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NUCLEAR REGULATORY COMMISSION

10 CFR Part 72

[NRC–2018–0220]

RIN 3150–AK17

List of Approved Spent Fuel Storage Casks: NAC International Multi-Purpose Canister Storage System, Certificate of Compliance No. 1025, Amendment Nos. 7 and 8

AGENCY: Nuclear Regulatory Commission.

ACTION: Direct final rule.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is amending its spent fuel storage regulations by revising the NAC International Multi-Purpose Canister (NAC–MPC) Storage System listing within the ''List of approved spent fuel storage casks'' to include Amendment Nos. 7 and 8 to Certificate of Compliance No. 1025. Amendment No. 7 revises the technical specifications to eliminate the requirements for the heat removal system to be operable for La Crosse Boiling Water Reactor spent fuel stored in the NAC–MPC because convective cooling is not required, and to eliminate duplicative requirements. In addition, Amendment No. 8 removes duplicative surveillance requirements in the technical specifications because these requirements are already required by the revised Technical Specification A 3.1.6, ''CONCRETE CASK Heat Removal System.''

DATES: This direct final rule is effective March 4, 2019, unless significant adverse comments are received by January 17, 2019. If this direct final rule is withdrawn as a result of such comments, timely notice of the withdrawal will be published in the **Federal Register** (FR). Comments received after this date will be considered if it is practical to do so, but the NRC is able to ensure consideration only for comments received on or before this date. Comments received on this direct final rule will also be considered to be comments on a companion proposed rule published in the Proposed Rules section of this issue of the FR.

ADDRESSES: You may submit comments by any of the following methods:

- *Federal Rulemaking Website:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2018–0220. Address questions about NRC dockets to Carol Gallagher; telephone: 301–415–3463; email: *Carol.Gallagher@nrc.gov.* For technical questions contact the individuals listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *Email comments to: Rulemaking.Comments@nrc.gov.* If you do not receive an automatic email reply confirming receipt, then contact us at 301–415–1677.
- *Fax comments to:* Secretary, U.S. Nuclear Regulatory Commission at 301–415–1101.
- *Mail comments to:* Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN: Rulemakings and Adjudications Staff.
- *Hand deliver comments to:* 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 a.m. and 4:15 p.m. (Eastern Time) Federal workdays; telephone: 301–415–1677.

For additional direction on obtaining information and submitting comments, see ''Obtaining Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Bernard H. White, Office of Nuclear Material Safety and Safeguards; telephone: 301–415–6577; email: *Bernard.White@nrc.gov* or Gregory R. Trussell, Office of Nuclear Material Safety and Safeguards; telephone: 301–415–6244; email: *Gregory.Trussell@nrc.gov.* Both are staff of the U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

SUPPLEMENTARY INFORMATION:

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I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2018–0220 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 *http://www.regulations.gov* and search for Docket ID NRC–2018–0220.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''*ADAMS Public Documents*'' and then 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.* For the convenience of the reader, instructions about obtaining materials referenced in this document are provided in the ''Availability of Documents'' section.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

B. Submitting Comments

Please include Docket ID NRC–2018–0220 in your comment submission.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at *http://www.regulations.gov* as well as enter the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for

submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

II. Rulemaking Procedure

This direct final rule is limited to the changes contained in Amendment Nos. 7 and 8 to Certificate of Compliance No. 1025 and does not include other aspects of the NAC–MPC Storage System design. The NRC is using the ''direct final rule procedure'' to issue these amendments because they represent limited and routine changes to an existing certificate that are expected to be noncontroversial. Adequate protection of public health and safety continues to be ensured. The amendments to the rule will become effective on March 4, 2019. However, if the NRC receives significant adverse comments on this direct final rule by January 17, 2019, then the NRC will publish a document that withdraws this action and will subsequently address the comments received in a final rule as a response to the companion proposed rule published in the Proposed Rules section of this issue of the FR. Absent significant modifications to the proposed revisions requiring republication, the NRC will not initiate a second comment period on this action.

A significant adverse comment is a comment where the commenter explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or would be ineffective or unacceptable without a change. A comment is adverse and significant if:

(1) The comment opposes the rule and provides a reason sufficient to require a substantive response in a notice-and-comment process. For example, a substantive response is required when:

(a) The comment causes the NRC staff to reevaluate (or reconsider) its position or conduct additional analysis;

(b) The comment raises an issue serious enough to warrant a substantive response to clarify or complete the record; or

(c) The comment raises a relevant issue that was not previously addressed or considered by the NRC staff.

(2) The comment proposes a change or an addition to the rule, and it is apparent that the rule would be ineffective or unacceptable without incorporation of the change or addition.

(3) The comment causes the NRC staff to make a change (other than editorial) to the rule, Certificate of Compliance, or technical specifications.

For detailed instructions on filing comments, please see the companion proposed rule published in the Proposed Rule section of this issue of the FR.

III. Background

Section 218(a) of the Nuclear Waste Policy Act (NWPA) of 1982, as amended, requires that ''the Secretary [of the Department of Energy] shall establish a demonstration program, in cooperation with the private sector, for the dry storage of spent nuclear fuel at civilian nuclear power reactor sites, with the objective of establishing one or more technologies that the [Nuclear Regulatory] Commission may, by rule, approve for use at the sites of civilian nuclear power reactors without, to the maximum extent practicable, the need for additional site-specific approvals by the Commission.'' Section 133 of the NWPA states, in part, that ''[the Commission] shall, by rule, establish procedures for the licensing of any technology approved by the Commission under Section 219(a) [sic: 218(a)] for use at the site of any civilian nuclear power reactor.''

To implement this mandate, the Commission approved dry storage of spent nuclear fuel in NRC-approved casks under a general license by publishing a final rule which added a new subpart K in part 72 of title 10 of the *Code of Federal Regulations* (10 CFR) entitled ''General License for Storage of Spent Fuel at Power Reactor Sites'' (55 FR 29181; July 18, 1990). This rule also established a new subpart L in 10 CFR part 72 entitled ''Approval of Spent Fuel Storage Casks,'' which contains procedures and criteria for obtaining NRC approval of spent fuel storage cask designs. The NRC subsequently issued a final rule on March 9, 2000 (65 FR 12444), that approved the NAC–MPC Cask System design and added it to the list of NRC-approved cask designs in § 72.214 as Certificate of Compliance No. 1025.

IV. Discussion of Changes

On November 14, 2017, as supplemented on February 12, 2018, NAC International submitted a request to the NRC to amend Certificate of Compliance No. 1025 by adding Amendment No. 7. On February 28, 2018, NAC International also submitted a request to amend Certificate of Compliance No. 1025 by adding Amendment No. 8. These two requests are included in this rulemaking.

Amendment No. 7 revises the technical specifications to:

- Modify the definition for OPERABLE under Technical Specification A 1.1, ''Definitions,'' by deleting the reference to Multi Purpose Canister—La Crosse Boiling Water Reactor (MPC LACBWR).
- Revise the note under ACTIONS of Technical Specification Limiting Condition for Operation (LCO) 3.1.6 under Technical Specification A 3.1.6, ''CONCRETE CASK Heat Removal System,'' to clarify that LCO 3.1.6 is not applicable to the MPC–LACBWR CANISTER.
- Revise SURVEILLANCE under Surveillance Requirement (SR) 3.1.6.1 by deleting ''and the MPC LACBWR CANISTER.'' Further, add a footnote to SR 3.1.6.1 stating, ''SR 3.1.6.1 is not applicable to the MPC LACBWR CANISTER. Convective cooling is not required for the MPC–LACBWR CANISTER.''
- Revise Technical Specification A 5.3 under A 5.0, ''ADMINISTRATIVE CONTROLS AND PROGRAMS,'' to delete the requirement for a response surveillance following off normal, accident, or natural phenomena events since the response surveillance is, in principle, covered by existing technical specification surveillance requirements and frequencies.

This amendment also revises the technical specifications to ensure they are consistent with the applicant's proposed change for the decay heat in its revised thermal evaluation, and makes an editorial change in Technical Specification 3.1.2 to ensure consistency.

Amendment No. 8 revises the technical specifications to:

- Revise Technical Specification No. A 3.1.6, ''CONCRETE CASK Heat Removal System'' to change Condition A from ''LCO not met'' to ''CONCRETE CASK Heat Removal System inoperable.''
- Add new LCO REQUIRED ACTION A.1 ''Ensure adequate heat removal to prevent exceeding short-term temperature limits with an Immediate COMPLETION TIME,'' and renumber old A.1 to A.2 ''Restore CONCRETE CASK Heat Removal System to OPERABLE status.''
- Revise renumbered LCO REQUIRED ACTION A.2 COMPLETION TIME from 8 hours to 25 days under Technical Specification A 3.1.6.
- Revise Technical Specification A 3.1.6 CONDITION B from ''Required Action and associated Completion Time not met'' to ''Required Action A.1 or A.2 and associated Completion Time not met.''

• Delete Technical Specification A 3.1.6 LCO REQUIRED ACTION B.1, ''Perform SR 3.1.6.1,'' and renumber old B.2.1 and B.2.2 to B.1 and B.2, respectively.

• Revise renumbered LCO REQUIRED ACTIONS B.1 and B.2 COMPLETION TIMES from 12 hours to 5 days under Technical Specification A 3.1.6.

• Revise Technical Specification A 3.2.2, ''CONCRETE CASK Average Surface Dose Rates,'' APPLICABILITY from ''Prior to or at the beginning of STORAGE OPERATIONS'' to ''Prior to STORAGE OPERATIONS.''

• Delete Technical Specification A 5.3, ''Surveillance After an Off-Normal, Accident, or Natural Phenomena Event,'' in its entirety as response surveillance is, in principle, covered by existing technical specification surveillance requirements and frequencies.

As documented in the preliminary safety evaluation reports, the NRC performed a safety review of each proposed Certificate of Compliance amendment request. For Amendment No. 7, with reduced heat load the convective heat flow in the annulus between the canister and concrete cask does not need to work in order for the storage cask and spent fuel to remain below their respective maximum operating temperatures. For Amendment No. 8, the surveillance requirements in Technical Specification A 5.3, ''Surveillance After an Off-Normal, Accident, or Natural Phenomena Event'' can be deleted because these requirements can be achieved with the revised Technical Specification A 3.1.6, ''CONCRETE CASK Heat Removal System'' by ensuring the heat removal capability. There are no significant changes to cask design requirements in the proposed amendments. Considering the specific design requirements for each accident condition, the design of the cask would prevent loss of containment, shielding, and criticality control in the event of an accident. These amendments do not reflect a significant change in design or fabrication of the cask. In addition, any resulting occupational exposure or offsite dose rates from the implementation of Amendment Nos. 7 and 8 would remain well within the 10 CFR part 20 limits. There will be no significant change in the types or amounts of any effluent released, no significant increase in the individual or cumulative radiation exposure, and no significant increase in the potential for, or consequences from, radiological accidents.

This direct final rule revises the NAC–MPC Storage System listing in § 72.214 by adding Amendment Nos. 7 and 8 to Certificate of Compliance No. 1025. These amendments consist of the changes previously described, as set forth in the revised certificate and technical specifications. The revised technical specifications are identified in the preliminary safety evaluation reports.

The amended NAC–MPC Storage System design, when used under the conditions specified in the Certificate of Compliance, technical specifications, and the NRC's regulations, will meet the requirements of 10 CFR part 72; therefore, adequate protection of public health and safety will continue to be ensured. When this direct final rule becomes effective, persons who hold a general license under § 72.210 may load spent nuclear fuel into NAC–MPC Storage System casks that meet the criteria of Amendment Nos. 7 and 8 to Certificate of Compliance No. 1025 under § 72.212.

V. Voluntary Consensus Standards

The National Technology Transfer and Advancement Act of 1995 (Pub. L. 104–113) requires that Federal agencies use technical standards that are developed or adopted by voluntary consensus standards bodies unless the use of such a standard is inconsistent with applicable law or otherwise impractical. In this direct final rule, the NRC will revise the NAC–MPC Storage System design listed in § 72.214, ''List of approved spent fuel storage casks.'' This action does not constitute the establishment of a standard that contains generally applicable requirements.

VI. Agreement State Compatibility

Under the ''Policy Statement on Adequacy and Compatibility of Agreement State Programs'' approved by the Commission on June 30, 1997, and published in the FR on September 3, 1997 (62 FR 46517), this rule is classified as Compatibility Category ''NRC.'' Compatibility is not required for Category ''NRC'' regulations. The NRC program elements in this category are those that relate directly to areas of regulation reserved to the NRC by the Atomic Energy Act of 1954, as amended, or the provisions of 10 CFR. Although an Agreement State may not adopt program elements reserved to the NRC, and the Category ''NRC'' does not confer regulatory authority on the State, the State may wish to inform its licensees of certain requirements by means consistent with the particular State's administrative procedure laws.

VII. 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 31883).

VIII. Environmental Assessment and Finding of No Significant Environmental Impact

A. The Action

The action is to amend § 72.214 to revise the NAC–MPC Storage System listing within the ''List of approved spent fuel storage casks'' to include Amendment Nos. 7 and 8 to Certificate of Compliance No. 1025. Amendment No. 7 revises the technical specifications to eliminate the requirements for the heat removal system to be operable for La Crosse Boiling Water Reactor spent fuel and to eliminate duplicative requirements. In addition, Amendment No. 8 removes surveillance requirements in the technical specifications because these requirements are already required by the revised Technical Specification A 3.1.6, ''CONCRETE CASK Heat Removal System.''

B. The Need for the Action

This direct final rule adds an amended Certificate of Compliance for the NAC–MPC Storage System design to the list of approved spent fuel storage casks that power reactor licensees can use to store spent fuel at reactor sites under a general license. Specifically, Amendment No. 7 revises the technical specifications to eliminate the requirements for the heat removal system to be operable for La Crosse Boiling Water Reactor spent fuel and to eliminate duplicative requirements as described in Section IV, ''Discussion of Changes,'' of this document. In addition, Amendment No. 8 removes surveillance requirements in the technical specifications because these requirements already are required by the revised Technical Specification A 3.1.6, ''CONCRETE CASK Heat Removal System.''

C. Environmental Impacts of the Action

On July 18,1990 (55 FR 29181), the NRC issued an amendment to 10 CFR part 72 to provide for the storage of spent fuel under a general license in cask designs approved by the NRC. The potential environmental impact of using NRC-approved storage casks was initially analyzed in the environmental

assessment for the 1990 final rule. The environmental assessment for Amendment Nos. 7 and 8 tier off of the environmental assessment for the July 18, 1990, final rule. Tiering on past environmental assessments is a standard process under the National Environmental Policy Act of 1969, as amended.

The NAC–MPC Storage Systems are designed to mitigate the effects of design basis accidents that could occur during storage. Design basis accidents account for human-induced events and the most severe natural phenomena reported for the site and surrounding area. Postulated accidents analyzed for an independent spent fuel storage installation, the type of facility at which a holder of a power reactor operating license would store spent fuel in casks in accordance with 10 CFR part 72, include tornado winds and tornado-generated missiles, a design basis earthquake, a design basis flood, an accidental cask drop, lightning effects, fire, explosions, and other incidents.

Considering the specific design requirements for each accident condition, the design of the cask would prevent loss of confinement, shielding, and criticality control in the event of an accident. If there is no loss of confinement, shielding, or criticality control, the environmental impacts resulting from an accident would be insignificant. This amendment does not reflect a significant change in design or fabrication of the cask.

Because there are no significant design or process changes, any resulting occupational exposure or offsite dose rates from the implementation of Amendment Nos. 7 and 8 would remain well within the 10 CFR part 20 limits. Therefore, the proposed changes will not result in any radiological or non-radiological environmental impacts that significantly differ from the environmental impacts evaluated in the environmental assessment supporting the July 18, 1990, final rule. There will be no significant change in the types or significant revisions in the amounts of any effluent released, no significant increase in the individual or cumulative radiation exposure, and no significant increase in the potential for or consequences from radiological accidents. The staff documented its safety findings in the preliminary safety evaluation reports.

D. Alternative to the Action

The alternative to this action is to deny approval of Amendment Nos. 7 and 8 and end the direct final rule. Consequently, any 10 CFR part 72 general licensee that seeks to either load spent nuclear fuel into the NAC–MPC Storage System or utilize the technical specifications, which reduces the burden on surveillance for storage of La Crosse Boiling Water Reactor spent fuel and other general licensees, in accordance with the changes described in proposed Amendment Nos. 7 and 8 would have to request an exemption from the requirements of §§ 72.212 and 72.214. Under this alternative, interested licensees would have to prepare, and the NRC would have to review, a separate exemption request, thereby increasing the administrative burden upon the NRC and the costs to each licensee. Therefore, the environmental impacts would be the same, or more likely greater than, the proposed action.

E. Alternative Use of Resources

Approval of Amendment Nos. 7 and 8 to Certificate of Compliance No. 1025 would result in no irreversible commitment of resources.

F. Agencies and Persons Contacted

No agencies or persons outside the NRC were contacted in connection with the preparation of this environmental assessment.

G. Finding of No Significant Impact

The environmental impacts of the action have been reviewed under the requirements in the National Environmental Policy Act of 1969, as amended, and the NRC's regulations in subpart A of 10 CFR part 51, ''Environmental Protection Regulations for Domestic Licensing and Related Regulatory Functions.'' Based on the foregoing environmental assessment, the NRC concludes that this direct final rule entitled ''List of Approved Spent Fuel Storage Casks: NAC International Multi-Purpose Canister Storage System, Certificate of Compliance No. 1025, Amendment Nos. 7 and 8,'' will not have a significant effect on the human environment. Therefore, the NRC has determined that an environmental impact statement is not necessary for this direct final rule.

IX. Paperwork Reduction Act Statement

This direct final rule does not contain any new or amended collections of information subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Existing collections of information were approved by the Office of Management and Budget (OMB), approval number 3150–0132.

Public Protection Notification

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

X. Regulatory Flexibility Certification

Under the Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b)), the NRC certifies that this direct final rule will not, if issued, have a significant economic impact on a substantial number of small entities. This direct final rule affects only nuclear power plant licensees and NAC International. These entities do not fall within the scope of the definition of small entities set forth in the Regulatory Flexibility Act or the size standards established by the NRC (§ 2.810).

XI. Regulatory Analysis

On July 18, 1990 (55 FR 29181), the NRC issued an amendment to 10 CFR part 72 to provide for the storage of spent nuclear fuel under a general license in cask designs approved by the NRC. Any nuclear power reactor licensee can use NRC-approved cask designs to store spent nuclear fuel if it notifies the NRC in advance, the spent fuel is stored under the conditions specified in the cask's Certificate of Compliance, and the conditions of the general license are met. A list of NRC-approved cask designs is contained in § 72.214. On March 9, 2000 (65 FR 12444), the NRC issued an amendment to 10 CFR part 72 that approved the NAC–MPC Storage System design by adding it to the list of NRC-approved cask designs in § 72.214.

On November 14, 2017, as supplemented on February 12, 2018, NAC International submitted a request to the NRC to amend Certificate of Compliance No. 1025 by adding Amendment No. 7. On February 28, 2018, NAC International also submitted a request to amend Certificate of Compliance No. 1025 by adding Amendment No. 8. The NAC International submitted these applications to amend the NAC–MPC Storage System as described in Section IV, ''Discussion of Changes,'' of this document.

The alternative to this action is to withhold approval of Amendment Nos. 7 and 8 and to require any 10 CFR part 72 general licensee seeking to load spent nuclear fuel into NAC–MPC Storage Systems under the changes described in Amendment Nos. 7 and 8 to request an exemption from the requirements of

§§ 72.212 and 72.214. Under this alternative, each interested 10 CFR part 72 licensee would have to prepare, and the NRC would have to review, a separate exemption request, thereby increasing the administrative burden upon the NRC and the costs to each licensee.

Approval of this direct final rule is consistent with previous NRC actions. Further, as documented in the preliminary safety evaluation reports and environmental assessment, this direct final rule will have no adverse effect on public health and safety or the environment. This direct final rule has no significant identifiable impact or benefit on other Government agencies. Based on this regulatory analysis, the NRC concludes that the requirements of this direct final rule are commensurate with the NRC's responsibilities for public health and safety and the common defense and security. No other available alternative is believed to be as satisfactory, and therefore, this action is recommended.

XII. Backfitting and Issue Finality

The NRC has determined that the backfit rule (10 CFR 72.62) does not apply to this direct final rule. Therefore, a backfit analysis is not required. This direct final rule revises Certificate of Compliance No. 1025 for the NAC–MPC Storage System, as currently listed in § 72.214, ''List of approved spent fuel storage casks.'' The revision consists of Amendment Nos. 7 and 8, which revise the technical specifications to eliminate the requirements for the heat removal system to be operable for La Crosse Boiling Water Reactor spent fuel and to eliminate duplicative requirements and removes surveillance requirements in the technical specifications because these requirements are already required by the revised Technical Specification A 3.1.6, ''CONCRETE CASK Heat Removal System.''

Amendment Nos. 7 and 8 to Certificate of Compliance No. 1025 for the NAC–MPC Storage System were initiated by NAC International and were not submitted in response to new NRC requirements, or an NRC request for amendment. Amendment Nos. 7 and 8 apply only to new casks fabricated and used under Amendment Nos. 7 and 8. These changes do not affect existing users of the NAC–MPC Storage System, and the current Amendment No. 6 continues to be effective for existing users. While current users of this storage system may comply with the new requirements in Amendment Nos. 7 and 8, this would be a voluntary decision on the part of current users.

For these reasons, Amendment Nos. 7 and 8 to Certificate of Compliance No. 1025 do not constitute backfitting under § 72.62 or § 50.109(a)(1), or otherwise represent an inconsistency with the issue finality provisions applicable to combined licenses in 10 CFR part 52. Accordingly, the NRC staff has not prepared a backfit analysis for this rulemaking.

XIII. Congressional Review Act

This direct final rule is not a rule as defined in the Congressional Review Act.

XIV. Availability of Documents

The documents identified in the following table are available to interested persons through one or more of the following methods, as indicated.

Document	ADAMS Accession No./ web link/ **Federal Register** citation
Request to Amend Certificate of Compliance No. 1025 for the NAC–MPC Storage System, dated November 14, 2017	ML17326A128
Request to Amend Certificate of Compliance No. 1025 for the NAC–MPC Storage System, dated February 12, 2018	ML18045A440
Request to Amend Certificate of Compliance No. 1025 for the NAC–MPC Storage System, dated February 28, 2018	ML18059A784
Proposed Certificate of Compliance No. 1025, Amendment No. 7	ML18255A024
Proposed Technical Specification Appendices A and B for Amendment No. 7	ML18255A022
Preliminary Safety Evaluation Report for Amendment No. 7	ML18255A026
Proposed Certificate of Compliance No. 1025, Amendment No. 8	ML18255A025
Proposed Technical Specification Appendices A and B for Amendment No. 8	ML18255A023
Preliminary Safety Evaluation Report for Amendment No. 8	ML18255A027

The NRC may post materials related to this document, including public comments, on the Federal Rulemaking website at *http://www.regulations.gov* under Docket ID NRC–2018–0220. The Federal Rulemaking website allows you to receive alerts when changes or additions occur in a docket folder. To subscribe: (1) Navigate to the docket folder (NRC–2018–0220); (2) click the ''Sign up for Email Alerts'' link; and (3) enter your email address and select how frequently you would like to receive emails (daily, weekly, or monthly).

List of Subjects in 10 CFR Part 72

Administrative practice and procedure, Hazardous waste, Indians, Intergovernmental relations, Nuclear energy, Penalties, Radiation protection, Reporting and recordkeeping requirements, Security measures, Whistleblowing.

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; the Nuclear Waste Policy Act of 1982, as amended; and 5 U.S.C. 552 and 553; the NRC is adopting the following amendments to 10 CFR part 72:

PART 72—LICENSING REQUIREMENTS FOR THE INDEPENDENT STORAGE OF SPENT NUCLEAR FUEL, HIGH-LEVEL RADIOACTIVE WASTE, AND REACTOR-RELATED GREATER THAN CLASS C WASTE

■ 1. The authority citation for part 72 continues to read as follows:

Authority: Atomic Energy Act of 1954, secs. 51, 53, 57, 62, 63, 65, 69, 81, 161, 182, 183, 184, 186, 187, 189, 223, 234, 274 (42 U.S.C. 2071, 2073, 2077, 2092, 2093, 2095, 2099, 2111, 2201, 2210e, 2232, 2233, 2234, 2236, 2237, 2238, 2273, 2282, 2021); Energy Reorganization Act of 1974, secs. 201, 202, 206, 211 (42 U.S.C. 5841, 5842, 5846, 5851); National Environmental Policy Act of 1969 (42 U.S.C. 4332); Nuclear Waste Policy Act of 1982, secs. 117(a), 132, 133, 134, 135, 137, 141, 145(g), 148, 218(a) (42 U.S.C. 10137(a),

10152, 10153, 10154, 10155, 10157, 10161, 10165(g), 10168, 10198(a)); 44 U.S.C. 3504 note.

■ 2. In § 72.214, Certificate of Compliance 1025 is revised to read as follows:

§ 72.214 List of approved spent fuel storage casks.

* * * * *

Certificate Number: 1025.

Initial Certificate Effective Date: April 10, 2000.

Amendment Number 1 Effective Date: November 13, 2001.

Amendment Number 2 Effective Date: May 29, 2002.

Amendment Number 3 Effective Date: October 1, 2003.

Amendment Number 4 Effective Date: October 27, 2004.

Amendment Number 5 Effective Date: July 24, 2007.

Amendment Number 6 Effective Date: October 4, 2010.

Amendment Number 7 Effective Date: March 4, 2019.

Amendment Number 8 Effective Date: March 4, 2019.

SAR Submitted by: NAC International, Inc.

SAR Title: Final Safety Analysis Report for the NAC Multi-Purpose Canister System (NAC–MPC System).

Docket Number: 72–1025.

Certificate Expiration Date: April 10, 2020.

Model Number: NAC–MPC.

* * * * *

Dated at Rockville, Maryland, this 4th day of December 2018.

For the Nuclear Regulatory Commission.

Margaret M. Doane,

Executive Director for Operations.

[FR Doc. 2018–27284 Filed 12–17–18; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2013–0555; Product Identifier 2010–SW–047–AD; Amendment 39–19529; AD 2014–05–06 R1]

RIN 2120–AA64

Airworthiness Directives; Airbus Helicopters Deutschland GmbH Helicopters (Type Certificate Previously Held by Eurocopter Deutschland GmbH)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are revising Airworthiness Directive (AD) 2014–05–06 for Eurocopter Deutschland GmbH Model EC135 and MBB–BK 117C–2 helicopters. AD 2014–05–06 required repetitive inspections of the flight-control bearings, replacing any loose bearings with airworthy flight-control bearings, and installing bushings and washers. This new AD retains the requirements of AD 2014–05–06 but removes the repetitive inspections. The actions of this AD are intended to correct an unsafe condition on these products.

DATES: This AD is effective January 22, 2019.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of April 14, 2014 (79 FR 13196, March 10, 2014).

ADDRESSES: For service information identified in this final rule, contact Airbus Helicopters, 2701 N. Forum Drive, Grand Prairie, TX 75052; telephone (972) 641–0000 or (800) 232–0323; fax (972) 641–3775; or at *http://www.helicopters.airbus.com/website/en/ref/Technical-Support_73.html.* You may view this referenced service information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy, Room 6N–321, Fort Worth, TX 76177. It is also available on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2013–0555.

Examining the AD Docket

You may examine the AD docket on the internet at *http://www.regulations.gov* in Docket No. FAA–2013–0555; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the European Aviation Safety Agency (EASA) AD, any incorporated-by-reference information, the economic evaluation, any comments received, and other information. The address for Docket Operations (phone: 800–647–5527) is Docket Operations, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Matt Fuller, Senior Aviation Safety Engineer, Safety Management Section, Rotorcraft Standards Branch, FAA, 10101 Hillwood Pkwy., Fort Worth, TX 76177; telephone (817) 222–5110; email *matthew.fuller@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to remove AD 2014–05–06, Amendment 39–17779 (79 FR 13196, March 10, 2014) (AD 2014–05–06) and add a new AD. AD 2014–05–06 applied to certain Eurocopter Deutschland GmbH Model EC135 and MBB–BK 117C–2 helicopters. The NPRM was published in the **Federal Register** on June 1, 2018 (83 FR 25415). AD 2014–05–06 required repetitive inspections of the flight-control bearings, replacing any loose bearings with airworthy flight-control bearings, and installing bushings and washers. The NPRM proposed to retain the requirements of AD 2014–05–06 but remove the repetitive inspection requirements.

AD 2014–05–06 was prompted by AD No. 2010–0058, dated March 30, 2010 (EASA AD 2010–0058), issued by EASA, which is the Technical Agent for the Member States of the European Union, to correct an unsafe condition for Eurocopter Deutschland GmbH (now Airbus Helicopters Deutschland GmbH) Model EC135, EC635, and MBB–BK 117C–2 helicopters. EASA advises that during an inspection of an MBB–BK117 C–2, ''bearings were detected which had not been correctly fixed.'' EASA advises that this condition, if not detected and corrected, may cause the affected control lever to shift in the axial direction and contact the helicopter structure, possibly resulting in reduced helicopter control. As some bearings on the EC135 and MBB–BK 117C–2 helicopter are installed with the same procedure, they are equally affected by the possibility of the unsafe condition, EASA advises.

Since we published AD 2014–05–06, EASA issued AD No. 2010–0058R1, dated April 7, 2017, to remove the repetitive inspections required by EASA AD 2010–0058. EASA advises that a review of data and feedback from in-service helicopters determined the Airbus Helicopters modification removes the need for repetitive inspections. We have made a similar determination and are issuing this AD to remove the repetitive inspections previously required by AD 2014–05–06.

Comments

We gave the public the opportunity to participate in developing this AD, but we received no comments on the NPRM.

FAA's Determination

These helicopters have been approved by the aviation authority of Germany and are approved for operation in the United States. Pursuant to our bilateral

agreement with Germany, EASA, its technical representative, has notified us of the unsafe condition described in the EASA AD. We have reviewed the relevant information and determined that an unsafe condition exists and is likely to exist or develop on other helicopters of these same type designs and that air safety and the public interest require adopting the AD requirements as proposed.

Differences Between This AD and the EASA AD

Differences between this AD and the EASA AD are:

- The EASA AD is applicable to EC 635-series helicopters, whereas this AD is not because these model helicopters have no U.S. type certificate.
- The EASA AD requires the modification within the next 12 months after April 13, 2010. This AD requires the modification within 100 hours TIS or at the next annual inspection, whichever occurs first.

Related Service Information Under 1 CFR Part 51

Eurocopter issued Alert Service Bulletin (ASB) EC135–67A–019, Revision 3, dated December 16, 2009, for Model EC135-series helicopters, and ASB MBB–BK117 C–2–67A–010, Revision 3, dated February 8, 2010, for Model MBB–BK 117C–2 helicopters. This service information specifies a repetitive inspection of the affected bearings and retrofitting bushings on the levers to prevent movement of the bearings.

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

Other Related Service Information

We reviewed Airbus Helicopters ASB EC135–67A–019 for Model EC135-series helicopters and ASB MBB–BK117C–2–67A–010 for Model MBB–BK 117C–2 helicopters, both Revision 4 and both dated April 3, 2017. This service information removes the repetitive inspections and retains the procedures for retrofitting the bushings on the levers to prevent movement of the bearings. Revision 3 of this service information is attached as an appendix to Revision 4.

Costs of Compliance

We estimate that this AD affects 295 Model EC135-series helicopters and 117 Model MBB–BK 117C–2 helicopters of U.S. Registry and that labor costs average $85 per work-hour. Based on these estimates, we expect the following costs:

- For EC135 helicopters, completing the required modification requires about 32 work-hours and parts cost about $312, for a total cost of $3,032 per helicopter and $894,440 for the U.S. fleet.
- For MBB–BK 117C–2 helicopters, completing the required modification requires about 32 work-hours and parts cost about $396, for a total cost of $3,116 per helicopter and $364,572 for the U.S. fleet.

Authority for This Rulemaking

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

We are 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

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

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

(1) Is not a ''significant regulatory action'' under Executive Order 12866,

(2) Is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979),

(3) Will not affect intrastate aviation in Alaska to the extent that it justifies making a regulatory distinction, and

(4) 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 removing Airworthiness Directive (AD) 2014–05–06, Amendment 39–17779 (79 FR 13196, March 10, 2014), and adding the following new AD:

2014–05–06 R1 Airbus Helicopters Deutschland GmbH (Type Certificate Previously Held by Eurocopter Deutschland GmbH): Amendment 39–19529; Docket No. FAA–2013–0555; Product Identifier 2010–SW–047–AD.

(a) Applicability

This AD applies to the following Airbus Helicopters Deutschland GmbH (Type Certificate previously held by Eurocopter Deutschland GmbH) helicopters, certificated in any category:

(1) Model EC135 P1, P2, P2+, T1, T2, and T2+ helicopters, serial number (S/N) 0005 through 00829, with a tail rotor control lever, part number (P/N) L672M2802205 or L672M1012212; cyclic control lever, P/N L671M1005250; collective control lever assembly, P/N L671M2020108; or collective control plate, P/N L671M5040207; installed, and

(2) Model MBB–BK 117C–2 helicopters, S/N 9004 through 9310, with a tail rotor control lever assembly, P/N B672M1007101 or B672M1807101; tail rotor control lever, P/N B672M1002202 or L672M2802205; or lateral control lever assembly, P/N B670M1008101, installed.

(b) Unsafe Condition

This AD defines the unsafe condition as incorrectly installed flight control bearings. This condition could cause the affected control lever to shift and contact the helicopter structure, resulting in reduced control of the helicopter.

(c) Effective Date

This AD becomes effective January 22, 2019.

(d) Compliance

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

(e) Required Actions

(1) For Model EC135 P1, P2, P2+, T1, T2, and T2+ helicopters: Within the next 100 hours time-in-service (TIS) or at the next annual inspection, whichever occurs first, modify the left-hand (LH) and right-hand (RH) guidance units and the cyclic shaft by installing bushings and washers to prevent shifting of the bearings in the axial direction as follows:

(i) Remove and disassemble the LH guidance unit and install a bushing, P/N L672M1012260, between the bearing block and the lever of the LH guidance unit as depicted in Detail A of Figure 5 of Eurocopter Alert Service Bulletin EC135–67A–019, Revision 3, dated December 16, 2009 (EC135 ASB).

(ii) For helicopters without a yaw brake, remove and disassemble the RH guidance unit and install a bushing, P/N L672M1012260, between the bearing block and the lever as depicted in Detail B of Figure 5 of EC135 ASB.

(iii) Remove and disassemble the cyclic shaft and install a washer, P/N L671M1005260, between the bearing block and the lever as depicted in Detail C of Figure 6 of EC135 ASB.

(iv) Remove the collective control rod from the bellcrank and install a washer, P/N L221M1042208, on each side of the collective control rod and bellcrank as depicted in Detail D of Figure 6 of EC135 ASB.

(2) For Model MBB–BK 117C–2 helicopters: Within the next 100 hours TIS or at the next annual inspection, whichever occurs first, modify the LH and RH guidance units and the lateral control lever by installing bushings and washers to prevent shifting of the bearings in the axial direction as follows:

(i) Remove and disassemble the RH guidance unit and install a bushing, P/N L672M1012260, between the lever and the bracket as depicted in Detail B of Figure 4 of Eurocopter Alert Service Bulletin MBB BK117 C–2–67A–010, Revision 3, dated February 8, 2010 (BK117 ASB). Remove and disassemble the LH guidance unit and install a bushing, P/N L672M1012260, between the lever and the bracket as depicted in Detail C of Figure 4 of BK117 ASB.

(ii) Remove the lateral control lever and install new bushings in accordance with the Accomplishment Instructions, paragraphs 3.C(9)(a) through 3.C(9)(g) of BK117 ASB.

(iii) Identify the modified lever assembly by writing ''MBB BK117 C–2–67A–010'' on the lever with permanent marking pen and protect with a single layer of lacquer (CM 421 or equivalent).

(iv) Apply corrosion preventive paste (CM518 or equivalent) on the shank of the screws and install airworthy parts as depicted in Figure 5 of BK117 ASB.

(f) Affected ADs

This AD replaces AD 2014–05–06, Amendment 39–17779 (79 FR 13196, March 10, 2014).

(g) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Safety Management Section, Rotorcraft Standards Branch, FAA, may approve AMOCs for this AD. Send your proposal to: Matt Fuller, Senior Aviation Safety Engineer, Safety Management Section, Rotorcraft Standards Branch, FAA, 10101 Hillwood Pkwy., Fort Worth, TX 76177; telephone (817) 222–5110; email *9-ASW-FTW-AMOC-Requests@faa.gov.*

(2) For operations conducted under a 14 CFR part 119 operating certificate or under 14 CFR part 91, subpart K, we suggest that you notify your principal inspector, or lacking a principal inspector, the manager of the local flight standards district office or certificate holding district office, before operating any aircraft complying with this AD through an AMOC.

(h) Additional Information

(1) Airbus Helicopters Alert Service Bulletin EC135–67A–019 and Alert Service Bulletin MBB–BK117C–2–67A–010, both Revision 4 and both dated April 3, 2017, which are not incorporated by reference, contain additional information about this AD. For service information identified in this AD, contact Airbus Helicopters, 2701 N. Forum Drive, Grand Prairie, TX 75052; telephone (972) 641–0000 or (800) 232–0323; fax (972) 641–3775; or at *http://www.helicopters.airbus.com/website/en/ref/Technical-Support_73.html.* You may review service information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy, Room 6N–321, Fort Worth, TX 76177.

(2) The subject of this AD is addressed in European Aviation Safety Agency (EASA) AD No. 2010–0058R1, dated April 7, 2017. You may view the EASA AD on the internet at *http://www.regulations.gov* in Docket No. FAA–2013–0555.

(i) Subject

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

(j) Material Incorporated by Reference

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

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

(3) The following service information was approved for IBR on April 14, 2014 (79 FR 13196, March 10, 2014).

(i) Eurocopter Alert Service Bulletin EC135–67A–019, Revision 3, dated December 16, 2009.

(ii) Eurocopter Alert Service Bulletin MBB BK117 C–2–67A–010, Revision 3, dated February 8, 2010.

(4) For Eurocopter service information identified in this AD, contact Airbus Helicopters, 2701 N. Forum Drive, Grand Prairie, TX 75052; telephone (972) 641–0000 or (800) 232–0323; fax (972) 641–3775; or at *http://www.helicopters.airbus.com/website/en/ref/Technical-Support_73.html.*

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

(6) 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, call (202) 741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Fort Worth, Texas, on December 6, 2018.

Scott A. Horn,

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

[FR Doc. 2018–27137 Filed 12–17–18; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2018–0006; Airspace Docket No. 18–AGL–1]

RIN 2120–AA66

Amendment of Class D Airspace; Appleton, WI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies Class D airspace at Appleton International Airport (formerly Outagamie County Airport), Appleton, WI. This action is required due to the decommissioning of the GAMIE locator outer marker (LOM) and collocated outer marker (OM) which provided navigation guidance to the airport. This action enhances the safety and management of instrument flight rules (IFR) operations at the airport. Also, the airport name and geographic coordinates are adjusted to coincide with the FAA's aeronautical database. Additionally, this action replaces the outdated term ''Airport/Facility Directory'' with the term ''Chart Supplement'' in the legal description, and removes the city associated with the airport name in the airspace designation.

DATES: Effective 0901 UTC, February 28, 2019. The Director of the Federal Register approves this incorporation by reference action under Title 1 Code of Federal Regulations part 51, subject to the annual revision of FAA Order 7400.11 and publication of conforming amendments.

ADDRESSES: FAA Order 7400.11C, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *http://www.faa.gov/air_traffic/publications/.* For further

information, you can contact the Airspace Policy Group, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783. The Order is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of FAA Order 7400.11C at NARA, call (202) 741–6030, or go to *https://www.archives.gov/federal-register/cfr/ibr-locations.html.*

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

FOR FURTHER INFORMATION CONTACT: John Witucki, Federal Aviation Administration, Operations Support Group, Central Service Center, 10101 Hillwood Parkway, Fort Worth, TX 76177; telephone (817) 222–5900.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

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

History

The FAA published a notice of proposed rulemaking (NPRM) in the **Federal Register** (83 FR 11445; March 15, 2018) for Docket No. FAA–2018–0006 to modify Class D airspace at Appleton International Airport, Appleton, WI. 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 airspace designations are published in paragraph 5000 of FAA Order 7400.11C, dated August 13, 2018, and effective September 15, 2018, which is incorporated by reference in 14 CFR 71.1. The Class D airspace designations listed in this document will be published subsequently in the Order.

Availability and Summary of Documents for Incorporation by Reference

This document amends FAA Order 7400.11C, Airspace Designations and Reporting Points, dated August 13, 2018, and effective September 15, 2018. FAA Order 7400.11C is publicly available as listed in the **ADDRESSES** section of this document. FAA Order 7400.11C lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Rule

This amendment to Title 14 Code of Federal Regulations (14 CFR) part 71 modifies Class D airspace extending upward from the surface to and including 3,400 feet MSL within a 4.2-mile radius (decreased from a 4.4-mile radius) of Appleton International Airport (formerly Outagamie County Airport), Appleton, WI. Airspace reconfiguration is necessary due to the decommissioning of the GAMIE LOM/OM.

This action also updates the airport name and geographic coordinates of the airport to coincide with the FAA's aeronautical database.

Additionally, this action makes an editorial change to the Class D airspace legal description replacing ''Airport/Facility Directory'' with the term ''Chart Supplement''.

Finally, an editorial removes the name of the city associated with the airport name in the airspace designation to comply with a recent change to FAA Order 7400.2L, Procedures for Handling Airspace Actions, dated October 12, 2017.

Regulatory Notices and Analyses

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

Environmental Review

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

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.11C, Airspace Designations and Reporting Points, dated August 13, 2018, and effective September 15, 2018, is amended as follows:

* * * * *

AGL WI D Appleton, WI [Amended]

Appleton International Airport, WI
(Lat. 44°15′29″ N, long 88°31′09″ W)

That airspace extending upward from the surface to and including 3,400 feet MSL within a 4.2-mile radius of Appleton International Airport. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Chart Supplement.

Issued in Fort Worth, Texas, on December 11, 2018.

John Witucki,

Manager (A), Operations Support Group, ATO Central Service Center.

[FR Doc. 2018–27253 Filed 12–17–18; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 510, 520, 522, 524, 556, and 558

[Docket No. FDA–2018–N–0002]

New Animal Drugs; Approval of New Animal Drug Applications; Changes of Sponsorship; Change of a Sponsor's Name and Address

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; technical amendments.

SUMMARY: The Food and Drug Administration (FDA or we) is amending the animal drug regulations to reflect application-related actions for new animal drug applications (NADAs) and abbreviated new animal drug applications (ANADAs) during April, May, and June 2018. FDA is informing the public of the availability of summaries of the basis of approval and of environmental review documents, where applicable. The animal drug regulations are also being amended to make technical amendments to improve the accuracy and readability of the regulations.

DATES: This rule is effective December 18, 2018.

FOR FURTHER INFORMATION CONTACT: George K. Haibel, Center for Veterinary Medicine (HFV–6), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 240–402–5689, *george.haibel@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Approval Actions

FDA is amending the animal drug regulations to reflect approval actions for NADAs and ANADAs during April, May, and June 2018, as listed in table 1. In addition, FDA is informing the public of the availability, where applicable, of documentation of environmental review required under the National Environmental Policy Act (NEPA) and, for actions requiring review of safety or effectiveness data, summaries of the basis of approval (FOI Summaries) under the Freedom of Information Act (FOIA). These public documents may be seen in the office of the Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday. Persons with access to the internet may obtain these documents at the CVM FOIA Electronic Reading Room: *https://www.fda.gov/AboutFDA/CentersOffices/Officeof Foods/CVM/CVMFOIAElectronic ReadingRoom/default.htm.* Marketing exclusivity and patent information may be accessed in FDA's publication, Approved Animal Drug Products Online (Green Book) at: *https://www.fda.gov/AnimalVeterinary/Products/Approved AnimalDrugProducts/default.htm.*

TABLE 1—ORIGINAL AND SUPPLEMENTAL NADAS AND ANADAS APPROVED DURING APRIL, MAY, AND JUNE 2018

Approval date	File No.	Sponsor	Product name	Species	Effect of the action	Public documents
May 4, 2018	141–481	Kindred Biosciences, Inc., 1555 Bayshore Hwy., Suite 200, Burlingame, CA 94010.	MIRATAZ (mirtazapine transdermal ointment).	Cats	Original approval for the management of weight loss in cats.	FOI Summary.
May 15, 2018	141–501	Boehringer Ingelheim Vetmedica, Inc., 2621 North Belt Hwy., St. Joseph, MO 64506–2002.	SEMINTRA (telmisartan oral solution).	Cats	Original approval for the control of systemic hypertension in cats.	FOI Summary.
May 25, 2018	141–063	Intervet, Inc., 2 Giralda Farms, Madison, NJ 07940.	NUFLOR (florfenicol), Injectable Solution.	Cattle	Supplemental approval to provide human food safety information for the use of the inactive ingredient *n*-methyl-2-pyrrolidone (NMP).	FOI Summary.
May 31, 2018	141–495	Elanco US Inc., 2500 Innovation Way, Greenfield, IN 46140.	INTEPRITY (avilamycin) and BIO-COX (salinomycin sodium) Type C medicated feeds.	Chickens	Original approval for the prevention of mortality caused by necrotic enteritis and for the prevention of coccidiosis in broiler chickens.	FOI Summary.
June 6, 2018	141–342	Jurox Pty. Ltd., 85 Gardiner Rd., Rutherford, NSW 2320, Australia.	ALFAXAN (alfaxalone), Injectable Solution.	Dogs and cats.	Supplemental approval providing for addition of preservatives and use of a multidose vial.	FOI Summary.
June 14, 2018	098–379	Merial, Inc., 3239 Satellite Blvd., Bldg. 500, Duluth, GA 30096–4640.	CYSTORELIN (gonadorelin), Injectable Solution.	Cattle	Supplemental approval for use with cloprostenol sodium to synchronize estrous cycles to allow for fixed-time artificial insemination (FTAI) in lactating dairy cows and beef cows.	FOI Summary, EA/FONSI.[1]

[1] The Agency has carefully considered an environmental assessment (EA) of the potential environmental impact of this action and has made a finding of no significant impact (FONSI).

II. Technical Amendments

With the approval of NADA 141–481, Kindred Biosciences, Inc. is now the sponsor of an approved application. Accordingly, we are amending § 510.600(c) to add the name, address, and drug labeler code of this sponsor.

Piramal Healthcare Ltd., Piramal Tower, Ganpatrao Kadam Marg, Lower Parel, Mumbai-400 013, India, has informed FDA that it has changed its name and address to Piramal Enterprises Ltd., Ananta, Agastya Corporate Park, Opp Fire Brigade, Kamani Junction, LBS Mag Kurla (West), Mumbai, 400070, India. We are amending § 510.600(c) to reflect this change.

We are also making technical amendments to update the scientific name of a pathogenic bacterium and to accurately list the concentrations of active ingredients in an otic dosage form new animal drug. We are also making a technical amendment to correct the sponsor of epsiprantel tablets. These actions are being taken to improve the accuracy of the regulations.

In addition, we are reformatting the regulations to create a tabular display of

the approved uses of narasin and a separate section for uses of a fixed-ratio, combination drug Type A medicated article containing narasin and nicarbazin. These actions are being taken to improve the readability, consistency, and accuracy of the regulations.

III. Legal Authority

This final rule is issued under section 512(i) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 360b(i)), which requires **Federal Register** publication of ''notice[s] . . . effective as a regulation,'' of the conditions of use of approved new animal drugs. This rule sets forth technical amendments to the regulations to codify recent actions on approved new animal drug applications and corrections to improve the accuracy of the regulations, and as such does not impose any burden on regulated entities.

Although denominated a rule pursuant to the FD&C Act, this document does not meet the definition of ''rule'' in 5 U.S.C. 804(3)(A) because it is a ''rule of particular applicability.'' Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808. Likewise, this is not a rule subject to Executive Order 12866, which defines a rule as ''an agency statement of general applicability and future effect, which the agency intends to have the force and effect of law, that is designed to implement, interpret, or prescribe law or policy or to describe the procedure or practice requirements of an agency.''

List of Subjects

21 CFR Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

21 CFR Parts 520, 522, and 524

Animal drugs.

21 CFR Part 556

Animal drugs, Foods.

21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR parts 510, 520, 522, 524, 556, and 558 are amended as follows:

PART 510—NEW ANIMAL DRUGS

■ 1. The authority citation for part 510 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 360b, 371, 379e.

■ 2. In § 510.600, in the table in paragraph (c)(1), alphabetically add an entry for ''Kindred Biosciences, Inc.'' and remove the entry for ''Piramal Healthcare Ltd.'' and add an entry for ''Piramal Enterprises Ltd.'' in its place; and in the table in paragraph (c)(2), revise the entry for ''065085'' and numerically add an entry for ''086078'' to read as follows:

§ 510.600 Names, addresses, and drug labeler codes of sponsors of approved applications.

* * * * *

(c) * * *

(1) * * *

Firm name and address	Drug labeler code
* * * * * * *	
Kindred Biosciences, Inc., 1555 Bayshore Hwy., Suite 200, Burlingame, CA 94010	086078
* * * * * * *	
Piramal Enterprises Ltd., Ananta, Agastya Corporate Park, Opp Fire Brigade, Kamani Junction, LBS Mag Kurla (West), Mumbai, 400070, India	065085
* * * * * * *	

(2) * * *

Drug labeler code	Firm name and address
* * * * * * *	
065085	Piramal Enterprises Ltd., Ananta, Agastya Corporate Park, Opp Fire Brigade, Kamani Junction, LBS Mag Kurla (West), Mumbai, 400070, India.
* * * * * * *	
086078	Kindred Biosciences, Inc., 1555 Bayshore Hwy., Suite 200, Burlingame, CA 94010.
* * * * * * *	

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS

■ 3. The authority citation for part 520 continues to read as follows:

Authority: 21 U.S.C. 360b.

§ 520.88f [Amended]

■ 4. In § 520.88f, in paragraph (c)(2), remove ''lacerations) due to *S. aureus, Streptococcus* spp., *E. coli*'' and in its place add ''lacerations) due to *S. aureus, Enterococcus faecalis, E. coli*''.

§ 520.816 [Amended]

■ 5. In § 520.816, in paragraph (b), remove ''050604'' and in its place add ''054771''.

■ 6. Add § 520.2335 to read as follows:

§ 520.2335 Telmisartan.

(a) *Specifications.* Each milliliter of solution contains 10 milligrams (mg) telmisartan.

(b) *Sponsor.* See No. 000010 in § 510.600(c) of this chapter.

(c) *Conditions of use*—(1) *Amount.* Administer 1.5 mg/kilogram (kg) (0.68 mg/pound (lb)) orally twice daily for 14 days, followed by 2 mg/kg (0.91 mg/lb) orally once daily.

(2) *Indications for use.* For the control of systemic hypertension in cats.

(3) *Limitations.* Federal law restricts this drug to use by or on the order of a licensed veterinarian.

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS

■ 7. The authority citation for part 522 continues to read as follows:

Authority: 21 U.S.C. 360b.

■ 8. Revise § 522.1077 to read as follows:

§ 522.1077 Gonadorelin.

(a) *Specifications.* Each milliliter (mL) of solution contains:

(1) 43 micrograms (µg) of gonadorelin as gonadorelin acetate;

(2) 100 µg of gonadorelin as gonadorelin acetate;

(3) 43 µg of gonadorelin as gonadorelin diacetate tetrahydrate; or

(4) 50 µg of gonadorelin as gonadorelin hydrochloride.

(b) *Sponsors.* See sponsor numbers in § 510.600(c) of this chapter.

(1) No. 000061 for use of the 43-µg/mL product described in paragraph (a)(1) as in paragraphs (d)(1)(i), (d)(1)(iv), and (d)(2) of this section.

(2) No. 068504 for use of the 100-µg/mL product described in paragraph (a)(2) as in paragraphs (d)(1)(ii), (d)(1)(v), and (d)(2) of this section.

(3) No. 061623 for use of the 43-µg/mL product described in paragraph (a)(3) as in paragraphs (d)(1)(i) and (d)(2) of this section.

(4) No. 050604 for use of the 43-µg/mL product described in paragraph (a)(3) as in paragraphs (d)(1)(i), (d)(1)(vi), and (d)(2) of this section.

(5) No. 054771 for use of the 50-µg/mL product described in paragraph (a)(4) as in paragraphs (d)(1)(iii), (d)(1)(vii), and (d)(2) of this section.

(c) *Special considerations.* Concurrent luteolytic drug use is approved as follows:

(1) Cloprostenol injection for use as in paragraph (d)(1)(iv) of this section as provided by No. 000061 in § 510.600(c) of this chapter.

(2) Cloprostenol injection for use as in paragraph (d)(1)(v) and (d)(1)(vi) of this section as provided by No. 068504 in § 510.600(c) of this chapter.

(3) Dinoprost injection for use as in paragraph (d)(1)(vii) of this section as provided by No. 054771 in § 510.600(c) of this chapter.

(d) *Conditions of use in cattle*—(1) *Indications for use and amounts*—(i) For the treatment of ovarian follicular cysts in dairy cattle: Administer 86 µg gonadorelin (No. 000061) or 100 µg gonadorelin diacetate tetrahydrate (Nos. 061623 and 050604) by intramuscular or intravenous injection.

(ii) For the treatment of ovarian follicular cysts in dairy cattle: Administer 100 µg gonadorelin by intramuscular or intravenous injection.

(iii) For the treatment of ovarian follicular cysts in cattle: Administer 100 µg gonadorelin by intramuscular injection.

(iv) For use with cloprostenol injection to synchronize estrous cycles to allow for fixed-time artificial insemination (FTAI) in lactating dairy cows: Administer to each cow 86 µg gonadorelin by intramuscular injection, followed 6 to 8 days later by 500 µg cloprostenol by intramuscular injection, followed 30 to 72 hours later by 86 µg gonadorelin by intramuscular injection.

(v) For use with cloprostenol sodium to synchronize estrous cycles to allow for fixed-time artificial insemination (FTAI) in lactating dairy cows and beef cows: Administer to each cow 100 µg gonadorelin by intramuscular injection, followed 6 to 8 days later by 500 µg cloprostenol by intramuscular injection, followed 30 to 72 hours later by 100 µg gonadorelin by intramuscular injection.

(vi) For use with cloprostenol sodium to synchronize estrous cycles to allow for fixed-time artificial insemination (FTAI) in lactating dairy cows and beef cows: Administer to each cow 100 µg gonadorelin diacetate tetrahydrate by intramuscular injection, followed 6 to 8 days later by 500 µg cloprostenol by intramuscular injection, followed 30 to 72 hours later by 100 µg gonadorelin diacetate tetrahydrate by intramuscular injection.

(vii) For use with dinoprost injection to synchronize estrous cycles to allow fixed-time artificial insemination (FTAI) in lactating dairy cows: Administer to each cow 100 to 200 µg gonadorelin by intramuscular injection, followed 6 to 8 days later by 25 mg dinoprost by intramuscular injection, followed 30 to 72 hours later by 100 to 200 µg gonadorelin by intramuscular injection.

(2) *Limitations.* Federal law restricts this drug to use by or on the order of a licensed veterinarian.

PART 524—OPHTHALMIC AND TOPICAL DOSAGE FORM NEW ANIMAL DRUGS

■ 9. The authority citation for part 524 continues to read as follows:

Authority: 21 U.S.C. 360b.

■ 10. In § 524.957, revise paragraph (a) to read as follows:

§ 524.957 Florfenicol, terbinafine, and mometasone otic solution.

(a) *Specifications.* Each single-dose, prefilled dropperette contains 1 milliliter (mL) of a solution containing 16.6 milligrams (mg) florfenicol, 14.8 mg terbinafine (equivalent to 16.6 mg terbinafine hydrochloride), and 2.2 mg mometasone furoate.

* * * * *

■ 11. Add § 524.1448 to read as follows:

§ 524.1448 Mirtazapine transdermal ointment.

(a) *Specifications.* Each gram of ointment contains 20 milligrams (mg) mirtazapine.

(b) *Sponsor.* See No. 086078 in § 510.600(c) of this chapter.

(c) *Conditions of use*—(1) *Amount.* Administer topically by applying a 1.5 inch ribbon of ointment (approximately 2 mg) on the inner pinna of the cat's ear once daily for 14 days. Alternate the daily application of ointment between the left and right inner pinna of the ears.

(2) *Indications for use.* For the management of weight loss in cats.

(3) *Limitations.* Federal law restricts this drug to use by or on the order of a licensed veterinarian.

PART 556—TOLERANCES FOR RESIDUES OF NEW ANIMAL DRUGS IN FOOD

■ 12. The authority citation for part 556 continues to read as follows:

Authority: 21 U.S.C. 342, 360b, 371.

■ 13. In § 556.428, add paragraph (c) to read as follows:

§ 556.428 Narasin.

* * * * *

(c) *Related conditions of use.* See §§ 558.363 and 558.364 of this chapter.

■ 14. Revise § 556.445 to read as follows:

§ 556.445 Nicarbazin.

(a) [Reserved]

(b) *Tolerances.* A tolerance of 4 parts per million is established for residues of nicarbazin in uncooked chicken muscle, liver, skin, and kidney.

(c) *Related conditions of use.* See §§ 558.364 and 558.366 of this chapter.

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

■ 15. The authority citation for part 558 continues to read as follows:

Authority: 21 U.S.C. 354, 360b, 360ccc, 360ccc–1, 371.

■ 16. In § 558.68, revise paragraph (e)(1)(ii) and add paragraph (e)(1)(v) to read as follows:

§ 558.68 Avilamycin.

* * * * *

(e) * * *

(1) * * *

Avilamycin in grams/ton	Combination in grams/ton	Indications for use	Limitations	Sponsor
*		*	*	*
(ii) 13.6 to 40.9	Monensin, 90 to 110.	Broiler chickens: For the prevention of mortality caused by necrotic enteritis associated with *Clostridium perfringens;* and as an aid in the prevention of coccidiosis caused by *Eimeria necatrix, E. tenella, E. acervulina, E. brunetti, E. mivati,* and *E. maxima*.	Feed as the sole ration for 21 consecutive days. To assure responsible antimicrobial drug use in broiler chickens, treatment administration must begin on or before 10 days of age. See § 558.355(d) of this chapter. Monensin as provided by No. 058198 in § 510.600(c) of this chapter.	058198
*		*	*	*
(v) 13.6 to 40.9	Salinomycin sodium, 40 to 60.	Broiler chickens: For the prevention of mortality caused by necrotic enteritis associated with *Clostridium perfringens;* and for the prevention of coccidiosis caused by *Eimeria tenella, E. necatrix, E. acervulina, E. maxima, E. brunetti,* and *E. mivati*.	Feed as the sole ration for 21 consecutive days. Feed to chickens that are at risk of developing, but not yet showing clinical signs of, necrotic enteritis associated with *Clostridium perfringens.* Not approved for use with pellet binders. To assure responsible antimicrobial drug use in broiler chickens, treatment administration must begin on or before 10 days of age. The safety of avilamycin has not been established in chickens intended for breeding purposes. Avilamycin has not been demonstrated to be effective in broiler chickens showing clinical signs of necrotic enteritis prior to the start of medication. Do not feed to laying hens producing eggs for human consumption. May be fatal if fed to adult turkeys or to horses. Salinomycin as provided by No. 016592 in § 510.600(c) of this chapter.	058198

* * * * *

■ 17. In § 558.76, remove and reserve paragraph (e)(1)(viii); redesignate paragraphs (e)(2)(xiii) through (xvii) as paragraphs (e)(2)(xiv) through (xviii); add new paragraph (e)(2)(xiii); and revise newly redesignated paragraph (e)(2)(xiv).

The addition and revision read as follows:

§ 558.76 Bacitracin methylendisalicylate.

* * * * *

(e) * * *

(2) * * *

(xiii) Narasin and nicarbazin as in § 558.364.

(xiv) Nicarbazin as in § 558.366.

* * * * *

■ 18. In § 558.78, add paragraph (d)(3)(vii) to read as follows:

§ 558.78 Bacitracin zinc.

* * * * *

(d) * * *

(3) * * *

(vii) Nicarbazin as in § 558.366.

* * * * *

■ 19. In § 558.95, revise paragraph (d)(5)(viii); redesignate paragraphs (d)(5)(ix) through (xi) as paragraphs (d)(5)(x) through (xii); and add new paragraph (d)(5)(ix).

The revision and addition read as follows:

§ 558.95 Bambermycins.

* * * * *

(d) * * *

(5) * * *

(viii) Narasin as in § 558.363.

(ix) Narasin and nicarbazin as in § 558.364.

* * * * *

§ 558.128 [Amended]

■ 20. In § 558.128, in paragraph (e)(3)(iv), in the ''Limitations'' column, at the end of the second sentence, add ''Chlortetracycline and bacitracin methylenedisalicylate as provided by No. 054771 in § 510.600(c) of this chapter.''

§ 558.325 [Amended]

■ 21. In § 558.325, in paragraph (e)(1)(iv), in the ''Combination in grams/ton'' column, remove ''Decoquinate, 2.72'' and in its place add ''Decoquinate, 27.2''.

■ 22. Revise § 558.363 to read as follows:

§ 558.363 Narasin.

(a) *Specifications.* Type A medicated articles containing 36, 45, 54, 72, and 90 grams narasin per pound.

(b) *Sponsor.* See No. 058198 in § 510.600(c) of this chapter.

(c) *Tolerances.* See § 556.428 of this chapter.

(d) *Special considerations.* An expiration date of 2 months (8 weeks) is required for narasin Type C medicated swine feeds.

(e) *Conditions of use.* It is used as follows:

(1) *Chickens*—

Narasin grams/ton	Combination in grams/ton	Indications for use	Limitations	Sponsor
(i) 54 to 90		Broiler chickens: For prevention of coccidiosis caused by *Eimeria necatrix, E. tenella, E. acervulina, E. brunetti, E. mivati,* and *E. maxima.*	For broiler chickens only. Feed continuously as sole ration. Do not allow adult turkeys, horses, or other equines access to narasin formulations. Ingestion of narasin by these species has been fatal.	058198
(ii) 54 to 72	Bacitracin methylenedisalicylate, 10 to 50.	Broiler chickens: For prevention of coccidiosis caused by *Eimeria necatrix, E. tenella, E. acervulina, E. brunetti, E. mivati,* and *E. maxima,* and for increased rate of weight gain and improved feed efficiency.	For broiler chickens only. Feed continuously as sole ration. Do not feed to laying hens. Do not allow adult turkeys, horses, or other equines access to narasin formulations. Ingestion of narasin by these species has been fatal. Bacitracin methylenedisalicylate as provided by No. 054771 in § 510.600(c) of this chapter.	054771
(iii) 54 to 72	Bacitracin zinc, 4 to 50	Broiler chickens: For prevention of coccidiosis caused by *Eimeria necatrix, E. tenella, E. acervulina, E. brunetti, E. mivati,* and *E. maxima,* and for increased rate of weight gain and improved feed efficiency.	For broiler chickens only. Feed continuously as sole ration. Do not allow adult turkeys, horses, or other equines access to narasin formulations. Ingestion of narasin by these species has been fatal. Bacitracin zinc as provided by No. 054771 in § 510.600(c) of this chapter.	054771
(iv) 54 to 72	Bambermycins, 1 to 2	Broiler chickens: For prevention of coccidiosis caused by *Eimeria necatrix, E. tenella, E. acervulina, E. brunetti, E. mivati,* and *E. maxima,* and for increased rate of weight gain and improved feed efficiency.	For broiler chickens only. Feed continuously as sole ration. Do not allow adult turkeys, horses, or other equines access to narasin formulations. Ingestion of narasin by these species has been fatal. Bambermycins as provided by No. 016592 in § 510.600(c) of this chapter.	016592

(2) *Swine*—

Narasin grams/ton	Combination in grams/ton	Indications for use	Limitations	Sponsor
(i) 13.6 to 27.2		Growing-finishing swine: For increased rate of weight gain when fed for at least 4 weeks.	Feed continuously for at least 4 weeks to swine during the growing-finishing period as the sole ration. No increased benefit in rate of weight gain has been shown when narasin concentrations in the diet are greater than 13.6 g/ton. Effectiveness has not been demonstrated when fed for durations less than 4 weeks. Do not allow adult turkeys, horses, or other equines access to narasin formulations. Ingestion of narasin by these species has been fatal. Not approved for use in breeding animals because safety and effectiveness have not been evaluated in these animals. Swine being fed with narasin should not have access to feeds containing pleuromutilins (*e.g.*, tiamulin) as adverse reactions may occur. If signs of toxicity occur, discontinue use.	058198
(ii) 18.1 to 27.2		Growing-finishing swine: For increased rate of weight gain and improved feed efficiency when fed for at least 4 weeks.	Feed continuously for at least 4 weeks to swine during the growing-finishing period as the sole ration. No increased benefit in rate of weight gain has been shown when narasin concentrations in the diet are greater than 13.6 g/ton. Effectiveness has not been demonstrated when fed for durations less than 4 weeks. Do not allow adult turkeys, horses, or other equines access to narasin formulations. Ingestion of narasin by these species has been fatal. Not approved for use in breeding animals because safety and effectiveness have not been evaluated in these animals. Swine being fed with narasin should not have access to feeds containing pleuromutilins (*e.g.*, tiamulin) as adverse reactions may occur. If signs of toxicity occur, discontinue use.	058198

(3) Narasin single-ingredient Type A medicated articles may also be used in combination with:

(i) Avilamycin as in § 558.68.

(ii) [Reserved]

§ 558.364 [Redesignated as § 558.365]

■ 23. Redesignate § 558.364 as § 558.365.

■ 24. Add new § 558.364 to read as follows:

§ 558.364 Narasin and nicarbazin.

(a) *Specifications.* A fixed-ratio, combination drug Type A medicated article containing 36 grams narasin and 36 grams nicarbazin per pound.

(b) *Sponsor.* See No. 058198 in § 510.600(c) of this chapter.

(c) *Tolerances.* See §§ 556.428 and 556.445 of this chapter.

(d) *Conditions of use.* It is used as follows:

(1) *Chickens*—

Narasin and nicarbazin grams/ton	Combination in grams/ton	Indications for use	Limitations	Sponsor
(i) 27 to 45 of each drug.	.....	Broiler chickens: For prevention of coccidiosis caused by *Eimeria tenella, E. necatrix, E. acervulina, E. maxima, E. brunetti,* and *E. mivati.*	Feed continuously as sole ration. Do not feed to laying hens. Withdraw 5 days before slaughter. Do not allow adult turkeys, horses, or other equines access to narasin formulations. Ingestion of narasin by these species has been fatal.	058198
(ii) 27 to 45 of each drug.	Bacitracin methylenedisalicylate, 4 to 50.	Broiler chickens: For prevention of coccidiosis caused by *Eimeria tenella, E. necatrix, E. acervulina, E. maxima, E. brunetti,* and *E. mivati,* and for increased rate of weight gain and improved feed efficiency.	Feed continuously as sole ration. Do not feed to laying hens. Withdraw 5 days before slaughter. Do not allow turkeys, horses, or other equines access to formulations containing narasin. Ingestion of narasin by these species has been fatal. Bacitracin methylenedisalicylate as provided by No. 054771 in § 510.600(c) of this chapter.	058198
(iii) 27 to 45 of each drug.	Bacitracin methylenedisalicylate, 50.	Broiler chickens: For prevention of coccidiosis caused by *Eimeria tenella, E. necatrix, E. acervulina, E. maxima, E. brunetti,* and *E. mivati,* and as an aid in the prevention of necrotic enteritis caused or complicated by *Clostridium* spp. or other organisms susceptible to bacitracin.	Feed continuously as sole ration. Withdraw 5 days before slaughter. Do not feed to laying hens. Do not allow turkeys, horses, or other equines access to formulations containing narasin. Ingestion of narasin by these species has been fatal. Bacitracin methylenedisalicylate as provided by No. 054771 in § 510.600(c) of this chapter.	054771
(iv) 27 to 45 of each drug.	Bacitracin methylenedisalicylate, 100 to 200.	Broiler chickens: For prevention of coccidiosis caused by *Eimeria tenella, E. necatrix, E. acervulina, E. maxima, E. brunetti,* and *E. mivati,* and as an aid in the control of necrotic enteritis caused or complicated by *Clostridium* spp. or other organisms susceptible to bacitracin.	To control necrotic enteritis, start medication at first clinical signs of disease; vary dosage based on the severity of infection; administer continuously for 5 to 7 days or as long as clinical signs persist, then reduce bacitracin to prevention level (50 g/ton). Do not feed to laying hens. Withdraw 5 days before slaughter. Do not allow turkeys, horses, or other equines access to formulations containing narasin. Ingestion of narasin by these species has been fatal. Bacitracin methylenedisalicylate as provided by No. 054771 in § 510.600(c) of this chapter.	054771
(v) 27 to 45 of each drug.	Bambermycins, 1 to 2	Broiler chickens: As an aid in preventing outbreaks of cecal (*Eimeria tenella*) and intestinal (*E. acervulina, E. maxima, E. necatrix,* and *E. brunetti*) coccidiosis, and for increased rate of weight gain and improved feed efficiency.	Feed continuously as sole ration from time chicks are placed on litter until past the time when coccidiosis is ordinarily a hazard. Do not use as a treatment for coccidiosis. Do not feed to laying hens. Withdraw 5 days before slaughter. Do not allow turkeys, horses, or other equines access to formulations containing narasin. Ingestion of narasin by these species has been fatal. Bambermycins as provided by No. 016592 in § 510.600(c) of this chapter.	058198

(2) Narasin and nicarbazin fixed-ratio, combination drug Type A medicated articles may also be used in combination with:

(i) Avilamycin as in § 558.68.

(ii) [Reserved]

■ 25. Revise § 558.366 to read as follows:

§ 558.366 Nicarbazin.

(a) *Specifications.* Type A medicated articles containing 25 percent nicarbazin.

(b) *Sponsors.* See Nos. 058198, 060728, and 066104 in § 510.600(c) of this chapter for use as in paragraph (d) of this section.

(c) *Related tolerances.* See § 556.445 of this chapter.

(d) *Conditions of use.* It is used as follows:

(1) *Chickens*—

Nicarbazin in grams per ton	Combination in grams per ton	Indications for use	Limitations	Sponsor
(i) 90.8 to 181.6	.....	Broiler chickens: As an aid in preventing outbreaks of cecal (*Eimeria tenella*) and intestinal (*E. acervulina, E. maxima, E. necatrix,* and *E. brunetti*) coccidiosis.	Feed continuously as sole ration from time chicks are placed on litter until past the time when coccidiosis is ordinarily a hazard. Do not use as a treatment for outbreaks of coccidiosis. Do not use in flushing mashes. Do not feed to laying hens. Withdraw 4 days before slaughter for use levels at or below 113.5 g/ton. Withdraw 5 days before slaughter for use levels above 113.5 g/ton.	066104
(ii) 90.8 to 181.6	Bacitracin methylenedisalicylate, 4 to 50.	Broiler chickens: As an aid in preventing outbreaks of cecal (*Eimeria tenella*) and intestinal (*E. acervulina, E. maxima, E. necatrix,* and *E. brunetti*) coccidiosis, and for increased rate of weight gain and improved feed efficiency.	Feed continuously as sole ration from time chicks are placed on litter until past the time when coccidiosis is ordinarily a hazard. Do not use as a treatment for outbreaks of coccidiosis. Do not use in flushing mashes. Do not feed to laying hens. Withdraw 4 days before slaughter for use levels at or below 113.5 g/ton. Withdraw 5 days before slaughter for use levels above 113.5 g/ton. Nicarbazin as provided by No. 066104; bacitracin methylenedisalicylate as provided by No. 054771 in § 510.600(c) of this chapter.	054771

Nicarbazin in grams per ton	Combination in grams per ton	Indications for use	Limitations	Sponsor
(iii) 90.8 to 181.6 ...	Bacitracin methylenedisalicylate, 30.	Broiler chickens; As an aid in preventing outbreaks of cecal (*Eimeria tenella*) and intestinal (*E. acervulina, E. maxima, E. necatrix,* and *E. brunetti*) coccidiosis, and for increased rate of weight gain and improved feed efficiency.	Feed continuously as sole ration from time chicks are placed on litter until past the time when coccidiosis is ordinarily a hazard. Do not use as a treatment for coccidiosis. Do not use in flushing mashes. Do not feed to laying hens. Withdraw 4 days before slaughter for use levels at or below 113.5 g/ton. Withdraw 5 days before slaughter for use levels above 113.5 g/ton. Nicarbazin as provided by No. 066104; bacitracin methylenedisalicylate as provided by No. 054771 in § 510.600(c) of this chapter.	066104
(iv) 90.8 to 181.6 ...	Bacitracin methylenedisalicylate 50.	Broiler chickens: As an aid in preventing outbreaks of cecal (*Eimeria tenella*) and intestinal (*E. acervulina, E. maxima, E. necatrix,* and *E. brunetti*) coccidiosis, and as an aid in the prevention of necrotic enteritis caused or complicated by *Clostridium* spp. or other organisms susceptible to bacitracin.	Feed continuously as sole ration from time chicks are placed on litter until past the time when coccidiosis is ordinarily a hazard. Do not use as a treatment for outbreaks of coccidiosis. Do not use in flushing mashes. Do not feed to laying hens. Withdraw 4 days before slaughter for use levels at or below 113.5 g/ton. Withdraw 5 days before slaughter for use levels above 113.5 g/ton. Nicarbazin as provided by No. 066104; bacitracin methylenedisalicylate as provided by No. 054771 in § 510.600(c) of this chapter.	054771
(v) 113.5	.....	Chickens: As an aid in preventing outbreaks of cecal (*Eimeria tenella*) and intestinal (*E. acervulina, E. maxima, E. necatrix,* and *E. brunetti*) coccidiosis.	Feed continuously as sole ration from time chicks are placed on litter until past the time when coccidiosis is ordinarily a hazard. Do not use as a treatment for coccidiosis. Do not use in flushing mashes. Do not feed to laying hens. Withdraw 4 days before slaughter.	058198 060728
(vi) 113.5	Bacitracin methylenedisalicylate, 30.	Broiler chickens; aid in preventing outbreaks of cecal (*Eimeria tenella*) and intestinal (*E. acervulina, E. maxima, E. necatrix,* and *E. brunetti*) coccidiosis, and for increased rate of weight gain and improved feed efficiency.	Feed continuously as sole ration from time chicks are placed on litter until past the time when coccidiosis is ordinarily a hazard. Do not use as a treatment for coccidiosis. Do not use in flushing mashes. Do not feed to laying hens. Withdraw 4 days before slaughter. Nicarbazin as provided by No. 066104; bacitracin methylenedisalicylate as provided by No. 054771 in § 510.600(c) of this chapter.	060728
(vii) 113.5	Bacitracin zinc, 4 to 50	Broiler chickens; aid in preventing outbreaks of cecal (*Eimeria tenella*) and intestinal (*E. acervulina, E. maxima, E. necatrix,* and *E. brunetti*) coccidiosis, and for increased rate of weight gain and improved feed efficiency.	For broiler chickens only. Feed continuously as sole ration from time chicks are placed on litter until past the time when coccidiosis is ordinarily a hazard. Do not use in flushing mashes. Do not feed to laying hens. Withdraw 4 days before slaughter. Nicarbazin as provided by No. 066104, bacitracin zinc as provided by No. 054771 in § 510.600(c) of this chapter.	054771 066104
(viii) 113.5	Bambermycins, 1 to 2	Broiler chickens: As an aid in preventing outbreaks of cecal (*Eimeria tenella*) and intestinal (*E. acervulina, E. maxima, E. necatrix,* and *E. brunetti*) coccidiosis, and for increased rate of weight gain and improved feed efficiency.	Feed continuously as sole ration from time chicks are placed on litter until past the time when coccidiosis is ordinarily a hazard; do not use as a treatment for coccidiosis. Do not use in flushing mashes. Do not feed to laying hens. Withdraw 4 days before slaughter. Nicarbazin as provided by No. 066104; bambermycins as provided by No. 016592 in § 510.600(c) of this chapter.	016592

(2) [Reserved]

§ 558.485 [Amended]

■ 26. In § 558.485, in paragraph (e)(2), in the ''Limitations'' column, remove ''Not for use in horses intended for food.'' and in its place add ''Do not use in horses intended for human consumption.''

Dated: December 11, 2018.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2018–27238 Filed 12–17–18; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2018–0864]

RIN 1625–AA00

Safety Zone; Tumon Bay, Tumon, GU

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for navigable waters within a 190 yard radius of a fireworks barge located in Tumon Bay for the New Year's Eve Fireworks display. The Coast Guard believes this safety zone is necessary to protect the public from potential hazards created by the fireworks display fallout. This safety zone will prohibit persons and vessels from being in the safety zone unless authorized by the Captain of the Port Guam (COTP).

DATES: This rule is effective from 9 p.m. on December 31, 2018 through 1 a.m. on January 1, 2019.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov,* type USCG–2018–0864 in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Chief Todd Wheeler, Waterways Management, U.S. Coast Guard; telephone 671–355–4566, email *wwmguam@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
DHS Department of Homeland Security

FR Federal Register
NPRM Notice of proposed rulemaking
§ Section
U.S.C. United States Code

II. Background Information and Regulatory History

The fireworks display is anticipated to be from midnight on December 31, 2018 through 00:30 a.m. on January 1, 2019, to celebrate New Year's Eve. The fireworks are to be launched from a barge in Tumon Bay approximately 350 yards north of Joseph F. Flores Beach Park. Hazards from fireworks displays include accidental discharge of fireworks, dangerous projectiles, and falling hot embers or other debris. The COTP has determined that potential hazards associated with the fireworks to be used in this display would be a safety concern for anyone within a 190 yard radius of the barge.

In response, on October 5, 2018, the Coast Guard published a notice of proposed rulemaking (NPRM) titled Safety Zone; Tumon Bay, Tumon, GU (83 FR 50310–50312). There we stated why we issued the NPRM, and invited comments on our proposed regulatory action related to this fireworks display. During the comment period that ended November 5, 2018, we received no comments.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under its authority in 33 U.S.C. 1231. The COTP has determined that potential hazards associated with the fireworks to be used in this January 1, 2019 display will be a safety concern for anyone within a 190 yard radius of the barge. The purpose of this rule is to ensure safety of vessels and the navigable waters in the safety zone before, during, and after the scheduled event.

IV. Discussion of Comments, Changes, and the Rule

As noted above, we received no comments on our NPRM published October 5, 2018. There are no changes in the regulatory text of this rule from the proposed rule in the NPRM.

This rule establishes a safety zone from 9 p.m. on December 31, 2018 through 1 a.m. on January 1, 2019. The safety zone will cover all navigable waters within a 190 yard radius of a fireworks barge located in Tumon Bay for the New Year's Eve Fireworks display. The Coast Guard believes this safety zone is necessary to protect the public from potential hazards created by the fireworks display fallout. No vessel or person will be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13771 directs agencies to control regulatory costs through a budgeting process. This rule has not been designated a ''significant regulatory action,'' under Executive Order 12866. Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB), and pursuant to OMB guidance, it is exempt from the requirements of Executive Order 13771.

This regulatory action determination is based on the size, location, duration, and time-of-year of the safety zone. Vessel traffic will be able to safely transit around this safety zone which will impact a small designated area of Tumon Bay for 4 hours. This is a low traffic area that consists mainly of outrigger canoes and sail boards during daylight hours. Moreover, the Coast Guard will issue a Broadcast Notice to Mariners via VHF–FM marine channel 16 about the safety zone, and the rule allows vessels to seek permission to enter the zone.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard received no comments from the Small Business Administration on this rulemaking. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

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

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

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

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

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

contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023–01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone lasting 4 hours that will prohibit entry within 190 yards of a fireworks barge in Tumon Bay approximately 350 yards north of Joseph F. Flores Beach Park. It is categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 01. A Record of Environmental Consideration supporting this determination is available in the docket where indicated under **ADDRESSES**.

G. Protest Activities

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

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.T14–0864 to read as follows:

§ 165.T14–0864 Safety Zone; Tumon Bay, Tumon, GU.

(a) *Location.* The following areas, within the Guam Captain of the Port (COTP) Zone (See 33 CFR 3.70–15), all navigable waters on the surface and below the surface within 190 yards of the fireworks barge participating in the New Year's Eve Fireworks display. The following position, 13 degrees 30 minutes 24.99 seconds N Latitude, 144 degrees 47 minutes 21.93 seconds E Longitude, are to be used as a guide to the location of the barge.

(b) *Effective dates.* This rule is effective from 9 p.m. on December 31, 2018 through 1 a.m. on January 1, 2019.

(c) *Enforcement.* Any Coast Guard commissioned, warrant, or petty officer, and any other COTP representative permitted by law, may enforce this temporary safety zone.

(d) *Waiver.* The COTP may waive any of the requirements of this rule for any person, vessel, or class of vessel upon finding that application of the safety zone is unnecessary or impractical for the purpose of maritime security.

(e) *Penalties.* Vessels or persons violating this rule are subject to the penalties set forth in 33 U.S.C. 1232 and 50 U.S.C. 192.

Dated: November 28, 2018.

Christopher M. Chase,

Captain, U.S. Coast Guard, Captain of the Port, Guam.

[FR Doc. 2018–27333 Filed 12–17–18; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2014–0424; FRL–9988–12–Region 4]

Air Plan Approval; MS; PSD Infrastructure Plan for the 2012 $PM_{2.5}$ NAAQS

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving portions of the State Implementation Plan (SIP) submission, submitted by the State of Mississippi, through the Mississippi Department of Environmental Quality (MDEQ), on December 11, 2015, to demonstrate that the State meets the infrastructure requirements of the Clean Air Act (CAA or Act) for the 2012 annual fine particulate matter ($PM_{2.5}$) national ambient air quality standard (NAAQS). The CAA requires that each state adopt and submit a SIP for the implementation, maintenance and enforcement of each NAAQS promulgated by EPA, which is commonly referred to as an ''infrastructure'' SIP. Specifically, EPA is approving the portions of the submission that relate to the prevention of significant deterioration (PSD) requirements. All other applicable infrastructure requirements for the 2012 Annual $PM_{2.5}$ NAAQS have been addressed in separate rulemakings.

DATES: This rule will be effective January 17, 2019.

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA–R04–OAR–2014–0424. All documents in the docket are listed on the *www.regulations.gov* website. Although listed in the index, some information is not 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 are available either electronically through *www.regulations.gov* or in hard copy at the Air Regulatory Management Section, Air Planning and Implementation Branch, Air, Pesticides and Toxics Management 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: Sean Lakeman, Air Regulatory Management Section, Air Planning and Implementation Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW, Atlanta, Georgia 30303–8960. Mr. Lakeman can be reached via telephone at (404) 562–9043 or via electronic mail at *lakeman.sean@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On December 14, 2012 (78 FR 3086, January 15, 2013), EPA promulgated a

revised primary annual $PM_{2.5}$ NAAQS. The standard was strengthened from 15.0 micrograms per cubic meter (μg/m^3) to 12.0 μg/m^3. Pursuant to section 110(a)(1) of the CAA, states are required to submit SIPs meeting the applicable requirements of section 110(a)(2) within three years after promulgation of a new or revised NAAQS or within such shorter period as EPA may prescribe. Section 110(a)(2) requires states to address basic SIP elements such as requirements for monitoring, basic program requirements and legal authority that are designed to assure attainment and maintenance of the NAAQS. States were required to submit such SIPs for the 2012 Annual $PM_{2.5}$ NAAQS to EPA no later than December 14, 2015.[1]

Through this action, EPA is approving Mississippi's PSD requirements of sections 110(a)(2)(C), 110(a)(2)(D)(i)(II) (prong 3) and 110(a)(2)(J) (hereafter ''PSD Elements'') for the 2012 Annual $PM_{2.5}$ NAAQS. In a notice of proposed rulemaking (NPRM) published on June 8, 2016 (81 FR 36848), EPA proposed to approve Mississippi's PSD Elements of the December 11, 2015, submittal. Comments on the NPRM were due on or before July 8, 2016. EPA received no adverse comments on the proposed action. In the final rule on December 12, 2016 (81 FR 89391), EPA inadvertently indicated that the Agency had already approved these requirements. Specifically, in the December 12, 2016, **Federal Register** final rule, EPA stated that on March 18, 2015 (80 FR 14019), the Agency approved Mississippi's December 11, 2015, submission regarding the PSD Elements. However, the March 18, 2015, **Federal Register** final rule only addressed the PSD Elements for the 2008 Lead, 2008 Ozone and 2010 Nitrogen Dioxide NAAQS. Therefore, EPA is taking the opportunity to correct this error and is approving the PSD Elements for the 2012 Annual $PM_{2.5}$ NAAQS. EPA notes that the Agency is not approving any specific rule, but rather finding that Mississippi's already approved SIP meets certain CAA requirements.

II. Final Action

As described above, EPA is approving the portions of the above-described infrastructure SIP submission submitted by Mississippi on December 11, 2015, to address the PSD requirements of sections 110(a)(2)(C), 110(a)(2)(D)(i)(II) (prong 3) and 110(a)(2)(J) of the CAA for the 2012 Annual $PM_{2.5}$ NAAQS.

III. Statutory and Executive Order Reviews

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

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866;
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

The SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law.

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 this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 19, 2019. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. *See* section 307(b)(2).

List of Subjects in 40 CFR Part 52

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

Dated: December 6, 2018.

Mary S. Walker,

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:

[1] In these infrastructure SIP submissions States generally certify evidence of compliance with sections 110(a)(1) and (2) of the CAA through a combination of state regulations and statutes, some of which have been incorporated into the federally-approved SIP. In addition, certain federally-approved, non-SIP regulations may also be appropriate for demonstrating compliance with sections 110(a)(1) and (2).

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

Subpart Z—Mississippi

■ 2. Section 52.1270(e) is amended by adding new entry for ''110(a)(1) and (2) Infrastructure Requirements for the 2012 Annual $PM_{2.5}$ NAAQS'' 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
*	*	*	*	*
110(a)(1) and (2) Infrastructure Requirements for the 2012 Annual $PM_{2.5}$ NAAQS.	Mississippi	12/11/2015	12/18/2018, [Insert citation of publication].	Addressing the PSD permitting requirements of sections 110(a)(2)(C), 110(a)(2)(D)(i)(II) (prong 3) and 110(a)(2)(J) only

[FR Doc. 2018–27256 Filed 12–17–18; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 120815345–3525–02]

RIN 0648–XG662

Snapper-Grouper Fishery of the South Atlantic; 2018 Recreational Accountability Measure and Closure for the South Atlantic Other Jacks Complex

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; closure.

SUMMARY: NMFS implements an accountability measure (AM) for the recreational sector for the other jacks complex (lesser amberjack, almaco jack, and banded rudderfish) in the South Atlantic for the 2018 fishing year through this temporary rule. NMFS has determined that recreational landings of the other jacks complex has exceeded its recreational annual catch limit (ACL). Therefore, NMFS closes the recreational sector for this complex on December 18, 2018, through the remainder of the 2018 fishing year in the exclusive economic zone (EEZ) of the South Atlantic. This closure is necessary to protect the lesser amberjack, almaco jack, and banded rudderfish resources.

DATES: This rule is effective 12:01 a.m., local time, December 18, 2018, until 12:01 a.m., local time, January 1, 2019.

FOR FURTHER INFORMATION CONTACT: Mary Vara, NMFS Southeast Regional Office, telephone: 727–824–5305, email: *mary.vara@noaa.gov.*

SUPPLEMENTARY INFORMATION: The snapper-grouper fishery of the South Atlantic includes lesser amberjack, almaco jack, and banded rudderfish, and is managed under the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic Region (FMP). The FMP was prepared by the South Atlantic Fishery Management Council and is implemented by NMFS under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622.

The recreational ACL for the other jacks complex is 267,799 lb (121,472 kg), round weight. Under 50 CFR 622.193(l)(2)(i), NMFS is required to close the recreational sector for the other jacks complex when the recreational ACL has been reached, or is projected to be reached, by filing a notification to that effect with the Office of the Federal Register, unless NMFS determines that no closure is necessary based on the best scientific information available. NMFS has determined that the recreational sector for this complex has exceeded its ACL. Therefore, this temporary rule implements an AM to close the recreational sector for the other jacks complex in the South Atlantic EEZ, effective 12:01 a.m., local time, December 18, 2018, until January 1, 2019, the start of the next fishing year.

During the recreational closure, the bag and possession limits for the fish in the other jacks complex in or from the South Atlantic EEZ are zero. Additionally, NMFS closed the commercial sector for the other jacks complex effective on August 22, 2018, upon reaching the commercial ACL (83 FR 41019; August 17, 2018). Therefore, as of 12:01 a.m. on December 18, 2018, no commercial or recreational harvest of fish in the other jacks complex from the South Atlantic EEZ is allowed for the remainder of the 2018 fishing year.

Classification

The Regional Administrator, Southeast Region, NMFS, has determined this temporary rule is necessary for the conservation and management of the other jacks complex, a component of the South Atlantic snapper-grouper fishery, and is consistent with the Magnuson-Stevens Act and other applicable laws.

This action is taken under 50 CFR 622.193(l)(2)(i) and is exempt from review under Executive Order 12866.

These measures are exempt from the procedures of the Regulatory Flexibility Act because the temporary rule is issued without opportunity for prior notice and public comment.

This action responds to the best scientific information available. The Assistant Administrator for NOAA Fisheries (AA) finds that the need to immediately implement this action to close the recreational sector for the other jacks complex constitutes good cause to waive the requirements to provide prior notice and opportunity for public comment pursuant to the authority set forth in 5 U.S.C. 553(b)(B), as such procedures are unnecessary and contrary to the public interest. Such procedures are unnecessary because the rule implementing the AM itself has been subject to notice and comment, and all that remains is to notify the public of the closure. Such procedures are contrary to the public interest because of the need to immediately implement this action to protect the other jacks complex. Prior notice and opportunity for public comment would require time and would potentially

allow the recreational sector to further exceed its ACL.

For the aforementioned reasons, the AA also finds good cause to waive the 30-day delay in the effectiveness of this action under 5 U.S.C. 553(d)(3).

Authority: 16 U.S.C. 1801 *et seq.*

Dated: December 12, 2018.

Jennifer M. Wallace,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2018–27285 Filed 12–13–18; 4:15 pm]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 83, No. 242
Tuesday, December 18, 2018

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.

NUCLEAR REGULATORY COMMISSION

10 CFR Part 72

[NRC–2018–0220]

RIN 3150–AK17

List of Approved Spent Fuel Storage Casks: NAC International Multi-Purpose Canister Storage System, Certificate of Compliance No. 1025, Amendment Nos. 7 and 8

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is proposing to amend its spent fuel storage regulations by revising the NAC International Multi-Purpose Canister (NAC–MPC) Storage System listing within the ''List of approved spent fuel storage casks'' to include Amendment Nos. 7 and 8 to Certificate of Compliance No. 1025. Amendment No. 7 would revise the technical specifications to eliminate the requirements for the heat removal system to be operable for La Crosse Boiling Water Reactor spent fuel stored in the NAC–MPC because convective cooling is not required, and to eliminate duplicative requirements. In addition, Amendment No. 8 removes duplicative surveillance requirements in the technical specifications because these requirements are already required by the revised Technical Specification A 3.1.6, ''CONCRETE CASK Heat Removal System.''

DATES: Submit comments by January 17, 2019. Comments received after this date will be considered if it is practical to do so, but the NRC is able to ensure consideration only for comments received on or before this date.

ADDRESSES: You may submit comments by any of the following methods:

- *Federal Rulemaking Website:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2018–0220. Address questions about NRC dockets to Carol Gallagher; telephone: 301–415–3463; email: *Carol.Gallagher@nrc.gov.* For technical questions contact the individuals listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *Email comments to: Rulemaking.Comments@nrc.gov.* If you do not receive an automatic email reply confirming receipt, then contact us at 301–415–1677.
- *Fax comments to:* Secretary, U.S. Nuclear Regulatory Commission at 301–415–1101.
- *Mail comments to:* Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN: Rulemakings and Adjudications Staff.
- *Hand deliver comments to:* 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 a.m. and 4:15 p.m. (Eastern Time) Federal workdays; telephone: 301–415–1677.

For additional direction on obtaining information and submitting comments, see ''Obtaining Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Bernard H. White, Office of Nuclear Material Safety and Safeguards; telephone: 301–415–6577; email: *Bernard.White@nrc.gov* or Gregory R. Trussell, Office of Nuclear Material Safety and Safeguards; telephone: 301–415–6244; email: *Gregory.Trussell@nrc.gov.* Both are staff of the U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2018–0220 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 *http://www.regulations.gov* and search for Docket ID NRC–2018–0220.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''ADAMS Public Documents'' and then 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.* For the convenience of the reader, instructions about obtaining materials referenced in this document are provided in the ''Availability of Documents'' section.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

B. Submitting Comments

Please include Docket ID NRC–2018–0220 in your comment submission.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at *http://www.regulations.gov* as well as enter the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

II. Rulemaking Procedure

Because the NRC considers this action to be non-controversial, the NRC is publishing this proposed rule concurrently with a direct final rule in the Rules and Regulations section of this issue of the **Federal Register** (FR). The direct final rule will become effective on March 4, 2019. However, if the NRC receives significant adverse comments on this proposed rule by January 17,

2019, then the NRC will publish a document that withdraws the direct final rule. If the direct final rule is withdrawn, the NRC will address the comments received in response to these proposed revisions in a subsequent final rule. Absent significant modifications to the proposed revisions requiring republication, the NRC will not initiate a second comment period on this action in the event the direct final rule is withdrawn.

A significant adverse comment is a comment where the commenter explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or would be ineffective or unacceptable without a change. A comment is adverse and significant if:

(1) The comment opposes the rule and provides a reason sufficient to require a substantive response in a notice-and-comment process. For example, a substantive response is required when:

(a) The comment causes the NRC staff to reevaluate (or reconsider) its position or conduct additional analysis;

(b) The comment raises an issue serious enough to warrant a substantive response to clarify or complete the record; or

(c) The comment raises a relevant issue that was not previously addressed or considered by the NRC staff.

(2) The comment proposes a change or an addition to the rule, and it is apparent that the rule would be ineffective or unacceptable without incorporation of the change or addition.

(3) The comment causes the NRC staff to make a change (other than editorial) to the rule, Certificate of Compliance, or technical specifications.

For procedural information and the regulatory analysis, see the direct final rule published in the Rules and Regulations section of this issue of the FR.

III. Background

Section 218(a) of the Nuclear Waste Policy Act (NWPA) of 1982, as amended, requires that ''the Secretary [of the Department of Energy] shall establish a demonstration program, in cooperation with the private sector, for the dry storage of spent nuclear fuel at civilian nuclear power reactor sites, with the objective of establishing one or more technologies that the [Nuclear Regulatory] Commission may, by rule, approve for use at the sites of civilian nuclear power reactors without, to the maximum extent practicable, the need for additional site-specific approvals by the Commission.'' Section 133 of the NWPA states, in part, that ''[the Commission] shall, by rule, establish procedures for the licensing of any technology approved by the Commission under Section 219(a) [sic: 218(a)] for use at the site of any civilian nuclear power reactor.''

To implement this mandate, the Commission approved dry storage of spent nuclear fuel in NRC-approved casks under a general license by publishing a final rule which added a new subpart K in part 72 of title 10 of the *Code of Federal Regulations* (10 CFR) entitled, ''General License for Storage of Spent Fuel at Power Reactor Sites'' (55 FR 29181; July 18, 1990). This rule also established a new subpart L in 10 CFR part 72 entitled, ''Approval of Spent Fuel Storage Casks,'' which contains procedures and criteria for obtaining NRC approval of spent fuel storage cask designs. The NRC subsequently issued a final rule on March 9, 2000 (65 FR 12444), that approved the NAC–MPC Cask System design and added it to the list of NRC-approved cask designs in § 72.214 as Certificate of Compliance No. 1025.

IV. Plain Writing

The Plain Writing Act of 2010 (Pub. L. 111–274) requires Federal agencies to write documents in a clear, concise, 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 31883). The NRC requests comment on the proposed rule with respect to the clarity and effectiveness of the language used.

V. Availability of Documents

The documents identified in the following table are available to interested persons through one or more of the following methods, as indicated.

Document	ADAMS accession No./ web link/**Federal Register** citation
Request to Amend Certificate of Compliance No. 1025 for the NAC–MPC Storage System, dated November 14, 2017	ML17326A128
Request to Amend Certificate of Compliance No. 1025 for the NAC–MPC Storage System, dated February 12, 2018	ML18045A440
Request to Amend Certificate of Compliance No. 1025 for the NAC–MPC Storage System, dated February 28, 2018	ML18059A784
Proposed Certificate of Compliance No. 1025, Amendment No. 7	ML18255A024
Proposed Technical Specification Appendices A and B for Amendment No. 7	ML18255A022
Preliminary Safety Evaluation Report for Amendment No. 7	ML18255A026
Proposed Certificate of Compliance No. 1025, Amendment No. 8	ML18255A025
Proposed Technical Specification Appendices A and B for Amendment No. 8	ML18255A023
Preliminary Safety Evaluation Report for Amendment No. 8	ML18255A027

The NRC may post materials related to this document, including public comments, on the Federal Rulemaking website at *http://www.regulations.gov* under Docket ID NRC–2018–0220. The Federal Rulemaking website allows you to receive alerts when changes or additions occur in a docket folder. To subscribe: (1) Navigate to the docket folder (NRC–2018–0220); (2) click the ''Sign up for Email Alerts'' link; and (3) enter your email address and select how frequently you would like to receive emails (daily, weekly, or monthly).

List of Subjects in 10 CFR Part 72

Administrative practice and procedure, Hazardous waste, Indians, Intergovernmental relations, Nuclear energy, Penalties, Radiation protection, Reporting and recordkeeping requirements, Security measures, Whistleblowing.

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; the Nuclear Waste Policy Act of 1982, as amended; and 5 U.S.C. 552 and 553; the NRC is proposing to adopt the following amendments to 10 CFR part 72:

PART 72—LICENSING REQUIREMENTS FOR THE INDEPENDENT STORAGE OF SPENT NUCLEAR FUEL, HIGH-LEVEL RADIOACTIVE WASTE, AND REACTOR-RELATED GREATER THAN CLASS C WASTE

■ 1. The authority citation for Part 72 continues to read as follows:

Authority: Atomic Energy Act of 1954, secs. 51, 53, 57, 62, 63, 65, 69, 81, 161, 182, 183, 184, 186, 187, 189, 223, 234, 274 (42 U.S.C. 2071, 2073, 2077, 2092, 2093, 2095, 2099, 2111, 2201, 2210e, 2232, 2233, 2234, 2236, 2237, 2238, 2273, 2282, 2021); Energy Reorganization Act of 1974, secs. 201, 202, 206, 211 (42 U.S.C. 5841, 5842, 5846, 5851); National Environmental Policy Act of 1969 (42 U.S.C. 4332); Nuclear Waste Policy Act of 1982, secs. 117(a), 132, 133, 134, 135, 137, 141, 145(g), 148, 218(a) (42 U.S.C. 10137(a), 10152, 10153, 10154, 10155, 10157, 10161, 10165(g), 10168, 10198(a)); 44 U.S.C. 3504 note.

■ 2. In § 72.214, Certificate of Compliance 1025 is revised to read as follows:

§ 72.214 List of approved spent fuel storage casks.

* * * * *

Certificate Number: 1025.

Initial Certificate Effective Date: April 10, 2000.

Amendment Number 1 Effective Date: November 13, 2001.

Amendment Number 2 Effective Date: May 29, 2002.

Amendment Number 3 Effective Date: October 1, 2003.

Amendment Number 4 Effective Date: October 27, 2004.

Amendment Number 5 Effective Date: July 24, 2007.

Amendment Number 6 Effective Date: October 4, 2010.

Amendment Number 7 Effective Date: March 4, 2019.

Amendment Number 8 Effective Date: March 4, 2019.

SAR Submitted by: NAC International, Inc.

SAR Title: Final Safety Analysis Report for the NAC Multi-Purpose Canister System (NAC–MPC System).

Docket Number: 72–1025.

Certificate Expiration Date: April 10, 2020.

Model Number: NAC–MPC.

* * * * *

Dated at Rockville, Maryland, this 4th day of December, 2018.

For the Nuclear Regulatory Commission.

Margaret M. Doane,

Executive Director for Operations.

[FR Doc. 2018–27286 Filed 12–17–18; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 15

[Docket No. FDA–2018–N–3952]

Eliminating Youth Electronic Cigarette and Other Tobacco Product Use: The Role for Drug Therapies; New Date for Public Hearing; Request for Comments

AGENCY: Food and Drug Administration, HHS.

ACTION: Notification of new date for public hearing; request for comments.

SUMMARY: The Food and Drug Administration (FDA or the Agency) is announcing a new date for the public hearing to discuss its efforts to eliminate youth electronic cigarette (e-cigarette) use as well as other tobacco product use, with a focus on the potential role of drug therapies to support youth e-cigarette cessation and the issues impacting the development of such therapies. FDA is also extending the comment period.

DATES: The public hearing will be held on January 18, 2019, from 9 a.m. to 5 p.m. The public hearing may be extended or may end early depending on the level of public participation. Persons seeking to present at the public hearing must register by January 8, 2019. Persons seeking to speak at the public hearing must register by January 15, 2019. Persons seeking to attend, but not present at, the public hearing must register by January 15, 2019. Section III provides attendance and registration information. Electronic or written comments will be accepted after the public hearing until February 1, 2019.

ADDRESSES: The public hearing will be held at the FDA White Oak Campus, 10903 New Hampshire Ave., Bldg. 31 Conference Center, the Great Room (Rm. 1503A), Silver Spring, MD 20993–0002. Entrance for public hearing participants (non-FDA employees) is through Building 1, where routine security check procedures will be performed. For parking and security information, please refer to *https://www.fda.gov/AboutFDA/WorkingatFDA/BuildingsandFacilities/WhiteOakCampusInformation/ucm241740.htm.*

You may submit comments as follows. Please note that late, untimely filed comments will not be considered. Electronic comments must be submitted on or before February 1, 2019. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of February 1, 2019. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are postmarked or the delivery service acceptance receipt is on or before that date. You may submit comments 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–2018–N–3952 for ''Eliminating Youth Electronic Cigarette and Other Tobacco Product Use: The Role for Drug Therapies; Public Hearing; Request for Comments.'' 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.

• 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.fda.gov/regulatoryinformation/dockets/default.htm.*

Docket: For access to the docket to read background documents or the received electronic and written/paper comments, 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.

FOR FURTHER INFORMATION CONTACT: Theresa Wells, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 1, Rm. 1202, Silver Spring, MD 20993, 703–380–3900, *Theresa.wells@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Nearly all tobacco product use begins during youth and young adulthood (Ref. 1). While the current use of any tobacco product among U.S. middle and high school students has decreased from 2011 to 2017, there has been an alarming increase in e-cigarette use over this time. In fact, since 2014, e-cigarettes [1] have been the most commonly used tobacco products among youth, used by 1.73 million (11.7 percent) high school students and 390,000 (3.3 percent) middle school students in 2017 (Ref. 2). Youth e-cigarette use raises a number of health concerns including risk of addiction to nicotine early on in life, potential harm to the developing adolescent brain, and exposure to chemicals including carbonyl compounds and volatile organic compounds known to have adverse health effects; the full range of possible health effects is not yet completely understood (Ref. 3).

On April 24, 2018, FDA announced its Youth Tobacco Prevention Plan. This plan focuses on three key strategies: Prevention of youth access to tobacco products, curbing the marketing of tobacco products aimed at youth, and educating teens about the dangers of using any tobacco products.[2] FDA recently launched an expansion of its ''The Real Cost'' campaign to educate youth on the dangers of e-cigarette use [3] and increased enforcement actions to address this critically important public health concern.[4]

In addition to the prevention of initiation, which will be the cornerstone of any successful effort to curb youth e-cigarette use, FDA is also exploring additional approaches to address youth e-cigarette use. One such approach may be the development of drug therapies, as part of multimodal treatment strategies, including behavioral interventions, to support tobacco product cessation. To date, research on youth tobacco product cessation has been limited and focused on smoking (*i.e.,* combustible products) cessation. One recent review found a paucity of data on either behavioral or drug therapies for smoking cessation in young people (age less than 20 years) and concluded that ''there continues to be a need for well-designed, adequately powered, randomized controlled trials of interventions for this population of smokers'' (Ref. 4). FDA is not aware of any research examining either drug or behavioral interventions for the cessation of youth or adult e-cigarette use. In contrast, there is a large body of research on adult smoking cessation, and multiple drugs for smoking cessation are approved for the adult population, including a variety of prescription and over-the-counter nicotine replacement therapy (NRT) products, as well as the prescription drugs varenicline and bupropion hydrochloride sustained release (see Appendix A).

[1] An e-cigarette is one type of electronic nicotine delivery system, which also includes e-cigars, e-hookah, vape pens, personal vaporizers, and electronic pipes. See *https://www.fda.gov/TobaccoProducts/Labeling/ProductsIngredientsComponents/ucm456610.htm* and Ref. 2.

[2] *https://www.fda.gov/TobaccoProducts/PublicHealthEducation/ProtectingKidsfromTobacco/ucm608433.htm.*

[3] *https://www.fda.gov/tobaccoproducts/publichealtheducation/publiceducationcampaigns/therealcostcampaign/default.htm.*

[4] *https://www.fda.gov/NewsEvents/Newsroom/PressAnnouncements/ucm620788.htm.*

II. Purpose and Scope of the Public Hearing

FDA is holding a public hearing to obtain the public's perspectives on the potential role drug therapies may play in the broader effort to eliminate youth e-cigarette and other tobacco product use, as well as the appropriate methods and study designs for evaluating youth e-cigarette cessation therapies and the safety and efficacy of such therapies. The Agency has determined that a public hearing is the most appropriate way to ensure public engagement on this issue, which is of great importance to the public health. FDA believes it is critical to obtain input across the medical and research fields, the pharmaceutical and tobacco industries, and among public health stakeholders (including adolescents) regarding approaches to eliminate youth e-cigarette and other tobacco product use, including exploring whether there is a need for drug therapies to support youth e-cigarette cessation, and if so, how FDA can support the development of such therapies.

Questions for Commenters to Address: Considering the broad range of activities focused on this public health issue, FDA is interested in the public's view on approaches to eliminating e-cigarette and other tobacco product use among youth. Although FDA welcomes all feedback on any public health, scientific, regulatory, or legal considerations relating to this topic, we particularly encourage commenters to consider the following questions as they prepare their comments or statements. Responses to questions should include supporting scientific justification.

1. FDA notes that the factors driving e-cigarette use among youth likely differ from those in the adult population. How might such differences impact the need for, or use of, drug therapies for e-cigarette cessation among youth?

2. FDA is interested in whether there is a population of youth e-cigarette users who would be likely to benefit from the use of drug therapies for e-cigarette cessation. What age groups (older adolescent vs. younger adolescent), patterns in tobacco use (duration and frequency of use), and clinical features (level of addiction, presence/absence of

comorbidities including psychiatric disease) might characterize this population? What types of products (NRT vs. non-NRT; prescription vs. over-the-counter) might be useful?

3. Describe the scientific, clinical, and societal factors that could either encourage or impede the conduct of clinical trials designed to evaluate drugs intended for youth e-cigarette cessation. What approaches could be used to encourage research and overcome barriers to research?

4. What methods and study designs are appropriate for assessing drug therapies for youth e-cigarette cessation? What are the appropriate control groups? What are the most informative endpoints and the best assessment tools to evaluate these endpoints?

5. Acknowledging that to date research has been limited, are there data available from the adult experience with smoking cessation that could potentially be leveraged in the effort to develop drug therapies for youth e-cigarette cessation? Have any drug therapies demonstrated potential to help adults discontinue e-cigarette use? Are there differences between adolescents and adults that impact the ability to extrapolate efficacy findings from the adult population to the adolescent population? Could existing NRT products be useful for youth e-cigarette cessation?

6. While this hearing is focused on the topic of e-cigarette use among youth, as e-cigarettes are currently the most commonly used form of tobacco in this population, FDA also welcomes comments regarding the potential need for drug therapies to support cessation of other tobacco products, including combustible products (*i.e.,* cigarettes or cigars) and smokeless tobacco products, among youth and the issues impacting the development of such therapies.

III. Participating in the Public Hearing

Registration and Requests for Oral Presentations: The FDA Conference Center at the White Oak location is a Federal facility with security procedures and limited seating. Attendance will be free and on a first-come, first-served basis. For those interested in presenting at the meeting with a formal oral presentation, please register by January 8, 2019, at *https://www.eventbrite.com/e/fda-pediatric-tobacco-cessation-part-15-public-hearing-tickets-50167147288.* For those interested in participating as a speaker during the open public hearing, please register by January 15, 2019, at *https://www.eventbrite.com/e/fda-pediatric-tobacco-cessation-part-15-public-hearing-tickets-50167147288.* If you wish to attend either in person or by webcast (see *Streaming Webcast of the Public Hearing*), please register for the hearing by January 15, 2019, at *https://www.eventbrite.com/e/fda-pediatric-tobacco-cessation-part-15-public-hearing-tickets-50167147288.* Those without internet or email access can register and/or request to participate as an open public hearing speaker or a formal presenter by contacting Theresa Wells by the above dates (see **FOR FURTHER INFORMATION CONTACT**).

FDA will try to accommodate all persons who wish to make a presentation. Formal oral presenters may use an accompanying slide deck, while those participating in the open public hearing will have less allotted time than formal oral presenters and will deliver oral testimony only (no accompanying slide deck). Individuals wishing to present should identify the number of the specific question, or questions, they wish to address. This will help FDA organize the presentations. Individuals and organizations with common interests should consolidate or coordinate their presentations and request time for a joint presentation. Individual organizations are limited to a single presentation slot. FDA will notify registered presenters of their scheduled presentation times. The time allotted for each presentation will depend on the number of individuals who wish to speak. Registered presenters making a formal oral presentation are encouraged to submit an electronic copy of their presentation (PowerPoint or PDF) to *OMPTFeedback@fda.hhs.gov* with the subject line ''Eliminating Youth Electronic Cigarette and Other Tobacco Product Use: The Role for Drug Therapies'' on or before January 11, 2019. Persons registered to present are encouraged to arrive at the hearing room early and check in at the onsite registration table to confirm their designated presentation time. Actual presentation times, however, may vary based on how the meeting progresses in real time. An agenda for the hearing and any other background materials will be made available 5 days before the hearing at *https://www.fda.gov/NewsEvents/MeetingsConferencesWorkshops/ucm620744.htm.*

If you need special accommodations because of a disability, please contact Theresa Wells (see **FOR FURTHER INFORMATION CONTACT**) at least 7 days before the hearing.

Streaming Webcast of the Public Hearing: For those unable to attend in person, FDA will provide a live webcast of the hearing. To join the hearing via the webcast, please go to *https://collaboration.fda.gov/ptc120518.*

Transcripts: Please be advised that as soon as a transcript is available, it will be accessible at *https://www.regulations.gov.* It may be viewed at the Dockets Management Staff (see **ADDRESSES**).

IV. Notice of Hearing Under 21 CFR Part 15

The Commissioner of Food and Drugs is announcing that the public hearing will be held in accordance with part 15 (21 CFR part 15). The hearing will be conducted by a presiding officer, who will be accompanied by FDA senior management from the Office of the Commissioner, the Center for Drug Evaluation and Research, and the Center for Tobacco Products. Under § 15.30(f) (21 CFR 15.30(f)), the hearing is informal and the rules of evidence do not apply. No participant may interrupt the presentation of another participant. Only the presiding officer and panel members can pose questions; they can question any person during or at the conclusion of each presentation. Public hearings under part 15 are subject to FDA's policy and procedures for electronic media coverage of FDA's public administrative proceedings (21 CFR part 10, subpart C). Under 21 CFR 10.205, representatives of the media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants. The hearing will be transcribed as stipulated in § 15.30(b) (see *Transcripts*). To the extent that the conditions for the hearing, as described in this notice, conflict with any provisions set out in part 15, this notice acts as a waiver of those provisions as specified in § 15.30(h).

V. 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.* U.S. Department of Health and Human Services (2014). ''The Health Consequences of Smoking—50 Years of Progress: A Report of the Surgeon General, 2014.'' Atlanta, GA: U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health. (Available at: *https://www.surgeongeneral.gov/library/reports/50-years-of-progress/index.html.*)

2.* Wang T.W., A. Gentzke, S. Sharapova, et al. (2018). ''Tobacco Product Use Among Middle and High School Students—United States, 2011–2017.'' *Morbidity and Mortality Weekly Report (MMWR)* 67:629–633. (Available at *https://www.cdc.gov/mmwr/volumes/67/wr/mm6722a3.htm.*)

3.* U.S. Department of Health and Human Services (2016). ''E-Cigarette Use Among Youth and Young Adults: A Report of the Surgeon General.'' Atlanta, GA: U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health. (Available at: *https://e-cigarettes.surgeongeneral.gov/documents/2016_sgr_full_report_non-508.pdf.)*

4. Fanshawe T.R., W. Halliwell, N. Lindson, et al. (2017). ''Tobacco Cessation Interventions for Young People.'' *Cochrane Database of Systematic Reviews,* Rev.11:CD003289. (Available at *https://www.cochranelibrary.com/cdsr/doi/10.1002/14651858.CD003289.pub6/epdf/full.*)

BILLING CODE 4164–01–P

Appendix A: Summary of FDA-Approved Active NDAs of NRTs and non-NRTs Indicated for Smoking Cessation (October 5, 2018)

Product Name (NDA #; holder)	OTC or Rx (Date approved; Date Rx→OTC)	Route (Doses)	Indication	Adult Treatment Duration and Schedule	Pediatric Labeling
NRT Therapies					
Nicorette gum (nicotine polacrilex) (NDA 018612 for 2 mg; NDA 020066 for 4 mg; GSK)	Approved as prescription on 1/13/84 for 2 mg; 6/8/92 for 4 mg; Rx→OTC for both on 2/9/96.	Oral (2, 4 mg gum)	Reduces withdrawal symptoms, including nicotine craving, associated with quitting smoking.	12 weeks (for longer use, talk to health care provider): • Wk 1-6: 1 per 1-2 hr • Wk 7-9: 1 per 2-4 hr • Wk 10-12: 1 per 4-8 hr If smoke 1st cigarette within 30 min of waking up, use 4 mg; if more than 30 min, use 2 mg.	If you are under 18 years of age ask a doctor before use.
NicoDerm CQ (nicotine) (NDA 020165; Sanofi Aventis)	Approved as prescription on 11/7/91; Rx→OTC on 8/2/96.	Patch (7, 14, 21 mg)	Same as above	10 weeks and 8 weeks (for longer use, talk to health care provider): If > 10 cigarettes/day: • Wk 1-6: one 21 mg/day • Wk 7-8: one 14 mg/day • Wk 9-10: one 7 mg/day If ≤ 10 cigarettes/day: • Wk 1-6: one 14 mg/day Wk 7-8: one 7 mg/day	Same as above
Habitrol (nicotine) (NDA 020076; Dr. Reddy's)	Approved as prescription on 11/27/91; Rx→OTC on 11/12/99.	Patch (7, 14, 21 mg)	Same as above	8 weeks (for longer use, talk to health care provider): If > 10 cigarettes/day: • Wk 1-4: one 21 mg/day • Wk 5-6: one 14 mg/day • Wk 7-8: one 7 mg/day If ≤ 10 cigarettes/day: • Wk 1-6: one 14 mg/day • Wk 7-8: one 7 mg/day	Same as above

Product Name (NDA #; holder)	OTC or Rx (Date approved; Date Rx→OTC)	Route (Doses)	Indication	Adult Treatment Duration and Schedule	Pediatric Labeling
Nicotrol NS (nicotine) (NDA 020385; Pfizer)	Prescription (3/22/96; N/A)	Nasal spray (50 microliter spray delivering 0.5 mg)	• Indicated as an aid to smoking cessation for the relief of nicotine withdrawal symptoms • Should be used as a part of a comprehensive behavioral smoking cessation program	2 sprays (one per nostril) = 1 dose • Starting dose: 1-2 doses/hour • Maximum doses/hour: 5 • Maximum doses/day: 40 Maximum recommended duration of treatment: 3 months The safety and efficacy of the continued use of Nicotrol NS for periods longer than 6 months have not been adequately studied and such use is not recommended.	Under Pediatric Use: Not recommended for use in the pediatric population because its safety and effectiveness in children and adolescents who smoke have not been evaluated.
Nicotrol Inhaler (nicotine) (NDA 020714; Pharmacia and Upjohn)	Prescription (5/2/97; N/A)	Inhalant (10 mg cartridge; 4 mg delivered)	• Indicated as an aid to smoking cessation for the relief of nicotine withdrawal symptoms • Recommended for use as part of a comprehensive behavioral smoking cessation program.	The recommended duration of treatment is 3 months, after which patients may be weaned from the inhaler by gradual reduction of the daily dose over the following 6 to 12 weeks. The safety and efficacy of the continued use of Nicotrol Inhaler for periods longer than 6 months have not been studied and such use is not recommended.	Safety and effectiveness in pediatric and adolescent patients below the age of 18 years have not been established for any nicotine replacement product. However, no specific medical risk is known or expected in nicotine dependent adolescents. NICOTROL Inhaler should be used for the treatment of tobacco dependence in the older adolescent only if the potential benefit justifies the potential risk.
Nicorette lozenge (nicotine polacrilex) (NDA 021330; GSK)	OTC (10/31/02; N/A)	Oral (2, 4 mg)	Reduces withdrawal symptoms, including nicotine craving, associated with quitting smoking.	12 weeks (for longer use, talk to health care provider): • Wk 1-6: 1 per 1-2 hr • Wk 7-9: 1 per 2-4 hr • Wk 10-12: 1 per 4-8 hr If smoke 1st cigarette within 30 min of waking up, use 4 mg; if more than 30 min, use 2 mg.	If you are under 18 years of age ask a doctor before use. No studies have been done to show if this product will work for you.
Nicorette mini lozenge (nicotine polacrilex) (NDA 022360; GSK)	OTC (5/18/09; N/A)	Oral (2, 4 mg)	Same as above	Same as above	Same as above
Non-NRT Therapies					
Zyban (bupropion hydrochloride sustained release) (NDA 020711; GSK)	Prescription (5/14/97; N/A)	Oral (150 mg)	• Indicated as an aid to smoking cessation treatment	7-12 weeks • Start at one 150-mg tablet per day for 3 days • Can increase to 300 mg per day given as one 150-mg tablet twice each day, with 8 hours between Patient may benefit from ongoing treatment.	Safety and effectiveness in the pediatric population have not been established. Boxed Warning for suicidality in children, adolescents, and young adults in setting of bupropion use as an antidepressant.

Dated: December 13, 2018.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2018–27352 Filed 12–17–18; 8:45 am]

BILLING CODE 4164–01–C

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–132881–17]

RIN 1545–BO30

Regulations Reducing Burden Under FATCA and Chapter 3

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations eliminating withholding on payments of gross proceeds, deferring withholding on foreign passthru payments, eliminating withholding on certain insurance premiums, and clarifying the definition of investment entity. This notice of proposed rulemaking also includes guidance concerning certain due diligence requirements of withholding agents and guidance on refunds and credits of amounts withheld.

DATES: Written or electronic comments and requests for a public hearing must be received by February 19, 2019.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG–132881–17), Internal Revenue Service, Room 5203, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may also be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG–132881–17), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224; or sent electronically via the Federal eRulemaking Portal at *http://www.regulations.gov* (IRS REG–132881–17).

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, John Sweeney, Nancy Lee, or Subin Seth, (202) 317–6942; concerning submissions of comments and/or requests for a public hearing, Regina Johnson, (202) 317–6901 (not toll free numbers).

SUPPLEMENTARY INFORMATION:

Background

This document contains amendments to the Income Tax Regulations (26 CFR part 1) under chapter 4 (sections 1471 through 1474) commonly known as the Foreign Account Tax Compliance Act (FATCA). This document also contains amendments to the Income Tax Regulations (26 CFR part 1) under sections 1441 and 1461.

On January 28, 2013, the Department of the Treasury (Treasury Department) and the IRS published final regulations under chapter 4 in the **Federal Register** (TD 9610, 78 FR 5873), and on September 10, 2013, corrections to the final regulations were published in the **Federal Register** (78 FR 55202). The regulations in TD 9610 and the corrections thereto are collectively referred to in this preamble as the 2013 final chapter 4 regulations. On March 6, 2014, the Treasury Department and the IRS published temporary regulations under chapter 4 (TD 9657, 79 FR 12812) that clarify and modify certain provisions of the 2013 final chapter 4 regulations, and corrections to the temporary regulations were published in the **Federal Register** on July 1, 2014, and November 18, 2014 (79 FR 37175 and 78 FR 68619, respectively). The regulations in TD 9657 and the corrections thereto are referred to in this preamble as the 2014 temporary chapter 4 regulations. A notice of proposed rulemaking cross-referencing the 2014 temporary chapter 4 regulations was published in the **Federal Register** on March 6, 2014 (79 FR 12868).

On March 6, 2014, the Treasury Department and the IRS published temporary regulations under chapters 3 and 61 in the **Federal Register** (TD 9658, 79 FR 12726) to coordinate with the regulations under chapter 4, and corrections to those temporary regulations were published in the **Federal Register** (79 FR 37181) on July 1, 2014. Collectively, the regulations in TD 9657 and the corrections thereto are referred to in this preamble as the 2014 temporary coordination regulations. A notice of proposed rulemaking cross-referencing the 2014 temporary coordination regulations was published in the **Federal Register** on March 6, 2014 (79 FR 12880).

On January 6, 2017, the Treasury Department and the IRS published final and temporary regulations under chapter 4 in the **Federal Register** (TD 9809, 82 FR 2124), and corrections to those final regulations were published on June 30, 2017 in the **Federal Register** (82 FR 27928). Collectively, the regulations in TD 9809 and the corrections thereto are referred to in this preamble as the 2017 chapter 4 regulations. A notice of proposed rulemaking cross-referencing the temporary regulations in TD 9809 and proposing regulations under chapter 4 relating to verification requirements for certain entities was published in the **Federal Register** on January 6, 2017 (82 FR 1629). Also on January 6, 2017, the Treasury Department and the IRS published final and temporary regulations under chapters 3 and 61 in the **Federal Register** (TD 9808, 82 FR 2046), and corrections to those final regulations were published on June 30, 2017 in the **Federal Register** (82 FR 29719). Collectively, the regulations in TD 9808 and the corrections thereto are referred to in this preamble as the 2017 coordination regulations. A notice of proposed rulemaking cross-referencing the temporary regulations in TD 9808 was published in the **Federal Register** on January 6, 2017 (82 FR 1645).

Pursuant to Executive Order 13777, Presidential Executive Order on Enforcing the Regulatory Reform Agenda (82 FR 9339), the Treasury Department is responsible for conducting a broad review of existing regulations. In a Request for Information published on June 14, 2017 (82 FR 27217), the Treasury Department invited public comment concerning regulations that should be modified or eliminated in order to reduce unnecessary burdens. In addition, in Notice 2017–28 (2017–19 I.R.B. 1235), the Treasury Department and the IRS invited public comment on recommendations for the 2017–2018 Priority Guidance Plan for tax guidance, including recommendations relating to Executive Order 13777. In response to the invitations for comments in the Request for Information and Notice 2017–28, the Treasury Department and the IRS received comments suggesting modifications to the regulations under chapters 3 and 4. See also Executive Order 13789, Identifying and Reducing Tax Regulatory Burdens, issued on April 21, 2017 (82 FR 19317) and the second report issued in response (82 FR 48013) (stating that the Treasury Department continues to analyze all recently issued significant regulations and is considering possible reforms of recent regulations, which include regulations under chapter 4).

Based on public input, and taking into account the burden-reducing policies described in Executive Orders 13777 and 13789, these regulations propose certain amendments to the regulations under chapters 3 and 4, including certain refund related issues for which comments were received. The Explanation of Provisions section of this preamble describes these proposed amendments and addresses public comments received in response to the Request for Information and Notice 2017–28, other than comments that would require a statutory change or

were addressed in prior Treasury decisions. The Explanation of Provisions section of this preamble also discusses comments to the 2017 chapter 4 regulations and 2017 coordination regulations to the extent the comments relate to amendments that are included in these proposed regulations. The Treasury Department and the IRS continue to study other public comments.

Explanation of Provisions

I. Elimination of Withholding on Payments of Gross Proceeds From the Sale or Other Disposition of Any Property of a Type Which Can Produce Interest or Dividends From Sources Within the United States

Under sections 1471(a) and 1472, withholdable payments made to certain foreign financial institutions (FFIs) and certain non-financial foreign entities (NFFEs) are subject to withholding under chapter 4. Section 1473(1) states that, except as otherwise provided by the Secretary, the term ''withholdable payment'' means: (i) Any payment of interest (including any original issue discount), dividends, rents, salaries, wages, premiums, annuities, compensations, remunerations, emoluments, and other fixed or determinable annual or periodical gains, profits, and income, if such payment is from sources within the United States; and (ii) any gross proceeds from the sale or other disposition of any property of a type which can produce interest or dividends from sources within the United States.

Since the enactment of chapter 4, the Treasury Department and the IRS have received comments from withholding agents on the burden of implementing a requirement to withhold on gross proceeds. The comments have noted in particular the lead time required to implement such a requirement and the potential complexity of a sufficient regulatory framework. The comments assert that withholding on gross proceeds would require significant efforts by withholding agents, including executing brokers that do not obtain tax documentation. The comments assert that adding this withholding requirement is of limited incremental benefit in supporting the objectives of chapter 4 with respect to foreign entities investing in U.S. securities. In response to these comments, the Treasury Department and the IRS have repeatedly issued guidance deferring the date when withholding on gross proceeds would begin. The 2017 chapter 4 regulations provide that such withholding will begin on January 1, 2019.

Many U.S. and foreign financial institutions, foreign governments, the Treasury Department, the IRS, and other stakeholders have devoted substantial resources to implementing FATCA withholding on withholdable payments. At the same time, 87 jurisdictions have an IGA in force or in effect and 26 jurisdictions are treated as having an IGA in effect because they have an IGA signed or agreed in substance, which allows for international cooperation to facilitate FATCA implementation. The Treasury Department and the IRS have determined that the current withholding requirements under chapter 4 on U.S. investments already serve as a significant incentive for FFIs investing in U.S. securities to avoid status as nonparticipating FFIs, and that withholding on gross proceeds is no longer necessary in light of the current compliance with FATCA. For these reasons, under the authority provided under section 1473(1) these proposed regulations would eliminate withholding on gross proceeds by removing gross proceeds from the definition of the term ''withholdable payment'' in § 1.1473–1(a)(1) and by removing certain other provisions in the chapter 4 regulations that relate to withholding on gross proceeds. As a result of these proposed changes to the chapter 4 regulations, only payments of U.S. source FDAP that are withholdable payments under § 1.1473–1(a) and that are not otherwise excepted from withholding under § 1.1471–2(a) or (b) would be subject to withholding under sections 1471(a) and 1472.

II. Deferral of Withholding on Foreign Passthru Payments

An FFI that has an agreement described in section 1471(b) in effect with the IRS is required to withhold on any passthru payments made to its recalcitrant account holders and to FFIs that are not compliant with chapter 4 (nonparticipating FFIs). Section 1471(d)(7) defines a ''passthru payment'' as any withholdable payment or other payment to the extent attributable to a withholdable payment.

In Notice 2010–60 (2010–37 I.R.B. 329), the Treasury Department and the IRS requested comments on methods a participating FFI could use to determine whether payments it makes are attributable to withholdable payments. In Notice 2011–34 (2011–19 I.R.B. 765), the Treasury Department and the IRS set forth a proposed framework for participating FFIs to withhold on such payments based on a methodology for determining a ''passthru payment percentage'' to be applied to certain payments made by FFIs. After the publication of Notice 2011–34, stakeholders noted the burdens and complexities in implementing a system for withholding on these payments along the lines of that described in the notice. In light of those comments, the framework outlined in Notice 2011–34 was not incorporated into the 2013 final chapter 4 regulations. In addition, the Treasury Department and the IRS have repeatedly issued guidance deferring the date when withholding on these payments would begin (referred to in guidance as ''foreign passthru payments''). The 2017 chapter 4 regulations provide that such withholding will not begin until the later of January 1, 2019, or the date of publication in the **Federal Register** of final regulations defining the term ''foreign passthru payment.''

The Treasury Department and the IRS have received comments noting that withholding on foreign passthru payments may not be needed given the number of IGAs in effect. One comment also recommended that if the Treasury Department and the IRS determine, based on an evaluation of the data received from FFIs on payments to nonparticipating FFIs in 2015 and 2016, that withholding on foreign passthru payments is necessary, the Treasury Department and the IRS should develop a more targeted solution.

Both in recognition of the time necessary to implement a system for withholding on foreign passthru payments and in recognition of the successful engagement of Treasury and partner jurisdictions to conclude intergovernmental agreements to implement FATCA, these proposed regulations further extend the time for withholding on foreign passthru payments. Accordingly, under proposed regulation § 1.1471–4(b)(4), a participating FFI will not be required to withhold tax on a foreign passthru payment made to a recalcitrant account holder or nonparticipating FFI before the date that is two years after the date of publication in the **Federal Register** of final regulations defining the term ''foreign passthru payment.'' The proposed regulations also make conforming changes to other provisions in the chapter 4 regulations that relate to foreign passthru payment withholding.

Notwithstanding these proposed amendments, the Treasury Department and the IRS remain concerned about the long-term omission of withholding on foreign passthru payments. The Treasury Department and the IRS acknowledge the progress made in implementing FATCA. Nevertheless, concerns remain regarding account

holders of participating FFIs that remain recalcitrant account holders or nonparticipating FFIs and regarding payments made to nonparticipating FFIs. Withholding on foreign passthru payments serves important purposes. First, it provides one way for an FFI that has entered into an FFI agreement to continue to remain in compliance with its agreement, even if some of its account holders have failed to provide the FFI with the information necessary for the FFI to properly determine whether the accounts are U.S. accounts and perform the required reporting, or, in the case of account holders that are FFIs, have failed to enter into an FFI agreement. Second, withholding on foreign passthru payments prevents nonparticipating FFIs from avoiding FATCA by investing in the United States through a participating FFI ''blocker.'' For example, a participating FFI that is an investment entity could receive U.S. source FDAP income free of withholding under chapter 4 and then effectively pay the amount over to a nonparticipating FFI as a corporate distribution. Despite being attributable to the U.S. source payment, the payment made to the nonparticipating FFI may be treated as foreign source income and therefore not a withholdable payment subject to chapter 4 withholding.

Accordingly, the Treasury Department and the IRS continue to consider the feasibility of a system for implementing withholding on foreign passthru payments. The Treasury Department and the IRS request additional comments from stakeholders on alternative approaches that would serve the same compliance objectives as would foreign passthru payment withholding and that could be more efficiently implemented by FFIs.

III. Elimination of Withholding on Non-Cash Value Insurance Premiums Under Chapter 4

Under § 1.1473–1(a)(1), a withholdable payment generally includes any payment of U.S. source FDAP income, subject to certain exclusions, such as for ''excluded nonfinancial payments.'' Excluded nonfinancial payments do not include premiums for insurance contracts. The 2013 final chapter 4 regulations included, however, a transitional rule that deferred withholding on payments with respect to offshore obligations until January 1, 2017, which was extended in the 2014 chapter 4 regulations to include premiums paid by persons acting as insurance brokers with respect to offshore obligations. Additionally, in response to comments noting the burden of providing to withholding agents withholding certificates and withholding statements for payments of insurance premiums, the chapter 4 regulations provide a rule generally allowing a withholding agent to treat as a U.S. payee a U.S. broker receiving a payment of an insurance premium in its capacity as an intermediary or an agent of a foreign insurer. The IRS also generally permits non-U.S. insurance brokers that are NFFEs to become qualified intermediaries in order to alleviate burden on the foreign brokers and U.S. withholding agents.

Notwithstanding these allowances, the Treasury Department and the IRS continued to receive comments requesting elimination of withholding under chapter 4 on premiums for insurance contracts that do not have cash value (non-cash value insurance premiums). The comments cited the burden on insurance brokers of documenting insurance carriers, intermediaries, and syndicates of insurers for chapter 4 purposes, noting examples to demonstrate the volume and complexity of placements with insurers of the insurance policies typically arranged by the brokers for their clients. The comments argued that withholding on non-cash value insurance premiums is not necessary to further the purposes of chapter 4.

At the same time, certain foreign entities that conducted a relatively small amount of insurance business had taken the position that they were not passive foreign investment companies (PFICs) under section 1297(a). Section 1297(a) generally defines a PFIC as a foreign corporation if 75 percent or more of the corporation's gross income for the taxable year is passive income or 50 percent or more of its assets produce, or are held for the production of, passive income. Section 1297(b)(2)(B), prior to a recent change in law (described below), provided an exception from the U.S. owner reporting and anti-deferral rules applicable to PFICs for corporations ''predominantly engaged'' in an insurance business. Withholding under chapter 4 on non-cash value insurance premiums strengthened the IRS's enforcement efforts, with respect to the use of the exception in section 1297(b)(2)(B) by U.S. owners of foreign corporations for tax avoidance and evasion, by facilitating reporting of the U.S. owners to avoid withholding on premiums received by the entity.

The preamble to the 2017 chapter 4 regulations noted that future changes to the PFIC rules may create an opportunity to revise the treatment of foreign insurance companies under chapter 4. 82 FR 2140. On December 22, 2017, the Tax Cuts and Jobs Act, Public Law 115–97 (2017) amended section 1297(b)(2)(B) to provide a more limited exception to PFIC status by replacing the exception for corporations predominantly engaged in an insurance business with a more stringent test based generally on a comparison of the corporation's insurance liabilities and its total assets. This amendment is expected to mitigate the need for reporting on the U.S. owners of these companies under chapter 4 because the Treasury Department and the IRS anticipate that these entities will either amend their business models on account of the change in law or will otherwise comply with the PFIC reporting requirements.

In light of the aforementioned change in law and in furtherance of the burden-reducing policies in Executive Orders 13777 and 13789, these proposed regulations provide that premiums for insurance contracts that do not have cash value (as defined in § 1.1471–5(b)(3)(vii)(B)) are excluded nonfinancial payments and, therefore, not withholdable payments.

IV. Clarification of Definition of Investment Entity

Under § 1.1471–5(e)(4)(i)(B), an entity is an investment entity (and therefore a financial institution) if the entity's gross income is primarily attributable to investing, reinvesting, or trading in financial assets and the entity is ''managed by'' another entity that is a depository institution, custodial institution, insurance company, or an investment entity described in § 1.1471–5(e)(4)(i)(A). Section 1.1471–5(e)(4)(v), *Example 2,* illustrates this rule with an example in which a fund is an investment entity because another financial institution (an investment advisor) provides investment advice to the fund and has discretionary management of the assets held by a fund and the fund meets the gross income test. In *Example 6* of § 1.1471–5(e)(4)(v), a trust is an investment entity because the trustee (an FFI) manages and administers the assets of the trust in accordance with the terms of the trust instrument and the trust meets the gross income test. Section 1.1471–5(e)(4)(v), *Example 8,* provides an example in which an entity is an investment entity because an introducing broker (that is, a broker using another broker to clear and settle its trades) has discretionary authority to manage the entity's assets and provides services as an investment advisor and manager to the entity and the entity meets the gross income test.

The Treasury Department and the IRS received a comment requesting that

''discretionary authority'' be more narrowly construed for purposes of treating an entity as an investment entity described in § 1.1471–5(e)(4)(i)(B). The comment suggested that an entity should not be treated as an investment entity solely because the entity invests in a mutual fund or similar vehicle because the investments made by the mutual fund are not tailored to the entity that invests in it. The comment requested the same result for a variety of other types of investment products and solutions with varying degrees of investor involvement and standardization, including an investment in a ''discretionary mandate.'' According to the comment, a ''discretionary mandate'' is an investment product or solution offered by a financial institution to certain clients where the financial institution manages and invests the client's funds directly (rather than the client investing in a separate entity) in accordance with the client's investment goals. The comment noted that some discretionary mandate clients claim to be passive NFFEs rather than FFIs.

As described in the examples, the ''managed by'' category of investment entities generally covers entities that receive specific professional management advice from an advisor that is tailored to the investment needs of the entity. A financial institution does not have discretionary authority over an entity merely because it sells the entity shares in a widely-held fund that employs a predetermined investment strategy. These proposed regulations clarify that an entity is not ''managed by'' another entity for purposes of § 1.1471–5(e)(4)(i)(B) solely because the first-mentioned entity invests all or a portion of its assets in such other entity, and such other entity is a mutual fund, an exchange traded fund, or a collective investment entity that is widely held and is subject to investor-protection regulation. In contrast, an investor in a discretionary mandate described above is ''managed by'' the financial institution under § 1.1471–5(e)(4)(i)(B).

The clarification in these proposed regulations is similar to the guidance published by the OECD interpreting the definition of a ''managed by'' investment entity under the Common Reporting Standard.

V. Modifications to Due Diligence Requirements of Withholding Agents Under Chapters 3 and 4

A. Treaty Statements Provided With Documentary Evidence for Chapter 3

Under chapter 3, a withholding agent must generally obtain either a withholding certificate or documentary evidence and a treaty statement in order to apply a reduced rate of withholding based on a payee's claim for benefits under a tax treaty. The 2017 coordination regulations added a requirement that when a treaty statement is provided with documentary evidence by an entity beneficial owner to claim treaty benefits, the statement must identify the specific limitation on benefits (LOB) provision relied upon in the treaty. In addition, the 2017 coordination regulations added a three-year validity period applicable to treaty statements provided with documentary evidence and a transition period that expires January 1, 2019, for withholding agents to obtain new treaty statements that comply with the new LOB requirement for accounts that were documented with documentary evidence before January 6, 2017 (preexisting accounts). The QI agreement in Revenue Procedure 2017–15, 2017–3 I.R.B. 437 (2017 QI agreement) cross-references the 2017 coordination regulations for the three-year validity period for treaty statements provided with documentary evidence and provides a two-year transition rule for accounts documented before January 1, 2017. Similar provisions are included in the WP and WT agreements in Revenue Procedure 2017–21, 2017–6 I.R.B. 791 (2017 WP and WT agreements).

Comments have noted the burden of complying with the new treaty statement requirements, including difficulties in obtaining new treaty statements for preexisting accounts within the transitional period given the large number of account holders impacted by this requirement. The comments requested an additional one-year period for withholding agents to obtain new treaty statements for preexisting accounts, and the removal of the three-year validity period for a treaty statement that meets the LOB requirement. A comment also noted that a three-year validity period for a treaty statement is not needed for certain categories of entities whose treaty status is unlikely to change, such as publicly traded corporations and government entities.

In response to these comments, these proposed regulations include several changes to the rules on treaty statements provided with documentary evidence. First, these proposed regulations extend the time for withholding agents to obtain treaty statements with the specific LOB provision identified for preexisting accounts until January 1, 2020 (rather than January 1, 2019). Second, these proposed regulations add exceptions to the three-year validity period for treaty statements provided by tax exempt organizations (other than tax-exempt pension trusts or pension funds), governments, and publicly traded corporations, entities whose qualification under an applicable treaty is unlikely to change. See proposed § 1.1441–1(e)(4)(ii)(A)(*2*). In addition, these proposed regulations correct an inadvertent omission of the actual knowledge standard for a withholding agent's reliance on the beneficial owner's identification of an LOB provision on a treaty statement provided with documentary evidence, the same as the standard that applies to a withholding certificate used to make a treaty claim. See proposed § 1.1441–6(c)(5)(i). The proposed amendments described in this section V.A. will also be incorporated into the 2017 QI agreement and 2017 WP and WT agreements, and a QI, WP, or WT may rely upon these proposed modifications until such time.

B. Permanent Residence Address Subject to Hold Mail Instruction for Chapters 3 and 4

In response to comments received on the 2014 temporary coordination regulations and the 2014 QI agreement regarding the definition of a ''permanent residence address,'' the 2017 coordination regulations (and the 2017 chapter 4 regulations by cross-reference) allow an address to be treated as a permanent residence address despite being subject to a hold mail instruction when a person provides documentary evidence establishing residence in the country in which the person claims to be a resident for tax purposes. Comments noted that the allowance to obtain documentary evidence establishing residence in a particular country is unnecessarily strict when the person is not claiming treaty benefits, and that it is unclear what documentary evidence may be used to establish residence for purposes of this allowance.

These proposed regulations provide that the documentary evidence required in order to treat an address that is provided subject to a hold mail instruction as a permanent residence address is documentary evidence that supports the person's claim of foreign status or, for a person claiming treaty benefits, documentary evidence that supports the person's residence in the country where the person claims treaty benefits. Regardless of whether the person claims treaty benefits, the documentary evidence on which a withholding agent may rely is the documentary evidence described in

§ 1.1471–3(c)(5)(i), without regard to the requirement that the documentation contain a permanent residence address.

A comment also requested the removal of any limitation on reliance on a permanent residence address subject to a hold mail instruction because many account holders prefer to receive electronic correspondence rather than paper mail. In response to this comment, proposed § 1.1471–1(b)(62) adds a definition of a hold mail instruction to clarify that a hold mail instruction does not include a request to receive all correspondence (including account statements) electronically.

These proposed regulations apply for purposes of chapters 3 and 4. A QI, WP, or WT may rely upon these proposed modifications until they are incorporated into the 2017 QI agreement and 2017 WP and WT agreements.

VI. Revisions Related to Credits and Refunds of Overwithheld Tax

A. Withholding and Reporting in a Subsequent Year

Under § 1.1441–5(b)(2)(i)(A), a U.S. partnership is required to withhold on an amount subject to chapter 3 withholding (as defined in § 1.1441–2(a)) that is includible in the gross income of a partner that is a foreign person. A U.S. partnership satisfies this requirement by withholding on distributions to the foreign partner that include an amount subject to chapter 3 withholding. To the extent a foreign partner's distributive share of income subject to chapter 3 withholding is not actually distributed to the partner, the U.S. partnership must withhold on the partner's distributive share of the income on the earlier of the date that the statement required under section 6031(b) (Schedule K–1, Partner's Share of Income, Deductions, Credits, etc.) is mailed or otherwise provided to the partner or the due date for furnishing the statement. Under section 6031(b), a partnership that files its return for a calendar year (calendar-year partnership) must generally furnish to each partner a Schedule K–1 on or before March 15 following the close of the taxable year, a due date that may be extended up to six months. See §§ 1.6031(b)–1T(b) and 1.6081–2T(a). Similar requirements apply to a foreign partnership that has entered into an agreement with the IRS to act as a WP. See the 2017 WP agreement. A foreign partnership other than a WP generally satisfies its withholding requirement in the same manner for amounts received from a withholding agent that failed to withhold to the extent required. See § 1.1441–5(c)(2) and (c)(3)(v). For purposes of chapter 4, similar withholding rules apply to a partnership that receives a withholdable payment allocable to a foreign partner. See § 1.1473–1(a)(5)(ii) and (vi).

Under § 1.1461–1(c)(1) and (2), a partnership is required to report on Form 1042–S, Foreign Person's U.S. Source Income Subject to Withholding, any amount subject to withholding that is allocable to a foreign partner for a calendar year. The partnership must file Form 1042–S (and furnish a copy to the partner) by March 15 of the calendar year following the year in which it receives the amount subject to withholding. The due date for filing a Form 1042–S may be automatically extended by 30 days (and an additional 30 days at the discretion of the IRS). See § 1.6081–8T(a). Amounts that are reportable on Forms 1042–S are also required to be reported on a withholding agent's income tax return, Form 1042, Annual Withholding Tax Return for U.S. Source Income of Foreign Persons. The due date for Form 1042 is March 15, which may be automatically extended for six months. See § 1.6081–10. Similar reporting rules apply to a partnership that receives a withholdable payment and withholds under chapter 4. See § 1.1474–1(c) and (d)(1).

Because the extended due date for filing a Form 1042–S generally occurs before the extended due date for furnishing a Schedule K–1 to a foreign partner, a partnership may be required to report an amount subject to withholding on a Form 1042–S before it performs all of the withholding required on such amount under § 1.1441–5(b)(2)(i)(A) or § 1.1473–1(a)(5)(ii) and (vi). To address this case, the Instructions for Form 1042 require a domestic partnership to report any withholding that occurs with respect to an amount that a partnership received but did not distribute to a partner in a calendar year (preceding year) on the partnership's Form 1042 for the following calendar year (subsequent year) (referred to as the ''lag method'' of reporting). In this case, the partnership would deposit the amount in the subsequent year and designate the deposit as made for that year for reporting on Form 1042. To correspond to the timing of the reporting on Form 1042, the partnership must also report this withholding on Forms 1042–S filed and issued for the subsequent year. For example, a calendar year domestic partnership that receives U.S. source dividends in 2017 (but does not make a distribution to its foreign partners), must withhold on the foreign partners' share of the dividend income by the time the partnership issues Schedules K–1 to the foreign partners, which could be as late as September 15, 2018. The lag method of reporting requires the partnership to report the withholding on the Forms 1042–S and 1042 for the 2018 year (which are issued and filed in 2019). The WP agreement includes a similar requirement to that described in this paragraph when a WP withholds after the due date for Form 1042–S (including extensions). The Instructions for Form 1042 provide a similar reporting rule for a domestic trust that withholds in a subsequent year on income of the trust that it is required to distribute but has not actually distributed to a foreign beneficiary. See § 1.1441–5(b)(2)(ii) and (iii). The WT agreement includes a similar requirement for a WT.

Apart from the cases described in the preceding paragraph, in certain other cases, a withholding agent is permitted to withhold an amount in a subsequent year that relates to the preceding year. For example, a withholding agent adjusting underwithholding under § 1.1461–2(b) or § 1.1474–2(b) may withhold the additional amount by the due date (without extensions) of Form 1042. In these cases, the Instructions for Form 1042 provide that, in contrast to the reporting required by partnerships and certain trusts described in the preceding paragraph, a withholding agent withholding in a subsequent year must designate the deposit and report the tax for the preceding year.

Comments have noted issues that arise under the lag method when a partner files an income tax return to report the partnership income allocated to the partner and to claim credit under section 33 (or a refund) based on the partnership's withholding. When a partnership applies the lag method, it issues a Form 1042–S for the subsequent year (and the related withholding) that generally reflects the income received by the partnership in the preceding year. However, the income is reported to the partner on Schedule K–1 for the preceding year, thus resulting in a mismatch between the income allocated to the partner and the withholding on that income. Because a partner must attach to its income tax return a Form 1042–S that it receives from a partnership to claim a credit or refund of overwithholding under § 301.6402–3(e), the partner cannot support the claim with the Form 1042–S until after the year in which the partner is required to report the income shown on the Schedule K–1.

These proposed regulations generally require a withholding agent (including a partnership or trust) that withholds in a

subsequent year to designate the deposit as attributable to the preceding year and report the amount on Forms 1042 and 1042–S for the preceding year. This proposed rule incorporates the existing rule for withholding agents (other than partnerships and trusts) from the form instructions, and extends the rule to partnerships and trusts. An exception to this requirement for a partnership that is not a calendar-year partnership (a fiscal-year partnership) provides that such partnership may designate a deposit as made for the subsequent year and report the amount on Forms 1042 and 1042–S for the subsequent year. This exception allows a fiscal-year partnership flexibility to determine the year for reporting that will result in the best matching of the income and the related withholding.

These proposed regulations also provide a revised due date for a partnership to file and furnish Form 1042–S when it withholds the tax after March 15 of the subsequent year that it designates as deposited for the preceding year. Under this new rule, the due date for a partnership to file and furnish a Form 1042–S in such a case will be September 15 of the subsequent year. This revised due date corresponds to the due date for a partnership to file Form 1042 with an extension and the due date for a calendar-year partnership to furnish a Schedule K–1 to a partner with an extension so that the partnership has sufficient time to determine the amount of withholding due and to coordinate with the extended due date for furnishing the Schedule K–1.

Based on the revisions included in these proposed regulations, the IRS intends to amend the Instructions for the 2019 Form 1042 to remove the requirement that a partnership or trust apply the lag method and to incorporate these proposed regulations. The IRS also intends to amend the Instructions to the 2019 Form 1042–S to require that in a case when a partnership is filing Form 1042–S after March 15 for a partner's distributive share of an amount received by the partnership in the preceding year, the partnership must file and issue a separate Form 1042–S for such amount for the preceding year (in addition to any Forms 1042–S filed and issued to the partner for amounts that are withheld when distributed to the partner before March 15 and reported for the preceding year).

The Treasury Department and the IRS intend to amend the WP and WT agreements to the extent necessary to incorporate the proposed regulations, and until such time a WP or WT may rely on these proposed modifications for purposes of its filing and deposit requirements.

B. Adjustments to Overwithholding Under the Reimbursement and Set-Off Procedures

Under § 1.1461–2(a), a withholding agent that has overwithheld and deposited the tax may adjust the overwithheld amount under either the reimbursement procedure or the set-off procedure. Under the reimbursement procedure, a withholding agent may repay the beneficial owner or payee the amount of tax overwithheld and then reimburse itself by reducing, by the amount of such repayment, any deposit of withholding tax otherwise required to be made before the end of the calendar year following the year of overwithholding. The withholding agent must make any repayment to the beneficial owner or payee before the earlier of the due date for filing Form 1042–S (without extensions) for the calendar year of overwithholding or the date on which the Form 1042–S is actually filed with the IRS, and must state on a timely filed Form 1042 (without extensions) for the calendar year of overwithholding that the filing constitutes a claim for credit in accordance with § 1.6414–1.

Under the set-off procedure, a withholding agent may apply the overwithheld amount against any amount which would otherwise be subject to withholding that is paid to the beneficial owner or payee before the earlier of the due date for filing Form 1042–S (without extensions) for the calendar year of overwithholding or the date that the Form 1042–S is actually filed with the IRS. Similar rules for adjusting overwithholding apply for purposes of chapter 4. See § 1.1474–2(a)(3) and (4).

If a withholding agent cannot apply the reimbursement or set-off procedure, a beneficial owner or payee must file a claim for credit or refund with the IRS in order to recover the overwithheld tax. Informal comments have requested to expand the cases in which a withholding agent may apply the reimbursement and set-off procedures in order to limit the need for a beneficial owner or payee to claim a credit or refund. These proposed regulations respond to these comments by modifying the reimbursement procedure to allow a withholding agent to use the extended due date for filing Forms 1042 and 1042–S to make a repayment and claim a credit. These proposed regulations also include revisions to conform the requirements for the set-off procedures to those that apply to the reimbursement procedures. In addition, these proposed regulations remove the requirement that a withholding agent include with its Form 1042 a statement that the filing constitutes a claim for credit when it applies reimbursement in the year following the year of the overwithholding. This statement is no longer necessary because Form 1042 was revised in 2016 to provide separate fields for adjustments to overwithholding and underwithholding.

These proposed regulations also provide that a withholding agent may not apply the reimbursement and set-off procedures after the date on which Form 1042–S has been furnished to the beneficial owner or payee (in addition to, under the current regulations, after the date a Form 1042–S has been filed). Because of the liberalizing amendments described in the preceding paragraph, this change is needed to ensure that a Form 1042–S furnished to a beneficial owner or payee reflects any repayments made pursuant to these adjustment procedures and is consistent with the associated Form 1042–S that is filed with the IRS. A QI, WP, or WT may rely upon the proposed modifications described in this section VI.B until they are incorporated into the 2017 QI agreement and 2017 WP and WT agreements.

C. Reporting of Withholding by Nonqualified Intermediaries

A withholding agent that makes a payment subject to chapter 3 withholding to a nonqualified intermediary (as defined in § 1.1441–1(c)(14)) can reliably associate the payment with documentation when it obtains a valid intermediary withholding certificate (that is, Form W–8IMY, Certificate of Foreign Intermediary, Foreign Flow-Through Entity, or Certain U.S. Branches for United States Tax Withholding) from the nonqualified intermediary and a withholding statement that allocates the payment among the payees and includes the documentation for each payee as described in § 1441–1(b)(2)(vii)(B) and (e)(3)(iii). For purposes of chapter 4, a withholding agent making a withholdable payment to a nonqualified intermediary that is a participating FFI or a registered deemed-compliant FFI may rely on a withholding statement that includes an allocation of the payment to a chapter 4 withholding rate pool of payees, and must obtain payee-specific documentation for payees that are not includible in a chapter 4 withholding rate pool to permit any reduced rate of withholding. See § 1.1471–3(c)(3)(iii)(B).

To the extent that a withholding agent cannot reliably associate a withholdable

payment made to a nonqualified intermediary with valid documentation under § 1.1471–3(c), the withholding agent must presume that the payment is made to a nonparticipating FFI and withhold 30 percent of the payment. See § 1.1471–3(f)(5). In such a case, the withholding agent is required to report the payment as a chapter 4 reportable amount made to an unknown recipient on a Form 1042–S that reports the nonqualified intermediary as an intermediary and the amount withheld as chapter 4 withholding. See the Instructions for Form 1042–S. If the amount withheld upon under chapter 4 is an amount subject to withholding under chapter 3, the withholding agent is relieved from its obligation to also withhold under chapter 3 on the payment. § 1.1441–3(a)(2). To the extent that a nonqualified intermediary is required to report the same payments to its account holders on Forms 1042 and 1042–S under the chapter 3 or 4 regulations, the nonqualified intermediary need not withhold when chapter 3 or 4 withholding has already been applied by its withholding agent, and it substantiates the withholding by attaching to its Form 1042 a copy of the Form 1042–S furnished by the withholding agent.

Comments have noted that some U.S. withholding agents charge fees for the administrative burden associated with reviewing underlying documentation that is included with a withholding statement provided by a nonqualified intermediary. In other cases, nonqualified intermediaries may not be able to obtain such documentation from account holders. For these reasons, some nonqualified intermediaries provide withholding agents with valid Forms W–8IMY to establish their chapter 4 statuses but do not provide any underlying payee documentation or withholding rate pool information to substantiate the allocations to payees shown on a withholding statement. Comments have stated that the requirement for withholding agents to report the withholding applied to withholdable payments as chapter 4 withholding in these cases (because the payees are presumed to be nonparticipating FFIs) has made it difficult for account holders to claim foreign tax credits from foreign jurisdictions that do not view the chapter 4 withholding tax as a creditable income tax. These comments recommended various proposals to allow a nonqualified intermediary to report the withholding as chapter 3 withholding applied to its account holders.

In response to the comments described in the preceding paragraph, these proposed regulations modify the rules for reporting by a nonqualified intermediary under §§ 1.1461–1(c)(4)(iv) and 1.1474–1(d)(2)(ii) to address a case in which a nonqualified intermediary receives a payment for which a withholding agent has withheld at the 30-percent rate under chapter 4 and reported the payment on Form 1042–S as made to an unknown recipient. In such a case, these proposed regulations permit a nonqualified intermediary that is a participating FFI or registered deemed-compliant FFI to report the withholding applied to the nonqualified intermediary on a Form 1042–S as chapter 3 withholding to the extent that the nonqualified intermediary determines that the payment is not an amount for which withholding is required under chapter 4 based on the payee's chapter 4 status. Under the existing reporting requirements, the nonqualified intermediary would be required to file a Form 1042 and would need to be furnished a copy of the Form 1042–S filed by the withholding agent to substantiate the credit against its withholding tax liability for the withholding applied by its withholding agent. Under the modified requirement, the nonqualified intermediary would be permitted to substantiate the credit even though the Form 1042–S furnished to it reports chapter 4 withholding and the corresponding Forms 1042–S that the nonqualified intermediary issues reports chapter 3 withholding. This change should assist account holders using Form 1042–S to claim foreign tax credits in their jurisdictions of residence in these cases. The Treasury Department and the IRS are of the view that this determination should be limited to a nonqualified intermediary that is a participating FFI or registered deemed-compliant FFI given the role of these FFIs in documenting their account holders for chapter 4 purposes and their compliance requirements under the chapter 4 regulations or an applicable IGA jurisdiction.

Reliance on Proposed Regulations

Under section 7805(b)(1)(C), taxpayers may rely on the proposed regulations until final regulations are issued, except as otherwise provided in this paragraph. With respect to the elimination of withholding on non-cash value insurance premiums under proposed § 1.1473–1(a)(3)(iii), the clarification of the definition of a ''managed by'' investment entity under proposed § 1.1471–5(e)(4)(i)(B), and the revised allowance for a permanent residence address subject to a hold mail instruction under proposed §§ 1.1441–1(c)(38) and 1.1471–1(b)(99), taxpayers may apply the modifications in these proposed regulations for all open tax years until final regulations are issued. For the revisions included in these proposed regulations that relate to credits and refunds of withheld tax, taxpayers may not rely on these proposed regulations until Form 1042 and Form 1042–S are updated for the 2019 calendar year.

Special Analyses

The Administrator of the Office of Information and Regulatory Affairs (OIRA), Office of Management and Budget (OMB), has waived review of this proposed rule in accordance with section 6(a)(3)(A) of Executive Order 12866. OIRA will subsequently make a significance determination of the final rule, pursuant to section 3(f) of Executive Order 12866 and the April 11, 2018, Memorandum of Agreement between the Treasury Department and the OMB.

The Treasury Department and the IRS expect the proposed regulation, when final, to be an Executive Order 13771 deregulatory action and request comment on this designation.

Paperwork Reduction Act

The collection of information contained in these proposed regulations is in a number of provisions, including §§ 1.1441–1, 1.1461–1, 1.1461–2, 1.1474–1, and 1.1474–2. The IRS intends that the information collection requirements of these regulations will be implemented through the use of Forms 1042 and 1042–S. As a result, for purposes of the Paperwork Reduction Act (44 U.S.C. 3507), the reporting burden associated with the collection of information in these regulations will be reflected in the information burden and OMB control number of the appropriate IRS form.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number.

The proposed regulations will not increase the number of taxpayers required to file a return. Current filers may have to modify slightly how they report, but the burden of reporting should not increase.

As described in section VI.A of the Explanations of Provisions, the proposed regulations allow a partnership that withholds in a subsequent year to designate the deposit as attributable to the preceding year and report the withholding on Forms 1042 and 1042–S for the preceding year

(rather than the subsequent year). In addition, the proposed regulations allow a partnership that withholds after March 15 of the subsequent year to file Form 1042–S on or before September 15 of such year. The IRS intends to modify Form 1042–S to add a check box to the form so that a partnership filer can indicate that it qualifies for the September 15 due date for filing the form. A partnership that relies on the September 15 due date may need to file an additional Form 1042–S if it is filing to report a partner's distributive share of an amount received by the partnership in the preceding year and it has already filed a Form 1042–S for such partner for the same year. Information on the number of partnerships that withhold in a year subsequent to the year in which the amount was received is not available. However, as an upper bound, table 1 shows the estimated number of partnerships that file Form 1042.

As explained in section IV.B of the Explanation of Provisions, the proposed regulations provide additional time for withholding agents to apply the reimbursement or set-off procedure to adjust overwithholding. The proposed revision may increase the amounts reported by filers of Forms 1042 and 1042–S, but should not affect the number of filers. It is unknown how many withholding agents will use the reimbursement and set-off procedures as a result of the modifications to those procedures in the proposed regulations. However, as an upper bound, table 1 shows the estimated number of withholding agents that report non-zero amounts as adjustments to overwithholding.

Finally, as described in section IV.C of the Explanation of Provisions, the proposed regulations permit certain nonqualified intermediaries to report on certain payments on Form 1042–S using the code for chapter 3 withholding rather than the code for chapter 4 withholding in certain cases in which chapter 4 withholding is applied on payments made to the nonqualified intermediaries. This modification in the proposed regulations should not affect the number of filers or increase any burdens, but rather change how nonqualified intermediaries report to certain recipients. It is not possible to estimate the number of nonqualified intermediaries that may change the code from chapter 4 to chapter 3, so as an upper bound, table 1 shows the estimated number of withholding agents that are nonqualified intermediaries that file Form 1042–S.

TABLE 1—RELATED TAX FORM COUNTS

	Number of respondents (estimated)
Total number of Form 1042 filers	45,000–50,000
Partnership filers of Form 1042	2,000–3,000
Form 1042 filers reporting adjustments to overwithholding	4,000–5,000
Nonqualified intermediaries filers of Form 1042–S	500

Tax Form 1042 data are from administrative tax files while the Form 1042–S information is from a 2016 data file on foreign tax withholding.

Books and records relating to a collection of information must be retained as long as their contents may be material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Regulatory Flexibility Act

It is hereby certified that the collection of information requirements in this notice of proposed rulemaking will not have a significant economic impact on a substantial number of small business entities within the meaning of section 601(6) of the Regulatory Flexibility Act (5 U.S.C. chapter 6). This notice of proposed rulemaking reduces the information required to be reported under chapters 3 and 4 as required by TDs 9610, 9657, 9658, 9808, and 9809, information collections that were certified by the Treasury Department and the IRS as not resulting in a significant economic impact on a substantial number of small business entities. The burden-reducing information collections of this notice of proposed rulemaking provide benefits for small business entities consistent with the Regulatory Flexibility Act's objective that information collections achieve statutory objectives while minimizing any significant impact on small business entities. Therefore, a Regulatory Flexibility Analysis is not required.

Pursuant to section 7805(f), this regulation has been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small businesses.

Statement of Availability of IRS Documents

IRS Revenue Procedures, Revenue Rulings, Notices, and other guidance cited in this preamble are published in the Internal Revenue Bulletin (or Cumulative Bulletin) and are available from the Superintendent of Documents, U.S. Government Publishing Office, Washington, DC 20402, or by visiting the IRS website at *www.irs.gov.*

Comments and Requests for Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any comments that are submitted timely to the IRS as prescribed in this preamble under the ''Addresses'' heading. The Treasury Department and the IRS request comments on all aspects of the proposed rules but specifically on foreign passthru payment withholding and the definition of investment entity, as discussed in section II of the Explanation of Provisions. All comments will be available for public inspection and copying. A public hearing will be scheduled if requested in writing by any person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the public hearing will be published in the **Federal Register**.

Drafting Information

The principal authors of these proposed regulations are John Sweeney, Nancy Lee, and Subin Seth, Office of Associate Chief Counsel (International). However, other personnel from the IRS and the Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 is amended by revising the entries for §§ 1.1471–1, 1.1471–2, 1.1471–3, 1.1471–4, and 1.1474–4 to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

* * * * *

Section 1.1471–1 also issued under 26 U.S.C. 1471 and 26 U.S.C. 1473.

Section 1.1471–2 also issued under 26 U.S.C. 1471 and 26 U.S.C. 1473.

Section 1.1471–3 also issued under 26 U.S.C. 1471 and 26 U.S.C. 1473.

Section 1.1471–4 also issued under 26 U.S.C. 1471 and 26 U.S.C. 1474.

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Section 1.1474–1 also issued under 26 U.S.C. 1473 and 26 U.S.C. 1474.

* * * * *

■ **Par. 2.** Section 1.1441–1 is amended by revising paragraphs (c)(38) and (e)(4)(ii)(A)(*2*) to read as follows:

§ 1.1441–1 Requirement for the deduction and withholding of tax on payments to foreign persons.

* * * * *

(c) * * *

(38) *Permanent residence address*—(i) *In general.* The term *permanent residence address* is the address in the country of which the person claims to be a resident for purposes of that country's income tax. In the case of a withholding certificate furnished in order to claim a reduced rate of withholding under an income tax treaty, whether a person is a resident of a treaty country must be determined in the manner prescribed under the applicable treaty. See § 1.1441–6(b). The address of a financial institution with which the person maintains an account, a post office box, or an address used solely for mailing purposes is not a permanent residence address unless such address is the only address used by the person and appears as the person's registered address in the person's organizational documents. Further, an address that is provided subject to a hold mail instruction (as defined in § 1.1471–1(b)(62)) is not a permanent residence address unless the person provides the documentary evidence described in paragraph (c)(38)(ii) of this section. If, after a withholding certificate is provided, a person's permanent residence address is subsequently subject to a hold mail instruction, the addition of the hold mail instruction is a change in circumstances requiring the person to provide the documentary evidence described in paragraph (c)(38)(ii) of this section in order for a withholding agent to use the address as a permanent residence address. If the person is an individual who does not have a tax residence in any country, the permanent residence address is the place at which the person normally resides. If the person is an entity and does not have a tax residence in any country, then the permanent residence address of the entity is the place at which the person maintains its principal office.

(ii) *Hold mail instruction.* An address that is subject to a hold mail instruction (as defined in § 1.1471–1(b)(62)) can be used by a withholding agent as a permanent residence address if the person has provided the withholding agent with documentary evidence described in § 1.1471–3(c)(5)(i) (without regard to the requirement in § 1.1471–3(c)(5)(i) that the documentary evidence contain a permanent residence address). The documentary evidence described in § 1.1471–3(c)(5)(i) must support the person's claim of foreign status or, in the case of a person that is claiming treaty benefits, must support residence in the country where the person is claiming a reduced rate of withholding under an income tax treaty.

* * * * *

(e) * * *

(4) * * *

(ii) * * *

(A) * * *

(*2*) *Documentary evidence for treaty claims and treaty statements.* Documentary evidence described in § 1.1441–6(c)(3) or (4) shall remain valid until the last day of the third calendar year following the year in which the documentary evidence is provided to the withholding agent, except as provided in paragraph (e)(4)(ii)(B) of this section. A statement regarding entitlement to treaty benefits described in § 1.1441–6(c)(5) (treaty statement) shall remain valid until the last day of the third calendar year following the year in which the treaty statement is provided to the withholding agent except as provided in this paragraph (e)(4)(ii)(A)(*2*). A treaty statement provided by an entity that identifies a limitation on benefits provision for a publicly traded corporation shall not expire at the time provided in the preceding sentence if a withholding agent determines, based on publicly available information at each time for which the treaty statement would otherwise be renewed, that the entity is publicly traded. A withholding agent described in the preceding sentence must retain a record of the information relied upon (to confirm that the entity is publicly traded) for as long as it may be relevant to the determination of the withholding agent's tax liability under section 1461 and § 1.1461–1. Notwithstanding the second sentence of this paragraph (e)(4)(ii)(A)(*2*), a treaty statement provided by an entity that identifies a limitation on benefits provision for a government or tax-exempt organization (other than a tax-exempt pension trust or pension fund) shall remain valid indefinitely. Notwithstanding the validity periods (or exceptions thereto) prescribed in this paragraph (e)(4)(ii)(A)(*2*), a treaty statement will cease to be valid if a change in circumstances makes the information on the statement unreliable or incorrect. For accounts opened and treaty statements obtained prior to January 6, 2017 (including those from publicly traded corporations, governments, and tax-exempt organizations), the treaty statement will expire January 1, 2020.

* * * * *

■ **Par. 3.** Section 1.1441–6 is amended by adding a sentence at the end of paragraph (c)(5)(i) to read as follows:

§ 1.1441–6 Claim of reduced withholding under an income tax treaty.

* * * * *

(c) * * *

(5) * * *

(i) * * * A withholding agent may rely on the taxpayer's claim on a treaty statement regarding its reliance on a specific limitation on benefits provision absent actual knowledge that such claim is unreliable or incorrect.

* * * * *

■ **Par. 4.** Section 1.1461–1 is amended by:

■ 1. Adding two sentences after the first sentence in paragraph (a)(1).

■ 2. Redesignating paragraph (c)(1)(i) as paragraph (c)(1)(i)(A) and adding paragraphs (c)(1)(i) introductory text and (c)(1)(i)(B).

■ 3. Adding a sentence at the end of paragraph (c)(4)(iv).

The additions read as follows:

§ 1.1461–1 Payment and returns of tax withheld.

(a)* * * (1) * * * In a case in which a withholding agent is permitted to withhold on an amount subject to reporting (as defined in paragraph (c)(2) of this section) in a calendar year (subsequent year) following the calendar year (preceding year) in which the withholding agent paid such amount (or, for a partnership or trust withholding with respect to a foreign partner, beneficiary, or owner, the year the partnership or trust received such amount), the withholding agent shall designate the deposit of the withholding as made for the preceding year and report the tax liability on Form 1042 for the preceding year. In the case of a partnership that withholds as described in the preceding sentence and does not file its federal income tax return on a calendar-year basis, however, such partnership may instead designate the deposit as made for the subsequent year and report the tax liability on Form 1042 for the subsequent year. * * *

* * * * *

(c) * * *

(1) * * *

(i) *Withholding agent information reporting.* This paragraph (c)(1)(i) describes the general requirements for a withholding agent to file an information return on Form 1042–S and describes a special rule for a withholding agent that

withholds in a subsequent year as described in paragraph (a)(1) of this section.

* * * * *

(B) *Special reporting by withholding agents that withhold in a subsequent year.* Notwithstanding the first sentence of paragraph (c)(1)(i)(A) of this section, if a withholding agent designates the deposit of such withholding as made for the preceding calendar year as described in paragraph (a)(1) of this section, the withholding agent is required to report the amount on Form 1042–S for the preceding year. With respect to a withholding agent described in the previous sentence that is a partnership and that withholds after March 15 of the subsequent year, such partnership may file and furnish the Form 1042–S on or before September 15 of that year. In the case of a partnership that designates the deposit of such withholding as made for the subsequent year as permitted in paragraph (a)(1) of this section, however, the partnership shall report the amount on Form 1042–S for the subsequent year.

* * * * *

(4) * * *

(iv) * * * If a nonqualified intermediary that is a participating FFI or a registered deemed-compliant FFI receives a payment that has been withheld upon at a 30-percent rate under chapter 4 by another withholding agent and that is reported as made to an unknown recipient on Form 1042–S provided to the nonqualified intermediary, the nonqualified intermediary may report the payment (or portion of the payment) on Form 1042–S as made to a recipient that has been withheld upon under chapter 3 when the payment is not an amount for which withholding is required under chapter 4 based on the payee's chapter 4 status and the nonqualified intermediary reports the correct withholding rate for the recipient.

* * * * *

■ **Par. 5.** Section 1.1461–2 is amended by:

■ 1. Revising the second sentence of paragraph (a)(2)(i) introductory text.

■ 2. Revising paragraphs (a)(2)(i)(A) and (B).

■ 3. Adding paragraph (a)(2)(i)(C).

■ 4. Revising paragraph (a)(3).

The revisions and addition read as follows:

§ 1.1461–2 Adjustments for overwithholding or underwithholding of tax.

(a) * * *

(2) * * *

(i) * * * In such a case, the withholding agent may reimburse itself by reducing, by the amount of tax actually repaid to the beneficial owner or payee, the amount of any deposit of withholding tax otherwise required to be made by the withholding agent under § 1.6302–2(a)(1)(iii) for any subsequent payment period occurring before the end of the calendar year following the calendar year of overwithholding. * * *

(A) The repayment to the beneficial owner or payee occurs before the earliest of the due date (including extensions) for filing the Form 1042–S for the calendar year of overwithholding, the date the Form 1042–S is actually filed with the IRS, or the date the Form 1042–S is furnished to the beneficial owner or payee;

(B) The withholding agent states on a timely filed (including extensions) Form 1042–S for the calendar year of overwithholding the amount of tax withheld and the amount of any actual repayment; and

(C) The withholding agent states on a timely filed (including extensions) Form 1042 for the calendar year of overwithholding the amount of adjustments made to overwithholding under paragraph (a)(1) of this section and the amount of any credit claimed under § 1.6414–1.

* * * * *

(3) *Set-off.* Under the set-off procedure, the withholding agent may repay the beneficial owner or payee by applying the amount overwithheld against any amount of tax which otherwise would be required under chapter 3 or 4 of the Internal Revenue Code or the regulations under part 1 of this chapter to be withheld from income paid by the withholding agent to such person. Any such set-off that occurs for a payment period in the calendar year following the calendar year of overwithholding shall be allowed only if—

(i) The repayment to the beneficial owner or payee occurs before the earliest of the due date (including extensions) for filing the Form 1042–S for the calendar year of overwithholding, the date the Form 1042–S is actually filed with the IRS, or the date the Form 1042–S is furnished to the beneficial owner or payee;

(ii) The withholding agent states on a timely filed (including extensions) Form 1042–S for the calendar year of overwithholding the amount of tax withheld and the amount of any repayment made through set-off; and

(iii) The withholding agent states on a timely filed (including extensions) Form 1042 for the calendar year of overwithholding the amount of adjustments made to overwithholding under paragraph (a)(1) of this section and the amount of any credit claimed under § 1.6414–1.

* * * * *

■ **Par. 6.** Section 1.1471–1 is amended by:

■ 1. Removing paragraph (b)(60) and redesignating paragraphs (b)(61) and (b)(62) as new paragraphs (b)(60) and (b)(61).

■ 2. Adding new paragraph (b)(62).

■ 3. Revising paragraph (b)(99).

The addition and revision read as follows:

§ 1.1471–1 Scope of chapter 4 and definitions.

* * * * *

(b) * * *

(62) *Hold mail instruction.* The term *hold mail instruction* means a current instruction by a person to keep the person's mail until such instruction is amended. An instruction to send all correspondence electronically is not a hold mail instruction.

* * * * *

(99) *Permanent residence address.* The term *permanent residence address* has the meaning set forth in § 1.1441–1(c)(38).

* * * * *

■ **Par. 7.** Section 1.1471–2 is amended by:

■ 1. Removing the language ''or constitutes gross proceeds from the disposition of such an obligation'' from the first sentence of paragraph (a)(1).

■ 2. Removing and reserving paragraph (a)(2)(iii)(B).

■ 3. Removing paragraph (a)(2)(vi).

■ 4. Removing the language '', or any gross proceeds from the disposition of such an obligation'' from the first and second sentences of paragraph (b)(1).

■ 5. Removing the language ''and the gross proceeds allocated to a partner from the disposition of such obligation as determined under § 1.1473–1(a)(5)(vii)'' from paragraph (b)(3)(i).

■ 6. Removing the language ''and further includes a beneficiary's share of the gross proceeds from a disposition of such obligation as determined under § 1.1473–1(a)(5)(vii)'' from paragraph (b)(3)(ii).

■ 7. Removing the language ''and the gross proceeds from the disposition of such obligation to the extent such owner is treated as owning the portion of the trust that consists of the obligation'' from paragraph (b)(3)(iii).

The revision reads as follows:

§ 1.1471–2 Requirement to deduct and withhold tax on withholdable payments to certain FFIs.

(a) * * *

(2) * * *

(iii) * * *

(B) [Reserved]

* * * * *

§ 1.1471–3 [Amended]

■ **Par. 8.** Section 1.1471–3 is amended by:

■ 1. Removing the language that reads ''and that is excluded from the definition of a withholdable payment under § 1.1473–1(a)(4)'' from paragraph (a)(3)(ii)(A)(*4*).

■ 2. Removing paragraph (c)(8)(iv) and redesignating paragraph (c)(8)(v) as new paragraph (c)(8)(iv).

■ **Par. 9.** Section 1.1471–4 is amended by:

■ 1. Removing the language ''or the gross proceeds from the disposition of such an obligation'' from the seventh sentence of paragraph (b)(1).

■ 2. Revising paragraph (b)(4).

The revision reads as follows:

§ 1.1471–4 FFI agreement.

* * * * *

(b) * * *

(4) *Foreign passthru payments.* A participating FFI is not required to deduct and withhold tax on a foreign passthru payment made by such participating FFI to an account held by a recalcitrant account holder or to a nonparticipating FFI before the date that is two years after the date of publication in the **Federal Register** of final regulations defining the term *foreign passthru payment.*

* * * * *

■ **Par. 10.** Section 1.1471–5 is amended by adding a sentence at the end of paragraph (e)(4)(i)(B) to read as follows:

§ 1.1471–5 Definitions applicable to section 1471.

* * * * *

(e) * * *

(4) * * *

(i) * * *

(B) * * * Notwithstanding the preceding sentence, an entity is not managed by another entity for purposes of this paragraph (e)(4)(i)(B) solely because the first-mentioned entity invests all or a portion of its assets in such other entity, if such other entity is a mutual fund, exchange traded fund, or a collective investment entity that is widely-held and is subject to investor protection regulation.

* * * * *

■ **Par. 11.** Section 1.1473–1 is amended by:

■ 1. Revising paragraph (a)(1).

■ 2. Removing the fourth sentence of paragraph (a)(2)(vii)(A).

■ 3. Removing and reserving paragraph (a)(3).

■ 4. Revising paragraph (a)(4)(iii).

■ 5. Removing paragraph (a)(4)(iv) and redesignating paragraphs (a)(4)(v) through (viii) as new paragraphs (a)(4)(iv) through (vii).

■ 6. Removing paragraph (a)(5)(vii).

The revisions read as follows:

§ 1.1473–1 Section 1473 definitions.

(a) * * * (1) *In general.* Except as otherwise provided in this paragraph (a) and § 1.1471–2(b) (regarding grandfathered obligations), the term *withholdable payment* means any payment of U.S. source FDAP income (as defined in paragraph (a)(2) of this section).

* * * * *

(3) [Reserved]

(4) * * *

(iii) *Excluded nonfinancial payments.* Payments for the following: services (including wages and other forms of employee compensation (such as stock options)), the use of property, office and equipment leases, software licenses, transportation, freight, gambling winnings, awards, prizes, scholarships, interest on outstanding accounts payable arising from the acquisition of goods or services, and premiums for insurance contracts that do not have cash value (as defined in § 1.1471–5(b)(3)(vii)(B)). Notwithstanding the preceding sentence, excluded nonfinancial payments do not include the following: Payments in connection with a lending transaction (including loans of securities), a forward, futures, option, or notional principal contract, or a similar financial instrument; premiums for cash value insurance contracts or annuity contracts; amounts paid under cash value insurance or annuity contracts; dividends; interest (including substitute interest described in § 1.861–2(a)(7)) other than interest described in the preceding sentence; investment advisory fees; custodial fees; and bank or brokerage fees.

* * * * *

■ **Par. 12.** Section 1.1474–1 is amended by:

■ 1. Adding two sentences after the first sentence in paragraph (b)(1).

■ 2. Revising paragraph (b)(2).

■ 3. Redesignating paragraph (d)(1)(i) as paragraph (d)(1)(i)(A) and adding paragraphs (d)(1)(i) introductory text and (d)(1)(i)(B).

■ 4. Adding a sentence after the first sentence in paragraph (d)(2)(ii).

The revisions and additions read as follows:

§ 1.1474–1 Liability for withheld tax and withholding agent reporting.

* * * * *

(b) * * *

(1) * * * In a case in which a withholding agent is permitted to withhold on a chapter 4 reportable amount (as defined in paragraph (d)(2) of this section) in a calendar year (subsequent year) following the calendar year (preceding year) in which the withholding agent paid such amount (or, for a partnership or trust withholding with respect to a foreign partner, beneficiary, or owner, the year the partnership or trust received such amount), the withholding agent shall designate the deposit of the withholding as made for the preceding year and shall report the tax liability on Form 1042 for the preceding year. In the case of a partnership that withholds as described in the preceding sentence and does not file its federal income tax return on a calendar-year basis, however, such partnership may instead designate the deposit as made for the subsequent year and report the tax liability on Form 1042 for the subsequent year.* * *

(2) *Special rule for foreign passthru payments that include an undetermined amount of income subject to tax.* [Reserved]

* * * * *

(d) * * *

(1) * * *

(i) *Withholding agent information reporting.* This paragraph (d)(1)(i) describes the general requirements for a withholding agent to file an information return on Form 1042–S and describes a special rule for a withholding agent that withholds in a subsequent year as described in paragraph (b)(1) of this section.

* * * * *

(B) *Special reporting by withholding agents that withhold in a subsequent year.* Notwithstanding the first sentence of paragraph (d)(1)(i)(A) of this section, if a withholding agent designates the deposit of such withholding as made for the preceding calendar year as described in paragraph (b)(1) of this section, the withholding agent is required to report the amount on Form 1042–S for the preceding year. With respect to a withholding agent described in the previous sentence that is a partnership and that withholds after March 15 of the subsequent year, such partnership may file and furnish the Form 1042–S on or before September 15 of that year. In the case of a partnership that designates the deposit of such withholding as made for the subsequent year as permitted in paragraph (b)(1) of this section, however, the partnership shall report the chapter 4 reportable amount on Form 1042–S for the subsequent year.

* * * * *

(2) * * *

(ii) * * * A chapter 4 reportable amount also does not include an

amount received by a nonqualified intermediary that is a participating FFI or a registered deemed-compliant FFI if the nonqualified intermediary reports such amount as having been withheld upon under chapter 3 to the extent permitted under § 1.1461–1(c)(4)(iv).
* * *

* * * * *

■ **Par. 13.** Section 1.1474–2 is amended by revising the second sentence of paragraph (a)(3)(i) introductory text, paragraphs (a)(3)(i)(A) through (C), and paragraph (a)(4) to read as follows:

§ 1.1474–2 Adjustments for overwithholding or underwithholding of tax.

(a) * * *

(3) * * *

(i) * * * In such a case, the withholding agent may reimburse itself by reducing, by the amount of tax actually repaid to the beneficial owner or payee, the amount of any deposit of withholding tax otherwise required to be made by the withholding agent under § 1.6302–2(a)(1)(iii) for any subsequent payment period occurring before the end of the calendar year following the calendar year of overwithholding. * * *

(A) The repayment to the beneficial owner or payee occurs before the earliest of the due date (including extensions) for filing the Form 1042–S for the calendar year of overwithholding, the date the Form 1042–S is actually filed with the IRS, or the date the Form 1042–S is furnished to the beneficial owner or payee;

(B) The withholding agent states on a timely filed (including extensions) Form 1042–S for the calendar year of overwithholding the amount of tax withheld and the amount of any actual repayment; and

(C) The withholding agent states on a timely filed (including extensions) Form 1042 for the calendar year of overwithholding the amount of adjustments made to overwithholding under paragraph (a)(1) of this section and the amount of any credit claimed under § 1.6414–1.

* * * * *

(4) *Set-off.* Under the set-off procedure, the withholding agent may repay the beneficial owner or payee by applying the amount overwithheld against any amount of tax which otherwise would be required under chapter 3 or 4 of the Internal Revenue Code or the regulations under part 1 of this chapter to be withheld from income paid by the withholding agent to such person. Any such set-off that occurs for a payment period in the calendar year following the calendar year of overwithholding shall be allowed only if—

(i) The repayment to the beneficial owner or payee occurs before the earliest of the due date (including extensions) for filing the Form 1042–S for the calendar year of overwithholding, the date the Form 1042–S is actually filed with the IRS, or the date the Form 1042–S is furnished to the beneficial owner or payee;

(ii) The withholding agent states on a timely filed (including extensions) Form 1042–S for the calendar year of overwithholding the amount of tax withheld and the amount of any repayment made through set-off; and

(iii) The withholding agent states on a timely filed (including extensions) Form 1042 for the calendar year of overwithholding the amount of adjustments made to overwithholding under paragraph (a)(1) of this section and the amount of any credit claimed under § 1.6414–1.

* * * * *

Kirsten Wielobob,

Deputy Commissioner for Services and Enforcement.

[FR Doc. 2018–27290 Filed 12–13–18; 4:15 pm]

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DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 220

[Docket ID: DOD–2016–HA–0107]

RIN 0720–AB68

Collection From Third Party Payers of Reasonable Charges for Healthcare Services

AGENCY: Office of the Assistant Secretary of Defense (Health Affairs), DoD.

ACTION: Proposed rule.

SUMMARY: This rule exercises the Department of Defense's (DoD's) authority to update current regulations to compute reasonable charges for inpatient and ambulatory (outpatient) institutional resources and also for pharmaceuticals, durable medical equipment (DME), supplies, immunizations, injections or other medications administered or furnished by DoD military treatment facilities (MTFs) under their three existing healthcare cost recovery programs—Third Party Collections, Medical Services Account, and Medical Affirmative Claims. Specifically, the rule updates the reasonable charges methodologies for inpatient and ambulatory institutional billing to allow for the use of Itemized Resource Utilization (IRU) based rates—developed from the cost to provide inpatient and ambulatory institutional healthcare resources—in addition to current bundled prospective reimbursement approaches of diagnostic related group (DRG), ambulatory payment classification (APC), ambulatory surgery center (ASC) and ambulatory procedure visit (APV) based rates. It also revises the reasonable charges methodology for pharmaceuticals, DME, supplies, immunizations, injections or medication administered to allow for their calculation using either Civilian Health and Medical Program of the Uniformed Services (CHAMPUS) prevailing rates or IRU based rates—developed from the cost to provide these healthcare items and resources– regardless of whether CHAMPUS prevailing rates are available. The additional IRU methodology implements an itemized rate and reasonable charges structure that improves collections and operation of DoD's healthcare cost recovery programs by ensuring MTFs receive appropriate reimbursement for institutional healthcare resources as well as for pharmaceuticals, DME, supplies, immunizations, injections or medication provided or administered and is more consistent with civilian health insurance industry practice. The proposed rule also replaces ''hospital'' with ''institutional'' throughout most of the regulation to align it with civilian health insurance industry terminology and better promote identification and separate billing of institutional and professional services.

DATES: Comments must be received by February 19, 2019.

ADDRESSES: You may submit comments, identified by docket number and/or Regulatory Information Number (RIN) and title, by any of the following methods:

- *Federal Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Department of Defense, Office of the Deputy Chief Management Officer, Directorate for Oversight and Compliance, 4800 Mark Center Drive, Mailbox #24, Alexandria, VA 22350–1700.

Instructions: All submissions received must include the agency name and docket number or RIN for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at *http://www.regulations.gov* as they are

received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Ms. DeLisa E. Prater, Program Manager, Defense Health Agency Uniform Business Office, (703) 275–6380.

SUPPLEMENTARY INFORMATION:

A. Executive Summary

1. Purpose of the Proposed Rule

The purpose of this proposed rule is to incorporate new additional statutory authority for calculating reasonable institutional facility charges for: (a) Inpatient services and resources provided at DoD (MTFs in addition to the current authorized methodology which uses all-inclusive prospective Civilian Health and Medical Program of the Uniformed Services (CHAMPUS) diagnostic related group (DRG) based payment rates (including professional charges), and (b) ambulatory services provided at DoD MTFs in addition to the current authorized methodologies which use all-inclusive CHAMPUS ambulatory procedure classification (APC) and ambulatory surgery center (ASC) based payment rates and MHS ambulatory procedure visit (APV) based payment rates. As defined in 32 CFR 199.2, the term ''facility charges'' means the charges, either inpatient or outpatient, made by a MTF to cover the overhead costs of providing the service (*e.g.,* building costs such as depreciation and interest, staffing costs, drugs and supplies; overhead costs such as utilities, housekeeping, maintenance). It also revises the reasonable charges methodology for pharmaceuticals, DME, supplies, immunizations, injections or medication administered or provided to allow for their reasonable charges calculation using either CHAMPUS prevailing or cost based rates regardless of whether CHAMPUS prevailing rates are available. The legal authority for this proposed rule is 10 U.S.C. 1095(f), 1097b(b) and 1079b.

2. Summary of the Major Provisions of the Proposed Rule

a. It would create an additional exception to the general rule that reasonable charges under 32 CFR 220.8(a), 220.8(b), 220.8(f)(5) and 220.8(f)(6) for inpatient and ambulatory institutional resources as well as for pharmaceuticals, DME, supplies, immunizations, injections or medication administered are based on the rates used by CHAMPUS under 32 CFR 199.14 to reimburse authorized providers. Specifically, it authorizes DoD MTFs to use an alternative reasonable charges methodology based on Itemized Resource Utilization (IRU) rates—developed from the cost to provide these resources and items—in addition to the use of aggregated and prospective DRG, APC, ASC and APV and prevailing CHAMPUS based encounter rates.

b. As a ''housekeeping'' change, it would replace ''hospital'' with ''institutional'' throughout most of the regulation to align it with civilian health insurance industry terminology and better promote identification and separate billing of institutional and professional services as required by 32 CFR 220.8(b).

B. Background

DoD is authorized to collect ''reasonable charges'' from third party payers for the cost of inpatient and ambulatory (outpatient) institutional services and also for pharmaceuticals, DME, supplies, immunizations, injections or medication administered or provided at DoD MTFs to military retirees, all dependents, and other eligible beneficiaries who have private health insurance. *See* 10 U.S.C. 1095 and 32 CFR 220.2. Also, DoD must collect from nonbeneficiaries (or their insurers) the cost of trauma or other medical care provided to them and from other federal agencies, the average cost of healthcare provided to their beneficiaries at DoD MTFs (10 U.S.C. 1079b(a) and 1085). Currently, DoD uses all-inclusive prospective CHAMPUS DRG based payment rates (including professional charges) as the reasonable charges for inpatient care and all-inclusive CHAMPUS APC and ASC based and MHS APV charges for miscellaneous institutional ambulatory care in its healthcare cost recovery programs—Third Party Collection, Medical Services Account and Medical Affirmative Claims. The MHS APV rate is authorized by the Assistant Secretary of Defense (Health Affairs) (ASD(HA)) Policy Memorandum, ''Use of CPT Code 99199'' (September 14, 2004) because MTFs currently do not have the appropriate software to group encounters into APCs and ASCs. Also, DoD uses the average cost for pharmaceutical rates because CHAMPUS prevailing rates are not available. However, DoD uses CHAMPUS based rates for DME, supplies, immunizations, injections or medication administered.

C. Expected Costs

IRU based rates are more representative of actual costs specific to the institutional resources and also to pharmaceuticals, DME, supplies, immunizations, injections or medication administered or consumed in the provision of care to a patient. Also, IRU based rates provide DoD the ability it does not currently have to bill third party payers in an itemized manner that they are accustomed to. With the availability of this alternative reasonable charges methodology, DoD MTFs can bill for institutional resources and also for pharmaceuticals, DME, supplies, immunizations, injections or medication administered using charge descriptions (*i.e.,* an MTF's comprehensive list of items and services for which it can charge) and individual cost-based rates associated with those descriptions. As a result, institutional bills are much more consistent with the actual resources and services provided to the patient, third party payers who receive MTF claims will have the detailed data needed for reimbursement, and the potential for MTFs to receive appropriate reimbursement improves. MTF claims are frequently returned for additional information or denied because they are not in an itemized format consistent with standard industry health insurance practice. The format of resulting line-item inpatient charges based on IRU rates will more closely resemble the format currently used in the health insurance industry and promote more efficient claim adjudication. This rule will not affect any payments by TRICARE as this rule does not pertain to purchased care. It specifically applies to rate development for cost recovery in the direct care setting.

In addition, using only the current methodologies for reasonable charges based on bundled prospective DRG/APC/ASC/APV based rates methods and CHAMPUS prevailing rates methods for pharmaceuticals, DME, supplies, immunizations, injections or medication administered limits MTFs' flexibility and ability to effectively accommodate current and new provider reimbursement methodologies and is likely reducing and resulting in missed reimbursement opportunities from third party payers. Third party payers do not uniformly have nor apply payment methods and rates to claims received. Rather, they each have their own distinct set of rules for and levels of payment that are not necessarily DRG/APC/ASC/APV/CHAMPUS rate based. For example, there are multiple versions of groupers, and a payer's reimbursement policy may use a different grouper than DoD or not involve a grouper at all. Moreover, third party payers are increasingly replacing fee-for-service with value-based performance payment portfolios (*e.g.,* pay for performance, bundled payments, shared savings/accountable care

organizations) for providers, including DoD MTFs. Itemized billing using IRU based rates provides payers with the detailed data needed for whatever reimbursement process they use yielding fewer requests for additional information and re-processing of claims and increased potential reimbursement.

Additional benefits from allowing for IRU based charges include:

(1) Providing greater transparency of DoD MTFs' financial efficiency and performance through more detailed purchasing, dispensing, and financial billing functions. IRU based charges provide information necessary to complete detailed analyses into what and how a MTF is purchasing, dispensing, and billing, which will lead to more informed decisions on how to save money, time, and effort at each of those three stages.

(2) Enabling different MTF departments and decision makers to come together to discuss common practices, terminology, and reporting, allowing for the development and analysis of benchmarks evaluating clinical performance, and identifying and implementing the most cost-effective delivery modes available.

(3) Providing the ability to track and monitor resources used to treat patients, thereby allowing MTF staff, management, and leadership to better control and manage costs, and optimize the efficiency of operations to deliver efficient care or prevent unnecessary care.

This IRU based charges approach is consistent with 10 U.S.C. 1095(f) and 1097b(b) that authorize the ASD(HA) to calculate all third party payment collections and rates charged to civilians and interagency payers based on any appropriate method. It is the Assistant Secretary's determination that itemized IRU based rates for inpatient and ambulatory resources and also for pharmaceuticals, DME, supplies, immunizations, injections or medication administered or provided better represents the reasonable charges and costs of providing care to all patients in MTFs.

The rule also replaces ''hospital'' with ''institutional'' throughout most of the regulation to align it with civilian healthcare insurance industry terminology. The current regulation uses ''hospital'' interchangeably to mean both: (1) A facility that provides emergency, inpatient, and in some cases outpatient medical care for sick or injured people; and (2) the institutional component of a hospital stay (*i.e.,* overhead and ancillary, diagnostic and treatment services, other than professional services provided by the facility during the inpatient stay such as room and board, laboratory tests and the technical component of radiology services). It is the general rule under CHAMPUS, 32 CFR 220.8(b) and also industry best practice to identify and charge separately for institutional and inpatient professional services. This nomenclature change helps DoD MTFs reinforce the distinction and better promotes identification and separate billing of institutional and professional services as required by 32 CFR 220.8(b) and in accordance with health insurance industry best practice.

D. Regulatory Procedures

Executive Order 12866, ''Regulatory Planning and Review,'' and Executive Order 13563, ''Improving Regulation and Regulatory Review''

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, distribute 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. It has been determined that this rule is not a significant regulatory action. The rule does not: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy; a section of the economy; productivity; competition; jobs; the environment; public health or safety; or State, local, or tribal governments or communities; (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another Agency; (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in these Executive Orders.

Executive Order 13771, ''Reducing Regulation and Controlling Regulatory Costs''

There are no cost savings to the public anticipated by amending the current 32 CFR part 220. Consistent with the analysis of transfer payments under OMB Circular A–4, this proposed rule does not involve regulatory costs subject to Executive Order 13771, ''Reducing Regulation and Controlling Regulatory Costs.''

Unfunded Mandates Reform Act (Sec. 202, Pub. L. 104–4)

Section 202 of Public Law 104–4, ''Unfunded Mandates Reform Act,'' (2 U.S.C. 1532) requires that an analysis be performed to determine whether any federal mandate may result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector of $100 million in any one year. It has been certified that this proposed rule does not contain a Federal mandate that may result in the expenditure by State, local and tribal governments, in aggregate, or by the private sector, of $100 million or more in any one year, and thus this proposed rule is not subject to this requirement.

Public Law 96–354, ''Regulatory Flexibility Act'' (5 U.S.C. 601 et seq.)

Public Law 96–354, ''Regulatory Flexibility Act'' (RFA) (5 U.S.C. 601), requires that each Federal agency prepare a regulatory flexibility analysis when the agency issues a regulation which would have a significant impact on a substantial number of small entities. This proposed rule is not an economically significant regulatory action, and it has been certified that it will not have a significant impact on a substantial number of small entities. Therefore, this proposed rule is not subject to the requirements of the RFA.

Public Law 96–511, ''Paperwork Reduction Act'' (44 U.S.C. Chapter 35)

This rule does not contain a ''collection of information'' requirement and will not impose additional information collection requirements on the public under Public Law 96–511, ''Paperwork Reduction Act'' (44 U.S.C. Chapter 35).

Executive Order 13132, ''Federalism''

E.O. 13132, ''Federalism,'' requires that an impact analysis be performed to determine whether the rule has federalism implications that would 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. It has been certified that this proposed rule does not have federalism implications, as set forth in E.O. 13132.

List of Subjects in 32 CFR Part 220

Claims, Health care, Health insurance, and Military personnel.

Accordingly, 32 CFR part 220 is proposed to be amended as follows:

PART 220—[AMENDED]

■ 1. The authority citation for part 220 is revised to read as follows:

Authority: 5 U.S.C. 301; 10 U.S.C. 1095(f), 1097b(b) and 1079b.

■ 2. Amend § 220.8 by:
■ a. Revising paragraphs (b), (c)(1), (5), (f)(2), (5) and (6),
■ b. Adding new paragraph (f)(8); and
■ c. Removing in paragraph (d) the wording ''inpatient hospital care'' and adding in its place ''care.''

The revisions and additions read as follows:

§ 220.8 Reasonable charges.

* * * * *

(b) *Inpatient institutional and professional services on or after October 1, 2017.* Reasonable charges for inpatient institutional services provided on or after October 1, 2017, are based on either of two methods as determined by the ASD(HA). The first uses the CHAMPUS Diagnosis Related Group (DRG) payment system rates under 32 CFR 199.14(a)(1). Certain adjustments are made to reflect differences between the CHAMPUS payment system and MHS billing solutions. Among these are to include in the inpatient hospital service charges adjustments related to direct medical education and capital costs (which in the CHAMPUS system are handled as annual pass through payments). Additional adjustments are made for long stay outlier cases. The second method uses Itemized Resource Utilization (IRU) rates based on the cost to provide inpatient institutional resources. Like the CHAMPUS system, inpatient professional services are not included in the inpatient institutional services charges calculated under either methodology, but are billed separately in accordance with paragraph (e) of this section. In lieu of either method described in this paragraph (b), the method in effect prior to April 1, 2003 (described in paragraph (c) of this section), may continue to be used for a period of time after April 1, 2003, if the ASD(HA) determines that effective implementation requires a temporary deferral.

(c) *Inpatient institutional and inpatient professional services before April 1, 2003.* (1) *In general.* Prior to April 1, 2003, the computation of reasonable charges for inpatient institutional and professional services is reasonable costs based on diagnosis related groups (DRGs). Costs shall be based on the inpatient full reimbursement rate per hospital discharge, weighted to reflect the intensity of the principal diagnosis involved. The average charge per case shall be published annually as an inpatient standardized amount. A relative weight for each DRG shall be the same as the DRG weights published annually for hospital reimbursement rates under CHAMPUS pursuant to 32 CFR 199.14(a)(1). The method in effect prior to April 1, 2003 (as described in this paragraph (c)), may continue to be used for a period of time after April 1, 2003, if the ASD(HA) determines that effective implementation requires a temporary deferral of the method described in paragraph (b) of this section.

* * * * *

(5) *Identification of professional and institutional charges.* For purposes of billing third party payers other than automobile liability and no-fault insurance carriers, inpatient billings are subdivided into two categories:

(i) Institutional charges (which refer to routine service charges associated with the facility encounter or hospital stay and ancillary charges).

* * * * *

(f) * * *

* * * * *

(2) With respect to inpatient institutional charges in the Burn Center at Brooke Army Medical Center, the ASD(HA) may establish an adjustment to the rate otherwise applicable under the payment methodologies under this section to reflect unique attributes of the Burn Center.

* * * * *

(5) The charge for immunizations, allergin extracts, allergic condition tests, and the administration of certain medications when these services are provided by or through a facility of the Uniformed Services or a separate immunizations or shot clinic, are based either on CHAMPUS prevailing rates or on IRU rates based on the cost to provide these items, exclusive of any costs considered for purposes of any outpatient visit. A separate charge shall be made for each immunization, injection or medication administered.

(6) The charges for pharmacy, durable medical equipment and supply resources are based either on CHAMPUS prevailing rates or on IRU rates based on the cost to provide these items, exclusive of any costs considered for purposes of any outpatient visit. A separate charge shall be made for each item provided.

* * * * *

(8) Ambulatory (outpatient) institutional services on or after October 1, 2017. Reasonable charges for institutional facility charges for ambulatory services provided on or after October 1, 2017, are based on any of three methods as determined by the ASD(HA). The first uses the CHAMPUS Ambulatory Payment Classification (APC) and Ambulatory Surgery Center (ASC) payment system rates under 32 CFR 199.14(a)(1)(ii) and (iii) and 32 CFR 199.14(d) respectively. The second uses a bundled MHS Ambulatory Procedure Visit (APV) payment system rate charge reflected by the average cost of providing an APV exclusive of professional services. The third method uses IRU rates based on the cost to provide ambulatory institutional resources. Like the CHAMPUS system, ambulatory professional services are not included in the ambulatory institutional facility charges calculated under any of the three methodologies, but are billed separately in accordance with paragraph (e) of this section.

* * * * *

Dated: December 11, 2018.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2018–27186 Filed 12–17–18; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2018–1065]

RIN 1625–AA00

Safety Zone; Oregon Inlet, Dare County, NC

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is proposing to establish a temporary safety zone on the navigable waters of Oregon Inlet in Dare County, North Carolina in support of demolition of the old Herbert C. Bonner Bridge. This temporary safety zone is intended to protect mariners, vessels, and demolition crews from the hazards associated with demolishing the old bridge, and will restrict vessel traffic on portions of Oregon Inlet near active demolition work and demolition equipment. This proposed rulemaking would prohibit vessels or persons from being in the safety zone. We invite your comments on this proposed rulemaking.

DATES: Comments and related material must be received by the Coast Guard on or before January 17, 2019.

ADDRESSES: You may submit comments identified by docket number USCG–

2018–1065 using the Federal eRulemaking Portal at *https://www.regulations.gov.* See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions about this proposed rulemaking, contact Petty Officer Matthew Tyson, Waterways Management Division, U.S. Coast Guard Sector North Carolina, Wilmington, NC; telephone: (910) 772–2221, email: *Matthew.I.Tyson@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
DHS Department of Homeland Security
FR Federal Register
NPRM Notice of proposed rulemaking
§ Section
U.S.C. United States Code
COTP Captain of the Port

II. Background, Purpose, and Legal Basis

On November 26, 2018, the North Carolina Department of Transportation provided the Coast Guard with details concerning the demolition of the old Herbert C. Bonner Bridge from February 1, 2019 through February 29, 2020. Demolition will not follow a set schedule due to sea conditions, equipment needs, and vessel navigation considerations. In addition, demolition will take place in two locations at once due to equipment types and demolition methods. A moving safety zone is proposed in Oregon Inlet within 100 yards of active demolition work and demolition equipment. Demolition work will take place at various points along the old Herbert C. Bonner Bridge, which follows a line beginning at approximate position 35°46′47″ N, 75°32′41″ W, then southeast to 35°46′37″ N, 75°32′33″ W, then southeast to 35°46′09″ N, 75°31′59″ W, then southeast to 35°46′03″ N, 75°31′51″ W, then southeast to 35°46′01″ N, 75°31′40″ W. (NAD 1983) in Dare County, North Carolina. The Captain of the Port (COTP) North Carolina has determined that potential safety hazards associated with the demolition would be a concern for anyone transiting through Oregon Inlet.

The purpose of this rule is to protect persons, vessels, and the marine environment on the navigable waters in Oregon Inlet during the demolition of the old Herbert C. Bonner Bridge. The Coast Guard proposes this rulemaking under authority in 33 U.S.C. 1231.

III. Discussion of Proposed Rule

The COTP proposes to establish a moving safety zone to be enforced during active demolition work from February 1, 2019 through February 29, 2020. Demolition will not follow a set schedule due to sea conditions, equipment needs, and vessel navigation considerations. In addition, demolition will take place in two locations at once due to equipment types and demolition methods. When the safety zone is active, the exact times will be announced via Broadcast Notices to Mariners at least 48 hours prior to enforcement. The moving safety zone will include all navigable waters within 100 yards of active demolition work and demolition equipment in Oregon Inlet along the old Herbert C. Bonner Bridge, which follows a line beginning at approximate position 35°46′47″ N, 75°32′41″ W, then southeast to 35°46′37″ N, 75°32′33″ W, then southeast to 35°46′09″ N, 75°31′59″ W, then southeast to 35°46′03″ N, 75°31′51″ W, then southeast to 35°46′01″ N, 75°31′40″ W. (NAD 1983). This zone is intended to protect persons, vessels, and the marine environment on the navigable waters in Oregon Inlet during the demolition of the old Herbert C. Bonner Bridge. No vessel or person will be permitted to enter the safety zone during the designated times. There will be alternative navigation options for vessel traffic when a moving safety zone covers all or part of the navigation channel. The regulatory text we are proposing appears at the end of this document.

IV. Regulatory Analyses

We developed this proposed rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13771 directs agencies to control regulatory costs through a budgeting process. This NPRM has not been designated a ''significant regulatory action,'' under Executive Order 12866. Accordingly, the NPRM has not been reviewed by the Office of Management and Budget (OMB), and pursuant to OMB guidance it is exempt from the requirements of Executive Order 13771.

This regulatory action determination is based on the size, location, and duration of the proposed safety zone. Vessel traffic will not be allowed to enter or transit portions of Oregon Inlet during active demolition work from February 1, 2019 through February 29, 2020. The specific enforcement times for active demolition work will be broadcast at least 48 hours in advance and vessels will be able to transit Oregon Inlet at all other times. The Coast Guard will issue a Local Notice to Mariners and transmit a Broadcast Notice to Mariners via VHF–FM marine channel 16 regarding the safety zone. There will be alternative navigation options for vessel traffic when a moving safety zone covers all or part of the navigation channel. Vessel traffic in this portion of Oregon Inlet will fluctuate between high, medium, and low depending on the time of the year. This rule does not allow vessels to request permission to enter the moving safety zone covering the active demolition areas within Oregon Inlet during the designated times.

B. Impact on Small Entities

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

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

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions

concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

Also, this proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this proposed rule has implications for federalism or Indian tribes, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this proposed rule under Department of Homeland Security Directive 023–01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule involves a 100-yard radius moving safety zone lasting from February 1, 2019 through February 29, 2020 that would prohibit entry into a portion of Oregon Inlet for bridge demolition. Normally such actions are categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 01. A preliminary Record of Environmental Consideration supporting this determination is available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

G. Protest Activities

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

V. Public Participation and Request for Comments

We view public participation as essential to effective rulemaking, and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

We encourage you to submit comments through the Federal eRulemaking Portal at *http://www.regulations.gov.* If your material cannot be submitted using *http://www.regulations.gov,* contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

We accept anonymous comments. All comments received will be posted without change to *https://www.regulations.gov* and will include any personal information you have provided. For more about privacy and the docket, visit *https://www.regulations.gov/privacyNotice.*

Documents mentioned in this NPRM as being available in the docket, and all public comments, will be in our online docket at *https://www.regulations.gov* and can be viewed by following that website's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted or a final rule is published.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.T05–1065 to read as follows:

§ 165.T05–1065 Safety Zone; Oregon Inlet, Dare County, NC.

(a) *Location.* The following area is a safety zone: all navigable waters of Oregon Inlet, within 100 yards of active demolition work and demolition equipment, along the old Herbert C. Bonner Bridge, which follows a line beginning at approximate position 35°46′47″ N, 75°32′41″ W, then southeast to 35°46′37″ N, 75°32′33″ W, then southeast to 35°46′09″ N, 75°31′59″ W, then southeast to 35°46′03″ N, 75°31′51′ W, then southeast to 35°46′01′ N, 75°31′40″ W (NAD 1983) in Dare County, NC.

(b) *Definitions.* As used in this section—

Designated representative means a Coast Guard Patrol Commander, including a Coast Guard commissioned, warrant, or petty officer designated by the Captain of the Port North Carolina (COTP) for the enforcement of the safety zone.

Captain of the Port means the Commander, Sector North Carolina.

Demolition crews means persons and vessels involved in support of demolition.

(c) *Regulations.* (1) The general regulations governing safety zones in § 165.23 apply to the area described in paragraph (a) of this section.

(2) With the exception of demolition crews, entry into or remaining in this safety zone is prohibited.

(3) All vessels within this safety zone when this section becomes effective must depart the zone immediately.

(4) The Captain of the Port, North Carolina can be reached through the Coast Guard Sector North Carolina Command Duty Officer, Wilmington, North Carolina at telephone number 910–343–3882.

(5) The Coast Guard and designated security vessels enforcing the safety zone can be contacted on VHF–FM marine band radio channel 13 (165.65 MHz) and channel 16 (156.8 MHz).

(d) *Enforcement.* The U.S. Coast Guard may be assisted in the patrol and enforcement of the safety zone by Federal, State, and local agencies.

(e) *Enforcement Period.* This regulation will be enforced from February 1, 2019 through February 29, 2020

(f) *Public Notification.* The Coast Guard will notify the public of the active enforcement times at least 48 hours in advance by transmitting Broadcast Notice to Mariners via VHF–FM marine channel 16.

Dated: December 7, 2018.

Bion B. Stewart,

Captain, U.S. Coast Guard Captain of the Port North Carolina.

[FR Doc. 2018–27385 Filed 12–17–18; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2017–0728; FRL–9988–01–Region 9]

Approval and Promulgation of Air Quality State Implementation Plans; California; Plumas County; Moderate Area Plan for the 2012 $PM_{2.5}$ NAAQS

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve most elements of the state implementation plan (SIP) revisions submitted by California to address Clean Air Act (CAA or ''Act'') requirements for the 2012 annual fine particulate matter ($PM_{2.5}$) national ambient air quality standards (NAAQS or ''standards'') in the Plumas County Moderate $PM_{2.5}$ nonattainment area (''Portola nonattainment area''). The SIP revisions are the ''Portola Fine Particulate Matter ($PM_{2.5}$) Attainment Plan'' submitted on February 28, 2017, and the 2019 and 2022 transportation conformity motor vehicle emission budgets (''budgets'') submitted on December 20, 2017. We refer to these submittals collectively as the ''Portola $PM_{2.5}$ Plan'' or ''Plan.'' The EPA is proposing to approve the following elements of the Portola $PM_{2.5}$ Plan: The 2013 base year emissions inventories, the reasonably available control measure/reasonably available control technology (RACM/RACT) demonstration, the attainment demonstration, the reasonable further progress (RFP) demonstration, the quantitative milestones, and the budgets for 2019 and 2021. The EPA is not proposing any action at this time on the contingency measures in the Portola $PM_{2.5}$ Plan.

DATES: Any comments must arrive by January 17, 2019.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R09–OAR–2017–0728 at *https://www.regulations.gov,* or via email to John Ungvarsky, at *Ungvarsky.john@epa.gov.* For comments submitted at *Regulations.gov*, follow the online instructions for submitting comments. Once submitted, comments cannot be removed or edited from *Regulations.gov*. For either manner of submission, the EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: John Ungvarsky, EPA Region IX, (415) 972–3963, *ungvarsky.john@epa.gov.*

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

Table of Contents

I. Background for Proposed Action

Under section 109 of the CAA, the EPA has established NAAQS for certain pervasive air pollutants (referred to as ''criteria pollutants'') and conducts periodic reviews of the NAAQS to determine whether they should be revised or whether new NAAQS should be established. The EPA sets the NAAQS for criteria pollutants at levels required to protect public health and welfare.[1] Particulate matter is one of the criteria pollutants for which the EPA has established health-based standards. The CAA requires states to submit regulations that control particulate matter emissions.

Particulate matter includes particles with diameters that are generally 2.5 microns or smaller ($PM_{2.5}$) and particles with diameters that are generally 10 microns or smaller (PM_{10}). It contributes to effects that are harmful to human health and the environment, including premature mortality, aggravation of respiratory and cardiovascular disease, decreased lung function, visibility impairment, and damage to vegetation and ecosystems. Individuals particularly sensitive to $PM_{2.5}$ exposure include older adults, people with heart and lung disease, and children.[2] $PM_{2.5}$ can be emitted by sources directly into the atmosphere as a solid or liquid particle (''primary $PM_{2.5}$'' or ''direct $PM_{2.5}$'') or can be formed in the atmosphere (''secondary $PM_{2.5}$'') as a result of various chemical reactions among precursor pollutants from sources such as nitrogen oxides (NO_X), sulfur dioxide (SO_2), volatile organic compounds (VOC), and ammonia.[3]

On July 18, 1997, the EPA revised the NAAQS for particulate matter to add new standards for $PM_{2.5}$.[4] The EPA established primary and secondary annual and 24-hour standards for $PM_{2.5}$. The annual standard was set at 15.0 micrograms per cubic meter ($\mu g/m^3$)

[1] For a given air pollutant, ''primary'' national ambient air quality standards are those determined by the EPA as requisite to protect the public health. ''Secondary'' standards are those determined by the EPA as requisite to protect the public welfare from any known or anticipated adverse effects associated with the presence of such air pollutant in the ambient air. CAA section 109(b).

[2] 78 FR 3086, 3088 (January 15, 2013).

[3] EPA, Air Quality Criteria for Particulate Matter, No. EPA/600/P–99/002aF and EPA/600/P–99/002bF, October 2004.

[4] 62 FR 38652.

based on a 3-year average of annual mean $PM_{2.5}$ concentrations, and the 24-hour (daily) standard was set at 65 µg/m^3 based on the 3-year average of the annual 98th percentile values of 24-hour $PM_{2.5}$ concentrations at each population-oriented monitor within an area.[5]

On October 17, 2006, the EPA retained the annual average NAAQS at 15 µg/m^3 but revised the level of the 24-hour $PM_{2.5}$ NAAQS to 35 µg/m^3 based on a 3-year average of the annual 98th percentile values of 24-hour concentrations.[6] [7]

On January 15, 2013, the EPA finalized the 2012 $PM_{2.5}$ NAAQS, including a revision of the annual standard to 12.0 µg/m^3 based on a 3-year average of annual mean $PM_{2.5}$ concentrations, and retaining the current 24-hour standard of 35 µg/m^3 based on a 3-year average of the 98th percentile of 24-hour concentrations.[8]

Following promulgation of a new or revised NAAQS, the EPA is required by CAA section 107(d) to designate areas throughout the nation as attaining or not attaining the NAAQS. The EPA designated and classified the Portola area as ''Moderate'' nonattainment for the 2012 annual $PM_{2.5}$ standards based on ambient monitoring data that showed the area was above 12.0 µg/m^3 for the 2011–2013 monitoring period.[9] For the 2011–2013 period, the annual $PM_{2.5}$ design value for the Portola area was 12.8 µg/m^3 based on monitored readings at the 161 Nevada Street and 420 Gulling Street monitors.[10]

The Portola $PM_{2.5}$ nonattainment area includes the City of Portola (''Portola''), which has a population of approximately 2,100 and is located at an elevation of 4,890 feet in an intermountain basin isolated by rugged mountains. Portola averages 20 inches of precipitation annually. From October through March the nonattainment area has very cold temperatures with the average daily low temperature of approximately 22 degrees Fahrenheit. The combination of mountains, cold temperatures, and elevation can cause inversions and impair $PM_{2.5}$ dispersion, especially during the winter. For a precise description of the geographic boundaries of the Portola $PM_{2.5}$ nonattainment area, see 40 CFR 81.305.

The local air district with primary responsibility for developing a plan to attain the 2012 annual $PM_{2.5}$ NAAQS in this area is the Northern Sierra Air Quality Management District (NSAQMD or ''District''). The District worked cooperatively with the California Air Resources Board (CARB) in preparing the Portola $PM_{2.5}$ Plan. Under state law, authority for regulating sources under state jurisdiction in the Portola nonattainment area is split between the District, which has responsibility for regulating stationary and most area sources, and CARB, which has responsibility for regulating most mobile sources.

II. Clean Air Act Requirements for Moderate $PM_{2.5}$ Nonattainment Area Plans

With respect to the statutory requirements for attainment plans for the 2012 annual $PM_{2.5}$ NAAQS, the general CAA part D nonattainment area planning requirements are found in subpart 1, and the Moderate area planning requirements specifically for particulate matter are found in subpart 4.

The EPA has a longstanding general guidance document that interprets the 1990 amendments to the CAA, commonly referred to as the General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990 (''General Preamble'').[11] The General Preamble addresses the relationship between the subpart 1 and the subpart 4 requirements and provides recommendations to states for meeting certain statutory requirements for particulate matter attainment plans. As explained in the General Preamble, specific requirements applicable to Moderate area attainment plan SIP submissions for the particulate matter NAAQS are set forth in subpart 4 of part D, title I of the Act, but such SIP submissions must also meet the general attainment planning provisions in subpart 1 of part D, title I of the Act, to the extent these provisions ''are not otherwise subsumed by, or integrally related to,'' the more specific subpart 4 requirements.[12]

To implement the $PM_{2.5}$ NAAQS, the EPA has also promulgated the ''Fine Particle Matter National Ambient Air Quality Standard: State Implementation Plan Requirements; Final Rule'' (hereinafter, the ''$PM_{2.5}$ SIP Requirements Rule'').[13] The $PM_{2.5}$ SIP Requirements Rule provides additional regulatory requirements and guidance applicable to attainment plan submissions for the $PM_{2.5}$ NAAQS, including the 2012 annual $PM_{2.5}$ NAAQS at issue in this action.

The subpart 1 statutory requirements for attainment plans include: (i) The section 172(c)(1) requirements for RACM/RACT and attainment demonstrations; (ii) the section 172(c)(2) requirement to demonstrate RFP; (iii) the section 172(c)(3) requirement for emissions inventories; (iv) the section 172(c)(5) requirements for a nonattainment new source review (NNSR) permitting program; and (v) the section 172(c)(9) requirement for contingency measures.

The more specific subpart 4 statutory requirements for Moderate $PM_{2.5}$ nonattainment areas include: (i) The section 189(a)(1)(A) and 189(e) NNSR permit program requirements; (ii) the section 189(a)(1)(B) requirements for attainment demonstrations; (iii) the section 189(a)(1)(C) requirements for RACM; and (iv) the section 189(c) requirements for RFP and quantitative milestones. Under subpart 4, states with Moderate $PM_{2.5}$ nonattainment areas must provide for attainment in the area as expeditiously as practicable but no later than December 31, 2021, for the 2012 $PM_{2.5}$ annual NAAQS. In addition, under subpart 4, direct $PM_{2.5}$ and all precursors to the formation of $PM_{2.5}$ are subject to control unless the EPA approves a demonstration from the State establishing that a given precursor does not contribute significantly to $PM_{2.5}$ levels that exceed the $PM_{2.5}$ NAAQS in the area.[14]

III. Completeness Review of the Portola $PM_{2.5}$ Attainment Plan

CAA sections 110(a)(1) and (2) and 110(l) require each state to provide reasonable public notice and opportunity for public hearing prior to the adoption and submission of a SIP or SIP revision to the EPA. To meet this requirement, every SIP submission should include evidence that adequate public notice was given and an opportunity for a public hearing was provided consistent with the EPA's implementing regulations in 40 CFR 51.102.

Both the District and CARB satisfied applicable statutory and regulatory requirements for reasonable public

[5] The primary and secondary standards were set at the same level for both the 24-hour and the annual $PM_{2.5}$ standards.

[6] Under EPA regulations at 40 CFR part 50, the primary and secondary 2006 24-hour $PM_{2.5}$ NAAQS are attained when the annual arithmetic mean concentration, as determined in accordance with 40 CFR part 50, Appendix N, is less than or equal to 35 µg/m^3 at all relevant monitoring sites in the subject area, averaged over a 3-year period.

[7] 71 FR 61144.

[8] 78 FR 3086.

[9] 80 FR 2206 (January 15, 2015).

[10] From 2000 through early 2013, the Portola $PM_{2.5}$ monitoring site was located at 161 Nevada Street. In 2013, the site was relocated to 420 Gulling Street.

[11] General Preamble, 57 FR 13498 (April 16, 1992).

[12] 57 FR 13538.

[13] 81 FR 58010, August 24, 2016.

[14] 40 CFR 51.1006 and 51.1009.

notice and hearing prior to adoption and submission of the Portola $PM_{2.5}$ Plan. The District provided a 30-day public comment period prior to its January 23, 2017 public hearing to adopt the main SIP submission.[15] CARB provided the required public notice and opportunity for public comment prior to its February 16, 2017 public hearing and adoption of the main SIP submission.[16] CARB then adopted its supplemental SIP submission pertaining to 2019 and 2022 transportation conformity motor vehicle emission budgets at its October 26, 2017 Board meeting after reasonable public notice.[17] Each submission includes proof of publication of notices for the respective public hearings. We find, therefore, that the Portola $PM_{2.5}$ Plan meets the requirements for reasonable notice and public hearings in CAA sections 110(a) and 110(l).

CAA section 110(k)(1)(B) requires the EPA to determine whether a SIP submission is complete within 60 days of receipt. This section also provides that any plan that the EPA has not affirmatively determined to be complete or incomplete will become complete by operation of law six months after the date of submission. The EPA's SIP completeness criteria are found in 40 CFR part 51, appendix V. The February 28, 2017 and December 20, 2017 SIP submissions became complete by operation of law on August 28, 2017 and June 20, 2018, respectively.

IV. Review of the Portola $PM_{2.5}$ Plan

A. Emissions Inventory

1. Requirements for Emissions Inventories

CAA section 172(c)(3) requires that each SIP include a ''comprehensive, accurate, current inventory of actual emissions from all sources of the relevant pollutant or pollutants in [the] area . . . .'' By requiring an accounting of actual emissions from all sources of the relevant pollutants in the area, this section provides for the base year inventory to include all emissions that contribute to the formation of a particular NAAQS pollutant. For the 2012 $PM_{2.5}$ NAAQS, this includes emissions of direct $PM_{2.5}$ as well as the main chemical precursors to the formation of secondary $PM_{2.5}$: NO_X, SO_2, VOC, and ammonia. Primary $PM_{2.5}$ includes condensable and filterable particulate matter.

A state must include in its SIP submission documentation explaining how the emissions data were calculated. In estimating mobile source emissions, a state should use the latest emissions models and planning assumptions available at the time it develops the SIP submission. States are also required to use the EPA's ''Compilation of Air Pollutant Emission Factors'' *(*AP–42)[18] road dust method for calculating re-entrained road dust emissions from paved roads.[19] The latest EPA-approved version of California's mobile source emission factor model is EMFAC2014.[20]

In addition to the base year inventory submitted to meet the requirements of CAA section 172(c)(3), the State must also submit future ''baseline inventories'' for the projected attainment year and each RFP milestone year, and any other year of significance for meeting applicable CAA requirements.[21] By ''baseline inventories'' (also referred to as ''projected baseline inventories''), we mean projected emissions inventories for future years that account for, among other things, the ongoing effects of economic growth and adopted emissions control requirements. The SIP submission should include documentation to explain how the state calculated the emissions projections.

2. Emissions Inventory in the Portola $PM_{2.5}$ Plan

The Portola $PM_{2.5}$ nonattainment area emissions inventory is typical of a small, high elevation mountain community. There are no major stationary sources or large industrial sources (existing or anticipated) and residential wood burning is a significant source of direct $PM_{2.5}$. A summary of the planning emissions inventories for direct $PM_{2.5}$ and all $PM_{2.5}$ precursors (NO_X, SO_X, VOC, and ammonia)[22] for the Portola $PM_{2.5}$ nonattainment area is found in section III. Detailed inventories for the Portola $PM_{2.5}$ nonattainment area together with documentation for the inventories are found in Appendix B of the Plan. CARB and District staff worked jointly to develop the emissions inventory for the Portola $PM_{2.5}$ nonattainment area. The District worked with operators of the three stationary facilities in the nonattainment area to develop the stationary source emissions estimates.[23] CARB staff developed the emissions inventory for mobile sources, both on-road and off-road.[24] The District and CARB shared responsibility for developing estimates for the area sources such as residential wood burning and paved road dust.

The Plan includes annual average emissions inventories for the 2013 base year and estimated emissions for the 2019, 2021, and 2022 future baseline years. Future baseline inventories are a projection of the base year inventory taking into account expected growth trends for each source category and emission reductions from control measures adopted prior to January 1, 2013. CARB develops emissions projections by applying growth and control profiles to the base year inventory.[25]

Each inventory includes emissions from stationary, area, on-road, and non-

[15] The District public notice posted on its website for January 23, 2017 public hearing (undated); February 14, 2017 proof of publication from Plumas County News of public notice for January 23, 2017 public hearing; December 14, 2016 proof of publication from Feather Publishing Co., Inc. of public notice that public notice for January 23, 2017 public hearing published in the Feather River Bulletin, Indian Valley Record, and Portola Reporter during the week beginning December 14, 2016; and NSAQMD Governing Board Resolution 2017–01, ''In the Matter of Adopting the Portola Fine Particulate Matter ($PM_{2.5}$) Attainment Plan (Portola Plan) as required by the Federal Clean Air Act,'' January 13, 2017.

[16] CARB, Notice of evidence of listserve publication, ''arbcombo—Notice of Public Meeting for February 16, 2017,'' and ''Notice of Public Meeting to Consider the Approval of the Portola $PM_{2.5}$ State Implementation Plan,'' both dated January 13, 2017; CARB Board Resolution 17–2, ''Portola $PM_{2.5}$ State Implementation Plan,'' February 16, 2017.

[17] CARB Board Resolution 17–28, ''Supplemental Transportation Conformity Emissions Budgets for the Portola Fine Particulate Matter ($PM_{2.5}$) Attainment Plan,'' October 26, 2017.

[18] The EPA released an update to AP–42 in January 2011 that revised the equation for estimating paved road dust emissions based on an updated data regression that included new emission tests results.

[19] 76 FR 6328 (February 4, 2011).

[20] The EMFAC model (short for EMission FACtor) is a computer model developed by CARB. The EPA approved EMFAC2014 for use in SIP revisions and transportation conformity at 80 FR 77337 (December 14, 2015).

[21] 40 CFR 51.1007(a), 51.1008(b), and 51.1009(f); see also U.S. EPA, ''Emissions Inventory Guidance for Implementation of Ozone [and Particulate Matter] National Ambient Air Quality Standards (NAAQS) and Regional Haze Regulations,'' available at *http://www.epa.gov/sites/production/files/2014-10/documents/2014revisedeiguidance_0.pdf.*

[22] The Portola $PM_{2.5}$ Plan generally uses ''sulfur oxides'' or ''SO_X'' in reference to SO_2 as a precursor to the formation of $PM_{2.5}$. We use SO_X and SO_2 interchangeably throughout this notice.

[23] CARB's facility search engine website shows for 2016 in the Portola $PM_{2.5}$ nonattainment area there are no major stationary sources and only three non-major stationary sources. Two of the non-major sources reported zero particulate matter (PM) emissions in 2016, and the third non-major source (*i.e.,* White Cap Ready Mix #1) reported 1.9 tons per year of PM emissions. For more information see *https://www.arb.ca.gov/app/emsinv/facinfo/facinfo.php.*

[24] The EPA regulations refer to ''nonroad'' vehicles and engines whereas California Air Resources Board (CARB) regulations refer to ''off-road'' vehicles and engines. These terms refer to the same types of vehicles and engines, and for the purposes of this action, we will be using CARB's chosen term, ''off-road,'' to refer to such vehicles and engines.

[25] Portola $PM_{2.5}$ Plan, Appendix B.

road sources. The inventories use EMFAC2014 for estimating on-road motor vehicle emissions.[26] Re-entrained paved road dust emissions were calculated using the EPA's AP–42 road dust methodology.[27]

Table 1 provides a summary of the annual average inventories in tons per day (tpd) of direct $PM_{2.5}$ and $PM_{2.5}$ precursors for the base year of 2013. These inventories provide the basis for the control measure analysis and the RFP and attainment demonstrations in the Portola $PM_{2.5}$ Plan. For a detailed breakdown of the inventories, see Appendix B, Tables 6–10 in the Portola $PM_{2.5}$ Plan.

TABLE 1—PORTOLA ANNUAL AVERAGE EMISSIONS INVENTORY FOR DIRECT $PM_{2.5}$ AND $PM_{2.5}$ PRECURSORS FOR THE 2013 BASE YEAR (tpd)

Category	Direct $PM_{2.5}$	NO_X	SO_X	VOC	Ammonia
Stationary Sources	0.007	0.002	0.000	0.016	0.018
Area Sources	0.468	0.048	0.015	0.661	0.142
On-Road Mobile Sources	0.005	0.181	0.0003	0.101	0.005
Off-Road Mobile Sources	0.011	0.273	0.0001	0.162	0.0001
Totals	0.490	0.504	0.016	0.940	0.149

Source: Portola $PM_{2.5}$ Plan, Section III, Table 3 (p. 24) and Appendix B, Tables 6–10.

3. The EPA's Evaluation and Proposed Action

The inventories in the Portola $PM_{2.5}$ Plan are based on the most current and accurate information available to the State and District at the time the Plan and its inventories were being developed in 2015 and 2016, including the latest version of California's mobile source emissions model, EMFAC2014. The inventories comprehensively address all source categories in the Portola $PM_{2.5}$ nonattainment area and were developed consistent with the EPA's inventory guidance. For these reasons, we are proposing to approve the 2013 base year emissions inventory in the Portola $PM_{2.5}$ Plan as meeting the requirements of CAA section 172(c)(3). We are also proposing to find that the projected baseline inventories in the Plan provide an adequate basis for the RACM, RFP, and attainment demonstrations in the Portola $PM_{2.5}$ Plan.

B. $PM_{2.5}$ Precursors

1. Precursor Requirements

The provisions of subpart 4 of part D, title I of the CAA do not define the term ''precursor'' for purposes of $PM_{2.5}$, nor do they explicitly require the control of any specifically identified PM precursor. The statutory definition of ''air pollutant'' in CAA section 302(g), however, provides that the term ''includes any precursors to the formation of any air pollutant, to the extent the Administrator has identified such precursor or precursors for the particular purpose for which the term 'air pollutant' is used.'' The EPA has identified SO_2, NO_X, VOC, and ammonia as precursors to the formation of $PM_{2.5}$. Accordingly, the attainment plan requirements of subpart 4 apply to emissions of all four precursor pollutants and direct $PM_{2.5}$ from all types of stationary, area, and mobile sources, except as otherwise provided in the Act (*e.g.,* in CAA section 189(e)).

Section 189(e) of the Act requires that the control requirements for major stationary sources of direct PM_{10} (which includes $PM_{2.5}$) also apply to major stationary sources of PM_{10} precursors, except where the Administrator determines that such sources do not contribute significantly to PM_{10} levels that exceed the standard in the area. Section 189(e) contains the only expressed exception to the control requirements under subpart 4 for sources of $PM_{2.5}$ precursor emissions. Although section 189(e) explicitly addresses only major stationary sources, the EPA interprets the Act as authorizing it also to determine, under appropriate circumstances, that regulation of specific $PM_{2.5}$ precursors from other sources in a given nonattainment area is not necessary.

Under the $PM_{2.5}$ SIP Requirements Rule, a state may elect to submit to the EPA a ''comprehensive precursor demonstration'' for a specific nonattainment area to show that emissions of a particular precursor from all existing sources located in the nonattainment area do not contribute significantly to $PM_{2.5}$ levels that exceed the standard in the area.[28] Such a comprehensive precursor demonstration must include a concentration-based contribution analysis (*i.e.,* evaluation of the contribution of a particular precursor to $PM_{2.5}$ levels in the area) and may also include a sensitivity-based contribution analysis (*i.e.,* evaluation of the sensitivity of $PM_{2.5}$ levels in the area to a decrease in emissions of the precursor). If the EPA determines that the contribution of the precursor to $PM_{2.5}$ levels in the area is not significant and approves the demonstration, the state is not required to control emissions of the relevant precursor from existing sources in the current attainment plan.[29]

The EPA issued the draft $PM_{2.5}$ Precursor Demonstration Guidance (''Draft Guidance'') to provide recommendations to states for appropriate precursor demonstrations in nonattainment plan SIP submissions.[30] For the annual $PM_{2.5}$ NAAQS, section 2.2 of the Draft Guidance recommends use of 0.2 $\mu g/m^3$ as a threshold below which ambient air quality impacts could be considered ''insignificant,'' *i.e.,* impacts that do not ''contribute'' to $PM_{2.5}$ concentrations that exceed the NAAQS. When considering whether a precursor contributes significantly to $PM_{2.5}$ levels which exceed the NAAQS in the area, a state may also consider additional factors based on the facts and circumstances of the area. As to air quality impacts that exceed the 0.2 $\mu g/m^3$ contribution threshold, states may provide additional support for a conclusion that a particular precursor does not contribute significantly to ambient $PM_{2.5}$ levels that exceed the NAAQS. States may consider information such as the amount by which the impacts exceed the recommended contribution threshold, the severity of nonattainment at relevant monitors and/or grid cell locations in the area, anticipated growth or loss of sources, analyses of speciation data and

[26] Portola $PM_{2.5}$ Plan, Appendix B.

[27] Id.

[28] 40 CFR 51.1006(a)(1).

[29] Id.

[30] EPA Office of Air Quality Planning and Standards, ''$PM_{2.5}$ Precursor Demonstration Guidance,'' EPA–454/P–16–001, November 17, 2016 draft, available at *https://www.epa.gov/pm-pollution/draft-pm25-precursor-demonstration-guidance.*

precursor emission inventories, and air quality trends.[31]

2. Precursor Demonstration in the Plan

Section V.C. of the Plan contains the State's demonstration that emissions of SO_X, NO_X, ammonia, and VOC from all existing sources in the nonattainment area do not contribute significantly to $PM_{2.5}$ levels that exceed the NAAQS. The demonstration includes a concentration-based portion, a sensitivity-based portion, and additional relevant information. The concentration-based portion is summarized in Table 8 of the Plan, based on 2013–2014 species composition data, and used to represent the base year design value used as the starting point in the rollback attainment demonstration as described in section IV.E.[32] All four precursors together account for 6.3% of the 2013 $PM_{2.5}$ design value. Organic matter and elemental carbon, mainly from wood burning, are the dominant contributors and account for 89% of the 2013 design value.

For VOC emissions, the corresponding ambient $PM_{2.5}$ component is anthropogenic Secondary Organic Aerosol (SOA). Based on comparison to ambient SOA concentrations per ton of total VOC emissions at other California locations, the State estimated Portola SOA concentrations of 0.02–0.05 μg/m^3. The State also noted that seasonal organic carbon (OC) measurements at Portola are indistinguishable from background levels during the summer. Because SOA is a subset of OC, and summer is when SOA is highest due to the warmer temperatures, the State found that Portola's SOA is comparable to the 0.06 μg/m^3 observed at nearby background interagency monitoring of protected visual environments (IMPROVE) sites [33] and well below the 0.2 μg/m^3 contribution threshold.

The ambient species concentrations corresponding to SO_X, NO_X, and ammonia were 0.41, 0.46, and 0.48 μg/m^3, respectively. Because these are all above the recommended contribution threshold of 0.2 μg/m^3, the State conducted a follow-up sensitivity-based analysis. The sensitivity-based portion of the precursor demonstration used a variant of the rollback attainment demonstration based on Positive Matrix Factorization (PMF) as described in section IV.B.2 of this notice.[34] The rollback model scales $PM_{2.5}$ component concentrations (excluding background) according to changes in emissions. Ammonium nitrate was scaled proportional to NO_X emissions; ammonium sulfate was scaled proportional to SO_X emissions; and ammonium was scaled proportional to ammonia emissions. These were all on a conservative one-to-one basis; that is, a 1% emission change leads to a 1% concentration change. The sensitivity emission reductions modeled were 10%, 25%, 30%, 50%, and 70%.

As in the attainment demonstration, the precursor demonstration used the estimated 2021 design value. The $PM_{2.5}$ effect of both the sensitivity reductions and the yearly reductions were combined to estimate the effect on the design value. Table 9 of the Plan lists the $PM_{2.5}$ design values resulting from a 10 to 70% reduction in emissions of each pollutant.[35] For SO_X and ammonia, the reductions have a negligible impact on the attainment year design value. The design values listed for the 70% emission reduction show $PM_{2.5}$ responses of 0.09 and 0.11 μg/m^3 for SO_X and ammonia respectively, both well below the recommended contribution threshold.

For NO_X sensitivity, the Plan includes a discussion of the ambient response to a 30% reduction, 0.16 μg/m^3, which is below the 0.2 μg/m^3 contribution threshold. However, the given design values for 50% and 70% reductions show responses of 0.26 μg/m^3 and 0.39 μg/m^3 respectively, which are above the recommended contribution threshold.

Beyond the concentration-based and sensitivity-based analyses, the Plan provides several pieces of additional information to help assess the significance of NO_X as a $PM_{2.5}$ precursor. Table 7 of the Plan shows that NO_X emissions in the Portola nonattainment area, estimated at 0.5 tpd, are far smaller than the NO_X emissions in several other California counties, which range from 46.5 to 104.0 tpd.[36] The Plan also shows that 90% of the NO_X emissions in Portola are from mobile sources, which already are stringently controlled; $PM_{2.5}$ concentrations would be not be sensitive to realistic additional control on these sources.

Supporting supplemental data from CARB shows trends in emissions and species concentrations during 2002–2016.[37] The data are for the Mountain Counties Air Basin, which comprises Plumas County and eight other similar counties that are also largely rural, wooded areas spanning the foothills to the crest of the Sierra Nevada mountains. Ammonia emissions during this period were essentially constant, but NO_X and SO_X emissions decreased by 46% and 67%, respectively. During the same time span, nitrate and sulfate concentrations decreased by 23% and 16%, respectively. Since nitrate and sulfate were responding to NO_X and SO_X emissions reductions, this suggests that ammonium nitrate formation is NO_X-limited and ammonium sulfate is SO_X-limited, rather than either being ammonia-limited. These observations support a finding that ammonia is an insignificant $PM_{2.5}$ precursor, for which controls would be of little benefit.

Based on its evaluations, the State concluded that additional controls on $PM_{2.5}$ precursors would have an insignificant effect on $PM_{2.5}$ concentrations, and that precursors need not be included in the controls analysis.

3. The EPA's Evaluation and Proposed Action

The comprehensive precursor demonstration provided in the Plan meets the requirements of 40 CFR 51.1006(a)(1) and is consistent with the EPA's recommendations in the Draft Guidance. The demonstration contains a concentration-based contribution analysis for VOC and sensitivity-based contribution analyses for NO_X, SO_X, and ammonia, together with additional information about the Portola area, as recommended in the Draft Guidance (*e.g.,* emission inventory and ambient $PM_{2.5}$ composition data).

For the SO_2 concentration-based analysis, the Plan states that background sulfate concentrations are 97% of the 0.41 μg/m^3 measured at Portola. The remaining 3% of the sulfate, or 0.012 μg/m^3, is attributable to Portola sources. This 3% contribution from Portola sources to $PM_{2.5}$ levels above the NAAQS is well below the EPA's 0.2 μg/m^3 contribution threshold.

For the VOC concentration analysis, the Plan provides several estimates of SOA at Portola. The estimates, which

[31] Id. at 17.

[32] Portola $PM_{2.5}$ Plan, 51.

[33] IMPROVE is a monitoring program managed by the EPA and other federal and state agencies to assess visibility and aerosol conditions including $PM_{2.5}$ species in Class I areas such as national parks. For more information, go to *http://vista.cira.colostate.edu/Improve/reconstructed-fine-mass/.*

[34] PMF is a multivariate source apportionment method that attributes $PM_{2.5}$ observed concentrations to sources through statistical and meteorological interpretation of data. PMF is one of several EPA recommended receptor modeling methods for understanding of source impacts on ambient $PM_{2.5}$ levels.

[35] Portola $PM_{2.5}$ Plan, 53.

[36] Id. at 47.

[37] Email with attachment (*i.e.,* Species Trends.xlsx) dated February 13, 2018, from Kasia Turkiewicz, CARB, to Scott Bohning and John Ungvarsky, EPA.

can be considered ''data analysis techniques'' as described in the Draft Guidance, are appropriate for refining SOA estimates from available measurements and provide a convincing case that VOCs do not contribute significantly to $PM_{2.5}$ levels that exceed the NAAQS in the area.

For NO_X, the Plan's estimate for the nitrate contribution and the corresponding sensitivity to NO_X reductions may be unrealistically high. The PMF modeling results estimated the secondary nitrate contribution to be 5.1% of the total $PM_{2.5}$, whereas the raw chemical composition data estimated only 3.3%.[38] In addition, the concentration-based analysis may have overestimated nitrate concentrations because it does not apply the sulfate, adjusted nitrate, derived water, inferred carbonaceous balance approach (SANDWICH) [39] for reconciling the mass from speciation measurements with that from the Federal Reference Method (FRM) used for design values. Because the SANDWICH adjustment generally reduces nitrate, due to nitrate losses from FRM monitors, the precursor demonstration in the Plan may be overestimating the amount of nitrate and the nitrate response to NO_X emission reductions. Thus, the approach used in the Plan results in a more conservative precursor demonstration.

The sensitivity-based precursor analysis relies on the same methodology as the attainment demonstration, including the very conservative assumption that the ambient response to NO_X reductions is in a 1:1 ratio to the emission change (on a percent basis). The responses to SO_2 and ammonia reductions were below the recommended 0.2 $\mu g/m^3$ contribution threshold, but the response to NO_X was above the threshold at 50% and 70% reductions.

The Plan includes additional information supporting a conclusion that NO_X emissions do not contribute significantly to $PM_{2.5}$ levels that exceed the NAAQS in the area. The information includes the small size of the NO_X emission inventory relative to other areas and recognition that mobile sources are already highly controlled. These are indications that ambient $PM_{2.5}$ levels would not be sensitive to additional NO_X controls.

The EPA also considered two other implications of the data provided with the Plan or as a supplement. The supplemental 2002–2016 emissions and speciation trends can be used to derive a response factor, the percent change in nitrate concentration for each percent change in NO_X emissions. Because ammonia emissions are constant, they provide a reasonable factor to use as the response to reductions of NO_X in the sensitivity analysis. Using 2002–2016 data results in a NO_X response factor of 0.378. Using this in a variant of the Plan's NO_X sensitivity analysis in place of the 1:1 assumption, the EPA found that the ambient $PM_{2.5}$ response to a 50% NO_X reduction is 0.105 $\mu g/m^3$, and the response to a 70% reduction is 0.147 $\mu g/m^3$. Both of these are below the EPA's recommended contribution threshold of 0.2 $\mu g/m^3$. (The original responses were 0.277 and 0.388 $\mu g/m^3$.) Since the years 2013–2016 were somewhat anomalous, with some nitrate increases, the EPA carried out the same exercise using just 2002–2011 data, which resulted in a NO_X response factor of 0.625. In turn, this results in a 50% response of 0.173 $\mu g/m^3$ and a 70% response of 0.243 $\mu g/m^3$. The 70% response is above but considerably closer to the recommended 0.2 $\mu g/m^3$ contribution threshold. When considered in light of the additional information discussed above, the 70% response supports a conclusion that NO_X emissions do not contribute significantly to $PM_{2.5}$ levels that exceed the NAAQS in the area.

A second implication of the data from the Plan concerns the effect of a 70% NO_X reduction on the year that the Portola area can attain the NAAQS. Under the $PM_{2.5}$ SIP Requirements Rule at 40 CFR 51.1009(a)(4)(i), if a Moderate $PM_{2.5}$ nonattainment area, such as the Portola area, can show that reducing emission of a precursor is not necessary for expeditious attainment of the NAAQS and cannot advance attainment by a year,[40] then that precursor need not be controlled for attainment purposes. Even assuming a NO_X reduction of 70%, which is very large in comparison with the historical reductions of about 6% per year, and assuming an unrealistically conservative 1:1 nitrate response ratio, the resulting response is 0.388 $\mu g/m^3$, which is less than the average 0.41 $\mu g/m^3$ per year $PM_{2.5}$ decrease seen during 2019–2021 in the attainment demonstration. This observation supports a conclusion that controlling NO_X is not necessary for expeditious attainment of the NAAQS because it would not advance the attainment date by a year in the Portola nonattainment area.

The EPA is proposing to approve the State's demonstration that emissions of $PM_{2.5}$ precursors (*i.e.,* SO_X, NO_X, ammonia, and VOC) from all existing sources located in the nonattainment area do not contribute significantly to $PM_{2.5}$ levels that exceed the standards in the area. If the EPA finalizes this proposal, the State and District would not be required to control emissions of these precursors from existing sources in the Portola $PM_{2.5}$ Plan for purposes of the 2012 annual $PM_{2.5}$ NAAQS. The State, District, and the EPA will reexamine this issue if the Portola area fails to attain the NAAQS and EPA reclassifies the area to Serious for the 2012 annual $PM_{2.5}$ NAAQS.

C. Reasonably Available Control Measures/Reasonably Available Control Technology

1. Requirements for RACM/RACT

The general subpart 1 attainment plan requirement for RACM and RACT is described in CAA section 172(c)(1), which requires that attainment plan submissions ''provide for the implementation of all reasonably available control measures as expeditiously as practicable (including such reductions in emissions from existing sources in the area as may be obtained through the adoption, at a minimum, of reasonably available control technology)'' and provide for attainment of the NAAQS.

The attainment planning requirements specific to $PM_{2.5}$ under subpart 4 likewise impose upon states with nonattainment areas classified as Moderate an obligation to develop attainment plans that require RACM/RACT on sources of direct $PM_{2.5}$ and all $PM_{2.5}$ plan precursors. CAA section 189(a)(1)(C) requires that Moderate area $PM_{2.5}$ SIPs contain provisions to assure that RACM/RACT are implemented no later than 4 years after designation of the area. The EPA reads CAA sections 172(c)(1) and 189(a)(1)(C) together to require that attainment plans for Moderate nonattainment areas provide for the implementation of RACM and RACT for existing sources of $PM_{2.5}$ and those $PM_{2.5}$ precursors subject to control in the nonattainment area as expeditiously as practicable but no later than 4 years after designation.[41]

The $PM_{2.5}$ SIP Requirements Rule defines RACM as ''any technologically and economically feasible measure that can be implemented in whole or in part within 4 years after the effective date of designation of a $PM_{2.5}$ nonattainment area and that achieves permanent and enforceable reductions in direct $PM_{2.5}$ emissions and/or $PM_{2.5}$ plan precursor

[38] Plan, Figure 9, 20, and Table 8, 51.

[39] Draft Guidance, 23.

[40] 81 FR 58010, 58020 (August 24, 2016).

[41] This interpretation is consistent with guidance provided in the General Preamble at 13540.

emissions from sources in the area.[42] RACM includes reasonably available control technology (RACT).'' The EPA has historically defined RACT as the lowest emission limitation that a particular stationary source is capable of meeting by the application of control technology (*e.g.,* devices, systems, process modifications, or other apparatus or techniques that reduce air pollution) that is reasonably available considering technological and economic feasibility.[43]

Under the $PM_{2.5}$ SIP Requirements Rule, those control measures that otherwise meet the definition of RACM but ''can only be implemented in whole or in part during the period beginning 4 years after the effective date of designation of a nonattainment area and no later than the end of the sixth calendar year following the effective date of designation of the area'' must be adopted and implemented by the state as ''additional reasonable measures.'' [44]

States must provide written justification in a SIP submission for eliminating potential control options from further review on the basis of technological or economic infeasibility.[45] An evaluation of technological feasibility may include consideration of factors such as a source's process and operating conditions, raw materials, physical plant layout, and non-air quality and energy impacts (*e.g.,* increased water pollution, waste disposal, and energy requirements).[46] An evaluation of economic feasibility may include consideration of factors such as cost per ton of pollution reduced (cost-effectiveness), capital costs, and operating and maintenance costs.[47] Absent other indications, the EPA presumes that it is reasonable for similar sources to bear similar costs of emissions reductions. Economic feasibility of RACM and RACT is thus largely informed by evidence that other sources in a source category have in fact applied the control technology, process change, or measure in question in similar circumstances.[48]

Consistent with these requirements, NSAQMD must implement RACM, including RACT, for direct $PM_{2.5}$ emission sources no later than April 15, 2019, and must implement additional reasonable measures for these sources no later than December 31, 2021.

The CAA explicitly provides for the use of economic incentive programs (EIPs), such as the Portola voluntary wood stove change-out program, as one tool for states to use to achieve attainment of the NAAQS.[49] EIPs use market-based strategies to encourage the reduction of emissions from stationary, area, and mobile sources in an efficient manner. The EPA has promulgated regulations for statutory EIPs required under section 182(g) of the Act and has issued guidance for discretionary EIPs.[50] Where a state relies on a discretionary EIP in a SIP submission, the EPA evaluates the programmatic elements of the EIP to determine whether the resulting emission reductions are quantifiable, surplus, enforceable and permanent.[51] These four fundamental ''integrity elements,'' which apply to all EIPs and other incentive/voluntary measures relied on for SIP purposes, are designed to ensure that such programs and measures satisfy the applicable requirements of the Act.

2. RACM/RACT Analysis in the Portola $PM_{2.5}$ Plan

The State's RACM and RACT analysis is in section VI.D of the Portola $PM_{2.5}$ Plan. The emissions inventory analysis, conducted as part of the RACT analysis, confirmed that no major stationary sources of direct $PM_{2.5}$ or any $PM_{2.5}$ precursor are located in the Portola $PM_{2.5}$ nonattainment area. As discussed above in section IV.C, the State provided a demonstration that $PM_{2.5}$ precursor emissions do not contribute significantly to ambient $PM_{2.5}$ levels that exceed the standards in the area. Therefore, the Portola $PM_{2.5}$ Plan contains a RACM demonstration addressing only sources of direct $PM_{2.5}$.

3. Primary Sources of $PM_{2.5}$ in the Nonattainment Area

$PM_{2.5}$ concentrations in the Portola $PM_{2.5}$ nonattainment area are dominated by direct $PM_{2.5}$ emissions from residential wood burning. Chapter II of the Plan documents the State and District's bases for concluding that wood burning is the dominant source of $PM_{2.5}$ throughout the nonattainment area. The documentation includes seasonal and diurnal patterns in $PM_{2.5}$ concentrations, chemical composition data, PMF modeling, and statistical correlations between $PM_{2.5}$ mass and levoglucosan (a wood burning tracer). The PMF model estimated that 76% of ambient $PM_{2.5}$ on an annual basis is from wood burning. Burning of garbage in stoves, fireplaces, and in open burn piles contributes another 2.5% of annual $PM_{2.5}$ levels.

4. RACM Measures

Table 2 lists the RACM measures in the Portola $PM_{2.5}$ Plan. We discuss each of these measures in detail further below.

TABLE 2—SUMMARY OF RACM IN PORTOLA $PM_{2.5}$ NONATTAINMENT AREA

Measure	Direct $PM_{2.5}$ emission reductions (tpd)	Scheduled action	Implementation year
Voluntary Wood Stove Change-out Program with Enforceable Commitment	0.062 [a]	2016	2016–2020.
City of Portola Wood Stove and Fireplace Ordinance Mandatory Wood Burning Curtailment.	Not estimated [b]	2016	2021.
Other Provisions in City of Portola Wood Stove and Fireplace Ordinance [c]	Not estimated [d]	2016	2016.
Open Burning Requirements (NSAQMD Rules 300–317)	Not estimated [e]	2019	2019.
CARB Mobile Source Programs	0.006	Ongoing	Ongoing.
Opacity Rule (NSAQMD Rule 202)	Not estimated	Ongoing	Ongoing.

[42] 40 CFR 51.1000. ''$PM_{2.5}$ plan precursors'' are defined as ''those $PM_{2.5}$ precursors required to be regulated in the applicable attainment plan and/or NNSR program'' and ''$PM_{2.5}$ precursors'' are SO_2, NO_x, VOC, and ammonia.

[43] General Preamble at 13541 and 57 FR 18070, 18073–74 (April 28, 1992).

[44] 40 CFR 51.1000, 51.1009(a)(i)(B), and 51.1009(a)(ii)(B).

[45] 40 CFR 51.1009(a)(3).

[46] 40 CFR 51.1009(a)(3); see also 57 FR 18070, 18073–74.

[47] Id.

[48] 57 FR 18070, 18074.

[49] See, *e.g.,* CAA sections 110(a)(2)(A), 172(c)(6), and 183(e)(4).

[50] A ''discretionary economic incentive program'' is ''any EIP submitted to the EPA as an implementation plan revision for purposes other than to comply with the statutory requirements of sections 182(g)(3), 182(g)(5), 187(d)(3), or 187(g) of the Act.'' 40 CFR 51.491; see also 59 FR 16690 (April 7, 1994) (codified at 40 CFR part 51, subpart U) and ''Improving Air Quality with Economic Incentive Programs,'' EPA, January 2001 (''2001 EIP Guidance'').

[51] 2001 EIP Guidance, section 4.1.

TABLE 2—SUMMARY OF RACM IN PORTOLA $PM_{2.5}$ NONATTAINMENT AREA—Continued

Measure	Direct $PM_{2.5}$ emission reductions (tpd)	Scheduled action	Implementation year
Educational Campaign	Not estimated[f]	Ongoing	Ongoing.
Voluntary Wood Burning Curtailment Program (''Clear the Air; Check Before You Light'').	Not estimated[f]	2016	2017.

[a] The reductions from the wood stove change-out program are based on the average of the cumulative annual emission reductions from 2019–2021 (*i.e.,* 0.045 tpd in 2019, 0.065 tpd in 2020, and 0.077 tpd in 2021).

[b] Additional reductions not calculated because a variety of factors affect the amount of any potential reductions still available after implementation of change-out program (*e.g.,* number of remaining uncertified wood stoves within City of Portola; whether the 30 μg/m^3 air quality threshold is triggered to implement the curtailment; and enforcement of the curtailment).

[c] Additional reductions from the other provisions in the Ordinance and the distribution of 20 moisture meters per year are uncertain (*e.g.,* reductions from prohibition on burning unseasoned wood) and/or overlap with reductions from the change-out program. To avoid double counting of reductions from the Ordinance and the change-out programs, no additional reductions from the Ordinance are relied on for attainment.

[d] Other provisions that apply in the Ordinance include, for example, prohibiting: Installation of an uncertified wood burning device, unqualified fireplace, or uncertified fireplace in new construction or remodel; more than one certified wood burning heater per dwelling unit in new construction; a wood burning device as the sole source of heat in new construction; installation of an outdoor wood-burning boiler or hydronic heater; uncertified wood burning heater remaining in any property upon change of ownership; burning of garbage or unpermitted fuels, including unseasoned wood (less than 20% moisture content) in a wood burning devices.

[e] Additional reductions from strengthening requirements applicable to non-agricultural open burning (*e.g.,* backyard and barrel burning) to be determined at time of anticipated rulemaking in 2019, but because the non-agricultural open burning inventory is small, the additional reductions will not advance attainment.

[f] For RACM, attainment, and RFP, the District is not relying on any reductions from the educational programs or the voluntary wood burning curtailment program.

Source: Portola $PM_{2.5}$ Plan, 37 (Table 4).

a. Voluntary Wood Stove Change-Out Program

Because ambient $PM_{2.5}$ in the Portola area is primarily caused by residential wood burning, CARB and the NSAQMD have chosen to implement a voluntary wood stove change-out program as the primary RACM control strategy for the entire Portola $PM_{2.5}$ nonattainment area. Appendix L of the Plan details the voluntary wood stove change-out program. Its implementation began in 2016 and will continue through 2020. See Table 3 below for the phased schedule of changeouts.

TABLE 3—WOOD STOVE CHANGE-OUT SCHEDULE

Year	Stove changeouts	
	Per year	Cumulative
2016	100	100
2017	100	200
2018	150	350
2019	150	500
2020	100	600
2021	0	600
2022	0	600

The woodstove change-out program is primarily funded by the EPA and the District. The District has approximately $3 million to fund the replacement of 600 of the estimated 664 uncertified wood stoves [52] in use in the nonattainment area. The District is utilizing $2.48 million through the EPA's 2015 Targeted Air Shed Grant program [53] and $400,000 from H&S Performance (H&S) pursuant to a December 17, 2015 Consent Agreement and Final Order between H&S and the EPA.[54] Additionally, the District is contributing up to $60,000 from the Plumas County portion of the District's Assembly Bill 2766 Motor Vehicle Registration fee surcharge.

The change-out program includes specific requirements designed to achieve quantifiable, surplus, enforceable, and permanent $PM_{2.5}$ emission reductions in the entire Portola $PM_{2.5}$ nonattainment area. The program requirements ensure, among other things, that older, dirtier wood stoves currently in operation in the Portola $PM_{2.5}$ nonattainment area will be replaced with EPA-certified wood stoves or other less-polluting devices. Residents of the City of Portola and low-income residents living outside the city but within the nonattainment area qualify for up to $3,500 to replace an uncertified wood burning device with an EPA-certified wood burning device. The $3,500 covers all or most of the change-out costs. In an effort to replace the uncertified devices with the cleanest technology available, the District offers an additional $1,000 to city residents or low-income residents within the nonattainment area for every uncertified wood stove replaced with a pellet, propane, or kerosene device. For all other residents living outside the City of Portola but within the nonattainment area, the District offers $1,500 to replace an uncertified wood burning device with an EPA-certified wood burning device and $3,000 to replace an uncertified wood burning device with a pellet, propane or kerosene heating device. An incentive is available within the entire nonattainment area, but the two-tier funding approach increases the likelihood of the greatest number of changeouts occurring in the city, the area with the greatest concentration of people and low-income residents in the nonattainment area. As of September 30, 2018, approximately 260 changeouts were completed, and an additional 49 applications were approved for possible future changeouts.[55]

The change-out program also includes requirements for participating

[52] Throughout this notice, we use the term ''uncertified wood stove'' to refer to a wood heater that is not certified under the applicable Phase II requirements of the EPA's new source performance standards (NSPS) promulgated in 1988 for new residential wood heaters at 40 CFR part 60, subpart AAA, as effective February 26, 1988 (53 FR 5860). In 2015, the EPA revised subpart AAA, Standards of Performance for New Residential Wood Heaters (''2015 NSPS'') with an effective date of May 15, 2015, and a sell-through date of December 31, 2015. See 53 FR 5860 (March 15, 2015). Because the Voluntary Wood Stove Change-out Program began after December 31, 2015, all new certified wood heaters sold in the Portola $PM_{2.5}$ nonattainment area must meet the applicable requirements in the 2015 NSPS.

[53] The Targeted Air Shed grant program is intended to improve air quality in areas of the US with the highest levels of pollution. For more information, see *https://www.epa.gov/grants/air-grants-and-funding.*

[54] *In the Matter of H&S Performance, LLC,* Consent Agreement and Final Order (docket no. CAA–HQ–2015–8248), entered December 17, 2015. Under this agreement, H&S Performance, LLC agreed to provide $400,000 to the NSAQMD to replace, retrofit, or upgrade at least 400 inefficient wood-burning appliances.

[55] Portola Monthly Air Quality Update from NSAQMD, September 2018.

contractors/retailers to sign a contract with NSAQMD. Contractors/retailers must meet licensing, permitting, and certification requirements. The contract includes specific requirements for the collection and retention of documents, such as:

- Program tracking form,
- Copy of change-out cost estimate with District approval signature,
- Photo of uncertified woodstove installed and operational in home (prior to replacement by certified device),[56]
- Photo of certified device installed,
- Copy of building permit,
- Acknowledgement of training form (homeowner/renter), and
- Final invoice.

The retailer/contractor must also meet the following requirements for retention of records and providing training to homeowners:

- Accounting records relating to the change-out program must be retained for five years and made available for possible review by federal, State and District agencies,
- Encourage homeowners to consider replacing wood appliances with alternative fuel devices, such as propane, pellet or kerosene, and
- Train homeowners on proper appliance operation and acceptable fuels to maximize the emission reductions, including a form signed by homeowners stating that they were trained to properly operate their new heating device.

To provide assurance that the voluntary change-out program will achieve the intended emissions reductions, the District adopted an enforceable commitment to replace 600 uncertified stoves with cleaner burning devices by December 31, 2020. The EPA approved this enforceable commitment into the SIP at 83 FR 13871 (April 2, 2018). The enforceable commitment obligates the NSAQMD to achieve specific amounts of $PM_{2.5}$ emission reductions through implementation of the woodstove change-out program by specific years, to submit annual reports to the EPA detailing its implementation of the program and the projected emission reductions, and to adopt and submit substitute measures by specific dates if the EPA determines that the woodstove change-out program will not achieve the necessary emission reductions. The EPA's Technical Support Document for its April 2, 2018 final action has more information about the enforceable commitment.

b. City of Portola Wood Stove and Fireplace Ordinance

On June 22, 2016, the City of Portola adopted Ordinance No. 344, ''An Ordinance of the City of Portola, County of Plumas Amending Chapter 15.10 of the City of Portola Municipal Code Providing for Regulation of Wood Stoves and Fireplaces'' (''City Ordinance''). The City Ordinance is in Appendix M of the Plan. The EPA approved the City Ordinance into the SIP at 83 FR 9213 (March 5, 2018).

The City Ordinance includes a mandatory burning curtailment provision effective January 1, 2021. The mandatory curtailment will restrict wood burning under specific conditions. If the District determines that adverse meteorological conditions are expected to persist and $PM_{2.5}$ may exceed 30 $\mu g/m^3$ on a given day in January, February, November, or December, the District will call a ''No Burn Day.'' When a No Burn Day is called, no person may operate a wood burning heater, wood burning fireplace, wood-fired fire pit or wood-fired cookstove within the city limits unless it is an approved and currently registered EPA-certified wood burning heater.[57] The curtailment provision encourages owners of uncertified stoves to upgrade to certified stoves or risk not being able to use their uncertified wood burning device on No Burn Days called after January 1, 2021. The curtailment provision does not take effect until January 1, 2021, giving homeowners and renters time to change their stoves to EPA-certified devices during the five-year implementation of the voluntary change-out program.

The City Ordinance and the District's wood stove change-out program collectively establish most of the recommended program elements outlined in the EPA's guidance document entitled ''Strategies for Reducing Residential Wood Smoke,'' [58] including:

- A wood burning curtailment program (section 15.10.060),
- Requirements to remove uncertified wood burning stoves upon home resale (section 15.10.040.A),
- Restrictions on wood burning devices in new construction (section 15.10.030.B),
- Restrictions on the installation of wood burning fireplaces (sections 15.10.030.A and 15.10.040.B),
- A requirement that all wood burning stoves sold or transferred within the District meet the EPA's current new source performance standard certification (section 15.10.030.A),
- A prohibition on the installation of wood fired boilers or hydronic heaters (sections 15.10.030.15, 15.10.030.A and 15.10.070),
- Requirements regarding wood moisture content (section 15.10.050.A),
- Restrictions on types of materials that may be burned (seasoned wood, uncolored paper, pellets, and manufactured logs) (section 15.10.050),
- A wood burning stove change-out program (described above), and
- Education and outreach programs, including a requirement for wood stove retailers to distribute educational materials provided by the District (section 15.10.080).

Although natural gas is not available in the area, the City Ordinance does not include any exemption for a residence where an uncertified wood stove is the sole source of heat. The City Ordinance is thus more stringent than curtailment provisions implemented by other air districts, most of which exempt households using wood stoves as a sole source of heat from curtailment requirements.[59]

The District considered expanding the requirements of the City Ordinance to the entire nonattainment area but determined that this was not feasible because the District did not have sufficient funding to offer incentives to cover the full cost of changeouts outside of the City of Portola. Some residents living outside of the city limits may not have sufficient resources to changeout their stoves. For these residents, the wood burning prohibition in the City Ordinance could cause unintended health risks if their sole source of heat is an uncertified wood stove, and they were prohibited from using it. In the future, expanding application of the City Ordinance beyond city limits will be contingent upon availability of more generous incentive funds for people residing outside the city limits. The

[56] The District also developed a memorandum of understanding with the City of Portola to destroy the replaced stoves. The City matches the stove with the program tracking number, cuts the stove in half with a plasma torch, and stores the stove in a locked yard. The City fills out and signs a verification of destruction form and submits it to the District. The form contains the tracking number and photo of the destroyed stove. See Portola $PM_{2.5}$ Plan, 32.

[57] See section 15.10.060 of the City Ordinance. In section 15.10.020 of the City Ordinance, ''wood burning heater'' is defined as an enclosed wood-burning device capable of and intended for space heating such as a wood stove, pellet-fueled wood heater, or wood-burning fireplace insert, and ''EPA-certified'' is defined as any wood burning heater with a Phase II certification or a more stringent certification as currently enforced in the NSPS.

[58] EPA, ''Strategies for Reducing Residential Wood Smoke,'' Publication No. EPA–456/B–13–001, revised March 2013.

[59] See *e.g.,* South Coast Air Quality Management District Rule 445 (amended May 3, 2013), paragraph (f)(7)(A), and Sacramento Metropolitan Air Quality Management District Rule 421 (amended September 24, 2009), paragraph 112.

Plan states that if additional funding becomes available in the future, the District will offer more generous incentives to residents living outside city limits and consider expanding mandatory burning curtailment to the entire nonattainment area.[60]

c. Open Burning (NSAQMD Rules 300–317)

The District enforces open burning requirements in NSAQMD Rules 300—317 that apply to a variety of area sources such as agricultural burning, forest burning, range improvement, and residences. The District's smoke management program ensures that open burning occurs on days with good dispersion to minimize the impact from $PM_{2.5}$ concentrations. The EPA approved these rules into the SIP at 62 FR 48480 (September 16, 1997) and 64 FR 45170 (August 19, 1999).

Within the Portola nonattainment area, wood smoke can originate from open burning or from home heating devices. Residents of this area occasionally burn yard debris in open piles. Land managers (*e.g.,* U.S. Forest Service) perform prescribed burns of timber harvest waste to promote fire safety and maintain forest health. Both residents and land managers must request a burn permit prior to starting a fire. The District, in coordination with CARB, makes a declaration of either a permissive Burn Day or a No Burn Day in the context of open burning only. It does not apply to wood burning devices and is distinct from the more stringent No Burn Day program previously described in the City Ordinance. The District and CARB consider a number of factors in making no-burn declarations to ensure that smoke from open burning will not unduly contribute to the ambient $PM_{2.5}$ mass.[61]

To further reduce $PM_{2.5}$ emissions during winter, the Portola $PM_{2.5}$ Plan contains a commitment by the District to strengthen its open burning rule in 2019. The District is assessing the feasibility of green waste collection in the nonattainment area and will consider whether to adopt open burning requirements similar to District Rule 318 (''American Valley Burning Restrictions''), which prohibits the open burning of yard waste and debris or other rubbish from November 15 to March 15 in a portion of the American Valley containing Quincy and East Quincy.[62]

d. Mobile Source Measures

Mobile sources account for approximately 3% of the overall direct $PM_{2.5}$ emissions inventory in the Portola $PM_{2.5}$ nonattainment area. The Plan projects that CARB's continued implementation of adopted mobile source control measures[63] will decrease direct $PM_{2.5}$ emissions by 2021 and provide 7% of the total reductions needed to attain the 2012 $PM_{2.5}$ NAAQS. As part of the State's RACM analysis for the mobile source control program, described on pages 86–90 of the Portola $PM_{2.5}$ Plan, CARB concludes that in light of the comprehensiveness and stringency of its mobile source program, all RACM under CARB's jurisdiction are already being implemented.

e. Visible Emissions (NSAQMD Rule 202)

Rule 202 limits visible emissions (*e.g.,* particulates) and is enforced by NSAQMD. The EPA approved this rule into the SIP at 62 FR 48480 (September 16, 1997). Enforcement of Rule 202 will help identify households with highly visible emissions that may still be using uncertified wood stoves and possibly eligible for the change-out program. Rule 202 prohibits any person from discharging into the atmosphere any air contaminant for more than 3 minutes in any hour that is as dark as, or darker in shade than, that designated as No. 1 on the Ringelmann Chart or ''of such opacity as to obscure an observer's view to a degree equal to or greater than does smoke.''[64]

f. Educational Campaign

The District is developing other voluntary measures to reduce the impact of wood smoke on $PM_{2.5}$. The District is conducting an aggressive outreach and educational campaign to help residents understand the benefits of changing from an old wood stove to a cleaner home heating device and the importance of clean burning. The District worked closely with the City of Portola and enlisted outreach partners such as the local hardware and grocery store, post office, library, senior community center, and schools to assist in the distribution of educational materials and advertise the change-out program. In addition, the Ordinance includes a requirement that retailers and contractors provide educational materials with the sale of a wood-burning device.[65]

g. Voluntary Wood Burning Curtailment Program

On November 1, 2017, the District began implementing ''Clear the Air; Check Before You Light,'' a voluntary wood burning curtailment program that runs during the peak wood-burning period (*i.e.,* November 1 through February 28) in the Portola nonattainment area. When conditions exist for potentially poor air quality, the District will issue an air quality advisory to notify the public. When an advisory is triggered the District will recommend avoiding the use of any wood burning device (including wood stoves, fireplaces, fire pits and cook stoves) to help reduce potential health impacts and possibly prevent an exceedance of federal/state air pollution standards. Use of alternative sources of heat such as electricity, propane or kerosene, are encouraged when an advisory is announced.[66]

5. The EPA's Evaluation and Proposed Action

As part of the EPA's March 5, 2018, final action approving the City Ordinance into the SIP, the EPA considered whether the City Ordinance includes all technologically and economically feasible measures for wood burning devices. We compared the provisions in the City Ordinance with other wood burning rules and with the recommendations in the EPA's guidance document entitled ''Strategies for Reducing Residential Wood Smoke.''[67] Based on this evaluation, we concluded that the City Ordinance and the District's wood stove change-out program collectively implement RACM and additional reasonable measures for residential wood burning devices in the Portola nonattainment area.[68]

[60] Portola $PM_{2.5}$ Plan, Table 4, 84–85.

[61] Id. at 22.

[62] Id. at 36.

[63] CARB has unique authority under CAA section 209 (subject to a waiver or authorization by the EPA) to adopt and implement new emissions standards for many categories of vehicles and engines. CARB has adopted standards and other requirements related to the control of emissions from numerous types of new and in-use on-road and off-road vehicles and engines, such as trucks, buses, motorcycles, passenger cars, off-road engines (gasoline and diesel-powered), off-road diesel fueled fleets, portable equipment, and marine engines. Generally, these regulations have been submitted and approved as revisions to the California SIP. See, *e.g.,* 77 FR 20308 (April 4, 2012), 81 FR 39424 (June 16, 2016), 82 FR 14446 (March 21, 2017), and 83 FR 23232 (May 18, 2018).

[64] NSAQMD Rule 202, ''Visible Emissions'' (adopted September 11, 1991).

[65] Portola $PM_{2.5}$ Plan, 34–35.

[66] NSAQMD Press Release dated October 25, 2017, Greater Portola Area Wintertime Advisory Program in Effect.

[67] EPA, ''Strategies for Reducing Residential Wood Smoke,'' Publication No. EPA–456/B–13–001, revised March 2013, and EPA, ''Residential Wood Combustion Summary of Measures—DRAFT,'' January 2016.

[68] 83 FR 9213 (November 3, 2017) and EPA, Region IX Air Division, ''Technical Support Document for the EPA's Rulemaking for the

Continued

We note that the curtailment provisions of the City Ordinance do not take effect until 2021. Given that uncertified wood stoves are currently the primary source of heat for many residents in Portola, we do not believe it is reasonable to require implementation of a mandatory curtailment program prior to implementation of the District's five-year wood stove change-out program, which provides funding for the replacement of 600 uncertified wood stoves between 2016 and 2020. After these incentive funds are disbursed, however, implementation of a mandatory curtailment program in the Portola nonattainment area is feasible. We propose to find that the District's enforceable commitments concerning implementation of the wood stove change-out program and related monitoring and reporting commitments implement RACM for the control of $PM_{2.5}$ emissions from residential wood burning in the Portola area. Because the curtailment provision in the City Ordinance otherwise meets the definition of RACM but is implemented during the period beginning 4 years after the area's designation as nonattainment and before the attainment date, we consider it an additional reasonable measure for purposes of attaining the 2012 $PM_{2.5}$ NAAQS.

Under the CAA, the EPA is charged with establishing national emissions limits for mobile sources. States are generally preempted from establishing such limits except for California, which can establish these limits subject to EPA waiver or authorization under CAA section 209 (referred to herein as ''waiver measures''). Over the years, the EPA has issued waivers (for on-road vehicles and engines measures) or authorizations (for non-road vehicle and engine measures) for many mobile source regulations adopted by CARB.

In the past, the EPA allowed California to take into account emissions reductions from waiver measures, notwithstanding the fact that these regulations had not been approved as part of the California SIP. However, in response to the decision by the United States Court of Appeals for the Ninth Circuit in *Committee for a Better Arvin* v. *EPA,*[69] the EPA approved waiver measures as revisions to the California SIP.[70] CARB's mobile source program extends beyond regulations that are subject to the waiver or authorization process set forth in CAA section 209 to include standards and other requirements to control emissions from in-use heavy duty trucks and buses, gasoline and diesel fuel specifications, and many other types of mobile sources. Generally, these regulations have been submitted and approved as revisions to the California SIP.[71] The Portola $PM_{2.5}$ Plan relies to a very small extent on emissions reductions from implementation of the waiver measures through the use of emissions models such as EMFAC2014.

The EPA is proposing to find that the District's enforceable commitment to implement the voluntary wood stove change-out program, the City Ordinance, CARB's mobile source program, the District's commitment to strengthen its open burning measure, and other controls on sources in the nonattainment area together implement all RACM and RACT for the control of direct $PM_{2.5}$ in the Portola nonattainment area. This collective set of $PM_{2.5}$ control requirements, particularly with respect to homes where wood-burning is the sole source of heat, is at least as stringent as analogous measures implemented in other Moderate $PM_{2.5}$ nonattainment areas with similar geography and demographics. Accordingly, the EPA is proposing to approve the $PM_{2.5}$ RACM demonstration in the Portola $PM_{2.5}$ Plan as meeting the requirements of CAA sections 172(c)(1) and 189(a)(1)(C) and 40 CFR 51.1009.

D. Major Stationary Source Control Requirements Under CAA Section 189(e)

Section 189(e) of the Act specifically requires that the control requirements applicable to major stationary sources of direct $PM_{2.5}$ also apply to major stationary sources of $PM_{2.5}$ precursors, except where the Administrator determines that such sources do not contribute significantly to $PM_{2.5}$ levels that exceed the standards in the area.[72] The control requirements applicable to major stationary sources of direct $PM_{2.5}$ in a Moderate $PM_{2.5}$ nonattainment area include, at minimum, the requirements of a NNSR permit program meeting the requirements of CAA sections 172(c)(5) and 189(a)(1)(A). In the $PM_{2.5}$ SIP Requirements Rule, we established a deadline for states to submit NNSR plan revisions to implement the $PM_{2.5}$ NAAQS 18 months after an area is initially designated and classified as a Moderate nonattainment area.[73] On September 6, 2016, California submitted the required NNSR SIP revisions. We are not proposing any action on the NNSR submittal at this time and will address these requirements in a separate rulemaking.

E. Air Quality Modeling

1. Requirements for Air Quality Modeling

Section 189(a)(1)(B) of the CAA requires that a plan for a Moderate $PM_{2.5}$ nonattainment area include a demonstration (including air quality modeling) that the plan will provide for attainment by the applicable attainment date, or a demonstration that attainment by such date is impracticable. An attainment demonstration must show that the control measures in the plan are sufficient for attainment of the NAAQS by the attainment date. The attainment demonstration predicts future ambient concentrations for comparison to the NAAQS, making use of available information on ambient concentrations, meteorology, and current and projected emissions inventories, including the effect of control measures in the plan. This information is typically used in conjunction with a computer model of the atmosphere.

The EPA has provided additional modeling requirements and guidance for modeling analyses in the ''Guideline on Air Quality Models'' (''Guideline'').[74] For areas where emissions are dominated by primary PM_{10} or $PM_{2.5}$ emitted by many small dispersed sources, such as fugitive dust or residential wood burning, states have historically used a ''rollback model'' to evaluate the impacts of emissions on ambient air quality. EPA recently

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California State Implementation Plan, Northern Sierra Air Quality Management District, City of Portola Ordinance 344, Wood Stove and Fireplace Ordinance,'' July 2017.

[69] *Committee for a Better Arvin* v. *EPA,* 786 F.3d 1169 (9th Cir. 2015) (''*Arvin*''). In *Arvin,* the Ninth Circuit concluded that CAA section 110(a)(2)(A) requires that all state and local control measures on which SIPs rely to attain the NAAQS, including California waiver measures, be included in the SIP and thereby subject to enforcement by the EPA and the general public. This decision struck down the EPA's longstanding practice of approving California plans that rely on emissions reductions from waiver measures notwithstanding their lack of approval as part of the SIP.

[70] See, *e.g.,* 81 FR 39424 (June 16, 2016), 82 FR 14447 (March 21, 2017), and 83 FR 23232 (May 18, 2018).

[71] See, *e.g.,* the EPA's approval of standards and other requirements to control emissions from in-use heavy-duty diesel-powered trucks, at 77 FR 20308 (April 4, 2012), revisions to the California on-road reformulated gasoline and diesel fuel regulations at 75 FR 26653 (May 12, 2010), and revisions to the California motor vehicle I/M program at 75 FR 38023 (July 1, 2010).

[72] General Preamble, 13539 and 13541–42. There are no major stationary sources (existing or anticipated) of direct $PM_{2.5}$ or $PM_{2.5}$ precursors in the Portola $PM_{2.5}$ nonattainment area.

[73] 81 FR 58528 at 58010 (August 24, 2016).

[74] 40 CFR part 51 Appendix W, ''Guideline on Air Quality Models,'' 82 FR 5182, January 17, 2017; available at *https://www.epa.gov/scram/clean-air-act-permit-modeling-guidance.*

approved rollback-based attainment demonstrations in the wood smoke-dominated Klamath Falls and Oakridge-Westfir $PM_{2.5}$ nonattainment areas in Oregon.[75] In a simple rollback model, the monitored ambient concentration (excluding any unchanging background concentration) is assumed to be proportional to emissions; when emissions are reduced by a given percentage, the concentration is assumed to scale or ''roll back'' by the same percentage. A variant is ''proportional rollback,'' in which rollback is applied to each emission source category individually, then summed in proportion to their ambient contributions. The proportions, or source apportionment, can be estimated using chemically speciated $PM_{2.5}$ measurements. This can be done with a receptor model such as the Chemical Mass Balance model or the PMF model, which compute the source category contributions that are the best statistical fit to the measured chemical species concentrations, given measured or estimated source species profiles.

2. Modeling in the Portola $PM_{2.5}$ Plan

The attainment demonstration, described in section V of the Plan, is based on proportional rollback, with source category proportions (source apportionment) determined using the PMF receptor model. Section V of the Plan describe the concentration starting point for the rollback, background concentrations, the mapping of ambient $PM_{2.5}$ components to $PM_{2.5}$ emission categories, and the rollback calculation procedure. In addition to a ''Traditional Rollback,'' the Plan also provides an ''Alternative Rollback,'' which is based on a more precise accounting of the impacts of various wood stove types.

The concentration starting point for rollback is typically a base year design value concentration that corresponds to the base year emissions. Instead of using the 2013 design value for the base year, the Plan used 13.9 $\mu g/m^3$, the average of the design values from 2013, 2014, and 2015. Because a single design value is a three-year average, the Plan's procedure gives a five-year weighted average centered on 2013, using concentrations from 2011–2015. This was done to reduce the effect of year-to-year variability, and to avoid basing the attainment demonstration solely on the unusually warm, dry years of 2011–2013.

In rollback, the area's emissions are used to scale only the portion of the concentration due to sources in the nonattainment area, excluding background concentrations. CARB chose speciated $PM_{2.5}$ concentrations from Bliss State Park next to Lake Tahoe in the Plan as background concentrations that would occur in the airshed in the absence of local anthropogenic emissions.

The State determined the contributions of emission source categories to ambient $PM_{2.5}$ using the PMF receptor model, described in Plan Appendix A. PMF was applied to 2011–2014 speciated $PM_{2.5}$ data for 15 chemical species. PMF determines source species profiles and source contribution levels that best fit the full set of data. The result was a source apportionment with estimates for the ambient contributions of six source categories: Wood burning, refuse burning, mobile, airborne soil, secondary nitrate, secondary sulfate.

The contributions of these source categories to the rollback base year $PM_{2.5}$ concentration are shown in the Figure 9 pie chart in the Plan, ''2011–2015 Annual Average $PM_{2.5}$ Source Contribution.'' Wood burning contributed by far the largest amount, 76.1%; mobile sources contributed 7.6%; airborne soil 3.9%; and refuse burning 2.5%. Secondary $PM_{2.5}$ in the form of ammonium nitrate and ammonium sulfate contributed 5.1% and 4.8%, respectively, of ambient $PM_{2.5}$ concentrations. Figure 11 in the Plan shows the strong correlation between concentrations of $PM_{2.5}$ and of levoglucosan, a marker for wood combustion.[76] This correlation corroborates the significant contribution of wood burning to Portola's ambient $PM_{2.5}$ levels.

Table 12 in the Portola $PM_{2.5}$ Plan shows the State's rollback calculation, in which the percent changes in the 2013 emissions of the inventory source categories are applied to their respective 2013 base year ambient contributions (excluding background). The main emissions change between base year and future emissions is for wood burning, reflecting the effect of the wood stove change-out program. For this source category, the State calculated emission reductions due to the wood stove change-out program during that period for each of the years from 2017 to 2021 using the EPA's Burn Wise Emission Calculator.[77] CARB applied reductions in tpd to the baseline emission inventory projections for annual average direct $PM_{2.5}$ emissions from residential wood burning in Table 8 of Appendix B in the Plan.

The Plan includes future year contributions from 2017 to 2021 for each source category and a total concentration for each year. Only the wood burning emissions differed for each of these years; emissions from other categories reflected their 2021 values. CARB then averaged the predicted concentrations for the 2019–2021 period to arrive at a 2021 predicted design value. The State's procedure of averaging projected concentrations for the three individual years 2019, 2020, and 2021 is similar to the procedure used for computing the 2021 monitored design value. The result of the rollback was a predicted 2021 $PM_{2.5}$ annual design value of 12.03 $\mu g/m^3$; with the rounding to one digit prescribed by 40 CFR 50 App. N, section 4.3, this meets the 12.0 $\mu g/m^3$ NAAQS.

Section V.F. of the Plan provided an ''Alternative Rollback'' model that more precisely quantified the effect of the stove change-out program on wood burning emissions. For this rollback model, all other source category emissions and their ambient contributions were assumed to remain at their base year 2013 levels. CARB calculated wood stove emissions and contributions separately for new certified stoves and uncertified stoves. This approach used the individual heating efficiency and emissions factors for these sources from the EPA's Burn Wise Emission Calculator and accounted for the number of each type of stove and the number of stove changeouts expected to occur in 2019, 2020, and 2021. CARB applied the fractional changes in emissions for these years to the wood burning portion of the 5-year weighted 13.9 $\mu g/m^3$ design value, and the three years' results averaged to arrive at a 2021 design value of 11.1 $\mu g/m^3$, which meets the 12.0 $\mu g/m^3$ NAAQS.

3. The EPA's Evaluation and Proposed Action

The EPA evaluated the State's choice of model for the attainment demonstration, as well as how the State applied the model, in terms of

[75] 81 FR 36176 (June 6, 2016), docket EPA–R10–OAR–2013–0005 for Klamath Falls; and 83 FR 5537 (February 8, 2018), docket EPA–R10–OAR–2017–0051 for Oakridge-Westfir.

[76] Levoglucosan is an organic compound formed from the pyrolysis of carbohydrates, such as starch and cellulose, the key component of wood. As a result, levoglucosan is often used as a chemical tracer for biomass burning in atmospheric chemistry studies, particularly with respect to airborne particulate matter. Jordan, T., Seen, A., Jacobsen, G., 2006, ''Levoglucosan as an atmospheric tracer for woodsmoke,'' *Atmospheric Environment,* 40 (27): 5316–5321.

[77] Portola $PM_{2.5}$ Plan Appendix E, Figure 1 and Table 2. The Burn Wise Emission Calculator is available at *https://www.epa.gov/burnwise/burn-wise-additional-resources.*

concentration starting point, background concentrations, mapping of emissions to concentrations, and the calculations used. The choice of an appropriate model for the District's attainment demonstration was informed by particular circumstances in the Portola $PM_{2.5}$ nonattainment area, most notably the dominance of primary $PM_{2.5}$ in ambient concentrations, the dispersed nature of the many small area sources responsible for it, and the relatively small fraction that is composed of secondary particulate matter. As discussed in the Plan, wood burning emissions of organic carbon and elemental carbon contribute 76% and 8%, respectively, of annual $PM_{2.5}$ concentrations in the Portola area.[78] Based on examination of meteorology, $PM_{2.5}$ emissions data and ambient $PM_{2.5}$ data, the Plan provides a well-supported demonstration that residential wood burning is the dominant contributor to the $PM_{2.5}$ air quality problem in the Portola area. The key assumption in a rollback analysis, *i.e.,* that ambient concentrations are proportional to emissions, is true for these primary $PM_{2.5}$ emissions. The EPA modeling guidance cited above does not mention rollback for attainment demonstrations but also does not fully address situations like that in the Portola area, where the dominant contributor to ambient $PM_{2.5}$ is primary $PM_{2.5}$ from many small area sources. Given that the key contributor to the air quality problem in the Portola area is already understood, neither photochemical grid models nor dispersion models would provide much information that is not already available from the rollback model. The EPA agrees that the use of rollback analysis under these facts and circumstances is consistent with EPA guidance and is appropriate for the Portola attainment demonstration and meets the Clean Air Act requirement for air quality modeling.

In addition, the EPA agrees that the Plan identifies an appropriate starting point concentration for the rollback model. The use of a five-year weighted average for the design value is not standard for rollback, but is consistent with the EPA's recommendation for the starting point of photochemical modeling attainment demonstrations. The Plan contains a reasonable justification for using a longer period to determine the starting point for the design value, based on the variable meteorology of the 2011–2015 period; the chosen procedure thus yields a more representative concentration that is appropriate for the rollback attainment demonstration. It makes for a more robust attainment demonstration that is not overly dependent on meteorological conditions in any one particular year.

The Plan contains convincing arguments for the State's selection of Bliss State Park as the source of background concentrations. The EPA agrees that the Plan's estimates for background concentrations are appropriate. The source attribution using PMF carried out for the Plan provides a good basis for the rollback model. The States also used several conservative assumptions, such as keeping certain ambient components constant instead of declining with emissions, so that the final concentration result is likely higher than would be expected with a more precise accounting.

As noted above, the Plan used the average of projections for the individual years 2019, 2020, and 2021 for the future year projection. In comparison with projecting just the single attainment year emissions and concentration, the approach used by the State is conservatively high, because the 2019 and 2020 projections do not account for all of the emission reductions from stove changeouts that will occur by the 2021 attainment year.[79]

The Plan also provides a second rollback model, termed ''Alternative Rollback.'' A key difference between the two rollback approaches is that the ''Alternative'' rollback relies more completely on the emission methodology for the residential wood burning category in the Burn Wise Emission Calculator. For both rollback approaches, the wood stove change-out program was by far the greatest source of emission and concentration reductions. The approaches relied on PMF source apportionment for the ambient effect of reductions, and they accounted for both the $PM_{2.5}$ reductions per amount of wood burned in certified stoves and for the lower amount of wood burned from their increased burn efficiency. The ''Alternative'' rollback corroborated the results of the ''Traditional'' rollback model and provides additional confidence in the attainment demonstration.

The EPA finds that the State correctly implemented the rollback model in a reasonable way, used an appropriate mapping of ambient $PM_{2.5}$ components to emission inventory categories, and incorporated an appropriate degree of conservatism. For these reasons, the EPA finds that the rollback modeling in the Plan is adequate for purposes of supporting the Portola attainment demonstration for the 2012 annual $PM_{2.5}$ NAAQS.

F. Attainment Demonstration

1. Requirements for Attainment Demonstrations

CAA section 189(a)(1)(B) requires that each state in which all or part of a Moderate $PM_{2.5}$ nonattainment area is located submit an attainment plan that includes, among other things, either a demonstration (including air quality modeling) that the plan will provide for attainment by the applicable attainment date or a demonstration that attainment by such date is impracticable. In addition, CAA section 172(c)(1) generally requires, for each nonattainment area, a plan that provides for the implementation of all RACM and RACT as expeditiously as practicable and provides for attainment of the NAAQS. The EPA interprets these two provisions together to require that an attainment demonstration for a Moderate $PM_{2.5}$ nonattainment area meet the following criteria:

(1) The attainment demonstration must show the projected attainment date for the Moderate nonattainment area that is as expeditious as practicable;

(2) The attainment demonstration must meet the requirements of 40 CFR part 51, appendix W and must include inventory data, modeling results, and emission reduction analyses on which the state has based its projected attainment date;

(3) The base year for the emissions inventory required for the attainment demonstration must be one of the 3 years used for designations or another technically appropriate inventory year if justified by the state in the plan submission; and

(4) The control strategies modeled as part of the attainment demonstration must be consistent with the control strategy requirements under 40 CFR 51.1009(a), including the requirements for RACM/RACT and additional reasonable measures.[80]

[78] Portola $PM_{2.5}$ Plan, 20 (Figure 9, 2011–2015 Annual Average $PM_{2.5}$ Source Contribution).

[79] The attainment demonstration need only show that emissions in the attainment year and the resulting projected concentration are consistent with attainment of the NAAQS; it does not need to show that the projected three-year design value meets the NAAQS. Future emissions need only be projected to the attainment year itself. See EPA, Office of Air Quality Planning and Standards, ''Modeling Guidance for Demonstrating Attainment of Air Quality Goals for Ozone, $PM_{2.5}$, and Regional Haze,'' December 2014 Draft, 17 (section 2.3.2, Future Year Selection); available at *https://www.epa.gov/scram/state-implementation-plan-sip-attainment-demonstration-guidance.*

[80] 40 CFR 51.1011(a).

In addition, the attainment demonstration must provide for the implementation of all control measures needed for attainment as expeditiously as practicable and no later than the beginning of the year containing the applicable attainment date.[81]

Under longstanding guidance, the EPA has recommended presumptive limits on the amounts of emission reductions from voluntary and other nontraditional measures that may be credited in an attainment plan. Specifically, for voluntary stationary and area source measures, the EPA has identified a presumptive limit of 6% of the total amount of emission reductions required for RFP, attainment, or maintenance demonstration purposes.[82] The EPA may, however, approve measures for SIP credit in amounts exceeding the presumptive limits ''where a clear and convincing justification is made by the State as to why a higher limit should apply in [its] case.'' [83]

We discuss each of these requirements and recommendations for attainment demonstrations below.

2. Attainment Demonstration in the Portola $PM_{2.5}$ Plan

Table 4 shows the relationship between the 2013 base year inventory and the 2021 attainment year inventory before and after the wood stove change-out program. The changes to the inventory reflect a 17% reduction in the direct $PM_{2.5}$ emissions inventory is needed to demonstrate attainment by December 31, 2021.

TABLE 4—SUMMARY OF ATTAINMENT DEMONSTRATION

Category	Direct $PM_{2.5}$ (tpd)
a. 2013 Baseline Emissions	0.490
b. Projected 2021 Emissions without Change-out Program [a]	0.486
c. Reductions from Wood Stove Change-out Program [b]	0.062
d. Attainment Year Emission Inventory = Projected 2021 Emissions (b) minus Reductions from Wood Stove Change-out Program (c)	0.424

[a] Mobile source reductions of 0.006 tpd from previously adopted measures credited in projected 2021 emission inventory. See Table 8 in Appendix B of Portola $PM_{2.5}$ Plan.

[b] The average reduction for the 2019–2021 time frame is 0.062 tpd. Source: Portola $PM_{2.5}$ Plan, Table 4, 37.

Traditional rollback analysis as described in section IV.B. of this proposed rule indicates that direct $PM_{2.5}$ reductions from the woodstove change-out program (*i.e.,* 0.062 tpd average for 2019–2021 as used in the rollback) and CARB's mobile source program (*i.e.,* 0.006 tpd) result in a predicted 2021 design value of 12.03 μg/m^3 and is adequate for the State to demonstrate that the Portola area will attain the 2012 annual $PM_{2.5}$ standards by the outermost statutory attainment date as a Moderate nonattainment area of December 31, 2021.[84] Table 5 below shows the projected cumulative impact of the change-out program on emission reductions and design values. The cumulative reductions and design value calculations are offset by one year to allow for full deployment of stove changeouts in a prior year. Because the bulk of the changeouts presumably occur during the late spring, summer, and early fall, the October-December period of a given year would likely see the greatest air quality benefits from that year's changeouts, but the January-March period would not. The State's calculations result in a conservative estimate of the benefits of the wood stove change-out program because the State is only taking credit for changeouts that have been in effect for a full year. Thus, the projected benefit of changing out 600 stoves will not be fully reflected in the design value until the 2023 design value, which will include 2021, 2022, and 2023, the first period of three consecutive years with the 600 new certified devices in operation. The Portola $PM_{2.5}$ Plan also includes an alternative rollback modeling demonstration that results in a 2021 DV of 11.1 μg/m^3. The alternative rollback is described in section IV.B. of this proposed rule and in section V.F. of the Plan.

TABLE 5—RELATIONSHIP BETWEEN CUMULATIVE STOVE CHANGEOUTS, REDUCTIONS, AND DESIGN VALUES FROM ROLLBACK ANALYSIS

Year	Stove change-outs	Cumulative stove changeouts credited towards attainment	Cumulative direct $PM_{2.5}$ reductions in rollback analysis credited towards attainment (tpd)	Annual average DV (μg/m^3)
2016	100	0	0	Not calculated.
2017	100	100	.013	13.22.
2018	150	200	.026	12.91.
2019	150	350	.045	12.45.

[81] Id.

[82] See, *e.g.,* EPA, Office of Air Quality Planning and Standards, ''Incorporating Emerging and Voluntary Measure in a State Implementation Plan (SIP),'' October 4, 2004 (''2004 Emerging and Voluntary Measures Guidance''), 9; EPA, Office of Air Quality Planning and Standards and Office of Transportation and Air Quality, ''Guidance on Incorporating Bundled Measures in a State Implementation Plan,'' August 16, 2005 (''2005 Bundled Measures Guidance''), 8; and EPA, Office of Air Quality Planning and Standards, ''Guidance for Quantifying and Using Emission Reductions from Voluntary Woodstove Changeout Programs in State Implementation Plans,'' EPA–456/B–06–001, January 2006 (''2006 Woodstove Guidance''), 4.

[83] See, *e.g.,* 2004 Emerging and Voluntary Measures Guidance, 9; 2005 Bundled Measures Guidance, 8, n. 6, and 2006 Woodstove Guidance, 4.

TABLE 5—RELATIONSHIP BETWEEN CUMULATIVE STOVE CHANGEOUTS, REDUCTIONS, AND DESIGN VALUES FROM ROLLBACK ANALYSIS—Continued

Year	Stove change-outs	Cumulative stove changeouts credited towards attainment	Cumulative direct $PM_{2.5}$ reductions in rollback analysis credited towards attainment (tpd)	Annual average DV ($\mu g/m^3$)
2020	100	500	.065	11.97.
2021	0	600	.077	11.68.
Projected 2021 DV (average of 2019–2021)				12.03.

Source: Portola $PM_{2.5}$ Plan, 56–57 (tables 10 and 11).

The Portola $PM_{2.5}$ Plan relies on the wood stove change-out program to achieve 0.077 tpd of $PM_{2.5}$ emission reductions in 2021, approximately 93% of the $PM_{2.5}$ reductions relied upon in the Plan to demonstrate attainment by the December 31, 2021 attainment date. The remaining 7% of necessary emission reductions will be achieved through ongoing implementation of federal emission reduction programs and CARB's mobile source control program. To justify this extensive reliance on the voluntary wood stove change-out program for attainment purposes, the Plan: (1) Provides a detailed description of the clear need for $PM_{2.5}$ emission reductions from wood stove changeouts in the Portola area, (2) describes features of the wood stove program that provide a greater level of certainty in the quantification of emission reductions than that normally associated with voluntary programs, and (3) includes a detailed, enforceable commitment by the District to monitor and report on program implementation and to submit substitute measures by specific dates if necessary to remedy any shortfall in required emission reductions.[85]

The $PM_{2.5}$ problem in the Portola nonattainment area is overwhelmingly caused by residential wood smoke. The District estimates that between 2011 and 2015, residential wood smoke emissions contributed 76% of annual average $PM_{2.5}$ concentrations and 86% of daily $PM_{2.5}$ concentrations on days exceeding 35 $\mu g/m^3$ at the $PM_{2.5}$ monitor located in the City of Portola. Other sources contributing to annual average $PM_{2.5}$ concentrations include refuse burning (2.5%), mobile sources (7.6%), secondary sulfates (4.8%), secondary nitrates (5.1%), and airborne soil (3.9%).[86]

The average daily low temperature from October to March in the Portola nonattainment area is 21.8 degrees Fahrenheit with an average of 218 frost days per year, necessitating ample home heating.[87] CARB estimates that of 2,458 households in the nonattainment area, 1,401 use wood burning devices as a primary or secondary heating source. Of those wood burning devices, 664 are uncertified woodstoves.[88] The 2011–2015 median household income in the Portola area was 54% that of the state median and home values were 40% of the state median.[89] The unemployment rate for the City of Portola averaged 10.6% during the 2014–2016 time frame.[90] According to the District, most residents cannot afford to replace their uncertified wood burning devices without significant financial assistance.[91] Natural gas is not an option for residential heating because it is not available in the Portola nonattainment area.[92] While propane and electric options are available, the abundance of wood in the area (at no or low cost) and high cost of these alternative forms of residential heat limit their feasibility as primary heat sources.[93]

The bowl-shaped topography, cold stagnant winters, and extensive use of residential wood stoves in the Portola nonattainment area have caused evening and morning $PM_{2.5}$ concentrations to peak during the winter. According to the District, the diurnal and seasonal pattern of $PM_{2.5}$ concentrations peaking in the winter evening and overnight hours further suggests that residential wood burning is the primary cause of elevated $PM_{2.5}$ concentrations in the Portola area rather than open burning of agricultural wastes, forest management, and other burning activities.[94] Although the District has implemented many other control measures for other sources of direct $PM_{2.5}$ emissions in the area,[95] these measures alone are not sufficient to provide for attainment in the Portola area given the small percentage of the $PM_{2.5}$ emissions inventory attributed to these emission sources.

The Plan describes a number of features of the wood stove program that provide a greater level of certainty in the quantification of emission reductions than that normally associated with voluntary programs. First, full funding is already secured to entirely fund the replacement of 600 wood stoves, which the State projects to be sufficient to provide for attainment of the 2012 annual $PM_{2.5}$ NAAQS by the applicable attainment date. Second, the emission reduction projections are conservative and relatively well understood compared to other voluntary programs. This is because wood stove technologies are generally well understood; wood stoves usually remain in the residence in which they are installed and have a long useful life; usage is generally predictable due to the fixed size of the home and heating needs; emission control technology is unlikely to be

[85] EPA, Region IX Air Division, ''Technical Support Document for EPA's Notice of Proposed Rulemaking for the California State Implementation Plan, Evaluation of incentive-based emission reductions relied upon in the Portola Fine Particulate Matter ($PM_{2.5}$) Attainment Plan,'' December 2017.

[86] Portola $PM_{2.5}$ Plan, 20.

[87] Id. at 8–9.

[88] Email dated November 29, 2017, from Katarzyna Turkiewicz, CARB, to Rynda Kay, EPA, RE: questions about the number of wood stoves in the Portola nonattainment area.

[89] U.S. Census, 2011–2015 American Community Survey 5-year estimate for City of Portola, CA and State of California.

[90] Additional information on unemployment rates in Portola is available at *http://www.homefacts.com/unemployment/California/Plumas-County/Portola/96122.html.*

[91] Portola $PM_{2.5}$ Plan, 20.

[92] Id. at 29.

[93] The average residential electricity rate in the City of Portola is 17.87¢/kWh, which is approximately 50% greater than the national average rate. See Electricity Local at *http://www.electricitylocal.com/states/california/portola/.*

[94] Portola $PM_{2.5}$ Plan, 21.

[95] See Portola $PM_{2.5}$ Plan, 81–82, and our discussion of RACM/RACT and additional reasonable measures in section IV.D of this proposed rule.

tampered with; education campaigns and training requirements help ensure proper operation and fuel selection; and conservative emission factors are used in emission projections. Third, the program infrastructure is well-established. The State and District's 2017 annual report on the wood stove program shows that as of December 31, 2017, the program had successfully funded the replacement of 196 stoves.[96] The State and District estimated that replacement of these 196 uncertified stoves achieved 0.031 tpd of $PM_{2.5}$ emission reductions, 19% higher than the projected emissions reductions accounted for in the attainment demonstration, due to the fact that new stoves were cleaner than assumed in the attainment demonstration.[97]

Finally, the Plan includes detailed, enforceable commitments by the District to monitor and report on program implementation in advance of the attainment date and to submit substitute measures, if necessary, to remedy any shortfall in required emission reductions. Specifically, the District has committed to: Implement the necessary number of woodstove changeouts in accordance with specific program criteria provided in the SIP submission; to achieve, by identified dates, specific amounts of $PM_{2.5}$ emission reductions from projected baseline levels identified in the Portola $PM_{2.5}$ Plan; to submit annual reports to the EPA that identify the calculator used to quantify emission reductions and describe, among other things, the projects implemented, actions taken by the State to confirm project compliance, and any changes to program implementation forms; and to adopt and submit to the EPA, by specific dates, any substitute measures necessary to address a shortfall in required emission reductions. These commitments became federally enforceable under the CAA upon the EPA's approval of the commitments into the SIP.[98]

3. The EPA's Evaluation and Proposed Action

The EPA has reviewed the emissions inventories, RACM/RACT demonstration, air quality modeling, and control strategy fully described in the Portola $PM_{2.5}$ Plan.

In summary and as described in section IV.B of this action, the State used two modeling techniques to demonstrate attainment of the 2012 annual $PM_{2.5}$ NAAQS in the Portola nonattainment area. First, the State used a traditional rollback model to demonstrate attainment of the 2012 annual $PM_{2.5}$ NAAQS. Second, the State corroborated the results of the traditional rollback model by using an alternative rollback model to also demonstrate attainment. The results using the alternative rollback model provide additional confidence in the attainment demonstration. The EPA accepts these modeling approaches for the attainment demonstration in the Portola $PM_{2.5}$ Plan.

Consistent with the requirements of 40 CFR 51.1011(a), the attainment demonstration shows the projected attainment date that is as expeditious as practicable in the Portola area, meets the requirements of 40 CFR part 51, appendix W, and includes inventory data, modeling results, and emission reduction analyses on which the State has based its projected attainment date. In addition, the base year for the emissions inventory used in the attainment demonstration, 2013, is one of the three years used for designation of the Portola area as a nonattainment area [99] and the control strategies modeled as part of the attainment demonstration are consistent with the control strategy requirements under 40 CFR 51.1009(a), including the requirements for RACM/RACT and additional reasonable measures.

With respect to the wood stove change-out program, the EPA believes that the Portola $PM_{2.5}$ Plan provides a clear and convincing justification for more extensive reliance on a voluntary incentive program to achieve emission reductions necessary for attainment than the EPA normally recommends. First, the District has shown a clear need for additional reductions from the wood stove program, as additional regulatory measures for other $PM_{2.5}$ emission sources in the area are not sufficient to provide for attainment, and a mandatory curtailment on use of wood stoves on high-$PM_{2.5}$ winter days is not economically feasible for implementation at this time in the Portola area. Second, the State and District have identified a number of program features that provide adequate assurance that the wood stove changeout program will achieve, at minimum, the emission reductions attributed to it in the attainment demonstration. Third, the District's SIP-approved enforceable commitment ensures that the EPA and citizens can hold the District responsible for achieving the emission reductions attributed to the wood stove change-out program in the attainment demonstration.

Finally, the City Ordinance includes a mandatory curtailment of uncertified stoves on days when the 24-hour average $PM_{2.5}$ concentration is forecasted to exceed 30 $\mu g/m^3$ that begins January 1, 2021. This clear prohibition on the operation of uncertified wood stoves on days with higher $PM_{2.5}$ levels after January 1, 2021, provides additional assurance that projected emission reductions will occur in time to provide for attainment of the 2012 $PM_{2.5}$ NAAQS by the December 31, 2021 attainment date.

For all of these reasons, we propose to approve the attainment demonstration in the Portola $PM_{2.5}$ Plan as satisfying the requirements of sections 189(a)(1)(B) and 172(c)(1) of the CAA and 40 CFR 51.1011(a).

G. Reasonable Further Progress and Quantitative Milestones

1. Requirements for Reasonable Further Progress and Quantitative Milestones

CAA section 172(c)(2) states that all nonattainment area plans shall require reasonable further progress (RFP). In addition, CAA section 189(c) requires that all $PM_{2.5}$ nonattainment area SIPs include quantitative milestones to be achieved every three years until the area is redesignated to attainment and which demonstrate RFP, as defined in CAA section 171(1). Section 171(1) defines RFP as ''such annual incremental reductions in emissions of the relevant air pollutant as are required by [Part D] or may reasonably be required by the Administrator for the purpose of ensuring attainment of the applicable [NAAQS] by the applicable date.'' Neither subpart 1 nor subpart 4 of part D, title I of the Act requires that a set percentage of emissions reductions be achieved in any given year for purposes of satisfying the RFP requirement.

For purposes of the $PM_{2.5}$ NAAQS, EPA has interpreted the RFP requirement to require that nonattainment area plans show annual incremental emission reductions sufficient to maintain generally linear progress toward attainment by the applicable deadline.[100] As discussed in EPA guidance in the Addendum to the General Preamble (''Addendum''),[101] requiring linear progress in reductions of direct $PM_{2.5}$ and any individual precursor in a $PM_{2.5}$ plan may be appropriate in situations where:

[96] CARB, ''Portola Wood Stove Change-Out, 2017 Progress Report, Covering Change-outs Completed Through 12/31/2017'' (''2017 Annual Report''), 3.

[97] Id. at 6 and 13–18.

[98] 83 FR 13871 (April 2, 2018).

[99] 80 FR 2206 (January 15, 2015).

[100] Addendum to the General Preamble, 59 FR 41998 (August 16, 1994), 42015.

[101] Id.

- The pollutant is emitted by a large number and range of sources,
- The relationship between any individual source or source category and overall air quality is not well known,
- A chemical transformation is involved (*e.g.,* secondary particulate significantly contributes to $PM_{2.5}$ levels over the standard), and/or
- The emission reductions necessary to attain the $PM_{2.5}$ standard are inventory-wide.[102]

The Addendum indicates that requiring linear progress may be less appropriate in other situations, such as:

- Where there are a limited number of sources of direct $PM_{2.5}$ or a precursor,
- Where the relationships between individual sources and air quality are relatively well defined, and/or
- Where the emission control systems utilized (*e.g.,* at major point sources) will result in swift and dramatic emission reductions.

In nonattainment areas characterized by any of these latter conditions, RFP may be better represented as step-wise progress as controls are implemented and achieve significant reductions soon thereafter. For example, if an area's nonattainment problem can be attributed to a few major sources, EPA guidance indicates that ''RFP should be met by 'adherence to an ambitious compliance schedule' which is likely to periodically yield significant emission reductions of direct $PM_{2.5}$ or a $PM_{2.5}$ precursor.'' [103]

Attainment plans for $PM_{2.5}$ nonattainment areas should include detailed schedules for compliance with emission regulations in the area and provide corresponding annual emission reductions to be realized from each milestone in the schedule.[104] In reviewing an attainment plan under subpart 4, the EPA considers whether the annual incremental emission reductions to be achieved are reasonable in light of the statutory objective of timely attainment. Although early implementation of the most cost-effective control measures is often appropriate, states should consider both cost-effectiveness and pollution reduction effectiveness when developing implementation schedules for its control measures and may implement measures that are more effective at reducing $PM_{2.5}$ earlier to provide greater public health benefits.[105]

The $PM_{2.5}$ SIP Requirements Rule establishes specific regulatory requirements for purposes of satisfying the Act's RFP requirements and provides related guidance in the preamble to the rule. Specifically, under the $PM_{2.5}$ SIP Requirements Rule, each $PM_{2.5}$ attainment plan must contain an RFP analysis that includes, at minimum, the following four components: (1) An implementation schedule for control measures; (2) RFP projected emissions for direct $PM_{2.5}$ and all $PM_{2.5}$ plan precursors for each applicable milestone year, based on the anticipated control measure implementation schedule; (3) a demonstration that the control strategy and implementation schedule will achieve reasonable progress toward attainment between the base year and the attainment year; and (4) a demonstration that by the end of the calendar year for each milestone date for the area, pollutant emissions will be at levels that reflect either generally linear progress or stepwise progress in reducing emissions on an annual basis between the base year and the attainment year.[106] States should estimate the RFP projected emissions for each quantitative milestone year by sector on a pollutant-by-pollutant basis.[107]

Section 189(c) requires that attainment plans include quantitative milestones that demonstrate RFP. The purpose of the quantitative milestones is to allow for periodic evaluation of the area's progress towards attainment of the NAAQS consistent with RFP requirements. Because RFP is an annual emission reduction requirement and the quantitative milestones are to be achieved every three years, when a state demonstrates compliance with the quantitative milestone requirement, it will demonstrate that RFP has been achieved during each of the relevant three years. Quantitative milestones should provide an objective means to evaluate progress toward attainment meaningfully, *e.g.,* through imposition of emission controls in the attainment plan and the requirement to quantify those required emission reductions. The CAA also requires states to submit milestone reports (due 90 days after each milestone), and these reports should include calculations and any assumptions made by the state concerning how RFP has been met, *e.g.,* through quantification of emission reductions to date.[108]

The CAA does not specify the starting point for counting the three-year periods for quantitative milestones under CAA section 189(c). In the General Preamble and Addendum, the EPA interpreted the CAA to require that the starting point for the first three-year period be the due date for the Moderate area plan submission.[109] Consistent with this longstanding interpretation of the Act, the $PM_{2.5}$ SIP Requirements Rule requires that each plan for a Moderate $PM_{2.5}$ nonattainment area contain quantitative milestones to be achieved no later than milestone dates 4.5 years and 7.5 years from the date of designation of the area.[110] Because the EPA designated the Portola area nonattainment for the 2012 annual $PM_{2.5}$ NAAQS effective April 15, 2015,[111] the applicable quantitative milestone dates for purposes of the Portola $PM_{2.5}$ Plan are October 15, 2019 and October 15, 2022.

2. RFP Demonstration and Quantitative Milestones in the Portola $PM_{2.5}$ Plan

The RFP demonstration and quantitative milestones are in section VI.A of the Portola $PM_{2.5}$ Plan. The Plan estimates that emissions of direct $PM_{2.5}$ will decline steadily from 2016 to 2021 and that emissions of direct $PM_{2.5}$ will generally remain below the levels needed to show step-wise progress toward attainment. According to the State and District, step-wise progress toward attainment is justified here because before the Portola area was designated as a $PM_{2.5}$ nonattainment area in 2015, the area was designated attainment for all NAAQS and was not required to implement any air quality control program. The development of the wood stove change-out program involved an intensive effort to secure funding, establish requirements for contractors/retailers, identify and educate potential applicants, review and process completed applications, coordinate the installation of new stoves along with the removal and destruction of the old stoves, and track the progress of the program at every step. Given the time necessary to develop this program, direct $PM_{2.5}$ emissions remained flat between 2013, the base year of the Plan, and 2016, the year that the District began to implement the wood stove change-out program. By 2016, however, the District had secured the necessary funding and developed the program infrastructure, enabling it to begin full implementation of its five-year voluntary wood stove change-out program to provide for attainment by December 2021, the earliest practicable attainment date for the 2012 annual

[102] Id.

[103] Id. at 42015.

[104] Id. at 42016.

[105] Id.

[106] 40 CFR 51.1012(a).

[107] 81 FR 58010, 58056 (August 24, 2016).

[108] Id. at 42016, 42017.

[109] General Preamble, 13539 and Addendum, 42016.

[110] 40 CFR 51.1013(a)(1).

[111] 80 FR 2206 (January 15, 2015).

$PM_{2.5}$ NAAQS in this area. The District estimates that the change-out program will achieve $PM_{2.5}$ emission reductions representing generally linear progress toward attainment between 2016 and 2022. Because the majority of the changeouts will be completed during the summer months when homeowners are not heating their homes, the District expects that direct $PM_{2.5}$ concentrations during the second half of the year will be lower than during the first half of the year. For RFP purposes, only the changeouts accomplished during the prior year are accounted for in the projected emission reductions (*i.e.,* only reductions from changeouts in effect for a full year are credited toward RFP).[112]

The Plan's emissions inventory shows that direct $PM_{2.5}$ is emitted predominantly by residential wood combustion.[113] The Plan specifically describes the District's procedures for calculating the 2019 and 2022 RFP targets for direct $PM_{2.5}$ and documents the District's conclusion that projected $PM_{2.5}$ emission levels, based on the adopted control strategy for the area, would meet the RFP targets in both milestone years, as shown in Table 6 below.[114]

TABLE 6—RFP DEMONSTRATION FOR DIRECT $PM_{2.5}$ (TPD)

Description	2013	2019	2022
Baseline inventory[a]	0.490	0.487	0.487
Reductions from RACM control strategy[a]	0.000	0.045	0.077
Inventory after RACM control strategy implemented[b]	0.49	0.44	0.41
RFP target[b]		0.44	0.41
RFP target achieved?		Yes	Yes

[a] Reductions from CARB's mobile source measures are already included in the projected 2019 and 2022 baseline inventories.
[b] Rounding to two decimal places (hundredths of a ton).

With respect to quantitative milestones, the Portola $PM_{2.5}$ Plan identifies RFP emissions levels for direct $PM_{2.5}$ in 2019 and 2022 that show, beginning in 2016, stepwise progress towards attaining the annual $PM_{2.5}$ NAAQS in 2021. The quantitative milestones are the differences in emissions between the future baseline inventories and the future controlled inventories for 2019 and 2022, *i.e.,* the projected emission reductions in each of these years, as shown in Table 7.[115]

TABLE 7—RFP PROJECTED EMISSION REDUCTIONS FOR QUANTITATIVE MILESTONE YEARS (TPD)

Sector	2019	2022
Wood Stove Changeouts	0.045	0.077
Total	0.045	0.077

Source: Portola $PM_{2.5}$ Plan, 71–72.

The Portola $PM_{2.5}$ Plan also contains an enforceable commitment by the District to implement specific numbers of wood stove change-out projects and to achieve specific amounts of $PM_{2.5}$ emission reductions through implementation of these projects by the 2019 RFP year and the 2021 attainment year.[116]

Finally, the Portola $PM_{2.5}$ Plan states the District's commitment to track, quantify, and report to the EPA on its implementation of the adopted control strategy and on the area's progress toward attainment. The Plan also states that the District will submit to the EPA a quantitative milestone report no later than 90 days after a given milestone date (*i.e.,* by January 15, 2020 and January 15, 2023, respectively), each of which will include the following information:

- Certification that the SIP strategy is being implemented consistent with RFP;
- Technical support, including calculations to document completion statistics for each quantitative milestone; and
- Discussion of whether the $PM_{2.5}$ NAAQS will be attained by the projected attainment date.[117]

3. The EPA's Evaluation and Proposed Action

a. Reasonable Further Progress Demonstration

As discussed in section IV.C. of this proposed rule, we are proposing to determine that $PM_{2.5}$ precursors do not contribute significantly to ambient $PM_{2.5}$ levels that exceed the 2012 annual $PM_{2.5}$ NAAQS in the Portola $PM_{2.5}$ nonattainment area and, accordingly, that no RFP demonstrations for $PM_{2.5}$ precursors are necessary for purposes of the 2012 annual $PM_{2.5}$ NAAQS in this area.

With respect to direct $PM_{2.5}$, we agree that step-wise progress is an appropriate measure of RFP for the 2012 $PM_{2.5}$ NAAQS in the Portola area. It is justified because direct $PM_{2.5}$ is emitted primarily from hundreds of individual residential wood combustion sources, and the District needed adequate time to secure funding and develop the infrastructure necessary to implement a wood stove change-out program. Accordingly, the emission reductions that result from this program did not begin until 2016, but will continue throughout the duration of the Plan.

The Portola $PM_{2.5}$ Plan documents the State's conclusion that it is implementing all RACM and RACT and additional reasonable measures for direct $PM_{2.5}$ as expeditiously as practicable and identifies projected levels of direct $PM_{2.5}$ emissions in 2019 and 2022 that reflect full implementation of the State's and

[112] Portola $PM_{2.5}$ Plan, 66–72.
[113] Id. at Appendix B.
[114] Id. at 66–70.
[115] Id. at 71–72.
[116] Id. at Appendix E, 10. The EPA approved this commitment into the SIP at 83 FR 13871 (April 2, 2018).
[117] Id. at 71.

District's attainment control strategy for direct $PM_{2.5}$.[118] The wood stove change-out program provides incremental reductions of direct $PM_{2.5}$ emission from 2016 to 2021. CARB's mobile source measures also provide incremental reductions of direct $PM_{2.5}$ emissions from 2013 to 2022, and the City Ordinance is projected to achieve emission reductions beginning in 2021, to the extent those reductions have not already occurred through implementation of the wood stove change-out program. All of these measures achieve $PM_{2.5}$ reductions each year and the State and District will be reporting on RFP in the 2019 and 2022 RFP milestone years and through the 2021 attainment year.[119]

Thus, the Portola $PM_{2.5}$ Plan demonstrates that emissions of direct $PM_{2.5}$ will be reduced at rates representing stepwise progress toward attainment. The Plan also demonstrates that all RACM, RACT, and additional reasonable measures that provide the bases for the direct $PM_{2.5}$ emissions projections in the RFP analysis in the Plan are being implemented as expeditiously as practicable. Accordingly, we propose to determine that the Plan requires the annual incremental reductions in emissions of direct $PM_{2.5}$ that are necessary for the purpose of ensuring reasonable further progress towards attainment of the 2012 annual $PM_{2.5}$ NAAQS by 2021, in accordance with the requirements of CAA sections 171(1) and 172(c)(2).

b. Quantitative Milestones

The Plan adequately documents the District's methodology for identifying and calculating appropriate RFP targets for the 2019 and 2022 milestone years and contains, as part of the RACM control strategy for the area, an enforceable commitment by the District to implement specific numbers of wood stove change-out projects and thereby achieve specific amounts of $PM_{2.5}$ emission reductions by the 2019 RFP year and the 2021 attainment year.[120] These quantitative milestones provide an objective means for evaluating the area's progress toward attainment of the $PM_{2.5}$ NAAQS. We propose to approve these quantitative milestones in the Portola $PM_{2.5}$ Plan as meeting the requirements of CAA section 189(c) and 40 CFR 51.1013(a)(1). We note that, consistent with the requirements of CAA section 189(c)(2) as interpreted in longstanding EPA policy, each of the upcoming milestone reports should include technical support sufficient to document completion statistics for appropriate milestones, *e.g.,* calculations and any assumptions made concerning emission reductions to date.[121]

H. Contingency Measures

1. Requirements for Contingency Measures

Under CAA section 172(c)(9), each SIP for a nonattainment area must include contingency measures to be implemented if an area fails to meet RFP (''RFP contingency measures'') or fails to attain the NAAQS by the applicable attainment date (''attainment contingency measures''). Under the $PM_{2.5}$ SIP Requirements Rule, $PM_{2.5}$ attainment plans must include contingency measures to be implemented following a determination by the EPA that the state has failed: (1) To meet any RFP requirement in the approved SIP; (2) to meet any quantitative milestone in the approved SIP; (3) to submit a required quantitative milestone report; or (4) to attain the applicable $PM_{2.5}$ NAAQS by the applicable attainment date.[122] Contingency measures must be fully adopted rules or control measures that are ready to be implemented quickly upon failure to meet RFP or failure of the area to meet the relevant NAAQS by the applicable attainment date.[123]

The purpose of contingency measures is to continue progress in reducing emissions while a state revises its SIP to meet the missed RFP requirement or to correct ongoing nonattainment. Neither the CAA nor the EPA's implementing regulations establish a specific level of emissions reductions that implementation of contingency measures must achieve, but the EPA recommends that contingency measures should provide for emissions reductions equivalent to approximately one year of reductions needed for RFP, calculated as the overall level of reductions needed to demonstrate attainment divided by the number of years from the base year to the attainment year. In general, we expect all actions needed to effect full implementation of the measures to occur within 60 days after the EPA notifies the State of a failure to meet RFP or to attain.[124]

To satisfy the requirements of 40 CFR 51.1014, the contingency measures adopted as part of a $PM_{2.5}$ attainment plan must consist of control measures for the area that are not otherwise required to meet other nonattainment plan requirements or that achieve emissions reductions not otherwise relied upon in the control strategy for the area (*e.g.,* to meet RACM/RACT requirements) and must specify the timeframe within which their requirements become effective following any of the EPA determinations specified in 40 CFR 51.1014(a).

The Ninth Circuit Court of Appeals recently rejected the EPA's interpretation of CAA section 172(c)(9) to allow approval of already implemented control measures as contingency measures, in a decision called *Bahr* v. *EPA* (''*Bahr*'').[125] In *Bahr,* the Ninth Circuit concluded that contingency measures must be measures that are triggered only after the EPA determines that an area fails to meet RFP requirements or to attain by the applicable attainment date, not before. Thus, within the geographic jurisdiction of the Ninth Circuit, states cannot rely on already implemented measures to comply with the contingency measure requirements under CAA section 172(c)(9).

2. Contingency Measures in the 2016 $PM_{2.5}$ Plan

The District's contingency measures are described in section VI.B of the Portola $PM_{2.5}$ Plan.

3. The EPA's Evaluation and Proposed Action

We are not proposing any action at this time on the contingency measures in the Portola $PM_{2.5}$ Plan. We intend to work with the State and District to assist them with the development and submission of contingency measures consistent with the *Bahr* decision and to act on the revised contingency measures, as appropriate, through a subsequent rulemaking.

I. Motor Vehicle Emission Budgets

1. Requirements for Motor Vehicle Emissions Budgets

Section 176(c) of the CAA requires federal actions in nonattainment and maintenance areas to conform to the SIP's goals of eliminating or reducing the severity and number of violations of the NAAQS and achieving expeditious attainment of the standards. Conformity to the SIP's goals means that such actions will not: (1) Cause or contribute to violations of a NAAQS, (2) worsen the severity of an existing violation, or

[118] Portola $PM_{2.5}$ Plan, Chapter VI, section D.3.

[119] Portola $PM_{2.5}$ Plan, Chapter VI, section A.

[120] Id. at Appendix E, 10.

[121] Addendum, 42017.

[122] See 40 CFR 51.1014(a).

[123] See 81 FR 58010, 58066; see also Addendum, 42015.

[124] See 81 FR 58010, 58066; see also General Preamble, 13512, 13543–44 and Addendum, 42014–42015.

[125] *Bahr* v. *EPA,* 836 F.3d 1218, 1235–1237 (9th Cir. 2016).

(3) delay timely attainment of any NAAQS or any interim milestone.

Actions involving Federal Highway Administration (FHWA) or Federal Transit Administration (FTA) funding or approval are subject to the EPA's transportation conformity rule, codified at 40 CFR part 93, subpart A. Under this rule, metropolitan planning organizations (MPOs) in nonattainment and maintenance areas coordinate with state and local air quality and transportation agencies, EPA, FHWA, and FTA to demonstrate that an area's regional transportation plans and transportation improvement programs conform to the applicable SIP.[126] This demonstration is typically done by showing that estimated emissions from existing and planned highway and transit systems are less than or equal to the motor vehicle emissions budgets (''budgets'') contained in all control strategy SIPs. An attainment, maintenance, or RFP SIP should include budgets for the attainment year, each required RFP milestone year, and the last year of the maintenance plan, as appropriate. Budgets are generally established for specific years and specific pollutants or precursors and must reflect all of the motor vehicle control measures contained in the attainment and RFP demonstrations or maintenance plan, as applicable.[127]

All direct $PM_{2.5}$ SIP budgets should include direct $PM_{2.5}$ motor vehicle emissions from tailpipes, brake wear, and tire wear. With respect to $PM_{2.5}$ from re-entrained road dust and emissions of VOC, $SO_2$and/or ammonia, the transportation conformity provisions of 40 CFR part 93, subpart A, apply only if the EPA Regional Administrator or the director of the state air agency has made a finding that emissions of these pollutants within the area are a significant contributor to the $PM_{2.5}$ nonattainment problem and has so notified the MPO and Department of Transportation (DOT), or if the applicable implementation plan (or implementation plan submission) includes any of these pollutants in the approved (or adequate) budget as part of the RFP, attainment or maintenance strategy.[128]

By contrast, transportation conformity requirements apply with respect to emissions of NO_X unless both the EPA Regional Administrator and the director of the state air agency have made a finding that transportation-related emissions of NO_X within the nonattainment area are not a significant contributor to the $PM_{2.5}$ nonattainment problem and have so notified the MPO and DOT, or the applicable implementation plan (or implementation plan submission) does not establish an approved (or adequate) budget for such emissions as part of the reasonable further progress, attainment or maintenance strategy.[129] The criteria for insignificance determinations can be found in 40 CFR 93.109(f). In order for a pollutant or precursor to be considered an insignificant contributor, the control strategy SIP must demonstrate that it would be unreasonable to expect that such an area would experience enough motor vehicle emissions growth in that pollutant/precursor for a NAAQS violation to occur. Insignificance determinations are based on factors such as air quality, SIP motor vehicle control measures, trends and projections of motor vehicle emissions, and the percentage of the total SIP inventory that is comprised of motor vehicle emissions. The EPA's rationale for the providing for insignificance determinations is described in the July 1, 2004 revision to the Transportation Conformity Rule at 69 FR 40004.

For motor vehicle emissions budgets to be approvable, they must meet, at a minimum, the EPA's adequacy criteria (40 CFR 93.118(e)(4)).

Under the $PM_{2.5}$ SIP Requirements Rule, each attainment plan submittal for a Moderate $PM_{2.5}$ nonattainment area must contain quantitative milestones to be achieved no later than 4.5 years and 7.5 years after the date the area was designated nonattainment.[130] The second of these milestone dates, October 15, 2022,[131] falls after the attainment date for the Portola area, which is December 31, 2021. As the EPA explained in the preamble to the $PM_{2.5}$ SIP Requirements Rule, it is important to include a post-attainment year quantitative milestone to ensure that, if the area fails to attain by the attainment date, the EPA can continue to monitor the area's progress toward attainment while the state develops a new attainment plan.[132] Although the post-attainment year quantitative milestone is a required element of a Moderate area plan, it is not necessary to demonstrate transportation conformity for 2022 or to use the 2022 budgets in transportation conformity determinations until such time as the area fails to attain the 2012 $PM_{2.5}$ NAAQS.

2. Motor Vehicle Emissions Budgets in the Portola $PM_{2.5}$ Plan

The Portola $PM_{2.5}$ Plan includes budgets for direct $PM_{2.5}$ for 2019 and 2022 (RFP milestone years) and 2021 (projected attainment year for the 2012 annual NAAQS).[133] The direct $PM_{2.5}$ budgets include tailpipe, brake wear, and tire wear emissions.[134]

The $PM_{2.5}$ budgets were calculated using EMFAC2014, CARB's latest approved version of the EMFAC model for estimating emissions from on-road vehicles operating in California,[135] and reflect annual daily average emissions consistent with the 2019 and 2022 RFP milestone years and the 2021 attainment demonstration for the annual $PM_{2.5}$ NAAQS. The 2019 and 2021 conformity budgets for direct $PM_{2.5}$, expressed in annual average tons per day, are provided in Table 8. As explained further below, we are not acting on the 2022 budgets at this time.

TABLE 8—ANNUAL AVERAGE CONFORMITY BUDGETS FOR $PM_{2.5}$ (TPD)

Category	2019	2021
Direct exhaust, tire, and brake wear from on road vehicles[a]	0.0026	0.0026
Total	0.0026	0.0026
Conformity Budget[b]	0.003	0.003

[a] Calculated from default EMFAC2014 v.1.07 output for Plumas County adjusted to reflect only the emissions from the Portola nonattainment area.

[b] Budgets are rounded up to the nearest 0.001 ton.

Appendix P of the Portola $PM_{2.5}$ Plan contains the State's evaluation of $PM_{2.5}$ precursors and the bases for its conclusion that emissions of VOC, SO_2,

[126] The Portola nonattainment area does not lie within, or share a border with any MPO, nor does any MPO model any projects within the Portola nonattainment area. Therefore, the Portola nonattainment area meets the definition in the transportation conformity rule for an isolated rural nonattainment area. The California Department of Transportation performs many of the functions in isolated rural nonattainment areas that the conformity rule requires of MPOs. Isolated rural nonattainment areas have no federally required metropolitan transportation plan or program. A regional emissions analysis is required only when a non-exempt regionally significant project is proposed in the isolated rural area. For further details on isolated rural nonattainment areas and the transportation conformity requirements in those areas, see 40 CFR 93.101 and 93.109(g).

[127] 40 CFR 93.118(e)(4)(v).

[128] 40 CFR 93.102(b)(3), 93.102(b)(2)(v), and 93.122(f); see also conformity rule preamble at 69 FR 40004, 40031–40036 (July 1, 2004).

[129] 40 CFR 93.102(b)(2)(iv).

[130] 40 CFR 51.1013(a)(1).

[131] Because the Portola area was designated nonattainment effective April 15, 2015, the first milestone date is October 15, 2019 and the second milestone date is October 15, 2022. 80 FR 2206 (January 15, 2015).

[132] 81 FR 58010, 58058 and 58063–64 (August 24, 2016).

[133] Portola $PM_{2.5}$ Plan, section VI.C (for 2021 budgets) and ''Transportation Conformity Budgets for the Portola $PM_{2.5}$ SIP Plan Supplement'' (for 2019 and 2022 budgets) dated December 20, 2017, and adopted by CARB Board on October 26, 2017.

[134] Plan at Chapter VI, section C.4, 77.

[135] See footnote 20.

NO_X, and ammonia from on-road motor vehicles are not significant contributors to the $PM_{2.5}$ nonattainment problem in the Portola area. The State focused its analysis on the contribution of on-road emissions of each precursor to the $PM_{2.5}$ design value in the Portola area, the changes in emission levels from 2013 to 2021, and motor vehicle emission control measures included in the Plan. Table 1 in Appendix P of the Portola $PM_{2.5}$ Plan shows that the on-road emission totals for direct $PM_{2.5}$ and all precursors decrease from 2013 to the 2021 attainment year. According to the State, on-road emissions of direct $PM_{2.5}$ and all precursors contribute less than 10% and on-road NO_X emissions contribute less than 2% to the $PM_{2.5}$ design value in the Portola area, compared to wood burning, which accounts for over 76% of the $PM_{2.5}$ design value.[136] On-road NO_X emissions account for approximately 36% of the total 2013 base year inventory but decline to 29% and 26% of the 2019 and 2021 inventories, respectively. The on-road NO_X emissions decrease from the 2013 base year is 0.07 tpd (or 37%) in 2019 and 0.09 tpd (or 47%) in 2021.[137] The State also evaluated on-road construction dust and paved and unpaved road dust and concluded that emissions of these pollutants are not significant contributors to the $PM_{2.5}$ nonattainment problem in the Portola area. Therefore, the Plan does not include budgets for VOC, SO_2, NO_X, ammonia, or $PM_{2.5}$ from re-entrained road dust or dust from road construction.

3. The EPA's Evaluation and Proposed Actions

With respect to $PM_{2.5}$ from re-entrained road dust, VOC, SO_2, and ammonia, neither the EPA nor the State has made a finding that on-road emissions of any of these pollutants or precursors are a significant contributor to the $PM_{2.5}$ nonattainment problem in the Portola area, and neither the approved California SIP for Portola nor the submitted Portola $PM_{2.5}$ Plan establish adequate budgets for such emissions as part of an RFP, attainment or maintenance strategy for the $PM_{2.5}$ NAAQS. Accordingly, the transportation conformity provisions of 40 CFR part 93, subpart A, do not apply with respect to $PM_{2.5}$ from re-entrained road dust or to emissions of VOC, SO_2 or ammonia for purposes of the 2012 $PM_{2.5}$ NAAQS in the Portola area.

With respect to NO_X emissions, we find that the State's evaluation of emission trends, projections of motor vehicle emissions, and the percentage of the total SIP inventory that is comprised of motor vehicle emissions is sufficient to demonstrate, consistent with 40 CFR 93.109(f), that it would be unreasonable to expect that this area would experience such growth in NO_X emissions from motor vehicles as to result in a violation of the $PM_{2.5}$ NAAQS. Accordingly, the EPA is proposing to determine that transportation-related emissions of NO_X are insignificant contributors to the $PM_{2.5}$ nonattainment problem in the Portola area.

We have evaluated the submitted direct $PM_{2.5}$ budgets for 2019 and 2021 in the Plan against our adequacy criteria in 40 CFR 93.118(e)(4) and (5) as part of our review of the budgets' approvability and will complete the adequacy review concurrent with our final action on the Portola $PM_{2.5}$ Plan.[138] On January 5, 2018, the EPA announced the availability of the budgets in the Portola $PM_{2.5}$ Plan and provided a 30-day public comment period. This announcement was posted on the EPA's Adequacy website at: *https://www.epa.gov/state-and-local-transportation/state-implementation-plans-sip-submissions-currently-under-epa#portola2018.* The comment period for this notification ended on February 5, 2018, and we did not receive any comments.

The EPA has not yet reviewed and is not taking any action at this time on the submitted budget for 2022 for the Portola $PM_{2.5}$ nonattainment area. Therefore, the submitted budget for 2022 for the Portola nonattainment area will not be used in transportation conformity determinations at this time. The EPA will begin reviewing the 2022 budget for adequacy and approval only if the area fails to attain the $PM_{2.5}$ NAAQS by December 31, 2021, the applicable Moderate area attainment date.

If the EPA were to either find adequate or approve the post-attainment milestone year motor vehicle emissions budgets now, those budgets would have to be used in transportation conformity determinations that are made after the effective date of the adequacy finding or approval even if the Portola $PM_{2.5}$ nonattainment area ultimately attains the $PM_{2.5}$ NAAQS by the Moderate area attainment deadline. As a result, the California Department of Transportation, which performs many of the MPO functions in the Portola $PM_{2.5}$ nonattainment area, would be required to demonstrate conformity for the post-attainment date milestone year and all later years addressed in the conformity determination to the post-attainment date RFP motor vehicle emissions budgets rather than the budgets associated with the attainment year for the area (*i.e.,* the motor vehicle emissions budgets for 2021). The EPA does not believe that it is necessary to demonstrate conformity using these post-attainment year budgets in areas that either the EPA anticipates will attain by the attainment date or in areas that, in fact, attain by the attainment date.

If the EPA determines that the Portola area has failed to attain the PM NAAQS by the applicable attainment date, the EPA will begin the budget adequacy and approval processes for the post-attainment year (2022) budget. If the EPA finds the 2022 budget adequate or approves it, that budget will have to be used in subsequent transportation conformity determinations. The EPA believes that initiating these processes following a determination that the area has failed to attain by the attainment date ensures that transportation activities will not cause or contribute to new violations, increase the frequency or severity of any existing violations, or delay timely attainment or any required interim emission reductions or milestones in the Portola area, consistent with the requirements of CAA section 176(c)(1)(B).

For the reasons discussed in sections V.E.v and V.F of this proposed rule, we are proposing to approve the RFP and attainment demonstrations in the Portola $PM_{2.5}$ Plan. The budgets, as given in Table 9 of this proposed rule, are consistent with these demonstrations, are clearly identified and precisely quantified, and meet all other applicable statutory and regulatory requirements including the adequacy criteria in 40 CFR 93.118(e)(4) and (5). For these reasons, the EPA proposes to approve the budgets listed in Table 8 above.

The transportation conformity rule allows us to limit the approval of budgets,[139] and CARB requested that we limit the duration of our approval of the budgets in the Plan to the period before the effective date of the EPA's adequacy finding for any subsequently submitted budgets.[140] However, we will consider

[136] Portola $PM_{2.5}$ Plan, Appendix P.

[137] Portola $PM_{2.5}$ Plan, Appendix B, Table 7.

[138] Under the Transportation Conformity regulations, the EPA may review the adequacy of submitted motor vehicle emission budgets simultaneously with the EPA's approval or disapproval of the submitted implementation plan. 40 CFR 93.118(f)(2).

[139] 40 CFR 93.118(e)(1).

[140] Letter dated December 20, 2017, from Richard W. Corey, Executive Officer, California Air Resources Board, to Alexis Strauss, Acting Regional Administrator, EPA Region 9.

the State's request to limit an approval of its budgets only if the request includes the following elements: [141]

- An acknowledgement and explanation as to why the budgets under consideration have become outdated or deficient;
- A commitment to update the budgets as part of a comprehensive SIP update; and
- A request that the EPA limit the duration of its approval to the time when new budgets have been found to be adequate for transportation conformity purposes.

Because CARB's request does not include all of these elements, we cannot at this time propose to limit the duration of our approval of the submitted budgets. In order to limit the approval, we would need the information described above in order to determine whether such limitation is reasonable and appropriate in this case. Once CARB has provided the necessary information, we intend to review it and take appropriate action. If we propose to limit the duration of our approval of the budgets in the Portola $PM_{2.5}$ Plan, we will provide the public an opportunity to comment. The duration of the approval of the budgets, however, would not be limited until we complete such a rulemaking.

V. Summary of Proposed Actions and Request for Public Comment

Under CAA sections 110(k)(3), the EPA is proposing to approve SIP revisions submitted by California to address the Act's Moderate area planning requirements for the 2012 $PM_{2.5}$ NAAQS in the Portola nonattainment area. Specifically, the EPA is proposing to approve the following elements of the Portola $PM_{2.5}$ Plan:

1. The 2013 base year emissions inventories as meeting the requirements of CAA section 172(c)(3);
2. The reasonably available control measure/reasonably available control technology demonstration as meeting the requirements of CAA sections 172(c)(1) and 189(a)(1)(C);
3. The attainment demonstration as meeting the requirements of CAA sections 172(c)(1) and 189(a)(1)(B);
4. The reasonable further progress demonstration as meeting the requirements of CAA section 172(c)(2);
5. The quantitative milestones as meeting the requirements of CAA section 189(c); and
6. The motor vehicle emissions budgets for 2019 and 2021, because they are derived from approvable attainment and RFP demonstrations and meet the requirements of CAA section 176(c) and 40 CFR part 93, subpart A.

The EPA is not proposing any action at this time on the contingency measures or the post-attainment year (2022) budget in the Portola $PM_{2.5}$ Plan.

We will accept comments from the public on these proposals for the next 30 days. The deadline and instructions for submission of comments are provided in the **DATES** and **ADDRESSES** sections at the beginning of this preamble.

VI. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this proposed action merely proposes to approve state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866;
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide the EPA with the discretionary authority to address disproportionate human health or environmental effects with practical, appropriate, and legally permissible methods under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

List of Subjects in 40 CFR Part 52

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

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

Dated: December 4, 2018.

Deborah Jordan,

Acting Regional Administrator, Region IX.

[FR Doc. 2018–27257 Filed 12–17–18; 8:45 am]

BILLING CODE 6560–50–P

[141] 67 FR 69141 (November 15, 2002), limiting our prior approval of budgets in certain California SIPs.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2018–0787; FRL–9988–18–Region 9]

Air Plan Approval; California; Antelope Valley Air Quality Management District; Optional General SIP Category

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a revision to the Antelope Valley Air Quality Management District (AVAQMD) portion of the California State Implementation Plan (SIP). This revision concerns emissions of volatile organic compounds (VOCs) from organic liquid loading. We are proposing to approve revisions to a local rule to regulate these emission sources under the Clean Air Act (CAA or the Act). We are taking comments on this

proposal and plan to follow with a final action.

DATES: Any comments must arrive by January 17, 2019.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R09–OAR–2018–0787 at *http://www.regulations.gov.* For comments submitted at *Regulations.gov*, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov.* For either manner of submission, the EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Rebecca Newhouse, EPA Region IX, (415) 972–3004, *newhouse.rebecca@epa.gov.*

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

Table of Contents

I. The State's Submittal

A. What rule did the State submit?

Table 1 lists the rule addressed by this proposal with the dates that it was adopted by the local air agency and submitted by the California Air Resources Board (CARB).

TABLE 1—SUBMITTED RULE

Local agency	Rule #	Rule title	Amended	Submitted
AVAQMD	462	Organic Liquid Loading [1]	09/19/17	11/13/17

[1] Subsequent to the submittal of Rule 462, the District made two minor administrative corrections to the rule text. The EPA is proposing to approve the corrected version of the rule. More information on these corrections can be found in the TSD.

On May 13, 2018, the submittal for AVAQMD was deemed by operation of law to meet the completeness criteria in 40 CFR part 51 Appendix V, which must be met before formal EPA review.

B. Are there other versions of this rule?

We approved an earlier version of Rule 462 into the SIP on October 5, 1979 (47 FR 29668). The AVAQMD adopted revisions to the SIP-approved version on September 19, 2017, and CARB submitted them to us on November 13, 2017.

C. What is the purpose of the rule revision?

VOCs help produce ground-level ozone, smog and particulate matter (PM), which harm human health and the environment. Section 110(a) of the CAA requires states to submit regulations that control VOC emissions. SIP-approved Rule 462 establishes VOC emission limits for organic liquid and gasoline transfers into delivery vessels at bulk terminals and bulk gasoline plants. It also describes inspection, recordkeeping, and work-practice requirements for organic liquid and gasoline transfers at these facilities. Revisions to the SIP-approved version of Rule 462 adopted on September 19, 2017, include lowering VOC emission limits for organic liquid and gasoline transfers at facilities transferring over 20,000 gallons of organic liquid per day from 0.65 lbs VOCs per 1000 gallons transferred to 0.08 lbs VOCs per 1000 gallons transferred; requiring those facilities to install and maintain a continuous emissions monitoring system; and requiring VOC vapor control efficiency of 90 percent for specified facilities existing prior to January 9, 1976, which load less than 20,000 gallons of gasoline per day. Revisions also require vapor recovery systems at specified organic liquid and gasoline transfer facilities be CARB-certified; strengthen inspection and record keeping requirements; and make other clarifying and conforming changes.

Additionally, on October 10, 2017 (82 FR 46923), the EPA partially conditionally approved AVAQMD's reasonably available control technology (RACT) demonstrations for the 1997 8-hr ozone National Ambient Air Quality Standards (NAAQS) and the 2008 8-hr ozone NAAQS (also referred to as the 2006 and 2015 RACT SIPs) with respect to Rule 462, based on commitments from AVAQMD to revise and submit amendments to Rule 462 that remedy specific deficiencies. These deficiencies were identified in our December 15, 2016 proposed partial approval and partial disapproval (81 FR 90754) and referenced in our July 28, 2017 proposal (82 FR 35149). For Rule 462, the deficiency was identified as a ''facility vapor leak'' definition that was inconsistent with the test method specified to conduct vapor leak measurements. Revisions to Rule 462 on September 19, 2017, corrected the deficiency. The EPA's technical support document (TSD) has more information about this rule.

II. The EPA's Evaluation and Action

A. How is the EPA evaluating the rule?

SIP rules must be enforceable (see CAA section 110(a)(2)), must not interfere with applicable requirements concerning attainment and reasonable further progress or other CAA requirements (see CAA section 110(l)), and must not modify certain SIP control requirements in nonattainment areas without ensuring equivalent or greater emissions reductions (see CAA section 193).

Generally, SIP rules must require RACT for each category of sources covered by a Control Techniques Guidelines (CTG) document as well as each major source of VOCs in ozone nonattainment areas classified as moderate or above (see CAA section 182(b)(2)). The AVAQMD regulates an ozone nonattainment area classified as Severe for the 1997 and 2008 8-hour ozone NAAQS (40 CFR 81.305).

Therefore, this rule must implement RACT. In addition, the rule was evaluated to ensure it met the commitment made by the AVAQMD that served as the basis for the partial conditional approval of the AVAQMD 2006 and 2015 RACT SIPs with respect to Rule 462 (82 FR 46923).

Guidance and policy documents that we used to evaluate enforceability, revision/relaxation and rule stringency requirements for the applicable criteria pollutants include the following:

1. ''State Implementation Plans; General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990,'' 57 FR 13498 (April 16, 1992); 57 FR 18070 (April 28, 1992).

2. ''Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations,'' EPA, May 25, 1988 (the Bluebook, revised January 11, 1990).

3. ''Guidance Document for Correcting Common VOC & Other Rule Deficiencies,'' EPA Region 9, August 21, 2001 (the Little Bluebook).

4. ''Control of Volatile Organic Emissions from Bulk Gasoline Plants,'' EPA–450/2–77–035, December 1977.

5. ''Control of Hydrocarbons from Tank Truck Gasoline Loading Terminals,'' EPA–450/2–77–026, October 1977.

B. Does the rule meet the evaluation criteria?

This rule is consistent with CAA requirements and relevant guidance regarding enforceability, RACT, and SIP revisions, and meets the District's commitment to remedy the Rule 462 deficiency identified in the RACT SIP conditional approval (82 FR 46923). The TSD has more information on our evaluation.

C. EPA Recommendations to Further Improve the Rule

The TSD describes additional rule revisions that we recommend for the next time the local agency modifies the rule.

D. Public Comment and Proposed Action

As authorized in section 110(k)(3) of the Act, the EPA proposes to fully approve the submitted rule because it fulfills all relevant requirements. We will accept comments from the public on this proposal until January 17, 2019. If we take final action to approve the submitted rule, our final action will incorporate this rule into the federally enforceable SIP.

III. Incorporation by Reference

In this rule, the EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is proposing to incorporate by reference the AVAQMD rule described in Table 1 of this preamble. The EPA has made, and will continue to make, these materials available through *www.regulations.gov* and at the EPA Region IX Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

IV. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this proposed action merely proposes to approve state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866;
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- does not provide the EPA with the discretionary authority to address disproportionate human health or environmental effects with practical, appropriate, and legally permissible methods under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

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

Dated: November 30, 2018.

Deborah Jordan,

Acting Regional Administrator, Region IX.

[FR Doc. 2018–27362 Filed 12–17–18; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2018–0544; FRL–9988–02–Region 4]

Air Plan Approval; Alabama; Regional Haze Progress Report

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a State Implementation Plan (SIP) revision submitted by the State of Alabama through the Alabama Department of Environmental Management (ADEM) with a letter dated June 26, 2018. Alabama's SIP revision (Progress Report) addresses requirements of the Clean Air Act (CAA or Act) and EPA's rules that require each state to submit periodic reports describing progress towards reasonable

progress goals (RPGs) established for regional haze and a determination of the adequacy of the State's existing SIP addressing regional haze (regional haze plan). EPA is proposing to approve Alabama's determination that the State's regional haze plan is adequate to meet these RPGs for the first implementation period covering through 2018 and requires no substantive revision at this time.

DATES: Comments must be received on or before January 8, 2019.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–OAR–2018–0544 at *http://www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov.* EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: D. Brad Akers, Air Regulatory Management Section, Air Planning and Implementation Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW, Atlanta, Georgia 30303–8960. Mr. Akers can be reached via telephone at (404) 562–9089 or electronic mail at *akers.brad@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

States are required to submit progress reports that evaluate progress towards the RPGs for each mandatory Class I federal area [1] (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 states to submit, at the same time as the 40 CFR 51.308(g) progress reports, 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. Alabama submitted its regional haze plan on July 15, 2008, as later amended in a SIP revision submitted on October 26, 2015.

Like many other states subject to the Clean Air Interstate Rule (CAIR), Alabama relied on CAIR in its regional haze plan to meet certain requirements of EPA's Regional Haze Rule, including best available retrofit technology (BART) requirements for emissions of sulfur dioxide (SO_2) and nitrogen oxides (NO_X) from certain electric generating units (EGUs) in the State.[2] This reliance was consistent with EPA's regulations at the time that Alabama developed its regional haze plan. *See* 70 FR 39104 (July 6, 2005). However, in 2008, the United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit) remanded CAIR to EPA without vacatur to preserve the environmental benefits provided by CAIR. *North Carolina* v. *EPA,* 550 F.3d 1176, 1178 (D.C. Cir. 2008). On August 8, 2011 (76 FR 48208), acting on the D.C. Circuit's remand, EPA promulgated the Cross-State Air Pollution Rule (CSAPR) to replace CAIR and issued Federal Implementation Plans (FIPs) to implement the rule in CSAPR-subject states.[3] Implementation of CSAPR was scheduled to begin on January 1, 2012, when CSAPR would have superseded the CAIR program. However, numerous parties filed petitions for review of CSAPR, and at the end of 2011, the D.C. Circuit issued an order staying CSAPR pending resolution of the petitions and directing EPA to continue to administer CAIR. Order of December 30, 2011, in *EME Homer City Generation, L.P.* v. *EPA,* D.C. Cir. No. 11–1302.

On June 28, 2012 (77 FR 38515), EPA finalized a limited approval of Alabama's regional haze plan as meeting some of the applicable regional haze requirements as set forth in sections 169A and 169B of the CAA and in 40 CFR 51.300–308. Separately, in a June 7, 2012 (77 FR 33642), action, EPA finalized a limited disapproval of Alabama's regional haze plan because of deficiencies arising from the State's reliance on CAIR to satisfy certain regional haze requirements. Also on June 7, 2012, EPA promulgated FIPs to replace reliance on CAIR with reliance on CSAPR to address deficiencies in CAIR-dependent regional haze plans of several states, including Alabama's regional haze plan. Following additional litigation and the lifting of the stay, EPA began implementation of CSAPR on January 1, 2015.

Certain CSAPR Phase 2 emissions budgets were remanded to EPA for reconsideration.[4] However, the CSAPR trading programs remained in effect and all CSAPR emissions budgets likewise remained in effect while EPA addressed the remands. The remanded budgets included the CSAPR Phase 2 SO_2 emissions budget applicable to Alabama units under the federal CSAPR SO_2 Group 2 Trading Program. On October 26, 2015, Alabama submitted a SIP revision to EPA which sought to adopt CSAPR at the state level and to change reliance from CAIR to CSAPR for certain regional haze requirements. This submittal also adopted the remanded SO_2 Phase 2 budget for the State. EPA approved portions of the October 26, 2015, submittal on August 31, 2016 (81 FR 59869), including the adoption of CSAPR unit requirements for SO_2 and NO_X annual trading programs, thereby replacing the FIP obligations in the State for these two programs.[5] The August 31, 2016, final rule also approved Alabama's adoption of the remanded federal SO_2 Phase 2 budget.

Subsequently, on May 19, 2017, Alabama submitted a SIP revision to address additional requirements for the NO_X ozone season requirements for CSAPR. On October 6, 2017 (82 FR 46674), EPA approved Alabama's adoption of a state allowance trading program to replace federal NO_X ozone season requirements under CSAPR, thereby replacing the remainder of the CSAPR FIP. On October 12, 2017, EPA

[1] Areas designated as mandatory Class I federal areas consist of national parks exceeding 6,000 acres, wilderness areas and national memorial parks exceeding 5,000 acres, and all international parks that were in existence on August 7, 1977 (42 U.S.C. 7472(a)). Listed at 40 CFR part 81 Subpart D.

[2] CAIR required certain states, including Alabama, to reduce emissions of SO_2 and NO_X that significantly contribute to downwind nonattainment of the 1997 National Ambient Air Quality Standard (NAAQS) for fine particulate matter ($PM_{2.5}$) and ozone. *See* 70 FR 25162 (May 12, 2005).

[3] CSAPR requires substantial reductions of SO_2 and NO_X emissions from EGUs in 27 states in the Eastern United States that significantly contribute to downwind nonattainment of the 1997 $PM_{2.5}$ and ozone NAAQS, 2006 $PM_{2.5}$ NAAQS, and the 2008 8-hour ozone NAAQS.

[4] *EME Homer City Generation, L.P.* v. *EPA,* 795 F.3d 118, 138 (D.C. Cir. 2015).

[5] Large EGUs in Alabama were subject to additional CSAPR FIP provisions requiring them to participate in the federal CSAPR NO_X ozone season trading program. While Alabama's October 26, 2015, SIP submittal also sought to replace the CSAPR FIP requirements addressing Alabama units' ozone-season NO_X emissions, EPA did not act on that portion of the SIP submittal until October 6, 2017, when it acted on Alabama's May 19, 2017 SIP revision. *See* 82 FR 46674.

approved the regional haze portion of Alabama's October 26, 2015 (82 FR 47393), SIP submission to change reliance from CAIR to CSAPR for certain regional haze requirements and converted EPA's limited approval/limited disapproval to a full approval.

On June 27, 2018,[6] Alabama submitted its Progress Report which, among other things, details the progress made in the first period toward implementation of the long term strategy outlined in the State's regional haze plan; the visibility improvement measured at the Sipsey Wilderness Area (the only Class I area within Alabama); and a determination of the adequacy of the State's existing regional haze plan. EPA is proposing to approve Alabama's June 26, 2018, Progress Report for the reasons discussed below.

II. EPA's Evaluation of Alabama's Progress Report and Adequacy Determination

A. Regional Haze Progress Report

This section includes EPA's analysis of Alabama's Progress Report and an explanation of the basis for the Agency's proposed approval.

1. Control Measures

In its Progress Report, Alabama summarizes the status of the emissions reduction measures that were relied upon by the State in its regional haze plan and included in the final iteration of the Visibility Improvement State and Tribal Association of the Southeast (VISTAS) regional haze emissions inventory and RPG modeling used by the State in developing its regional haze plan. The measures include, among other things, applicable federal programs (*e.g.,* mobile source rules, Maximum Achievable Control Technology standards), federal consent agreements, and federal control strategies for EGUs. Alabama also reviewed the status of BART requirements for the two BART-subject sources for NO_X and SO_2 in the State—Solutia, Inc., Decatur facility and International Paper Company, Courtland facility—and described several court decisions addressing CAIR and CSAPR.[7]

As discussed in Section I of this notice, a number of states, including Alabama, submitted regional haze plans that relied on CAIR to meet certain regional haze requirements. EPA finalized a limited disapproval of Alabama's 2008 regional haze plan due to this reliance and promulgated a FIP to replace the State's reliance on CAIR with reliance on CSAPR. Although a number of parties challenged the legality of CSAPR and the D.C. Circuit initially vacated and remanded CSAPR to EPA in *EME Homer City Generation, L.P.* v. *EPA,* 696 F.3d 7 (D.C. Cir. 2012), the United States Supreme Court reversed the D.C. Circuit's decision on April 29, 2014, and remanded the case to the D.C. Circuit to resolve remaining issues in accordance with the high court's ruling. *EPA* v. *EME Homer City Generation, L.P.,* 134 S. Ct. 1584 (2014). On remand, the D.C. Circuit affirmed CSAPR in most respects, and CSAPR is now in effect. *EME Homer City Generation, L.P.* v. *EPA,* 795 F.3d 118 (D.C. Cir. 2015). Because CSAPR should result in greater emissions reductions of SO_2 and NO_X than CAIR throughout the affected region, EPA expects Alabama to maintain and continue its progress towards its RPGs for 2018 through continued, and additional, SO_2 and NO_X reductions. *See generally* 76 FR 48208 (August 8, 2011).

In the State's 2008 regional haze plan and Progress Report, Alabama focuses its assessment on SO_2 emissions from EGUs because of VISTAS' findings that ammonium sulfate accounted for 69–87 percent of the visibility-impairing pollution in the VISTAS states and roughly 75 percent of the visibility-impairing pollution at the Sipsey Wilderness Area on the 20 percent worst visibility days. Alabama determined in its 2008 regional haze plan that no additional controls for sources in the State were needed to make reasonable progress for SO_2 during the first implementation period.[8] In its regional haze plan, Alabama identified 19 Alabama EGUs at six facilities located in the area of influence of Alabama's Class I area using the State's methodology for determining sources eligible for a reasonable progress control determination. Because these 19 EGUs were subject to CAIR and the Sipsey Wilderness Area was projected to exceed the uniform rate of progress during the first implementation period, ADEM opted not to require any additional emissions reductions for reasonable progress for the first implementation period.[9] Alabama's Progress Report indicates that SO_2 emissions from all in-state EGUs have decreased by approximately 71 percent from 2002 to 2012.

Because many states had not yet defined their criteria for identifying sources to evaluate for reasonable progress at the time Alabama was developing the State's 2008 regional haze plan, Alabama initially applied the State's criteria for identifying emissions units eligible for a reasonable progress control analysis as a screening tool to identify Class I areas outside of the State potentially impacted by Alabama sources. Alabama identified the following Class I areas as potentially impacted by Alabama sources: Cohutta Wilderness Area in Georgia; Joyce Kilmer-Slickrock Wilderness Area in North Carolina; St. Marks Wilderness Area in Florida; and Breton Wilderness Area in Louisiana.[10] Additionally, North Carolina identified an Alabama source (Tennessee Valley Authority (TVA)—Widows Creek) as meeting North Carolina's threshold for a reasonable progress control evaluation at one of its Class I areas (Joyce Kilmer-Slickrock Wilderness Area). Alabama determined that there were no additional controls that would be reasonable to require of this source for the first implementation period. Alabama also consulted with Florida, Georgia, and Louisiana and concluded that no Alabama sources were identified by these states as meeting their criteria for a reasonable progress control evaluation.[11]

EPA proposes to find that Alabama has adequately addressed the applicable provisions under 40 CFR 51.308(g) regarding the implementation status of control measures because the State described the implementation of measures within Alabama, including BART at BART-subject sources for NO_X and SO_2.

2. Emissions Reductions

As discussed in Section II.A.1. of this notice, Alabama focused its assessment in its regional haze plan and Progress Report on SO_2 emissions from EGUs because of VISTAS' findings that ammonium sulfate is the primary component of visibility-impairing pollution in the VISTAS states. In its Progress Report, Alabama provides 2002, 2005, 2008, 2011, and 2012 SO_2 emissions data from EPA's Clean Air Markets Division (CAMD) for EGUs in the State. Actual SO_2 emissions reductions from 2002–2012 for these Alabama EGUs (319,428 tons) have already exceeded the projected SO_2 emissions reductions from 2002 to 2018 estimated in Alabama's regional haze plan for these EGUs (312,397 tons).[12] Alabama also includes cumulative

[6] EPA notes that the cover letter was dated June 26, 2018. The submittal date is the date of receipt, which was June 27, 2018.

[7] Progress Report, pp. 9–11.

[8] *See* 77 FR 11937, 11946 (February 28, 2012).

[9] *See* 77 FR 11949 and Section 7.6 of Alabama's 2008 regional haze plan.

[10] *See* 77 FR 11956.

[11] *See* 77 FR 11956 and Appendix J of Alabama's 2008 regional haze plan.

[12] Progress Report, Figure 4, p. 14.

volatile organic compounds (VOC), fine particulate matter ($PM_{2.5}$), coarse particulate matter (PM_{10}), ammonia (NH_3), SO_2, and NO_X emissions data from 2002, 2007, and 2011 for point sources. For the five-year period covered by the Progress Report, the 2011 National Emissions Inventory (NEI) was the latest available inventory.[13] This data shows a decline in these emissions over this time period and shows that the SO_2 reductions are greater than those estimated for these units between 2002–2018 in the State's regional haze plan. The emissions reductions identified by Alabama are due, in part, to the implementation of measures included in the State's regional haze plan.

EPA proposes to find that Alabama has adequately addressed the applicable provisions of 40 CFR 51.308(g) regarding emissions reductions because the State identifies SO_2 emissions reductions from EGUs in Alabama, the largest sources of SO_2 emissions in the State.

3. Visibility Conditions

The provisions under 40 CFR 51.308(g) require that states with Class I areas within their borders provide information on current visibility conditions and the difference between current visibility conditions and baseline visibility conditions expressed in terms of five-year averages of these annual values.

Alabama's Progress Report provides visibility monitoring data for the Sipsey Wilderness Area. Alabama reported current visibility conditions as the 2009–2013 five-year time period and used the 2000–2004 baseline period for the State's Class I area.[14] Alabama also provided 20 percent worst day and 20 percent best day visibility data for each year from 2004–2013 in terms of five-year averages. Table 1 shows the visibility conditions for the 2009–2013 five-year time period, the difference between the current visibility conditions and baseline visibility conditions, and the RPGs for the Sipsey Wilderness Area in the State's 2008 regional haze plan.

TABLE 1—BASELINE VISIBILITY, RPGS, AND CURRENT VISIBILITY IN ALABAMA'S CLASS I AREA

[Deciviews]

Class I area	Baseline (2000–2004)	RPGs (2018)	Current (2009–2013)
20 Percent Best Days			
Sipsey Wilderness Area	15.6	14.22	12.82
20 Percent Worst Days			
Sipsey Wilderness Area	29.0	23.53	22.91

As shown in Table 1, the Sipsey Wilderness Area saw an improvement in visibility between baseline and the 2009–2013 time period.[15]

EPA proposes to find that Alabama has adequately addressed the applicable provisions under 40 CFR 51.308(g) regarding visibility conditions because the State provided baseline visibility conditions, visibility conditions for the 2009–2013 five-year time period, the difference between these sets of visibility conditions, and five-year visibility averages at the Sipsey Wilderness Area from 2004–2013.

4. Emissions Tracking

In its Progress Report, Alabama presents data from a statewide actual emissions inventory for 2007, developed through the Southeastern Modeling, Analysis and Planning (SEMAP) partnership and compares this data to the baseline emissions inventory for 2002 (actual emissions). The pollutants inventoried include: VOC, NH_3, NO_X, $PM_{2.5}$, PM_{10}, and SO_2. The emissions inventories include the following source classifications: Point, area, biogenic (*e.g.,* VOC from vegetation, emissions from fires), non-road mobile, and on-road mobile sources. As discussed in Section II.A.2, above, Alabama also presented 2002, 2005, 2008, 2011, and 2012 SO_2 data for EGUs in Alabama and 2011 emissions for point sources in Alabama.

SEMAP estimated on-road mobile source emissions in the 2007 inventory using EPA's MOVES model. This model tends to estimate higher emissions for NO_X and particulate matter than its previous counterpart, EPA's MOBILE6.2 model, used by the State to estimate on-road mobile source emissions for the 2002 inventories. Due in part to the change in methodology, there are increases in NO_X, $PM_{2.5}$ and PM_{10}, in the 2007 actual on-road emissions, while VOC, NH_3 and SO_2 mobile emissions show decreases from the actual 2002 emissions, as can be seen when comparing Tables 2 and 3. Apart from this, decreases in total pollutant emissions can be seen for each pollutant potentially impacting visibility.

Additionally, ADEM included the 2011 point source actual emissions inventory from the 2011 NEI, Version 2, included in Table 4, below. The actual point source emissions in 2011 showed significant reductions for all pollutants when compared to both the 2002 and 2007 inventories. These point source emissions have already exceeded the reductions expected in the 2018 projected year inventory, which can be seen in Table 5, below.

TABLE 2—2002 ACTUAL EMISSIONS INVENTORY SUMMARY FOR ALABAMA

[tpy]

Source category	VOC	NO_X	$PM_{2.5}$	PM_{10}	NH_3	SO_2
Point	49,323	238,007	23,353	33,084	2,121	520,217
Area	209,200	34,900	101,442	444,259	60,275	54,812

[13] *See* the EPA's website for additional data and documentation for the 2011 version of the NEI (*https://www.epa.gov/air-emissions-inventories/2011-national-emissions-inventory-nei-data*).

[14] For the first regional haze plans, ''baseline'' conditions were represented by the 2000–2004 time period. *See* 64 FR 35730 (July 1, 1999).

[15] Progress Report, Table 3, p. 15.

TABLE 2—2002 ACTUAL EMISSIONS INVENTORY SUMMARY FOR ALABAMA—Continued

[tpy]

Source category	VOC	NO_X	$PM_{2.5}$	PM_{10}	NH_3	SO_2
On-Road Mobile	137,086	170,047	3,006	4,188	5,968	7,386
Non-Road Mobile	60,487	65,366	4,526	4,949	33	7,584
Biogenic	1,751,809	14,873	0	0	0	0
Total	2,207,904	523,191	132,328	486,481	68,397	590,000

TABLE 3—2007 ACTUAL EMISSIONS INVENTORY SUMMARY FOR ALABAMA

[tpy]

Source category	VOC	NO_X	$PM_{2.5}$	PM_{10}	NH_3	SO_2
Point	38,877	197,963	24,930	34,776	2,191	526,620
Area	79,030	3,940	41,587	349,981	62,426	431
On-Road Mobile	77,078	172,668	5,887	7,861	2,823	1,509
Non-Road Mobile	52,230	63,588	4,121	4,424	46	3,469
Biogenic	1,745,263	9,785	0	0	0	0
Total	1,992,478	447,944	76,525	397,042	67,486	532,029

TABLE 4—2011 ACTUAL EMISSIONS INVENTORY SUMMARY OF POINT SOURCES FOR ALABAMA

[tpy] [16]

Source category	VOC	NO_X	$PM_{2.5}$	PM_{10}	NH_3	SO_2
Point	26,077	121,962	11,124	17,093	1,874	245,802

TABLE 5—2018 PROJECTED ACTUAL EMISSIONS INVENTORY SUMMARY OF POINT SOURCES FOR ALABAMA

[tpy] [17] [18]

Source category	VOC	NO_X	$PM_{2.5}$	PM_{10}	NH_3	SO_2
Point	57,243	142,676	27,366	37,746	3,536	249,075

EPA is proposing to find that Alabama adequately addressed the provisions of 40 CFR 51.308(g) regarding emissions tracking because the State compared the most recent updated emission inventory data for the five-year period covered by the Progress Report with the baseline emissions used in the modeling for the regional haze plan. Furthermore, Alabama evaluated EPA Air Markets Program Data [19] SO_2 emissions data from 2002–2012 for EGUs in the State because ammonium sulfate is the primary component of visibility-impairing pollution in the VISTAS states, and EGUs are the largest source of SO_2 in the State.

5. Assessment of Changes Impeding Visibility Progress

In its Progress Report, Alabama documented that sulfates, which are formed from SO_2 emissions, continue to be the biggest single contributor to regional haze for the Sipsey Wilderness Area, and therefore focused its analysis on large SO_2 emissions from point sources.[20] In its 2008 regional haze plan, Alabama notes that sulfates account for 75 percent of the visibility impairment on the 20 percent worst days and 50 percent of visibility impairment on the 20 percent best days over the 2000–2004 period. In addressing the requirements at 40 CFR 51.308(g)(5), Alabama shows in the Progress Report that the overall contribution of sulfates toward visibility impairment has been reduced to 64 percent over the 2008–2012 period for the 20 percent worst days and remained approximately the same for the 20 percent best days. Alabama also examines other potential pollutants of concern affecting visibility at the Sipsey Wilderness Area. Furthermore, the Progress Report shows that visibility averages for the five-year period 2009–2013 are better than the 2018 RPGs for the Sipsey Wilderness Area and that SO_2 emissions reductions from 2002–2012 for EGUs in Alabama have exceeded the projected reductions from 2002–2018 in the regional haze plan.

EPA proposes to find that Alabama has adequately addressed the provisions of 40 CFR 51.308(g) regarding an assessment of significant changes in anthropogenic emissions for the reasons discussed above.

6. Assessment of Current Strategy

Alabama believes that it is on track to meet the 2018 RPGs for the Sipsey Wilderness Area, and that the State's sources will not impede Class I areas outside of Alabama from meeting their RPGs based on the trends in visibility and emissions presented in its Progress Report. Alabama notes that the Interagency Monitoring of Protected Visual Environments (IMPROVE)

[16] ADEM included the entire 2011 emissions inventory summary in Appendix A of its Progress Report. This inventory shows decreases in total emissions for all pollutants since 2002 and 2007.

[17] *See* Section 7 of Alabama's 2008 regional haze plan and page 18 of the Progress Report for the complete inventory.

[18] The Progress Report lists SO_2 projected 2018 point source emissions as 418,486 tpy. This is an error in carrying over information from the 2008 Alabama regional haze plan. The correct value is provided in Table 5. *See* Table 7.2.3–2 of the 2008 regional haze plan, p. 52 and 77 FR 11945.

[19] EPA Air Markets Program Data is available at: *https://ampd.epa.gov/ampd/.*

[20] *See* Figures 9 and 10 in the Progress Report.

visibility readings for 2009–2013 generally show greater improvements in visibility than projected by the State in establishing the 2018 RPGs for the Sipsey Wilderness Area and that SO_2 emissions from coal-fired EGUs in the State have decreased from 2002–2012 by more than the predicted decline in SO_2 emissions from these sources for the first implementation period in Alabama's 2008 regional haze plan. Alabama expects that these emissions will continue to decrease through the first regional haze implementation period.

As discussed above, Alabama identified the following Class I areas as potentially impacted by Alabama sources: Cohutta Wilderness Area in Georgia; Joyce Kilmer-Slickrock Wilderness Area in North Carolina; St. Marks Wilderness Area in Florida; and Breton Wilderness Area in Louisiana. In its Progress Report, Alabama notes that it has evaluated IMPROVE monitoring data from 2009–2013 for these Class I areas and that the trend for each of these areas is at or below the glidepath.[21] The State concludes that given expected continued emission reductions, the trends for those areas should continue, and no additional controls are needed at this time to meet RPGs.

Alabama notes that it consulted with other states during the development of its 2008 regional haze plan, including Florida, Georgia, Louisiana, and North Carolina. Of these states, North Carolina identified one unit in Alabama—TVA Widows Creek—as meeting North Carolina's criteria for a reasonable progress control evaluation and asked Alabama to share its reasonable progress control evaluation for this unit. Alabama determined that because this unit was subject to CAIR and had a scrubber installed, no additional controls were reasonable for this period. *See* 77 FR 11956. The State reiterates that after consultation with each of these states, Alabama was not requested to further evaluate any source relative to a regional Class I area. Additionally, the State did not request any out-of-state source to evaluate impacts on the Sipsey Wilderness Area because no source met the State's criteria for a reasonable progress analysis.

The State notes that, considering the trends in visibility in the IMPROVE network, and given SO_2 reductions achieved, it is reasonable to assume that these conclusions still stand for the purposes of the Progress Report.

As discussed above, CAIR was implemented during the time period evaluated by ADEM for its Progress Report, CAIR has been replaced by CSAPR, and the requirements of CSAPR apply to sources in Alabama through the State's implementation plan. Alabama's fully approved regional haze plan, which now relies on CSAPR rather than CAIR, accordingly contains sufficient provisions to ensure that the RPGs of Class I areas in nearby states will be achieved.

EPA proposes to find that Alabama has adequately addressed the provisions of 40 CFR 51.308(g) regarding the strategy assessment. In its Progress Report, Alabama describes the improving visibility trends using data from the IMPROVE network and the downward emissions trends in key pollutants, with a focus on SO_2 emissions from EGUs in the State. ADEM determined that its regional haze plan is sufficient to meet the RPGs for its own Class I area and the Class I areas outside the State potentially impacted by the emissions from Alabama. EPA preliminarily finds that Alabama's conclusion regarding the sufficiency of its regional haze plan is appropriate because CAIR was in effect in Alabama through 2014, providing the emission reductions relied upon in Alabama's regional haze plan through that date. CSAPR is now being implemented, and by 2018, the end of the first regional haze implementation period, CSAPR will reduce emissions of SO_2 and NO_X from EGUs in Alabama by the same amount assumed by EPA when the Agency originally issued the FIP for the State in June 2012, replacing reliance on CAIR with reliance on CSAPR. Because CSAPR, now adopted and implemented at the state level, will ensure the control of SO_2 and NO_X emissions reductions relied upon by Alabama and other states in setting their RPGs beginning in January 2015 at least through the remainder of the first implementation period in 2018, EPA is proposing to approve Alabama's finding that the plan elements and strategies in its implementation plan are sufficient to achieve the RPGs for the Class I area in the State and for Class I areas in nearby states potentially impacted by sources in the State.

7. Review of Current Monitoring Strategy

In its Progress Report, Alabama summarizes the existing monitoring network in the State to monitor visibility at the Sipsey Wilderness Area and concludes that no modifications to the existing visibility monitoring strategy are necessary. The primary monitoring network for regional haze, both nationwide and in Alabama, is the IMPROVE network. There is currently one IMPROVE site located in the Sipsey Wilderness Area.

The State explains the importance of the IMPROVE monitoring network for tracking visibility trends at the Class I area in Alabama. ADEM states that data produced by the IMPROVE monitoring network will be used for preparing the regional haze progress reports and SIP revisions, and thus, the monitoring data from the IMPROVE sites needs to be readily accessible and to be kept up to date. The Visibility Information Exchange Web System website has been maintained by VISTAS and the other Regional Planning Organizations to provide ready access to the IMPROVE data and data analysis tools.

In addition, ADEM operates a $PM_{2.5}$ network of filter-based federal reference method monitors and filter-based speciation monitors. These $PM_{2.5}$ measurements help ADEM characterize air pollution levels in areas across the State, and therefore aid in the analysis of visibility improvement in and near the Sipsey Wilderness Area.[22]

EPA proposes to find that Alabama has adequately addressed the applicable provisions of 40 CFR 51.308(g) regarding the monitoring strategy because the State reviewed its visibility monitoring strategy and determined that no further modifications to the strategy are necessary.

B. Determination of Adequacy of the Existing Regional Haze Plan

In its Progress Report, ADEM submitted a negative declaration to EPA that the existing regional haze plan requires no further substantive revision at this time to achieve the RPGs for Class I areas affected by the State's sources. The State's negative declaration is based on the findings from the Progress Report, including the findings that: Visibility has already improved at the Sipsey Wilderness Area in Alabama such that the visibility averages for the five-year period 2009–2013 are better than the RPGs for 2018; actual SO_2 emissions reductions from coal-fired EGUs in Alabama exceed the predicted reductions in ADEM's 2008 regional haze plan; additional EGU control measures not relied upon in the State's 2008 regional haze plan have occurred or will occur during the first implementation period that will further reduce SO_2 emissions; and emissions of SO_2 from EGUs in Alabama are expected to continue to trend downward.

[21] The ''glidepath'' is the rate of progress needed to reach natural visibility conditions by 2064 (also referred to as the ''uniform rate of progress''). *See* 77 FR 11940.

[22] *See* Figure 11 in the Progress Report, p. 24.

EPA proposes to conclude that Alabama has adequately addressed 40 CFR 51.308(h) because the visibility trends at the Sipsey Wilderness Area and at Class I areas outside of the State potentially impacted by sources within Alabama and the emissions trends of the largest emitters of visibility-impairing pollutants in the State indicate that the relevant RPGs will be met.

III. Proposed Action

EPA is proposing to approve Alabama's June 26, 2018, Regional Haze Progress Report as meeting the applicable regional haze requirements set forth in 40 CFR 51.308(g) and 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. This action merely proposes to approve state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866;
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

The SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

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

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

Dated: December 6, 2018.

Mary S. Walker,

Acting Regional Administrator, Region 4.

[FR Doc. 2018–27357 Filed 12–17–18; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

45 CFR Parts 302, 303, 307, and 309

RIN 0970–AC50

Child Support Technical Corrections Notice of Proposed Rulemaking

AGENCY: Office of Child Support Enforcement (OCSE), Administration for Children and Families (ACF), Department of Health and Human Services (HHS).

ACTION: Notice of proposed rulemaking; delay of compliance date.

SUMMARY: The Office of Child Support Enforcement proposes to eliminate regulations rendered outdated or unnecessary and make technical amendments to the Flexibility, Efficiency, and Modernization in Child Support Enforcement (FEM) final rule, published on December 20, 2016, including proposing to amend the compliance date for review and adjustment of child support orders. We are also proposing conforming amendments to the regulations as a result of Bipartisan Budget Act of 2018, Public Law 115–123.

DATES: In order to be considered, we must receive written comments on this notice of proposed rulemaking (NPRM) on or before January 17, 2019.

ADDRESSES: You may submit comments, identified by [docket number and/or Regulatory Information Number (RIN) number], by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.
- *Mail:* Written comments may be submitted to: Office of Child Support Enforcement, Attention: Director of Policy and Training, 330 C Street SW, Washington, DC 20201.

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

FOR FURTHER INFORMATION CONTACT: Tricia John, Division of Policy and Training, OCSE, telephone (202) 260–7143. Email inquiries to *ocse.dpt@acf.hhs.gov*. 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.

SUPPLEMENTARY INFORMATION:

Submission of Comments

Comments should be specific, address issues raised by the proposed rule, propose alternatives where appropriate, explain reasons for any objections or recommended changes, and reference the specific action of the proposed rule that is being addressed. Additionally, we will be interested in comments that indicate agreement with changed or new proposals. We will not acknowledge receipt of the comments we receive. However, we will review and consider all comments that are germane and are received during the comment period. We will respond to these comments in the preamble to the Final Rule.

Statutory Authority

This NPRM is published under the authority granted to the Secretary of Health and Human Services by section

1102 of the Social Security Act (Act), 42 U.S.C. 1302. Section 1102 of the Act authorizes the Secretary to publish regulations, not inconsistent with the Act, as may be necessary for the efficient administration of the functions with which the Secretary is responsible under the Act.

Background

These revisions are intended to carry out the President's directives in Executive Orders (E.O.) 13771 and 13777. Executive Order 13777 requires each agency to establish a Regulatory Reform Task Force that shall evaluate existing regulations (as defined in section 4 of E.O. 13771) and make recommendations to the agency head regarding their repeal, replacement, or modification, consistent with applicable law. This rule proposes to eliminate identified regulatory requirements that are outdated and unnecessary. Additionally, this regulation proposes to make a few technical amendments that needed policy adjustments.

The OCSE is proposing to revise the compliance date for *Review and adjustment of child support orders* in § 303.8(b)(7)(ii). This Federal requirement indicates that the State must, within 15 business days of learning that the noncustodial parent will be incarcerated for more than 180 calendar days, send notices to both parents informing them of the right to request review and, if appropriate, adjustment of the child support order. Currently, the FEM final rule indicates that the compliance date for this Federal requirement is 1 year from the date of publication of the final rule, or December 20, 2017, and if State law changes are needed, the compliance date will be the first day of the second calendar quarter beginning after the close of the first regular session of the State legislature that begins after the effective date of the final rule (January 20, 2017).

However, after issuing the FEM final rule, it was brought to our attention that the compliance date for § 303.8(b)(7)(ii) would be impractical for those States that needed to revise their regulations to prohibit incarceration from being considered voluntary unemployment in accordance to § 302.56(c)(3). As a result, we are amending the compliance date for § 303.8(b)(7)(ii) to add that for those States that consider incarceration to be voluntary unemployment, the compliance date is 1 year after completion of the first quadrennial review of the State's guidelines that commences more than 1 year after publication of the final rule (December 20, 2016).

On February 9, 2018, the President signed the Bipartisan Budget Act of 2018 Public Law (Pub. L.) 115–123. Section 53117 of Public Law 115–123, Modernizing child support enforcement fees, amends Section 454(6)(B)(ii) of the Social Security Act to increase the annual collection fee from $25 to $35. The law also revises the amount from $500 to $550 that the State must collect and disburse to the family before imposing the fee each Federal fiscal year. Additionally, to obtain more timely National Directory of New Hires (NDNH) data, we are proposing in § 303.108(c) to reduce the timeframe to report wage information to the NDNH from the end of the fourth month following the reporting period to the end of the first month following the reporting period, which would align the timeframes for when States must report wage data and unemployment compensation claims data.

Effective and Compliance Dates

The proposed effective date would be 60 days from the date of publication of this final rule. However, we are proposing delayed compliance dates, or the dates that States must comply with the final rule, for the following proposed regulatory changes:

- Review and adjustment of child support orders [§ 303.8(b)(7)(ii)]: Currently, the compliance date for sending notices to both parents within 15 business days of when the IV–D agency learns that the noncustodial parent will be incarcerated for more than 180 days is 1 year from the date of publication of the FEM final rule (December 20, 2016). If State law revisions are needed, the compliance date is the first day of the second calendar quarter beginning after the close of the first regular session of the state legislature that begins after the effective date of the regulation (January 20, 2017). However, for those States that consider incarceration to be voluntary unemployment, this proposed rule will delay the compliance date for sending these notices [§ 303.8(b)(7)(ii)] to 1 year after completion of the first quadrennial review of the State's guidelines that commences more than 1 year after publication of the FEM final rule (December 20, 2016).
- Annual collection fee for individuals not receiving title IV–A assistance [§ 302.33(e)]: The compliance date is the first day of the first fiscal year that begins on or after the date of the enactment of the Bipartisan Budget Act of 2018, or October 1, 2018. If the Secretary of Health and Human Services determines that State legislation (other than legislation appropriating funds) is required for a State to meet the requirements imposed by the amendment in Section 454(6)(B)(ii) of the Social Security Act [42 U.S.C. 654(6)(B)(ii)], then the State shall not be regarded as failing to meet such requirements before the first day of the first calendar quarter beginning after the first regular session of the State legislature that begins after the date of the enactment of Public Law 115–123. However, if a State has a 2-year legislative session, each year of the session is deemed to be a separate regular session of the state legislature.
- Quarterly wage and unemployment compensation claims reporting to the National Directory of New Hires [§ 303.108(c)]: The compliance date is one year after the publication of the final rule.

We are inviting comments concerning the proposed effective and compliance dates.

Section-by-Section Discussion of the Provisions of This Proposed Rule

Section 302.33: Services to Individuals Not Receiving Title IV–A Assistance

We propose to revise § 302.33(e) because Section 454(6)(B)(ii) of the Social Security Act was amended by Section 53117 of Public Law 115–123, Modernizing Child Support Enforcement Fees. The $25 annual fee was increased to $35. The amount the State must collect and disburse to the family each year before imposing the collection of the annual fee was changed from $500 to $550.

Section 303.11: Case Closure Criteria

We propose to revise paragraph (b)(9)(ii) to allow case closure when the noncustodial parent is also receiving concurrent Supplemental Security Income (SSI) and Social Security Retirement (SSR) benefits. The rationale for closing concurrent SSI/Social Security Disability Income (SSDI) cases applies equally to concurrent SSI/SSR cases because the noncustodial parent meets the low-income means-tested criteria for the SSI program. The concurrent SSI/SSR noncustodial parent receives no more income than a SSI/SSDI recipient. SSDI and SSR benefits are related in that SSR benefits take the place of SSDI when an individual reaches retirement age.

SSDI benefits are available to individuals who are disabled, have enough work income, and under the age of 65 or retirement age. When an individual turns 65 or retirement age, they become eligible for SSR benefits, which are also based on their work income. A recipient receives concurrent SSI and either SSDI or SSR benefits under title II of the Act when the disabled noncustodial parent qualifies for the means-tested SSI benefits on the basis of his or her income and assets, but also qualifies for the SSDI or SSR benefits. In these cases, the Social Security Administration pays a combination of benefits up to the SSI benefit level. Given that a noncustodial parent who is eligible for concurrent benefits meets the SSI means-tested criteria and receives the same benefit

amount as a SSI beneficiary, it is appropriate to close these cases on the same basis as an SSI case.

Section 303.71: Requests for Full-Collection Services by the Secretary of the Treasury

We propose to remove § 303.71, ''Requests for full collection services by the Secretary of the Treasury.'' Currently, there are only 23 cases that have been certified under this procedure between 2008 and 2013. Based on the Internal Revenue Service's statute of limitations, they will close a full-collection case after 10 years if there is no payment activity. States have not submitted any new cases for this enforcement procedure since 2013. Because the number of other more effective enforcement procedures available to States has grown, and given that States are no longer widely using this enforcement tool, we propose streamlining the regulations by removing the provision. Because the procedure is statutory, the removal of § 303.71 will not impact a State's ability to use this procedure, pursuant to section 452(b) of the Act, if it so chooses.

Section 303.73: Applications To Use the Courts of the United States To Enforce Court Orders

We propose to remove § 303.73, ''Applications to use the courts of the United States to enforce court orders,'' because it is no longer necessary. Sections 452(a)(8) and 460 of the Act permit the use of the courts of the United States, without regard to any amount in controversy, when another State has not undertaken to enforce a court order of an originating State against an absent parent within a reasonable time and the Secretary finds that use of the Federal courts is the only reasonable method of enforcing such order. Federal regulations at § 303.73 prescribe that a State seeking to use the Federal courts to enforce a child support order against an absent parent in another State may apply to the Secretary for permission to use a United States district court for such purpose based on instructions issued by OCSE. This regulation, originally promulgated at 45 CFR 302.72 in 1975, was needed to enforce interstate orders. An Action Transmittal (AT) issued February 6, 1976 (OCSE–AT–76–1) and revised May 12, 1976 (OCSE–AT–76–8) provides guidance for use of Federal courts and instructions to State IV–D agencies for preparation and submission of applications for certification to use a U.S. district court.

However, the ''Preventing Sex Trafficking and Strengthening Families Act,'' enacted on September 29, 2014 (Pub. L. 113–183), amended section 466(f) of the Social Security Act, requiring all States to enact 2008 amendments to the Uniform Interstate Family Support Act ''officially adopted as of September 30, 2008 by the National Conference of Commissioners on Uniform State Laws'' (referred to as UIFSA 2008). As a result, UIFSA 2008 makes this requirement obsolete since it establishes procedures for enforcing interstate orders. UIFSA 2008 defines a tribunal as a court, administrative agency, or quasi-judicial entity authorized to establish, enforce, or modify support orders or to determine parentage of a child. UIFSA also establishes rules/standards related to personal, subject matter, and long-arm jurisdiction and establishes procedures on registering/enforcing foreign orders.

Section 303.108: Quarterly Wage and Unemployment Compensation Claims Reporting to the National Directory of New Hires

Section 453A(g)(2)(B) of the Act, requires that the State Directory of New Hires shall, on a quarterly basis, furnish to the NDNH information concerning the wages and unemployment compensation paid to individuals, by such dates, in such format, and containing such information as the Secretary of Health and Human Services shall specify in regulations. In accordance with § 303.108(c), the State must report quarterly wage information no later than the end of the fourth month following the reporting period. However, the State reports quarterly unemployment compensation claim information no later than the end of the first month following the reporting period.

We propose to revise § 303.108(c) to reduce the timeframe for reporting quarterly wage data to the end of the first month following the reporting period. This will align the time frames for when States must report wage data and unemployment compensation claims data to the NDNH and help ensure State child support programs receive data more timely to locate parents and to establish and enforce support orders and medical support orders.

Section 307.11: Functional Requirements for Computerized Support Enforcement Systems in Operation by October 1, 2000

We propose to revise paragraph (c)(3) as a technical correction to the FEM final rule to include noncustodial parents who receive concurrent Supplemental Security Income (SSI) and Social Security Retirement (SSR) benefits under title II of the Act. Additionally, we are adding ''or through an income withholding order'' so the State should be preventing garnishment from the noncustodial parent's financial accounts or through an income withholding order. In other words, if a noncustodial parent is receiving concurrent SSI and either SSDI or SSR benefits, the State should not be sending an income withholding order directing the Social Security Administration to garnish the SSDI or SSR portion of the concurrent benefits.

As we indicated under the *Case closure criteria* section (§ 303.11), a recipient receives concurrent SSI and either SSDI or SSR benefits under title II of the Act when the disabled noncustodial parent qualifies for the means-tested SSI benefits on the basis of his or her income and assets, but also qualifies for the SSDI or SSR benefits. In these cases, the Social Security Administration pays a combination of benefits up to the SSI benefit level. Given that a noncustodial parent who is eligible for concurrent benefits meets the SSI means-tested criteria and receives the same benefit amount as a SSI beneficiary, it is appropriate that neither the SSDI nor the SSR benefit is garnished by the State through either an income withholding order or from his or her financial accounts. However, if the noncustodial parent only receives a SSDI or SSR benefit, the State child support agency may continue to garnish these benefits.

Likewise, we are making similar changes to paragraph (c)(3)(ii). If the State incorrectly garnishes a noncustodial parent concurrent benefits from SSI and either SSDI or SSR either from his or her financial account or directly through an income withholding order, the State must promptly return the monies within 5 business days after the State becomes aware that the noncustodial parent was receiving concurrent SSI and either SSDI or SSR benefits.

Section 307.30: Federal Financial Participation at the 90 Percent Rate for Statewide Computerized Support Enforcement Systems

We propose to remove § 307.30 because this section is outdated. We no longer have the authority to provide enhanced Federal financial participation (FFP) funding at the 90 percent rate for statewide computerized support enforcement systems. The 90 percent enhanced funding was only available for expenditures for the

planning, design, development, installation, or enhancement of a statewide computerized support enforcement system during the Federal fiscal years 1996 and 1997.

Section 307.31: Federal Financial Participation at the 80 Percent Rate for Computerized Support Enforcement Systems

We propose to remove § 307.31 because this section is outdated. We no longer have the authority to provide enhanced FFP funding at the 80 percent rate for statewide computerized support enforcement systems. The 80 percent enhanced funding was only available for expenditures for the planning, design, development, installation, or enhancement of a statewide computerized support enforcement system until September 30, 2001.

Section 309.20: Who submits a Tribal IV–D program application and where?

We propose to revise § 309.20(b) to remove an outdated address.

Section 309.75: What administrative and management procedures must a Tribe or Tribal organization include in a Tribal IV–D plan?

An Interim Final Rule effective December 26, 2014 (79 FR 75871), issued jointly by the Office of Management and Budget (OMB), HHS, and a number of Federal agencies, implements final guidance regarding ''Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards'' (Uniform Guidance). We are revising the reference regarding OMB Circular A–133, which was superseded by the Uniform Guidance effective December 26, 2014 (79 FR 75871), to the updated reference 45 CFR part 75, subpart F.

Section 309.155: What uses of Tribal IV–D program funds are not allowable?

We are revising the reference in § 309.155(g) regarding OMB Circular A–87, which was superseded by the Uniform Guidance effective December 26, 2014 (79 FR 75871) to the updated reference 45 CFR part 75, subpart E.

Paperwork Reduction Act

No new information collection requirements are imposed by these regulations, nor are any existing requirements changed as a result of their promulgation. Therefore, the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), regarding reporting and record keeping, do not apply.

Regulatory Flexibility Analysis

The Secretary certifies that, under 5 U.S.C. 605(b), as enacted by the Regulatory Flexibility Act (Pub. L. 96–354), this rule will not result in a significant impact on a substantial number of small entities. The primary impact is on State governments. State governments are not considered small entities under the Act.

Regulatory Impact Analysis

Executive Orders 12866, 13563, and 13771

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 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. ACF consulted with the OMB and determined that this rule does meet the criteria for a significant regulatory action under E.O. 12866. Thus, it was subject to OMB review. ACF determined that the costs to title IV–D agencies as a result of this rule will not be significant as defined in E.O. 12866 (have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities). Because the rule is not economically significant as defined in E.O. 12866, no cost-benefit analysis needs to be included in this NPRM. This proposed rule, if finalized as proposed, would be considered an E.O. 13771 deregulatory action.

Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act (Pub. L. 104–4) requires agencies to prepare an assessment of anticipated costs and benefits before proposing any rule that may result in an annual expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation). That threshold level is currently approximately $150 million. This proposed rule does not impose any mandates on State, local, or tribal governments, or the private sector that will result in an annual expenditure of $146 million or more.

Congressional Review

This regulation is not a major rule as defined in 5 U.S.C. chapter 8.

Assessment of Federal Regulations and Policies on Families

Section 654 of the Treasury and General Government Appropriations Act of 1999 requires Federal agencies to determine whether a proposed policy or regulation may affect family well-being. If the agency's determination is affirmative, then the agency must prepare an impact assessment addressing seven criteria specified in the law. This regulation makes technical changes in the child support regulations. This regulation will not have an adverse impact on family well-being as defined in the legislation.

Executive Order 13132

Executive Order 13132 prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial direct compliance costs on State and local governments and is not required by statute, or the rule preempts State law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. This rule does not have federalism impact as defined in the Executive Order.

List of Subjects

45 CFR Part 302

Child support, State Plan Requirements.

45 CFR Part 303

Child support, Standards for program operations.

45 CFR Part 307

Child support, Computerized support enforcement systems.

45 CFR Part 309

Child support, Tribal child support enforcement (IV–D) program.

(Catalog of Federal Domestic Assistance Programs No. 93.563, Child Support Enforcement Program.)

Lynn A. Johnson,

Assistant Secretary for Children and Families.

Approved: November 19, 2018.

Alex M. Azar II,

Secretary.

For the reasons set forth in the preamble, we propose to amend 45 CFR Chapter III, as set follows:

PART 302—STATE PLAN REQUIREMENTS

■ 1. The authority citation for part 302 continues to read as follows:

Authority: 42 U.S.C. 651 through 658, 659a, 660, 664, 666, 667, 1302, 1396a(a)(25), 1396b(d)(2), 1396b(o), 1396b(p), and 1396(k).

§ 302.33 [Amended]

■ 2. Amend § 302.33 by:
■ a. Revising (e) intro text paragraph;
■ b. Removing in paragraph (e)(1), (2), (4), (5) wherever it appears the dollar amount ''$25'' and replacing it with ''$35''; and
■ c. Removing in paragraphs (e)(1)(i) and (3), wherever it appears the dollar amount ''$500'' and replacing it with ''$550''.

The revision reads as follows:

§ 302.33 Services to individuals not receiving title IV–A assistance.

* * * * *

(e) Annual collection fee. * * *

* * * * *

PART 303—STANDARDS FOR PROGRAM OPERATIONS

■ 3. The authority citation for part 303 reads as follows:

Authority: 42 U.S.C. 651 through 658, 659a, 660, 663, 664, 666, 667, 1302, 1396a(a)(25), 1396b(d)(2), 1396b(o), 1396b(p), and 1396(k), and 25 U.S.C. 1603(12) and 1621e.

■ 4. Revise § 303.11 paragraph (b)(9)(ii) to read as follows:

§ 303.11 Case closure criteria.

* * * * *

(b) * * *

(9) * * *

(i) * * *

(ii) Both SSI payments and either Social Security Disability Insurance (SSDI) or Social Security Retirement (SSR) benefits under title II of the Act.

* * * * *

§ 303.71 [Removed]

■ 5. Remove § 303.71.

§ 303.73 [Removed]

■ 6. Remove § 303.73.
■ 7. Amend § 303.108 by revising paragraph (c) to read as follows:

§ 303.108 Quarterly wage and unemployment compensation claims reporting to the National Directory of New Hires

* * * * *

(c) *What timeframes apply for reporting quarterly wage and unemployment compensation claims data?* The State shall report wage and claim information for the reporting period no later than the end of the first month following the reporting period.

* * * * *

PART 307—COMPUTERIZED SUPPORT ENFORCEMENT SYSTEMS

■ 8. The authority for part 307 continues to read as follows:

Authority: 42 U.S.C. 652 through 658, 664, 666 through 669A, and 1302.

■ 9. Amend § 307.11 by revising paragraphs (c)(3)(i) and (ii) as follows:

§ 307.11 Functional requirements for computerized support enforcement systems in operation by October 1, 2000

* * * * *

(c) * * *

(3) * * *

(i) Identify cases that have been previously identified as involving a noncustodial parent who is a recipient of SSI payments or concurrent SSI payments and either Social Security Disability Insurance (SSDI) or Social Security retirement (SSR) benefits under title II of the Act, to prevent garnishment of these funds from the noncustodial parent's financial account or through an income withholding order; and

(ii) Return funds to a noncustodial parent within 5 business days after the agency determines that SSI payments or concurrent SSI payments and either SSDI or SSR benefits under title II of the Act have been incorrectly garnished from the noncustodial parent's financial account or through an income withholding order.

* * * * *

§ 307.30 [Removed]

■ 10. Remove § 307.30.

§ 307.31 [Removed]

■ 11. Remove § 307.31.

PART 309—TRIBAL CHILD SUPPORT ENFORCEMENT (IV–D) PROGRAM

■ 12. The authority for part 309 continues to read as follows:

Authority: 42 U.S.C. 655(f) and 1302.

§ 309.20 [Amended]

■ 13. Amend § 309.20 paragraph (b) by removing the words ''Tribal Child Support Enforcement Program, 370 L'Enfant Promenade SW, Washington, DC 20447'' and adding in its place, the words ''Federal Office of Child Support Enforcement''.

§ 309.75 [Amended]

■ 14. Amend § 309.75 paragraph (d) by removing the citation wording ''OMB Circular A–133'' and adding in its place, the words ''45 CFR part 75, Subpart F''.

§ 309.155 [Amended]

■ 15. Amend § 309.155 paragraph (g) by removing the words ''OMB Circular A–87'' and adding in its place, the words ''45 CFR part 75, Subpart E''.

[FR Doc. 2018–27224 Filed 12–17–18; 8:45 am]

BILLING CODE 4184–42–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

46 CFR Part 10

[Docket No. USCG–2018–0041]

Draft Merchant Mariner Medical Manual

AGENCY: Coast Guard, DHS.

ACTION: Notice of availability, extension of public comment period.

SUMMARY: The Coast Guard is extending, for 30 days, the period for submitting public comments on the notice of availability of the Draft Merchant Mariner Medical Manual. The extension responds to requests made by the public.

DATES: The comment period for the Notice of availability published on November 13, 2018 (83 FR 56272) is extended. Comments must be submitted to the online docket via *http://www.regulations.gov,* or reach the Docket Management Facility, on or before February 13, 2019.

ADDRESSES: You may submit comments identified by docket number USCG–2018–0041 using the Federal eRulemaking Portal at *http://www.regulations.gov.* See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: For information about this document call or email Adrienne Buggs, M.D., United States Coast Guard, Office of Merchant Mariner Credentialing; telephone: 202–372–2357, email: *MMCPolicy@uscg.mil.*

SUPPLEMENTARY INFORMATION:

Public Participation and Comments

We encourage you to submit comments (or related material) on the draft Merchant Mariner Medical Manual. We will consider all submissions and may adjust our final action based on your comments. If you submit a comment, please include the docket number for this notice, indicate the specific section of the document to which each comment applies, and

provide a reason for each suggestion or recommendation.

We encourage you to submit comments through the Federal eRulemaking Portal at *http://www.regulations.gov.* If your material cannot be submitted using *http://www.regulations.gov,* contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions. Documents mentioned in this notice, and all public comments, will be posted in our online docket at *http://www.regulations.gov* and can be viewed by following that website's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted or the Coast Guard publishes any additional documents related to this notice of availability.

We accept anonymous comments. All comments received will be posted without change to *http://www.regulations.gov* and will include any personal information you have provided. For more about privacy and the docket, you may review a Privacy Act notice regarding the Federal Docket Management System in the March 24, 2005, issue of the **Federal Register** (70 FR 15086).

Background and Discussion of Draft Manual

We issued a Notice of Availability of the Draft Merchant Mariner Medical Manual on November 13, 2018 (83 FR 56272). We received requests from commenters asking for additional time for the comment period. We have decided to grant the extension to provide a greater opportunity for the public to review and provide their comments. With this extension, the total length of the public comment period will now be 90 days.

This notice is issued under the authority of 5 U.S.C. 552(a), 46 U.S.C. 7101, and 46 U.S.C. 7302.

Dated: December 12, 2018.

J.G. Lantz,

Director, Commercial Regulations and Standards, U.S. Coast Guard.

[FR Doc. 2018–27330 Filed 12–17–18; 8:45 am]

BILLING CODE 9110–04–P

Notices

Federal Register
Vol. 83, No. 242
Tuesday, December 18, 2018

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of New Fee Site; Federal Lands Recreation Enhancement Act

AGENCY: Ozark-St. Francis National Forest in Arkansas, USDA Forest Service.

ACTION: Notice of new recreation fees.

SUMMARY: The Ozark-St. Francis National Forests in Arkansas, will be implementing new fees at Richland Creek Campground at $10 per night for a single site or $20 per night for a double site. This site has had additional amenities added to improve services and experiences that include new grills, tables, lantern poles, tent pads, parking spaces, new toilet, water system upgrades and trashcans. In addition, most sites are now fully accessible for wheelchairs. Fees are assessed based on the level of amenities and services provided, cost of operation and maintenance, market assessment and public comment. Funds from fees will be used for the continued operation and maintenance as well as improvements to the facilities within the campground.

DATES: Implementation of the new fees will occur no sooner than 180 days from date of publication in the **Federal Register**.

Public comment for this new fee proposal was completed on July 27, 2018. The Southern Region Recreation Resource Advisory Committee reviewed and offered recommendations on this new fee on August 27, 2018 respectively. The Region 8 Regional Forester decided to implement this new fee on October 26, 2018.

ADDRESSES: Cherie Hamilton, Forest Supervisor, Ozark-St. Francis National Forest, 605 West Main St., Russellville, Arkansas 72801.

FOR FURTHER INFORMATION CONTACT: Robert Duggan, Recreation Program Manager, 479–964–7238.

SUPPLEMENTARY INFORMATION: This site will honor a 50% discount for holders of the Interagency Senior and Access passes. The Federal Recreation Lands Enhancement Act (Title VII, P.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.

Dated: November 16, 2018.

Allen Rowley,

Acting Associate Deputy Chief, National Forest System.

[FR Doc. 2018–27353 Filed 12–17–18; 8:45 am]

BILLING CODE 3411–15–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Rhode Island Advisory Committee

AGENCY: Commission on Civil Rights.

ACTION: Announcement of meetings.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission), and the Federal Advisory Committee Act (FACA), that a planning meeting of the Rhode Island State Advisory Committee to the Commission will convene by conference call, on Tuesday, February 5, 2019 at 11:00 a.m. (EST). The purpose of the meeting is for project planning.

DATES: Tuesday, February 5, 2019 at 11:00 a.m. (EST).

Public Call-In Information: Conference call number: 1–888–254–3590 and conference call ID: 1051852.

FOR FURTHER INFORMATION CONTACT: Evelyn Bohor, at *ero@usccr.gov* or by phone at 202–376–7533.

SUPPLEMENTARY INFORMATION: Interested members of the public may listen to the discussion by calling the following toll-free conference call number: 1–888–254–3590 and conference call ID: 1051852. Please be advised that before placing them into the conference call, the conference call operator may ask callers to provide their names, their organizational affiliations (if any), and email addresses (so that callers may be notified of future meetings). Callers can expect to incur charges for calls they initiate over wireless lines, and the Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number herein.

Persons with hearing impairments may also follow the discussion by first calling the Federal Relay Service at 1–800–877–8339 and providing the operator with the toll-free conference call number: 1–888–254–3590 and conference call ID: 1051852.

Members of the public are invited to submit written comments; the comments must be received in the regional office approximately 30 days after each scheduled meeting. Written comments may be mailed to the Eastern Regional Office, U.S. Commission on Civil Rights, 1331 Pennsylvania Avenue, Suite 1150, Washington, DC 20425, or emailed to Evelyn Bohor at *ero@usccr.gov.* Persons who desire additional information may contact the Eastern Regional Office at (202) 376–7533.

Records and documents discussed during the meeting will be available for public viewing as they become available at *https://gsageo.force.com/FACA/apex/FACAPublicCommittee?id=a10t0000001gzm4AAA;* click the ''Meeting Details'' and ''Documents'' links. Records generated from this meeting may also be inspected and reproduced at the Eastern Regional Office, as they become available, both before and after the meetings. Persons interested in the work of this advisory committee are advised to go to the Commission's website, *www.usccr.gov,* or to contact the Eastern Regional Office at the above phone number, email or street address.

Agenda

Tuesday, February 5, 2019 at 11:00 a.m. (EST)

I. Roll Call

II. Project Planning

III. Open Comment

IV. Adjournment

Dated: December 13, 2018.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2018–27321 Filed 12–17–18; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Connecticut Advisory Committee

AGENCY: Commission on Civil Rights.

ACTION: Announcement of meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission), and the Federal Advisory Committee Act (FACA), that a meeting of the Connecticut Advisory Committee to the Commission will convene by conference call at 12:00 p.m. (EST) on Wednesday, January 9, 2019. The purpose of the meeting is finalize preparations for a briefing on prosecutorial appointments at the Legislative Office Building in Hartford on January 15, 2019.

DATES: Wednesday, January 9, 2019 at 12:00 p.m. (EST)

Public Call–In Information: Conference call–in number: 1–888–204–4368 and conference call 4713528.

FOR FURTHER INFORMATION CONTACT: Evelyn Bohor at *ero@usccr.gov* or by phone at 202–376–7533.

SUPPLEMENTARY INFORMATION: Interested members of the public may listen to the discussion by calling the following toll-free conference call-in number: 1–888–204–4368 and conference call 4713528. Please be advised that before placing them into the conference call, the conference call operator will ask callers to provide their names, their organizational affiliations (if any), and email addresses (so that callers may be notified of future meetings). Callers can expect to incur charges for calls they initiate over wireless lines, and the Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free conference call-in number.

Persons with hearing impairments may also follow the discussion by first calling the Federal Relay Service at 1–800–977–8339 and providing the operator with the toll-free conference call-in number: 1–888–204–4368 and conference call 4713528.

Members of the public are invited to make statements during the open comment period of the meeting or submit written comments. The comments must be received in the regional office approximately 30 days after each scheduled meeting. Written comments may be mailed to the Eastern Regional Office, U.S. Commission on Civil Rights, 1331 Pennsylvania Avenue, Suite 1150, Washington, DC 20425, faxed to (202) 376–7548, or emailed to Evelyn Bohor at *ero@usccr.gov.* Persons who desire additional information may contact the Eastern Regional Office at (202) 376–7533.

Records and documents discussed during the meeting will be available for public viewing as they become available at *https://gsageo.force.com/FACA/FACAPublicViewCommitteeDetails?id=a10t0000001gzlqAAA;* click the ''Meeting Details'' and ''Documents'' links. Records generated from this meeting may also be inspected and reproduced at the Eastern Regional Office, as they become available, both before and after the meetings. Persons interested in the work of this advisory committee are advised to go to the Commission's website, *www.usccr.gov,* or to contact the Eastern Regional Office at the above phone numbers, email or street address.

Agenda

Wednesday, January 9, 2019 at 12:00 p.m. (EST)

- Roll Call
- Final Preparations for Briefing
- Open Comment
- Adjourn

Dated: December 13, 2018.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2018–27320 Filed 12–17–18; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

International Trade Administration

Advisory Committee on Supply Chain Competitiveness: Notice of Public Meetings

AGENCY: International Trade Administration, U.S. Department of Commerce.

ACTION: Notice of open meetings.

SUMMARY: This notice sets forth the schedule and proposed topics of discussion for public meetings of the Advisory Committee on Supply Chain Competitiveness (Committee).

DATES: The meetings will be held on January 16, 2019, from 12:00 p.m. to 3:00 p.m., and January 17, 2019, from 9:00 a.m. to 4:00 p.m., Eastern Standard Time (EST).

ADDRESSES: The meetings on January 16 and 17 will be held at the U.S. Department of Commerce, 1401 Constitution Avenue NW, Research Library (Room 1894), Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Richard Boll, Office of Supply Chain, Professional & Business Services (OSCPBS), International Trade Administration. (Phone: (202) 482–1135 or Email: *richard.boll@trade.gov.*

SUPPLEMENTARY INFORMATION:

Background: The Committee was established under the discretionary authority of the Secretary of Commerce and in accordance with the Federal Advisory Committee Act (5 U.S.C. App.). It provides advice to the Secretary of Commerce on the necessary elements of a comprehensive policy approach to supply chain competitiveness and on regulatory policies and programs and investment priorities that affect the competitiveness of U.S. supply chains. For more information about the Committee visit: *http://trade.gov/td/services/oscpb/supplychain/acscc/.*

Matters to Be Considered: Committee members are expected to continue to discuss the major competitiveness-related topics raised at the previous Committee meetings, including trade and competitiveness; freight movement and policy; trade innovation; regulatory issues; finance and infrastructure; and workforce development. The Committee's subcommittees will report on the status of their work regarding these topics. The agenda may change to accommodate other Committee business. The Office of Supply Chain, Professional & Business Services will post the final detailed agendas on its website, *http://trade.gov/td/services/oscpb/supplychain/acscc/,* at least one week prior to the meeting.

The meetings will be open to the public and press on a first-come, first-serve basis. Space is limited. The public meetings are physically accessible to people with disabilities. Individuals requiring accommodations, such as sign language interpretation or other ancillary aids, are asked to notify Mr. Richard Boll, at (202) 482–1135 or *richard.boll@trade.gov,* five (5) business days before the meeting.

Interested parties are invited to submit written comments to the Committee at any time before and after the meeting. Parties wishing to submit written comments for consideration by the Committee in advance of this meeting must send them to the Office of Supply Chain, Professional & Business Services, 1401 Constitution Ave NW, Room 11014, Washington, DC, 20230, or email to *richard.boll@trade.gov.*

For consideration during the meetings, and to ensure transmission to the Committee prior to the meetings, comments must be received no later than 5:00 p.m. EST on January 9, 2019.

Comments received after January 9, 2019, will be distributed to the

Committee, but may not be considered at the meetings. The minutes of the meetings will be posted on the Committee website within 60 days of the meeting.

Dated: December 13, 2018.

Maureen Smith,

Director, Office of Supply Chain.

[FR Doc. 2018–27336 Filed 12–17–18; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–838]

Clad Steel Plate From Japan: Continuation of the Antidumping Duty Order

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

SUMMARY: As a result of the determinations by the Department of Commerce (Commerce) and the International Trade Commission (ITC) that revocation of the antidumping duty order on clad steel plate from Japan would likely lead to a continuation or recurrence of dumping and material injury to an industry in the United States, Commerce is publishing a notice of continuation of the antidumping duty order.

DATES: Applicable December 18, 2018.

FOR FURTHER INFORMATION CONTACT: David Crespo, 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) 482–3693.

SUPPLEMENTARY INFORMATION:

Background

On July 2, 1996, Commerce published the antidumping duty order on clad steel plate from Japan.[1] On January 2, 2018, Commerce initiated and the ITC instituted the fourth sunset review of the antidumping duty order on clad steel plate from Japan, pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act).[2] As a result of its review, Commerce determined that revocation of the antidumping duty order on clad steel plate from Japan would likely lead to a continuation or recurrence of dumping and, therefore, notified the ITC of the magnitude of the margins likely to prevail should the order be revoked.[3] On December 12, 2018, the ITC published its determination, pursuant to section 751(c) of the Act, that revocation of the antidumping duty order on clad steel plate from Japan would likely lead to a continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.[4]

Scope of the Order

The scope of the order is all clad [5] steel plate of a width of 600 millimeters (mm) or more and a composite thickness of 4.5 mm or more. Clad steel plate is a rectangular finished steel mill product consisting of a layer of cladding material (usually stainless steel or nickel) which is metallurgically bonded to a base or backing of ferrous metal (usually carbon or low alloy steel) where the latter predominates by weight.

Stainless clad steel plate is manufactured to American Society for Testing and Materials (ASTM) specifications A263 (400 series stainless types) and A264 (300 series stainless types). Nickel and nickel-base alloy clad steel plate is manufactured to ASTM specification A265. These specifications are illustrative but not necessarily all-inclusive.

Clad steel plate within the scope of the order is classifiable under the Harmonized Tariff Schedule of the United States (HTSUS) 7210.90.10.00. Although the HTSUS subheading is provided for convenience and customs purposes, our written description of the scope of the order is dispositive.

Continuation of the Order

As a result of the determinations by Commerce and the ITC that revocation of the antidumping duty order on clad steel plate from Japan would likely lead to a continuation or recurrence of dumping and material injury to an industry in the United States, pursuant to section 751(d)(2) of the Act, Commerce hereby orders the continuation of the antidumping duty order on clad steel plate from Japan. U.S. Customs and Border Protection will continue to collect antidumping duty cash deposits at the rates in effect at the time of entry for all imports of subject merchandise. The effective date of the continuation of the order will be the date of publication in the **Federal Register** of this notice of continuation. Pursuant to section 751(c)(2) of the Act, Commerce intends to initiate the next five-year review of the order not later than 30 days prior to the fifth anniversary of the effective date of continuation.

Administrative Protective Order

This notice also serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return/destruction or conversion to judicial protective order of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Failure to comply is a violation of the APO which may be subject to sanctions.

This five-year sunset review and this notice are in accordance with section 751(c) of the Act and published pursuant to section 777(i)(1) of the Act and 19 CFR 351.218(f)(4).

Dated: December 12, 2018.

Christian Marsh,

Deputy Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2018–27332 Filed 12–17–18; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DOD–2018–OS–0033]

Notice of Availability for Finding of No Significant Impact for the Environmental Assessment Addressing Construction and Operation of a Fiscal Year 2019 General Purpose Warehouse at Defense Logistics Agency Distribution Red River, Red River Army Depot, Texas

AGENCY: Defense Logistics Agency (DLA), Department of Defense.

[1] *See Notice of Antidumping Order: Clad Steel Plate from Japan,* 61 FR 34421 (July 2, 1996).

[2] *See Initiation of Five-Year (Sunset) Reviews,* 83 FR 100 (January 2, 2018) (*Sunset Initiation*) and *Clad Steel Plate from Japan; Institution of a Five-Year Review,* 83 FR 148 (January 2, 2018).

[3] *See Clad Steel Plate from Japan: Final Results of the Expedited Fourth Sunset Review of the Antidumping Duty Order,* 83 FR 22008 (May 11, 2018), and accompanying decision memorandum.

[4] *See Clad Steel Plate from Japan,* 83 FR 63904 (December 12, 2018); *see also* Clad Steel Plate from Japan (Inv. No. 731–TA–739 (Fourth Review), USITC Publication 4851, December 2018).

[5] Cladding is the association of layers of metals of different colors or natures by molecular interpenetration of the surfaces in contact. This limited diffusion is characteristic of clad products and differentiates them from products metalized in other manners (*e.g.,* by normal electroplating). The various cladding processes include pouring molten cladding metal onto the basic metal followed by rolling; simple hot-rolling of the cladding metal to ensure efficient welding to the basic metal; any other method of deposition of superimposing of the cladding metal followed by any mechanical or thermal process to ensure welding (*e.g.,* electrocladding), in which the cladding metal (nickel, chromium, *etc.*) is applied to the basic metal by electroplating, molecular interpenetration of the surfaces in contact then being obtained by heat treatment at the appropriate temperature with subsequent cold rolling. *See* Harmonized Commodity Description and Coding System Explanatory Notes, Chapter 72, General Note (IV)(C)(2)(e).

ACTION: Notice of availability (NOA).

SUMMARY: On June 8, 2018, DLA published an NOA in the **Federal Register** announcing the publication of the Environmental Assessment (EA) Addressing Construction and Operation of a Fiscal Year 2019 (FY19) General Purpose Warehouse (GPW) at DLA Distribution Red River, Red River Army Depot, Texas. The EA was available for a 30-day public comment period that ended July 9, 2018. The EA was prepared as required under the National Environmental Policy Act (NEPA) of 1969. In addition, the EA complied with DLA and Army NEPA regulations. No comments from the public were received during the EA public comment period.

FOR FURTHER INFORMATION CONTACT: Ira Silverberg at 571–767–0705 during normal business hours Monday through Friday, from 8:00 a.m. to 4:30 p.m. (EST) or by email: *ira.silverberg@dla.mil.*

SUPPLEMENTARY INFORMATION: DLA and Red River Army Depot (RRAD) consulted with the Texas State Historic Preservation Officer (SHPO) at the Texas Historical Commission; the Texas Parks and Wildlife Department (TPWD); the Tribal Historic Preservation Officers of the Caddo Nation; the Comanche Nation; the Kiowa Tribe of Oklahoma; and the Wichita and Affiliated Tribes for this Proposed Action. The Texas SHPO stamped the Request for State Historic Preservation Office Consultation with a determination that no historic properties would be affected by the Proposed Action. The TPWD provided comments regarding state-listed species. DLA addressed TPWD's comments in the EA, as appropriate, and responded to the TPWD with an acknowledgment letter. The Kiowa Tribe of Oklahoma provided an approval to proceed with the Proposed Action with the understanding that the Kiowa Tribe Office of Historic Preservation be notified should any undiscovered properties be encountered. DLA and RRAD did not receive responses to the consultation requests with the other tribes. An appendix to the EA includes the agency and tribal consultation documents and the responses from the SHPO, the TPWD, and the Kiowa Tribe of Oklahoma. The revised EA is available electronically at the Federal eRulemaking Portal at *http://www.regulations.gov* within Docket ID: DOD–2018–OS–0033.

This Finding of No Significant Impact (FONSI) documents the decision of DLA to construct and operate an FY19 GPW at DLA Distribution Red River, Texas. DLA has determined the Proposed Action is not a major federal action the significantly affects the quality of the human environment within the context of NEPA, and no significant impacts on the human environment are associated with this decision.

DLA completed an EA to address the potential environmental consequences associated with the proposed construction and operation of an FY19 GPW at DLA Distribution Red River, Texas. This FONSI incorporates the EA by reference and summarizes the results of the analyses in the EA.

Purpose of and Need for Action: The purpose of the Proposed Action is to provide DLA Distribution Red River with sufficient warehouse space so that vehicle parts and other materiel can be stored in an appropriate manner. The Proposed Action is needed because DLA Distribution Red River has an immediate and long-term requirement for additional warehousing space. The shortfall of warehouse space has resulted in critical supplies being stored in unprotected outdoor settings. Storage of materiel outdoors has led to new and otherwise serviceable equipment being weathered and, in some cases, deteriorating to the point of inoperability. Additionally, placement of materiel adjacent to buildings also prevents fire fighting equipment from fully accessing the exterior of buildings.

Proposed Action and Alternatives: Under the Proposed Action, DLA would construct and operate an FY19 GPW. The 445,500-square foot (ft^2) GPW would include a 5,500-ft^2 administrative area with an employee break room, locker rooms, restrooms, administrative offices, and mechanical and utility service areas. Other features of the proposed FY19 GPW include Early Suppression Fire Response fire protection, site information systems, weather sealed truck doors, loading docks, site lighting, storm drainage, paving (*i.e.,* access roadways, aprons, parking, and walkways), and related site improvements such as landscaping. Additionally, all necessary utilities, including electric, water, wastewater, natural gas, and communication services, would be extended to the proposed FY19 GPW. Construction of the proposed FY19 GPW would disturb approximately 1,460,000 ft^2 of currently undeveloped land.

The proposed FY19 GPW would not eliminate the entire shortfall of GPW space at DLA Distribution Red River. Therefore, once constructed, DLA would transfer only the most sensitive and valuable materiel from the existing outdoor storage areas on the installation into the FY19 GPW. Operation of the FY19 GPW would be consistent with existing and foreseeable future uses within RRAD as well as all applicable environmental policies and regulations.

Description of the No Action Alternative: Under the No Action Alternative, DLA would not construct a new FY19 GPW at DLA Distribution Red River, Texas. No changes to materiel storage conditions would result. Critical materiel that should be stored in warehouses would continue to be stored outdoors, which would result in equipment and other materiel deteriorating from exposure to weather and installation personnel being exposed to safety hazards. The No Action Alternative would not meet the purpose of and need for the Proposed Action.

Potential Environmental Impacts: No significant effects on environmental resources would be expected from the Proposed Action. Insignificant adverse effects on land use and recreation, noise, air quality, geological resources, water resources, biological resources, infrastructure and transportation, and hazardous materials and wastes would be expected. Insignificant, beneficial effects on land use, geological resources, water resources, and infrastructure and transportation also would be expected. Details of the environmental consequences are discussed in the EA, which is hereby incorporated by reference.

Determination: DLA has determined that implementation of the Proposed Action will not have a significant effect on the human environment. Human environment was interpreted comprehensively to include the natural and physical environment and the relationship of people with that environment. Specifically, no highly uncertain or controversial impacts, unique or unknown risks, or cumulatively significant effects were identified. Implementation of the Proposed Action will not violate any federal, state, or local laws. Based on the results of the analyses performed during preparation of the EA and consideration of comments received during the public comment period, Mr. Gordon B. Hackett III, Director, DLA Installation Management, concludes that construction and operation of a FY19 GPW at DLA Distribution Red River, Texas, does not constitute a major federal action significantly affecting the quality of the human environment within the context of NEPA. Therefore, an environmental impact statement for the Proposed Action is not required.

Dated: December 13, 2018.

Shelly E. Finke,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. 2018–27347 Filed 12–17–18; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Charter Renewal of Department of Defense Federal Advisory Committees

AGENCY: Department of Defense.

ACTION: Renewal of federal advisory committee.

SUMMARY: The Department of Defense is publishing this notice to announce that it is renewing the charter for the Department of Defense Military Family Readiness Council (''the Council'').

FOR FURTHER INFORMATION CONTACT: Jim Freeman, Advisory Committee Management Officer for the Department of Defense, 703–692–5952.

SUPPLEMENTARY INFORMATION: The Council's charter is being renewed pursuant to 10 U.S.C. 1781a, and in accordance with the Federal Advisory Committee Act (FACA) of 1972 (5 U.S.C., App) and 41 CFR 102–3.50(a). The Council's charter and contact information for the Council's Designated Federal Officer (DFO) can be found at *https://www.facadatabase.gov/FACA/apex/FACAPublicAgencyNavigation.*

The Council, pursuant to 10 U.S.C. 1781a(d), shall review and make recommendations to the Secretary of defense regarding the policy and plans required under 10 U.S.C. 1781b, monitor requirements for the support of military family readiness by the Department of Defense (DoD), and evaluate and assess the effectiveness of the military family readiness programs and activities of DoD. The Council, pursuant to 10 U.S.C. 1781a(e), shall no later than February 1st of each year, submit a report on military family readiness to the Secretary of Defense and the congressional defense committees. Each report, at a minimum, shall include the following: a. An assessment of the adequacy and effectiveness of the military family readiness programs and activities of the DoD during the preceding fiscal year in meeting the needs and requirement of military families. b. Recommendations on actions to be taken to improve the capability of the military family readiness programs and activities of the DoD to meet the needs and requirements of military families, including actions relating to the allocation of funding and other resources to and among such programs and activities.

The Council, pursuant to 10 U.S.C. 1781a(b), shall be composed of 18 members. All members of the Council are appointed to provide advice on the basis of their best judgment and without representing any particular point of view and in a manner that is free from conflict of interest. Except for reimbursement of official Council-related travel and per diem, Council members serve without compensation.

The public or interested organizations may submit written statements to the Council membership about the Council's mission and functions. Written statements may be submitted at any time or in response to the stated agenda of planned meeting of the Council. All written statements shall be submitted to the DFO for the Council, and this individual will ensure that the written statements are provided to the membership for their consideration.

Dated: December 7, 2018.

Shelly Finke,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. 2018–27271 Filed 12–17–18; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF THE DEFENSE

Department of the Army, Corps of Engineers

Withdrawal of the Notice of Intent To Prepare a Draft Environmental Impact Statement for the Dam Safety Modification Study Report for Center Hill Dam, DeKalb County, Tennessee

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Notice of Intent; withdrawal.

SUMMARY: The U.S. Army Corps of Engineers, Nashville District (USACE), is issuing this notice to inform Federal, State, local governmental agencies, and the public that USACE is withdrawing the Notice of Intent (NOI) to prepare a draft Environmental Impact Statement (EIS) to support the Dam Safety Modification Study Report (DSMSR) for Center Hill Dam.

ADDRESSES: U.S. Army Corps of Engineers, Nashville District, 110 9th Avenue South, RM 405A, Nashville, Tennessee 37203–3817.

FOR FURTHER INFORMATION CONTACT: Joy Broach, Aquatic Biologist, (615) 736–7956; email: *joy.i.broach@usace.army.mil.*

SUPPLEMENTARY INFORMATION: USACE published an NOI in the **Federal Register** on Friday, April 20, 2018 (77 FR 17541) to prepare a draft EIS pursuant to the National Environmental policy Act (NEPA) for the DSMSR. A scoping letter was circulated to federal, state, and local agencies, political officials, and the public on April 20, 2018. A public scoping meeting was held on May 3, 2018 to solicit public comments regarding environmental concerns for seven potential alternatives to lower risk at Center Hill Dam. Since the public meeting on May 3, 2018, and after additional engineering studies, the proposed alternatives have been evaluated. Several measures considered structural changes to existing spillway gate machinery to maximize spillway flow for extreme flood events. One measure considered adding spillway gates near the saddle dam and one measure considered changing the emergency operating schedule for spillway gate operations. The dam safety modification dam safety study recommended plan is maintenance rehabilitation of the electrical system, gate machinery and brakes to increase reliability, along with adding capability to remotely operate the gates from the top of the dam during an extreme flood event. The recommended plan does not include relocation or long-term road closure of Highway 96. The measures addressing spillway gate maintenance to increase gate reliability, are being recommended as a result of the dam safety modification study. These measures are considered routine operation and maintenance of the existing dam structure; they are categorically excluded from NEPA documentation and do not require an EIS. Therefore, the NOI to prepare an EIS is withdrawn with this notice.

Dated: December 11, 2018.

Timothy A. Higgs,

Environmental Section Chief, Project Planning Branch, U.S. Army Corps of Engineers, Nashville District.

[FR Doc. 2018–27346 Filed 12–17–18; 8:45 am]

BILLING CODE 3720–58–P

DEPARTMENT OF EDUCATION

[Docket No. ED–2018–ICCD–0133]

Agency Information Collection Activities; Comment Request; Assessing Evidence of Effectiveness in Adult Education

AGENCY: Institute of Education Sciences (IES), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, ED is proposing a new information collection.

DATES: Interested persons are invited to submit comments on or before February 19, 2019.

ADDRESSES: To access and review all the documents related to the information collection listed in this notice, please use *http://www.regulations.gov* by searching the Docket ID number ED–2018–ICCD–0133. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. *Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Information Collection Clearance Division, U.S. Department of Education, 550 12th Street SW, PCP, Room 9089, Washington, DC 20202–0023.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Melanie Ali, 202–245–8345.

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: Assessing Evidence of Effectiveness in Adult Education.

OMB Control Number: 1850–NEW.

Type of Review: A new information collection.

Respondents/Affected Public: Private Sector.

Total Estimated Number of Annual Responses: 60.

Total Estimated Number of Annual Burden Hours: 27.

Abstract: Title II of the Workforce Innovation and Opportunity Act (WIOA) of 2014 mandates a National Assessment of Adult Education. As part of the assessment, ED is conducting a feasibility study to determine whether specific adult education approaches could be rigorously evaluated at this time. If such approaches are identified, ED may elect to conduct effectiveness studies in a subsequent phase of the national assessment.

The feasibility study, which is the focus of this clearance package, will draw on interviews with directors of WIOA-funded adult education programs that currently implement, or that could implement, one of a number of approaches that ED has prioritized. If any of the proposed studies proceed, revised clearance packages will be submitted for data collections not covered under this request.

Dated: December 13, 2018.

Stephanie Valentine,

Acting Director, Information Collection Clearance Division, Office of the Chief Privacy Officer, Office of Management.

[FR Doc. 2018–27343 Filed 12–17–18; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 1250–000]

City of Pasadena, California; Notice of Authorization for Continued Project Operation

On December 29, 2016, City of Pasadena, California, licensee for the Azusa Hydroelectric Project, filed an Application for an Exemption from Licensing pursuant to the Federal Power Act (FPA) and the Commission's regulations thereunder. The Azusa Hydroelectric Project is located on the Azusa Conduit in Los Angeles County, California.

The license for Project No. 1250 was issued for a period ending December 31, 2018. Section 15(a)(1) of the FPA, 16 U.S.C. 808(a)(1), requires the Commission, at the expiration of a license term, to issue from year-to-year an annual license to the then licensee under the terms and conditions of the prior license until a new license is issued, or the project is otherwise disposed of as provided in section 15 or any other applicable section of the FPA. If the project's prior license waived the applicability of section 15 of the FPA, then, based on section 9(b) of the Administrative Procedure Act, 5 U.S.C. 558(c), and as set forth at 18 CFR 16.21(a), if the licensee of such project has filed an application for a subsequent license, the licensee may continue to operate the project in accordance with the terms and conditions of the license after the minor or minor part license expires, until the Commission acts on its application. If the licensee of such a project has not filed an application for a subsequent license, then it may be required, pursuant to 18 CFR 16.21(b), to continue project operations until the Commission issues someone else a license for the project or otherwise orders disposition of the project.

If the project is subject to section 15 of the FPA, notice is hereby given that an annual license for Project No. 1250 is issued to the licensee for a period effective January 1, 2019 through December 31, 2019, or until the issuance of a new license for the project or other disposition under the FPA, whichever comes first. If issuance of a new license (or other disposition) does not take place on or before December 31, 2019, notice is hereby given that, pursuant to 18 CFR 16.18(c), an annual license under section 15(a)(1) of the FPA is renewed automatically without further order or notice by the Commission, unless the Commission orders otherwise.

If the project is not subject to section 15 of the FPA, notice is hereby given that the licensee, City of Pasadena, California, is authorized to continue operation of the Azusa Hydroelectric Project, until such time as the Commission acts on its Surrender of License and application for (conduit) Exemption from Licensing.

Dated: December 12, 2018.

Kimberly D. Bose,

Secretary.

[FR Doc. 2018–27311 Filed 12–17–18; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PF18–6–000]

Summit Permian Transmission, LLC; Notice of Intent To Prepare an Environmental Document for the Planned Double E Pipeline Project and Request for Comments on Environmental Issues

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental document that will discuss the environmental impacts of the Double E Pipeline Project involving construction and operation of facilities by Summit Permian Transmission, LLC (Summit) in New Mexico and Texas. The Commission will use this environmental document in its decision-making process to determine whether the project is in the public convenience and necessity.

This notice announces the opening of the scoping process the Commission will use to gather input from the public and interested agencies about issues regarding the project. The National Environmental Policy Act (NEPA) requires the Commission to consider the environmental impacts that could result from its action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires the Commission to discover concerns the public may have about proposals. This process is referred to as ''scoping.'' The main goal of the scoping process is to focus the analysis in the Commission's environmental document on the important environmental issues. By this notice, the Commission requests public comments on the scope of the issues to address. Your input will also help the Commission staff determine whether the preparation of an environmental assessment, or an environmental impact statement, would be appropriate for this project. To ensure that your comments are timely and properly recorded, please submit your comments so that the Commission receives them in Washington, DC on or before 5:00 p.m. Eastern Time on January 10, 2019.

You can make a difference by submitting your specific comments or concerns about the project. Your comments should focus on the potential environmental effects, reasonable alternatives, and measures to avoid or lessen environmental impacts. Your input will help the Commission staff determine the scope of the environmental review and what issues need to be evaluated. Commission staff will consider all filed comments during the preparation of the environmental document.

If you sent comments on this project to the Commission before the opening of this docket on July 25, 2018, you will need to file those comments in Docket No. PF18–6–000 to ensure they are considered as part of this proceeding.

This notice is being sent to the Commission's current environmental mailing list for this project. State and local government representatives should notify their constituents of this planned project and encourage them to comment on their areas of concern.

If you are a landowner receiving this notice, a pipeline company representative may contact you about the acquisition of an easement to construct, operate, and maintain the planned facilities. The company would seek to negotiate a mutually acceptable easement agreement. You are not required to enter into an agreement. However, if the Commission approves the project, that approval conveys with it the right of eminent domain. Therefore, if you and the company do not reach an easement agreement, the pipeline company could initiate condemnation proceedings in court. In such instances, compensation would be determined by a judge in accordance with state law.

A fact sheet prepared by the FERC entitled ''An Interstate Natural Gas Facility On My Land? What Do I Need To Know?'' is available for viewing on the FERC website (*www.ferc.gov*) at *https://www.ferc.gov/resources/guides/gas/gas.pdf.* This fact sheet addresses a number of typically asked questions, including the use of eminent domain and how to participate in the Commission's proceedings.

Public Participation

The Commission offers a free service called eSubscription that makes it easy to stay informed of all issuances and submittals regarding the dockets/projects to which you subscribe. These instant email notifications are the fastest way to receive notification and provide a link to the document files which can reduce the amount of time you spend researching proceedings. To sign up go to *www.ferc.gov/docs-filing/esubscription.asp.*

For your convenience, three methods are available to submit your comments to the Commission. The Commission encourages electronic filing of comments and has staff available to assist you at (866) 208–3676 or *FercOnlineSupport@ferc.gov.* Please carefully follow these instructions so that your comments are properly recorded.

(1) You can file your comments electronically using the *eComment* feature, which is located on the Commission's website (*www.ferc.gov*) under the link to *Documents and Filings.* Using eComment is an easy method for submitting brief, text-only comments on a project;

(2) You can file your comments electronically by using the *eFiling* feature, which is located on the Commission's website (*www.ferc.gov*) under the link to *Documents and Filings.* With eFiling, you can provide comments in a variety of formats by attaching them as a file with your submission. New eFiling users must first create an account by clicking on ''*eRegister.*'' You will be asked to select the type of filing you are making; a comment on a particular project is considered a ''Comment on a Filing''; or

(3) You can file a paper copy of your comments by mailing them to the following address. Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Be sure to reference the project docket number (PF18–6–000) with your submission.

Please note this is not your only public input opportunity; please refer to the review process flow chart in appendix 1 for more information about opportunities to comment on this project.[1]

Summary of the Planned Project

The scope of facilities currently includes the following:

- Approximately 34 miles of new 30-inch-diameter trunk-line pipeline (Trunk-line 100 or T100) from Summit's existing Lane Processing Plant in Eddy County, New Mexico to a planned Poker Lake Compressor Station site, also in Eddy County. In addition to the trunk-line, this portion of the project would include:

—One 30-inch pig launcher[2] and one receipt meter located within the Lane Processing Plant;

—two mainline block valves within a 40-foot by 50-foot gravel pad within the planned right-of-way; and

[1] The appendices referenced in this notice will not appear in the **Federal Register**. Copies of the appendices were sent to all those receiving this notice in the mail and are available at *www.ferc.gov* using the link called ''eLibrary'' or from the Commission's Public Reference Room, 888 First Street NE, Washington, DC 20426, or call (202) 502–8371.

[2] A ''pig'' is a tool that the pipeline company inserts into and pushes through the pipeline for cleaning the pipeline, conducting internal inspections, or other purposes.

—one permanent and six temporary access roads.

• One new compressor station (Poker Lake Compressor Station), sited on approximately 70 acres on federal land managed by the U.S. Bureau of Land Management, in Eddy County. The new compressor station would require two Taurus 70 turbine-driven compressor units, totaling about 22,200 horsepowers. Associated facilities would include one 42-inch pig launcher; one 30-inch pig receiver; and one receipt meter located at the Poker Lake Compressor Station site with an expected volume of 175 million standard cubic feet per day (MMscfd).

• Approximately 81.1 miles of new 42-inch-diameter trunk-line pipeline (Trunk-line 200 or T200) from the planned Poker Lake Compressor Station; through Loving, Ward, and Reeves Counties, Texas and terminating at the Waha Pigging Station in Reeves County, Texas. In addition to the trunk-line, this portion of the project would include:

—Four mainline block valves within a 40-foot by 50-foot gravel pad within the planned right-of-way;

—one 42-inch pig receiver, located within the Waha Hub Pigging Station site; and six permanent and 22 temporary access roads.

• Approximately 17.3 miles of new 30-inch-diameter lateral-line pipeline (Lateral 100 or L100) from the existing Loving Processing Plants to the planned trunk-line in Eddy County, New Mexico. Additional facilities would include:

—One 30-inch pig launcher within an approximate 300-foot by 300-foot site;

—one 30-inch pig receiver within an approximate 200-foot by 200-foot site; and

—three receipt meters with an approximate 300-foot by 300-foot site, including:

▪ One receipt meter to serve the new Sendero Midstream Partners Plant, currently under construction;

▪ one receipt meter to serve the existing Matador Resources Company's Plant; and

▪ one receipt meter to serve the new Lucid Energy Group Road Runner Plant, currently under construction.

—one permanent and four temporary access roads.

• Approximately 1.4 miles of new 42-inch-diameter trunk-line (Trunk-line 300 or T300) from the planned Summit Waha Pigging Station site in Reeves County, Texas to the final delivery locations in the Waha Hub in Pecos, County, Texas. Aboveground facilities would include:

—One delivery meter to serve Kinder Morgan's Permian Highway Pipeline, currently under construction;

—one delivery meter to serve Kinder Morgan's existing Gulf Coast Express Pipeline; and

—one delivery meter to serve Energy Transfer Company's existing Trans Pecos Pipeline header pipeline.

• Approximately 160 acres of temporary laydown or pipeyards are planned for the project. In addition, fiber optic cables would be installed within the same trench as the pipelines, for facility communications and operation.

Summit anticipates initial construction activities to begin in April 2020, with a planned in-service date of April 2021. The general location of the project facilities is shown in appendix 2.[3]

Land Requirements for Construction

Construction of the planned facilities would disturb about 2,730 acres of land, including the trunk-line and lateral pipelines, new compressor station and the aboveground facilities. Following construction, Summit would maintain about 976 acres for permanent operation of the project's facilities; the remaining acreages would be restored and revert to their former uses. About 93 percent of the planned pipeline route parallels existing pipeline, utility, or road rights-of-way.

The NEPA Process

The environmental document will discuss impacts that could occur as a result of the construction and operation of the planned project under these general headings:

- Geology and soils;
- water resources and wetlands;
- vegetation and wildlife;
- threatened and endangered species;
- cultural resources;
- land use;
- socioeconomics;
- air quality and noise;
- public safety; and
- cumulative impacts.

Commission staff will also evaluate possible alternatives to the planned project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

[3] The appendices referenced in this notice will not appear in the **Federal Register**. Copies of the appendices were sent to all those receiving this notice in the mail and are available at *www.ferc.gov* using the link called ''eLibrary'' or from the Commission's Public Reference Room, 888 First Street NE, Washington, DC 20426, or call (202) 502–8371. For instructions on connecting to eLibrary, refer to the last page of this notice.

Although no formal application has been filed, Commission staff have already initiated a NEPA review under the Commission's pre-filing process. The purpose of the pre-filing process is to encourage early involvement of interested stakeholders and to identify and resolve issues before the Commission receives an application. As part of the pre-filing review, Commission staff will contact federal and state agencies to discuss their involvement in the scoping process and the preparation of the environmental document.

The environmental document will present Commission staffs' independent analysis of the issues, and will be available in electronic format in the public record through eLibrary [4] and the Commission's website (*https://www.ferc.gov/industries/gas/enviro/eis.asp*). If eSubscribed, you will receive instant email notification when the environmental document is issued. The environmental document may be issued for an allotted public comment period. Commission staff will consider all comments on the environmental document before making recommendations to the Commission. To ensure Commission staff have the opportunity to consider and address your comments, please carefully follow the instructions in the Public Participation section, beginning on page 2.

With this notice, the Commission is asking agencies with jurisdiction by law and/or special expertise with respect to the environmental issues related to this project to formally cooperate in the preparation of the environmental document.[5] Agencies that would like to request cooperating agency status should follow the instructions for filing comments provided under the Public Participation section of this notice. Currently, the U.S. Bureau of Land Management (BLM), Carlsbad Field Office has expressed its intention to participate as a cooperating agency in the preparation of the environmental document to satisfy the BLM's NEPA responsibilities related to this project.

Consultation Under Section 106 of the National Historic Preservation Act

In accordance with the Advisory Council on Historic Preservation's implementing regulations for section 106 of the National Historic Preservation Act, the Commission is

[4] For instructions on connecting to eLibrary, refer to the last page of this notice.

[5] The Council on Environmental Quality regulations addressing cooperating agency responsibilities are at Title 40, Code of Federal Regulations, Part 1501.6.

using this notice to initiate consultation with the applicable State Historic Preservation Office(s), and to solicit their views and those of other government agencies, interested Indian tribes, and the public on the project's potential effects on historic properties.[6] Commission staff will define the project-specific Area of Potential Effects (APE) in consultation with the SHPO(s) as the project develops. On natural gas facility projects, the APE at a minimum encompasses all areas subject to ground disturbance (examples include construction right-of-way, contractor/pipe storage yards, compressor stations, and access roads). The environmental document for this project will document the Commission staff's findings on the impacts on historic properties and summarize the status of consultations under section 106.

Currently Identified Environmental Issues

Commission staff have already identified several issues that deserve attention based on a preliminary review of the planned facilities and the environmental information provided by Summit. This preliminary list of issues may change based on your comments and our analysis.

- the project crosses federal lands managed by the BLM in New Mexico;
- the project crosses lands managed by New Mexico State Lands Trust;
- one or more known cultural resources sites may be impacted by the project; and
- sensitive plant and animal species may be affected by the project.

Environmental Mailing List

The environmental mailing list includes federal, state, and local government representatives and agencies; elected officials; environmental and public interest groups; Native American Tribes; other interested parties; and local libraries and newspapers. This list also includes all affected landowners (as defined in the Commission's regulations) who are potential right-of-way grantors, whose property may be used temporarily for project purposes, or who own homes within certain distances of aboveground facilities, and anyone who submits comments on the project. Commission staff will update the environmental mailing list as the analysis proceeds to ensure that Commission notices related to this environmental review are sent to all individuals, organizations, and government entities interested in and/or potentially affected by the planned project.

When the Commission issues the environmental document for an allotted public comment period, a *Notice of Availability* of the environmental document will be sent to the environmental mailing list and will provide instructions to access the electronic document on the FERC's website (*www.ferc.gov*). If you need to make changes to your name/address, or if you would like to remove your name from the mailing list, please return the attached ''Mailing List Update Form'' (appendix 3).

Becoming an Intervenor

Once Summit files its application with the Commission, you may want to become an ''intervenor'' which is an official party to the Commission's proceeding. Only intervenors have the right to seek rehearing of the Commission's decision and be heard by the courts if they choose to appeal the Commission's final ruling. An intervenor formally participates in the proceeding by filing a request to intervene pursuant to Rule 214 of the Commission's Rules of Practice and Procedures (18 CFR 385.214). Motions to intervene are more fully described at *http://www.ferc.gov/resources/guides/how-to/intervene.asp.* Please note that the Commission will not accept requests for intervenor status at this time. You must wait until the Commission receives a formal application for the project, after which the Commission will issue a public notice that establishes an intervention deadline.

Additional Information

Additional information about the project is available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC website (*www.ferc.gov*) using the eLibrary link. Click on the eLibrary link, click on ''General Search'' and enter the docket number in the ''Docket Number'' field, excluding the last three digits (*i.e.,* PF18–6). Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659. The eLibrary link also provides access to the texts of all formal documents issued by the Commission, such as orders, notices, and rulemakings.

Public sessions or site visits will be posted on the Commission's calendar located at *www.ferc.gov/EventCalendar/EventsList.aspx* along with other related information.

Dated: December 11, 2018.

Kimberly D. Bose,

Secretary.

[FR Doc. 2018–27296 Filed 12–17–18; 8:45 am]

BILLING CODE 6717–01–P

[6] The Advisory Council on Historic Preservation regulations are at Title 36, Code of Federal Regulations, Part 800. Those regulations define historic properties as any prehistoric or historic district, site, building, structure, or object included in or eligible for inclusion in the National Register of Historic Places.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. AC19–46–000]

Tennessee Gas Pipeline Company, L.L.C.; Notice of Filing

Take notice that on December 6, 2018, Tennessee Gas Pipeline Company, L.L.C. filed a request for approval to use Account 439, authorized by the Financial Accounting Standards Board.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the eFiling link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the eLibrary link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the website that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comments: 5:00 p.m. Eastern Time on December 26, 2018.

Dated: December 12, 2018.

Kimberly D. Bose,

Secretary.

[FR Doc. 2018–27306 Filed 12–17–18; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC19–12–000]

Commission Information Collection Activities (FERC–592); Comment Request; Extension

AGENCY: Federal Energy Regulatory Commission, Department of Energy.

ACTION: Notice of information collection and request for comments.

SUMMARY: In compliance with the requirements of the Paperwork Reduction Act of 1995, the Federal Energy Regulatory Commission (Commission or FERC) is soliciting public comment on the currently approved information collection, FERC–592 (Standards of Conduct for Transmission Provider and Marketing Affiliates of Interstate Pipelines).

DATES: Comments on the collection of information are due February 19, 2019.

ADDRESSES: You may submit comments (identified by Docket No. IC19–12–000) by either of the following methods:

- *eFiling at Commission's website: http://www.ferc.gov/docs-filing/efiling.asp.*
- *Mail/Hand Delivery/Courier:* Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE, Washington, DC 20426.

Instructions: All submissions must be formatted and filed in accordance with submission guidelines at: *http://www.ferc.gov/help/submission-guide.asp.* For user assistance contact FERC Online Support by email at *ferconlinesupport@ferc.gov,* or by phone at: (866) 208–3676 (toll-free), or (202) 502–8659 for TTY.

Docket: Users interested in receiving automatic notification of activity in this docket or in viewing/downloading comments and issuances in this docket may do so at *http://www.ferc.gov/docs-filing/docs-filing.asp.*

FOR FURTHER INFORMATION CONTACT: Ellen Brown may be reached by email at *DataClearance@FERC.gov,* telephone at (202) 502–8663, and fax at (202) 273–0873.

SUPPLEMENTARY INFORMATION:

Title: Standards of Conduct for Transmission Provider and Marketing Affiliates of Interstate Pipelines.

OMB Control No.: 1902–0157.

Type of Request: Three-year extension of the FERC–592 information collection requirements with no changes to the current reporting requirements.

Abstract: The Commission uses the information maintained and posted by the respondents to monitor the pipeline's transportation, sales, and storage activities for its marketing affiliate to deter undue discrimination by pipeline companies in favor of their marketing affiliates. Non-affiliated shippers and other entities (*e.g.* state commissions) also use information to determine whether they have been harmed by affiliate preference and to prepare evidence for proceedings following the filing of a complaint.

18 CFR Part 358 (Standards of Conduct)

Respondents maintain and provide the information required by part 358 on their internet websites. When the Commission requires a pipeline to post information on its website following a disclosure of non-public information to its marketing affiliate, non-affiliated shippers obtain comparable access to the non-public transportation information, which allows them to compete with marketing affiliates on a more equal basis.

18 CFR 250.16, and the FERC–592 Log/Format

This form (log/format) provides the electronic formats for maintaining information on discounted transportation transactions and capacity allocation to support monitoring of activities of interstate pipeline marketing affiliates. Commission staff considers discounts given to shippers in litigated rate cases.

Without this information collection:

- The Commission would be unable to effectively monitor whether pipelines are giving discriminatory preference to their marketing affiliates; and
- non-affiliated shippers and state commissions and others would be unable to determine if they have been harmed by affiliate preference or prepare evidence for proceedings following the filing of a complaint.

Type of Respondents: Natural gas pipelines.

Estimate of Annual Burden:[1] The Commission estimates the annual reporting burden and cost for the information collection as:

FERC–592—STANDARDS FOR CONDUCT FOR TRANSMISSION PROVIDERS MARKETING AFFILIATES OF INTERSTATE PIPELINES

	Number of respondents	Annual number of responses per respondent	Total number of responses	Average burden & cost per response[2]	Total annual burden hours & total annual cost	Cost per respondent ($)
	(1)	(2)	(1) * (2) = (3)	(4)	(3) * (4) = (5)	(5) ÷ (1)
FERC 592[3] ...	85	1	85	116.62 hrs.; $9,212.98	9,913 hrs.; $783,127	9,212.98

Comments: Comments are invited on: (1) Whether the collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information collection;

[1] ''Burden'' is defined as the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. For further explanation of what is included in the information collection burden, reference 5 Code of Federal Regulations 1320.3.

[2] The estimates for cost per response are derived using the following formula: Average Burden Hours per Response * $79.00/hour = Average cost/response. The figure is the 2018 FERC average hourly cost (for wages and benefits) of $79.00 (and an average annual salary of $164,820/year). Commission staff is using the FERC average salary because we consider any reporting requirements completed in response to the FERC–592 to be compensated at rates similar to the work of FERC employees.

[3] The requirements for this collection are contained in 18 CFR part 358 and 18 CFR part 250.16.

and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Dated: December 12, 2018.

Kimberly D. Bose,

Secretary.

[FR Doc. 2018–27308 Filed 12–17–18; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. IS18–766–000; IS18–767–000]

Mid-America Pipeline Company, LLC; Seminole Pipeline Company LLC; Notice of Technical Conference

Take notice that a technical conference will be held Thursday, January 17, 2019 at 9:00 a.m. (Eastern Standard Time), in Hearing Room 7, at the offices of the Federal Energy Regulatory Commission, 888 First Street NE, Washington DC 20426.

At the technical conference, the Commission staff and the parties to the proceeding should be prepared to discuss all issues set for technical conference as established in the October 25, 2018 order, *Mid-America Pipeline Company, LLC* et al., 165 FERC 61,046. All interested persons are permitted to attend.

Commission conferences are accessible under section 508 of the Rehabilitation Act of 1973. For accessibility accommodations please send an email to *accessibility@ferc.gov* or call toll free 1–866–208–3372 (voice) or 202–502–8659 (TTY); or send a fax to 202–208–2106 with the required accommodations.

For more information about this technical conference please contact Matthew Petersen at (202)-502–6845 or *matthew.petersen@ferc.gov.*

Dated: December 12, 2018.

Kimberly D. Bose,

Secretary.

[FR Doc. 2018–27309 Filed 12–17–18; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. AC19–43–000]

Midcontinent Express Pipeline LLC; Notice of Filing

Take notice that on December 6, 2018, Midcontinent Express Pipeline LLC filed a request for approval to use Account 439, authorized by the Financial Accounting Standards Board.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the eFiling link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the eLibrary link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the website that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comments: 5:00 p.m. Eastern Time on December 26, 2018.

Dated: December 12, 2018.

Kimberly D. Bose,

Secretary.

[FR Doc. 2018–27314 Filed 12–17–18; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. AC19–30–000]

Virginia Electric and Power Company; Notice of Filing

Take notice that on November 28, 2018, Virginia Electric and Power Company filed a request for approval to use Account 439, authorized by the Financial Accounting Standards Board.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the eFiling link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

This filing is accessible online at *http://www.ferc.gov,* using the eLibrary link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the website that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comments: 5:00 p.m. Eastern Time on December 18, 2018.

Dated: December 12, 2018.

Kimberly D. Bose,

Secretary.

[FR Doc. 2018–27302 Filed 12–17–18; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–2906–012; ER10–2908–012; ER10–2910–012; ER11–4393–007

Applicants: Morgan Stanley Capital Group Inc., MS Solar Solutions Corp., Power Contract Financing II, L.L.C., TAQA Gen X LLC.

Description: Notice of Non-Material Change in Status of the Morgan Stanley Public Utilities.

Filed Date: 12/11/18.

Accession Number: 20181211–5142.

Comments Due: 5 p.m. ET 1/2/19.

Docket Numbers: ER19–302–001.

Applicants: NTE Southeast Electric Company, LLC.

Description: Tariff Amendment: Amendment to 1 to be effective 1/1/2019.

Filed Date: 12/12/18.

Accession Number: 20181212–5251.

Comments Due: 5 p.m. ET 1/2/19.

Docket Numbers: ER19–531–000.

Applicants: El Paso Electric Company.

Description: § 205(d) Rate Filing: Rate Schedule No. 117 Agreement on Interconnection Study 2 Costs to be effective 12/12/2018.

Filed Date: 12/11/18.

Accession Number: 20181211–5115.

Comments Due: 5 p.m. ET 1/2/19.

Docket Numbers: ER19–532–000.

Applicants: Summer Energy Midwest, LLC.

Description: § 205(d) Rate Filing: Summer Energy of Ohio Notice of Succession to be effective 10/31/2018.

Filed Date: 12/12/18.

Accession Number: 20181212–5009.

Comments Due: 5 p.m. ET 1/2/19.

Docket Numbers: ER19–533–000.

Applicants: Louisville Gas and Electric Company.

Description: § 205(d) Rate Filing: Rate Schedule 505 Amd and Restated OMU IA 2018 to be effective 11/13/2018.

Filed Date: 12/11/18.

Accession Number: 20181211–5148.

Comments Due: 5 p.m. ET 1/2/19.

Docket Numbers: ER19–534–000.

Applicants: Prairie Breeze Wind Energy II LLC.

Description: § 205(d) Rate Filing: Revised Market-Based Rate Tariff Filing to be effective 12/13/2018.

Filed Date: 12/12/18.

Accession Number: 20181212–5026.

Comments Due: 5 p.m. ET 1/2/19.

Docket Numbers: ER19–536–000.

Applicants: Buckeye Wind Energy LLC.

Description: § 205(d) Rate Filing: Revised Market-Based Rate Tariff Filing to be effective 12/13/2018.

Filed Date: 12/12/18.

Accession Number: 20181212–5027.

Comments Due: 5 p.m. ET 1/2/19.

Docket Numbers: ER19–537–000.

Applicants: AltaGas San Joaquin Energy Inc.

Description: § 205(d) Rate Filing: Notices of Succession to be effective 12/13/2018.

Filed Date: 12/12/18.

Accession Number: 20181212–5028.

Comments Due: 5 p.m. ET 1/2/19.

Docket Numbers: ER19–538–000.

Applicants: California Independent System Operator Corporation.

Description: § 205(d) Rate Filing: 2018–12–12 Imbalance Conformance Enhancement Amendment to be effective 2/27/2019.

Filed Date: 12/12/18.

Accession Number: 20181212–5132.

Comments Due: 5 p.m. ET 1/2/19.

Docket Numbers: ER19–539–000.

Applicants: California Independent System Operator Corporation.

Description: § 205(d) Rate Filing: 2018–12–12 EIM Agreement between CAISO and Salt River Project to be effective 2/11/2019.

Filed Date: 12/12/18.

Accession Number: 20181212–5136.

Comments Due: 5 p.m. ET 1/2/19.

Docket Numbers: ER19–540–000.

Applicants: Ohio Power Company, PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Ohio Power et al. submits 50th Revised ILDSA, SA No. 1336 btw AEPSC and Buckeye to be effective 12/12/2018.

Filed Date: 12/12/18.

Accession Number: 20181212–5175.

Comments Due: 5 p.m. ET 1/2/19.

Docket Numbers: ER19–541–000.

Applicants: ITC Midwest LLC.

Description: § 205(d) Rate Filing: Filing of JUA with Jo-Carroll Energy to be effective 2/11/2019.

Filed Date: 12/12/18.

Accession Number: 20181212–5202.

Comments Due: 5 p.m. ET 1/2/19.

Docket Numbers: ER19–542–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Original ISA, SA No. 5238; Queue No. AD1–084 to be effective 11/12/2018.

Filed Date: 12/12/18.

Accession Number: 20181212–5219.

Comments Due: 5 p.m. ET 1/2/19.

Docket Numbers: ER19–543–000.

Applicants: Nevada Power Company.

Description: § 205(d) Rate Filing: Service Agreement No. 18–00087 NPC-Sunshine Valley Solar EPC to be effective 12/13/2018.

Filed Date: 12/12/18.

Accession Number: 20181212–5230.

Comments Due: 5 p.m. ET 1/2/19.

Docket Numbers: ER19–544–000.

Applicants: Aragonne Wind LLC.

Description: § 205(d) Rate Filing: Request for Cat. 1 Seller Status in the SW Region to be effective 12/13/2018.

Filed Date: 12/12/18.

Accession Number: 20181212–5247.

Comments Due: 5 p.m. ET 1/2/19.

Take notice that the Commission received the following electric securities filings:

Docket Numbers: ES19–5–000.

Applicants: Cube Yadkin Transmission LLC.

Description: Application under for Authorization Section 204 of the Federal Power Act of Cube Yadkin Transmission LLC.

Filed Date: 12/12/18.

Accession Number: 20181212–5194.

Comments Due: 5 p.m. ET 1/2/19.

The filings are accessible in the Commission's eLibrary system by clicking on the links or 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: December 12, 2018.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2018–27318 Filed 12–17–18; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Sunshine Act Meetings

The following notice of meeting is published pursuant to section 3(a) of the government in the Sunshine Act (Pub. L. 94–409), 5 U.S.C. 552b:

AGENCY HOLDING MEETING: Federal Energy Regulatory Commission.

DATE AND TIME: December 20, 2018, 10:00 a.m.

PLACE: Room 2C, 888 First Street NE, Washington, DC 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda.

* *Note*—Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: Kimberly D. Bose, Secretary, Telephone (202) 502–8400.

For a recorded message listing items struck from or added to the meeting, call (202) 502–8627.

This is a list of matters to be considered by the Commission. It does not include a listing of all documents relevant to the items on the agenda. All public documents, however, may be viewed online at the Commission's website at *http://ferc.capitolconnection.org/* using the eLibrary link, or may be examined in the Commission's Public Reference Room.

1050TH MEETING—OPEN MEETING

[December 20, 2018, 10:00 a.m.]

Item No.	Docket No.	Company
	ADMINISTRATIVE	
A–1	AD19–1–000	Agency Administrative Matters.
A–2	AD19–2–000	Customer Matters, Reliability, Security and Market Operations.
	ELECTRIC	
E–1	RM19–2–000	Refinements to Horizontal Market Power Analysis for Sellers in Certain Regional Transmission Organization and Independent System Operator Markets.
E–2	ER18–1952–001, ER18–1952–002, ER18–1952–003.	Gulf Power Company.
E–3	EC18–117–000	NextEra Energy, Inc.; 700 Universe, LLC.; Gulf Power Company.
E–4	EL18–155–000	Ameren Illinois Company.
	EL18–156–000	Ameren Transmission Company of Illinois.
	EL18–161–000	Northern States Power Company, a Minnesota corporation.
	EL18–162–000	Northern States Power Company, a Wisconsin corporation.
	ER18–2322–000	Midcontinent Independent System Operator, Inc.
E–5	EL18–163–000	Public Service Company of Colorado.
	EL18–166–000	Southwestern Public Service Company.
	ER18–2319–000	Public Service Company of Colorado.
E–6	EL18–138–000	Midcontinent Independent System Operator, Inc.; ALLETE, Inc.; Montana-Dakota Utilities Co.; Northern Indiana Public Service Company; Otter Tail Power Company; Southern Indiana Gas & Electric Company.
	ER18–1739–000	Midcontinent Independent System Operator, Inc.
E–7	EL18–159–000	International Transmission Company.
	EL18–160–000	ITC Midwest, LLC.
	ER18–2323–000	Midcontinent Independent System Operator, Inc.
	EL19–16–000	Michigan Electric Transmission Company, LLC.
E–8	EL18–157–000	American Transmission Company, LLC.
E–9	EL18–165–000	TransCanyon DCR, LLC.
E–10	EL18–167–000	Virginia Electric and Power Company.
E–11	EL18–158–000	GridLiance West Transco LLC.
E–12	EL18–164–000	Southern California Edison Company.
E–13	ER19–166–000	Southwest Power Pool, Inc.
E–14	ER18–2340–001	Midcontinent Independent System Operator, Inc.
E–15	ER19–169–000	ISO New England Inc. and New England Power Pool Participants Committee.
E–16	ER18–1953–000, ER18–1953–001	Gulf Power Company.
E–17	ER17–2154–002	Pacific Gas and Electric Company.
E–18	ER17–802–002, EL19–24–000, ER17–802–001 (consolidated).	Exelon Generation Company, LLC.
E–19	ER18–2377–000	Southwestern Public Service Company.
E–20	OMITTED	
E–21	EL18–188–000	NRG Curtailment Solutions, Inc. v. New York Independent System Operator, Inc.
E–22	EL18–194–000	Nebraska Public Power District v. Tri-State Generation and Transmission Association, Inc. and Southwest Power Pool, Inc.
E–23	EL18–197–000	City of Oakland, California v. Pacific Gas and Electric Company.
E–24	EL18–176–000	City of Falmouth, Kentucky.
	GAS	
G–1	RP19–238–000, RP19–238–001	Southwest Gas Transmission Company, A Limited Partnership.
G–2	RP19–240–000	WestGas Interstate, Inc.
G–3	RP19–266–000, RP19–267–000	Southeast Supply Header, LLC.
G–4	RP19–307–000	Black Hills Utility Holdings, Inc.; Black Hills Service Company, LLC.
G–5	RP17–811–003, RP17–811–004, RP18–271–001, RP18–271–002 (consolidated).	Peregrine Oil & Gas II, LLC v. Texas Eastern Transmission, LP.

1050TH MEETING—OPEN MEETING—Continued

[December 20, 2018, 10:00 a.m.]

Item No.	Docket No.	Company
	HYDRO	
H–1	RM18–14–000	Elimination of Form 80 and Revision of Regulations on Recreational Opportunities and Development at Licensed Hydropower Projects.
H–2	DI18–1–001	Covington Mountain Hydro, LLC.
H–3	P–14329–005	Columbia Basin Hydropower.
H–4	P–2744–046	North East Wisconsin Hydro, LLC.
	CERTIFICATES	
C–1	CP18–532–000	Puget Sound Energy, Inc.; SOCCO, Inc.; Sumas Pipeline Company; Sumas Dry Kilns, Inc.
C–2	CP19–20–000	Golden Pass LNG Terminal LLC and Golden Pass Products LLC.
C–3	CP18–45–000	Dominion Energy Transmission, Inc.
C–4	CP15–550–000	Venture Global Calcasieu Pass, LLC.
	CP15–551–000, CP15–551–001	TransCameron Pipeline, LLC.

Issued: December 13, 2018.

Kimberly D. Bose,

Secretary.

A free webcast of this event is available through *http://ferc.capitolconnection.org/.* Anyone with internet access who desires to view this event can do so by navigating to *www.ferc.gov's* Calendar of Events and locating this event in the Calendar. The event will contain a link to its webcast. The Capitol Connection provides technical support for the free webcasts. It also offers access to this event via television in the DC area and via phone bridge for a fee. If you have any questions, visit *http://ferc.capitolconnection.org/* or contact Shirley Al-Jarani at 703–993–3104.

Immediately following the conclusion of the Commission Meeting, a press briefing will be held in the Commission Meeting Room. Members of the public may view this briefing in the designated overflow room. This statement is intended to notify the public that the press briefings that follow Commission meetings may now be viewed remotely at Commission headquarters, but will not be telecast through the Capitol Connection service.

[FR Doc. 2018–27487 Filed 12–14–18; 4:15 pm]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2337–000]

PacifiCorp; Notice of Authorization for Continued Project Operation

On December 30, 2016, PacifiCorp, licensee for the Prospect No. 3 Hydroelectric Project, filed an Application for a New License pursuant to the Federal Power Act (FPA) and the Commission's regulations thereunder. The Prospect No. Hydroelectric Project is located on the South Fork Rogue River, in Jackson County, Oregon.

The license for Project No. 2337 was issued for a period ending December 31, 2018. Section 15(a)(1) of the FPA, 16 U.S.C. 808(a)(1), requires the Commission, at the expiration of a license term, to issue from year-to-year an annual license to the then licensee under the terms and conditions of the prior license until a new license is issued, or the project is otherwise disposed of as provided in section 15 or any other applicable section of the FPA. If the project's prior license waived the applicability of section 15 of the FPA, then, based on section 9(b) of the Administrative Procedure Act, 5 U.S.C. 558(c), and as set forth at 18 CFR 16.21(a), if the licensee of such project has filed an application for a subsequent license, the licensee may continue to operate the project in accordance with the terms and conditions of the license after the minor or minor part license expires, until the Commission acts on its application. If the licensee of such a project has not filed an application for a subsequent license, then it may be required, pursuant to 18 CFR 16.21(b), to continue project operations until the Commission issues someone else a license for the project or otherwise orders disposition of the project.

If the project is subject to section 15 of the FPA, notice is hereby given that an annual license for Project No. 2337 is issued to the licensee for a period effective January 1, 2019 through December 31, 2019, or until the issuance of a new license for the project or other disposition under the FPA, whichever comes first. If issuance of a new license (or other disposition) does not take place on or before December 31, 2019, notice is hereby given that, pursuant to 18 CFR 16.18(c), an annual license under section 15(a)(1) of the FPA is renewed automatically without further order or notice by the Commission, unless the Commission orders otherwise.

If the project is not subject to section 15 of the FPA, notice is hereby given that the licensee, PacifiCorp, is authorized to continue operation of the Prospect No. 3 Hydroelectric Project, until such time as the Commission acts on its application for a subsequent license.

Dated: December 12, 2018.

Kimberly D. Bose,

Secretary.

[FR Doc. 2018–27312 Filed 12–17–18; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. P–14862–001]

Douglas Leen; Notice of Application Tendered for Filing With the Commission and Soliciting Additional Study Requests

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Original minor license.

b. *Project No.:* P–14862–001.

c. *Date filed:* November 28, 2018.

d. *Applicant:* Mr. Douglas Leen.

e. *Name of Project:* Kupeanof Microhydro Project.

f. *Location:* On an unnamed stream, in Petersburg Borough, Alaska. The project would occupy 0.1 acre of United States lands administered by U.S. Forest Service.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791 (a)–825(r).

h. *Applicant Contact:* Douglas Leen, P.O. Box 341, Petersburg, AK 99833; (907) 518–0335; *mail@dougleen.com.*

i. *FERC Contact:* Ryan Hansen at (202) 502–8074; or email at *ryan.hansen@ferc.gov.*

j. *Cooperating agencies:* Federal, state, local, and tribal agencies with jurisdiction and/or special expertise with respect to environmental issues that wish to cooperate in the preparation of the environmental document should follow the instructions for filing such requests described in item l below. Cooperating agencies should note the Commission's policy that agencies that cooperate in the preparation of the environmental document cannot also intervene. *See,* 94 FERC ¶ 61,076 (2001).

k. Pursuant to section 4.32(b)(7) of 18 CFR of the Commission's regulations, if any resource agency, Indian Tribe, or person believes that an additional scientific study should be conducted in order to form an adequate factual basis for a complete analysis of the application on its merit, the resource agency, Indian Tribe, or person must file a request for a study with the Commission not later than 60 days from the date of filing of the application, and serve a copy of the request on the applicant.

l. *Deadline for filing additional study requests and requests for cooperating agency status:* January 28, 2019.

The Commission strongly encourages electronic filing. Please file additional study requests and requests for cooperating agency status using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. The first page of any filing should include docket number P–14862–001.

m. The application is not ready for environmental analysis at this time.

n. The proposed hydroelectric project would consist of: an intake located in either a containment pond created by 50 sand bags or an existing pond; a penstock consisting of an up to 400-foot-long, 0.5-foot-diameter PVC pipe; one turbine unit with a capacity of 1.5 kilowatts; a 4-foot-long, 3-foot-wide, 7-foot-high lumber shed on a cement pad; a 150-foot-long transmission line; and appurtenant facilities.

o. A copy of the application is available for review at the Commission in the Public Reference Room or 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. For assistance, contact FERC Online Support. A copy is also available for inspection and reproduction at the address in item h above.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

p. *Procedural schedule:* The application will be processed according to the following preliminary Hydro Licensing Schedule. Revisions to the schedule will be made as appropriate.

Issue Notice of Acceptance March 2019
Issue Scoping Document 1 for comments April 2019
Comments on Scoping Document 1 May 2019
Issue notice of ready for environmental analysis May 2019
Commission issues EA August 2019
Comments on EA September 2019

Dated: December 11, 2018.

Kimberly D. Bose,

Secretary.

[FR Doc. 2018–27294 Filed 12–17–18; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 619–000]

Pacific Gas and Electric Company and City of Santa Clara, California; Notice of Authorization for Continued Project Operation

On December 12, 2016, Pacific Gas and Electric Company and City of Santa Clara, California, licensees for the Bucks Creek Hydroelectric Project, filed an Application for a New License pursuant to the Federal Power Act (FPA) and the Commission's regulations thereunder. The Bucks Creek Hydroelectric Project is located on Bucks, Grizzly, and Milk Ranch Creek in Plumas County, California.

The license for Project No. 619 was issued for a period ending December 31, 2018. Section 15(a)(1) of the FPA, 16 U.S.C. 808(a)(1), requires the Commission, at the expiration of a license term, to issue from year-to-year an annual license to the then licensee under the terms and conditions of the prior license until a new license is issued, or the project is otherwise disposed of as provided in section 15 or any other applicable section of the FPA. If the project's prior license waived the applicability of section 15 of the FPA, then, based on section 9(b) of the Administrative Procedure Act, 5 U.S.C. 558(c), and as set forth at 18 CFR 16.21(a), if the licensee of such project has filed an application for a subsequent license, the licensee may continue to operate the project in accordance with the terms and conditions of the license after the minor or minor part license expires, until the Commission acts on its application. If the licensee of such a project has not filed an application for a subsequent license, then it may be required, pursuant to 18 CFR 16.21(b), to continue project operations until the Commission issues someone else a license for the project or otherwise orders disposition of the project.

If the project is subject to section 15 of the FPA, notice is hereby given that an annual license for Project No. 619 is issued to the licensee for a period effective January 1, 2019 through December 31, 2019, or until the issuance of a new license for the project or other disposition under the FPA, whichever comes first. If issuance of a new license (or other disposition) does not take place on or before December 31, 2019, notice is hereby given that, pursuant to 18 CFR 16.18(c), an annual license under section 15(a)(1) of the FPA is renewed automatically without further order or notice by the Commission, unless the Commission orders otherwise.

If the project is not subject to section 15 of the FPA, notice is hereby given that the licensee, Pacific Gas and Electric Company and City of Santa Clara, are authorized to continue operation of the Bucks Creek Hydroelectric Project, until such time as the Commission acts on its application for a subsequent license.

Dated: December 12, 2018.

Kimberly D. Bose,

Secretary.

[FR Doc. 2018–27310 Filed 12–17–18; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL19–14–000]

Cottonwood Energy Company LP; Notice of Institution of Section 206 Proceeding and Refund Effective Date

On December 12, 2018, the Commission issued an order in Docket No. EL19–14–000, pursuant to section 206 of the Federal Power Act (FPA), 16 U.S.C. 824e (2012), instituting an investigation into whether Cottonwood Energy Company LP's Rate Schedule FERC No. 1 may be unjust and unreasonable. *Cottonwood Energy Company LP,* 165 FERC 61,228 (2018).

The refund effective date in Docket No. EL19–14–000, established pursuant to section 206(b) of the FPA, will be the date of publication of this notice in the **Federal Register**.

Any interested person desiring to be heard in Docket No. EL19–14–000 must file a notice of intervention or motion to intervene, as appropriate, with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rule 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.214, within 21 days of the date of issuance of the order.

Dated: December 12, 2018.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2018–27316 Filed 12–17–18; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC19–11–000]

Commission Information Collection Activities (FERC–538); Comment Request; Extension

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of information collection and request for comments.

SUMMARY: In compliance with the requirements of the Paperwork Reduction Act of 1995, the Federal Energy Regulatory Commission (Commission or FERC) is soliciting public comment on the currently approved information collection, FERC–538 (Gas Pipelines Certificates: Sections 7(a) Mandatory Initial Service).

DATES: Comments on the collection of information are due [insert date that is 60 days after publication in the **Federal Register**].

ADDRESSES: You may submit comments (identified by Docket No. IC19–11–000) by either of the following methods:

- *eFiling at Commission's website: http://www.ferc.gov/docs-filing/efiling.asp.*
- *Mail/Hand Delivery/Courier:* Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE, Washington, DC 20426.

Instructions: All submissions must be formatted and filed in accordance with submission guidelines at: *http://www.ferc.gov/help/submission-guide.asp.* For user assistance contact FERC Online Support by email at *ferconlinesupport@ferc.gov,* or by phone at: (866) 208–3676 (toll-free), or (202) 502–8659 for TTY.

Docket: Users interested in receiving automatic notification of activity in this docket or in viewing/downloading comments and issuances in this docket may do so at *http://www.ferc.gov/docs-filing/docs-filing.asp.*

FOR FURTHER INFORMATION CONTACT: Ellen Brown may be reached by email at *DataClearance@FERC.gov,* telephone at (202) 502–8663, and fax at (202) 273–0873.

SUPPLEMENTARY INFORMATION:

Title: Gas Pipelines Certificates: Sections 7(a) Mandatory Initial Service.

OMB Control No.: 1902–0061.

Type of Request: Three-year extension of the FERC–538 information collection requirements with no changes to the current reporting requirements.

Abstract: Under sections 7(a), 10(a) and 16 of Natural Gas Act (NGA),[1] upon application by a person or municipality authorized to engage in the local distribution of natural gas, the Commission may order a natural gas company to extend or improve its transportation facilities, and sell natural gas to the municipality or person and, for such purpose, to extend its transportation facilities to communities immediately adjacent to such facilities or to territories served by the natural gas pipeline company. The Commission uses the application data in order to be fully informed concerning the applicant, and the service the applicant is requesting.

Type of Respondents: Persons or municipalities authorized to engage in the local distribution of natural gas.

Estimate of Annual Burden: [2] The Commission estimates the annual reporting burden and cost for the information collection as:

FERC–538—GAS PIPELINE CERTIFICATES: SECTION 7(A) MANDATORY INITIAL SERVICE

	Number of respondents	Annual number of responses per respondent	Total number of responses	Average burden & cost per response [3]	Total annual burden hours & total annual cost	Cost per respondent ($)
	(1)	(2)	(1)*(2) = (3)	(4)	(3)*(4) = (5)	(5)(1)
Gas Pipeline Certificates.	1	1	1	240 hrs.; $18,960	240 hrs.; $18,960	$18,960

[3] The estimates for cost per response are derived using the following formula: Average Burden Hours per Response * $79.00/hour = Average cost/response. The figure is the 2018 FERC average hourly cost (for wages and benefits) of $79.00 (and an average annual salary of $164,820/year). Commission staff is using the FERC average salary because we consider any reporting requirements completed in response to the FERC–538 to be compensated at rates similar to the work of FERC employees.

Comments: Comments are invited on: (1) Whether the collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Dated: December 12, 2018.

Kimberly D. Bose,

Secretary.

[FR Doc. 2018–27307 Filed 12–17–18; 8:45 am]

BILLING CODE 6717–01–P

[1] 15 U.S.C. 717f–w.

[2] ''Burden'' is defined as the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. For further explanation of what is included in the information collection burden, reference 5 Code of Federal Regulations 1320.3.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2891–017]

City of Tallahassee; Notice of Availability of Environmental Assessment

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), the Office of Energy Projects has reviewed an application submitted by the City of Tallahassee (licensee) to surrender the project license for the Jackson Bluff Hydroelectric Project No. 2891. The project is located on the Ochlockonee River in Leon, Liberty, and Gadsden counties, Florida. The project does not occupy federal lands.

An environmental assessment (EA) has been prepared as part of staff's review of the proposal. In the application the licensee proposes to decommission the power generating capability both electrically and hydraulically. No modifications to the existing dam or project-related buildings are proposed. All decommissioning work would occur at the powerhouse. The EA contains Commission staff's analysis of the probable environmental impacts of the proposed action and concludes that approval of the proposal would not constitute a major federal action significantly affecting the quality of the human environment.

The EA is available for review and reproduction at the Commission's Public Reference Room, located at 888 First Street NE, Room 2A, Washington, DC 20426. The EA may also be viewed on the Commission's website at *http://www.ferc.gov* using the ''elibrary'' link. Enter the docket number (P–2891) in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3372, or for TTY, (202) 502–8659.

Dated: December 10, 2018.

Kimberly D. Bose,

Secretary.

[FR Doc. 2018–27183 Filed 12–17–18; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. AC19–44–000]

El Paso Natural Gas Company, L.L.C.; Notice of Filing

Take notice that on December 6, 2018, El Paso Natural Gas Company, L.L.C. filed a request for approval to use Account 439, authorized by the Financial Accounting Standards Board.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the eFiling link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the eLibrary link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the website that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comments: 5:00 p.m. Eastern Time on December 26, 2018.

Dated: December 12, 2018.

Kimberly D. Bose,

Secretary.

[FR Doc. 2018–27304 Filed 12–17–18; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. AC19–45–000]

Natural Gas Pipeline Company of America LLC; Notice of Filing

Take notice that on December 6, 2018, Natural Gas Pipeline Company of America LLC filed a request for approval to use Account 439, authorized by the Financial Accounting Standards Board.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the eFiling link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

This filing is accessible online at *http://www.ferc.gov,* using the eLibrary link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the website that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance

with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comments: 5:00 p.m. Eastern Time on December 26, 2018.

Dated: December 12, 2018.

Kimberly D. Bose,

Secretary.

[FR Doc. 2018–27305 Filed 12–17–18; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. EL19–19–000, EL19–20–000, EL19–21–000]

Bayou Cove Peaking Power, LLC; Louisiana Generating LLC; Big Cajun I Peaking Power LLC; Notice of Institution of Section 206 Proceeding and Refund Effective Date

On December 12, 2018, the Commission issued an order in Docket Nos. EL19–19–000, EL19–20–000, and EL19–21–000, pursuant to section 206 of the Federal Power Act (FPA), 16 U.S.C. 824e (2012), instituting an investigation into whether the above-captioned entities' proposed Rate Schedules for Reactive Service may be unjust and unreasonable. *Bayou Cove Peaking Power, LLC, et al.,* 165 FERC 61,227 (2018).

The refund effective date in Docket Nos. EL19–19–000, EL19–20–000, and EL19–21–000, established pursuant to section 206(b) of the FPA, will be the date of publication of this notice in the **Federal Register**.

Any interested person desiring to be heard in Docket Nos. EL19–19–000, EL19–20–000, and EL19–21–000 must file a notice of intervention or motion to intervene, as appropriate, with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rule 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.214 (2018), within 21 days of the date of issuance of the order.

Dated: December 12, 2018.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2018–27319 Filed 12–17–18; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER19–529–000]

Brookfield Renewable Trading and Marketing 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 Brookfield Renewable Trading and Marketing 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 January 2, 2019.

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 should submit an original and 5 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for electronic review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the website that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: December 12, 2018.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2018–27315 Filed 12–17–18; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC18–20–000]

Commission Information Collection Activities (FERC–919); Comment Request; Extension

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of information collection and request for comments.

SUMMARY: In compliance with the requirements of the Paperwork Reduction Act of 1995, the Federal Energy Regulatory Commission (Commission or FERC) is soliciting public comment on the currently approved information collection, FERC–919 (Refinement to Policies and Procedures for Market Based Rates for Wholesale Sales of Electric Energy, Capacity and Ancillary Services by Public Utilities), which will be submitted to the Office of Management and Budget (OMB) for a review of the information collection requirements.

DATES: Comments on the collection of information are due [Insert date that is 30 days after publication in the **Federal Register**.].

ADDRESSES: Comments filed with OMB, identified by OMB Control No. 1902–0234, should be sent via email to the Office of Information and Regulatory Affairs: *oira_submission@omb.gov.* Attention: Federal Energy Regulatory Commission Desk Officer. The Desk Officer may also be reached via telephone at 202–395–8528.

A copy of the comments should also be sent to the Commission, in Docket No. IC18–20–000 by either of the following methods:

- *eFiling at Commission's website: http://www.ferc.gov/docs-filing/efiling.asp*
- *Mail/Hand Delivery/Courier:* Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE, Washington, DC 20426.

Instructions: All submissions must be formatted and filed in accordance with submission guidelines at: *http://www.ferc.gov/help/submission-guide.asp.* For user assistance, contact FERC Online Support by email at *ferconlinesupport@ferc.gov,* or by phone at: (866) 208–3676 (toll-free), or (202) 502–8659 for TTY.

Docket: Users interested in receiving automatic notification of activity in this docket or in viewing/downloading comments and issuances in this docket may do so at *http://www.ferc.gov/docs-filing/docs-filing.asp.*

FOR FURTHER INFORMATION CONTACT: Ellen Brown may be reached by email at *DataClearance@FERC.gov,* telephone at (202) 502–8663, and fax at (202) 273–0873.

SUPPLEMENTARY INFORMATION:

Title: FERC–919, Refinement to Policies and Procedures for Market Based Rates for Wholesale Sales of Electric Energy, Capacity and Ancillary Services by Public Utilities.

OMB Control No.: 1902–0234.

Type of Request: Three-year extension of the FERC–919 information collection requirements with no changes to the current reporting requirements.

Abstract: The FERC–919 is necessary to ensure that market-based rates charged by public utilities are just and reasonable as mandated by Federal Power Act (FPA) sections 205 and 206. Section 205 of the FPA requires just and reasonable rates and charges. Section 206 allows the Commission to revoke a seller's market-based rate authorization if it determines that the seller may have gained market power since it was originally granted market-based rate authorization by the Commission.

In 18 Code of Federal Regulations (CFR) Part 35, Subpart H,[1] the Commission codifies market-based rate standards for generating electric utilities for use in the Commission's determination of whether a wholesale seller of electric energy, capacity, or ancillary services qualify for market-based rate authority. Subpart H mandates that sellers submit market power analyses and related filings.

Horizontal Market Power Analysis

Market power analyses must address both horizontal and vertical market power. To demonstrate lack of horizontal market power, the Commission requires two indicative market power screens: The uncommitted pivotal supplier screen (which is based on the annual peak demand of the relevant market) and the uncommitted market share screen applied on a seasonal basis. The Commission presumes sellers that fail either screen to have market power and such sellers may submit a delivered price test analysis or alternative evidence to rebut the presumption of horizontal market power. If a seller fails to rebut the presumption of horizontal market power, the Commission sets the just and reasonable rate at the default cost-based rate unless it approves different mitigation based on case specific circumstances. When submitting horizontal market power analyses, a seller must use the workable electronic spreadsheet provided in Appendix A of Subpart H and include all materials referenced.

Vertical Market Power Analysis

To demonstrate a lack of vertical market power, if a public utility with market-based rates, or any of its affiliates, owns, operates or controls transmission facilities, that public utility must:

- Have on file a Commission-approved Open Access Transmission Tariff[2]
- Submit a description of its ownership or control of, or affiliation with an entity that owns or controls:
  - Intrastate natural gas transportation, intrastate natural gas storage or distribution facilities
  - Sites for generation capacity development; and physical coal supply sources and ownership or control over who may access transportation of coal supplies
- Make an affirmative statement that it has not erected and will not erect barriers to entry into the relevant market

Asset Appendix

In addition to the market power analyses, a seller must submit an asset appendix with its initial application for market-based rate authorization or updated market power analysis, and all relevant change in status filings. The asset appendix must:

- List, among other things, all affiliates that have market-based rate authority
- List all generation assets owned (clearly identifying which affiliate owns which asset) or controlled (clearly identifying which affiliate controls which asset) by the corporate family by balancing authority area, and by geographic region, and provide the in-service date and nameplate and/or seasonal ratings by unit
- Must reflect all electric transmissions and natural gas interstate pipelines and/or gas storage facilities owned or controlled by the corporate family and the location of such facilities.[3]

Triennial Market Power Analysis

Sellers that own or control 500 megawatts or more of generation and/or that own, operate or control transmission facilities, are affiliated with any entity that owns, operates or controls transmission facilities in the same region as the seller's generation assets, or with a franchised public utility in the same region as the seller's generation assets are required to file updated market power analyses every three years. The updated market power analyses must demonstrate that a seller does not possess horizontal market power.

Change in Status Filings

Concerning change of status filings, the Commission requires that sellers file notices of such changes no later than 30 days after the change in status occurs. The Commission also requires that each seller include an appendix identifying specified assets with each pertinent change in status notification filed.

Exemptions From Submitting Updated Market Power Analyses

Wholesale power marketers and wholesale power producers that are not affiliated with franchised public utilities or transmission owners, that do not own transmission, and that do not, together with all of their affiliates, own or control 500 MW or more of generation in a relevant region are not required to submit updated market power analyses. The Commission determines which sellers are in this category through information filed by the utility either when the seller files its initial application for market-based rate authorization or through a separate filing made to request such a determination.

Type of Respondents: Public utilities, wholesale electricity sellers.

Estimate of Annual Burden:[4] The Commission estimates the total annual burden and cost[5] for this information collection as follows.

[1] Market-Based Rates for Wholesale Sales of Electric Energy, Capacity and Ancillary Services by Public Utilities, Order No. 697, 72 FR 39904 (Jul. 20, 2007), FERC Stats. & Regs. ¶ 31,252 (2007) (Final Rule).

[2] A part of the associated burden is reported separately in information collections FERC–516 (OMB Control Number: 1902–0096).

[3] See Subpart H, Appendix B for standard form.

[4] "Burden" is the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. For further explanation of what is included in the information collection burden, refer to Title 5 Code of Federal Regulations 1320.3.

[5] The estimated hourly costs (for wages and benefits) provided in this section are based on the figures for May 2017 posted by the Bureau of Labor Statistics (BLS) for the Utilities section available (at *https://www.bls.gov/oes/current/naics2_22.htm*) and benefits information (for December 2017, issued March 20, 2018, at *https://www.bls.gov/news.release/ecec.nr0.htm*). The hourly estimates for salary plus benefits are:

—Economist (Occupation Code: 19–3011), $71.98

—Electrical Engineers (Occupation Code: 17–2071), $66.90

—Lawyers (Occupation Code: 23–0000), $143.68

The average hourly cost (salary plus benefits), weighing all of these skill sets evenly, is $94.18. The Commission rounds it down to $94/hour.

FERC–919, MARKET BASED RATES FOR WHOLESALE SALES OF ELECTRIC ENERGY, CAPACITY AND ANCILLARY SERVICES BY PUBLIC UTILITIES

Requirement	Number of respondents (1)	Annual number of responses per respondent (2)	Total number of responses (1) * (2) = (3)	Average burden & cost per response (4)	Total annual burden hours & cost (3) * (4) = (5)	Annual cost per respondent ($) (5) ÷ (1)
Market Power Analysis in New Applications for Market-based rates.	144	1	144	250 hrs.; $23,500	36,000 hrs.; $3,384,000.	$23,500
Triennial market power analysis in seller updates.	65	1	65	250 hrs.; $23,500	16,250 hrs.; $1,527,500.	23,500
Appendix B addition to change in status reports.	149	1	149	49 hrs.; $4,606 ...	7,301 hrs.; $686,294.	4,606
Total	.....	.....	358	.....	59,551 hrs.; 5,597,794.	.....

Comments: Comments are invited on: (1) Whether the collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Dated: December 11, 2018.

Kimberly D. Bose,

Secretary.

[FR Doc. 2018–27292 Filed 12–17–18; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 7464–004]

Margaret Moser; Notice of Application for Surrender of Exemption, Soliciting Comments, Motions To Intervene, and Protests

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Proceeding:* Application for surrender of exemption.

b. *Project No.:* 7464–004.

c. *Date Filed:* December 2, 2018.

d. *Exemptee:* Ms. Margaret Moser.

e. *Name of Project:* Marden Brook Hydroelectric Project.

f. *Location:* The exempted project is located on Marden Brook, near the town of Lancaster, Coos County, New Hampshire.

g. *Filed Pursuant to:* 18 CFR 4.102.

h. *Licensee Contact:* Mr. Geoffrey or Lukas Moser, Box 116 RFD No. 1, 574 North Road, Lancaster, NH 03584, or 720–503–1572.

i. *FERC Contact:* Ms. Diana Shannon, 202–502–6136, or *diana.shannon@ferc.gov.*

j. Deadline for filing comments, interventions, and protests is 30 days from the issuance date of this notice by the Commission. The Commission strongly encourages electronic filing. Please file motions to intervene, protests and comments 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, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. The first page of any filing should include docket number P–7464–004.

k. *Description of Project Facilities:* The exempted run-of-river project consists of: (1) A concrete gravity spillway with small earth embankment sections on both sides, that includes a drainage gate and low level sluice gate on the left side; (2) an intake structure; (3) a buried steel penstock; and (4) a wheelhouse containing an overshot water wheel with a total generating capacity of approximately 3 kilowatts. The dam structure is approximately 6 feet high and creates an impoundment of less than 0.5 acre and contains less than 1 acre-foot of storage.

l. *Description of Request:* The project has not operated for some time and the exemptee wishes to surrender the project. The exemptee proposes to decommission the generating equipment and keep the project features in place. No construction or ground disturbance would result from the proposal.

m. This filing may be viewed on the Commission's website at *http://www.ferc.gov/docs-filing/elibrary.asp.* 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. A copy is also available for inspection and reproduction in the Commission's Public Reference Room located at 888 First Street, NE, Room 2A, Washington, DC 20426, or by calling (202) 502–8371.

n. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

o. 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, .212 and .214. 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.

p. Filing and Service of Responsive 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 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 and otherwise comply with the requirements of 18 CFR 4.34(b). All comments, motions to intervene, or protests should relate to the surrender application that is the subject of this notice. Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon

each representative of the applicant specified in the particular application. If an intervener 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. A copy of all other filings in reference to this application 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 4.34(b) and 385.2010.

q. Agency Comments—Federal, state, and local agencies are invited to file comments on the described proceeding. If any agency does not file comments within the time specified for filing comments, it will be presumed to have no comments.

Dated: December 11, 2018.

Kimberly D. Bose,

Secretary.

[FR Doc. 2018–27291 Filed 12–17–18; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2206–082]

Duke Energy Progress, 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. *Type of Application:* Non-capacity amendment of license.

b. *Project No.:* 2206–082.

c. *Date Filed:* November 20, 2018.

d. *Applicant:* Duke Energy Progress, LLC.

e. *Name of Project:* Yadkin Pee-Dee Hydroelectric Project.

f. *Location:* The project is located on the Yadkin and Pee-Dee rivers in Anson, Montgomery, Richmond, and Stanly counties, North Carolina.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791 (a)–825(r).

h. *Applicant Contact:* Mr. Jeffery G. Lineberger, P.E., Director, Water Strategy and Hydro Licensing, 526 South Church Street, Mail Code EC12Y, Charlotte, NC, (704) 382–0293.

i. *FERC Contact:* Steven Sachs, (202) 502–8666, *Steven.Sachs@ferc.gov.*

j. Deadline for filing comments, motions to intervene, and protests is 30 days from the issuance of this notice by the Commission. 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/doc-sfiling/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, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. The first page of any filing should include docket number P–2206–082.

k. *Description of Request:* In conjunction with necessary spillway stabilization work, the applicant intends to replace the existing wooden flashboards at the Blewett Falls development with a pneumatic crest gate system. The proposed crest gate would consist of 9 sections of various height, but would have the same maximum elevation as the existing flashboards. The applicant also proposes to construct a 21-foot-wide, 24-foot-long concrete control building near the spillway as part of the crest gate system. The applicant intends to install the system beginning in November 2020, and complete construction in November 2021. Additionally, the applicant proposes changes to the conceptual designs for fish passage structure referenced in U.S. Fish and Wildlife Service's fishway prescriptions, which would provide downstream American Shad and upstream American eel passage at the Blewett Falls dam. The applicant now proposes to operate three sections of the pneumatic crest gate system for downstream shad passage, and to use the existing pool and weir fish ladder for upstream eel passage.

l. *Locations of the Applications:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, DC 20426, or by calling (202) 502–8371. The filing may also be viewed on the Commission's website at *http://www.ferc.gov/docs-filing/elibrary.asp.* 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.

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, Motions to Intervene, or Protests: Anyone may submit comments, a motion to intervene, or a protest in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. 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, motions to intervene, or protests must be received on or before the specified comment date for the particular application.

o. Filing and Service of Responsive Documents: Any filing must (1) bear in all capital letters the title ''COMMENTS'', ''MOTION TO INTERVENE'', or ''PROTEST'' 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 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 and otherwise comply with the requirements of 18 CFR 4.34(b). All comments, motions to intervene, or protests should relate to project works which are the subject of the temporary variance request. Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. If an intervener 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. A copy of all other filings in reference to this application 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 4.34(b) and 385.2010.

Dated: December 11, 2018.

Kimberly D. Bose,

Secretary.

[FR Doc. 2018–27293 Filed 12–17–18; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. AC19–42–000]

Colorado Interstate Gas Company, L.L.C.; Notice of Filing

December 12, 2018.

Take notice that on December 6, 2018, Colorado Interstate Gas Company, L.L.C. filed a request for approval to use Account 439, authorized by the Financial Accounting Standards Board.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion

to intervene or protest must serve a copy of that document on the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the eFiling link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

This filing is accessible online at *http://www.ferc.gov,* using the eLibrary link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the website that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comments: 5:00 p.m. Eastern Time on December 26, 2018.

Dated: December 12, 2018.

Kimberly D. Bose,

Secretary.

[FR Doc. 2018–27303 Filed 12–17–18; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2512–079]

Hawks Nest Hydro, 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:* Recreation Management Plan.

b. *Project No.:* 2512–079.

c. *Date Filed:* November 30, 2018.

d. *Applicant:* Hawks Nest Hydro, LLC.

e. *Name of Project:* Hawks Nest Hydroelectric Project.

f. *Location:* The project is located on the New River, just upstream of the confluence of the New and Gauley Rivers, near the Town of Ansted in Fayette County, West Virginia.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Marshall Olson, Compliance Manager, 40325 Hoops Court, Albemarle, NC 28001, (865) 255–4240.

i. *FERC Contact:* Shawn Halerz, (202) 502–6360, *Shawn.Halerz@ferc.gov.*

j. *Deadline for filing comments, motions to intervene, and protests:* January 12, 2018.

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, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. The first page of any filing should include docket number P–2512–079. 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:* As required by Article 408 of the December 22, 2017 license, Hawks Nest Hydro, LLC (licensee) requests Commission approval of a proposed Recreation Management Plan (plan) for the project. The plan incorporates the provisions required by Article 408 and conditions of the West Virginia Department of Environmental Protection water quality certificate. The licensee proposes enhancements to the existing Cotton Hill Bridge Day-Use area, the addition of a take-out location on the New River in the Gauley Bridge area developed in conjunction with the West Virginia Department of Natural Resources, and the addition of a dam portage/bike-hike trail.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also 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. A copy is also available for inspection and reproduction at the address in item (h) above. 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: December 12, 2018.

Kimberly D. Bose,

Secretary.

[FR Doc. 2018–27313 Filed 12–17–18; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Western Area Power Administration

Parker-Davis Project—Rate Order No. WAPA–184

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of rate order extending firm electric and transmission service formula rates.

SUMMARY: The Deputy Secretary of Energy extends the existing Parker-Davis Project (P–DP) formula rates and will submit them to the Federal Energy Regulatory Commission (FERC) for confirmation and approval on a final basis. The existing formula rates were scheduled to expire on September 30, 2018, for firm electric and transmission service under Rate Schedules PD–F7, PD–FT7, PD–FCT7, and PD–NFT7. The Administrator of the Western Area Power Administration (WAPA) approved the use of the existing P–DP rates beyond September 30, 2018, under his authority to set rates for short-term sales. The short-term rates cover the period between October 1, 2018, and the date this rate extension goes into effect.

DATES: Firm electric and transmission service formula rates under Rates Schedules PD–F7, PD–FT7, PD–FCT7, and PD–NFT7 will become effective on the first calendar day of the month following January 17, 2019, and will remain in effect through September 30, 2023.

FOR FURTHER INFORMATION CONTACT: Mr. Ronald E. Moulton, Senior Vice President and Regional Manager, or Ms. Tina Ramsey, Rates Manager, Desert Southwest Region, Western Area Power Administration, P.O. Box 6457, Phoenix, AZ 85005–6457, (602) 605–2525, or *dswpwrmrk@wapa.gov.*

SUPPLEMENTARY INFORMATION: The Secretary of Energy delegated: (1) the authority to develop power and transmission rates to WAPA's Administrator; (2) the authority to confirm, approve, and place such rates into effect on an interim basis to the Deputy Secretary of Energy; and (3) the authority to confirm, approve, and place into effect on a final basis, to remand, or to disapprove such rates to FERC.[1]

Following the procedures for public participation in the development of power and transmission rates,[2] WAPA is extending the P–DP formula rates set forth in Rate Schedules PD–F7, PD–FT7, PD–FCT7, and PD–NFT7. These rate schedules contain the formulas that are used to calculate the charges for firm electric and transmission service on an annual basis.

Extending these formula rates through September 30, 2023, gives WAPA and its customers time to evaluate the potential benefits of combining transmission rates on Federal transmission systems located within WAPA's Desert Southwest Region. Combining rates may lead to more efficient use of the Federal transmission systems, diversify the use of those systems, and lower rates for customers. If, after a thorough evaluation, WAPA determines that combining transmission rates is beneficial to its customers, it will follow established procedures for public participation in the development of the combined rates.

Rate Schedules PD–F7, PD–FT7, PD–FCT7, and PD–NFT7 were previously approved by FERC for a 5-year period through September 30, 2018.[3] Since the rate schedules were scheduled to expire before the rate extension could be placed into effect, WAPA's Administrator approved the use of the existing P–DP rates beyond September 30, 2018, under his authority to set rates for short-term sales. The short-term rates cover the period between October 1, 2018, and the date this rate extension goes into effect or March 31, 2019, whichever occurs first.

A notice of proposed extension of formula rates was published in the **Federal Register** on July 13, 2018 (83 FR 32664).[4] WAPA determined it was not necessary to hold a public information or public comment forum on the proposed formula rate extension, but provided a 30-day consultation and comment period to give the public an opportunity to comment on the proposed extension. The consultation and comment period ended on August 13, 2018, and WAPA received no comments on the proposed extension.

Following DOE's review of WAPA's proposal, I hereby approve Rate Order No. WAPA–184 on an interim basis, which extends existing Rate Schedules PD–F7, PD–FT7, PD–FCT7, and PD–NFT7 through September 30, 2023. Rate Order No. WAPA–184 will be submitted to FERC for confirmation and approval on a final basis.

Dated: December 10, 2018.

Dan Brouillette,

Deputy Secretary of Energy.

DEPARTMENT OF ENERGY

DEPUTY SECRETARY

In the Matter of: Western Area Power Administration Extension of Parker-Davis Project Firm Electric and Transmission Service Formula Rates
Rate Order No. WAPA–184

ORDER CONFIRMING AND APPROVING AN EXTENSION OF PARKER-DAVIS PROJECT FIRM ELECTRIC AND TRANSMISSION SERVICE FORMULA RATES

Section 302 of the Department of Energy (DOE) Organization Act (42 U.S.C. 7152) transferred to and vested in the Secretary of Energy the power marketing functions of the Secretary of the Department of the Interior and the Bureau of Reclamation under the Reclamation Act of 1902 (ch. 1093, 32 Stat. 388), as amended and supplemented by subsequent laws, particularly section 9(c) of the Reclamation Project Act of 1939 (43 U.S.C. 485h(c)), and other acts that specifically apply to the project involved.

By Delegation Order No. 00–037.00B, effective November 19, 2016, the Secretary of Energy delegated (1) the authority to develop power and transmission rates to the Administrator of the Western Area Power Administration (WAPA); (2) the authority to confirm, approve, and place such rates into effect on an interim basis to the Deputy Secretary of Energy; and (3) the authority to confirm, approve, and place into effect on a final basis, to remand, or to disapprove such rates to the Federal Energy Regulatory Commission (FERC). This extension is issued under the Delegation Order and DOE rate extension procedures found at 10 CFR 903.23(a).

BACKGROUND

On September 16, 2013, the Deputy Secretary of Energy approved, on an interim basis, Parker-Davis Project Rate Schedules PD–F7, PD–FT7, PD–FCT7, and PD–NFT7 under Rate Order No. WAPA–162 for the 5-year period beginning October 1, 2013, and ending September 30, 2018. These rate schedules were confirmed, approved, and placed into effect on a final basis by FERC on September 18, 2014.[1]

Following the procedures set forth in 10 CFR 903.23(a), WAPA filed a notice in the **Federal Register** on July 13, 2018, proposing to extend Rate Schedules PD–F7, PD–FCT7, PD–FT7, and PD–NFT7 under Rate Order No. WAPA–184.[2] WAPA provided a consultation and comment period on the proposed formula rate extension. The consultation and comment period ended on August 13, 2018,

[1] Delegation Order No. 00–037.00B, effective November 19, 2016.

[2] 10 CFR 903.23.

[3] FERC confirmed and approved Rate Order No. WAPA–162 *Order Confirming and Approving Rate Schedules on a Final Basis,* Docket No. EF14–4–000, 148 FERC ¶ 61,193 (Sept. 18, 2014).

[4] Western Area Power Administration, Notice of Proposed Extension of Formula Rates for Parker-Davis Project Firm Electric and Transmission Service, 83 FR 32664 (July 13, 2018).

[1] *See Order Confirming and Approving Rate Schedules on a Final Basis,* Docket No. EF14–4–000, 148 FERC ¶ 61,193 (Sept. 18, 2014).

[2] *Western Area Power Administration, Notice of Proposed Extension of Formula Rates for Parker-Davis Project Firm Electric and Transmission Service,* 83 Fed. Reg. 32664 (July 13, 2018).

and WAPA received no comments on the proposed extension.

DISCUSSION

On September 30, 2018, the existing Rate Schedules PD–F7, PD–FCT7, PD–FT7, and PD–NFT7 were scheduled to expire. Under Delegation Order No. 00–037.00B, Section 1.5, WAPA's Administrator approved rates for short-term sales that were the same as those in existing Rate Schedules PD–F7, PD–FCT7, PD–FT7, and PD–NFT7 to cover the period between October 1, 2018, and the date the final rate extension goes into effect or March 31, 2019, whichever occurs first. The existing firm electric and transmission service formula rates provide adequate revenue to pay all annual costs, including interest expense, and to repay required investment according to the cost recovery criteria set forth in DOE Order RA 6120.2. Rate Order No. WAPA–184, which extends the existing rate schedules through September 30, 2023, ensures adequate revenue to pay all annual costs for the period covered by this Order.

[FR Doc. 2018–27340 Filed 12–17–18; 8:45 am]

BILLING CODE 6450–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0057]

Information Collection Being Submitted for Review and Approval to the Office of Management and Budget

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995, the Federal Communications Commission (FCC or the Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collection. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The Commission may not conduct or sponsor a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

DATES: Written comments should be submitted on or before January 17, 2019. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contacts listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicholas A. Fraser, OMB, via email *Nicholas_A._Fraser@omb.eop.gov;* and to Nicole Ongele, FCC, via email *PRA@fcc.gov* and to *Nicole.Ongele@fcc.gov.* Include in the comments the OMB control number as shown in the **SUPPLEMENTARY INFORMATION** below.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection, contact Nicole Ongele at (202) 418–2991. To view a copy of this information collection request (ICR) submitted to OMB: (1) Go to the web page *http://www.reginfo.gov/public/do/PRAMain*, (2) look for the section of the web page called ''Currently Under Review,'' (3) click on the downward-pointing arrow in the ''Select Agency'' box below the ''Currently Under Review'' heading, (4) select ''Federal Communications Commission'' from the list of agencies presented in the ''Select Agency'' box, (5) click the ''Submit'' button to the right of the ''Select Agency'' box, (6) when the list of FCC ICRs currently under review appears, look for the OMB control number of this ICR and then click on the ICR Reference Number. A copy of the FCC submission to OMB will be displayed.

SUPPLEMENTARY INFORMATION: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the Federal Communications Commission (FCC or the Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collection.

Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0057.

Title: Application for Equipment Authorization.

Form Number: FCC Form 731.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents and Responses: 11,291 respondents; 24,851 responses.

Estimated Time per Response: 8.11 hours (rounded up).

Frequency of Response: On occasion reporting requirement and third-party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in the 47 U.S.C. 154(i), 301, 302, 303(e), 303(f) and 303(r).

Total Annual Burden: 201,450 hours.

Total Annual Costs: $50,110,000.

Privacy Act Impact Assessment: The personally identifiable information (PII) in this information collection is covered by a Privacy Impact Assessment (PIA), Equipment Authorizations Records and Files Information System. It is posted at: *https://www.fcc.gov/general/privacy-act-information#pia.*

Nature and Extent of Confidentiality: Minimal exemption from the Freedom of Information Act (FOIA) under 5 U.S.C. 552(b)(4) and FCC rules under 47 CFR 0.457(d) is granted for trade secrets which may be submitted as attachments to the application FCC Form 731. No other assurances of confidentiality are provided to respondents.

Needs and Uses: The Commission will submit this revised information collection to the Office of Management and Budget (OMB) after this 60-day comment period to obtain the three-year clearance. There is an increase in respondents/burden cost estimates to reflect the increased complexity of devices subject to the Commission rules and costs associated with testing by third-party test firms and review by Telecommunications Certification Bodies. At the same time the changes in system and consolidation of different information collection projects a reduction of burden hours.

The Commission is seeking a revision of the Equipment Authorization

information collection because of a redesign of the electronic system that collects the information (Equipment Authorization System) that streamlines the processes for filing the information associated with applications for equipment Certification pursuant to subpart J of part 2 of the Commission rules. The new electronic system also allows the Commission to consolidate and combine information that is currently authorized separately.[1] The system is designed to process all data collection electronically and will eliminate repetitive information collection within applications and will permit parties to reference previously submitted information at the time of equipment authorization application. The justification has been revised to represent the updated information collected from different parties, to note that previously submitted information can be referenced in individual applications and to project the updated costs associated with testing the more complex devices that predominate the current environment.

The Commission rules require manufacturers of certain radio frequency (RF) equipment [2] to obtain equipment authorization approval prior to marketing their equipment. Manufacturers may then market their RF equipment based on a showing of compliance with the applicable technical standards. The Commission typically adopts or modifies its technical standards in response to new technologies and in conjunction with changes to spectrum allocations. Under the equipment authorization rules there are two types of authorization processes: Certification and Suppliers Declaration of Conformity. The technical rules for the services in which the equipment is proposed to operate will specify which type of equipment authorization must be obtained before the equipment can be marketed. This information collection is specific for equipment subject to Certification. Appendix A of this statement provides the current list of rules that require Certification. Applications for Certification are submitted on FCC Form 731.[3]

Accordingly, this information collection applies to RF equipment that:

(a) Is currently manufactured, or may be manufactured in the future, and

(b) operates under varying technical standards.

A party (*e.g.* an RF equipment manufacturer) seeking device Certification pursuant to § 2.911 must first obtain a grantee code. This is a one-time application, as the party may use the same grantee code in all of its subsequent equipment authorization applications. The party provides its contact information and the FCC Registration Number (FRN) to obtain the grantee code on the Grantee Code Application web page of FCC Form 731.[4] A grantee code is assigned pursuant to § 2.926(c) of the Commission rules, and any information changes (as described in § 2.929) must be updated on the electronic system.

A party seeking device Certification is required to submit its application to an FCC-recognized Telecommunications Certification Body (TCB). The FCC recognizes TCBs pursuant to §§ 2.960 and 2.962. TCBs must be designated by appropriate designating authorities in the United States or through a mutual recognition agreement (MRA) for foreign countries where an MRA is in place, pursuant to § 2.960. A TCB's designation is only recognized when it is supported by an accrediting organization meeting the requirements specified in § 2.960(c). Information about the TCBs including their scope of responsibilities pursuant to § 2.962, the TCB accrediting body (TCBA) and the TCB designating authority (TDA) is submitted by the parties on the specific web pages of FCC Form 731. The information about a TCB, TCBA or TDA is only collected when a new entity is added or there is a change in the scope of the entity responsibilities. The information is used for verification and validation when a TCB submits information indicating approval of the application for grant of Certification.

TCBs have flexibility in the format they use to collect information for application for equipment Certification—*e.g.,* they may require applicants to submit the required information in a format that mirrors FCC Form 731, or they may opt to use a customized format. In all cases, the information required is governed by the procedural rules in part 2 and a showing of compliance with the FCC technical standards for the specific type of equipment that is the subject of the application.

TCBs process application as follows:

(i) The TCB receives and reviews the information submitted by the party seeking Certification of an RF device.

(ii) The TCB enters the information on the appropriate FCC Form 731 web page. The TCB submits the final recommendation on the disposal of the application. If the recommendation is to authorize the grant, a grant of certification is published through the system. If the recommendation is not to approve, this decision is noted in the system.

All applications for Certification require the product to be tested for rules compliance by measurement test firms (TF) accredited by test firm accreditation bodies (TFAB) that have been recognized by the FCC (see §§ 2.948 and 2.949, respectively). TF and TFAB information is submitted through FCC Form 731 web pages for such information for verification and validation when the TCB reviews the application. The information collection for TF and TFAB is currently approved under OMB 3060–0398, but is being included in this revision.

An application for Certification must contain the following data, as is specified in § 2.1033:

- Information about the Grantee or their agents submitting the application on the Grantee's behalf.
- Information specific to the equipment including FCC Identifier, equipment class, technical specifications, etc.
- Attachments that demonstrate compliance with FCC rules may include any combination of the following based on the applicable FCC rule parts for the equipment for which authorization is requested:
  - Identification of equipment (§ 2.925);
  - Attestation statements that may be required for specific equipment;
  - External photos;
  - Block diagram of the device;
  - Schematics;
  - Test Report;
  - Test Setup Photos;
  - User's Manual;
  - Internal Photos;
  - Parts List/Tune Up Information;
  - RF Exposure Information;
  - Operational Description;
  - Cover Letters;
  - Software Defined Radio/Cognitive Radio Files;
  - Pre-approval guidance correspondence with TCB; and
  - Pre-approval inquiry correspondence with applicant

Applications for devices subject to multiple rule parts or to different

[1] The revised collection will include the information collection previously authorized under OMB 3060–0398 (Secs. 2.948, 2.949 except for Section 15.117(g)(2)).

[2] *See* Section 2.803 (47 CFR 2.803). The kinds of equipment that are being marketed include devices such as cellular telephones, tablets, remote control devices and scanning devices. However, the types of equipment that are manufactured may change in response to changing technologies and new spectrum allocations made by the Commission.

[3] The information collection for Suppliers Declaration for conformity is authorized under OMB 3060–0636.

[4] Information collection for FCC Registration Number is authorized under OMB 3060–0917.

requirements within the same rule part can be included in a single submission that provides whatever additional relevant information is necessary to show compliance with additional requirements. Applications subject to pre-approval guidance pursuant to § 2.964 must include the guidance correspondence.

Applications for devices operating under certain service rules (as specified in § 2.1033) must also include information specified in the rule parts.[5] This documentation, as well as any other information that demonstrates conformance with FCC Rules, may range from 100 to 1,000 pages, and is essential to control potential interference to radio communications. The FCC may use this information to investigate complaints of harmful interference.

The decision on the grant of application is made on the Equipment Authorization System electronically pursuant to §§ 2.915, 2.917 or 2.919. A Certification is subject to the limitations under § 2.927 and the grantee is responsible for ongoing compliance including record retention pursuant to §§ 2.931, 2.937 and 2.938.

The grantee is responsible to ensure that the device continues to comply with the rules. Device changes will require a new application for Certification pursuant to §§ 2.932 and 2.933, unless they can be classified as permissive changes under the rules for Class II or III permissive changes, as specified in § 2.1043(b). For a permissive change, the grantee is required to file supplementary information explaining the changes and must provide updated test information to a TCB for review. The TCB will then submit the data on the FCC Form 731 web pages for permissive changes. The only data required is that which supports the compliance of the changed functions. For changes which are considered Class I under §§ 2.1043(b) or 2.924 no further submissions are necessary although the applicant is responsible for keeping records of the changes.

Information on the procedures for equipment authorization applications can be obtained from the internet at: *https://www.fcc.gov/engineering-technology/laboratory-division/general/equipment-authorization.*

Appendix A

RULE PARTS REFERENCING EQUIPMENT CERTIFICATION

Rule sections (47 CFR)	Reference
2.911, 2.1033	Applications.
11.34	EAS Equipment acceptability for filing.
15.201	Equipment Authorization Requirements.
18.203	Equipment Authorization.
20.19(b)	HAC Requirements.
20.21(e)(2)	Signal Boosters.
22.377	Certification of transmitters.
24.51	Equipment Authorization (including 24.52 RF Hazards).
25.129	Equipment Authorization for portable earth-station transceivers.
27.51	Equipment Authorization (including 27.52 RF Safety).
30.201	Equipment Authorization (30.201(c) refers to verification).
74.451	Certification of equipment—remote pickup.
74.750	Low Power TV (type notified).
74.851	Certification of equipment—LPAS.
80.203	Authorization of transmitters—maritime services (special manual or other type approval requirements).
87.147	Authorization of equipment—Aviation.
90.203	Certification required—Private land mobile radio.
95.335	Operation of non-certified transmitters prohibited—Personal Radio Service.
95.361	Transmitter Certification—Personal Radio Service.
95.561	FRS transmitter certification.
95.761	RCRS transmitter certification.
95.961	CBRS transmitter certification.
95.1761	GMRS transmitter certification.
95.1951	Certification—200 MHz.
95.2161	LPRS transmitter certification.
95.2361	WMTS transmitter certification.
95.2561	MedRadio transmitter certification.
95.2761	MURS transmitter certification.
95.2961	PLB and MSLD transmitter certification.
95.3161	OBU transmitter certification.
95.3361	Certification—76–81GHz Radar service.
96.49	Equipment Authorization CBRS.
97.315	Certification of external RF power amplifiers—Amateur Radio.

[5] See 47 CFR Sections 2.1033(b)(9)–(14), 2.1033(c)(13)–(21) and 2.1033(d).

Federal Communications Commission.

Cecilia Sigmund,

Federal Register Liaison Officer, Office of the Secretary.

[FR Doc. 2018–27272 Filed 12–17–18; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0198; Docket No. 2018–0003; Sequence No. 20]

Submission for OMB Review; Violations of Arms Control Treaties or Agreements With the United States

AGENCY: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice.

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 an existing OMB emergency clearance notice regarding violations of arms control treaties or agreements with the United States.

DATES: Submit comments on or before January 17, 2019.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to: Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for GSA, Room 10236, NEOB, Washington, DC 20503. Additionally submit a copy to GSA by any of the following methods:

- *Federal eRulemaking Portal:* This website provides the ability to type short comments directly into the comment field or attach a file for lengthier comments. Go to *http://www.regulations.gov* and follow the instructions on the site.
- *Mail:* General Services Administration, Regulatory Secretariat Division (MVCB), 1800 F Street NW, Washington, DC 20405. ATTN: Ms. Mandell/IC 9000–0198, Violations of Arms Control Treaties or Agreements with the United States.

Instructions: Please submit comments only and cite Information Collection 9000–0198, Violations of Arms Control Treaties or Agreements with the United States, in all correspondence related to this collection. Comments received generally will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided. To confirm receipt of your comment(s), please check *www.regulations.gov,* approximately two to three days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

FOR FURTHER INFORMATION CONTACT: Ms. Cecelia L. Davis, Procurement Analyst, Federal Acquisition Policy Division, at 202–219–0202 or email *cecelia.davis@gsa.gov.*

SUPPLEMENTARY INFORMATION:

A. Purpose

This is a requirement for an extension of OMB control number 9000–0198, Violations of Arms Control Treaties or Agreements with the United States.

Section 1290 of Public Law 114–328 (codified at 22 U.S.C. 2593e) went into effect on December 23, 2016. The implementation of this FAR case will protect against doing business with entities that engage in any activity that contributed to or is a significant factor in a country's failure to comply with arms control treaties or agreements with the United States. This action is necessary because of statutory requirements relating to a national security function of the United States.

A notice was published in the **Federal Register** at 83 FR 28145, on June 15, 2018, as part of an interim rule under FAR Case 2017–018, Violations of Arms Control Treaties or Agreements with the United States.

B. Public Comment

A 60-day notice published in the **Federal Register** at 83 FR 29117 on June 22, 2018. No comments were received.

C. Annual Reporting Burden

Number of Respondents: 11,634.

Responses per Respondent: 8.6.

Total Responses: 99,796.

Average Burden Hours per Response: 0.4 hours.

Total Burden Hours: 40,478.

Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat Division (MVCB), 1800 F Street NW, Washington, DC 20405, telephone 202–501–4755. Please cite OMB Control No. 9000–0198, Violations of Arms Control Treaties or Agreements with the United States.

Janet Fry,

Director, Federal Acquisition Policy Division, Office of Governmentwide Acquisition Policy, Office of Acquisition Policy, Office of Governmentwide Policy.

[FR Doc. 2018–27365 Filed 12–17–18; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Agency for Healthcare Research and Quality, HHS.

ACTION: Notice.

SUMMARY: This notice announces the intention of the Agency for Healthcare Research and Quality (AHRQ) to request that the Office of Management and Budget (OMB) approve the proposed information collection project: ''*Online Application Order Form for Products from the Healthcare Cost and Utilization Project (HCUP).*''

DATES: Comments on this notice must be received by February 19, 2019.

ADDRESSES: Written comments should be submitted to: Doris Lefkowitz, Reports Clearance Officer, AHRQ, by email at *doris.lefkowitz@AHRQ.hhs.gov*.

Copies of the proposed collection plans, data collection instruments, and specific details on the estimated burden can be obtained from the AHRQ Reports Clearance Officer.

FOR FURTHER INFORMATION CONTACT: Doris Lefkowitz, AHRQ Reports Clearance Officer, (301) 427–1477, or by email at *doris.lefkowitz@AHRQ.hhs.gov*.

SUPPLEMENTARY INFORMATION:

Proposed Project

Online Application Order Form for Products from the Healthcare Cost and Utilization Project (HCUP)

In accordance with the Paperwork Reduction Act, 44 U.S.C. 3501–3521, AHRQ invites the public to comment on this proposed information collection. The Healthcare Cost and Utilization Project (HCUP, pronounced ''H-Cup'') is a vital resource helping the Agency achieve its research agenda, thereby furthering its goal of improving the delivery of health care in the United States. HCUP is a family of health care databases and related software tools and products developed through a Federal-

State-Industry partnership and sponsored by AHRQ. HCUP includes the largest collection of longitudinal hospital care data in the United States, with all-payer, encounter-level information beginning in 1988. The HCUP databases are annual files that contain anonymous information from hospital discharge records for inpatient care and certain components of outpatient care, such as emergency care and ambulatory surgeries. The project currently releases seven types of databases created for research use on a broad range of health issues, including cost and quality of health services, medical practice patterns, access to health care programs, and outcomes of treatments at the national, State, and local market levels. HCUP also produces a large number of software tools to enhance the use of administrative health care data for research and public health use. Software tools use information available from a variety of sources to create new data elements, often through sophisticated algorithms, for use with the HCUP databases.

HCUP's objectives are to:

- Create and enhance a powerful source of national, state, and all-payer health care data.
- Produce a broad set of software tools and products to facilitate the use of HCUP and other administrative data.
- Enrich a collaborative partnership with statewide data organizations (that voluntarily participate in the project) aimed at increasing the quality and use of health care data.
- Conduct and translate research to inform decision making and improve health care delivery.

This project is being conducted by AHRQ through its primary contractor and subcontractor, IBM Watson Health and Social & Scientific Systems, Inc., pursuant to AHRQ's statutory authority to conduct and support research on health care and on systems for the delivery of such care, including activities with respect to the outcomes, cost, cost-effectiveness, and use of health care services and access to such services. 42 U.S.C. 299a(a)(3).

Method of Collection

The HCUP releases seven types of databases for public research use:

(1) The National Inpatient Sample (NIS) is the largest all-payer inpatient care database in the United States, yielding national estimates of hospital inpatient stays. The NIS approximates 20 percent of the discharges from all U.S. community hospitals and contains data from approximately 7 million hospital stays each year. NIS data releases are available for purchase from the HCUP Central Distributor for data years beginning in 1988.

(2) The Kids' Inpatient Database (KID) is the only all-payer inpatient care database for children in the United States. The KID was specifically designed to permit researchers to study a broad range of conditions and procedures related to child health issues. The KID contains a sample of 2 to 3 million discharges for children age 20 and younger from more than 4,200 U.S. community hospitals. KID data releases are available every third year starting in 1997.

(3) The Nationwide Emergency Department Sample (NEDS) is the largest all-payer ED database in the United States. It is constructed to capture information both on ED visits that do not result in an admission and on ED visits that result in an admission to the same hospital. The NEDS contains more than 31 million unweighted records for ED visits at about 950 U.S. community hospitals and approximates a 20-percent stratified sample of U.S. hospital-based EDs. NEDS data releases are available beginning with data year 2006.

(4) The State Inpatient Databases (SID) contain the universe of inpatient discharge abstracts from data organizations in 48 States and the District of Columbia that currently participate in the SID. Together, the SID encompass approximately 97 percent of all U.S. community hospital discharges. Most States that participate in the SID make their data available for purchase through the HCUP Central Distributor. Files are available beginning with data year 1990.

(5) The State Ambulatory Surgery and Services Databases (SASD) contain encounter-level data from ambulatory surgery and other outpatient services from hospital-owned facilities. In addition, some States provide data for ambulatory surgery and outpatient services from nonhospital-owned facilities. Currently, 35 States participate in the SASD. Files are available beginning with data year 1997.

(6) The State Emergency Department Databases (SEDD) contain data from hospital-owned emergency departments (ED) for visits that do not result in a hospitalization. Currently, 38 States participate in the SEDD. Files are available beginning with data year 1999.

(7) A new database called the Nationwide Readmissions Database (NRD) is planned for release in late 2019. The NRD is designed to support various types of analyses of national readmission rates. This database addresses a large gap in health care data—the lack of nationally representative information on hospital readmissions. The NRD is a calendar-year, discharge-level database constructed from the HCUP State Inpatient Databases (SID).

To support AHRQ's mission to improve health care through scientific research, HCUP databases and software tools are disseminated to users outside of the Agency through a mechanism known as the HCUP Central Distributor at *https://www.hcup-us.ahrq.gov/tech_assist/centdist.jsp*. The HCUP Central Distributor assists qualified researchers to access uniform research data across multiple states with the use of one application process. The HCUP databases disseminated through the Central Distributor are referred to as ''restricted access public release files''; that is, they are publicly available, but only under restricted conditions.

This information collection request is for the activities associated with the HCUP database application process, not the collection of health care data for HCUP databases. The activities associated with this application include:

(1) HCUP Application. All persons requesting access to the HCUP databases must complete an application at *https://distributor.hcup-us.ahrq.gov/*. Applications for HCUP State databases require a brief description of the planned research use to ensure that the intended use is consistent with HCUP policies and with the HCUP Data Use Agreement (DUA). Paper versions of all application packages are also available for downloading at *http://www.hcup-us.ahrq.gov/tech_assist/centdist.jsp*.

(2) HCUP DUA Training. All persons wanting access to the HCUP databases must complete an online training course. The purpose of the training is to emphasize the importance of data protection, reduce the risk of inadvertent violations, and describe the individual's responsibility when using HCUP data. The training course can be accessed and completed online at *http://www.hcup-us.ahrq.gov/techassist/dua.jsp*.

(3) HCUP DUA. All persons wanting access to the HCUP databases must sign a data use agreement. An example DUA for the Nationwide databases is available at *http://www.hcup-us.ahrq.gov/team/NationwideDUA.jsp*.

HCUP databases are released to researchers outside of AHRQ after the completion of required training and submission of an application that includes a signed HCUP DUA. In addition, before restricted access public release state-level databases are released, AHRQ must review and approve the applicant's statement of intended use to ensure that the planned use is consistent with HCUP policies and with the HCUP DUA. Fees are set

for databases released through the HCUP Central Distributor depending on the type of database. The fee for sale of state-level data is determined by each participating Statewide Data Organization and reimbursed to those organizations.

Information collected in the HCUP Application process will be used for two purposes only:

1. Business Transaction: In order to deliver the HCUP databases and software, contact information is necessary for shipping some types of HCUP data on disk (or any other media used in the future).

2. Enforcement of the HCUP DUA: The HCUP DUA contains several restrictions on use of the data. Most of these restrictions have been put in place to safeguard the privacy of individuals and establishments represented in the data. For example, data users can only use the data for research, analysis, and aggregate statistical reporting and are prohibited from attempting to identify any persons in the data. Contact information on HCUP DUAs is retained in the event that a violation of the DUA takes place.

Estimated Annual Respondent Burden

Exhibit 1 shows the estimated annualized burden associated with the applicants' time to order any of the HCUP databases. An estimated 1,500 persons will order HCUP data annually. Each of these persons will complete an application (10 minutes), the DUA training (15 minutes) and a DUA (5 minutes). The total burden is estimated to be 750 hours annually.

Exhibit 2 shows the estimated annualized cost burden associated with the applicants' time to order HCUP data. The total cost burden is estimated to be $29,662 annually.

EXHIBIT 1—ESTIMATED ANNUALIZED BURDEN HOURS

Form name	Number of respondents	Number of responses per respondent	Hours per response	Total burden hours
HCUP Application Form	1,500	1	10/60	250
HCUP DUA Training	1,500	1	15/60	375
HCUP DUA	1,500	1	5/60	125
Total	4,500	na	na	750

EXHIBIT 2—ESTIMATED ANNUALIZED COST BURDEN

Form name	Number of respondents	Total burden hours	Average hourly wage rate *	Total cost burden
HCUP Application Form	1,500	250	$39.55	$9,887
HCUP DUA Training	1,500	375	39.55	14,831
HCUP DUA	1,500	125	39.55	4,944
Total	4,500	750	na	29,662

* Based upon the mean of the average wages for Life Scientists, All Other (19–1099), National Compensation Survey: Occupational Employment Statistics, May 2017 National Occupational Employment and Wage Estimates United States, U.S. Department of Labor, Bureau of Labor Statistics. *http://www.bls.gov/oes/current/oes_nat.htm#b29-0000*.

Request for Comments

In accordance with the Paperwork Reduction Act, comments on AHRQ's information collection are requested with regard to any of the following: (a) Whether the proposed collection of information is necessary for the proper performance of AHRQ health care research and health care information dissemination functions, including whether the information will have practical utility; (b) the accuracy of AHRQ's estimate of burden (including hours and costs) of the proposed collection(s) of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information upon the respondents, including the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the Agency's subsequent request for OMB approval of the proposed information collection.

All comments will become a matter of public record.

Francis D. Chesley, Jr.,

Acting Deputy Director.

[FR Doc. 2018–27359 Filed 12–17–18; 8:45 am]

BILLING CODE 4160–90–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Supplemental Evidence and Data Request on Diagnostic and Treatment of Clinical Alzheimer's-Type Dementia (CATD)

AGENCY: Agency for Healthcare Research and Quality (AHRQ), HHS.

ACTION: Request for supplemental evidence and data submissions.

SUMMARY: The Agency for Healthcare Research and Quality (AHRQ) is seeking scientific information submissions from the public. Scientific information is being solicited to inform our review of *Diagnostic and Treatment of Clinical Alzheimer's-type Dementia (CATD),* which is currently being conducted by the AHRQ's Evidence-based Practice Centers (EPC) Program. Access to published and unpublished pertinent scientific information will improve the quality of this review.

DATES: *Submission Deadline* on or before January 17, 2019.

ADDRESSES:

Email submissions: epc@ahrq.hhs.gov.

Print submissions:

Mailing Address: Center for Evidence and Practice Improvement, Agency for Healthcare Research and Quality, ATTN: EPC SEADs Coordinator, 5600 Fishers Lane, Mail Stop 06E53A, Rockville, MD 20857.

Shipping Address (FedEx, UPS, etc.): Center for Evidence and Practice Improvement, Agency for Healthcare Research and Quality, ATTN: EPC SEADs Coordinator, 5600 Fishers Lane, Mail Stop 06E77D, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Jenae Benns, Telephone: 301–427–1496 or Email: *epc@ahrq.hhs.gov.*

SUPPLEMENTARY INFORMATION: The Agency for Healthcare Research and Quality has commissioned the Evidence-based Practice Centers (EPC) Program to complete a review of the evidence for *Diagnostic and Treatment of Clinical Alzheimer's-type Dementia (CATD).* AHRQ is conducting this systematic review pursuant to Section 902(a) of the Public Health Service Act, 42 U.S.C. 299a(a).

The EPC Program is dedicated to identifying as many studies as possible that are relevant to the questions for each of its reviews. In order to do so, we are supplementing the usual manual and electronic database searches of the literature by requesting information from the public (*e.g.,* details of studies conducted). We are looking for studies that report on *Diagnostic and Treatment of Clinical Alzheimer's-type Dementia (CATD),* including those that describe adverse events. The entire research protocol, including the key questions, is also available online at: *https://effectivehealthcare.ahrq.gov/topics/alzheimers-type-dementia/protocol.*

This is to notify the public that the EPC Program would find the following information on *Diagnostic and Treatment of Clinical Alzheimer's-type Dementia (CATD)* helpful:

- A list of completed studies that your organization has sponsored for this indication. In the list, please *indicate whether results are available on ClinicalTrials.gov along with the ClinicalTrials.gov trial number.*
- *For completed studies that do not have results on ClinicalTrials.gov,* please provide a summary, including the following elements: study number, study period, design, methodology, indication and diagnosis, proper use instructions, inclusion and exclusion criteria, primary and secondary outcomes, baseline characteristics, number of patients screened/eligible/enrolled/lost to follow-up/withdrawn/analyzed, effectiveness/efficacy, and safety results.
- *A list of ongoing studies that your organization has sponsored for this indication.* In the list, please provide the *ClinicalTrials.gov* trial number or, if the trial is not registered, the protocol for the study including a study number, the study period, design, methodology, indication and diagnosis, proper use instructions, inclusion and exclusion criteria, and primary and secondary outcomes.
- Description of whether the above studies constitute ALL Phase II and above clinical trials sponsored by your organization for this indication and an index outlining the relevant information in each submitted file.

Your contribution will be very beneficial to the EPC Program. Materials submitted must be publicly available or able to be made public. Materials that are considered confidential; marketing materials; study types not included in the review; or information on indications not included in the review cannot be used by the EPC Program. This is a voluntary request for information, and all costs for complying with this request must be borne by the submitter.

The draft of this review will be posted on AHRQ's EPC Program website and available for public comment for a period of 4 weeks. If you would like to be notified when the draft is posted, please sign up for the email list at: *https://www.effectivehealthcare.ahrq.gov/email-updates.*

The systematic review will answer the following questions. This information is provided as background. AHRQ is not requesting that the public provide answers to these questions.

The Key Questions

KQ 1: In adults with CATD, what are the efficacy and harms of prescription pharmacological interventions versus placebo/inactive control for treatment of cognition, function, and quality of life?

KQ 1a: In adults with CATD, does the efficacy of prescription pharmacological interventions versus placebo/inactive control vary as a function of patient characteristics (*i.e.,* age, sex, race/ethnicity, depression, pre-treatment cognitive or functional level/CATD stage, living setting)?

KQ 2: In adults with CATD, what are the efficacy and harms of nonprescription pharmacological interventions versus placebo/inactive control for treatment of cognition, function, and quality of life?

KQ 2a: In adults with CATD, does the efficacy of nonprescription pharmacological interventions versus placebo/inactive control vary as a function of patient characteristics (*i.e.,* age, sex, race/ethnicity, depression, pre-treatment cognitive or functional level/CATD stage, living setting)?

KQ 3: In adults with CATD, what are the comparative effectiveness and harms of prescription pharmacological interventions versus other active interventions for treatment of cognition, function, and quality of life?

KQ 3a: In adults with CATD, what are the comparative effectiveness and harms of prescription pharmacological interventions versus other prescription pharmacological interventions for treatment of cognition, function, and quality of life?

KQ 3b: In adults with CATD, what are the comparative effectiveness and harms of prescription pharmacological interventions versus nonprescription pharmacological interventions for treatment of cognition, function, and quality of life?

KQ 3c: In adults with CATD, what are the comparative effectiveness and harms of prescription pharmacological interventions versus nonpharmacological interventions for treatment of cognition, function, and quality of life?

KQ 3d: In adults with CATD, does the comparative effectiveness of prescription pharmacological interventions versus other active interventions for treatment of cognition, function, and quality of life vary as a function of patient characteristics (*i.e.,* age, sex, race/ethnicity, depression, pre-treatment cognitive or functional level/CATD stage, living setting)?

KQ 4: In adults with CATD and behavioral and psychological symptoms of dementia (BPSD), what are the efficacy and harms of prescription pharmacological interventions versus placebo/inactive control for treatment of BPSD?

KQ 4a: In adults with CATD and BPSD, what are the efficacy and harms of prescription pharmacological interventions versus placebo/inactive control for reducing frequency and severity of future BPSD?

KQ 4b: In adults with CATD and BPSD, does the efficacy of prescription pharmacological interventions versus placebo/inactive control for reducing frequency and severity of future BPSD vary as a function of patient characteristics (*i.e.,* age, sex, race/ethnicity, depression, pre-treatment cognitive or functional level/CATD stage, pre-treatment BPSD severity, living setting)?

KQ 4c: In adults with CATD and BPSD, what are the efficacy and harms of prescription pharmacological interventions versus placebo/inactive control for acute treatment of BPSD?

KQ 4d: In adults with CATD and BPSD, does the efficacy of prescription pharmacological interventions versus placebo/inactive control for acute treatment of BPSD vary as a function of patient characteristics (*i.e.,* age, sex, race/ethnicity, depression, pre-treatment cognitive or functional level/CATD stage, pre-treatment BPSD severity, living setting)?

KQ 5: In adults with CATD and BPSD, what are the efficacy and harms of nonprescription pharmacological interventions versus placebo/inactive control for treatment of BPSD in adults with CATD and BPSD?

KQ 5a: In adults with CATD and BPSD, what are the efficacy and harms of nonprescription pharmacological interventions versus placebo/inactive control for reducing frequency and severity of future BPSD?

KQ 5b: In adults with CATD and BPSD, does the efficacy of nonprescription pharmacological interventions versus placebo/inactive control for reducing frequency and severity of future BPSD vary as a function of patient characteristics (*i.e.,* age, sex, race/ethnicity, depression, pre-treatment cognitive or functional level/CATD stage, pre-treatment BPSD severity, living setting)?

KQ 5c: In adults with CATD and BPSD, what are the efficacy and harms of

nonprescription pharmacological interventions versus placebo/inactive control for acute treatment of BPSD?

KQ 5d: In adults with CATD and BPSD, does the efficacy of nonprescription pharmacological interventions versus placebo/inactive control for acute treatment of BPSD vary as a function of patient characteristics (*i.e.,* age, sex, race/ethnicity, depression, pre-treatment cognitive or functional level/CATD stage, pre-treatment BPSD severity, living setting)?

KQ 6: In adults with CATD and BPSD, what are the comparative effectiveness and harms of prescription pharmacological interventions versus other active interventions for treatment of BPSD?

KQ 6a: In adults with CATD and BPSD, what are the comparative effectiveness and harms of prescription pharmacological interventions versus other prescription pharmacological interventions for reducing frequency and severity of future BPSD?

KQ 6b: In adults with CATD and BPSD, what are the comparative effectiveness and harms of prescription pharmacological interventions versus nonprescription pharmacological interventions for reducing frequency and severity of future BPSD?

KQ 6c: In adults with CATD and BPSD, what are the comparative effectiveness and harms of prescription pharmacological interventions versus nonpharmacological interventions for reducing frequency and severity of future BPSD?

KQ 6d: In adults with CATD and BPSD, does the comparative effectiveness of prescription pharmacological interventions versus other active interventions for reducing frequency and severity of future BPSD vary as a function of patient characteristics (*i.e.,* age, sex, race/ethnicity, depression, pre-treatment cognitive or functional level/CATD stage, pre-treatment BPSD severity, living setting)?

KQ 6e: In adults with CATD and BPSD, what are the comparative effectiveness and harms of prescription pharmacological interventions versus other prescription pharmacological interventions for acute treatment of BPSD?

KQ 6f: In adults with CATD and BPSD, what are the comparative effectiveness and harms of prescription pharmacological interventions versus nonprescription pharmacological interventions for acute treatment of BPSD?

KQ 6g: In adults with CATD and BPSD, what are the comparative effectiveness and harms of prescription pharmacological interventions versus nonpharmacological interventions for acute treatment of BPSD?

KQ 6h: In adults with CATD and BPSD, does the comparative effectiveness of prescription pharmacological interventions versus other active interventions for acute treatment of BPSD vary as a function of patient characteristics (*i.e.,* age, sex, race/ethnicity, depression, pre-treatment cognitive or functional level/CATD stage, pre-treatment BPSD severity, living setting)?

KQ 7: In adults with suspected CATD, what are the accuracy, comparative accuracy, and harms of different individual cognitive diagnostic tests and their combinations for making the diagnosis of CATD as defined by full clinical evaluation and/or neuropsychological testing with explicit diagnostic criteria?

KQ 7a: Do the accuracy and comparative accuracy of cognitive tests for making the diagnosis of CATD as defined by full clinical evaluation and/or neuropsychological testing with explicit diagnostic criteria vary as a function of patient characteristics (*i.e.,* age, sex, race/ethnicity, education, pre-testing cognitive or functional level CATD stage)?

KQ 8: In adults with a clinical diagnosis of CATD, what are the accuracy, comparative accuracy, and harms of brain imaging, CSF, and blood tests for diagnosing pathologically confirmed Alzheimer's disease as the underlying etiology?

KQ 8a: Do the accuracy and comparative accuracy of brain imaging, CSF, and blood tests for pathologically confirmed Alzheimer's disease as the underlying etiology of CATD vary as a function of patient characteristics (*i.e.,* age, sex, race/ethnicity, depression, education, pre-testing cognitive or functional level CATD stage)?

TABLE 1—PICOTS
[Populations, interventions, comparators, outcomes, timing, settings/study design]

KQ	Population	Intervention	Treatment comparator or diagnostic reference standard	Health outcomes & harms	Timing	Setting	Study design
KQ 1–3: Drug treatment efficacy, comparative effectiveness & harms on cognition, function & quality of life.	Adults with CATD ≥50 years of age *Patient characteristics to be assessed as possible treatment effect modifiers:* Age, Sex, Race/ethnicity, Depression, Pre-treatment cognitive or functional level/CATD stage, Living setting.	*Prescription pharmacologic (drug) treatment:* Cholinesterase inhibitors, NMDA antagonists. *Nonprescription pharmacologic (drug) treatment:* OTC supplements, Vitamins, Herbals.	*For efficacy comparisons:* Placebo, Other inactive control. *For comparative effectiveness comparisons:* Prescription drug treatment, Nonprescription drug treatment, Nondrug treatment.	*Efficacy and comparative effectiveness:* Change in patient cognition (global screen, multidomain, memory, executive function, language, attention), function, or QOL on validated test. Change in disease stage based on validated test. Change in patient "at home" IADL or ADL function. Change in patient residence to different level of independence. *Harms:* *General:* FDA defined SAEs, Withdrawals due to AEs. *Psychiatric:* Somnolence, Confusion/Delirium. *Nonpsychiatric:* Falls, Extrapyramidal symptoms, Stroke. Mortality (all-cause, CVD, non-CVD).	≥24 weeks	*Cognitive outcomes:* Community-dwelling, Assisted living. *Functional & QOL outcomes:* Community-dwelling, Assisted living, Nursing home.	*Efficacy and comparative effectiveness:* RCT, CCT, systematic review of RCTs or CCTs. *Harms:* RCT, CCT, controlled prospective cohort studies with ≥1,000 participants, systematic review of any of these study designs.
KQ 4–6: Drug treatment efficacy, comparative effectiveness & harms on BPSD.	Adults with CATD ≥50 years of age with BPSD (studies specified BPSD inclusion criterion). *Patient characteristics to be assessed as possible treatment effect modifiers:* Age, Sex, Race/ethnicity, Pre-treatment cognitive or functional level/CATD stage, Pre-treatment BPSD severity, Living setting.	*Prescription pharmacologic treatment:* Cholinesterase inhibitors, NMDA antagonists, Antipsychotics, second generation (any) and first generation (only haloperidol), Antidepressants, Anti-seizure/mood stabilizers, Anxiolytics, benzodiazepine, Anxiolytics, other Hormonal agents (Disinhibited sexual behavior only), Cannabinoids, Combinations. *Nonprescription pharmacologic treatment:* OTC supplements, Vitamins, Herbals.	*Efficacy comparisons:* Placebo, Other inactive control. *Comparative effectiveness comparisons:* Prescription drug treatment, Nonprescription drug treatment, Nondrug treatment.	*Efficacy and comparative effectiveness:* *Primary:* Change in the frequency and/or severity of patient BPSD* on validated tests, Agitation/aggression, Psychosis, Depression, Anxiety, Disinhibited sexual behavior, Change in patient QoL on validated test, Change in validated general behavior scale. *Secondary:* Change in caregiver/staff outcomes on validated tests, Depression, Global stress/distress, QOL, Burden. *Harms:* *General:* FDA defined composite SAE outcome, Withdrawals due to AE. *Psychiatric:* Somnolence, Confusion/Delirium. *Nonpsychiatric:* Falls, Extrapyramidal symptoms, Stroke, Mortality (all-cause, CVD, non-CVD).	*Agitation, aggression, psychosis or Disinhibited sexual behavior outcomes:* ≥2 weeks. *Depression or anxiety outcomes:* ≥24 weeks.	Community-dwelling, Assisted living, Nursing home.	*Efficacy and comparative effectiveness:* RCT, CCT, systematic review of RCTs or CCTs. *Harms:* RCT, CCT, controlled prospective cohort studies ≥1,000 participants, systematic review of any of these study designs.

KQ 7–8: Diagnostic test accuracy & harms (also see Table 2 below).	*Cognitive tests:* Adults ≥50 years of age with suspected CATD. *Biomarker tests only:* Adults ≥50 years of age with clinical syndrome of CATD. *Patient characteristics to be assessed as possible effect modifiers of diagnostic test accuracy:* Age, Sex, Race/ethnicity, Education, Depression. Pre-test cognitive or functional level/CATD stage.	*Brief, validated cognitive tests:* Global (brief screens, multi-domain batteries), Single domain tests (memory, executive, language, attention. *Biomarker tests:* *Brain imaging:* CT/MRI: Medial temporal atrophy/hippocampal volume, Cortical thickness, DTI indices PET: ^{18}F-FDG PET, Amyloid PET, ^{11}C-PiB and fluorinated tracers (e.g. florbetapir, flutemetamol, florbetaben), Tau PET fMRI: Resting state and task specific activation SPECT: Resting state cerebral perfusion *CSF tests:* Aβ42, Aβ42/Aβ40 ratio, t-tau, p-tau, t-tau/Aβ42 ratio, p-tau/Aβ42 ratio, neurofilament light protein *Blood tests:* Aβ42, Aβ42/Aβ40 ratio, APP *Combinations*	*Cognitive tests:* Full clinical evaluation and/or neuropsychological testing with explicit diagnostic criteria. *Biomarker tests:* Post-mortem neuropathological confirmation of AD.	*Accuracy and comparative accuracy (e.g., TP, FP, TN, FN, sensitivity, specificity, PPV, NPV).* Of cognitive tests for confirming clinical syndrome of CATD. Of biomarker tests for confirming that etiology of CATD is AD. *Harms:* *Psychological or behavioral* True positive: Labeling stigma False positive: Incorrect diagnosis, Labeling stigma, Side effects of unneeded interventions (e.g., restrictions on independence). False negative: Unexplained symptoms, Failure to make appropriate interventions (e.g., safety precautions, future planning). Any test result: Patient or caregiver mental distress. *Physical:* Directly from diagnostic tests: Pain, Infection, Headache, Radiation.	Any	Community-dwelling, Assisted living.	*Accuracy and comparative accuracy:* Controlled observational studies (*i.e.,* cross-sectional, retrospective cohort, case control); systematic review of controlled observational studies. *Harms:* Controlled observational studies (i.e., cross-sectional, retrospective cohort, case control, prospective cohort); systematic review of controlled observational studies.

* For this report, two psychological symptoms that are components of BPSD have been excluded due to their coverage in recent, high quality systematic reviews—apathy and sleep disturbances.[18 19] In addition, wandering was also eliminated, as this symptom is usually treated with nonpharmacologic interventions, which are not covered as interventions in this review.

† Strength of evidence (SOE) will be evaluated for the 1–2 most commonly reported validated treatment efficacy outcomes for each of the following test categories: disease stage, global cognitive screening tests, global multidomain cognitive tests, memory, executive functioning, language, attention, function, quality of life, BPSD agitation/aggression, and the harms outcome of serious adverse events. Additional treatment outcomes will be considered for SOE grading when available data allow. For diagnostic tests, SOE will be graded for the 1–2 most commonly reported validated tests for each of the following categories: global cognitive screening tests, global multidomain cognitive tests, memory, MRI, PET, and CSF tests. Additional diagnostic testing outcomes will be considered for SOE grading when available data allow.

Aß = beta amyloid, AD = Alzheimer's dementia, ADL = activities of daily living, AE = adverse events, APOE = apolipoprotein E, APP = amyloid precursor protein, BPSD = behavioral and psychological symptoms of dementia, CATD = clinical Alzheimer's-type dementia, CCT = controlled clinical trial, CSF = cerebrospinal fluid, CT = computed tomography, CVD = cardiovascular disease, DTI = diffusion tensor imaging, FDG = fluorodeoxyglucose, fMRI = functional magnetic resonance imaging, FN = false negative, FP = false positive, IADL = instrumental activities of daily living, MCI = mild cognitive impairment, MRI = magnetic resonance imaging, NMDA = N-methyl-D-aspartate, NPV = negative predictive value, OTC = over-the-counter, PET = positron emission tomography, PPV = positive predictive value, p-tau = abnormally phosphorylated tau, QOL = quality of life, RCT = randomized clinical trial, ROC = receiver operating characteristic, SAE = serious adverse events, SPECT = single-photon emission computed tomography, TN = true negative, TP = true positive, t-tau = total tau.

TABLE 2—PRESCRIPTION DRUGS USED FOR TREATMENT OF CATD COGNITION, FUNCTION, QUALITY OF LIFE OR BPSD

Class of drug	Drug name(s)
Cholinesterase inhibitor	Donepezil*, rivastigmine*, galantamine*.
NMDA receptor antagonist	Memantine*.
Cholinesterase inhibitor/NMDA receptor antagonist combination	Donepezil/Memantine*.
1st generation (typical) antipsychotic	only Haloperidol.
2nd generation (atypical) antipsychotic	*e.g.,* Risperidone, quetiapine, olanzapine, aripiprazole, clozapine.
Anti-depressant, selective serotonin-reuptake inhibitor (SSRI)	*e.g.,* Citalopram, escitalopram, sertraline, fluoxetine, fluvoxamine, paroxetine.
Anti-depressant, serotonin-norepinephrine reuptake inhibitor (SNRI)	*e.g.,* Duloxetine, venlafaxine.
Anti-depressant, other†	*e.g.,* Trazodone, bupropion, mirtazapine.
Anti-seizure/mood stabilizer	*e.g.,* Valproate, gabapentin, carbamazepine, lamotrigine.
Anti-anxiety, benzodiazepine	*e.g.,* Clonazepam, diazepam, lorazepam, temazepam, alprazolam.
Anti-anxiety, other	Buspirone.
Mixed	Dextromethorpan/Quinidine.
Hormones (antiandrogens, estrogens, gonadotropin-releasing hormone analogues).	*e.g.,* medroxyprogesterone acetate, cyproterone acetate, leuprolide.
Cannabinoids	*e.g.,* medical marijuana.

*US FDA approved indication for Alzheimer's dementia.
†Excludes MAO-inhibitor, tricyclic and tetracyclic antidepressants.
BPSD = behavioral and psychological symptoms of dementia, CATD = clinical Alzheimer's-type dementia, NMDA = N-methyl-D-aspartate, SSRI = selective serotonin reuptake inhibitor, SNRI = selective norepinephrine reuptake inhibitor.

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Francis D. Chesley, Jr.,

Acting Deputy Director.

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BILLING CODE 4160–90–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier CMS–10465]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, HHS.

ACTION: Notice.

SUMMARY: The Centers for Medicare & Medicaid Services (CMS) is announcing an opportunity for the public to comment on CMS' intention to collect information from the public. Under the Paperwork Reduction Act of 1995 (the PRA), federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information (including each proposed extension or reinstatement of an existing collection of information) and to allow 60 days for public comment on the proposed action. Interested persons are invited to send comments regarding our burden estimates or any other aspect of this collection of information, including the necessity and utility of the proposed information collection for the proper performance of the agency's functions, the accuracy of the estimated burden, ways to enhance the quality, utility, and clarity of the information to be collected, and the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

DATES: Comments must be received by February 19, 2019.

ADDRESSES: When commenting, please reference the document identifier or OMB control number. To be assured consideration, comments and recommendations must be submitted in any one of the following ways:

1. *Electronically.* You may send your comments electronically to *http://www.regulations.gov.* Follow the instructions for ''Comment or Submission'' or ''More Search Options'' to find the information collection document(s) that are accepting comments.

2. *By regular mail.* You may mail written comments to the following address:

CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development, Attention: Document Identifier/OMB Control Number _, Room C4–26–05, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

To obtain copies of a supporting statement and any related forms for the proposed collection(s) summarized in this notice, you may make your request using one of following:

1. Access CMS' website address at *https://www.cms.gov/Regulations-and-Guidance/Legislation/PaperworkReductionActof1995/PRA-Listing.html.*

2. Email your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov.*

3. Call the Reports Clearance Office at (410) 786–1326.

FOR FURTHER INFORMATION CONTACT: William N. Parham at (410) 786–4669.

SUPPLEMENTARY INFORMATION:

Contents

This notice sets out a summary of the use and burden associated with the following information collections. More detailed information can be found in each collection's supporting statement and associated materials (see **ADDRESSES**).

CMS–10465 Minimum Essential Coverage

Under the PRA (44 U.S.C. 3501–3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. The term ''collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA requires federal agencies to publish a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, CMS is publishing this notice.

Information Collection

Type of Information Collection Request: Extension of a currently approved collection; *Title of Information Collection:* Minimum Essential Coverage; *Use:* The final rule titled ''Patient Protection and Affordable Care Act; Exchange Functions: Eligibility for Exemptions; Miscellaneous Minimum Essential Coverage Provisions,'' published July 1, 2013 (78 FR 39494) designates certain types of health coverage as minimum essential coverage. Other types of coverage, not statutorily designated and not designated as minimum essential coverage in regulation, may be recognized by the Secretary of Health and Human Services (HHS) as minimum essential coverage if certain substantive and procedural requirements are met. To be recognized as minimum essential coverage, the coverage must offer substantially the same consumer protections as those enumerated in the Title I of Affordable Care Act relating to non-grandfathered, individual health insurance coverage to ensure consumers are receiving adequate coverage. The final rule requires sponsors of other coverage that seek to have such coverage recognized as minimum essential coverage to adhere to certain procedures. Sponsoring organizations must submit to HHS certain information about their coverage and an attestation that the plan substantially complies with the provisions of Title I of the Affordable Care Act applicable to non-grandfathered individual health insurance coverage. Sponsors must also provide notice to enrollees informing

them that the plan has been recognized as minimum essential coverage for the purposes of the individual coverage requirement. *Form Number:* CMS–10465 (OMB control number: 0938–1189); *Frequency:* Occasionally; *Affected Public:* Public and Private sectors; *Number of Respondents:* 10; *Total Annual Responses:* 10; *Total Annual Hours:* 52.5. (For policy questions regarding this collection contact Russell Tipps at 301–492–4371).

Dated: December 13, 2018.

William N. Parham, III,

Director, Paperwork Reduction Staff, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2018–27335 Filed 12–17–18; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2018–N–4627]

Intent To Consider the Appropriate Classification of Hyaluronic Acid Intra-articular Products Intended for the Treatment of Pain in Osteoarthritis of the Knee Based on Scientific Evidence

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing our intent to consider the appropriate classification of hyaluronic acid (HA) intra-articular products intended for the treatment of pain in osteoarthritis (OA) of the knee. Although HA products intended for this use have been regulated as devices (Procode MOZ; acid, hyaluronic, intra-articular), the current published scientific literature supports that HA achieves its primary intended purpose of treatment of pain in OA of the knee through chemical action within the body. Because HA for this use may not meet the definition of a device, sponsors of HA products who intend to submit a premarket approval application (PMA) or a supplement to a PMA for a change in indications for use, formulation, or route of administration are encouraged to obtain an informal or formal classification and jurisdiction determination through a Pre-Request for Designation (Pre-RFD) or Request for Designation (RFD), respectively, from FDA prior to submission. If a sponsor believes their product meets the device definition, they may provide relevant evidence in the Pre-RFD or RFD.

FOR FURTHER INFORMATION CONTACT: Leigh Hayes, Office of Combination Products, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 32, Rm. 5129, Silver Spring, MD 20993, 301–796–8938, Fax: 301–847–8619, *combination@fda.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

HA is a linear polysaccharide formed by repeating disaccharide units of D-glucuronic acid and N-acetylglucosamine linked by β (1, 4) and β (1, 3) glycoside bonds (Ref. 1). HA is present throughout the body and in joints where it acts as a structural element (Ref. 2). It is also found in the cavities of synovial joints and plays a role in promoting the viscoelastic properties of the synovial fluid and in joint lubrication (Refs. 3 and 4).

Intra-articular administration of exogenous HA has been used to treat pain in OA of the knee in patients who have failed to respond adequately to conservative non-pharmacologic therapy and to certain analgesics (*e.g.,* acetaminophen). Although HA for this use has been regulated as a Class III device (Procode MOZ; acid, hyaluronic, intra-articular), as discussed further below, the current published scientific literature supports that HA achieves its primary intended purpose of the treatment of pain in OA of the knee through chemical action within the body.

Under section 201(h) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 321(h)) a device ''does not achieve its primary intended purposes through chemical action within or on the body,'' among other things. Under FDA's interpretation of this device definition, products exhibit ''chemical action'' if they interact at the molecular level with bodily components (*e.g.,* cells or tissues) to mediate (including promoting or inhibiting) a bodily response, or with foreign entities (*e.g.,* organisms or chemicals) to alter that entity's interaction with the body; and interaction at the molecular level occurs through either chemical reaction (*i.e.,* formation or breaking of covalent bonds), intermolecular forces (*e.g.,* electrostatic interactions), or both (see, *e.g.,* FDA Guidance, ''Classification of Products as Drugs and Devices and Additional Product Classification Issues'', available at *https://www.fda.gov/RegulatoryInformation/Guidances/ucm258946.htm*).

OA pain has a complex pathophysiology and has several components, including: (1) Neuropathic pain (related to a lesion or disease of the somatosensory nervous system); (2) local inflammation; and (3) joint degradation (Ref. 5). During the intra-articular injection, HA is introduced to the synovial fluid of the affected joint. Previously, it was suggested that mechanical or physical actions at the joint (*e.g.,* shock absorption) are responsible for achieving the primary intended purpose of the treatment of pain in OA of the knee; however, the current scientific literature supports that the mechanisms of action of HA also include chemical actions (*e.g.,* chondroprotection, anti-inflammatory effects and cartilage matrix alterations) (Refs. 6 to 9). Published scientific literature supports that intra-articular injection of HA achieves its primary intended purpose of the treatment of pain in OA of the knee through multiple mechanisms (we note that the published scientific literature discussed in this notice is not exhaustive). These include, but are not limited to:

(1) *Anti-inflammatory effects:* Local inflammation is an important part of the pathophysiology of OA joint pain (Ref. 5). As such, the mitigation of inflammation can result in pain relief (Ref. 10). The scientific literature supports that HA acts though chemical action to achieve its anti-inflammatory effects. These effects are mediated through the binding of HA to cellular receptors that include the Cluster of Differentiation 44 Receptor (CD44), Receptor for Hyaluronan Mediated Motility (RHAMM), and Toll-Like Receptor (TLR)2 and TLR4, which alter numerous downstream cell signaling activities and/or pathways resulting in anti-inflammatory effects (Refs. 9, 11, and 12). Some of the downstream anti-inflammatory effects discussed in the scientific literature include alteration of cytokines (*e.g.,* Interleukin (IL)-1β) and inducible nitric oxide synthase (iNOS), which all have regulatory roles in inflammatory processes (Ref. 9).

(2) *Analgesic effects:* Joint inflammation is usually characterized by mechanical hyperalgesia, likely caused by an increased mechanosensitivity of joint nociceptors (Ref. 13). The scientific literature supports that HA interacts with cellular receptors (*e.g.,* nociceptors, CD44) to reduce pain (Refs. 2, 8, 9, and 11). For instance, binding of HA to CD44 has been reported to act via signaling pathways to reduce pain, such as by downregulating Prostaglandin E2 (PGE_2) and Cyclooxygenase (COX–2) production (Refs. 2 and 11). The literature also reports that HA may also act to relieve pain by activating opioid receptors (Ref. 11). In other words, the literature explains that HA binds to cellular receptors that act to alleviate pain through modification of cellular pain pathways.

(3) *Chondroprotective effects:* Pain intensity in OA is positively associated with the degree of joint degradation (Ref. 5). HA has been reported to have chondroprotective effects by reducing the degradation and/or restoration of cartilage (Refs. 11 and 14). According to the scientific literature, much of the mechanisms responsible for these effects are through molecular pathways (*e.g.,* CD44-initiated pathways) that have downstream biological effects that act to alter the disease state of the joint by the synthesis of extracellular matrix (ECM) proteins (*e.g.,* collagen type II) and joint components (*e.g.,* increased proteoglycan and glycosaminoglycan) (Refs. 2, 9, 11, and 14). Collectively, these binding interactions of HA may act on molecular pathways that serve to protect and restore cartilage.

Taken together, most of the effects described above (*i.e.,* anti-inflammatory, analgesic, and chondroprotective) are achieved through various molecular pathways that depend on the direct interaction of HA with bodily components (*e.g.,* cellular receptors) and downstream activation of specific signaling pathways.

Additionally, although injection of HA provides mechanical effects (*e.g.,* shock absorption), it is believed that such effects are limited due to the short half-life of HA (Refs. 2 and 15). Exogenous-introduced HA has been reported to have a half-life of a few days or up to 30 days for cross-linked versions (Refs. 2 and 15). Nevertheless, treatment with HA has been reported to result in clinical therapeutic effect for up to 6 months following injection (Ref. 9). In other words, treatment with HA has been reported to continue reduction in pain long after it is cleared from the knee joint. This further supports that HA achieves its primary intended purpose of the treatment of pain in OA of the knee through chemical action within the body (*e.g.,* through its anti-inflammatory and chondroprotective effects that act to mitigate the underlying OA condition).

Because the current published scientific literature supports that HA achieves its primary intended purpose of the treatment of pain in OA of the knee through chemical action, and therefore, HA for this use may not meet the definition of a device, sponsors of HA products who intend to submit a PMA or a supplement to a PMA for a change in indications for use, formulation, or route of administration are encouraged to obtain an informal or formal classification and jurisdictional determination through a Pre-RFD or RFD, respectively, from FDA prior to submission. If a sponsor believes their product meets the device definition, they may provide relevant evidence in the pre-RFD or RFD.

II. References

The following references are on display with the Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, and are available for viewing by interested persons between 9 a.m. and 4 p.m., Monday through Friday; these are not available electronically at *https://www.regulations.gov* as these references are copyright protected. Some may be available at the website address, if listed. FDA has verified the website addresses, as of the date this document publishes in the **Federal Register**, but websites are subject to change over time.

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Dated: December 13, 2018.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2018–27351 Filed 12–17–18; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Proposed Collection: Public Comment Request Information Collection Request Title: HRSA AIDS Education and Training Centers Evaluation Activities, OMB No. 0915–0281—Revision

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: In compliance with the requirement for opportunity for public comment on proposed data collection projects of the Paperwork Reduction Act of 1995, HRSA announces plans to submit an Information Collection Request (ICR), described below, to the

Office of Management and Budget (OMB). Prior to submitting the ICR to OMB, HRSA seeks comments from the public regarding the burden estimate, below, or any other aspect of the ICR.

DATES: Comments on this ICR should be received no later than February 19, 2019.

ADDRESSES: Submit your comments to *paperwork@hrsa.gov* or mail the HRSA Information Collection Clearance Officer, Room 14N136B, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, email *paperwork@hrsa.gov* or call Lisa Wright-Solomon, the HRSA Information Collection Clearance Officer at (301) 443–1984.

SUPPLEMENTARY INFORMATION: When submitting comments or requesting information, please include the information request collection title for reference, pursuant to Section 3506(c)(2)(A), the Paperwork Reduction Act of 1995.

Information Collection Request Title: HRSA Ryan White HIV/AIDS Program (RWHAP) AIDS Education and Training Centers (AETC) Evaluation Activities, OMB No. 0915–0281—Revision

Abstract: The RWHAP AETC program, authorized by Title XXVI of the Public Health Service Act, supports a network of regional and national centers that conduct targeted, multi-disciplinary education and training programs for health care providers serving people living with HIV (PLWH). The purpose of the RWHAP Regional AETC program is to increase the size and strengthen the skills of the current and novice HIV clinical workforce in the United States. Through the provision of specialized professional education and training, the RWHAP Regional AETCs aim to improve outcomes along the HIV care continuum including diagnosis, linkage, retention, and viral suppression and to reduce HIV incidence by improving the achievement and maintenance of viral load suppression of PLWH. In addition, the RWHAP AETC program includes the National Coordinating Resource Center (NCRC), which offers a virtual library of online training resources for adaptation by HIV care providers and other healthcare professionals to meet local training needs. The RWHAP AETC NCRC works closely with the HRSA HIV/AIDS Bureau (HAB) to coordinate cross-regional collaborative efforts, manage the NCRC website, plan and execute the national RWHAP Clinical Conference, and develop an online curriculum for clinical learners.

The RWHAP AETC proposes several revisions to the Event Records (ER) and the Participant Information Form (PIF). The ER will have nine new data elements; however, only five data elements will require responses from all respondents. The option to respond to the other four data elements will depend on how participants respond to previous questions. The PIF will have one new data element that asks whether respondents prescribe anti-retroviral therapy to their patients. Three data elements were also deleted. These revisions reflect changes in the National AETC program guidance on reporting sources of funding and multi-session events. With a net increase of seven data elements across both the ER and PIF instruments, respondent burden is anticipated to increase slightly. In addition, HRSA HAB has modified the data instruments not only to improve the logical flow of questions within each instrument but also to improve the overall clarity of each of the questions being asked.

Need and Proposed Use of the Information: As part of an ongoing effort to evaluate RWHAP AETC activities, information is needed on AETC training sessions, clinical consultations, and technical assistance activities. Each regional center collects information on RWHAP AETC training events and is required to report aggregate data on their activities to HRSA's HAB. The goal of national data collection efforts is to create a uniform set of data elements that will produce an accurate summary of the national scope of RWHAP AETC professional training, consultation, and events. The elements included in the national database have been selected for their relevance in demonstrating the RWHAP AETCs' efforts in achieving the program's stated goals: To improve care for PLWH by providing education, training, and clinical consultation; and to provide support to clinicians and other providers. HRSA HAB uses the data collected when conducting programmatic assessments and to determine future program needs. The national data elements are intended to be a meaningful core set of elements that individual RWHAP AETCs can use in program and strategic planning. HRSA HAB also uses this information to respond to requests from HHS, Congress, and others.

Likely Respondents: RWHAP AETC trainees are asked to complete the PIF at the start or conclusion of an event. Trainers are asked to complete an ER for each training event they conduct during the year. In addition, each regional RWHAP AETC (eight total) and the RWHAP AETC National Coordinating Resource Center will compile these data into a data set and submit to HRSA HAB once a year.

Burden Statement: Burden in this context means the time expended by persons to generate, maintain, retain, disclose, or provide the information requested. This includes the time needed to review instructions; to develop, acquire, install, and utilize technology and systems for the purpose of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; to train personnel and to be able to respond to a collection of information; to search data sources; to complete and review the collection of information; and to transmit or otherwise disclose the information. The total annual burden hours estimated for this Information Collection Request are summarized in the table below.

The estimated annual response burden to trainers, as well as trainees of training programs is follows:

TOTAL ESTIMATED ANNUALIZED BURDEN HOURS

Form name	Number of respondents	Number of responses per respondent	Total responses	Average burden per response (in hours)	Total burden hours
Participant Information Form (PIF)	61,288	1	61,288	0.167	10,235
Event Record (ER)	10,522	1	10,522	0.200	2,104
Total	71,810		71,810		12,339

The estimated annual burden to RWHAP AETCs is as follows:

	Number of respondents	Responses per respondent	Total responses	Hours per response	Total burden hours
Aggregate Data Set	9	2	18	32	576

HRSA specifically requests comments on (1) the necessity and utility of the proposed information collection for the proper performance of the agency's functions, (2) the accuracy of the estimated burden, (3) ways to enhance the quality, utility, and clarity of the information to be collected, and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Amy P. McNulty,

Acting Director, Division of the Executive Secretariat.

[FR Doc. 2018–27328 Filed 12–17–18; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Submission to OMB for Review and Approval; Public Comment Request; The Maternal, Infant, and Early Childhood Home Visiting Program Quarterly Data Collection, OMB No. 0906–0016—Revision

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, HRSA has submitted an Information Collection Request (ICR) to the Office of Management and Budget (OMB) for review and approval. A 60-day **Federal Register** Notice was published in the **Federal Register** on February 21, 2018. There were 24 public comments. Comments submitted during the first public review of this ICR will be provided to OMB. OMB will accept further comments from the public during the review and approval period.

DATES: Comments on this ICR should be received no later than January 17, 2019.

ADDRESSES: Submit your comments, including the ICR Title, to the desk officer for HRSA, either by email to *OIRA_submission@omb.eop.gov* or by fax to 202–395–5806.

FOR FURTHER INFORMATION CONTACT: To request a copy of the clearance requests submitted to OMB for review, email Lisa Wright-Solomon, the HRSA Information Collection Clearance Officer at *paperwork@hrsa.gov* or call (301) 443–1984.

SUPPLEMENTARY INFORMATION:

Information Collection Request Title: The Maternal, Infant, and Early Childhood Home Visiting Program Quarterly Data Collection, OMB Number: 0906–0016—Revision.

Abstract: This clearance request is for continued approval of the Maternal, Infant, and Early Childhood Home Visiting (MIECHV) Program Quarterly Data Collection. The MIECHV Program, administered by HRSA in partnership with the Administration for Children and Families (ACF), supports voluntary, evidence-based home visiting services during pregnancy and to parents with young children up to kindergarten entry. States, certain non-profit organizations, and Tribal entities are eligible to receive funding from the MIECHV Program and have the flexibility to tailor the program to serve the specific needs of their communities. After taking into consideration public comments in response to the 60-day notice published in the **Federal Register** on February 21, 2018 (83 FR 7481), HRSA is proposing revisions to the data collection forms for the MIECHV Program by making the following changes:

- *Form 4, Due date:* The due date will be revised from 60 days to 30 days after the end of each reporting period.
- *Form 4, Section A:* All tables will be renumbered.
- *Form 4, Table A.2:* Columns will be revised to reflect Local Implementing Agencies (LIAs) served, LIA addresses, counties served, zip codes served, and evidence-based home visiting models implemented.
- *Form 4, Table A.4.1:* Columns will be combined to reflect number of full-time equivalents (FTEs) for home visitors, supervisors, and other staff.
- *Form 4, Table A.4.2:* Table will be deleted.
- *Form 4, Section B:* Section will be updated to reflect current benchmark constructs.
- *Form 4, Definitions of Key Terms:* Update definitions for all tables. HRSA is requesting approval of this revised information collection request through March 31, 2022.

Need and Proposed Use of the Information: HRSA uses quarterly performance information to demonstrate program accountability and continuously monitor and provide oversight to MIECHV Program awardees. The information is also used to provide quality improvement guidance and technical assistance to awardees and help inform the development of early childhood systems at the national, state, and local level. HRSA is seeking to revise place-based services and staffing indicators for home visiting programs. In addition, on a quarterly basis HRSA will collect a set of standardized performance and outcome indicators that correspond with the benchmark areas identified in statute for awardees who fail to demonstrate improvement through the required 3-year assessment of improvement.

Likely Respondents: MIECHV Program awardees (n=56).

Burden Statement: Burden in this context means the time expended by persons to generate, maintain, retain, disclose, or provide the information requested. This includes the time needed to review instructions; to develop, acquire, install, and utilize technology and systems for the purpose of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; to train personnel and to be able to respond to a collection of information; to search data sources; to complete and review the collection of information; and to transmit or otherwise disclose the information. The total annual burden hours estimated for this ICR are summarized in the table below:

[1] HRSA currently estimates approximately 10 awardees may need to report benchmark performance data on a quarterly basis based on the statutorily-required assessment of improvement.

[2] The 10 responses for Section B are a sub-set of 56 total awardees funded through the MIECHV Program.

TOTAL ESTIMATED ANNUALIZED BURDEN HOURS

Form name	Number of respondents	Number of responses per respondent	Total responses	Average burden per response (in hours)	Total burden hours
Form 4: Section A—Quarterly Performance Report—State/ Territory Awardees	56	4	224	24	5,376
Form 4: Section B—Quarterly Benchmark Performance Measures	[1] 10	4	40	200	8,000
Total	[2] 56		264		13,376

Amy P. McNulty,

Acting Director, Division of the Executive Secretariat.

[FR Doc. 2018–27348 Filed 12–17–18; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

[Document Identifier: OS–0990–New]

Agency Information Collection Request. 30-Day Public Comment Request

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: In compliance with the requirement of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, is publishing the following summary of a proposed collection for public comment.

DATES: Comments on the ICR must be received on or before January 17, 2019.

ADDRESSES: Submit your comments to *OIRA_submission@omb.eop.gov* or via facsimile to (202) 395–5806.

FOR FURTHER INFORMATION CONTACT: Sherrette Funn, *Sherrette.Funn@hhs.gov* or (202) 795–7714. When submitting comments or requesting information, please include the document identifier 0990–New–30D and project title for reference.

SUPPLEMENTARY INFORMATION: Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Title of the Collection: HHS 42 CFR subpart B; Sterilization of Persons in Federally Assisted Family Planning Projects.

Type of Collection: Extension.

OMB No.: 0937–0166.

Abstract: This is a request for extension of a currently approved collection for the disclosure and recordkeeping requirements codified at 42 CFR part 50, subpart B (''Sterilization of Persons in Federally Assisted Family Planning Projects''). The consent form solicits information to assure voluntary and informed consent to persons undergoing sterilization in programs of health services which are supported by federal financial assistance administered by the PHS. It provides additional procedural protection to the individual and the regulation requires that the consent form be a copy of the form that is appended to the PHS regulation. In 2003, the PHS sterilization consent form was revised to conform to OMB government-wide standards for the collection of race/ethnicity data and to incorporate the PRA burden statement as part of the consent form. We are requesting a three year extension.

Type of respondent: Individuals seeking sterilization; frequency: Once; prior to procedure.

ESTIMATED ANNUALIZED BURDEN TABLE

Type of respondent	Number of respondents	Number responses per respondent	Average burden per response (in hours)	Total burden hours
Citizens Seeking Sterilization	100,000	1	1	100,000
Citizens Seeking Sterilization	100,000	1	15/60	25,000
Total		2		125,000

Terry Clark,

Asst. Paperwork Reduction Act Reports Clearance Officer, Office of the Secretary.

[FR Doc. 2018–27366 Filed 12–17–18; 8:45 am]

BILLING CODE 4150–34–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; 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/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with grant and/or contract proposals applications, the

disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel; Improving the Reach and Quality of Cancer Care in Rural Populations

Date: January 18, 2019.

Time: 7:30 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda North Marriott Hotel & Conference Center, 5701 Marinelli Road, North Bethesda, MD 20852.

Contact Person: Clifford W. Schweinfest, Ph.D., Scientific Review Officer, Special Review Branch Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W108 Bethesda, MD 20892–9750, 240–276–6343, *schweinfestcw@mail.nih.gov.*

Name of Committee: National Cancer Institute, Special Emphasis Panel; NCI SPORE II (P50).

Date: January 29–30, 2019.

Time: 8:30 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Gaithersburg Marriott Washingtonian Center, 9751 Washingtonian Boulevard, Gaithersburg, MD 20878.

Contact Person: Wlodek Lopaczynski, M.D., Ph.D., Scientific Review Officer, Office of the Director, Division of Extramural Activities, National Cancer Institute, NIH 9609 Medical Center Drive, Room 7W514, Bethesda, MD 20892–9750 240–276–6340, *lopacw@mail.nih.gov.*

Name of Committee: National Cancer Institute Special Emphasis Panel; SEP–5: NCI Clinical and Translational R21 and Omnibus R03.

Date: February 1, 2019.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue Bethesda, MD 20814.

Contact Person: Robert S. Coyne, Ph.D., Scientific Review Officer, Special Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W236, Bethesda, MD 20892–9750 240–276–5120, *coyners@mail.nih.gov.*

Name of Committee: National Cancer Institute, Special Emphasis Panel; Quantitative Imaging Tools and Methods for Cancer Therapy Response Assessment.

Date: February 1, 2019.

Time: 11:00 a.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Cancer Institute, Shady Grove, 9609 Medical Center Drive, Room 7W640, Rockville, MD 20850 (Telephone Conference Call).

Contact Person: Saejeong J. Kim, Ph.D., Scientific Review Officer, Special Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W640, Bethesda, MD 20892–9750, 240–276–5179, *saejeong.kim@nih.gov.*

Name of Committee: National Cancer Institute Special Emphasis Panel; SEP–3: NCI Clinical and Translational R21 and Omnibus R03.

Date: February 7–8, 2019.

Time: 4:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda North Marriott Hotel & Conference Center, 5701 Marinelli Road, North Bethesda, MD 20852.

Contact Person: Ombretta Salvucci, Ph.D., Scientific Review Officer, Special Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W264, Bethesda, MD 20892–9750, 240–276–7286, *salvucco@mail.nih.gov.*

Name of Committee: National Cancer Institute Special Emphasis Panel; TEP–3: SBIR Contract Review.

Date: February 13–14, 2019.

Time: 10:00 a.m. to 2:00 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Cancer Institute, Shady Grove, 9609 Medical Center Drive, Room 2W032, Rockville, MD 20850 (Telephone Conference Call).

Contact Person: Eduardo E. Chufan, Ph.D., Scientific Review Officer, Research Technology and Contract Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W254, Bethesda, MD 20892–9750, 240–276–7975, *chufanee@mail.nih.gov.*

Name of Committee: National Cancer Institute Special Emphasis Panel; Biological Comparisons in Patient-Derived Models of Cancer.

Date: February 22, 2019.

Time: 1:00 p.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Cancer Institute, Shady Grove, 9609 Medical Center Drive, Room 7W236, Rockville, MD 20850 (Telephone Conference Call).

Contact Person: Robert S. Coyne, Ph.D., Scientific Review Officer, Special Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W236, Bethesda, MD 20892–9750, 240–276–5120, *coyners@mail.nih.gov.*

Name of Committee: National Cancer Institute Special Emphasis Panel; SEP–7: NCI Clinical and Translational R21 and Omnibus R03.

Date: February 28, 2019.

Time: 7:30 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda North Marriott Hotel & Conference Center, 5701 Marinelli Road, North Bethesda, MD 20852.

Contact Person: Saejeong J. Kim, Ph.D., Scientific Review Officer, Special Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W640, Bethesda, MD 20892–9750, 240–276–2432, *saejeong.kim@nih.gov.*

Name of Committee: National Cancer Institute Special Emphasis Panel; NCORP Research Bases.

Date: March 5, 2019.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Cancer Institute, Shady Grove, 9609 Medical Center Drive, Room 7W032/034, Rockville, MD 20850.

Contact Person: Michael B. Small, Ph.D., Scientific Review Officer, Program and Review Extramural Staff Training Office, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W412, Bethesda, MD 20892–9750, 240–276–6384, *smallm@mail.nih.gov.*

Name of Committee: National Cancer Institute Special Emphasis Panel; Community Oncology Research Program—Community Sites.

Date: March 7–8, 2019.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Cancer Institute, Shady Grove, 9609 Medical Center Drive, Room TE406, Rockville, MD 20850.

Contact Person: Timothy C. Meeker, M.D., Ph.D., Scientific Review Officer, Resources and Training Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W606, Bethesda, MD 20892–9750, 240–276–6464, *meekert@mail.nih.gov.*

Name of Committee: National Cancer Institute Special Emphasis Panel; SEP–1 for Provocative Questions.

Date: March 7, 2019.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda North Marriott Hotel & Conference Center, 5701 Marinelli Road, North Bethesda, MD 20852.

Contact Person: Hasan Siddiqui, Ph.D. , Scientific Review Officer, Special Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W240, Bethesda, MD 20892–9750, 240–276–5122, *hasan.siddiqui@nih.gov.*

Name of Committee: National Cancer Institute Special Emphasis Panel; SEP–6: NCI Clinical and Translational R21 and Omnibus R03.

Date: March 7–8, 2019.

Time: 5:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda North Marriott Hotel & Conference Center, 5701 Marinelli Road, North Bethesda, MD 20852.

Contact Person: Eduardo E. Chufan, Ph.D., Scientific Review Officer, Research Technology and Contract Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W254, Bethesda, MD 20892–9750, 240–276–7975, *chufanee@mail.nih.gov.*

Name of Committee: National Cancer Institute Special Emphasis Panel SEP–4 for Provocative Questions.

Date: March 14–15, 2019.

Time: 6:00 p.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Washington DC/Rockville Hotel, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Clifford W. Schweinfest, Ph.D., Scientific Review Officer, Special Review Branch Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W108, Bethesda, MD 20892–9750, 240–276–6343, *schweinfestcw@mail.nih.gov.*

Name of Committee: National Cancer Institute, Special Emphasis Panel SEP–3 for Provocative Questions.

Date: March 21, 2019.

Time: 7:30 a.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Washington DC/Rockville Hotel, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Hasan Siddiqui, Ph.D., Scientific Review Officer, Special Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W240 Bethesda, MD 20892–9750, 240–276–5122, *hasan.siddiqui@nih.gov.*

Name of Committee: National Cancer Institute Special Emphasis Panel TEP–9: Clonogenic High-Throughput Assay for Anti-Cancer Agents and Radiation Modulators.

Date: March 28, 2019.

Time: 10:00 a.m. to 3:00 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Cancer Institute, Shady Grove, 9609 Medical Center Drive, Room 7W246 Rockville, MD 20850.

Contact Person: Jun Fang, Ph.D., Scientific Review Officer, Research Technology and Contract Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W260, Bethesda, MD, 20892–9750 240–276–5460, *jfang@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: December 11, 2018.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2018–27178 Filed 12–17–18; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Dental & Craniofacial Research Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel; Dental Practice-Base Research Network.

Date: January 7, 2019.

Time: 1:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: NIDCR Conference Room, 651 Democracy One, 6701 Democracy Blvd., Bethesda, MD 20892.

Contact Person: Guo He Zhang, MPH, Ph.D., Scientific Review Officer, Scientific Review Branch, Natl Institute of Dental and Craniofacial Research, National Institutes of Health, 6701 Democracy Boulevard, Suite 672, Bethesda, MD 20892, *zhanggu@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.121, Oral Diseases and Disorders Research, National Institutes of Health, HHS)

Dated: December 12, 2018.

Natasha M. Copeland,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2018–27277 Filed 12–17–18; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Notice To Announce Webinar To Request Public Input on Upcoming Surgeon General's Report on Oral Health

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: The National Institutes of Health (NIH), National Institute of Dental and Craniofacial Research (NIDCR), is announcing a webinar to provide background information pertaining to the commissioning of a new report on oral health by the Surgeon General and to obtain public input on the report.

DATES: The webinar will be held on Thursday, January 10, 2019 from 12:00–12:30 p.m. EST. Written comments must be received before January 25, 2019.

ADDRESSES: The webinar will be held by teleconference and online. Information is available at: *www.nidcr.nih.gov/SGReport-Oral-Health.* You may submit written comments by: Email: *NIDCR-SGROH@nidcr.nih.gov;* or Mail: Ms. Michelle Pitt, NIH/NIDCR, 31 Center Drive, Room 5B55, Bethesda, MD 20892.

FOR FURTHER INFORMATION CONTACT: Bruce A. Dye, DDS, MPH, Dental Epidemiology Officer, Office of Science Policy and Analysis, NIH/NIDCR, 31 Center Drive, Room 5B55, Rockville, MD 20892. Email: *bruce.dye@nih.gov.*

SUPPLEMENTARY INFORMATION: The webinar will update the public on the status of the new Surgeon General's Report on Oral Health and provide an opportunity for the public to submit comments to help guide development of the report. Additional information about the upcoming report was published in a previous **Federal Register** Notice on July 27, 2018, 83 FR 35664. Interested persons or organizations are invited to submit written views on oral health, including the importance of poor oral health as a public health issue, contemporary issues affecting oral health, new knowledge that may transform the oral health of the nation, and future directions. NIDCR is also interested in receiving examples of partnerships or coalitions that have demonstrated improvement of oral health and wellbeing of individuals, families, or communities.

Please note that comments received, including any supplemental material provided with the comments, are part of the public record and subject to public disclosure. Do not include any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure. NIDCR will carefully consider all comments submitted and may include relevant information in the upcoming Surgeon General's Report on Oral Health.

Dated: December 12, 2018.

Lawrence A. Tabak,

Deputy Director, National Institutes of Health.

[FR Doc. 2018–27363 Filed 12–17–18; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Special Emphasis Panel; Inflammation and Independence in Seniors.

Date: January 8, 2019.

Time: 12:00 p.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Aging, Gateway Building, Suite 2W200, 7201 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Anita H. Undale, Ph.D., Scientific Review Branch, National Institute on Aging, Gateway Building, Suite 2W200, 7201 Wisconsin Avenue, Bethesda, MD 20892, 240–747–7825, *anita.undale@nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: December 11, 2018.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2018–27182 Filed 12–17–18; 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 Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; PHS 2019–1 SBIR Topic 73: Mobile Health Point-of-Care Diagnostics.

Date: January 10–11, 2019.

Time: 10:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, 5601 Fishers Lane, Rockville, MD 20892 (Telephone Conference Call).

Contact Person: Ann Marie M. Cruz, Ph.D., Scientific Review Officer, Program Management & Operations Branch DEA/SRP RM 3E71, National Institutes of Health, NIAID, 5601 Fishers Lane, Rockville, MD 20852, 301–761–3100, *AnnMarie.Cruz@niaid.nih.gov*.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; NIAID Investigator Initiated Program Project Application (P01).

Date: January 16, 2019.

Time: 11:00 a.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 5601 Fishers Lane, Rockville, MD 20892.

Contact Person: Tracy A. Shahan, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, Room #3F31, National Institutes of Health/NIAID, 5601 Fishers Lane, MSC 79823, Bethesda, MD 20892–9823, (240) 669–5030, *tshahan@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: December 12, 2018.

Natasha M. Copeland,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2018–27282 Filed 12–17–18; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Accreditation and Approval of AmSpec LLC (New Haven, CT) as a Commercial Gauger and Laboratory

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

ACTION: Notice of accreditation and approval of AmSpec LLC (New Haven, CT), as a commercial gauger and laboratory.

SUMMARY: Notice is hereby given, pursuant to CBP regulations, that AmSpec LLC (New Haven, CT), has been approved to gauge petroleum and certain petroleum products and accredited to test petroleum and certain petroleum products for customs purposes for the next three years as of August 9, 2018.

DATES: AmSpec LLC (New Haven, CT) was approved and accredited as a commercial gauger and laboratory as of August 9, 2018. The next triennial inspection date will be scheduled for August 2021.

FOR FURTHER INFORMATION CONTACT: Dr. Justin Shey, Laboratories and Scientific Services, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue NW, Suite 1500N, Washington, DC 20229, tel. 202–344–1060.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to 19 CFR 151.12 and 19 CFR 151.13, that AmSpec LLC, 100 Wheeler St., Unit G, New Haven, CT 06512, has been approved to gauge petroleum and certain petroleum products and accredited to test petroleum and certain petroleum products for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 19 CFR 151.13.

AmSpec LLC (New Haven, CT) is approved for the following gauging procedures for petroleum and certain petroleum products from the American Petroleum Institute (API):

API chapters	Title
1	Vocabulary.
3	Tank Gauging.
7	Temperature Determination.
8	Sampling.
12	Calculations.
17	Maritime Measurement.

AmSpec LLC (New Haven, CT) is accredited for the following laboratory analysis procedures and methods for petroleum and certain petroleum products set forth by the U.S. Customs and Border Protection Laboratory Methods (CBPL) and American Society for Testing and Materials (ASTM):

CBPL No.	ASTM	Title
27–01	D 287	Standard Test Method for API Gravity of Crude Petroleum and Petroleum Products (Hydrometer Method).
27–02	D 1298	Standard Test Method for Density, Relative Density (Specific Gravity), or API Gravity of Crude Petroleum and Liquid Petroleum Products by Hydrometer Method.
27–04	D 95	Standard Test Method for Water in Petroleum Products and Bituminous Materials by Distillation.
27–05	D 4928	Standard Test Method for Water in Crude Oils by Coulometric Karl Fischer Titration.
27–06	D 473	Standard Test Method for Sediment in Crude Oils and Fuel Oils by the Extraction Method.
27–08	D 86	Standard Test Method for Distillation of Petroleum Products at Atmospheric Pressure.
27–11	D 445	Standard Test Method for Kinematic Viscosity of Transparent and Opaque Liquids (and Calculation of Dynamic Viscosity).
27–13	D 4294	Standard Test Method for Sulfur in Petroleum and Petroleum Products by Energy-Dispersive X-ray Fluorescence Spectrometry.
27–20	D 4057	Standard Practice for Manual Sampling of Petroleum and Petroleum Products.
27–48	D 4052	Standard Test Method for Density and Relative Density of Liquids by Digital Density Meter.
27–50	D 93	Standard Test Methods for Flash-Point by Pensky-Martens Closed Cup Tester.
27–53	D 2709	Standard Test Method for Water and Sediment in Middle Distillate Fuels by Centrifuge.
27–54	D 1796	Standard Test Method for Water and Sediment in Fuel Oils by the Centrifuge Method.
27–58	D 5191	Standard Test Method for Vapor Pressure of Petroleum Products (Mini Method).
	D 97	Standard Test Method for Pour Point of Petroleum Products.
	D 2500	Standard Test Method for Cloud Point of Petroleum Products and Liquid Fuels.

Anyone wishing to employ this entity to conduct laboratory analyses and gauger services should request and receive written assurances from the entity that it is accredited or approved by the U.S. Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively, inquiries regarding the specific test or gauger service this entity is accredited or approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344–1060. The inquiry may also be sent to *CBPGaugersLabs@cbp.dhs.gov.* Please reference the website listed below for a complete listing of CBP approved gaugers and accredited laboratories. *http://www.cbp.gov/about/labs-scientific/commercial-gaugers-and-laboratories.*

Dated: December 6, 2018.

Patricia Hawes Coleman,

Acting Executive Director, Laboratories and Scientific Services.

[FR Doc. 2018–27197 Filed 12–17–18; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Accreditation and Approval of AmSpec LLC (Yorktown, VA) as a Commercial Gauger and Laboratory

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

ACTION: Notice of accreditation and approval of AmSpec LLC (Yorktown, VA), as a commercial gauger and laboratory.

SUMMARY: Notice is hereby given, pursuant to CBP regulations, that AmSpec LLC (Yorktown, VA), has been approved to gauge petroleum and certain petroleum products and accredited to test petroleum and certain petroleum products for customs purposes for the next three years as of August 14, 2018.

DATES: AmSpec LLC (Yorktown, VA) was approved and accredited as a commercial gauger and laboratory as of August 14, 2018. The next triennial inspection date will be scheduled for August 2021.

FOR FURTHER INFORMATION CONTACT: Dr. Justin Shey, Laboratories and Scientific Services, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue NW, Suite 1500N, Washington, DC 20229, tel. 202–344–1060.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to 19 CFR 151.12 and 19 CFR 151.13, that AmSpec LLC, 100–B Redoubt Rd., Yorktown, VA 23692, has been approved to gauge petroleum and certain petroleum products and accredited to test petroleum and certain petroleum products for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 19 CFR 151.13.

AmSpec LLC (Yorktown, VA) is approved for the following gauging procedures for petroleum and certain petroleum products from the American Petroleum Institute (API):

API chapters	Title
1	Vocabulary.
3	Tank Gauging.
7	Temperature Determination.
8	Sampling.
12	Calculations.
17	Maritime Measurement.

AmSpec LLC (Yorktown, VA) is accredited for the following laboratory analysis procedures and methods for petroleum and certain petroleum products set forth by the U.S. Customs and Border Protection Laboratory Methods (CBPL) and American Society for Testing and Materials (ASTM):

CBPL No.	ASTM	Title
27–02	D 1298	Standard Test Method for Density, Relative Density (Specific Gravity), or API Gravity of Crude Petroleum and Liquid Petroleum Products by Hydrometer Method.
27–04	D 95	Standard Test Method for Water in Petroleum Products and Bituminous Materials by Distillation.
27–06	D 473	Standard Test Method for Sediment in Crude Oils and Fuel Oils by the Extraction Method.
27–08	D 86	Standard Test Method for Distillation of Petroleum Products at Atmospheric Pressure.
27–11	D 445	Standard Test Method for Kinematic Viscosity of Transparent and Opaque Liquids (and Calculation of Dynamic Viscosity).
27–13	D 4294	Standard Test Method for Sulfur in Petroleum and Petroleum Products by Energy-Dispersive X-ray Fluorescence Spectrometry.

CBPL No.	ASTM	Title
27–14	D 2622	Standard Test Method for Sulfur in Petroleum Products by Wavelength Dispersive X-Ray Fluorescence Spectrometry.
27–48	D 4052	Standard Test Method for Density and Relative Density of Liquids by Digital Density Meter.
27–53	D 2709	Standard Test Method for Water and Sediment in Middle Distillate Fuels by Centrifuge.
27–57	D 7039	Standard Test Method for Sulfur in Gasoline and Diesel Fuel by Monochromatic Wavelength Dispersive X-Ray Fluorescence Spectrometry.
27–58	D 5191	Standard Test Method for Vapor Pressure of Petroleum Products (Mini Method).

Anyone wishing to employ this entity to conduct laboratory analyses and gauger services should request and receive written assurances from the entity that it is accredited or approved by the U.S. Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively, inquiries regarding the specific test or gauger service this entity is accredited or approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344–1060. The inquiry may also be sent to *CBPGaugersLabs@cbp.dhs.gov.* Please reference the website listed below for a complete listing of CBP approved gaugers and accredited laboratories. *http://www.cbp.gov/about/labs-scientific/commercial-gaugers-and-laboratories.*

Dated: December 6, 2018.

Patricia Hawes Coleman,

Acting Executive Director, Laboratories and Scientific Services.

[FR Doc. 2018–27195 Filed 12–17–18; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Accreditation and Approval of Intertek USA, Inc. (Benicia, CA), as a Commercial Gauger and Laboratory

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

ACTION: Notice of accreditation and approval of Intertek USA, Inc. (Benicia, CA), as a commercial gauger and laboratory.

SUMMARY: Notice is hereby given, pursuant to CBP regulations, that Intertek USA, Inc. (Benicia, CA), has been approved to gauge petroleum and certain petroleum products and accredited to test petroleum and certain petroleum products for customs purposes for the next three years as of March 6, 2018.

DATES: Intertek USA, Inc. (Benicia, CA) was accredited and approved, as a commercial gauger and laboratory as of March 6, 2018. The next triennial inspection date will be scheduled for March 2021.

FOR FURTHER INFORMATION CONTACT: Dr. Justin Shey, Laboratories and Scientific Services Directorate, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue NW, Suite 1500N, Washington, DC 20229, tel. 202–344–1060.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to 19 CFR 151.12 and 19 CFR 151.13, that Intertek USA, Inc., 6050 Egret Ct., Benicia, CA 94510 has been approved to gauge petroleum and certain petroleum products and accredited to test petroleum and certain petroleum products for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 19 CFR 151.13.

Intertek USA, Inc. (Benicia, CA), is approved for the following gauging procedures for petroleum and certain petroleum products from the American Petroleum Institute (API):

API chapters	Title
1	Vocabulary.
2	Tank Calibration.
3	Tank Gauging.
7	Temperature Determination.
8	Sampling.
11	Physical Properties Data.
12	Calculations.
17	Marine Measurement.

Intertek USA, Inc. (Benicia, CA), is accredited for the following laboratory analysis procedures and methods for petroleum and certain petroleum products set forth by the U.S. Customs and Border Protection Laboratory Methods (CBPL) and American Society for Testing and Materials (ASTM):

CBPL No.	ASTM	Title
27–01	D 287	Standard Test Method for API Gravity of Crude Petroleum and Petroleum Products (Hydrometer Method).
27–03	D 4006	Standard Test Method for Water in Crude Oil by Distillation.
27–04	D 95	Standard Test Method for Water in Petroleum Products and Bituminous Materials by Distillation.
27–06	D 473	Standard Test Method for Sediment in Crude Oils and Fuel Oils by the Extraction Method.
27–07	D 4807	Standard Test Method for Sediment in Crude Oil by Membrane Filtration.
27–46	D 5002	Standard Test Method for Density and Relative Density of Crude Oils by Digital Density Analyzer.
27–48	D 4052	Standard Test Method for Density and Relative Density of Liquids by Digital Density Meter.

Anyone wishing to employ this entity to conduct laboratory analyses and gauger services should request and receive written assurances from the entity that it is accredited or approved by the U.S. Customs and Border Protection to conduct the specific test or gauger service requested.

Alternatively, inquiries regarding the specific test or gauger service this entity is accredited or approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344–1060. The inquiry may also be sent to *CBPGaugersLabs@cbp.dhs.gov.* Please reference the website listed below for a complete listing of CBP approved gaugers and accredited laboratories. *http://www.cbp.gov/about/labs-scientific/commercial-gaugers-and-laboratories.*

Dated: December 6, 2018.

Patricia Hawes Coleman,

Acting Executive Director, Laboratories and Scientific Services.

[FR Doc. 2018–27194 Filed 12–17–18; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–6113–N–02]

Announcement of Funding Awards

AGENCY: Office of Strategic Planning and Management, HUD.

ACTION: Notice.

SUMMARY: In accordance with the Department of Housing and Urban Development Reform Act of 1989, this announcement notifies the public of funding decisions made by the Department in competitions for funding under the Notices of Funding Availability (NOFAs) for the following programs: Fiscal Year (FY) 2017 Choice Neighborhoods Implementation; FY 2018 Lead Technical Studies and Healthy Homes Technical Studies Grant; FY 2018 Housing Counseling Training Grant; FY 2018 Comprehensive Housing Counseling Grant Program, and FY 2018 Choice Neighborhood Planning.

FOR FURTHER INFORMATION CONTACT: Office of Strategic Planning and Management, Grants Management and Oversight Division at *AskGMO@hud.gov* or the contact person listed in each appendix.

SUPPLEMENTARY INFORMATION: The *FY 2017 Choice Neighborhoods Implementation* competition was announced in a NOFA published on *grants.gov* on August 24, 2017 (FR–6100–N–34). The competition closed on November 22, 2017. Applications were rated and selected for funding based on selection criteria contained in the NOFA. HUD awarded $144,214,284 to 5 recipients to provide grants to support locally driven strategies that address struggling neighborhoods with distressed public or HUD-assisted housing through a comprehensive approach to neighborhood transformation. Local leaders, residents, and stakeholders, such as public housing authorities, cities, schools, police, business owners, nonprofits, and private developers, came together to create and implement a plan that revitalizes distressed HUD housing and addresses the challenges in the surrounding neighborhood. The program helps communities transform neighborhoods by revitalizing severely distressed public and/or assisted housing and catalyzing critical improvements in the neighborhood, including vacant property, housing, businesses, services and schools.

The *FY 2018 Lead Technical Studies Grant* competition was announced in the NOFA published on *grants.gov* on May 10, 2018 (FR–6200–N–15). The competition closed on June 13, 2018, for Pre-Applications and on August 20, 2018, for Full Applications. Applications were rated and selected for funding based on selection criteria contained in the NOFA. HUD awarded $1,946,741 to 3 recipients to gain knowledge to improve the efficacy and cost-effectiveness of methods for evaluation and control of residential lead-based paint hazards. The *FY 2018 Healthy Homes Technical Studies Grant* competition was announced in the NOFA published on grants.gov on May 10, 2018 (FR–6200–N–15). The competition closed on June 13, 2018, for Pre-Applications and August 20, 2018, for Full Applications. Applications were rated and selected for funding based on selection criteria contained in the NOFA. HUD awarded $4,771,419 to 5 recipients to advance the recognition and control of priority residential health and safety hazards and more closely examine the link between housing and health.

The *FY 2018 Housing Counseling Training Grant* competition was announced in the NOFA published on *grants.gov* on August 01, 2018 (FR–6200–N–30). The competition closed on August 31, 2018. Applications were rated and selected for funding based on selection criteria contained in the NOFA. HUD awarded $3,500,000 to 4 recipients to continue investing in the creation and maintenance of a professional and effective housing counseling industry that can meaningfully assist consumers by providing them with the information they need to make informed housing choices and maximizes the impact of Federal funding appropriated for HUD's Housing Counseling Program.

The *FY 2018 Comprehensive Housing Counseling Grant Program* competition was announced in the NOFA published on *grants.gov* on July 03, 2018 (FR–6200–N–33). The competition closed on August 07, 2018. Applications were rated and selected for funding based on selection criteria contained in the NOFA. HUD awarded $46,631,397 to 207 recipients to provide funds that shall be used for providing counseling and advice to tenants and homeowners with respect to property maintenance, financial management and literacy, and such other matters as may be appropriate to assist program clients improve their housing conditions, meet financial needs and fulfill the responsibilities of tenancy or homeownership. Funding is intended to support HUD-approved housing counseling agencies to respond flexibly to the needs of residents and neighborhoods and deliver a wide variety of housing counseling services to homebuyers, homeowners, renters, and the homeless. property maintenance, financial management and literacy, and such other matters as may be appropriate to assist program clients improve their housing conditions, meet financial needs and fulfill the responsibilities of tenancy or homeownership.

The *FY 2018 Choice Neighborhoods Planning* competition was announced in the NOFA published on *grants.gov* on April 10, 2018 (FR–6200–N–38). The competition closed on June 12, 2018. Applications were rated and selected for funding based on selection criteria contained in the NOFA. HUD awarded $4, 950,000 to 6 recipients to resources to address three core goals: Housing, People and Neighborhoods. To achieve these core goals, communities must develop and implement a comprehensive neighborhood revitalization strategy, or Transformation Plan. The Transformation Plan will become the guiding document for the revitalization of the public and/or assisted housing units while simultaneously directing the transformation of the surrounding neighborhood and positive outcomes for families.

In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (103 Stat. 1987, 42 U.S.C. 3545(a)(4)(C)), the Department is publishing the awardees and the amounts of the awards in Appendices A–F to this document.

Dated: December 3, 2018.

Christopher Walsh,

Director, Grants Management & Oversight.

Appendix A

FY2017 Choice Neighborhoods Implementation Grants

Contact: Mindy Turbov, (202) 402–4191.

Lead grantee	Address	City	State	ZIP code	Amount
City of Flint	1101 S Saginaw St	Flint	MI	48502	$30,000,000
City of Phoenix	251 W Washington Street, 4th Floor.	Phoenix	AZ	85003	30,000,000
Housing Authority of the City of Baltimore	417 East Fayette Street, Suite 1339.	Baltimore	MD	21202	30,000,000
City of Shreveport	505 Travis Street	Shreveport	LA	71101	24,214,284
Housing Authority of the City of Tulsa	415 E Independence St	Tulsa	OK	74106	30,000,000
Total					144,214,284

Appendix B

FY2018 Lead Technical Studies and Healthy Homes Technical Studies Grant

Contact: Dr. Peter J. Ashley (202) 402–7595.

LEAD TECHNICAL STUDIES

Organization name	Address	City	State	Zip	Award
The University of Texas at El Paso—College of Health Sciences.	500 W University Ave	El Paso	TX	79968	$699,911
National Center for Healthy Housing, Inc	10320 Little Patuxent Pkwy	Columbia	MD	21044	596,830
National Center for Healthy Housing, Inc	10320 Little Patuxent Pkwy	Columbia	MD	21044	650,000
Total					1,946,741

HEALTHY HOMES TECHNICAL STUDIES

Organization name	Address	City	State	Zip	Award
Massachusetts Department of Public Health	250 Washington Street	Boston	MA	02108	$1,000,000
The Trustees of Columbia University in the City of New York—Environmental Health Sciences.	630 West 168th Street	New York	NY	10032	991,572
President and Fellows of Harvard College—Harvard T H Chan School of Public Health.	677 Huntington Avenue	Boston	MA	02115	999,912
Tufts University—School of Engineering	136 Harrison Avenue	Boston	MA	02111	779,935
Baylor College of Medicine	One Baylor Plaza	Houston	TX	77030	1,000,000
Total					4,771,419

Appendix C

FY2018 Housing Counseling Training Grant

Contact: Tom Hardy (313) 234–7443.

Grantee name	Address	City	State	ZIP	Amount
UNIDOS US	1126 16th Street NW, Suite 600	Washington	DC	20036–4845	$802,031.00
RURAL COMMUNITY ASSISTANCE CORPORATION.	3120 Freeboard Drive, Suite 201.	West Sacramento.	CA	95691–5039	504,100.00
NATIONAL COMMUNITY REINVESTMENT COALITION, INC.	740 15th St. NW, Suite 400	Washington	DC	20005–1019	1,129,758.00
NEIGHBORHOOD REINVESTMENT CORP. DBA NEIGHBORWORKS AMERICA.	999 North Capital Street NE, Suite 900.	Washington	DC	20002–4684	1,064,111.00
Total					3,500,000.00

Appendix D

FY2018 Comprehensive Housing Counseling Grant Program

Contact: Connie Barton 617–994–8521.

Grantee name	Address	City	State	Zip	Amount
COMMUNITY ACTION PARTNERSHIP OF NORTH ALABAMA, INC.	1909 Central Pkwy. SW	Decatur	AL	35601–6822	$21,239.00
COMMUNITY ACTION PARTNERSHIP, HUNTSVILLE/MADISON & LIMESTONE COUNTIES, INC.	3516 Stringfield Rd. NW	Huntsville	AL	35810–1758	22,883.00
ORGANIZED COMMUNITY ACTION PROGRAM, INC.	507 N 3 Notch St	Troy	AL	36081–2120	24,837.00
HOUSING AUTHORITY OF THE CITY OF PRICHARD.	200 W Prichard Avenue	Prichard	AL	36610	26,215.00
COMMUNITY ACTION AGENCY OF NORTHWEST ALABAMA, INC.	745 Thompson St	Florence	AL	35630–3867	26,215.00
COMMUNITY SERVICE PROGRAMS OF WEST ALABAMA, INC.	601 Black Bears Way	Tuscaloosa	AL	35401–4807	32,322.00
UNITED WAY OF CENTRAL ALABAMA, INC	3600 8th Avenue	Birmingham	AL	35222–3250	407,964.00
MISSISSIPPI COUNTY, ARKANSAS ECONOMIC OPPORTUNITY COMMISSION, INC.	1400 North Division Street	Blytheville	AR	72315–1438	16,798.00
NORTHWEST REGIONAL HOUSING AUTHORITY.	114 Sisco Ave	Harrison	AR	72601–2130	21,239.00
SOUTHERN BANCORP COMMUNITY PARTNERS.	8924 Kanis Rd	Little Rock	AR	72205–6414	29,546.00
UNIVERSAL HOUSING DEVELOPMENT CORPORATION.	301 E 3rd St	Russellville	AR	72801–5109	31,767.00
IN AFFORDABLE HOUSING, INCORPORATED	108 S Rodney Parham Rd	Little Rock	AR	72205–4708	40,431.00
NEWTOWN COMMUNITY DEVELOPMENT CORPORATION.	511 W University Dr., Ste 4	Tempe	AZ	85281–5585	27,058.00
COMMUNITY SERVICES AND EMPLOYMENT TRAINING, INC. (CSET).	312 NW 3rd Avenue	Visalia	CA	93291–3626	19,573.00
CITY OF VACAVILLE DEPARTMENT OF HOUSING SERVICES.	40 Eldridge Avenue, Suite 2	Vacaville	CA	95688–6824	21,239.00
ORANGE COUNTY FAIR HOUSING COUNCIL, INC.	1516 Brookhollow Drive, Suite A	Santa Ana	CA	92705–5426	22,595.00
FAIR HOUSING ADVOCATES OF NORTHERN CALIFORNIA.	1314 Lincoln Ave	San Rafael	CA	94901–2105	31,767.00
ASIAN INCORPORATED	1167 Mission Street, 4th Floor	San Francisco	CA	94103–1544	33,966.00
FAIR HOUSING COUNCIL OF RIVERSIDE COUNTY, INC.	4164 Brockton Avenue	Riverside	CA	92501–3400	38,942.00
PROJECT SENTINEL	554 Valley Way	Milpitas	CA	95035–4106	69,728.00
CREDIT.ORG	4351 Latham St	Riverside	CA	92501–1749	332,228.00
CONSUMER CREDIT COUNSELING SERVICES OF SAN FRANCISCO D/B/A BALANCE.	1655 Grant Street, Suite 1300	Concord	CA	94520–2600	767,514.00
RURAL COMMUNITY ASSISTANCE CORPORATION.	3120 Freeboard Drive, Suite 201.	West Sacramento.	CA	95691–5039	832,841.00
NATIONAL ASSOCIATION OF REAL ESTATE BROKERS-INVESTMENT DIVISION, INC.	7677 OakPort Street, Suite 1030, 10th Fl.	Oakland	CA	94621–1929	1,204,160.00
COMMUNITY RENEWAL TEAM, INC	330 Market Street	Hartford	CT	06120–2901	17,352.00
CONNECTICUT HOUSING FINANCE AUTHORITY.	999 West Street	Rocky Hill	CT	06067–3011	182,806.00
MARSHALL HEIGHTS COMMUNITY DEVELOPMENT ORGANIZATION.	3939 Benning Road NE	Washington	DC	20019–3402	25,948.00
HOUSING COUNSELING SERVICES, INCORPORATED.	2410 17th St. NW, Ste 100	Washington	DC	20009–2724	87,539.00
NATIONAL CAPACD	1628 16th Street NW, 4th Floor	Washington	DC	20009–3064	703,606.00
NATIONAL COMMUNITY REINVESTMENT COALITION, INC.	740 15th St. NW, Suite 400	Washington	DC	20005–1019	1,023,312.00
NATIONAL FOUNDATION FOR CREDIT COUNSELING, INC.	2000 M St. NW, Suite 505	Washington	DC	20036–3307	1,153,659.00
UNIDOS US	1126 16th Street NW, Suite 600	Washington	DC	20036–4845	1,789,473.00
NEIGHBORHOOD REINVESTMENT CORP. DBA NEIGHBORWORKS AMERICA.	999 North Capitol Street NE, Suite 900.	Washington	DC	20002–4684	3,000,000.00
COMMUNITY ENTERPRISE INVESTMENTS, INCORPORATED.	302 North Barcelona St	Pensacola	FL	32501–4806	16,798.00
THE AGRICULTURE AND LABOR PROGRAM, INC.	300 Lynchburg Rd	Winter Haven	FL	33850–2576	17,908.00
BRIGHT COMMUNITY TRUST, INC	2605 Enterprise Road E, Suite 230.	Clearwater	FL	33759–1067	19,840.00
COMMUNITY SOLUTIONS 360, INC	8466 Lockwood Ridge Road Suite 157.	Sarasota	FL	34243–2951	22,616.00
ADOPT A HURRICANE FAMILY, INC. DBA CRISIS HOUSING SOLUTIONS.	4700 SW 64th Avenue—Suite C	Davie	FL	33314–4433	23,706.00
HOME OWNERSHIP RESOURCE CENTER OF LEE COUNTY.	2915 Colonial Blvd., Ste 200	Fort Myers	FL	33966–1009	24,282.00
BROWARD COUNTY HOUSING AUTHORITY	4780 N State Road 7	Lauderdale Lakes.	FL	33319–5860	24,837.00
TALLAHASSEE URBAN LEAGUE, INC	923 Old Bainbridge Rd	Tallahassee	FL	32303–6042	24,837.00

Grantee name	Address	City	State	Zip	Amount
COMPREHENSIVE HOUSING RESOURCES, INC.	21450 Gibralter Dr., Ste 1	Port Charlotte	FL	33952–5417	25,104.00
WEST PALM BEACH HOUSING AUTHORITY	1715 Division Ave	West Palm Beach.	FL	33407–6284	26,503.00
OPA-LOCKA COMMUNITY DEVELOPMENT CORPORATION.	490 Opa Locka Blvd	Opa Locka	FL	33054–3563	27,325.00
MID-FLORIDA HOUSING PARTNERSHIP, INC	1834 Mason Ave	Daytona Beach	FL	32117–5101	28,435.00
COMMUNITY HOUSING INITIATIVE, INC	3033 College Wood Dr	Melbourne	FL	32934–8324	30,101.00
AFFORDABLE HOMEOWNERSHIP FOUNDATION INC.	5264 Clayton Ct., Ste 1	Fort Myers	FL	33907–2112	30,280.00
JACKSONVILLE AREA LEGAL AID, INC	126 W Adams St	Jacksonville	FL	32202–3849	1,212.00
TAMPA BAY COMMUNITY DEVELOPMENT CORPORATION.	2139 NE Coachman Rd., Suite 1.	Clearwater	FL	33765–2612	33,878.00
SOLITA'S HOUSE INC	3101 E 7th Ave	Tampa	FL	33605–4207	34,255.00
OCALA HOUSING AUTHORITY	1629 NW 4th St	Ocala	FL	34475–6051	40,298.00
CONSOLIDATED CREDIT SOLUTIONS, INC	5701 W Sunrise Blvd	Plantation	FL	33313–6269	90,038.00
DEBT MANAGEMENT CREDIT COUNSELING CORP.	3310 N Federal Highway	Lighthouse Point.	FL	33064–6742	112,136.00
CREDIT CARD MGMT SVCS, INC D/B/A DEBTHELPER.COM.	1325 N Congress Ave. #201	West Palm Beach.	FL	33401–2005	219,442.00
AREA COMMITTEE TO IMPROVE OPPORTUNITIES NOW, INC.	2440 West Broad Street, Suite 9.	Athens	GA	30606–3429	20,128.00
AFFORDABLE HOUSING ENTERPRISES, INC	210 South 13th Street	Griffin	GA	30224–2704	21,506.00
APPALACHIAN HOUSING AND REDEVELOPMENT CORPORATION.	800 Avenue B	Rome	GA	30165–2714	24,015.00
REFUGEE FAMILY ASSISTANCE PROGRAM	5405 Memorial Drive, Suite 101	Stone Mountain	GA	30083–3234	32,412.00
OPERATION HOPE, INC	191 PEACHTREE ST. NE, Suite 3840.	Atlanta	GA	30303–1740	510,990.00
GEORGIA HOUSING AND FINANCE AUTHORITY.	60 Executive Park South NE	Atlanta	GA	30329–2296	627,524.00
HALE MAHAOLU HOMEOWNERSHIP/HOUSING COUNSELING.	615 West Papa Ave	Kahului	HI	96732–2500	26,682.00
EASTERN IOWA REGIONAL HOUSING AUTHORITY.	7600 Commerce Park	Dubuque	IA	52002–9673	19,018.00
HOME OPPORTUNITIES MADE EASY, INC. (HOME, INC.).	1618 6th Avenue	Des Moines	IA	50314–3301	20,395.00
MUSCATINE MUNICIPAL HOUSING AGENCY	215 Sycamore St	Muscatine	IA	52761–3839	24,570.00
FAMILY MANAGEMENT FINANCIAL SOLUTIONS, INC.	359 Rock Island Ave	Waterloo	IA	50701–5301	40,104.00
CENTER FOR SIOUXLAND	715 Douglas St	Sioux City	IA	51101–1021	45,924.00
IDAHO HOUSING AND FINANCE ASSOCIATION.	565 West Myrtle	Boise	ID	83702–7675	93,464.00
SPRINGFIELD HOUSING AUTHORITY	200 N 11th St	Springfield	IL	62703–1004	17,352.00
MACOUPIN COUNTY HOUSING AUTHORITY	760 Anderson Street	Carlinville	IL	62626–1003	22,349.00
LAKE COUNTY HOUSING AUTHORITY	33928 N US Highway 45	Grayslake	IL	60030–1714	26,791.00
WILL COUNTY CENTER FOR COMMUNITY CONCERNS.	2455 Glenwood Ave	Joliet	IL	60435–5464	44,753.00
HOUSING ACTION ILLINOIS	67 E Madison Street, Suite 1603.	Chicago	IL	60603–3014	1,259,176.00
CITY OF BLOOMINGTON—HOUSING AND NEIGHBORHOOD DEVELOPMENT (HAND).	401 N Morton Street	Bloomington	IN	47404–3729	10,000.00
LINCOLN HILLS DEVELOPMENT CORPORATION.	302 Main St	Tell City	IN	47586–2207	22,905.00
HOOSIER UPLANDS ECONOMIC DEVELOPMENT CORPORATION.	500 W Main St	Mitchell	IN	47446–1411	25,948.00
INDIANA HOUSING AND COMMUNITY DEVELOPMENT AUTHORITY.	30 South Meridian Street, Ste 1000.	Indianapolis	IN	46204–3565	130,079.00
LIVE THE DREAM DEVELOPMENT, INC	247 Double Springs Rd	Bowling Green	KY	42101–5160	17,352.00
CAMPBELLSVILLE HOUSING AND REDEVELOPMENT AUTHORITY.	400 Ingram Ave	Campbellsville	KY	42718–1627	23,460.00
KCEOC COMMUNITY ACTION PARTNERSHIP, INC.	5448 N US Highway 25E	Gray	KY	40734–6582	24,837.00
HOUSING ASSISTANCE AND DEVELOPMENT SERVICES, INC.	215 E 12th Ave	Bowling Green	KY	42101–3403	30,192.00
KENTUCKY HOUSING CORPORATION	1231 Louisville Rd	Frankfort	KY	40601–6156	318,588.00
LOUISIANA HOUSING CORPORATION	2415 Quail Drive	Baton Rouge	LA	70808–0120	579,800.00
SPRINGFIELD PARTNERS FOR COMMUNITY ACTION.	721 State Street, 2nd Floor	Springfield	MA	01109–4109	24,015.00
ACTION FOR BOSTON COMMUNITY DEVELOPMENT, INC.	178 Tremont St	Boston	MA	02111–1006	24,282.00
RCAP SOLUTIONS, INC	12 E Worcester St	Worcester	MA	01604–3612	25,392.00
PRO-HOME, INC	40 Summer Street	Taunton	MA	02780–3420	25,948.00
COMMUNITY SERVICE NETWORK, INC	136 Elm Street	Stoneham	MA	02180–3426	28,287.00
CATHOLIC SOCIAL SERVICES—FALL RIVER	1600 Bay St	Fall River	MA	02724–1216	47,353.00

Grantee name	Address	City	State	Zip	Amount
CITIZENS' HOUSING AND PLANNING ASSOCIATION, INC.	18 Tremont Street, Suite 401	Boston	MA	02108–2301	674,066.00
THE HOUSING PARTNERSHIP NETWORK	1 Washington Mall, 12th Fl	Boston	MA	02108–2603	720,390.00
NEIGHBORHOOD STABILIZATION CORPORATION (NACA COUNSELING SUBSIDIARY).	225 Centre Street, Suite 100	Boston	MA	02119–1298	1,946,309.00
GARWYN OAKS NORTHWEST HOUSING RESOURCE CENTER, INC.	2300 Garrison Blvd., Suite 140	Baltimore	MD	21216–2335	17,352.00
COMPREHENSIVE HOUSING ASSISTANCE, INC.	5809 Park Heights Avenue	Baltimore	MD	21215–3931	18,175.00
ALLEGANY COUNTY HUMAN RESOURCES DEVELOPMENT COMMISSION, INC.	125 Virginia Ave	Cumberland	MD	21502–3952	19,018.00
DIVERSIFIED HOUSING DEVELOPMENT, INC	8025 Liberty Rd	Windsor Mill	MD	21244–2966	20,000.00
ARUNDEL COMMUNITY DEVELOPMENT SERVICE INC.	2666 Riva Road, Suite 210	Annapolis	MD	21401–7345	27,037.00
SHORE UP!, INC	520 Snow Hill Rd	Salisbury	MD	21804–6031	27,356.00
WASHINGTON COUNTY COMMUNITY ACTION COUNCIL (WCCAC).	117 Summit Ave	Hagerstown	MD	21740–5508	27,732.00
HAGERSTOWN NEIGHBORHOOD DEVELOPMENT PARTNERSHIP, INC. (HNDP).	21 E Franklin St	Hagerstown	MD	21740–4914	30,389.00
HOME PARTNERSHIP, INC. (HPI)	626 Towne Center Dr., Suite 102.	Joppa	MD	21085–4446	31,123.00
SOUTHERN MARYLAND TRI-COUNTY COMMUNITY ACTION.	8383 Old Leonardtown Road	Hughesville	MD	20637	32,996.00
FREDERICK COMMUNITY ACTION AGENCY	100 S Market St	Frederick	MD	21701–5527	37,993.00
HARFORD COUNTY HOUSING AGENCY	15 S Main St., Ste 106	Bel Air	MD	21014–8723	43,436.00
HOUSING INITIATIVE PARTNERSHIP, INC. (HIP).	6525 Belcrest Road, Suite 555	Hyattsville	MD	20782–2003	55,766.00
CENTRO DE APOYO FAMILIAR—CENTER FOR ASSISTANCE FAMILLIES.	6801 Kenilworth Ave	Riverdale	MD	20737–1331	90,618.00
GUIDEWELL FINANCIAL SOLUTIONS, INC	757 Frederick Rd., 2nd Floor	Baltimore	MD	21228–4500	398,200.00
HOMEFREE—U S A	6200 Baltimore Avenue, 3rd Floor.	Riverdale	MD	20737–1054	1,952,955.00
MAINE STATE HOUSING AUTHORITY	353 Water Street	Augusta	ME	04330–4665	43,849.00
NEIGHBORHOODS INC. OF BATTLE CREEK	47 Washington Ave. N	Battle Creek	MI	49037–3025	19,840.00
BAY AREA HOUSING, INC D/B/A COMMUNITY HOME SOLUTIONS.	114 Washington Ave	Bay City	MI	48708–5846	25,392.00
OAKLAND LIVINGSTON HUMAN SERVICE AGENCY.	196 Cesar E Chavez Ave	Pontiac	MI	48342–1094	27,058.00
GRAND RAPIDS URBAN LEAGUE	745 Eastern Ave SE	Grand Rapids	MI	49503–5544	30,368.00
NORTHWEST MICHIGAN COMMUNITY ACTION AGENCY, INC.	3963 Three Mile Road, North	Traverse City	MI	49686–9164	32,034.00
HOUSING SERVICES MID MICHIGAN (FORMERLY HOUSING SERVICES FOR EATON COUNTY).	319 S Cochran Ave	Charlotte	MI	48813–1555	33,699.00
COMMUNITY ACTION AGENCY	1214 Greenwood Ave	Jackson	MI	49203–3037	38,875.00
OAKLAND COUNTY HOUSING COUNSELING	250 Elizabeth Lake Rd., Ste 1900.	Pontiac	MI	48341–1035	49,574.00
MICHIGAN STATE HOUSING DEVELOPMENT AUTHORITY.	735 E. Michigan Avenue	Lansing	MI	48912–1474	650,000.00
GREENPATH, INC	36500 Corporate Drive	Farmington Hills	MI	48331–3553	2,340,846.00
CATHOLIC CHARITIES DIOCESE OF ST. CLOUD.	157 Roosevelt Rd., Ste 200	Saint Cloud	MN	56301–5485	28,168.00
SOUTHERN MINNESOTA REGIONAL LEGAL SERVICES, INC.	55 5th St. E, Ste 400	Saint Paul	MN	55101–1118	33,678.00
HOMEOWNERSHIP PRESERVATION FOUNDATION.	7645 Lyndale Ave. South, Suite 250.	Minneapolis	MN	55423–4084	92,993.00
MINNESOTA HOMEOWNERSHIP CENTER	1000 Payne Avenue, Suite 200	Saint Paul	MN	55130–3986	730,879.00
COMMUNITY SERVICES LEAGUE	404 North Noland Road	Independence	MO	64050–3057	32,301.00
YOUTH EDUCATION AND HEALTH IN SOULARD.	1924 S 12th St	Saint Louis	MO	63104–3951	32,641.00
HOUSING OPTIONS PROVIDED FOR THE ELDERLY (HOPE).	7300 Dartmouth Ave., Suite 100	University City	MO	63130–2904	219,242.00
COVENANT FAITH OUTREACH MINISTRIES—COVENANT COMMUNITY DEVELOPMENT CORPORATION.	813 Varsity Drive, Suite #11	Tupelo	MS	38801–4715	28,991.00
HOUSING EDUCATION AND ECONOMIC DEVELOPMENT, INC.	3405 Medgar Evers Blvd	Jackson	MS	39213–6360	31,797.00
MISSISSIPPI HOMEBUYER EDUCATION CENTER-INITIATIVE.	350 West Woodrow Wilson, Suite 3480.	Jackson	MS	39213–7681	208,332.00
MISSISSIPPI HOME CORPORATION	735 Riverside Drive	Jackson	MS	39202–1166	297,491.00
MONTANA HOMEOWNERSHIP NETWORK DBA NEIGHBORWORKS MONTANA.	509 1st Ave. S	Great Falls	MT	59401–3604	434,246.00
FRANKLIN-VANCE-WARREN OPPORTUNITY, INC.	180 South Beckford Drive	Henderson	NC	27536–2584	17,908.00

Grantee name	Address	City	State	Zip	Amount
CHATHAM COUNTY HOUSING AUTHORITY	13450 US Hwy 64 West	Siler City	NC	27344–6443	22,905.00
HOUSING AUTHORITY OF THE CITY OF HIGH POINT.	500 E Russell Ave	High Point	NC	27260–6746	27,613.00
TWIN RIVERS OPPORTUNITIES, INC	318 Craven St	New Bern	NC	28560–4909	29,279.00
STATESVILLE HOUSING AUTHORITY	110 W Allison St	Statesville	NC	28677–6616	30,101.00
FOOTHILLS CREDIT COUNSELING, INC	709 W Main St., SUITE A	Forest City	NC	28043–2820	33,196.00
WESTERN PIEDMONT COUNCIL OF GOVERNMENTS.	1880 2nd Ave. NW	Hickory	NC	28601–5766	45,635.00
NORTH CAROLINA HOUSING COALITION	5800 Faringdon Place	Raleigh	NC	27609–3930	705,501.00
TELAMON CORPORATION	5560 Munford Road, Suite 109	Raleigh	NC	27612–2635	933,037.00
NORTH DAKOTA HOUSING FINANCE AGENCY.	2624 Vermont Avenue	Bismarck	ND	58504–6803	102,345.00
BLUE VALLEY COMMUNITY ACTION PARTNERSHIP.	620 5th St	Fairbury	NE	68352–2624	26,910.00
FAMILY HOUSING ADVISORY SERVICES, INC	2401 Lake St	Council Bluffs	NE	68111–3872	36,166.00
HIGH PLAINS COMMUNITY DEVELOPMENT CORPORATION.	803 E 3rd St., Ste 4	Chadron	NE	69337–2855	40,066.00
CREDIT ADVISORS FOUNDATION	1818 S 72nd Street	Omaha	NE	68124–1704	138,113.00
NEW HAMPSHIRE HOUSING FINANCE AUTHORITY.	32 Constitution Dr	Bedford	NH	03110–6062	302,816.00
HUDSON COUNTY HOUSING RESOURCE CENTER, INC.	857 Bergen Aveue	Jersey City	NJ	07306–4405	16,243.00
HOUSING AUTHORITY OF THE CITY OF PATERSON.	60 Van Houten St	Paterson	NJ	07505–1028	24,570.00
SENIOR CITIZENS UNITED COMMUNITY SERVICES OF CAMDEN COUNTY, INC.	537 W Nicholson Rd	Audubon	NJ	08106–1970	36,794.00
CONSUMER CREDIT AND BUDGET COUNSELING, DBA NATIONAL FOUNDATION FOR DEBT MANAGEMENT.	299 S Shore Rd. US Route 9 So.	Marmora	NJ	08223–1210	150,137.00
NEW JERSEY HOUSING AND MORTGAGE FINANCE AGENCY.	637 South Clinton Avenue	Trenton	NJ	08611–1811	244,481.00
HOUSING & COMMUNITY DEVELOPMENT NETWORK OF NEW JERSEY.	145 West Hanover Street	Trenton	NJ	08618–4823	305,013.00
GARDEN STATE CONSUMER CREDIT COUNSELING, INC. D/B/A/NAVICORE SOLUTIONS.	200 U.S. Highway 9 North	Manalapan	NJ	07726–3072	483,426.00
CENTER FOR NEW YORK CITY NEIGHBORHOODS.	17 Battery Place, Suite 728	New York	NY	10004–1207	16,243.00
STRYCKER'S BAY NEIGHBORHOOD COUNCIL, INC.	696 Amsterdam Avenue	New York	NY	10025–6901	16,798.00
NIAGARA FALLS NEIGHBORHOOD HOUSING SERVICES.	479 16th St	Niagara Falls	NY	14303–1636	27,346.00
GREATER SHEEPSHEAD BAY DEVELOPMENT CORPORATION.	2107 E 22nd St	Brooklyn	NY	11229–3641	28,754.00
ALLEGANY COUNTY COMMUNITY OPPORTUNITIES AND RURAL DEVELOPMENT (ACCORD) CORP.	84 Schuyler St	Belmont	NY	14813–1051	33,411.00
NEW YORK MORTGAGE COALITION	85 Broad Street, 17th Floor	New York	NY	10004–2434	474,577.00
PATHSTONE CORPORATION	400 East Avenue	Rochester	NY	14607–1910	488,334.00
NEW YORK STATE HOUSING FINANCE AGENCY.	38–40 State Street, 4th Floor	Albany	NY	12207–2837	882,051.00
NATIONAL URBAN LEAGUE	80 Pine St., 9th Floor	New York	NY	10005–1720	1,114,060.00
YOUNGSTOWN METROPOLITAN HOUSING AUTHORITY.	131 W Boardman St	Youngstown	OH	44503–1337	19,018.00
WEST OHIO COMMUNITY ACTION PARTNERSHIP.	540 S Central Ave	Lima	OH	45804–1306	21,239.00
COMMUNITY HOUSING SOLUTIONS	12114 Larchmere Blvd	Cleveland	OH	44120–1139	24,282.00
YOUNGSTOWN NEIGHBORHOOD DEVELOPMENT CORP.	820 Canfield Road	Youngstown	OH	44511–2345	24,282.00
WORKING IN NEIGHBORHOODS	1814 Dreman Ave	Cincinnati	OH	45223–2319	28,724.00
FAIR HOUSING RESOURCE CENTER	1100 Mentor Ave	Painesville	OH	44077–1832	33,411.00
FAIR HOUSING CONTACT SERVICE	441 Wolf Ledges Pkwy., Ste 200.	Akron	OH	44311–1038	37,905.00
COUNTYCORP	130 W 2nd St., Ste 1420	Dayton	OH	45402–1502	45,508.00
WSOS COMMUNITY ACTION COMMISSION, INC.	109 S Front St	Fremont	OH	43420–3021	53,883.00
COMMUNITY DEVELOPMENT SUPPORT ASSOCIATION.	114 S Independence St	Enid	OK	73701–5624	20,128.00
HOUSING PARTNERS OF TULSA, INCORPORATED.	415 E Independence Street	Tulsa	OK	74106–5727	25,104.00
HOUSING AUTHORITY OF THE CHOCTAW NATION OF OKLAHOMA.	207 Jim Monroe Rd	Hugo	OK	74743–5621	28,414.00
QUICKCERT, INC	7122 S Sheridan Rd., Ste 2–533.	Tulsa	OK	74133–2748	172,433.00
HOUSING AUTHORITY OF YAMHILL COUNTY	135 NE Dunn Pl	Mcminnville	OR	97128–9081	20,951.00

Grantee name	Address	City	State	Zip	Amount
COMMUNITY CONNECTION OF NORTHEAST OREGON, INC.	2802 Adams Ave	La Grande	OR	97850–5267	24,570.00
OPEN DOOR COUNSELING CENTER	34420 SW Tualatin Valley Hwy	Hillsboro	OR	97123–5470	52,772.00
INTERCOMMUNITY ACTION, INC. D/B/A INTERACT, JOURNEY'S WAY.	403 Rector St	Philadelphia	PA	19128–3522	18,730.00
PENNSYLVANIA COMMUNITY REAL ESTATE CORP. D/B/A TENANT UNION REPRESENTATIVE NETWORK (T.U.R.N.).	100 S Broad St., Ste 800	Philadelphia	PA	19110–1018	31,479.00
HISPANIC ASSOCIATION OF CONTRACTORS AND ENTERPRISES.	167 W Allegheny Ave., Ste 200	Philadelphia	PA	19140–5846	40,076.00
MON VALLEY INITIATIVE	303–305 E 8th Avenue	Homestead	PA	15120–1517	793,119.00
NUEVA ESPERANZA, INC	4261 N 5th St	Philadelphia	PA	19140–2615	796,035.00
PENNSYLVANIA HOUSING FINANCE AGENCY	211 North Front Street	Harrisburg	PA	17101–1406	2,455,579.00
PROVIDENCE HOUSING AUTHORITY	50 Laurel Hill Ave	Providence	RI	02909–4306	16,798.00
COMMUNITY DEVELOPMENT & IMPROVEMENT CORP.	100 Rogers Terrace	Graniteville	SC	29801–3435	22,616.00
CHARLESTON TRIDENT URBAN LEAGUE, INC	1064 Gardner Road Suite 216	Charleston	SC	29407–5768	27,058.00
SOUTHEASTERN HOUSING FOUNDATION	986 Doyle Street	Orangeburg	SC	29115–6087	27,901.00
BEAUFORT COUNTY BLACK CHAMBER OF COMMERCE.	801 Bladen Street	Beaufort	SC	29902–4574	31,212.00
EASTERN EIGHT COMMUNITY DEVELOPMENT CORP.	214 East Watauga Avenue	Johnson City	TN	37601–4630	19,840.00
CLINCH-POWELL RESOURCE CONSERVATION AND DEVELOPMENT COUNCIL, INC.	7995 Rutledge Pike	Rutledge	TN	37861–3003	31,767.00
WEST TENNESSEE LEGAL SERVICES, INCORPORATED.	210 West Main Street	Jackson	TN	38301–6114	796,050.00
AUSTIN HABITAT FOR HUMANITY	500 W Ben White Blvd	Austin	TX	78704–7030	16,798.00
WACO COMMUNITY DEVELOPMENT CORPORATION.	1624 Colcord Ave	Waco	TX	76707–2246	25,948.00
CITY OF SAN ANTONIO/DEPARTMENT OF HUMAN SERVICES.	106 S. Saint Marys St, 7th Floor	San Antonio	TX	78205–3601	26,770.00
DALLAS AREA HABITAT FOR HUMANITY	2800 N Hampton Rd	Dallas	TX	75212–5029	36,973.00
MONEY MANAGEMENT INTERNATIONAL INC	14141 Southwest Fwy	Sugar Land	TX	77478–3493	1,723,342.00
COMMUNITY ACTION SERVICES	815 S Freedom Blvd., Ste 100	Provo	UT	84601–5817	24,570.00
UTAH STATE UNIVERSITY—FAMILY LIFE CENTER—HFC.	6435 Old Main Hill	Logan	UT	84322–0001	39,015.00
CATHOLIC CHARITIES USA	2050 Ballenger Avenue, Suite 400.	Alexandria	VA	22314–6847	1,091,128.00
VIRGINIA HOUSING DEVELOPMENT AUTHORITY.	601 S Belvidere Street	Richmond	VA	23220–6504	1,258,402.00
VIRGIN ISLANDS HOUSING FINANCE AUTHORITY.	3202 Demara Plaza, Suite 200	St. Thomas	VI	00802–6447	47,133.00
BENNINGTON-RUTLAND OPPORTUNITY COUNCIL, INC. (BROC).	45 Union St	Rutland	VT	05701–3956	33,123.00
WASHINGTON STATE HOUSING FINANCE COMMISSION.	1000 2nd Avenue, Suite 2700	Seattle	WA	98104–3601	758,194.00
MOVIN' OUT, INC	902 Royster Oaks Drive, Ste 105.	Madison	WI	53714–9101	33,432.00
TENANT RESOURCE CENTER	1202 Williamson St., Ste 102	Madison	WI	53703–4806	36,679.00
SOUTHERN APPALACHIAN LABOR SCHOOL FOUNDATION, INC.	140 School Street	Kincaid	WV	25901–2932	22,061.00
HOUSING AUTHORITY OF MINGO COUNTY	5026 Helena Avenue	Delbarton	WV	25670	23,727.00
Total					46,631,397.00

Appendix E

FY2018 Choice Neighborhoods Planning Grants

Contact: Mindy Turbov, (202) 402–4191.

Lead grantee	Address	City	State	ZIP	Award amount
City of Tucson	310 N Commerce Park Loop	Tucson	AZ	85726–7210	$1,300,000
Housing Authority of Baltimore City	417 E Fayette Street	Baltimore	MD	21202–4868	1,300,000
Marquette University	P.O. Box 1881	Milwaukee	WI	53201	1,300,000
Housing Authority of the City of Camden	2021 Watson Street	Camden	NJ	08105–1866	350,000
Housing Authority of the City of Phenix City	200 16th Street	Phenix City	AL	36867–1409	250,000
Urban Strategies, Inc	720 Olive Street, Suite 2600	St. Louis	MO	63101–2313	350,000
Total					4,850,000

[FR Doc. 2018–27349 Filed 12–17–18; 8:45 am]
BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–HQ–ES–2018–0034; FXHC892009CBRS0–13X–FF09E15000]

John H. Chafee Coastal Barrier Resources System; Hurricane Sandy Remapping Project for Connecticut, Maryland, Massachusetts, New York, Rhode Island, and Virginia

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; request for comments; notice of public meetings via webcast and teleconference.

SUMMARY: The Coastal Barrier Resources Reauthorization Act of 2006 requires the Secretary of the Interior to prepare digital versions of the John H. Chafee Coastal Barrier Resources System (CBRS) maps. We, the U.S. Fish and Wildlife Service, have prepared proposed digital boundaries for the second batch of CBRS units included in the Hurricane Sandy Remapping Project. This second batch of the project includes a total of 310 CBRS units (256 existing units and 54 proposed new units) located in Connecticut, Maryland, Massachusetts, New York (Long Island), Rhode Island, and Virginia. Though the Massachusetts units were included in the first batch of this project, a minor portion of Rhode Island Unit D01 in this second batch is located in Massachusetts. This notice announces the availability of the proposed boundaries for public review and comment, and also advises the public of upcoming public meetings that will be held via webcast and teleconference.

DATES:

Written comments: To ensure consideration, we must receive your written comments by April 17, 2019.

Public meetings: We will hold public meetings via webcast and teleconference on January 29, 2019, January 30, 2019, and January 31, 2019; see Virtual Public Meetings and Meeting Participation Information under **SUPPLEMENTARY INFORMATION**, below, for meeting dates, times, and registration information.

Pre-meeting registration: If you are planning to participate in one of the virtual public meetings (being offered via webcast and telephone only), we request that participants register by January 22, 2019 (see Meeting Participation Information under **SUPPLEMENTARY INFORMATION**, below).

ADDRESSES: You may submit written comments by one of the following methods:

- *Electronically: Go to the Federal e-Rulemaking Portal: http://www.regulations.gov.* Search for FWS–HQ–ES–2018–0034, which is the docket number for this notice.
- *By hard copy:* Submit by U.S. mail or hand-delivery to: Public Comments Processing, Attn: Docket No. FWS–HQ–ES–2018–0034; Division of Policy, Performance, and Management Programs; U.S. Fish and Wildlife Service; 5275 Leesburg Pike, MS: BPHC; Falls Church, VA 22041–3808.

We request that you send comments by only one of the methods described above. We will post all information received on *http://www.regulations.gov.* If you provide personal identifying information in your comment, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so.

FOR FURTHER INFORMATION CONTACT: Katie Niemi, Coastal Barriers Coordinator, (703) 358–2071 (telephone); or *CBRA@fws.gov* (email).

SUPPLEMENTARY INFORMATION: The Coastal Barrier Resources Reauthorization Act of 2006 (section 4 of Public Law 109–226; CBRRA) requires the Secretary of the Interior (Secretary) to prepare digital versions of the John H. Chafee Coastal Barrier Resources System (CBRS) maps. We, the U.S. Fish and Wildlife Service (Service), have prepared proposed digital boundaries for the second batch of CBRS units included in the Hurricane Sandy Remapping Project. This second batch of the project includes a total of 310 CBRS units (256 existing units and 54 proposed new units) located in Connecticut, Maryland, Massachusetts, New York (Long Island), Rhode Island, and Virginia. This notice announces the availability of the proposed boundaries for public review and comment, and also advises the public of upcoming public meetings that will be held via webcast and teleconference.

Background and Methodology

Background information on the Coastal Barrier Resources Act (16 U.S.C. 3501 *et seq.;* CBRA) and the CBRS, as well as information on the Hurricane Sandy Remapping Project and the methodology used to produce the revised boundaries, can be found in a notice the Service published in the **Federal Register** on March 12, 2018 (83 FR 10739). The methodology information that is specific to the second batch of the project is described below.

Digital Conversion of the Existing Boundaries

The boundaries of the CBRS were originally hand-drawn on paper maps. The existing CBRS maps for Maryland, Virginia, and New York City underwent a digital conversion process between 2013 and 2015 (80 FR 25314; May 4, 2015). The digital conversion project replaced the underlying base maps with aerial imagery; updated the boundaries to a digital format to make them compatible with modern Geographic Information Systems (GIS); and incorporated modifications as necessary to account for natural changes, voluntary additions, and additions of excess Federal property.

The existing CBRS unit boundaries for Connecticut, Massachusetts, most of the Long Island portion of New York, and Rhode Island were digitally converted as part of this Hurricane Sandy Remapping Project in accordance with the digital conversion methodology described in a notice the Service published in the **Federal Register** on August 29, 2013 (78 FR 53467). The existing boundaries for these areas do not incorporate modifications to account for natural changes, voluntary additions, and additions of excess Federal property; such changes are instead reflected in the proposed boundaries.

Initial Stakeholder Outreach

The initial outreach that was conducted with certain landowners and/or managers of coastal barrier areas during the data mining and research phase of the project is described in a notice the Service published in the **Federal Register** on March 12, 2018 (83 FR 10739). The Service reached out to approximately 65 different stakeholders in Connecticut, Maryland, New York, Rhode Island, and Virginia, including, but not limited to, State natural resource management agencies, State parks and recreation agencies, private conservation organizations, and local governments. Some of these organizations, due to a variety of circumstances, were unable to provide input during the initial stakeholder outreach process. Additional outreach to these groups and a broader group of stakeholders is being conducted as part of the public review process; see the Request for Comments section, below, for more information.

Proposed Modifications to the CBRS

The Service has prepared draft revised boundaries that propose modifications to the CBRS in Connecticut, Maryland, Massachusetts,

New York, Rhode Island, and Virginia. This second batch of the Hurricane Sandy Remapping Project includes a total of 310 CBRS units (256 existing units and 54 proposed new units), which are listed below in Appendix A. The breakdown of units by State is as follows: 32 existing units and 3 proposed new units in Connecticut, 49 existing units and 11 proposed new units in Maryland, 80 existing units and 22 proposed new units in New York, 31 existing units and 4 proposed new units in Rhode Island (including a minor portion of Unit D01 located in Massachusetts), and 64 existing units and 14 proposed new units in Virginia.

Nineteen of the 256 existing units have no proposed changes. Two of the existing 256 units are proposed for deletion from the CBRS, 15 of the existing units are proposed for reclassification from System Unit to Otherwise Protected Area (OPA) or vice-versa, and two of the existing units are transferred from one existing System Unit to another existing System Unit; in all of these cases, the current unit numbers are retired, resulting in 291 total proposed units.

Twenty-one of the 54 proposed new units are comprised partially, mostly, or entirely of areas that are currently contained within the CBRS, but are proposed for reclassification from System Unit to OPA or vice-versa. Thirty-three of the 54 proposed new units are comprised entirely of areas that are not currently contained within the CBRS.

If adopted by Congress, the proposed boundaries would remove 787 acres from the CBRS (600 acres of fastland and 187 acres of associated aquatic habitat) and add approximately 141,072 acres to the CBRS (5,057 acres of fastland and 136,015 acres of associated aquatic habitat). The proposed boundaries would remove 643 structures from the CBRS and add 96 structures to the CBRS. A summary of metrics associated with the proposed changes for each State is below. More detailed information regarding the specific proposed changes to each unit is available in a set of unit summaries. See the Availability of Proposed CBRS Boundaries and Related Information section, below, for information on where to access the unit summaries.

Connecticut

The Service has prepared comprehensively revised proposed boundaries for all of the 32 existing CBRS units in Connecticut. One existing unit in Connecticut has no proposed changes. Four of the existing 32 units are proposed for reclassification from System Unit to OPA or vice-versa, and, therefore, their current unit numbers are retired. Two of the existing 32 units in Connecticut are proposed for transfer from one existing System Unit to another existing System Unit (one of which is Rhode Island Unit D08; the Connecticut acreage is reported as part of Unit D08).

The Service identified three proposed new units in Connecticut. One of the three proposed new units in Connecticut is comprised partially of areas that are currently contained within the CBRS, but are proposed for reclassification from System Unit to OPA. Two of the three proposed new units in Connecticut are comprised entirely of areas that are not currently contained within the CBRS.

There are 29 total proposed units in Connecticut. The proposed boundaries for Connecticut would remove 32 acres from the CBRS (15 acres of fastland and 17 acres of associated aquatic habitat) and add approximately 4,477 acres to the CBRS (238 acres of fastland and 4,239 acres of associated aquatic habitat). The proposed boundaries would remove 51 structures from the CBRS and add approximately 8 structures to the CBRS.

Maryland

The Service has prepared comprehensively revised proposed boundaries for all of the 49 existing CBRS units in Maryland. Twelve existing units in Maryland have no proposed changes. One of the existing 49 units is proposed for deletion from the CBRS, and, therefore, its current unit number is retired. The Service identified 11 proposed new units in Maryland, which are all comprised entirely of areas that are not currently contained within the CBRS.

There are 59 total proposed units in Maryland. The proposed boundaries for Maryland would remove 124 acres from the CBRS (105 acres of fastland and 19 acres of associated aquatic habitat) and add 18,998 acres to the CBRS (429 acres of fastland and 18,569 acres of associated aquatic habitat). The proposed boundaries would remove 83 structures from the CBRS and add 7 structures to the CBRS.

Massachusetts

The Service prepared comprehensively revised proposed boundaries for all of the 86 existing CBRS units in Massachusetts as part of the first batch of this project described in a notice published in the **Federal Register** on March 12, 2018 (83 FR 10739). However, a minor portion of Rhode Island Unit D01 is located in Massachusetts. The acreage for this Massachusetts area (about 3 acres) is reported as part of Rhode Island Unit D01.

New York

The Service has prepared comprehensively revised proposed boundaries for all of the 80 existing CBRS units on Long Island in New York. The Great Lakes units in New York were not assessed as part of this review. One existing unit in New York has no proposed changes. Eight of the existing 80 units are proposed for reclassification from System Unit to OPA, and, therefore, their current unit numbers are retired.

The Service identified 22 proposed new units in New York. Fourteen of the 22 proposed new units in New York are comprised partially, mostly, or entirely of areas that are currently contained within the CBRS, but are proposed for reclassification from System Unit to OPA or vice-versa. Eight of the 22 proposed new units in New York are comprised entirely of areas that are not currently contained within the CBRS.

There are 94 total proposed units in New York. The proposed boundaries for New York would remove 328 acres from the CBRS (242 acres of fastland and 86 acres of associated aquatic habitat) and add 19,768 acres to the CBRS (2,581 acres of fastland and 17,187 acres of associated aquatic habitat). The proposed boundaries would remove 282 structures from the CBRS and add 30 structures to the CBRS.

Rhode Island

The Service has prepared comprehensively revised proposed boundaries for 31 of the 35 existing CBRS units in Rhode Island. The map for the remaining four Rhode Island units (Units RI–04P, RI–05P, RI–06, and RI–07) was comprehensively reviewed and revised by the Service and adopted by Congress in 2014 (Pub. L. 113–253). One existing unit in Rhode Island has no proposed changes. Three of the existing 31 units are proposed for reclassification from System Unit to OPA, and, therefore, their current unit numbers are retired.

The Service identified four proposed new units in Rhode Island. Three of the four proposed new units are comprised either mostly or entirely of areas that are currently contained within the CBRS, but are proposed for reclassification from System Unit to OPA. One of the four proposed new units is comprised entirely of areas that are not currently contained within the CBRS.

There are 32 total proposed units in Rhode Island. The proposed boundaries

for Rhode Island would remove 102 acres from the CBRS (89 acres of fastland and 13 acres of associated aquatic habitat) and add 1,315 acres to the CBRS (376 acres of fastland and 939 acres of associated aquatic habitat). A small portion of this acreage falls within Connecticut and Massachusetts. The proposed boundaries would remove 147 structures from the CBRS and add 6 structures to the CBRS.

Virginia

The Service has prepared comprehensively revised proposed boundaries for all of the 64 existing CBRS units in Virginia. Four existing units in Virginia have no proposed changes. One of the existing 64 units is proposed for deletion from the CBRS, and, therefore, its current unit number is retired.

The Service identified 14 proposed new units in Virginia. Three of the 14 proposed new units in Virginia are comprised partially, mostly, or entirely of areas that are currently contained within the CBRS, but are proposed for reclassification from System Unit to OPA or vice-versa. Eleven of the 14 proposed new units in Virginia are comprised entirely of areas that are not currently contained within the CBRS.

There are 77 total proposed units in Virginia. The proposed boundaries for Virginia would remove 201 acres from the CBRS (149 acres of fastland and 52 acres of associated aquatic habitat) and add 96,514 acres to the CBRS (1,433 acres of fastland and 95,081 acres of associated aquatic habitat). The proposed boundaries would remove 80 structures from the CBRS and add 45 structures to the CBRS.

Proposed Additions to the CBRS

The draft revised boundaries for Connecticut, Maryland, Massachusetts, New York, Rhode Island, and Virginia would make additions to the CBRS, including the creation of 54 new units that are consistent with a directive in section 4 of Public Law 109–226 concerning recommendations for expansion of the CBRS. The proposed boundaries are based upon the best data available to the Service at the time the areas were reviewed. Our assessment indicated that any new areas proposed for addition to the CBRS were relatively undeveloped at the time the proposed boundaries were created.

16 U.S.C. 3503(g) requires that we consider the following criteria when assessing the development status of a potential addition to the CBRS: (1) Whether the density of development is less than one structure per 5 acres of land above mean high tide (which generally suggests eligibility for inclusion within the CBRS); and (2) whether there is existing infrastructure consisting of a road, with a reinforced road bed, to each lot or building site in the area; a wastewater disposal system sufficient to serve each lot or building site in the area; electric service for each lot or building site in the area; and a fresh water supply for each lot or building site in the area (which generally suggests ineligibility for inclusion within the CBRS).

If, upon review of the proposed boundaries, interested parties find that any areas proposed for addition to the CBRS are currently developed (according to the criteria codified in 16 U.S.C. 3503(g)), they may submit supporting documentation of such development to the Service during this public comment period. For any areas proposed for addition to the CBRS, we will consider the density of development and level of infrastructure on-the-ground as of the close of the comment period on the date listed in the **DATES** section, above.

Request for Comments

Section 4 of Public Law 109–226 requires the Secretary to provide an opportunity for the submission of public comments. We invite the public to review and comment on the proposed CBRS boundaries for the Connecticut, Maryland, New York, Rhode Island (including a minor portion of Unit D01 located in Massachusetts), and Virginia units listed in Appendix A. The Service is specifically notifying the following stakeholders concerning the availability of the proposed boundaries: The Chair and Ranking Member of the House of Representatives Committee on Natural Resources; the Chair and Ranking Member of the Senate Committee on Environment and Public Works; the members of the Senate and House of Representatives for the affected areas; the Governors of Connecticut, Maryland, Massachusetts, New York, Rhode Island, and Virginia; organizations that own land held for conservation and/or recreation within the existing and proposed units (where such ownership information and mailing addresses were publicly available); other appropriate Federal, State, and local officials; and appropriate nongovernmental organizations.

Interested parties may submit written comments and accompanying data as described in **ADDRESSES**, above. Comments regarding specific CBRS unit(s) should reference the appropriate unit number(s) and unit name(s) as listed in Appendix A. We must receive comments on or before the date listed above in **DATES**.

Following the close of the comment period, we will review all comments we receive on the proposed boundaries and make adjustments to the boundaries, as appropriate, based on information received through public comments, updated aerial imagery, CBRA criteria, and objective mapping protocols. We will then prepare final recommended boundaries to be submitted to Congress. The final recommended boundaries will become effective only if they are adopted by Congress through legislation.

Availability of Proposed CBRS Boundaries and Related Information

In the past, the Service has produced static PDFs of draft maps depicting proposed changes to the CBRS. However, in an effort to reduce costs, increase efficiency, and provide a more user-friendly interface for the public to view the proposed changes, the Service has created an online ''CBRS Projects Mapper'' to display the proposed CBRS boundaries in lieu of static PDFs of the draft maps. The online mapper creates greater transparency in the public review process, allowing users to zoom in further and obtain more detailed information about the type of change that is proposed for a specific area (*e.g.,* additions, removals, and reclassifications).

The CBRS Projects Mapper and unit summaries (containing historical changes and proposed changes to the individual units) can be accessed from the Service's website at *http://www.fws.gov/cbra.* Public comments should be submitted at *http://www.regulations.gov* (see **ADDRESSES**, above). A shapefile of the proposed CBRS boundaries, which can be used with GIS software, is also available for download. The shapefile is best viewed using the base imagery to which the boundaries were drawn; the base imagery sources and dates are included in the metadata for the shapefile. The Service is not responsible for any misuse or misinterpretation of the shapefile.

Additionally, a stakeholder outreach toolkit (comprised of project fact sheets, flyers for the virtual public meetings, and other information about the project) will be made available to local officials upon request. Local officials may use this toolkit to increase awareness of the project and the virtual public meetings within the community. Local officials may contact the individual identified in **FOR FURTHER INFORMATION CONTACT**, above, for more information regarding the toolkit.

Interested parties who are unable to access the proposed boundaries or other information online may contact the individual identified in **FOR FURTHER INFORMATION CONTACT**, above, and reasonable accommodations will be made.

Virtual Public Meetings

We will hold the following public meetings via webcast and teleconference only. The purpose of the meetings is to give the public an overview of the Hurricane Sandy Remapping Project and to offer an opportunity for questions and answers regarding the proposed changes to the CBRS units listed in Appendix A.

Date	Time (Eastern time)	States
January 29, 2019	10 a.m.–12 p.m	Connecticut and Rhode Island.
January 30, 2019	10 a.m.–12 p.m	New York.
January 31, 2019	10 a.m.–12 p.m	Maryland and Virginia.

Meeting Participation Information

These webcast meetings are open to the public. To ensure that enough call-in lines are available, we request that participants register by emailing *CBRA@fws.gov* by 5 p.m. (Eastern time) on January 22, 2019. Registrants will be provided with instructions for participation via email. Participants requesting reasonable accommodations, such as interpretive services, should notify the person listed under **FOR FURTHER INFORMATION CONTACT** at least one week prior to the meeting.

Appendix A—Hurricane Sandy Remapping Project Units

Below are the affected units for each State, including unit number, unit name, county, and the status of the unit (*i.e.,* existing unit, existing unit reclassified and unit number retired, existing unit transferred and unit number retired, and new unit).

State	County	Unit No.	Unit name	Unit status
Connecticut	New London	CT–00	Barn Island	Existing Unit Transferred and Unit Number Retired.
Connecticut	New London	CT–01	Mason Island	Existing Unit.
Connecticut	New London	CT–02	Bluff Point	Existing Unit.
Connecticut	New London	CT–02P	Bluff Point	Existing Unit Reclassified and Unit Number Retired.
Connecticut	New London	CT–03	Old Black Point	Existing Unit.
Connecticut	New London	CT–04	Hatchett Point	Existing Unit.
Connecticut	New London	CT–05	Little Pond	Existing Unit.
Connecticut	New London	CT–06	Mile Creek	Existing Unit.
Connecticut	New London, Middlesex	CT–07	Griswold Point	Existing Unit.
Connecticut	Middlesex	CT–08	Cold Spring Brook	Existing Unit.
Connecticut	Middlesex	CT–09	Harbor View	Existing Unit Transferred and Unit Number Retired.
Connecticut	New Haven	CT–10	Toms Creek	Existing Unit.
Connecticut	New Haven	CT–11	Seaview Beach	Existing Unit.
Connecticut	New Haven	CT–12	Lindsey Cove	Existing Unit.
Connecticut	New Haven	CT–13	Kelsey Island	Existing Unit.
Connecticut	New Haven	CT–14P	Nathan Hale Park	Existing Unit.
Connecticut	New Haven	CT–15P	Morse Park	Existing Unit.
Connecticut	Fairfield	CT–18P	Long Beach	Existing Unit.
Connecticut	New Haven	CT–19P	East River Marsh	New Unit.
Connecticut	Fairfield	CT–20P	Calf Islands	New Unit.
Connecticut	New London	E01	Wilcox Beach	Existing Unit.
Connecticut	New London	E01A	Ram Island	Existing Unit.
Connecticut	New London	E02	Goshen Cove	Existing Unit.
Connecticut	New London	E03	Jordan Cove	Existing Unit.
Connecticut	New London	E03A	Niantic Bay	Existing Unit.
Connecticut	Middlesex	E03B	Lynde Point	Existing Unit.
Connecticut	Middlesex	E04	Menunketesuck Island	Existing Unit.
Connecticut	Middlesex, New Haven	E05	Hammonasset Point	Existing Unit.
Connecticut	Middlesex	E05P	Hammonasset Point	Existing Unit Reclassified and Unit Number Retired.
Connecticut	New Haven, Fairfield	E07	Milford Point	Existing Unit.
Connecticut	New Haven	E07P	Milford Point	Existing Unit Reclassified and Unit Number Retired.
Connecticut	Fairfield	E08A	Fayerweather Island	Existing Unit Reclassified and Unit Number Retired.
Connecticut	Fairfield	E08AP	Fayerweather Island	New Unit—Partially Reclassified.
Connecticut	Fairfield	E09	Norwalk Islands	Existing Unit.
Connecticut	Fairfield	E09P	Norwalk Islands	Existing Unit.
Maryland	Worcester	MD–01P	Assateague Island	Existing Unit.
Maryland	Somerset	MD–02	Fair Island	Existing Unit.
Maryland	Somerset	MD–03	Sound Shore	Existing Unit.

State	County	Unit No.	Unit name	Unit status
Maryland	Somerset	MD–03P	Sound Shore	New Unit.
Maryland	Somerset	MD–04P	Cedar/Janes Island	Existing Unit.
Maryland	Somerset	MD–06	Joes Cove	Existing Unit.
Maryland	Somerset	MD–07P	Scott Point	Existing Unit.
Maryland	Somerset	MD–08P	Hazard Island	Existing Unit.
Maryland	Somerset	MD–09P	St. Pierre Point	Existing Unit.
Maryland	Somerset	MD–11	Little Deal Island	Existing Unit.
Maryland	Somerset	MD–12	Deal Island	Existing Unit.
Maryland	Somerset	MD–14	Franks Island	Existing Unit.
Maryland	Somerset	MD–14P	Franks Island	Existing Unit.
Maryland	Somerset	MD–15	Long Point	Existing Unit.
Maryland	Wicomico	MD–16	Stump Point	Existing Unit.
Maryland	Somerset	MD–17P	Martin	Existing Unit.
Maryland	Somerset, Dorchester	MD–18P	Marsh Island	Existing Unit.
Maryland	Dorchester	MD–19	Holland Island	Existing Unit.
Maryland	Dorchester	MD–20	Jenny Island	Existing Unit.
Maryland	Dorchester	MD–21P	Barren Island	Existing Unit.
Maryland	Dorchester	MD–22	Hooper Point	Existing Unit.
Maryland	Dorchester	MD–24	Covey Creek	Existing Unit.
Maryland	Dorchester	MD–25	Castle Haven Point	Existing Unit Deleted and Unit Number Retired.
Maryland	Talbot	MD–26	Boone Creek	Existing Unit.
Maryland	Talbot	MD–27	Benoni Point	Existing Unit.
Maryland	Talbot	MD–28	Lowes Point	Existing Unit.
Maryland	Talbot	MD–29	Rich Neck	Existing Unit.
Maryland	Queen Anne's	MD–30	Kent Point	Existing Unit.
Maryland	Queen Anne's	MD–32	Stevensville	Existing Unit.
Maryland	Queen Anne's	MD–33	Wesley Church	Existing Unit.
Maryland	Kent	MD–34P	Eastern Neck Island	Existing Unit.
Maryland	Kent	MD–35	Wilson Pond	Existing Unit.
Maryland	Calvert	MD–37P	Flag Ponds	Existing Unit.
Maryland	Calvert	MD–38	Cove Point Marsh	Existing Unit.
Maryland	Calvert	MD–38P	Cove Point Marsh	New Unit.
Maryland	Calvert	MD–39	Drum Point	Existing Unit.
Maryland	St. Mary's	MD–40	Lewis Creek	Existing Unit.
Maryland	St. Mary's	MD–41	Green Holly Pond	Existing Unit.
Maryland	St. Mary's	MD–44	St. Clarence Creek	Existing Unit.
Maryland	St. Mary's	MD–45	Deep Point	Existing Unit.
Maryland	St. Mary's	MD–46	Point Look-In	Existing Unit.
Maryland	St. Mary's	MD–47	Tanner Creek	Existing Unit.
Maryland	St. Mary's	MD–48P	Point Lookout	Existing Unit.
Maryland	St. Mary's	MD–49	Bisco Creek	Existing Unit.
Maryland	St. Mary's	MD–50	Chicken Cock Creek	Existing Unit.
Maryland	St. Mary's	MD–51	Piney Point Creek	Existing Unit.
Maryland	St. Mary's	MD–52	McKay Cove	Existing Unit.
Maryland	St. Mary's	MD–53	Blake Creek	Existing Unit.
Maryland	St. Mary's	MD–54	Belvedere Creek	Existing Unit.
Maryland	St. Mary's	MD–55P	St. Clements Island	Existing Unit.
Maryland	St. Mary's	MD–56	St. Catherine Island	Existing Unit.
Maryland	Dorchester	MD–58	Lower Hooper Island	New Unit.
Maryland	Dorchester	MD–59	Meekins Neck	New Unit.
Maryland	Talbot	MD–60	Chlora Point	New Unit.
Maryland	St. Mary's	MD–61P	Biscoe Pond	New Unit.
Maryland	St. Mary's	MD–62	Carroll Pond	New Unit.
Maryland	St. Mary's	MD–63	Potter Creek	New Unit.
Maryland	St. Mary's	MD–64	Cherryfield	New Unit.
Maryland	Charles	MD–65	Swan Point	New Unit.
Maryland	Charles	MD–66	Lower Cedar Point	New Unit.
New York	Suffolk	F01	Fisher Island Barriers	Existing Unit.

State	County	Unit No.	Unit name	Unit status
New York	Suffolk	F02	Eatons Neck	Existing Unit.
New York	Suffolk	F04	Crane Neck	Existing Unit Reclassified and Unit Number Retired.
New York	Suffolk	F04P	Crane Neck	New Unit—Mostly Reclassified.
New York	Suffolk	F05	Old Field Beach	Existing Unit.
New York	Suffolk	F05P	Old Field Beach	New Unit—Mostly Reclassified.
New York	Suffolk	F06	Shelter Island Barriers	Existing Unit.
New York	Suffolk	F08A	Sammys Beach	Existing Unit.
New York	Suffolk	F08B	Accabonac Harbor	Existing Unit.
New York	Suffolk	F09	Gardiners Island Barriers	Existing Unit.
New York	Suffolk	F10	Napeague	Existing Unit.
New York	Suffolk	F10P	Napeague	New Unit—Mostly Reclassified.
New York	Suffolk	F11	Mecox	Existing Unit.
New York	Suffolk	F12	Southampton Beach	Existing Unit.
New York	Suffolk	F13	Tiana Beach	Existing Unit.
New York	Suffolk	F13P	Tiana Beach	Existing Unit.
New York	Nassau	NY–03	Sands Point	Existing Unit.
New York	Nassau	NY–04P	Prospect Point	Existing Unit.
New York	Nassau	NY–05P	Dosoris Pond	Existing Unit.
New York	Nassau	NY–06	The Creek Beach	Existing Unit.
New York	Nassau	NY–06P	The Creek Beach	Existing Unit.
New York	Nassau	NY–07P	Centre Island Beach	Existing Unit.
New York	Suffolk	NY–09P	Lloyd Beach	Existing Unit.
New York	Suffolk	NY–10	Lloyd Point	Existing Unit.
New York	Suffolk	NY–10P	Lloyd Point	New Unit—Mostly Reclassified.
New York	Suffolk	NY–11	Lloyd Harbor	Existing Unit.
New York	Suffolk	NY–11P	Lloyd Harbor	Existing Unit.
New York	Suffolk	NY–12	Centerpoint Harbor	Existing Unit.
New York	Suffolk	NY–13	Hobart Beach	Existing Unit.
New York	Suffolk	NY–14	Crab Meadow	Existing Unit.
New York	Suffolk	NY–15	Sunken Meadow	Existing Unit.
New York	Suffolk	NY–15P	Sunken Meadow	New Unit—Mostly Reclassified.
New York	Suffolk	NY–16	Stony Brook Harbor	Existing Unit.
New York	Suffolk	NY–16P	Stony Brook Harbor	New Unit—Partially Reclassified.
New York	Suffolk	NY–17	Cedar Beach	Existing Unit.
New York	Suffolk	NY–17P	Cedar Beach	Existing Unit.
New York	Suffolk	NY–18	Wading River	Existing Unit.
New York	Suffolk	NY–19	Baiting Hollow	Existing Unit Reclassified and Unit Number Retired.
New York	Suffolk	NY–19P	Baiting Hollow	New Unit—Mostly Reclassified.
New York	Suffolk	NY–20P	Luce Landing	Existing Unit.
New York	Suffolk	NY–21P	Mattituck Inlet	Existing Unit.
New York	Suffolk	NY–22P	Goldsmith Inlet	Existing Unit.
New York	Suffolk	NY–23	Truman Beach	New Unit—Mostly Reclassified.
New York	Suffolk	NY–23P	Truman Beach	Existing Unit.
New York	Suffolk	NY–24	Plum Island	Existing Unit.
New York	Suffolk	NY–25	Orient Beach	Existing Unit Reclassified and Unit Number Retired.
New York	Suffolk	NY–25P	Orient Beach	New Unit—Mostly Reclassified.
New York	Suffolk	NY–26	Pipes Cove	Existing Unit.
New York	Suffolk	NY–27	Conkling Point	Existing Unit.
New York	Suffolk	NY–28	Southhold Bay	Existing Unit.
New York	Suffolk	NY–29P	Cedar Beach Point	Existing Unit.
New York	Suffolk	NY–30	Hog Neck Bay	Existing Unit.
New York	Suffolk	NY–31	Little Creek	Existing Unit.
New York	Suffolk	NY–31A	Cutchogue Harbor	New Unit—Partially Reclassified.
New York	Suffolk	NY–31P	Little Creek	Existing Unit.
New York	Suffolk	NY–32	Downs Creek	Existing Unit.
New York	Suffolk	NY–33	Robins Island	Existing Unit.
New York	Suffolk	NY–34	East Creek	Existing Unit.
New York	Suffolk	NY–35	Indian Island	Existing Unit Reclassified and Unit Number Retired.
New York	Suffolk	NY–35P	Indian Island	New Unit—Partially Reclassified.
New York	Suffolk	NY–36	Flanders Bay	Existing Unit.
New York	Suffolk	NY–36P	Flanders Bay	New Unit—Mostly Reclassified.
New York	Suffolk	NY–37	Red Creek Pond	Existing Unit.
New York	Suffolk	NY–38	Squire Pond	Existing Unit.
New York	Suffolk	NY–39	Cow Neck	Existing Unit.
New York	Suffolk	NY–40	North Sea Harbor	Existing Unit.
New York	Suffolk	NY–40P	North Sea Harbor	Existing Unit.
New York	Suffolk	NY–41	Clam Island	Existing Unit Reclassified and Unit Number Retired.
New York	Suffolk	NY–41P	Clam Island	Existing Unit.
New York	Suffolk	NY–42	Mill Creek	Existing Unit.

State	County	Unit No.	Unit name	Unit status
New York	Suffolk	NY–43	Short Beach	Existing Unit.
New York	Suffolk	NY–43P	Short Beach	Existing Unit.
New York	Suffolk	NY–44	Gleason Point	Existing Unit.
New York	Suffolk	NY–45	Shell Beach	Existing Unit.
New York	Suffolk	NY–46	Crab Creek	Existing Unit.
New York	Suffolk	NY–47	Hay Beach Point	Existing Unit.
New York	Suffolk	NY–48	Mashomack Point	Existing Unit.
New York	Suffolk	NY–49	Smith Cove	Existing Unit.
New York	Suffolk	NY–50	Fresh Pond	Existing Unit.
New York	Suffolk	NY–51	Northwest Harbor	Existing Unit Reclassified and Unit Number Retired.
New York	Suffolk	NY–51P	Northwest Harbor	Existing Unit.
New York	Suffolk	NY–52	Hog Creek	Existing Unit.
New York	Suffolk	NY–53	Big Reed Pond	Existing Unit.
New York	Suffolk	NY–54	Oyster Pond	Existing Unit Reclassified and Unit Number Retired.
New York	Suffolk	NY–54P	Oyster Pond	New Unit—Entirely Reclassified.
New York	Suffolk	NY–55	Montauk Point	Existing Unit Reclassified and Unit Number Retired.
New York	Suffolk	NY–55P	Montauk Point	New Unit—Mostly Reclassified.
New York	Suffolk	NY–56	Amagansett	Existing Unit.
New York	Suffolk	NY–56P	Amagansett	Existing Unit.
New York	Suffolk	NY–57	Georgica/Wainscott Ponds	Existing Unit.
New York	Suffolk	NY–58	Sagaponack Pond	Existing Unit.
New York	Suffolk, Nassau	NY–59	Fire Island	Existing Unit.
New York	Suffolk, Nassau	NY–59P	Fire Island	Existing Unit
New York	Queens, Kings, Nassau	NY–60P	Jamaica Bay	Existing Unit.
New York	Nassau	NY–88	Centre Island	New Unit.
New York	Suffolk	NY–89	Duck Island Harbor	New Unit.
New York	Suffolk	NY–90P	Peconic Dunes	New Unit
New York	Suffolk	NY–92	Cold Spring Pond	New Unit.
New York	Suffolk	NY–93	South Ferry	New Unit.
New York	Suffolk	NY–94	Log Cabin Creek	New Unit.
New York	Suffolk	NY–95P	Little Northwest Creek	New Unit.
New York	Suffolk	NY–96P	Dennistown Bell Park	New Unit.
Rhode Island, Massachusetts.	Newport, Bristol	D01	Little Compton Ponds	Existing Unit.
Rhode Island	Newport	D01P	Tunipus Pond	Existing Unit.
Rhode Island	Newport	D02	Fogland Marsh	Existing Unit.
Rhode Island	Washington, Kent, Newport, Bristol.	D02B	Prudence Island	Existing Unit.
Rhode Island	Kent, Newport, Bristol	D02BP	Prudence Island	Existing Unit.
Rhode Island	Washington	D02C	West Narragansett Bay	Existing Unit.
Rhode Island	Newport	D02P	Fogland Marsh	New Unit—Entirely Reclassified.
Rhode Island	Washington	D03	Card Ponds	Existing Unit.
Rhode Island	Washington	D03P	Card Ponds	Existing Unit.
Rhode Island	Washington	D04	Green Hill Beach	Existing Unit.
Rhode Island	Washington	D05	East Beach	Existing Unit Reclassified and Unit Number Retired.
Rhode Island	Washington	D05P	East Beach	Existing Unit.
Rhode Island	Washington	D06	Quonochontaug Beach	Existing Unit.
Rhode Island	Washington	D06P	Quonochontaug Beach	New Unit—Mostly Reclassified.
Rhode Island	Washington	D07	Maschaug Ponds	Existing Unit.
Rhode Island, Connecticut.	Washington, New London	D08	Napatree	Existing Unit.
Rhode Island	Washington	D08P	Napatree	Existing Unit.
Rhode Island	Washington	D09	Block Island	Existing Unit.
Rhode Island	Washington	D09P	Block Island	Existing Unit.
Rhode Island	Newport	RI–01	Brown Point	Existing Unit.
Rhode Island	Newport	RI–02	Sapowet Point	Existing Unit.
Rhode Island	Newport	RI–02A	McCorrie Point	Existing Unit.
Rhode Island	Newport	RI–02P	Sapowet Point	New Unit—Mostly Reclassified.
Rhode Island	Newport	RI–03P	Sandy Point	Existing Unit.
Rhode Island	Newport	RI–08	Fox Hill Marsh	Existing Unit.
Rhode Island	Newport	RI–08P	Fox Hill Marsh	Existing Unit.
Rhode Island	Washington	RI–09	Bonnet Shores Beach	Existing Unit.
Rhode Island	Washington	RI–10	Narragansett Beach	Existing Unit.
Rhode Island	Washington	RI–10P	Narragansett Beach	Existing Unit.
Rhode Island	Washington	RI–11	Seaweed Beach	Existing Unit Reclassified and Unit Number Retired.
Rhode Island	Washington	RI–11P	Seaweed Beach	Existing Unit.
Rhode Island	Washington	RI–12	East Matunuck Beach	Existing Unit Reclassified and Unit Number Retired.
Rhode Island	Washington	RI–12P	East Matunuck Beach	Existing Unit.

State	County	Unit No.	Unit name	Unit status
Rhode Island	Washington	RI–13P	Misquamicut Beach	Existing Unit.
Rhode Island	Washington	RI–14P	Point Judith	New Unit.
Virginia	Accomack	K03	Cedar Island	Existing Unit.
Virginia	Northampton	K04	Little Cobb Island	Existing Unit.
Virginia	Northampton	K05	Fishermans Island	Existing Unit.
Virginia	Northampton	K05P	Fishermans Island	Existing Unit.
Virginia	Accomack	VA–01P	Assateague Island	Existing Unit.
Virginia	Accomack	VA–02P	Assawoman Island	Existing Unit.
Virginia	Accomack	VA–03P	Metompkin Island	Existing Unit.
Virginia	Accomack, Northampton	VA–04P	Parramore/Hog/Cobb Islands	Existing Unit.
Virginia	Northampton	VA–05P	Wreck Island	Existing Unit.
Virginia	Northampton	VA–06P	Smith Island	Existing Unit.
Virginia	Northampton	VA–09	Elliotts Creek	Existing Unit.
Virginia	Northampton	VA–10	Old Plantation Creek	Existing Unit.
Virginia	Northampton	VA–11	Wescoat Point	Existing Unit.
Virginia	Northampton	VA–12	Great Neck	Existing Unit.
Virginia	Northampton	VA–13	Westerhouse Creek	Existing Unit.
Virginia	Northampton	VA–14	Shooting Point	Existing Unit.
Virginia	Accomack, Northampton	VA–16	Scarborough Neck	Existing Unit.
Virginia	Accomack	VA–16P	Scarborough Neck	New Unit—Mostly Reclassified.
Virginia	Accomack	VA–17	Craddock Neck	Existing Unit.
Virginia	Accomack	VA–17P	Craddock Neck	New Unit.
Virginia	Accomack	VA–18	Hacks Neck	Existing Unit.
Virginia	Accomack	VA–19	Parkers/Finneys Islands	Existing Unit.
Virginia	Accomack	VA–20	Parkers Marsh	New Unit—Partially Reclassified.
Virginia	Accomack	VA–20P	Parkers Marsh	Existing Unit.
Virginia	Accomack	VA–21	Beach Island	Existing Unit.
Virginia	Accomack	VA–22	Russell Island	Existing Unit.
Virginia	Accomack	VA–22P	Russell Island	New Unit.
Virginia	Accomack	VA–23	Simpson Bend	Existing Unit.
Virginia	Accomack	VA–24	Drum Bay	Existing Unit.
Virginia	Accomack	VA–25	Fox Islands	Existing Unit.
Virginia	Accomack	VA–26	Cheeseman Island	Existing Unit.
Virginia	Accomack	VA–27	Watts Island	Existing Unit.
Virginia	Accomack	VA–28	Tangier Island	Existing Unit.
Virginia	Accomack	VA–28P	Tangier Island	New Unit—Entirely Reclassified.
Virginia	Westmoreland	VA–29	Elbow Point	Existing Unit.
Virginia	Westmoreland	VA–30	White Point	Existing Unit.
Virginia	Westmoreland	VA–31	Cabin Point	Existing Unit.
Virginia	Westmoreland	VA–32	Glebe Point	Existing Unit.
Virginia	Westmoreland	VA–33	Sandy Point	Existing Unit.
Virginia	Northumberland	VA–34	Judith Sound	Existing Unit.
Virginia	Northumberland	VA–35	Cod Creek	Existing Unit.
Virginia	Northumberland	VA–36	Presley Creek	Existing Unit.
Virginia	Northumberland	VA–37	Cordreys Beach	Existing Unit.
Virginia	Northumberland	VA–38	Marshalls Beach	Existing Unit.
Virginia	Northumberland	VA–39P	Ginny Beach	Existing Unit.
Virginia	Northumberland	VA–40	Gaskin Pond	Existing Unit.
Virginia	Northumberland	VA–41	Owens Pond	Existing Unit.
Virginia	Northumberland	VA–42	Chesapeake Beach	Existing Unit.
Virginia	Northumberland	VA–43	Fleet Point	Existing Unit.
Virginia	Northumberland	VA–44	Bussel Point	Existing Unit.
Virginia	Northumberland	VA–45	Harveys Creek	Existing Unit.
Virginia	Northumberland	VA–46	Ingram Cove	Existing Unit.
Virginia	Northumberland	VA–47	Bluff Point Neck	Existing Unit.
Virginia	Northumberland	VA–47P	Bluff Point Neck	New Unit.
Virginia	Northumberland	VA–48	Barnes Creek	Existing Unit.
Virginia	Lancaster	VA–49	North Point	Existing Unit.
Virginia	Lancaster	VA–50	Windmill Point	Existing Unit.
Virginia	Lancaster	VA–51	Deep Hole Point	Existing Unit.
Virginia	Middlesex	VA–52	Sturgeon Creek	Existing Unit.
Virginia	Middlesex	VA–53	Jackson Creek	Existing Unit.
Virginia	Middlesex	VA–54	Stove Point	Existing Unit Deleted and Unit Number Retired.
Virginia	Mathews	VA–55	Rigby Island/Bethel Beach	Existing Unit.
Virginia	Mathews	VA–55P	Rigby Island/Bethel Beach	New Unit.
Virginia	Mathews	VA–56	New Point Comfort	Existing Unit.
Virginia	Gloucester	VA–57	Ware Neck	Existing Unit.
Virginia	Gloucester	VA–58	Severn River	Existing Unit.
Virginia	City of Poquoson (Independent City).	VA–59P	Plum Tree Island	Existing Unit.
Virginia	City of Hampton (Independent City).	VA–60	Long Creek	Existing Unit.
Virginia	City of Hampton (Independent City).	VA–60P	Long Creek	Existing Unit.

State	County	Unit No.	Unit name	Unit status
Virginia	City of Virginia Beach (Independent City).	VA–61P	Cape Henry	Existing Unit.
Virginia	City of Virginia Beach (Independent City).	VA–62P	Back Bay	Existing Unit.
Virginia	Northumberland	VA–63P	Dameron Marsh	New Unit.
Virginia	Lancaster	VA–64	Little Bay	New Unit.
Virginia	Lancaster	VA–65P	White Marsh	New Unit.
Virginia	Gloucester	VA–66	Lone Point	New Unit.
Virginia	Gloucester	VA–67	Oldhouse Creek	New Unit.
Virginia	York	VA–68	Bay Tree Beach	New Unit.
Virginia	York	VA–68P	Bay Tree Beach	New Unit.

Gary Frazer,

Assistant Director for Ecological Services.

[FR Doc. 2018–27322 Filed 12–17–18; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[190A2100DD/AAKC001030/A0A501010.999900 253G; OMB Control Number 1076–0112]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Tribal Reassumption of Jurisdiction Over Child Custody Proceedings

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of Information Collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, we, the Bureau of Indian Affairs (BIA) are proposing to renew an information collection.

DATES: Interested persons are invited to submit comments on or before January 17, 2019.

ADDRESSES: Send written comments on this information collection request (ICR) to the Office of Management and Budget's Desk Officer for the Department of the Interior by email at *OIRA_Submission@omb.eop.gov;* or via facsimile to (202) 395–5806. Please provide a copy of your comments to Evangeline M. Campbell, Chief, Division of Human Services, Bureau of Indian Affairs, 1849 C Street NW, MIB–3645, Washington, DC 20240; or by email to *evangeline.campbell@bia.gov.* Please reference OMB Control Number 1076–0112 in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Evangeline M. Campbell by email at *evangeline.campbell@bia.gov,* or by telephone at 202–513–7621.

In accordance with the Paperwork Reduction Act of 1995, we provide the general public and other Federal agencies with an opportunity to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

A **Federal Register** notice with a 60-day public comment period soliciting comments on this collection of information was published on August 29, 2018. 83 FR 44061. There were no comments received in response to this notice.

We are again soliciting comments on the proposed ICR that is described below. We are especially interested in public comment addressing the following issues: (1) Is the collection necessary to the proper functions of the BIA; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the BIA enhance the quality, utility, and clarity of the information to be collected; and (5) how might the BIA minimize the burden of this collection on the respondents, including through the use 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 can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Abstract: The BIA is seeking to renew the information collection conducted under 25 CFR 13, Tribal Reassumption of Jurisdiction over Child Custody Proceedings, which prescribes procedures by which an Indian tribe that occupies a reservation over which a state asserts any jurisdiction pursuant to federal law may reassume jurisdiction over Indian child proceedings as authorized by the Indian Child Welfare Act, Public Law 95–608, 92 Stat. 3069, 25 U.S.C. 1918.

The collection of information will ensure that the provisions of Public Law 95–608 are met. Any Indian Tribe that became subject to State jurisdiction pursuant to the provisions of the Act of August 15, 1953 (67 Stat. 588), as amended by title IV of the Act of April 11, 1968 (82 Stat. 73,78), or pursuant to any other Federal law, may reassume jurisdiction over child custody proceedings. The collection of information provides data that will be used in considering the petition and feasibility of the plan of the Tribe for reassumption of jurisdiction over Indian child custody proceedings. We collect the following information: Full name, address, and telephone number of petitioning Tribe or Tribes; a Tribal resolution; estimated total number of members in the petitioning Tribe of Tribes with an explanation of how the number was estimated; current criteria for Tribal membership; citation to provision in Tribal constitution authorizing the Tribal governing body to exercise jurisdiction over Indian child custody matters; description of Tribal court; copy of any Tribal ordinances or Tribal court rules establishing procedures or rules for exercise of jurisdiction over child custody matters; and all other information required by 25 CFR 13.11.

Title of Collection: Tribal Reassumption of Jurisdiction over Child Custody Proceedings.

OMB Control Number: 1076–0112.

Form Number: None.

Type of Review: Extension of a currently approved collection.

Respondents/Affected Public: Federally recognized Tribes who submit Tribal reassumption petitions for review and approval by the Secretary of the Interior.

Total Estimated Number of Annual Respondents: 1.

Total Estimated Number of Annual Responses: 1.

Estimated Completion Time per Response: 8 hours.

Total Estimated Number of Annual Burden Hours: 8 hours.

Respondent's Obligation: Required to Obtain or Retain a Benefit.

Frequency of Collection: On occasion.

Total Estimated Annual Non-hour Burden Cost: None.

An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Elizabeth K. Appel,

Director, Office of Regulatory Affairs and Collaborative Action—Indian Affairs.

[FR Doc. 2018–27350 Filed 12–17–18; 8:45 am]

BILLING CODE 4337–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLCO956000 L14400000.BJ0000 19X]

Notice of Filing of Plats of Survey, Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of official filing.

SUMMARY: The plat of survey of the following described lands is scheduled to be officially filed in the Bureau of Land Management (BLM), Colorado State Office, Lakewood, Colorado, 30 calendar days from the date of this publication. The survey, which was executed at the request of the U.S. Forest Service, is necessary for the management of these lands.

DATES: Unless there are protests of this action, the plat described in this notice will be filed on January 17, 2019.

ADDRESSES: You may submit written protests to the BLM Colorado State Office, Cadastral Survey, 2850 Youngfield Street, Lakewood, CO 80215–7093.

FOR FURTHER INFORMATION CONTACT: Randy Bloom, Chief Cadastral Surveyor for Colorado, (303) 239–3856; *rbloom@blm.gov*. Persons who use a telecommunications device for the deaf may call the Federal Relay Service at 1–800–877–8339 to contact the above individual during normal business hours. The Service is available 24 hours a day, seven days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The supplemental plat of section 25 in Township 37 North, Range 3 East, New Mexico Principal Meridian, Colorado, was approved on November 28, 2018.

A person or party who wishes to protest the above survey must file a written notice of protest within 30 calendar days from the date of this publication at the address listed in the **ADDRESSES** section of this notice. A statement of reasons for the protest may be filed with the notice of protest and must be filed within 30 calendar days after the protest is filed. If a protest against the survey is received prior to the date of official filing, the filing will be stayed pending consideration of the protest. A plat will not be officially filed until the day after all protests have been dismissed or otherwise resolved.

Before including your address, phone number, email address, or other personal identifying information in your protest, please be aware that your entire protest, including your personal identifying information, may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority: 43 U.S.C. Chap. 3.

Randy A. Bloom,

Chief Cadastral Surveyor.

[FR Doc. 2018–27368 Filed 12–17–18; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

[RR83570000, 190R5065C6, RX.59389832.1009676; OMB Control Number 1006–0002]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Recreation Use Data Reports

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, we, the Bureau of Reclamation (Reclamation) are proposing to renew an information collection with revisions.

DATES: Interested persons are invited to submit comments on or before January 17, 2019.

ADDRESSES: Send written comments on this information collection request (ICR) to the Office of Management and Budget's Desk Officer for the Department of the Interior by email at *OIRA_Submission@omb.eop.gov*; or via facsimile to (202) 395–5806. Please provide a copy of your comments to Ronnie Baca, Bureau of Reclamation, Office of Policy and Administration, 84–57000, P.O. Box 25007, Denver, CO 80225–0007; or by email to *rbaca@usbr.gov*. Please reference OMB Control Number 1006–0002 in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Ronnie Baca by email at *rbaca@usbr.gov,* or by telephone at (303) 445–3257. You may also view the ICR at *http://www.reginfo.gov/public/do/PRAMain*.

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995, we provide the general public and other Federal agencies with an opportunity to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

A **Federal Register** notice with a 60-day public comment period soliciting comments on this collection of information was published on July 25, 2018 (83 FR 35285). No comments were received.

We are again soliciting comments on the proposed ICR that is described below. We are especially interested in public comment addressing the following issues: (1) Is the collection necessary to the proper functions of Reclamation; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might Reclamation enhance the quality, utility, and clarity of the information to be collected; and (5) how might Reclamation minimize the burden of this collection on the respondents, including through the use of information technology.

Comments that you submit in response to this notice are a matter of

public record. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Abstract: Reclamation collects agency-wide recreation and concession information to fulfill congressional reporting requirements pursuant to current public laws, including the Federal Water Project Recreation Act (16 U.S.C. 460I), and the Federal Lands Recreation Enhancement Act (16 U.S.C. 87). In addition, collected information will permit relevant program assessments of resources managed by Reclamation, its recreation managing partners, and/or concessionaires for the purpose of contributing to the implementation of Reclamation's mission. More specifically, the collected information enables Reclamation to (1) evaluate the effectiveness of program management based on existing recreation and concessionaire resources and facilities, and (2) validate the efficiency of resources for public use within partner managed recreation resources, located on Reclamation project lands in the 17 Western States.

Title of Collection: Recreation Use Data Report.

OMB Control Number: 1006–0002.

Form Number: Form 7–2534—Recreation Use Data Report.

Type of Review: Revision of a currently approved collection.

Respondents/Affected Public: State, local, or tribal governments; agencies who manager Reclamation's recreation resources and facilities; and commercial concessions, subconcessionaires, and nonprofit organizations located on Reclamation lands with associated recreation services.

Total Estimated Number of Annual Respondents: 212.

Total Estimated Number of Annual Responses: 212.

Estimated Completion Time per Response: 40 minutes.

Total Estimated Number of Annual Burden Hours: 141 hours.

Respondent's Obligation: Mandatory.

Frequency of Collection: Annually.

Total Estimated Annual Nonhour Burden Cost: 0.

An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Karl Stock,

Acting Director, Policy and Administration.

[FR Doc. 2018–27360 Filed 12–17–18; 8:45 am]

BILLING CODE 4332–90–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

[RR04651000, 19XR0680G1, RX.08605001.1000000]

Hydroelectric Power Development at Silver Jack Dam, Bostwick Park Project, Colorado

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of intent to accept proposals, select lessee, and contract for hydroelectric power development at Silver Jack Dam.

SUMMARY: Current Federal policy allows non-Federal development of electrical power resource potential on Federal water resource projects. The Bureau of Reclamation (Reclamation) will consider proposals for non-Federal development of hydroelectric power at Silver Jack Dam, a feature of the Bostwick Park Project, located in Colorado. Reclamation is considering such hydroelectric power development under a Lease of Power Privilege. No Federal funds will be available for such hydroelectric power development.

DATES: A written proposal and seven copies must be submitted on or before 4:00 p.m. (MDT) May 17, 2019. A proposal will be considered timely only if it is received in the office of the Area Manager on or before 4:00 p.m. on the designated date. Interested entities are cautioned that delayed delivery to this office due to failures or misunderstandings of the entity and/or of mail, overnight, or courier services will not excuse lateness and, accordingly, are advised to provide sufficient time for delivery. Late proposals will not be considered.

ADDRESSES: Send written proposals to Mr. Ed Warner, Area Manager, Western Colorado Area Office, Bureau of Reclamation, 445 West Gunnison Avenue, Suite 221, Grand Junction, Colorado 81501–5711, telephone (970) 248–0600.

FOR FURTHER INFORMATION CONTACT: Technical data, including past water release patterns, may be obtained by contacting Mr. Ryan Christianson, Water Management Group Chief, Western Colorado Area Office, Bureau of Reclamation, 445 West Gunnison Avenue, Suite 221, Grand Junction, Colorado 81501, telephone (970) 248–0652. Reclamation will be available to meet with interested entities only upon written request to the Water Management Group Chief at the above cited address. Reclamation will provide an opportunity for a site visit. In addition, Reclamation reserves the right to schedule a single meeting and/or visit to address the questions of all entities that have submitted questions or requested site visits. Information related to the operation and maintenance (O&M) of Silver Jack Dam may be obtained by contacting Mr. Allen Distel, Bostwick Park Water Conservancy District, 400 South 3rd Street, Montrose, Colorado 81402, telephone (970) 249–8707.

SUPPLEMENTARY INFORMATION: The Bostwick Park Project is a Federal Reclamation project. This Notice presents background information, proposal content guidelines, and information concerning selection of a non-Federal entity to develop hydroelectric power at Silver Jack Dam, and power purchasing and/or marketing considerations. Interested parties will not need to file an application with the Federal Energy Regulatory Commission. To be considered for selection, the applicant's proposed Lease of Power Privilege (LOPP) project must not impair the efficiency of Reclamation project power or water deliveries, impact the structural integrity of the project, jeopardize public safety, or negatively affect any other Reclamation project purposes.

The Bostwick Park Project, located near the town of Montrose in west-central Colorado on the Cimarron River in the Colorado River Basin, was authorized for construction (including hydropower) by the Colorado River Basin Project Act of September 2, 1964 (Pub. L. 88–568), as a participating project under the Colorado River Storage Project Act of April 11, 1956 (Pub. L. 84–485). The Bostwick Park Water Conservancy District (District), under its contracts with the United States, has certain operation, maintenance, replacement, and repayment responsibilities and obligations concerning Silver Jack Dam.

Reclamation is considering hydroelectric power development at Silver Jack Dam under a LOPP. A LOPP is an alternative to development under a license from the Federal Energy Regulatory Commission. A LOPP is a contractual right given to a non-Federal

entity to use a Reclamation facility for electric power generation consistent with Reclamation project purposes. Leases of power privilege have terms not to exceed 40 years. The general authority for LOPP under Reclamation law includes, among others, the Town Sites and Power Development Act of 1906 (43 U.S.C. Sec. 522), and the Reclamation Project Act of 1939 (43 U.S.C. 485h(c)) (1939 Act).

Reclamation will be the lead Federal agency for ensuring compliance with the National Environmental Policy Act (NEPA) of any LOPP considered in response to this Notice. Reclamation will also lead necessary consultation with American Indian Tribal Governments and compliance with the National Historic Preservation Act (NHPA), Endangered Species Act (ESA), and other related environmental regulations for all elements of the proposed project.

LOPPs may be issued only when Reclamation has determined that NEPA and any other regulatory compliance requirements are completed. Any LOPP at Silver Jack Dam must accommodate existing contractual and environmental commitments related to O&M of such existing facilities. The lessee (*i.e.,* successful proposing entity) will be required to enter into a contract with Reclamation. This contract will (1) address requirements related to coordination of operations and maintenance with Bostwick Park Project stakeholders (including the District) and (2) stipulate that the LOPP lessee will be responsible for any increase in operations or maintenance costs that are attributable to the hydroelectric power development.

All costs incurred by the United States related to development and O&M under a LOPP, including NEPA and other environmental regulatory compliance, engineering reviews, and development of the LOPP, would be the expense of the lessee. In addition, the lessee would be required to make annual payments to the United States for the use of a Federal facility at a rate of 3 mills per kilowatt-hour of generation. If conditions provide opportunity for substantial benefits to accrue to the lessee, then the United States will benefit proportionally.

Under the LOPP, provisions will be included for the mill rate to increase each year commensurate with inflation based on the average of the previous 5 years of the Gross Domestic Product (GDP) Price Deflator. If the 5-year GDP Price Deflator average shows no change or deflation, the LOPP rate will remain the same as the previous year's rate. The rate of increase of the 5-year GDP Price Deflator average will be capped at 5 percent. Such annual payments to the United States would be deposited as a credit to the Upper Colorado River Basin Fund, and are applied against the total outstanding reimbursable repayment obligation for reimbursable project construction costs of the Federal project, on which the LOPP is issued, pursuant to the existing construction cost allocation (not applied only against power construction costs).

Proposal Content Guidelines

Interested parties should submit proposals explaining in as precise detail as is practicable how the hydropower potential would be developed. Minimum factors by which a proposal will be scored and criteria evaluated include the following:

(a) Anticipated contractual arrangements with the District for the Bostwick Park Project feature(s) that are proposed for utilization in the hydropower development under consideration. Define how the hydropower development would operate in harmony with the multiple purposes of the Bostwick Park Project and existing applicable contracts related to O&M of Bostwick Park Project feature(s) being considered for modification.

(b) Information regarding whether the applicant qualifies as a preference entity. If the proposal is made by a group of entities or by a subdivision of an entity, then the application must explain whether and why the applicant or applicants qualify as preference entities. The term ''preference entity,'' as applied to a LOPP, means an entity qualifying for preference under Section 9c of the 1939 Act as a municipality, public corporation or agency, or cooperative or other nonprofit organization financed in whole or in part by loans made pursuant to the Rural Electrification Act of 1936, as amended.

(c) Information relevant to the qualifications of the proposing entity to plan and implement such a project, including but not limited to: Type of organization; length of time in business; experience in funding, design, and construction of similar projects; industry rating(s) that indicate financial soundness and/or technical and managerial capability; experience of key management personnel; history of any reorganizations or mergers with other companies; and any other information that demonstrates the interested entity's organizational, technical, and financial ability to perform all aspects of the work. Proposals will include a discussion of past experience in developing, operating, and maintaining similar facilities and provide references as appropriate.

(d) Geographical locations and descriptions of principal structures and other important features of the proposed development including roads and transmission lines. Proposals must estimate and describe installed capacity and the capacity of the power facilities under dry, average, and wet hydrological conditions. Proposals must also describe the daily, weekly, monthly, and annual pattern of expected generation under average, wet, and dry hydrological conditions; the ability of generation to provide ancillary services such as regulation, spinning reserves, and voltampere reactive support; and information on the reliability of the generation, potential maintenance outage schedule, and duration. If capacity and energy can be delivered to another location, either by the proposing entity or by potential third party transmission agents, the proposal must specify where that capacity and energy can be delivered. The proposal must describe the concepts and contractual arrangements (including the involved parties) related to transmission interconnection, power sales, and the proposed approach to third party transmission if required.

(e) Existing title arrangements or a description of the ability to acquire title to or the right to occupy and use lands necessary for the proposed LOPP project, including such additional lands as may be required during construction.

(f) A description of studies necessary to adequately define impacts of the proposed LOPP project on the Bostwick Park Project, historic properties (if such are present), and the environment. The proposal must describe any significant environmental issues associated with the proposed LOPP project and the proposing entity's approach for gathering relevant data and resolving such issues to protect and enhance the quality of the environment. The proposal will explain any proposed use of the LOPP project for conservation and utilization of the available water resources in the public interest.

(g) Plans for assuming liability for damage to the operational and structural integrity of the Bostwick Park Project caused by construction, operation, and/or maintenance of the hydropower development.

(h) Identify the organizational structure planned for the long-term O&M of any proposed hydropower development.

(i) A management plan, including schedules of these activities as applicable, to accomplish activities such

as planning; NEPA compliance; NHPA compliance; ESA compliance; necessary studies; LOPP project development; design, construction, safety plan, and facility testing; and the start of hydropower production.

(j) An estimate of development costs. These costs will include all investment costs such as the cost of studies to determine feasibility; NEPA compliance; NHPA compliance; ESA compliance; other statutory compliance; design; construction; financing as well as the amortized annual cost of the investment; annual O&M expense for the hydropower development; lease payments to the United States; expenses associated with the Reclamation project; and anticipated return on investment. If there are additional transmission expenses associated with the development of the LOPP project, these expenses must also be included. The proposal must identify proposed methods of financing the LOPP project. The proposal must include an economic analysis that compares the present worth of all benefits and costs of the hydropower development.

Selection of Lessee

Reclamation will evaluate proposals received in response to this published Notice. Reclamation may request additional information from individual proposing entities and/or all proposing entities after proposals are submitted, but prior to making a selection of a lessee.

Reclamation will give more favorable consideration to proposals that (1) responsibly develop hydropower; (2) avoid, reduce, or minimize environmental impacts; (3) clearly demonstrate that the offeror is qualified to develop the hydropower facility and provide for long-term O&M; and (4) best share the economic benefits of the hydropower development among parties (including the United States) to the LOPP. A proposal will be deemed unacceptable if it is inconsistent with Bostwick Park Project purposes, as determined by Reclamation.

Reclamation will give preference to those entities that qualify as preference entities, as defined under Proposal Content Guidelines, item (b) of this Notice, provided that they are well qualified to develop and provide for long-term O&M of the hydropower facility. If one applicant is a preference entity and the other is not, and the preference entity's proposed plans are not as well qualified as the non-preference entity's plans, Reclamation will inform the preference entity of the specific reasons why its plans are not as well qualified and afford up to 30 calendar days for the preference entity to render its plans at least as well qualified as the other plans. All other applicants will be informed of this action. If the plans of the preference entity are rendered at least as well qualified within the time allowed, Reclamation will favor the preference entity. If the preference entity's plans are not rendered at least as well qualified within the time allowed, Reclamation will favor the other applicant.

Notice and Time Period To Enter Into LOPP

Reclamation will notify, in writing, all entities submitting proposals of Reclamation's decision regarding selection of the potential lessee. The selected potential lessee will be provided a maximum of 24 months from the date of selection to sign the preliminary lease, complete the requirements set forth in the preliminary lease, and to sign the LOPP. The lessee will have a maximum of 1 year from the date of the execution of the LOPP to complete final designs, specifications, etc., and an additional 1 year to begin construction. A maximum of 4 years is allowed, from the date of the preliminary lease to the beginning of construction. Maximum timeframes for construction will be determined by the Upper Colorado Regional Director. The above timeframes will only be extended for just cause resulting from actions and/or circumstances that are beyond the control of Reclamation or the lessee. Just cause and timeframe adjustments will be determined solely by the Upper Colorado Regional Director.

Dated: October 24, 2018.

Brent Rhees,

Regional Director, Upper Colorado Region.

[FR Doc. 2018–27299 Filed 12–17–18; 8:45 am]

BILLING CODE 4332–90–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

[RR83550000, 190R5065C6, RX.59389832.1009676]

Quarterly Status Report of Water Service, Repayment, and Other Water-Related Contract Actions

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of contract actions.

SUMMARY: Notice is hereby given of contractual actions that have been proposed to the Bureau of Reclamation (Reclamation) and are new, discontinued, or completed since the last publication of this notice. This notice is one of a variety of means used to inform the public about proposed contractual actions for capital recovery and management of project resources and facilities consistent with section 9(f) of the Reclamation Project Act of 1939. Additional announcements of individual contract actions may be published in the **Federal Register** and in newspapers of general circulation in the areas determined by Reclamation to be affected by the proposed action.

ADDRESSES: The identity of the approving officer and other information pertaining to a specific contract proposal may be obtained by calling or writing the appropriate regional office at the address and telephone number given for each region in the **SUPPLEMENTARY INFORMATION** section of this notice.

FOR FURTHER INFORMATION CONTACT: Michelle Kelly, Reclamation Law Administration Division, Bureau of Reclamation, P.O. Box 25007, Denver, Colorado 80225–0007; telephone 303–445–2888.

SUPPLEMENTARY INFORMATION: Consistent with section 9(f) of the Reclamation Project Act of *1939,* and the rules and regulations published in 52 FR 11954, April 13, 1987 (43 CFR 426.22), Reclamation will publish notice of proposed or amendatory contract actions for any contract for the delivery of project water for authorized uses in newspapers of general circulation in the affected area at least 60 days prior to contract execution. Announcements may be in the form of news releases, legal notices, official letters, memorandums, or other forms of written material. Meetings, workshops, and/or hearings may also be used, as appropriate, to provide local publicity. The public participation procedures do not apply to proposed contracts for the sale of surplus or interim irrigation water for a term of 1 year or less. Either of the contracting parties may invite the public to observe contract proceedings. All public participation procedures will be coordinated with those involved in complying with the National Environmental Policy Act. Pursuant to the ''Final Revised Public Participation Procedures'' for water resource-related contract negotiations, published in 47 FR 7763, February 22, 1982, a tabulation is provided of all proposed contractual actions in each of the five Reclamation regions. When contract negotiations are completed, and prior to execution, each proposed contract form must be approved by the Secretary of the Interior, or pursuant to delegated or redelegated authority, the Commissioner of Reclamation or one of the regional

directors. In some instances, congressional review and approval of a report, water rate, or other terms and conditions of the contract may be involved.

Public participation in and receipt of comments on contract proposals will be facilitated by adherence to the following procedures:

1. Only persons authorized to act on behalf of the contracting entities may negotiate the terms and conditions of a specific contract proposal.

2. Advance notice of meetings or hearings will be furnished to those parties that have made a timely written request for such notice to the appropriate regional or project office of Reclamation.

3. Written correspondence regarding proposed contracts may be made available to the general public pursuant to the terms and procedures of the Freedom of Information Act, as amended.

4. Written comments on a proposed contract or contract action must be submitted to the appropriate regional officials at the locations and within the time limits set forth in the advance public notices.

5. All written comments received and testimony presented at any public hearings will be reviewed and summarized by the appropriate regional office for use by the contract approving authority.

6. Copies of specific proposed contracts may be obtained from the appropriate regional director or his or her designated public contact as they become available for review and comment.

7. In the event modifications are made in the form of a proposed contract, the appropriate regional director shall determine whether republication of the notice and/or extension of the comment period is necessary.

Factors considered in making such a determination shall include, but are not limited to, (i) the significance of the modification, and (ii) the degree of public interest which has been expressed over the course of the negotiations. At a minimum, the regional director will furnish revised contracts to all parties who requested the contract in response to the initial public notice.

Definitions of Abbreviations Used in the Reports

ARRA American Recovery and Reinvestment Act of 2009
BCP Boulder Canyon Project
Reclamation Bureau of Reclamation
CAP Central Arizona Project
CUP Central Utah Project
CVP Central Valley Project
CRSP Colorado River Storage Project
FR Federal Register
IDD Irrigation and Drainage District
ID Irrigation District
M&I Municipal and Industrial
O&M Operation and Maintenance
OM&R Operation, Maintenance, and Replacement
P–SMBP Pick-Sloan Missouri Basin Program
RRA Reclamation Reform Act of 1982
SOD Safety of Dams
SRPA Small Reclamation Projects Act of 1956
USACE U.S. Army Corps of Engineers
WD Water District

Pacific Northwest Region: Bureau of Reclamation, 1150 North Curtis Road, Suite 100, Boise, Idaho 83706–1234, telephone 208–378–5344.

New contract actions:

18. *Cascade ID, Yakima Project, Washington:* Contract for Yakima Tribes use of Cascade ID's canal for Melvin R. Sampson Hatchery.

19. *Bitter Root ID, Bitter Root Project, Montana:* Amendment to SOD contract to extend repayment period.

20. Water user entities responsible for repayment of reimbursable project construction costs in Idaho, Washington, Oregon, Montana, and Wyoming: Contracts for conversion or prepayment executed pursuant to the Water Infrastructure Improvements for the Nation Act, Public Law 114–322, Sec. 4011(a–d).

Mid-Pacific Region: Bureau of Reclamation, 2800 Cottage Way, Sacramento, California 95825–1898, telephone 916–978–5250.

New contract action:

53. *Water user entities responsible for repayment of reimbursable project construction costs in California, Nevada, and Oregon:* Contracts for conversion or prepayment executed pursuant to the Water Infrastructure Improvements for the Nation Act, Public Law 114–322, Sec. 4011(a–d).

Lower Colorado Region: Bureau of Reclamation, P.O. Box 61470 (Nevada Highway and Park Street), Boulder City, Nevada 89006–1470, telephone 702–293–8192.

New contract actions:

21. *Present Perfected Right 30 (Stephenson), BCP, California:* Offer contracts for delivery of Colorado River water to holders of miscellaneous present perfected rights as described in the 2006 Consolidated Decree in *Arizona* v. *California,* 547 U.S. 150.

22. *San Carlos Apache and Pascua Yaqui Tribes, CAP, Arizona:* Execute a CAP water lease for the San Carlos Apache Tribe to lease 1,750 acre-feet of its CAP water to the Pascua Yaqui Tribe during calendar year 2019.

Completed contract actions:

4. *Ogram Farms, BCP, Arizona:* Assign the contract to the new landowners and revise Exhibit A of the contract to change the contract service area and points of diversion/delivery. Contract executed on August 23, 2018.

10. *Cibola Valley IDD and Western Water, LLC, BCP, Arizona:* Execute a proposed partial assignment of fourth priority Colorado River water in the amount of 621.48 acre-feet per year from the District to Western Water, LLC and a new Colorado River water delivery contract with Western Water, LLC. Contract executed on July 24, 2018.

11. *Red River Land Company, LLC; BCP; Arizona:* Review and approve a proposed partial assignment of 300 acre-feet per year of Arizona fourth priority Colorado River water entitlement from Cibola Valley IDD to Red River and execute the associated amendment to Cibola Valley IDD's contract and enter into a Colorado River water delivery contract with Red River. Contract executed on July 24, 2018.

13. *Rayner Ranches, BCP, Arizona:* Review and approve a proposed assignment of Rayner Ranches Colorado River water delivery contract for 4,500 acre-feet per year to GM Gabrych Family, LP and execute a new Colorado River water delivery contract with GM Gabrych Family, LP. Contract executed on August 31, 2018.

19. *San Carlos Apache Tribe and Freeport Minerals Corporation, CAP, Arizona:* Execute a CAP water lease in order for the San Carlos Apache Tribe to lease 17,010 acre-feet of its CAP water to Freeport Minerals Corporation during calendar year 2018. Lease executed on June 13, 2018.

Upper Colorado Region: Bureau of Reclamation, 125 South State Street, Room 8100, Salt Lake City, Utah 84138–1102, telephone 801–524–3864.

The Upper Colorado Region has no updates to report for this quarter.

Great Plains Region: Bureau of Reclamation, P.O. Box 36900, Federal Building, 2021 4th Avenue North, Billings, Montana 59101, telephone 406–247–7752.

New contract action:

34. *Garrison Diversion Conservancy District; Garrison Diversion Unit, P–SMBP; North Dakota:* Consideration of a contract for 20 cubic-feet-per-second of water for rural and M&I purposes.

Deleted contract actions:

13. *Central Oklahoma Master Conservancy District, Norman Project, Oklahoma:* Amend existing contract No. 14–06–500–590 to execute a separate contract(s) to allow for importation and storage of nonproject water in

accordance with the Lake Thunderbird Efficient Use Act of 2012.

16. *Dickinson-Heart River Mutual Aid Corporation; Dickinson Unit, Heart Division; P–SMBP; North Dakota:* Consideration of amending the long-term irrigation water service contract to modify the acres irrigated.

Completed contract actions:

12. *Purgatoire Water Conservancy District, Trinidad Project, Colorado:* Consideration of a request to amend the contract. Contract executed on August 9, 2018.

25. *Keyhole Country Club; Keyhole Unit, P–SMBP; North Dakota:* Consideration of renewal of contract No. 8–07–60–WS042. Contract executed on June 20, 2018.

31. *Kansas Bostwick ID; Bostwick Division, P–SMBP; Kansas:* Consideration of an amendment to contract No. 16XX630077 to reflect the actual annual expenditures. Contract executed on April 16, 2018.

32. *Bostwick ID; Bostwick Division, P–SMBP; Nebraska:* Consideration of an amendment to contract No. 16XX630076 to reflect the actual annual expenditures. Contract executed on April 30, 2018.

33. *Cody Canal ID, Shoshone Project, Wyoming:* Consideration of an amendment to long-term agreement No. 9–AB–60–00060 to extend the term for 30 years. Contract executed on September 17, 2018.

Dated: December 11, 2018.

Karl Stock,

Acting Director, Policy and Administration.

[FR Doc. 2018–27329 Filed 12–17–18; 8:45 am]

BILLING CODE 4332–90–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

[RR83550000, 190R5065C6, RX.59389832.1009676]

Change in Discount Rate for Water Resources Planning

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of change in discount rate.

SUMMARY: The Bureau of Reclamation is announcing the interest rate to be used by Federal agencies in the formulation and evaluation of plans for water and related land resources is 2.875 percent for fiscal year 2019.

DATES: This discount rate is to be used for the period October 1, 2018, through and including September 30, 2019.

FOR FURTHER INFORMATION CONTACT: Mr. DeShawn Woods, Bureau of Reclamation, Reclamation Law Administration Division, P.O. Box 25007, Denver, Colorado 80225; telephone 303–445–2900.

SUPPLEMENTARY INFORMATION: The Water Resources Planning Act of 1965 and the Water Resources Development Act of 1974 require an annual determination of a discount rate for Federal water resources planning. The discount rate for Federal water resources planning for fiscal year 2019 is 2.875 percent. Discounting is to be used to convert future monetary values to present values.

This rate has been computed in accordance with Section 80(a), Public Law 93–251 (88 Stat. 34), and 18 CFR 704.39, which: (1) Specify that the rate will be based upon the average yield during the preceding fiscal year on interest-bearing marketable securities of the United States which, at the time the computation is made, have terms of 15 years or more remaining to maturity (average yield is rounded to nearest one-eighth percent); and (2) provide that the rate will not be raised or lowered more than one-quarter of 1 percent for any year. The U.S. Department of the Treasury calculated the specified average to be 2.9176 percent. This rate, rounded to the nearest one-eighth percent, is 2.875 percent, which is a change of less than the allowable one-quarter of 1 percent. Therefore, the fiscal year 2019 rate is 2.875 percent.

The rate of 2.875 percent will be used by all Federal agencies in the formulation and evaluation of water and related land resources plans for the purpose of discounting future benefits and computing costs or otherwise converting benefits and costs to a common-time basis.

Dated: December 11, 2018.

Karl Stock,

Acting Director, Policy and Administration.

[FR Doc. 2018–27331 Filed 12–17–18; 8:45 am]

BILLING CODE 4332–90–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1065]

Certain Mobile Electronic Devices and Radio Frequency and Processing Components Thereof; Commission Determination To Review in Part a Final Initial Determination Finding a Violation of Section 337; Schedule for Filing Written Submissions on the Issues Under Review and on Remedy, Public Interest, and Bonding; and Extension of the Target Date

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission (the ''Commission'') has determined to review in part the final initial determination (''ID'') of the administrative law judge (''ALJ''), which was issued on September 28, 2018. The Commission has determined to extend the target date for completion of the investigation to February 19, 2019.

FOR FURTHER INFORMATION CONTACT: Carl P. Bretscher, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205–2382. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (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 this investigation may be viewed on the Commission's Electronic Docket Information System (''EDIS'') (*https://edis.usitc.gov*). Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal, telephone (202) 205–1810.

SUPPLEMENTARY INFORMATION: On August 14, 2017, the Commission instituted this investigation based on a Complaint and amendment thereto filed by Qualcomm Incorporated of San Diego, California (''Qualcomm''). 82 FR 37899 (Aug. 14, 2017). The notice of investigation named Apple Inc. of Cupertino, California (''Apple'') as Respondent. The Complaint alleged violations of Section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), by reason of the importation into the United States,

sale for importation, or sale within the United States after importation of certain mobile electronic devices and radio frequency and processing components thereof that infringe one or more claims of U.S. Patent No. 9,535,490 (''the '490 patent''), U.S. Patent No. 8,698,558 (''the '558 patent''), U.S. Patent No. 8,633,936 (''the '936 patent''), U.S. Patent No. 8,838,949 (''the '949 patent''), U.S. Patent No. 9,608,675 (''the '675 patent''), and U.S. Patent No. 8,487,658 (''the '658 patent''). The Office of Unfair Import Investigations (''OUII'') is also a party to this investigation.

The following claims were voluntarily terminated during the course of this investigation: all asserted claims of the '658 patent, '949 patent, and '675 patent; claims 1, 20–24, 26, 38, 67, and 68 of the '936 patent; claims 1, 6, and 8–20 of the '558 patent; and claims 1–6, 8, 10, and 16–17 of the '490 patent. Comm'n Notice (July 17, 2018) (*aff'g* Order No. 43); Comm'n Notice (May 23, 2018) (*aff'g* Order No. 37); Comm'n Notice (Apr. 6, 2018) (*aff'g* Order No. 34); Comm'n Notice (Mar. 22, 2018) (*aff'g* Order No. 24); Comm'n Notice (Sept. 20, 2017) (*aff'g* Order No. 6). The only claims still at issue are claim 31 of the '490 patent, claim 7 of the '558 patent, and claims 19, 25, and 27 of the '936 patent.

The presiding administrative law judge (''ALJ'') originally set a target date for completion of this investigation within 17 months, *i.e.,* by January 14, 2019. Comm'n Notice (Sept. 11, 2017) (*aff'g* Order No. 3). The Commission subsequently agreed to extend the target date to January 28, 2019. Comm'n Notice (Sept. 26, 2018) (*aff'g* Order No. 44). The Commission also extended the date for determining whether to review the subject ID to December 12, 2018. Comm'n Notice (Nov. 9, 2018).

The ALJ held an evidentiary hearing from June 19–27, 2018. On September 28, 2018, the ALJ issued his final initial determination in this investigation. The ALJ found a violation of Section 337 due to infringement of the '490 patent. ID at 197. The ALJ found no infringement and hence no violation of Section 337 with respect to the '558 patent or '936 patent. *Id.* The ALJ found that Qualcomm satisfied the technical and economic prongs of the domestic industry requirement with respect to the '490 patent, but did not satisfy the technical prong with respect to the '558 patent or '936 patent. *Id.* The ALJ also found that it was not shown by clear and convincing evidence that any asserted claim was invalid. *Id.* The ALJ further recommended that no limited exclusion order or cease-and-desist order be issued in this investigation due to their prospective effects on competitive conditions in the United States, national security, and other public interest concerns. *Id.* at 199–200. The ALJ recommended that bond be set at zero-percent of entered value during the Presidential review period, if any. *Id.* at 201.

Apple and Qualcomm filed their respective petitions for review on October 15, 2018. The parties, including OUII, filed their respective responses to the petitions on October 23, 2018. The Commission has also received a number of public interest statements from third parties, including Intel Corporation; ACT/The App Association; the American Antitrust Institute; the American Conservative Union; Americans for Limited Government; the Computer and Communications Industry Association; Conservatives for Property Rights; Frances Brevets (a patent sovereign fund); Frontiers of Freedom; Innovation Alliance; Inventors Digest; IP Europe; Public Knowledge and Open Markets (a joint submission); RED Technologies; R Street Institute, the Electronic Frontier Foundation, Engine Advocacy, and Lincoln Network (a joint submission), *et al.*

Having reviewed the record in this investigation, including the ALJ's orders and final ID, as well as the parties' petitions and responses thereto, the Commission has determined to review the final ID in part, as follows.

As to the 490 patent, the Commission has determined to review the ALJ's construction of the term ''hold'' and his findings on infringement and the technical prong of domestic industry to the extent they may be affected by that claim construction. The Commission has further determined to review the ALJ's findings as to whether claim 31 of the '490 patent is obvious.

The Commission has determined not to review any of the ALJ's findings with respect to the '558 patent or the '936 patent.

The Commission has also determined not to review the ALJ's findings with respect to the economic prong of the domestic industry requirement.

The parties are asked to provide additional briefing on the following issues regarding the '490 patent, with appropriate reference to the applicable law and the existing evidentiary record. For each argument presented, the parties' submissions should set forth whether and/or how that argument was presented and preserved in the proceedings before the ALJ, in conformity with the ALJ's Ground Rules (Order No. 2), with citations to the record:

A. With regard to the '490 patent, please explain the plain and ordinary meaning of the term ''hold'' in the context of claim 31 of this patent. In particular, explain whether the ordinary meaning of ''hold'' can mean both ''to store, buffer, or accumulate'' data and ''to prevent data from traveling across the bus,'' or whether ''hold'' must be limited to one construction or the other.

B. Assuming ''hold'' could be interpreted to mean ''to store, buffer, or accumulate'' data and ''to prevent data from traveling across the bus,'' as set forth in Question (A), explain whether that construction would affect the ALJ's findings on infringement or the technical prong of domestic industry, and if so, how.

C. Assuming ''hold'' could be interpreted to mean ''to store, buffer, or accumulate'' data and ''to prevent data from traveling across the bus,'' as set forth in Question (A), explain whether that construction would affect the ALJ's analysis of either the Heinrich patent (U.S. Patent No. 9,329,671) or the Balasubramanian patent (U.S. Patent No. 8,160,000) or his findings on obviousness, and if so, how.

D. The Heinrich patent, *supra,* explains that a scheduler may be implemented either through software or hardware to control interprocessor communications in both directions across a bus. *See* Heinrich at 4:44–50, 7:8–21, 8:1–5. Heinrich further teaches that the scheduler can monitor the active state of the receiving processor by monitoring the active state of the IPC bus. *See id.* at 9:50–62. Explain whether the active state of the bus connecting the two processors in Heinrich coincides with or is otherwise related to the active state(s) of the processor(s) receiving the transmission across the bus. If so, explain whether monitoring the active state of the receiving processor (by monitoring the bus) and timing data transmissions to coincide with the active state of the receiving processor(s) will directly, indirectly, or inherently cause the transmissions to coincide with the active state of the bus.

E. Based on your answer to Question (D), explain whether Heinrich's technique of grouping and scheduling transmissions to minimize the number of times a receiving processor switches between its active and sleep states will also minimize the number of times the bus switches between its active and sleep states.

F. Taking into consideration the ALJ's construction of ''after transmission,'' explain whether a scheduler that monitors the active states of both processors (*i.e.,* the application and baseband processors) and controls

transmissions in both directions across the bus to coincide with the active state of each receiving processor will, in the course of its operation, directly, indirectly, or inherently ''pull'' uplink data from the application processor after the scheduler has initiated transmission of downlink data from the modem processor, as in claim 31.

G. Explain whether the scheduler and/or lazy timers in Heinrich may comprise a ''modem timer'' and perform the functions of a modem processor in claim 31.

H. Explain whether the Balasubramanian patent includes any disclosures or teachings relevant to Questions D–G for purposes of analyzing obviousness.

I. Explain whether there is a long-felt but unmet need for the invention of the '490 patent, focusing particularly on evidence of a nexus between the invention and this secondary consideration of non-obviousness.

The parties are requested to brief only the discrete issues identified above, with reference to the applicable law and evidentiary record. The parties are not to brief any other issues on review, which have already been adequately presented in the parties' previous filings.

In connection with the final disposition of this investigation, the Commission may issue: (1) An exclusion order that could result in the exclusion of the subject articles from entry into the United States, and/or (2) a cease-and-desist order that could result in the respondent being required to cease and desist from engaging in unfair acts in the importation and sale of such articles. Accordingly, the Commission is interested in receiving written submissions that address the form of remedy, if any, that should be ordered. If a party seeks exclusion of an article from entry into the United States for purposes other than entry for consumption, the party should so indicate and provide information establishing that activities involving other types of entry either are adversely affecting it or likely to do so. For background, see *Certain Devices for Connecting Computers via Telephone Lines,* Inv. No. 337–TA–360, USITC Pub. No. 2843 (December 1994) (Commission Opinion).

If the Commission contemplates some form of remedy, it must consider the effects of that remedy upon the public interest. The factors the Commission will consider include the effect that an exclusion order and/or cease-and-desist order would have on: (1) The public health and welfare; (2) competitive conditions in the U.S. economy; (3) U.S. production of articles that are like or directly competitive with those that are subject to investigation; and (4) U.S. consumers. The Commission is therefore interested in receiving written submissions that address the aforementioned public interest factors in the context of this investigation.

Accordingly, the Commission is interested in receiving responses to the following questions. For the purpose of preparing their responses, the parties should assume that a violation of Section 337 has been found with respect to claim 31 of the '490 patent only. No other patent or patent claim has been found to be infringed.

A. Assuming the Commission were to affirm the ALJ's finding that only claim 31 of '490 patent is infringed and not invalid, explain the likelihood that Apple or Intel could design around the claimed invention to avoid infringement and, if so, approximately how long it would take to implement such a design-around in Apple's accused products (if known).

B. Explain whether and to what extent Intel supplies the same chipsets used in the accused Apple iPhones to any other U.S. merchant for use in any other products that are made, used, or sold in the United States or imported into the United States.

C. Explain whether the ''carve-outs'' proposed by the Office of Unfair Import Investigations would be practicable, feasible, and would effectively balance enforcement of Qualcomm's '490 patent rights against the interest of avoiding Intel's exit from the relevant market for premium baseband chipsets.

D. Explain whether delaying implementation of a limited exclusion order or cease-and-desist order for a fixed period of time (*e.g.,* six months or one year) would effectively balance enforcement of Qualcomm's patent rights against the adverse consequences alleged by the parties with respect to industry competition, monopolization, the alleged exit of Apple's chipset supplier from the market for 5G technology, and other concerns. If not, explain whether any other ''carve-out'' or limitation in a remedial order can accomplish this objective.

E. Explain whether national security concerns may be taken into consideration for the purpose of evaluating the public interest and, if so, whether and how such national security concerns would be implicated if a limited exclusion order were to issue covering products that infringe claim 31 of the '490 patent.

If the Commission orders some form of remedy, the U.S. Trade Representative, as delegated by the President, has 60 days to approve or disapprove the Commission's action. *See* Presidential Memorandum of July 21, 2005. 70 *Fed. Reg.* 43251 (July 26, 2005). During this period, the subject articles would be entitled to enter the United States under bond, in an amount determined by the Commission and prescribed by the Secretary of the Treasury. The Commission is therefore interested in receiving submissions concerning the amount of the bond that should be imposed if a remedy is ordered.

The Commission has determined to extend the target date for completion of this investigation to February 19, 2019.

Written Submissions: The parties to this investigation are requested to file written submissions on the issues identified in this Notice. Parties to the investigation, interested government agencies, and any other interested parties are also encouraged to file written submissions on the issues of remedy, the public interest, and bonding. Such submissions should address the recommended determination by the ALJ on remedy and bonding. Complainant and OUII are requested to submit proposed remedial orders for the Commission's consideration. Complainant is also requested to state the date that the patents expire and the HTSUS numbers under which the accused products are imported. Complainant is further requested to supply the names of known importers of the Respondent's products at issue in this investigation. The written submissions and proposed remedial orders must be filed no later than the close of business on January 3, 2019. Reply submissions must be filed no later than the close of business on January 10, 2019. Opening submissions are limited to 60 pages. Reply submissions are limited to 40 pages. Such submissions should address the ALJ's recommended determination on remedy and bonding. No further submissions on any of these issues will be permitted unless otherwise ordered by the Commission.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above and submit eight (8) true paper copies to the Office of the Secretary by noon the next day, pursuant to section 201.4(f) of the Commission's Rule of Practice and Procedure (19 CFR 210.4(f)). Submissions should refer to the investigation number (''Inv. No. 337–TA–1065'') in a prominent place on the cover page and/or first page. (*See* Handbook for Electronic Filing Procedures, *https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf*). Persons with questions regarding filing should contact the Secretary (202–205–2000).

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All information, including confidential business information and documents for which confidential treatment is properly sought, submitted to the Commission for purposes of this Investigation may be disclosed to and used: (i) By the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel [1] solely for cybersecurity purposes. All non-confidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.

The authority for the Commission's determination is contained in Section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in part 210 of the Commission's Rules of Practice and Procedure (19 CFR part 210).

By order of the Commission.

Issued: December 12, 2018.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2018–27301 Filed 12–17–18; 8:45 am]

BILLING CODE 7020–02–P

[1] All contract personnel will sign appropriate nondisclosure agreements.

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—UHD Alliance, Inc.

Notice is hereby given that, on November 16, 2018, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), UHD Alliance, Inc. (''UHD Alliance'') filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Charter Communications, St. Louis, MO, has been added as a party to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and UHD Alliance intends to file additional written notifications disclosing all changes in membership.

On June 17, 2015, UHD Alliance filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on July 17, 2015 (80 FR 42537).

The last notification was filed with the Department on September 6, 2018. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on October 17, 2018 (83 FR 52557).

Suzanne Morris,

Chief, Premerger and Division Statistics Unit, Antitrust Division.

[FR Doc. 2018–27326 Filed 12–17–18; 8:45 am]

BILLING CODE 4410–11–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Consent Decree Under the Clean Air Act and the Resource Conservation and Recovery Act

On December 12, 2018, the Department of Justice lodged a proposed consent decree with the United States District Court for the District of Connecticut in the lawsuit entitled *United States* v. *Tradebe Treatment and Recycling Northeast, LLC,* Civil Action No. 3:18-cv-02031. In a complaint, the United States, on behalf of the U.S. Environmental Protection Agency, alleges that Tradebe Treatment and Recycling Northeast, LLC violated the Clean Air Act, 42 U.S.C. 7401, *et seq.,* for failure to comply with EPA regulations for off-site waste and recovery operations, 40 CFR part 63, subpart DD, at its facilities located in Bridgeport and Meriden, Connecticut. The Complaint also alleges a number of violations at the facilities for failure to comply with permits issued under the Resource Conservation and Recovery Act, 42 U.S.C. 6901, *et seq.,* and its underlying regulations at 40 CFR part 264, subparts AA, BB and CC. The proposed consent decree, among other things, requires that Tradebe maintain full compliance with its RCRA permits at the facilities and with applicable hazardous waste regulations, including RCRA air emissions regulations. Both facilities will install new air emission control systems to permanently replace their current control systems, and will adopt additional emission reduction measures for a two year period. Tradebe will also pay a $525,000 settlement 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. *Tradebe Treatment and Recycling, LLC,* D.J. Ref. No. 90–5–2–1–11838. 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, D.C. 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 $10.25 (25 cents per page

reproduction cost), payable to the United States Treasury.

Robert Maher,

Assistant Chief, Environmental Enforcement Section, Environment & Natural Resources Division.

[FR Doc. 2018–27300 Filed 12–17–18; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility To Apply for Trade Adjustment Assistance

In accordance with the Section 223 (19 U.S.C. 2273) of the Trade Act of 1974 (19 U.S.C. 2271, *et seq.*) (''Act''), as amended, the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance under Chapter 2 of the Act (''TAA'') for workers by (TA–W) number issued during the period of *October 20, 2018 through November 9, 2018.* (This Notice primarily follows the language of the Trade Act. In some places however, changes such as the inclusion of subheadings, a reorganization of language, or ''and,'' ''or,'' or other words are added for clarification.)

Section 222(a)—Workers of a Primary Firm

In order for an affirmative determination to be made for workers of a primary firm and a certification issued regarding eligibility to apply for TAA, the group eligibility requirements under Section 222(a) of the Act (19 U.S.C. 2272(a)) must be met, as follows:

(1) The first criterion (set forth in Section 222(a)(1) of the Act, 19 U.S.C. 2272(a)(1)) is that a significant number or proportion of the workers in such workers' firm (or ''such firm'') have become totally or partially separated, or are threatened to become totally or partially separated; AND (2(A) or 2(B) below)

(2) The second criterion (set forth in Section 222(a)(2) of the Act, 19 U.S.C. 2272(a)(2)) may be satisfied by either (A) the Increased Imports Path, or (B) the Shift in Production or Services to a Foreign Country Path/Acquisition of Articles or Services from a Foreign Country Path, as follows:

(A) Increased Imports Path:

(i) The sales or production, or both, of such firm, have decreased absolutely; AND (ii and iii below)

(ii) (I) imports of articles or services like or directly competitive with articles produced or services supplied by such firm have increased; OR

(II)(aa) imports of articles like or directly competitive with articles into which one or more component parts produced by such firm are directly incorporated, have increased; OR

(II)(bb) imports of articles like or directly competitive with articles which are produced directly using the services supplied by such firm, have increased; OR

(III) imports of articles directly incorporating one or more component parts produced outside the United States that are like or directly competitive with imports of articles incorporating one or more component parts produced by such firm have increased; AND

(iii) the increase in imports described in clause (ii) contributed importantly to such workers' separation or threat of separation and to the decline in the sales or production of such firm; OR

(B) Shift in Production or Services to a Foreign Country Path OR Acquisition of Articles or Services From a Foreign Country Path:

(i)(I) there has been a shift by such workers' firm to a foreign country in the production of articles or the supply of services like or directly competitive with articles which are produced or services which are supplied by such firm; OR

(II) such workers' firm has acquired from a foreign country articles or services that are like or directly competitive with articles which are produced or services which are supplied by such firm; AND

(ii) the shift described in clause (i)(I) or the acquisition of articles or services described in clause (i)(II) contributed importantly to such workers' separation or threat of separation.

Section 222(b)—Adversely Affected Secondary Workers

In order for an affirmative determination to be made for adversely affected secondary workers of a firm and a certification issued regarding eligibility to apply for TAA, the group eligibility requirements of Section 222(b) of the Act (19 U.S.C. 2272(b)) must be met, as follows:

(1) a significant number or proportion of the workers in the workers' firm or an appropriate subdivision of the firm have become totally or partially separated, or are threatened to become totally or partially separated; AND

(2) the workers' firm is a supplier or downstream producer to a firm that employed a group of workers who received a certification of eligibility under Section 222(a) of the Act (19 U.S.C. 2272(a)), and such supply or production is related to the article or service that was the basis for such certification (as defined in subsection 222(c)(3) and (4) of the Act (19 U.S.C. 2272(c)(3) and (4)); AND

(3) either—

(A) the workers' firm is a supplier and the component parts it supplied to the firm described in paragraph (2) accounted for at least 20 percent of the production or sales of the workers' firm; OR

(B) a loss of business by the workers' firm with the firm described in paragraph (2) contributed importantly to the workers' separation or threat of separation determined under paragraph (1).

Section 222(e)—Firms Identified by the International Trade Commission

In order for an affirmative determination to be made for adversely affected workers in firms identified by the International Trade Commission and a certification issued regarding eligibility to apply for TAA, the group eligibility requirements of Section 222(e) of the Act (19 U.S.C. 2272(e)) must be met, by following criteria (1), (2), and (3) as follows:

(1) the workers' firm is publicly identified by name by the International Trade Commission as a member of a domestic industry in an investigation resulting in—

(A) an affirmative determination of serious injury or threat thereof under section 202(b)(1) of the Act (19 U.S.C. 2252(b)(1)); OR

(B) an affirmative determination of market disruption or threat thereof under section 421(b)(1) of the Act (19 U.S.C. 2436(b)(1)); OR

(C) an affirmative final determination of material injury or threat thereof under section 705(b)(1)(A) or 735(b)(1)(A) of the Tariff Act of 1930 (19 U.S.C. 1671d(b)(1)(A) and 1673d(b)(1)(A)); AND

(2) the petition is filed during the 1-year period beginning on the date on which—

(A) a summary of the report submitted to the President by the International Trade Commission under section 202(f)(1) of the Trade Act (19 U.S.C. 2252(f)(1)) with respect to the affirmative determination described in paragraph (1)(A) is published in the **Federal Register** under section 202(f)(3) (19 U.S.C. 2252(f)(3)); OR

(B) notice of an affirmative determination described in subparagraph (B) or (C) of paragraph (1) is published in the **Federal Register**; AND

(3) the workers have become totally or partially separated from the workers' firm within—

(A) the 1-year period described in paragraph (2); OR

(B) notwithstanding section 223(b) of the Act (19 U.S.C. 2273(b)), the 1-year period preceding the 1-year period described in paragraph (2).

Affirmative Determinations for Trade Adjustment Assistance

The following certifications have been issued. The date following the company name and location of each determination references the impact date for all workers of such determination.

The following certifications have been issued. The requirements of Section 222(a)(2)(A) (Increased Imports Path) of the Trade Act have been met.

TA–W No.	Subject firm	Location	Impact date
93,714	NRG Energy, Inc., Homer City Generating Station, NRG Energy Services Group, LLC, etc.	Homer City, PA	April 9, 2017.
93,845	Boise Cascade Company, Wood Products Division	Elgin, OR	May 25, 2017.
94,045	Roaring Spring Blank Book Company, Roaring Spring Paper Products Division.	Martinsburg, PA	November 30, 2017.
94,117	ArcelorMittal Plate LLC, Conshohocken Division, ArcelorMittal USA LLC, BSI Electrical, etc.	Conshohocken, PA	May 6, 2018.
94,129	MBC Ventures, Inc., Maryland Brush Company	Baltimore, MD	September 14, 2017.
94,210	Emberex, Inc	Eugene, OR	October 5, 2017.

The following certifications have been issued. The requirements of Section 222(a)(2)(B) (Shift in Production or Services to a Foreign Country Path or Acquisition of Articles or Services from a Foreign Country Path) of the Trade Act have been met.

TA–W No.	Subject firm	Location	Impact date
94,008	Advanced Motors & Drives, Nidec Motor Corporation, CPS Professionals, AP Professionals.	East Syracuse, NY	July 25, 2017.
94,014	Hewlett Packard Enterprise, HPE Hybrid IT—Storage Division	Fort Collins, CO	July 26, 2017.
94,043	Afni, Inc., Universal Department	Tucson, AZ	August 6, 2017.
94,084	Informa, Business Intelligence Division, iMoneyNet Statistics Group	Westborough, MA	August 22, 2017.
94,102	HP Inc., Consumer PCs, Accessories, Displays & Services Division	Palo Alto, CA	August 28, 2017.
94,118	Ciena Corporation	Spokane Valley, WA	September 10, 2017.
94,119	Crystal Vision, LLC, Consolidated Data Services, Omnicom Group, Unisys.	Irving, TX	September 10, 2017.
94,123	Johnson Controls Fire Protection LP, Johnson Controls, SimplexGrinnell, Accounts Payable Team, Agile 1.	Westminster, MA	September 5, 2017.
94,125	Static Control Components, Inc., Static Control Components Limited, Plant 10.	Sanford, NC	January 16, 2018.
94,125A	Static Control Components, Inc., Static Control Components Limited, Plant 1.	Sanford, NC	September 12, 2017.
94,125B	Static Control Components, Inc., Static Control Components Limited, Plant 2.	Sanford, NC	September 12, 2017.
94,125C	Static Control Components, Inc., Static Control Components Limited, Plant 7.	Sanford, NC	September 12, 2017.
94,125D	Static Control Components, Inc., Static Control Components Limited, Plant 9.	Sanford, NC	September 12, 2017.
94,125E	Static Control Components, Inc., Static Control Components Limited, Plant 16.	Sanford, NC	September 12, 2017.
94,125F	Static Control Components, Inc., Static Control Components Limited, Plant 17.	Sanford, NC	September 12, 2017.
94,125G	Static Control Components, Inc., Static Control Components Limited, Plant 18.	Sanford, NC	September 12, 2017.
94,125H	Static Control Components, Inc., Static Control Components Limited, Plant 20.	Sanford, NC	September 12, 2017.
94,127	Deluxe Media Inc., Deluxe Entertainment Services Group Inc., Deluxe Shared Services Inc., etc.	Northvale, NJ	September 13, 2017.
94,128	ELC Beauty, Point of Sale Center of Excellence, Estee Lauder Companies, Inc.	New York, NY	September 10, 2017.
94,142	Hewlett Packard Enterprise, Hewlett Packard Enterprise Pointnext Division, HP Inc.	Palo Alto, CA	September 18, 2017.
94,166	Payless ShoeSource Worldwide, Inc., Finance Department, Payless, Inc.	Topeka, KS	September 25, 2017.
94,182	Aalfs Manufacturing, Inc., Ropa Siete Leguas, Corporate Administrative Offices.	Sioux City, IA	October 1, 2017.
94,183	CSC Holdings, LLC, Call Center Workforce Management Division, Altice USA, Inc.	Bethpage, NY	September 28, 2017.
94,185	Catalina Marketing Corporation, Media Services Division, Account Managers, Senior Account Managers, etc.	St. Petersburg, FL	October 1, 2017.
94,186	MediaNews Group, Inc., DBA Digital First Media, MNG Enterprises, Inc., Shared Services, etc.	Colorado Springs, CO	September 28, 2017.
94,187	MBN (Middle East Broadcasting Networks)	Springfield, VA	September 28, 2017.

TA–W No.	Subject firm	Location	Impact date
94,188	Nokia of America Corporation, Nokia, Nokia Solutions & Networks LLC, Alcatel-Lucent USA.	Naperville, IL	December 17, 2018.
94,194	The Boeing Company El Paso Operations, The Boeing Company, Boeing Defense Space & Security Division, Moseley, etc.	El Paso, TX	October 2, 2017.
94,214	IQVIA Inc., Quintiles IMS, IQVIA Holdings Inc., Chief Information Office, etc.	Chesapeake, VA	October 4, 2017.
94,219	Capital One US Card Operations, Capital One Financial Corporation, Iconma LLC, Allied-Barton Security, etc.	Lincoln, NE	October 9, 2017.
94,223	Wacom Technology Services Company, Wacom Technology Corporation, Target CW (WMBE Payrolling, Inc.).	Portland, OR	October 9, 2017.
94,227	Franke Kitchen Systems LLC, Franke Management AG, Kitchen Systems Division.	Ruston, LA	October 12, 2017.
94,228	Zodiac Pool Systems LLC, Aerotek	Vista, CA	May 17, 2018.
94,228A	Volt and Eastridge, Zodiac Pool Systems LLC	Vista, CA	October 11, 2017.
94,229	CCS Medical, Inc., Wound Care Division, Kelly Services, Inc., HealthCare Support, etc.	Farmers Branch, TX	October 12, 2017.
94,238	Wilbrecht LEDCO, Inc	Huron, SD	October 15, 2017.
94,244	Pitney Bowes Inc	Neenah, WI	October 16, 2017.
94,246	CWD LLC, APC Automotive Technologies, PeopleNow	Carson, CA	October 17, 2017.
94,258	Cantech Industries Inc., Intertape Polymer Group Inc., @Work Personnel, Staff Pro.	Johnson City, TN	October 22, 2017.
94,272	Harman International Industries, Inc., Samsung Electronics, Connected Car Division, Acro Service Corporation.	Novi, MI	October 12, 2017.
94,275	Circor Energy Products Inc., Circor International Inc., Energy Group Division, Onin Staffing, etc.	Oklahoma City, OK	October 24, 2017.
94,279	Harman International Industries, Inc., Samsung Electronics, Connected Car Division, Advantage Staffing, etc.	Franklin, KY	October 11, 2018.
94,284	Agfa Corporation, Agfa-Gevaert NV	Somerville, NJ	October 29, 2017.
94,293	Key Safety Restraint Systems (KSRS), Joyson Safety Systems, Inc., Manpower and Surge Staffing.	Greenville, AL	October 31, 2017.
94,312	Dormakaba USA, Randstad	Lexington, KY	November 7, 2017.

The following certifications have been issued. The requirements of Section 222(b) (supplier to a firm whose workers are certified eligible to apply for TAA) of the Trade Act have been met.

TA–W No.	Subject firm	Location	Impact date
94,016	Kelly Foundry and Machine Co	Elkins, WV	July 25, 2017.

The following certifications have been issued. The requirements of Section 222(e) (firms identified by the International Trade Commission) of the Trade Act have been met.

TA–W No.	Subject firm	Location	Impact date
93,748	Milward Alloys Inc., Adecco Staffing	Lockport, NY	April 20, 2016.
94,023	Murphy Plywood	Eugene, OR	December 27, 2016.
94,197	Michigan Seamless Tube, LLS, Specialty Steel Works Inc	South Lyon, MI	January 30, 2017.

Negative Determinations For Worker Adjustment Assistance

In the following cases, the investigation revealed that the eligibility criteria for TAA have not been met for the reasons specified.

The investigation revealed that the requirements of Trade Act section 222(a)(1) and (b)(1) (significant worker total/partial separation or threat of total/partial separation), or (e) (firms identified by the International Trade Commission), have not been met.

TA–W No.	Subject firm	Location	Impact date
94,097	Apollo Medical, PC, Billing Department	Brooklyn, NY.	
94,122	Synergistic Systems, Inc., Teachers Insurance and Annuity Association of America, Data Quality, etc.	Denver, CO.	

The investigation revealed that the criteria under paragraphs (a)(2)(A)(i) (decline in sales or production, or both), or (a)(2)(B) (shift in production or services to a foreign country or acquisition of articles or services from a foreign country), (b)(2) (supplier to a firm whose workers are certified eligible to apply for TAA or downstream

producer to a firm whose workers are certified eligible to apply for TAA), and (e) (International Trade Commission) of section 222 have not been met.

TA–W No.	Subject firm	Location	Impact date
94,113	Drynachan, LLC dba Advance Health, Signify Health, LLC, Aerotek, Kelly Services, National Recruiters, etc.	Herndon, VA.	

The investigation revealed that the criteria under paragraphs (a)(2)(A) (increased imports), (a)(2)(B) (shift in production or services to a foreign country or acquisition of articles or services from a foreign country), (b)(2) (supplier to a firm whose workers are certified eligible to apply for TAA or downstream producer to a firm whose workers are certified eligible to apply for TAA), and (e) (International Trade Commission) of section 222 have not been met.

TA–W No.	Subject firm	Location	Impact date
93,779	The Boeing Company, Defense, Space, & Security Division, American CyberSystems (ACS), etc.	Oklahoma City, OK.	
94,049	C & D Zodiac, Inc., Cabin ZOII Division, Zodiac Aerospace, VOLT Workforce Solutions, etc.	Santa Maria, CA.	
94,094	LQ Management, LLC, La Quinta Intermediate Holdings, LLC	Irving, TX.	
94,104	Orchard Supply Company, LLC, Southwest Barnes Road Location, Lowe's Companies, Inc.	Beaverton, OR.	
94,104A	Orchard Supply Company, LLC, Southeast 10th Avenue Location, Lowe's Companies, Inc.	Portland, OR.	
94,104B	Orchard Supply Company, LLC, Northeast Halsey Street Location, Lowe's Companies, Inc.	Portland, OR.	
94,104C	Orchard Supply Company, LLC, Southwest Cascade Avenue Location, Lowe's Companies, Inc.	Tigard, OR.	

Determinations Terminating Investigations of Petitions for Trade Adjustment Assistance

After notice of the petitions was published in the **Federal Register** and on the Department's website, as required by section 221 of the Act (19 U.S.C. 2271), the Department initiated investigations of these petitions.

The following determinations terminating investigations were issued because the worker group on whose behalf the petition was filed is covered under an existing certification.

TA–W No.	Subject firm	Location	Impact date
93,926	Infinite Computer Solutions, Inc., International Business Machines (IBM).	Phoenix, AZ.	
94,017	Aspen Insurance U.S. Services Inc	Rocky Hill, CT.	
94,017A	Aspen Insurance U.S. Services Inc	New York, NY.	
94,017B	Aspen Insurance U.S. Services Inc	Boston, MA.	
94,017C	Aspen Insurance U.S. Services Inc	Atlanta, GA.	
94,064	Aerostructures Contract Employees, Chipton Ross, and Johnson Services Group, Triumph Aerostructures, Triumph Aerospace Structure Division, Triumph Group.	Red Oak, TX.	
94,105	Juniata Valley Occupational Health, GE Inspection Technologies, GE Oil & Gas.	Lewistown, PA.	
94,174	Rose International Inc., Suntrust Mortgage, Servicing Department	Richmond, VA.	

I hereby certify that the aforementioned determinations were issued during the period of October 20, 2018 through November 9, 2018. These determinations are available on the Department's website *https://www.doleta.gov/tradeact/taa/taa_search_form.cfm* under the searchable listing determinations or by calling the Office of Trade Adjustment Assistance toll free at 888–365–6822.

Signed at Washington, DC, this 15th day of November 2018.

Hope D. Kinglock,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2018–27295 Filed 12–17–18; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221 (a) of the Trade Act of 1974 (''the Act'') and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade

Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221 (a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, no later than December 28, 2018.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than December 28, 2018.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room N–5428, 200 Constitution Avenue NW, Washington, DC 20210.

Signed at Washington, DC this 15th day of November 2018.

Hope D. Kinglock,

Certifying Officer, Office of Trade Adjustment Assistance.

Appendix

80 TAA Petitions Instituted Between 10/20/18 and 11/9/18

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
94249	Allstate (State/One-Stop)	Roanoke, VA	10/22/18	10/18/18
94250	Bell-Carter Foods Inc. (State/One-Stop)	Corning, CA	10/22/18	10/19/18
94251	Ernest Industries (State/One-Stop)	Westland, MI	10/22/18	10/19/18
94252	Faurecia Automotive Seating, Inc. (State/One-Stop)	Auburn Hills, MI	10/22/18	10/19/18
94253	Hemlock Semiconductor (State/One-Stop)	Hemlock, MI	10/22/18	10/19/18
94254	McWane also known as AB&I Foundry (State/One-Stop)	Oakland, CA	10/22/18	10/19/18
94255	Musco Family Olive Company (State/One-Stop)	Tracy, CA	10/22/18	10/19/18
94256	TRW Automotive US, LLC (State/One-Stop)	Atkins, VA	10/22/18	10/19/18
94257	AIG Global Testing Services (State/One-Stop)	New York, NY	10/23/18	10/22/18
94258	Cantech Industries Inc. (Company)	Johnson City, TN	10/23/18	10/22/18
94259	CashStar (State/One-Stop)	Portland, ME	10/23/18	10/23/18
94260	CenturyLink (State/One-Stop)	Denver, CO	10/23/18	10/22/18
94261	Grayson Lumber Corporation (State/One-Stop)	Houston, AL	10/23/18	10/22/18
94262	Henkel USA Distributors Corporation (State/One-Stop)	Salt Lake City, UT	10/23/18	10/22/18
94263	J.W. Hulme Co (State/One-Stop)	St Paul, MN	10/23/18	10/22/18
94264	Johnson Controls International Plc (State/One-Stop)	Alexandria, VA	10/23/18	10/22/18
94265	Weyerhaeuser NR Company (State/One-Stop)	Millport, AL	10/23/18	10/22/18
94266	Ossur North America (Workers)	Camarilo, CA	10/23/18	10/22/18
94267	West Fraser, Inc. (State/One-Stop)	Opelika, AL	10/23/18	10/22/18
94268	T. R. Miller Mill Company, Inc. (State/One-Stop)	Brewton, AL	10/23/18	10/22/18
94269	The Westervelt Company (Company)	Moundville, AL	10/23/18	10/22/18
94270	Medtronic (Company)	Culver City, CA	10/24/18	10/23/18
94271	Homer Donaldson Company LLC Hodoco (State/One-Stop)	Hudson, MI	10/24/18	10/23/18
94272	Harman International Industries, Inc. (Company)	Novi, MI	10/24/18	10/12/18
94273	MBI (State/One-Stop)	Franklin Park, IL	10/24/18	10/23/18
94274	Canfor (State/One-Stop)	Fulton, AL	10/25/18	10/24/18
94275	Circor Energy Products Inc. (Company)	Oklahoma City, OK	10/25/18	10/24/18
94276	Faneuil, Inc. (State/One-Stop)	Vienna, VA	10/25/18	10/24/18
94277	Phoenix Trim Works (State/One-Stop)	Williamsport, PA	10/25/18	10/24/18
94278	Forcepoint (State/One-Stop)	Austin, TX	10/26/18	10/25/18
94279	Harman International Industries, Inc. (Company)	Franklin, KY	10/26/18	10/25/18
94280	Paysafe Group (Company)	Westlake Village, CA	10/26/18	10/25/18
94281	Caterpillar (State/One-Stop)	Aurora, IL	10/29/18	10/26/18
94282	Movement Mortgage (State/One-Stop)	Norfolk, VA	10/29/18	10/26/18
94283	ULX Partners—LeClairRyan (State/One-Stop)	Glen Allen, VA	10/29/18	10/26/18
94284	Agfa Corporation (State/One-Stop)	Somerville, NJ	10/30/18	10/29/18
94285	American Media LLC (State/One-Stop)	Pleasanton, CA	10/30/18	10/29/18
94286	Boston Herald (State/One-Stop)	Boston, MA	10/30/18	10/29/18
94287	Seneca Sawmill (State/One-Stop)	Eugene, OR	10/30/18	10/29/18
94288	Crawford & Company (Company)	Peachtree Corners, GA	10/31/18	10/30/18
94289	Health Care Service Corporation (HCSC) (State/One-Stop)	Oklahoma City, OK	10/31/18	10/30/18
94290	Connexions Loyalty Travel Solutions (State/One-Stop)	St. Louis, MO	11/01/18	10/31/18
94291	Experian (State/One-Stop)	Allen, TX	11/01/18	10/31/18
94292	FXI, Inc. Baldwyn, MS Plant (Workers)	Baldwyn, MS	11/01/18	10/23/18
94293	Key Safety Restraint Systems (KSRS) (Company)	Greenville, AL	11/01/18	10/31/18
94294	MModal Services, Limited (Workers)	Franklin, TN	11/01/18	10/31/18
94295	Overly Door (Union)	Greenburg, PA	11/01/18	10/31/18
94296	Westcon Group (State/One-Stop)	Chantilly, VA	11/01/18	10/31/18

80 TAA PETITIONS INSTITUTED BETWEEN 10/20/18 AND 11/9/18—Continued

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
94297	Block Steel (State/One-Stop)	Skokie, IL	11/02/18	11/01/18
94298	CTDI = Communications Test Design, Inc. (Workers)	Lebanon, TN	11/02/18	11/01/18
94299	Copland Industries (State/One-Stop)	Burlington, NC	11/02/18	11/01/18
94300	Ericsson (State/One-Stop)	Plano, TX	11/02/18	11/01/18
94301	Ericsson (State/One-Stop)	Plano, TX	11/02/18	11/01/18
94302	Seneca Noti (State/One-Stop)	Noti, OR	11/02/18	10/29/18
94303	Copland Industries, Inc. (Company)	Burlington, NC	11/05/18	11/02/18
94304	Copland Fabrics, Inc. (Company)	Burlington, NC	11/05/18	11/02/18
94305	HG Communications (State/One-Stop)	Laguna Hills, CA	11/06/18	11/05/18
94306	Stimson Lumber (State/One-Stop)	Clatskanie, OR	11/06/18	11/05/18
94307	Stimson Lumber (State/One-Stop)	Gaston, OR	11/06/18	11/05/18
94308	Stimson Lumber (State/One-Stop)	Tillamook, OR	11/06/18	11/05/18
94309	Tangoe, Inc. (Workers)	Parsippany, NJ	11/06/18	10/30/18
94310	Varex Imaging (State/One-Stop)	Santa Clara, CA	11/06/18	11/05/18
94311	Wilbrecht Ledco, Inc. (Company)	St. Paul, MN	11/06/18	11/05/18
94312	Dormakaba USA (Company)	Lexington, KY	11/07/18	11/07/18
94313	Insight Global Inc. (State/One-Stop)	San Diego, CA	11/07/18	11/06/18
94314	Quad Graphics, Inc. (State/One-Stop)	Sidney, NE	11/07/18	11/06/18
94315	TRIGO–SCSI (Company)	Joliet, IL	11/07/18	11/06/18
94316	Columbia Forest Products (State/One-Stop)	Boardman, OR	11/08/18	11/07/18
94317	Harden Furniture LLC (State/One-Stop)	McConnellsville, NY	11/08/18	11/07/18
94318	Invento Americas (Workers)	Sheboygan, WI	11/08/18	11/07/18
94319	Nokia, Inc. (State/One-Stop)	Irving, TX	11/08/18	11/07/18
94320	Rosboro Co. LLC (State/One-Stop)	Springfield, OR	11/08/18	11/07/18
94321	Siemens Healthineers Inc. (Company)	Hoffman Estates, IL	11/08/18	11/06/18
94322	Toys R Us (Workers)	Terre Haute, IN	11/08/18	11/08/18
94323	Virgin Atlantic Airways (State/One-Stop)	Norwalk, CT	11/08/18	11/07/18
94324	Bak USA (State/One-Stop)	Buffalo, NY	11/09/18	11/08/18
94325	BJC Healthcare (Workers)	St. Louis, MO	11/09/18	11/08/18
94326	C Cretors & Co. Cretors-Bismarck, LLC (State/One-Stop)	Bismarck, MO	11/09/18	11/02/18
94327	Keurig Dr Pepper (State/One-Stop)	Waterbury Center, VT	11/09/18	11/08/18
94328	Silberline Manufacturing Co., Inc. (Petition indicated Decatur, IN) (Company)	Tamaqua, PA	11/09/18	11/08/18

[FR Doc. 2018–27298 Filed 12–17–18; 8:45 am]
BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

Post-Initial Determinations Regarding Eligibility To Apply for Trade Adjustment Assistance

In accordance with Sections 223 and 284 (19 U.S.C. 2273 and 2395) of the Trade Act of 1974 (19 U.S.C. 2271, *et seq.*) (''Act''), as amended, the Department of Labor herein presents Notice of Affirmative Determinations Regarding Application for Reconsideration, summaries of Negative Determinations Regarding Applications for Reconsideration, summaries of Revised Certifications of Eligibility, summaries of Revised Determinations (after Affirmative Determination Regarding Application for Reconsideration), summaries of Negative Determinations (after Affirmative Determination Regarding Application for Reconsideration), summaries of Revised Determinations (on remand from the Court of International Trade), and summaries of Negative Determinations (on remand from the Court of International Trade) regarding eligibility to apply for trade adjustment assistance under Chapter 2 of the Act (''TAA'') for workers by (TA–W) number issued during the period of *October 20, 2018 through November 9, 2018.* Post-initial determinations are issued after a petition has been certified or denied. A post-initial determination may revise a certification, or modify or affirm a negative determination.

Notice of Determination on Remand

Post-initial determinations have also been issued with respect to cases where negative determinations regarding eligibility to apply for TAA were issued initially or on reconsideration and were appealed to the Court of International Trade and remanded by the court to the Secretary for the taking of additional evidence. See 29 CFR 90.19(a) and (c). For cases where the worker group eligibility requirements are met, the previous determination was modified and Revised Determinations on Remand have been issued. For cases where the worker group eligibility requirements are not met, the previous determination is affirmed and Negative Determinations on Remand have been issued. The Secretary will certify and file the record of the remand proceedings in the Court of International Trade. Determinations on Remand are final determinations for purposes of judicial review pursuant to section 284 of the Act (19 U.S.C. 2395).

Summary of Statutory Requirement

(This Notice primarily follows the language of the Trade Act. In some places however, changes such as the inclusion of subheadings, a reorganization of language, or ''and,'' ''or,'' or other words are added for clarification.)

Section 222(a)—Workers of a Primary Firm

In order for an affirmative determination to be made for workers of a primary firm and a certification issued regarding eligibility to apply for TAA, the group eligibility requirements under Section 222(a) of the Act (19 U.S.C. 2272(a)) must be met, as follows:

(1) The first criterion (set forth in Section 222(a)(1) of the Act, 19 U.S.C. 2272(a)(1)) is that a significant number or proportion of the workers in such workers' firm (or ''such firm'') have become totally or partially separated, or are threatened to become totally or partially separated;

AND (2(A) or 2(B) below)

(2) The second criterion (set forth in Section 222(a)(2) of the Act, 19 U.S.C. 2272(a)(2)) may be satisfied by either (A) the Increased Imports Path, or (B) the Shift in Production or Services to a Foreign Country Path/Acquisition of Articles or Services from a Foreign Country Path, as follows:

(A) Increased Imports Path:

(i) the sales or production, or both, of such firm, have decreased absolutely;

AND (ii and iii below)

(ii) (I) imports of articles or services like or directly competitive with articles produced or services supplied by such firm have increased; OR

(II)(aa) imports of articles like or directly competitive with articles into which one or more component parts produced by such firm are directly incorporated, have increased; OR

(II)(bb) imports of articles like or directly competitive with articles which are produced directly using the services supplied by such firm, have increased; OR

(III) imports of articles directly incorporating one or more component parts produced outside the United States that are like or directly competitive with imports of articles incorporating one or more component parts produced by such firm have increased;

AND

(iii) the increase in imports described in clause (ii) contributed importantly to such workers' separation or threat of separation and to the decline in the sales or production of such firm; OR

(B) Shift in Production or Services to a Foreign Country Path OR Acquisition of Articles or Services from a Foreign Country Path:

(i)(I) there has been a shift by such workers' firm to a foreign country in the production of articles or the supply of services like or directly competitive with articles which are produced or services which are supplied by such firm; OR

(II) such workers' firm has acquired from a foreign country articles or services that are like or directly competitive with articles which are produced or services which are supplied by such firm;

AND

(ii) the shift described in clause (i)(I) or the acquisition of articles or services described in clause (i)(II) contributed importantly to such workers' separation or threat of separation.

Section 222(b)—Adversely Affected Secondary Workers

In order for an affirmative determination to be made for adversely affected secondary workers of a firm and a certification issued regarding eligibility to apply for TAA, the group eligibility requirements of Section 222(b) of the Act (19 U.S.C. 2272(b)) must be met, as follows:

(1) a significant number or proportion of the workers in the workers' firm or an appropriate subdivision of the firm have become totally or partially separated, or are threatened to become totally or partially separated;

AND

(2) the workers' firm is a supplier or downstream producer to a firm that employed a group of workers who received a certification of eligibility under Section 222(a) of the Act (19 U.S.C. 2272(a)), and such supply or production is related to the article or service that was the basis for such certification (as defined in subsection 222(c)(3) and (4) of the Act (19 U.S.C. 2272(c)(3) and (4));

AND

(3) either—

(A) the workers' firm is a supplier and the component parts it supplied to the firm described in paragraph (2) accounted for at least 20 percent of the production or sales of the workers' firm; OR

(B) a loss of business by the workers' firm with the firm described in paragraph (2) contributed importantly to the workers' separation or threat of separation determined under paragraph (1).

Section 222(e)—Firms identified by the International Trade Commission

In order for an affirmative determination to be made for adversely affected workers in firms identified by the International Trade Commission and a certification issued regarding eligibility to apply for TAA, the group eligibility requirements of Section 222(e) of the Act (19 U.S.C. 2272(e))must be met, by following criteria (1), (2), and (3) as follows:

(1) the workers' firm is publicly identified by name by the International Trade Commission as a member of a domestic industry in an investigation resulting in—

(A) an affirmative determination of serious injury or threat thereof under section 202(b)(1) of the Act (19 U.S.C. 2252(b)(1)); OR

(B) an affirmative determination of market disruption or threat thereof under section 421(b)(1) of the Act (19 U.S.C. 2436(b)(1)); OR

(C) an affirmative final determination of material injury or threat thereof under section 705(b)(1)(A) or 735(b)(1)(A) of the Tariff Act of 1930 (19 U.S.C. 1671d(b)(1)(A) and 1673d(b)(1)(A));

AND

(2) the petition is filed during the 1-year period beginning on the date on which—

(A) a summary of the report submitted to the President by the International Trade Commission under section 202(f)(1) of the Trade Act (19 U.S.C. 2252(f)(1)) with respect to the affirmative determination described in paragraph (1)(A) is published in the **Federal Register** under section 202(f)(3) (19 U.S.C. 2252(f)(3)); OR

(B) notice of an affirmative determination described in subparagraph (B) or (C) of paragraph (1) is published in the **Federal Register**;

AND

(3) the workers have become totally or partially separated from the workers' firm within—

(A) the 1-year period described in paragraph (2); OR

(B) notwithstanding section 223(b) of the Act (19 U.S.C. 2273(b)), the 1-year period preceding the 1-year period described in paragraph (2).

Revised Certifications of Eligibility

The following revised certifications of eligibility to apply for TAA have been issued. The date following the company name and location of each determination references the impact date for all workers of such determination, and the reason(s) for the determination.

The following revisions have been issued.

TA–W No.	Subject firm	Location	Impact date	Reason(s)
92,465 ..	GE Inspection Technologies	Lewistown, PA	12/5/2015	Worker Group Clarification.
92,882 ..	Triumph Aerostructures	Red Oak, TX	3/13/2017	Worker Group Clarification.
93,622 ..	Suntrust Mortgage	Richmond, VA	3/7/2017	Worker Group Clarification.

Signed at Washington, DC this 23rd day of November 2018.

Hope D. Kinglock,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2018–27297 Filed 12–17–18; 8:45 am]

BILLING CODE 4510–FN–P

OFFICE OF MANAGEMENT AND BUDGET

Request for Comments on OMB's Update to the Trusted Internet Connections Initiative

AGENCY: Office of Management and Budget.

ACTION: Notice of public comment period.

SUMMARY: The Office of Management and Budget (OMB) is seeking public comment on a draft memorandum titled, ''*Update to the Trusted Internet Connections Initiative.*''

DATES: The 30-day public comment period on the draft memorandum begins on the day it is published in the **Federal Register** and ends 30 days after date of publication in the **Federal Register**.

ADDRESSES: Interested parties should provide comments at the following link: *https://policy.cio.gov/tic-draft/*. The Office of Management and Budget is located at 725 17th Street NW, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: The Office of the Federal Chief Information Officer at *ofcio@omb.eop.gov* or James Massot at (202–395–3030) or Tim Wang at (202–395–6464).

SUPPLEMENTARY INFORMATION: The Office of Management and Budget (OMB) is proposing a policy revision to improve and modernize a Federal Cybersecurity Initiative.

In 2007, OMB Memorandum M–08–05 established the Trusted Internet Connections (TIC) initiative to standardize the implementation of security capabilities across the Federal Executive Branch by implementing controlled connections to external networks and reducing the overall number of those external network connections. As the information technology landscape has evolved, the implementation requirements of the TIC initiative have created obstacles for agencies to adopt modern cloud solutions.

Pursuant to the Report to the President on Federal IT Modernization, OMB, in close partnership with DHS and GSA, has worked with a number of Federal agencies on agency-led TIC pilots that have been used to identify solutions to current barriers to agency cloud adoption. These pilot results have directly informed the contents of the *Update to the Trusted Internet Connections (TIC) Initiative* memorandum.

The draft OMB M-Memorandum included in this package, *Update to the Trusted Internet Connections (TIC) Initiative,* updates the TIC initiative by focusing on three goals:

I. Remove Barriers to Cloud and Modern Technology Adoption—Agencies will have increased flexibility in how they meet TIC initiative security objectives. In some cases, the TIC initiative may entail implementing alternative security controls rather than routing traffic through a physical TIC access point.

II. Ensure the TIC Initiative Remains Agile—Due to the rapid pace that technology and cyber threats evolve, this memorandum establishes a collaborative and iterative process, which includes input from both industry and Federal agencies, for continuously updating the TIC initiative's implementation guidance. This process includes ongoing piloting and approval of new and innovative methods to achieve TIC initiative security objectives in the most effective and efficient manner.

III. Streamline and Automate Verification Processes—The goal is to shift from burdensome, point-in-time, manual spot checks to a scalable, comprehensive, and continuous validation process.

OMB is seeking public comment on this draft memorandum titled ''*Update to the Trusted Internet Connections (TIC) Initiative*''. OMB's authority to issue this guidance and obtain public comments is in the Federal Information Security Modernization Act of 2014.

Suzette Kent,

Federal Chief Information Officer, Office of the Federal Chief Information Officer.

[FR Doc. 2018–27325 Filed 12–17–18; 8:45 am]

BILLING CODE 3110–05–P

NATIONAL COMMISSION ON MILITARY, NATIONAL, AND PUBLIC SERVICE

[NCMNPS Docket No. 02–2018–01]

Privacy Act of 1974; System of Records

AGENCY: National Commission on Military, National, and Public Service.

ACTION: Notice of a new system of records.

SUMMARY: In accordance with the Privacy Act of 1974, as amended, the National Commission on Military, National, and Public Service (the ''Commission'') gives notice of the establishment of a new system of records titled, ''NCMNPS–2, Employee Administrative Records''.

DATES: Written comments should be submitted on or before January 17, 2019. The new system of records will be effective January 17, 2019, unless the comments received result in a contrary determination.

ADDRESSES: You may submit comments, identified by the title and docket number (see above), by any of the following methods:

- *Email: legal@inspire2serve.gov.* Please include the docket number in the subject line of the message.
- *Website: http://www.inspire2serve.gov/content/share-your-thoughts.* Follow the instructions on the page to submit a comment and include the docket number in the comment.
- *Mail:* National Commission on Military, National, and Public Service, Attn: Docket 02–2018–01, 2530 Crystal Drive, Suite 1000, Box No. 63, Arlington, VA 22202.

To ensure proper handling, please include the docket number on your correspondence. Comments will be available for public inspection and copying on official business days between the hours of 10 a.m. and 5 p.m. Eastern Time. You can make an appointment to inspect comments by telephoning 703–571–3742. All comments, including attachments and other supporting materials, will become part of the public record and subject to public disclosure. You should submit only information that you wish to make available publicly. Sensitive personal information, such as account numbers or social security numbers, should not be included.

FOR FURTHER INFORMATION CONTACT: For general inquiries, submission process questions, or any additional information about this request for comments, please contact Rachel Rikleen, at (703) 571–3760 or by email at *legal@inspire2serve.gov.*

SUPPLEMENTARY INFORMATION: The National Commission on Military, National, and Public Service (the ''Commission'') was created as an independent agency within the executive branch by the National Defense Authorization Act for Fiscal Year 2017, Public Law 114–328, 130 Stat. 2000 (2016). As a federal agency, the Commission is required to maintain information regarding its personnel. The

Employee Administrative system helps the Commission manage and administer human capital functions, including personnel actions, payroll, time and attendance, leave, insurance, tax, retirement and other benefits, and employee claims for loss or damage to personal property; to prepare related reports to other federal agencies; to prepare travel arrangements for Commission employees; and to apply the federal ethics regulations to the Commission and its employees. The information will also be used for administrative purposes to ensure quality control, performance, and improving management processes. This system will be included in the Commission's inventory of record systems.

The Privacy Act embodies fair information practice principles in a statutory framework governing the means by which federal government agencies collect, maintain, use, and disseminate individuals' records. The Privacy Act applies to information that is maintained in a ''system of records.'' A ''system of records'' is a group of any records under the control of an agency from which information is retrieved by the name of an individual or by some identifying number, symbol, or other identifying particular assigned to the individual. In the Privacy Act, an individual is defined to encompass U.S. citizens and lawful permanent residents.

The report of this system of records has been submitted to the Committee on Oversight and Government Reform of the House of Representatives, the Committee on Homeland Security and Governmental Affairs of the Senate, and the Office of Management and Budget, pursuant to the Privacy Act, 5 U.S.C. 552a(r).

The system of records notice entitled ''NCMNPS–2, Employee Administrative Records'' is published in its entirety below.

Dated: December 12, 2018.

Paul N. Lekas,

General Counsel and Chief Privacy Officer.

NCMNPS–2

SYSTEM NAME AND NUMBER:

NCMNPS–2, Employee Administrative Records.

SECURITY CLASSIFICATION:

None of the information in the system is classified.

SYSTEM LOCATION:

Records are maintained at the National Commission on Military, National, and Public Service's office in Arlington, VA. The mailing address for the Commission is 2530 Crystal Drive, Suite 1000, Box No. 63, Arlington, VA 22202. The Department of Defense's Washington Headquarter Services (WHS) provides some human resource services under an interagency memorandum of understanding. Records held by WHS are handled consistent with their system of records.

SYSTEM MANAGER(S):

Director of Operations, National Commission on Military, National, and Public Service, 2530 Crystal Drive, Suite 1000, Box No. 63, Arlington, VA 22202. The Director of Operations can be contacted at 703–571–3742 or *info@inspire2serve.gov.*

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 5501 *et seq.,* 5525 *et seq.,* 5701 *et seq.,* and 6301 *et seq.;* Executive Order 9397, as amended by Executive Order 13478; the Ethics in Government Act of 1978; 5 U.S.C. 301; 44 U.S.C. 3101; Public Law 114–328, sections 551–557.

PURPOSE(S) OF THE SYSTEM:

The information in the system is being collected to enable the Commission to manage and administer human capital functions, including personnel actions, payroll, time and attendance, leave, insurance, tax, retirement and other benefits, and employee claims for loss or damage to personal property; to prepare related reports to other federal agencies; to prepare travel arrangements for Commission employees; and to apply the federal ethics regulations to the Commission and its employees. The information will also be used for administrative purposes to ensure quality control, performance, and improving management processes.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals covered by this system are current and former Commission employees, volunteers, detailees, applicants, and interns who work at the Commission (collectively, ''employees'') and their named dependents, beneficiaries, and/or emergency contacts.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records in this system may contain identifiable information about individuals including, without limitation: (1) Identification and contact information, including name, address, email address, phone number and other contact information; (2) employee emergency contact information, including name, phone number, relationship to employee or emergency contact; (3) Social Security number (SSN), employee ID number, organization code, pay rate, salary, grade, length of service, and other related pay and leave records including payroll data; (4) biographic and demographic data, including date of birth and marital or domestic partnership status; (5) employment-related information such as performance reports, training, professional licenses, certification, and memberships information, employee claims for loss or damage to personal property, and other information related to employment by the Commission; (6) benefits data, such as health, life, travel, and disability insurance information; (7) retirement benefits information and flexible spending account information; (8) travel-related information, including information related to reimbursement for official travel; and (9) information compiled in connection with annual ethics filings and related regulatory requirements.

General personnel and administrative records contained in this system are covered under the government-wide systems of records notice published by the Office of Personnel Management (OPM/GOVT–1). This system complements OPM/GOVT–1 and this notice incorporates by reference but does not repeat all of the information contained in OPM/GOVT–1.

RECORD SOURCE CATEGORIES:

Information in this system is obtained from current and former Commission employees; their named dependents, beneficiaries and/or emergency contacts; individuals who have applied for a position or have been extended offers of employment by the Commission; and from individuals and entities associated with federal employee benefits, retirement, human resource functions, accounting, and payroll systems administration.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

In addition to those disclosures permitted under 5 U.S.C. 552a(b), all or a portion of the records or information contained in this system may be disclosed by the Commission as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

A. To the Department of Justice (DOJ), including Offices of the U.S. Attorneys, or other federal agencies conducting litigation or in proceedings before any court, adjudicative, or administrative body, when it is relevant or necessary to the litigation and one of the following

is a party to the litigation or has an interest in such litigation:

1. The Commission;

2. Any employee or former employee of the Commission in his or her official capacity;

3. Any employee or former employee of the Commission in his or her individual capacity when DOJ or the Commission has agreed to represent the employee; or

4. The U.S. Government or any agency thereof.

B. To a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of the individual to whom the record pertains.

C. To the National Archives and Records Administration (NARA) or General Services Administration pursuant to records management inspections being conducted under the authority of 44 U.S.C. 2904 and 2906.

D. To an agency or organization for the purpose of performing audit or oversight operations as authorized by law, but only such information as is necessary and relevant to such audit or oversight function.

E. To appropriate agencies, entities, and persons when: (1) The Commission suspects or has confirmed that there has been a breach of the system of records; (2) the Commission has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, the Commission (including its information systems, programs, and operations), the Federal Government, or national security; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Commission's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

F. To another Federal agency or Federal entity, when the Commission determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed breach or (2) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

G. To contractors and their agents, experts, consultants, and others performing or working on a contract, service, cooperative agreement, or other assignment for the Commission, when necessary to accomplish an agency function related to this system of records. Individuals provided information under this routine use are subject to the same Privacy Act requirements and limitations on disclosure as are applicable to the Commission officers and employees.

H. To an appropriate federal, state, tribal, territorial, local, international, or foreign law enforcement agency or other appropriate authority charged with investigating or prosecuting a violation or enforcing or implementing a law, rule, regulation, or order, when a record, either on its face or in conjunction with other information, indicates a violation or potential violation of law, which includes criminal, civil, or regulatory violations and such disclosure is proper and consistent with the official duties of the person making the disclosure.

I. To designated officers and employees of federal, state, tribal, territorial, local, or international agencies in connection with the hiring or continued employment of an individual, the conduct of a suitability or security investigation of an individual, the grant, renewal, suspension, or revocation of a security clearance, or the certification of security clearances, to the extent that the Commission determines the information is relevant and necessary to the hiring agency's decision.

J. To a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations or in connection with criminal law proceedings.

K. To the other federal agencies who provide payroll personnel processing services under a cross-servicing agreement for purposes relating to the conversion of the Commission employee payroll and personnel processing services; the issuance of paychecks to employees and distribution of wages; and the distribution of allotments and deductions to financial and other institutions, some through electronic funds transfer.

L. To federal, state, tribal, territorial, or local agencies for use in locating individuals and verifying their income sources to enforce child support orders, to establish and modify orders of support, and for enforcement of related court orders.

M. To provide wage and separation information to another federal agency as required by law for payroll purposes.

N. To the Office of Personnel Management, the Merit System Protection Board, Federal Labor Relations Authority, or the Equal Employment Opportunity Commission when requested in the performance of their authorized duties.

O. To the Department of Labor in connection with a claim filed by an employee for compensation due to a job-connected injury or illness.

P. To the Department of the Treasury to issue checks.

Q. To State offices of unemployment compensation with survivor annuity or health benefits claims or records reconciliations.

R. To Federal Employee's Group Life Insurance or Health Benefits carriers in connection with survivor annuity or health benefits claims or records reconciliations.

S. To the Internal Revenue Service and State and local tax authorities for which an employee is or was subject to tax regardless of whether tax is or was withheld in accordance with Treasury Fiscal Requirements, as required.

T. To any source from which additional information is requested by the Commission relevant to a Commission determination concerning an individual's pay, leave, or travel expenses, to the extent necessary to identify the individual, inform the source of the purpose(s) of the request, and to identify the type of information requested.

U. To the Office of Management and Budget at any stage in the legislative coordination and clearance process in connection with private relief legislation as set forth in OMB Circular No. A–19.

V. To the Social Security Administration and the Department of the Treasury to disclose pay data on an annual basis.

W. To the Department of Health and Human Services for the purpose of providing information on new hires and quarterly wages as required under the Personal Responsibility and Work Opportunity Reconciliation Act of 1996.

X. To the news media and the public, with the approval of the Chief Privacy Officer in consultation with counsel, when there exists a legitimate public interest in the disclosure of the information or when disclosure is necessary to preserve confidence in the integrity of the Commission or is necessary to demonstrate the accountability of the Commission's officers, employees, or individuals covered by the system, except to the extent it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

The Commission stores records in this system electronically or on paper in secure facilities in a locked drawer behind a locked door.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Only authorized personnel can access or retrieve information. Records may be retrieved by a variety of fields, including, without limitation, the individual's name, SSN, address, account number, transaction number, phone number, date of birth, or by some combination thereof.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

The Commission will maintain electronic and paper records under the National Archives and Records Administration's General Records Schedules 1.1, 2.1–2.8.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Records in this system are safeguarded in accordance with applicable rules and policies, including automated systems security and access policies. Access to records in this system is limited to those individuals who have a need to know the information for the performance of their official duties and who have appropriate clearances or permissions.

RECORD ACCESS PROCEDURES:

Individuals seeking notification and access to any record contained in this system of records, or seeking to contest its content, may submit a request in writing to the Chief Privacy Officer at the address provided for the System Manager, above. When seeking records about yourself from this system of records your request must comply with the Commission's Privacy Act regulations and must include sufficient information to permit us to identify potentially responsive records. In addition, you must sign your request, and your signature must either be notarized or submitted under 28 U.S.C. 1746, a law that permits statements to be made under penalty of perjury as a substitute for notarization. If your request is seeking records pertaining to another living individual, you must include a statement from that individual certifying his/her consent to your access to his/her records. Without this information, we may not be able to conduct an effective search, and your request may be denied due to lack of specificity or lack of compliance with applicable regulations.

CONTESTING RECORD PROCEDURES:

See ''Record Access Procedures'' above.

NOTIFICATION PROCEDURES:

See ''Record Access Procedures'' above.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

No previous **Federal Register** notices for this system of records exist.

[FR Doc. 2018–27289 Filed 12–17–18; 8:45 am]

BILLING CODE 3610–YE–P

NEIGHBORHOOD REINVESTMENT CORPORATION

Sunshine Act Meetings; Audit Committee Meeting

TIME & DATE: 11:00 a.m., Tuesday, December 11, 2018.

PLACE: NeighborWorks America—Gramlich Boardroom, 999 North Capitol Street NE, Washington DC 20002.

STATUS: Open (with the exception of Executive Session).

Consistent with the requirements of 5 U.S.C. 552 (b)(e), NeighborWorks America has submitted for publication in the **Federal Register** this notice of the Audit Committee Meeting that occurred on Tuesday, December 11, 2018. The Audit Committee determined by a recorded vote that business required that such meeting be called at such date, and made public announcement of the time, place, and subject matter of such meeting at the earliest practicable time.

MATTERS TO BE CONSIDERED:

The General Counsel of the Corporation has certified that in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552 (b)(2) and (4) permit closure of the following portion(s) of this meeting:

- Internal Audit Report

Agenda

I. Call to Order
II. Ratification of Appointment of the Audit Committee
III. Approval of Business Requiring Meeting on December 11
IV. Executive Session With the Chief Audit Executive
V. FY19 Internal Audit Work Plan, Including Request To Defer WeConnect Applications Interface From FY18
VI. External Audit Reports
V. Adjournment

CONTACT PERSON FOR MORE INFORMATION: Rutledge Simmons, EVP & General Counsel/Secretary, (202) 760–4105; *Rsimmons@nw.org.*

Rutledge Simmons,

EVP & General Counsel/Corporate Secretary.

[FR Doc. 2018–27442 Filed 12–14–18; 4:15 pm]

BILLING CODE 7570–02–P

NUCLEAR REGULATORY COMMISSION

[NRC–2018–0275]

Biweekly Notice; Applications and Amendments to Facility Operating Licenses and Combined Licenses Involving No Significant Hazards Considerations

AGENCY: Nuclear Regulatory Commission.

ACTION: Biweekly notice.

SUMMARY: Pursuant to the Atomic Energy Act of 1954, as amended (the Act), the U.S. Nuclear Regulatory Commission (NRC) is publishing this regular biweekly notice. The Act requires the Commission to publish notice of any amendments issued, or proposed to be issued, and grants the Commission the authority to issue and make immediately effective any amendment to an operating license or combined license, as applicable, upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued, from November 20, 2018 to December 3, 2018. The last biweekly notice was published on December 4, 2018.

DATES: Comments must be filed by January 17, 2019. A request for a hearing must be filed by February 19, 2019.

ADDRESSES: You may submit comments by any of the following methods:

- *Federal Rulemaking website:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2018–0275. Address questions about Docket IDs in *Regulations.gov* to Krupskaya Castellon; telephone: 301–287–9221; email: *Krupskaya.Castellon@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *Mail comments to:* May Ma, Office of Administration, Mail Stop: TWFN–7–A60M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

For additional direction on obtaining information and submitting comments,

see ''Obtaining Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Ikeda Betts, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–1959, email: *Ikeda.Betts@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2018–0275, facility name, unit number(s), plant docket number, application date, and subject 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 *http://www.regulations.gov* and search for Docket ID NRC–2018–0275.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in this document.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

B. Submitting Comments

Please include Docket ID NRC–2018–0275, facility name, unit number(s), plant docket number, application date, and subject in your comment submission.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at *http://www.regulations.gov* as well as enter the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

II. Background

Pursuant to the Atomic Energy Act of 1954, as amended (the Act), the U.S. Nuclear Regulatory Commission (NRC) is publishing this regular biweekly notice. The Act requires the Commission to publish notice of any amendments issued, or proposed to be issued, and grants the Commission the authority to issue and make immediately effective any amendment to an operating license or combined license, as applicable, upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

III. Notice of Consideration of Issuance of Amendments to Facility Operating Licenses and Combined Licenses and Proposed No Significant Hazards Consideration Determination

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in § 50.92 of title 10 of the *Code of Federal Regulations* (10 CFR), this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of 60 days after the date of publication of this notice. The Commission may issue the license amendment before expiration of the 60-day period provided that its final determination is that the amendment involves no significant hazards consideration. In addition, the Commission may issue the amendment prior to the expiration of the 30-day comment period if circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example in derating or shutdown of the facility. If the Commission takes action prior to the expiration of either the comment period or the notice period, it will publish in the **Federal Register** a notice of issuance. If the Commission makes a final no significant hazards consideration determination, any hearing will take place after issuance. The Commission expects that the need to take this action will occur very infrequently.

A. Opportunity To Request a Hearing and Petition for Leave To Intervene

Within 60 days after the date of publication of this notice, any persons (petitioner) whose interest may be affected by this action may file a request for a hearing and petition for leave to intervene (petition) with respect to the action. Petitions shall be filed in accordance with the Commission's ''Agency Rules of Practice and Procedure'' in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.309. The NRC's regulations are accessible electronically from the NRC Library on the NRC's website at *http://www.nrc.gov/reading-rm/doc-collections/cfr/.* Alternatively, a copy of the regulations is available at the NRC's Public Document Room, located at One White Flint North, Room O1–F21, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. If a petition is filed, the Commission or a presiding officer will rule on the petition and, if appropriate, a notice of a hearing will be issued.

As required by 10 CFR 2.309(d) the petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements for standing: (1) The name, address, and telephone number of the petitioner; (2) the nature of the petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the petitioner's interest.

In accordance with 10 CFR 2.309(f), the petition must also set forth the specific contentions which the petitioner seeks to have litigated in the proceeding. Each contention must

consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner must provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to the specific sources and documents on which the petitioner intends to rely to support its position on the issue. The petition must include sufficient information to show that a genuine dispute exists with the applicant or licensee on a material issue of law or fact. Contentions must be limited to matters within the scope of the proceeding. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to satisfy the requirements at 10 CFR 2.309(f) with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene. Parties have the opportunity to participate fully in the conduct of the hearing with respect to resolution of that party's admitted contentions, including the opportunity to present evidence, consistent with the NRC's regulations, policies, and procedures.

Petitions must be filed no later than 60 days from the date of publication of this notice. Petitions and motions for leave to file new or amended contentions that are filed after the deadline will not be entertained absent a determination by the presiding officer that the filing demonstrates good cause by satisfying the three factors in 10 CFR 2.309(c)(1)(i) through (iii). The petition must be filed in accordance with the filing instructions in the ''Electronic Submissions (E-Filing)'' section of this document.

If a hearing is requested, and the Commission has not made a final determination on the issue of no significant hazards consideration, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to establish when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, then any hearing held would take place before the issuance of the amendment unless the Commission finds an imminent danger to the health or safety of the public, in which case it will issue an appropriate order or rule under 10 CFR part 2.

A State, local governmental body, Federally-recognized Indian Tribe, or agency thereof, may submit a petition to the Commission to participate as a party under 10 CFR 2.309(h)(1). The petition should state the nature and extent of the petitioner's interest in the proceeding. The petition should be submitted to the Commission no later than 60 days from the date of publication of this notice. The petition must be filed in accordance with the filing instructions in the ''Electronic Submissions (E-Filing)'' section of this document, and should meet the requirements for petitions set forth in this section, except that under 10 CFR 2.309(h)(2) a State, local governmental body, or Federally-recognized Indian Tribe, or agency thereof does not need to address the standing requirements in 10 CFR 2.309(d) if the facility is located within its boundaries. Alternatively, a State, local governmental body, Federally-recognized Indian Tribe, or agency thereof may participate as a non-party under 10 CFR 2.315(c).

If a hearing is granted, any person who is not a party to the proceeding and is not affiliated with or represented by a party may, at the discretion of the presiding officer, be permitted to make a limited appearance pursuant to the provisions of 10 CFR 2.315(a). A person making a limited appearance may make an oral or written statement of his or her position on the issues but may not otherwise participate in the proceeding. A limited appearance may be made at any session of the hearing or at any prehearing conference, subject to the limits and conditions as may be imposed by the presiding officer. Details regarding the opportunity to make a limited appearance will be provided by the presiding officer if such sessions are scheduled.

B. Electronic Submissions (E-Filing)

All documents filed in NRC adjudicatory proceedings, including a request for hearing and petition for leave to intervene (petition), any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities that request to participate under 10 CFR 2.315(c), must be filed in accordance with the NRC's E-Filing rule (72 FR 49139; August 28, 2007, as amended at 77 FR 46562; August 3, 2012). The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases to mail copies on electronic storage media. Detailed guidance on making electronic submissions may be found in the Guidance for Electronic Submissions to the NRC and on the NRC website at *http://www.nrc.gov/site-help/e-submittals.html.* Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least 10 days prior to the filing deadline, the participant should contact the Office of the Secretary by email at *hearing.docket@nrc.gov,* or by telephone at 301–415–1677, to (1) request a digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign submissions and access the E-Filing system for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a petition or other adjudicatory document (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on the NRC's public website at *http://www.nrc.gov/site-help/e-submittals/getting-started.html.* Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit adjudicatory documents. Submissions must be in Portable Document Format (PDF). Additional guidance on PDF submissions is available on the NRC's public website at *http://www.nrc.gov/site-help/electronic-sub-ref-mat.html.* A filing is considered complete at the time the document is submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an email notice confirming receipt of the document. The E-Filing system also distributes an email notice that provides access to the document to the NRC's Office of the General Counsel and any others who have advised the Office of the Secretary

that they wish to participate in the proceeding, so that the filer need not serve the document on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before adjudicatory documents are filed so that they can obtain access to the documents via the E-Filing system.

A person filing electronically using the NRC's adjudicatory E-Filing system may seek assistance by contacting the NRC's Electronic Filing Help Desk through the ''Contact Us'' link located on the NRC's public website at *http://www.nrc.gov/site-help/e-submittals.html,* by email to *MSHD.Resource@nrc.gov,* or by a toll-free call at 1–866–672–7640. The NRC Electronic Filing Help Desk is available between 9 a.m. and 6 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing stating why there is good cause for not filing electronically and requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, 11555 Rockville Pike, Rockville, Maryland 20852, Attention: Rulemaking and Adjudications Staff. Participants filing adjudicatory documents in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in the NRC's electronic hearing docket which is available to the public at *https://adams.nrc.gov/ehd,* unless excluded pursuant to an order of the Commission or the presiding officer. If you do not have an NRC-issued digital ID certificate as described above, click cancel when the link requests certificates and you will be automatically directed to the NRC's electronic hearing dockets where you will be able to access any publicly available documents in a particular hearing docket. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or personal phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. For example, in some instances, individuals provide home addresses in order to demonstrate proximity to a facility or site. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

For further details with respect to these license amendment applications, see the application for amendment which is available for public inspection in ADAMS and at the NRC's PDR. For additional direction on accessing information related to this document, see the ''Obtaining Information and Submitting Comments'' section of this document.

Exelon Generation Company, LLC (Exelon), Docket No. 50–219, Oyster Creek Nuclear Generating Station (OCNGS), Ocean County, New Jersey

Date of amendment request: November 12, 2018. A publicly-available version is in ADAMS under Accession No. ML18317A022.

Description of amendment request: The amendment would remove the existing Cyber Security Plan (CSP) requirements contained in License Condition 2.C.(4) of the OCNGS Renewed Facility Operating License and the commitment to fully implement the CSP by the Milestone 8 commitment date of August 31, 2021 (ADAMS Accession No. ML17289A222).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

Following cessation of power operations and removal of all spent fuel from the reactor, spent fuel at OCNGS will be stored in the spent fuel pool (SFP) and in the independent spent fuel storage installation (ISFSI). In this configuration, the spectrum of possible transients and accidents is significantly reduced compared to an operating nuclear power reactor. The only design basis accident that could potentially result in an offsite radiological release at OCNGS is the fuel handling accident (FHA), which is predicated on spent fuel being stored in the SFP. An analysis has been performed that concludes that once OCNGS has be[en] permanently shut down for 33 days, there is no longer any possibility of an offsite radiological release from a design basis accident that could exceed the U.S. Environmental Protection Agency's (EPA's) Protective Action Guidelines (PAGs). The results of this analysis have been previously submitted to the NRC (ADAMS Accession No. ML17234A082) (Reference 5 [of Exelon's letter dated November 12, 2018]). With the significant reduction in radiological risk based on OCNGS being shut down for more than 33 days, the consequences of a cyber-attack are also significantly reduced.

Additionally, per an NRC Memorandum, ''*Cyber Security Requirements for Decommissioning Nuclear Power Plants*'' (Reference 4 [of Exelon's letter dated November 12, 2018], ADAMS Accession No. ML16172A284), the NRC staff has determined that 10 CFR 73.54 does not apply to reactor licensees that have submitted certifications of permanent cessation of power operations and permanent removal of fuel under 10 CFR 50.82(a)(1), and whose certifications have been docketed by the NRC (10 CFR 50.82(a)(2) (References 2 and 3 [of Exelon's letter dated November 12, 2018], Accession Nos. ML18045A084 and ML18268A258), once sufficient time has passed such that the spent fuel stored in the spent fuel pool cannot reasonably heat up to clad ignition temperature within 10 hours. Exelon has provided a site-specific analysis, ''*Oyster Creek Nuclear Generating Station Zirconium Fire Analysis for Drained Spent Fuel Pool,*'' in Reference 5 [of Exelon's letter dated November 12, 2018] (ADAMS Accession No. ML17234A082), that provides the determination that sufficient time will have passed prior to the requested implementation date such that the spent fuel stored in the spent fuel pool cannot reasonably heat up to clad ignition temperature within 10 hours. Exelon has subsequently submitted a revised OCNGS site-specific Zirconium-Fire Analysis (References 7 and 8 [of Exelon's letter dated November 12, 2018], ML18295A384 and ML18310A306) that supports that the minimum cooling time may be reduced to 9.38 months (235 days).

This proposed change does not alter previously evaluated accident analysis assumptions, introduce or alter any initiators, or affect the function of facility structures, systems, and components (SSCs) relied upon to prevent or mitigate any previously evaluated accident or the manner in which these SSCs are operated, maintained, modified, tested, or inspected. The proposed change does not involve any facility modifications which affect the performance capability of any SSCs relied upon to prevent or mitigate the consequences of any previously evaluated accidents.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

This proposed change does not alter accident analysis assumptions, introduce or alter any initiators, or affect the function of facility SSCs relied upon to prevent or mitigate any previously evaluated accident, or the manner in which these SSCs are operated, maintained, modified, tested, or inspected. The proposed change does not involve any facility modifications which affect the performance capability of any SSCs relied upon to mitigate the consequences of previously evaluated accidents and does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

Plant safety margins are established through limiting conditions for operation and design features specified in the OCNGS Permanently Defueled Technical Specifications that were approved by the NRC Safety Evaluation dated October 26, 2018 (Reference 11 [of Exelon's letter dated November 12, 2018], ADAMS Accession No. ML18227A338). The proposed change does not involve any changes to the initial conditions that establish safety margins and does not involve modifications to any SSCs which are relied upon to provide a margin of safety. Because there is no change to established safety margins as a result of this proposed change, no significant reduction in a margin of safety is involved.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Tamra Domeyer, Associate General Counsel, Exelon Generation Company, LLC, 4300 Winfield Road, Warrenville, IL 60555.

NRC Branch Chief: Douglas A. Broaddus.

Exelon Generation Company, LLC, Docket Nos. 50–352 and 50–353, Limerick Generating Station (LGS), Units 1 and 2, Montgomery County, Pennsylvania

Date of amendment request: October 19, 2018. A publicly-available version is in ADAMS under Accession No. ML18292A451.

Description of amendment request: The amendments would revise the LGS, Units 1 and 2, Technical Specification (TS) requirements for inoperable isolation actuation instrumentation to allow for isolation of the flow path(s) that penetrate the primary containment (PC) boundary instead of requiring closure of a specific PC isolation valve (PCIV). The proposed changes also clarify the TS action for inoperable isolation actuation instrumentation for the reactor enclosure manual isolation function.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed changes would modify specific TS Actions for inoperable PC Isolation Actuation Instrumentation to allow for isolation of the PC penetration flow path(s) instead of requiring closure of a specific PCIV. Closure of either the inboard or outboard PCIV provides the same safety function for isolating the PC penetration. The proposed changes provide for an increase in operational flexibility and avoid the potential for an extended isolation of a PC penetration. The proposed changes also modify the TS action for inoperable Isolation Actuation Instrumentation to include a clarification for the Reactor Enclosure manual isolation function. The change simplifies the description of the operator actions required to be taken and is based on the end result of performing the safety function for ensuring SC [secondary containment] integrity is maintained. These changes are consistent with existing LGS TS actions for inoperable PCIVs. These changes are also consistent with Improved Standard Technical Specifications (ISTS) actions for inoperable Isolation Actuation Instrumentation.

The proposed changes do not alter the physical design of any plant structure, system, or component; therefore, the proposed changes have no adverse effect on plant operation, or the availability or operation of any accident mitigation equipment. The plant response to the design basis accidents does not change. The proposed changes will maintain plant operation within the bounds of the current analysis for the accident source term dose limits in the Loss of Coolant Accident (LOCA) analysis, and therefore, the changes do not adversely affect the consequences of any accident previously evaluated.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed changes would modify specific TS Actions for inoperable PC Isolation Actuation Instrumentation to allow for isolation of the PC penetration flow path(s) instead of requiring closure of a specific PCIV. Closure of either the inboard or outboard PCIV provides the same safety function for isolating the penetration. The proposed changes provide for an increase in operational flexibility and avoid the potential for an extended isolation of a PC penetration. The proposed changes also modify the TS action for inoperable Isolation Actuation Instrumentation to include a clarification for the Reactor Enclosure manual isolation function. The change simplifies the description of the operator actions required to be taken and is based on the end result of performing the safety function for ensuring SC integrity is maintained. The proposed changes will maintain plant operation within the bounds of the current analysis and assumptions for the accident and special event analysis.

The proposed changes do not alter the plant configuration (no new or different type of equipment is being installed) or require any new or unusual operator actions. The proposed changes do not alter the safety limits or safety analysis assumptions associated with the operation of the plant. The proposed changes do not introduce any new failure modes that could result in a new accident. The proposed changes do not reduce or adversely affect the capabilities of any plant structure, system, or component in the performance of their safety function. Also, the response of the plant and the operators following the design basis accidents is unaffected by the proposed changes.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed changes would modify specific TS Actions for inoperable PC Isolation Actuation Instrumentation to allow for isolation of the PC penetration flow path(s) instead of requiring closure of a specific PCIV. Closure of either the inboard or outboard PCIV provides the same safety function for isolating the PC penetration. The proposed changes provide for an increase in operational flexibility and avoid the potential for an extended isolation of a PC penetration. The proposed changes also modify the TS action for inoperable Isolation Actuation Instrumentation to include a clarification for the Reactor Enclosure manual isolation function. The change simplifies the description of the operator actions required to be taken and is based on the end result of performing the safety function for ensuring SC integrity is maintained. The proposed changes will maintain plant operation within the bounds of the current analysis and assumptions for the accident and special event analysis.

The proposed changes have no adverse effect on plant operation, or the availability or operation of any accident mitigation equipment. The plant response to the design basis accidents does not change. The proposed changes do not adversely affect existing plant safety margins or the reliability of the equipment assumed to operate in the safety analyses. There is no change being made to safety analysis assumptions, safety limits or limiting safety system settings that would adversely affect plant safety as a result of the proposed changes.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Tamra Domeyer, Associate General Counsel, Exelon Generation Company, LLC, 4300 Winfield Road, Warrenville, IL 60555.

NRC Branch Chief: James G. Danna.

Exelon Generation Company, LLC, Docket No. 50–220, Nine Mile Point Nuclear Station, Unit 1, Oswego County, New York

Date of amendment request: June 26, 2018. A publicly-available version is in ADAMS under Accession No. ML18177A044.

Description of amendment request: The amendment would modify Technical Specification (TS) 3.3.1, ''Oxygen Concentration,'' to require inerting the primary containment to less than 4 percent by volume oxygen concentration within 24 hours of exceeding 15 percent of rated thermal power (RTP), and allow de-inerting the containment 24 hours prior to reducing thermal power to less than or equal to 15 percent of RTP. Also, the amendment would add a new requirement to identify required actions if the primary containment oxygen concentration increases to greater than or equal to four volume percent while in the power operating condition.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change modifies the Technical Specifications (TS) by adopting containment inerting and de-inerting requirements that are consistent with the guidance of NUREG–1433, ''Standard Technical Specifications—General Electric BWR/4 Plants, Volume 1, Revision 4.0,'' published April 2012. The proposed change will allow inerting of the primary containment within 24 hours of exceeding 15 percent (%) Rated Thermal Power (RTP), and de-inerting 24 hours prior to reducing reactor power to less than or equal to 15% RTP. Also, a new TS condition will be added to identify required actions if the primary containment oxygen concentration increases to greater than or equal to 4% by volume while in the power operating condition. The proposed change does not alter the physical configuration of the plant, nor does it affect any previously analyzed accident initiators. The accident analysis assumes that a Loss of Coolant Accident (LOCA) occurs at 100% RTP. The consequences of a LOCA at less than or equal to 15% RTP would be much less severe, and produce less hydrogen than a LOCA at 100% RTP.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change adopts the STS guidance regarding containment inerting/de-inerting requirements. The proposed change introduces no new mode of plant operation and does not involve any physical modification to the plant. The proposed change is consistent with the current safety analysis assumptions. No setpoints are being changed which would alter the dynamic response of plant equipment. Accordingly, no new failure modes are introduced.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The proposed change revises the Applicability presentation of the Oxygen Concentration TS. No safety limits are affected. The Oxygen Concentration TS requirements assure sufficient safety margins are maintained, and that the design, operation, surveillance methods, and acceptance criteria specified in applicable codes and standards (or alternatives approved for use by the NRC) will continue to be met as described in the plants' licensing basis. The proposed change does not adversely affect existing plant safety margins or the reliability of the equipment assumed to operate in the safety analysis. As such, there are no changes being made to safety analysis assumptions, safety limits, or limiting safety system settings that would adversely affect plant safety.

Therefore, the proposed change does not result in a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Tamra Domeyer, Associate General Counsel, Exelon Generation Company, LLC, 4300 Winfield Road, Warrenville, IL 60555.

NRC Branch Chief: James G. Danna.

Exelon Generation Company, LLC, Docket No. 50–219, Oyster Creek Nuclear Generating Station (OCNGS), Ocean County, New Jersey

Date of amendment request: October 22, 2018. A publicly-available version is in ADAMS under Accession No. ML18295A384.

Description of amendment request: The amendment would revise the effective and implementation dates of License Amendment No. 294, Permanently Defueled Emergency Plan (PDEP) and Emergency Action Level (EAL) scheme for the permanently defueled condition. On October 17, 2018 (ADAMS Accession No. ML18221A400), the NRC approved License Amendment No. 294, OCNGS PDEP and Permanently Defueled EAL Scheme. The PDEP and Permanently Defueled EAL scheme were predicated on approval of request for exemptions from portions of 10 CFR 50.47(b); 10 CFR 50.47(c)(2); and 10 CFR part 50, Appendix E, Section IV, which were approved on October 16, 2018 (ADAMS Accession No. ML18220A980). The basis for the approval of the exemptions from offsite emergency preparedness requirements included a site-specific analysis that showed that the fuel stored in the spent fuel pool (SFP) would not reach the zirconium ignition temperature in fewer than 10 hours from the time at which it was assumed a loss of both water and air cooling of the spent fuel (zirc-fire window). The revised adiabatic calculation provided in the submittal dated October 22, 2018, results in a reduced decay period from 365 days to 285 days for the zirc-fire window after the final reactor shut down.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change to the effective and implementation dates of License Amendment No. 294, OCNGS PDEP, Permanently Shutdown EAL scheme, and associated Exemptions at 9.38 months (285 days) does not impact the function of plant structures, systems, or components (SSCs). The proposed change does not affect accident initiators or precursors, nor does it alter design assumptions. The proposed change does not prevent the ability of the on-shift staff and emergency response organization (ERO) to perform their intended functions to mitigate the consequences of any accident or event that will be credible in the permanently defueled condition.

The probability of occurrence of previously evaluated accidents is not increased, since most previously analyzed accidents can no longer occur and the probability of the few remaining credible accidents are unaffected by the proposed amendment.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change to effective and implementation dates for License Amendment No. 294, PDEP, Permanently Shutdown EAL scheme, and associated Exemptions at 9.38 months (285 days) is commensurate with the hazards associated with a permanently shutdown and defueled facility based on the updated site-specific analysis that showed the fuel stored in the SFP would not reach the zirconium ignition temperature in fewer than 10 hours from the time at which it was assumed a loss of both water and air cooling of the spent fuel. The proposed change does not involve installation of new equipment or modification of existing equipment, so that no new equipment failure modes are introduced. In addition, the proposed change does not result in a change to the way that the equipment or facility is operated so that no new or different kinds of accident initiators are created.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

Margin of safety is associated with confidence in the ability of the fission product barriers (*i.e.,* fuel cladding, reactor coolant system pressure boundary, and containment structure) to limit the level of radiation dose to the public. The proposed change is associated with changing the effective and implementation dates of License Amendment No. 294, PDEP, Permanently Shutdown EAL scheme and associated Exemptions; it does not impact operation of the plant or its response to transients or accidents. The change does not affect the Technical Specifications. The proposed change does not involve a change in the method of plant operation, and no design bases accident analyses will be affected by the proposed changes. Safety analysis acceptance criteria are not affected by the proposed changes. The PDEP will continue to provide the necessary response staff with the appropriate guidance to protect the health and safety of the public.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Tamra Domeyer, Associate General Counsel, Exelon Generation Company, LLC, 4300 Winfield Road, Warrenville, IL 60555.

NRC Branch Chief: Douglas A. Broaddus.

Exelon Generation Company, LLC, Docket Nos. 50–317 and 50–318, Calvert Cliffs Nuclear Power Plant (Calvert Cliffs), Units 1 and 2, Calvert County, Maryland

Date of amendment request: August 13, 2018. A publicly available version is in ADAMS under Accession No. ML18226A189.

Description of amendment request: The amendments would revise the Technical Specifications (TSs) and licensing basis for the Calvert Cliffs, Units 1 and 2 Renewed Facility Operating Licenses, as documented in the Updated Final Safety Analysis Report (UFSAR). The changes would incorporate use of both a deterministic and a risk-informed approach to address safety issues discussed in Generic Safety Issue (GSI)-191, ''Assessment of Debris Accumulation on PWR [Pressurized-Water Reactor] Sump Performance,'' and close Generic Letter (GL) 2004–02, ''Potential Impact of Debris Blockage on Emergency Recirculation During Design Basis Accidents at Pressurized-Water Reactors,'' dated September 13, 2004 (ADAMS Accession No. ML042360586). New TS 3.6.9, ''Containment Emergency Sump,'' would be added, and administrative changes would be made to TS 3.5.2, ''ECCS [Emergency Core Cooling System]—Operating,'' and TS 3.5.3, ''ECCS—Shutdown.''

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change adds a new Technical Specification (TS) for the Containment Emergency Sump and moves an existing surveillance requirement (SR) from the ECCS TS to the new Containment Emergency Sump TS. The proposed changes support a methodology change for assessment of debris effects that adds the results of a risk-informed evaluation to the Calvert Cliffs licensing basis. The methodology change concludes that the ECCS and Containment System will have sufficient defense-in-depth and safety margin and with high probability will operate following a LOCA [loss-of-coolant accident] when considering the impacts and effects of debris accumulation on containment emergency recirculation sump strainer in recirculation mode. The methodology change also supports the changes to the TS.

There is no significant increase in the probability of an accident previously evaluated. The proposed changes address mitigation of loss of coolant accidents and have no effect on the probability of the occurrence of a LOCA. The proposed methodology and TS changes do not implement any physical changes to the facility or any Structures Systems and Components (SSCs), and do not implement any changes in plant operation that could lead to a different kind of accident.

The methodology change confirms that required SSCs supported by the emergency recirculation sumps with a high probability will perform their safety functions as required and does not alter or prevent the ability of SSCs to perform their intended function to mitigate the consequences of an accident previously evaluated within the acceptance limits. The safety analysis acceptance criteria in the Updated Final Safety Analysis Report (UFSAR) continue to be met for the proposed methodology change. The evaluation of the changes determined that containment integrity will be maintained. The dose consequences were considered in the assessment and quantitative evaluation of the effects on dose using input from the risk-informed approach shows the increase in dose consequences is small.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of any the accident previously evaluated in the UFSAR.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change adds a new Technical Specification for the Containment Emergency sump and moves an existing SR from the ECCS TS to the new Containment Emergency Sump TS. The proposed changes are a methodology change for assessment of debris effects from LOCAs that are already evaluated in the Calvert Cliffs UFSAR, an extension of TS required completion time for potential LOCA debris related effects on ECCS and CS and associated administrative changes to the TS. No new or different kind

[of] accident is being evaluated. None of the changes install or remove any plant equipment, or alter the design, physical configuration, or mode of operation of any plant structure, system or component. The proposed changes do not introduce any new failure mechanisms or malfunctions that can initiate an accident. The proposed changes do not introduce failure modes, accident initiators, or equipment malfunctions that would cause a new or different kind of accident.

Therefore, the proposed changes do not create the possibility for a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed change adds a new TS for the containment emergency sump and moves an existing SR from the ECCS TS to the new Containment Emergency Sump TS. The proposed change includes a methodology change for assessment of debris effects from LOCAs.

The sump strainer debris loads from a full spectrum of LOCAs of all piping sizes up to and including double-ended guillotine breaks of the largest pipe in the reactor coolant system, are analyzed. Appropriate redundancy and consideration of loss of offsite power and worst case single failure are retained, such that defense-in-depth is maintained.

Application of the risk-informed methodology showed that the increase in risk from the contribution of the analyzed debris effects is very small as defined by RG [Regulatory Guide] 1.174 and that there is adequate defense in depth and safety margin. Consequently, Calvert Cliffs determined that the risk-informed method does not involve a significant reduction in margin of safety and demonstrated that the containment emergency sump will continue to support the ability of safety related components to perform their design functions when the effects of debris are considered. The proposed change does not alter the manner in which safety limits are determined or acceptance criteria associated with a safety limit. The proposed change does not implement any changes to plant operation and does not significantly affect SSCs that respond to safely shutdown the plant and to maintain the plant in a safe shutdown condition. The proposed change does not affect the existing safety margins in the barriers for the release of radioactivity. There are no changes to any of the safety analyses in the UFSAR.

Defense in depth and safety margin was extensively evaluated for the methodology change and the associated TS changes. The evaluation determined that there is substantial defense in depth and safety margin that provide a high level of confidence that the calculated risk for the methodology and TS changes is acceptable.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Tamra Domeyer, Associate General Counsel, Exelon Generation Company, LLC, 4300 Winfield Road, Warrenville, IL 60555.

NRC Branch Chief: James G. Danna.

Exelon Generation Company, LLC, Docket Nos. 50–317, 50–318 and 72–8, Calvert Cliffs Nuclear Power Plant (CCNPP), Units 1 and 2, and Independent Spent Fuel Storage Installation, Calvert County, Maryland

Date of amendment request: August 30, 2018. A publicly available version is in ADAMS under Accession No. ML18242A067.

Description of amendment request: The amendments would relocate and consolidate the Emergency Operations Facility (EOF) and Joint Information Center (JIC) for CCNPP with the existing Exelon Generation Company, LLC joint EOF and JIC located at 175 North Caln Road, Coatesville, Pennsylvania. (This facility in Coatesville, Pennsylvania, is currently used as an EOF/JIC for Limerick Generating Station, Units 1 and 2 (LGS); Peach Bottom Atomic Power Station, Units 2 and 3 (PBAPS); and Three Mile Island Nuclear Station (TMI).)

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change relocates the CCNPP EOF/JIC from its present location to the existing Coatesville EOF/JIC. This EOF/JIC facility currently functions as the EOF/JIC for LGS, PBAPS, and TMI. The functions and capabilities of the relocated CCNPP EOF/JIC will continue to meet the applicable regulatory requirements. The proposed changes have no effect on normal plant operation. The proposed changes do not affect accident initiators or accident precursors, nor do the changes alter design assumptions. The proposed changes do not impact the function of plant Structures, Systems, or Components (SSCs). The proposed changes do not alter or prevent the ability of the emergency response organization to perform its intended functions to mitigate the consequences of an accident or event.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change only impacts the implementation of the CCNPP Emergency Plan by relocating and consolidating its EOF/JIC with the established Coatesville EOF/JIC. The functions and capabilities of the relocated CCNPP EOF/JIC will continue to meet the applicable regulatory requirements. The proposed change has no impact on the design, function, or operation of any plant SSCs. The proposed change does not affect plant equipment or accident analyses. The proposed change does not involve a physical alteration of the plant (*i.e.,* no new or different type of equipment will be installed), a change in the method of plant operation, or new operator actions. The proposed change does not introduce failure modes that could result in a new accident, and the proposed change does not alter assumptions made in the safety analysis.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed change only impacts the implementation of the CCNPP Emergency Plan by relocating its current EOF/JIC to the existing Coatesville EOF/JIC. The functions and capabilities of the relocated EOF/JIC will continue to meet the applicable regulatory requirements.

Margin of safety is associated with confidence in the ability of the fission product barriers (*i.e.,* fuel cladding, reactor coolant system pressure boundary, and containment structure) to limit the level of radiation dose to the public. The proposed change is associated with the Emergency Plans for CCNPP and does not impact operation of the plant or its response to transients or accidents. The proposed change does not affect the Technical Specifications. The proposed change does not involve a change in the method of plant operation, and no accident analyses will be affected by the proposed change. Safety analysis acceptance criteria are not affected. The proposed change does not adversely affect existing plant safety margins, or the reliability of the equipment assumed to operate in the safety analyses. There are no changes being made to safety analysis assumptions, safety limits, or limiting safety system settings that would adversely affect plant safety as a result of the proposed change.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Tamra Domeyer, Associate General Counsel, Exelon Generation Company, LLC, 4300 Winfield Road, Warrenville, IL 60555.

NRC Branch Chief: James G. Danna.

PSEG Nuclear LLC, Docket No. 50–354, Hope Creek Generating Station (HCGS), Salem County, New Jersey

Date of amendment request: October 30, 2018. A publicly-available version is in ADAMS under Accession No. ML18304A191.

Description of amendment request: The amendment would revise Technical Specification (TS) 3.3.7.4, ''Remote Shutdown System Instrumentation and Controls,'' to make the HCGS requirements consistent with Improved Standard Technical Specification 3.3.4, ''Remote Shutdown System.'' The change would increase the allowed outage time for inoperable remote shutdown system components to a time that is more consistent with their safety significance. Also, the amendment would delete Tables 3.3.7.4–1, 3.3.7.4–2, and 4.3.7.4–1, and relocate them to the Technical Requirements Manual, where they would be directly controlled by HCGS.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed TS amendment does not involve potential accident initiators; therefore, there is no significant increase in the probability of an accident previously evaluated. There is no proposed change to the design basis or configuration of the plant and the extension of the allowed outage time of the Remote Shutdown System functions is consistent with the low probability of an event requiring control room evacuation during the allowed outage time and does not have a significant effect on safety.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed amendment does not involve physical alteration of the HCGS. No new equipment is being introduced, and installed equipment is not being operated in a new or different manner. There is no change being made to the parameters within which the HCGS is operated. There are no setpoints at which protective or mitigating actions are initiated that are affected by this proposed action. The change does not alter assumptions made in the safety analysis. This proposed action will not alter the manner in which equipment operation is initiated, nor will the functional demands on credited equipment be changed. No alteration is proposed to the procedures that ensure the HCGS remains within analyzed limits, and no change is being made to procedures relied upon to respond to an off-normal event. As such, no new failure modes are being introduced.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

Margin of safety is related to the confidence in the ability of the fission product barriers to perform their design functions during and following an accident. These barriers include the fuel cladding, the reactor coolant system, and the containment system. The proposed change, which makes the HCGS TS for Remote Shutdown System consistent with the requirements of NUREG–1433, does not exceed or alter a setpoint, design basis or safety limit.

Therefore, the proposed amendment does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Steven Fleischer, PSEG Services Corporation, 80 Park Plaza, T–5, Newark, NJ 07101.

NRC Branch Chief: James G. Danna.

Tennessee Valley Authority, Docket Nos. 50–259, 50–260, and 50–296, Browns Ferry Nuclear Plant (BFN), Units 1, 2, and 3, Limestone County, Alabama

Date of amendment request: October 18, 2018. A publicly-available version is in ADAMS under Accession No. ML18295A109.

Description of amendment request: The amendments would revise the BFN licensing basis regarding the National Fire Protection Association (NFPA) 805 program to delete Modification 85 from Table S–2 ''Plant Modifications Committed,'' and to extend due dates for Modifications 102 and 106 in Table S–2 for 4 months and 6 months, respectively.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed amendment adds the reference to this letter to the BFN RFOL [Renewed Facility Operating License] License Condition, Transition Condition 2, paragraphs 2.C.(13), 2.C.(14), and 2.C.(7) for BFN Units 1, 2, and 3, respectively. The change encompassed by the proposed amendment is to delete Modification 85 in Attachment S, Table S–2 of the BFN NFPA 805 Transition Report, and to extend the due dates of Modifications 102 and 106.

The proposed changes do not adversely affect accident initiators or precursors nor alter the design assumptions, conditions, and configuration of the facility or the manner in which the plant is operated and maintained. The proposed change does not affect the ability of structures, systems and components (SSCs) to perform their intended safety function to mitigate the consequences of an initiating event within the assumed acceptance limits.

Therefore, these proposed changes do not involve a significant increase in the probability of consequences of an accident previously identified.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed amendment adds the reference to this letter to the BFN RFOL License Condition, Transition Condition 2, paragraphs 2.C.(13), 2.C.(14), and 2.C.(7) for BFN Units 1, 2, and 3, respectively. The changes encompassed by the proposed amendment are to delete Modification 85 in Attachment S, Table S–2 of the BFN NFPA 805 Transition Report, and extend the due dates of Modifications 102 and 106.

There is no risk impact to Core Damage Frequency (CDF) or Large Early Release Frequency (LERF) because these proposed changes do not impact the FPRA [fire probabilistic risk assessment] results. These proposed changes are an NFPA 805 Chapter 3 compliance issue only and do not require a change to the FPRA. This level of detail is not modeled in the FPRA.

The proposed change does not result in any new or different kinds of accident from that previously evaluated because it does not change any precursors or equipment that is previously credited for accident mitigation.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The proposed amendment adds the reference to this letter to the BFN RFOL License Condition, Transition Condition 2, paragraphs 2.C.(13), 2.C.(14), and 2.C.(7) for BFN Units 1, 2, and 3, respectively. The change encompassed by the proposed amendment is to delete Modification 85 in

Attachment S, Table S–2 of the BFN NFPA 805 Transition Report, and extend the due dates of Modifications 102 and 106.

The proposed change deletes Modification 85 in its entirety from Table S–2. Modification 85 would have installed pneumatic pre-discharge alarms and pneumatic time delays in the CO_2 systems to meet NFPA 12, 2008 Edition. NFPA 12, 2008 Edition requires pneumatic predischarge alarms and pneumatic time delays for CO_2 systems. The CO_2 system predischarge alarms and time delays are currently electric and meet the NFPA 12, 1966 Edition code of record.

The deletion of Modification 85 does not affect the Fire PRA or the fire suppression system currently in place at BFN. This proposed change does not affect other items listed in Attachment S or adversely affect the BFN implementation of NFPA 805 at BFN.

The proposed changes associated with Modifications 85, 102, and 106 do not involve any licensing basis analyses. Therefore, the safety margin inherent in the analyses for fire events has been preserved.

These proposed changes will not result in any new or different kinds of accident from that previously evaluated because it does not change any precursors or equipment that is previously credited for accident mitigation.

Therefore, based on the above discussion, these proposed changes do not involve a reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, 6A West Tower, Knoxville, TN 37902.

NRC Branch Chief: Undine Shoop.

IV. Previously Published Notices of Consideration of Issuance of Amendments to Facility Operating Licenses and Combined Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The following notices were previously published as separate individual notices. The notice content was the same as above. They were published as individual notices either because time did not allow the Commission to wait for this biweekly notice or because the action involved exigent circumstances. They are repeated here because the biweekly notice lists all amendments issued or proposed to be issued involving no significant hazards consideration.

For details, see the individual notice in the **Federal Register** on the day and page cited. This notice does not extend the notice period of the original notice.

Tennessee Valley Authority, Docket No. 50–391, Watts Bar Nuclear Plant, Unit 2, Rhea County, Tennessee

Date of amendment request: October 31, 2018.

Brief description of amendment request: The proposed amendment would revise the completion date for License Condition 2.C.(5) for the Watts Bar Nuclear Plant, Unit 2, regarding the completion of action to resolve the issues identified in Bulletin 2012–01, ''Design Vulnerability in Electric Power System'' (ADAMS Accession No. ML12074A115), from December 31, 2018, to December 31, 2019, to align with the remainder of the Tennessee Valley Authority fleet and with the nuclear industry.

Date of publication of individual notice in ***Federal Register:*** November 14, 2018 (83 FR 56876).

Expiration date of individual notice: December 14, 2018 (public comments); January 14, 2019 (hearing requests).

V. Notice of Issuance of Amendments to Facility Operating Licenses and Combined Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR chapter I, which are set forth in the license amendment.

A notice of consideration of issuance of amendment to facility operating license or combined license, as applicable, proposed no significant hazards consideration determination, and opportunity for a hearing in connection with these actions, was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.22(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items can be accessed as described in the ''Obtaining Information and Submitting Comments'' section of this document.

Duke Energy Carolinas, LLC, Docket Nos. 50–413 and 50–414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina

Date of amendment request: September 14, 2017, as supplemented by letters dated May 8, August 17, September 20, October 29, and November 15, 2018.

Brief description of amendments: The amendments revised Technical Specification 3.7.8, ''Nuclear Service Water System (NSWS).'' A new Condition D was added, along with other corresponding changes, for one NSWS pond return header being inoperable due to the NSWS being aligned for single pond return header operation with a Completion Time of 30 days.

Date of issuance: November 28, 2018.

Effective date: As of the date of issuance and shall be implemented within 120 days of issuance.

Amendment Nos.: 300 (Unit 1) and 296 (Unit 2). A publicly-available version is in ADAMS under Accession No. ML18275A278; documents related to these amendments are listed in the Safety Evaluation enclosed with the amendments.

Renewed Facility Operating License Nos. NPF–35 and NPF–52: The amendments revised the Renewed Facility Operating Licenses and Technical Specifications.

Date of initial notice in ***Federal Register:*** March 13, 2018 (83 FR 10914). The supplemental letters dated May 8, August 17, September 20, October 19, and November 15, 2018, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 28, 2018.

No significant hazards consideration comments received: Yes. One comment from a member of the public was received, however it was not related to the no significant hazards consideration determination or the license amendment request.

Duke Energy Carolinas, LLC, Docket Nos. 50–369 and 50–370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina

Date of amendment request: May 31, 2018.

Brief description of amendments: The amendments modified Technical Specification 3.1.7, ''Rod Position Indication,'' to add a new Condition for more than one inoperable digital rod position indication (DRPI) per rod group, and revise the Actions Note and to clarify the wording of current Required Actions A.1 and B.1. This change is consistent with NRC-approved Technical Specification Task Force (TSTF) Traveler TSTF–234–A, ''Add Action for More Than One [D]RPI Inoperable,'' Revision 1.

Date of issuance: November 19, 2018.

Effective date: These license amendments are effective as of its date of issuance and shall be implemented within 30 days of issuance.

Amendment Nos.: 310 (Unit 1) and 289 (Unit 2). A publicly-available version is in ADAMS under Accession No. ML18277A322; documents related to these amendments are listed in the Safety Evaluation enclosed with the amendments.

Renewed Facility Operating License Nos. NPF–9 and NPF–17: The amendments revised the Renewed Facility Operating Licenses and Technical Specifications.

Date of initial notice in ***Federal Register:*** August 28, 2018 (83 FR 43904).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated November 19, 2018.

No significant hazards consideration comments received: No.

Duke Energy Progress, LLC, Docket No. 50–400, Shearon Harris Nuclear Power Plant, Unit 1 (HNP), Wake and Chatham Counties, North Carolina

Date of amendment request: October 10, 2017.

Brief description of amendment: The amendment revised Technical Specification (TS) ¾.1.1, ''Reactivity Control Systems Boration Control,'' and TS ¾.1.3, ''Reactivity Control Systems Movable Control Assemblies Group Height,'' to align more closely to the improved Standard TSs for rod control and to the initial conditions in the HNP safety analyses.

Date of issuance: November 19, 2018.

Effective date: As of the date of issuance and shall be implemented within 30 days of issuance.

Amendment No.: 168. A publicly-available version is in ADAMS under Accession No. ML18262A303; documents related to this amendment are listed in the Safety Evaluation enclosed with the amendment.

Renewed Facility Operating License No. NPF–63: The amendment revised the Renewed Facility Operating License and TSs.

Date of initial notice in ***Federal Register:*** January 2, 2018 (83 FR 167).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 19, 2018.

No significant hazards consideration comments received: No.

Entergy Nuclear Operations, Inc., Docket No. 50–293, Pilgrim Nuclear Power Station, Plymouth County, Massachusetts

Date of amendment request: January 12, 2018, as supplemented by letter dated May 23, 2018.

Brief description of amendment: The amendment consisted of changes to the Emergency Response Organization's on-shift and augmented staffing changes to the Pilgrim Nuclear Power Station Site Emergency Plan.

Date of issuance: November 30, 2018.

Effective date: This license amendment is effective upon submittal of the certification of permanent removal of fuel from the reactor vessel in accordance with 10 CFR 50.82(a)(1)(ii), and shall be implemented within 90 days of the effective date.

Amendment No.: 248. A publicly-available version is in ADAMS under Accession No. ML18284A375; documents related to this amendment are listed in the Safety Evaluation enclosed with the amendment.

Renewed Facility Operating License No. DPR–35: The amendment revised the Site Emergency Plan.

Date of initial notice in ***Federal Register:*** March 27, 2018 (83 FR 13149). The supplemental letter dated May 23, 2018, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 30, 2018.

No significant hazards consideration comments received: No.

Entergy Operations, Inc., Docket No. 50–368, Arkansas Nuclear One, Unit 2 (ANO–2), Pope County, Arkansas

Date of amendment request: November 20, 2017, as supplemented by letters dated August 1, and October 10, 2018.

Brief description of amendment: The amendment revised the ANO–2 Technical Specifications (TSs) to replace the current pressure-temperature limits for heatup, cooldown, and the inservice leak hydrostatic tests for the reactor coolant system presented in TS 3.4.9, which expire at 32 Effective Full Power Years (EFPY), with limitations that extend out to 54 EFPY.

Date of issuance: November 27, 2018.

Effective date: As of the date of issuance and shall be implemented within 30 days from the date of issuance.

Amendment No.: 311. A publicly-available version is in ADAMS under Accession No. ML18298A012; documents related to this amendment are listed in the Safety Evaluation enclosed with the amendment.

Renewed Facility Operating License No. NPF–6: The amendment revised the Renewed Facility Operating License and TSs.

Date of initial notice in ***Federal Register:*** February 27, 2018 (83 FR 8514). The supplemental letters dated August 1, and October 10, 2018, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the NRC staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 27, 2018.

No significant hazards consideration comments received: No.

Entergy Operations, Inc., Docket Nos. 50–313 and 50–368, Arkansas Nuclear One, Units 1 and 2, Pope County, Arkansas

Entergy Operations, Inc.; System Energy Resources, Inc.; Cooperative Energy, a Mississippi Electric Cooperative; and Entergy Mississippi, Inc., Docket No. 50–416, Grand Gulf Nuclear Station (Grand Gulf), Unit 1, Claiborne County, Mississippi

Date of amendment request: September 21, 2017, as supplemented by letter dated November 15, 2018.

Brief description of amendments: The amendments for Arkansas Nuclear One, Units 1 and 2, revised Renewed Facility

Operating License Nos. DPR–51 and NPF–6 to reflect a new limited liability company, Entergy Arkansas, LLC, as owner, as a result of the license transfer. The amendment for Grand Gulf, Unit 1, revised Renewed Facility Operating License No. NPF–29 to reflect a newly formed entity with antitrust responsibilities, Entergy Mississippi, LLC, as a result of the license transfer.

Date of issuance: November 30, 2018.

Effective date: As of the date of issuance and shall be implemented within 60 days from the date of issuance.

Amendment Nos: 262 (Arkansas Nuclear One, Unit 1), 312 (Arkansas Nuclear One, Unit 2), and 215 (Grand Gulf, Unit 1). A publicly-available version is in ADAMS under Accession No. ML18306A513; documents related to these amendments are listed in the Safety Evaluation enclosed with the letter dated August 1, 2018 (ADAMS Accession No. ML18177A236).

Renewed Facility Operating License Nos. DPR–51, NPF–6, and NPF–29: The amendments revised the Renewed Facility Operating Licenses for Arkansas Nuclear One, Units 1 and 2, and revised the Renewed Facility Operating License and the antitrust conditions for Grand Gulf, Unit 1.

Date of initial notice in ***Federal Register:*** December 29, 2017 (82 FR 61800). The supplemental letter dated November 15, 2018, provided additional information that clarified the application and did not expand the scope of the application as originally noticed.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 1, 2018.

Exelon FitzPatrick, LLC and Exelon Generation Company, LLC, Docket No. 50–333, James A. FitzPatrick Nuclear Power Plant (FitzPatrick), Oswego County, New York

Date of amendment request: January 31, 2018, as supplemented by letter dated July 12, 2018.

Brief description of amendment: The amendment revised the emergency plan by changing the emergency action level schemes to those based on the Nuclear Energy Institute's (NEI's) guidance in NEI–99–01, Revision 6, ''Development of Emergency Action Levels for Non-Passive Reactors,'' dated November 2012, which was endorsed by the NRC by letter dated March 28, 2013.

Date of issuance: November 28, 2018.

Effective date: As of the date of issuance, and shall be implemented on or before December 31, 2019.

Amendment No.: 323. A publicly-available version is in ADAMS under Accession No. ML18289A432; documents related to this amendment are listed in the Safety Evaluation enclosed with the amendment.

Renewed Facility Operating License No. DPR–59: The amendment revised the FitzPatrick emergency plan.

Date of initial notice in ***Federal Register:*** July 17, 2018 (83 FR 33267). The supplement dated July 12, 2018, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the NRC staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 28, 2018.

No significant hazards consideration comments received: No.

Exelon Generation Company, LLC, Docket Nos. 50–352 and 50–353, Limerick Generating Station, Units 1 and 2, Montgomery County, Pennsylvania

Date of amendment request: January 29, 2018, as supplemented by letter dated June 11, 2018.

Brief description of amendments: The amendments lowered the Technical Specification (TS) Standby Liquid Control System (SLCS) Surveillance Requirement (SR) (TS ¾.1.5) pump flow rate value, raised the TS SLCS SR Boron-10 enrichment value of the sodium pentaborate added to the SLCS tank, and expanded the operating range in the sodium pentaborate solution temperature/concentration requirements figure.

Date of issuance: November 27, 2018.

Effective date: As of the date of issuance and shall be implemented within 90 days of issuance.

Amendment Nos.: 232 (Unit 1) and 195 (Unit 2). A publicly-available version is in ADAMS under Accession No. ML18255A278; documents related to these amendments are listed in the Safety Evaluation enclosed with the amendments.

Renewed Facility Operating License Nos. NPF–39 and NPF–85: The amendments revised the Renewed Facility Operating Licenses and TSs.

Date of initial notice in ***Federal Register:*** March 27, 2018 (83 FR 13150). The supplemental letter dated June 11, 2018, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the NRC staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 27, 2018.

No significant hazards consideration comments received: No.

NextEra Energy Duane Arnold, LLC, Docket No. 50–331, Duane Arnold Energy Center, Linn County, Iowa

Date of amendment request: December 15, 2018, as supplemented by letters dated July 26, and October 18, 2018.

Brief description of amendment: The amendment revised the emergency action level (EAL) scheme to one based on the Nuclear Energy Institute (NEI) document NEI 99–01, Revision 6, ''Development of Emergency Action Levels for Non-Passive Reactors,'' dated November 21, 2012.

Date of issuance: November 30, 2018.

Effective date: As of the date of issuance and shall be implemented within 365 days.

Amendment No.: 308. A publicly-available version is in ADAMS under Accession No. ML18292A566; documents related to this amendment are listed in the Safety Evaluation enclosed with the amendment.

Renewed Facility Operating License No. DPR–49: The amendment revised the Renewed Facility Operating License No. DPR–49.

Date of initial notice in ***Federal Register:*** March 13, 2018 (83 FR 10920). The supplemental letters dated July 26, and October 18, 2018, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 30, 2018.

No significant hazards consideration comments received: No.

NextEra Energy Point Beach, LLC, Docket Nos. 50–266 and 50–301, Point Beach Nuclear Plant (PBNP), Units 1 and 2, Town of Two Creeks, Manitowoc County, Wisconsin

Date amendment request: August 31, 2017, as supplemented by letters dated October 26, 2017, August 10, and September 28, 2018.

Brief description of amendments: The amendments revised the Renewed Facility Operating Licenses for PBNP, Units 1 and 2, to add a new license

condition to allow the implementation of 10 CFR 50.69, ''Risk-informed categorization and treatment of structures, systems and components for nuclear power reactors.''

Date of issuance: November 26, 2018.

Effective date: As of the date of issuance and shall be implemented within 90 days of issuance.

Amendment Nos.: 262 (Unit 1) and 265 (Unit 2). A publicly-available version is in ADAMS under Accession No. ML18289A378; documents related to these amendments are listed in the Safety Evaluation enclosed with the amendments.

Renewed Facility Operating License Nos. DPR–24 and DPR–27: The amendments revised the Renewed Facility Operating Licenses.

Date of initial notice in ***Federal Register:*** February 13, 2018 (83 FR 6226). The supplemental letters dated August 10, and September 28, 2018, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated November 26, 2018.

No significant hazards consideration comments received: No.

NextEra Energy Seabrook, LLC, Docket No. 50–443, Seabrook Station, Unit No. 1, Rockingham County, New Hampshire

Date of amendment request: December 1, 2017.

Description of amendment request: The amendment revised certain 18-month Technical Specification (TS) surveillance requirements to eliminate the condition that testing be conducted ''during shutdown'' and revised the administrative portion of the TSs regarding plant staff and responsibilities.

Date of issuance: November 27, 2018.

Effective date: As of the date of issuance and shall be implemented within 90 days.

Amendment No.: 158. A publicly-available version is in ADAMS under Accession No. ML18247A538; documents related to this amendment are listed in the Safety Evaluation enclosed with the amendment.

Facility Operating License No. NPF–86: The amendment revised the Facility Operating License and TSs.

Date of initial notice in ***Federal Register:*** February 13, 2018 (83 FR 6227).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 27, 2018.

No significant hazards consideration comments received: No.

Northern States Power Company—Minnesota, Docket No. 50–263, Monticello Nuclear Generating Plant, Wright County, Minnesota

Date of amendment request: July 3, 2018.

Brief description of amendment: The amendment changed the Technical Specifications to adopt Technical Specifications Task Force (TSTF) traveler, TSTF–551, Revision 3, ''Revise Secondary Containment Surveillance Requirements.''

Date of issuance: November 26, 2018.

Effective date: As of the date of issuance and shall be implemented within 90 days of issuance.

Amendment No.: 199. A publicly-available version is in ADAMS under Accession No. ML18291B214; documents related to this amendment are listed in the Safety Evaluation enclosed with the amendment.

Renewed Facility Operating License No. DPR–22: The amendment revised the Renewed Facility Operating License and Technical Specifications.

Date of initial notice in ***Federal Register:*** August 28, 2018 (83 FR 43906).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 26, 2018.

No significant hazards consideration comments received: No.

Southern Nuclear Operating Company, Docket Nos. 52–025 and 52–026, Vogtle Electric Generating Plant, Units 3 and 4, Burke County, Georgia

Date of amendment request: May 18, 2018.

Description of amendments: These amendments authorized changes to Technical Specifications Limiting Condition for Operation 3.3.8, Engineered Safety Feature Actuation System (ESFAS) Instrumentation, related to Safeguard Actuation Functions. Various ESFAS Functions require applicability and corresponding action changes to more accurately reflect their operation and related safety analysis assumptions.

Date of issuance: November 13, 2018.

Effective date: As of the date of issuance and shall be implemented within 30 days of issuance.

Amendment Nos.: 148 (Unit 3) and 147 (Unit 4). A publicly-available version is in ADAMS under Package Accession No. ML18296A412; documents related to these amendments are listed in the Safety Evaluation enclosed with the amendments.

Facility Combined Licenses Nos. NPF–91 and NPF–92: The amendments revised the Facility Combined License.

Date of initial notice in ***Federal Register:*** July 17, 2018 (83 FR 33270).

The Commission's related evaluation of the amendments is contained in the Safety Evaluation dated November 13, 2018.

No significant hazards consideration comments received: No.

Virginia Electric and Power Company, Docket Nos. 50–338 and 50–339, North Anna Power Station, Units No. 1 and No. 2, Louisa County, Virginia

Date of amendment request: January 22, 2018, as supplemented by letter dated March 26, 2018.

Brief description of amendments: The amendments revised the North Anna Power Station, Unit Nos. 1 and 2, Technical Specification (TS) 3.7.10, ''Main Control Room/Emergency Switchgear Room (MCR/ESGR) Emergency Ventilation System (EVS),'' and TS 3.7.12, ''Emergency Core Cooling System (ECCS) Pump Room Exhaust Air Cleanup System (PREACS),'' to adopt the Technical Specifications Task Force (TSTF) Traveler TSTF–522, Revision 0, ''Revise Ventilation System Surveillance Requirements to Operate for 10 hours per Month.'' The amendments further revised TS 5.5.10, ''Ventilation Filter Testing Program (VFTP),'' to remove the electric heater output test and to increase the specified relative humidity (RH) for the charcoal testing for the MCR/ESGR EVS from the current 70 percent to 95 percent RH. Additionally, the amendments made an administrative change to the Environmental Protection Plan to reflect updated references to 10 CFR.

Date of issuance: November 27, 2018.

Effective date: As of the date of issuance and shall be implemented within 60 days of issuance.

Amendment Nos.: 280 and 263. A publicly-available version is in ADAMS under Accession No. ML18290A852; documents related to these amendments are listed in the Safety Evaluation enclosed with the amendments.

Renewed Facility Operating License No. NPF–4 and NPF–7: The amendments revised the Renewed Facility Operating Licenses and TSs.

Date of initial notice in ***Federal Register:*** September 11, 2018 (83 FR 45988).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 27, 2018.

No significant hazards consideration comments received: No.

Vistra Operations Company LLC, Docket Nos. 50–445 and 50–446, Comanche Peak Nuclear Power Plant, Unit Nos. 1 and 2 (CPNPP), Somervell County, Texas

Date of amendment request: March 29, 2018.

Brief description of amendments: The amendments revised Technical Specification 3.3.2, ''Engineered Safety Feature Actuation System (ESFAS) Instrumentation,'' to change the applicability of when the automatic auxiliary feedwater actuation due to the trip of all main feedwater pumps is required to be operable at CPNPP.

Date of issuance: November 30, 2018.

Effective date: As of the date of issuance and shall be implemented within 60 days from the date of issuance.

Amendment Nos.: Unit 1–171; Unit 2–171. A publicly-available version is in ADAMS under Accession No. ML18304A487; documents related to these amendments are listed in the Safety Evaluation enclosed with the amendments.

Facility Operating License Nos. NPF–87 and NPF–89: The amendments revised the Facility Operating Licenses and Technical Specifications.

Date of initial notice in ***Federal Register****:* June 5, 2018 (83 FR 26107).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated November 30, 2018.

No significant hazards consideration comments received: No.

Dated at Rockville, Maryland, this 10th day of December 2018.

For the Nuclear Regulatory Commission.

Kathryn M. Brock,

Deputy Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2018–26968 Filed 12–17–18; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–277–SLR and 50–278–SLR; ASLBP No. 19–960–01–SLR–BD01]

Establishment of Atomic Safety and Licensing Board: Exelon Generation Company, LLC

Pursuant to delegation by the Commission, *see* 37 FR 28,710; December 29, 1972, and the Commission's regulations, *see, e.g.,* 10 CFR 2.104, 2.105, 2.300, 2.309, 2.313, 2.318, 2.321, notice is hereby given that an Atomic Safety and Licensing Board (Board) is being established to preside over the following proceeding:

Exelon Generation Company, LLC

(Peach Bottom Atomic Power Station, Units 2 and 3)

This proceeding involves an application seeking a twenty-year subsequent license renewal of Renewed Facility Operating License Nos. DPR–44 and DPR–56, which currently authorize Exelon Generation Company, LLC to operate Peach Bottom Atomic Power Station Units 2 and 3 until, respectively, August 8, 2033 and July 2, 2034. In response to a notice published in the **Federal Register** announcing the opportunity to request a hearing, *see* 83 FR 45,285; September 6, 2018, a hearing request has been filed on behalf of Beyond Nuclear, Inc.

The Board is comprised of the following Administrative Judges:

- Michael M. Gibson, Chairman, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.
- Dr. Michael F. Kennedy, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.
- Dr. Sue H. Abreu, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

All correspondence, documents, and other materials shall be filed in accordance with the NRC E-Filing rule. *See* 10 CFR 2.302.

Dated: December 12, 2018, in Rockville, Maryland.

Edward R. Hawkens,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. 2018–27276 Filed 12–17–18; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 70–7005; NRC–2018–0281]

Waste Control Specialists LLC

AGENCY: Nuclear Regulatory Commission.

ACTION: Environmental assessment and finding of no significant impact; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing an Environmental Assessment (EA) and Finding of No Significant Impact (FONSI) in support of the NRC's consideration of a request from Waste Control Specialists LLC (WCS) to continue to store transuranic waste that originated from the Los Alamos National Laboratory (LANL) without an NRC license under the terms of a 2014 order. The 2014 order exempted WCS from the NRC's regulations concerning special nuclear material (SNM). The current action is in response to a request by WCS dated August 30, 2018, to extend the possession time to temporarily store certain waste at specific locations at the WCS Site until December 23, 2020.

DATES: The EA and FONSI referenced in this document are available on December 18, 2018.

ADDRESSES: Please refer to Docket ID NRC–2018–0281 when contacting the NRC about the availability of information regarding this document. You may obtain publicly-available information related to this document using any of the following methods:

- *Federal Rulemaking website:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2018–0281. Address questions about Docket IDs in *Regulations.gov* to Krupskaya Castello; telephone: 301–287–9221; email: *Krupskaya.Castellon@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 *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in this document.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: Harry Felsher, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington DC 20555–0001; telephone: 301–415–6559; email: *Harry.Felsher@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

Waste Control Specialists LLC operates a facility in Andrews County, Texas (*i.e.,* the WCS Site), that is licensed to process and store certain types of radioactive material contained in low-level waste (LLW) and mixed waste (MW). The WCS Site is also licensed to dispose of radioactive, hazardous, and toxic waste. Under an Agreement authorized by the Atomic Energy Act of 1954, as amended (AEA), a State can assume regulatory authority over radioactive material. In 1963, Texas entered into such an Agreement and assumed regulatory authority over source material, byproduct material, and SNM under critical mass.

On June 5, 1997, the State of Texas Department of Health (TDH) issued WCS a radioactive materials license (RML) to possess, treat, and store LLW (RML L04971). In 1997, WCS began accepting Resource Conservation and Recovery Act (RCRA) and Toxic Substance Control Act (TSCA) wastes for treatment, storage, and disposal. Later that year, WCS received a license from the TDH for treatment and storage of MW and LLW. The MW and LLW streams may contain quantities of SNM. In 2007, the TDH transferred its licensing authority over the WCS RML to the Texas Commission on Environmental Quality (TCEQ). In September 2009, the TCEQ issued RML R04100 to WCS for disposal of LLW. In 2013, the TCEQ consolidated the separate licenses for possession, treatment, and storage of LLW (RML L04971) and for disposal of LLW (RML R04100) into RML R04100.

Section 70.3 of title 10 of the *Code of Federal Regulations* (10 CFR) requires persons who own, acquire, deliver, receive, possess, use, or transfer SNM to obtain a license pursuant to the requirements of 10 CFR part 70. The licensing requirements in 10 CFR part 70 apply to persons in Agreement States possessing greater than critical mass quantities, as defined in 10 CFR 150.11. However, pursuant to 10 CFR 70.17(a), ''the Commission may grant such exemptions from the requirements of the regulations in this part as it determines are authorized by law and will not endanger life or property or the common defense and security and are otherwise in the public interest.''

On September 25, 2000, WCS first requested an exemption from the licensing requirements in 10 CFR part 70 (ADAMS Accession No. ML003759584). On November 21, 2001, the NRC issued an order to WCS (2001 Order) granting an exemption to WCS from certain NRC regulations and permitted WCS, under specified conditions, to possess waste containing SNM in greater quantities than specified in 10 CFR part 150, at the WCS storage and treatment facility on the WCS Site in Andrews County, Texas, without obtaining an NRC license pursuant to 10 CFR part 70. The 2001 Order was published in the **Federal Register** on November 15, 2001 (66 FR 57489).

By letters dated August 6, 2003, and March 14, 2004, WCS requested a modification to the 2001 Order that would allow it to use additional reagents for chemical stabilization of mixed waste containing SNM. The NRC issued a new order on November 4, 2004 (2004 Order) that superseded the 2001 Order. The 2004 Order was published in the **Federal Register** on November 12, 2004 (69 FR 65468).

By letter dated December 10, 2007, WCS requested additional modifications to the 2004 Order that would allow it to discontinue confirmatory sampling of waste streams with certain SNM characteristics and to perform confirmatory sampling of sealed sources by using surface smear surveys. The NRC issued a new order to WCS on October 20, 2009 (2009 Order), which superseded the 2004 Order. The 2009 Order was published in the **Federal Register** on October 26, 2009 (74 FR 55071).

On February 14, 2014, a radiation release event occurred at the U.S. Department of Energy (DOE) Waste Isolation Pilot Plant (WIPP) Facility (WIPP incident). In response, the DOE suspended operations at the WIPP Facility. In April 2014, WCS began receiving some specific waste from the DOE that both WCS and DOE understood to meet both the U.S. Department of Transportation (DOT) shipping requirements and the conditions in the 2009 Order. WCS began storing that waste at the Treatment, Storage, and Disposal Facility (TSDF). The waste was DOE transuranic waste that originated at the Los Alamos National Laboratory (LANL) that was destined to be disposed of at the DOE WIPP Facility (*i.e.,* ''LANL Waste''). In June 2014, WCS received information from the DOE that some of the LANL Waste being temporarily stored at the TSDF may be similar to the waste that might be the cause of the WIPP Incident. In response, WCS moved some of the LANL Waste from the TSDF to the Federal Waste Facility (FWF) disposal cell for temporary storage.

By letter dated July 18, 2014, WCS requested an exemption from the NRC's regulations to possess SNM in excess of the critical mass limits specified in 10 CFR 150.11 while temporarily storing some LANL Waste in the FWF disposal cell. The NRC issued a new order to WCS on December 3, 2014 (2014 Order) that superseded the 2009 Order. The 2014 Order was published in the **Federal Register** on December 11, 2014 (79 FR 73647). The 2014 Order changed the 2009 Order conditions by adding new conditions, primarily related to the temporary storage of the LANL Waste both at the TSDF and in the FWF disposal cell. The State of Texas incorporated the 2014 Order Conditions into WCS' (TCEQ-issued license) RML R04100.

By letter dated March 28, 2016, WCS requested the relaxation of Condition 8.B.4 of the 2014 Order to extend the timeframe for temporarily allowing storage of the LANL Waste at the WCS Site from ''two years'' to ''until December 23, 2018'' to be consistent with date in the TCEQ-issued license to WCS. By letter dated September 23, 2016 (ADAMS Accession No. ML16097A265), the NRC approved a modification of the 2014 Order Condition 8.B,4, extending WCS' authorization to store the LANL Waste at the WCS Site without a license under 10 CFR part 70 to ''until December 23, 2018,'' by citing the closed status of operations at the WIPP Facility and the safe temporary storage status of the LANL Waste at the TSDF and in the FWF disposal cell.

By letter dated August 30, 2018, WCS requested, for the second time, that the effectiveness of its exemption from NRC requirements in 10 CFR part 70 be extended with the relaxation of Condition 8.B.4 of the 2014 Order to extend the timeframe for temporarily allowing storage of the LANL Waste at the WCS Site for another two years, to ''until December 23, 2020.'' That proposal is the subject of this Environmental Assessment.

II. Environmental Assessment

Description of the Proposed Action

The proposed action is the WCS request to modify the 2014 Order Condition 8.B.4. for the second time to allow WCS to continue to store the LANL Waste at specific locations at the WCS Site for an additional two years, until December 23, 2020, without an NRC license.

Need for the Proposed Action

WCS is making this request to continue to store the LANL Waste while the DOE-led Interagency Project Team (including WCS, DOE, EPA, NRC, the State of Texas, and the State of New Mexico) works to recommend a path

forward for disposition of the LANL Waste. While the WIPP Facility has resumed operations, some of the LANL Waste at the WCS Site cannot be shipped off the WCS Site at this time because it does not meet DOT shipping requirements. WCS has indicated that it will not be able to ship the LANL Waste to another appropriate location by the timeframe specified in the 2014 Order Condition 8.B.4, as modified by NRC letter dated September 23, 2016.

The purpose of this EA is to assess the potential environmental impacts of the WCS request to modify the 2014 Order Condition 8.B.4. for the second time to allow WCS to store the LANL Waste at specific locations at the WCS Site for additional two years, until December 23, 2020. This EA does not approve or deny the requested action.

Environmental Impacts of the Proposed Action

The NRC does not expect changes in radiation hazards to workers or to the environment. WCS will continue to ensure that the LANL Waste in both the FWF disposal cell and the TSDF remain stored safely and securely, and will notify the NRC of any events as appropriate, as set out in the 2014 Order. No changes to its handling or associated hazards would occur as a result of granting the requested change. Other environmental impacts would be the same as evaluated in the EA that supported the 2014 Order, as well as the 2001, 2004, and 2009 Orders, as applicable to the activities associated with the continued safe storage of the LANL Waste.

Environmental Impacts of the Alternatives to the Proposed Action

As an alternative to the proposed action, the NRC staff could deny the WCS request and therefore, not issue a second modification to the Order Condition 8.B.4. that would authorize continued storage of the LANL Waste at the WCS Site (*i.e.,* the ''no action'' alternative). Upon expiration of the timeframe in the 2014 Order Condition 8.B.4., as modified by the September 23, 2016 NRC letter to WCS, WCS would still be required to maintain the material safely. In addition, the NRC authorization of any change to the current storage of the LANL Waste at the WCS Site would still be required and WCS has submitted no such proposal to the NRC. As a result, under this alternative, there would be no environmental impacts different from the proposed action, although WCS would be required to secure a license or other regulatory authorization for the storage of the material or potentially be in violation of 10 CFR part 70 upon the expiration of the term in the 2014 Order Condition 8.B.4.

Thus, the ''no action'' alternative would not result in changes to the environmental impacts evaluated in the NRC's prior EAs that supported the 2014 Order or the previous NRC orders. Those prior EAs concluded that there would be no significant radiological or non-radiological environmental impacts associated with the storage of SNM at the WCS Site, consistent with the conditions in those NRC Orders.

Agencies and Persons Consulted

On December 3, 2018, the staff consulted with TCEQ by providing a draft of the EA for review and comment. By letter dated December 7, 2018 (ADAMS Accession No. ML18344A091), TCEQ provided comments on and recommended corrections to the draft EA. The NRC staff modified the EA to appropriately address the TCEQ comments and recommended corrections.

The proposed action does not involve the development or disturbance of additional land. Hence, the NRC has determined that the proposed action will not affect listed endangered or threatened species or their critical habitat. Therefore, no further consultation is required under Section 7 of the Endangered Species Act. Likewise, the NRC staff has determined that the proposed action does not have the potential to adversely affect cultural resources because no ground disturbing activities are associated with the proposed action. Therefore, no consultation is required under Section 106 of the National Historic Preservation Act.

III. Finding of No Significant Impact

The NRC has reviewed the WCS August 30, 2018, request to supplement the 2014 Order again to extend the possession time of the LANL Waste at specific locations at the WCS Site. The NRC has found that effluent releases and potential radiological doses to the public are not anticipated to change as a result of this action and that occupational exposures are expected to remain within regulatory limits and as low as reasonably achievable. On the basis of this environmental assessment, the NRC concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined not to prepare an environmental impact statement for the proposed action.

Dated at Rockville, Maryland, this 12th day of December 2018.

For the Nuclear Regulatory Commission.

John R. Tappert,

Director, Division of Decommissioning, Uranium Recovery, and Waste Programs, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 2018–27323 Filed 12–17–18; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–84805; File No. SR–NYSENAT–2018–25]

Self-Regulatory Organizations; NYSE National, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Its Schedule of Fees and Rebates

December 12, 2018.

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 November 30, 2018, NYSE National, Inc. (the ''Exchange'' or ''NYSE National'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its Schedule of Fees and Rebates to adopt a new Step Up Adding Tier that would set forth fees for displayed and non-displayed orders that add liquidity to the Exchange. The Exchange proposes to implement the rule change on December 3, 2018. 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

[1] 15 U.S.C.78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

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 amend its Schedule of Fees and Rebates to adopt a new Step Up Adding Tier that would set forth fees for displayed and non-displayed orders that add liquidity to the Exchange.

The Exchange proposes to implement the rule change on December 3, 2018.

Proposed Step Up Adding Tier

The Exchange proposes a new Step Adding Tier for displayed and non-displayed orders in securities priced at or above $1.00.

Under the proposed Step Up Adding Tier, the Exchange would offer the following fees for transactions in stocks with a per share price of $1.00 or more when adding liquidity to the Exchange if the ETP Holder has 0.04% or more of Adding ADV as a percent of US CADV over the ETP Holder's Adding ADV as a % of US CADV in November 2018:

- $0.0015 per share for adding displayed orders;
- $0.0015 per share for orders that set a new Exchange BBO; [4]
- $0.0017 per share for adding non-displayed orders; and
- $0.0005 per share for MPL orders.

For example, in a given month of 20 trading days, assume that an ETP Holder adds liquidity of an ADV of 3.5 million shares in a month where CADV is 7 billion shares, or 0.05% of US CADV in November 2018 (the ''Baseline'').[5] Further assume that the ETP Holder adds liquidity of an ADV of 7 million shares in the relevant billing month, or 0.10% of US CADV. That ETP Holder would qualify for the proposed Step Up Adding Tier based on their 0.05% step up as a percent of US CADV over the ETP Holder's Baseline.

The proposed changes are not otherwise intended to address any other issues, and the Exchange is not aware of any problems that ETP Holders would have in complying with the proposed change.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[6] in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,[7] in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

The Exchange believes that the proposed Step Up Adding Tier fees for ETP Holders with 0.04% or more Adding average daily volume as a percentage of US CADV in addition to the ETP Holder's Adding ADV as a percentage of US CADV in November 2018 is reasonable because the proposed tier would further contribute to incentivizing ETP Holders to bring additional order flow to a public market. In particular, the Exchange believes that the tiered rates will provide an incentive for more active ETP Holders that do not meet the qualification for Adding Tiers 2, 3 and 4, which offer lower fees for adding liquidity, to add displayed liquidity to the Exchange, to the benefit of the investing public and all market participants. In addition, the Exchange believes that the proposed Step Up Adding Tier fees are equitable and not unfairly discriminatory because all similarly situated market participants who would submit additional liquidity to the Exchange in order to qualify for the fees would be subject to the same fees on an equal and non-discriminatory basis. The Exchange also believes that the proposed non-substantive changes would not be inconsistent with the public interest and the protection of investors because investors will not be harmed and in fact would benefit from increased clarity and transparency, thereby reducing potential confusion.

Finally, the Exchange believes that it is subject to significant competitive forces, as described below in the Exchange's statement regarding the burden on competition.

For the foregoing reasons, the Exchange believes that the proposal is consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,[8] the Exchange believes that the proposed rule change would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Instead, the Exchange believes that the proposed changes would encourage the submission of additional liquidity to a public exchange, thereby promoting price discovery and transparency and enhancing order execution opportunities for ETP Holders. The Exchange believes that this could promote competition between the Exchange and other execution venues, including those that currently offer similar order types and comparable transaction pricing, by encouraging additional orders to be sent to the Exchange for execution. The Exchange also believes that the proposed rule is designed to provide the public and investors with a Schedule of Fees and Rebates that is clear and consistent, thereby reducing burdens on the marketplace and facilitating investor protection.

Finally, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive or rebate opportunities available at other venues to be more favorable. In such an environment, the Exchange must continually adjust its fees and rebates to remain competitive with other exchanges and with alternative trading systems that have been exempted from compliance with the statutory standards applicable to exchanges. Because competitors are free to modify their own fees and credits in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited. As a result of all of these considerations, the Exchange does not believe that the proposed changes will impair the ability of ETP Holders or competing order execution venues to maintain their competitive standing in the financial markets.

[4] The term ''BBO'' is defined in Rule 1.1 to mean the best bid or offer that is a Protected Quotation on the Exchange. The term ''BB'' means the best bid that is a Protected Quotation on the Exchange and the term ''BO'' means the best offer that is a Protected Quotation on the Exchange.

[5] The Exchange also proposes non-substantive changes to Adding Tier 1 to change the ''m'' in ''More'' to lower case and to Adding Tiers 2, 3 and 4 to remove superfluous commas following the word ''share'' in the adding MPL fee.

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(4) & (5).

[8] 15 U.S.C. 78f(b)(8).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A) [9] of the Act and subparagraph (f)(2) of Rule 19b–4 [10] thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B) [11] 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–2018–25 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–2018–25. 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; the Commission does not edit personal identifying information from submissions. 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–2018–25 and should be submitted on or before January 8, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2018–27279 Filed 12–17–18; 8:45 am]

BILLING CODE 8011–01–P

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(2).

[11] 15 U.S.C. 78s(b)(2)(B).

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736

Extension:

Order Granting a Conditional Exemption under the Securities Exchange Act of 1934 from the Confirmation Requirements of Exchange Act Rule 10b–10(a) for Certain Transactions in Money Market Funds, SEC File No. 270–792; OMB Control No. 3235–0739

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (''PRA'') (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget (''OMB'') a request for approval of extension of the existing collection of information provided for in the following: Order Granting a Conditional Exemption under the Securities Exchange Act of 1934 from the Confirmation Requirements of Exchange Act Rule 10b–10(a) for Certain Transactions in Money Market Funds (17 CFR 240.10b–10(a)).

Rule 10b–10 under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*) generally requires broker-dealers to provide customers with specified information relating to their securities transactions at or before the completion of the transactions. Rule 10b–10(b), however, provides an exception from this requirement for certain transactions in money market funds that attempt to maintain a stable net asset value when no sales load or redemption fee is charged. The exception permits broker-dealers to provide transaction information to money market fund shareholders on a monthly, rather than immediate, basis, subject to the conditions. Amendments to Rule 2a–7 of the Investment Company Act of 1940 (''Investment Company Act'') (15 U.S.C. 80a–1 *et seq.*) among other things, means, absent an exemption, broker-dealers would not be able to continue to rely on the exception under Exchange Act Rule 10b–10(b) for transactions in money market funds operating in accordance with Rule 2a–7(c)(1)(ii).[1]

In 2015, the Commission issued an Order Granting a Conditional Exemption under the Securities Exchange Act of 1934 From The Confirmation Requirements of Exchange Act Rule 10b–10(a) For Certain Transactions In Money Market Funds (''Order'') [2] which allows broker-dealers, subject to certain conditions, to provide transaction information to investors in any money market fund operating pursuant to Rule 2a–7(c)(1)(ii) on a monthly basis in lieu of providing immediate confirmations as required under Exchange Act Rule 10b–10(a) (''the Exemption''). Accordingly, to be

[1] *See generally* Money Market Fund Reform; Amendments to Form PF, Securities Act Release No. 9408, Investment Advisers Act Release No. 3616, Investment Company Act Release No. 30551 (June 5, 2013), 78 FR 36834, 36934 (June 19, 2013); *see also* Exchange Act Rule 10b–10(b)(1), 17 CFR 240.10b–10(b)(1) (limiting alternative monthly reporting to money market funds that attempt to maintain a stable NAV).

[2] *See* Order Granting a Conditional Exemption Under the Securities Exchange Act of 1934 From the Confirmation Requirements of Exchange Act Rule 10b–10(a) for Certain Transactions in Money Market Funds, Exchange Act Release No. 34–76480 (Nov. 19, 2015), 80 FR 73849 (Nov. 25, 2015).

eligible for the Exemption, a broker-dealer must (1) provide an initial written notification to the customer of its ability to request delivery of immediate confirmations consistent with the written notification requirements of Exchange Act Rule 10b–10(a), and (2) not receive any such request to receive immediate confirms from the customer.

As of March 31, 2018, the Commission estimates there are approximately 162 broker-dealers that clear customer transactions or carry customer funds and securities who would be responsible for providing customer confirmations. The Commission estimates that the cost of the ongoing notification requirements would be minimal, approximately 5% of the initial burden which was previously estimated to be 36 hours per broker-dealer, or approximately 1.8 hours per broker-dealer per year to provide ongoing notifications or a total burden of 292 hours annually for the 162 carrying broker-dealers.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information under the PRA unless it displays a currently valid OMB control number.

The public may view background documentation for this information collection at the following website: *www.reginfo.gov.* Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503, or by sending an email to: *Lindsay.M.Abate@omb.eop.gov;* and (ii) Charles Riddle, Acting Director/Chief Information Officer, Securities and Exchange Commission, c/o Candace Kenner, 100 F Street NE Washington, DC 20549, or by sending an email to: *PRA_Mailbox@sec.gov.* Comments must be submitted to OMB within 30 days of this notice.

Dated: December 12, 2018.

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2018–27267 Filed 12–17–18; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–84809; File No. SR–MSRB–2018–08]

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Order Granting Approval of a Proposed Rule Change Concerning Certain Data Elements on Form G–45 Under MSRB Rule G–45, on Reporting of Information on Municipal Fund Securities

December 12, 2018.

I. Introduction

On October 15, 2018, the Municipal Securities Rulemaking Board (the ''MSRB'' or ''Board'') filed with the Securities and Exchange Commission (the ''SEC'' or ''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 Form G–45 under MSRB Rule G–45, on reporting of information on municipal fund securities,[3] to clarify a data element concerning the program management fee, to add a data element concerning the investment option closing date, and to delete data elements concerning annualized three-year performance information (the ''proposed rule change''). The proposed rule change was published for comment in the **Federal Register** on November 2, 2018.[4] In the Notice of Filing, the MSRB requested that the proposed rule change become effective on June 30, 2019.[5]

The Commission did not receive any comment letters on the proposed rule change.

II. Description of Proposed Rule Change

In the Notice of Filing, the MSRB stated that the purpose of the proposed rule change is to refine and enhance certain of the investment option data that the MSRB collects under Rule G–45 from underwriters to 529 savings plans [6] and ABLE programs.[7] Specifically, the MSRB stated that it proposes to amend Form G–45 to (i) clarify a data element concerning the program management fee, (ii) add a data element concerning the investment option closing date, and (iii) delete data elements concerning annualized three-year performance information.[8] The MSRB also stated that the proposed rule change would provide information that would enhance the MSRB's and other regulators' ability to effectively and efficiently analyze 529 savings plans and ABLE programs to assess the impact of each 529 savings plan and ABLE program on the market, to evaluate trends and differences, and to gain an understanding of the aggregate risk taken by investors.[9]

The MSRB stated that throughout the seven reporting periods during which the MSRB has analyzed data submitted on Form G–45, the MSRB has observed anomalies in the data submitted under Investment Option information.[10] The MSRB stated that those anomalies related to the program management fee and to investment options that closed during the reporting period. Form G–45 requires that an underwriter report the program management fee (expressed as an annual percentage of 529 savings plan or ABLE program assets) assessed by the 529 savings plan or ABLE program.[11] The MSRB noted that the program management fee typically is a separately identifiable percentage that is shown in the fee table for the 529 savings plan or ABLE program, but for some 529 savings plans and ABLE programs, this is not the case.[12] The MSRB stated that instead for those 529 savings plans or ABLE programs, the program management fee is assessed by the underlying mutual fund in which the investment option invests and this is typically done through a 529 or ABLE share class of the mutual fund.[13] The MSRB further noted that underwriters for those 529 savings plans or ABLE programs generally report the program management fee as zero on Form G–45, and then may add explanatory information in the notes section of the form about the fee.[14] The MSRB stated that such explanatory information, however, may or may not actually disclose the program management fee in a format that is typically used for

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] MSRB Form G–45 is an electronic form on which submissions of the information required by Rule G–45 are made to the MSRB.

[4] Securities Exchange Act Release No. 84496 (October 29, 2018) (the ''Notice of Filing''), 83 FR 55214 (November 2, 2018).

[5] *See* Notice of Filing.

[6] Section 529 of the Internal Revenue Code of 1986, as amended (the ''Code'') established savings plans (''529 savings plans'') to encourage saving for future education costs. 26 U.S.C. 529(b)(1)(A)(ii).

[7] ABLE programs are programs designed to implement Section 529A to the Code. 26 U.S.C. 529A. Section 529A of the Code permits a state, or an agency or instrumentality thereof, to establish and maintain a tax-advantaged savings program to help support individuals with disabilities in maintaining health, independence, and quality of life. *See* Notice of Filing.

[8] *See* Notice of Filing.

[9] *Id.*

[10] *Id.*

[11] *Id.*

[12] *Id.*

[13] *Id.*

[14] *Id.*

comparison—*i.e.,* as an annual percentage of 529 savings plan or ABLE program assets.[15] The MSRB stated that the proposed rule change would clarify that the underwriter must report the program management fee as an annual percentage of assets (*e.g.,* x.xx%) no matter whether the program management fee is assessed by the underlying mutual fund or by the 529 savings plan or ABLE program itself.[16] The MSRB stated that the underwriter would not be able to report the program management fee as zero and then explain in a note that it is assessed by the underlying mutual fund.[17] Thus, the MSRB stated, the proposed rule change would allow the MSRB, as well as other regulators, to analyze data in a uniform format that would facilitate (i) comparison among 529 savings plans and ABLE programs, (ii) the evaluation of trends and differences, and (iii) the identification of potential risks to investors that may affect those 529 savings plans and ABLE programs.[18]

In the Notice of Filing, the MSRB noted that an investment option offered in a 529 savings plan may close to new investors, but allow current account owners who have allocated account value to an investment option to continue to invest in that ''closed'' investment option.[19] Alternatively, the MSRB stated, the 529 savings plan may close an investment option completely.[20] In either case, the MSRB stated that the investment option data submitted for that investment option on Form G–45 can be contrary to what the MSRB would have expected for the investment option when compared to prior reporting periods, and the MSRB may not be able to easily determine why such variance occurred.[21] The MSRB stated that, to address this issue, the proposed rule change would add ''check-the-box'' items to Form G–45 that would alert the MSRB about whether an investment option has closed to new investors, but allows current account owners to contribute funds, or whether the investment option has closed to all investors.[22]

The MSRB sought public comment about providing additional data concerning the investment options offered in 529 savings plans and ABLE programs.[23] In response, the MSRB received the suggestion that the MSRB no longer require that an underwriter submit three-year annualized performance information for an investment option on Form G–45.[24]

Form G–45 requires that underwriters annually report (i) total returns, including sales charges, (ii) total returns, excluding sales charges, and (iii) benchmark return percent for specified periods, including annualized or annual three-year percent. The MSRB noted that at the time the MSRB approved Form G–45, the College Savings Plans Network's (''CSPN'') voluntary disclosure principles that provide recommendations to the state entities that establish and maintain 529 savings plans (the ''disclosure principles'') and which commenters stated were the industry norm in other rulemakings, recommended that such disclosure be made.[25] However, the MSRB noted, since that time, CSPN has updated the disclosure principles, and CSPN no longer recommends that a 529 savings plan include three-year performance information.[26] Further, the MSRB noted that three-year annualized performance information is not required by the SEC for mutual funds.[27]

The MSRB has determined that Form G–45, even without the three-year performance data, would continue to provide the MSRB with sufficient performance information to assist the MSRB with its analysis of 529 savings plans and ABLE programs.[28] Therefore, the MSRB stated that because it believes that it will have sufficient performance information, it is no longer an appropriate regulatory burden and should be eliminated to avoid unnecessary costs.[29]

III. Discussion and Commission Findings

The Commission has carefully considered the proposed rule change. The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the MSRB.

In particular, the proposed rule change is consistent with Section 15B(b)(2)(C) of the Act.[30] Section 15B(b)(2)(C) of the Act states that the MSRB's rules shall 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 municipal securities and municipal financial products, to remove impediments to and perfect the mechanism of a free and open market in municipal securities and municipal financial products, and, in general, to protect investors, municipal entities, obligated persons, and the public interest.[31] The Commission believes the proposed rule change is consistent with Section 15B(b)(2)(C) and necessary and appropriate to help the MSRB receive complete and reliable information about 529 savings plans and ABLE programs. The MSRB can use the data elements collected on Form G–45 to monitor these municipal fund securities and detect potential investor harm. The Commission believes that, for that data set to be complete and reliable, such data should include accurate data about the fees and expenses associated with an investment in a 529 savings plan or an ABLE program, including the program management fee, as provided in the proposed rule change. The Commission also believes that such data should include accurate information about the investment options available to existing and potential investors, as provided in the proposed rule change. The Commission believes the proposed rule change would help the MSRB to gather relevant data required to ensure the MSRB's regulatory scheme is sufficient and/or to determine whether additional rulemaking is necessary to protect investors and the public interest. Further, the Commission believes that the deletion in the proposed rule change of the requirement that 529 savings plans and ABLE programs provide three-year annualized performance information would better align Rule G–45 reporting requirements with industry reporting standards, and therefore would foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in municipal securities and municipal financial products.

The Commission believes that the proposed rule change would improve the MSRB's ability to analyze the market for 529 savings plans and ABLE programs as well as improve the MSRB's ability to evaluate trends and differences among 529 savings plans and ABLE programs. Further, the Commission believes that the MSRB, as well as other financial regulators

[15] *Id.*
[16] *Id.*
[17] *Id.*
[18] *Id.*
[19] *Id.*
[20] *Id.*
[21] *Id.*
[22] *Id.*
[23] *Id.*
[24] *Id.*
[25] *Id.*
[26] *Id.*
[27] *Id.*
[28] *Id.*
[29] *Id.*
[30] 15 U.S.C. 78*o*–4(b)(2)(C).
[31] 15 U.S.C. 78*o*–4(b)(2)(C).

charged with enforcing the MSRB's rules, can use the information submitted on MSRB Form G–45 to enhance their understanding of, and ability to monitor, 529 savings plans and ABLE programs.

In approving the proposed rule change, the Commission also has considered the impact of the proposed rule change on efficiency, competition, and capital formation.[32] The Commission does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The clarification regarding the collection of the program management fee information should reduce instances of the MSRB needing to have underwriters resubmit corrected information that is currently required to be submitted under Rule G–45. The Commission believes the deletion of the Rule G–45 requirement to report three-year annualized performance data for each investment option and any related benchmarks will better align Rule G–45 reporting requirements with industry reporting standards and will likely reduce Rule G–45 reporting burdens. Additionally, with regard to the proposed requirement to report investment option closing date information, the Commission understands that this information is readily available to underwriters and the cost of submission of such information would be minor. The Commission believes that the additional information required to be submitted by the proposed rule change would be submitted on an equal and non-discriminatory basis, and the requirement would apply equally to all dealers that serve as underwriters to 529 savings plans and/or ABLE programs. Furthermore, the Commission believes that the potential burdens created by the proposed rule change are likely to be outweighed by the benefits.

For the reasons noted above, the Commission believes that the proposed rule change is consistent with the Act.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[33] that the proposed rule change (SR–MSRB–2018–08) be, and hereby is, approved.

For the Commission, pursuant to delegated authority.[34]

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2018–27281 Filed 12–17–18; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736

Extension:

Rule 17Ad–11, SEC File No. 270–261, OMB Control No. 3235–0274

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (''PRA'') (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget (''OMB'') a request for approval of extension of the previously approved collection of information provided for in Rule 17Ad–11 (17 CFR 240.17Ad–11), under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*).

Rule 17Ad–11 requires every registered recordkeeping transfer agent to report to issuers and its appropriate regulatory agency in the event that the aggregate market value of an aged record difference exceeds certain thresholds. A record difference occurs when an issuer's records do not agree with those of securityholders as indicated, for instance, on certificates presented to the transfer agent for purchase, redemption or transfer. An aged record difference is a record difference that has existed for more than 30 calendar days. In addition, the rule requires every recordkeeping transfer agent to report to its appropriate regulatory agency in the event of a failure to post certificate detail to the master securityholder file within five business days of the time required by Rule 17Ad–10 (17 CFR 240.17Ad–10). Also, a transfer agent must maintain a copy of any report required under Rule 17Ad–11 for a period of not less than three years following the date of the report, the first year in an easily accessible place.

Because the information required by Rule 17Ad–11 is already available to transfer agents, any collection burden for small transfer agents is minimal. Based on a review of the number of Rule 17Ad–11 reports the Commission, the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, and the Federal Deposit Insurance Corporation received since 2012, the Commission staff estimates that 8 respondents will file a total of approximately 10 reports annually. The Commission staff estimates that, on average, each report can be completed in 30 minutes. Therefore, the total annual hourly burden to the entire transfer agent industry is approximately five hours (30 minutes × 10 reports). Assuming an average hourly rate of $25 for a transfer agent staff employee, the average total internal cost of the report is $12.50. The total annual internal cost of compliance for the approximate 8 respondents is approximately $125.00 (10 reports × $12.50).

The retention period for the recordkeeping requirement under Rule 17Ad–11 is three years following the date of a report prepared pursuant to the rule. The recordkeeping requirement under Rule 17Ad–11 is mandatory to assist the Commission and other regulatory agencies with monitoring transfer agents and ensuring compliance with the rule. This rule does not involve the collection of confidential information.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information under the PRA unless it displays a currently valid OMB control number.

The public may view background documentation for this information collection at the following website: *www.reginfo.gov.* Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503, or by sending an email to: *Lindsay.M.Abate@omb.eop.gov*; and (ii) Charles Riddle, Acting Director/Chief Information Officer, Securities and Exchange Commission, c/o Candace Kenner, 100 F Street NE, Washington, DC 20549, or by sending an email to: *PRA_Mailbox@sec.gov.* Comments must be submitted to OMB within 30 days of this notice.

Dated: December 12, 2018.

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2018–27266 Filed 12–17–18; 8:45 am]

BILLING CODE 8011–01–P

[32] 15 U.S.C. 78c(f).

[33] 15 U.S.C. 78s(b)(2).

[34] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736

Extension:

Rule 15c3–4, SEC File No. 270–441, OMB Control No. 3235–0497

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (''PRA''), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget (''OMB'') a request for approval of extension of the previously approved collection of information provided for in Rule 15c3–4 (17 CFR. 240.15c3–4) (the ''Rule'') under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*).

Rule 15c3–4 requires certain broker-dealers that are registered with the Commission as OTC derivatives dealers, or who compute their net capital charges under Appendix E to Rule 15c3–1 (17 CFR 240.15c3–1) (''ANC firms''), to establish, document, and maintain a system of internal risk management controls. The Rule sets forth the basic elements for an OTC derivatives dealer or an ANC firm to consider and include when establishing, documenting, and reviewing its internal risk management control system, which are designed to, among other things, ensure the integrity of an OTC derivatives dealer's or an ANC firm's risk measurement, monitoring, and management process, to clarify accountability at the appropriate organizational level, and to define the permitted scope of the dealer's activities and level of risk. The Rule also requires that management of an OTC derivatives dealer or an ANC firm must periodically review, in accordance with written procedures, the firm's business activities for consistency with its risk management guidelines.

The staff estimates that the average amount of time a new OTC derivatives dealer will spend establishing and documenting its risk management control system is 2,000 hours and that, on average, a registered OTC derivatives dealer will spend approximately 200 hours each year to maintain (*e.g.,* reviewing and updating) its risk management control system.[1] Currently, three firms are registered with the Commission as OTC derivatives dealers. The staff estimates that approximately six additional entities may become registered as OTC derivatives dealers within the next three years. Thus, the estimated annualized burden would be 600 hours for the three OTC derivatives dealers currently registered with the Commission to maintain their risk management control systems,[2] 4,000 hours for the six new OTC derivatives dealers to establish and document their risk management control systems,[3] and 1,200 hours for the six new OTC derivatives dealers to maintain their risk management control systems.[4] Accordingly, the staff estimates the total annualized burden associated with Rule 15c3–4 for the six OTC derivatives dealers will be approximately 5,800 hours annually.

The staff believes that the internal cost of complying with Rule 15c3–4 will be approximately $314 per hour.[5] This per hour cost is based upon an annual average hourly salary for a compliance manager who would be responsible for ensuring compliance with the requirements of Rule 15c3–4. Accordingly, the total annualized internal cost of compliance for all affected OTC derivatives dealers is estimated to be $1,821,200.[6]

The records required to be made by OTC derivatives dealers pursuant to the Rule and the results of the periodic reviews conducted under paragraph (d) of Rule 15c3–4 must be preserved under Rule 17a–4 of the Exchange Act (17 CFR 240.17a–4) for a period of not less than three years, the first two years in an easily accessible place. The Commission will not generally publish or make available to any person notice or reports received pursuant to the Rule. The statutory basis for the Commission's refusal to disclose such information to the public is the exemption contained in section (b)(4) of the Freedom of Information Act (5 U.S.C. 552), which essentially provides that the requirement of public dissemination does not apply to commercial or financial information which is privileged or confidential.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information under the PRA unless it displays a currently valid OMB control number.

The public may view background documentation for this information collection at the following website: *www.reginfo.gov.* Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503, or by sending an email to: (i) *Lindsay.M.Abate@omb.eop.gov;* and (ii) Charles Riddle, Acting Director/Chief Information Officer, Securities and Exchange Commission, c/o Candace Kenner, 100 F Street NE Washington, DC 20549, or by sending an email to: *PRA_Mailbox@SEC.gov.* Comments must be submitted to OMB within 30 days of this notice.

Dated: December 12, 2018.

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2018–27270 Filed 12–17–18; 8:45 am]

BILLING CODE 8011–01–P

[1] This notice does not cover the hour burden associated with ANC firms, because the hour burden for ANC firms is included in the Paperwork Reduction Act collection for Rule 15c3–1, which requires ANC firms to comply with specific provisions of Rule 15c3–4 in Appendix E to Rule 15c3–1. *See* 17 CFR 240.15c3–1(a)(7)(iii), 17 CFR 240.15c3–1e(a)(1)(ii), and 17 CFR 240.15c3–1e(a)(1)(viii)(C).

[2] (200 hours x 3 firms) = 600.

[3] ((2,000 hours/3 years) × 6 firms) = 4,000.

[4] (200 hours × 6 firms) = 600.

[5] The $314 per hour salary figure for a compliance manager is from SIFMA's Management & Professional Earnings in the Securities Industry 2013, modified by Commission staff to account for an 1800-hour work-year and multiplied by 5.35 to account for bonuses, firm size, employee benefits and overhead.

[6] 5,800 hours × $314 per hour = $1,821,200.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–84804; File No. SR–NYSE–2018–58]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing of Proposed Rule Change To Amend Rule 123C To Extend the Cut-Off Times for Order Entry and Cancellation for Participation in the Closing Auction and When the Exchange Will Begin Disseminating Order Imbalance Information for the Closing Auction

December 12, 2018.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on November 30, 2018, New York Stock Exchange LLC (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 123C (The Closing Procedures) to extend the cut-off times for order entry and cancellation for participation in the closing auction and when the Exchange will begin disseminating Order Imbalance Information for the closing auction. 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 amend Rule 123C (The Closing Procedures) to extend the cut-off times for order entry and cancellation for participation in the closing auction and when the Exchange would begin disseminating Order Imbalance Information [4] for the closing auction from 3:45 p.m. to 3:50 p.m. Eastern Time.[5] The Exchange also proposes non-substantive amendments to Rule 123C.

Proposed Amendment To Change 3:45 p.m. to 3:50 p.m. in Rule 123C

Rule 123C sets forth the closing procedures on the Exchange. Among other things, Rule 123C specifies the time by which by which Market-on-Close (''MOC'') Orders,[6] Limit-on-Close (''LOC'') Orders,[7] and Closing Offset (''CO'') Orders [8] may be entered or cancelled. Until 3:45 p.m., these orders can be entered or cancelled without restriction.[9] At 3:45 p.m., if there is a significant imbalance of buy MOC and marketable LOC Orders against sell MOC and marketable LOC Orders, the Exchange will publish a Mandatory MOC/LOC Imbalance Publication.[10] After 3:45 p.m., MOC and LOC Orders may be entered only to offset a Mandatory MOC/LOC Imbalance Publication.[11] In addition, between 3:45 p.m. and 3:58 p.m., MOC, LOC, and CO Orders may be cancelled or reduced in size only to correct a legitimate error.[12] In addition, as provided for in Rule 123C(6), at 3:45 p.m., the Exchange begins disseminating an Order Imbalance Information Data Feed for the close. Supplemental Material .40 to Rule 123C further provides that if not otherwise specified, if the scheduled close of trading is before 4:00 p.m., the times specified in Rule 123C shall be adjusted based on the early scheduled time, and references to 3:45 p.m. shall mean 15 minutes before the early scheduled close.

The Exchange proposes to amend Rule 123C to change all references to 3:45 p.m. in the Rule to 3:50 p.m.[13] The Exchange also proposes to amend Supplementary Material .40 to Rule 123C to provide that references to 3:50 p.m. shall mean 10 minutes before the early scheduled close. This proposed rule change would have the substantive effect of changing: (1) The publication time for the Mandatory MOC/LOC Imbalance Publication; (2) the cut-off time for unrestricted entry and cancellation of MOC Orders and LOC Orders; (3) cancellation of CO Orders; and (4) the time when the Exchange would begin disseminating Order Imbalance Information for the close.

As the equities markets continue to evolve and become more efficient and automated, the Exchange believes that the current cut-off times can be extended and still serve the same purpose. The Exchange believes that the proposed changes would give member organizations greater control over their MOC, LOC, and CO Orders while continuing to provide market participants enough time at the end of the trading day to react to and offset closing order imbalances. Shortening the time frame for order entry and cancellation restrictions and when Order Imbalance Information would be disseminated is also consistent with the related cut-off times available on other equity exchanges.[14]

Non-Substantive Amendments to Rule 123C

The Exchange proposes to amend Rule 123C(1)(c) to include CO Orders in the definition of ''legitimate error''. This change would harmonize the definition of ''legitimate error'' with Rule 123C(3)(B), which sets forth the cut-off time for when an MOC, LOC, and CO Order may be cancelled or reduced in size to correct a legitimate error.

The Exchange also proposes the following non-substantive changes to Rule 123C: (i) Remove the period from the titles of the sections (1), (2), (3), and (5) to conform to the punctuation in other sections the Rule; and (ii) capitalize the word ''Orders'' in the title of section (3). The Exchange proposes a non-substantive correction to add a ''.''

[4] Order Imbalance Information is described under Rule 123C(6)(a)(i) and (ii).

[5] Unless otherwise noted, all times listed in this proposal are Eastern Time.

[6] An MOC Order is a Market Order in a security that, by its terms, is to be executed in its entirety at the closing price. *See* Rule 13(c)(4).

[7] An LOC Order is a Limit Order in a security that is entered for execution at the closing price of the security on the Exchange provided that the closing price is at or within the specified limit. *See* [sic] 13(c)(2).

[8] A CO Order is a day Limit Order to buy or sell as part of the closing transaction where the eligibility to participate in the closing transaction is contingent upon: (i) An imbalance in the security on the opposite side of the market from the CO Order; (ii) after taking into account all other types of interest eligible for execution at the closing price, there is still an imbalance in the security on the opposite side of the market from the CO Order; and (iii) the limit price of the CO Order being at or within the price of the closing transaction. *See* Rule 13(c)(1).

[9] *See* Rule 123C(2)(a).

[10] A Mandatory MOC/LOC Imbalance Publication is the dissemination of information that indicates a disparity between MOC and marketable LOC interest to buy and MOC and marketable LOC interest to sell, measured at 3:45 p.m. *See* Rule 123C(1)(d). Rule 123C(4) sets forth how the MOC and LOC Imbalance is to be calculated and Rule 123C(5) sets forth the circumstances of when a Mandatory MOC/LOC Imbalance Publication would be published.

[11] *See* Rules 123C(2)(b)(i) and (ii).

[12] *See* Rule 123C(3)(b). A ''legitimate error'' means an error in any term of an MOC or LOC Order, such as price, number of shares, side of the transaction (buy or sell) or identification of the security. *See* Rule 123C(1)(c). After 3:58 p.m., MOC, LOC, and CO Orders may not be cancelled for any reason. Rule 123(c)(3)[sic].

[13] To effect this change, the Exchange proposes to amend Rules 123C(1)(b), (d), (d)(ii), and (f); 123C(2)(a), (a)(i), (b), (b)(ii), (c)(i), (c)(ii), and (c)(iii); 123C(3)(a), (b); 123C(4)(a)(i); Rule 123C(5)(a), (b), (b)(i), (b)(ii), (c); and Rule 123C(6)(a)(iv), (a)(v), and (b).

[14] The Commission recently approved a proposed rule change by the Nasdaq Stock Market LLC (''Nasdaq'') to move the cut-off times for the entry of MOC and LOC Orders from 3:50 p.m. to 3:55 p.m. *See* Securities Exchange Act Release No. 84454 (October 19, 2018), 83 FR 53923 (October 25, 2018) (SR–Nasdaq–2018–68) (Approval Order). In addition, Cboe BZX Exchange, Inc. (''BZX'') offers ''Late-Limit-On-Close Order'' and accepts this order until 4:00 p.m. and BZX uses a 3:55 p.m. cut-off for regular MOC and LOC Order entry in its closing auction. *See* BZX Rules 11.23(a)(11) and (c)(1)(A). Finally, the Exchange's affiliate, NYSE Arca, Inc. (''NYSE Arca'') initiates its ''Closing Auction Imbalance Freeze'' for all MOC and LOC Orders at 3:59 p.m. *See* NYSE Arca Rule 7.35–E(d)(2).

at the end of the Rules 123C(4)(a)(i) and Rule 123(1)(b) [sic]. Finally, the Exchange proposes a non-substantive amendment to Rule 123C(5)(c) to capitalize the term ''Trading Halt'' as that is a defined term under Rule 123C(1)(g).

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,[15] in general, and furthers the objectives of Section 6(b)(5),[16] in particular, because it is 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 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.

The Exchange believes that extending the cut-off times for entry and cancellation of MOC and LOC Orders, cancellation of CO Orders, as well as when the Exchange would begin disseminating Order Imbalance Information for the close would remove impediments to and perfect the mechanism of a free and open market and a national market system because it would allow market participants to retain control over their orders for a longer period of time, and thereby assist those market participants in managing their trading at the close. As the equities markets continue to evolve and become more efficient and automated, the Exchange believes that the current 3:45 p.m. cut-off time is no longer necessary for market participants to respond to offset auction imbalances. The Exchange believes that the proposed 3:50 p.m. cut-off time reflects the efficiency and more automated nature of trading in today's market, while also retaining sufficient time for market participants to react to and offset any order imbalances leading into the close. The proposed rule change should also improve price discovery by facilitating additional participation in the closing auction.

The Exchange further believes that the proposed rule change would remove impediments to and perfect the mechanism of free and open market and a national market system because it would more closely align the Exchange's cut-off times with those of other equity exchanges. For example, the Commission recently approved a proposed rule change by Nasdaq to move the cut-off times for the entry of MOC and LOC Orders from 3:50 p.m. to 3:55 p.m.[17] In addition, BZX offers ''Late-Limit-On-Close Order'' and accepts this order until 4:00 p.m. and also uses a 3:55 p.m. cut-off for regular MOC and LOC Order entry in its closing auction.[18] Finally, the Exchange's affiliate, NYSE Arca, initiates its ''Closing Auction Imbalance Freeze'' for all MOC and LOC Orders at 3:59 p.m.[19] The Exchange, therefore, believes that there is ample precedent in the industry for extending the order entry cut-off time to 3:50 p.m. as proposed.

The Exchange also believes the proposal would promote just and equitable principles of trade because the proposed rule change would not alter the basic operations of the Exchange's closing procedures. Rather, the proposed rule change would provide more time for unrestricted order entry and cancellation leading into the close, while maintaining existing requirements for how to determine whether to publish a Mandatory MOC/LOC Imbalance Publication, the order entry and cancellation requirements in the Rule, and the content of Order Imbalance Information. Finally, the Exchange believes that the proposed non-substantive amendments to Rule 123C would promote clarity and consistency in Exchange rules.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, but rather will serve to improve competition for order flow at the close of trading. The Commission recently approved a proposed rule change by Nasdaq to move the cut-off times for the entry of MOC and LOC Orders from 3:50 to 3:55 p.m.[20] In addition, other exchanges operate closing auctions with later cut-off times than proposed by the Exchange. The Exchange believes that market participants that trade in the Exchange's closing auction would similarly benefit from a later cut-off time, while also continuing to have a period to enter orders to offset a published imbalance. The proposed cut-off time would apply equally to all market participants and reflects the current market environment where trading is increasingly more automated and efficient. The non-substantive amendments to Rule 123C are not designed to address 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

Within 45 days of the date of publication of this notice in the **Federal Register** or up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change 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–NYSE–2018–58 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–NYSE–2018–58. 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

[15] 15 U.S.C. 78f(b).

[16] 15 U.S.C. 78f(b)(5).

[17] *See supra* note 14.

[18] *Id.*

[19] *Id.*

[20] *See supra* note 14.

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–NYSE–2018–58 and should be submitted on or before January 8, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[21]

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2018–27278 Filed 12–17–18; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meetings

TIME AND DATE: 2:00 p.m. on Thursday, December 20, 2018.

PLACE: The meeting will be held at the Commission's headquarters, 100 F Street NE, Washington, DC 20549.

STATUS: This meeting will be closed to the public.

MATTERS TO BE CONSIDERED: Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters also may be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (6), (7), (8), 9(B) and (10) and 17 CFR 200.402(a)(3), (a)(5), (a)(6), (a)(7), (a)(8), (a)(9)(ii) and (a)(10), permit consideration of the scheduled matters at the closed meeting.

Commissioner Jackson, as duty officer, voted to consider the items listed for the closed meeting in closed session.

The subject matters of the closed meeting will be:

Institution and settlement of injunctive actions;

Institution and settlement of administrative proceedings;

Resolution of litigation claims; and

Other matters relating to enforcement proceedings.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

CONTACT PERSON FOR MORE INFORMATION: For further information and to ascertain what, if any, matters have been added, deleted or postponed; please contact Brent J. Fields from the Office of the Secretary at (202) 551–5400.

Dated: December 13, 2018.

Brent J. Fields,

Secretary.

[FR Doc. 2018–27417 Filed 12–14–18; 11:15 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–84806; File No. SR–NYSE–2018–52]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing of Proposed Rule Change To Amend Rule 7.31 Relating to Discretionary Orders, Auction-Only Orders, Discretionary Modifier, and Yielding Modifier and Related Amendments to Rules 7.16, 7.34, 7.36, and 7.37

December 12, 2018.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on November 29, 2018, New York Stock Exchange LLC (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the 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 amend Rule 7.31 (Orders and Modifiers) to: (i) Add a new order type, Discretionary Orders; (ii) add two new order type modifiers, the Last Sale Peg Modifier and the Yielding Modifier; and (iii) make related changes to Rules 7.16, 7.34, 7.36, and 7.37. 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 amend Rule 7.31 (Orders and Modifiers) to: (i) Add a new order type, Discretionary Orders; (ii) add two new order type modifiers, the Last Sale Peg Modifier and the Yielding Modifier; and (iii) make related changes to Rules 7.16, 7.34, 7.36, and 7.37.

Each of these proposed changes is designed to introduce on Pillar order types and modifiers that are currently available for trading securities listed on the Exchange. First, the proposed new order type, Discretionary Orders, or ''D Orders,'' is based on current d-Quote functionality.[4] Second, the proposed Last Sale Peg Modifier is based on the Buy Minus Zero Plus Instruction.[5] Finally, the proposed Yielding Modifier is based on e-Quotes that yield (''g-Quotes'').[6] The Exchange also proposes to make related changes to Rules 7.16 (Short Sales), 7.34 (Trading Sessions), 7.36 (Order Ranking and Display), and 7.37 (Order Execution and Routing).

Currently, only UTP Securities are traded on the Exchange's Pillar trading platform.[7] Accordingly, at this time, the

[21] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] *See* Supplementary Material .25 to Rule 70 (''Rule 70.25'').

[5] *See* Rule 13(f)(4).

[6] *See* Rule 70(a)(ii) and (iii).

[7] ''UTP Security'' is defined as a security that is listed on a national securities exchange other than the Exchange and that trades on the Exchange

Continued

proposed D Order, Last Sale Peg Modifier, and Yielding Modifier would be available only for UTP Securities. When the Exchange transitions Exchange-listed securities to Pillar, these order types and modifiers would be available for those securities as well.[8]

Proposed Discretionary Order

The Exchange proposes a new order type, a Discretionary Order or ''D Order'', under paragraph (d)(4) of Rule 7.31 for securities trading on Pillar. Today, the Exchange offers d-Quotes [9] for trading in Exchange-listed securities only, which operate in a similar manner as the proposed D Order, including that such order type is available to Floor brokers only.

Under Rule 70.25, a d-Quote is a quotation entered by a Floor broker that includes discretionary instructions as to size and/or price.[10] Such discretionary instructions are active during the trading day, unless the PBBO is crossed.[11] A Floor broker can also include an instruction for the discretionary instructions to participate in the opening or closing transaction only.[12] Discretionary instructions are not displayed and such instructions apply to both displayed and reserve interest.[13] Currently, price discretion can apply to all or a portion of a d-Quote and a d-Quote with a midpoint modifier has a discretionary price range to the midpoint of the PBBO.[14]

With respect to discretionary size, a Floor broker may designate the amount of d-Quote volume to which the discretionary price instructions shall apply, and can also designate that a minimum size of contra-side volume with which it is willing to trade using discretionary size instructions.[15] A Floor broker may also designate a minimum trade size (''MTS'') that must be met before the d-Quote is executed.[16] A resting d-Quote will be triggered to exercise discretion so long as the contra-side interest's price is within the discretionary price range and meets the MTS that has been set for the d-Quote.[17]

On Pillar, the Exchange proposes to offer Floor brokers functionality similar to d-Quotes in the form of D Orders. However, the Exchange proposes to simplify and streamline D Order functionality on Pillar as compared to how d-Quotes function. Among other things, the Exchange would not offer discretionary size instructions for D Orders that are available to d-Quotes. Also unlike d-Quotes, the discretionary price instructions would be applicable to the entirety of the D Order. In addition, all D Orders would have a discretionary price range capped at the midpoint of the PBBO, which is currently optional functionality for d-Quotes.

Overview. Proposed Rule 7.31(d)(4) would set forth the general requirements for D Orders and would provide that a D Order is a Limit Order that may trade at an undisplayed discretionary price. As further proposed, a D Order must be designated Day, may be designated as routable or non-routable,[18] and on entry, must have a minimum of one round lot displayed. This proposed rule text is based in part on how d-Quotes currently function, with a proposed difference that on Pillar, D Orders would be required to have a display quantity.[19] The Exchange proposes that, as currently available for d-Quotes, D Orders could be combined with a Reserve Order, which would be addressed in an amendment to Rule 7.31(d)(1)(C).

Proposed Rule 7.31(d)(4) would further provide that a D Order is available only to Floor brokers and is eligible to be traded in the Core Trading Session [20] only. This proposed rule text is based on current rules that d-Quotes are available only to Floor brokers. The requirement that D Orders would be eligible to trade in the Core Trading Session only is consistent with current d-Quote functionality, which trade during ''regular trading hours'' only. The Exchange proposes to apply this same time frame when making D Orders available to all securities that trade on Pillar, including UTP Securities because, as discussed below, D Order functionality would operate similarly to Pegged Orders, which are also only available during Core Trading Hours. The Exchange also proposes to amend Rule 7.34(c)(1)(A) to specify when a D Order may be entered and be eligible for execution.

Upon Arrival. Proposed Rule 7.31(d)(4)(A) would provide that the Floor broker would be required to specify one of the following instructions for a D Order: (i) Limit Price D Order; or (ii) Midpoint Price D Order.

- Proposed Rule 7.31(d)(4)(A)(i) would provide that on arrival, a Limit Price D Order to buy (sell) would trade with sell (buy) orders on the Exchange Book, or, if designated as routable, route to an Away Market up (down) to the limit price of the order. If after trading or routing the PBBO is locked or crossed or there is no PBB (PBO), a Limit Price D Order would be cancelled. For a Limit Price D Order that is partially routed to an Away Market on arrival, any returned quantity of such D Order would join the working price of the resting odd-lot quantity of the D Order. Because the limit price of a D Order would function similarly to the upper (lower) discretionary price range of a d-Quote, this proposed operation of a Limit Price D Order on arrival is similar to how d-Quotes currently function.[21]
- Proposed Rule 7.31(d)(4)(A)(ii) would provide that on arrival, a Midpoint Price D Order to buy (sell) would trade with sell (buy) orders on the Exchange Book up (down) to the lower (higher) of the midpoint of the PBBO (''Midpoint Price'') or the order's limit price. The rule would further provide that a Midpoint Price D Order would not route on arrival, even if designated as routable. If designated as routable, a Midpoint D Order combined with a Reserve Order would be evaluated for routing each time the display quantity is replenished as provided for in Rule 7.31(d)(1)(D).[22] The rule would further provide that if the PBBO is locked or crossed or if the Midpoint Price is unavailable, the Midpoint Price D Order would be rejected. The Midpoint Price D Order is based on current functionality that a d-Quote may be designated with a

pursuant to unlisted trading privileges. *See* Rule 1.1(x).

[8] The proposed D Order, Last Sale Peg Modifier, and Yielding Modifier would function in an identical manner as proposed herein when made available for Exchange-listed securities.

[9] *See* Rule 70.25. *See also* Securities Exchange Act Release Nos. 54577 (October 5, 2006), 71 FR 60208 (October 12, 2006) (SR–NYSE–2006–25) (''d-Quote Approval Order''); 60251 (July 7, 2009), 74 FR 34068 (July 14, 2009) (SR–NYSE–2009–55); 61072 (November 30, 2009), 74 FR 64103 (December 7, 2009) (SR–NYSE–2009–106); *and* 75444 (July 13, 2015), 80 FR 42575 (July 17, 2015) (SR–NYSE–2015–15).

[10] *See* Rule 70.25(a)(i).

[11] *See* Rule 70.25(a)(ii).

[12] *See id.*

[13] *See* Rule 70.25(a)(vi) and (vjj).

[14] *See* Rule 70.25(b).

[15] *See* Rule 70.25(c).

[16] *See* Rule 70.25(d).

[17] *See* Rule 70.25(e)(ii).

[18] A d-Quote can be combined with a Do Not Ship ''DNS'' Order, which is an order that would be cancelled if it were required to be routed. *See* Rule 13(e)(2). Accordingly, a d-Quote combined with DNS is a non-routable d-Quote.

[19] Currently, Reserve Orders available to Floor brokers do not require a display quantity. *See* Rule 70(f).

[20] The Core Trading Session begins at 9:30 a.m. Eastern Time and ends at the conclusion of Core Trading Hours. *See* Rule 7.34(a)(2). The term ''Core Trading Hours'' means ''the hours of 9:30 a.m. Eastern Time through 4:00 p.m. Eastern Time or such other hours as may be determined by the Exchange from time to time.'' *See* Rule 1.1(d).

[21] *See* Rule 70.25(e)(vii) (a d-Quote may initiate a sweep to the extent of their price and volume discretion).

[22] Rule 7.31(d)(1)(D) provides that a routable Reserve Order will be evaluated for routing both on arrival and each time the display quantity is replenished.

midpoint modifier and the discretionary price range of such d-Quote is the midpoint of the PBBO.[23]

The Exchange notes that the proposed functionality to either cancel or reject a D Order when the PBBO is locked or crossed is based on how Primary Pegged Orders[24] currently function.[25] As discussed below, the Exchange proposes that D Orders would function similarly to Primary Pegged Orders because they would be pegged to the same-side PBBO. The Exchange therefore believes that a D Order should be rejected or cancelled under the same circumstances when a Primary Pegged Order would be cancelled or rejected.[26] In addition, this is consistent with current d-Quote functionality that provides that discretionary instructions are not active when the PBBO is crossed.[27]

Display Price. Proposed Rule 7.31(d)(4)(B) would set forth how a D Order would be displayed when resting on the Exchange Book and would provide that the working[28] and display price of a D Order to buy (sell) would be pegged to the PBB (PBO). If the PBB (PBO) is higher (lower) than the limit price of a D Order to buy (sell), the working and display price would be the limit price of the order. The rule would further provide that a D Order to buy (sell) would be cancelled if there is no PBB (PBO) against which to peg. At its display price,[29] a D Order would be ranked Priority 2—Display Orders.[30] This proposed functionality for D Orders would be new for Pillar and is based on how Primary Pegged Orders function, including that a D Order would be cancelled if there is nothing against which to peg. The Exchange believes this proposed difference would streamline and simplify the operation of D Orders as compared to d-Quotes.[31]

Exercising Discretion. Proposed Rule 7.31(d)(4)(C) would provide that a resting D Order to buy (sell) would be eligible to exercise discretion up (down) to the limit price of the order. This proposed rule text is new for Pillar and reflects that the limit price of the D Order would function as the ceiling or floor of the discretionary price range for such order. As noted above, the display price of a D Order would be pegged to the same-side PBBO and would not be based on the limit price.

The proposed rule would further provide that such D Order would not exercise discretion if the PBBO is locked or crossed or if there is no Midpoint Price. This functionality is based in part on how d-Quotes currently function and adds that D Orders would not exercise discretion if the market is locked (because a D Order would be pegged to the same-side PBBO and there is no midpoint) or if there is no Midpoint Price (meaning there is no price available for a D Order to extend its discretion to).[32]

Proposed Rule 7.31(d)(4)(C)(i) would provide that a D Order to buy (sell) would be triggered to exercise discretion if the price of an Aggressing Order[33] to sell (buy) is above (below) the PBB (PBO) and at or below the Midpoint Price (the ''discretionary price range''). This would be new functionality for D Orders. Currently, any contra-side order that is within the discretionary price range of a d-Quote would trigger a d-Quote to trade.[34] The Exchange believes the proposed difference for D Orders would streamline and simplify the function of D Orders. More specifically, because the discretionary price range for a D Order would be one minimum price variation (''MPV'') better than the same-side PBBO capped by the Midpoint Price, the Exchange believes that only contra-side orders with a limit price within that same discretionary price range should trigger a D Order to exercise discretion.

Proposed Rule 7.31(d)(4)(C)(ii) would provide that the discretionary price at which a D Order to buy (sell) would trade would be the price of the sell (buy) order. This proposed functionality would be new for Pillar and is to be read together with proposed Rule 7.31(d)(4)(C)(i), which defines the price range of the contra-side order that could trigger the D Order to exercise discretion. In addition, the Exchange proposes to define the term ''discretionary price'' in new Rule 7.36(a)(7) to mean the undisplayed price at which a D Order would trade if it exercises discretion.

Proposed Rule 7.31(d)(4)(C)(ii) would further provide that if there is other interest to buy (sell) on the Exchange Book priced equal to or higher (lower) than the price of the sell (buy) order, the discretionary price would be one MPV higher (lower) than the highest (lowest) priced resting order to buy (sell), capped by the Midpoint Price.[35] This would be new functionality for Pillar and is based in part on current functionality that requires a d-Quote to exercise the least amount of price discretion.[36] The following example illustrates this behavior:

- If the PBBO is $10.00 by $10.10 with a Midpoint Price of $10.05 and a Floor broker enters a D Order to buy 100 shares with a limit price of $10.08 (''Order 1''), Order 1 would be pegged to and displayed at $10.00, the PBB, with a discretionary price range up to the $10.05 Midpoint Price. If a non-displayed Limit Order to buy 100 shares at $10.03 is placed on the Exchange Book (''Order 2'') and next, a Limit Order to sell 200 shares at $10.01 is entered (''Order 3''), because Order 3 is marketable against Order 2 at $10.03, Order 1's discretionary price range would extend to $10.04, one MPV higher than Order 2's limit price. Order 3 would execute 100 shares against Order 1 at $10.04, providing Order 3 with $0.03 of price improvement relative to its limit price. The remaining 100 shares of Order 3 would execute against Order 2 at $10.03.

Ranking and Working Time. As provided for in Rule 7.36(f)(1), an order is assigned its working time based on its original entry time, which is the time when an order is placed on the Exchange Book. Rule 7.36(f)(2) further provides that an order is assigned a new working time any time its working price changes.[37] Because a D Order can trade at more than one price—its display price or its discretionary price, the Exchange proposes to address the working time associated with each such

[23] *See* Rule 70.25(b)(v).

[24] *See* Rule 7.31(h) for a description of Pegged Orders.

[25] *See* Rule 7.31(h)(2) and (h)(2)(B) (''A Primary Pegged Order will be rejected if the PBBO is locked or crossed.'').

[26] *See* Rule 7.31(h)(2) (''A Primary Pegged Order to buy (sell) will be rejected on arrival, or cancelled when resting, if there is no PBB (PBO) against which to peg.'')

[27] *See* Rule 70.25(a)(ii).

[28] ''Working price'' means the price at which an order is eligible to trade at any given time, which may be different from the limit price or display price of the order. *See* Rule 7.36(a)(3).

[29] ''Display price'' means the price at which a Limit Order is displayed, which may be different from the limit price or working price of the order. *See* Rule 7.36(a)(1).

[30] Rule 7.36(e) governs execution priority for orders resting on the Exchange Book and currently sets forth three priority categories: Priority 1—Market Orders, Priority 2—Display Orders, and Priority 3—Non-Display Orders. If a D Order is combined with a Reserve Order, the reserve interest of such order would be ranked Priority 3—Non-Display Orders. *See* Rule 7.31(d)(1).

[31] Currently, d-Quotes resting at the depth of book can exercise discretion. *See* Rule 70.25(e)(i)(A).

[32] *See* Rule 70.25(a)(ii).

[33] An Aggressing Order is a buy (sell) order that is or becomes marketable against sell (buy) interest on the Exchange Book. *See* Rule 7.36(a)(6). A resting order may become an Aggressing Order if its working price changes, if the PBBO or NBBO is updated, because of changes to other orders on the Exchange Book, or when processing inbound messages. *Id.*

[34] *See* Rule 70.25(e)(ii).

[35] The MPV for securities is defined in Rule 7.6.

[36] *See* Rule 70.25(e)(i)(A).

[37] Pursuant to Rule 7.36(f)(2), each time a D Order is assigned a new working and display price, *i.e.,* with each change to the same-side PBBO pursuant to proposed Rule 7.31(d)(4)(B)(i), such D Order would be assigned a new working time.

price in proposed Rule 7.31(d)(4)(D). As proposed, the trigger to exercise discretion would not change the working time of a D Order's display and working price.

Proposed Rule 7.31(d)(4)(D)(i) would provide that at its discretionary price, a D Order would be assigned a new temporary working time that is later than any same-side resting interest at that price. This temporary working time is distinct from the working time associated with the display and working price of the D Order, which are pegged to the same-side PBBO.

Proposed Rule 7.31(d)(4)(D)(ii) would provide that multiple D Orders eligible to trade at the same discretionary price would be ranked by limit price and time. This is new functionality for Pillar. Current Rule 70.25(e)(iii) and (iv) describe how competing d-Quotes from more than one Floor broker trade. The Exchange does not propose to replicate this functionality on Pillar and believes that ranking multiple same-side D Orders based on limit price and time would simplify the process for allocation among competing D Orders. Finally, proposed Rule 7.31(d)(4)(D)(iii) would provide that any quantity of a D Order that does not execute at a discretionary price would return to the working time associated with its working and display price.

The Exchange believes that the proposed temporary working time associated with the discretionary price would respect the priority of the working times of orders that may have a working price equal to the D Order's discretionary price. By assigning a temporary working time, the D Order would be ranked behind other orders at that price. In addition, because the D Order would continue to be displayed at its display price, even if it were triggered to exercise discretion, the proposal would honor such D Order's original working time if it were to trade at its display price.

Resting D Order that Becomes Marketable. Proposed Rule 7.31(d)(4)(E) would provide that after the PBBO unlocks or uncrosses or a Midpoint Price becomes accessible, resting D Orders to buy (sell) would be ranked based on the lower (higher) of the Midpoint Price or limit price of the order to determine whether a D Order is marketable within the discretionary price range with contra-side orders on the Exchange Book. This proposed rule text is new and reflects the difference in Pillar that D Orders would not exercise discretion when the PBBO is locked or crossed or if a Midpoint Price is unavailable. This proposed rule text addresses how a resting D Order would be ranked for trading when the PBBO unlocks or uncrosses or if a Midpoint Price becomes accessible.

D Orders Rejected and Modifiers. Proposed Rule 7.31(d)(4)(F) would provide that a D Order may be designated with a Self Trade Prevention Modifier (''STP'') and would be rejected if combined with any other modifiers or if the same-side PBBO is zero. This proposed functionality is new, as d-Quotes cannot currently be designated with an STP Modifier.[38] The Exchange believes that making STP Modifiers available for D Orders would provide Floor brokers with more tools to reduce the potential for two orders to interact if they are from the same customer. By specifying that D Orders cannot be combined with other modifiers, the rule provides transparency that a D Order cannot be combined with other modifiers defined in Rule 7.31(i).

Regarding STP, Rule 7.31(i)(2) describes the Exchange's STP Modifier. Generally, if two orders from the same Client ID both have an STP Modifier, the Exchange will cancel one of the two orders, based on instruction from the member organization. For D Orders, because the discretionary price is temporary, the Exchange proposes that if a D Order exercising discretion would trade with another order with an STP Modifier from the same Client ID, the two orders would not trade, but nor would either order be cancelled. The Exchange does not believe it would be appropriate to cancel the D Order in such scenario because if the D Order is not cancelled, it would be eligible to trade with another order at either its display price or a different discretionary price at a later time. To effect this change, the Exchange proposes to amend Rule 7.31(i)(2) to add new subparagraph (C) that would provide that a resting D Order with an STP Modifier that is triggered to exercise discretion and is not an Aggressing Order will not trade at a discretionary price against a contra-side order that is also designated with an STP Modifier and from the same Client ID and that in such case, the D Order would not be cancelled.

Last 10 Seconds of Trading. Proposed Rule 7.31(d)(4)(G) would provide that a request to enter a D Order in any security 10 seconds or less before the scheduled close of trading would be rejected. This proposed rule text is based in part on the second sentence of current Rule 70.25(a)(ii), which provides that the Exchange will reject any d-Quotes that are entered 10 seconds or less before the scheduled end of trading. The proposed functionality for UTP Securities would be identical to Rule 70.25(a)(ii).

Allocation of D Orders. Rule 7.37(b) describes how an Aggressing Order is allocated among contra-side orders at each price. The Exchange maintains separate allocation wheels on each side of the market for displayed and non-displayed orders at each price. The Exchange proposes to amend Rule 7.37(b) to set forth how D Orders would participate in the allocation process.

Rule 7.37(b)(1) sets forth the following allocation sequence: (1) Market Orders trade first based on time; (2) orders with Setter Priority as described in Exchange Rule 7.36(h) receive an allocation; (3) orders ranked Priority 2—Displayed Orders are allocated on parity by Participant; (4) orders ranked Priority 3—Non-Display Orders, other than Mid-Point Liquidity (''MPL'') Orders[39] with an MTS Modifier, are allocated on parity by Participant;[40] and then (5) MPL Orders with an MTS Modifier are allocated based on MTS size (smallest to largest) and time.

As proposed, D Orders trading at a discretionary price would be allocated next on parity by Floor Broker Participant.[41] Accordingly, at their discretionary price, D Orders would be allocated after all other orders at that price, except, as described below, Yielding Orders. To effect this change, the Exchange proposes to amend Rule 7.37(b)(1) to add new sub-paragraph (F) to provide that next, D Orders trading at a discretionary price would be allocated on parity by Floor Broker Participant. This proposed functionality is based in part on current Rule 70.25(a)(ii), which provides that executions of d-Quotes within the discretionary price range are considered non-displayable for purposes of Rule 72.

Rule 7.37(b)(2) describes the process for the parity allocation wheel. Currently, the Exchange creates separate allocation wheels for orders ranked Priority 2—Display Orders and orders ranked Priority 3—Non-Display Orders. The Exchange proposes to create a third allocation wheel if there is more than one D Order eligible to trade at a discretionary price. In such case, the Exchange would create an allocation

[38] *See* Rule 13(f)(3)(B).

[39] *See* Rule 7.31(d)(3) for a description of MPL Orders.

[40] In sum, an order with an MTS Modifier would only trade with contra-side orders that, either individually or in the aggregate, satisfy the order's minimum trade size condition. *See* Rule 7.31(i)(3) for a full description of the MTS Modifier.

[41] *See* Rule 7.36(a)(5) for the definition of the term ''Floor Broker Participant.''

wheel for D Orders at that discretionary price.[42]

The Exchange proposes that an allocation wheel for D Orders trading at a discretionary price would function the same as allocation wheels for display and non-display orders, with one proposed difference. Because the discretionary price at which a D Order would trade is a temporary price established based on whether a contra-side order triggers a D Order to exercise discretion, the Exchange proposes to amend Rule 7.37(b)(2)(A) to provide that for each D Order parity allocation wheel, a D Order to buy (sell) with the highest (lowest) limit price would establish the first position on that allocation wheel. This proposed rule text is consistent with the proposed ranking of D Orders as set forth in proposed Rule 7.31(d)(4)(D)(ii), which would require multiple D Orders eligible to trade at the same discretionary price to be ranked by limit price and time as described above.

The following example illustrates how the parity allocation wheel for D Orders would be established:

- If the PBBO is $10.00 by $10.10 with a Midpoint Price of $10.05 and a Floor broker enters a D Order to buy 1,000 shares with a limit price of $10.06 (''Order 1''), Order 1 would be pegged to and displayed at $10.00, the PBB, with discretion to the $10.05, the Midpoint Price. If another Floor broker enters a separate D Order to buy 1,000 shares with a limit price of $10.07 (''Order 2''), like Order 1, Order 2 would be pegged to and displayed at $10.00, the PBB, with discretion to $10.05, the Midpoint Price.
- If a Limit Order to sell 100 shares at $10.05 is entered (''Order 3''), Order 3 would trigger both Order 1 and 2 to exercise discretion at the Midpoint Price. Because Order 2 has the more aggressive limit price, it would establish the first position on the D Order parity wheel. In this example, Order 3 would trade 100 shares with Order 2 at $10.05. Because there is no remaining quantity of Order 3, Order 1 would not receive an allocation.

Re-pricing of D Orders during a Short Sale Period. Rule 7.16(f)(5) sets forth how the Exchange processes short sale orders during a Short Sale Period.[43] The Exchange proposes to amend Rule 7.16(f)(5)(C) to address how the Exchange would process D Orders marked ''short'' during a Short Sale Period. As proposed, during a Short Sale Period, the Exchange proposes to process sell short D Orders like Pegged Orders and MPL Orders. To effect this change, the Exchange proposes to amend Rule 7.16(f)(5)(C) to add that D Orders, like Pegged Orders and MPL Orders today, including orders marked buy, sell long and sell short exempt, would use the National Best Bid and Offer (''NBBO'') instead of the PBBO as the reference price. Because the Exchange has defined the term ''Midpoint Price'' for D Orders, the Exchange further proposes to amend that rule to provide that the Midpoint Price of D Orders would be the midpoint price of the NBBO, including situations where the midpoint is less than one minimum price increment above the National Best Bid (''NBB''). This functionality would be new for D Orders on Pillar as compared to how d-Quotes function and is based on applying existing Pillar logic for orders that peg to the PBBO to D Orders.

Proposed Last Sale Peg Modifier

The Exchange proposes to add a new order type modifier, Last Sale Peg, which would be set forth in proposed paragraph (i)(4) of Rule 7.31. Today, the Exchange offers the Buy Minus Zero Plus (''BMZP'')[44] instruction for trading in Exchange-listed securities. The Last Sale Peg Modifier is designed to achieve the same purpose as the BMZP instruction for securities trading on Pillar, with specified differences to reflect Pillar functions and terminology.

Under Rule 13(f)(4), for Exchange-listed securities, an order with a BMZP instruction will not trade at a price that is higher than the last sale, subject to the limit price of an order, if applicable.[45] Odd-lot sized transactions are not considered the last sale for purposes of executing BMZP orders.

The BMZP instruction is available to buy Limit Orders only and is designed to assist member organizations in their compliance with the ''safe harbor'' provisions of Rule 10b–18 under the Act (''Rule 10b–18'') for issuer repurchases.[46] One of the four provisions required to fall under Rule 10b–18's safe harbor is that the purchase price of a security may not exceed the highest independent bid or the last independent transaction price for the security.[47] Because an order with a BMZP instruction will not trade at a price that is higher than the last sale, member organizations can use this instruction to facilitate their compliance with at least one of the conditions of the safe harbor provision of Rule 10b–18.[48]

On Pillar, the Exchange proposes to offer functionality that is based on the BMZP instruction and rename it the Last Sale Peg Modifier. Proposed 7.31(i)(4) would set forth the general requirements for the Last Sale Peg Modifier. As proposed, a Non-Routable Limit Order to buy may be designated with a Last Sale Peg Modifier, which would be referred to as a ''Last Sale Peg Order.'' Proposed 7.31(i)(4) would also provide that a Last Sale Peg Order would not trade or be displayed at a price higher than the later of the most recent last-sale eligible trade[49] executed on the Exchange or the most recent consolidated last-sale eligible trade[50] which would be defined for purposes of this Rule as the ''last-sale price.'' This rule text is based on Rule 13(f)(4)(A), but with greater specificity of what it means to be a last sale price for purposes of a Last Sale Peg Order.

The proposed functionality to restrict Last Sale Peg Orders to Non-Routable Limit Orders would be new because currently, the BMZP instruction can be included on both routable and non-routable buy orders. The Exchange believes that limiting the availability of this modifier to Non-Routable Limit Orders would simplify the operation of this modifier, while at the same time achieving the goal of the modifier, which is to provide an instruction to facilitate compliance with the safe harbor provisions of Rule 10b–18. Like the BMZP instruction, the proposed Last Sale Peg Order would be available only for buy orders.

[42] *See* proposed amendment to Rule 7.37(b)(2).

[43] A ''Short Sale Period'' is defined in Rule 7.16(f)(4) to mean the period when a Short Sale Price Test is in effect. A ''Short Sale Price Test'' is defined in Rule 7.16(f)(3) to mean the period during which Exchange systems will not execute or display a short sale order with respect to a covered security at a price that is less than or equal to the current NBB in compliance with Rule 201 of Regulation SHO. 17 CFR 242.201.

[44] *See* Rule 13(f)(4).

[45] *See* Rule 13(f)(4). Limit Orders with a BMZP instruction that are systemically delivered to Exchange systems are eligible to be automatically executed in accordance with, and to the extent provided by, Rules 1000–1004, consistent with the order's instructions. *Id.* Odd-lot sized transactions are not be considered the last sale for purposes of executing an order with a BMZP instruction. *Id.*

[46] *See* 17 CFR 240.10b–18. *See also* Securities Exchange Act Release No. 78679 (August 25, 2016), 81 FR 60080 (August 31, 2016) (SR–NYSE–2016–59).

[47] *See* 17 CFR 240.10b–18(b)(3). The other three conditions relate to time of purchases, volume of purchases, and a requirement that only one broker or dealer be involved in such repurchases on a single day.

[48] The Exchange does not represent that an order with a BMZP instruction or the proposed Last Sale Peg Modifier are guaranteed to meet the requirements of the safe harbor provision of Rule 10b–18; rather, these instruction are available to member organizations to facilitate their own compliance with Rule 10b–18.

[49] A last-sale eligible trade must be of at least one round lot.

[50] A consolidated last-sale eligible trade is the last-sale eligible trade reported to the responsible single plan processor.

Proposed Rule 7.31(i)(4)(A) would provide that the working price of a Last Sale Peg Order would be pegged to the lower of the last-sale price, the limit price of the order, or the PBO. To reflect which last-sale price would be applicable, proposed Rule 7.31(i)(4)(A) would further provide that the working price of a resting Last Sale Peg Order would not be adjusted until an Aggressing Order is fully processed. In other words, if an Aggressing Order trades at multiple prices, the Exchange would wait for the last price at which such order trades to determine the last-sale price for purposes of re-pricing the working price of a resting Last Sale Peg Order.

The rule would further provide that if the last-sale price is not at a permissible MPV, the working price of the order would be rounded down to the nearest MPV. This last provision would be applicable, for example, if the last-sale price were at the midpoint of a penny-spread security, which would not be in two decimals. In such case, the Exchange would round the working price of the Last Sale Peg Order down to the MPV for the security. This proposed rule text would be new for Pillar and the Exchange believes that it would promote transparency regarding how a Last Sale Peg Order would be displayed on the Exchange Book in a manner to facilitate compliance with the safe-harbor provisions of Rule 10b–18.

Proposed Rule 7.31(i)(4)(B) would provide that the display price of a Last Sale Peg Order would be the same as the working price, unless the working price is pegged to the PBO, in which case, the display price would be determined under paragraph (e)(1) of Rule 7.31. Rule 7.31(e)(1) describes how a Non-Routable Limit Order to buy that, at the time of entry and after trading with any sell orders in the Exchange Book priced at or below the PBO is priced.[51] Because a Last Sale Peg Order would be a Non-Routable Limit Order, it would follow the pricing instructions of such order.

Proposed Rule 7.31(i)(4)(C) would provide that a Last Sale Peg Order may be designated with an STP Modifier and would be rejected if combined with any other modifiers or if there is no last-sale price. This proposed rule text promotes transparency that a Non-Routable Limit Order with a Last Sale Peg Modifier can include an STP, but could not be combined with any other modifiers described in Rule 7.31.

The Exchange proposes that Last Sale Peg Orders would be eligible for execution only during the Core Trading Session. As further proposed, similar to Primary Pegged Orders, the Exchange proposes that Last Sale Peg Orders would be accepted prior to the commencement of the Core Trading Session, but would not be eligible for execution until the Core Trading Session begins. To effect this change, the Exchange proposes to amend Rule 7.34(c)(1)(A) to add Last Sale Peg Orders to the description of orders that may be accepted but not eligible to trade during the Early Trading Session.

Proposed Yielding Modifier

The Exchange proposes to add a second new order type modifier, the Yielding Modifier, under paragraph (i)(5) of Rule 7.31, for trading on Pillar. Today, the Exchange offers Floor brokers g-Quotes [52] for trading in Exchange-listed securities only. The proposed Yielding Modifier is based on how g-Quotes currently function and as with g-Quotes, would be available only to Floor brokers.

Currently, g-Quotes are designed to assist Floor brokers with compliance with Section 11(a)(1) of the Act,[53] which generally prohibits a member of a national securities exchange from effecting transactions on that exchange for its own account, the account of an associated person, or any account over which it or an associated person exercises discretion. Subsection (G) of Section 11(a)(1) provides an exemption from this prohibition, allowing an exchange member to have its own floor broker execute a proprietary order, also known as a ''G order,'' provided such order yields priority, parity, and precedence (the ''G Rule''). For Exchange-listed securities, the Exchange offers g-Quotes, which are an electronic method for Floor brokers to represent orders that yield priority, parity and precedence based on size to all other displayed and non-displayed orders on the Exchange Book, in compliance with the G Rule.[54]

Like g-Quotes, the proposed Yielding Modifier would aid Floor brokers in complying with the G Rule when trading on Pillar. Proposed Rule 7.31(i)(5) would set forth the general requirements for the Yielding Modifier and would provide that a Limit Order, Non-Routable Limit Order, or Reserve Order may be designated with a Yielding Modifier, which for purposes of this Rule, would be referred to as a ''Yielding Order.'' This proposed rule text is based on how the Exchange currently functions, because a g-Quote is a form of an e-Quote, and pursuant to Rule 70.25, e-Quotes may be displayed or non-displayed and routable or non-routable. The proposed rule text uses Pillar terminology to reflect these functions. Proposed Rule 7.31(i)(5) would also provide that a Yielding Order would yield priority to all other displayed and non-displayed orders at the same price, and, similar to g-Quotes, may be entered by a Floor broker only.

Proposed Rule 7.31(i)(5) would also provide that a Yielding Order would be ranked Priority 4—Yielding Orders. The Exchange would make a related amendment to Rule 7.36(e) to add this additional priority category. Proposed Rule 7.36(e)(4) would provide that Priority 4—Yielding Orders would have fourth priority. The Exchange believes that these proposed priority categories are consistent with current g-Quote functionality because Yielding Orders would be ranked behind all other displayed and non-displayed orders.

Proposed Rule 7.31(i)(5)(A) and (B) would describe how an Aggressing Yielding Order would trade. Proposed Rule 7.31(i)(5)(A) would provide that an Aggressing Yielding Order to buy (sell) with a limit price higher (lower) than the limit price of a resting order to buy (sell) would trade ahead of such resting order. This proposed rule text is consistent with how g-Quotes are ranked and traded in an auction; a better-priced g-Quote will trade ahead of an at-priced limit order because it has price priority.[55] The Exchange proposes to make this explicit in the rules for all executions of a Yielding Order. For example, if the Exchange has a Non-Displayed Limit Order to buy with a limit price of 10.00 (''Order 1'') that is locked by an ALO Order to sell at 10.00 (''Order 2''), an arriving Yielding Order to buy with a limit price of 10.03

[51] Under Rule 7.31(e)(1), Non-Routable Limit Orders would be re-priced as follows: (i) It will have a working price of the PBO (PBB) of an Away Market and a display price one MPV below (above) that PBO (PBB); (ii) if the PBO (PBB) of an Away Market re-prices higher (lower), it will be assigned a new working price of the updated PBO (PBB) and a new display price of one MPV below (above) that updated PBO (PBB); (iii) if the PBO (PBB) of an Away Market re-prices to be equal to or lower (higher) than its last display price, its display price will not change, but the working price will be adjusted to be equal to its display price; or (iv) if its limit price no longer locks or crosses the PBO (PBB) of an Away Market, it will be assigned a working price and display price equal to its limit price and will not be assigned a new working price or display price based on changes to the PBO (PBB).

[52] *See* Rule 70(a)(ii) and (iii).

[53] 15 U.S.C. 78k(a)(1).

[54] Under the G Rule, G orders are not required to yield to other orders that are for the account of a member, *e.g.,* Designated Market Maker (''DMM'') interest or other g-Quotes.

[55] *See* Rule 115A(a)(1) and Rule 123C(7)(a)(vii).

(''Order 3'') would trade with Order 2 at 10.00. Because Order 3 is willing to trade at a more aggressive price than Order 1 and therefore has price priority, the Exchange believes that Order 3 would not need to yield to Order 1 when trading at 10.00. The Exchange therefore believes that this proposed execution would be consistent with the G Rule.[56]

Proposed Rule 7.31(i)(5)(B) would provide that an Aggressing Yielding Order to buy (sell) with a limit price equal to the limit price of a resting order to buy (sell) would either: (i) Trigger the resting order to become an Aggressing Order, unless the order to sell (buy) is an MPL–ALO Order,[57] or an MPL Order with an MTS Modifier, in which case neither the Yielding Order nor the same-side resting order would trade; or (ii) trade ahead of such resting order if such resting order is not eligible to trade (*e.g.,* an ALO Order or an order with an MTS Modifier).

In the first scenario, the Exchange believes that triggering the resting order to trade ahead of the Yielding Order would respect the priority of the resting order at that price. Neither order would trade if the contra-side order is either an MPL ALO or MPL Order with an MTS Modifier and has a conditional instruction that does not allow it to trade at that price. The Exchange believes that not permitting either order to trade in this circumstance would ensure that the Yielding Order does not trade ahead of a same-priced resting order in accordance with the G Rule.

In the second scenario, the Exchange believes that if a resting order has a condition that has not been met and is therefore not eligible to trade, such order cedes execution priority to a same-side Yielding Order at the same price, and therefore, the Yielding Order would not be trading ahead of such order in violation of the G Rule. The execution of both an ALO Order and an order with an MTS Modifier are both contingent on a pre-condition being met. The ALO Order requires that the contra-side order be a liquidity remover and the order with a MTS Modifier requires that the contra-side order be of a certain size to meet its minimum quantity condition. Because the condition of either resting order has not been met and such order cannot participate in an execution, the Exchange believes this order cedes execution priority to the Yielding Order and the Yielding Order would not be required to yield to it under the G Rule.

The following example illustrates how an order with a Yielding Modifier would interact with conditional orders, such as ALO orders, MPL ALO orders, or MPL orders with an MTS Modifier.

- If the PBBO is $10.00 by $10.20 resulting in a Midpoint Price of $10.10, a Limit Order to buy 40 shares at $10.10 is entered and is placed on the Exchange Book (''Order 1''), and an MPL ALO order to sell 100 shares at 10.00 is then entered (''Order 2'') and placed on the Exchange Book at the Midpoint Price, the Exchange Book would become internally locked because Order 2 cannot trade with Order 1.[58] Next, a Floor broker enters a Yielding Order to buy 50 shares at $10.10 (''Order 3''). Order 3 would not execute against Order 2 because Order 3 is priced equal to Order 1 and must yield priority, parity and precedence to Order 1. Order 3 would be placed on the Exchange Book at $10.10.
- If the Away Market PBB is $10.00, a Non-Displayed Limit Order to sell 1,000 shares at $10.00 is entered (''Order 1''), and an ALO order to buy 100 shares at $10.00 is entered (''Order 2''), Order 2 would not trade with Order 1 because it cannot act as a liquidity remover. Order 2 would be placed on the Exchange Book at $10.00. Next, a Yielding Order to buy 1,000 shares at $10.00 is entered (''Order 3''), which would execute 1,000 shares against Order 1 at $10.00. Order 3 would not be required to yield to Order 2 because Order 2 was an ALO order that chose to forgo the execution in favor of being placed on the Exchange Book and acting as a liquidity provider.

Similar to the Last Sale Peg Order, proposed Rule 7.31(i)(5)(C) would provide that a Yielding Order may be designated with an STP Modifier and would be rejected if combined with any other modifiers.

The Exchange also proposes to amend Rule 7.37(b) to describe how orders with a Yielding Modifier would participate in the allocation process. As described above, the Exchange proposes that after all other displayed and non-displayed orders are allocated, D Orders would be allocated on parity. The Exchange proposes to amend Rule 7.37(b)(1) to add subparagraph (G) to provide that after D Orders have been allocated, the display quantity of orders ranked Priority 4—Yielding Orders would be allocated based on time. The Exchange would further add subparagraph (H) to provide that next, the non-display quantity of orders ranked Priority 4—Yielding Orders would be allocated on time. This proposed allocation process is based in part on how g-Quotes are allocated after all other displayed and non-displayed orders in Exchange-listed securities. The Exchange proposes new functionality for Pillar that within each Yielding Order priority ranking, orders would be allocated on time rather than on parity. The Exchange believes that this proposed difference would streamline and simplify the allocation of Yielding Orders and is consistent with their intended compliance with the G Rule.

2. Statutory Basis

The Exchange believes that the proposal is consistent with Section 6(b) of the Act,[59] in general, and furthers the objectives of Sections 6(b)(5) of the Act,[60] in particular, because it is 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 mechanisms of, a free and open market and a national market system and, in general, to protect investors and the public interest and because it is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The proposed rule change extends the availability of orders and modifiers currently available for trading of Exchange-listed securities to trading of UTP Securities on Pillar. Specifically, the proposed D Order, Last Sale Peg Modifier, and Yielding Modifier that the Exchange proposes for Pillar would operate in a similar manner as d-Quotes, BMZP, and g-Quotes, respectively, which are currently available for trading in Exchange-listed securities. The proposed rule changes are all based on existing functionality with differences in rule text only to reflect Pillar terminology.

D Orders. The Exchange believes that the proposed D Order would remove

[56] *See, e.g.,* Securities Exchange Act Release No. 67686 (August 17, 2012), 77 FR 51596, 51599 (August 24, 2012) (SR–NYSE–2012–19) (Approval Order) (approving the Exchange's proposal that better-priced G Orders would be guaranteed to participate in a closing auction and would have priority over same-side limit orders on the Exchange Book that are at the same price as the closing auction).

[57] *See* Rule 7.31(e)(2) for a description of the ALO Order. An MPL Order may be designated with the ALO modifier. *See* Rule 7.31(d)(3)(E).

[58] *See* Rule 7.31(d)(3)(E)(i) (providing that ''[a]n Aggressing MPL–ALO Order to buy (sell) will trade with resting orders to sell (buy) with a working price below (above) the midpoint of the PBBO at the working price of the resting orders, but will not trade with resting orders to sell (buy) priced at the midpoint of the PBBO.'').

[59] 15 U.S.C. 78f(b).

[60] 15 U.S.C. 78f(b)(5).

impediments to, and perfect the mechanisms of, a free and open market and a national market system and, in general, protect investors and the public interest because it would expand existing functionality available to trading of Exchange-listed securities to trading of UTP Securities on Pillar. This proposed rule change would also ensure that this functionality would continue to be available to Floor brokers when the Exchange transitions trading of Exchange-listed securities to Pillar. The Exchange notes that D Orders would operate in a manner similar to d-Quotes. For example, a D Order would be eligible to trade at an undisplayed, discretionary price. In addition, D Orders could still be designated as routable or non-routable and could be combined with a Reserve Order. However, the Exchange proposes to simplify and streamline D Order functionality as compared to how d-Quotes function. More specifically, the Exchange proposes to cap the discretionary price range to the midpoint of the PBBO, define the discretionary price range of such order based on the limit price, limit the circumstances when a D Order would be triggered to exercise discretion, and peg the display price of a D Order to the same-side PBBO.

The Exchange believes that these proposed differences would simplify the operation of D Orders as compared to d-Quotes, while at the same time allow such orders to both contribute to the display of liquidity at the Exchange and offer price improvement opportunities to contra-side orders. Accordingly, the Exchange believes that the proposed D Order would remove impediments to and perfect the mechanism of a free and open market and a national market system by promoting price improvement to incoming orders, thereby improving execution opportunities for market participants. These increased price improvement opportunities are designed to attract additional order flow to the Exchange.

The Exchange believes that making the proposed D Order available to Floor brokers only is not designed to permit unfair discrimination among customers, issuers, brokers, or dealers. First, D Orders are based on current d-Quote functionality, which is available only to Floor brokers and is designed to replicate electronically the Floor broker's agency role to exercise price discretion on an order on behalf of a customer.[61] Floor brokers fulfill an agency broker role on behalf of their customers without conflicts and fill a void for firms that have chosen to allocate resources away from trading desks. In addition to this role, Floor brokers provide services for more illiquid securities, which upstairs trading desks may not be staffed to manage. Importantly, when providing such agency trading services, a Floor broker is unconflicted because a Floor broker is not trading for the member's own account and does not sell research to customers. Floor brokers therefore can focus on price discovery and volume discovery on behalf of their customers, while at the same time managing their customers' order flow to ensure that it does not impact pricing on the market (*e.g.,* executing large positions on behalf of a customer). Use of the D Order would facilitate this agency function by allowing Floor brokers to enter orders on behalf of their customers without pricing impact because the discretionary price range would be undisplayed. When managing such customer order flow, Floor brokers trading in UTP Securities would continue to be subject to Exchange rules that are unique to Floor brokers, including Rules 95, 122, 123, and paragraphs (d)–(j) of Rule 134. In addition, any member organization can choose to have a Floor broker operation and thus have direct access to D Orders on behalf of its customers.

In addition, the Exchange notes that while D Orders would be available only to Floor brokers, such orders would not receive any execution priority or benefit when trading at a discretionary price. To the contrary, as proposed, if a D Order were to exercise discretion and trade at an undisplayed, discretionary price, such D Order would be ranked behind all other same-side orders at that price, except for a Yielding Order, which by definition yields to all other orders and can only be entered by another Floor broker. The Exchange therefore believes that the proposed changes to Rule 7.37, which sets forth the allocation process for D Orders, would remove impediments to, and perfect the mechanisms of, a free and open market and a national market system by providing transparency regarding the priority of such orders.

More specifically, the Exchange believes it would remove impediments to and perfect the mechanism of a free and open market and a national market system for a D Order trading at a discretionary price to yield to other orders at that price because any such resting order, whether displayed (which could only be an odd-lot sized order) or non-displayed, would have time priority over the D Order trading at a discretionary price. To reflect this time priority, the Exchange proposes to assign a D Order a temporary working time associated with the discretionary price, which the Exchange believes would respect the priority of the working times of orders that may have a working price equal to the D Order's discretionary price. By assigning a temporary working time, the D Order would be ranked behind other orders at that price. The Exchange further believes that maintaining the working time of a D Order if it trades at its displayed price would reflect that even if triggered to exercise discretion, it would remain displayed at the same-side PBBO until it is executed. If a D Order that is triggered to exercise discretion is not fully executed, it would remain available for execution at its displayed price. Because that display price would not be changing, the Exchange believes it is reasonable to maintain time priority for that D Order if it were to execute at that displayed price.

The Exchange believes that the manner by which the discretionary price for a D Order would be determined would remove impediments to and perfect the mechanism of a free and open market and a national market system because the principles are the same as how d-Quotes function, which is to provide price improvement while exercising the least amount of price discretion. Consistent with that current behavior, a proposed D Order would be able to trade at a discretionary price that provides price improvement over resting orders on the Exchange Book, subject to a cap at the Midpoint Price.

The Exchange also believes it is reasonable for D Orders to be allocated among multiple Floor brokers at a price based on parity as such model is consistent with the Exchange's current parity allocation for Floor brokers. As noted above, this parity allocation is only among the Floor broker D Orders—other resting orders at that price, whether displayed or undisplayed, would have first priority. The Exchange further believes that with this parity allocation, it would be appropriate to create a separate allocation wheel for D Orders when more than one D Order is eligible to trade at the same discretionary price. The Exchange further believes that it is appropriate for the most aggressively-priced D Order to establish the first position on any such allocation wheel as it would encourage the entry of aggressively-priced orders

[61] *See, e.g.,* Securities Exchange Act Release No. 34–60251 (July 7, 2009), 74 FR 34068 (July 14, 2009) (Approval Order) (noting that d-Quotes provide Floor brokers with similar functionality that was previously available to Floor brokers).

available to provide price improvement to contra-side orders.

Last Sale Peg Modifier. The Exchange believes that the proposed Last Sale Peg Modifier would remove impediments to, and perfect the mechanisms of, a free and open market and a national market system and, in general, protect investors and the public interest because it would expand existing functionality available to trading of Exchange-listed securities to trading on Pillar, which would aid member organizations in their compliance with provision of Rule 10b–18. Today, the Exchange offers the BMZP instruction, which prevents a buy order from trading at a price higher than the last sale. As proposed, the Last Sale Peg Modifier would offer functionality based on the BMZP instruction for all orders that trade on the Exchange. Similar to the BMZP instruction, the proposed Last Sale Peg Modifier would be available to buy orders and is designed to facilitate compliance with one of the conditions of the safe harbor provision of Rule 10b–18. The Exchange believes that the proposed differences between the proposed Last Sale Peg Modifier and the BMZP instruction are designed to streamline the operation of the order modifier and promote transparency, while at the same time maintaining the core purpose of such modifier. For example, the Exchange believes that limiting this modifier to Non-Routable Limit Orders would simplify its operation because the Exchange would not be able to assist a member organization to comply with Rule 10b–18 if such order were routed to an Away Market.

Yielding Modifier. The Exchange believes that the proposed Yielding Modifier would remove impediments to, and perfect the mechanisms of, a free and open market and a national market system and, in general, protect investors and the public interest because it would expand functionality currently available on the Exchange to Floor brokers in Exchange-listed securities to all securities trading on Pillar by providing Floor brokers an electronic method to represent orders on Pillar that yield priority, parity and precedence to displayed and non-displayed orders on the Exchange's book in compliance with the G Rule.[62] Today, the Exchange offers g-Quotes [63] for trading in Exchange-listed securities. The proposed Yielding Modifier is based on current g-Quote functionality, including that it would only be available to Floor brokers. The Exchange notes that there is no need to offer this modifier to non-Floor brokers because the only members with the specified G Rule obligations today are Floor brokers—the electronic, off-Floor entry of orders is subject to an exception to the G Rule.[64]

The Exchange believes the proposed rule for the Yielding Modifier is designed to provide transparency of how the proposed modifier would function if there are resting orders on both sides of the Exchange book locking each other at the same price. The Exchange believes that the proposed functionality to allow an arriving Yielding Order that is priced better than a resting order that is locked with a contra-side order to trade ahead of such same-side resting order is consistent with the G Rule because in such scenario, the Yielding Order is willing to trade at a better price than the resting order, and therefore has price priority over such resting order. Likewise, the Exchange believes it would be appropriate to trigger a resting order eligible to trade ahead of a same-priced, same-side Yielding Order because if such resting order is eligible to be executed and the Yielding Order does not have price priority, the resting order should have an opportunity to trade first. If it cannot trade, then neither it nor the Yielding Order would trade. Finally, the Exchange believes it would be consistent with the G Rule for a Yielding Order to trade ahead of a same-priced resting order that is unable to trade because one or more conditions cannot be met for such resting order. The Exchange believes this trading scenario would be consistent with the G Rule because the resting order is not eligible to trade, and therefore it would yield priority to the Yielding Order; the Yielding Order would not trade ahead of any orders in that execution.

Lastly, the Exchange believes the proposed changes to Rules 7.36 and 7.37 regarding the priority and parity allocation process for orders with a Yielding Modifier would remove impediments to, and perfect the mechanisms of, a free and open market and a national market system. The Exchange believes it is reasonable to prioritize for execution and parity purposes orders with a Yielding Modifier behind all other orders at the same price because doing so is consistent with the modifier's purpose, which is to yield priority and parity to all other displayed and non-displayed orders at the same price, in compliance with the G Rule.

[62] *See* Section 11(a)(1) of the Act, 15 U.S.C. 78k(a)(1).

[63] *See* Rule 70(a)(ii) and (iii).

[64] *See* Securities Exchange Act Release No. 82945 (March 26, 2018), 83 FR 13553, 13568 (March 29, 2018) (SR–NYSE–2018–36) (''Approval Order'').

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,[65] the Exchange believes that the proposed rule change would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed change extends the availability of order types that are currently available for Exchange-listed securities to trading on Pillar. The Exchange operates in a highly competitive environment in which its unaffiliated exchange competitors operate under common rules for the trading of securities listed on their markets as well as those that they trade pursuant to unlisted trading privileges. By extending the availability of order types that are currently available for Exchange-listed securities to trading on Pillar, the Exchange would provide its members with consistency across trading of all securities in the Exchange. Doing so would also enable the Exchange to further compete with unaffiliated exchange competitors that also trade UTP securities.

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

Within 45 days of the date of publication of this notice in the **Federal Register** or up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

[65] 15 U.S.C. 78f(b)(8).

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–NYSE–2018–52 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–NYSE–2018–52. 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–NYSE–2018–52 and should be submitted on or before January 8, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[66]

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2018–27280 Filed 12–17–18; 8:45 am]

BILLING CODE 8011–01–P

[66] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration # 15831 and # 15832; Connecticut Disaster Number CT–00044]

Presidential Declaration of a Major Disaster for Public Assistance Only for the State of Connecticut

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of Connecticut (FEMA–4410–DR), dated 12/05/2018.

Incident: Severe Storms and Flooding.

Incident Period: 09/25/2018 through 09/26/2018.

DATES: Issued on 12/05/2018.

Physical Loan Application Deadline Date: 02/04/2019.

Economic Injury (EIDL) Loan Application Deadline Date: 09/05/2019.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 12/05/2018, Private Non-Profit organizations that provide essential services of a governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties/Areas: Middlesex and New London Counties, including the Mashantucket Pequot Indian Tribe and Mohegan Tribe of Indians of Connecticut located within New London County.

The Interest Rates are:

	Percent
For Physical Damage:	
Non-Profit Organizations with Credit Available Elsewhere ...	2.500
Non-Profit Organizations without Credit Available Elsewhere	2.500
For Economic Injury:	
Non-Profit Organizations without Credit Available Elsewhere	2.500

The number assigned to this disaster for physical damage is 158316 and for economic injury is 158320.

(Catalog of Federal Domestic Assistance Number 59008)

James Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2018–27372 Filed 12–17–18; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #15836 and #15837; Pennsylvania Disaster Number PA–00088]

Administrative Declaration of a Disaster for the Commonwealth of Pennsylvania

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Administrative declaration of a disaster for the Commonwealth of Pennsylvania dated 12/11/2018.

Incident: Flooding.

Incident Period: 08/10/2018 through 08/15/2018.

DATES: Issued on 12/11/2018.

Physical Loan Application Deadline Date: 02/11/2019.

Economic Injury (EIDL) Loan Application Deadline Date: 09/11/2019.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the Administrator's disaster declaration, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Bradford, Columbia, Delaware, Northumberland, Schuylkill, Susquehanna

Contiguous Counties:

Pennsylvania: Berks, Carbon, Chester, Dauphin, Juniata, Lackawanna, Lebanon, Lehigh, Luzerne, Lycoming, Montgomery, Montour, Perry, Philadelphia, Snyder, Sullivan, Tioga, Union, Wayne, Wyoming

Delaware: New Castle

New Jersey: Gloucester
New York: Broome, Chemung, Tioga
The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners with Credit Available Elsewhere	4.000
Homeowners without Credit Available Elsewhere	2.000
Businesses with Credit Available Elsewhere	7.350
Businesses without Credit Available Elsewhere	3.675
Non-Profit Organizations with Credit Available Elsewhere	2.500
Non-Profit Organizations without Credit Available Elsewhere	2.500
For Economic Injury:	
Businesses & Small Agricultural Cooperatives without Credit Available Elsewhere	3.675
Non-Profit Organizations without Credit Available Elsewhere	2.500

The number assigned to this disaster for physical damage is 15836 6 and for economic injury is 15837 0.

The States which received an EIDL Declaration # are Pennsylvania, Delaware, New Jersey, New York.

(Catalog of Federal Domestic Assistance Number 59008)

Dated: December 11, 2018.

Linda E. McMahon,

Administrator.

[FR Doc. 2018–27364 Filed 12–17–18; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #15834 and #15835; Iowa Disaster Number IA–00077]

Administrative Declaration of a Disaster for the State of Iowa

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Administrative declaration of a disaster for the State of Iowa dated 12/11/2018.

Incident: Severe Storms, Tornadoes, Straight-line Winds and Flooding.

Incident Period: 06/06/2018 through 07/02/2018.

DATES: Issued on 12/11/2018.

Physical Loan Application Deadline Date: 02/11/2019.

Economic Injury (EIDL) Loan Application Deadline Date: 09/11/2019.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the Administrator's disaster declaration, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Polk

Contiguous Counties:

Iowa: Boone, Dallas, Jasper, Madison, Marion, Story, Warren

The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners with Credit Available Elsewhere	3.875
Homeowners without Credit Available Elsewhere	1.938
Businesses with Credit Available Elsewhere	7.220
Businesses without Credit Available Elsewhere	3.610
Non-Profit Organizations with Credit Available Elsewhere	2.500
Non-Profit Organizations without Credit Available Elsewhere	2.500
For Economic Injury:	
Businesses & Small Agricultural Cooperatives without Credit Available Elsewhere	3.610
Non-Profit Organizations without Credit Available Elsewhere	2.500

The number assigned to this disaster for physical damage is 15834 6 and for economic injury is 15835 0.

The States which received an EIDL Declaration # are Iowa.

(Catalog of Federal Domestic Assistance Number 59008)

Dated: December 11, 2018.

Linda E. McMahon,

Administrator.

[FR Doc. 2018–27367 Filed 12–17–18; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Disaster Declaration #15742 and #15743; Florida Disaster Number FL–00140

Presidential Declaration Amendment of a Major Disaster for the State of Florida

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 5.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of Florida (FEMA–4399–DR), dated 10/11/2018.

Incident: Hurricane Michael.

Incident Period: 10/07/2018 through 10/19/2018.

DATES: Issued on 12/07/2018.

Physical Loan Application Deadline Date: 12/17/2018.

Economic Injury (EIDL) Loan Application Deadline Date: 07/11/2019.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for the State of FLORIDA, dated 10/11/2018, is hereby amended to extend the deadline for filing applications for physical damages as a result of this disaster to 12/17/2018.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Number 59008)

James Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2018–27371 Filed 12–17–18; 8:45 am]

BILLING CODE 8025–01–P

SOCIAL SECURITY ADMINISTRATION

[Docket No. SSA–2018–0067]

Rate for Assessment on Direct Payment of Fees to Representatives in 2019

AGENCY: Social Security Administration.

ACTION: Notice.

SUMMARY: We are announcing that the assessment percentage rate under the Social Security Act (Act) is 6.3 percent for 2019.

FOR FURTHER INFORMATION CONTACT: Jeffrey C. Blair, Associate General Counsel for Program Law, Office of the General Counsel, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235–6401. Phone: (410) 965–3157, email *Jeff.Blair@ssa.gov.*

SUPPLEMENTARY INFORMATION: A claimant may appoint a qualified individual as a representative to act on his or her behalf in matters before the

Social Security Administration (SSA). If the claimant is entitled to past-due benefits and was represented either by an attorney or by a non-attorney representative who has met certain prerequisites, the Act provides that we may withhold up to 25 percent of the past-due benefits and use that money to pay the representative's approved fee directly to the representative.

When we pay the representative's fee directly to the representative, we must collect from that fee payment an assessment to recover the costs we incur in determining and paying representatives' fees. The Act provides that the assessment we collect will be the lesser of two amounts: A specified dollar limit; or the amount determined by multiplying the fee we are paying by the assessment percentage rate.[1]

The Act initially set the dollar limit at $75 in 2004 and provides that the limit will be adjusted annually based on changes in the cost-of-living.[2] The maximum dollar limit for the assessment currently is $95, as we announced in the **Federal Register** on October 24, 2018 (83 FR 53702).

The Act requires us each year to set the assessment percentage rate at the lesser of 6.3 percent or the percentage rate necessary to achieve full recovery of the costs we incur to determine and pay representatives' fees.[3]

Based on the best available data, we have determined that the current rate of 6.3 percent will continue for 2019. We will continue to review our costs for these services on a yearly basis.

Dated: December 11, 2018.

Michelle King,

Deputy Commissioner for Budget, Finance, and Management.

[FR Doc. 2018–27369 Filed 12–17–18; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Prepare an Environmental Impact Statement (EIS) for the Proposed Replacement Terminal Project at Bob Hope "Hollywood Burbank" Airport, Burbank, Los Angeles County, California

AGENCY: Federal Aviation Administration, (FAA), DOT.

ACTION: Notice of Intent to Prepare an Environmental Impact Statement and Request for Scoping Comments.

SUMMARY: The Federal Aviation Administration (FAA) is issuing this notice under the provisions of the National Environmental Policy Act (NEPA) of 1969, as amended to advise the public that an Environmental Impact Statement (EIS) will be prepared to assess the potential impacts of the proposed Replacement Terminal Project and its connected actions. To ensure that all significant issues related to the proposed action are identified, one (1) public scoping meeting and one (1) governmental agency-scoping meeting will be held.

FAA is the lead agency on the preparation of the EIS.

FOR FURTHER INFORMATION CONTACT: Mr. David F. Cushing, Manager, Los Angeles Airports District Office, LAX–600, Federal Aviation Administration, Western-Pacific Region—Los Angeles Airports District Office, LAX–600, 777 S. Aviation Boulevard, Suite 150, El Segundo, California 90245.

SUPPLEMENTARY INFORMATION: The purpose of this notice is to inform federal, state, and local government agencies, and the public of the intent to prepare an EIS and to conduct a public and agency scoping process. Information, data, opinions, and substantive comments obtained throughout the scoping process will be considered in preparing the draft EIS.

The scoping process for this EIS will include a comment period for interested agencies and interested persons to submit oral and/or written comments representing the concerns and issues they believe should be addressed. Please submit any written comments to the FAA not later than 5:00 p.m. Pacific Time, Friday, March 1, 2019.

The EIS will be prepared in accordance with the procedures described in FAA Order 5050.4B, *National Environmental Policy Act (NEPA) Implementing Instructions for Airport Actions,* and FAA Order 1050.1F, *Environmental Impacts: Policies and Procedures.* The Burbank-Glendale-Pasadena Airport Authority, the owner of Bob Hope ''Hollywood Burbank'' Airport, proposes the following elements of the proposed Replacement Terminal: Construction of a 355,000-square-foot replacement airline passenger terminal with 14 gates and to meet FAA standards; construction of a 413,000-square-foot aircraft parking apron that would accommodate 14 aircraft; construction of approximately a 200 space employee automobile surface parking lot north of the proposed replacement passenger terminal with additional employee parking using public parking facilities in the Southeast Quadrant; construction of a five-to-seven story public automobile parking structure that would not exceed 6,637 parking spaces; construction of a new multi-lane road extending from the intersection of North Hollywood Way and Winona Avenue that would loop around the proposed parking structures to provide vehicle access to the replacement passenger terminal and parking structures; realigning Avenue A, the existing terminal loop road in the southeast quadrant of the Airport would be realigned to permit the extension of Taxiways C and A while still allowing access to the Regional Intermodal Transportation Center and long term parking in the Southeast Quadrant; construction of an 8,000-square-foot replacement airline cargo building adjacent to the replacement passenger terminal building; construction of a replacement Aircraft Rescue and Fire Fighting (ARFF) station south of the replacement passenger terminal with the existing location (Northwest Quadrant) located in a hangar becoming available for general aviation uses; construction of a new 8,000-square-foot Ground Support Equipment (GSE) and terminal maintenance building north of the replacement terminal building with about 2,000 square feet used for equipment and tool storage and office space for maintenance staff; construction of a new central utility plant; construction of a storage and staging area for ground transportation vehicles (taxis, shared vans, Uber, Lyft, etc.) west of the North Hollywood Way/Winona Avenue entrance; extend Taxiway A from Runway 08–26 south to the Runway 33 threshold, and extend Taxiway C between Taxiway G and the Runway 26 threshold providing full-length parallel taxiways; relocation of the airport service road; demolition and removal of the existing 232,000-square-foot passenger terminal, existing commercial aircraft ramp and adjacent taxilanes; removal of parking booth and employee parking lot; Close parking Lots A, B and remove all structures; removal of tenant-leased pavement to allow for the development of the replacement passenger terminal; demolition of the existing 16,000-square-foot airline cargo and GSE maintenance building and demolition of the shuttle bus dispatch office and staging area.

Within the EIS, FAA proposes to consider a range of alternatives that could potentially meet the purpose and

[1] 42 U.S.C. 406(d), 406(e), and 1383(d)(2).

[2] 42 U.S.C. 406(d)(2)(A) and 1383(d)(2)(C)(ii)(I).

[3] 42 U.S.C. 406(d)(2)(B)(ii) and 1383(d)(2)(C)(ii)(II).

need to relocate the existing terminal building and enhance airfield safety at Bob Hope ''Hollywood Burbank'' Airport including, but not limited to, the following:

Replacement Passenger Terminal in the Northeast Quadrant—Sponsor's Proposed Action: As described in detail above.

Replacement Passenger Terminal in the Southeast Quadrant: Construction of a replacement passenger terminal in the Southeast Quadrant of the Airport.

Replacement Passenger Terminal in the Southwest Quadrant: Construction of a replacement passenger terminal in the Southwest Quadrant of the Airport.

Replacement Passenger Terminal in the Northwest Quadrant: Construction of a replacement passenger terminal in the Northwest Quadrant of the Airport.

Construction of a New Airport: Construction of a new airport designed to meet all FAA standards.

Construction of Remote Landside Facility: Construction of a remote ''landside'' facility and an on-Airport ''airside'' facility. Ground access, public parking, and terminal building facilities would be located off-Airport and connected to the aircraft parking positions and passenger holdrooms on-Airport by a ground transportation link.

Transfer of Aviation Activity to Other Airports: Transfer or shifting of aviation activity to another existing public airport (or airports) in Southern California.

Use of Other Modes of Transportation: Use of other modes of transportation, including automobiles, buses, existing passenger trains, or proposed high-speed rail facilities.

Airfield Reconfiguration: Relocation of the existing runways at the Airport to be away from the existing passenger terminal in an effort to comply with FAA standards.

No Action Alternative: Under this alternative, the existing airport would remain unchanged. The Authority would take no action to develop a replacement passenger terminal.

Public Scoping and Agency Meetings: To ensure that the full range of issues related to the proposed action is addressed and that all significant issues are identified, comments and suggestions are invited from all interested parties. Public and agency scoping meetings will be conducted to identify any significant issues associated with the proposed action.

A governmental agency scoping meeting for all federal, state, and local regulatory agencies which have jurisdiction by law or have special expertise with respect to any potential environmental impacts associated with the proposed action will be held on Tuesday, January 29, 2019. This meeting will take place at 1:00 p.m. Pacific Time, at the Buena Vista Branch Library, 300 N Buena Vista Street, Burbank, California 91505. A notification letter will be sent in advance of the meeting.

One public scoping meeting for the general public will be held. The public scoping meeting will be held from 6:00 p.m. to 8:00 p.m. Pacific Time on Tuesday, January 29, 2019. The public scoping meeting will be conducted at the Buena Vista Branch Library, 300 N Buena Vista Street, Burbank, California 91505. A legal notice will be also be placed in newspapers having general circulation in the study area. The newspaper notice will notify the public that scoping meetings will be held to gain their input concerning the proposed action, alternatives to be considered, and impacts to be evaluated.

The FAA is aware that there are Native American tribes with a historical interest in the area. The FAA will interact on a government-to-government basis, in accordance with all executive orders, laws, regulations, and other memoranda. The tribes will also be invited to participate in accordance with NEPA and Section 106 of the National Historic Preservation Act.

Issued in El Segundo, California, December 12, 2018.

Arlene Draper,

Acting Director, Office of Airports, Western-Pacific Region, AWP–600.

[FR Doc. 2018–27373 Filed 12–17–18; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2018–0368]

Hours of Service of Drivers: North Shore Environmental Construction, Inc.; Application for Exemption

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of application for exemption; request for comments.

SUMMARY: FMCSA announces that it has received an application from North Shore Environmental Construction, Inc. (North Shore) for exemption from the hours-of-service (HOS) regulations for drivers engaged in providing direct assistance in environmental emergencies or potential environmental emergencies. The applicants request a five-year exemption from the ''14-hour rule'' for their drivers engaged in responding to environmental emergencies. FMCSA requests public comment on this application for exemption.

DATES: Comments must be received on or before January 17, 2019.

ADDRESSES: You may submit comments identified by Federal Docket Management System Number FMCSA–2018–0368 by any of the following methods:

- *Federal eRulemaking Portal: www.regulations.gov.* See the *Public Participation and Request for Comments* section below for further information.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building, Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* West Building, Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., between 9 a.m. and 5 p.m. E.T., Monday through Friday, except Federal holidays.
- *Fax:* 1–202–493–2251.

Each submission must include the Agency name and the docket number for this notice. Note that DOT posts all comments received without change to *www.regulations.gov,* including any personal information included in a comment. Please see the *Privacy Act* heading below.

Docket: For access to the docket to read background documents or comments, go to *www.regulations.gov* at any time or visit Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays. The on-line FDMS is available 24 hours each day, 365 days each year.

Privacy Act: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy.*

FOR FURTHER INFORMATION CONTACT: Mr. Richard Clemente, FMCSA Driver and Carrier Operations Division; Telephone: (202) 366–2722; Email: *MCPSD@dot.gov.* If you have questions on viewing or submitting material to the docket, contact Docket Services, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation and Request for Comments

FMCSA encourages you to participate by submitting comments and related materials.

Submitting Comments

If you submit a comment, please include the docket number for this notice (FMCSA–2018–0368), indicate the specific section of this document to which the comment applies, and provide a reason for suggestions or recommendations. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so the Agency can contact you if it has questions regarding your submission.

To submit your comment online, go to *www.regulations.gov* and put the docket number, ''FMCSA–2018–0368'' in the ''Keyword'' box, and click ''Search.'' When the new screen appears, click on ''Comment Now!'' button and type your comment into the text box in the following screen. Choose whether you are submitting your comment as an individual or on behalf of a third party and then submit. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope. FMCSA will consider all comments and material received during the comment period and may grant or not grant this application based on your comments.

II. Legal Basis

FMCSA has authority under 49 U.S.C. 31136(e) and 31315 to grant exemptions from certain Federal Motor Carrier Safety Regulations (FMCSRs). FMCSA must publish a notice of each exemption request in the **Federal Register** (49 CFR 381.315(a)). The Agency must provide the public an opportunity to inspect the information relevant to the application, including any safety analyses that have been conducted. The Agency must also provide an opportunity for public comment on the request.

The Agency reviews safety analyses and public comments submitted, and determines whether granting the exemption would likely achieve a level of safety equivalent to, or greater than, the level that would be achieved by the current regulation (49 CFR 381.305). The decision of the Agency must be published in the **Federal Register** (49 CFR 381.315(b)) with the reasons for denying or granting the application and, if granted, the name of the person or class of persons receiving the exemption, and the regulatory provision from which the exemption is granted. The notice must also specify the effective period (up to 5 years) and explain the terms and conditions of the exemption. The exemption may be renewed (49 CFR 381.300(b)).

III. Request for Exemption

North Shore Environmental Construction, Inc. (North Shore) seeks an exemption from the ''14-hour rule'' [§ 395.3(a)(2)] for its drivers engaged in responding to environmental emergencies. North Shore employs 12 commercial driver's license (CDL) holders, and its total number of commercial motor vehicles (CMVs) is 15. North Shore is a member of the Spill Control Association of America. In responding to emergency incidents, North Shore's technicians work alongside a mix of both private industry and public agencies, and their work often has a direct impact on protection of both public safety and the environment. North Shore advises that it is contractually required to provide direct assistance to responsible parties who are experiencing environmental emergencies or potential environmental emergencies. North Shore defines an environmental emergency as a sudden threat to the public health or the well-being of the environment, arising from the release or potential release of oil, radioactive materials, or hazardous chemicals into the air, land, or water. North Shore's employees are hybrid driver/operator/technicians, so the total on-duty time can be a challenge, especially after normal work hours. Other job duties include industrial maintenance, spill response, sampling, lab packing and waste management. With the current driver shortage, obtaining qualified drivers with these additional skills and experience has become problematic.

North Shore is requesting relief from 49 CFR 395.3(a)(2), commonly known as the ''14-hour rule.'' North Shore states that the hours-of-service (HOS) rules have always been an issue for emergency response companies. The national shortage of drivers, and in its case, drivers with specialized safety and environmental training, has been worsening over the last few years, making this a critical issue. North Shore is requesting this exemption to allow the company to respond to a release or threat of a release of oil and other hazardous materials. North Shore is requesting relief from this regulation with the following conditions:

- On-duty period will not exceed 4.5 additional hours for initial response;
- Any driver who exceeds the 14-hour period would in no case exceed a total of 8 hours drive time;
- Drivers would not exceed 70 hours on duty in 8 days;
- Drivers would be required to take 10 hours off duty, subsequent to the duty day; and
- All activities would be subject to the electronic logging device rule.

According to North Shore, there would be a significant challenge in responding to environmental emergencies if the exemption was not granted. The initial response hours are the most critical in an environmental emergency and the ability to quickly respond is vital. North Shore believes that a tightly managed exemption actually provides a risk averse situation by discouraging potentially unmanaged risk taking. If the exemption is not granted, there could be a disruption of nation/regional commerce activities, including power restoration activities and protection of interstate commerce and infrastructure. Granting the exemption would mitigate public transportation disruptions, much as tow trucks do when moving wrecked or disabled vehicles under 49 CFR 390.23(a)(ii)(3).

IV. Method To Ensure an Equivalent or Greater Level of Safety

North Shore believes that the proposed relief, and the parameters in which their drivers operate, would continue to provide the highest level of safety and compliance, while carefully responding to incidents that threaten public safety and the environment. Safety is always the primary objective and guiding principle of all of North Shore's business activities as demonstrated by the following:

- North Shore has specific policies on ''fatigue and transportation management.''
- Health and safety is paramount for all operations dealing with environmental emergencies and would remain the case when utilizing the exemption.
- Drivers who utilize this exemption may come back into compliance and restart the computation of maximum driving time only after 10 hours off duty which starts at the end of their extended hours period.
- The exemption would not exempt drivers or the company from the requirements relating to the CDL, drug/alcohol testing, hazardous materials, size and weight, or State/Federal registration and tax requirements.

• North Shore understands the concepts of risk management and mitigation.

• North Shore maintains a multitude of safety, security, annual medical surveillance, and training plans, as well as comprehensive drug and alcohol programs compliant with multiple DOT departments.

• North Shore has vigorous preventative maintenance programs specific to the equipment they own and operate.

North Shore believes an equivalent level of safety will be achieved if their drivers are exempt from the requirements as described in this notice. The requested exemption is for 5 years. A copy of the application for exemption is available for review in the docket for this notice.

Issued on: December 7, 2018.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2018–27338 Filed 12–17–18; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2018–0312]

Hours of Service of Drivers: American Bakers Association and International Dairy Foods Association; Application for Exemption

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of application for exemption; request for comments.

SUMMARY: FMCSA announces that it has received a joint application from the American Bakers Association (ABA) and the International Dairy Foods Association (IDFA) requesting an exemption from the hours-of-service (HOS) regulations for drivers engaged in the delivery of baked goods and milk products during periods and in geographic areas reasonably anticipated to be impacted by an impending natural disaster or emergency situation. ABA/IDFA requests a 5-year exemption from 49 CFR part 395 for their drivers engaged in the delivery of essential food staples to extend their driving hours to help communities prepare for anticipated disaster conditions, such as extreme weather events, natural disasters, and other emergencies. The applicants state that the exemption would achieve a level of safety equivalent to, or greater than, the level that would be achieved absent the proposed exemption. FMCSA requests public comment on ABA/IDFA's application for exemption.

DATES: Comments must be received on or before January 17, 2019.

ADDRESSES: You may submit comments identified by Federal Docket Management System Number FMCSA–2018–0312 by any of the following methods:

• *Federal eRulemaking Portal: www.regulations.gov.* See the *Public Participation and Request for Comments* section below for further information.

• *Mail:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Ground Floor, Room W12–140, Washington, DC 20590–0001.

• *Hand Delivery or Courier:* West Building, Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, between 9 a.m. and 5 p.m. E.T., Monday through Friday, except Federal holidays.

• *Fax:* 1–202–493–2251.

Each submission must include the Agency name and the docket number for this notice. Note that DOT posts all comments received without change to *www.regulations.gov,* including any personal information included in a comment. Please see the *Privacy Act* heading below.

Docket: For access to the docket to read background documents or comments, go to *www.regulations.gov* at any time or visit Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays. The on-line FDMS is available 24 hours each day, 365 days each year.

Privacy Act: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy.*

FOR FURTHER INFORMATION CONTACT: For information concerning this notice, please contact Mr. Richard Clemente, Transportation Specialist, FMCSA Driver and Carrier Operations Division; Telephone: (202) 366–2722; Email: *MCPSD@dot.gov.* If you have questions on viewing or submitting material to the docket, contact Docket Services, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation and Request for Comments

FMCSA encourages you to participate by submitting comments and related materials.

Submitting Comments

If you submit a comment, please include the docket number for this notice (FMCSA–2018–0312), indicate the specific section of this document to which the comment applies, and provide a reason for suggestions or recommendations. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so the Agency can contact you if it has questions regarding your submission.

To submit your comment online, go to *www.regulations.gov* and put the docket number, ''FMCSA–2018–0312'' in the ''Keyword'' box, and click ''Search.'' When the new screen appears, click on ''Comment Now!'' button and type your comment into the text box in the following screen. Choose whether you are submitting your comment as an individual or on behalf of a third party and then submit. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope. FMCSA will consider all comments and material received during the comment period and may grant or not grant this application based on your comments.

II. Legal Basis

FMCSA has authority under 49 U.S.C. 31136(e) and 31315 to grant exemptions from certain Federal Motor Carrier Safety Regulations (FMCSRs). FMCSA must publish a notice of each exemption request in the **Federal Register** (49 CFR 381.315(a)). The Agency must provide the public an opportunity to inspect the information relevant to the application, including any safety analyses that have been conducted. The Agency must also provide an opportunity for public comment on the request.

The Agency reviews safety analyses and public comments submitted, and determines whether granting the exemption would likely achieve a level of safety equivalent to, or greater than, the level that would be achieved by the current regulation (49 CFR 381.305).

The decision of the Agency must be published in the **Federal Register** (49 CFR 381.315(b)) with the reasons for denying or granting the application and, if granted, the name of the person or class of persons receiving the exemption, and the regulatory provision from which the exemption is granted. The notice must also specify the effective period (up to 5 years) and explain the terms and conditions of the exemption. The exemption may be renewed (49 CFR 381.300(b)).

III. Request for Exemption

The American Bakers Association (ABA) represents the wholesale baking industry. ABA advocates on behalf of more than 1,000 baking facilities and company suppliers. Their members produce bread, rolls, crackers, bagels, sweet goods, tortillas, and many other baked products. ABA advises that the average number of drivers and commercial motor vehicles (CMVs) per company is approximately 1,050, ranging from 70 to 5,500.

The International Dairy Foods Association (IDFA) represents the dairy manufacturing and marketing industry. Their members range from large multinational organizations to single-plant companies, and together they represent more than 85 percent of the milk, cultured products, cheese, ice cream and frozen desserts produced and marketed in the U.S. and sold throughout the world. IDFA states that, based on statistics for the fluid milk industry, the sector has approximately 15,500 drivers and 18,000 trucks (both tractor-trailers and smaller delivery trucks). The industry believes that approximately 450,000,000 miles are driven each year in milk and dairy product deliveries.

ABA/IDFA requests an exemption from the provisions of 49 CFR 395.3, ''Maximum driving time for property-carrying vehicles'' for their drivers delivering ''essential food staples,'' particularly baked goods and milk products, *in advance of anticipated natural disasters or other emergency conditions.* The requested exemption would only cover the period of time in advance of, during, and shortly after the emergency condition, where the HOS rules can be an unintended barrier to efficient disaster preparations and operations.

The applicants proposed that the exemption apply during periods of disaster preparation in anticipation of disaster conditions, to be defined based on the existing definition of ''Emergency'' in 49 CFR 390.5, but modified to encompass conditions that are reasonably anticipated. The exemption would apply from the time that a natural disaster or emergency is reasonably anticipated until a reasonable time after the disaster has resolved. ABA/IDFA states that, although some element of reasonable judgement is necessarily inherent in this proposed approach, a definition that is tied to an official Declaration of Emergency would defeat the public purpose of a disaster preparation exemption by forcing suppliers to wait until an official declaration of emergency by the President, State governors, or FMCSA, which would often leave insufficient lead time for disaster preparation. Accordingly, the requested exemption should allow suppliers to use reasonable judgment based on early warning announcements, such as hazardous weather announcements.

ABA/IDFA advises that disaster preparation is not limited to hurricanes, as serious storms such as ice storms, heavy rains, or strong frontal patterns that spawn tornadoes can also wreak levels of havoc in certain regions throughout the country. The need of consumers for essential food staples significantly increases in advance of and during emergency conditions, and emergency preparations are often exacerbated by a rush on retail establishments prior to announced emergency events.

The increased demand for essential food staples prior to threatened natural disasters and other emergencies requires changes to delivery logistics, schedules, and HOS for at least a 72-hour period prior to an anticipated disaster event, as it is critical to move a large volume of supplies into the disaster-affected area, and supplies often must be sourced from regional distribution centers, other manufacturing facilities that are able to increase production, or in the case of widespread disasters, distribution systems in other regions. Disaster preparations significantly and abruptly increase the need for driving time, delivery routes and drivers, due to heavy traffic on roads, challenging driving conditions, use of alternative or evacuation routes, and disruptions such as downed trees and traffic accidents. Furthermore, emergency conditions may create situations in which rest breaks on normal schedules are infeasible or dangerous due to road or parking conditions.

According to ABA/IDFA, the best way to prepare for anticipated disasters or emergencies is to increase delivery runs ahead of the impending situation. Because facilities in a disaster area that produce fresh bread and milk may be without power, flooded, or otherwise impacted by the disaster, it is often necessary to source replacement deliveries from more distant production facilities in other regions. Suppliers often have the ability to increase production well ahead of emergency situations, and will begin advancing product into the market 72 hours or more ahead of the anticipated stock depletion. Experience has shown the applicants that the HOS restrictions often become a limiting factor at the expense of effective emergency preparations. Perhaps the most critical factor, due to a national shortage of licensed commercial drivers, there are simply no additional drivers or contract carriers available to supplement normal driver ranks due to the spiking demand ahead of and during disasters. Accordingly, the only way to prepare for disasters is to increase routes and driving times of regular drivers in the suppliers' distribution network.

In summary, this exemption woulld allow suppliers of essential food staples to adapt delivery schedules to allow communities to prepare for anticipated disaster conditions, such as extreme weather events, natural disasters, and other emergencies that disrupt delivery schedules and require increased driving hours. The exemption would help avoid shortages of essential food staples at retail stores and food establishments that could otherwise result if deliveries are restricted by the generally applicable HOS rules in 49 CFR 395.3. ABA/IDFA states that without an exemption to the HOS provisions, retail stores and food establishments are more likely to run out of product, leaving consumers lacking essential food staples during emergency conditions.

IV. Method To Ensure an Equivalent or Greater Level of Safety

By providing the flexibility for bakery and milk product delivery drivers to adjust HOS during disaster conditions, suppliers will be able to supply essential food staples with greater efficiency and safety by allowing experienced drivers and employers to modify delivery routes and schedules to accommodate the safe delivery of emergency supplies.

As detailed in their application, ABA/IDFA believes the ability to utilize the judgment of experienced, well-trained and qualified drivers during weather events will promote safety. The nature of retail unloading, and familiar routes, reduces concerns regarding driver fatigue and safety. Many retail stores are open only during set hours, which provides natural limits to the use of the exemption.The ability to take breaks and end the day according to the

conditions of the road and traffic during the weather event will allow drivers to take their time and use caution as appropriate under the conditions at that time, rather than feeling pressure to comply with the HOS rules that are most appropriate for normal driving conditions. ABA/IDFA further adds that the exemption perhaps most importantly will allow families to stock supplies at their regular neighborhood stores and avoid the need for residents to drive unnecessarily looking for emergency supplies of essential food staples in advance of or during a disaster situation.

Regarding an equivalent level of safety, ABA/IDFA details the following in their application regarding HOS compliance following the exemption from 49 CFR 395.3: A weather ''trigger'' would start a 72-hour HOS exemption period leading up to an anticipated storm, which creates two possible scenarios following the exemption period: (1) FMCSA grants a wide-scale HOS exemption period for the impacted area or a State government declares a state of emergency and suspends the HOS requirements, or (2) the storms impact on the region is too insignificant to warrant an HOS exemption on either the State or Federal level. In the case of the first scenario, the HOS requirements for that period are already suspended and concerns of equivalent safety will have already been considered in existing regulations In the second scenario, the applicants propose an equivalent level of safety as follows: (1) For the 11 hour driving time limit, for every 2 hours a driver surpasses this limit, an additional hour will be added to the original 10-hour rest limit to be completed between runs following the exemption period; and (2) for the 60/70 hour limits, should a driver surpass these normal limits during the exemption period, two additional hours will be added to the original 34-hour off duty period required following the exemption period. In order to verify compliance, the hours would continue to be documented through the use of electronic logging devices pursuant to the current rules in 49 CFR part 395, subpart B. The requested exemption is for 5 years. A copy of ABA/IDFA's application for exemption is available for review in the docket for this notice.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2018–27345 Filed 12–17–18; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2018–0367]

Hours of Service of Drivers: Association of American Railroads and American Short Line and Regional Railroad Association; Application for Exemption

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of application for exemption; request for comments.

SUMMARY: FMCSA announces that it has received an application from the Association of American Railroads and American Short Line and Regional Railroad Association (AAR/ASLRRA) requesting a limited exemption from the maximum driving time requirements of the hours-of-service (HOS) regulations for drivers of property-carrying vehicles. The applicants request the exemption to enable affected railroad employees, subject to the HOS rule, to respond to an unplanned event that occurs outside of or extends beyond the employee's normal work hours. FMCSA requests public comment on AAR/ASLRRA's application for exemption.

DATES: Comments must be received on or before January 17, 2019.

ADDRESSES: You may submit comments identified by Federal Docket Management System Number FMCSA–2018–0367 by any of the following methods:

- *Federal eRulemaking Portal: www.regulations.gov.* See the *Public Participation and Request for Comments* section below for further information.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* West Building, Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, between 9 a.m. and 5 p.m. E.T., Monday through Friday, except Federal holidays.
- *Fax:* 1–202–493–2251.

Each submission must include the Agency name and the docket number for this notice. Note that DOT posts all comments received without change to *www.regulations.gov,* including any personal information included in a comment. Please see the *Privacy Act* heading below.

Docket: For access to the docket to read background documents or comments, go to *www.regulations.gov* at any time or visit Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays. The on-line FDMS is available 24 hours each day, 365 days each year.

Privacy Act: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy.*

FOR FURTHER INFORMATION CONTACT: Ms. Pearlie Robinson, FMCSA Driver and Carrier Operations Division; Office of Carrier, Driver and Vehicle Safety Standards; Telephone: (202) 366–4225; Email: *MCPSD@dot.gov.* If you have questions on viewing or submitting material to the docket, contact Docket Services, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation and Request for Comments

FMCSA encourages you to participate by submitting comments and related materials.

Submitting Comments

If you submit a comment, please include the docket number for this notice (FMCSA–2018–0367), indicate the specific section of this document to which the comment applies, and provide a reason for suggestions or recommendations. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so the Agency can contact you if it has questions regarding your submission.

To submit your comment online, go to *www.regulations.gov* and put the docket number, ''FMCSA–2018–0367'' in the ''Keyword'' box, and click ''Search.'' When the new screen appears, click on ''Comment Now!'' button and type your comment into the text box in the following screen. Choose whether you are submitting your comment as an individual or on behalf of a third party and then submit. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-

addressed postcard or envelope. FMCSA will consider all comments and material received during the comment period.

II. Legal Basis

FMCSA has authority under 49 U.S.C. 31136(e) and 31315 to grant exemptions from certain Federal Motor Carrier Safety Regulations. FMCSA must publish a notice of each exemption request in the **Federal Register** (49 CFR 381.315(a)). The Agency must provide the public an opportunity to inspect the information relevant to the application, including any safety analyses that have been conducted. The Agency must also provide an opportunity for public comment on the request.

The Agency reviews safety analyses and public comments submitted, and determines whether granting the exemption would likely achieve a level of safety equivalent to, or greater than, the level that would be achieved by the current regulation (49 CFR 381.305). The decision of the Agency must be published in the **Federal Register** (49 CFR 381.315(b)) with the reasons for denying or granting the application and, if granted, the name of the person or class of persons receiving the exemption, and the regulatory provision from which the exemption is granted. The notice must also specify the effective period (up to 5 years) and explain the terms and conditions of the exemption. The exemption may be renewed (49 CFR 381.300(b)).

III. Request for Exemption

The Association of American Railroads and American Short Line and Regional Railroad Association (AAR/ASLRRA) contend that the HOS prohibitions on driving after a 14-hour period on duty, and after 60 or 70 hours on duty in a 7- or 8-day week without the required off-duty period, inhibit a railroad's ability to respond expeditiously to certain types of emergency situations. For this reason AAR/ASLRAA is requesting that a railroad employee responding to an unplanned event that affects interstate commerce, service or the safety of railway operations, including passenger rail operations, and that occurs outside of or extends beyond the employee's normal shift, be exempt from the provisions in 49 CFR part 395.3(a) and (b). Unplanned events include some of the following: A derailment; a rail failure or other report of dangerous track condition; a disruption to the electric propulsion system; a bridge-strike; a disabeled vehicle on the track; a train collision; weather and storm-related events; a matter of national security; or a matter concerning public safety; a blocked grade crossing, etc. The applicants request the exemption be granted for five years. If the exemption is granted it would cover 21,000 drivers and 11,000 commercial motor vehicles (CMVs).

In their application, AAR/ASLRRA compare the work of railroad employees responding to an emergency situation to that of utility employees responding to an emergency situation. The HOS rules do not apply to a driver of a utility service vehicle as defined in 49 CFR 395.2. In the same respect that utility employees use any CMV to repair and maintain pertinent services, railroad employees use vehicles as mobile supply facilities, transporting personnel, equipment and material needed for the driver to use at worksites within a region. Like utility employees, railroad employees will have unpredictable work hours when needed to address operational emergencies.

AAR/ASLRRA contend that the work done by these employees supports the railroad's effort to restore essential interstate commerce passenger rail operations and, in the event of a grade crossing incident, restore road and pedestrian access to the public. The applicants assert that there is no principled distinction between railroad employees responding to an unplanned event and those who operate utility service vehicles.

According to AAR/ASLRRA railroads work with local officials who have authority to declare an emergency in the case of unplanned events. However, the process is not well-defined and there are no assurances that a request made during off-hours would be reviewed in a timely manner. For example, one of AAR's member railroads has an internal process that often involves coordination among multiple jurisdictions due to the nature of the interstate railroad system. Despite the railroad's best efforts, a delay in response from a designated official outside of the normal work day can reportedly cause up to a five to seven-hour delay in the railroad's efforts to resolve the unplanned event. According to the applicants, this type of delay can have a crippling impact on the rail network, expecially in congested areas of the country like the Northeast Corridor and Chicago.

IV. Method To Ensure an Equivalent or Greater Level of Safety

AAR/ASLRRA explained that ''the requested exemption will allow railroad employees to respond timelier to unplanned events to restore rail service without incurring extended blocked crossings, cascading effects to traffic on the rail network, delays to passenger rail operations, and delayed customer service. Additionally, railroads will be able to improve public safety to motorists and pedestrians, if they are able to expeditiously clear blocked grade crossings.''

The applicants propose to provide any employee required to drive within the terms of the requested exemption additional time off-duty in excess of the 10 consecutive hours required by 395.3(a)(1). For ease of recordkeeping, the applicants propose that:

- Any employee responding to an unplanned event that exceeds his/her 14 hours of duty time for 5 hours or less be given 5 additional consecutive hours off-duty for a total of 15 consecutive hours off-duty before driving again;
- Any employee responding to an unplanned event that exceeds his/her 14 hours of duty time for 5 hours up to a maximum of 10 hours be given 10 additional consecutive hours off-duty for a total of 20 consecutive hours off-duty before driving again; and
- Any employee who exceeds 60 or 70 hours on duty in a 7- or 8-day week due to responding to an unplanned event be given 34 hours of rest as prescribed in section 395.3 (c) prior to driving again.

A copy of the application for exemption is available for review in the docket for this notice.

Issued on: December 7, 2018.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2018–27341 Filed 12–17–18; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2018–0347]

Commercial Driver's License Standards: Application for Exemption; Navistar, Inc. (Navistar)

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of application for exemption; request for comments.

SUMMARY: FMCSA announces that Navistar, Inc. (Navistar) has requested an exemption for one commercial motor vehicle (CMV) driver from the Federal requirement to hold a U.S. commercial driver's license (CDL). Navistar requests an exemption for Mr. Jerome Douay, a Product Engineer Senior Manager with MAN Truck & Bus AG (MAN) in Munich, Germany, who holds a valid German commercial license. MAN is

partnering with Navistar to help develop technology advancements in fuel economy and emissions reductions. Mr. Douay wants to test drive Navistar vehicles on U.S. roads to better understand product requirements in ''real world'' environments, and verify results. Navistar believes the requirements for a German commercial license ensure that operation under the exemption will likely achieve a level of safety equivalent to or greater than the level that would be obtained in the absence of the exemption. FMCSA requests public comments on Navistar's application for exemption.

DATES: Comments must be received on or before January 17, 2019.

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) Docket ID FMCSA–2018–0347 using any of the following methods:

- *Federal eRulemaking Portal: www.regulations.gov.* Follow the online instructions for submitting comments.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building, Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* West Building, Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* 1–202–493–2251.

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Docket: For access to the docket to read background documents or comments, go to *www.regulations.gov* at any time or visit Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays. The on-line FDMS is available 24 hours each day, 365 days each year.

Privacy Act: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy.*

FOR FURTHER INFORMATION CONTACT: Ms. Pearlie Robinson, FMCSA Driver and Carrier Operations Division; Office of Carrier, Driver and Vehicle Safety Standards; Telephone: 202–366–4225. Email: *MCPSD@dot.gov.* If you have questions on viewing or submitting material to the docket, contact Docket Services, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation and Request for Comments

FMCSA encourages you to participate by submitting comments and related materials.

Submitting Comments

If you submit a comment, please include the docket number for this notice (FMCSA–2018–0347), indicate the specific section of this document to which the comment applies, and provide a reason for suggestions or recommendations. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so the Agency can contact you if it has questions regarding your submission.

To submit your comment online, go to *www.regulations.gov* and put the docket number, ''FMCSA–2018–0347'' in the ''Keyword'' box, and click ''Search.'' When the new screen appears, click on ''Comment Now!'' button and type your comment into the text box in the following screen. Choose whether you are submitting your comment as an individual or on behalf of a third party and then submit. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope. FMCSA will consider all comments and material received during the comment period and may grant or not grant this application based on your comments.

II. Legal Basis

FMCSA has authority under 49 U.S.C. 31136(e) and 31315 to grant exemptions from the Federal Motor Carrier Safety Regulations. FMCSA must publish a notice of each exemption request in the **Federal Register** (49 CFR 381.315(a)). The Agency must provide the public an opportunity to inspect the information relevant to the application, including any safety analyses that have been conducted. The Agency must also provide an opportunity for public comment on the request.

The Agency reviews the safety analyses and the public comments, and determines whether granting the exemption would likely achieve a level of safety equivalent to, or greater than, the level that would be achieved by the current regulation (49 CFR 381.305). The decision of the Agency must be published in the **Federal Register** (49 CFR 381.315(b)) with the reason for the grant or denial, and, if granted, the specific person or class of persons receiving the exemption, and the regulatory provision or provisions from which exemption is granted. The notice must also specify the effective period of the exemption (up to 5 years), and explain the terms and conditions of the exemption. The exemption may be renewed (49 CFR 381.300(b)).

III. Request for Exemption

Navistar has applied for an exemption for Jerome Douay from 49 CFR 383.23, which prescribes licensing requirements for drivers operating CMVs in interstate or intrastate commerce. Mr. Douay is unable to obtain a CDL in any of the U.S. States due to his lack of residency in the United States. A copy of the application is in Docket No. FMCSA–2018–0347.

The exemption would allow Mr. Douay to operate CMVs in interstate or intrastate commerce to support Navistar field tests designed to meet future vehicle safety and environmental requirements and to promote technological advancements in vehicle safety systems and emissions reductions. Mr. Douay needs to drive Navistar vehicles on public roads to better understand ''real world'' environments in the U.S. market. According to Navistar, Mr. Douay will typically drive for no more than 6 hours per day for 2 consecutive days, and that 50 percent of the test driving will be on two-lane State highways, while 50 percent will be on Interstate highways. The driving will consist of no more than 250 miles per day, for a total of 500 miles during a two-day period on a quarterly basis. He will in all cases be accompanied by a holder of a U.S. CDL who is familiar with the routes to be traveled.

Mr. Douay holds a valid German commercial license, and as explained by Navistar in its exemption request, the requirements for that license ensure that, operating under the exemption, he would likely achieve a level of safety equivalent to, or greater than, the level that would be achieved by the current regulation. Furthermore, according to Navistar, Mr. Douay is familiar with the operation of CMVs worldwide. Navistar

requests that the exemption cover the maximum allowable duration of 5 years.

A copy of Navistar's application for exemption is available for review in the docket for this notice.

Issued on: December 7, 2018.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2018–27339 Filed 12–17–18; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Limitation on Claims Against Proposed Public Transportation Projects

AGENCY: Federal Transit Administration (FTA), DOT.

ACTION: Notice.

SUMMARY: This notice announces final environmental action taken by the Federal Transit Administration (FTA) for a project in Milwaukee County, Wisconsin. The purpose of this notice is to announce publicly the environmental decision by FTA on the subject project and to activate the limitation on any claims that may challenge this final environmental action.

DATES: By this notice, FTA is advising the public of final agency actions subject to 23 U.S.C. 139(l). A claim seeking judicial review of FTA actions announced herein for the listed public transportation project will be barred unless the claim is filed on or before May 17, 2019.

FOR FURTHER INFORMATION CONTACT: Nancy-Ellen Zusman, Assistant Chief Counsel, Office of Chief Counsel, (312) 353–2577 or Juliet Bochicchio, Environmental Protection Specialist, Office of Environmental Programs, (202) 366–9348. FTA is located at 1200 New Jersey Avenue SE, Washington, DC 20590. Office hours are from 9:00 a.m. to 5:00 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: Notice is hereby given that FTA has taken final agency action by issuing certain approvals for the public transportation project listed below. The action on the project, as well as the laws under which such action was taken, are described in the documentation issued in connection with the project to comply with the National Environmental Policy Act (NEPA) and in other documents in the FTA environmental project file for the project. Interested parties may contact either the project sponsor or the relevant FTA Regional Office for more information. Contact information for FTA's Regional Offices may be found at *https://www.fta.dot.gov.*

This notice applies to all FTA decisions on the listed project as of the issuance date of this notice and all laws under which such action was taken, including, but not limited to, NEPA [42 U.S.C. 4321–4375], Section 4(f) requirements [23 U.S.C. 138, 49 U.S.C. 303], Section 106 of the National Historic Preservation Act [54 U.S.C. 306108], and the Clean Air Act [42 U.S.C. 7401–7671q]. This notice does not, however, alter or extend the limitation period for challenges of project decisions subject to previous notices published in the **Federal Register**. The project and action that is the subject of this notice follow:

Project name and location: East-West Bus Rapid Transit Project, Milwaukee County, Wisconsin. *Project sponsor:* Milwaukee County, WI. *Project description:* The Milwaukee County East-West Bus Rapid Transit (BRT) Project will implement a new transit corridor along a 9-mile-long alignment to provide bus transit service from downtown Milwaukee to the City of Wauwatosa. The BRT Project will use existing transportation infrastructure to improve accessibility, mobility, transit travel times, reliability, and passenger amenities within the project area. The BRT Project will operate on existing roads in dedicated transit lanes for approximately 5 miles and otherwise in mixed traffic lanes, and will be implementing transit signal priority or other signal treatments at 33 intersections to reduce travel times in the corridor. The alignment will involve complete roadway reconstruction along portions of 92nd Street and 94th Street through the Milwaukee Regional Medical Center campus between Wisconsin Avenue and Watertown Plank Road and will involve the construction of 19 BRT stations. This notice only applies to the discrete actions taken by FTA at this time, as described below. Nothing in this notice affects FTA's previous decisions, or notice thereof, for this project.

Final agency actions: Section 4(f) determination, dated August 22, 2018; Section 106 finding of no adverse effect on historic properties, dated July 2, 2018; project-level air quality conformity; and Finding of No Significant Impact for the Milwaukee East-West Bus Rapid Transit Project, Milwaukee County, WI, dated November 29, 2018.

Supporting documentation: Milwaukee East-West Bus Rapid Transit Project, Milwaukee County, WI, Environmental Assessment, dated August 22, 2018.

Elizabeth S. Riklin,

Deputy Associate Administrator for Planning and Environment.

[FR Doc. 2018–27327 Filed 12–17–18; 8:45 am]

BILLING CODE 4910–57–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

[Docket No. PHMSA–2018–0078]

Pipeline Safety: Information Collection Activities, Revision to OPID Assignment Request and National Registry Notification

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, this notice announces that the information collection request abstracted below is being forwarded to the Office of Management and Budget (OMB) for review and comment. PHMSA proposes revising certain parts of the forms and instructions for the Operator Assignment Request (PHMSA F 1000.1) and National Registry Notification (PHMSA F 1000.2) currently approved under OMB control number 2137–0627. A **Federal Register** notice with a 60-day comment period soliciting comments on the information collection was published on August 9, 2018.

DATES: Interested persons are invited to submit comments on or before January 17, 2019.

FOR FURTHER INFORMATION CONTACT: Angela Dow by telephone at 202–366–1246, by email at *angela.dow@dot.gov,* or by mail at DOT, PHMSA, 1200 New Jersey Avenue SE, PHP–30, Washington, DC 20590–0001.

ADDRESSES: Submit comments regarding the burden estimate, including suggestions for reducing the burden, to the Office of Management and Budget, Attention: Desk Officer for the Office of the Secretary of Transportation, 725 17th Street NW, Washington, DC 20503.

SUPPLEMENTARY INFORMATION: Section 1320.8(d), Title 5, Code of Federal Regulations, requires PHMSA to provide interested members of the public and affected agencies an opportunity to comment on information collection and recordkeeping requests. In accordance with this regulation, on August 9, 2018, (83 FR 39508) PHMSA published a

Federal Register notice with a 60-day comment period soliciting comments on the information collection.

PHMSA received one comment from Vectren Corporation. Vectren Corporation supports the information collection, but notes that it could be improved by more detailed reporting instructions. PHMSA placed instructions for completing the Operator Assignment Request and the National Registry Notification forms in the docket. PHMSA will submit the information collection titled ''National Registry of Pipeline and Liquefied Natural Gas (LNG) Operators'' to OMB for revision.

The following information is provided for this information collection: (1) Title of the information collection; (2) OMB control number; (3) Current expiration date; (4) Type of request; (5) Abstract of the information collection activity; (6) Description of affected public; (7) Estimate of total annual reporting and recordkeeping burden; and (8) Frequency of collection.

PHMSA will request a three-year term of approval for the following information collection:

Title: National Registry of Pipeline and Liquefied Natural Gas (LNG) Operators.

OMB Control Number: 2137–0627.

Current Expiration Date: 7/31/2020.

Type of Request: Revision.

Abstract: The National Registry of Pipeline and LNG Operators serves as the storehouse for the reporting requirements for an operator regulated or subject to reporting requirements under 49 CFR part 192, 193, or 195. This registry incorporates the use of two forms: OPID Assignment Request (PHMSA F 1000.1) and National Registry Notification (PHMSA F 1000.2).

Affected Public: Operators of Pipeline Facilities.

Annual Reporting and Recordkeeping Burden:

Total Annual Responses: 689.

Total Annual Burden Hours: 689.

Frequency of Collection: On occasion.

Comments to Office of Management and Budget are invited on:

(a) The need for the proposed information, including whether the information will have practical utility in helping the agency to achieve its pipeline safety goals;

(b) The accuracy of the agency's estimate of the burden of the proposed collection;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(d) Ways to minimize the burden on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; and 49 CFR 1.48.

Issued in Washington, DC, on December 12, 2018, under authority delegated in 49 CFR 1.97.

Alan K. Mayberry,

Associate Administrator for Pipeline Safety.

[FR Doc. 2018–27274 Filed 12–17–18; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

[Docket No. PHMSA–2016–0136]

Pipeline Safety: Meetings of the Gas Pipeline Advisory Committee and Liquid Pipeline Advisory Committee

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Notice of advisory committee meetings.

SUMMARY: This notice announces a public meeting of the Technical Pipeline Safety Standards Committee, also known as the Gas Pipeline Advisory Committee (GPAC), and a joint meeting of the GPAC and the Technical Hazardous Liquid Pipeline Safety Standards Committee, also known as the Liquid Pipeline Advisory Committee (LPAC). The GPAC will meet to discuss the gathering line component of the proposed rule titled: ''Safety of Gas Transmission and Gathering Pipelines.'' The GPAC and LPAC will meet jointly to discuss a variety of policy issues and topics relevant to both gas and liquid pipeline safety.

DATES: The GPAC will meet on January 8, 2019, from 8:30 a.m. to 5:00 p.m. ET and on January 9, 2019, from 8:30 a.m. to noon ET. The GPAC and LPAC will meet jointly on January 9, 2019, from 1:00 p.m. to 5:00 p.m. ET, and on January 10, 2019, from 8:30 a.m. to noon ET. Members of the public who wish to attend in person must register on the pipeline advisory committee meeting page no later than December 31, 2018. Individuals requiring accommodations, such as sign language interpretation or other ancillary aids, are asked to notify PHMSA by December 31, 2018. For additional information, see the **ADDRESSES** section.

ADDRESSES: The meetings will be held at the U.S. Department of Transportation (DOT), 1200 New Jersey Avenue SE, Washington, DC 20590. The meeting agendas and additional information will be available on the meeting page at: *https://primis.phmsa.dot.gov/meetings/MtgHome.mtg?mtg=143.*

The meetings will be webcast. Information for accessing the webcast will be posted on the meeting page at: *https://primis.phmsa.dot.gov/meetings/MtgHome.mtg?mtg=143.* Presentations will be available on the meeting page and posted on the E-Gov website, *https://www.regulations.gov/,* under docket number PHMSA–2016–0136 within 30 days following the meetings.

Public Participation: The meetings will be open to the public. Members of the public may attend the meeting in person or view the meeting via webcast. Please note, that limited space is available for in-person attendance. Members of the public who wish to attend in person must register on the pipeline advisory committee meeting page at: *https://primis.phmsa.dot.gov/meetings/MtgHome.mtg?mtg=143.* Members of the public participating in-person or via the webcast will have an opportunity to make a statement during the meeting.

Written Comments: Persons who wish to submit written comments on the meeting may submit them to the docket in the following ways:

E-Gov Website: https://www.regulations.gov. This site allows the public to enter comments on any **Federal Register** notice issued by any agency.

Fax: 1–202–493–2251.

Mail: Docket Management Facility, DOT, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590–0001.

Hand Delivery: Room W12–140 on the ground level of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC, between 9:00 a.m. and 5:00 p.m., Monday through Friday, except on Federal holidays.

Instructions: Identify the docket number PHMSA–2016–0136 at the beginning of your comments. Note that all comments received will be posted without change to *https://www.regulations.gov,* including any personal information provided.

Anyone can search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.).

Docket: For docket access or to read background documents or comments, go to *https://www.regulations.gov* at any time or to Room W12–140 on the ground level of the DOT West Building, 1200 New Jersey Avenue SE,

Washington, DC, between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays.

If you wish to receive confirmation of receipt of your written comments, please include a self-addressed, stamped postcard with the following statement: ''Comments on PHMSA–2016–0136.'' The docket clerk will date stamp the postcard prior to returning it to you via the U.S. mail.

Privacy Act Statement: DOT may solicit comments from the public regarding certain general notices. DOT posts these comments, without edit, including any personal information the commenter provides, to *https://www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *https://www.dot.gov/privacy.*

Services for Individuals with Disabilities: The public meetings will be fully accessible to people with disabilities. Individuals requiring accommodations, such as sign language interpretation or other ancillary aids, are asked to notify Cameron Satterthwaite at *cameron.satterthwaite@dot.gov.*

FOR FURTHER INFORMATION CONTACT: For information about the meetings, contact Cameron Satterthwaite, at 202–366–1319, or *cameron.satterthwaite@dot.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The GPAC and the LPAC are statutorily mandated advisory committees that advise PHMSA on proposed gas pipeline and hazardous liquid pipeline safety standards, respectively, and their associated risk assessments. The committees are established in accordance with the Federal Advisory Committee Act (5 U.S.C. App. 2, as amended) and 49 U.S.C. 60115. The committees consist of 15 members with membership evenly divided among federal and state governments, the regulated industry, and the public. The committees advise PHMSA on the technical feasibility, reasonableness, cost-effectiveness, and practicability of each proposed pipeline safety standard.

II. Meeting Details and Agenda

The GPAC will be considering the gathering line component of the proposed rule titled: ''Safety of Gas Transmission and Gathering Pipelines,'' that was published in the **Federal Register** on April 8, 2016, (81 FR 20722) and the associated regulatory analysis. The rule proposes to repeal the use of API Recommended Practice 80 for gathering lines, apply Type B requirements along with emergency requirements to newly regulated greater than 8-inch Type A gathering lines in Class 1 locations, and extend the reporting requirements to all gathering lines.

The GPAC and LPAC will meet in a joint session to discuss relevant policy issues and topics. The topics will include: Pipeline safety public awareness; regulatory update; Voluntary Information-sharing System Working Group update; research and development projects update; and other relevant topics.

PHMSA will post the agendas on the meeting page at: *https://primis.phmsa.dot.gov/meetings/MtgHome.mtg?mtg=143.*

Issued in Washington, DC on December 12, 2018, under authority delegated in 49 CFR 1.97.

Alan K. Mayberry,

Associate Administrator for Pipeline Safety.

[FR Doc. 2018–27275 Filed 12–17–18; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Extension of Information Collection Request Submitted for Public Comment; Comment Request for Revenue Procedure 2018–4, Revenue Procedure 2018–5, Revenue Procedure 2016–6, and Revenue Procedure 2018–8

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Internal Revenue Service, as part of its continuing effort to reduce paperwork and respondent burden, invites the public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995. Currently, the IRS is soliciting comments concerning Revenue Procedure 2018–4 (Letter Rulings), Revenue Procedure 2018–5 (Technical Advice), Revenue Procedure 2016–6 (Determination Letters), and Revenue Procedure 2018–8 (User Fees).

DATES: Written comments should be received on or before February 19, 2019 to be assured of consideration.

ADDRESSES: Direct all written comments to Laurie Brimmer, Internal Revenue Service, Room 6236, 1111 Constitution Avenue NW, Washington, DC 20224. Requests for additional information or copies of the regulations should be directed to R. Joseph Durbala, at Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW, Washington DC 20224, or through the internet, at *RJoseph.Durbala@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Revenue Procedure 2018–4 (Letter Rulings), Revenue Procedure 2018–5 (Technical Advice), Revenue Procedure 2016–6 (Determination Letters), and Revenue Procedure 2018–8 (User Fees).

OMB Number: 1545–1520.

Revenue Procedure Number: 2018–4, 2018–5, 2016–6, and 2018–8.

Abstract: The information requested in these revenue procedures is required to enable the Office of the Division Commissioner (Tax Exempt and Government Entities) of the Internal Revenue Service to give advice on filing letter ruling, determination letter, and technical advice requests, to process such requests, and to determine the amount of any user fees.

Current Actions: There is no change to the burden previously approved.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households, business or other for-profit organizations, not-for-profit institutions, farms, and state, local or tribal governments.

Estimated Number of Respondents: 8,733.

Estimated Time per Respondent: 2 hrs., 5 min.

Estimated Total Annual Burden Hours: 18,151.

The following paragraph applies to all the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

Books or records relating to a collection of information must be retained if their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Desired Focus of Comments: The Internal Revenue Service (IRS) is particularly interested in comments that:

- 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 methodology 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 using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* by permitting electronic submissions of responses.

Comments submitted in response to this notice will be summarized and/or included in the ICR for OMB approval of the extension of the information collection; they will also become a matter of public record.

Approved: December 11, 2018

R. Joseph Durbala,

IRS Tax Analyst.

[FR Doc. 2018–27287 Filed 12–17–18; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Extension of Information Collection Request Submitted for Public Comment; Comment Request for Form 8586

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Internal Revenue Service, as part of its continuing effort to reduce paperwork and respondent burden, invites the public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995. Currently, the IRS is soliciting comments concerning Form 8586, Low-Income Housing Credit.

DATES: Written comments should be received on or before February 19, 2019 to be assured of consideration.

ADDRESSES: Direct all written comments to Laurie Brimmer, Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW, Washington, DC 20224. Requests for additional information or copies of the regulations should be directed to R. Joseph Durbala, at Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW, Washington DC 20224, or through the internet, at *RJoseph.Durbala@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Low-Income Housing Credit.

OMB Number: 1545–0984.

Form Number: 8586.

Abstract: Internal Revenue Code section 42 permits owners of residential rental projects providing low-income housing to claim a tax credit for part of the cost of constructing or rehabilitating such low-income housing. Form 8586 is used by taxpayers to compute the credit and by the IRS to verify that the correct credit has been claimed.

Current Actions: There is no change to the burden previously approved.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households, and businesses, or other for-profit organizations.

Estimated Number of Respondents: 7,786.

Estimated Time per Respondent: 8 hrs., 48 min.

Estimated Total Annual Burden Hours: 68,517.

The following paragraph applies to all the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

Books or records relating to a collection of information must be retained if their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Desired Focus of Comments: The Internal Revenue Service (IRS) is particularly interested in comments that:

• 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 methodology 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 using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* by permitting electronic submissions of responses.

Comments submitted in response to this notice will be summarized and/or included in the ICR for OMB approval of the extension of the information collection; they will also become a matter of public record.

Approved: December 11, 2018.

R. Joseph Durbala,

IRS Tax Analyst.

[FR Doc. 2018–27288 Filed 12–17–18; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

Privacy Act of 1974; System of Records

AGENCY: Department of Veterans Affairs (VA).

ACTION: Notice of a new system of records.

SUMMARY: The Privacy Act of 1974 requires that all agencies publish in the **Federal Register** a notice of the existence and character of their systems of records. Notice is hereby given that the Department of Veterans Affairs (VA) is establishing a new system of records entitled, ''HealthShare Referral Manager (HSRM)–VA'' (180VA10D).

DATES: Comments on this new system of records must be received no later than January 17, 2019. If no public comment is received during the period allowed for comment or unless otherwise published in the **Federal Register** by VA, the new system will become effective January 17, 2019. If VA receives public comments, VA shall review the comments to determine whether any changes to the notice are necessary.

ADDRESSES: Written comments concerning the new system of records may be submitted by: Mail or hand-delivery to Director, Regulations Management (00REG), Department of Veterans Affairs, 810 Vermont Avenue NW, Room 1068, Washington, DC 20420; fax to (202) 273–9026; or Email to *http://www.Regulations.gov.* Comments should indicate that they are submitted in response to ''HealthShare Referral Manager (HSRM)–VA'' (180VA10D). All comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1063B, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday (except holidays). Please call (202) 461–4902 (this is not a toll-free number) for an appointment.

FOR FURTHER INFORMATION CONTACT: Kevin Kania, Program Manager, Community Care Referrals and

Authorization (CCRA) System, Office of Community Care, Hines Office of Information and Technology Field Office, Edward Hines, Jr. VA Hospital, P.O. Box 7008, Building 37, Room 128, Hines, IL 60141; telephone at (815) 254–0334. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION:

I. Description of Proposed Systems of Records

CCRA is an enterprise-wide solution in support of the Veterans Access, Choice, and Accountability Act of 2014 (Pub. L. 113–146) (''Choice Act''), as amended by the VA Expiring Authorities Act of 2014 (Pub. L. 113–175), to generate referrals and authorizations for Veterans receiving care in the community. VA clinical providers and Non-VA clinical providers will access a cloud based software system to request and refer clinical care for Veterans with Non-VA Community Care providers. This solution will enhance Veteran access to care by utilizing a common and modern system to orchestrate the complex business of VA referral management. The CCRA solution is an integral component of the VA Community Care (CC) Information Technology (IT) architecture, and will track and share health care information and correspondence necessary for Veterans to be seen for appropriate and approved episodes of CC. The CCRA solution will allow the VA to move to a process that generates standardized referrals and authorizations, according to clinical and business rules.

The CCRA project completed a contract to provide HealthShare Referral Manager by Intersystems as the CCRA solution. HealthShare Referral Manager is a commercial off-the-shelf software product that will be hosted in an Amazon Web Services (AWS) FedRAMP High Gov cloud and is planned for enterprise integration with VA systems, both inside and outside of CC.

II. Proposed Routine Use Disclosures of Data in the System

We are proposing to establish the following Routine Use disclosures of information maintained in the system. To the extent that records contained in the system include information protected by 38 U.S.C. 7332, *i.e.,* medical treatment information related to drug abuse, alcoholism or alcohol abuse, sickle cell anemia or infection with the human immunodeficiency virus; information protected by 38 U.S.C. 5705, *i.e.,* quality assurance records; or information protected by 45 CFR parts 160 and 164, *i.e.,* individually identifiable health information, such information cannot be disclosed under a routine use unless there is also specific statutory authority permitting the disclosure. VA may disclose protected health information pursuant to the following routine uses where required or permitted by law.

1. VA may disclose information from the record of an individual in response to an inquiry from the congressional office made at the request of that individual. VA must be able to provide information about individuals to adequately respond to inquiries from Members of Congress at the request of constituents who have sought their assistance.

2. VA may disclose information from this system to appropriate agencies, entities, and persons when (1) VA suspects or has confirmed that there has been a breach of the system of records; (2) VA has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, VA (including its information systems, programs, and operations), the Federal Government, or national security; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with VA's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

3. VA may disclose information in this system, except the names and home addresses of Veterans and their dependents, which is relevant to a suspected or reasonably imminent violation of law, whether civil, criminal or regulatory in nature and whether arising by general or program statute or by regulation, rule or order issued pursuant thereto, to a Federal, state, local, tribal, or foreign agency charged with the responsibility of investigating or prosecuting such violation, or charged with enforcing or implementing the statute, regulation, rule or order. On its own initiative, VA may also disclose the names and addresses of Veterans and their dependents to a Federal agency charged with the responsibility of investigating or prosecuting civil, criminal or regulatory violations of law, or charged with enforcing or implementing the statute, regulation, rule or order issued pursuant thereto. VA must be able to provide on its own initiative information that pertains to a violation of laws to law enforcement authorities in order for them to investigate and enforce those laws. Under 38 U.S.C. 5701(a) and (f), VA may only disclose the names and addresses of Veterans and their dependents to Federal entities with law enforcement responsibilities. This is distinct from the authority to disclose records in response to a qualifying request from a law enforcement entity, as authorized by Privacy Act subsection 5 U.S.C. 552a(b)(7).

4. VA may disclose information from this system of records to the Department of Justice (DoJ), either on VA's initiative or in response to DoJ's request for the information, after either VA or DoJ determines that such information is relevant to DoJ's representation of the United States or any of its components in legal proceedings before a court or adjudicative body, provided that, in each case, the agency also determines prior to disclosure that release of the records to the DoJ is a use of the information contained in the records that is compatible with the purpose for which VA collected the records. VA, on its own initiative, may disclose records in this system of records in legal proceedings before a court or administrative body after determining that the disclosure of the records to the court or administrative body is a use of the information contained in the records that is compatible with the purpose for which VA collected the records. VA must be able to provide information to DoJ in litigation where the United States or any of its components is involved or has an interest. A determination would be made in each instance that under the circumstances involved, the purpose is compatible with the purpose for which VA collected the information. This routine use is distinct from the authority to disclose records in response to a court order under subsection (b)(11) of the Privacy Act, 5 U.S.C. 552(b)(11), or any other provision of subsection (b), in accordance with the court's analysis in *Doe* v. *DiGenova,* 779 F.2d 74, 78–84 (D.C. Cir. 1985) and *Doe* v. *Stephens,* 851 F.2d 1457, 1465–67 (D.C. Cir. 1988).

5. VA may disclose information from this system of records to individuals, organizations, private or public agencies, or other entities or individuals with whom VA has a contract or agreement to perform such services as VA may deem practicable for the purposes of laws administered by VA, in order for the contractor, subcontractor, public or private agency, or other entity or individual with whom VA has a contract or agreement to perform services under the contract or agreement. This routine use includes disclosures by an individual or entity performing services for VA to any secondary entity or individual to perform an activity that is necessary for individuals, organizations, private or public agencies, or other entities or individuals with whom VA has a contract or agreement to provide the

service to VA. This routine use, which also applies to agreements that do not qualify as contracts defined by Federal procurement laws and regulations, is consistent with the Office of Management and Budget (OMB) guidance in OMB Circular A–108, paragraph 6(j) that agencies promulgate routine uses to address disclosure of Privacy Act-protected information to contractors in order to perform the services contracts for the agency.

6. VA may disclose information from this system to the Equal Employment Opportunity Commission (EEOC) when requested in connection with investigations of alleged or possible discriminatory practices, examination of Federal affirmative employment programs, or other functions of the Commission as authorized by law or regulation. VA must be able to provide information to EEOC to assist it in fulfilling its duties to protect employees' rights, as required by statute and regulation.

7. VA may disclose information from this system to the Federal Labor Relations Authority (FLRA), including its General Counsel, information related to the establishment of jurisdiction, investigation, and resolution of allegations of unfair labor practices, or in connection with the resolution of exceptions to arbitration awards when a question of material fact is raised; for it to address matters properly before the Federal Services Impasses Panel, investigate representation petitions, and conduct or supervise representation elections. VA must be able to provide information to FLRA to comply with the statutory mandate under which it operates.

8. VA may disclose information from this system to the Merit Systems Protection Board (MSPB), or the Office of the Special Counsel, when requested in connection with appeals, special studies of the civil service and other merit systems, review of rules and regulations, investigation of alleged or possible prohibited personnel practices, and such other functions promulgated in 5 U.S.C. 1205 and 1206, or as authorized by law. VA must be able to provide information to MSPB to assist it in fulfilling its duties as required by statute and regulation.

9. VA may disclose information from this system to the National Archives and Records Administration (NARA) and General Services Administration (GSA) in records management inspections conducted under Title 44, U.S.C. NARA is responsible for archiving old records which are no longer actively used but may be appropriate for preservation, and for the physical maintenance of the Federal government's records. VA must be able to provide the records to NARA in order to determine the proper disposition of such records.

10. Data breach response and remedial efforts with another Federal agency: VA may disclose information from this system to another Federal agency or Federal entity, when VA determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed breach or (2) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

11. Disclosure to other Federal agencies may be made to assist such agencies in preventing and detecting possible fraud or abuse by individuals in their operations and programs.

12. VA may disclose relevant health care information to (a) a Federal agency or non-VA health care provider or institution when VA refers a patient for hospital or nursing home care or medical services, or authorizes a patient to obtain non-VA medical services, and the information is needed by the Federal agency or non-VA institution or provider to perform the services, or (b) a Federal agency or a non-VA hospital (Federal, State and local, public, or private) or other medical installation having hospital facilities, blood banks, or similar institutions, medical schools or clinics, or other groups or individuals that have contracted or agreed to provide medical services or share the use of medical resources under the provisions of 38 U.S.C. 513, 7409, 8111, or 8153, when treatment is rendered by VA under the terms of such contract or agreement, or the issuance of an authorization, and the information is needed for purposes of medical treatment and/or follow-up, determining entitlement to a benefit, or recovery of the costs of the medical care.

III. Compatibility of the Proposed Routine Uses

The Privacy Act permits VA to disclose information about individuals without their consent for a routine use when the information will be used for a purpose that is compatible with the purpose for which VA collected the information. In all of the routine use disclosures described above, either the recipient of the information will use the information in connection with a matter relating to one of VA's programs, to provide a benefit to the VA, or to disclose information as required by law.

Under section 264, Subtitle F of Title II of the Health Insurance Portability and Accountability Act of 1996 (HIPAA) Public Law 104–191, 100 Stat. 1936, 2033–34 (1996), the United States Department of Health and Human Services (HHS) published a final rule, as amended, establishing Standards for Privacy of Individually-Identifiable health Information, 45 CFR parts 160 and 164. Veterans Health Administration (VHA) may not disclose individually identifiable health information (as defined in HIPAA and the Privacy Rule, 42 U.S.C. 1320(d)(6) and 45 CFR 164.501) pursuant to a routine use unless either: (a) The disclosure is required by law, or (b) the disclosure is also permitted or required by HHS' Privacy Rule. The disclosures of individually-identifiable health information contemplated in the routine uses published in this new system of records notice are permitted under the Privacy Rule or required by law. However, to also have authority to make such disclosures under the Privacy Act, VA must publish these routine uses. Consequently, VA is publishing these routine uses to the routine uses portion of the system of records notice stating that any disclosure pursuant to the routine uses in this system of records notice must be either required by law or permitted by the Privacy Rule, before VHA may disclose the covered information.

The notice of intent to publish and an advance copy of the system notice have been sent to the appropriate Congressional committees and to the Director, Office of Management and Budget, as required by 5 U.S.C. 552a(r) (Privacy Act) and guidelines issued by OMB (65 FR 77677), December 12, 2000.

Signing Authority

The Senior Agency Official for Privacy, or designee, approved this document 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. James B. Ford, Acting Executive Director for Privacy, Quality, Privacy, and Risk, Department of Veterans Affairs approved this document on July 16, 2018 for publication.

Dated: December 13, 2018.

Kathleen M. Manwell,

Program Analyst, VA Privacy Service, Office of Information and Technology, Department of Veterans Affairs.

SYSTEM NAME AND NUMBER:

HealthShare Referral Manager (HSRM)-VA (180VA10D)

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Amazon Web Services, LLC, 13461 Sunrise Valley Drive, Herndon, VA 20171–3283. Community Care Referrals and Authorization (CCRA) System Program Manager, Office of Community Care, Hines Office of Information and Technology Field Office, Edward Hines, Jr. VA Hospital, P.O. Box 7008, Building 37, Room 128, Hines, IL 60141.

SYSTEM MANAGER(S):

Officials responsible for policies and procedures: Program Manager, VHA Office of Community Care (10D), Health Eligibility Center, 2957 Clairmont Road, Suite 200 Atlanta, GA 30329–1647. Telephone number (815) -254–0334. (This is not a toll-free number.)

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title 38, United States Code, section 7301(a) and Veterans Access, Choice, and Accountability Act of 2014 (Pub. L. 113–146).

PURPOSE(S) OF THE SYSTEM:

CCRA is an enterprise-wide system used by community care staff to automatically generate referrals and authorizations for all Veterans receiving care in the community. The system is an integral component of the VA community care information technology (IT) architecture, and will allow Veterans to receive care from community providers within the Community Care Network through the Veterans Choice Program. The CCRA system will allow these providers to view relevant patient and clinical information from Veterans Information Systems and Technology Architecture (VistA). The exchange of health care information and authorizations will enhance VA's ability to ensure that Veterans receive the best health care available to address their medical needs. The CCRA system will also enable the VA to move from what is currently a largely manual process to an automated process that generates standardized referrals and authorizations according to clinical and business rules. The automated process will decrease the administrative burden on VA clinical and community care staff members by way of establishing clinical and business pathways that which reflect best processes, consistent outcomes, and reduced turnaround times.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The records include information concerning:

1. Veterans who have applied for health care services under Title 38, United States Code, Chapter 17, and in certain cases members of their immediate families.
2. Individuals examined or treated under contract or resource sharing agreements.
3. Individuals who were provided medical care under emergency conditions for humanitarian reasons.
4. Health care professionals providing examination or treatment to any individuals within VA health care facilities.
5. Healthcare professionals providing examination or treatment to individuals under contract or resource sharing agreements or CC programs, such as Choice.
6. Patients and members of their immediate family, volunteers, maintenance personnel, as well as individuals working collaboratively with VA.
7. Contractors, sub-contractors, contract personnel, students, providers and consultants.

CATEGORIES OF RECORDS IN THE SYSTEM:

The records may include information and health information related to:

1. Identifying information (*e.g.,* name, birth date, death date, admission date, discharge date, gender, social security number, taxpayer identification number); address information (*e.g.,* home and/or mailing address, home telephone number, emergency contact information such as name, address, telephone number, and relationship); prosthetic and sensory aid serial numbers; medical record numbers; integration control numbers; information related to medical examination or treatment (*e.g.,* location of VA medical facility providing examination or treatment, treatment dates, medical conditions treated or noted on examination); information related to military service and status.
2. Computer access authorizations, computer applications available and used, information access attempts, frequency and time of use; identification of the person responsible for, currently assigned, or otherwise engaged in various categories of patient care or support of health care delivery.
3. Application, eligibility, and claim information regarding payment determination for medical services provided to VA beneficiaries by non-VA health care institutions and providers.
4. Health care provider's name, address, and taxpayer identification number, correspondence concerning individuals and documents pertaining to claims for medical services, reasons for denial of payment, and appellate determinations.

RECORD SOURCE CATEGORIES:

The Veteran or other VA beneficiary, family members or accredited representatives, and other third parties; private medical facilities and healthcare professionals; health insurance carriers; other Federal agencies; employees; contractors; VHA facilities and automated systems providing clinical and managerial support at VA health care facilities.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

1. VA may disclose information from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.
2. VA may disclose information from this system to appropriate agencies, entities, and persons when (1) VA suspects or has confirmed that there has been a breach of the system of records; (2) VA has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, VA (including its information systems, programs, and operations), the Federal Government, or national security; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with VA's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

This routine use permits disclosures by the Department to respond to a suspected or confirmed data breach, including the conduct of any risk analysis or provision of credit protection services as provided in 38 U.S.C. 5724

a. Effective Response. A Federal agency's ability to respond quickly and effectively in the event of a breach of Federal data is critical to its efforts to prevent or minimize any consequent harm. An effective response necessitates disclosure of information regarding the breach to those individuals affected by it, as well as to persons and entities in a position to cooperate, either by assisting in notification to affected individuals or playing a role in preventing or minimizing harms from the breach.

b. *Disclosure of Information.* Often, the information to be disclosed to such persons and entities is maintained by Federal agencies and is subject to the Privacy Act (5 U.S.C. 552a). The Privacy Act prohibits the disclosure of any record in a system of records by any means of communication to any person or agency absent the written consent of the subject individual, unless the disclosure falls within one of twelve statutory exceptions. In order to ensure an agency is in the best position to respond in a timely and effective manner, in accordance with 5 U.S.C. 552a(b)(3) of the Privacy Act, agencies should publish a routine use for appropriate systems specifically applying to the disclosure of information in connection with response and remedial efforts in the event of a data breach.

3. VA may, on its own initiative, disclose information in this system, except the names and home addresses of Veterans and their dependents, which is relevant to a suspected or reasonably imminent violation of law, whether civil, criminal or regulatory in nature and whether arising by general or program statute or by regulation, rule or order issued pursuant thereto, to a Federal, state, local, tribal, or foreign agency charged with the responsibility of investigating or prosecuting such violation, or charged with enforcing or implementing the statute, regulation, rule or order. On its own initiative, VA may also disclose the names and addresses of Veterans and their dependents to a Federal agency charged with the responsibility of investigating or prosecuting civil, criminal or regulatory violations of law, or charged with enforcing or implementing the statute, regulation, rule or order issued pursuant thereto.

4. VA may disclose information from this system of records to the Department of Justice (DoJ), either on VA's initiative or in response to DoJ's request for the information, after either VA or DoJ determines that such information is relevant to DoJ's representation of the United States or any of its components in legal proceedings before a court or adjudicative body, provided that, in each case, the agency also determines prior to disclosure that release of the records to the DoJ is a use of the information contained in the records that is compatible with the purpose for which VA collected the records. VA, on its own initiative, may disclose records in this system of records in legal proceedings before a court or administrative body after determining that the disclosure of the records to the court or administrative body is a use of the information contained in the records that is compatible with the purpose for which VA collected the records.

5. VA may disclose information from this system of records to individuals, organizations, private or public agencies, or other entities or individuals with whom VA has a contract or agreement to perform such services as VA may deem practicable for the purposes of laws administered by VA, in order for the contractor, subcontractor, public or private agency, or other entity or individual with whom VA has a contract or agreement to perform services under the contract or agreement.

6. VA may disclose information from this system to the Equal Employment Opportunity Commission (EEOC) when requested in connection with investigations of alleged or possible discriminatory practices, examination of Federal affirmative employment programs, or other functions of the Commission as authorized by law or regulation.

7. VA may disclose information from this system to the Federal Labor Relations Authority (FLRA), including its General Counsel, information related to the establishment of jurisdiction, investigation, and resolution of allegations of unfair labor practices, or in connection with the resolution of exceptions to arbitration awards when a question of material fact is raised; for it to address matters properly before the Federal Service Impasses Panel, investigate representation petitions, and conduct or supervise representation elections.

8. VA may disclose information from this system to the Merit Systems Protection Board (MSPB), or the Office of the Special Counsel, when requested in connection with appeals, special studies of the civil service and other merit systems, review of rules and regulations, investigation of alleged or possible prohibited personnel practices, and such other functions promulgated in 5 U.S.C. 1205 and 1206, or as authorized by law.

9. VA may disclose information from this system to the National Archives and Records Administration (NARA) and General Services Administration (GSA) in records management inspections conducted under title 44, U.S.C. NARA is responsible for archiving old records which are no longer actively used but may be appropriate for preservation, and for the physical maintenance of the Federal government's records.

10. VA may disclose information from this system to another Federal agency or Federal entity, when VA determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed breach or (2) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

11. Disclosure to other Federal agencies may be made to assist such agencies in preventing and detecting possible fraud or abuse by individuals in their operations and programs.

12. VA may disclose relevant health care information to (a) a Federal agency or non-VA health care provider or institution when VA refers a patient for hospital or nursing home care or medical services, or authorizes a patient to obtain non-VA medical services, and the information is needed by the Federal agency or non-VA institution or provider to perform the services, or (b) a Federal agency or a non-VA hospital (Federal, State and local, public, or private) or other medical installation having hospital facilities, blood banks, or similar institutions, medical schools or clinics, or other groups or individuals that have contracted or agreed to provide medical services or share the use of medical resources under the provisions of 38 U.S.C. 513, 7409, 8111, or 8153, when treatment is rendered by VA under the terms of such contract or agreement, or the issuance of an authorization, and the information is needed for purposes of medical treatment and/or follow-up, determining entitlement to a benefit, or recovery of the costs of the medical care.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

CCRA relies on information in VistA, and only collects information related to referrals. Referral information is maintained as part of the individual's electronic health care record in accordance with the rules applied to those records. The CCRA system is hosted in Amazon Web Services (AWS) Government Cloud (GovCloud) infrastructure as a service cloud-computing environment that has been authorized at the high-impact level under the Federal Risk and Authorization Management Program (FedRAMP). The secure site-to-site encrypted network connection is limited to access via the VA trusted internet connection (TIC).

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records are retrieved by name, social security number or other assigned identifiers of the individuals on whom they are maintained.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

These patient appointment and appointment schedules records shall be maintained per Record Control Schedule (RCS) 10–1 item; 2201.1. According to General Records Scehdule (GRS) 5.1 item 010, DAA–GRS–2017–0003–0001, temporary destroy transitory records, messages coordinating schedules, appointments, and events when no longer needed for business use, or according to agency predetermined time or business rule.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

1. CCRA has physical controls and securely stores digital and non-digital media defined within the latest revision of NIST SP 800–88, Guidelines for Media Sanitization, and VA 6500, within controlled areas; and protects information system media until the media is destroyed or sanitized using approved equipment, techniques, and procedures.

2. The CCRA system is hosted in Amazon Web Services (AWS) Government Cloud (GovCloud) infrastructure as a service cloud-computing environment that has been authorized at the high-impact level under the Federal Risk and Authorization Management Program (FedRAMP). The secure site-to-site encrypted network connection is limited to access via the VA trusted internet connection (TIC).

RECORD ACCESS PROCEDURES:

Individuals seeking information regarding access to and contesting of records in this system may write, call or visit the VA facility location where medical care was provided or VHA Office of Community Care.

CONTESTING RECORD PROCEDURES:

(See Record Access Procedures above.)

NOTIFICATION PROCEDURES:

An individual who wishes to determine whether a record is being maintained in this system under his or her name or other personal identifier, or wants to review the contents of such record, should submit a written request or apply in person to the last VA health care facility where care was rendered. All inquiries must reasonably describe the portion of the medical record involved and the place and approximate date that medical care was provided. Inquiries should include the patient's full name, social security number, and return address.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

None.

[FR Doc. 2018–27334 Filed 12–17–18; 8:45 am]

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Part II

Department of Homeland Security

U.S. Customs and Border Protection

Department of the Treasury

19 CFR Parts 181, 190, and 191
Modernized Drawback; Final Rule

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

DEPARTMENT OF THE TREASURY

19 CFR Parts 181, 190, and 191

[CBP Dec. 18–15; USCBP–2018–0029]

RIN 1515–AE23

Modernized Drawback

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

ACTION: Final rule.

SUMMARY: This document adopts as final, with changes, proposed amendments to the U.S. Customs and Border Protection (CBP) regulations implementing changes to the drawback regulations, as directed by the Trade Facilitation and Trade Enforcement Act of 2015 (TFTEA). These regulations establish new processes for drawback pursuant to TFTEA, which liberalize the merchandise substitution standard, simplify recordkeeping requirements, extend and standardize timelines for filing drawback claims, and require the electronic filing of drawback claims. This document also provides details with respect to the process required to perfect TFTEA-based claims filed under CBP's Interim Guidance procedures. Further, this document also finalizes regulations clarifying the prohibition on the filing of a substitution drawback claim for internal revenue excise tax in situations where no excise tax was paid upon the substituted merchandise or where the substituted merchandise is the subject of a different claim for refund or drawback of tax.

DATES: This final rule, with the exception discussed below, is effective on December 17, 2018. The effective date for amendments regarding the drawback of excise taxes (§§ 190.22(a)(1)(ii)(C), 190.32(b)(3), 190.171(c)(3), 191.22(a), 191.32(b)(4), and 191.171(d)) is February 19, 2019.

FOR FURTHER INFORMATION CONTACT: Randy Mitchell, CBP Office of Trade, Trade Policy and Programs, 202–863–6532, *randy.mitchell@cbp.dhs.gov.*

SUPPLEMENTARY INFORMATION:

Background

Table of Contents

I. TFTEA-Drawback

A. Section 906 and the Trade Facilitation and Trade Enforcement Act

Section 313 of the Tariff Act of 1930, as amended (19 U.S.C. 1313), authorizes U.S. Customs and Border Protection (CBP) to refund, in whole or in part, duties, taxes, and fees imposed under Federal law upon entry or importation of merchandise (and paid on the imported merchandise), and to refund or remit internal revenue tax paid on domestic alcohol, as prescribed in 19 U.S.C. 1313(d), as drawback. Drawback more broadly includes the refund or remission of excise taxes pursuant to other provisions of law. Drawback for payment by CBP is a privilege, not a right, subject to compliance with prescribed rules and regulations administered by CBP. *See* 19 U.S.C. 1313(l).

On February 24, 2016, the Trade Facilitation and Trade Enforcement Act of 2015 (TFTEA) (Pub. L. 114–125, 130 Stat. 122, February 24, 2016) was signed into law. Section 906 of TFTEA, *Drawback and Refunds,* made significant changes to the drawback laws, which generally liberalize the standards for substituting merchandise, ease documentation requirements, extend and standardize timelines for filing drawback claims, and require electronic filing.

B. Transition Period and Interim Guidance

Section 906(q)(3) of TFTEA provided for a one-year transition period, to begin on February 24, 2018, wherein drawback claimants would have the choice between filing claims under pre-TFTEA law and the existing process detailed in the current regulations (part 191) or filing TFTEA-Drawback claims under the amended statute. However, because the implementing regulations were not going to be in place in time for the beginning of the transition period, CBP developed interim procedures for accepting TFTEA-Drawback claims. Specifically, to enable the Automated Commercial Environment (ACE) to recognize and accept TFTEA-Drawback claims, ACE was programmed with provisional placeholder requirements, modeled on the draft regulatory package then under development. Corresponding provisional Customs and Trade Automated Interface Requirements (CATAIR) Guidelines were provided by CBP to enable claimants to program their systems to interface with these provisional placeholder requirements in ACE. On February 9, 2018, CBP posted these provisional guidelines on CBP's website in a document entitled *Drawback: Interim Guidance for Filing TFTEA Drawback Claims* (*Interim Guidance*).[2] CBP has been accepting TFTEA-Drawback claims submitted

[1] For purposes of this document, ''TFTEA-Drawback'' is the term generally used to refer to drawback under section 313 of the Tariff Act of 1930, as amended by the Trade Facilitation and Trade Enforcement Act of 2015.

[2] The document is available at: *https://www.cbp.gov/document/guidance/ace-drawback-guidance.* Since initially publishing the Interim Guidance, CBP has published two subsequent versions, with Version 3 being the current version. These versions clarify the guidance set forth in the original document, and do not reflect any substantive changes to CBP's policy or systems.

under the Interim Guidance since February 24, 2018. The Interim Guidance is effective until the Final Rule is in effect and official guidance will be provided consistent with the TFTEA-Drawback regulations.

C. Proposed Rulemaking

On August 2, 2018, CBP published a notice of proposed rulemaking (NPRM) in the **Federal Register** (83 FR 37886) announcing proposed regulations to implement TFTEA-Drawback. The proposal also included such things as clarifying the prohibition on double drawback with respect to Federal excise taxes [3] and making technical corrections and conforming changes to parts 113 (dealing with bonds), 181 (dealing with the North American Free Trade Agreement (NAFTA)) and 191 (dealing with drawback for non-TFTEA-Drawback claims during the transition year). The NPRM provided for a 45-day comment period, through September 17, 2018. On August 20, 2018, CBP published a correction document in the **Federal Register** (83 FR 42062) that clarified the references in proposed section 190.32(d). Specifically, the reference in paragraph (d) should have been only to paragraphs (b)(1) and (b)(2), the specific paragraphs regarding the ''lesser of'' rule, rather than to the entirety of paragraph (b), which included the prohibition on double drawback in paragraph (b)(3). As evidenced by reading the entire preamble of the proposed rule, it is clear that the prohibition on double drawback applies to all drawback claims, including those for wine.

D. Difference Between the Interim Guidance and the NPRM

Although the Interim Guidance allowed for ''mixed'' claims—*i.e.,* making a substitution-based drawback claim under the new law as amended by TFTEA for imported merchandise associated with an entry summary where the entry summary had previously been designated as the basis of a claim under the old law—to be submitted without receiving a rejection message in ACE, the August 2, 2018 notice of proposed rulemaking expressly prohibited such claims. *See* 83 FR 37886 at 37888. Upon further consideration, and as detailed in the Discussion of Comments section below pertaining to mixed claims, CBP has decided not to adopt in this final rule the proposed restriction in the NPRM concerning mixed claims; rather, CBP has decided in this final rule to permit the filing of mixed claims.

E. Perfection of Previously Filed Claims

As also explained in the proposed rule, the Interim Guidance provided provisional placeholder requirements for electronically-filed TFTEA-Drawback claims, as reflected in the provisional CATAIR. These requirements were designed to be placeholders only, and were never intended to be used to process TFTEA-Drawback claims beyond initial acceptance in ACE. The procedures outlined and explained in the Interim Guidance remain in place until this final rule is implemented and effective.

Members of the trade should direct questions related to the process of perfecting TFTEA-Drawback claims filed prior to this final rule's effective date to one of the drawback offices listed here: *https://www.cbp.gov/trade/entry-summary/drawback/locations.* Electronic mailbox information for each of the drawback offices (also called drawback centers) is provided in the Interim Guidance. In addition, questions related to the Interim Guidance may be sent to the Drawback and Revenue Branch in the Commercial Operations Division by emailing: *otdrawback@cbp.dhs.gov.* Members of the trade should notify CBP of their request to perfect a claim in writing via mail or email. The notification should be sent directly to the appropriate drawback office for further guidance on processing the claim. Contact information for each drawback office is provided in the Interim Guidance and found here: *https://www.cbp.gov/document/guidance/ace-drawback-guidance.*

II. Discussion of Comments

CBP received 92 documents in response to the notice of proposed rulemaking.[4] For the most part, the documents received contained comments on multiple topics. The majority of comments received focused on specific regulations in proposed new part 190. Multiple comments were received regarding the proposed amendments to part 113 dealing with bonds, as well as on the technical corrections and conforming changes proposed to parts 181 and 191.

Multiple comments were also received regarding the economic analysis included with the notice of proposed rulemaking. The comments have been grouped together below based on the general topic of the comment.

A. General Matters

1. Proposed Regulations

Comment: One commenter stated that moving forward with the proposed regulations in part 190 will put an extreme hardship on drawback claimants. Another commenter stated that, as an alternative to the proposed document requirements, the submission and approval process from the NPRM should be revised to require first-time drawback claimants to submit a letter of certification with their first drawback claim through the CBP portal. The commenter stated that document submissions could include a certification of commercial records being maintained to support drawback and acknowledgement of the recordkeeping requirements of part 190. The commenter stated that this alternative procedure would still provide CBP with visibility regarding drawback claims, claimants, and records but would eliminate the excessive paperwork and approval process that are time consuming and duplicative of the statutory requirements. The commenter stated that, as proposed, part 190 imposes more administrative, time-consuming requirements on all parties and should be eliminated or substantially modified to streamline and simplify the drawback process as TFTEA requires.

Response: CBP disagrees with these comments. In some cases, TFTEA imposed additional requirements on both CBP and the trade. CBP has endeavored to provide guidance to the public through the CATAIR, public policy, and the proposed regulations, to facilitate compliance. Additionally, CBP has conducted many outreach efforts to alleviate the hardships for the trade with respect to the transition to TFTEA-Drawback. CBP notes that the modernization of drawback, which results from TFTEA, ultimately streamlines claims and creates significant efficiencies for both the trade and CBP.

Comment: Multiple commenters noted that CBP neglected to add section 190.29 to the table of contents in subpart B.

Response: CBP will correct this oversight in this final rule by adding section 190.29 to the Table of Contents

[3] The Internal Revenue Code (IRC) of 1986, as amended, codified as title 26 of the United States Code (26 U.S.C.), is the main body of domestic statutory tax law of the United States and includes, *inter alia,* laws covering Federal excise taxes. Federal excise taxes are imposed on the manufacture, importation, and/or distribution of certain consumer goods, such as distilled spirits, wines, beer, tobacco products, imported taxable fuel, and petroleum products.

[4] While many commenters distinguished CBP from the Department of the Treasury (Treasury) in their submissions, the responses throughout this section, as with the entirety of this rulemaking, are the result of collaboration between CBP and Treasury.

for Part 190. Additionally, CBP has made additional technical corrections to ensure that the title of the regulation in the Table of Contents for Part 190 matches the actual regulation itself for sections 190.26, 190.38, and 190.72.

Comment: One commenter noted that the proposed 60-day delayed effective dates for the regulations to prohibit double drawback contained a drafting error of omission. Specifically, the commenter identified the omission as section 190.171(c)(3), which implements the prohibition on double drawback for finished petroleum derivatives for which substitution drawback is claimed pursuant to 19 U.S.C. 1313(p).

Response: CBP agrees that the 60-day delayed effective date for the prohibition on double drawback should apply to double drawback for finished petroleum derivatives for which substitution drawback is claimed pursuant to 19 U.S.C. 1313(p). Accordingly, the 60-day delayed effective date is modified to include section 190.171(c)(3).

Comment: CBP received multiple requests to extend the comment period for the proposed rule.

Response: Since the passage of TFTEA, CBP has worked aggressively towards modernizing the regulatory process for the drawback program to have final regulations in place by February 23, 2019. CBP has engaged extensively with stakeholders during this time period so as to receive input parallel in time to CBP's regulatory drafting. Further, the Interim Guidance, which has been in place since February 24, 2018, provided drawback claimants with actual experience in filing TFTEA-Drawback claims and with the opportunity to work with CBP in perfecting the filing process. CBP determined that the 45-day comment period struck a balance between allowing for substantive public comments while ensuring adequate time for CBP to publish a final rule so that claimants may obtain the benefits associated with modernized drawback. Based on the volume of insightful comments received, CBP disagrees that the comment period should be extended.

2. TFTEA-Drawback Definitions

In developing a list of terms and their definitions in section 190.2, CBP proposed definitions for new terms relating to TFTEA-Drawback (*e.g., document* and *sought chemical element*), as well as incorporating definitions for terms already in part 191 (*e.g., abstract, manufacture or production, specific manufacturing drawback ruling,* and *substituted merchandise or articles*). CBP received many comments requesting modifications to the definitions in part 190.

Comment: Multiple commenters asked that a reference allowing records kept in the normal course of business be added to the definition for *abstract* in section 190.2. Another commenter asked that the phrase ''records kept in the normal course of business'' be added to the definition.

Response: CBP disagrees with the commenters regarding the need for edits to the term *abstract.* The term means that the actual production records of the manufacturer are required. The abstract should be supported by records kept in the normal course of business, but the abstract itself may be documentation that is generated specifically to support the drawback claim and the manufacturer or producer agrees to maintain this record (or, alternately, a schedule) when applying for a general or specific manufacturing ruling. Accordingly, the term *abstract* will remain as proposed.

Comment: CBP proposed definitions for the terms *bill of materials* and *formula* in section 190.2. One commenter suggested adding language to the definitions to include components that are used but drop out of the manufacturing process or are consumed in the process without becoming a part of the manufactured article.

Response: CBP agrees with this comment. The definitions for *bill of materials* and *formula* in section 190.2 have been clarified accordingly in this final rule.

Comment: In section 190.2, CBP proposed a definition of *document.* Multiple comments were received. One comment, noting that many records are not produced, endorsed, or maintained electronically, asked that CBP replace a term used in the originally proposed definition (''normal meaning'') with suggested language (''written, printed, or electronic matter''). Other comments asked that a reference to records kept in the normal course of business be added to the definition.

Response: CBP disagrees with the comments regarding the term *document.* The suggestion to add the reference to records kept in the normal course is unnecessary precisely because the term ''normal meaning'' is useful and appropriate. Accordingly, the definition will remain as proposed.

Comment: One commenter requested that CBP modify the term *drawback* in section 190.2 to better match the statute.

Response: CBP notes that the statute provides no definition of drawback, per se. CBP has defined drawback, in regulations in the context of its authority to pay, as the refund or remission, in whole or in part, of the duties, taxes, and/or fees paid on merchandise which were imposed under Federal law, and the definition specifically provides that this includes drawback paid upon the entry or importation of the imported merchandise, and the refund or remission of internal revenue tax paid on domestic alcohol as prescribed in 19 U.S.C. 1313(d). The definition cross-references section 190.3, which speaks more broadly to the types of duties, taxes, and fees that are refundable as drawback. CBP disagrees with the commenter, and finds that the definition is consistent with the statutory requirements in 19 U.S.C. 1313, which identify for each type of drawback identified thereunder, the types of duties, taxes, and fees that are eligible for refund. CBP has, however, changed the text of the definition of drawback in section 190.2 to clarify that this regulatory definition is limited to CBP's payment of drawback and does not purport to define drawback for all purposes of 19 U.S.C. 1313, such as 19 U.S.C. 1313(v)'s broad prohibition of multiple drawback claims, including those pursuant to the Internal Revenue Code.

Comment: CBP proposed a definition for the term *drawback product* in section 190.2. One commenter suggested adding language to section 190.2 to provide more clarity.

Response: CBP disagrees with the comment. The definition for *drawback product* in section 190.2 mirrors the definition provided under 19 CFR 191.2 and this term was not affected by TFTEA. Accordingly, the definition will remain as it was proposed in the NPRM.

Comment: One commenter requested that CBP modify the definition for *intermediate party* in section 190.2 to note that a party can also receive and possess substituted merchandise. This commenter provided suggested language.

Response: CBP agrees with the comment. CBP is amending the definition of *intermediate party* in section 190.2 to clarify that the intermediate party may also be in possession of substituted merchandise, subject to the applicable statutory limitations. Relatedly, CBP has also amended the definition to clarify that there may be destruction (in lieu of exportation) to qualify merchandise for drawback in certain cases.

Comment: One commenter asked CBP to remove the more flexible phrase in section 190.2 regarding what is a *manufacture or production,* ''including, but not limited to, an assembly, . . .'' and replace it with suggested language (''a process, whether mechanical, chemical, or otherwise stated whether from the direct action of the human hand, from chemical processes devised and directed by human skill, or by the employment of machinery . . .'').

Response: CBP disagrees with the commenter's suggestions to amend the definition of *manufacture or production,* which was taken from current 19 CFR 191.2. This definition has proven flexible and useful as written, providing adequate guidance while still allowing for claimants to request rulings regarding whether a process amounts to a manufacture or production.

Comment: Regarding the definition of *per unit averaging,* one commenter stated that the last sentence referencing the applicability of the ''lesser of'' rules does not belong in this definition. This commenter stated that the regulation incorrectly states that the value of the imported merchandise may not exceed the total value of the exported merchandise and recommends removing the last sentence from the definition.

Response: CBP agrees, in part, with the comment. The definition of *per unit averaging* in section 190.2 is modified by removing the phrase regarding the value upon which the refund is calculated not being able to exceed the value of the imported merchandise and making minor edits regarding the ''lesser of'' rule. The ''lesser of'' rule is applicable to certain substitution drawback claims and so the per unit averaging claim calculations are subject to this limitation, except where specifically exempted therefrom.

Comment: In section 190.2, CBP proposed a definition of *sought chemical element.* Multiple commenters suggested that the definition in the regulations should restate the definition provided in the statute at 19 U.S.C. 1313(b)(4)(B) and that the parenthetical phrase should be removed, and one commenter suggested adding ''isotopes'' to the definition.

Response: CBP disagrees with the commenters' suggestions regarding the term *sought chemical element.* The term is defined consistently with 19 U.S.C. 1313(b)(4)(b), except that a parenthetical clarification is included to specify that a ''compound'' is considered ''a distinct substance formed by a chemical union of two or more elements in definite proportion by weight.'' The commenters did not disagree with the correctness of the parenthetical clarification, which will remain as proposed because it provides additional specificity for members of the public who may not have the same level of familiarity as the commenters do with respect to sought chemical elements. As the definition is drafted consistently with the statute, except for the parenthetical clarification, the suggestion to add isotopes is not accepted. Accordingly, the definition for *sought chemical elements* will remain as it was proposed.

Comment: In section 190.2, CBP proposed a definition of *specific manufacturing drawback rulings.* One commenter requested that CBP remove the requirement that a synopsis of approved specific manufacturing drawback rulings will be published in the Customs Bulletin.

Response: CBP agrees with this commenter. Based upon comments received and its own internal review, CBP has determined that there is no longer sufficient benefit to the trade or to CBP to support the publication of synopses of specific manufacturing rulings. As such, the definition is modified accordingly in this final rule.

Comment: Multiple commenters suggested edits for the definition of *substituted merchandise or articles,* noting that, in paragraphs (2) and (3), the term ''direct identification'' should be replaced with the term ''unused merchandise'' and requested that CBP modify paragraph (3) by inserting a reference to Schedule B.

Response: Regarding the term *substituted merchandise or articles,* CBP is accepting the recommendations to remove the term ''direct identification'' in paragraph (3) of the definition and replaced with the term ''unused merchandise'' for drawback under 19 U.S.C. 1313(j)(2); and, CBP is also accepting the recommendation to include a reference to the allowance in 19 U.S.C. 1313(j)(6) for the use of Schedule B numbers for substitution in paragraph (3). However, regarding substitution under 19 U.S.C. 1313(c)(2), CBP is accepting the recommendation to remove the term ''direct identification'' from the definition for *substituted merchandise or articles* but is not accepting the recommendation to replace the term with ''unused merchandise'' because 19 U.S.C. 1313(c) more specifically deals with merchandise not conforming to sample or specifications, *i.e.,* rejected merchandise. Accordingly, CBP is replacing the term ''direct identification'' with the term ''rejected merchandise'' in section 190.2 of the final rule describing 19 U.S.C. 1313(c)(2).

Comment: For substitution of finished petroleum derivatives claims, CBP proposed a definition for *qualified article* in section 190.172(a). Multiple commenters noted that not all HTSUS numbers which were provided in the definition for *qualified article* in 19 U.S.C. 1313(p)(3)(A)(i)(I) were listed in proposed section 190.172(a).

Response: CBP agrees with the commenters and section 190.172(a) is modified accordingly in the final rule.

Comment: CBP proposed a definition for wine in section 190.2 requiring an alcoholic content not in excess of 14 percent by volume with reference to the relevant Alcohol and Tobacco Tax and Trade Bureau (TTB) regulations (27 CFR 4.21(a)(1) and (2)). One commenter requested that the specific percentage be removed so that the section include only the citation to the authority for the percentage of alcohol to avoid issues related to percentage changes, such as those contained in section 13805 of the Tax Cuts and Jobs Act (Pub. L. 115–97, 131 Stat. 2054, December 22, 2017), which amended 26 U.S.C. 5041(b) by adjusting the alcohol content level for application of excise tax rates on wine from 14% to 16% (in the case of wine removed after December 31, 2017 and before January 1, 2020). The commenter also requested that a similar change be made at section 190.32(d)(3)(b).

Response: CBP disagrees with this commenter's suggestion. While section 13805 of the Tax Cuts and Jobs Act, contained in part IX, subpart A, Craft Beverage Modernization and Tax Reform (CBMTRA), changed the wine tax classification cut-off from 14% to 16%, it did not amend the Federal Alcohol Administration (FAA) Act and thus CBMTRA does not require the Alcohol and Tobacco Tax and Trade Bureau to change its regulatory interpretation of which wines are considered ''table wine'' under the FAA Act, in 27 CFR 4.21(a)(1) and (2). Accordingly, CBP will continue to interpret the alternative rule for wine substitution for 19 U.S.C. 1313(j)(2) standard in light of its past practice, providing for substitution unused merchandise drawback for ''table wine'' containing not more than 14% alcohol.

3. Economic Analysis

Comment: One commenter questioned the estimated economic impact of the rule cited in the NPRM's Regulatory Impact Analysis (RIA). The commenter stated that the RIA understated the cost of implementation of drawback filing by all parties involved with the drawback process, including importers,

manufacturers, exporters and brokers. Additionally, the commenter claimed that the rule's costs to small entities are significantly understated in the NPRM's Regulatory Flexibility Act (RFA) analysis. The commenter asserted that CBP's analysis underestimated the costs of ACE drawback system modification, add-on drawback software, and broker fees to trade members due to recent changes in ACE programming and new regulatory requirements.

Response: Unfortunately, the commenter did not include any data to support the claims or propose alternative costs that CBP could incorporate into the analysis. CBP based its estimates on the best data available. Therefore, CBP has no basis for changing its estimates.

Comment: One commenter stated that CBP understated the costs of added recordkeeping in the NPRM's RIA, arguing that the rule's costs to trade members are higher than estimated due to the variety of documentation that CBP could require for drawback verification under the rule and increased record retention periods.

Response: CBP disagrees with this comment. TFTEA, and the corresponding drawback regulations proposed in 19 CFR part 190, largely reduce the recordkeeping burden for trade members by allowing them to verify claims using records maintained in the normal course of business. For example, TFTEA and the proposed drawback regulations in 19 CFR part 190 will completely eliminate CBP Form 7552: Delivery Certificate for Purposes of Drawback, allowing trade members to instead keep evidence of transfers in their records kept in the normal course of business, and provide such evidence to CBP upon request. This change will result in savings to trade members rather than costs. In regards to TFTEA and the rule's longer record retention period, CBP captured the cost of extended recordkeeping in the Major Amendment 9 section of the NPRM's RIA and in this document. CBP developed the extended recordkeeping cost estimates in consultation with various members of the trade community and subject matter experts. Unfortunately, the commenter did not include any data to support the claims that CBP understated recordkeeping costs, and the commenter did not propose alternative costs that CBP could incorporate into the analysis. For this reason, CBP chooses to maintain its recordkeeping estimates.

Comment: One commenter questioned CBP's RFA conclusion that the agency cannot determine whether the (negative) economic impact of the rule on small entities may be considered significant under the RFA. The commenter claimed that CBP did not adequately evaluate the new electronic filing costs and data element submissions of TFTEA and the expanded recordkeeping and data retention requirements of the statute. The commenter also suggested that CBP should acknowledge the ''significant cost impact to small business of the NPRM and work to simplify the operation requirements of Part 190 to minimize the impact of TFTEA on small business.''

Response: CBP disagrees with these statements. CBP developed a comprehensive analysis examining the impacts of TFTEA and the proposed Modernized Drawback rule. The analysis evaluates new filing costs and data element submissions under the Major Amendment 1 section of the RIA as well as Major Amendment 7. The RIA also includes an assessment of the costs of TFTEA's expanded recordkeeping and data retention requirements in the Major Amendment 9 section of the RIA. The RFA accounts for these costs, analyzing their impacts on small entities. This document continues to include a full assessment of TFTEA's drawback amendments and the Modernized Drawback rule's corresponding changes. CBP worked in consultation with various members of the trade community representing a wide range of industries involved in drawback and subject matter experts to inform many of the estimates in the RIA and RFA, as cited throughout the document. Moreover, CBP has worked to craft a regulation to minimize the impact on small entities while still meeting TFTEA and other legal requirements and protecting U.S. Government revenue. For instance, CBP eliminated the proposed requirement in section 190.26(d) for trade members to maintain manufacturing or production records for articles purchased from a manufacturer or producer and claimed for drawback. CBP made this change based on a public comment explaining that the requirement could harm businesses. Unfortunately, the commenter did not include any data or justification to support the claims that the RIA and RFA did not adequately evaluate the impact of the rule on trade members, including those considered small under the RFA. The commenter also did not provide evidence to support its statement that CBP should certify that this rule has a significant economic impact on a substantial number of small entities. To further assess the impacts of the rule on small entities, CBP has expanded its RFA sample from 100 entities to 375 entities, leading to a 95 percent confidence level with a 5 percent margin of error. For these reasons, CBP continues to conclude that the agency cannot determine whether the economic impact of the rule on small entities may be considered significant under the RFA.

B. Filing Requirements

1. Complete Claim

CBP proposed procedures in subpart E, which provides for completion of drawback claims, in sections 190.51, 190.52, and 190.53, and provides guidance on the requirements to submit a drawback claim, electronically, to CBP. These provisions are similar to the provisions in current part 191, except where it was necessary to outline all of the data elements for a complete claim (previously contained on the CBP Form 7551, Drawback Entry) and modify those requirements to comply with TFTEA-Drawback. CBP received several comments described below involving the parameters on what should be included in a complete claim and concerns over the submission and processing of those claims.

Comment: One commenter requested clarification on how to file certain documents, for which the commenter is unaware of a way to file electronically, citing as an example the requirement to file the notice of intent to export at the port of intended examination in section 190.35.

Response: CBP appreciates the opportunity to clarify. There are certain forms and documents which may be originally filed in forms that are not electronic (and not as part of drawback claims), and it is possible that such forms will later be filed as supporting documentation for drawback claims for upload through the Document Imaging Service (DIS) or manual submission. Please see the CATAIR guidance on programming as well as the Interim Guidance on how to file TFTEA-Drawback claims. Accordingly, CBP will not be amending the definition for *filing* in section 190.2.

Comment: Regarding section 190.51(e)(1)(i), official date of filing, several commenters requested that this section be revised to clarify the deficiencies, computer errors, and unresolved filing issues involved with ACE electronic drawback claim filings that occurred at the beginning of the TFTEA filing period on February 24, 2018. One commenter stated that drawback claimants and brokers should not be penalized for the inadequate electronic environment for filing of drawback claims when CBP's

programming deficiencies and issues raised by claimants and brokers remain unresolved beyond the filing timeline deadlines of the statute.

Response: CBP disagrees with the commenters' request. CBP understood that system issues could occur during deployment and the transition year, therefore, CBP published procedures to account for such issues in the Interim Guidance. The guidance establishes procedures that protect the original claim date, and inform claimants and brokers to whom questions should be directed for additional assistance.

Comment: Several commenters requested clarification for section 190.51(e)(1) regarding the date of filing and the impact on this date of subsequent required document uploads (which are not always completed on the date of filing).

Response: Regarding the submission of supporting documentation, while CBP will not be amending section 190.51(e)(1), to have the date of claim submission be the official date of filing, the claimant has a 24-hour window from the time of claim submission to upload required documentation via the Document Image System (DIS) in ACE. This 24-hour window is part of the certification contained in section 190.51(a)(2)(xvi). Otherwise, for required documentation uploaded beyond this 24-hour window, the official date of filing is the date that the DIS upload is complete.

Comment: Regarding section 190.51(e)(1)(ii), abandonment, one commenter stated that this section should be modified to account for CBP deficiencies in the ACE electronic drawback environment and no claim can be considered abandoned until all electronic filing issues have been resolved. The commenter stated that drawback claimants and brokers should not be denied recovery of legally authorized refunds under the statute because of CBP errors or electronic filing deficiencies.

Response: CBP disagrees with the comment. Pursuant to 19 U.S.C. 1313(r)(1), a drawback entry shall be filed or applied for, as applicable, not later than five years after the date on which merchandise on which drawback is claimed was imported. Claims not completed within the five-year period shall be considered abandoned. No extension will be granted unless it is established that U.S. Customs and Border Protection was responsible for the untimely filing. The statute clearly does not provide CBP with the authority to extend the time period for abandonment in this context, although there is a singular exception carved out for an event declared by the President to be a major disaster (*see* 19 U.S.C. 1313(r)(3)).

Comment: Regarding section 190.52(a), regarding the rejection of incomplete drawback claims, one commenter stated that this section must be modified to prohibit CBP's ability to reject a claim within five years of the date of importation when the reason for the untimely completion of a claim is the result of deficiencies in CBP's electronic filing environment for drawback and issues raised in filing rejections remain unresolved and/or uncorrected by CBP.

Response: CBP disagrees with the commenter. Section 190.52(a) specifically identifies the reasons for which CBP may reject a claim, which must be complete (pursuant to section 190.51(a)(1)) and timely (pursuant to 190.52(e)). CBP's automated validations facilitate the prompt acceptance or rejection of claims and a filer will be aware if there is a known issue immediately after the attempted filing of a claim. This efficiency reduces the administrative burden on CBP and enables the filer to immediately take remedial steps. Further, and pursuant to policy, CBP collaborates with filers who encounter electronic filing issues to timely resolve them. However, CBP has clarified in section 190.52 that, subsequent to claim acceptance in ACE, if it is determined by CBP that the claim was incomplete or untimely, then it may be denied.

Comment: Several commenters stated that CBP failed to provide for situations where HTSUS classification changes after importation, such as when an incorrect HTSUS number was provided on entry and subsequently corrected. One commenter expressed concern that erroneous HTSUS classifications could be granted drawback. Another commenter stated that it was essential that ACE account for situations where a change in HTSUS occurs, where the correct classification is in dispute, or when the ACE record does not match the proper classification. Some commenters noted that working with a CBP Import Specialist to correct an import entry is cumbersome and requested that CBP establish a process for situations involving a mismatch of HTSUS classification numbers. Similarly, one commenter requested that CBP establish a process for situations involving reconciliation and adjusted fees or values. Another commenter requested a clear policy and guidance in situations where ACE rejects drawback claims for rounding errors and the claimant does not have to manually adjust until the system accepts the claim.

Response: While CBP agrees with the commenters that situations may arise where the HTSUS classification changes after importation, CBP does not agree that any changes to the regulations are necessary. The commenters appear to be seeking policy guidance in specific situations, which is outside the scope of this rulemaking. Instead, a drawback claimant should coordinate with importers to ensure that import entries are properly and timely corrected such that ACE will reflect the correct import data. Drawback policy guidance issued by CBP provides additional instructions on how to facilitate the correction of import data in the other scenarios raised by the commenters, and claimants are encouraged to coordinate with CBP Drawback Specialists and other CBP personnel to ensure the correctness of their claims.

Comment: One commenter observed that proposed § 190.51(a)(2) covering drawback entry requirements would require a surety code, bond type, and amount of bond for all drawback entries. The commenter noted that the bond requirement only applies when a claimant is requesting accelerated payment of drawback. The commenter referenced the ''31-Record'' of the ACE ABI CATAIR for drawback and stated that the NPRM does not accurately reflect the ''31-Record'' requirements. The commenter suggested that § 190.51(a)(2)(iii) be modified.

Response: CBP agrees that proposed section 190.51(a)(2)(iii) needs clarification. Accordingly, CBP has amended section 190.51(a)(2)(iii) to require the following information, only if the claimant is requesting accelerated payment of drawback under section 190.92: Surety code and bond type for all bonds and, additionally, the bond number and amount of bond for single transaction bonds.

Comment: Several commenters suggested removing the requirement to provide ''factory location'' in section 190.51(a)(2)(ix) for manufacturing drawback claims.

Response: CBP disagrees with the commenter's suggestion regarding factory location. The ''factory location'' in section 190.51(a)(2)(ix) is necessary to verify compliance with the terms of the manufacturing ruling to ensure that the party identified as the manufacturer or producer is, in fact, the manufacturer or producer who obtained the manufacturing drawback ruling. The ''factory location'' is also part of the tracing of the imported merchandise or other substituted merchandise through the manufacturing or production

operations to ensure that the finished article is eligible for drawback upon exportation or destruction.

Comment: Several commenters suggested amending section 190.51(a)(2)(x) to state that the certification that the imported or designated merchandise is unused applies to 19 U.S.C. 1313(j)(1) only.

Response: The ''certification'' referred to in section 190.51(a)(2)(x) ensures that the merchandise that was exported or destroyed was unused per the requirements of 19 U.S.C 1313(j). However, CBP agrees that clarification is needed to reflect that this is not a reference to the imported merchandise, which would too narrowly limit the certification to claims under 19 U.S.C. 1313(j)(1). With this clarification, it is now evident that the certification applies to both claims under 19 U.S.C. 1313(j)(1) and (j)(2) .

Comment: One commenter suggested that the certification in section 190.51(a)(2)(xii), regarding the correctness of the drawback claim, is gratuitous and should be removed because it is included in the electronic signature requirements under the CATAIR, for the electronic submission of drawback claims.

Response: CBP disagrees with the comment. The reason why the certification is included in the electronic signature is because it is required as part of a drawback claim. This certification was also required for drawback claims filed manually before TFTEA-Drawback, as it was contained on the CBP Form 7551, Drawback Entry.

Comment: One commenter suggested that the certification in section 190.51(a)(2)(xiii), regarding the proper calculation of the drawback claim amounts when a destruction is incomplete, pursuant to 19 U.S.C. 1313(x), is gratuitous and should be removed because it is included in the electronic signature requirements under the CATAIR, for the electronic submission of drawback claims.

Response: CBP disagrees with the comment. The reason why the certification is included in the electronic signature is because it is required as part of a drawback claim. This certification is important because TFTEA further expanded the types of drawback claims for which exported merchandise could be the basis when the destruction was incomplete and requiring the certification safeguards the revenue, given that the failure to make the proper deductions for recovered merchandise would result in excessive drawback refunds.

Comment: One commenter suggested that the certification in section 190.51(a)(2)(xiv), regarding the possession of the merchandise that is the basis for a substitution manufacturing drawback claim, pursuant to 19 U.S.C. 1313(j)(2), is gratuitous and should be removed because it is included in the electronic signature requirements under the CATAIR, for the electronic submission of drawback claims.

Response: CBP disagrees with the comment. The reason why the certification is included in the electronic signature is because it is required as part of a drawback claim. This certification was also required for drawback claims filed manually before TFTEA-Drawback, as it was contained on the CBP Form 7551, Drawback Entry.

2. Filing Deadline

Comment: In section 190.27(a), CBP proposed that manufacturing drawback claims will be allowed within five years after importation of the merchandise used to manufacture or produce articles. One commenter requested that this section be clarified to state that the five-year period to file claims runs to the date of filing.

Response: CBP disagrees with the commenter's suggestion to amend section 190.27(a). The deadline for filing drawback claims, as set forth in 19 U.S.C. 1313(r), is provided for, in general, in section 190.51(e), regarding the time of filing. Section 190.51 is the provision on completion of drawback claims, and it is critical for all drawback claims. Accordingly, CBP believes that specification of the timeframe for filing in paragraph (e) clearly puts potential drawback claimants on notice of the statutory filing deadline.

Comment: CBP proposed that drawback claims under subpart J, titled Internal Revenue Tax on Flavoring Extracts and Medicinal or Toilet Preparations (Including Perfumery) Manufactured From Domestic Tax-Paid Alcohol, must be completed within three years after the date of exportation of the articles upon which drawback is claimed in section 190.102(e). One commenter suggested part 190.102(e) should be amended to provide for five years after the date of exportation.

Response: CBP disagrees with this comment. Claims subject to 19 U.S.C. 1313(d), for internal revenue tax refunds on flavoring extracts and medicinal or toilet preparations (including perfumery) manufactured from domestic tax-paid alcohol, do not designate imported merchandise because there is no imported merchandise involved in the manufacturing operations. Accordingly, the new timeframe for the filing of drawback claims for TFTEA, which is triggered by the date of importation, does not apply to these claims. In the absence of any explicit statutory language regarding these filing deadlines, it will remain three years from the date of exportation, as was previously allowed prior to TFTEA.

3. Recordkeeping

Comment: In several places, CBP proposed to require the maintenance of records involving, for example, bills of materials or formulas, exportations, and transfers of merchandise. Two commenters stated, with respect to proposed sections 190.9(a), 190.10, 190.23, and 190.26, that CBP failed to add the phrase ''kept in the normal course of business'' in all relevant locations and requested that this phrase be added for consistency.

Response: CBP disagrees with the commenters' suggestion. It may be that records kept in the normal course are suitable for the purposes referred to in the comment. However, in some cases, as the records must establish certain dates and facts, it is not always the case that records kept in the normal course will meet the burden required for drawback purposes. Therefore, rather than create the impression that records kept in the normal course would be suitable in all situations, CBP will maintain the proposed language in these regulations to require the necessary information, whether or not the particular record is kept in the normal course of business in all cases.

Comment: CBP proposed in section 190.10(b)(2), the requirement that a record of the date of physical delivery of merchandise in a transfer be maintained. One commenter noted this requirement was not in the statute and requested that this section be modified to allow for evidence through the normal course of business without providing the specific date.

Response: CBP disagrees with the comment. Transfers involve physical delivery and a date is necessary to support transfers from and into inventories. The date of physical delivery must be documented in the records that support the transfer. These may be records that are kept in the normal course of business, but the specific date must be identifiable in order for CBP to verify that merchandise can be traced through any transfers between parties.

Comment: CBP proposed certain requirements regarding recordkeeping involving transfers of merchandise, including maintaining the record of the person from whom the transfer was received in proposed section

190.10(b)(8). One commenter suggested removing this requirement.

Response: CBP disagrees with the commenter to remove the requirement that those records specifically identify the person from whom transferred, as provided in section 190.10(b)(8), as it is necessary to establish the parties to the transfer of merchandise and the person from whom the merchandise was received is the transferor.

Comment: In section 190.10(c), CBP proposed requirements on the transferor of merchandise to notify the transferee(s) when the transfer does not cover the entire quantity of merchandise reported on a specific line item from an entry summary. One commenter claimed that CBP's requirement to evidence transfers by notification amounts to a new certification requirement (which the commenter claims is contrary to the statutory mandate that eliminated certificates of delivery). The commenter suggests that the transferor or transferee should be allowed to prove this information through business records kept in the normal course of business as required by the statute.

Response: CBP agrees with the comment. CBP has revised section 190.10(c) in this final rule to indicate that while parties to a transfer are required to maintain documentation sufficient to demonstrate their drawback eligibility, the first filed claim will determine the eligibility of merchandise for specific types of drawback regardless of what may be indicated in any notice shared between the transferor and transferee. CBP declines to police the nature of the notice shared between the parties. However, CBP cautions that parties who do not share sufficient and accurate information may not be exercising their due diligence in transfers, which creates potential liability not just for the importer and drawback claimant pursuant to 19 U.S.C. 1313(k), but also for all parties in intermediate transfers pursuant to 19 U.S.C. 1593a.

Comment: CBP proposed regulations regarding submission of documents and records on transfers of merchandise in proposed section 190.10(e). One commenter stated that this section should specifically state that submission of transfer documentation shall only be made upon specific request by CBP. The statute clearly states that transfer of drawback rights is a private transaction between parties. The NPRM should clearly state that fact and not present a possible regulatory delay in drawback refunds not contemplated by the statute.

Response: CBP agrees with the commenter and section 190.10(e) is clarified in this final rule to indicate that the required records must be provided upon request by CBP.

Comment: CBP proposed requirements that manufacturing drawback claimants must maintain records regarding the transfer of goods. In situations where the claimant purchased the articles, CBP proposed in section 190.26(d) that the claimant must maintain records regarding the manufacture of the articles received from the manufacturer or producer. One commenter explained how this could prove difficult, as in some situations the claimant and the manufacturer or producer could be competitors, so sharing manufacturing records would not be feasible. The commenter suggested changing the wording to provide that the manufacturer or producer be required to maintain records (kept in the normal course of business) documenting the manufacture or production of articles, and that the claimant must maintain records supporting the transfer.

Response: CBP agrees with this commenter. Understanding that the certificate of manufacture and delivery was the document establishing the record of manufacture under the old law, each party should maintain its own records under TFTEA. The manufacturer or producer is responsible for maintaining the documentation to support the actual manufacture or production. However, a claimant who is not a manufacturer or producer will not have access to these records in many instances. Accordingly, CBP has revised section 190.26(d) in the final rule to reflect that the claimant who purchases the articles is responsible for maintaining records to document the transfer of articles received. CBP has also further clarified that section 190.26(d) applies not just to transferred merchandise purchased for exportation, but also for destruction. Moreover, CBP notes that the limitations on who may claim manufacturing drawback under section 190.28 remain applicable notwithstanding the liberalization of this provision to remove the requirement for the certificate of manufacture and delivery.

4. Protests

Comment: CBP received multiple comments regarding drawback and the right to protest. One commenter stated that there was no way to officially protest a rejected or incomplete claim because it is not a successful electronic transmission. The commenter requested that CBP address this situation in the final rule, suggesting a mechanism to allow a claim that might otherwise be rejected to be filed in order to permit a protest. Another commenter, citing the joint and several liability provisions of TFTEA, stated that 19 CFR 174.12(a), the provision regarding who may file a protest, should be amended to permit the importer of the merchandise and its import bond surety the right to file a protest with respect to drawback entries that give rise to their liability.

Response: CBP disagrees with these comments. The requirements for a valid protest, which were not modified by TFTEA in any way, are set forth in 19 U.S.C. 1514. Consistent with that section, a protest may be filed, with respect to any of the decisions listed in 19 U.S.C. 1514(a), by any person specified in 19 U.S.C. 1514(c)(2), consistent with the overall requirements of 19 U.S.C. 1514 generally, and 19 U.S.C. 1514(c) in particular. Because TFTEA did not amend or otherwise speak to the statutory requirements governing the protestability of CBP's drawback decisions, CBP will not be modifying the regulations in part 174.

5. Proof of Export

Comment: CBP proposed requirements regarding proof of export in drawback claims and provided a list of documents that could be submitted as proof of export in proposed section 190.72. Multiples commenters, citing similar language in 19 CFR 191.72 regarding proof of exportation, suggested that proposed section 190.72(b) be modified to include the phrases ''in the normal course of business'' and ''including, but not limited to'' to provide flexibility in situations where the normal course of business (and the associated records) may include other methods than those currently provided for in proposed section 190.72(b). Several commenters also provided suggested language to be added to section 190.72(b)(1) to specifically include tracking identification statements for express consignment as proof of export.

Response: CBP agrees in part with the commenters. CBP reviews the totality of evidence presented when determining proof of export for drawback purposes. Accordingly, in the final rule, CBP is amending section 190.72(b) by including the phrase ''including, but not limited to'' to better align with the language in the corresponding regulation in part 191. Regarding the requests to add the phrase ''in the normal course of business'' to section 190.72(b), CBP also agrees with the commenters. The statute as amended by TFTEA allows, in 19 U.S.C. 1313(i)(2), for the possibility that drawback claimants may rely on records kept in

the normal course of business. However, CBP notes that, pursuant to 19 U.S.C. 1313(i)(1), such records must also establish fully the date and fact of exportation and the identity of the exporter. CBP therefore disagrees with the commenters' recommendations to insert tracking identification statements for express consignment in the list of specific supporting documentary evidence for proof of export in section 190.72(b)(1). It is not apparent that tracking identification statements for express consignment would constitute proof of export for drawback purposes in every case. A claimant would need to demonstrate how these statements fully establish the date and fact of exportation on their own and, if not, then the totality of the evidence would include these documents along with other supporting documents.

Comment: One commenter noted that bills of lading, while useful for supporting proof of exportation, should not be considered by CBP as the only source of such proof. The commenter requested that CBP modify section 190.52(b)(1) to state that letters of endorsement could be attached to export records kept in the normal course of business, rather than be attached to only bills of ladings.

Response: CBP disagrees, in part, with this commenter's suggestion. Records kept in the normal course of business may not always establish the date and fact of export and the identity of the exporter. However, while the commenter's suggested language is not accepted, CBP will modify section 190.52(b)(1) to state that letters of endorsement from the exporter may be attached to records or other documentary evidence of exportation, as provided for in section 190.72.

Comment: CBP proposed section 190.73, which states that an electronic export system of the United States Government may be actual proof of exportation only if CBP has officially approved the use of that electronic export system as proof of compliance for drawback claims. One commenter requested that this regulation be modified so that the records kept through the electronic export system may be ''presented as sole proof'' (rather than ''considered as actual proof''). The commenter notes that the records will be business records and can offer proof of some portion of the requirements for proving export as provided for in section 190.72(a). Another commenter requested that CBP indicate when an electronic export system will be approved and requested an explanation as to why no electronic system, such as the Automated Export System, can be approved currently. That commenter also noted that approving an electronic export system concurrently with or prior to eliminating export summary procedure from drawback regulations would be beneficial.

Response: CBP agrees with the commenters, in part, and section 190.73 is revised to state that the records may be presented as actual proof of export. However, CBP notes that section 190.73 provides that electronic proof of export will be allowed when CBP officially approves an electronic export system for this purpose and that notice of this approval will be published in the Customs Bulletin. At this time, CBP has determined that there is not an electronic export system that establishes the date and fact of exportation, as well as the identity of the exporter, which can be relied upon to demonstrate drawback eligibility. CBP also notes that the current export system, Automated Export System (AES), is largely a pre-departure filing system and therefore does not necessarily provide proof of exportation.

Comment: CBP proposed requirements regarding proof of export for drawback claims in section 190.72 and required that a notice of lading be filed under section 190.112. One commenter, noting that notice of lading is not a document that is kept in the normal course of business, requested that the requirement to file the notice of lading be eliminated and that the requirements of section 190.72 regarding proof of export be those required in section 190.112.

Response: CBP disagrees with this comment. The notice of lading certifies that merchandise was indeed laden, and lists the class of the vessel and nationality, as this information is essential to establish drawback eligibility under 19 U.S.C. 1309(b). CBP allows for a composite notice for repetitive shipments, which alleviates the burden to some extent. Section 190.72 is limited to documents that establish proof of an actual exportation for drawback claims in general. While 19 U.S.C. 1309(b) states that lading upon a vessel or aircraft may be considered an exportation under certain limited circumstances, such lading does not generally constitute proof of exportation for drawback claims and, accordingly, notice of lading is not listed as proof of exportation in section 190.72.

Comment: CBP proposed in section 190.112(e) to require the submission of notices of lading to support drawback claims made pursuant to 19 U.S.C. 1309(b). One commenter proposed that section 190.112(e) be modified to require a certification of possession of all required notices of lading and other supporting documents, rather than the actual submission of the documents.

Response: CBP disagrees with the comment. It is the act of lading on a qualified vessel or aircraft that constitutes the deemed exportation under 19 U.S.C. 1309(b). Because deemed exportation is a limited exception to the ordinary standard for proof of exportation, the documentation in support of eligibility is required for submission at the time of filing of the claim in order to protect the revenue.

Comment: For drawback claims for articles laden as supplies pursuant to 19 U.S.C. 1309(b), a notice of lading is required. Specifically, for fuel laden on vessels or aircraft as supplies, a composite notice of lading is authorized under section 190.112(h), which covers all deliveries of fuel during one calendar month at a single port or airport to all vessels or airplanes of one vessel owner or operator or airline. One commenter proposed that this composite notice of lading should not be restricted to a single port or airport.

Response: CBP disagrees with this comment. When reviewing the correctness of these claims, CBP evaluates them by analyzing their lading data based on specific ports. Accordingly, notices of lading should remain as is for purposes of administrative efficiency.

C. Refund Amount

1. Refund Methodology

Comment: CBP proposed the per unit average methodology for the calculation of claims for TFTEA-Drawback claims involving substitution. Several commenters expressed support for the per unit average method as a means of simplifying drawback claims under TFTEA.

Response: CBP appreciates the commenters' support. CBP has determined, based on the rationale set forth in the NPRM, that this method of calculation simplifies the calculation of substitution drawback claims, enabling validation of their correctness in ACE.

Comment: CBP proposed a regulation stating which duties, taxes, and fees are subject or not subject to drawback in section 190.3. One commenter requested that the regulations explicitly state which fees are drawback eligible, specifically citing agricultural fees as a point of past contention. A second commenter noted a typographical error and suggested taking the word ''of'' out of section 190.3(a).

Response: CBP agrees with the comment regarding the clerical error

and corrected section 190.3(a) in the final rule. However, CBP disagrees with the suggestion of explicitly stating what fees are eligible for drawback. The list of duties, taxes, and fees eligible for drawback in section 190.3(a) is not exhaustive. The fees that are eligible for refund are those that were imposed under Federal law, upon entry or importation, and paid on the imported merchandise. Agricultural fees that satisfy the legal requirements for drawback eligibility could be refunded, assuming that the claimant can trace them to the specific import entries upon which they were paid. However, not all agricultural fees will be eligible for drawback and CBP declines to list them as generally eligible in section 190.3(a). If a claimant needs to clarify whether a particular agricultural fee is eligible for drawback, a ruling could be requested under 19 CFR part 177.

Comment: CBP proposed that the amount of drawback allowable would ''not exceed'' 99 percent in multiple locations throughout the regulations such as in sections 190.22 and 190.32. Multiple comments were received on this language, and some comments requested that these references be amended to better align with the statutory language from 19 U.S.C. 1313(l) and state that the amount of drawback allowable ''be equal to'' 99 percent. One commenter questioned the justification for the ''lesser of'' rule, stating that the scenarios CBP cites where manufacturers manipulate drawback and lower their taxes by manufacturing cheaper products for the sole purpose of destroying them or re-routing them are not realistic.

Response: CBP disagrees with the comments suggesting that changes be made to the regulations for the purpose of selective alignment with the statutory language. For substitution manufacturing and substitution unused merchandise drawback claims, in section 190.22(a)(1)(ii) (in paragraphs (A) and (B)) and in section 190.32(b) (in paragraphs (1) and (2)), respectively, the regulations state that the drawback allowable, which is calculated using per unit averaging, will not exceed 99 percent of the lesser of the duties, taxes, and fees paid on the imported or substituted merchandise (*i.e.,* the ''lesser of'' rule). While the statutory language in 19 U.S.C. 1313(l) states that refunds will be equal to 99 percent of the duties, taxes, and fees paid on the imported merchandise, this language is subject to an explicit limitation. The limitation is expressed, for both substitution manufacturing and substitution unused merchandise drawback claims, by an exception for the ''lesser of'' rule, as indicated by the statutory language in 19 U.S.C. 1313(l), which provides that where merchandise is substituted for the imported merchandise, drawback is limited to the ''lesser of'' the amount of duties, taxes, and fees paid on the imported merchandise and the amount that would apply to the subtituted merchandise if the substituted merchandise were imported. Moreover, there are other limitations on the amounts of both types of drawback claims, including the statutory language in 19 U.S.C. 1313(x), which effectively precludes the payment of a refund equal to 99 percent of the duties, taxes, and fees paid on the imported merchandise in situations involving recovered materials. Accordingly, it would be inaccurate for the regulations to state, categorically, that drawback claimants are entitled to a refund equal to 99% of the duties, taxes, and fees paid on the imported merchandise. Relatedly, CBP has made conforming changes in this final rule to section 190.32(d)(2) (as wine claims under the alternate rule in 19 U.S.C. 1313(j)(2) are also subject to certain limitations that could impact the amount of the allowable refund, including 19 U.S.C. 1313(x)) and to 19 CFR 191.45(c) (as rejected merchandise drawback claims are also subject to the limitation in 19 U.S.C. 1313(x)). CBP has also added a new paragraph (d) to section 190.71 restating the statutory requirements for deductions for the value of recovered materials when drawback eligible merchandise is destroyed. Regarding the justification for the ''lesser of'' rule, CBP recognizes that the vast majority of drawback claimants do not attempt to manipulate the drawback program. However, there are reasonable concerns regarding the protection of the revenue given the significant expansion of the substitution standards, and the statutory language in 19 U.S.C. 1313(l) clearly directs that the ''lesser of'' rule shall be applied to substitution manufacturing and substitution unused merchandise drawback claims (except where specifically exempted).

Comment: CBP provided examples regarding the ad valorem duty rate in section 190.51(b)(ii)(3)(ii)(1). One commenter stated that these calculations did not properly address scenarios where the imported merchandise was classified under both a 10-digit HTSUS subheading number from Chapters 1–97 of the HTSUS and a separate subheading from Chapter 98, specifically within heading 9802, which provides for articles exported or returned and advanced or improved abroad.

Response: CBP agrees with the commenter that the value of the goods that is relevant for calculation of the drawback refund is not the value that is associated with the 10-digit HTSUS subheading within heading 9802 (the non-dutiable value); but, rather, it is the value that is associated with the 10-digit HTSUS subheading number from chapters 1–97 of the HTSUS (the dutiable value). CBP confirms that while these values are required to be reported for purposes of Subchapter II to Chapter 98 of the HTSUS (which applies to heading 9802 and the subheadings thereunder), the applicable dutiable value for drawback purposes is the value upon which the duties, taxes, and fees were assessed (*i.e.,* the value that is associated with the 10-digit HTSUS subheading number from chapters 1–97 of the HTSUS). Prior to the publication of the NPRM, CBP had issued both policy and programming guidance to clarify these issues for the trade. CBP also notes that, in contrast to the commenter's scenario, and as also addressed in CBP's guidance, there will be other instances where multiple HTSUS provisions and associated values may be required to be reported to CBP for drawback claims in order to obtain all refunds associated with specific imported merchandise (*e.g.,* the 8-digit HTSUS provisions from Chapter 99 of the HTSUS, which provide for temporary duties, that would need to be reported in addition to the 10-digit HTSUS subheading number from chapters 1–97 of the HTSUS, which provides for general customs, duties, taxes, and fees).

2. Valuation

Comment: CBP proposed regulations on the valuation of merchandise for direct identification claims in section 190.11(a)(1) by providing two options for valuing imported merchandise. One commenter stated that the language after the semicolon, regarding merchandise identified pursuant to an approved accounting method, is unnecessary, redundant, and confusing and provided suggested language for proposed section 190.11(a).

Response: CBP disagrees with the comment. This language provides claimants greater flexibility by allowing claimants the option of declaring the value of imported merchandise by one of two methods—either the value of the merchandise upon entry (invoice value) or if the merchandise is identified by an approved accounting method.

Comment: CBP proposed a new regulation, section 190.11(c), regarding

the valuation of destroyed merchandise to be the value of the merchandise at the time of destruction, determined as if the merchandise had been exported in its condition at the time of destruction and an Electronic Export Information (EEI) had been required. One commenter noted that it can take significant time before a manufacturer determines merchandise is defective (sometimes after a portion of the merchandise has been used in the manufacturing process or when performing quality control on finished articles) and that the value at the time of destruction can be significantly less than the amount paid for the merchandise. This commenter requested that CBP change proposed section 190.11(c), regarding the valuation of the destroyed merchandise or articles, to provide for the use of the fair market value for the merchandise rather than the value at the time of destruction.

Response: CBP disagrees with this comment. The value of the unused merchandise, determined as if it had been exported in its condition at the time of destruction, is the appropriate value to be used when the ''lesser of'' rule is applied to substitution unused merchandise drawback claims pursuant to 19 U.S.C. 1313(j)(2). This timeframe is consistent with how the ''lesser of'' rule is applied to merchandise that is exported for such claims. This timeframe also serves to protect the revenue, as intended by the ''lesser of'' rule in 19 U.S.C. 1313(l)(2)(B), by preventing claimants from importing expensive merchandise and destroying significantly less expensive merchandise (classified under the same HTSUS subheading) in order to manipulate their drawback claim refunds to the detriment of the revenue of the United States. Alternatively, claimants whose merchandise is destroyed may seek refunds calculated based on the value of the imported merchandise (without the application of the ''lesser of'' rule), by filing claims for either direct identification unused merchandise drawback (19 U.S.C. 1313(j)(1)) or rejected merchandise drawback (19 U.S.C. 1313(c)). Prior to TFTEA-Drawback, the commenter would have had to file under these provisions (as opposed to 19 U.S.C. 1313(j)(2)) in order to recover a refund based on the value of the imported merchandise. This is because destroyed merchandise that would have been significantly depreciated in value (relative to its value at the time of importation) could not have qualified for substitution under the much more stringent commercial interchangeability standard applicable to unused merchandise drawback claims under the pre-TFTEA drawback law. Moreover, adopting the suggestion of the commenter would turn the drawback program into an insurance program, and the drawback laws were not designed for the purpose of protecting against profit loss in every instance where imported merchandise is not able to be used as intended or sold.

Comment: CBP proposed a regulation regarding the valuation of substituted merchandise in manufacturing drawback claims at section 190.11(d), including the requirement that the value of substituted merchandise be the cost of acquisition. Several commenters stated that it is both impractical and infeasible to require all manufacturers to ascertain and record the acquisition value of merchandise used to manufacture a specific exported item, citing, among other things, bulk, commingled, and non-serialized merchandise inventory practices. As acquisition cost is not always a cost kept in the normal course of business, the commenters believe that this regulatory requirement is in direct violation of the statute's provisions on ''records kept in the normal course of business'' as well as the National Customs Automation Program (NCAP) goals set forth in 19 U.S.C. 1412(2). As an alternative, the commenters requested that other values be used to calculate the value of substituted merchandise. Specifically, the commenters suggested that those values could be calculated based upon generally accepted accounting principles, and suggested specific values that may be used for such a calculation should be listed, including standard costs, industry average costs, average inventory values in a specified turnover period, weighted average duty cost, and lowest valued merchandise acquired during a fixed time period.

Response: CBP agrees, in part, with the commenters. Claimants must be able to determine the value of the substituted merchandise (and support this determination) when filing substitution manufacturing drawback claims pursuant to the ''lesser of'' rule, which is set forth in 19 U.S.C. 1313(l)(2)(C). CBP has modified the definition of substituted merchandise in section 190.11(d) to reflect that substituted values for manufacturing drawback claims, which is to be calculated based on either the cost of acquisition *or* the cost of production, may be determined based upon generally accepted accounting principles. Certain of the commenters' other specific methods of inventory valuation may also be allowable, but only if they are permitted under generally accepted accounting principles. Accordingly, CBP disagrees with the suggestions to specifically list additional methods of calculating the value of the substituted merchandise. If a party requires further clarification regarding its method of calculating the cost of acquisition or production, then the claimant may request an administrative ruling (*see* 19 CFR part 177). More generally, CBP notes that the accuracy of the substituted values is critical to the proper application of the ''lesser of'' rule in 19 U.S.C. 1313(l)(2)(C), which requires an actual comparison between the values of the imported and substituted merchandise to arrive at the amount of the allowable refund for substitution drawback claims. The ''lesser of'' rule does not contain a provision for reliance on records kept in the normal course of business, nor does it otherwise entitle claimants to such reliance, for purposes of establishing the value of substituted merchandise. Finally, the drawback program is outside the scope of the NCAP program goals set forth in 19 U.S.C. 1412(2).

Comment: One commenter referred to its specific manufacturing ruling on sought chemical elements for tungsten powders and semifinished components and expressed concern that it would no longer be valid under TFTEA. The commenter also urged that CBP modify the definition of the value of substituted merchandise in section 190.11(d) to allow for certain types of costs tracked in the commenter's continuous manufacturing operations.

Response: A decision with respect to the validity of a specific manufacturing ruling is outside the scope of this final rule. As provided for in section 190.8(g)(2)(iv), a limited modification may be requested in order to comply with TFTEA-Drawback requirements. More generally, a ruling may be requested under 19 CFR part 177 if clarification is required. However, CBP notes that section 190.11(d) includes the cost of production and, as modified, will allow for the use of accounting methods under generally accepted accounting principles, which should enable the commenter to properly value its substituted merchandise.

Comment: CBP proposed regulations regarding accounting methods with certain conditions and criteria in section 190.14. One commenter provided suggested language regarding the requirement that all inputs and withdrawals, domestic and foreign, be kept as required under each accounting method for the five-year period from the date of filing a claim. The commenter also suggested adding the phrase ''for the five-year period from the import

date to the date of filing the claim'' in multiple places in section 190.14.

Response: CBP disagrees with the suggestion. Adding this timeframe is not necessary, as section 190.14 is largely the same as 19 CFR 191.14, with respect to the approved methods. Claims remain subject to their filing deadlines, as provided for in 19 U.S.C. 1313(r), and the accounting methods are only applicable to the inventories maintained within the timeframe for filing the claims.

3. First Filed and Mixed Claims

CBP proposed certain limitations on claims known as the first filed rule and the prohibition on mixed claims. These limitations were intended for two purposes, to safeguard the revenue and to ensure that drawback claimants would be paid the entirety of the refund amounts available under the drawback laws. The propensity for conflict between these purposes exists when an importer or another party to whom the importer has assigned its drawback rights splits the merchandise from a single import entry summary line to be designated as the basis for a refund on more than one drawback claim. Accordingly, such drawback claims must use the same method of refund calculation (either per unit averaging or invoice-based) to avoid a conflict. CBP received several comments described below involving concerns over the effects of these limitations on the availability of drawback.

Comment: In the NPRM, CBP proposed the first filed rule (whereby the first claim that is filed with respect to merchandise designated on a given entry summary line limits the type of claim (direct or substitution drawback, which ever was claimed first with respect any merchandise on that line) that may be filed with respect to any of the remaining merchandise designated on that same entry summary line). Multiple commenters urged CBP to reconsider this position and requested that CBP not implement the first filed rule.

Response: CBP disagrees with these comments. The first filed rule creates an essential bright line rule for simplification of drawback. It is necessary to limit a single import entry summary line to a single method of calculation of refund amounts. If invoice-based and per unit averaging calculations were to be used to calculate drawback for merchandise designated on the same import entry summary line, it is entirely possible that the last-in-line claimant would not be able to receive the full amount of the refund to which it would be entitled by law because the maximum aggregate amount of the refund available for merchandise designated on a single entry summary line cannot exceed 99% of the total duties, taxes, and/or fees paid on all of the merchandise on that line (however that total is distributed among the individual units of merchandise—whether by per unit averaging for substitution claims or by actual respective amounts for direct claims). For example, if a substitution claim were made with respect to low value merchandise designated on a line that contains both high value and low value goods, the high value goods would increase that line's overall per unit average value, thereby increasing the drawback amount paid on the substitution claim. However, if a direct identification claim were subsequently made with respect to the high value goods on that same entry summary line, the total amount of drawback remaining for that entry summary line may not be sufficient to pay the amount of drawback that would otherwise be associated with those high value goods. When an importer envisions that its merchandise might be the basis for multiple drawback claims calculated based upon different methods, it is a prudent business decision to split that merchandise among multiple entry summary lines to maximize drawback refund opportunities. In short, the first filed rule creates a predictable legal framework in which claimants and other parties to transactions can, with certainty, engage in import transactions as well as transfers of merchandise so as to ensure the full availability of the drawback refund that will be claimed. CBP notes that Section 906(g) provided CBP with the authority to determine how drawback refunds would be calculated, but there is no authority to grant less than what would properly be paid based upon a given method of calculation, or to exceed the aggregate amount of drawback available for merchandise on a given entry summary line, nor is there a legal basis to allow a claimant to modify the method of calculation to maximize its drawback refunds. Accordingly, to ensure that no inappropriate underpayments or overpayments are made, CBP had to build protections into the calculation methodologies.

Comment: A few commenters stated that CBP did not study and quantify the impact of the first filed rule on revenue or on drawback provided. Some commenters also asserted that the first filed rule would substantially reduce the amount of drawback available to trade members.

Response: CBP disagrees with the claims that CBP did not study and quantify the impact of the first filed rule. CBP analyzed and quantified the impact of the first filed rule under the ''Major Amendment 3—Generally require per-unit averaging calculation for substitution drawback'' section of the RIA accompanying the NPRM. CBP agrees that the first filed rule could result in reduced drawback for some claimants, including U.S. manufacturers and producers. While this amendment could result in lost drawback to trade members, trade members could mitigate, or even completely avoid, these losses through operational or business decisions such as, for example, breaking up, or requiring importers to break up, the various products included in a single entry into as many distinct entry summary lines as possible to ensure that the claim filing limitations do not arise.

Comment: One commenter stated that CBP did not satisfy any link between per unit averaging and the first filed rule.

Response: CBP disagrees with this commenter. The first filed rule is required to institute the per unit averaging amendments proposed in TFTEA. As previously stated, if invoice-based and per unit averaging calculations were to be used to calculate drawback for merchandise designated on the same import entry summary line, it is entirely possible that the last-in-line claimant would not be able to receive the full amount of the refund to which it would be entitled by law because the maximum amount of the aggregate refund available for merchandise designated on a single entry summary line cannot exceed 99 percent of the total duties, taxes, and/or fees paid on all of the merchandise on that line (however that total is distributed among the individual units of merchandise–whether by per unit averaging for substitution claims or by actual respective amounts for direct claims). The first filed rule limits a single import entry summary line to a single method of calculation of refund amounts to avoid such a discrepancy.

Comment: One commenter stated that CBP ''did not fulfill their obligations under TFTEA in examining the use of per-unit averaging.'' The commenter stated that the first filed rule should be withdrawn from the Modernized Drawback rule until CBP completes the study on per unit averaging mandated by Congress and issue a report on the results of that study. The commenter further stated that the RIA does not satisfy the expectations of the Congressional report because the per unit averaging drawback transfers cited

in the RIA are ''rough estimates'' and range from $23.6 million to $94.4 million over the period of analysis.

Response: CBP disagrees with this comment for several reasons. First, Congress did not specify any requirements for the way in which CBP must conduct the per unit averaging study. Congress only indicated that it expects CBP ''to study the potential impact of such line item averaging in drafting regulations.'' Second, CBP based the per unit averaging estimates in the RIA on the best data available. While CBP notes that they are rough estimates, the per unit averaging impacts cited were developed in consultation with various members of the trade community and subject matter experts. CBP chose to use a range of estimated transfer impacts given the unavailability of data, but this range purposely uses conservatively low and high endpoints. Finally, for further reference, CBP included an appendix in the NPRM's Regulatory Impact Analysis comparing the impacts of per unit averaging to the current invoice-based drawback calculation method.

Comment: One commenter requested that CBP allow a single line on an import entry summary to be designated as the basis for both direct identification claims (calculated using invoice values) and substitution claims (calculated using per unit averaging). The commenter claimed that CBP could impose a customized ''lesser of'' rule in situations where a line has already been claimed against using the per unit average calculation method for substitution claims, by comparing the per unit average amount and the invoice amount for the direct identification claim, with the lesser amount being the amount payable.

Response: CBP disagrees with this comment. There is no statutory authority under 19 U.S.C. 1313(l) to allow for the implementation of a customized ''lesser of'' rule that would effectively result in an award of less than the full 99% of the duties, taxes, and fees to which a claimant was entitled for its refund by application of the method of refund calculation required by CBP. Moreover, such a rule would prevent drawback claimants who received partial transfers of merchandise from an import entry line item from being in a position to calculate the amount of their drawback refunds, which they are required to do as part of their complete claim.

Comment: One commenter suggested adding an exception to the first filed rule for situations where merchandise on a line item is subject to duties and taxes based on a specific rate (as opposed to an *ad valorem* or compound duty rate) for sections 190.51(a)(3) and 190.51(a)(4).

Response: CBP disagrees with this comment. While customs duties assessed at a specific rate may not be affected by the type of calcuation method used (because they are based on quantity, not value), CBP notes that the same mechandise subject to customs duties at a specific rate may also be subject to other duties, taxes, and/or fees assessed at ad valorem rates. For consistency and ease of administration, CBP has determined that a transparent and brightline method of applying per unit averaging is the most reasonable approach.

Comment: In the NPRM, CBP proposed not to allow mixed claims (*i.e.,* TFTEA-Drawback substitution claims cannot designate imported merchandise if the associated entry summary was already designated on a drawback claim filed under the law in effect prior to February 24, 2016). However, these mixed claims were allowed to be submitted pursuant to the Interim Guidance (and were not rejected by the system) to enable the filing of TFTEA-Drawback claims as of February 24, 2018. Multiple commenters urged CBP to reconsider this prohibition on mixed claims. Some commenters suggested that CBP should clarify that the prohibition on mixed claims should only be for any merchandise on a particular entry summary line that has been designated as the basis of a claim under part 191 (as opposed to any merchandise covered by the same entry summary).

Response: CBP agrees with this comment. The issue of mixed claims exists because the drawback claims filed under the pre-TFTEA law did not identify the specific import entry line items upon which imported merchandise was entered. As a result, ACE cannot determine, in an automated manner, whether the imported merchandise for a particular drawback claim was previously entered on a specific line item. Because substitution drawback claims under TFTEA are calculated based on per unit averaging, they cannot designate merchandise that was previously designated on any drawback claim with an invoice-based calculation, which means all pre-TFTEA claims. Accordingly, if a substitution drawback claim is filed under TFTEA that designated imported merchandise on an entry summary that also contains merchandise that was previously designated as the basis for a pre-TFTEA drawback claim, it is necessary to determine whether the merchandise that was the basis of the pre-TFTEA claim is on the same entry line as the merchandise that is now being designated as the basis for a TFTEA substitution claim (because if so, then the same concerns that necessitate the first filed rule, discussed above, are also implicated in these circumstances). Since ACE cannot make this determination in an automated manner, it must be done manually. Nevertheless, CBP agrees that drawback should be allowed for a claimant who can provide evidence to prove that a TFTEA-Drawback substitution claim does not designate merchandise that is covered by an entry summary line that also contains merchandise that was previously claimed on a drawback claim under the pre-TFTEA drawback law. CBP has modified section 190.51(a)(4) accordingly. A related modification was made to 19 CFR 191.51(a)(3). CBP notes that mixed claims may be filed so long as supporting documentation, as defined in the regulations, is submitted to CBP within 30 days of the date of filing of the drawback claims. Also, in contrast to the Interim Guidance, in the final rule, there is no time limit on the filing of the mixed claims (although this transitional issue will no longer exist after 2024).

D. Specific Claims

1. Unused Merchandise

Comment: CBP proposed to not allow multiple substitutions in section 190.33(b)(1)(iii) in situations involving transferred merchandise and unused merchandise drawback claims. Multiple commenters requested that the prohibition on multiple substitutions be removed. One commenter claimed that section 190.33(b)(1)(iii) improperly continued to apply this prohibition on multiple substitutions contrary to TFTEA. Specifically, the commenter alleged that the definitions set forth by TFTEA in 19 U.S.C. 1313(z)(1) and (3) for the terms ''directly'' and ''indirectly'' preclude a prohibition on multiple substitutions for unused merchandise drawback claims.

Response: CBP disagrees with this recommendation. TFTEA did not modify the language in 19 U.S.C. 1313(j)(2) with respect to the prohibition on multiple substitutions. The party entitled to claim drawback must either be the importer of the imported merchandise, or must have received, directly or indirectly, from the importer, the imported merchandise, properly substituted merchandise, or some combination thereof. The proposed regulations continue to allow for multiple transfers of imported or substituted merchandise, but do not

permit multiple substitutions (*see* 19 U.S.C. 1313(j)(2)(C)(ii)). CBP notes that the definitions of directly and indirectly, as set forth by TFTEA in 19 U.S.C. 1313(z)(1) and (3), respectively, do not affect this interpretation. The definitions pertain to transfers of merchandise between importers, intermediate parties, and claimants, but they do not authorize multiple substitutions within the context of those transfers. Notwithstanding the lack of a statutory basis for multiple substitutions, as an administrative matter, they would be extremely burdensome to CBP and would pose a risk to the revenue given the numerous additional opportunities for impermissible substitutions that would exist, and which could only be monitored through manual verifications. Allowing multiple substitutions would also significantly impede CBP's ability to enforce the drawback laws by significantly complicating verifications of the correctness of substitutions, thereby jeopardizing the revenue of the United States.

Comment: CBP proposed regulations regarding which party may claim drawback in situations regarding unused merchandise drawback at section 190.33(b). One commenter noted instances of related but separate entities, which are precluded from claiming drawback under the proposed regulations (for example, an importer and a closely related exporter). The commenter provided hypothetical examples and requested that CBP amend section 190.33(b) to provide for related parties (as defined at 19 U.S.C. 1401a(g)) to the importer.

Response: CBP disagrees with the comment. There is a statutory requirement that the drawback claimant have had possession of the imported or substituted merchandise under 19 U.S.C. 1313(j)(2)(c)(ii), and CBP does not have the authority to permit substitution unused merchandise claims that do not comply with this requirement. A party that does not take possession of the imported or substituted merchandise is not eligible to claim drawback (through assignment of that right by the exporter or destroyer), regardless of the relationship as between the related party and the importer, any intermediate parties, or the exporter/destroyer.

Comment: In section 190.31(c), CBP proposed language stating that performing an operation or combination of operations on imported merchandise not amounting to a manufacture or production is not a ''use'' for purposes of 19 U.S.C. 1313(j), regarding unused merchandise drawback. One commenter requested that the phrase ''under the provisions of the manufacturing drawback law'' be removed as there is a reference to the specific statutory provision in the same sentence.

Response: CBP disagrees with this comment. The phrase ''under the provisions of the manufacturing drawback law'' will remain in section 190.31(c) because it is necessary to clarify that, under no circumstances, will a drawback claimant qualify for unused merchandise drawback if any operation or combination of operations rises to the level of a manufacture or production, regardless of whether those operations are listed in 19 U.S.C. 1313(j)(3). However, based on the review of this section, CBP has corrected in the final rule the citation in section 190.31(c) to properly reference 19 U.S.C. 1313(j)(3) (and not 19 U.S.C. 1313(j)(3)(A)).

Comment: CBP proposed section 190.183, regarding Foreign Trade Zones (FTZ) and articles manufactured or produced in the United States. One commenter suggested that section 190.183(a) be modified to also include references to unused merchandise drawback. The commenter also requested that section 190.183(b) should include a reference to the electronic equivalent of the CBP Form 214, Application for Foreign-Trade Zone Admission and/or Status Designation.

Response: CBP disagrees with the commenter. Section 190.183 is limited to a description of eligibility for FTZ merchandise for manufacturing drawback claims and so CBP declines to modify section 190.183(a) to include a reference to unused merchandise drawback claims. However, CBP notes that eligibility for FTZ merchandise for unused merchandise drawback claims is separately provided for in section 190.185. CBP also declines to modify section 190.183(b) to include a reference to the electronic equivalent of the CBP Form 214, as such a reference is unnecessary and implicitly accepted by CBP by virtue of reference to the actual form itself.

2. Rejected Merchandise

CBP proposed a new regulation in section 190.45 regarding the special rule for substitution for returned retail merchandise that is a subset of rejected merchandise provided for in 19 U.S.C. 1313(c). Several comments were received on this matter and are addressed below.

Comment: One commenter requested that CBP modify section 190.45 by adding a new paragraph regarding returned retail merchandise and the lack of use.

Response: CBP disagrees with this comment. The language in 19 U.S.C. 1313(c)(1)(C)(ii) is sufficiently clear as it provides for drawback on merchandise ultimately sold at retail by the importer, or the person who received the merchandise from the importer, and for any reason returned to and accepted by the importer, or the person who received the merchandise from the importer. This specific language is already provided for in section 190.41, which is the subpart of part 190 that pertains to rejected merchandise drawback claims. Accordingly, CBP will not be amending proposed section 190.45 in response to this comment.

Comment: Regarding eligibility requirements for returned retail merchandise in section 190.45(b), one commenter stated that the section is vague and subject to different interpretations based on the CBP personnel and office reviewing the claim. In the view of this commenter, the section should be modified/clarified to include a certification of non-use by the claimant and the returned merchandise subject to the written return policy of the claimant or person who received the imported merchandise from the claimant. These certifications of return could then be submitted to CBP upon request by CBP. The return policy and records of refund supporting the return could be required as part of the recordkeeping requirements for drawback payment under this section.

Response: Pursuant to 19 U.S.C. 1313(c)(1)(C)(ii), returned retail merchandise is merchandise that is ultimately sold at retail by the importer, or the person who received the merchandise from the importer, and for any reason returned to and accepted by the importer, or the person who received the merchandise from the importer. A certification of non-use is not required under the statute and CBP disagrees with the commenter's suggestion to impose such an additional burden on drawback claimants.

Comment: One commenter, discussing a specific ruling regarding retail operations and what constitutes use of merchandise, stated that there are significant barriers to retailers participating in drawback.

Response: CBP understands that certain inventory practices may prevent drawback claimants from maximizing drawback opportunities under both the unused merchandise drawback provision in 19 U.S.C. 1313(j)(1) and (2) along with the returned retail merchandise provision in 19 U.S.C. 1313(c). However, these statutory bases for drawback are subject to different legal requirements. The commenter

raised concerns over a particular ruling, HQ H263493, which addressed the scope of ''use,'' and criticized its application more generally to retailers. This is outside the scope of the final rule, but the commenter's concerns may be addressed through the request of a ruling pursuant to 19 CFR part 177.

3. Manufacturing Rulings

CBP proposed certain requirements in the regulations relating to manufacturing drawback in subpart B of part 190. Appendix A to Part 190 contains general manufacturing drawback rulings, under which manufacturers may operate, and Appendix B to Part 190 contains sample formats for applications for specific manufacturing drawback rulings, which provide templates for applicants. CBP received multiple manufacturing drawback-related comments.

Comment: CBP proposed regulations for specific manufacturing drawback rulings, including procedures for limited modifications to specific manufacturing rulings granted under part 191 in section 190.8(g)(2)(iv). One commenter stated that this section is not required in general due to the statutory clarity of TFTEA. Multiple commenters stated the regulation should include a requirement of prompt review and approval by CBP. Related, some comments were received indicating that CBP should provide adequate personnel and resources to timely approve the limited modifications, claiming that the current timeframe for review and approval takes close to two years for approval.

Response: CBP disagrees with the comment. The statutory clarity, alone, is not sufficient to be considered a deemed modification for all manufacturing rulings issued under part 191. In fact, those manufacturing rulings are limited, by their own terms, only to drawback claims filed under part 191. Unless a limited modification is filed, in accordance with the regulations, to modify the terms to comply with part 190, a manufacturing ruling issued under part 191 will become moot as of February 24, 2019, when TFTEA-Drawback (under part 190) becomes the sole statutory authority under which drawback claims may be approved. CBP will manage its workload with respect to the processing of drawback ruling applications and limited modifications thereto based on the available resources, but notes that most approvals do not take two years.

Comment: One commenter noted that the Interim Guidance referenced a ''representative bill of materials'' and requested that section 190.8(g)(2)(iv), which requires a supplemental application for a limited modification to file a claim under part 190 based on a ruling approved under part 191, be amended in paragraph (B) to also include this reference.

Response: CBP disagrees with this comment. An actual bill of materials must be provided as part of the application for a limited modification to bring a manufacturing ruling issued under 19 CFR part 190 into compliance with TFTEA. The use of the description for a representative bill of materials in the Interim Guidance was intended to further clarify that each drawback claim will have an actual bill of materials associated with it.

Comment: CBP proposed regulations that set out the procedures on how the public submits general manufacturing drawback rulings in section 190.7. Regarding section 190.7(b)(2), one commenter stated that the requirements are reasonable for new claimants only. One commenter noted that CBP did not provide a specific timeframe in proposed section 190.7(c) regarding when it would acknowledge receipt of letters of intent to operate under a general manufacturing ruling promptly. Some commenters requested that CBP respond within a specified timeframe, suggesting a 90-day timeframe be added to proposed section 190.7(c), noting that failing to include a timeframe could result in delays.

Response: CBP appreciates these comments but disagrees that changes are needed to the proposed regulations involved. The requirements in part 190 will be applied to all drawback claims filed for TFTEA-Drawback, both during the transition year and, exclusively, on or after February 24, 2019. Drawback claimants, for the most part, receive acknowledgment of letters of intent to operate under general manufacturing rulings well within 90 days. However, as delays may occur, retaining flexibility is essential. Further, as provided for in proposed section 190.7(b)(2), claimants may file claims at the same time as submitting the letter of intent to operate, and therefore filing timeframes will not be jeopardized.

Comment: CBP proposed a process on how CBP will review applications for specific manufacturing drawback rulings promptly and laid out the steps CBP would take for approvals and disapprovals in proposed section 190.8(e), without providing a specific timeframe as to when CBP would make its decision. Some commenters requested that CBP respond within a specified timeframe, suggesting a 90-day timeframe be added to section 190.8(e), noting that failing to include a timeframe could result in delays.

Response: CBP disagrees with this comment. Drawback claimants, for the most part, receive appropriately prompt responses regarding the approval or disapproval of specific manufacturing drawback applications (appropriate to the level of complexity and the thoroughness of the application). However, in many cases, the applications are incomplete when first submitted and require a significant amount of cooperative discussions between CBP and the applicant just to enable CBP to make a proper determination. If the regulations were to require a response within 90 days (or some other similar timeframe), many applications would simply be denied. As the process is now, the applicants are afforded the opportunity to correct and augment the application without an artificial deadline looming.

Comment: CBP proposed Appendix A to Part 190, which, like Appendix A in current part 191, sets forth the general manufacturing drawback rulings along with instructions for how to submit a letter of notification to operate under a general manufacturing drawback ruling. Multiple comments were received requesting that ''III. General Manufacturing Drawback Ruling Under 19 U.S.C. 1313(a) or 1313(b) for Agents (T.D. 81–181)'' be removed from Appendix A because transfers of merchandise are now documented by recordkeeping, and a manufacturing ruling is not something kept in the normal course of business.

Response: CBP disagrees with this commenter and the general ruling will not be removed from Appendix A to Part 190. Agents operating under a principal's general manufacturing ruling(s) must continue to follow the instructions outlined in T.D. 81–181. Any party that seeks to perform manufacturing or production for the ultimate purpose of making a drawback claim must be compliant with the manufacturing drawback laws, as established under this particular T.D. Records kept in the normal course of business, alone, do not demonstrate such compliance, and each transfer of imported merchandise or drawback products for manufacture or production must be supported by a manufacturing ruling, even if the party performing the operations is an agent of a principal, who is separately authorized to perform a particular manufacturing or production operation.

Comment: CBP proposed certain requirements in the regulations relating to general and specific manufacturing rulings. One commenter stated that,

beyond some very basic requirements from the statute, the requirements related to providing information to CBP could be replaced with a certification of manufacturing (and a promise to adhere to all regulatory requirements). Multiple commenters suggested edits to the appendices with a few recommending removing the appendices to part 190 altogether.

Response: Except for the changes required under TFTEA, most of the underlying processes involved in manufacturing drawback claims, including manufacturing rulings, remain unchanged. CBP maintains the authority to fully vet, prior to submission, the basis for any manufacturing claim, through the well-established ruling process, in order to ensure compliance and protect the revenue. Historically, the requirement for manufacturing drawback rulings dates back several decades, to when these rulings were considered to be contracts. In practice, CBP provided sample proposal contracts upon request, to help facilitate the mandatory submission of information regarding a manufacturing process. To reduce the burden on the trade for the development of such contracts specific to their manufacturing and production operations, in 1988, CBP published extensive guidance on how to submit these contracts, converting them to rulings, as provided for in the appendices to part 191. The continuation of the requirement for the submission of these applications, under the appendices to part 190, places no further burden on the trade, outside of the changes required by TFTEA. Moreover, these rulings facilitate the vetting of the manufacturing or production operations and the merchandise to be imported/substituted and the exported article. Any proprietary data provided to support these requirements is maintained by CBP and is not released to the public. A mere certification regarding these requirements, to be supported by a bill of materials/formula, as suggested by the commenter, does not enable CBP to fully assess whether a manufacture or production has taken place, which is integral to a proper manufacturing drawback claim.

Comment: One commenter stated that a new general ruling for manufacturing operations under 19 U.S.C. 1313(b) should be developed, where the claimant agrees to follow the substitution requirements identified in the statute. This commenter stated that there is no longer a need for specific ruling applications, review, or approval because the statute clearly defines the substitution criteria for TFTEA-Drawback claims. The commenter stated that a simple certification letter would insure compliance with the statute given the statutory requirements for substitution at the 8-digit HTSUS level. The commenter stated that implementation of a general manufacturing ruling would result in effective and efficient implementation of a manufacturing substitution drawback program under 19 U.S.C. 1313(b) given the limited resources the commenter stated that CBP has to review specific manufacturing drawback rulings.

Response: CBP disagrees with the request to create a new general manufacturing ruling based on commercial interchangeability requirements, which do not apply under TFTEA-Drawback. CBP notes more generally that the specific manufacturing rulings required in Appendix B to Part 190 require more extensive review than the general manufacturing rulings, so that CBP can ensure compliance with the applicable requirements.

Comment: CBP proposed to require the description of the merchandise and articles and the applicable HTSUS number in section 190.7(b)(3)(v). One commenter noted that in complex manufacturing situations, capturing this data will be difficult as components to be claimed could change frequently and stated that this could result in the need for frequent modification letters. This commenter also requested that the reference to the requirement that the IRS number be provided as part of the application for a general manufacturing drawback ruling be changed to a requirement for the Importer of Record number, in section 190.7(b)(3)(viii).

Response: CBP agrees, in part, with this comment. The manufacturer or producer who operates under a drawback ruling is responsible for the accuracy of the bill of materials data. Because the HTSUS classification constitutes the basis for substitution, this data must necessarily be identified for imported merchandise that will be designated for substitution drawback claims. However, claimants who do not wish to identify HTSUS subheadings for imported components used in manufacture or production for direct identification claims will not be required to do so as the merchandise will be directly traceable from importation through exportation or destruction. Accordingly, section 190.7(b)(3)(v) is revised to indicate that the applicable 8-digit HTSUS subheading number(s) must only be provided for imported merchandise that will be designated for substitution manufacturing drawback claims. However, CBP declines to revise section 190.7(b)(3)(viii) because the requirement for the IRS number remains relevant as not all applicants for general manufacturing ruling are importers. Moreover, the IRS number also effectively delineates between entities with separate legal status, which can be significant (*e.g.,* in cases where successorship is an issue).

Comment: CBP proposed to require the HTSUS number and quantity of merchandise in Appendix A to Part 190. One commenter suggested these requirements be removed and replaced with a description of the articles, unless specifically described in the general manufacturing ruling.

Response: CBP disagrees with this suggestion. A producer or manufacturer who seeks to qualify its imported merchandise for drawback should know the classification under the HTSUS. Given that this information is critical to confirm the nature of the merchandise and the propriety of the substitution, and it should be known to the drawback claimant, CBP maintains that its being provided as part of the general ruling request's merchandise description is important to ensure the enforcement of the ruling in a verification context.

Comment: CBP proposed section 190.7, providing information on general manufacturing drawback rulings. One commenter suggested that section 190.7(a) be edited to state that unincorporated business units with separate IOR numbers from a parent corporation can operate under a letter of notification submitted by the parent corporation.

Response: CBP disagrees with the comment. Section 190.7(a) specifically requires that a separately incorporated subsidiary must submit its own letter of notification and is precluded from operating under a letter submitted by the parent. This language specifically does not apply to an unincorporated subsidiary and no further clarification is needed.

Comment: CBP proposed to allow for the designation of any eligible imported merchandise or drawback product (which was used in manufacture or production) in substitution manufacturing drawback claims under 19 U.S.C. 1313(b). One commenter noted that some drawback products received through transfer are not always subject to further operations and noted that there is no provision that allows for a claimant to designate or substitute an export back to a drawback product. This commenter stated that drawback products are not unused merchandise

and that the ''other; other'' HTSUS limitation for residual (or basket) provisions, as provided for in 19 U.S.C. 1313(j)(5), did not apply and requested an allowance for substitution designation of exported articles and the drawback products received via transfer. This commenter also stated that the ''lesser of'' rule should not apply in this scenario.

Response: CBP disagrees with this comment. Substitution of finished manufactured articles is not authorized under 19 U.S.C. 1313(a) and (b). Only imported merchandise may be designated as the basis for a manufacturing drawback claim under 19 U.S.C. 1313(b). Intermediate drawback products may exist, but the imported merchandise and any other merchandise substituted for it, must be traceable through the exportation or destruction. There is no statutory authority for the substitution of the exported or destroyed merchandise, nor is there any statutory authority to circumvent the application of the ''lesser of'' rule for substitution manufacturing drawback claims, absent a statutory exemption.

4. Packaging Materials

Comment: Regarding section 190.13, one commenter requested revisions to better align with the language from 19 U.S.C. 1313(q) to reflect that packaging is drawback-eligible under 19 U.S.C. 1313(q), regardless of whether drawback is (or is not) claimed on its contents so long as the packaging otherwise qualifies under the other applicable drawback provisions.

Response: CBP agrees with the comment and section 190.13 is modified accordingly in this final rule.

5. North American Free Trade Agreement

Comment: Regarding same condition and NAFTA, one commenter requested that CBP amend 19 CFR 181.45(b)(1) to include the phrase ''including, but not limited to'' in order to provide flexibility regarding which operations could be undergone without materially altering the characteristic of the good and still be considered to be in the same condition for purposes of drawback under NAFTA.

Response: CBP does not agree with the comment. Unused merchandise drawback claims for NAFTA drawback, which applies to goods exported to Canada and Mexico, is more limited than under TFTEA-Drawback. Only direct identification claims are permitted pursuant to 19 U.S.C. 1313(j)(1) and, in addition, the goods must be in the same condition. The term same condition is more restrictive than the term unused, as it is defined in 19 U.S.C. 1313(j)(3). The term same condition is specifically defined in 19 CFR 181.45(b)(1) to be restricted to certain operations in order to comply with the limitations set forth in section 203 of the NAFTA. The commenter did not identify any specific operations that it believes to be improperly excluded under the current regulatory language and, accordingly, CBP declines to modify the language of the regulation to provide for a more expansive interpretation of same condition. However, in order to further clarify within the regulations, CBP is adding a new definition of *unused merchandise* to section 190.2, which incorporates that statutory limitations on the allowable operations for unused merchandise. This new definition will also further distinguish between unused merchandise within the meaning of 19 U.S.C. 1313(j), as implemented in part 190, and the more stringent same condition standard applicable to NAFTA claims under this provision pursuant to 19 CFR 184.45(b)(1).

Comment: Regarding inventory methods for commingled goods and NAFTA, 19 CFR 181.45(b)(2)(i) provides for the use of approved inventory methods as set forth in the appendix to part 181. One commenter requested that CBP change the reference from the appendix in part 181 to section 190.14, which provides for the identification of merchandise by accounting method for direct identification drawback claims. The commenter claimed that section 190.14 should strictly control for purposes of inventory accounting for commingled fungible goods to be identified for NAFTA same condition drawback claims filed under 19 U.S.C. 1313(j)(1).

Response: CBP does not agree with the comment. The provision in 19 CFR 181.45(b)(i), which provides for accounting for fungible goods commingled in inventory, applies to unused merchandise exported to Canada or Mexico in the same condition as imported and for which drawback is claimed under 19 U.S.C 1313(j)(1). The provision distinguishes between inventories limited to only non-originating merchandise and inventories that are not limited to only non-originating merchandise. For the former, in 19 CFR 181.45(b)(2)(i)(B), CBP requires the use of section 190.14 for the identification of the imported merchandise. However, for the latter, in 19 CFR 181.45(b)(2)(i)(A), CBP requires the use of the accounting methods in the appendix to part 181. The accounting methods in section 190.14, and the appendix in part 181 are not the same, and CBP intentionally distinguished the circumstances in which each would be allowed for purposes of the identification of merchandise for NAFTA same condition drawback claims under 19 U.S.C. 1313(j)(1). The reason that the accounting methods in section 190.14 may not be used for inventories that are not limited to only non-originating merchandise, in 19 CFR 181.45(b)(2)(i)(A), is because the outcome would be so complex—in terms of the tracing of merchandise—that verification by CBP would be an extreme administrative burden. As a result, CBP will not adopt the commenter's suggestion.

E. Bonding

1. Bond Type

Comment: CBP proposed in section 190.92(e)(3) to require a single transaction bond for claims involving accelerated payment filed before CBP provided written notification of approval. Multiple comments were received stating that this requirement (for a single transaction bond) was too restrictive, and suggested that the regulation provide flexibility of permitting claims under a continuous bond if there was sufficient balance for the amount of accelerated payment claimed.

Response: CBP agrees with the comments and section 190.92(e)(3) is modified in this final rule by removing the language limiting the bonding type to single transaction bonds, which will allow for an active continuous bond or a single transaction bond (with sufficient balance in place) to cover the amount of accelerated drawback to be paid on the claim.

Comment: One commenter stated that CBP is not carrying forward the existing drawback regulation in 19 CFR 191.73, which provides for requirements of the Export Summary Procedure (ESP), to proposed part 190. Instead, CBP will ultimately approve an electronic export system of the U.S. Government for use in verifying actual proof of exportation. The text in 19 CFR 113.65(a) creates obligations triggered by the use of the ESP and the commenter recommended that this paragraph be amended in order to establish a sunset date of February 23, 2019.

Response: CBP disagrees with the comment. ESP is only required in 19 CFR part 191, and so the terms of this agreement do not apply to claims filed under part 190 with a bond posted for accelerated payment. Accordingly, the de facto date is when part 191 is no longer allowed for drawback claims,

which is as of February 24, 2019, as provided for in 19 CFR 191.0.

2. Joint and Several Liability

Comment: Several commenters questioned whether CBP intends to pursue importers to recoup payment of erroneous drawback claims.

Response: Any person making a drawback claim is liable for the claim. *See* TFTEA 906(f)(1). In addition, TFTEA expressly states that importers are also liable for any drawback claim made by another person with respect to merchandise imported by the importer. TFTEA 906(f)(2) (amending 19 U.S.C. 1313(k)). Pursuant to TFTEA, CBP reserves the right to recoup from the importer payment of erroneous drawback claims based on merchandise imported by the importer. The importer and the claimant are ''jointly and severally'' liable pursuant to section 906(f)(3). Further, 19 U.S.C. 1593a, the drawback claim penalty statute, is not limited to the actions of the claimant. 19 U.S.C. 1593a provides that no person, by fraud or negligence, may seek, induce or affect, or attempt to seek, induce, or affect, the payment or credit to that person or others of any drawback claim by means of any document, written or oral statement, or electronically transmitted data or information, or act which is material and false, or any omission which is material. 19 U.S.C. 1593a also covers aiding or abetting any other person to violate the drawback statute. Section 190.62 reiterates the criminal and civil penalties related to drawback and section 190.63 incorporates the joint and several liability into the new drawback regulatory regime.

Comment: CBP proposed an additional import bond condition contained in section 113.62(a)(4), establishing that, with respect to merchandise imported by the principal, the principal and surety are liable to pay erroneous drawback payments made to a drawback claimant who is not the principal. Several commenters stated that such an import bond requirement was misplaced. The commenters noted that drawback is not part of the import transaction and therefore it is inappropriate for a bond condition to require the importer and its surety to maintain liability for the actions of a future assignee, who is unknown at the time the import bond is written. Some commenters suggested that any importer drawback bond requirement should be separate from the import bond conditions and pointed to amending section 113.65, which covers bonds for repayment of erroneous drawback payments.

Response: After careful consideration of the comments, CBP is withdrawing proposed section 113.62(a)(4). CBP agrees that there are several ways to address the importer's liability to pay erroneous drawback payments claimed for merchandise imported by the importer. CBP may take appropriate action in the future to require, for completion of a drawback claim, a bond from an importer whose imported merchandise is subject of a drawback claim. CBP also notes that, currently, only accelerated payment claims require a bond, as provided for in sections 190.51 (Completion of Drawback Claims) and 190.92 (Accelerated Payment). CBP may propose, in the future, that all drawback claims be bonded.

Comment: CBP also proposed an additional import bond condition regarding claims involving internal revenue tax imposed under the Internal Revenue Code of 1986 (IRC), as amended, in proposed section 113.62(m). Several commenters expressed concerns regarding this additional bond condition. One commenter pointed out that the provision would extend to all provisions of the IRC as drafted, not just the excise taxes contemplated by the NPRM. Other commenters stated that a bond covenant not to file, or transfer the right to file, a claim, puts the importer in the untenable position of having to violate a bond condition in order to file a protective claim so as to thereafter be able to contest in court the application of the excise tax refund language in this final rule. Some commenters also discussed the proposed changes to section 113.62 extending the liquidated damages to a violation of proposed section 113.62(m) and asserted that this proposed change creates a punitive, not compensatory situation, with the liquidated damages likely exceeding the maximum drawback penalties.

Response: After careful consideration of the comments, CBP is withdrawing proposed section 113.62(m) and the conforming changes to section 113.62. As stated in the response to the comment on proposed section 113.62(a)(4) above, CBP may in the future take action to require a bond covering an importer's joint and several liability for drawback claims based on the importer's imported merchandise.

F. Federal Excise Tax and Substitution Drawback Claims

CBP proposed to add text clarifying the prohibition on double drawback: Drawback of certain excise taxes pursuant to 19 U.S.C. 1313 is allowed only to the extent that tax has been paid and not refunded or remitted on the export or destruction that is the basis for the drawback claim.

1. Double Drawback Generally

Comment: One commenter stated that essentially all domestically produced wine would no longer be available for substitution unused merchandise drawback under the NPRM, even though Congress has supported substitution and enacted special rules for wine producers providing drawback based on color and value. Several other commenters expressed opposition to limits on duty drawback or substitution drawback.

Response: CBP disagrees that the rule would prohibit export of domestically produced wine from being the basis for substitution drawback. Many of these commenters appear to have conflated double drawback of excise taxes with drawback of duties, or substitution drawback generally. The statute does not prevent substitution drawback, but it does prevent claiming two drawbacks of excise tax, one on the export and one on the import, on the basis of a single export. The proposed rule, as required by statute, would continue to allow for the drawback of duties and fees on imported products, and it would also allow drawback of excise tax on imported product, when that claim is based on an exported product for which the tax has been paid and not refunded.

CBP agrees that Congress has supported substitution drawback. In fact, the rule and statute expand the availability of substitution for drawback claims. Currently, substitution unused merchandise drawback claims for wine are permitted within the same color where price variation does not exceed 50 percent. This practice continues under TFTEA, which also allows for substitution unused merchandise drawback claims when the imported and substituted merchandise are classifiable under the same 8-digit (or, in some cases, 10-digit) HTSUS subheading number, as provided for in 19 U.S.C. 1313(j)(2) and (5).

The prohibition on double drawback of excise taxes does not preclude drawback of excise tax on exported goods when that export is not the basis for a second claim of drawback of excise taxes on an import. The excise tax regime already encourages U.S. exports of goods subject to excise taxes by virtue of Internal Revenue Code provisions that refund or remit excise tax on goods that are exported and not consumed domestically.

Comment: One commenter stated that drawback of excise taxes based on domestically produced exports on which no tax has been paid is no more

a double drawback than would be a producer exporting its product and claiming drawback against duty paid for imported products. Other commenters similarly stated that there is no distinction between drawing back excise tax when no tax has been paid on the export and the drawback of duties.

Response: CBP disagrees with these commenters. Not all goods are subject to excise taxes. Generally, under the excise tax regime, goods consumed domestically are taxed, regardless whether they are of foreign or domestic origin. The import duty regime levies tariffs only on imported products, an important difference. When a domestic product is exported, no duty is refunded, remitted, or otherwise extinguished because, unlike most excise taxes, no duty is imposed on domestically made products. Because no import duty is imposed on the domestic substituted product, and thus no duty liability is remitted upon its export, there is no double drawback of duties in the commenter's example. When there is, however, an excise tax liability associated with the substituted domestic product that has been either refunded or remitted upon export, and that export is also used as the basis for an additional refund or remission of tax on an import, then there are two drawbacks—a double drawback that 19 U.S.C. 1313(v) prohibits.

Comment: One commenter stated that the NPRM's assertion, that double drawback results in imported product being introduced into commerce with no net payment of excise tax, is false because the import is tax-paid and consumed before drawback has been claimed. The comment states that the reality of claiming drawback is that designated imported merchandise for drawback generally comes from the oldest consumption entry or warehouse withdrawal under the retroactive drawback time period, which can be up to five years prior to exportation of substituted merchandise.

Response: CBP disagrees that the drawback of taxes after their payment, even if this follows the sale of the imported merchandise in the United States, materially changes the NPRM's explanation or analysis, even if an importer were to receive the payment five years after importation. To reflect the actual incidence of the tax, one must look at the transaction as a whole—the import, export, and corresponding drawbacks. Although the excise taxes on the imports are paid initially at entry in this example, the eventual drawback of 99 percent of these taxes indeed results in the imported product being introduced into commerce and consumed domestically with a net tax of only one percent of the excise tax that is applied to domestic goods. In the example provided, there would be no excise tax paid on the substituted merchandise that is exported, or if there was such a tax paid, it could be refunded. Such provisions in the tax code continue to encourage exports.

Comment: Several commenters stated that 19 U.S.C. 1313(v) operates only to prevent multiple drawback claims filed under Title 19 or with CBP based on the same exported merchandise. The commenters stated that the language of 19 U.S.C. 1313 makes it clear that it has no relationship to drawback under the Internal Revenue Code and that section 1313(v)'s ''claim for drawback'' language has the same meaning as the term ''drawback claim'', defined in section 190.2 and 19 CFR 191.2(j), which relate to an entry filed with CBP.

Response: CBP disagrees that the scope of 19 U.S.C. 1313(v) is so limited as to prevent only multiple drawbacks processed by CBP based on the same exported or destroyed merchandise. Congress adopted no such limitation on the language of section 1313(v). The language of section 1313(v) is broad by its terms, stating that merchandise used to satisfy ''any claim for drawback'' cannot be the basis for ''any other claim for drawback.'' This expansive language contrasts with the language used elsewhere in section 1313 to refer to particular kinds of drawback. *See* 19 U.S.C. 1313(j), (k)(1), and (1)(2)(A), (B), and (C) (referring to ''drawback *under this section*'') (emphasis added); 1313(n)(2) (referring to ''NAFTA drawback''); and 1313(n)(4) (referring to ''Chile FTA drawback''). CBP further disagrees that the regulatory definition of ''drawback claim'' used by CBP to administer its drawback payments under the customs law forecloses a broader definition of ''claim for drawback'' for the purpose of 19 U.S.C. 1313(v). While the CBP regulatory definition was focused only on the actual payments CBP makes pursuant to the customs law, the language of section 1313(v) is not so narrow. Further, a request for a payment is satisfied by a payment, not by exporting or destroying merchandise. If Congress had intended ''any claim for drawback'' to mean only the specific written request for drawback payment, it is unlikely that it would have referred to ''[m]erchandise that is exported or destroyed to satisfy any claim for drawback.'' Instead, CBP believes that Congress used ''any claim for drawback'' more broadly, in the sense of a legal claim or entitlement, the elements of which may be satisfied (in part) by the exportation or destruction of merchandise. To clarify its scope, and its use in these two different contexts, CBP is amending its definition of ''drawback claim'' in 19 CFR 190.2.

Comment: One commenter claimed that there is a long-established precedent for paying double drawback of excise taxes on wine.

Response: A CBP field office first paid double drawback of excise tax on wine claims inadvertently and these payments have continued since that time. This grant of double drawback was not effectuated or ratified by any CBP rule, guidance document, or other action of general applicability, and CBP is unaware of any approval of this administrative treatment beyond the responsible field office. Customs law generally requires a notice and comment process to change a practice that has become an established ''treatment previously accorded by the Customs Service,'' 19 U.S.C. 1625(c), and many private parties may regard their receipt of double drawback as an established treatment. However, CBP is not aware of granting double drawback claims for commodities other than wine. The proposed drawback regulations clarify that the prohibition on double drawback applies to wine just as it applies to other commodities subject to excise taxes. For all such commodities, drawback claims for excise taxes on imports are only allowed to the extent that tax has been paid and not refunded on the export or destruction that is the basis for the drawback claim.

CBP believes the best reading of 19 U.S.C. 1313(v) precludes such a double drawback, but to the extent section 1313(v) may be considered ambiguous, CBP has adopted a reasonable construction of the prohibition on double drawback that appropriately advances the policies of the excise tax regime. That regime provides, on net, for the collection of an excise tax on goods that are consumed domestically. It would undermine the policy of this regime if certain imported goods could be consumed domestically free of excise tax, due to double drawback.

Comment: Several commenters asserted that ''drawback'' does not include an exemption from tax, and specifically that the statutory schemes allowing the export of alcohol beverages from bond without payment of tax cannot be a drawback because no tax obligation exists. They state there is neither a refund nor a remission. One commenter asserted that exporting from a TTB-bonded facility is a tax exemption and not a drawback or claim for drawback. The commenter stated that there is no taxable event because

that tax is never assessed on alcohol beverage exports.

Response: CBP disagrees that the export of alcohol beverages without payment of excise taxes is not remission of tax and therefore not a drawback for the purposes of 19 U.S.C. 1313(v). Alcohol taxes on domestic product are imposed, by operation of law, before or upon removal from bond. Those products may be allowed to be removed ''without payment of tax,'' but that is not synonymous with ''free of tax.'' *See, e.g.,* 26 U.S.C. 5214. The tax liability is extinguished only upon export. *See, e.g.,* 26 U.S.C. 5062(b). Drawback encompasses both refunds and remission of unpaid tax liabilities that were determined or otherwise imposed by Federal law. The understanding that drawback includes export from a TTB-bonded facility is consistent with Congress's use of the term ''drawback'' in 19 U.S.C. 1313(d), which refers to export of domestic products on which tax has been paid *or determined* (*i.e.,* not yet paid), and in 26 U.S.C. 5062(b), which describes the extinguishment of a product's tax liability upon export as a ''drawback.'' Moreover, it would be anomalous for 19 U.S.C. 1313(v) to prevent revenue loss only when it arose in the form of a refund of amounts already paid and not because it arose from withdrawal without payment of tax, where the unpaid tax liability is remitted.

Comment: One commenter asserted that the NPRM interprets the statutory language too broadly in defining drawback, stating that the NPRM attempts to redefine the terms ''drawback'' and ''claim for drawback'' as used in 19 U.S.C. 1313(v) to include any tax-free exportation of domestically produced goods to which an excise tax might otherwise apply and that this is inconsistent with statutory language and congressional intent. The commenter stated that only three of at least seven different Internal Revenue Code provisions governing the excise tax status of exported beer, wine, spirits, tobacco, and petroleum products use the term drawback and that, in these cases, they specifically refer to refund of a tax already paid or extinguishment of a previously determined tax liability. The commenter explained that the statutory framework, including the ''parallel statutory schemes'' for beer, wine, and spirits, notwithstanding bond requirements, never requires determination of the tax on these products bound for export and that the possibility that a tax liability would be incurred if the goods were not exported is not sufficient to create an obligation that requires remission.

Response: CBP recognizes that not every IRC provision concerning remission of excise tax liability expressly uses the term drawback, but disagrees that the rule's interpretation of the prohibition in 19 U.S.C. 1313(v) is too expansive. Rather, for reasons described in the NPRM, 19 U.S.C. 1313(v)'s prohibition on multiple drawback claims is best read to mean that excise taxes may not effectively be drawn back twice on the basis of a single export—once for the export of the substituted merchandise and then again with respect to the imported merchandise for which the exported merchandise is being substituted. This is the case even if the excise tax statute does not use the term ''drawback'' to describe refund or remission, because such statutes create the same economic effect and operate, as a commenter explained, parallel to statutes that do use the term. Section 1313(v) broadly refers to ''any claim for drawback,'' and Congress's inconsistent use of the term ''drawback'' in the Internal Revenue Code does not preclude CBP from construing that term—particularly its use in combination with the term ''any''—to encompass transactions that are identical in economic substance to transactions that Congress has expressly label a ''drawback.'' *Compare* 26 U.S.C. 5062(b) (which uses the term drawback to describe remission upon export of a tax liability determined but not yet paid for wine and distilled spirits) *with* 26 U.S.C. 5704(b), 27 CFR 44.61, 44.66 (the similar process for tobacco taxes that also provides for remission of a tax liability upon export but does not use the term drawback) *and with* 26 U.S.C. 5051(a)(1)(A), 5053(a), 5054(a)(1), 27 CFR 25.93, 27 CFR Subpart G (the similar process for beer taxes that provides for remission of tax liability imposed on removal upon export). As explained previously, the language in 19 U.S.C. 1313(v) is broad and does not suggest an intent for ''any claim for drawback'' to be interpreted narrowly.

Comment: One commenter stated that, contrary to the NPRM text, federal excise taxes are not imposed on all tobacco products and cigarette papers and tubes manufactured in or imported into the United States. The commenter reproduced 26 U.S.C. 5703 and 5704 and stated that section 5704 provides for exemption from excise taxes for tobacco products removed in bond from domestic factories and for products exported. The commenter stated that an exemption from excise tax is not an extinguishment of liability from tax but rather there is no excise tax imposed on tobacco products removed in bond from domestic factories and for products exported.

Response: IRC section 5701 (26 U.S.C. 5701) imposes an excise tax on tobacco products manufactured in or imported into the United States. IRC section 5704(b) (26 U.S.C. 5704(b)) provides permission to remove from bond without payment of tax in accordance with such regulations and under such bonds as the Secretary shall prescribe. This statute does not provide permission to remove free of tax. The tax liability of the product to be exported is only extinguished upon proof of export. *See* 27 CFR 44.66. Consequently, CBP disagrees with the argument that this is not a drawback for purposes of 19 U.S.C. 1313(v).

Comment: Several commenters refer to the TTB's use of ''drawback'' in a more narrow way than in the NPRM. These commenters distinguish TTB's drawback process on TTB's Forms 5130.6, 5120.24, and 5110.30 from withdrawal for exportation on TTB's Forms F 5100.11 and 5130.12. One commenter also cites an online TTB forms tutorial glossary that defines drawback as a return or rebate of excise taxes previously paid.

Response: CBP disagrees that TTB's use of the term ''drawback'' in different, narrower ways in some contexts precludes the interpretation of 19 U.S.C. 1313(v) reflected in the rule. TTB does not interpret or administer 19 U.S.C. 1313(v) or other customs laws, and must distinguish between taxes that have been paid and those that have been forgiven for purposes of determining whether a refund of tax should be paid.

Comment: Two commenters asserted that the rule's changes to 19 CFR 191.22, 191.23, and 191.171, provisions for drawback under the pre-TFTEA law, reflect an impermissible attempt to circumvent the statutorily-mandated one-year transition period and should be withdrawn in their entirety.

Response: CBP disagrees that prohibiting double drawback implicates TFTEA's transition period. The statutory prohibition on double drawback, 19 U.S.C. 1313(v), predates TFTEA. Double drawback was contrary to law before TFTEA, and TFTEA did nothing to alter this. Accordingly, the rule correctly prohibits double drawback for all claims without regard to the transition period provided for TFTEA changes. However, as noted above, CBP is providing a 60-day delayed effective date for regulations regarding the drawback of excise taxes and clarifying the prohibition on double drawback. Other sections of the regulation will go into effect immediately.

Comment: Two commenters stated that under the definition of drawback in 19 CFR 191.2(i), domestically-produced wine exported exempt from tax cannot create a drawback, because it is not an importation. The commenters further note that Congress quoted this customs definition when enacting TFTEA.

Response: The existing regulatory definition was adopted when, at least as a practical matter, the drawback of excise taxes was not available on imported goods. The commenter cites the Senate Finance Committee's quotation of the definition in its general description of drawback. This recent legislative history did not speak to Congress's understanding of the phrase in section 1313(v), much less Congress's intent when it enacted that provision in 1993. Moreover, the existing CBP regulations contain no provision implementing section 1313(v) and therefore do not control the agency interpretation of the phrase ''any claim for drawback'' as used in that section. CBP is amending the 19 CFR 190.2 definition of drawback in the final rule, however, to further clarify that it is only for purposes of CBP's authority to pay claims. As revised, the definition explicitly recognizes that the term ''drawback'' has a broader meaning outside the specific context of customs payment of drawback, such as the drawback associated with exporting merchandise subject to an excise tax. CBP is also deleting the cross reference to 19 CFR 101.1 that was proposed at 190.3(a)(3). It had been included to provide for drawback of internal revenue taxes in manufacturing drawback, but it is no longer necessary because TFTEA makes explicit when tax is subject to drawback.

Comment: Two commenters proposed that the potential abuse of double drawback through destruction be addressed directly rather than by prohibiting all double drawback. One of these commenters suggested regulations under Internal Revenue Code section 5008 may be an avenue for doing so, or else by deleting the words ''export or'' from the proposed regulatory text in sections 190.22, 190.32, and in 19 CFR 191.22 and 191.32.

Response: Section 1313(j) makes plain that both exportation and destruction are valid bases for substitution drawback, available on equal terms, and section 1313(v) similarly makes no distinction between export-based drawbacks and destruction-based drawbacks. CBP does not believe that section 1313(v) should be read so narrowly as to invite widespread abuse that would thwart its purpose, on the assurance that section 5008 could be used to curb some of the abuse.

Comment: Two commenters stated that excise tax drawback provides a WTO legal export promotion incentive that makes the U.S. wine industry competitive in world markets or helps offset the risk of developing foreign markets.

Response: Drawback of excise taxes not in excess of the amounts that have accrued for the product can be acceptable under WTO rules. The proposal will continue to allow drawback of excise taxes on imports, as long as the export on which the drawback claim is based is in taxpaid status. Trading partners have complained that double drawback, or drawback granted on the basis of exports for which a drawback has already been granted, amounts to a disguised export subsidy prohibited under WTO rules. In addition, for reasons explained in the NPRM and below, CBP believes that the practice of double drawback is inefficient in promoting the competitiveness of exports and disadvantages some U.S. domestic producers.

2. Harbor Maintenance and Oil Spill Liability Taxes

Comment: Several commenters stated that the prohibition on double drawback would change the treatment of drawback of harbor maintenance taxes (HMT) and oil spill liability trust fund taxes (OSLTF). Some commenters stated that the NPRM's interpretation of 19 U.S.C. 1313(v) would limit drawback claims to only one claim across all types of duties, taxes, and fees. They state that if exportation without payment of tax constitutes a claim for drawback, then this would bar drawback not only of excise taxes but also of duties, fees, and taxes such as HMT and OSLTF. One commenter stated that OSLTF is never imposed on petroleum products refined in the United States and suggested that this lack of taxation cannot be characterized as a drawback. This commenter further stated that Chapter 38 of the Internal Revenue Code should not have been included in the proposed regulatory text designed to prevent double drawback because there is no chance of a double drawback arising under OSLTF imposed by that chapter.

Response: CBP proposed no changes with regard to HMT or OSLTF in the NPRM. CBP has neither adopted nor proposed an interpretation that would limit a claimant to only one duty, tax, or fee upon which to claim drawback. A single claim for drawback on a particular product can (and often does) cover multiple types of liabilities, while still remaining a single, consolidated claim. Nothing about CBP's interpretation of section 1313(v) implies that the prohibition on double drawback should be applied *across* all types of taxes, duties, and fees rather than *within* each class. That issue is distinct from the question whether drawback encompasses remission of tax liabilities not yet determined.

In any event, it is not CBP's intent to limit drawback in the manner the commenters suggest. With respect to pre-TFTEA drawback law, CBP believes such an interpretation is inconsistent with the statutory language of 19 U.S.C. 1313(j), which provides that each duty, tax, or fee imposed under federal law upon entry or importation can be eligible for drawback. With respect to post-TFTEA drawback law, CBP believes that section 1313(l) (which is cross-referenced in (j)(1) and (j)(2)) provides conjunctively for refunds of ''99 percent of the duties, taxes, and fees paid'' (emphasis added). CBP's position is that merchandise exported or destroyed to satisfy a claim for drawback cannot be the basis for any other claim for drawback of the same tax.

CBP also disagrees that the 19 U.S.C. 1313(v) prohibition on multiple drawback claims limits CBP's current practice with regard to HMT or OSLTF. HMT does not apply to exports. *See* 26 U.S.C. 4462(d). Finally, 26 U.S.C. 4461, in Chapter 36, imposes the HMT, while the proposed section 190.171(c)(3) only addresses taxes imposed under Chapters 32 and 38. Therefore, it is clear drawback of HMT based on the exported U.S.-refined fuels would remain available, even though the section 4081 taxes were never paid on the export.

Similarly, it is not possible for double drawback of excise tax to arise with respect to OSLTF as it has with wine. A U.S. refiner is responsible for paying OSLTF on the inputs for domestic fuel production. That tax attaches, inter alia, per 26 U.S.C. 4611(a)(1), when crude oil is received at a United States refinery. Consequently, and as explained above, all exports of substituted domestic petroleum products are subject to the OSLTF, but at an earlier stage in the production chain. The proposed amendments to sections 190.171(c)(3) and 19 CFR 191.171(d) are not intended to limit drawback of the OSLTF. Under the OSLTF regime, the tax is always paid, whether on imported product or domestically produced product. There is no provision in the Internal Revenue Code for drawback of OSLTF upon export. The tax is never deferred, remitted, or refunded under a statutory provision other than Title 19 drawback.

Thus, this situation is distinct from the double drawback scenarios that can arise with excise taxes that may be remitted or refunded. CBP considers the tax to be paid even though it was paid on the inputs for exported substituted product and not on the product itself. To avoid any potential confusion about the continued availability of OSLTF drawback, CBP is changing the regulatory text in the final rule to exclude Subchapter A of Chapter 38 from the scope of the restrictions in 19 CFR 190.22(a)(1)(ii)(C), 190.32(b)(3), 190.171(c)(3), 191.32(b)(4), and 191.171(d).

3. Statutory Prohibition on Double Drawback and Legislative Intent

Comment: Several commenters stated that ending double drawback on wine and declining to extend the practice to other commodities is contrary to the language of the statute and to legislative intent. One commenter stated that the rule disallows excise tax drawback provided for by TFTEA and does not further Congress's purposes.

Response: CBP does not agree that Congress intended to permit double drawback when it enacted TFTEA. TFTEA did not amend 19 U.S.C. 1313(v), which expressly prohibits double drawback, or make any other statutory changes that indicate approval of double drawback.

While TFTEA expands eligibility for substitution drawback, eligibility for substitution drawback and double drawback are separate issues. The more liberalized substitution standard provided for by TFTEA and these regulations does not require allowing double drawback. Section 1313(v) continues to prohibit double drawback.

Comment: Several commenters stated that TFTEA's ''lesser of'' rule clarifies that double drawback is permitted and makes no exception for substituted merchandise that was subject to a tax exemption or refund.

Response: CBP disagrees that TFTEA allows double drawback. The commenter refers to TFTEA's ''lesser of'' rule, which is a safeguard that limits drawback claims to the lesser of the duties, taxes, and fees paid on imported merchandise or the duties, taxes, and fees that would have been paid on the substituted merchandise if it were imported. It applies independently of any double drawback, and therefore does not indicate whether Congress intended to allow such a practice. The ''lesser of'' rule does not override the 19 U.S.C. 1313(v) prohibition on double drawback, but rather, sections 19 U.S.C. 1313(j)(2) and (l) are both subject to that prohibition. As addressed above, drawback in the form of a remission of an excise tax that occurs upon exportation is a drawback for purposes of 19 U.S.C. 1313(v).

Comment: Several commenters argued that the withdrawal of a 2009 NPRM that proposed a similar clarification with respect to the prohibition on double drawback demonstrates that this rule is not sound or backed by statute. These commenters claimed that there was significant opposition to the 2009 NPRM, including from Members of Congress. Several commenters asserted that because Congress was aware of the withdrawn 2009 NPRM and did not subsequently address the issue in TFTEA in 2016, Congress ratified CBP's payment of excise tax drawback claims without regard to whether excise taxes were in fact paid on the substituted merchandise.

Response: CBP disagrees with this comment. CBP's policy decision to withdraw the 2009 NPRM is not probative of legislative intent under any accepted methods of statutory construction. Withdrawing the 2009 NPRM provided Congress with an opportunity to consider double drawback legislation. Congress ultimately decided against authorizing double drawback in TFTEA and left section 1313(v) in place. Although CBP has paid double drawback of excise taxes on wine since 2004, the clarification on double drawback contained in this rule will ensure that double drawback of excise taxes on wine is prohibited in the same way as it has always been for all other commodities subject to excise tax. Congress took no steps in TFTEA to authorize double drawback, despite knowing that CBP was not granting double drawback to distilled spirits, tobacco, beer, and fuel—all of which are governed by substantially similar drawback regimes as wine.

Comment: Several commenters stated that the ''notwithstanding any other provision of law'' language in 19 U.S.C. 1313(j)(2) was added specifically to overturn court decisions that upheld the denial of claims for HMT drawback. The commenters stated that this not only changed the HMT treatment but also means that no other provision of law can restrict drawback eligibility; they state any excise tax is recoverable notwithstanding any other provision of law—even if doing so conflicts with other legal provisions. One commenter also cited case law for the proposition that ''notwithstanding'' clauses such as this are clear and should be interpreted strictly. Another commenter described the history of the ''notwithstanding'' language in 19 U.S.C. 1313(j)(2), stating that it reflects Congress's overturning of CBP's practice of rejecting excise drawback claims under the customs laws on the basis that the Internal Revenue Code was the exclusive means of drawing back those taxes. The commenters also noted that 19 U.S.C. 1313(j)(2) delineates precise conditions under which substitution drawback claims must be allowed, and paying tax on the substituted exported merchandise is not among them. The commenters stated that the NPRM is, for these reasons, inconsistent with 19 U.S.C. 1313(j)(2).

Response: CBP agrees that the legislative history indicates that Congress intended the ''notwithstanding any other section of law'' language to clarify that drawback of HMT is permitted. CBP disagrees, however, that this language was intended to limit the operation of 19 U.S.C. 1313(v)'s prohibition on double drawback. Courts have cautioned against literal constructions of ''notwithstanding any other provision of law'' clauses that ''narrow so dramatically an important provision that it inserted in the same statute.'' *Ministry of Def. & Support for the Armed Forces of the Islamic Republic of Iran* v. *Elahi,* 556 U.S. 366, 386 (2009); *see also Oregon Natural Resources Council* v. *Thomas,* 92 F.3d 792, 796 (9th Cir. 1996) (noting that the court had ''repeatedly held that the phrase 'notwithstanding any other law' is not always construed literally''). If 19 U.S.C. 1313(j)(2)'s ''notwithstanding'' language applied to the crucial prohibition set forth in section 1313(v), then nothing in section 1313 would prevent the same export or destruction from being used to claim drawback from the actual importation of that merchandise (direct identification drawback under 19 U.S.C. 1313(j)(1)) *and* from the importation of other merchandise for which the exported or destroyed merchandise is substituted (substitution drawback under 19 U.S.C. 1313(j)(2)). Likewise, if section 1313(j)(2)'s ''notwithstanding'' language applied to section 1313(v), then nothing in section 1313 would prohibit multiple claims under (j)(2) where there are multiple imports of commercially interchangeable merchandise but only one export. Section 1313(v) prohibits these duplicative claims. If 19 U.S.C. 1313(j)(2) applied its ''notwithstanding'' language to section 1313(v), a firm could export a single item every five years, for example, and never pay duty on any import of any commercially interchangeable item. Congress could not have intended such results. Rather, as the commenter notes, the legislative

history shows that Congress intended the ''notwithstanding'' language in section 1313(j)(2) for the purpose of changing the law to allow drawback of HMT. *See* S.Rep. No. 108–28, at 173 (2003). The rule continues to provide for HMT drawback as Congress provided, while also preventing double drawback that Congress prohibited.

Comment: Several commenters stated that Congress intended to allow drawback of excise taxes regardless of whether excise taxes were paid on the substituted exported or destroyed merchandise. They described the long history of drawback, noting that its presence in U.S. law dates to the ''first substantive legislation in this government's history'' signed into law by George Washington in 1789. The commenters noted that Alexander Hamilton and Adam Smith exalted the good economic sense of customs drawback, with the commenters suggesting that drawback of excise taxes when no excise taxes were paid on substituted exports also makes good economic sense.

Response: CBP agrees that drawback has a long history in the United States, dating to the Second Act of Congress on July 4, 1789, but part of that long history has been Congress's efforts to prevent abuses. In fact, in his ''Sketch of the Finances of the United States,'' Secretary of the Treasury Albert Gallatin noted that Congress suspended a drawback law that drained the Treasury instead of yielding revenue. Albert Gallatin, *Sketch of the Finances of the United States,* 43 (1796). Nothing in the NPRM is in tension with this history.

Comment: One commenter stated that the NPRM argued that restrictions on duty drawback were intended to prevent revenue loss even though there is no evidence that Congress intended this when passing TFTEA. Another commenter stated that CBP has taken the position that following the statute would result in undue revenue loss and has found ambiguity in the drawback law where none exists in order to substitute its judgment on double drawback for that of Congress.

Response: CBP disagrees that the rule is inconsistent with the statutory framework for drawback. TFTEA is silent on double drawback, and CBP, to the best of its knowledge, has not been allowing double drawback claims on commodities other than wine. The prohibition on multiple claims in section 1313(v) continues to prohibit double drawback, as it did before TFTEA's enactment, and the NPRM corrects an aberration in CBP's practice with respect to wine.

Comment: One commenter asserted that the revenue loss estimates described in the NPRM are a minor share of total federal revenue, stating that foregone excise tax revenue never truly belonged to the federal government as the product was never sold in the United States.

Response: CBP disagrees that the size of the revenue loss relative to the entire federal budget relieves it of a responsibility to carry out Congress's intent to levy excise taxes on products consumed domestically. CBP also disagrees that the potential revenue loss is minor, for reasons described in the NPRM.

Comment: Several commenters stated that the U.S. Constitution prohibits the imposition of any tax on exports and that the NPRM's rationale would require that a tax on exports be paid for substitution drawback eligibility. One commenter noted the Declaration of Independence and Articles of Confederation signer Elbridge Gerry's observation that Congress could not be trusted to tax exports.

Response: The Constitutional prohibition on export taxes does not apply to generally applicable taxes that are imposed at the time of production. *See, e.g., Nufarm America's, Inc.* v. *United States,* 477 F.Supp. 2d 1290, 1296 (Ct. Int'l Trade 2007), *quoting Cornell* v. *Coyne,* 192 U.S. 418, 427 (1904). Accordingly, CBP disagrees that the Constitutional prohibition on export taxes affects the application of drawback on generally applicable excise taxes. Whether the Constitution permits these taxes to apply to products destined for export is immaterial to CBP's decision here, however, insofar as Congress has specifically allowed drawback of excise taxes that ultimately is exported, consistent with a framework that levies the excise tax on goods consumed in the United States. Even if the Constitution were understood to prohibit levying excise taxes on goods that are exported, however, it certainly does not require Congress to forgive excise tax paid on a corresponding import. This would result in the domestic consumption that has not been taxed, a problem not compelled by the Constitution and one that Congress prevented through 19 U.S.C. 1313(v).

Comment: One commenter supported the regulatory text originally proposed in section 190.32(d), stating that it recognizes the statutory history of wine drawback, preserves an important export incentive, and is consistent with a TFTEA conference report (H. Rept. 114–376), which states that the Conferees further clarify that the existing treatment of wine under section 313(j)(2) of the Tariff Act of 1930 is preserved, and that the amendments to the statute do not change this treatment.

Response: On August 20, 2018, CBP published a technical correction of proposed section 190.32(d) in the **Federal Register** (83 FR 42062), which clarified the references in that provision. As is evident from the detailed discussion of wine in the preamble of the proposed rule, the statutory prohibition on double drawback applies to excise taxes on wine just as it applies to other products. The technical correction document fixed an inadvertent error in a cross-reference in the proposed regulation, which the commenter requested that CBP adopt. The uncorrected proposed text in section 190.32(d)(2) had an exemption for drawback claims for wine that included an imprecise reference to the entirety of section 190.32(b). The reference should have been only to paragraphs (b)(1) and (b)(2), the specific paragraphs regarding the ''lesser of'' rule, and not to all of section 190.32(b), and the oversight was corrected.

With respect to the TFTEA conference report cited in this comment, CBP disagrees that it addresses double drawback. The only mention of wine in 19 U.S.C. 1313(j)(2) does no more than clarify that the unique alternative substitution standard that has been applied to wine will continue to be available along with the new HTSUS-based substitution standard TFTEA created. Eligibility for substitution and double drawback are separate issues. The more liberalized substitution standard provided for by TFTEA and these regulations does not equate to allowing the double drawback prohibited by 19 U.S.C. 1313(v).

Comment: One commenter stated that several legislators tried to amend 19 U.S.C. 1313 in 2007, proposing a subsection (z) that would have reduced the drawback claims allowed under subsections 1313(b), (j)(2), and (p) by the amount of any Federal tax credit or refund of any Federal tax paid on the merchandise. Because this language is consistent with the NPRM's clarification regarding the prohibition on double drawback but was never enacted into law, the comment states the Congress must have intentionally omitted the proposed restriction. The comment also states that the proposal to add a subsection (z) rather than amend subsection (v) demonstrates that Congress did not interpret section 1313(v) the way the NPRM does.

Response: The comment refers to text contained in a provision to limit or reduce drawback on certain imported ethanol that was part of two 2007 energy

tax amendments to major legislation that were not adopted. CBP disagrees that the failure of these broad energy tax proposals to become law can be seen as Congressional support for double drawback. There is no indication that Congress debated or voted on double drawback in 2007. More broadly, the fact that Congress might have considered specifically mandating a change to CBP's application of section 1313(v) through clarifying legislation would not establish that CBP lacked the authority to make such a clarification on its own.

Comment: One commenter stated that Treasury cannot rely on an economic impact rationale to eliminate the eligibility of excise taxes for drawback when Congress intends to continue and expand this type of drawback.

Response: CBP disagrees that Congress allowed, much less expanded, double drawback through TFTEA, or that this rule would eliminate the eligibility of excise taxes for drawback. On the contrary, 19 U.S.C. 1313(v), which TFTEA did not change, prohibits ''double drawback'' of excise taxes. CBP included the economic analysis to explain to the public the effects of an arcane practice not well understood by many, and to explain the policy considerations that informed its resolution of any statutory ambiguity on this issue.

4. Trade Trends and Economic Effects of Double Drawback

To explain the economic and trade impact of double drawback, CBP presented trade statistics during the period in which CBP has allowed for the double drawback of excise taxes on wine, and a discussion of potential effects from double drawback.

Comment: One commenter stated that, contrary to the analysis in the NPRM and in large part due to the availability of excise tax drawback, U.S. wine exports have substantially increased during the period from 2001 to 2017, exceeding $1.53 billion in 2017.

Response: CBP disagrees that the available trade data demonstrate that wine exports have increased because of the availability of double drawback. CBP believes that it began paying claims that resulted in double drawback of excise taxes for wine in 2004. Therefore, 2004 (and not 2001) is the more instructive starting point for analysis. While exports increased in value from $682 million to $1.255 billion from 2004 to 2016, exports by volume only increased from 327 million liters in 2004 to 345 million liters in 2016, a 5.5 percent increase. In evaluating the impact of double drawback, the volume of exports is more relevant than the value of exports because excise taxes are assessed by volume. On balance, the data submitted by commenters and considered by CBP do not demonstrate that double drawback was a significant driver of the increase in wine exports. The large increase in value of wine exports was not from an increase in volume,[5] but rather was due to an increase in the average value per liter of bottled wine exports from $2.32 to $6.14 during that period.

Comment: One commenter described the adverse effects of double drawback and stated that double drawback has caused market distortion and significantly disrupted the U.S. import wine market, with those importers benefiting from a drawback credit earned from non-tax paid exports enjoying a significant cost of goods advantage. One commenter concluded that the expansion of substitution drawback eligibility under TFTEA created an urgency to fix the double drawback problem before its effects broaden.

Response: CBP agrees that double drawback has market distorting effects that likely most benefit firms that both import and export, typically larger firms. CBP believes these observations provide additional support for clarifying the prohibition on double drawback, as proposed in the NPRM.

Comment: One commenter stated that the NPRM's double drawback clarification discriminates against certain industries by choosing who should be eligible for tax and trade programs instead of making sure that tax and trade policy is economically neutral and promotes efficient allocation of resources by affording the same benefits to all businesses.

Response: CBP disagrees that the proposed rule discriminates against specific industries. To the contrary, it corrects a practice that inadvertently afforded imported wine special treatment for certain claimants, as applicable—allowing drawback for wine on the basis of an export already subject to drawback, in effect a double drawback. Although a CBP field office has allowed double drawback of excise taxes for wine, CBP does not believe it has done so for other commodities subject to excise tax (*e.g.,* distilled spirits, beer, taxable fuel). Far from discriminating against particular industries as the commenter suggests, this rule restores parity by clarifying that double drawback is prohibited by statute for each product class. The rule changes a practice that allowed for special treatment of wine for certain claimants, as applicable, and thereby treats the wine industry in the same manner as all other industries that have not collected double drawback. Even within the wine industry, double drawback does not benefit firms evenly, but rather advantages U.S.-based firms that import while putting solely domestic U.S. producers at a competitive disadvantage.

Comment: Several commenters stated that ending double drawback of excise taxes on wine or not extending double drawback to all industries subject to relevant excise taxes would cause economic harm, including a loss of U.S. jobs. These commenters suggested that double drawback helps U.S. wine compete internationally, including in markets where foreign products may receive government subsidies and benefit from more favorable foreign trade agreements. Multiple commenters stated that increasing U.S. production depends on double drawback. Several commenters also said that ending double drawback for wine would harm many businesses supporting the wine industry or that failing to extend double drawback to other industries would present a lost economic opportunity for U.S. manufacturing.

Response: The rule fully preserves the ability to export wine without payment of tax, which will continue to help promote exports. The rule would, however, limit a practice that nearly eliminates excise taxes on imported wine and therefore encourages imports. Double drawback allows imported products to be sold 99 percent free of excise tax in the United States, while domestic products are fully taxed. Thus, while double drawback may provide a tax advantage for those U.S.-based firms that both import and export, CBP does not believe that this policy, on balance, provides a competitive advantage to U.S. production as a whole. The practice of double drawback, which reduces taxes on imports, does not appear to be an effective measure for promoting exports and domestic production. As described in the NPRM, trade statistics indicate that the U.S. trade deficit for wine by volume *increased* during the time that CBP has allowed the drawback of excise taxes for wine without regard to whether excise tax was paid on the substituted merchandise. Import volumes of wine grew over 50 percent while export volume grew only five percent from 2004 to 2016.

Comment: One commenter from a distilled spirits firm stated that it is

[5] The volume of bottled wine exports decreased from 2004 to 2016, from 259 to 171 million liters. *See* Table B, NPRM, 83 FR at 37900.

moving a portion of its Canadian production to the United States due solely to the ability to claim drawback for a distilled spirits product through February 24, 2019. It referred to its alleged recent approval from CBP for substitution unused merchandise drawback claims on internal revenue taxes paid upon whiskey under 19 CFR part 191 and expressed concern that it would no longer be valid under TFTEA pursuant to the new part 190.

Response: CBP acknowledges that double drawback is an attractive tax benefit for some firms and may play a role in production decisions. These firm-level incentives, however, do not mean that the market-wide effect is positive for U.S. production. In the particular case of the commenter, CBP has not, to the best of its knowledge, allowed double drawback of excise taxes on distilled spirits. Insofar as the drawback eligibility of domestically manufactured product is concerned, there should not be an impact as a result of TFTEA because, as indicated elsewhere in the responses to the comments, double drawback is not allowable for pre-TFTEA or TFTEA-drawback claims in light of the general applicability of 19 U.S.C. 1313(v) to both.

Comment: One commenter states that the view in the NPRM that double drawback results in excise tax-free foreign products competing with domestic products that are fully taxed improperly assumes that drawback funds will be used to reduce U.S. domestic prices instead of being used to add new employees, build new bottling lines, and reduce export pricing.

Response: CBP recognizes that a reduction in taxes applicable to a particular imported product will result in lower prices and/or increased profits for the seller, and that those profits could be applied in any number of ways more or less beneficial to the U.S. economy. This observation, however, does not alter CBP's and Treasury's duty to collect the taxes imposed by Congress, or change the fact that failure to correctly apply the tax to certain sellers will provide a competitive advantage to those sellers. Furthermore, we note that this benefit accrues only to certain firms and does not appear to be effective as an export promotion measure. The commenter provides no evidence to assert that the tax reduction on imports has resulted in a meaningful increase in employment or investment in the United States, nor does the commenter present evidence that undercuts CBP's reasonable expectation that lower excise taxes on imports will result, on balance, in lower priced imports (inclusive of tax). We also note that contrary to the commenter's suggestion that double drawback of excise taxes reduces export prices, the average export price of bottled wine increased 250 percent during the period of double drawback.

Comment: One commenter stated that the NPRM's clarification with respect to drawback of excise taxes would benefit California's wine grape growers. The commenter observed that double drawback subsidizes both imports and exports, hurting wineries that use only California wine grapes, as these wineries are forced to compete against subsidized wineries who benefit from imported bulk wine.

Response: CBP agrees that double drawback can have an effect on both imports and exports, that it can reduce the price of imports, and that it affects the wine industry in uneven ways—providing a tax break on imported wine for firms that both import and export, but providing no benefits for firms that only serve the domestic market.

Comment: One commenter observed that the economic arguments and reasoning contained in the NPRM lack the evidence and rigor required to establish its conclusions.

Response: CBP has used the best data available to inform its conclusions and has reviewed and considered all data submitted by commenters. CBP acknowledges that its analysis (like any economic analysis) is not without uncertainty and limitations. CBP does not believe that the available trade data provide persuasive evidence that double drawback is effective as a tool for promoting exports of U.S. product. During the period in which double drawback was paid, import growth was significantly greater than export growth.

Comment: One commenter stated that the trade statistics described in the NPRM are incomplete in that they only extend back to 2004, even though the U.S. wine industry began claiming substitution unused merchandise drawback in 2001. This commenter also describes as ''baseless'' the conclusion that drawback promotes imports but not exports, considering the refund of taxes on the import is only possible when there is an export.

Response: CBP disagrees that the NPRM's economic analysis concluded that double drawback exclusively promotes imports, not exports. CBP acknowledges that double drawback may promote exports for some firms. To be clear, to the extent that double drawback promotes exports, it does so by giving firms that export an entitlement to import a similar product 99 percent excise tax-free into the U.S. market. The analysis in the NPRM concluded that the observed economic effects of double drawback do not support the view that it is effective in promoting exports. CBP underscores that the NPRM fully preserves the ability of U.S. firms to export domestic product with the benefit of drawback of excise taxes. They may not, however, use such an export as the basis for a claim of drawback of excise taxes on an import.

The proposed regulations do not restrict the wine substitution standards. The prohibition is on double drawback, and CBP believes that it began paying claims for wine that resulted in double drawback of excise taxes in 2004, not 2001. Therefore, CBP believes that 2004 (and not 2001) was the appropriate starting date for its analysis. The commenter may have been confusing the impact of the application in 2001, by the San Francisco drawback office of a commercial interchangeability standard that was inconsistent with, and more liberal than, that applied by CBP Headquarters. That more liberal standard for substitution may have led to expanded approval of substitution unused merchandise drawback claims and also more exports. *See* ''Commercial Interchangeability of Table Wine; Drawback; Food, Conservation, and Energy Act of 2008,'' CBP Ruling HQ H036362 (Mar. 27, 2009).

Comment: Two commenters stated that ''flexitanks,'' a technological innovation for transporting wine, rather than double drawback, caused the increase in bulk wine imports described in the NPRM. Another commenter stated that many reasons may explain why imports of bulk wine into the United States have increased so significantly since 2004.

Response: CBP acknowledges that technological innovation and other factors potentially contributed to the growth in bulk wine shipments, but these factors do not change the incentive for vintners to import bulk wine provided by the availability of double drawback of excise taxes. In fact, the advent of flexitanks, which made bulk shipments cheaper, may have amplified the impact of the incentive to import provided by double drawback. This is because the reduction of the cost in the wine means that the value of the drawback, which is by volume and constant, has increased relative to the cost of bulk wine, which is lower when imported in flexitanks. Thus, CBP disagrees with the statement that the increase in bulk wine shipments has nothing to do with excise tax. It is more likely that both flexitanks and double

drawback contributed to rising trade shares in bulk wines.

Comment: One commenter presented the following hypothetical as an illustration of double drawback's subsidy of bulk wine imports: If a U.S. winery is choosing between a lot of California grapes and one that is imported, and assuming both are equivalent in cost and quality, the potential for double drawback makes the foreign import a better choice. The comment notes that there is no subsidy if the winery chooses the U.S. product, but the imported bulk wine has the potential of returning the equivalent of $0.2827 in federal excise tax per liter of wine to the imported winery, provided the winery can find a qualifying export.

Response: CBP agrees that double drawback provides an advantage to and may encourage imports, as explained in the NPRM.

Comment: One commenter stated that the NPRM does not explain how the ratio of excise tax to product value matters in the context of incentives to seek double drawback.

Response: The ratio of excise tax to product value in the context of double drawback matters because economic decisions are made in part because of relative costs. The larger the drawback of excise tax relative to the purchase price of the imported product, the more likely one is to purchase that product. For example, if the excise tax on a product is $1 and imported product A costs $2 and imported product B costs $3, the purchaser is more likely to choose product A, with all else being constant, because its net cost (with drawback) is half that of product B. If product A, however, costs $10 and product B costs $11, the difference in net value ($9 and $10) would only be about 10 percent and less likely to affect a purchasing decision. This is why the ratio of product value to excise tax means that drawback that is constant by volume is more likely to have an impact on decisions to purchase less expensive products such as bulk wine.

Comment: One commenter stated that the NPRM incorrectly concludes that double drawback uniquely promotes imports without having an effect on exports. The commenter provided a ''difference-in-difference'' analysis to support his view that the practice of double drawback promoted exports.

Response: In the NPRM, CBP concluded that trade data are consistent with the view that double drawback may have promoted wine imports but that it has not been effective as an export promotion measure. CBP disagrees that the difference-in-difference model presented persuasively establishes otherwise. To support the critique, the commenter provided analysis showing a relative growth in bulk wine exports to the European Union (EU) compared to Canada beginning around 2004, the year CBP inadvertently began allowing double drawback on substituted wine. CBP has some concerns with this approach, which are discussed below.

First, the analysis focuses narrowly on bulk wine exports to the EU, while double drawback has affected both bottled and bulk wine exports to all non-NAFTA countries. The reason for this narrow focus appears to be, as the analysis in the NPRM indicated, that an analysis of bottled wine (or bulk and bottled wine combined) would find a negative effect on exports. While the commenter argued that the NPRM's analysis is flawed because it does not extend far enough into the past, if one were to take at face value the bulk wine analysis figure, the effect on exports operates with a strong lag, so starting a comparison in 2004 would have little effect on the findings in the NPRM.

Second, the commenter notes that careful economic analysis controls for variables not being studied. CBP acknowledges that it lacks sufficient data to control for these variables in its analysis. Instead, CBP produced a qualitative examination of trends in aggregate trade data. CBP did not make categorical causal statements, but rather explained that the low growth rate in export volume did not suggest a large export response to double drawback. CBP agrees that strong causal statements would require considerably more data and exhaustive economic analysis as the commenter describes, controlling for a wide range of economic factors affecting supply and demand for wine. Unfortunately, the commenter's analysis also fails to control for these variables. Instead, the commenter's analysis hinges entirely on the assumption that exports of bulk wine to Canada and the EU would have behaved identically over the period in question in the absence of double drawback. There are, however, many factors that may affect the EU but not Canada over this sample period. Bulk wine shipping costs, for example, decreased significantly around the time CBP began paying double drawback claims, which would have a much bigger effect on shipments to the EU than to Canada.

To more carefully evaluate the fundamental assumption underlying the commenter's analysis, CBP examined total EU imports of bulk wine, both from the United States and other origins, from 2000 to 2016. Using United Nations (UN) Comtrade import data for bulk wine, CBP is able to recreate the commenter's findings that the U.S. exports to the EU grew substantially beginning around 2004 while U.S. exports to Canada remained relatively flat. Figure 1 shows the volume of U.S. bulk wine imports for Canada and the EU from 2000 to 2016. Much like Figure 1 in the commenter's analysis, EU imports diverge from Canadian imports around the time of the introduction of substitution drawback.

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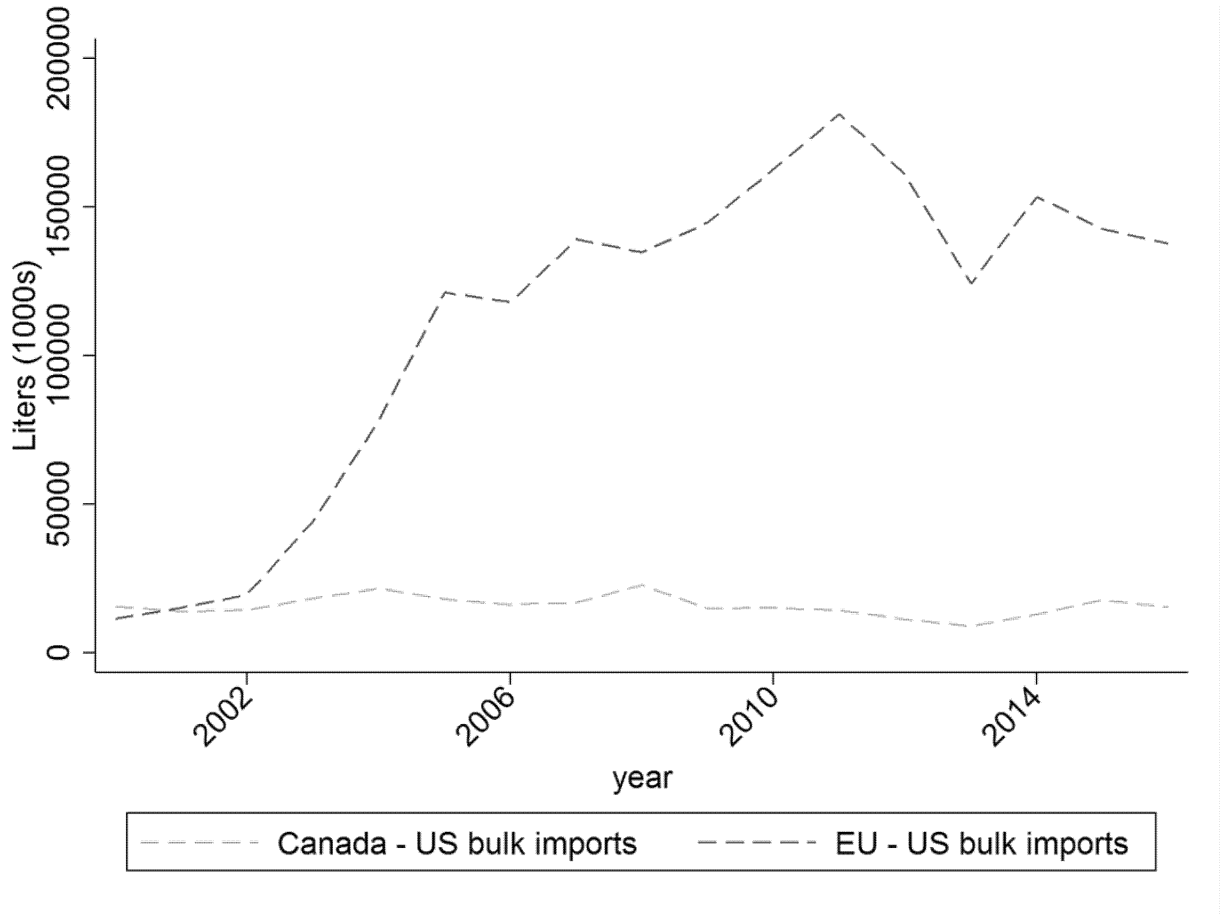
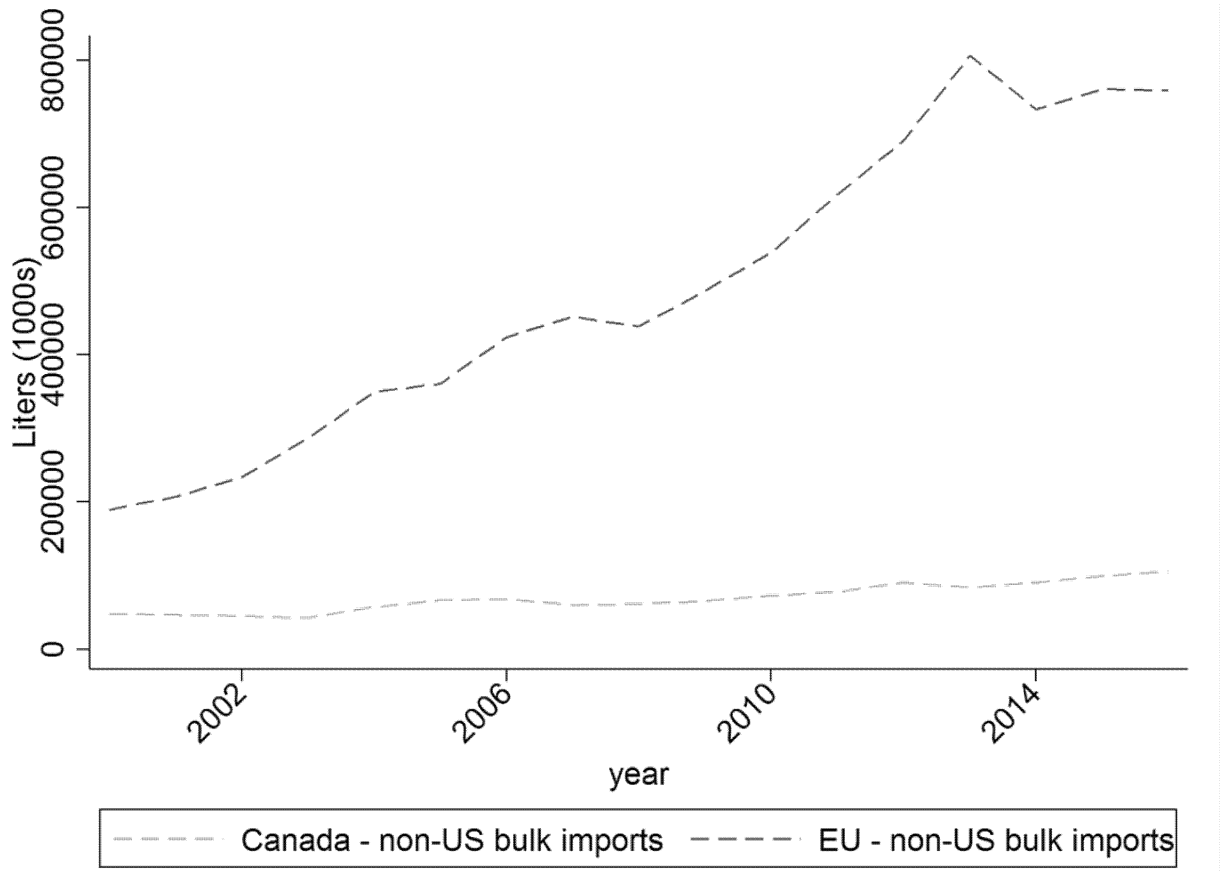
Figure 1



However, during this time period, EU imports of bulk wine from non-U.S. countries increased dramatically while imports to Canada from other non-U.S. countries remained relatively flat. *See* Figure 2.

Figure 2



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This analysis shows that Canada and the EU experienced very different trends in bulk wine imports unrelated to double drawback in the United States, making Canada a poor control group for this analysis. In short, because the fundamental assumption underlying the model is unrealistic in this context, the results are not useful in evaluating the effects of double drawback.

The commenter then claims that the NPRM ''ignores the fundamental economic logic of substitution drawback,'' namely, that it ''requires a *firm* to match its imports with corresponding exports'' (emphasis added), and then cites that in the period between 2004 and 2016, the United States imported about three times as many liters as it exported. The commenter argues that therefore the limiting factor was not imports but exports, and, as such, double drawback incentivized exports, not imports.

The effect of double drawback as an incentive to boost exports or imports depends not just on the amount of importing and exporting a firm does but also on many other factors that affect the profitability of importing and exporting (*e.g.,* production costs, supply chain costs, demand for products, transaction costs associated with double drawback). CBP also notes that many firms that do business in the United States will export more than they import, such that they would have an incentive to increase imports. The relative effect of double drawback on importing versus exporting is theoretically ambiguous and varies from firm to firm, but by the commenter's rationale, exports should have increased during this time period while actual trends tend to show more of an increase in imports than exports during the time CBP has paid double drawback claims.

Finally, the commenter takes the volume of bottled wine exports from 2016, the tax to value ratio, and an elasticity of export supply to estimate a possible effect of substitution drawback on bottled wine exports. While the commenter asserts that the ''calculation demonstrates how substitution drawback has in fact increased exports of wine relative to what would have otherwise occurred,'' this is an unsubstantiated claim. The exercise merely simulates what, under key and somewhat arbitrary assumptions, may be considered a plausible effect.

Whether this is a plausible effect depends in particular on the size of the elasticity of export supply used, with larger elasticities predicting a larger effect on exports. The commenter used an elasticity of 9, which is arguably quite large. Further, the commenter provides no direct evidence that it is a reasonable elasticity. Instead, it is indirectly backed out using price elasticities of supply and demand from the literature and a set of structural assumptions. These assumptions ignore many important margins along which behavior might change, and assume producers only respond to double drawback by increasing exports of bottled wine. The commenter dismisses effects on imports without justification, and he does the same with respect to benefits that would accrue to firms that would not need to change their investment, production, exporting, or importing to take advantage of tax reduction. He also dismisses benefits that accrue to mergers between importers and exporters that occur for

the sole purpose of capturing the subsidy. In fact, those responses involve no actual change in production, and it is plausible that those represent the largest potential uses of double drawback. Further, the exercise does not take into account possible offsetting negative effects on U.S. production for domestic consumption, nor does it take into consideration potential shifting of production between bottled and bulk wine.

Comment: One commenter stated that the analysis is overly narrow and overlooks potential economic benefits of double drawback to the U.S. economy.

Response: Double drawback serves as a subsidy for the joint importation and exportation of wine and likely distorts the decisions of consumers and firms, leading to deadweight loss. A reduction in excise taxes on wine would be made up by higher taxes or increased borrowing and would produce a change to overall economic output that varies from modestly negative to minimal. Double drawback no doubt benefits its beneficiaries, but CBP does not believe it benefits the overall economy, and notes that double drawback advantages imported product in the domestic market over domestically produced goods.

5. Revenue Loss Estimates of Double Drawback

Comment: One commenter stated that the Congressional Budget Office (CBO) assessed the loss of revenue resulting from TFTEA-Drawback changes and concluded that the ten-year impact of the drawback changes was only a revenue reduction of $24 million. The commenter argued that the Administration should not replace the CBO analysis. The commenter stated, based on the CBO figures, that the potential impact of TFTEA-Drawback changes is minor and that double drawback should be allowed.

Response: CBP disagrees that the CBO assessment reflected an expansion of double drawback. Because nothing in TFTEA changes the law on double drawback, there is no reason to believe CBO would have assumed a change in its analysis. The disparity between the CBO score and the revenue loss estimates in the NPRM tends to, if anything, support CBP's conclusion that TFTEA was not intended to expand the availability of double drawback. CBO's estimates predicted the revenue loss due to the more liberal 8-digit HTSUS substitution standard introduced in TFTEA. The analysis in the NPRM estimated $674 million to $3.3 billion in annual lost revenue if double drawback were expanded.

Comment: One commenter stated that the NPRM should not have included motor fuels taxes (IRC Chapter 32) in any estimate of revenue loss attributable to drawback, because it is not legally possible to claim drawback of these taxes under the Tariff Act of 1930, as amended.

Response: While the framework for collecting motor fuels taxes makes double drawback less likely than it is for other commodities, such as wine and distilled spirits, there are import procedures that may be used for motor fuels that could result in a claim for drawback of these taxes under the Tariff Act of 1930, as amended. Internal Revenue Code sections 6421(c) and 6427(l) provide for the refund of motor fuels taxes paid on exported gasoline and diesel, respectively. The NPRM estimate uses a small takeup rate of one to five percent that would result in only a $20 million to $98 million annual revenue loss, recognizing that use of those procedures is less likely. But, even assuming zero takeup of double drawback for motor fuels, it does not change the larger finding that double drawback would lead to substantial revenue loss, a loss that CBP believes Congress did not intend.

Comment: One comment sought clarification of the exact methodology behind the $54.9 million estimate of disbursed substitution unused merchandise drawback claims for wine included in the NPRM.

Response: CBP appreciates the opportunity to clarify. The estimate is based on two separate sources of data: (1) Transaction level data on all excise tax refunds for the top 20 importers of wine, and (2) data on substitution drawback claims. For 2015, CBP processed $51.393 million in excise refunds for substitution drawback claims for the top 20 importers. The figure of $54.9 million comes from a second analysis by CBP not limited to the top importers, but based on a comprehensive analysis of all substitution drawback claims for HTS codes 2204, 2205, and 2206. These two figures are in close alignment, suggesting that 2015 drawback claims for wine were greater than $50 million and that the vast majority of these claims were attributable to the top 20 importers.

Comment: One commenter questioned the assumption that the tax refunds reflect drawback on wine as opposed to drawback on other excise-taxable goods like taxable fuel and tobacco.

Response: CBP only examined the claims for wine categories because CBP does not believe it has paid double drawback claims on other excise taxable goods. Wine is the only product that CBP knows has received this treatment for certain claimants, and therefore any drawback claim is highly unlikely to be attributed to another source.

Comment: One commenter questioned the assumption that these refunds reflect double drawback claims at all, asking whether these refunds could be for other excise taxes.

Response: The analysis carefully focuses on drawback claims for excise tax on wine. Other forms of drawback, such as manufacturing drawback, are identified using a different code, and excluded from the analysis. Given the limits of the data, however, these claims could contain related claims for refunds of other taxes, namely refunds of harbor maintenance taxes. Those fees, however, are trivial in comparison to the excise tax on wine, and therefore would not have a significant effect on the analysis.

Comment: One commenter stated that the NPRM's tax-to-value discussion is mistaken.

Response: This critique demonstrates some confusion about the tax-to-value ratios reported in the NPRM, specifically the claim that the tax-to-value ratio for spirits is five to eight times higher than it is for wine. These figures are constructed using 2015 United States International Trade Commission (USITC) trade data as follows. Wine imports have a value per gallon of $18.40 and face a maximum tax of $1.07 per gallon. The tax-to-value ratio is $1.07/$18.40, or 0.058. Spirits imports, including grain alcohol, have an average value of $36.37 per proof gallon and face a maximum tax of $13.50 per proof gallon, for a tax-to-value ratio of $13.50/$36.37, or 0.371. The tax-to-value ratio for spirits is therefore 538 percent larger. Wine exports have a value per gallon of $13.70 for a tax-to-value ratio of 0.078. Distilled spirits exports, including grain alcohol, have an average value of $19.50 per proof gallon for a tax-to-value ratio of 0.692. The tax-to-value ratio for distilled spirits is therefore 786 percent larger. The values of five and eight times higher for spirits refer to these calculations based on import and export values.

The commenter correctly notes that these averages hide substantial variation in value across individual products. CBP largely agrees with the commenter in that CBP estimates that only 34 percent of spirits imports fall into the high tax-to-value category. The only point of disagreement concerns vodka. It is true that most vodka imports are of relatively high value. The vast majority of vodka imports are in subheading 2208.60.20, HTSUS, which is defined as

vodka valued over $2.05 per liter. On average, these imports have a tax-to-value ratio similar to that of bulk wine. Under the TFTEA 8-digit HTSUS substitution standard, however, this vodka can be substituted with much cheaper domestic vodka. Assuming most vodka imports are 80 proof and converting into proof gallons, $2.05 per liter corresponds to a minimum value of $9.69 per proof gallon. The tax is $13.50 per proof gallon, or 139 percent of the minimum value. Therefore, even expensive vodka imports could be matched profitably with cheap vodka exports or destroyed domestic product, which can be obtained at even lower prices.

Comment: One commenter argued that the NPRM failed to consider adequately that taking advantage of double drawback requires matching an import to an export.

Response: CBP disagrees that the NPRM did not consider the necessity of matching imports to exports to claim drawback. The commenter correctly notes that beer exports are much lower than beer imports, and CBP agrees that matching imports and exports would be an important constraint for beer producers. That is a reason the revenue loss estimates for beer are relatively low as a fraction of total excise liability on imported beer. Currently, non-NAFTA exports as a share of imports is only 7.7 percent. Through a combination of matching pre-existing imports and exports, and increasing exports, the lower bound estimate in the NPRM is that only 1.5 percent of imports are matched with an export and therefore eligible for a drawback claim. In the NPRM's upper bound estimate, 4.6 percent of imports are matched with an export. This is much lower than the observed value of 15.5 percent for wine imports because of the constraint of matching exports.

For spirits, the analysis in the NPRM considered two kinds of goods. For relatively expensive spirits, those with a low tax-to-value ratio, the analysis recognized that matching exports is an important constraint. The focus therefore was limited to 8-digit HTSUS provision products that are both imported and exported in non-trivial quantities, namely brandy, liqueurs, and cordials. For these products, the analysis assumed that only current exports and imports can be matched and apply the takeup rate to the minimum of imports or exports. With respect to high tax-to-value products, namely vodka, gin, and grain alcohol, the analysis in the NPRM did not view current exports as an important constraint because of the potential to destroy domestic production profitably without the need to find an export market.

In the case of tobacco, currently, the vast majority of cigarettes sold in the United States are produced domestically. There is, however, a large international market for similar cigarettes, and they are produced in many foreign countries. Many of the largest cigarette companies are multinational, producing and selling cigarettes all over the world. Therefore, given the availability of foreign produced goods and the strong incentive double drawback would provide, CBP would expect a gradual shift in the composition of the U.S. market as more U.S. production is exported and more U.S. consumption is imported. Eventually, were double drawback allowed, most excise tax on cigarettes could disappear as more packaging is shifted overseas and U.S.-packaged cigarettes are exported to foreign markets.

Comment: One commenter stated that the NPRM is incorrect in its assertion that double drawback would create a significant incentive to shift the production of tobacco products overseas. It asserts that federal regulatory requirements applicable to tobacco imports are significant and that the potential for drawback to change at any time also disincentivizes undertaking the expense of offshoring production until there is, among other things, more history of drawback refunds and assessment by outside attorneys. Another commenter similarly expressed skepticism that tobacco producers would shift packaging facilities overseas to take advantage of double drawback.

Response: CBP disagrees that double drawback would not incentivize shifting the production of tobacco products overseas. Although uncertainty over availability of double drawback may initially depress the takeup rate, CBP believes that if double drawback became settled law (as many commenters insist it should be), there would be a powerful economic incentive for outsourcing the production of tobacco products overseas for consumption in the United States, as at least one comment anticipates.

These comments correctly note that CBP predicts strong responses, including shifting packaging facilities overseas, by cigarette manufacturers in response to double drawback. This is a much more cost-intensive response than any behavior observed for wine producers. The incentives to serve the domestic market with foreign-packaged cigarettes would be extremely strong, however. The pre-tax wholesale price of cigarettes is approximately $2.50 per carton. The federal excise tax is approximately $10 per carton. This means that cigarettes packaged abroad and eligible for double drawback would be 80 percent cheaper than domestic cigarettes. Unless shipping costs were close to 400 percent of the wholesale price, tobacco companies would find it profitable to serve the U.S. market with foreign cigarettes. It is worth noting that only the packaging would need to be overseas to qualify as an import. The foreign-packaged cigarettes could still contain U.S. grown tobacco, so this scenario does not require a change in tobacco production. CBP acknowledges that other regulatory considerations would affect the industry response, but CBP is unaware of any insurmountable barriers to widespread off-shoring of cigarette packaging.

CBP predicts that such a process would take several years. CBP acknowledges substantial uncertainty in the timing of this shift to overseas packaging, and this uncertainty is reflected in the large difference between the upper and lower bound estimates of the revenue loss for tobacco were double drawback to be expanded. In the long run, were double drawback allowed, substantively all excise tax on cigarettes could disappear as more packaging is shifted overseas and U.S.-packaged cigarettes are exported to foreign markets.

Comment: One commenter expressed skepticism that distilled spirits producers would destroy cheaply made goods to claim drawback.

Response: CBP agrees that the destruction of goods is an unusual act. It could, however, be a profitable one for importers and claimants of drawback for distilled spirits and tobacco products. Take vodka as an example. The vast majority of vodka imports are in the subheading 2208.60.20, which is defined as vodka valued over $2.05 per liter. Assuming most vodka imports are 80 proof and converting into proof gallons, that corresponds to a minimum value of $9.69 per proof gallon. The tax is $13.50 per proof gallon, or 139 percent of the minimum value. A vodka importer could buy the cheapest wholesale vodka above the $9.69 per proof gallon threshold, and destroy it, earning a net profit of $3.81 per proof gallon after submitting a drawback claim. That same vodka importer could earn an even higher profit by producing cheap vodka in the United States and using its discretion to assign a subjective value of $9.69 to it, and then destroying it. The profit would be the difference between $13.50 and the cost of production. Given that bulk vodka

has a 2016 wholesale price of approximately $3 per proof gallon, there is reason to believe the profit margin on destruction could be over $10 per proof gallon. The incentive is even stronger for grain alcohol importers. The 2016 wholesale price of grain alcohol is $2.37 per proof gallon, suggesting the cost of production is even lower than that of cheap vodka. The USDA figures cited in the NPRM indicate that production costs for grain alcohol are between 50 cents and $1 per proof gallon.

Comment: Two commenters stated that two scenarios in the NPRM involving drawback of excise tax on distilled spirits imported into and exported from bond are incorrect in that they are already expressly prohibited under current and proposed drawback regulations. The commenters stated that imported merchandise must be regularly entered or withdrawn from consumption to be available for drawback. *See* 19 U.S.C. 1313(u); 19 CFR 191.151(a)(2). One commenter stated that there is no evidence that the re-routing hypotheticals are based on real examples, and another similarly states that re-routing is unprecedented and implausible.

Response: CBP disagrees that these scenarios are not realistic. While 19 U.S.C. 1313(u) and related regulations would disqualify goods entered into a customs warehouse but not withdrawn for consumption, alcohol regularly entered, but entered into a TTB warehouse, would not pay tax and could still be the basis for a claim for drawback.

CBP also disagrees that trade re-routing is unprecedented. The USITC defines re-exports as ''foreign-origin goods that have previously entered the U.S. customs territory, a Customs bonded warehouse, or a U.S. FTZ, and, at the time of exportation, have undergone no change in form or condition or enhancement in value by further manufacturing in the U.S. customs territory or U.S. FTZs.'' For 2015, re-exports represented 41 percent of total U.S. exports of spirits by volume and 22 percent by value.

CBP recognizes that transportation costs and other logistical difficulties would make foreign trade re-routing impractical in many circumstances. For instance, Japanese exports to Korea would make a poor candidate for trade re-routing through the United States. CBP, therefore, limited the NPRM's analysis to exports from Canada and Mexico to non-NAFTA countries. An analysis of UN Comtrade data suggests that non-NAFTA exports from Canada and Mexico would amount to approximately 8 percent of U.S. imports. CBP treats this as the feasible amount of re-routing and apply the upper and lower bound takeup rates of 25 percent and 75 percent, respectively, to this amount in the analysis.

The commenter also questions why foreign manufacturers would give permission to have their products re-routed through the United States. All multinational spirits producers that sell imports in the United States would have an incentive to re-route trade. The largest distilled spirits producers and suppliers in the United States are multinational firms. Even smaller foreign producers with production in only one country would have incentive to route their exports bound for other countries through the United States in order to receive drawback on their exports that are destined for the United States. Other importers could sell imports to exporters that wish to claim substitution drawback.

Comment: One commenter stated that CBP estimated the amount of double drawback paid rather than calculating exact figures by tabulating paper claim forms.

Response: CBP agrees that the analysis of the paper forms, approximately 12,000 annually, should provide the exact amount of the excise taxes refunded under existing practice. CBP disagrees, however, that undertaking such an analysis would be useful or necessary. CBP based the wine double drawback estimates on two separate sources of data: (1) Transaction level data on all excise tax refunds for the top 20 importers of wine, and (2) data on substitution drawback claims. Furthermore, as the comment itself explains, ''the majority, if not all, of the taxes refunded under the existing drawback law are excise tax refunds on wine.'' Therefore, CBP believes its conclusions were reasonable.

Comment: One commenter stated that the NPRM's estimates of potential revenue loss associated with double drawback of tobacco excise taxes are not based on any facts, figures, or statistics. It notes that from 2013 to 2017, the total actual excise taxes paid on cigarettes has averaged only $401.8 million, and therefore the $322 million to $2.2 billion estimated range is ''certainly arbitrary and capricious and must be disregarded,'' with the higher end of the estimate exceeding the entire cumulative taxes paid on cigarettes in the past five years.

Response: CBP disagrees with this comment because the total excise tax collections on tobacco averaged $14 billion per year during the years cited. *See, e.g.,* TTB Tax Collection Activities by Fiscal Year, available at *https://www.ttb.gov/tax_audit/tax_collections.shtml.* CBP's revenue loss estimates are based on the best data available to the Federal government, and CBP acknowledges a degree of uncertainty in any forecast premised on behavioral responses to a change in policy. Commenters have not produced evidence that supports the conclusion CBP's estimates are unreasonable.

G. Miscellaneous

1. Assignment of Drawback Rights

Comment: When multiple parties will have an interest in the exported merchandise, CBP proposed that drawback claimants submit, as part of a complete claim, a letter describing the component article on the export bill of lading to which a particular claim is related. One commenter stated that this requirement, in section 190.26(e)(2)(i), is unnecessary because the electronic signature on a drawback claim includes a general certification as to the accuracy of the drawback claim.

Response: CBP disagrees with the commenter's statement that the letter required in proposed section 190.26(e)(2)(i) is unnecessary due to the electronic signature requirement. This letter, which is endorsed by the exporter, is necessary to demonstrate compliance with the limitation set forth in 19 U.S.C. 1313(v) regarding the prohibition on using merchandise that was exported or destroyed as the basis for multiple drawback claims. A general statement as to the accuracy of a drawback claim does not specifically indicate that it is a manufacturing drawback claim involving merchandise that will be designated by multiple claimants, nor does it contain the endorsement of the exporter regarding these respective interests (noting that the exporter is not always the drawback claimant).

Comment: Regarding blanket waivers and assignments of drawback rights for manufacturing drawback claims, CBP proposed to allow exporters to waive and assign their drawback rights for all, or any portion, of their exportations with respect to a particular commodity for a given period of time to any other party who has the right to be a drawback claimant. One commenter requested that CBP amend this restriction in proposed section 190.26(e)(2)(ii) to allow waivers for all future exports without specifying a given period.

Response: CBP disagrees with the suggestion and section 190.26(e)(2)(ii) will remain as it was proposed. Waivers for indefinite periods of time regarding assignment of drawback rights could create a significant risk to the revenue

because these waivers do not require renewals. Absent an expiration date, there is a serious compliance risk. Specifically, an exporter or destroyer might decide, for business reasons, to cease the assignment of drawback rights to a party to whom it has already issued a waiver and elect to either claim the drawback itself or assign the rights to a separate party. The regulations do not require the exporter or destroyer to notify CBP of such a change in business practices, and so the expiration date for the waivers acts as a check to ensure that there will not be multiple waivers in perpetuity to different parties for rights to the same exported or destroyed merchandise (which would be contrary to 19 U.S.C. 1313(v)). Accordingly, the identification of the specified period of time is necessary to ensure waiver validity and enable verification.

Comment: Regarding waivers and assignments of drawback rights for unused merchandise drawback claims, CBP proposed to allow exporters to waive the right to claim drawback and assign such right by executing a certification waiving the right to claim drawback. One commenter stated that there was an inconsistency in proposed section 190.33(b), stating that the waiver had to be filed at the time of or prior to filing a drawback claim, and proposed section 190.52(b), stating that this waiver needed only to be on file and made available to CBP on request. This commenter requested that CBP address this inconsistency.

Response: CBP agrees with the comment and has amended section 190.33(b)(2) to clarify this certification requirement as it applies to electronic claim filing by indicating that certifications must accompany each claim. Similarly, the certification requirement for manufacturing drawback claims in section 190.28 is also modified in this final rule.

Comment: Regarding the assignment of rights for unused merchandise drawback claims, CBP proposed in the NPRM to require claimants to file a certification that is signed by the exporter or destroyer waiving the right to claim drawback. As proposed in section 190.33, the certification is required to be filed at the time of filing the claim or prior to filing the claim and can be a single or blanket certification. One commenter, noting the general recordkeeping requirements regarding records kept in the normal course of business in some provisions of 19 U.S.C. 1313, requested that CBP amend proposed sections 190.33(a)(2) and (b)(2) to state that the claimant must retain such certification or other business record and provide such evidence of waiver and assignment upon request by CBP, rather than at the time of or prior to filing the claim.

Response: CBP disagrees with this comment. TFTEA specifically eliminated certain certification requirements for drawback claims, but not with respect to the documentation of the claimant's actual right to claim drawback. Because the right to claim drawback belongs exclusively to the exporter or destroyer, parties other than the exporter or destroyer must be able to demonstrate that such rights have been assigned to them in order to maintain the integrity of the drawback claims process and to ensure compliance with 19 U.S.C. 1313(v), which explicitly prohibits multiple drawback claims from being filed on the same exported or destroyed merchandise.

2. Successorship

CBP largely kept the same language used in the corresponding sections in part 191 regarding drawback successorship in proposed sections 190.22(d) and 190.32(f). A ''drawback successor'' is an entity to whom the predecessor has transferred, by written agreement, merger, or corporate resolution, certain rights and assets, including the right to claim drawback. CBP received multiple comments on the topic.

Comment: One commenter requested that CBP modify the language in proposed sections 190.22(d)(2) and 190.32(f)(2) to better align with the statutory text of 19 U.S.C. 1313(s) and requested related edits to sections 190.91(a)(3), regarding waiver of prior notice, and 190.92(a)(3), regarding accelerated payment.

Response: CBP agrees, in part, with the commenter. CBP modified the language in sections 190.22(d)(2) and 190.32(f)(2) to properly align with the statutory text of 19 U.S.C. 1313(s). However, CBP disagrees with the commenter's proposal to modify the provisions on limited successorship in section 190.91(a)(3), regarding waiver of prior notice, and section 190.92(a)(3), regarding accelerated payment. These provisions are specifically intended to be more narrow than the general successorship provisions in 19 U.S.C. 1313(s), which are intended to allow for successorship with respect to substitution manufacturing claims under 19 U.S.C. 1313(b) and substitution unused merchandise drawback claims under 19 U.S.C. 1313(j)(2). The limited succession for the privileges in sections 190.91(a)(3) and 190.92(a)(3) is intended to be more narrow because the standards for compliance with their requirements are higher and unlikely to be adhered to during a mere asset transfer, which is allowable for succession under 19 U.S.C. 1313(s). Instead, the limited succession for privileges is allowed only when there is a complete corporate consolidation as opposed to an asset transfer, in order to ensure a sufficient level of knowledge of the drawback claims process will be transferred from the predecessor company.

Comment: One commenter stated that CBP failed to account for all successor scenarios in section 190.22(d)(1) and proposed suggested language regarding explicitly stating that a successor can claim where the predecessor imports and uses merchandise and then manufactures a finished article where either the successor or the predecessor exports the finished article, so long as the merger agreement provides for this situation.

Response: CBP disagrees with this comment. The successor provision for drawback in 19 U.S.C. 1313(s)(1) is limited to an authorization for the designation of imported merchandise used by the predecessor before the date of succession as the basis for drawback on articles manufactured or produced by the drawback successor after the date of succession. There is no allowance in the statute for the scenario proposed by the commenter and CBP lacks the authority to further expand the scope of what constitutes a succession with respect to manufacturing drawback claims.

Comment: Regarding designations by successors and section 190.22(d)(3)(i), one commenter stated that clarifications are needed to indicate that the certifications required under this section do not require prior approval by CBP and can be made at the time of filing a drawback claim. This commenter stated that this clarification would be consistent with section 190.22(d)(3)(iv), which states that records supporting the evidence of a successor's right to a predecessor's drawback need only be submitted to CBP upon request.

Response: CBP agrees with the commenter and section 190.22(d)(3)(ii) is amended to indicate that the certification of the predecessor that has not been otherwise designated is now required to be kept in the claimant's records, but not provided as part of a complete claim for a substitution manufacturing drawback claim. Relatedly, a corresponding change has been made to the requirement for the same certification in section 190.32(f)(3)(i) and (ii) for successorship

for substitution unused merchandise drawback claims.

3. CBP Form 7553 Notice of Intent

Comment: CBP received multiple comments requesting the elimination of CBP Form 7553, Notice of Intent to Export, Destroy or Return Merchandise for Purposes of Drawback. One commenter requested that CBP eliminate the form to comply with the goals of the Paperwork Reduction Act and TFTEA in reducing the number of forms to be filled out. Another commenter, citing section 190.166, dealing with destruction of merchandise in subpart P, which deals with distilled spirits, wine, or beer, requested that CBP Form 7553 be eliminated because the elements are already transmitted electronically. This commenter also requests a process be established to electronically notify if a shipment will be reviewed.

Response: CBP disagrees with these commenters. CBP must have the opportunity to inspect merchandise prior to export or destruction to ensure the specific requirements for drawback eligibility are satisfied. Additionally, claimants who wish to avoid the filing of this form, which is authorized in compliance with the Paperwork Reduction Act, may apply for the privilege to waive this requirement, which is specifically provided for in section 190.91. Return to CBP custody is mandatory for drawback internal revenue tax to be allowed pursuant to 26 U.S.C. 5062(c), for distilled spirits, wines, or beer which are unmerchantable or do not conform to sample or specifications. Without the submission of the CBP Form 7553, there would be no proof that such return was properly made to CBP. Regarding the commenter's request to make notification of CBP's intent to examine be electronic, at this time, the current manual process will remain in effect.

4. Privileges

CBP proposed procedures in sections 190.91, 190.92, and 190.93 regarding the ability to apply for and obtain the privilege of: Waiver of prior notice of intent to export; accelerated payment in which payment of drawback claims may be obtained prior to liquidation; or a combination of both types of privileges separately or in a combined application. These provisions are similar to the provisions dealing with privileges in current part 191, except where modification was necessary to implement the terms of TFTEA such as the need to meet the standard for substitution rather than using the term commercially interchangeable. These sections are cross-referenced in other sections such as section 190.36 dealing with failure to file notice of intent to export, destroy, or return merchandise for purposes of drawback and section 190.42 dealing with procedures and supporting documentation. CBP received several comments described below involving the applications and the privileges of waiving prior notice or accelerated payment.

Comment: Several commenters stated that accelerated payment should be paid on TFTEA-Drawback claims prior to the implementation of the regulations, so long as those claims were filed in compliance with the Interim Guidance. The commenters noted that because the claims are 100% bonded, there is no risk to the revenue.

Response: CBP disagrees with the commenters. As indicated in the Interim Guidance, accelerated payment privileges will not be allowed for TFTEA-Drawback claims under part 190 until the regulations become effective. While the claims may be 100% bonded, the methods of claim calculation could not be considered final until the regulations are implemented (and claims are perfected to fully comply, if necessary). Further, despite claims being 100% bonded, the potential recovery of any overpayments could entail significant administrative burdens that should not be incurred given the absence of legal certainty on the correct claim amounts. Finally, CBP notes that the Interim Guidance also provides that drawback claimants may provide bonding information when TFTEA-Drawback claims are filed or after part 190 becomes effective in order to obtain accelerated payments.

Comment: CBP proposed certain regulations regarding the applications and requirements for obtaining privileges for the waiver of prior notice and accelerated payment. One commenter requested that CBP eliminate the applications altogether, and if not, that the applications be modified to be a registration to use the privileges rather than an application requiring CBP approval.

Response: CBP disagrees with the comment. The purpose of these applications is to ensure that the drawback claimant maintains records sufficient to support eligibility for these privileges, including the necessary trace documents and other details (*e.g.,* the structure of the claimant's drawback program and structure of future claims). The processing of these applications also provides CBP the opportunity to address questions regarding the claimant's drawback program, to ensure compliance. It should be noted that claimants may consolidate privilege applications pursuant to section 190.93.

Comment: CBP proposed regulations regarding applications for obtaining privileges and the Interim Guidance also had instructions. Multiple commenters stated that the NPRM did not contain information on what to do in the case of an application that is pending CBP review and points out that most of the information provided presumed applications had been granted. This commenter asked for clarification regarding these unresolved applications and asked that CBP modify the regulations to state that privileges granted for 19 U.S.C. 1313(j)(1) claims be extended to 1313(j)(2) claims, as stated in the Interim Guidance.

Response: CBP disagrees with the request to modify the regulations. However, to clarify, as provided for under the Interim Guidance, privileges granted under part 191 may be used for claims under part 190 in addition to being available for claims under part 191 through February 23, 2019. Regarding pending privilege applications, CBP will address applications submitted under the applicable part (part 190 or part 191, which is available through February 23, 2019). CBP notes that both the proposed and final regulations, in sections 190.91(a)(2) and 190.92(a)(2), specifically provide that, for privilege applications approved before the end of the transition period for claims under 19 U.S.C. 1313(j)(1), the privilege will also be applicable to claims for the same type of merchandise if made under 19 U.S.C. 1313(j)(2).

Comment: One commenter requested that CBP amend section 190.42(c), regarding the procedures required for rejected merchandise under 19 U.S.C. 1313(c), to allow for waiver of prior notice of exportation pursuant to proposed section 190.91.

Response: CBP agrees with the commenter's request to amend proposed section 190.42(c) to allow for the waiver of prior notice, and CBP will also modify sections 190.91(a) and (b) in this final rule to provide for waiver of prior notice for rejected merchandise claims under 19 U.S.C. 1313(c). Changes to 19 U.S.C. 1313(c) made in the Miscellaneous Trade and Technical Corrections Act of 2004 removed the requirement for merchandise to be returned to CBP custody, and replaced it with the requirement for exportation or destruction under CBP supervision. While the statutory change preceded TFTEA, the regulations were not previously amended to reflect its implementation. Now, the regulations have been amended to remove the

requirement for return to CBP custody and, consistent with this comment, to also allow for the privilege of waiver of prior notice, which has already been allowed in practice. Related to this, CBP has made similar changes to 19 CFR 191.42(c) and has also modified the provision in section 190.36(a) for one-time waiver of prior notice, which originally applied only to drawback claims under 19 U.S.C. 1313(j), to also include drawback claims under section 1313(c), which has already been allowed in practice.

Comment: CBP proposed procedures in section 190.92 regarding the ability to apply for and obtain the privilege of accelerated payment. The proposed regulation did not state a deadline as to when CBP will certify the drawback claim for payment. One commenter stated that the proposed regulation should contain a three-week deadline by which CBP must certify the claim for payment. The commenter also stated that section 190.92(i) failed to provide for a timeframe in which bills or refunds (as a result of liquidation) would be issued by CBP and stated that the lack of a timeframe removes accountability from CBP.

Response: CBP disagrees with this commenter's suggestion to add timeframes for certifying accelerated payment claims. This is not necessary because ACE automation ensures that accelerated payment requests for claims that pass validation (including sufficient bonding) will be paid on a regular, periodic basis within a relatively short timeframe. Typically, such payment will be made within one month. Regarding the commenter's suggestion to provide a timeframe for issuing bills or refunds because of liquidation, drawback claims are subject to the standard billing and refund cycles administered in ACE and adding a specified timeframe in this regulation is unnecessary.

Comment: Regarding section 190.92(a)(1), dealing with accelerated payment, one commenter stated that the NPRM specifically states accelerated payment of drawback is only available when CBP's review of the request for accelerated payment of drawback does not find omissions from, or inconsistencies with the requirements of the drawback law and part 190. The commenter stated that the regulation as drafted would require that drawback claimants must then exclude from accelerated payment requests any duties, taxes or fees where certain rules, such as the first filed rule, would apply. The commenter stated that this section of the NPRM should be eliminated as CBP's arbitrary and capricious attempt to restrict prompt payment of eligible drawback under accelerated payment provisions of this part.

Response: CBP disagrees with the commenter. TFTEA-Drawback claims must be filed in accordance with the applicable drawback laws and part 190, regardless of whether the claimant requests the benefit of the accelerated payment privilege.

Comment: Regarding section 190.92(a)(2), one commenter stated that the NPRM limits the types of drawback covered by an existing approval of accelerated payment by type of drawback claimed except that approvals under 19 U.S.C. 1313(j)(1) may also be applied to claims under 19 U.S.C. 1313(j)(2). The commenter stated that a limitation on types of drawback covered is administratively inefficient and not effective in the administration of accelerated payment of drawback. The commenter stated that a simple certification by a claimant that it maintains records to support drawback coupled with a drawback bond to cover the drawback payment is sufficient for CBP to protect the revenue yet administratively result in an efficient operation of the accelerated payment program. The commenter stated that requiring claimants to submit multiple applications to cover multiple types of drawback to which a claimant may be eligible is a waste of CBP's limited resources in the administration of drawback.

Response: CBP disagrees with the commenter regarding the specification of the basis for the drawback claims. Different types of drawback claims have different regulatory requirements and the documentation required to support the claims will vary. In order to ensure that a privilege should be granted, CBP must review the supporting documentation that the claimant would provide for its claims upon request from CBP and determine that it is sufficient. CBP notes that the kind of documentation needed for a substitution unused merchandise drawback claim is significantly different from that which would be required for a direct identification manufacturing drawback claim and declines to do as the commenter has suggested, which would be to accept documentation to support the former as being acceptable to support the latter.

Comment: As part of an application for accelerated payment, CBP proposed in section 190.92(b)(1)(iv) to require applicants to provide a description of the bond coverage that the applicant intends to use to cover the accelerated payment of the drawback. One commenter stated that ACE will only approve advance payment if sufficient bond coverage exists and stated this system requirement applies for both single transaction bonds and continuous bonds. The commenter suggested that requiring an accelerated payment privilege application to describe the claimant's bond coverage is no longer necessary because of the eBond filing capabilities in ACE. This commenter stated that CBP should remove the requirement from section 190.92(b)(1)(iv). Related to eBond, one commenter requested that CBP modify section 190.92(d) to better reflect the electronic environment for bonds.

Response: CBP disagrees with this comment. The required information for the application for accelerated payment of drawback is separate from the processing of claims for accelerated payment. By providing a description of the anticipated bond coverage, the applicant is demonstrating its preparation for compliance with the requirements necessary to qualify for the privilege of accelerated payment. Accordingly, the application requirement for a description of the anticipated bonding will remain in place. Regarding the request to modify section 190.92(d), CBP disagrees because this section continues to reflect the applicable requirements even though some aspects may be automated in eBond.

Comment: CBP proposed regulations regarding destruction in section 190.71. One commenter also requested that CBP provide for waiver of prior notice in situations regarding destruction in section 190.71 and requested related edits to provide for destruction in section 190.92, regarding eligibility for accelerated payment.

Response: CBP agrees with the comment. Waiver of prior notice for intent to export should be expanded to include destruction, although only an ongoing program of destruction would likely satisfy the requirements to qualify for the privilege. Accordingly, changes have been made in the relevant provisions of sections 190.71 and 190.92 in this final rule to account for the eligibility of destruction for waiver of prior notice, which has already been allowed in practice. Relatedly, CBP has also modified section 190.36, the provision for one-time waiver of prior notice, which originally applied only to exportations, to also include destruction. CBP has determined that this allowance for destruction, which has already been allowed in practice, enables the trade to more efficiently file drawback claims and eases the administrative burden on CBP, while facilitating compliance through the

advance vetting of destruction programs and supporting documentation prior to approval of the privilege application. Relatedly, CBP has made clarifying edits throughout section 190.35 to provide for destruction for unused merchandise drawback, which has already been allowed in practice.

III. Technical Corrections

In the August 2, 2018 NPRM, certain drafting errors had been made, such as the numbering of lines within the same example (*e.g.,* errors made in the examples regarding the amount of merchandise processing fee eligible for drawback in certain scenarios in section 190.51(b)(2)). These and other technical or grammatical errors have also been corrected throughout. As noted below, the final rule contains the following changes:

In section 190.6, CBP is amending paragraph (b)(3) by removing the phrase ''of exporters on bills of lading or evidence of exportation'' and replacing it with the phrase ''to assign the right to claim drawback''. This change creates consistency with the liberalization of documentary evidence for proof of export as provided for in 19 CFR 181.47, 191.72, and 191.74. Bills of lading and other general types of exportation no longer require such certifications; however, the certifications to assign the right to claim drawback continue to be required as noted in the parenthetical for sections 190.28 and 190.82. In section 190.6, CBP is also amending paragraph (c)(3) to include a citation to section 190.36 for one-time waivers along with the reference to waiver of prior notice under section 190.91.

In section 190.8, CBP is amending paragraph (e)(1) as CBP Headquarters will no longer forward a copy of the application for the specific manufacturing drawback ruling to the appropriate drawback office(s) with a copy of the approval letter. Rather, with the transition to the electronic filing environment under TFTEA, CBP Headquarters will upload approved specific manufacturing ruling requests via DIS into ACE.

In section 190.14(b)(4), CBP is amending the section by removing the phrase ''Generally Acceptable Accounting Procedures (GAAP)'', an incorrect reference, and replacing it with ''generally acceptable accounting procedures'', which is the phrase used in 19 CFR 191.14.

In sections 190.22(a) and 190.32(b), CBP is amending each section by adding the following clarifying phrase: The amount of duties, taxes, and fees eligible for drawback is determined by per unit averaging, as defined in section 190.2, for any drawback claim based on 19 U.S.C. 1313(b).

In sections 190.28, 190.33(a)(2) and 190.33(b)(2), CBP is amending each section to clarify the certification requirement as it applies to electronic claim filing by indicating that certifications should accompany each claim. Similarly, the certification requirement for manufacturing drawback claims in section 190.28 is also modified in this final rule.

In sections 190.35(a), to be consistent with sections 190.42 and 190.71, CBP is amending the section to state that CBP Form 7553 must be filed five working days prior to the date of intended exportation.

In section 190.51(a)(2)(iv), CBP is amending this section to require the port code for the drawback office ''where the claim is being filed'' where it previously required the port code for the drawback office ''that will review the claim''.

In section 190.51(a)(2)(ix), CBP has made edits to clarify that, in some scenarios, multiple manufacturing rulings may be involved in a single drawback claim, as well as clarifying the applicable information required for each ruling involved.

In section 190.51, regarding the completion of drawback claims, CBP is correcting an error where two paragraphs were listed as (b). The first, and accurate, paragraph (b) is concerning drawback due. The second paragraph (b), limitation, is now correctly labelled as paragraph (b)(4).

In section 190.193, CBP is amending paragraph (c)(3) by removing the reference to certificates of manufacture and delivery as these certificates were eliminated in TFTEA. CBP also added a reference to destruction in paragraph (d)(4) to clarify that destruction is also a basis for drawback eligibility and, when applicable, the application package for the drawback compliance program would require supporting documentation for recordkeeping for destruction.

In reviewing the Appendices to Part 190, CBP has made a number of non-material or conforming changes in order to further align the appendices with the requirements of TFTEA and aid in simplifying the contents of the appendices. CBP has made certain technical corrections or clarifying edits throughout (such as minor grammatical edits, replacing outdated references to kind and quality with references to identity, and removing references to the physical location of CBP locations where drawback claims will be filed due to electronic filing).

IV. Conclusion

Based on the analysis of the comments and further consideration, CBP has decided to adopt as final the proposed rule published in the **Federal Register** (82 FR 37886) on August 2, 2018, as modified by the changes noted in the discussion of comments and the noted technical corrections.

V. Statutory and Regulatory Requirements

A. Inapplicability of Delayed Effective Date

Under section 553(d) of the Administrative Procedure Act (APA) (5 U.S.C. 553), substantive rulemaking generally requires a 30-day delayed effective date, subject to specified exceptions. Among the statutory exceptions to this general rule is the situation presented here, with respect to most sections of the final TFTEA-Drawback rule, where good cause is found and the reasons establishing good cause are published with the rule. 5 U.S.C. 553(d)(3).

With the exception of certain sections (addressed below), this rulemaking generally eases burdens through modernization of the drawback program and will provide extensive benefits to the public, such as liberalizing the standards for substituting merchandise, easing documentation requirements, and providing for electronic filing; finalization of the rule also will enable accelerated payment as to claims made under the new drawback law. Delaying the final implementation of this rule would result in further delays for claimants in receiving the refund payments that Congress mandated. Due to the strict statutory timelines for filing drawback claims, and given the extensive stakeholder engagement with respect to this regulatory package to date, including in the context of five months of experience with the Interim Guidance prior to publication of the NPRM, as well as the robust comments received after publication of the NPRM, CBP believes that there is good cause for most sections of this rule to become effective immediately upon publication, so as to not further delay payments to claimants. For these reasons, pursuant to 5 U.S.C. 553(d)(3), CBP finds that there is good cause for dispensing with a delayed effective date.

Section 808 of the Congressional Review Act (5 U.S.C. 808) provides that any rule as to which an agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rule issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary

to the public interest, shall take effect at such time as the Federal agency promulgating the rule determines. For the same reasons that CBP finds there is good cause for dispensing with a delayed effective date under the Administrative Procedure Act, CBP believes that, under section 808 of the Congressional Review Act, notwithstanding section 801 of that act (which would essentially result in a 60-day delay in effective date), and even though there was notice and public procedure as to the NPRM, good cause exists for the final rule to become effective without further public procedure and immediately upon its filing for publication (44 U.S.C. 1503), as delaying the effective date would be contrary to the public interest. Additionally, on October 12, 2018, the United States Court of International Trade ordered the regulations, with certain exceptions noted below, to be filed with the Office of Federal Register on or before December 17, 2018, and to become effective on the date of filing with the Office Federal Register. *See Tabacos de Wilson,* v. *United States,* No. 18–00059 (Ct. Int'l Trade 2018).

As proposed in the NPRM, there is an exception to the immediate effective date as to claims of a specific type, with respect to which additional considerations, involving a possible change in prior treatment for certain claimants, as applicable, are present. Specifically, for the regulatory sections regarding the drawback of excise taxes at §§ 190.22(a)(1)(C), 190.32(b)(3), 190.171(c)(3), 191.22(a), 191.32(b)(4), and 191.171(d), the effective date will be 60 days after publication. This effective date is also in compliance with the October 12, 2018 order from the United States Court of International Trade.

B. Executive Order 13563 (Improving Regulation and Regulatory Review) and Executive Order 12866 (Regulatory Planning and Review)

Executive Orders 13563 and 12866 direct agencies to assess 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 costs, benefits, and transfers, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule is an ''economically significant regulatory action'' under section 3(f) of Executive Order 12866. Accordingly, this rule has been reviewed by the Office of Management and Budget (''OMB''). CBP prepared an economic analysis of the estimated impacts of this rule for public awareness, which CBP summarizes below. The complete analysis can be found in the public docket for this rulemaking at *www.regulations.gov.*

To fulfill a mandate in the Trade Facilitation and Trade Enforcement Act of 2015 (Pub. L. 114–125), U.S. Customs and Border Protection and the Department of the Treasury published the Modernized Drawback Notice of Proposed Rulemaking in the **Federal Register** on August 2, 2018.[6] The Modernized Drawback NPRM proposed to create new drawback regulations that would make the current regulations generally obsolete for claims filed on or after February 24, 2019. These regulations would (1) require the electronic filing of drawback claims; (2) liberalize the standard for substituting merchandise for drawback; (3) generally require per unit averaging calculation for substitution drawback; (4) generally require substitution drawback claims to be calculated on a ''lesser of'' basis; (5) expand the scope of drawback refunds; (6) establish joint and several liability for drawback claims; (7) modify the rulings process; (8) standardize the timeframe for eligibility to claim drawback; and (9) modify recordkeeping requirements. These regulations would also (10) eliminate ''double drawback'' of excise taxes. These changes are referred to subsequently as ''Major Amendment'' and the corresponding number, 1 through 10. The Modernized Drawback NPRM also included minor amendments that mostly clarify current practice and policy, restructure the regulations, and eliminate outdated regulations. After much consideration of the public comments on the Modernized Drawback NPRM, CBP adopts most of the regulatory amendments specified in the NPRM without change in the Modernized Drawback Final Rule, except CBP will allow mixed TFTEA and non-TFTEA substitution drawback claims (''mixed claims''). Additionally, CBP will make minor changes to the NPRM, which the final rule will reflect, to: (1) Remove the proposed requirement for joint and several liability bonds; (2) codify existing CBP drawback practices, such as allowing waivers of prior notice for rejected merchandise and accepting continuous bonds for drawback claims with pending accelerated payment approval; (3) ease documentation requirements for transferred merchandise; (4) standardize document submission timelines; (5) reduce drawback claim data submission requirements; (6) clarify regulations; and (7) make technical corrections. With the adoption of most of the proposed regulatory amendments, CBP has largely used the Modernized Drawback NPRM's regulatory impact analysis template for this final rule analysis.[7] However, some changes to the analysis were necessary to capture the regulatory changes from the NPRM just described, OMB suggestions, and data updates, as discussed later in this analysis.

The Modernized Drawback Final Rule will affect trade members involved in the drawback process, including those engaged in the U.S. import, export, and destruction processes, and the U.S. Government (particularly CBP) over a 10-year period of analysis spanning from 2018 to 2027. The largest impact of this rule will be in the form of monetary transfers from the U.S. Government to trade members. Under CBP's primary estimation method, the U.S. Government (or, in turn, taxpayers) will transfer $763.3 million in present value revenue, or $101.6 million when annualized, to trade members as a result of Major Amendment 2's eased substitution drawback standard and Major Amendment 5's expanded scope of drawback refunds (using a 7 percent discount rate; see Summary Table). Alternatively, trade members will transfer between $494.0 million and $525.7 million in present value revenue, or $65.7 million to $70.0 million on an annualized basis, to the U.S. Government due to Major Amendment 2's limitation of substitution unused merchandise drawback, Major Amendment 3's per unit averaging calculation, Major Amendment 4's ''lesser of'' calculation, and Major Amendment 10's elimination of ''double drawback'' (using a 7 percent discount rate; see Summary Table). Though these transfers are not to and from the same private entities (*i.e.,* some entities may experience only a monetary transfer *from* the U.S. Government and others may only experience a monetary transfer *to* the U.S. Government), on net, over the 10-year period of analysis the U.S. Government will transfer $237.6 million to $269.3 million in present value revenue to trade members as a direct result of this rule. These net transfers will equal $31.6 million to $35.8 million when annualized (using a 7 percent discount rate; see Summary Table).

[6] *See* 83 FR 37886 (August 2, 2018).

[7] The Regulatory Impact Analysis of the Modernized Drawback Notice of Proposed Rulemaking is available at *https://www.regulations.gov/docket?D=USCBP-2018-0029.*

This rule will also produce costs and benefits to trade members and CBP. Trade members affected by this rule will sustain costs related to Major Amendment 1's electronic filing requirement, Major Amendment 3's mixed claim [8] requirements, Major Amendment 7's modified rulings process, and Major Amendment 9's expanded recordkeeping requirements. These costs will total $57.2 million in present value and $7.6 million at an annualized rate under CBP's primary estimation method from 2018 to 2027 (using 7 percent discount rate; see Summary Table). Trade members will also incur non-monetized, non-quantified costs from this rule. Major Amendment 3's per unit averaging calculation requirement and claim limitations may make it less attractive for trade members to use the United States as a home base for a distribution facility when coupled with other considerations and offer drawback rights to parties to whom they sell merchandise (*i.e.,* third-party drawback), though the extent of these costs is unknown. Major Amendment 6's establishment of joint and several liability for drawback claims will impose a new liability on importers that may deter some drawback claims. Lastly, Major Amendment 8's standardized drawback eligibility timeframe and a new CBP amendment will offer some trade members less time to file drawback claims and documentation as compared to the current process. Based on CBP subject matter expertise, CBP does not believe that these non-monetized, non-quantified costs will be large when considering the additional drawback opportunities presented with this rule.[9]

CBP will sustain costs from Major Amendment 1's electronic filing requirement, Major Amendment 2's eased substitution drawback standard, and Major Amendment 7's modified rulings process. These costs will total $5.1 million in present value, or $0.7 million when annualized, under the primary estimation method from 2018 to 2027 (using a 7 percent discount rate; see Summary Table).

Over the period of analysis, trade members will experience cost savings from Major Amendment 1's electronic filings and Major Amendment 2's eased substitution. These cost savings will measure $5.4 million in present value and $0.7 million when annualized under the primary estimation method over the period of analysis (using a 7 percent discount rate; see Summary Table). Trade members will also enjoy non-monetized, non-quantified benefits from this rule's streamlined claim submissions and processing, increased time to claim drawback, simplified understanding of the drawback process, added reassurance that rulings with potentially business-sensitive information will not be available for public consumption, and decreased business costs.

CBP will enjoy cost savings from Major Amendment 1's electronic filings, Major Amendment 2's eased substitution drawback standard, and Major Amendment 3's per unit averaging calculation. These benefits will equal $4.2 million in present value and $0.6 million on an annualized basis under the primary estimation method (using a 7 percent discount rate; see Summary Table). In addition to these monetized savings, CBP will experience non-monetized, non-quantified benefits from this rule, including an eased work process, strengthened ability to validate drawback claims and recoup inaccurately over-claimed drawback, added administrative review time, and simplified implementation of drawback filing rules. These changes will result in major benefits to CBP.[10]

The Summary Table outlines the total impact of the Modernized Drawback Final Rule under CBP's primary estimation method. As shown, the U.S. Government will transfer $237.6 million to $269.3 million in present value net revenue to trade members as a direct result of this rule, which will equal $31.6 million to $35.8 million when annualized (using a 7 percent discount rate). In total, this rule will generate $62.3 million to $62.4 million in monetized present value costs and $9.6 million in monetized present value cost savings under the primary estimation method (using a 7 percent discount rate). When annualized, the monetized cost of this rule equals $8.3 million and its monetized cost saving will measure $1.3 million (using a 7 percent discount rate). Altogether, the total monetized present value net benefit of this rule under the primary estimation method is between −$52.7 million and −$52.8 million (*i.e.,* a net cost), while its annualized net benefit totals −$7.0 million (using a 7 percent discount rate). Furthermore, this rule will introduce non-monetized, non-quantified costs and benefits. Some aspects of this rule will make it potentially less attractive for some trade members to use the United States as a home base for a distribution facility and offer drawback rights to other parties, impose a new liability for importers, and offer less time for trade members to file drawback claims and documentation. Nonetheless, these costs will likely be minor when considering the rule's additional drawback opportunities. In contrast, the rule will introduce major non-monetized, non-quantified benefits to trade members and CBP. The rule will provide streamlined claim submissions and processing for trade members and CBP, increased time for trade members to claim drawback, added administrative review time for CBP, a strengthened ability for CBP to validate drawback claims and recoup inaccurately over-claimed drawback, a simplified drawback process for trade members and CBP, added reassurance for trade members that rulings with potentially business-sensitive information will not be available for public consumption, and decreased business costs for trade members. CBP believes that this rule's non-monetized, non-quantified benefits will be much greater than this rule's non-monetized, non-quantified costs.

Because CBP has previously granted ''double drawback'' for wine (granting drawback of excise taxes paid on imported wine upon the export of substituted non-taxpaid wine under section 1313(j)(2)), some firms dealing in other products subject to Federal excise tax that is imposed upon entry or importation have asked whether they could also pursue substitution drawback claims similar to those that have been made for wine. Therefore, CBP has also included a Supplementary Summary Table showing the impact of this rule under an alternate analysis where it is assumed, solely for analytical and informational purposes, that double drawback had been extended to other commodities prior to this rule taking effect. As shown in the Supplementary Summary Table, if it is assumed that double drawback had been expanded to other goods subject to excise taxes collected upon entry, then the effect of eliminating the revenue loss under the hypothetical extension of double drawback would be a transfer of $13.5 billion in present value net revenue to the U.S. Government under the alternate analysis from 2018 to 2027, which would equal $1.8 billion when annualized (using a 7 percent discount rate). The actual estimated range of the

[8] This rule will allow trade members to file TFTEA drawback claims that designate unused line items from import entry summaries previously designated on non-TFTEA claims, but only if trade members submit documentation proving that the line items in issue were unused via DIS upload within 30 days of submitting their drawback claim.

[9] Source: Email correspondence with CBP's Office of Trade on July 12, 2018.

[10] Source: Email correspondence with CBP's Office of Trade on July 12, 2018.

transfer or revenue loss would average $674 million to $3.3 billion annually over the next 10 years (undiscounted). The quantified costs and benefits of the rule would be the same as under the primary analysis.

Although this analysis includes CBP's best estimates of the costs, benefits, and transfers resulting from this rule, the exact impact of this rule is unknown due to data limitations and indefinite reactions from the trade community. Accordingly, the actual costs, benefits, and transfers resulting from this rule could be higher or lower than CBP has estimated in this analysis.

SUMMARY TABLE—TOTAL IMPACT OF RULE UNDER PRIMARY ESTIMATION METHOD, 2018–2027

[Monetized values in millions; 2018 U.S. dollars]

	Undiscounted	3% Discount rate		7% Discount rate	
		Present value	Annualized	Present value	Annualized
Major Amendment 1—Require the Electronic Filing of Drawback Claims:					
Total Cost	$70.3	$65.7	$7.5	$60.9	$8.1.
Total Benefit	$10.5	$9.1	$1.0	$7.7	$1.0
	Streamlined claim submissions and processing and strengthened ability for CBP to validate claims and recoup inaccurately over-claimed drawback.				
Total Transfer to Trade Members.					
Total Transfer to U.S. Government.					
Major Amendment 2—Liberalize the Standard for Substituting Merchandise for Drawback:					
Total Cost	$0.03	$0.03	$0.003	$0.02	$0.003.
Total Benefit	$0.7	$0.6	$0.1	$0.5	$0.1.
Total Transfer to Trade Members	$1,000.5	$876.9	$99.8	$747.7	$99.5.
Total Transfer to U.S. Government	$11.0	$9.6	$1.1	$8.2	$1.1.
Major Amendment 3—Generally Require Per Unit Averaging Calculation for Substitution Drawback:					
Total Cost	$0.01 to $0.03	$0.01 to $0.03	$0.001 to $0.004.	$0.01 to $0.03	$0.001 to $0.004.
	Potentially less attractive for trade members to use the United States as a home base for a distribution facility and offer drawback rights to parties to whom they sell merchandise (*i.e.,* third-party drawback).				
Total Benefit	$1.8	$1.6	$0.2	$1.4k	$0.2.
	Strengthened ability for CBP to validate claims and recoup inaccurately over-claimed drawback.				
Total Transfer to Trade Members.					
Total Transfer to U.S. Government	$14.2 to $56.7	$12.4 to $49.6	$1.4 to $5.6	$10.6 to $42.3	$1.4 to $5.6.
Major Amendment 4—Generally Require Substitution Drawback Claims to be Calculated on a "Lesser of" Basis:					
Total Cost.					
Total Benefit	**Strengthened ability for CBP to validate claims and recoup inaccurately over-claimed drawback.**				
Total Transfer to Trade Members.					
Total Transfer to U.S. Government	$20.1	$17.6	$2.0	$15.0	$2.0.
Major Amendment 5—Expand the Scope of Drawback Refunds:					
Total Cost.					
Total Benefit.					
Total Transfer to Trade Members	$20.9	$18.3	$2.1	$15.6	$2.1.
Total Transfer to U.S. Government.					
Major Amendment 6—Establish Joint and Several Liability for Drawback Claims:					
Total Cost	**New liability for importers.**				

SUMMARY TABLE—TOTAL IMPACT OF RULE UNDER PRIMARY ESTIMATION METHOD, 2018–2027—Continued

[Monetized values in millions; 2018 U.S. dollars]

	Undiscounted	3% Discount rate		7% Discount rate	
		Present value	Annualized	Present value	Annualized
Total Benefit	**Improved accuracy of the documentation surrounding the transfer of drawback rights for some trade members claiming drawback and expanded opportunities for CBP to recoup inaccurately over-claimed drawback.**				
Total Transfer to Trade Members. Total Transfer to U.S. Government.					
Major Amendment 7—Modify the Rulings Process: Total Cost	$1.1	$1.1	$0.1	$1.1	$0.1.
Total Benefit	**Strengthened ability for CBP to validate claims and recoup inaccurately over-claimed drawback.**				
Total Transfer to Trade Members. Total Transfer to U.S. Government.					
Major Amendment 8—Standardize the Timeframe for Eligibility to Claim Drawback:					
Total Cost	**Less time for trade members to file drawback claims.**				
Total Benefit	**Additional time for trade members to use merchandise for drawback; simplified understanding of the drawback process for trade members; simplified implementation of drawback filing rules for CBP.**				
Total Transfer to Trade Members. Total Transfer to U.S. Government.					
Major Amendment 9—Modify Record-keeping Requirements: Total Cost	$0.4	$0.3	$0.04	$0.3	$0.04.
Total Benefit	**Strengthened ability for CBP to validate claims and recoup inaccurately over-claimed drawback.**				
Total Transfer to Trade Members. Total Transfer to U.S. Government.					
Major Amendment 10—Eliminate ''Double Drawback'' of Excise Taxes: Total Cost. Total Benefit. Total Transfer to Trade Members. Total Transfer to U.S. Government ..	$622.6	$543.1	$61.8	$460.3	$61.2.
Minor Amendments: Total Cost.					
Total Benefit	**Additional opportunity for trade members to recover materials rather than destroy entire shipments when claiming unused merchandise drawback; enhanced understanding of the drawback process.**				
Total Transfer to Trade Members. Total Transfer to U.S. Government.					
New Amendments to NPRM:					
Total Cost	**Less time for trade members to file drawback claim documentation**				
Total Benefit.					
	Streamlined claim submissions and processing; simplified drawback process for trade members and CBP; added reassurance for trade members that rulings with potentially business-sensitive information will not be available for public consumption; decreased business costs; added administrative review time for CBP.				
Total Transfer to Trade Members.					

SUMMARY TABLE—TOTAL IMPACT OF RULE UNDER PRIMARY ESTIMATION METHOD, 2018–2027—Continued

[Monetized values in millions; 2018 U.S. dollars]

	Undiscounted	3% Discount rate		7% Discount rate	
		Present value	Annualized	Present value	Annualized
Total Transfer to U.S. Government.					
Overall Rule: Total Cost	$71.9 to $71.9	$67.2 to $67.2	$7.6 to $7.7	$62.3 to $62.4	$8.3 to $8.3.
	Potentially less attractive for trade members to use the United States as a home base for a distribution facility and offer drawback rights to other parties; new liability for importers; less time for trade members to file drawback claims and documentation.				
Total Benefit	$13.0	$11.3	$1.3	$9.6	$1.3.
	Streamlined claim submissions and processing; improved accuracy of the drawback rights transfer documentation; additional time for trade members to use merchandise for drawback; additional opportunity for trade members to recover materials rather than destroy entire shipments when claiming unused merchandise drawback; simplified drawback process for trade members and CBP; strengthened ability for CBP to validate claims and recoup inaccurately over-claimed drawback; added reassurance for trade members that rulings with potentially business-sensitive information will not be available for public consumption; decreased business costs; added administrative review time for CBP.				
Total Transfer to Trade Members	$1,021.3	$895.2	$101.9	$763.3	$101.6.
Total Transfer to U.S. Government	$667.8 to $710.3	$582.7 to $619.9	$66.3 to $70.6	$494.0 to $525.7	$65.7 to $70.0.
Net Transfer (from U.S. Government to Trade Members).	$311.0 to $353.5	$275.2 to $312.4	$31.3 to $35.6	$237.6 to $269.3	$31.6 to $35.8.

Notes: The estimates in this table are contingent upon CBP's expectations of the population affected by the rule and the discount rates applied. The net transfers to trade members shown in this table are also not necessarily to and from the same private entities (*i.e.,* some entities may experience only a monetary transfer *from* the U.S. Government and others may only experience a monetary transfer *to* the U.S. Government). Estimates may not sum to total due to rounding.

C. Executive Order 13771 (Reducing Regulation and Controlling Regulatory Costs)

Executive Order 13771 directs agencies to reduce regulation and control regulatory costs, and provides that ''for every one new regulation issued, at least two prior regulations be identified for elimination, and that the cost of planned regulations be prudently managed and controlled through a budgeting process.'' [11] These requirements only apply to rules designated as ''significant regulatory actions'' under section 3(f) of Executive Order 12866. OMB's implementation guidance explains that ''Federal spending regulatory actions that cause only income transfers between taxpayers and program beneficiaries . . . are considered 'transfer rules' and are not covered by E.O. [Executive Order] 13771 . . . However . . . such regulatory actions may impose requirements apart from transfers . . . In those cases, the actions would need to be offset to the extent they impose more than de minimis costs.'' [12]

This rule is a significant regulatory action under section 3(f) of Executive Order 12866, and is hence subject to the requirements of Executive Order 13771. Most of the regulatory amendments in this rule are the result of the Trade Facilitation and Trade Enforcement Act of 2015 (Pub. L. 114–125), which amended 19 U.S.C. 1313, the statute guiding CBP drawback regulations, and required CBP to promulgate regulations implementing these changes by February 24, 2018. This rule includes both a regulatory action and a deregulatory action that implement TFTEA's requirements. Because these actions are related to drawback, CBP chose to include both actions in this rule instead of promulgating two separate rules. On net, this rule imposes a regulatory burden (and is thus a regulatory action) because its regulatory impacts exceed its deregulatory impacts. This rule's regulatory impacts (*i.e.,* costs) will measure $8.3 million on an annualized basis,[13] while its deregulatory impacts (*i.e.,* cost savings) will measure $1.3 million on an annualized basis (in 2016 U.S. dollars, using a 7 percent discount rate). Together, these impacts will introduce an annualized net regulatory cost of $7.0 million.

D. Regulatory Flexibility Act

This section examines the impact of the Modernized Drawback Final Rule on small entities per the requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA). A small entity may be a small business (defined as any independently owned and operated business not dominant in its field that qualifies as a small business per the Small Business Act); a small not-for-profit organization; or a small governmental jurisdiction (locality with fewer than 50,000 people).

Under the RFA and SBREFA, if an agency can certify (typically through a screening analysis) that a rule will not have a ''significant economic impact on a substantial number of small entities,'' a detailed assessment of the rule's impact on small entities is not required. Otherwise, an agency must complete an initial regulatory flexibility analysis (IRFA) exploring the impact of the rulemaking on small entities. If at the final rule stage an agency still cannot certify that the rule will not have a ''significant economic impact on a

[11] *See* 82 FR 9339 (February 3, 2017).

[12] *See* OMB's memorandum titled, ''Guidance Implementing Executive Order 13771, Titled 'Reducing Regulation and Controlling Regulatory Costs' '' (April 5, 2017).

[13] This estimate includes the high value of CBP's estimated range of costs of Major Amendment 3's mixed substitution drawback claim requirements. *See* Regulatory Impact Analysis of the Modernized Drawback Final Rule.

substantial number of small entities,'' a final regulatory flexibility analysis (FRFA) assessing the final rule's impact on small entities is required. CBP published a screening analysis and IRFA of the Modernized Drawback Notice of Proposed Rulemaking in the **Federal Register** on August 2, 2018.[14] For the final rule, CBP has updated the initial screening analysis to reflect information on additional entities and new costs, benefits, and transfers data. CBP has also prepared a FRFA.

Screening Analysis

The Modernized Drawback rule will fundamentally change the drawback process and consequently affect all trade members eligible for drawback (*i.e.,* drawback claimants). These trade members can include importers, exporters, manufacturers, producers, and intermediate parties representing a diverse array of industries. CBP does not assess the rule's impact on customs brokers who file claims for trade members eligible for drawback in this RFA analysis because they will presumably charge their clients a fee for any costs introduced with the rule (and thus not be affected themselves).

Because the Small Business Administration's (SBA) guidelines on small businesses under the RFA do not explicitly define small business standards for the importers, exporters, manufacturers, producers, and intermediate parties potentially affected by the rule, CBP used data on the industries in which these parties operate to determine the number of small entities potentially affected by this rule. CBP began by compiling a list of all 9,017 unique drawback claimants who filed claims between 2007 and 2016 and matching the claimant identification number (''claimant ID'') to the operator/owner name and address listed in internal CBP databases. Next, CBP assigned a random number to each of the claimants in that list and sorted the data in ascending order by the random number assigned. Using public and proprietary databases, CBP then pulled information like the entity type (subsidiary or parent company), primary line of business, employee size, and revenue on the claimants in ascending order until the agency had market data for 375 unique entities.[15]

Table 1 shows the industries, according to their North American Industrial Classification System (NAICS) code, in the sample of entities affected by this rule and the SBA's small business size standards for these industries. For the most part, the SBA's size standards are the average annual receipts or the average employment of a firm.[16] As shown, CBP finds that 71 percent (268) of the drawback claimants sampled are considered ''small businesses'' according to the SBA's size standards or are a small non-profit organization, of which there was one in the sample. CBP did not identify any small governmental jurisdictions affected by the rule in this sample. According to these findings, CBP assumes that the rule will affect a substantial number of small entities. CBP recognizes that this screening analysis may have excluded some less established, potentially small entities due to market data availability. To the extent that those excluded are small, the portion of small entities affected by the rule will be higher than estimated.

Of the small drawback claimants sampled and included in Table 1, the average number of employees at these entities ranged from 1 to 1,200 and their annual revenue measured from less than $0.5 million to $751.8 million (see Table 2). Table 2 shows the average number of employees and annual revenue corresponding to the small entities sampled in each NAICS industry using the low ranges of data available (as only ranges of employees and revenue are available for some entities).

TABLE 1—STATISTICS OF SMALL ENTITIES AFFECTED BY RULE FROM THE RANDOM SAMPLE

NAICS code	NAICS description	Number of entities in sample	Percent of entities in sample	SBA size standard	Number of small entities in sample	Percent of small entities in sample
113210	Forest Nurseries and Gathering of Forest Products.	1	0.3	$11.0 Million	0	0.0
113310	Logging	1	0.3	500 Employees	0	0.0
212391	Potash, Soda, and Borate Mineral Mining.	1	0.3	750 Employees	1	0.3
221118	Other Electric Power Generation	1	0.3	250 Employees	1	0.3
311211	Flour Milling	1	0.3	1,000 Employees	1	0.3
311224	Soybean and Other Oilseed Processing.	1	0.3	1,000 Employees	0	0.0
311421	Fruit and Vegetable Canning	2	0.5	1,000 Employees	1	0.3
311930	Flavoring Syrup and Concentrate Manufacturing.	1	0.3	1,000 Employees	1	0.3
312130	Wineries	1	0.3	1,000 Employees	1	0.3
312140	Distilleries	1	0.3	1,000 Employees	1	0.3
313210	Broadwoven Fabric Mills	3	0.8	1,000 Employees	2	0.5
314994	Rope, Cordage, Twine, Tire Cord, and Tire Fabric Mills.	1	0.3	1,000 Employees	1	0.3
314999	All Other Miscellaneous Textile Product Mills.	2	0.5	500 Employees	2	0.5
315190	Other Apparel Knitting Mills	1	0.3	750 Employees	1	0.3
315220	Men's and Boys' Cut and Sew Apparel Manufacturing.	5	1.3	750 Employees	4	1.1
315240	Women's, Girls', and Infants' Cut and Sew Apparel Manufacturing.	6	1.6	750 Employees	5	1.3
315280	Other Cut and Sew Apparel Manufacturing.	1	0.3	750 Employees	1	0.3

[14] *See* 83 FR 37886 (August 2, 2018).

[15] Out of a total population of 9,017 unique drawback claimants who filed claims between 2007 and 2016, CBP used a sample of 375 claimants with market data to inform this screening analysis due to the extensive time burden to gather and analyze business information. This sample size resulted in a statistically valid sample using a 95 percent confidence level with a 5 percent margin of error.

[16] The SBA's calculation methods for average annual receipts and average employment of a firm can be found in 13 CFR 121.104 and 13 CFR 121.106, respectively.

TABLE 1—STATISTICS OF SMALL ENTITIES AFFECTED BY RULE FROM THE RANDOM SAMPLE—Continued

NAICS code	NAICS description	Number of entities in sample	Percent of entities in sample	SBA size standard	Number of small entities in sample	Percent of small entities in sample
315990	Apparel Accessories and Other Apparel Manufacturing.	2	0.5	500 Employees ...	1	0.3
316210	Footwear Manufacturing	1	0.3	1,000 Employees	0	0.0
321911	Wood Window and Door Manufacturing.	1	0.3	1,000 Employees	1	0.3
321918	Other Millwork (including Flooring) ...	1	0.3	500 Employees ...	1	0.3
325180	Other Basic Inorganic Chemical Manufacturing.	7	1.9	1,000 Employees	5	1.3
325194	Cyclic Crude, Intermediate, and Gum and Wood Chemical Manufacturing.	1	0.3	1,250 Employees	1	0.3
325199	All Other Basic Organic Chemical Manufacturing.	2	0.5	1,250 Employees	0	0.0
325211	Plastics Material and Resin Manufacturing.	4	1.1	1,250 Employees	3	0.8
325220	Artificial and Synthetic Fibers and Filaments Manufacturing.	1	0.3	1,000 Employees	1	0.3
325412	Pharmaceutical Preparation Manufacturing.	2	0.5	1,250 Employees	2	0.5
325612	Polish and Other Sanitation Good Manufacturing.	1	0.3	750 Employees ...	1	0.3
325620	Toilet Preparation Manufacturing	1	0.3	1,250 Employees	1	0.3
325998	All Other Miscellaneous Chemical Product and Preparation Manufacturing.	2	0.5	500 Employees ...	1	0.3
326113	Unlaminated Plastics Film and Sheet (except Packaging) Manufacturing.	1	0.3	750 Employees ...	1	0.3
326199	All Other Plastics Product Manufacturing.	3	0.8	750 Employees ...	3	0.8
326299	All Other Rubber Product Manufacturing.	1	0.3	500 Employees ...	1	0.3
327110	Pottery, Ceramics, and Plumbing Fixture Manufacturing.	1	0.3	1,000 Employees	1	0.3
327120	Clay Building Material and Refractories Manufacturing.	2	0.5	750 Employees ...	2	0.5
327390	Other Concrete Product Manufacturing.	1	0.3	500 Employees ...	1	0.3
327420	Gypsum Product Manufacturing	1	0.3	1,500 Employees	1	0.3
327910	Abrasive Product Manufacturing	1	0.3	750 Employees ...	0	0.0
331110	Iron and Steel Mills and Ferroalloy Manufacturing.	2	0.5	1,500 Employees	0	0.0
331410	Nonferrous Metal (except Aluminum) Smelting and Refining.	2	0.5	1,000 Employees	2	0.5
331491	Nonferrous Metal (except Copper and Aluminum) Rolling, Drawing, and Extruding.	1	0.3	750 Employees ...	1	0.3
332323	Ornamental and Architectural Metal Work Manufacturing.	1	0.3	500 Employees ...	1	0.3
332510	Hardware Manufacturing	1	0.3	750 Employees ...	0	0.0
332813	Electroplating, Plating, Polishing, Anodizing, and Coloring.	1	0.3	500 Employees ...	1	0.3
332911	Industrial Valve Manufacturing	1	0.3	750 Employees ...	0	0.0
332996	Fabricated Pipe and Pipe Fitting Manufacturing.	1	0.3	500 Employees ...	1	0.3
332999	All Other Miscellaneous Fabricated Metal Product Manufacturing.	1	0.3	750 Employees ...	1	0.3
333111	Farm Machinery and Equipment Manufacturing.	1	0.3	1,250 Employees	1	0.3
333244	Printing Machinery and Equipment Manufacturing.	1	0.3	750 Employees ...	1	0.3
333249	Other Industrial Machinery Manufacturing.	1	0.3	500 Employees ...	1	0.3
333415	Air-Conditioning and Warm Air Heating Equipment and Commercial and Industrial Refrigeration Equipment Manufacturing.	1	0.3	1,250 Employees	0	0.0
333613	Mechanical Power Transmission Equipment Manufacturing.	1	0.3	750 Employees ...	1	0.3
333997	Scale and Balance Manufacturing ...	1	0.3	500 Employees ...	0	0.0

TABLE 1—STATISTICS OF SMALL ENTITIES AFFECTED BY RULE FROM THE RANDOM SAMPLE—Continued

NAICS code	NAICS description	Number of entities in sample	Percent of entities in sample	SBA size standard	Number of small entities in sample	Percent of small entities in sample
334118	Computer Terminal and Other Computer Peripheral Equipment Manufacturing.	1	0.3	1,000 Employees	0	0.0
334310	Audio and Video Equipment Manufacturing.	2	0.5	750 Employees ...	1	0.3
334419	Other Electronic Component Manufacturing.	1	0.3	750 Employees ...	0	0.0
334510	Electromedical and Electrotherapeutic Apparatus Manufacturing.	1	0.3	1,250 Employees	1	0.3
334513	Instruments and Related Products Manufacturing for Measuring, Displaying, and Controlling Industrial Process Variables.	1	0.3	750 Employees ...	0	0.0
334516	Analytical Laboratory Instrument Manufacturing.	1	0.3	1,000 Employees	1	0.3
335121	Residential Electric Lighting Fixture Manufacturing.	1	0.3	750 Employees ...	1	0.3
335122	Commercial, Industrial, and Institutional Electric Lighting Fixture Manufacturing.	1	0.3	500 Employees ...	1	0.3
335129	Other Lighting Equipment Manufacturing.	1	0.3	500 Employees ...	1	0.3
335220	Major Household Appliance Manufacturing.	1	0.3	1,500 Employees	1	0.3
336213	Motor Home Manufacturing	1	0.3	1,250 Employees	1	0.3
336330	Motor Vehicle Steering and Suspension Components (except Spring) Manufacturing.	1	0.3	1,000 Employees	1	0.3
336510	Railroad Rolling Stock Manufacturing.	1	0.3	1,500 Employees	1	0.3
337214	Office Furniture (except Wood) Manufacturing.	1	0.3	1,000 Employees	1	0.3
337920	Blind and Shade Manufacturing	1	0.3	1,000 Employees	0	0.0
339112	Surgical and Medical Instrument Manufacturing.	3	0.8	1,000 Employees	2	0.5
339113	Surgical Appliance and Supplies Manufacturing.	1	0.3	750 Employees ...	1	0.3
339115	Ophthalmic Goods Manufacturing	1	0.3	1,000 Employees	1	0.3
339910	Jewelry and Silverware Manufacturing.	1	0.3	500 Employees ...	1	0.3
339920	Sporting and Athletic Goods Manufacturing.	2	0.5	750 Employees ...	1	0.3
339930	Doll, Toy, and Game Manufacturing	1	0.3	500 Employees ...	1	0.3
339991	Gasket, Packing, and Sealing Device Manufacturing.	1	0.3	500 Employees ...	0	0.0
339992	Musical Instrument Manufacturing ...	1	0.3	1,000 Employees	1	0.3
339999	All Other Miscellaneous Manufacturing.	3	0.8	500 Employees ...	3	0.8
423120	Motor Vehicle Supplies and New Parts Merchant Wholesalers.	2	0.5	200 Employees ...	2	0.5
423220	Home Furnishing Merchant Wholesalers.	9	2.4	100 Employees ...	6	1.6
423330	Roofing, Siding, and Insulation Material Merchant Wholesalers.	1	0.3	200 Employees ...	1	0.3
423430	Computer and Computer Peripheral Equipment and Software Merchant Wholesalers.	1	0.3	250 Employees ...	1	0.3
423440	Other Commercial Equipment Merchant Wholesalers.	3	0.8	100 Employees ...	3	0.8
423460	Ophthalmic Goods Merchant Wholesalers.	1	0.3	150 Employees ...	1	0.3
423510	Metal Service Centers and Other Metal Merchant Wholesalers.	3	0.8	200 Employees ...	2	0.5
423620	Household Appliances, Electric Housewares, and Consumer Electronics Merchant Wholesalers.	3	0.8	200 Employees ...	3	0.8
423690	Other Electronic Parts and Equipment Merchant Wholesalers.	5	1.3	250 Employees ...	2	0.5
423710	Hardware Merchant Wholesalers	4	1.1	150 Employees ...	3	0.8

TABLE 1—STATISTICS OF SMALL ENTITIES AFFECTED BY RULE FROM THE RANDOM SAMPLE—Continued

NAICS code	NAICS description	Number of entities in sample	Percent of entities in sample	SBA size standard	Number of small entities in sample	Percent of small entities in sample
423810	Construction and Mining (except Oil Well) Machinery and Equipment Merchant Wholesalers.	2	0.5	250 Employees ...	2	0.5
423830	Industrial Machinery and Equipment Merchant Wholesalers.	13	3.5	100 Employees ...	12	3.2
423840	Industrial Supplies Merchant Wholesalers.	4	1.1	100 Employees ...	3	0.8
423850	Service Establishment Equipment and Supplies Merchant Wholesalers.	1	0.3	100 Employees ...	0	0.0
423860	Transportation Equipment and Supplies (except Motor Vehicle) Merchant Wholesalers.	1	0.3	150 Employees ...	1	0.3
423910	Sporting and Recreational Goods and Supplies Merchant Wholesalers.	13	3.5	100 Employees ...	11	2.9
423920	Toy and Hobby Goods and Supplies Merchant Wholesalers.	2	0.5	150 Employees ...	2	0.5
423940	Jewelry, Watch, Precious Stone, and Precious Metal Merchant Wholesalers.	13	3.5	100 Employees ...	13	3.5
423990	Other Miscellaneous Durable Goods Merchant Wholesalers.	5	1.3	100 Employees ...	5	1.3
424130	Industrial and Personal Service Paper Merchant Wholesalers.	1	0.3	150 Employees ...	1	0.3
424310	Piece Goods, Notions, and Other Dry Goods Merchant Wholesalers.	6	1.6	100 Employees ...	6	1.6
424320	Men's and Boys' Clothing and Furnishings Merchant Wholesalers.	5	1.3	150 Employees ...	4	1.1
424330	Women's, Children's, and Infants' Clothing and Accessories Merchant Wholesalers.	17	4.5	100 Employees ...	14	3.7
424340	Footwear Merchant Wholesalers	7	1.9	200 Employees ...	6	1.6
424410	General Line Grocery Merchant Wholesalers.	2	0.5	250 Employees ...	2	0.5
424490	Other Grocery and Related Products Merchant Wholesalers.	4	1.1	250 Employees ...	4	1.1
424610	Plastics Materials and Basic Forms and Shapes Merchant Wholesalers.	5	1.3	150 Employees ...	5	1.3
424690	Other Chemical and Allied Products Merchant Wholesalers.	7	1.9	150 Employees ...	7	1.9
424720	Petroleum and Petroleum Products Merchant Wholesalers (except Bulk Stations and Terminals).	3	0.8	200 Employees ...	3	0.8
424820	Wine and Distilled Alcoholic Beverage Merchant Wholesalers.	3	0.8	250 Employees ...	2	0.5
424910	Farm Supplies Merchant Wholesalers.	3	0.8	200 Employees ...	3	0.8
424940	Tobacco and Tobacco Product Merchant Wholesalers.	1	0.3	250 Employees ...	1	0.3
424990	Other Miscellaneous Nondurable Goods Merchant Wholesalers.	5	1.3	100 Employees ...	5	1.3
441120	Used Car Dealers	1	0.3	$25.0 Million	1	0.3
441222	Boat Dealers	2	0.5	$32.5 Million	1	0.3
441228	Motorcycle, ATV, and All Other Motor Vehicle Dealers.	1	0.3	$32.5 Million	0	0.0
442210	Floor Covering Stores	1	0.3	$7.5 Million	0	0.0
443142	Electronics Stores	2	0.5	$32.5 Million	2	0.5
446130	Optical Goods Stores	1	0.3	$20.5 Million	0	0.0
448110	Men's Clothing Stores	1	0.3	$11.0 Million	0	0.0
448120	Women's Clothing Stores	4	1.1	$27.5 Million	4	1.1
448130	Children's and Infants' Clothing Stores.	2	0.5	$32.5 Million	2	0.5
448140	Family Clothing Stores	2	0.5	$38.5 Million	2	0.5
448190	Other Clothing Stores	3	0.8	$20.5 Million	2	0.5
448210	Shoe Stores	1	0.3	$27.5 Million	1	0.3
448310	Jewelry Stores	1	0.3	$15.0 Million	1	0.3
451110	Sporting Goods Stores	3	0.8	$15.0 Million	3	0.8

TABLE 1—STATISTICS OF SMALL ENTITIES AFFECTED BY RULE FROM THE RANDOM SAMPLE—Continued

NAICS code	NAICS description	Number of entities in sample	Percent of entities in sample	SBA size standard	Number of small entities in sample	Percent of small entities in sample
451140	Musical Instrument and Supplies Stores.	1	0.3	$11.0 Million	0	0.0
452210	General Merchandise Stores	1	0.3	$32.5 Million	1	0.3
453930	Manufactured (Mobile) Home Dealers.	1	0.3	$15.0 Million	1	0.3
453998	All Other Miscellaneous Store Retailers (except Tobacco Stores).	1	0.3	$7.5 Million	1	0.3
454110	Electronic Shopping and Mail-Order Houses.	4	1.1	$38.5 Million	0	0.0
483112	Deep Sea Passenger Transportation	1	0.3	1,500 Employees	0	0.0
486210	Pipeline Transportation of Natural Gas.	1	0.3	$27.5 Million	0	0.0
488510	Freight Transportation Arrangement	1	0.3	$15.0 Million	0	0.0
492110	Couriers and Express Delivery Services.	1	0.3	1,500 Employees	1	0.3
493110	General Warehousing and Storage	1	0.3	$27.5 Million	1	0.3
493130	Farm Product Warehousing and Storage.	1	0.3	$27.5 Million	1	0.3
512250	Record Production and Distribution	1	0.3	250 Employees	1	0.3
522110	Commercial Banking	1	0.3	$550.0 Million in Assets.	0	0.0
522390	Other Activities Related to Credit Intermediation.	1	0.3	$20.5 Million	1	0.3
525990	Other Financial Vehicles	1	0.3	$32.5 Million	1	0.3
533110	Lessors of Nonfinancial Intangible Assets (except Copyrighted Works).	1	0.3	$38.5 Million	1	0.3
541330	Engineering Services	1	0.3	$15.0 Million	0	0.0
541380	Testing Laboratories	1	0.3	$15.0 Million	0	0.0
541611	Administrative Management and General Management Consulting Services.	1	0.3	$15.0 Million	1	0.3
541618	Other Management Consulting Services.	1	0.3	$15.0 Million	1	0.3
541690	Other Scientific and Technical Consulting Services.	1	0.3	$15.0 Million	0	0.0
541990	All Other Professional, Scientific, and Technical Services.	2	0.5	$15.0 Million	2	0.5
551112	Offices of Other Holding Companies	1	0.3	$20.5 Million	1	0.3
561499	All Other Business Support Services	3	0.8	$15.0 Million	3	0.8
561621	Security Systems Services (except Locksmiths).	1	0.3	$20.5 Million	0	0.0
561990	All Other Support Services	4	1.1	$11.0 Million	4	1.1
624110	Child and Youth Services*	1	0.3	$11.0 Million	1	0.3
711410	Agents and Managers for Artists, Athletes, Entertainers, and Other Public Figures.	1	0.3	$11.0 Million	1	0.3
711510	Independent Artists, Writers, and Performers.	1	0.3	$7.5 Million	1	0.3
712110	Museums	1	0.3	$27.5 Million	1	0.3
713940	Fitness and Recreational Sports Centers.	1	0.3	$7.5 Million	1	0.3
811310	Commercial and Industrial Machinery and Equipment (except Automotive and Electronic) Repair and Maintenance.	1	0.3	$7.5 Million	0	0.0
811490	Other Personal and Household Goods Repair and Maintenance.	1	0.3	$7.5 Million	1	0.3
812332	Industrial Launderers	1	0.3	$38.5 Million	0	0.0
813910	Business Associations	1	0.3	$7.5 Million	1	0.3
	Foreign Entity	37	9.9	N/A		
Total		375	100		268	71

*This sample corresponds to a non-profit organization.

Note: Estimates may not sum to total due to rounding.

Source of drawback claimants sample: Internal CBP database; gathered through email correspondence with CBP's Office of Trade on March 2, 2017.

Source of descriptive entity information: Hoover's. Online company reports. Available at *http://www.hoovers.com/.* Accessed August 31, 2018 through September 12, 2018; Manta. Online company reports. Available at *http://www.manta.com/.* Accessed August 31, 2018 through September 12, 2018.

Source of SBA size standard information: U.S. Small Business Administration, ''Table of Small Business Size Standards Matched to North American Industry Classification System Codes.'' October 1, 2017. Available at *https://www.sba.gov/sites/default/files/2018-07/NAICS%202017%20Table%20of%20Size%20Standards.pdf.* Accessed September 6, 2018.

TABLE 2—AVERAGE EMPLOYMENT AND REVENUE STATISTICS OF SMALL ENTITIES AFFECTED BY RULE FROM THE RANDOM SAMPLE

NAICS code	NAICS description	Number of *small* entities in sample	Average number of employees at small entities in sample—low range value	Average annual revenue of small entities in sample—low range value (in millions)
212391	Potash, Soda, and Borate Mineral Mining	1	680	$751.8
221118	Other Electric Power Generation	1	14	2.0
311211	Flour Milling	1	20	2.9
311421	Fruit and Vegetable Canning	1	540	178.1
311930	Flavoring Syrup and Concentrate Manufacturing	1	70	14.7
312130	Wineries	1	50	10.7
312140	Distilleries	1	985	392.7
313210	Broadwoven Fabric Mills	2	15	2.1
314994	Rope, Cordage, Twine, Tire Cord, and Tire Fabric Mills	1	375	116.7
314999	All Other Miscellaneous Textile Product Mills	2	90	6.0
315190	Other Apparel Knitting Mills	1	138	17.4
315220	Men's and Boys' Cut and Sew Apparel Manufacturing	4	127	15.4
315240	Women's, Girls', and Infants' Cut and Sew Apparel Manufacturing	5	69	10.6
315280	Other Cut and Sew Apparel Manufacturing	1	2	0.2
315990	Apparel Accessories and Other Apparel Manufacturing	1	1	0.1
321911	Wood Window and Door Manufacturing	1	250	56.3
321918	Other Millwork (including Flooring)	1	18	4.5
325180	Other Basic Inorganic Chemical Manufacturing	5	447	190.8
325194	Cyclic Crude, Intermediate, and Gum and Wood Chemical Manufacturing	1	1,000	269.6
325211	Plastics Material and Resin Manufacturing	3	227	79.2
325220	Artificial and Synthetic Fibers and Filaments Manufacturing	1	740	230.6
325412	Pharmaceutical Preparation Manufacturing	2	332	61.7
325612	Polish and Other Sanitation Good Manufacturing	1	98	30.0
325620	Toilet Preparation Manufacturing	1	350	169.4
325998	All Other Miscellaneous Chemical Product and Preparation Manufacturing	1	34	9.7
326113	Unlaminated Plastics Film and Sheet (except Packaging) Manufacturing	1	275	46.7
326199	All Other Plastics Product Manufacturing	3	221	55.7
326299	All Other Rubber Product Manufacturing	1	1	0.1
327110	Pottery, Ceramics, and Plumbing Fixture Manufacturing	1	5	0.2
327120	Clay Building Material and Refractories Manufacturing	2	201	73.9
327390	Other Concrete Product Manufacturing	1	97	24.4
327420	Gypsum Product Manufacturing	1	10	0.1
331410	Nonferrous Metal (except Aluminum) Smelting and Refining	2	358	116.1
331491	Nonferrous Metal (except Copper and Aluminum) Rolling, Drawing, and Extruding.	1	20	9.7
332323	Ornamental and Architectural Metal Work Manufacturing	1	47	16.0
332813	Electroplating, Plating, Polishing, Anodizing, and Coloring	1	25	2.4
332996	Fabricated Pipe and Pipe Fitting Manufacturing	1	100	38.4
332999	All Other Miscellaneous Fabricated Metal Product Manufacturing	1	65	13.5
333111	Farm Machinery and Equipment Manufacturing	1	1,200	675.0
333244	Printing Machinery and Equipment Manufacturing	1	110	39.8
333249	Other Industrial Machinery Manufacturing	1	256	87.8
333613	Mechanical Power Transmission Equipment Manufacturing	1	38	10.5
334310	Audio and Video Equipment Manufacturing	1	13	1.2
334510	Electromedical and Electrotherapeutic Apparatus Manufacturing	1	15	0.3
334516	Analytical Laboratory Instrument Manufacturing	1	430	121.8
335121	Residential Electric Lighting Fixture Manufacturing	1	11	1.5
335122	Commercial, Industrial, and Institutional Electric Lighting Fixture Manufacturing.	1	410	201.5
335129	Other Lighting Equipment Manufacturing	1	300	137.7
335220	Major Household Appliance Manufacturing	1	89	12.1
336213	Motor Home Manufacturing	1	275	138.1
336330	Motor Vehicle Steering and Suspension Components (except Spring) Manufacturing.	1	215	54.6
336510	Railroad Rolling Stock Manufacturing	1	100	42.6
337214	Office Furniture (except Wood) Manufacturing	1	45	7.0
339112	Surgical and Medical Instrument Manufacturing	2	126	11.5
339113	Surgical Appliance and Supplies Manufacturing	1	110	73.2
339115	Ophthalmic Goods Manufacturing	1	660	329.6
339910	Jewelry and Silverware Manufacturing	1	1	0.2
339920	Sporting and Athletic Goods Manufacturing	1	40	4.6

TABLE 2—AVERAGE EMPLOYMENT AND REVENUE STATISTICS OF SMALL ENTITIES AFFECTED BY RULE FROM THE RANDOM SAMPLE—Continued

NAICS code	NAICS description	Number of *small* entities in sample	Average number of employees at small entities in sample—low range value	Average annual revenue of small entities in sample—low range value (in millions)
339930	Doll, Toy, and Game Manufacturing	1	7	1.0
339992	Musical Instrument Manufacturing	1	625	126.1
339999	All Other Miscellaneous Manufacturing	3	45	10.4
423120	Motor Vehicle Supplies and New Parts Merchant Wholesalers	2	15	13.5
423220	Home Furnishing Merchant Wholesalers	6	31	23.6
423330	Roofing, Siding, and Insulation Material Merchant Wholesalers	1	1	2.6
423430	Computer and Computer Peripheral Equipment and Software Merchant Wholesalers.	1	60	24.0
423440	Other Commercial Equipment Merchant Wholesalers	3	41	29.3
423460	Ophthalmic Goods Merchant Wholesalers	1	7	1.6
423510	Metal Service Centers and Other Metal Merchant Wholesalers	2	3	0.7
423620	Household Appliances, Electric Housewares, and Consumer Electronics Merchant Wholesalers.	3	49	** 13.6
423690	Other Electronic Parts and Equipment Merchant Wholesalers	2	60	15.7
423710	Hardware Merchant Wholesalers	3	83	** 28.5
423810	Construction and Mining (except Oil Well) Machinery and Equipment Merchant Wholesalers.	2	26	14.3
423830	Industrial Machinery and Equipment Merchant Wholesalers	12	29	26.7
423840	Industrial Supplies Merchant Wholesalers	3	9	11.4
423860	Transportation Equipment and Supplies (except Motor Vehicle) Merchant Wholesalers.	1	12	3.2
423910	Sporting and Recreational Goods and Supplies Merchant Wholesalers	11	23	11.3
423920	Toy and Hobby Goods and Supplies Merchant Wholesalers	2	59	21.7
423940	Jewelry, Watch, Precious Stone, and Precious Metal Merchant Wholesalers.	13	14	16.0
423990	Other Miscellaneous Durable Goods Merchant Wholesalers	5	23	23.0
424130	Industrial and Personal Service Paper Merchant Wholesalers	1	23	0.1
424310	Piece Goods, Notions, and Other Dry Goods Merchant Wholesalers	6	11	** 3.8
424320	Men's and Boys' Clothing and Furnishings Merchant Wholesalers	4	16	** 10.0
424330	Women's, Children's, and Infants' Clothing and Accessories Merchant Wholesalers.	14	8	** 4.4
424340	Footwear Merchant Wholesalers	6	10	6.2
424410	General Line Grocery Merchant Wholesalers	2	11	6.7
424490	Other Grocery and Related Products Merchant Wholesalers	4	16	11.1
424610	Plastics Materials and Basic Forms and Shapes Merchant Wholesalers	5	23	12.9
424690	Other Chemical and Allied Products Merchant Wholesalers	7	14	21.6
424720	Petroleum and Petroleum Products Merchant Wholesalers (except Bulk Stations and Terminals).	3	15	29.9
424820	Wine and Distilled Alcoholic Beverage Merchant Wholesalers	2	6	2.2
424910	Farm Supplies Merchant Wholesalers	3	26	49.9
424940	Tobacco and Tobacco Product Merchant Wholesalers	1	70	15.5
424990	Other Miscellaneous Nondurable Goods Merchant Wholesalers	5	26	10.9
441120	Used Car Dealers	1	1	0.1
441222	Boat Dealers	1	33	12.1
443142	Electronics Stores	2	19	2.7
448120	Women's Clothing Stores	4	24	3.1
448130	Children's and Infants' Clothing Stores	2	72	16.3
448140	Family Clothing Stores	2	24	3.5
448190	Other Clothing Stores	2	23	6.8
448210	Shoe Stores	1	17	2.5
448310	Jewelry Stores	1	1	0.1
451110	Sporting Goods Stores	3	13	1.9
452210	General Merchandise Stores	1	20	2.5
453930	Manufactured (Mobile) Home Dealers	1	91	13.0
453998	All Other Miscellaneous Store Retailers (except Tobacco Stores)	1	5	0.5
492110	Couriers and Express Delivery Services	1	6	1.7
493110	General Warehousing and Storage	1	20	0.5
493130	Farm Product Warehousing and Storage	1	14	1.7
512250	Record Production and Distribution	1	55	8.0
522390	Other Activities Related to Credit Intermediation	1	4	0.03
525990	Other Financial Vehicles	1	2	0.2
533110	Lessors of Nonfinancial Intangible Assets (except Copyrighted Works)	1	11	3.4
541611	Administrative Management and General Management Consulting Services	1	2	0.1
541618	Other Management Consulting Services	1	1	0.1
541990	All Other Professional, Scientific, and Technical Services	2	3	0.2

TABLE 2—AVERAGE EMPLOYMENT AND REVENUE STATISTICS OF SMALL ENTITIES AFFECTED BY RULE FROM THE RANDOM SAMPLE—Continued

NAICS code	NAICS description	Number of *small* entities in sample	Average number of employees at small entities in sample—low range value	Average annual revenue of small entities in sample—low range value (in millions)
551112	Offices of Other Holding Companies	1	1	1.6
561499	All Other Business Support Services	3	1	0.9
561990	All Other Support Services	4	5	0.3
624110	Child and Youth Services*	1	21	3.9
711410	Agents and Managers for Artists, Athletes, Entertainers, and Other Public Figures.	1	15	3.2
711510	Independent Artists, Writers, and Performers	1	2	0.3
712110	Museums	1	4	0.2
713940	Fitness and Recreational Sports Centers	1	4	0.1
811490	Other Personal and Household Goods Repair and Maintenance	1	18	1.8
813910	Business Associations	1	4	0.8

*This sample corresponds to a non-profit organization.

**The number of small entities forming this average excludes an entity missing revenue information. That entity had employment information, which the average employee figure includes.

Source of drawback claimants sample: Internal CBP database; gathered through email correspondence with CBP's Office of Trade on March 2, 2017.

Source of small entity employment information: Hoover's. Online company reports. Available at *http://www.hoovers.com/.* Accessed August 31, 2018 through September 12, 2018; Manta. Online company reports. Available at *http://www.manta.com/.* Accessed August 31, 2018 through September 12, 2018.

Based on the share of drawback claimants sampled, CBP assumes that 71 percent of drawback claimants affected by this rule over the 2018 to 2027 period of analysis, or 7,042 claimants, will be small entities. These drawback claimants will incur costs related to ACE system modifications, electronic claim submission requirements, expanded recordkeeping requirements, mixed substitution drawback claim requirements, and additional full desk reviews; however, these costs will differ depending on their filing preferences and claim review.

Each unique drawback claimant will need to either modify its existing drawback system, acquire add-on drawback software, or hire a customs broker to comply with this rule's new drawback regulations outlined in 19 CFR part 190. CBP estimates that approximately 206 small entity drawback claimants (71 percent of the estimated 290 total claimants) will modify their ACE filing systems in 2018 to comply with all of the new drawback regulations outlined in 19 CFR part 190.[17] These claimants could incur an estimated one-time cost of $90,000 that will translate to $9,000 per year of the analysis.[18] However, because of the high cost of ACE system modifications, these small claimants are more likely to choose a lower-cost option like purchasing add-on drawback software or hiring a customs broker to meet this rule's requirements while lessening its impact on their revenue. CBP projects that an additional 3,905 small drawback claimants (71 percent of the estimated 5,500 total claimants) will acquire add-on drawback software consistent with all of this rule's requirements for a one-time cost of $1,500, or $150 over the 10-year period of analysis. CBP presumes that rather than acquire and learn the software necessary to file a drawback claim electronically and meet the other submission requirements of this rule, an estimated 2,932 small paper-based drawback claimants (71 percent of the estimated 4,129 total claimants) will hire a customs broker to file their claims as a result of the rule. These claimants will likely file an average of 3 drawback claims per year, at an annual cost of $921 according to the $307 customs broker filing fee.[19] These estimates are based on the assumption that all small drawback claimants will continue to file drawback claims in spite of these electronic filing costs. CBP received public comments on these assumptions, which the agency discusses later in section 2 of the IRFA.

All drawback claimants must also retain drawback records for an extended period of time with this rule. CBP finds that all 7,042 small drawback claimants will sustain $59.99 in expenses between 2021 and 2027, or approximately $4 each year over the 10-year period of analysis, to electronically store drawback claim documentation.[20]

[17] CBP based the estimate of drawback claimants required to modify their ACE drawback systems consistent with this rule's changes on the projected number of unique drawback claimants with this rule in 2018 (9,919) minus the 4,129 drawback claimants estimated to file by paper under the current 19 CFR part 191 regulations in 2018 (and thus exempt from an ACE drawback system modification cost), multiplied by the 5 percent share of claimants anticipated to modify their ACE drawback systems consistent with this rule's changes: (9,919 unique drawback claimants in 2018 − 4,129 paper-based filers in 2018) × 5 percent anticipated to modify their ACE drawback systems = 290 (rounded) drawback claimants.

[18] Such regulatory changes will include providing line-item drawback claim data at the 10-digit HTSUS subheading level; consistent units of measurement for claimed imports, exports, and destructions (matching the HTSUS code to the designated imported merchandise for substitution drawback claims); exported, destroyed, or substituted merchandise values for substitution claims filed under 19 U.S.C. 1313(b) and 19 U.S.C. 1313(j)(2); accounting methodologies used for direct identification drawback claims (if applicable); unique identifiers linking imports to exports or destructions on each drawback claim; per unit averages for substitution claims; and ''lesser of'' rule calculations for substitution claims.

[19] From 2018 to 2027, CBP projects under its primary estimation method that 4,129 unique drawback claimants will file 101,642 drawback claims electronically instead of by paper as a result of this rule (see Regulatory Impact Analysis of the Modernized Drawback Final Rule), averaging about 3 claims per unique drawback claimant each year over the 10-year period: 101,642 drawback claims filed electronically instead of by paper over 10-year period/4,129 unique drawback claimants = 25 (rounded) claims per unique drawback claimant over the 10-year period; 25 claims over 10-year period/10 years = 3 (rounded) claims per unique drawback claimant each year.

[20] $59.99 electronic recordkeeping cost per year × 7-year period of recordkeeping = $419 (rounded) total electronic recordkeeping cost over 7-year period; $419 storage cost over 7-year period of

Continued

Furthermore, some drawback claimants may be subject to this rule's mixed substitution drawback claim requirements and additional full desk reviews. CBP estimates that this rule's mixed substitution drawback claim requirements will affect up to 141 small drawback claimants each year between 2018 and 2023 (71 percent of an estimated 198 total claimants).[21] CBP also estimates that each affected claimant will file an average of two mixed substitution drawback claims subject to this rule's supporting documentation requirements each year between 2018 and 2023, at a cost of $15 per claim or $30 total each year from 2018 to 2023.[22] Over the 10-year period of analysis, CBP estimates that each small drawback claimant affected by this rule's mixed substitution drawback claim requirements would sustain an average cost of $18 per year over the 10-year period of analysis.[23] CBP estimates that this rule's additional full desk reviews will affect 366 small drawback claimants (71 percent of the estimated 515 total claimants) over the 10-year period of analysis, introducing an average cost of $18 per year to these claimants. CBP assumes that these 366 claimants will each complete one full desk review over the 10-year period, at a cost of $179 per review (or $18 over 10 years). Besides these monetized costs, this rule will introduce non-monetized, non-quantified costs to trade members, including the possibility of decreased use of the United States as a home base for a distribution facility when coupled with other considerations, less third-party drawback, and less time to file drawback claims and documentation as compared to the current process.

Table 3 outlines the rule's different costs to small entities, while Table 4 shows this rule's potential range of costs to small entities. As shown, small entities could incur undiscounted annual costs from this rule as low as $154 if a small claimant only incurs an added recordkeeping cost and add-on drawback software cost (Cost B + Cost D in Table 4) and up to $9,040 if a small claimant experiences the rule's high ACE drawback system modification cost, added recordkeeping cost, mixed substitution drawback claim requirements cost, and full desk review cost (once over the 10-year analysis) (Cost A + Cost D + Cost E + Cost F in Table 4). About 96 percent of small drawback claimants will likely sustain a cost of $943 (Cost C + Cost D + Cost F in Table 4) or less per year from this rule, while the remaining 4 percent could incur higher annual costs measuring up to $9,040.

TABLE 3—COST OF RULE TO SMALL ENTITIES

[Undiscounted 2018 U.S. Dollars]

Cost category	Number of small entities affected	Share of small entities affected (%)	Annual cost per claimant (undiscounted)
A. ACE Drawback System Modification	206	3	$9,000
B. Add-On Drawback Software	3,905	55	150
C. Customs Broker Claim Filing	2,932	42	921
D. Added Recordkeeping	7,042	100	4
E. Mixed Substitution Claim Requirements	141	2	18
F. Full Desk Review	366	5	18

Note: Estimates may not sum to total due to rounding.

TABLE 4—RANGE OF ANNUAL COSTS OF RULE TO SMALL ENTITIES

[Undiscounted 2018 U.S. dollars—cost per claimant by category]

Cost range	ACE drawback system modification [A]	Add-on drawback software [B]	Customs broker claim filing [C]	Added recordkeeping [D]	Mixed substitution claim requirements [E]	Full desk review [F]	Total
Low		$150		$4			$154
Medium			$921	4		$18	943

recordkeeping/10-year period of analysis = $42 (rounded) electronic recordkeeping cost per year of the 10-year period of analysis; $42 (rounded) storage cost per year × 10 percent of unique drawback claimants incurring electronic recordkeeping cost per year = $4 (rounded) electronic recordkeeping cost per unique drawback claimant each year.

[21] For the purposes of this analysis, CBP assumes that the percentage of unique drawback claimants affected by this rule's mixed substitution drawback claim requirements is equal to the high value of the estimated range of substitution drawback claims affected by Major Amendment 3's mixed substitution drawback claim requirements—2 percent. As such, CBP estimates that 2 percent of the assumed 9,919 unique drawback claimants would be affected by this rule's mixed substitution rule, for a total of 198 drawback claimants. Of these claimants, CBP finds that 71 percent, or 141, would be affected by this requirement over the period of analysis.

[22] CBP bases the average number of mixed substitution drawback claims subject to this rule's supporting documentation requirements each year on the high value of estimated mixed substitution drawback claims filed during the period of analysis under CBP's primary estimation method (2,210; see Regulatory Impact Analysis of the Modernized Drawback Final Rule) divided by the 6-year period of mixed substitution drawback claim submissions and then divided by the number of drawback claimants affected by this rule's mixed substitution drawback claim requirements: 2,210 total mixed substitution drawback claims filed/6-year submission period = 368 (rounded) mixed substitution drawback claims filed per year between 2018 and 2023; 368 (rounded) mixed substitution drawback claims filed per year between 2018 and 2023/198 drawback claimants affected by the mixed substitution drawback claim requirements = 2 (rounded) mixed substitution drawback claims filed each year per affected drawback claimant.

[23] $30 mixed substitution drawback claim supporting document submission cost per year × 6-year period of recordkeeping = $180 (rounded) total mixed substitution drawback claim supporting document submission cost over 6-year period; $180 mixed substitution drawback claim supporting document submission cost over 6-year period/10-year period of analysis = $18 (rounded) mixed substitution drawback claim supporting document submission cost per year of the 10-year period of analysis.

TABLE 4—RANGE OF ANNUAL COSTS OF RULE TO SMALL ENTITIES—Continued

[Undiscounted 2018 U.S. dollars—cost per claimant by category]

Cost range	ACE drawback system modification [A]	Add-on drawback software [B]	Customs broker claim filing [C]	Added recordkeeping [D]	Mixed substitution claim requirements [E]	Full desk review [F]	Total
High	$9,000			4	$18	18	9,040

Note: Estimates may not sum to total due to rounding.

CBP compares the rule's low ($154), medium ($943), and high ($9,040) range of monetized costs per year to the annual revenue of the small drawback claimants sampled. At the low range, this rule's $154 monetized cost will represent less than 1 percent of annual revenue for 100 percent (263) of the small entities sampled with revenue data available,[24] as shown in Table 5. At the medium range, this rule's $943 monetized cost will represent less than 1 percent of annual revenue for 96 percent (252) of the small entities sampled with revenue data available. This rule's $943 monetized cost will represent between 1 percent and 3 percent of annual revenue for the remaining 4 percent (11) of the small entities, as Table 6 illustrates. Finally, at the high range, this rule's $9,040 monetized cost will represent less than 1 percent of the annual revenue for 74 percent (195) of the small entities sampled with revenue data available (see Table 7). The share of this rule's $9,040 monetized cost on annual revenue will measure between: 1 percent and 3 percent for about 10 percent (27) of the remaining small entities, 3 percent and 5 percent for 6 percent (17) of the small entities sampled, 5 percent and 10 percent for 5 percent (14) percent of small entities sampled, and 10 percent or more for 4 percent (10) of the small entities sampled (see Table 7). Note that because of the high cost of ACE system modifications included in the high range cost estimate, only a nominal number of small claimants will likely incur this rule's high annual cost of $9,040. Instead, most claimants will probably choose lower-cost options like purchasing add-on drawback software or hiring a customs broker to meet this rule's requirements that will have minimal impacts on their annual revenue, as assumed under the low- and medium-cost scenarios shown in Table 5 and Table 6.

Under all three ranges, the share of this rule's costs on the annual revenue of small entities is less than 1 percent for the vast majority of entities sampled. Small entities will experience an impact of 5 percent or more only under the high cost range of $9,040. Assuming that the share of this rule's total annualized cost to small entities is equal to the estimated share of drawback claimants affected by this rule over the 2018 to 2027 period of analysis (71 percent), the total annualized cost of this rule to all small entities will equal $5.4 million under the primary estimation method and assuming that Major Amendment 3 affects 2 percent of substitution drawback claims. CBP did not receive any public comments on whether these costs would deter small entities from filing drawback claims, though CBP did receive a comment stating that these costs are understated. Unfortunately, the commenter did not include any data to support this claim or propose alternative costs that CBP could incorporate into the analysis. CBP based its estimates on the best data available. Therefore, CBP has no basis for changing its estimates. To the extent that small entities incur greater (fewer) costs from this rule, the costs of this rule will be higher (lower) than estimated.

TABLE 5—COST IMPACTS AS A SHARE OF REVENUE FOR SMALL ENTITIES AFFECTED BY RULE FROM THE RANDOM SAMPLE—ASSUMING ANNUAL COST OF $154 PER UNIQUE DRAWBACK CLAIMANT

Cost as a share of revenue range	Number of small entities affected	Percent of small entities affected
0% ≤ Impact < 1%	263	100
1% ≤ Impact < 3%	0	0
3% ≤ Impact < 5%	0	0
5% ≤ Impact < 10%	0	0
10% or More	0	0
Total	263	100

Note: Estimates may not sum to total due to rounding.

TABLE 6—COST IMPACTS AS A SHARE OF REVENUE FOR SMALL ENTITIES AFFECTED BY RULE FROM THE RANDOM SAMPLE—ASSUMING ANNUALIZED COST OF $943 PER UNIQUE DRAWBACK CLAIMANT

Cost as a share of revenue range	Number of small entities affected	Percent of small entities affected
0% ≤ Impact < 1%	252	96

[24] Five of the small entities sampled did not have revenue data available, so CBP excluded these entities from the revenue impact calculation.

TABLE 6—COST IMPACTS AS A SHARE OF REVENUE FOR SMALL ENTITIES AFFECTED BY RULE FROM THE RANDOM SAMPLE—ASSUMING ANNUALIZED COST OF $943 PER UNIQUE DRAWBACK CLAIMANT—Continued

Cost as a share of revenue range	Number of small entities affected	Percent of small entities affected
1% ≤ Impact < 3%	7	3
3% ≤ Impact < 5%	4	2
5% ≤ Impact < 10%	0	0
10% or More	0	0
Total	263	100

Note: Estimates may not sum to total due to rounding.

TABLE 7—COST IMPACTS AS A SHARE OF REVENUE FOR SMALL ENTITIES AFFECTED BY RULE FROM THE RANDOM SAMPLE—ASSUMING ANNUALIZED COST OF $9,040 PER UNIQUE DRAWBACK CLAIMANT

Cost as a share of revenue range	Number of small entities affected	Percent of small entities affected
0% ≤ Impact < 1%	195	74
1% ≤ Impact < 3%	27	10
3% ≤ Impact < 5%	17	6
5% ≤ Impact < 10%	14	5
10% or More	10	4
Total	263	100

Note: Estimates may not sum to total due to rounding.

This rule will also result in benefits as well as net monetary transfers to drawback claimants. This rule will provide time and resource savings from forgone paper-based drawback claims, form submissions, and ruling and predetermination requests that offset some of the rule's costs to small entities. CBP estimates that 2,932 small paper-based drawback claimants (71 percent of the estimated 4,129 total claimants) will enjoy $9 in cost savings for each paper claim avoided. These claimants will likely file an average of 3 drawback claims per year, at an annual cost saving of $27.[25] CBP finds that all 7,042 small drawback claimants will save $16 in printing and mailing costs related to forgone CBP Form 7552 submissions beginning in 2019. Before 2019, the estimated 2,932 small paper-based claimants will not gain this benefit because they will still submit paper CBP Form 7552s. Based on the total number of CBP Form 7552s avoided over the period of analysis and the total number of unique drawback claimants, CBP estimates that each claimant will forgo about 4 CBP Form 7552 submissions each year of the analysis, saving a total of $64 per year.[26] Lastly, only a small number of claimants will sustain benefits from forgone ruling and predetermination requests. CBP estimates that 645 requests will be avoided during the period of analysis due to the rule and assumes that each forgone request corresponds to a unique drawback claimant. By applying the previously discussed assumption that 71 percent of drawback claimants affected by this rule over the 2018 to 2027 period of analysis are small entities, CBP finds that 458 small drawback claimants will each save $188 in costs related to ruling and predetermination requests. This will translate to about $19 per year over the 10-year period of analysis. Small drawback claimants will also enjoy non-monetized, non-quantified benefits from this rule, including streamlined claim submissions and processing, increased time to claim drawback, simplified understanding of the drawback process, added reassurance that business-sensitive information is not available for public consumption, and decreased business costs.

This rule's share of net monetary transfers to small entities is unknown. This rule will introduce $31.6 million to $35.8 million in annualized net transfers from the U.S. Government to drawback claimants (using a 7 percent discount rate). These transfers will average between $3,200 and $3,600 per claimant based on the projected 9,919 unique drawback claimants affected by this rule. Some small entities may receive more or less than this average, and potentially even negative net transfers if they make net payments to the U.S. Government.

Similar to the notice of proposed rulemaking and corresponding IRFA, CBP believes that a substantial number of trade members who could be considered ''small'' may be affected by this final rule based on the results from this screening analysis.[27] CBP cannot determine whether the economic impact on these entities may be considered

[25] From 2018 to 2027, CBP projects under its primary estimation method that 4,129 unique drawback claimants will file 101,642 drawback claims electronically instead of by paper as a result of this rule (see Regulatory Impact Analysis of the Modernized Drawback Final Rule), averaging about 3 claims per unique drawback claimant each year over the 10-year period: 101,642 drawback claims filed electronically instead of by paper over 10-year period/4,129 unique drawback claimants = 25 (rounded) claims per unique drawback claimant over the 10-year period; 25 claims over 10-year period/10 years = 3 (rounded) claims per unique drawback claimant each year.

[26] From 2018 to 2027, CBP projects under its primary estimation method that 9,919 unique drawback claimants will forgo 392,000 CBP Form 7552 submissions as a result of this rule (see Regulatory Impact Analysis of the Modernized Drawback Final Rule), averaging about 4 forms per unique drawback claimant each year over the 10-year period: 392,000 CBP Form 7552 submissions forgone over 10-year period/9,919 unique drawback claimants = 40 (rounded) forms per unique drawback claimant over the 10-year period; 40 claims over 10-year period/10 years = 4 (rounded) forms per unique drawback claimant each year.

[27] SBA publishes small business size standards for a variety of, though not all, economic activities and industries. SBA does not explicitly define size standards for the importers, exporters, manufacturers, producers, and intermediate parties potentially affected by this rule. *See* 13 CFR 121.101–13 CFR 121.201 for information on SBA's size standards.

significant under the RFA. For these reasons, CBP cannot certify that the rule will not have a significant economic impact on a substantial number of small entities. CBP has prepared the following FRFA assessing the final rule's potential effect on small entities.

Final Regulatory Flexibility Analysis

This FRFA includes the following:

1. A succinct statement of the need for, and objectives of, the rule;

2. A summary of the significant issues raised by the public comments in response to the IRFA, a summary of the assessment of the agency of such issues, and a statement of any changes made in the proposed rule as a result of such comments;

3. A description and an estimate of the number of small entities to which the rule will apply or an explanation of why no such estimate is available;

4. A description of the projected reporting, recordkeeping, and other compliance requirements of the rule, including an estimate of the classes of small entities that will be subject to the requirement and the types of professional skills necessary for preparation of the report or record; and

5. A description of the steps the agency has taken to minimize the significant adverse economic impact on small entities consistent with the stated objectives of applicable statutes, including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule and why each of the other significant alternatives to the rule considered by the agency was rejected.

1. A succinct statement of the need for, and objectives of, the rule.

Section 906 of the Trade Facilitation and Trade Enforcement Act of 2015 (Pub. L. 114–125) (TFTEA), signed into law on February 24, 2016, seeks to simplify and modernize the current drawback procedures through amendments to 19 U.S.C. 1313, the statute guiding CBP drawback regulations. TFTEA requires CBP to promulgate regulations in accordance with the new statute and allows for a one-year transition period in which trade members can follow either the old drawback statute and corresponding regulations as written prior to TFTEA or the amended statute through February 23, 2019. This rule will implement new drawback regulations consistent with TFTEA and the protection of U.S. Government revenue, and thereby modernize the current drawback process.

2. A summary of the significant issues raised by the public comments in response to the IRFA, a summary of the assessment of the agency of such issues, and a statement of any changes made in the proposed rule as a result of such comments.

CBP received some comments specifically addressing the Modernized Drawback rule's potential impacts on small entities. One commenter claimed that the rule's costs to small entities are significantly understated in the Regulatory Flexibility Act (RFA) analysis in the NPRM. The commenter asserted that CBP's analysis underestimates the costs of ACE drawback system modifications, add-on drawback software, and broker fees to trade members due to recent changes in ACE programming and new regulatory requirements. Unfortunately, the commenter did not include any data to support the claims or propose alternative costs that CBP could incorporate into the analysis. CBP based its estimates on the best data available. Therefore, CBP has no basis for changing its estimates. To the extent that small entities incur greater (fewer) costs from this rule, the costs of this rule will be higher (lower) than estimated.

The same commenter said that CBP understated the costs of added recordkeeping, arguing that the rule's costs to trade members are higher than estimated due to the variety of documentation that CBP could require for drawback verification under the rule and increased retention periods. CBP disagrees with this comment. TFTEA, and the corresponding drawback regulations proposed in 19 CFR part 190, largely reduce the recordkeeping burden for members by allowing them to verify claims using records maintained in the normal course of business. For example, TFTEA and the proposed drawback regulations in 19 CFR part 190 will completely eliminate CBP Form 7552: Delivery Certificate for Purposes of Drawback, allowing trade members to instead keep evidence of transfers in their records kept in the normal course of business, and provide such evidence to CBP upon request. This transition will result in savings to trade members rather than costs. In regards to TFTEA and the rule's longer record retention period, CBP captured the cost of extended recordkeeping in the Major Amendment 9 section of the NPRM's RIA and in this document. CBP developed the extended recordkeeping cost estimates in consultation with various members of the trade community and subject matter experts. Unfortunately, the commenter did not include any data to support the claim that CBP understated recordkeeping costs, and the commenter did not propose alternative costs that CBP could incorporate into the analysis. For this reason, CBP chose to maintain its recordkeeping estimates.

Furthermore, the commenter questioned CBP's RFA conclusion that the agency cannot determine whether the (negative) economic impact of the rule on small entities may be considered significant under the RFA. The commenter claimed that CBP did not adequately evaluate the new electronic filing costs and data element submissions of TFTEA and the expanded recordkeeping and data retention requirements of the statute. The commenter also suggested that CBP should acknowledge the ''significant cost impact to small business of the NPRM and work to simplify the operation requirements of Part 190 to minimize the impact of TFTEA on small business.'' CBP disagrees with these statements. CBP developed a comprehensive analysis examining the impacts of TFTEA and the proposed Modernized Drawback rule. The analysis evaluates new filing costs and data element submissions under the Major Amendment 1 section of the RIA as well as the Major Amendment 7 section. The RIA also includes an assessment of the costs of TFTEA's expanded recordkeeping and data retention requirements in the Major Amendment 9 section of the RIA. The RFA analysis accounts for these costs, analyzing their impacts on small entities. This document continues to include a full assessment of TFTEA's drawback amendments and the Modernized Drawback rule's corresponding changes. CBP worked in consultation with various members of the trade community representing a wide range of industries involved in drawback and subject matter experts to inform many of the estimates of the RIA and RFA analysis, as cited throughout the document. Moreover, CBP has worked to craft a regulation to minimize the impact on small entities while still meeting TFTEA and other legal requirements and protecting U.S. Government revenue. For instance, CBP has eased the proposed requirement in 19 CFR 190.26(d) for drawback claimants to maintain manufacturing or production records for articles purchased from a manufacturer or producer and claimed for drawback. CBP made this change based on a public comment explaining that the requirement could harm businesses. The commenter questioning the RFA analysis did not include any data or justification to support the claims that the RIA and RFA did not adequately evaluate the impact of the rule on trade

members, including those considered small under the RFA. The commenter also did not provide evidence to support its statement that CBP should certify that this rule has a significant economic impact on a substantial number of small entities. To further assess the impacts of the rule on small entities, CBP has expanded its RFA sample from 100 entities to 375 entities, leading to a 95 percent confidence level with a 5 percent margin of error. For these reasons, CBP continues to conclude that the agency cannot determine whether the economic impact of the rule on small entities may be considered significant under the RFA.

3. A description and an estimate of the number of small entities to which the rule will apply or an explanation of why no such estimate is available.

As discussed in the screening analysis above, the Modernized Drawback rule will fundamentally change the drawback process and consequently affect all trade members eligible for drawback (*i.e.,* drawback claimants). These trade members can include importers, exporters, manufacturers, producers, and intermediate parties representing a diverse array of industries. CBP estimates that 71 percent of drawback claimants affected by this rule over the 2018 to 2027 period of analysis, or 7,042 claimants, will be small entities.

4. A description of the projected reporting, recordkeeping, and other compliance requirements of the rule, including an estimate of the classes of small entities that will be subject to the requirement and the types of professional skills necessary for preparation of the report or record.

This rule will implement several new reporting, recordkeeping, and other compliance requirements for all drawback claimants, including those considered small. Among these changes, CBP will require drawback claimants filing under the new drawback regulations outlined in 19 CFR part 190 to:

- Submit new data elements with their claims, including Form 7551: Drawback Entry summary data at the line, rather than header, level; claimed merchandise data at the 10-digit HTSUS subheading level; line designations; and consistent units of measurement for claimed import, export, or destruction data (matching the HTSUS code to the designated imported merchandise for substitution drawback claims).
- File their complete drawback claims electronically using ACE and DIS, thus not allowing for manual, paper-based claims.[28]
- Submit additional data, including exported, destroyed, or substituted merchandise values for substitution claims filed under 19 U.S.C. 1313(b) and 19 U.S.C. 1313(j)(2); accounting methodologies used for direct identification drawback claims (if applicable); unique identifiers linking imports to exports or destructions; per unit averages for substitution claims; and ''lesser of'' rule calculations for substitution claims.

Along with these reporting requirements, CBP will change the recordkeeping standards for all drawback claimants filing under the new regulations in 19 CFR part 190. Consistent with TFTEA, this rule will change the drawback recordkeeping timeframe for all drawback claimants from three years from CBP's date of payment of the drawback claim to three years from the liquidation of the claim. CBP estimates that drawback claimants will generally have to retain records for one extra year with this rule's new recordkeeping requirement rather than under the current three-year recordkeeping period, though some trade members may need to retain records for up to four more years under this rule.[29]

This rule will also encourage parties that split entry summary line items when transferring merchandise (transferors) to provide notification to the recipients (transferees) as to whether that merchandise is eligible for substitution or direct identification drawback. Notification of this designation from the transferor to the transferee should be documented in records, which may include records kept in the normal course of business.

Furthermore, this rule will require all drawback claimants filing manufacturing drawback claims under the new regulations in 19 CFR part 190 (which will account for about 20 percent of all claims filed with this rule) to maintain applicable bills of materials and/or formula records [30] identifying the imported and/or substituted merchandise and the exported or destroyed article(s) in their normal course of business. When filing a manufacturing drawback claim, trade members must also certify that they have these bills of materials and/or formula records by checking a box on their electronic drawback claim, and provide the documentation to CBP upon request.

CBP will also now require trade members to submit CBP Form 7553: Notice(s) of Intent to Export, Destroy, or Return Merchandise for Purposes of Drawback to CBP five working days prior to the date of intended exportation with this rule. The current regulations in 19 CFR part 191 require trade members to file CBP Form 7553 only two working days prior to the date of intended exportation. This change will give trade members less time to submit CBP Form 7553, but it will give CBP more time to review the form.

Under the current and proposed drawback regulations, a trade member filing a substitution unused merchandise or manufacturing drawback claim that is not the exporter or destroyer must submit an assignment letter certifying the drawback rights to CBP at the time of, or prior to the filing of the claim(s) covered by the certification. This rule will require trade members to file the certification only at the time of filing the claim(s) covered by the certification. Eliminating the ability to file the certifications prior to submitting a claim will have little to no effect as most trade members already submit the certifications at the time of filing their claims, and trade members must currently possess these certifications at the time of filing a drawback claim as a matter of law.[31]

Drawback claimants must follow these new reporting, recordkeeping, and compliance requirements of the rule. Other than obtaining the software or broker necessary to file drawback claims electronically in ACE, CBP does not believe that drawback claimants need any additional professional skills or resources to satisfy the rule's reporting, recordkeeping, and compliance requirements. CBP believes that the benefits of filing a drawback claim will outweigh the reporting, recordkeeping, and other compliance requirements of this rule, and thus not discourage drawback claimants from filing claims.

5. A description of the steps the agency has taken to minimize the significant adverse economic impact on small entities consistent with the stated objectives of applicable statutes, including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule and why each of the other significant

[28] Some drawback documentation, such as privilege and ruling applications, will remain paper-based.

[29] Based on input from CBP and trade community representative. Sources: Email correspondence with CBP's Office of Field Operations on April 5, 2017 and email correspondence with trade community representative on February 22, 2017.

[30] *See* 19 CFR 190.2.

[31] Email correspondence with CBP's Office of Trade on September 27, 2018.

alternatives to the rule considered by the agency was rejected.

Section 906 of the Trade Facilitation and Trade Enforcement Act of 2015 (Pub. L. 114–125) seeks to modernize the current drawback procedures through amendments to 19 U.S.C. 1313, the statute guiding CBP drawback regulations. Section 906(q) of TFTEA requires CBP to promulgate regulations implementing these changes and allows for a one-year transition period (February 24, 2018–February 23, 2019) in which trade members can follow either the old drawback statute and corresponding regulations as written prior to TFTEA or the amended statute. This rule will implement new drawback regulations consistent with TFTEA and the protection of U.S. Government revenue.

Due to the nature of TFTEA's mandate, CBP could not establish different requirements for small entities while still following the statute. Nonetheless, CBP conducted outreach with various members of the trade community representing a wide range of industries involved in drawback. CBP also considered two other alternatives to the rule that would have different impacts on drawback claimants, including those considered small. A detailed discussion of these alternatives is in the Regulatory Impact Analysis of the Modernized Drawback Final Rule, which can be found in the public docket for this rulemaking at *www.regulations.gov.* As previously mentioned, CBP further modified the new drawback regulations in 19 CFR part 190 in response to public comments to minimize certain impacts on trade members, including those considered small.

a. Alternative 1

The first regulatory alternative CBP considered will implement all of the rule's changes in 2018 rather than in 2019, offering no transition year. With this alternative, paper-based filers must begin filing their drawback claims electronically in 2018, but they will receive the benefits of drawback modernization in 2018 and beyond. With this alternative, paper-based filers, including those considered small, will begin to incur electronic filing costs in 2018 rather than 2019 like under the rule. This alternative will also lead to relatively more full desk reviews for claimants, including those considered small, than under the rule. Drawback claimants, including those considered small, will sustain an annualized cost of $8.1 million from this alternative under the primary estimation method, which is slightly higher than the rule's $7.6 million annualized cost to drawback claimants (using a 7 percent discount rate; see Regulatory Impact Analysis of the Modernized Drawback Final Rule). On a per-claimant basis, Alternative 1 will cost $810 annually over the period of analysis compared to the rule's nearly $770 cost per unique claimant.[32] Alternative 1 will also result in an annualized net transfer measuring between $39.1 million and $43.3 million from the U.S. Government to drawback claimants, which will average from $3,900 to $4,400 per unique claimant based on the 9,919 unique drawback claimants projected under this alternative (using a 7 percent discount rate; see Regulatory Impact Analysis of the Modernized Drawback Final Rule). Like the rule, Alternative 1 will introduce benefits to drawback claimants that the Regulatory Impact Analysis of the Modernized Drawback Final Rule discusses in further detail. These benefits to claimants, including those considered small, will be greater than the rule's cost savings due to the relatively higher number of CBP Form 7552s (and corresponding time, printing, and mailing costs) avoided. CBP did not choose Alternative 1 because TFTEA statutorily allows a one-year transition period (February 24, 2018–February 23, 2019) in which drawback claimants can follow either the old drawback statute and corresponding regulations in 19 CFR part 191 as written prior to TFTEA or the amended statute.[33]

b. Alternative 2

The second regulatory alternative CBP considered will implement all of the rule's changes, except it will not change the current regulatory standard for substituting merchandise for drawback (*i.e.,* no implementation of Major Amendment 2 of the Regulatory Impact Analysis of the Modernized Drawback Final Rule). Under this alternative, CBP estimates that the number of substitution drawback claim submissions and the number of drawback claimants will be lower than under the rule over the period of analysis because this alternative will offer relatively fewer new opportunities to claim drawback (see Regulatory Impact Analysis of the Modernized Drawback Final Rule). In fact, drawback claims will measure about 548,000 from 2018 to 2027 under Alternative 2's primary estimation method and the number of unique drawback claimants will equal approximately 9,017. Because of its narrower scope, Alternative 2 will introduce slightly lower overall costs to drawback claimants, including those considered small, than the rule's cost. In particular, claimants will incur relatively fewer full desk reviews and associated costs with this alternative. Drawback claimants, including those considered small, will incur an annualized cost of $7.6 million from this alternative under the primary estimation method, compared to the rule's annualized cost of $7.6 million (using a 7 percent discount rate; see Regulatory Impact Analysis of the Modernized Drawback Final Rule). On a per-claimant basis, Alternative 2 will cost nearly $840 annually over the period of analysis, while the rule will introduce an average cost of almost $770 cost per unique claimant.[34] Alternative 2 will also result in annualized net transfers between $62.9 million and $67.1 million from drawback claimants to the U.S. Government, which will average $7,000 to $7,400 per unique claimant based on the 9,017 unique drawback claimants projected under this alternative (using a 7 percent discount rate; see Regulatory Impact Analysis of the Modernized Drawback Final Rule). Like the rule, Alternative 2 will introduce benefits to drawback claimants that the Regulatory Impact Analysis of the Modernized Drawback Final Rule discusses in further detail. These benefits will be slightly lower than the rule's benefits because drawback claimants will continue to submit ruling and predetermination requests for substitution drawback claims with this alternative. CBP did not choose this Alternative 2 because TFTEA statutorily requires CBP to liberalize the standard for substituting merchandise for drawback by generally basing it on goods classifiable under the same 8-digit HTSUS (or Schedule B) subheading.[35]

Conclusion

In conclusion, because the Modernized Drawback rule will presumably affect all drawback claimants, it will likely affect a substantial number of small entities in each industry submitting such claims. CBP cannot determine whether the rule's economic impact on these entities may be considered significant under the RFA due to data limitations. Therefore,

[32] $8,100,000/9,919 unique drawback claimants = $810 (rounded); $7,600,000/9,919 unique drawback claimants = $770 (rounded).

[33] *See* Section 906 of the Trade Facilitation and Trade Enforcement Act of 2015 (Pub. L. 114–125).

[34] $7,600,000/9,017 unique drawback claimants = $840 (rounded); $7,600,000/9,919 unique drawback claimants = $770 (rounded).

[35] *See* Section 906 of the Trade Facilitation and Trade Enforcement Act of 2015 (Pub. L. 114–125).

CBP cannot certify that this final rule will not have a significant economic impact on a substantial number of small entities. As a result, CBP has conducted a FRFA of the final rule.

E. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), an agency may not conduct, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number assigned by OMB. The collections of information for this rulemaking are included in an existing collection for CBP Forms 7551, 7552, and 7553 (OMB control number 1651–0075).

This rule will, among other things, eliminate the submission requirement for CBP Form 7552 for drawback claimants who file electronically under the new drawback regulations in 19 CFR part 190. Drawback claimants filing by paper under the current drawback regulations in 19 CFR part 191 will still be required to submit the paper CBP Form 7552 until this rule's requirements become mandatory in 2019. Based on this change, CBP estimates a decrease in CBP Form 7552 responses and burden hours. Additionally, CBP Form 7551 has a decrease in burden hours based on changes in the agency estimate. CBP will submit to OMB for review the following adjustments to the previously approved Information Collection under OMB control number 1651–0075 to account for this rule's changes. Furthermore, CBP expects to submit a request to eliminate CBP Form 7552 to OMB in 2019 prior to this rule's mandatory requirement date.

CBP Form 7551, Drawback Entry (reduction in burden hours due to change in agency estimate)

Estimated Number of Respondents: 2,516

Estimated Number of Responses per Respondent: 22.2

Estimated Number of Total Annual Responses: 55,772

Estimated Time per Response: 35 minutes

Estimated Total Annual Burden Hours: 32,532

CBP Form 7552, Delivery Certificate for Drawback (reduction in burden hours due to regulation)

Estimated Number of Respondents: 400

Estimated Number of Responses per Respondent: 20

Estimated Number of Total Annual Responses: 8,000

Estimated Time per Response: 33 minutes

Estimated Total Annual Burden Hours: 4,400

CBP Form 7553, Notice of Intent to Export, Destroy or Return Merchandise for Purposes of Drawback (no change)

Estimated Number of Respondents: 150

Estimated Number of Responses per Respondent: 20

Estimated Number of Total Annual Responses: 3,000

Estimated Time per Response: 33 minutes

Estimated Total Annual Burden Hours: 1,650

VI. Signing Authority

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

List of Subjects

19 CFR Part 181

Administrative practice and procedure, Canada, Customs duties and inspection, Exports, Mexico, Reporting and recordkeeping requirements, Trade agreements.

19 CFR Part 190

Alcohol and alcoholic beverages, Claims, Customs duties and inspection, Exports, Foreign trade zones, Guantanamo Bay Naval Station, Cuba, Packaging and containers, Reporting and recordkeeping requirements, Trade agreements.

19 CFR Part 191

Alcohol and alcoholic beverages, Claims, Customs duties and inspection, Exports, Foreign trade zones, Guantanamo Bay Naval Station, Cuba, Packaging and containers, Reporting and recordkeeping requirements, Trade agreements.

Regulatory Amendments

For the reasons given above, 19 CFR chapter I is amended as set forth below:

PART 181—NORTH AMERICAN FREE TRADE AGREEMENT

■ 1. The general authority citation for part 181 continues to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States), 1624, 3314;

* * * * *

§§ 181.45, 181.46, 181.47, 181.49, and 181.50 [Amended]

■ 2. In the table below, for each section indicated in the left column, remove the words indicated in the middle column, and add, in their place, the words indicated in the right column.

Section	Remove	Add
181.45(b)(2)(i)(B)	§ 191.14 of this chapter, as provided therein	§ 190.14 or § 191.14 of this chapter, as appropriate.
181.45(c)	Such a good must be returned to Customs custody for exportation under Customs supervision within three years after the release from Customs custody.	Such a good must be exported or destroyed within the statutory 5-year time period and in compliance with the requirements set forth in subpart D of part 190 of this chapter or within the 3-year time period and in compliance with the requirements set forth in subpart D of part 191 of this chapter, as applicable.
181.46(b)	(*see* § 191.141(b)(3) (ii) and (iii) of this chapter)	(*see* § 190.35 or § 191.35 of this chapter, as appropriate).
181.47(a)	part 191 of this chapter;	part 190 or 191 of this chapter, as appropriate.
181.49	(*see* § 191.15 (*see* also §§ 191.26(f), 191.38, 191.175(c)) of this chapter).	(*see* § 190.15 (*see* also §§ 190.26(f), 190.38, 190.175(c)) or § 191.15 (*see* also §§ 191.26(f), 191.38, 191.175(c)) of this chapter, as appropriate).
181.50(a)	subpart G of part 191 of this chapter	subpart H of part 190 or subpart H of part 191 of this chapter, as appropriate.
181.50(c)	§ 191.92 of this chapter	§ 190.92 or § 191.92 of this chapter, as appropriate.

■ 3. Add part 190 to read as follows:

PART 190—MODERNIZED DRAWBACK

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States), 1313, 1624;

§§ 190.2, 190.10, 190.15, 190.23, 190.38, 190.51 issued under 19 U.S.C. 1508;

§ 190.84 also issued under 19 U.S.C. 1514;

§§ 190.111, 190.112 also issued under 19 U.S.C. 1309;

§§ 190.151(a)(1), 190.153, 190.157, 190.159 also issued under 19 U.S.C. 1557;

§§ 190.182–190.186 also issued under 19 U.S.C. 81c;

§§ 190.191–190.195 also issued under 19 U.S.C. 1593a.

§ 190.0 Scope.

This part sets forth general provisions applicable to all drawback claims and specialized provisions applicable to specific types of drawback claims filed under 19 U.S.C. 1313, as amended. For drawback claims and specialized provisions applicable to specific types of drawback claims filed pursuant to 19 U.S.C. 1313, as it was in effect on or before February 24, 2016, please see part 191 of this chapter. Additional drawback provisions relating to the North American Free Trade Agreement (NAFTA) are contained in subpart E of part 181 of this chapter.

§ 190.0a Claims filed under NAFTA.

Claims for drawback filed under the provisions of part 181 of this chapter must be filed separately from claims filed under the provisions of this part.

Subpart A—General Provisions

§ 190.1 Authority of the Commissioner of CBP.

Pursuant to DHS Delegation number 7010.3, the Commissioner of CBP has the authority to prescribe, and pursuant to Treasury Order No. 100–16 (set forth in the appendix to part 0 of this chapter), the Secretary of the Treasury has the sole authority to approve, rules and regulations regarding drawback.

§ 190.2 Definitions.

For the purposes of this part:

Abstract. Abstract means the summary of the actual production records of the manufacturer.

Act. Act, unless indicated otherwise, means the Tariff Act of 1930, as amended.

Bill of materials. Bill of materials refers to a record that identifies each component incorporated into a manufactured or produced article (and includes components used in the manufacturing or production process). This may include a record kept in the normal course of business.

Designated merchandise. Designated merchandise means either eligible imported duty-paid merchandise or drawback products selected by the drawback claimant as the basis for a drawback claim under 19 U.S.C. 1313(b) or (j)(2), as applicable, or qualified articles selected by the claimant as the basis for drawback under 19 U.S.C. 1313(p).

Destruction. Destruction means the destruction of articles or merchandise to the extent that they have no commercial value. For purposes of 19 U.S.C. 1313(a), (b), (c), and (j), *destruction* also includes a process by which materials are recovered from imported merchandise or from an article manufactured from imported merchandise, as provided for in 19 U.S.C. 1313(x).

Direct identification drawback. Direct identification drawback includes drawback authorized pursuant to section 313(j)(1) of the Act, as amended (19 U.S.C. 1313(j)(1)), on imported merchandise exported, or destroyed under CBP supervision, without having been used in the United States (*see* also sections 313(c), (e), (f), (g), (h), and (q)). Direct identification is involved in manufacturing drawback pursuant to section 313(a) of the Act, as amended (19 U.S.C. 1313(a)), on imported merchandise used to manufacture or produce an article which is either exported or destroyed. Merchandise or articles may be identified for purposes of direct identification drawback by use of the accounting methods provided for in § 190.14.

Document. In this part, *document* has its normal meaning and includes information input into and contained within an electronic data field, and electronic versions of hard-copy documents.

Drawback. Drawback, as authorized for payment by CBP, means the refund, in whole or in part, of the duties, taxes, and/or fees paid on imported merchandise, which were imposed under Federal law upon entry or importation, and the refund of internal revenue taxes paid on domestic alcohol as prescribed in 19 U.S.C. 1313(d). More broadly, drawback also includes the refund or remission of other excise taxes pursuant to other provisions of law.

Drawback claim. Drawback claim, as authorized for payment by CBP, means the drawback entry and related documents required by regulation which together constitute the request for drawback payment. All drawback claims must be filed electronically through a CBP-authorized Electronic Data Interchange system. More broadly, drawback claim also includes claims for refund or remission of other excise taxes pursuant to other provisions of law.

Drawback entry. Drawback entry means the document containing a description of, and other required information concerning, the exported or destroyed article upon which a drawback claim is based and the designated imported merchandise for which drawback of the duties, taxes, and fees paid upon importation is claimed. Drawback entries must be filed electronically.

Drawback office. Drawback office means any of the locations where drawback claims and related applications or requests may be submitted. CBP may, in its discretion, transfer or share work between the different drawback offices even though the submission may have been to a particular office.

Drawback product. A *drawback product* means a finished or partially finished product manufactured in the United States under the procedures in this part for manufacturing drawback. A drawback product may be exported, or destroyed under CBP supervision with a claim for drawback, or it may be used in the further manufacture of other drawback products by manufacturers or producers operating under the procedures in this part for manufacturing drawback, in which case drawback may be claimed upon exportation or destruction of the ultimate product. Products manufactured or produced from substituted merchandise (imported or domestic) also become ''drawback products'' when applicable substitution requirements of the Act are met. For purposes of section 313(b) of the Act, as amended (19 U.S.C. 1313(b)), drawback products may be designated as the basis for drawback or deemed to be substituted merchandise (*see* 19 U.S.C. 1313(b)). For a drawback product to be designated as the basis for a drawback claim, any transfer of the product must be properly documented (*see* § 190.24).

Exportation. Exportation means the severance of goods from the mass of goods belonging to this country, with the intention of uniting them with the mass of goods belonging to some foreign country. An exportation may be deemed to have occurred when goods subject to drawback are admitted into a foreign trade zone in zone-restricted status, or are laden upon qualifying aircraft or vessels as aircraft or vessel supplies in accordance with section 309(b) of the Act, as amended (19 U.S.C. 1309(b)) (*see* §§ 10.59 through 10.65 of this chapter).

Exporter. Exporter means that person who, as the principal party in interest in the export transaction, has the power and responsibility for determining and controlling the sending of the items out of the United States. In the case of ''deemed exportations'' (*see* definition of *exportation* in this section), *exporter* means that person who, as the principal party in interest in the transaction deemed to be an exportation, has the power and responsibility for determining and controlling the transaction. In the case of aircraft or vessel supplies under 19 U.S.C. 1309(b), *exporter* means the party who has the power and responsibility for lading

supplies on the qualifying aircraft or vessel.

Filing. Filing means the electronic delivery to CBP of any document or documentation, as provided for in this part.

Formula. Formula refers to records that identify the quantity of each element, material, chemical, mixture, or other substance incorporated into a manufactured article (and includes those used in the manufacturing or production process). This includes records kept in the normal course of business.

Fungible merchandise or articles. Fungible merchandise or articles means merchandise or articles which for commercial purposes are identical and interchangeable in all situations.

General manufacturing drawback ruling. A *general manufacturing drawback ruling* means a description of a manufacturing or production operation for drawback and the regulatory requirements and interpretations applicable to that operation (*see* § 190.7).

Intermediate party. Intermediate party means any party in the chain of commerce leading to the exporter (or destroyer) from the importer and who has acquired, purchased, or possessed the imported or substituted merchandise (or any intermediate or finished article, in the case of manufacturing drawback) as allowed under the applicable regulations for the type of drawback claimed, which authorize the transfer of the imported or other drawback eligible merchandise by that intermediate party to another party.

Manufacture or production. Manufacture or production means a process, including, but not limited to, an assembly, by which merchandise is either made into a new and different article having a distinctive name, character or use; or is made fit for a particular use even though it is not made into a new and different article.

Multiple products. Multiple products mean two or more products produced concurrently by a manufacture or production operation or operations.

Per unit averaging. Per unit averaging means the equal apportionment of the amount of duties, taxes, and fees eligible for drawback for all units covered by a single line item on an entry summary to each unit of merchandise. This method of refund calculation is required for certain substitution drawback claims (*see* § 190.51(b)(ii)), which may also be subject to additional limitations under the ''lesser of'' rules, if applicable (*see* § 190.22(a)(1)(ii) and 190.32(b)).

Possession. Possession, for purposes of substitution unused merchandise drawback (19 U.S.C. 1313(j)(2)), means physical or operational control of the merchandise, including ownership while in bailment, in leased facilities, in transit to, or in any other manner under the operational control of, the party claiming drawback.

Records. Records include, but are not limited to, written or electronic business records, statements, declarations, documents and electronically generated or machine readable data which pertain to a drawback claim or to the information contained in the records required by Chapter 4 of Title 19, United States Code, in connection with the filing of a drawback claim and which may include records normally kept in the ordinary course of business (*see* 19 U.S.C. 1508).

Relative value. Relative value means, except for purposes of § 190.51(b), the value of a product divided by the total value of all products which are necessarily manufactured or produced concurrently in the same operation. Relative value is based on the market value, or other value approved by CBP, of each such product determined as of the time it is first separated in the manufacturing or production process. Market value is generally measured by the selling price, not including any packaging, transportation, or other identifiable costs, which accrue after the product itself is processed. Drawback must be apportioned to each such product based on its relative value at the time of separation.

Schedule. A *schedule* means a document filed by a drawback claimant, under section 313(a) or (b), as amended (19 U.S.C. 1313(a) or (b)), showing the quantity of imported or substituted merchandise used in or appearing in each article exported or destroyed that justifies a claim for drawback.

Schedule B. Schedule B means the Department of Commerce Schedule B, Statistical Classification of Domestic and Foreign Commodities Exported from the United States.

Sought chemical element. A *sought chemical element,* under section 313(b), means an element listed in the Periodic Table of Elements that is imported into the United States or a chemical compound (a distinct substance formed by a chemical union of two or more elements in definite proportion by weight) consisting of those elements, either separately in elemental form or contained in source material.

Specific manufacturing drawback ruling. A *specific manufacturing drawback ruling* means a letter of approval (or its electronic equivalent) issued by CBP Headquarters in response to an application filed by a manufacturer or producer for a ruling on a specific manufacturing or production operation for drawback, as described in the format in Appendix B of this part. Specific manufacturing drawback rulings are subject to the provisions in part 177 of this chapter.

Substituted merchandise or articles. Substituted merchandise or articles means merchandise or articles that may be substituted as follows:

(1) For manufacturing drawback pursuant to section 1313(b), substituted merchandise must be classifiable under the same 8-digit HTSUS subheading number as the designated imported merchandise;

(2) For rejected merchandise drawback pursuant to section 1313(c)(2), substituted merchandise must be classifiable under the same 8-digit HTSUS subheading number and have the same specific product identifier (such as part number, SKU, or product code) as the designated imported merchandise;

(3) For unused merchandise drawback pursuant to section 1313(j)(2), substituted merchandise must be classifiable under the same 8-digit HTSUS subheading number as the designated imported merchandise except for wine which may also qualify pursuant to § 190.32(d), but when the 8-digit HTSUS subheading number under which the imported merchandise is classified begins with the term ''other,'' then the other merchandise may be substituted for imported merchandise for drawback purposes if the other merchandise and such imported merchandise are classifiable under the same 10-digit HTSUS statistical reporting number and the article description for that 10-digit HTSUS statistical reporting number does not begin with the term ''other''; but when the first 8 digits of the 10-digit Schedule B number applicable to the exported merchandise are the same as the first 8 digits of the HTSUS subheading number under which the imported merchandise is classified, the merchandise may be substituted (without regard to whether the Schedule B number corresponds to more than one 8-digit HTSUS subheading number); and

(4) For substitution drawback of finished petroleum derivatives pursuant to section 1313(p), a substituted article must be of the same kind and quality as the qualified article for which it is substituted, that is, the articles must be commercially interchangeable or described in the same 8-digit HTSUS subheading number (*see* § 190.172(b)).

Unused merchandise. Unused merchandise means, for purposes of unused merchandise drawback claims,

imported merchandise or other merchandise upon which either no operations have been performed or upon which any operation or combination of operations has been performed (including, but not limited to, testing, cleaning, repacking, inspecting, sorting, refurbishing, freezing, blending, repairing, reworking, cutting, slitting, adjusting, replacing components, relabeling, disassembling, and unpacking), but which does not amount to a manufacture or production for drawback purposes under 19 U.S.C. 1313(a) or (b).

Verification. Verification means the examination of any and all records, maintained by the claimant, or any party involved in the drawback process, which are required by the appropriate CBP officer to render a meaningful recommendation concerning the drawback claimant's conformity to the law and regulations and the determination of supportability, correctness, and validity of the specific claim or groups of claims being verified.

Wine. Wine, for purposes of substitution unused merchandise drawback under 19 U.S.C. 1313(j)(2) and pursuant to the alternative standard for substitution (*see* 19 CFR 190.32(d)), refers to table wine. Consistent with Alcohol and Tobacco Tax and Trade Bureau (TTB) regulations, table wine is a ''Class 1 grape wine'' that satisfies the requirements of 27 CFR 4.21(a)(1) and having an alcoholic content not in excess of 14 percent by volume pursuant to 27 CFR 4.21(a)(2)).

§ 190.3 Duties, taxes, and fees subject or not subject to drawback.

(a) Drawback is allowable pursuant to 19 U.S.C. 1313 on duties, taxes, and fees paid on imported merchandise which were imposed under Federal law upon entry or importation, including:

(1) Ordinary customs duties, including:

(i) Duties paid on an entry, or withdrawal from warehouse, for consumption for which liquidation has become final;

(ii) Estimated duties paid on an entry, or withdrawal from warehouse, for consumption, for which liquidation has not become final, subject to the conditions and requirements of § 190.81(b); and

(iii) Tenders of duties after liquidation of the entry, or withdrawal from warehouse, for consumption for which the duties are paid, subject to the conditions and requirements of § 190.81(c), including:

(A) Voluntary tenders (for purposes of this section, a ''voluntary tender'' is a payment of duties on imported merchandise in excess of duties included in the liquidation of the entry, or withdrawal from warehouse, for consumption, provided that the liquidation has become final and that the other conditions of this section and § 190.81 are met);

(B) Tenders of duties in connection with notices of prior disclosure under 19 U.S.C. 1592(c)(4); and

(C) Duties restored under 19 U.S.C. 1592(d).

(2) Marking duties assessed under section 304(c), Tariff Act of 1930, as amended (19 U.S.C. 1304(c));

(3) Internal revenue taxes which attach upon importation;

(4) Merchandise processing fees (*see* § 24.23 of this chapter); and

(5) Harbor maintenance taxes (*see* § 24.24 of this chapter).

(b) Drawback is not allowable on antidumping and countervailing duties which were imposed on any merchandise entered, or withdrawn from warehouse, for consumption (*see* 19 U.S.C. 1677h).

(c) Drawback is not allowed when the identified merchandise, the designated imported merchandise, or the substituted merchandise (when applicable), consists of an agricultural product which is duty-paid at the over-quota rate of duty established under a tariff-rate quota, except that:

(1) Agricultural products as described in this paragraph are eligible for drawback under 19 U.S.C. 1313(j)(1); and

(2) Tobacco otherwise meeting the description of agricultural products in this paragraph is eligible for drawback under 19 U.S.C. 1313(j)(1) or 19 U.S.C. 1313(a).

§ 190.4 Merchandise in which a U.S. Government interest exists.

(a) *Restricted meaning of Government.* A U.S. Government instrumentality operating with nonappropriated funds is considered a Government entity within the meaning of this section.

(b) *Allowance of drawback.* If the merchandise is sold to the U.S. Government, drawback will be available only to the:

(1) Department, branch, agency, or instrumentality of the U.S. Government which purchased it; or

(2) Supplier, or any of the parties specified in § 190.82, provided the claim is supported by documentation signed by a proper officer of the department, branch, agency, or instrumentality concerned certifying that the right to drawback was reserved by the supplier or other parties with the knowledge and consent of the department, branch, agency, or instrumentality.

(c) *Bond.* No bond will be required when a U.S. Government entity claims drawback.

§ 190.5 Guantanamo Bay, insular possessions, trust territories.

Guantanamo Bay Naval Station is considered foreign territory for drawback purposes and, accordingly, drawback may be permitted on articles shipped there from the customs territory of the United States. Drawback is not allowed, except on claims made under 19 U.S.C. 1313(j)(1), on articles shipped from the customs territory of the United States to the U.S. Virgin Islands, American Samoa, Wake Island, Midway Islands, Kingman Reef, Guam, Canton Island, Enderbury Island, Johnston Island, or Palmyra Island. *See* 19 U.S.C. 1313(y). Puerto Rico, which is part of the customs territory of the United States, is not considered foreign territory for drawback purposes and, accordingly, drawback may not be permitted on articles shipped there from elsewhere in the customs territory of the United States.

§ 190.6 Authority to sign or electronically certify drawback documents.

(a) Documents listed in paragraph (b) of this section must be signed or electronically certified only by one of the following:

(1) The president, a vice president, secretary, treasurer, or any other employee legally authorized to bind the corporation;

(2) A full partner of a partnership;

(3) The owner of a sole proprietorship;

(4) Any employee of the business entity with a power of attorney;

(5) An individual acting on his or her own behalf; or

(6) A licensed customs broker with a power of attorney to sign the applicable drawback document.

(b) The following documents require execution in accordance with paragraph (a) of this section:

(1) Drawback entries;

(2) Notices of Intent to Export, Destroy, or Return Merchandise for Purposes of Drawback;

(3) Certifications to assign the right to claim drawback (*see* §§ 190.28 and 190.82); and

(4) Abstracts, schedules and extracts from monthly abstracts, and bills of materials and formulas, if not included as part of a drawback claim.

(c) The following documents (*see* also part 177 of this chapter) may be executed by one of the persons described in paragraph (a) of this section or by any other individual legally authorized to bind the person (or

entity) for whom the document is executed:

(1) A letter of notification of intent to operate under a general manufacturing drawback ruling under § 190.7;

(2) An application for a specific manufacturing drawback ruling under § 190.8;

(3) An application for waiver of prior notice under § 190.91 or a 1-time waiver of prior notice under § 190.36;

(4) An application for approval of accelerated payment of drawback under § 190.92; and

(5) An application for certification in the Drawback Compliance Program under § 190.193.

§ 190.7 General manufacturing drawback ruling.

(a) *Purpose; eligibility.* General manufacturing drawback rulings are designed to simplify drawback for certain common manufacturing operations but do not preclude or limit the use of applications for specific manufacturing drawback rulings (*see* § 190.8). A manufacturer or producer engaged in an operation that falls within a published general manufacturing drawback ruling may submit a letter of notification of intent to operate under that general ruling. Where a separately-incorporated subsidiary of a parent corporation is engaged in manufacture or production for drawback, the subsidiary is the proper party to submit the letter of notification, and cannot operate under a letter of notification submitted by the parent corporation.

(b) *Procedures*—(1) *Publication.* General manufacturing drawback rulings are contained in Appendix A to this part. As deemed necessary by CBP, new general manufacturing drawback rulings will be issued as CBP Decisions and added to the appendix thereafter.

(2) *Submission.* Letters of notification of intent to operate under a general manufacturing drawback ruling must be submitted to any drawback office where drawback entries will be filed, concurrent with or prior to filing a claim, provided that the general manufacturing drawback ruling will be followed without variation. If there is any variation from the general manufacturing drawback ruling, the manufacturer or producer must apply for a specific manufacturing drawback ruling under § 190.8.

(3) *Information required.* Each manufacturer or producer submitting a letter of notification of intent to operate under a general manufacturing drawback ruling under this section must provide the following specific detailed information:

(i) Name and address of manufacturer or producer (if the manufacturer or producer is a separately-incorporated subsidiary of a corporation, the subsidiary corporation must submit a letter of notification in its own name);

(ii) In the case of a business entity, the names of the persons listed in § 190.6(a)(1) through (6) who will sign drawback documents;

(iii) Locations of the factories which will operate under the letter of notification;

(iv) Identity (by T.D. or CBP Decision number and title) of the general manufacturing drawback ruling under which the manufacturer or producer will operate;

(v) Description of the merchandise and articles, unless specifically described in the general manufacturing drawback ruling, and the applicable 8-digit HTSUS subheading number(s) for imported merchandise that will be designated as part of substitution manufacturing drawback claims;

(vi) Description of the manufacturing or production process, unless specifically described in the general manufacturing drawback ruling;

(vii) Basis of claim used for calculating drawback; and

(viii) IRS (Internal Revenue Service) number (with suffix) of the manufacturer or producer.

(c) *Review and action by CBP.* The drawback office to which the letter of notification of intent to operate under a general manufacturing drawback ruling was submitted will review the letter of notification of intent.

(1) *Acknowledgment.* The drawback office will promptly issue a letter acknowledging receipt of the letter of intent and authorizing the person to operate under the identified general manufacturing drawback ruling, subject to the requirements and conditions of that general manufacturing drawback ruling and the law and regulations, to the person who submitted the letter of notification if:

(i) The letter of notification is complete (*i.e.,* contains the information required in paragraph (b)(3) of this section);

(ii) The general manufacturing drawback ruling identified by the manufacturer or producer is applicable to the manufacturing or production process;

(iii) The general manufacturing drawback ruling identified by the manufacturer or producer will be followed without variation; and

(iv) The described manufacturing or production process is a manufacture or production as defined in § 190.2.

(2) *Computer-generated number.* With the letter of acknowledgment the drawback office will include the unique computer-generated number assigned to the acknowledgment of the letter of notification of intent to operate. This number must be stated when the person files manufacturing drawback claims with CBP under the general manufacturing drawback ruling.

(3) *Non-conforming letters of notification of intent.* If the letter of notification of intent to operate does not meet the requirements of paragraph (c)(1) of this section in any respect, the drawback office will promptly and in writing specifically advise the person of this fact and why this is so. A letter of notification of intent to operate which is not acknowledged may be resubmitted to the drawback office to which it was initially submitted with modifications and/or explanations addressing the reasons CBP may have given for non-acknowledgment, or the matter may be referred (by letter from the manufacturer or producer) to CBP Headquarters (Attention: Entry Process and Duty Refunds Branch, Regulations and Rulings, Office of Trade).

(d) *Procedure to modify a general manufacturing drawback ruling.* Modifications are allowed under the same procedure terms as provided for in § 190.8(g) for specific manufacturing drawback rulings.

(e) *Duration.* Acknowledged letters of notification under this section will remain in effect under the same terms as provided for in § 190.8(h) for specific manufacturing drawback rulings.

§ 190.8 Specific manufacturing drawback ruling.

(a) *Applicant.* Unless operating under a general manufacturing drawback ruling (*see* § 190.7), each manufacturer or producer of articles intended to be claimed for drawback must apply for a specific manufacturing drawback ruling. Where a separately-incorporated subsidiary of a parent corporation is engaged in manufacture or production for drawback, the subsidiary is the proper party to apply for a specific manufacturing drawback ruling, and cannot operate under any specific manufacturing drawback ruling approved in favor of the parent corporation.

(b) *Sample application.* Sample formats for applications for specific manufacturing drawback rulings are contained in Appendix B to this part.

(c) *Content of application.* The application of each manufacturer or producer must include the following information as applicable:

(1) Name and address of the applicant;

(2) Internal Revenue Service (IRS) number (with suffix) of the applicant;

(3) Description of the type of business in which engaged;

(4) Description of the manufacturing or production process, which shows how the designated and substituted merchandise is used to make the article that is to be exported or destroyed;

(5) In the case of a business entity, the names of persons listed in § 190.6(a)(1) through (6) who will sign drawback documents;

(6) Description of the imported merchandise including specifications and applicable 8-digit HTSUS subheading(s);

(7) Description of the exported article and applicable 8-digit HTSUS subheadings;

(8) How manufacturing drawback is calculated;

(9) Summary of the records kept to support claims for drawback; and

(10) Identity and address of the recordkeeper if other than the claimant.

(d) *Submission of application.* An application for a specific manufacturing drawback ruling must be submitted to CBP Headquarters (Attention: Entry Process and Duty Refunds Branch, Regulations and Rulings, Office of Trade). Applications may be physically delivered (in triplicate) or submitted via email. Claimants must indicate if drawback claims are to be filed under the ruling at more than one drawback office.

(e) *Review and action by CBP.* CBP Headquarters will review each application for a specific manufacturing drawback ruling.

(1) *Approval.* If the application is consistent with the drawback law and regulations, CBP Headquarters will issue a letter of approval to the applicant and will upload a copy of the application for the specific manufacturing drawback ruling to the Automated Commercial Environment (ACE) along with a copy of the letter of approval. Each specific manufacturing drawback ruling will be assigned a unique manufacturing number which will be included in the letter of approval to the applicant from CBP Headquarters, which must be used when filing manufacturing drawback claims.

(2) *Disapproval.* If the application is not consistent with the drawback law and regulations, CBP Headquarters will promptly and in writing inform the applicant that the application cannot be approved and will specifically advise the applicant why this is so. A disapproved application may be resubmitted with modifications and/or explanations addressing the reasons given for disapproval; a disapproval may be appealed to CBP Headquarters (Attention: Entry Process and Duty Refunds Branch, Regulations and Rulings, Office of Trade).

(f) *Schedules and supplemental schedules.* When an application for a specific manufacturing drawback ruling states that drawback is to be based upon a schedule, as defined in § 190.2, filed by the manufacturer or producer, the schedule will be reviewed by CBP Headquarters. The application may include a request for authorization for the filing of supplemental schedules with the drawback office where claims are filed.

(g) *Procedure to modify a specific manufacturing drawback ruling*—(1) *Supplemental application.* Except as provided for limited modifications in paragraph (g)(2) of this section, a manufacturer or producer desiring to modify an existing specific manufacturing drawback ruling may submit a supplemental application for such modification to CBP Headquarters (Attention: Entry Process and Duty Refunds Branch, Regulations and Rulings, Office of Trade). Such a supplemental application may, at the discretion of the manufacturer or producer, be in the form of the original application, or it may identify the specific manufacturing drawback ruling to be modified (by T.D. or CBP Decision number, if applicable, and unique computer-generated number) and include only those paragraphs of the application that are to be modified, with a statement that all other paragraphs are unchanged and are incorporated by reference in the supplemental application.

(2) *Limited modifications.* (i) A supplemental application for a specific manufacturing drawback ruling must be submitted to the drawback office where the original claim(s) was filed if the modifications are limited to:

(A) The location of a factory, or the addition of one or more factories where the methods followed and records maintained are the same as those at another factory operating under the existing specific manufacturing drawback ruling of the manufacturer or producer;

(B) The succession of a sole proprietorship, partnership or corporation to the operations of a manufacturer or producer;

(C) A change in name of the manufacturer or producer;

(D) A change in the persons who will sign drawback documents in the case of a business entity;

(E) A change in the basis of claim used for calculating drawback;

(F) A change in the decision to use or not to use an agent under § 190.9, or a change in the identity of an agent under that section;

(G) A change in the drawback office where claims will be filed under the ruling (*see* paragraph (g)(2)(iii) of this section);

(H) An authorization to continue operating under a ruling approved under 19 CFR part 191 (*see* paragraph (g)(2)(iv) of this section); or

(I) Any combination of the foregoing changes.

(ii) A limited modification, as provided for in this paragraph (g)(2), must contain only the modifications to be made, in addition to identifying the specific manufacturing drawback ruling and being signed by an authorized person. To effect a limited modification, the manufacturer or producer must file with the drawback office(s) where claims were originally filed a letter stating the modifications to be made. The drawback office will promptly acknowledge acceptance of the limited modifications.

(iii) To transfer a claim to another drawback office, the manufacturer or producer must file with the second drawback office where claims will be filed, a written application to file claims at that office, with a copy of the application and approval letter under which claims are currently filed. The manufacturer or producer must provide a copy of the written application to file claims at the new drawback office to the drawback office where claims are currently filed.

(iv) To file a claim under this part based on a ruling approved under 19 CFR part 191, the manufacturer or producer must file a supplemental application for a limited modification no later than February 23, 2019, which provides the following:

(A) Revised parallel columns with the required annotations for the applicable 8-digit HTSUS subheading number(s);

(B) Revised bill of materials or formula with the required annotations for the applicable 8-digit HTSUS subheading number(s); and

(C) A certification of continued compliance, which states: ''The undersigned acknowledges the current statutory requirements under 19 U.S.C. 1313 and the regulatory requirements in 19 CFR part 190, and hereby certifies its continuing eligibility for operating under the manufacturing drawback ruling in compliance therewith.''

(h) *Duration.* Subject to 19 U.S.C. 1625 and part 177 of this chapter, a specific manufacturing drawback ruling

under this section will remain in effect indefinitely unless:

(1) No drawback claim is filed under the ruling for a period of 5 years and notice of termination is published in the Customs Bulletin; or

(2) The manufacturer or producer to whom approval of the ruling was issued files a request to terminate the ruling, in writing, with CBP Headquarters (Attention: Entry Process and Duty Refunds Branch, Regulations and Rulings, Office of Trade).

§ 190.9 Agency.

(a) *General.* An owner of the identified merchandise, the designated imported merchandise and/or the substituted merchandise that is used to produce the exported articles may employ another person to do part, or all, of the manufacture or production under 19 U.S.C. 1313(a) or (b) and as defined in § 190.2. For purposes of this section, such owner is the principal and such other person is the agent. Under 19 U.S.C. 1313(b), the principal will be treated as the manufacturer or producer of merchandise used in manufacture or production by the agent. The principal must be able to establish by its manufacturing records, the manufacturing records of its agent(s), or the manufacturing records of both (or all) parties, compliance with all requirements of this part (*see,* in particular, § 190.26).

(b) *Requirements*—(1) *Contract.* The manufacturer must establish that it is the principal in a contract between it and its agent who actually does the work on either the designated or substituted merchandise, or both, for the principal. The contract must include:

(i) Terms of compensation to show that the relationship is an agency rather than a sale;

(ii) How transfers of merchandise and articles will be recorded by the principal and its agent;

(iii) The work to be performed on the merchandise by the agent for the principal;

(iv) The degree of control that is to be exercised by the principal over the agent's performance of work;

(v) The party who is to bear the risk of loss on the merchandise while it is in the agent's custody; and

(vi) The period that the contract is in effect.

(2) *Ownership of the merchandise by the principal.* The records of the principal and/or the agent must establish that the principal had legal and equitable title to the merchandise before receipt by the agent. The right of the agent to assert a lien on the merchandise for work performed does not derogate the principal's ownership interest under this section.

(3) *Sales prohibited.* The relationship between the principal and agent must not be that of a seller and buyer. If the parties' records show that, with respect to the merchandise that is the subject of the principal-agent contract, the merchandise is sold to the agent by the principal, or the articles manufactured by the agent are sold to the principal by the agent, those records are inadequate to establish existence of a principal-agency relationship under this section.

(c) *Specific manufacturing drawback rulings; general manufacturing drawback rulings*—(1) *Owner.* An owner who intends to operate under the principal-agent procedures of this section must state that intent in any letter of notification of intent to operate under a general manufacturing drawback ruling filed under § 190.7 or in any application for a specific manufacturing drawback ruling filed under § 190.8.

(2) *Agent.* Each agent operating under this section must have filed a letter of notification of intent to operate under a general manufacturing drawback ruling (*see* § 190.7), for an agent, covering the articles manufactured or produced, or have obtained a specific manufacturing drawback ruling (*see* § 190.8), as appropriate.

(d) *Certificate*—(1) *Contents of certificate.* The principal for whom processing is conducted under this section must file, with any drawback claim, a certificate, subject to the recordkeeping requirements of §§ 190.15 and 190.26, certifying that upon request by CBP it can establish the following:

(i) Quantity of merchandise transferred from the principal to the agent;

(ii) Date of transfer of the merchandise from the principal to the agent;

(iii) Date of manufacturing or production operations performed by the agent;

(iv) Total quantity, description, and 10-digit HTSUS classification of merchandise appearing in or used in manufacturing or production operations performed by the agent;

(v) Total quantity, description, and 10-digit HTSUS classification of articles produced in manufacturing or production operations performed by the agent;

(vi) Quantity and 10-digit HTSUS classification of articles transferred from the agent to the principal; and

(vii) Date of transfer of the articles from the agent to the principal.

(2) *Blanket certificate.* The certificate required under paragraph (d)(1) of this section may be a blanket certificate for a stated period.

§ 190.10 Transfer of merchandise.

(a) *Ability to transfer merchandise.* (1) A party may transfer drawback eligible merchandise or articles to another party, provided that the transferring party:

(i) Imports and pays duties, taxes, and/or fees on such imported merchandise;

(ii) Receives such imported merchandise;

(iii) In the case of 19 U.S.C. 1313(j)(2), receives such imported merchandise, substituted merchandise, or any combination of such imported and substituted merchandise; or

(iv) Receives an article manufactured or produced under 19 U.S.C. 1313(a) and/or (b).

(2) The transferring party must maintain records that:

(i) Document the transfer of that merchandise or article;

(ii) Identify such merchandise or article as being that to which a potential right to drawback exists; and

(iii) Assign such right to the transferee (*see* § 190.82).

(b) *Required records.* The records that support the transfer must include the following information:

(1) The party to whom the merchandise or articles are delivered;

(2) Date of physical delivery;

(3) Import entry number and entry line item number;

(4) Quantity delivered and, for substitution claims, total quantity attributable to the relevant import entry line item number;

(5) Total duties, taxes, and fees paid on, or attributable to, the delivered merchandise, and, for substitution claims, total duties, taxes, and fees paid on, or attributable to, the relevant import entry line item number;

(6) Date of importation;

(7) Port where import entry filed;

(8) Person from whom received;

(9) Description of the merchandise delivered;

(10) The 10-digit HTSUS classification for the designated imported merchandise (such HTSUS number must be from the entry summary line item and other entry documentation for the merchandise); and

(11) If the merchandise transferred is substituted for the designated imported merchandise under 19 U.S.C. 1313(j)(2), the 10-digit HTSUS classification of the substituted merchandise (as if it had been imported).

(c) *Line item designation for partial transfers of merchandise.* Regardless of any agreement between the transferor

and the transferee, the method used for the first filed claim relating to merchandise reported on that entry summary line item will be the exclusive basis for the calculation of refunds (either using per unit averaging or not) for any subsequent claims for any other merchandise reported on that same entry summary line item. *See* § 190.51(a)(3).

(d) *Retention period.* The records listed in paragraph (b) of this section must be retained by the issuing party for 3 years from the date of liquidation of the related claim or longer period if required by law (*see* 19 U.S.C. 1508(c)(3)).

(e) *Submission to CBP.* If the records required under paragraph (b) of this section or additional records requested by CBP are not provided by the claimant upon request by CBP, the part of the drawback claim dependent on those records will be denied.

(f) *Warehouse transfer and withdrawals.* The person in whose name merchandise is withdrawn from a bonded warehouse will be considered the importer for drawback purposes. No records are required to document prior transfers of merchandise while in a bonded warehouse.

§ 190.11 Valuation of merchandise.

The values declared to CBP as part of a complete drawback claim pursuant to § 190.51 must be established as provided below. If the drawback eligible merchandise or articles are destroyed, then the value of the imported merchandise and any substituted merchandise must be reduced by the value of materials recovered during destruction in accordance with 19 U.S.C. 1313(x).

(a) *Designated imported merchandise.* The value of the imported merchandise is determined as follows:

(1) *Direct identification claims.* The value of the imported merchandise is the customs value of the imported merchandise upon entry into the United States (see subpart E of part 152 of this chapter); or, if the merchandise is identified pursuant to an approved accounting method, then the value of the imported merchandise is the customs value that is properly attributable to the imported merchandise as identified by the appropriate recordkeeping (see § 190.14, varies by accounting method).

(2) *Substitution claims.* The value of the designated imported merchandise is the per unit average value, which is the entered value for the applicable entry summary line item apportioned equally over each unit covered by the line item.

(b) *Exported merchandise or articles.* The value of the exported merchandise or articles eligible for drawback is the selling price as declared for the Electronic Export Information (EEI), including any adjustments and exclusions required by 15 CFR 30.6(a). If there is no selling price for the EEI, then the value is the other value as declared for the EEI including any adjustments and exclusions required by 15 CFR 30.6(a) (*e.g.,* the market price, if the goods are shipped on consignment). (For special types of transactions where certain unusual conditions are involved, the value for the EEI is determined pursuant to 15 CFR part 30 subpart C.) If no EEI is required (*see,* 15 CFR part 30 subpart D for a complete list of exemptions), then the claimant must provide the value that would have been set forth on the EEI when the exportation took place, but for the exemption from the requirement for an EEI.

(c) *Destroyed merchandise or articles.* The value of the destroyed merchandise or articles eligible for drawback is the value at the time of destruction, determined as if the merchandise had been exported in its condition at the time of its destruction and an EEI had been required.

(d) *Substituted merchandise for manufacturing drawback claims.* The value of the substituted merchandise for manufacturing drawback claims pursuant to 19 U.S.C. 1313(b) is the cost of acquisition or production for the manufacturer or producer who used the substituted merchandise in manufacturing or production. These costs must be based on records kept in the ordinary course of business and may be determined on the basis of any of the inventory accounting methods recognized in the Generally Accepted Accounting Principles. Any inventory management method which is used by a manufacturer or producer for valuation of the substituted merchandise for manufacturing drawback claims under 19 U.S.C. 1313(b) must be used without variation with other methods for a period of at least 1 year.

§ 190.12 Claim filed under incorrect provision.

A drawback claim filed under this part and pursuant to any provision of section 313 of the Act, as amended (19 U.S.C. 1313), may be deemed filed pursuant to any other provision thereof should the drawback office determine that drawback is not allowable under the provision as originally filed, but that it is allowable under such other provision. To be allowable under such other provision, the claim must meet each of the requirements of such provision. The claimant may raise alternative provisions prior to liquidation and by protest (*see* part 174 of this chapter).

§ 190.13 Packaging materials.

(a) *Imported packaging material.* Drawback is provided for in section 313(q)(1) of the Act, as amended (19 U.S.C. 1313(q)(1)), on imported packaging material used to package or repackage merchandise or articles exported or destroyed pursuant to section 313(a), (b), (c), or (j) of the Act, as amended (19 U.S.C. 1313(a), (b), (c), or (j)). The amount of drawback payable on the packaging material is determined pursuant to the particular drawback provision to which the packaged goods themselves are subject. The packaging material must be separately identified on the claim, and all other information and documents required for the particular drawback provision under which the claim is made must be provided for the packaging material.

(b) *Packaging material manufactured in United States from imported materials.* Drawback is provided for in section 313(q)(2) of the Act, as amended (19 U.S.C. 1313(q)(2)), on packaging material that is manufactured or produced in the United States from imported materials and used to package or repackage articles that are exported or destroyed under section 313(a) or (b) of the Act, as amended (19 U.S.C. 1313(a) or (b)). The packaging material and the imported merchandise used in the manufacture or production of the packaging material must be separately identified on the claim, and all other information and documents required for the particular drawback provision under which the claim is made must be provided for the packaging material as well as the imported merchandise used in its manufacture or production, for purposes of determining the applicable drawback payable. Drawback under 19 U.S.C. 1313(q)(2) is allowed, regardless of whether or not any of the articles or merchandise the packaging contains are actually eligible for drawback.

§ 190.14 Identification of merchandise or articles by accounting method.

(a) *General.* This section provides for the identification of merchandise or articles for drawback purposes by the use of accounting methods. This section applies to identification of merchandise or articles in inventory or storage, as well as identification of merchandise used in manufacture or production, as defined in § 190.2. This section is not applicable to situations in which the

drawback law authorizes substitution (substitution is allowed in specified situations under 19 U.S.C. 1313(b), 1313(j)(2), 1313(k), and 1313(p); this section does apply to situations in these subsections in which substitution is not allowed, as well as to the subsections of the drawback law under which no substitution is allowed). When substitution is authorized, merchandise or articles may be substituted without reference to this section, under the criteria and conditions specifically authorized in the statutory and regulatory provisions providing for the substitution.

(b) *Conditions and criteria for identification by accounting method.* Manufacturers, producers, claimants, or other appropriate persons may identify for drawback purposes lots of merchandise or articles under this section, subject to each of the following conditions and criteria:

(1) The lots of merchandise or articles to be so identified must be fungible as defined in § 190.2;

(2) The person using the identification method must be able to establish that inventory records (for example, material control records), prepared and used in the ordinary course of business, account for the lots of merchandise or articles to be identified as being received into and withdrawn from the same inventory. Even if merchandise or articles are received or withdrawn at different geographical locations, if such inventory records treat receipts or withdrawals as being from the same inventory, those inventory records may be used to identify the merchandise or articles under this section, subject to the conditions of this section. If any such inventory records (that is, inventory records prepared and used in the ordinary course of business) treat receipts and withdrawals as being from different inventories, those inventory records must be used and receipts into or withdrawals from the different inventories may not be accounted for together. If units of merchandise or articles can be specifically identified (for example, by serial number), the merchandise or articles must be specifically identified and may not be identified by accounting method, unless it is established that inventory records, prepared and used in the ordinary course of business, treat the merchandise or articles to be identified as being received into and withdrawn from the same inventory (subject to the above conditions);

(3) Unless otherwise provided in this section or specifically approved by CBP (by a binding ruling under part 177 of this chapter), all receipts (or inputs) into and all withdrawals from the inventory must be recorded in the accounting record;

(4) The records which support any identification method under this section are subject to verification by CBP (*see* § 190.61). If CBP requests such verification, the person using the identification method must be able to demonstrate how, under generally accepted accounting procedures, the records which support the identification method used account for all merchandise or articles in, and all receipts into and withdrawals from, the inventory, and the drawback per unit for each receipt and withdrawal; and

(5) Any accounting method which is used by a person for drawback purposes under this section must be used exclusively, without using other methods for a period of at least 1 year, unless approval is given by CBP for a shorter period.

(c) *Approved accounting methods.* The following accounting methods are approved for use in the identification of merchandise or articles for drawback purposes under this section. If a claim is eligible for the use of any accounting method, the claimant must indicate on the drawback entry whether an accounting method was used, and if so, which accounting method was used, to identify the merchandise as part of the complete claim (see § 190.51).

(1) *First-in, first-out* (*FIFO*)—(i) *General.* The FIFO method is the method by which fungible merchandise or articles are identified by recordkeeping on the basis of the first merchandise or articles received into the inventory. Under this method, withdrawals are from the oldest (first-in) merchandise or articles in the inventory at the time of withdrawal.

(ii) *Example.* If the beginning inventory is zero, 100 units with $1 drawback attributable per unit are received in inventory on the 2nd of the month, 50 units with no drawback attributable per unit are received into inventory on the 5th of the month, 75 units are withdrawn for domestic (non-export) shipment on the 10th of the month, 75 units with $2 drawback attributable per unit are received in inventory on the 15th of the month, 100 units are withdrawn for export on the 20th of the month, and no other receipts or withdrawals occurred in the month, the drawback attributable to the 100 units withdrawn for export on the 20th is a total of $75 (25 units from the receipt on the 2nd with $1 drawback attributable per unit, 50 units from the receipt on the 5th with no drawback attributable per unit, and 25 units from the receipt on the 15th with $2 drawback attributable per unit). The basis of the foregoing and the effects on the inventory of the receipts and withdrawals, and balance in the inventory thereafter are as follows: On the 2nd of the month the receipt of 100 units ($1 drawback/unit) results in a balance of that amount; the receipt of 50 units ($0 drawback/unit) on the 5th results in a balance of 150 units (100 with $1 drawback/unit and 50 with $0 drawback/unit); the withdrawal on the 10th of 75 units ($1 drawback/unit) results in a balance of 75 units (25 with $1 drawback/unit and 50 with $0 drawback/unit); the receipt of 75 units ($2 drawback/unit) on the 15th results in a balance of 150 units (25 with $1 drawback/unit, 50 with $0 drawback/unit, and 75 with $2 drawback/unit); the withdrawal on the 20th of 100 units (25 with $1 drawback/unit, 50 with $0 drawback/unit, and 25 with $2 drawback unit) results in a balance of 50 units (all 50 with $2 drawback/unit).

(2) *Last-in, first out* (*LIFO*)—(i) *General.* The LIFO method is the method by which fungible merchandise or articles are identified by recordkeeping on the basis of the last merchandise or articles received into the inventory. Under this method, withdrawals are from the newest (last-in) merchandise or articles in the inventory at the time of withdrawal.

(ii) *Example.* In the example in paragraph (c)(1)(ii) of this section, the drawback attributable to the 100 units withdrawn for export on the 20th is a total of $175 (75 units from the receipt on the 15th with $2 drawback attributable per unit and 25 units from the receipt on the 2nd with $1 drawback attributable per unit). The basis of the foregoing and the effects on the inventory of the receipts and withdrawals, and balance in the inventory thereafter are as follows: On the 2nd of the month the receipt of 100 units ($1 drawback/unit) results in a balance of that amount; the receipt of 50 units ($0 drawback/unit) on the 5th results in a balance of 150 units (100 with $1 drawback/unit and 50 with $0 drawback/unit); the withdrawal on the 10th of 75 units (50 with $0 drawback/unit and 25 with $1 drawback/unit) results in a balance of 75 units (all with $1 drawback/unit); the receipt of 75 units ($2 drawback/unit) on the 15th results in a balance of 150 units (75 with $1 drawback/unit and 75 with $2 drawback/unit); the withdrawal on the 20th of 100 units (75 with $2 drawback/unit and 25 with $1 drawback/unit) results in a balance of 50 units (all 50 with $1 drawback/unit).

(3) *Low-to-high*—(i) *General.* The low-to-high method is the method by which

fungible merchandise or articles are identified by recordkeeping on the basis of the lowest drawback amount per unit of the merchandise or articles in inventory. Merchandise or articles with no drawback attributable to them (for example, domestic merchandise or duty-free merchandise) must be accounted for and are treated as having the lowest drawback attributable to them. Under this method, withdrawals are from the merchandise or articles with the least amount of drawback attributable to them, then those with the next higher amount, and so forth. If the same amount of drawback is attributable to more than one lot of merchandise or articles, withdrawals are from the oldest (first-in) merchandise or articles among those lots with the same amount of drawback attributable. Drawback requirements are applicable to withdrawn merchandise or articles as identified (for example, if the merchandise or articles identified were attributable to an import more than 5 years before the claimed export, no drawback could be granted).

(ii) *Ordinary low-to-high*—(A) *Method.* Under the ordinary low-to-high method, all receipts into and all withdrawals from the inventory are recorded in the accounting record and accounted for so that each withdrawal, whether for export or domestic shipment, is identified by recordkeeping on the basis of the lowest drawback amount per unit of the merchandise or articles available in the inventory.

(B) *Example.* In this example, the beginning inventory is zero, and receipts into and withdrawals from the inventory are as follows:

Date	Receipt ($ per unit)	Withdrawals
Jan. 2	100 (zero)	
Jan. 5	50 ($1.00)	
Jan. 15		50 (export).
Jan. 20	50 ($1.01)	
Jan. 25	50 ($1.02)	
Jan. 28		50 (domestic).
Jan. 31	50 ($1.03)	
Feb. 5		100 (export).
Feb. 10	50 ($.95)	
Feb. 15		50 (export).
Feb. 20	50 (zero)	
Feb. 23		50 (domestic).
Feb. 25	50 ($1.05)	
Feb. 28		100 (export).
Mar. 5	50 ($1.06)	
Mar. 10	50 ($.85)	
Mar. 15		50 (export).
Mar. 21		50 (domestic).
Mar. 20	50 ($1.08)	
Mar. 25	50 ($.90)	
Mar. 31		100 (export).

Note to paragraph (c)(3)(ii)(B): The drawback attributable to the January 15 withdrawal for export is zero (the available receipt with the lowest drawback amount per unit is the January 2 receipt), the drawback attributable to the January 28 withdrawal for domestic shipment (no drawback) is zero (the remainder of the January 2 receipt), the drawback attributable to the February 5 withdrawal for export is $100.50 (the January 5 and January 20 receipts), the drawback attributable to the February 15 withdrawal for export is $47.50 (the February 10 receipt), the drawback attributable to the February 23 withdrawal for domestic shipment (no drawback) is zero (the February 20 receipt), the drawback attributable to the February 28 withdrawal for export is $102.50 (the January 25 and January 31 receipts), the drawback attributable to the March 15 withdrawal for export is $42.50 (the March 10 receipt), the drawback attributable to the March 21 withdrawal for domestic shipment (no drawback) is $52.50 (the February 25 receipt), and the drawback attributable to the March 31 withdrawal for export is $98.00 (the March 25 and March 5 receipts). Remaining in inventory is the March 20 receipt of 50 units ($1.08 drawback/unit). Total drawback attributable to withdrawals for export in this example would be $391.00.

(iii) *Low-to-high method with established average inventory turn-over period*—(A) *Method.* Under the low-to-high method with established average inventory turn-over period, all receipts into and all withdrawals for export are recorded in the accounting record and accounted for so that each withdrawal is identified by recordkeeping on the basis of the lowest drawback amount per available unit of the merchandise or articles received into the inventory in the established average inventory turn-over period preceding the withdrawal.

(B) *Accounting for withdrawals* (*for domestic shipments and for export*). Under the low-to-high method with established average inventory turn-over period, domestic withdrawals (withdrawals for domestic shipment) are not accounted for and do not affect the available units of merchandise or articles. All withdrawals for export must be accounted for whether or not drawback is available or claimed on the withdrawals. Once a withdrawal for export is made and accounted for under this method, the merchandise or articles withdrawn are no longer available for identification.

(C) *Establishment of inventory turn-over period.* For purposes of the low-to-high method with established average inventory turn-over period, the average inventory turn-over period is based on the rate of withdrawal from inventory and represents the time in which all of the merchandise or articles in the inventory at a given time must have been withdrawn based on that rate. To establish an average of this time, at least 1 year, or 3 turn-over periods (if inventory turns over fewer than 3 times per year), must be averaged. The inventory turn-over period must be that for the merchandise or articles to be identified, except that if the person using the method has more than one kind of merchandise or articles with different inventory turn-over periods, the longest average turn-over period established under this section may be used (instead of using a different inventory turn-over period for each kind of merchandise or article).

(D) *Example.* In the example in paragraph (c)(3)(ii)(B) of this section (but, as required for this method, without accounting for domestic withdrawals, and with an established average inventory turn-over period of 30 days), the drawback attributable to the January 15 withdrawal for export is zero (the available receipt in the preceding 30 days with the lowest amount of drawback is the January 2 receipt, of which 50 units will remain after the withdrawal), the drawback attributable to the February 5 withdrawal for export is $101.50 (the January 20 and January 25 receipts), the drawback attributable to the February 15 withdrawal for export is $47.50 (the February 10 receipt), the drawback attributable to the February 28 withdrawal for export is $51.50 (the February 20 and January 31 receipts), the drawback attributable to the March 15 withdrawal for export is $42.50 (the March 10 receipt), and the drawback attributable to the March 31 withdrawal for export is $98.00 (the March 25 and March 5 receipts). No drawback may be claimed on the basis of the January 5 receipt or the February 25 receipt because in the case of each, there were insufficient withdrawals for export within the established average inventory turn-over period; the 50 units remaining from the January 2 receipt after the January 15 withdrawal are not identified for a withdrawal for export because there is no other withdrawal for export (other than the January 15 withdrawal) within the established average inventory turn-over period; the March 20 receipt (50 units at $1.08) is not yet attributed to withdrawals for export. Total drawback attributable to withdrawals for export in this example would be $341.00.

(iv) *Low-to-high blanket method*—(A) *Method.* Under the low-to-high blanket method, all receipts into and all withdrawals for export are recorded in the accounting record and accounted for. Each withdrawal is identified on the basis of the lowest drawback amount per available unit of the merchandise or articles received into inventory in the applicable statutory period for export preceding the withdrawal (*e.g.,* 180 days

under 19 U.S.C. 1313(p) and 5 years for other types of drawback claims pursuant to 19 U.S.C. 1313(r)). Drawback requirements are applicable to withdrawn merchandise or articles as identified (for example, no drawback could be granted generally if the merchandise or articles identified were attributable to an import made more than 5 years before the claimed export; and, for claims pursuant to 19 U.S.C. 1313(p), no drawback could be granted if the merchandise or articles identified were attributable to an import that was entered more than 180 days after the date of the claimed export or if the claimed export was more than 180 days after the close of the manufacturing period attributable to an import).

(B) *Accounting for withdrawals* (*for domestic shipments and for export*). Under the low-to-high blanket method, domestic withdrawals (withdrawals for domestic shipment) are not accounted for and do not affect the available units of merchandise or articles. All withdrawals for export must be accounted for whether or not drawback is available or claimed on the withdrawals. Once a withdrawal for export is made and accounted for under this method, the merchandise or articles withdrawn are no longer available for identification.

(C) *Example.* In the example in paragraph (c)(3)(ii)(B) of this section (but, as required for this method, without accounting for domestic withdrawals), the drawback attributable to the January 15 withdrawal for export is zero (the available receipt in the inventory with the lowest amount of drawback is the January 2 receipt, of which 50 units will remain after the withdrawal), the drawback attributable to the February 5 withdrawal for export is $50.00 (the remainder of the January 2 receipt and the January 5 receipt), the drawback attributable to the February 15 withdrawal for export is $47.50 (the February 10 receipt), the drawback attributable to the February 28 withdrawal for export is $50.50 (the February 20 and January 20 receipts), the drawback attributable to the March 15 withdrawal for export is $42.50 (the March 10 receipt), and the drawback attributable to the March 31 withdrawal for export is $96.00 (the March 25 and January 25 receipts). Receipts not attributed to withdrawals for export are the January 31 (50 units at $1.03), February 25 (50 units at $1.05), March 5 (50 units at $1.06), and March 20 (50 units at $1.08) receipts. Total drawback attributable to withdrawals for export in this example would be $286.50.

(4) *Average*—(i) *General.* The average method is the method by which fungible merchandise or articles are identified on the basis of the calculation by recordkeeping of the amount of drawback that may be attributed to each unit of merchandise or articles in the inventory. In this method, the ratio of:

(A) The total units of a particular receipt of the fungible merchandise in the inventory at the time of a withdrawal to;

(B) The total units of all receipts of the fungible merchandise (including each receipt into inventory) at the time of the withdrawal;

(C) Is applied to the withdrawal, so that the withdrawal consists of a proportionate quantity of units from each particular receipt and each receipt is correspondingly decreased. Withdrawals and corresponding decreases to receipts are rounded to the nearest whole number.

(ii) *Example.* In the example in paragraph (c)(1)(ii) of this section, the drawback attributable to the 100 units withdrawn for export on the 20th is a total of $133 (50 units from the receipt on the 15th with $2 drawback attributable per unit, 33 units from the receipt on the 2nd with $1 drawback attributable per unit, and 17 units from the receipt on the 5th with $0 drawback attributable per unit). The basis of the foregoing and the effects on the inventory of the receipts and withdrawals, and balance in the inventory thereafter are as follows: On the 2nd of the month the receipt of 100 units ($1 drawback/unit) results in a balance of that amount; the receipt of 50 units ($0 drawback/unit) on the 5th results in a balance of 150 units (100 with $1 drawback/unit and 50 with $0 drawback/unit); the withdrawal on the 10th of 75 units (50 with $1 drawback/unit (applying the ratio of 100 units from the receipt on the 2nd to the total of 150 units at the time of withdrawal) and 25 with $0 drawback/unit (applying the ratio of 50 units from the receipt on the 5th to the total of 150 units at the time of withdrawal)) results in a balance of 75 units (with 50 with $1 drawback/unit and 25 with $0 drawback/unit, on the basis of the same ratios); the receipt of 75 units ($2 drawback/unit) on the 15th results in a balance of 150 units (50 with $1 drawback/unit, 25 with $0 drawback/unit, and 75 with $2 drawback/unit); the withdrawal on the 20th of 100 units (50 with $2 drawback/unit (applying the ratio of the 75 units from the receipt on the 15th to the total of 150 units at the time of withdrawal), 33 with $1 drawback/unit (applying the ratio of the 50 units remaining from the receipt on the 2nd to the total of 150 units at the time of withdrawal, and 17 with $0 drawback/unit (applying the ratio of the 25 units remaining from the receipt on the 5th to the total of 150 units at the time of withdrawal)) results in a balance of 50 units (25 with $2 drawback/unit, 17 with $1 drawback/unit, and 8 with $0 drawback/unit, on the basis of the same ratios).

(5) *Inventory turn-over for limited purposes.* A properly established average inventory turn-over period, as provided for in paragraph (c)(3)(iii)(C) of this section, may be used to determine:

(i) The fact and date(s) of use in manufacture or production of the designated imported merchandise and other (substituted) merchandise (*see* 19 U.S.C. 1313(b)); or

(ii) The fact and date(s) of manufacture or production of the exported or destroyed articles (*see* 19 U.S.C. 1313(a) and (b)).

(d) *Approval of other accounting methods.* (1) Persons proposing to use an accounting method for identification of merchandise or articles for drawback purposes which has not been previously approved for such use (*see* paragraph (c) of this section), or which includes modifications from the methods listed in paragraph (c) of this section, may seek approval by CBP of the proposed accounting method under the provisions for obtaining an administrative ruling (*see* part 177 of this chapter). The conditions applied and the criteria used by CBP in approving such an alternative accounting method, or a modification of one of the approved accounting methods, will be the criteria in paragraph (b) of this section, as well as those in paragraph (d)(2) of this section.

(2) In order for a proposed accounting method to be approved by CBP for purposes of this section, it must meet the following criteria:

(i) For purposes of calculations of drawback, the proposed accounting method must be either revenue neutral or favorable to the Government; and

(ii) The proposed accounting method should be:

(A) Generally consistent with commercial accounting procedures, as applicable for purposes of drawback;

(B) Consistent with inventory or material control records used in the ordinary course of business by the person proposing the method; and

(C) Easily administered by CBP.

§ 190.15 Recordkeeping.

Pursuant to 19 U.S.C. 1508(c)(3), all records which pertain to the filing of a drawback claim or to the information contained in the records required by 19 U.S.C. 1313 in connection with the filing of a drawback claim must be retained for 3 years after liquidation of such claims or longer period if required

by law (under 19 U.S.C. 1508, the same records may be subject to a different period for different purposes).

Subpart B—Manufacturing Drawback

§ 190.21 Direct identification manufacturing drawback.

Section 313(a) of the Act, as amended (19 U.S.C. 1313(a)), provides for drawback upon the exportation, or destruction under CBP supervision, of articles manufactured or produced in the United States with the use of imported merchandise, provided that those articles have not been used in the United States prior to such exportation or destruction. The amount of drawback allowable will not exceed 99 percent of the amount of duties, taxes, and fees paid with respect to the imported merchandise. However, duties may not be refunded upon the exportation or destruction of flour or by-products produced from imported wheat. Where two or more products result, drawback must be distributed among the products in accordance with their relative values, as defined in § 190.2, at the time of separation. Merchandise may be identified for drawback purposes under 19 U.S.C. 1313(a) in the manner provided for and prescribed in § 190.14.

§ 190.22 Substitution drawback.

(a)(1) *General*—(i) *Substitution standard.* If imported, duty-paid merchandise or merchandise classifiable under the same 8-digit HTSUS subheading number as the imported merchandise is used in the manufacture or production of articles within a period not to exceed 5 years from the date of importation of such imported merchandise, then upon the exportation, or destruction under CBP supervision, of any such articles, without their having been used in the United States prior to such exportation or destruction, drawback is provided for in section 313(b) of the Act, as amended (19 U.S.C. 1313(b)). Drawback is allowable even though none of the imported, duty-paid merchandise may actually have been used in the manufacture or production of the exported or destroyed articles. The amount of duties, taxes, and fees eligible for drawback is determined by per unit averaging, as defined in § 190.2, for any drawback claim based on 19 U.S.C. 1313(b).

(ii) *Allowable refund*—(A) *Exportation.* In the case of an article that is exported, the amount of drawback allowable will not exceed 99 percent of the lesser of:

(*1*) The amount of duties, taxes, and fees paid with respect to the imported merchandise; or

(*2*) The amount of duties, taxes, and fees that would apply to the substituted merchandise if the substituted merchandise were imported.

(B) *Destruction.* In the case of an article that is destroyed, the amount of drawback allowable will not exceed 99 percent of the lesser of:

(*1*) The amount of duties, taxes, and fees paid with respect to the imported merchandise (after the value of the imported merchandise has been reduced by the value of materials recovered during destruction as provided in 19 U.S.C. 1313(x)); or

(*2*) The amount of duties, taxes, and fees that would apply to the substituted merchandise if the substituted merchandise were imported (after the value of the imported merchandise has been reduced by the value of materials recovered during destruction as provided in 19 U.S.C. 1313(x)).

(C) *Federal excise tax.* For purposes of drawback of internal revenue tax imposed under Chapters 32, 38 (with the exception of Subchapter A of Chapter 38), 51, and 52 of the Internal Revenue Code of 1986, as amended (IRC), drawback granted on the export or destruction of substituted merchandise will be limited to the amount of taxes paid (and not returned by refund, credit, or drawback) on the substituted merchandise.

(2) *Special rule for sought chemical elements*—(i) *Substitution standard.* A sought chemical element, as defined in § 190.2, may be considered imported merchandise, or merchandise classifiable under the same 8-digit HTSUS subheading number as such imported merchandise, used in the manufacture or production of an article as described in paragraph (a)(1)(i) of this section, and it may be substituted for source material containing that sought chemical element, without regard to whether the sought chemical element and the source material are classifiable under the same 8-digit HTSUS subheading number, and apportioned quantitatively, as appropriate (*see* § 190.26(b)(4)).

(ii) *Allowable refund.* The amount of drawback allowable will be determined in accordance with paragraph (a)(1)(ii) of this section. The value of the substituted source material must be determined based on the quantity of the sought chemical element present in the source material, as calculated per § 190.26(b)(4).

(b) *Use by same manufacturer or producer at different factory.* Duty-paid merchandise or drawback products used at one factory of a manufacturer or producer within 5 years after the date on which the material was imported may be designated as the basis for drawback on articles manufactured or produced in accordance with these regulations at other factories of the same manufacturer or producer.

(c) *Designation.* A manufacturer or producer may designate any eligible imported merchandise or drawback product which it has used in manufacture or production.

(d) *Designation by successor*—(1) *General rule.* Upon compliance with the requirements in this section and under 19 U.S.C. 1313(s), a drawback successor as defined in paragraph (d)(2) of this section may designate merchandise or drawback product used by a predecessor before the date of succession as the basis for drawback on articles manufactured or produced by the successor after the date of succession.

(2) *Drawback successor.* A ''drawback successor'' is a manufacturer or producer to whom another entity (predecessor) has transferred, by written agreement, merger, or corporate resolution:

(i) All or substantially all of the rights, privileges, immunities, powers, duties, and liabilities of the predecessor; or

(ii) The assets and other business interests of a division, plant, or other business unit of such predecessor, but only if in such transfer the value of the transferred realty, personalty, and intangibles (other than drawback rights, inchoate or otherwise) exceeds the value of all transferred drawback rights, inchoate or otherwise.

(3) *Certifications and required evidence*—(i) *Records of predecessor.* The predecessor or successor must certify that the successor is in possession of the predecessor's records which are necessary to establish the right to drawback under the law and regulations with respect to the merchandise or drawback product.

(ii) *Merchandise not otherwise designated.* The predecessor or successor must certify that the predecessor has not designated and will not designate, nor enable any other person to designate, such merchandise or product as the basis for drawback.

(iii) *Value of transferred property.* In instances in which assets and other business interests of a division, plant, or other business unit of a predecessor are transferred, the predecessor or successor must specify, and maintain supporting records to establish, the value of the drawback rights and the value of all other transferred property.

(iv) *Review by CBP.* The written agreement, merger, or corporate

resolution, provided for in paragraph (d)(2) of this section, and the records and evidence provided for in paragraph (d)(3)(i) through (iii) of this section, must be retained by the appropriate party(s) for 3 years from the date of liquidation of the related claim and are subject to review by CBP upon request.

(e) *Multiple products*—(1) *General.* Where two or more products are produced concurrently in a substitution manufacturing operation, drawback will be distributed to each product in accordance with its relative value (*see* § 190.2) at the time of separation.

(2) *Claims covering a manufacturing period.* Where the claim covers a manufacturing period rather than a manufacturing lot, the entire period covered by the claim is the time of separation of the products and the value per unit of product is the market value for the period (as provided for in the definition of relative value in § 190.2). Manufacturing periods in excess of one month may not be used without specific approval of CBP.

(3) *Recordkeeping.* Records must be maintained showing the relative value of each product at the time of separation.

§ 190.23 Methods and requirements for claiming drawback.

Claims must be based on one or more of the methods specified in paragraph (a) of this section and comply with all other requirements specified in this section.

(a) *Method of claiming drawback.*—(1) *Used in.* Drawback may be paid based on the amount of the imported or substituted merchandise used in the manufacture of the exported article, where there is no waste or the waste is valueless or unrecoverable. This method must be used when multiple products also necessarily and concurrently result from the manufacturing process, and there is no valuable waste (*see* paragraph (a)(2) of this section).

(2) *Used in less valuable waste.* Drawback is allowable under this method based on the quantity of merchandise or drawback products used to manufacture the exported or destroyed article, reduced by an amount equal to the quantity of this merchandise that the value of the waste would replace. This method must be used when multiple products also necessarily and concurrently result from the manufacturing process, and there is valuable waste.

(3) *Relative value.* Drawback is also allowable under this method when two or more products result from manufacturing or production. The relative value method must be used when multiple products also necessarily and concurrently result from the manufacturing process, and drawback must be distributed among the products in accordance with their relative values (as defined in § 190.2) at the time of separation.

(4) *Appearing in.* Drawback is allowable under this method based only on the amount of imported or substituted merchandise that appears in (is contained in) the exported articles. The appearing in method may not be used if there are multiple products also necessarily and concurrently resulting from the manufacturing process.

(b) *Abstract or schedule.* A drawback claimant may use either the abstract or schedule method to show the quantity of material used or appearing in the exported or destroyed article. An abstract is the summary of records which shows the total quantity used in or appearing in all articles produced during the period covered by the abstract. A schedule shows the quantity of material actually used in producing, or appearing in, each unit of product. Manufacturers or producers submitting letters of notification of intent to operate under a general manufacturing drawback ruling (*see* § 190.7) and applicants for approval of specific manufacturing drawback rulings (*see* § 190.8) must state whether the abstract or schedule method is used; if no such statement is made, drawback claims must be based upon the abstract method.

(c) *Claim for waste.*—(1) *Valuable waste.* When the waste has a value and the drawback claim is not limited to the quantity of imported or substituted merchandise or drawback products appearing in the exported or destroyed articles claimed for drawback, the manufacturer or producer must keep records to show the market value of the merchandise or drawback products used to manufacture or produce the exported or destroyed articles, as well as the market value of the resulting waste, under the used in less valuable waste method (as provided for in the definition of relative value in § 190.2).

(2) *If claim for waste is waived.* If claim for waste is waived, only the ''appearing in'' basis may be used (*see* paragraph (a)(4) of this section). Waste records need not be kept unless required to establish the quantity of imported duty-paid merchandise or drawback products appearing in the exported or destroyed articles claimed for drawback.

§ 190.24 Transfer of merchandise.

Evidence of any transfers of merchandise (*see* § 190.10) must be evidenced by records, as defined in § 190.2.

§ 190.25 Destruction under CBP supervision.

A claimant may destroy merchandise and obtain drawback by complying with the procedures set forth in § 190.71 relating to destruction.

§ 190.26 Recordkeeping.

(a) *Direct identification.* (1) *Records required.* Each manufacturer or producer under 19 U.S.C. 1313(a) must keep records to allow the verifying CBP official to trace all articles manufactured or produced for exportation or destruction with drawback, from importation, through manufacture or production, to exportation or destruction. To this end, these records must specifically establish:

(i) The date or inclusive dates of manufacture or production;

(ii) The quantity, identity, and 8-digit HTSUS subheading number(s) of the imported duty-paid merchandise or drawback products used in or appearing in (*see* § 190.23) the articles manufactured or produced;

(iii) The quantity, if any, of the non-drawback merchandise used, when these records are necessary to determine the quantity of imported duty-paid merchandise or drawback product used in the manufacture or production of the exported or destroyed articles or appearing in them;

(iv) The quantity and description of the articles manufactured or produced;

(v) The quantity of waste incurred, if applicable; and

(vi) That the articles on which drawback is claimed were exported or destroyed within 5 years after the importation of the duty-paid merchandise, without having been used in the United States prior to such exportation or destruction. (If the articles were commingled after manufacture or production, their identity may be maintained in the manner prescribed in § 190.14.)

(2) *Accounting.* The merchandise and articles to be exported or destroyed will be accounted for in a manner which will enable the manufacturer, producer, or claimant:

(i) To determine, and the CBP official to verify, the applicable import entry and any transfers of the merchandise associated with the claim; and

(ii) To identify with respect to that import entry, and any transfers of the merchandise, the imported merchandise or drawback products used in manufacture or production.

(b) *Substitution.* The records of the manufacturer or producer of articles

manufactured or produced in accordance with 19 U.S.C. 1313(b) must establish the facts in paragraph (a)(1)(i), (iv) through (vi) of this section, and:

(1) The quantity, identity, and specifications of the merchandise designated (imported duty-paid, or drawback product);

(2) The quantity, identity, and specifications of the substituted merchandise before its use to manufacture or produce (or appearing in) the exported or destroyed articles;

(3) That, within 5 years after the date of importation of the imported duty-paid merchandise, the manufacturer or producer used the designated merchandise in manufacturing or production and that during the same 5-year period it manufactured or produced the exported or destroyed articles; and

(4) If the designated merchandise is a sought chemical element, as defined in § 190.2, that was contained in imported material and a substitution drawback claim is made based on that chemical element:

(i) The duties, taxes, and fees paid on the imported material must be apportioned among its constituent components. The claim on the chemical element that is the designated merchandise must be limited to the duty apportioned to that element on a unit-for-unit attribution using the unit of measure set forth in the HTSUS that is applicable to the imported material. If the material is a compound with other constituents, including impurities, and the purity of the compound in the imported material is shown by satisfactory analysis, that purity, converted to a decimal equivalent of the percentage, is multiplied against the entered amount of the material to establish the amount of pure compound. The amount of the element in the pure compound is to be determined by use of the atomic weights of the constituent elements and converting to the decimal equivalent of their respective percentages and multiplying that decimal equivalent against the above-determined amount of pure compound.

(ii) The amount claimed as drawback based on the sought chemical element must be deducted from the amounts paid on the imported material that may be claimed on any other drawback claim.

Example to paragraph (b)(4): Synthetic rutile that is shown by appropriate analysis in the entry papers to be 91.7% pure titanium dioxide is imported and dutiable at a 5% ad valorem duty rate. The amount of imported synthetic rutile is 30,000 pounds with an entered value of $12,000. The total duty paid is $600. Titanium in the synthetic rutile is designated as the basis for a drawback claim under 19 U.S.C. 1313(b). The amount of titanium dioxide in the synthetic rutile is determined by converting the purity percentage (91.7%) to its decimal equivalent (.917) and multiplying the entered amount of synthetic rutile (30,000 pounds) by that decimal equivalent (.917 × 30,000 = 27,510 pounds of titanium dioxide contained in the 30,000 pounds of imported synthetic rutile). The titanium, based on atomic weight, represents 59.93% of the constituents in titanium dioxide. Multiplying that percentage, converted to its decimal equivalent, by the amount of titanium dioxide determines the titanium content of the imported synthetic rutile (.5993 × 27,510 pounds of titanium dioxide = 16,486.7 pounds of titanium contained in the imported synthetic rutile). Therefore, up to 16,486.7 pounds of titanium is available to be designated as the basis for drawback. As the per unit duty paid on the synthetic rutile is calculated by dividing the duty paid ($600) by the amount of imported synthetic rutile (30,000 pounds), the per unit duty is two cents of duty per pound of the imported synthetic rutile ($600 ÷ 30,000 = $0.02). The duty on the titanium is calculated by multiplying the amount of titanium contained in the imported synthetic rutile by two cents of duty per pound (16,486.7 × $0.02 = $329.73 duty apportioned to the titanium). The product is then multiplied by 99% to determine the maximum amount of drawback available ($329.73 × .99 = $326.44). If an exported titanium alloy ingot weighs 17,000 pounds, in which 16,000 pounds of titanium was used to make the ingot, drawback is determined by multiplying the duty per pound ($0.02) by the weight of the titanium contained in the ingot (16,000 pounds) to calculate the duty available for drawback ($0.02 × 16,000 = $320.00). Because only 99% of the duty can be claimed, drawback is determined by multiplying this available duty amount by 99% (.99 × $320.00 = $316.80). As the oxygen content of the titanium dioxide is 45% of the synthetic rutile, if oxygen is the designated merchandise on another drawback claim, 45% of the duty claimed on the synthetic rutile would be available for drawback based on the substitution of oxygen.

(c) *Valuable waste records.* When waste has a value and the manufacturer, producer, or claimant, has not limited the claims based on the quantity of imported or substituted merchandise appearing in the articles exported or destroyed, the manufacturer or producer must keep records to show the market value of the merchandise used to manufacture or produce the exported or destroyed article, as well as the quantity and market value of the waste incurred (as provided for in the definition of relative value in § 190.2). In such records, the quantity of merchandise identified or designated for drawback, under 19 U.S.C. 1313(a) or 1313(b), respectively, must be based on the quantity of merchandise actually used to manufacture or produce the exported or destroyed articles. The waste replacement reduction will be determined by reducing from the quantity of merchandise actually used by the amount of merchandise which the value of the waste would replace.

(d) *Purchase of manufactured or produced articles for exportation or destruction.* Where the claimant purchases articles from the manufacturer or producer and exports or destroys them, the claimant must maintain records to document the transfer of articles received.

(e) *Multiple claimants*—(1) *General.* Multiple claimants may file for drawback with respect to the same export or destruction (for example, if an automobile is exported, where different parts of the automobile have been produced by different manufacturers under drawback conditions and the exporter waives the right to claim drawback and assigns such right to the manufacturers under § 190.82).

(2) *Procedures*—(i) *Submission of letter.* Each drawback claimant must file a separate letter, as part of the claim, describing the component article to which each claim will relate. Each letter must show the name of the claimant and bear a statement that the claim will be limited to its respective component article. The exporter or destroyer must endorse the letters, as required, to show the respective interests of the claimants.

(ii) *Blanket waivers and assignments of drawback rights.* Exporters may waive and assign their drawback rights for all, or any portion, of their exportations with respect to a particular commodity for a given period to a drawback claimant.

(f) *Retention of records.* Pursuant to 19 U.S.C. 1508(c)(3), all records required to be kept by the manufacturer, producer, or claimant with respect to drawback claims, and records kept by others to complement the records of the manufacturer, producer, or claimant with respect to drawback claims must be retained for 3 years after the date of liquidation of the related claims (under 19 U.S.C. 1508, the same records may be

subject to a different retention period for different purposes).

§ 190.27 Time limitations for manufacturing drawback.

(a) *Direct identification.* Drawback will be allowed on imported merchandise used to manufacture or produce articles that are exported or destroyed under CBP supervision within 5 years after importation of the merchandise identified to support the claim.

(b) *Substitution.* Drawback will be allowed on the imported merchandise if the following conditions are met:

(1) The designated merchandise is used in manufacture or production within 5 years after importation;

(2) Within the 5-year period described in paragraph (b)(1) of this section, the exported or destroyed articles, or drawback products, were manufactured or produced; and

(3) The completed articles must be exported or destroyed under CBP supervision within 5 years of the date of importation of the designated merchandise, or within 5 years of the earliest date of importation associated with a drawback product.

(c) *Drawback claims filed before specific or general manufacturing drawback ruling approved or acknowledged.* Drawback claims may be filed before the letter of notification of intent to operate under a general manufacturing drawback ruling covering the claims is acknowledged (§ 190.7), or before the specific manufacturing drawback ruling covering the claims is approved (§ 190.8), but no drawback will be paid until such acknowledgement or approval, as appropriate.

§ 190.28 Person entitled to claim manufacturing drawback.

The exporter (or destroyer) will be entitled to claim drawback, unless the exporter (or destroyer), by means of a certification, assigns the right to claim drawback to the manufacturer, producer, importer, or intermediate party. Such certification must accompany each claim and also affirm that the exporter (or destroyer) has not claimed and will not itself claim drawback or assign the right to claim drawback on the particular exportation or destruction to any other party. The certification provided for under this section may be a blanket certification for a stated period. Drawback is paid to the claimant, who may be the manufacturer, producer, intermediate party, importer, or exporter (or destroyer).

§ 190.29 Certification of bill of materials or formula.

At the time of filing a claim under 19 U.S.C. 1313(a) or (b), the claimant must certify the following:

(a) The claimant is in possession of the applicable bill of materials or formula for the exported or destroyed article(s), which will be promptly provided upon request;

(b) The bill of materials or formula identifies the imported and/or substituted merchandise and the exported or destroyed article(s) by their 8-digit HTSUS subheading numbers; and

(c) The bill of materials or formula identifies the manufactured quantities of the imported and/or substituted merchandise and the exported or destroyed article(s).

Subpart C—Unused Merchandise Drawback

§ 190.31 Direct identification unused merchandise drawback.

(a) *General.* Section 313(j)(1) of the Act, as amended (19 U.S.C. 1313(j)(1)), provides for drawback upon the exportation or destruction under CBP supervision of imported merchandise upon which was paid any duty, tax, or fee imposed under Federal law upon entry or importation, if the merchandise has not been used within the United States before such exportation or destruction. The total amount of drawback allowable will not exceed 99 percent of the amount of duties, taxes, and fees paid with respect to the imported merchandise.

(b) *Time of exportation or destruction.* Drawback will be allowable on imported merchandise if, before the close of the 5-year period beginning on the date of importation and before the drawback claim is filed, the merchandise is exported from the United States or destroyed under CBP supervision.

(c) *Operations performed on imported merchandise.* The performing of any operation or combination of operations, not amounting to manufacture or production under the provisions of the manufacturing drawback law as provided for in 19 U.S.C. 1313(j)(3), on imported merchandise is not a use of that merchandise for purposes of this section.

§ 190.32 Substitution unused merchandise drawback.

(a) *General.* Section 313(j)(2) of the Act, as amended (19 U.S.C. 1313(j)(2)), provides for drawback of duties, taxes, and fees paid on imported merchandise based on the export or destruction under CBP supervision of substituted merchandise (as defined in § 190.2, pursuant to 19 U.S.C. 1313(j)(2)), before the close of the 5-year period beginning on the date of importation of the imported merchandise and before the drawback claim is filed, and before such exportation or destruction the substituted merchandise is not used in the United States (*see* paragraph (e) of this section) and is in the possession of the party claiming drawback. The amount of duties, taxes, and fees eligible for drawback is determined by per unit averaging, as defined in 19 CFR 190.2, for any drawback claim based on 19 U.S.C. 1313(j)(2).

(b) *Allowable refund*—(1) *Exportation.* In the case of an article that is exported, subject to paragraph (b)(3) of this section, the total amount of drawback allowable will not exceed 99 percent of the lesser of:

(i) The amount of duties, taxes, and fees paid with respect to the imported merchandise; or

(ii) The amount of duties, taxes, and fees that would apply to the exported article if the exported article were imported.

(2) *Destruction.* In the case of an article that is destroyed, subject to paragraph (b)(3) of this section, the total amount of drawback allowable will not exceed 99 percent of the lesser of:

(i) The amount of duties, taxes, and fees paid with respect to the imported merchandise (after the value of the imported merchandise has been reduced by the value of materials recovered during destruction as provided in 19 U.S.C. 1313(x)); or

(ii) The amount of duties, taxes, and fees that would apply to the destroyed article if the destroyed article had been imported (after the value of the imported merchandise has been reduced by the value of materials recovered during destruction as provided in 19 U.S.C. 1313(x)).

(3) *Federal excise tax.* For purposes of drawback of internal revenue tax imposed under Chapters 32, 38 (with the exception of Subchapter A of Chapter 38), 51, and 52 of the Internal Revenue Code of 1986, as amended (IRC), drawback granted on the export or destruction of substituted merchandise will be limited to the amount of taxes paid (and not returned by refund, credit, or drawback) on the substituted merchandise.

(c) *Determination of HTSUS classification for substituted merchandise.* Requests for binding rulings on the classification of imported, substituted, or exported merchandise may be submitted to CBP pursuant to the procedures set forth in part 177.

(d) *Claims for wine*—(1) *Alternative substitution standard.* In addition to the 8-digit HTSUS substitution standard in § 190.2, drawback of duties, taxes, and fees, paid on imported wine as defined in § 190.2 may be allowable under 19 U.S.C. 1313(j)(2) with respect to wine if the imported wine and the exported wine are of the same color and the price variation between the imported wine and the exported wine does not exceed 50 percent.

(2) *Allowable refund.* For any drawback claim for wine (as defined in § 190.2) based on 19 U.S.C. 1313(j)(2), the total amount of drawback allowable will not exceed 99 percent of the duties, taxes, and fees paid with respect to the imported merchandise, without regard to the limitations in paragraph (b)(1) or (b)(2) of this section.

(3) *Required certification.* When the basis for substitution for wine drawback claims under 19 U.S.C. 1313(j)(2) is the alternative substitution standard rule set forth in (d)(1), claims under this subpart may be paid and liquidated if:

(i) The claimant specifies on the drawback entry that the basis for substitution is the alternative substitution standard for wine; and

(ii) The claimant provides a certification, as part of the complete claim (*see* 190.51(a)), stating that:

(A) The imported wine and the exported wine are a Class 1 grape wine (as defined in 27 CFR 4.21(a)(1)) of the same color (*i.e.,* red, white, or rosé);

(B) The imported wine and the exported wine are table wines (as defined in 27 CFR 4.21(a)(2)) and the alcoholic content does not exceed 14 percent by volume; and

(C) The price variation between the imported wine and the exported wine does not exceed 50 percent.

(e) *Operations performed on substituted merchandise.* The performing of any operation or combination of operations, not amounting to manufacture or production as provided for in 19 U.S.C. 1313(j)(3)(B), on the substituted merchandise is not a use of that merchandise for purposes of this section.

(f) *Designation by successor; 19 U.S.C. 1313(s)*—(1) *General rule.* Upon compliance with the requirements of this section and under 19 U.S.C. 1313(s), a drawback successor as defined in paragraph (f)(2) of this section may designate either of the following as the basis for drawback on merchandise possessed by the successor after the date of succession:

(i) Imported merchandise which the predecessor, before the date of succession, imported; or

(ii) Imported and/or substituted merchandise that was transferred to the predecessor from the person who imported and paid duty on the imported merchandise.

(2) *Drawback successor.* A ''drawback successor'' is an entity to which another entity (predecessor) has transferred, by written agreement, merger, or corporate resolution:

(i) All or substantially all of the rights, privileges, immunities, powers, duties, and liabilities of the predecessor; or

(ii) The assets and other business interests of a division, plant, or other business unit of such predecessor, but only if in such transfer the value of the transferred realty, personalty, and intangibles (other than drawback rights, inchoate or otherwise) exceeds the value of all transferred drawback rights, inchoate or otherwise.

(3) *Certifications and required evidence*—(i) *Records of predecessor.* The predecessor or successor must certify that the successor is in possession of the predecessor's records which are necessary to establish the right to drawback under the law and regulations with respect to the imported and/or substituted merchandise.

(ii) *Merchandise not otherwise designated.* The predecessor or successor must certify that the predecessor has not designated and will not designate, nor enable any other person to designate, the imported and/or substituted merchandise as the basis for drawback.

(iii) *Value of transferred property.* In instances in which assets and other business interests of a division, plant, or other business unit of a predecessor are transferred, the predecessor or successor must specify, and maintain supporting records to establish, the value of the drawback rights and the value of all other transferred property.

(iv) *Review by CBP.* The written agreement, merger, or corporate resolution, provided for in paragraph (f)(2) of this section, and the records and evidence provided for in paragraph (f)(3)(i) through (iii) of this section, must be retained by the appropriate party(s) for 3 years from the date of liquidation of the related claim and are subject to review by CBP upon request.

§ 190.33 Person entitled to claim unused merchandise drawback.

(a) *Direct identification.* (1) Under 19 U.S.C. 1313(j)(1), as amended, the exporter or destroyer will be entitled to claim drawback.

(2) The exporter or destroyer may waive the right to claim drawback and assign such right to the importer or any intermediate party. A drawback claimant under 19 U.S.C. 1313(j)(1) other than the exporter or destroyer must secure and retain a certification signed by the exporter or destroyer waiving the right to claim drawback, and stating that it did not and will not authorize any other party to claim the exportation or destruction for drawback (*see* § 190.82). The certification provided for under this section may be a blanket certification for a stated period. The claimant must file such certification with each claim.

(b) *Substitution.* (1) Under 19 U.S.C. 1313(j)(2), as amended, the following parties may claim drawback:

(i) In situations where the exporter or destroyer of the substituted merchandise is also the importer of the imported merchandise, that party will be entitled to claim drawback.

(ii) In situations where the person who imported and paid the duty on the imported merchandise transfers the imported merchandise, substituted merchandise, or any combination of imported and substituted merchandise to the person who exports or destroys that merchandise, the exporter or destroyer will be entitled to claim drawback. (Any such transferred merchandise, regardless of its origin, will be treated as imported merchandise for purposes of drawback under 19 U.S.C. 1313(j)(2), and any retained merchandise will be treated as domestic merchandise.)

(iii) In situations where the transferred merchandise described in paragraph (b)(1)(ii) of this section is the subject of further transfer(s), such transfer(s) must be documented by records, including records kept in the normal course of business, and the exporter or destroyer will be entitled to claim drawback (multiple substitutions are not permitted).

(2) The exporter or destroyer may waive the right to claim drawback and assign such right to the importer or to any intermediate party, provided that the claimant had possession of the substituted merchandise prior to its exportation or destruction. A drawback claimant under 19 U.S.C. 1313(j)(2) other than the exporter or destroyer must secure and retain a certification signed by the exporter or destroyer that such party waived the right to claim drawback, and stating that it did not and will not authorize any other party to claim the exportation or destruction for drawback (*see* § 190.82). The certification provided for under this section may be a blanket certification for a stated period. The claimant must file such certification with each claim.

§ 190.34 Transfer of merchandise.

Any transfer of merchandise (*see* § 190.10) must be recorded in records, which may include records kept in the normal course of business, as defined in § 190.2.

§ 190.35 Notice of intent to export or destroy; examination of merchandise.

(a) *Notice.* A notice of intent to export or destroy merchandise which may be the subject of an unused merchandise drawback claim (19 U.S.C. 1313(j)) must be provided to CBP to give CBP the opportunity to examine the merchandise. The claimant or the exporter (for destruction under CBP supervision, see § 190.71) must file at the port of intended examination a Notice of Intent to Export, Destroy, or Return Merchandise for Purposes of Drawback on CBP Form 7553 at least 5 working days prior to the date of intended exportation unless CBP approves another filing period or the claimant has been granted a waiver of prior notice (*see* § 190.91).

(b) *Required information.* The notice must certify that the merchandise has not been used in the United States before exportation or destruction. In addition, if applicable, the notice must provide the bill of lading number, if known, the name and telephone number, mailing address, and, if available, fax number and email address of a contact person, and the location of the merchandise.

(c) *Decision to examine or to waive examination.* Within 2 working days after receipt of the Notice of Intent to Export, Destroy, or Return Merchandise for Purposes of Drawback (*see* paragraph (a) of this section), CBP will notify the party designated on the Notice in writing of CBP's decision to either examine the merchandise to be exported, or to waive examination. If CBP timely notifies the designated party, in writing, of its decision to examine the merchandise (*see* paragraph (d) of this section), but the merchandise is exported without having been presented to CBP for examination, any drawback claim, or part thereof, based on the Notice will be denied. If CBP notifies the designated party, in writing, of its decision to waive examination of the merchandise, or, if timely notification of a decision by CBP to examine or to waive examination has not been received, the merchandise may be exported without delay.

(d) *Time and place of examination.* If CBP gives timely notice of its decision to examine the exported merchandise, the merchandise to be examined must be promptly presented to CBP. CBP must examine the merchandise within 5 working days after presentation of the merchandise. The merchandise may be exported without examination if CBP fails to timely examine the merchandise after presentation to CBP. If the examination is to be completed at a port other than the port of actual exportation or destruction, the merchandise must be transported in-bond to the port of exportation or destruction.

(e) *Extent of examination.* The appropriate CBP office may permit release of merchandise without examination, or may examine, to the extent determined to be necessary, the items to be exported or destroyed.

§ 190.36 Failure to file Notice of Intent to Export, Destroy, or Return Merchandise for Purposes of Drawback.

(a) *General; application.* Merchandise which has been exported or destroyed without complying with the requirements of § 190.35(a), § 190.42(a), § 190.71(a), or § 190.91 may be eligible for unused merchandise drawback under 19 U.S.C. 1313(j) or under 19 U.S.C. 1313(c) subject to the following conditions:

(1) *Application.* The claimant must file a written application with the drawback office where the drawback claims will be filed. Such application must include the following:

(i) Required information.

(A) Name, address, and Internal Revenue Service (IRS) number (with suffix) of applicant;

(B) Name, address, and IRS number(s) (with suffix(es)) of exporter(s), if applicant is not the exporter;

(C) Export period covered by this application;

(D) Commodity/product lines of imported and exported merchandise covered in this application (and the applicable HTSUS numbers);

(E) The origin of the above merchandise;

(F) Estimated number of export transactions covered in this application;

(G) Estimated number of drawback claims and estimated time of filing those claims to be covered in this application;

(H) The port(s) of exportation;

(I) Estimated dollar value of potential drawback claims to be covered in this application;

(J) The relationship between the parties involved in the import and export transactions; and

(K) Provision(s) of drawback covered under the application;

(ii) Written declarations regarding:

(A) The reason(s) that CBP was not notified of the intent to export; and

(B) Whether the applicant, to the best of its knowledge, will have future exportations or destructions on which unused merchandise drawback might be claimed; and

(iii) A certification that the following documentary evidence will be made available for CBP to review upon request:

(A) For the purpose of establishing that the imported merchandise was not used in the United States (for purposes of drawback under 19 U.S.C. 1313(j)(1)) or that the exported or destroyed merchandise was not used in the United States and satisfied the requirements for substitution with the imported merchandise (for purposes of drawback under 19 U.S.C. 1313(j)(2)), and, as applicable:

(*1*) Records;

(*2*) Any laboratory records prepared in the ordinary course of business; and/or

(*3*) Inventory records prepared in the ordinary course of business tracing all relevant movements and storage of the imported merchandise, substituted merchandise, and/or exported merchandise; and

(B) Evidence establishing compliance with all other applicable drawback requirements.

(2) *One-time use.* The procedure provided for in this section may be used by a claimant only once, unless good cause is shown (for example, successorship).

(3) *Claims filed pending disposition of application.* Drawback claims may be filed under this section pending disposition of the application. However, those drawback claims will not be processed or paid until the application is approved by CBP.

(b) *CBP action.* In order for CBP to evaluate the application under this section, CBP may request, and the applicant must provide, any of the information listed in paragraph (a)(1)(iii)(A)(*1*) through (*3*) of this section. In making its decision to approve or deny the application under this section, CBP will consider factors such as, but not limited to, the following:

(1) Information provided by the claimant in the written application;

(2) Any of the information listed in paragraphs (a)(1)(iii)(A)(*1*) through (*3*) of this section and requested by CBP under paragraph (b); and

(3) The applicant's prior record with CBP.

(c) *Time for CBP action.* CBP will notify the applicant in writing within 90 days after receipt of the application of its decision to approve or deny the application, or of CBP's inability to approve, deny or act on the application and the reason therefor.

(d) *Appeal of denial of application.* If CBP denies the application, the

applicant may file a written appeal with the drawback office which issued the denial, provided that the applicant files this appeal within 30 days of the date of denial. If CBP denies this initial appeal, the applicant may file a further written appeal with CBP Headquarters, Office of Trade, Trade Policy and Programs, provided that the applicant files this further appeal within 30 days of the denial date of the initial appeal. CBP may extend the 30-day period for appeal to the drawback office or to CBP Headquarters, for good cause, if the applicant applies in writing for such extension within the appropriate 30-day period above.

(e) *Future intent to export or destroy unused merchandise.* If an applicant states it will have future exportations or destructions on which unused merchandise drawback may be claimed (*see* paragraph (a)(1)(ii)(B) of this section), the applicant will be informed of the procedures for waiver of prior notice (*see* § 190.91). If the applicant seeks waiver of prior notice under § 190.91, any documentation submitted to CBP to comply with this section will be included in the request under § 190.91. An applicant that states that it will have future exportations or destructions on which unused merchandise drawback may be claimed (*see* paragraph (a)(1)(ii)(B) of this section) and which does not obtain waiver of prior notice must notify CBP of its intent to export or destroy prior to each such exportation or destruction, in accordance with § 190.35.

§ 190.37 Destruction under CBP supervision.

A claimant may destroy merchandise and obtain unused merchandise drawback by complying with the procedures set forth in § 190.71 relating to destruction.

§ 190.38 Recordkeeping.

(a) *Maintained by claimant; by others.* Pursuant to 19 U.S.C. 1508(c)(3), all records which are necessary to be maintained by the claimant under this part with respect to drawback claims, and records kept by others to complement the records of the claimant, which are essential to establish compliance with the legal requirements of 19 U.S.C. 1313(j)(1) or (j)(2), as applicable, and this part with respect to drawback claims, must be retained for 3 years after liquidation of such claims (under 19 U.S.C. 1508, the same records may be subject to a different retention period for different purposes).

(b) *Accounting for the merchandise.* Merchandise subject to drawback under 19 U.S.C. 1313(j)(1) and (j)(2) must be accounted for in a manner which will enable the claimant:

(1) To determine, and CBP to verify, the applicable import entry or transfer(s) of drawback-eligible merchandise;

(2) To determine, and CBP to verify, the applicable exportation or destruction; and

(3) To identify, with respect to the import entry or any transfer(s) of drawback-eligible merchandise, the imported merchandise designated as the basis for the drawback claim.

Subpart D—Rejected Merchandise

§ 190.41 Rejected merchandise drawback.

Section 313(c) of the Act, as amended (19 U.S.C. 1313(c)), provides for drawback upon the exportation or destruction under CBP supervision of imported merchandise which has been entered, or withdrawn from warehouse, for consumption, duty-paid, and which: Does not conform to sample or specifications; has been shipped without the consent of the consignee; or has been determined to be defective as of the time of importation; or ultimately sold at retail by the importer or the person who received the merchandise from the importer, and for any reason returned to and accepted by the importer or the person who received the merchandise from the importer. The total amount of drawback allowable will be 99 percent of the amount of duties paid with respect to the imported, duty-paid merchandise. *See* subpart P of this part for drawback of internal revenue taxes for unmerchantable or nonconforming distilled spirits, wines, or beer.

§ 190.42 Procedures and supporting documentation.

(a) *Time limit for exportation or destruction.* Drawback will be denied on merchandise that is exported or destroyed after the statutory 5-year time period.

(b) *Required documentation.* The claimant must submit documentation to CBP as part of the complete drawback claim (*see* § 190.51) to establish that the merchandise did not conform to sample or specification, was shipped without the consent of the consignee, or was defective as of the time of importation (*see* § 190.45 for additional requirements for claims made on rejected retail merchandise under 19 U.S.C. 1313(c)(1)(C)(ii)). If the claimant was not the importer, the claimant must also:

(1) Submit a statement signed by the importer and every other person, other than the ultimate purchaser, that owned the goods, that no other claim for drawback was made on the goods by any other person; and

(2) Certify that records are available to support the statement required in paragraph (b)(1) of this section.

(c) *Notice.* A notice of intent to export or destroy merchandise which may be the subject of a rejected merchandise drawback claim (19 U.S.C. 1313(c)) must be provided to CBP to give CBP the opportunity to examine the merchandise. The claimant, or the exporter (for destruction under CBP supervision, see § 190.71), must file at the port of intended redelivery to CBP custody a Notice of Intent to Export, Destroy, or Return Merchandise for Purposes of Drawback on CBP Form 7553 at least 5 working days prior to the date of intended return to CBP custody, unless the claimant has been granted a waiver of prior notice (*see* § 190.91) or complies with the procedures for 1-time waiver in § 190.36.

(d) *Required information.* The notice must provide the bill of lading number, if known, the name and telephone number, mailing address, and, if available, fax number and email address of a contact person, and the location of the merchandise.

(e) *Decision to waive examination.* Within 2 working days after receipt of the Notice of Intent to Export, Destroy, or Return Merchandise for Purposes of Drawback (*see* paragraph (c) of this section), CBP will notify, in writing, the party designated on the Notice of CBP's decision to either examine the merchandise to be exported or destroyed, or to waive examination. If CBP timely notifies the designated party, in writing, of its decision to examine the merchandise (*see* paragraph (f) of this section), but the merchandise is exported or destroyed without having been presented to CBP for such examination, any drawback claim, or part thereof, based on the Notice of Intent to Export, Destroy, or Return Merchandise for Purposes of Drawback, must be denied. If CBP notifies the designated party, in writing, of its decision to waive examination of the merchandise, or, if timely notification of a decision by CBP to examine or to waive examination is absent, the merchandise may be exported or destroyed without delay and will be deemed to have been returned to CBP custody.

(f) *Time and place of examination.* If CBP gives timely notice of its decision to examine the merchandise to be exported or destroyed, the merchandise to be examined must be promptly presented to CBP. CBP must examine the merchandise within 5 working days after presentation of the merchandise.

The merchandise may be exported or destroyed without examination if CBP fails to timely examine the merchandise after presentation to CBP, and in such case the merchandise will be deemed to have been returned to CBP custody. If the examination is to be completed at a port other than the port of actual exportation or destruction, the merchandise must be transported in-bond to the port of exportation or destruction.

(g) *Extent of examination.* The appropriate CBP office may permit release of merchandise without examination, or may examine, to the extent determined to be necessary, the items exported or destroyed.

(h) *Drawback claim.* When filing the drawback claim, the drawback claimant must correctly calculate the amount of drawback due (*see* § 190.51(b)). The procedures for restructuring a claim (*see* § 190.53) apply to rejected merchandise drawback if the claimant has an ongoing export program which qualifies for this type of drawback.

(i) *Exportation.* Claimants must provide documentary evidence of exportation (*see* subpart G of this part). The claimant may establish exportation by mail as set out in § 190.74.

§ 190.43 Unused merchandise drawback claim.

Rejected merchandise may be the subject of an unused merchandise drawback claim under 19 U.S.C. 1313(j)(1), in accordance with subpart C of this part, to the extent that the merchandise qualifies therefor.

§ 190.44 [Reserved]

§ 190.45 Returned retail merchandise.

(a) *Special rule for substitution.* Section 313(c)(1)(C)(ii) of the Tariff Act of 1930, as amended (19 U.S.C. 1313(c)(1)(C)(ii)), provides for drawback upon the exportation or destruction under CBP supervision of imported merchandise which has been entered, or withdrawn from warehouse, for consumption, duty-paid and ultimately sold at retail by the importer, or the person who received the merchandise from the importer, and for any reason returned to and accepted by the importer, or the person who received the merchandise from the importer.

(b) *Eligibility requirements.* (1) Drawback is allowable pursuant to compliance with all requirements set forth in this subpart; and

(2) The claimant must also show by evidence satisfactory to CBP that drawback may be claimed by—

(i) Designating an entry of merchandise that was imported within 1 year before the date of exportation or destruction of the merchandise described in paragraph (a) under CBP supervision.

(ii) Certifying that the same 8-digit HTSUS subheading number and specific product identifier (such as part number, SKU, or product code) apply to both the merchandise designated for drawback (in the import documentation) and the returned merchandise.

(c) *Allowable refund.* The total amount of drawback allowable will not exceed 99 percent of the amount of duties paid with respect to the imported merchandise.

(d) *Denial of claims.* No drawback will be refunded if CBP is not satisfied that the claimant has provided, upon request, the documentation necessary to support the certification required in paragraph (b)(2)(ii) of this section.

Subpart E—Completion of Drawback Claims

§ 190.51 Completion of drawback claims.

(a) *General*—(1) *Complete claim.* Unless otherwise specified, a complete drawback claim under this part will consist of the successful electronic transmission to CBP of the drawback entry (as described in paragraph (a)(2) of this section), applicable Notice(s) of Intent to Export, Destroy, or Return Merchandise for Purposes of Drawback on CBP Form 7553, applicable import entry data, and evidence of exportation or destruction as provided for under subpart G of this part.

(2) *Drawback entry.* The drawback entry is to be filed through a CBP-authorized electronic system and must include the following:

(i) Claimant identification number;

(ii) Broker identification number (if applicable);

(iii) If requesting accelerated payment under § 190.92, surety code and bond type (and, for single transaction bonds, also the bond number and amount of bond);

(iv) Port code for the drawback office where the claim is being filed;

(v) Drawback entry number and provision(s) under which drawback is claimed;

(vi) Statement of eligibility for applicable privileges (as provided for in subpart I of this part);

(vii) Amount of refund claimed for each of relevant duties, taxes, and fees (calculated to two decimal places);

(viii) For each designated import entry line item, the entry number and the line item number designating the merchandise, a description of the merchandise, a unique import tracing identification number(s) (ITIN) (used to associate the imported merchandise and any substituted merchandise with any intermediate products (if applicable) and the drawback-eligible exported or destroyed merchandise or finished article(s)), as well as the following information for the merchandise designated as the basis for the drawback claim: The 10-digit HTSUS classification, amount of duties paid, applicable entered value (*see* 19 CFR 190.11(a)), quantity, and unit of measure (using the unit(s) of measure required under the HTSUS for substitution manufacturing and substitution unused merchandise drawback claims), as well as the types and amounts of any other duties, taxes, or fees for which a refund is requested;

(ix) For manufacturing claims under 19 U.S.C. 1313(a) or (b), each associated ruling number, along with the following information: Corresponding information for the factory location, the basis of the claim (as provided for in § 190.23), the date(s) of use of the imported and/or substituted merchandise in manufacturing or processing (or drawback product containing the imported or substituted merchandise), a description of and the 10-digit HTSUS classification for the drawback product or finished article that is manufactured or produced, the quantity and unit of measure for the drawback product or finished article that is manufactured or produced, the disposition of the drawback product or finished article that is manufactured or produced (transferred, exported, or destroyed), unique manufacture tracing identification number(s) (MTIN) (used to associate the manufactured merchandise, including any intermediate products, with the drawback-eligible exported or destroyed finished article(s)), and a certification from the claimant that provides as follows: ''The article(s) described above were manufactured or produced and disposed of as stated herein in accordance with the drawback ruling on file with CBP and in compliance with applicable laws and regulations.'';

(x) Indicate whether the designated imported merchandise, other substituted merchandise, or finished article (for manufacturing claims) was transferred to the drawback claimant prior to the exportation or destruction of the eligible merchandise, and for unused merchandise drawback claims under 19 U.S.C. 1313(j), provide a certification from the client that provides as follows: ''The undersigned hereby certifies that the exported or destroyed merchandise herein described is unused in the United States and further certifies that this merchandise was not subjected to any process of

manufacture or other operation except the allowable operations as provided for by regulation.'';

(xi) Indicate whether the eligible merchandise was exported or destroyed and provide the applicable 10-digit HTSUS or Department of Commerce Schedule B classification, quantity, and unit of measure (the unit of measure specified must be the same as that which was required under the HTSUS for the designated imported merchandise in paragraph (viii) for substitution unused merchandise drawback claims) and, for claims under 19 U.S.C. 1313(c), specify the basis as one of the following:

(A) Merchandise does not conform to sample or specifications;

(B) Merchandise was defective at time of importation;

(C) Merchandise was shipped without consent of the consignee; or

(D) Merchandise sold at retail and returned to the importer or the person who received the merchandise from the importer;

(xii) For eligible merchandise that was exported, the unique export identifier (the number used to associate the export transaction with the appropriate documentary evidence of exportation), export destination, name of exporter, the applicable comparative value pursuant to § 190.11(b) (*see* § 190.22(a)(1)(ii), § 190.22(a)(2)(ii), or § 190.32(b)) for substitution claims, and a certification from the claimant that provides as follows: ''I declare, to the best of my knowledge and belief, that all of the statements in this document are correct and that the exported article is not to be relanded in the United States or any of its possessions without paying duty.'';

(xiii) For eligible merchandise that was destroyed, the name of the destroyer and, if substituted, the applicable comparative value pursuant to § 190.11(c) (*see* § 190.22(a)(1)(ii), § 190.22(a)(2)(ii), or § 190.32(b)), and a certification from the claimant, if applicable, that provides as follows: ''The undersigned hereby certifies that, for the destroyed merchandise herein described, the value of recovered materials (including the value of any tax benefit or royalty payment) that accrues to the drawback claimant has been deducted from the value of the imported (or substituted) merchandise designated by the claimant, in accordance with 19 U.S.C. 1313(x).'';

(xiv) For substitution unused merchandise drawback claims under 19 U.S.C. 1313(j)(2), a certification from the claimant that provides as follows: ''The undersigned hereby certifies that the substituted merchandise is unused in the United States and that the substituted merchandise was in our possession prior to exportation or destruction.'';

(xv) For NAFTA drawback claims provided for in subpart E of part 181, the foreign entry number and date of entry, the HTSUS classification for the foreign entry, the amount of duties paid for the foreign entry and the applicable exchange rate, and, if applicable, a certification from the claimant that provides as follows: ''Same condition to NAFTA countries—The undersigned certifies that the merchandise herein described is in the same condition as when it was imported under the above import entry(s) and further certifies that this merchandise was not subjected to any process of manufacture or other operation except the allowable operations as provided for by regulation.''; and

(xvi) All certifications required in this part and as otherwise deemed necessary by CBP to establish compliance with the applicable laws and regulations, as well as the following declaration: ''The undersigned acknowledges statutory requirements that all records supporting the information on this document are to be retained by the issuing party for a period of 3 years from the date of liquidation of the drawback claim. All required documentation that must be uploaded in accordance with 19 CFR 190.51 will be provided to CBP within 24 hours of the filing of the drawback claim. The undersigned acknowledges that a false certification of the foregoing renders the drawback claim incomplete and subject to denial. The undersigned is fully aware of the sanctions provided in 18 U.S.C. 1001, and 18 U.S.C. 550, and 19 U.S.C. 1593a.''

(3) *Election of line item designation for imported merchandise.* Merchandise on a specific line on an entry summary may be designated for either direct identification or substitution claims but a single line on an entry summary may not be split for purposes of claiming drawback under both direct identification and substitution claims. The first complete drawback claim accepted by CBP which designates merchandise on a line on an entry summary establishes this designation for any remaining merchandise on that same line.

(4) *Limitation on line item eligibility for imported merchandise.* Claimants filing substitution drawback claims under part 190 for imported merchandise associated with a line item on an entry summary if any other merchandise covered on that entry summary has been designated as the basis of a claim under part 191 must provide additional information enabling CBP to verify the availability of drawback for the indicated merchandise and associated line item within 30 days of claim submission. The information to be provided will include, but is not limited to: summary document specifying the lines used and unused on the import entry; the import entry summary, corresponding commercial invoices, and copies of all drawback claims that previously designated the import entry summary; and post summary/liquidation changes (for imports or drawback claims, if applicable).

(b) *Drawback due*—(1) *Claimant required to calculate drawback.* Drawback claimants are required to correctly calculate the amount of drawback due. The amount of drawback requested on the drawback entry is generally to be 99 percent of the duties, taxes, and fees eligible for drawback. (For example, if $1,000 in import duties are eligible for drawback less 1 percent ($10), the amount claimed on the drawback entry should be for $990.) Claims exceeding 99 percent (or 100% when 100% of the duty is available for drawback) will not be paid until the calculations have been corrected by the claimant. Claims for less than 99 percent (or 100% when 100% of the duty is available for drawback) will be paid as filed, unless the claimant amends the claim in accordance with § 190.52(c). The amount of duties, taxes, and fees eligible for drawback is determined by whether a claim is based upon direct identification or substitution, as provided for below:

(i) *Direct identification.* The amounts eligible for drawback for a unit of merchandise consists of those duties, taxes, and fees that were paid for that unit of the designated imported merchandise. This may be the amount of duties, taxes, and fees actually tendered on that unit or those attributable to that unit, if identified pursuant to an approved accounting method (*see* 19 CFR 190.14).

(ii) *Substitution.* The amount of duties, taxes, and fees eligible for drawback pursuant to 19 U.S.C. 1313(b) or 19 U.S.C. 1313(j)(2) is determined by per unit averaging, as defined in § 190.2. The amount that may be refunded is also subject to the limitations set forth in § 190.22(a)(1)(ii) (manufacturing claims) and § 190.32(b) (unused merchandise claims), as applicable.

(2) *Merchandise processing fee apportionment calculation.* Where a drawback claimant requests a refund of a merchandise processing fee paid pursuant to 19 U.S.C. 58c(a)(9)(A), the claimant is required to correctly

apportion the fee to that imported merchandise for which drawback is claimed when calculating the amount of drawback requested on the drawback entry. This is determined as follows:

(i) Relative value ratio for each line item. The value of each line item of entered merchandise subject to a merchandise processing fee is calculated (to four decimal places) by dividing the value of the line item subject to the fee by the total value of entered merchandise subject to the fee. The result is the relative value ratio.

(ii) Merchandise processing fee apportioned to each line item. To apportion the merchandise processing fee to each line item, the relative value ratio for each line item is multiplied by the merchandise processing fee paid.

(iii) Amount of merchandise processing fee eligible for drawback per line item. The amount of merchandise processing fee apportioned to each line item is multiplied by 99 percent to calculate that portion of the fee attributable to each line item that is eligible for drawback.

(iv) Amount of merchandise processing fee eligible for drawback per unit of merchandise. To calculate the amount of a merchandise processing fee eligible for drawback per unit of merchandise, the line item amount that is eligible for drawback is divided by the number of units covered by that line item (to two decimal places).

(v) Limitation on amount of merchandise processing fee eligible for drawback for substitution claims. The amount of a merchandise processing fee eligible for drawback per unit of merchandise for drawback claims based upon substitution is subject to the limitations set forth in §§ 190.22(a)(1)(ii) (manufacturing claims) and 190.32(b) (unused merchandise claims), as applicable.

Example 1:

Line item 1—5,000 articles valued at $10 each total $50,000
Line item 2—6,000 articles valued at $15 each total $90,000
Line item 3—10,000 articles valued at $20 each total $200,000
Total units = 21,000
Total value = $340,000
Merchandise processing fee = $485 (for purposes of this example, the fee cap of $485 is assumed; see 19 CFR 24.23 for the current amount consistent with 19 U.S.C. 58c(a)(9)(B)(i)).

Line item relative value ratios. The relative value ratio for line item 1 is calculated by dividing the value of that line item by the total value ($50,000 ÷ 340,000 = .1471). The relative value ratio for line item 2 is .2647. The relative value ratio for line item 3 is .5882.

Merchandise processing fee apportioned to each line item. The amount of fee attributable to each line item is calculated by multiplying $485 by the applicable relative value ratio. The amount of the $485 fee attributable to line item 1 is $71.3435 (.1471 × $485 = $71.3435). The amount of the fee attributable to line item 2 is $128.3795 (.2647 × $485 = $128.3795). The amount of the fee attributable to line item 3 is $285.2770 (.5882 × $485 = $285.2770).

Amount of merchandise processing fee eligible for drawback per line item. The amount of merchandise processing fee eligible for drawback for line item 1 is $70.6301 (.99 × $71.3435). The amount of fee eligible for drawback for line item 2 is $127.0957 (.99 × $128.3795). The amount of fee eligible for drawback for line item 3 is $282.4242 (.99 × $285.2770).

Amount of merchandise processing fee eligible for drawback per unit of merchandise. The amount of merchandise processing fee eligible for drawback per unit of merchandise is calculated by dividing the amount of fee eligible for drawback for the line item by the number of units in the line item. For line item 1, the amount of merchandise processing fee eligible for drawback per unit is $.0141 ($70.6301 ÷ 5,000 = $.0141). If 1,000 widgets form the basis of a claim for drawback under 19 U.S.C. 1313(j), the total amount of drawback attributable to the merchandise processing fee is $14.10 (1,000 × .0141 = $14.10). For line item 2, the amount of fee eligible for drawback per unit is $.0212 ($127.0957 ÷ 6,000 = $.0212). For line item 3, the amount of fee eligible for drawback per unit is $.0282 ($282.4242 ÷ 10,000 = $.0282).

Example 2. This example illustrates the treatment of dutiable merchandise that is exempt from the merchandise processing fee and duty-free merchandise that is subject to the merchandise processing fee.

Line item 1—700 meters of printed cloth valued at $10 per meter (total value $7,000) that is exempt from the merchandise processing fee under 19 U.S.C. 58c(b)(8)(B)(iii)
Line item 2—15,000 articles valued at $100 each (total value $1,500,000)
Line item 3—10,000 duty-free articles valued at $50 each (total value $500,000)

The relative value ratios are calculated using line items 2 and 3 only, as there is no merchandise processing fee imposed by reason of importation on line item 1.

Line item 2—1,500,000 ÷ 2,000,000 = .75 (line items 2 and 3 form the total value of the merchandise subject to the merchandise processing fee).
Line item 3—500,000 ÷ 2,000,000 = .25.

If the total merchandise processing fee paid was $485, the amount of the fee attributable to line item 2 is $363.75 (.75 × $485 = $363.75). The amount of the fee attributable to line item 3 is $121.25 (.25 × $485 = $121.25).

The amount of merchandise processing fee eligible for drawback for line item 2 is $360.1125 (.99 × $363.75). The amount of fee eligible for line item 3 is $120.0375 (.99 × $121.25).

The amount of drawback on the merchandise processing fee attributable to each unit of line item 2 is $.0240 ($360.1125 ÷ 15,000 = $.0240). The amount of drawback on the merchandise processing fee attributable to each unit of line item 3 is $.0120 ($120.0375 ÷ 10,000 = $.0120).

If 1,000 units of line item 2 were exported, the drawback attributable to the merchandise processing fee is $24.00 ($.0240 × 1,000 = $24.00).

(3) *Calculations for all other duties, taxes, and fees*—(i) *General.* Where a drawback claimant requests a refund of any other duties, taxes, and fees allowable in accordance with § 190.3, the claimant is required to accurately calculate (including apportionment using per unit averaging or inventory management methods, as appropriate) the duties, taxes, and fees attributable to the designated imported merchandise for which drawback is being claimed when calculating the amount of drawback requested on the drawback entry (generally 99% of the duties, taxes, and fees paid on the imported merchandise).

(ii) *Examples.* As illustrated in the examples in this paragraph, in the case of customs duties, the type of calculation required to determine the amount of duties available for refund (generally 99% of the duties paid on the imported merchandise) will vary depending on whether the duty involved is ad valorem, specific, or compound.

Example 1: Ad valorem duty rate. Apportionment of the duties paid (and available for refund) will be based on the application of the duty rates to the per unit values of the imported merchandise. The per unit values are based on the invoice values unless the method of refund calculation is per unit averaging, which would require equal apportionment of the duties paid over the quantity of imported merchandise covered by the line item upon which the imported merchandise was reported on the import entry summary. As a result, the amount of duties available for refund will vary depending on the method used to calculate refunds.

Example 2: Specific duty rate. No apportionment of the duties paid is required to determine the amount available for refund. A fixed duty rate is applicable to each unit of the imported merchandise based on quantity. This fixed rate will not vary based on the per unit values of the imported merchandise and, as a result, there is no impact on the amount of duties available for refunds (regardless of whether the refunds are calculated based on invoice values or per unit averaging).

Example 3: Compound duty rate. A compound duty rate is a combination of an ad valorem duty rate and a specific duty rate, with both rates applied to the same imported merchandise. As a result, a combination of the calculations discussed in paragraphs (a)

and (b) of this section will apply when calculating the amount of duties paid that are available for refund.

(4) *Limitation.* The amount of duties, taxes, and fees eligible for drawback per unit of merchandise for drawback claims based upon substituted merchandise is subject to the limitations set forth in § 190.22(a)(1)(ii) (manufacturing claims) and § 190.32(b) (unused merchandise claims), as applicable.

(c) *HTSUS classification or Schedule B commodity number(s)*—(1) *General.* Drawback claimants are required to provide, on all drawback claims they submit, the 10-digit HTSUS classification or the Schedule B commodity number(s), for the following:

(i) *Designated imported merchandise.* For imported merchandise designated on drawback claims, the HTSUS classification applicable at the time of entry (*e.g.,* as required to be reported on the applicable entry summary(s) and other entry documentation).

(ii) *Substituted merchandise on manufacturing claims.* For merchandise substituted on manufacturing drawback claims, and consistent with the applicable general manufacturing drawback ruling or the specific manufacturing drawback ruling, the applicable HTSUS classification numbers must be the same as either—

(A) If the substituted merchandise was imported, the HTSUS classification applicable at the time of entry (*e.g.,* as required to be reported on the applicable entry summary(s) and other entry documentation); or,

(B) If the substituted merchandise was not imported, the HTSUS classification that would have been reported to CBP for the applicable entry summary(s) and other entry documentation, for the domestically produced substituted merchandise, at the time of entry of the designated imported merchandise.

(iii) *Exported merchandise or articles.* For exported merchandise or articles, the HTSUS classification or Schedule B commodity number(s) must be from the Electronic Export Information (EEI), when required. If no EEI is required (*see,* 15 CFR part 30 subpart D for a complete list of exemptions), then the claimant must provide the Schedule B commodity number(s) or HTSUS number(s) that the exporter would have set forth on the EEI when the exportation took place, but for the exemption from the requirement for an EEI.

(iv) *Destroyed merchandise or articles.* For destroyed merchandise or articles, the HTSUS classification or Schedule B commodity number(s) must be reported, subject to the following:

(A) if the HTSUS classification is reported, then it must be the HTSUS classification that would have been applicable to the destroyed merchandise or articles if they had been entered for consumption at the time of destruction; or

(B) if the Schedule B commodity number is reported, then it must be the Schedule B commodity number that would have been reported for the destroyed merchandise or articles if the EEI had been required for an exportation at the time of destruction.

(2) *Changes to classification.* If the 10-digit HTSUS classification or the Schedule B commodity number(s) reported to CBP for the drawback claim are determined to be incorrect or otherwise in controversy after the filing of the drawback entry, then the claimant must notify the drawback office where the drawback claim was filed of the correct HTSUS classification or Schedule B commodity number or the nature of the controversy before the liquidation of the drawback entry.

(d) *Method of filing.* All drawback claims must be submitted through a CBP-authorized system.

(e) *Time of filing*—(1) *General.* A complete drawback claim is timely filed if it is successfully transmitted not later than 5 years after the date on which the merchandise designated as the basis for the drawback claim was imported and in compliance with all other applicable deadlines under this part.

(i) *Official date of filing.* The official date of filing is the date upon which CBP receives a complete claim, as provided in paragraph (a) of this section, via transmission through a CBP-authorized system, including the uploading of all required supporting documentation.

(ii) *Abandonment.* Claims not completed within the 5-year period after the date on which the merchandise designated as the basis for the drawback claim was imported will be considered abandoned. Except as provided in paragraph (e)(2) of this section, no extension will be granted unless it is established that CBP was responsible for the untimely filing.

(iii) *Special timeframes.* For substitution claims, the exportation or destruction of merchandise shall not have preceded the date of importation of the designated imported merchandise, and/or the exportation or destruction of merchandise shall not otherwise be outside of the timeframes specified in 19 U.S.C. 1313(c)(2)(C) and 19 U.S.C. 1313(p)(2), if applicable.

(2) *Major disaster.* The 5-year period for filing a complete drawback claim provided for in paragraph (e)(1) of this section may be extended for a period not to exceed 18 months if:

(i) The claimant establishes to the satisfaction of CBP that the claimant was unable to file the drawback claim because of an event declared by the President to be a major disaster, within the meaning given to that term in 42 U.S.C. 5122(2), on or after January 1, 1994; and

(ii) The claimant files a request for such extension with CBP no later than 1 year from the last day of the 5-year period referred to in paragraph (e)(1) of this section.

(3) *Record retention.* If an extension is granted with respect to a request filed under paragraph (e)(2)(ii) of this section, the periods of time for retaining records under 19 U.S.C. 1508(c)(3) will be extended for an additional 18 months.

§ 190.52 Rejecting, perfecting or amending claims.

(a) *Rejecting the claim.* Upon review of a drawback claim when transmitted in ACE, if the claim is determined to be incomplete (*see* § 190.51(a)(1)) or untimely (*see* § 190.51(e)), the claim will be rejected and CBP will notify the filer. The filer will then have the opportunity to complete the claim subject to the requirement for filing a complete claim within 5 years of the date of importation of the merchandise designated as the basis for the drawback claim (or within 3 years after the date of exportation of the articles upon which drawback is claimed for drawback pursuant to 19 U.S.C. 1313(d)). If it is later determined by CBP, subsequent to acceptance of the claim and upon further review, that the claim was incomplete or untimely, then it may be denied.

(b) *Perfecting the claim; additional evidence required.* If CBP determines that the claim is complete according to the requirements of § 190.51(a)(1), but that additional evidence or information is required, CBP will notify the filer. The claimant must furnish, or have the appropriate party furnish, the evidence or information requested within 30 days of the date of notification by CBP. CBP may extend this 30-day period if the claimant files a written request for such extension within the 30-day period and provides good cause. The evidence or information required under this paragraph may be filed more than 5 years after the date of importation of the merchandise designated as the basis for the drawback claim (or within 3 years after the date of exportation of the articles upon which drawback is claimed for drawback pursuant to 19 U.S.C. 1313(d)). Such additional

evidence or information may include, but is not limited to:

(1) Records or other documentary evidence of exportation, as provided for in § 190.72, which shows that the articles were shipped by the person filing the drawback entry, or a letter of endorsement from the exporter which must be attached to such records or other documentary evidence, showing that the party filing the entry is authorized to claim drawback and receive payment (the claimant must have on file and make available to CBP upon request, the endorsement from the exporter assigning the right to claim drawback);

(2) A copy of the import entry and invoice annotated for the merchandise identified or designated;

(3) A copy of the export invoice annotated to indicate the items on which drawback is being claimed; and

(4) Records documenting the transfer of the merchandise including records kept in the normal course of business upon which the claim is based (*see* § 190.10).

(c) *Amending the claim; supplemental filing.* Amendments to claims for which the drawback entries have not been liquidated must be made within 5 years of the date of importation of the merchandise designated as the basis for the drawback claim. Liquidated drawback entries may not be amended; however, they may be protested as provided for in § 190.84 and part 174 of this chapter.

§ 190.53 Restructuring of claims.

(a) *General.* CBP may require claimants to restructure their drawback claims in such a manner as to foster administrative efficiency. In making this determination, CBP will consider the following factors:

(1) The number of transactions of the claimant (imports and exports);

(2) The value of the claims;

(3) The frequency of claims;

(4) The product or products being claimed; and

(5) For 19 U.S.C. 1313(a) and 1313(b) claims, the provisions, as applicable, of the general manufacturing drawback ruling or the specific manufacturing drawback ruling.

(b) *Exemption from restructuring; criteria.* In order to be exempt from a restructuring, a claimant must demonstrate an inability or impracticability in restructuring its claims as required by CBP and must provide a mutually acceptable alternative. Criteria used in such determination will include a demonstration by the claimant of one or more of the following:

(1) Complexities caused by multiple commodities or the applicable general manufacturing drawback ruling or the specific manufacturing drawback ruling;

(2) Variable and conflicting manufacturing and inventory periods (for example, financial, accounting and manufacturing records maintained are significantly different);

(3) Complexities caused by multiple manufacturing locations;

(4) Complexities caused by difficulty in adjusting accounting and inventory records (for example, records maintained—financial or accounting—are significantly different); and/or

(5) Complexities caused by significantly different methods of operation.

Subpart F—Verification of Claims

§ 190.61 Verification of drawback claims.

(a) *Authority.* All claims are subject to verification by CBP.

(b) *Method.* CBP personnel will verify compliance with the law and this part, the accuracy of the related general manufacturing drawback ruling or specific manufacturing drawback ruling (as applicable), and the selected drawback claims. Verification may include an examination of all records relating to the transaction(s).

(c) *Liquidation.* When a claim has been selected for verification, liquidation will be postponed only on the drawback entry for the claim selected for verification. Postponement will continue in effect until the verification has been completed and a report is issued, subject to the limitation in 19 CFR 159.12(f). In the event that a substantial error is revealed during the verification, CBP may postpone liquidation of all related product line claims, or, in CBP's discretion, all claims made by that claimant.

(d) *Errors in specific or general manufacturing drawback rulings*—(1) *Specific manufacturing drawback ruling; action by CBP.* If verification of a drawback claim filed under a specific manufacturing drawback ruling (*see* § 190.8) reveals errors or deficiencies in the drawback ruling or application therefor, the verifying CBP official will promptly inform CBP Headquarters (Attention: Entry Process and Duty Refunds Branch, Regulations and Rulings, Office of Trade).

(2) *General manufacturing drawback ruling.* If verification of a drawback claim filed under a general manufacturing drawback ruling (*see* § 190.7) reveals errors or deficiencies in a general manufacturing drawback ruling, the letter of notification of intent to operate under the general manufacturing drawback ruling, or the acknowledgment of the letter of notification of intent, the verifying CBP official will promptly inform CBP Headquarters (Attention: Entry Process and Duty Refunds Branch, Regulations and Rulings, Office of Trade).

(3) *Action by CBP Headquarters.* CBP Headquarters will review the stated errors or deficiencies and take appropriate action (*see* 19 U.S.C. 1625; 19 CFR part 177).

§ 190.62 Penalties.

(a) *Criminal penalty.* Any person who knowingly and willfully files any false or fraudulent entry or claim for the payment of drawback upon the exportation or destruction of merchandise or knowingly or willfully makes or files any false document for the purpose of securing the payment to himself or others of any drawback on the exportation or destruction of merchandise greater than that legally due, will be subject to the criminal provisions of 18 U.S.C. 550, 1001, or any other appropriate criminal sanctions.

(b) *Civil penalty.* Any person who seeks, induces or affects the payment of drawback, by fraud or negligence, or attempts to do so, is subject to civil penalties, as provided under 19 U.S.C. 1593a. A fraudulent violation is subject to a maximum administrative penalty of 3 times the total actual or potential loss of revenue. Repetitive negligent violations are subject to a maximum penalty equal to the actual or potential loss of revenue.

§ 190.63 Liability for drawback claims.

(a) *Liability of claimants.* Any person making a claim for drawback will be liable for the full amount of the drawback claimed.

(b) *Liability of importers.* An importer will be liable for any drawback claim made by another person with respect to merchandise imported by the importer in an amount equal to the lesser of:

(1) The amount of duties, taxes, and fees that the person claimed with respect to the imported merchandise; or

(2) The amount of duties, taxes, and fees that the importer authorized the other person to claim with respect to the imported merchandise.

(c) *Joint and several liability.* Persons described in paragraphs (a) and (b) of this section will be jointly and severally liable for the amount described in paragraph (b).

Subpart G—Exportation and Destruction

§ 190.71 Drawback on articles destroyed under CBP supervision.

(a) *Procedure.* At least 7 working days before the intended date of destruction of merchandise or articles upon which drawback is intended to be claimed, a Notice of Intent to Export, Destroy, or Return Merchandise for Purposes of Drawback on CBP Form 7553 must be filed by the claimant with the CBP port where the destruction is to take place, giving notification of the date and specific location where the destruction is to occur. Within 4 working days after receipt of the CBP Form 7553, CBP will advise the filer in writing of its determination to witness or not to witness the destruction. If the filer of the notice is not so notified within 4 working days, the merchandise may be destroyed without delay and will be deemed to have been destroyed under CBP supervision. Unless CBP determines to witness the destruction, the destruction of the articles following timely notification on CBP Form 7553 will be deemed to have occurred under CBP supervision. If CBP attends the destruction, CBP will certify on CBP Form 7553.

(b) *Evidence of destruction.* When CBP does not attend the destruction, the claimant must submit evidence that destruction took place in accordance with the Notice of Intent to Export, Destroy, or Return Merchandise for Purposes of Drawback on CBP Form 7553. The evidence must be issued by a disinterested third party (for example, a landfill operator). The type of evidence depends on the method and place of destruction, but must establish that the merchandise was, in fact, destroyed within the meaning of ''destruction'' in § 190.2.

(c) *Completion of drawback entry.* After destruction, the claimant must provide CBP Form 7553, certified by the CBP official witnessing the destruction in accordance with paragraph (a) of this section, to CBP as part of the complete drawback claim based on the destruction (*see* § 190.51(a)). If CBP has not attended the destruction, the claimant must provide the evidence that destruction took place in accordance with the approved CBP Form 7553, as provided for in paragraph (b) of this section, as part of the complete drawback claim based on the destruction (*see* § 190.51(a)).

(d) *Deduction for value of recovered materials.* Under 19 U.S.C. 1313(x), a destruction may include a process by which materials are recovered from imported merchandise or from an article manufactured from imported merchandise for drawback claims made pursuant to 19 U.S.C. 1313(a), (b), (c), and (j). In determining the amount of duties to be refunded as drawback to a claimant, the value of recovered materials (including the value of any tax benefit or royalty payment) that accrues to the drawback claimant must be deducted from the value of the imported merchandise that is destroyed, or from the value of the merchandise used, or designated as used, in the manufacture of the article.

§ 190.72 Proof of exportation.

(a) *Required export data.* Proof of exportation of articles for drawback purposes must establish fully the date and fact of exportation and the identity of the exporter by providing the following summary data as part of a complete claim (*see* § 190.51) (in addition to providing prior notice of intent to export if applicable):

(1) Date of export;

(2) Name of exporter;

(3) Description of the goods;

(4) Quantity and unit of measure;

(5) Schedule B number or HTSUS number; and

(6) Country of ultimate destination.

(b) *Supporting documentary evidence.* The documents for establishing exportation (which may be records kept in the normal course of business) include, but are not limited to:

(1) Records or other documentary evidence of exportation (originals or copies) issued by the exporting carrier, such as a bill of lading, air waybill, freight waybill, Canadian Customs manifest, and/or cargo manifest;

(2) Records from a CBP-approved electronic export system of the United States Government (§ 190.73);

(3) Official postal records (originals or copies) which evidence exportation by mail (§ 190.74);

(4) Notice of lading for supplies on certain vessels or aircraft (§ 190.112); or

(5) Notice of transfer for articles manufactured or produced in the United States which are transferred to a foreign trade zone (§ 190.183).

§ 190.73 Electronic proof of exportation.

Records kept through an electronic export system of the United States Government may be presented as actual proof of exportation only if CBP has officially approved the use of that electronic export system as proof of compliance for drawback claims. Official approval will be published as a general notice in the Customs Bulletin.

§ 190.74 Exportation by mail.

If the merchandise on which drawback is to be claimed is exported by mail or parcel post, the official postal records (original or copies) which describe the mail shipment will be sufficient to prove exportation. The postal record must be identified on the drawback entry, and must be retained by the claimant in their records and made available to CBP upon request (*see* § 190.51(a)).

§ 190.75 Exportation by the Government.

(a) *Claim by U.S. Government.* When a department, branch, agency, or instrumentality of the U.S. Government exports products with the intention of claiming drawback, it may establish the exportation in the manner provided in § 190.72 (*see* § 190.4).

(b) *Claim by supplier.* When a supplier of merchandise to the Government or any of the parties specified in § 190.82 claims drawback, exportation must be established under § 190.72.

§ 190.76 [Reserved]

Subpart H—Liquidation and Protest of Drawback Entries

§ 190.81 Liquidation.

(a) *Time of liquidation.* Drawback entries may be liquidated after:

(1) Liquidation of the designated import entry or entries becomes final pursuant to paragraph (e) of this section; or

(2) Deposit of estimated duties on the imported merchandise and before liquidation of the designated import entry or entries.

(b) *Claims based on estimated duties.* (1) Drawback may be paid upon liquidation of a claim based on estimated duties if one or more of the designated import entries have not been liquidated, or the liquidation has not become final (because of a protest being filed) (*see* also § 173.4(c) of this chapter), only if the drawback claimant and any other party responsible for the payment of liquidated import duties each files a written request for payment of each drawback claim, waiving any right to payment or refund under other provisions of law, to the extent that the estimated duties on the unliquidated import entry are included in the drawback claim for which drawback on estimated duties is requested under this paragraph. The drawback claimant must, to the best of its knowledge, identify each import entry that has been protested and that is included in the drawback claim. A drawback entry, once finally liquidated on the basis of estimated duties pursuant to paragraph (e)(2) of this section, will not be adjusted by reason of a subsequent final liquidation of the import entry.

(2) However, if final liquidation of the import entry discloses that the total amount of import duty is different from the total estimated duties deposited, except in those cases when drawback is 100% of the duty, the party responsible for the payment of liquidated duties, as applicable, will:

(i) Be liable for 1 percent of all increased duties found to be due on that portion of merchandise recorded on the drawback entry; or

(ii) Be entitled to a refund of 1 percent of all excess duties found to have been paid as estimated duties on that portion of the merchandise recorded on the drawback entry.

(c) *Claims based on voluntary tenders or other payments of duties*—(1) *General.* Subject to the requirements in paragraph (2) of this section, drawback may be paid upon liquidation of a claim based on voluntary tenders of the unpaid amount of lawful ordinary customs duties or any other payment of lawful ordinary customs duties for an entry, or withdrawal from warehouse, for consumption (*see* § 190.3(a)(1)(iii)), provided that:

(i) The tender or payment is specifically identified as duty on a specifically identified entry, or withdrawal from warehouse, for consumption;

(ii) Liquidation of the specifically identified entry, or withdrawal from warehouse, for consumption became final prior to such tender or payment; and

(iii) Liquidation of the drawback entry in which that specifically identified import entry, or withdrawal from warehouse, for consumption is designated has not become final.

(2) *Written request and waiver.* Drawback may be paid on claims based on voluntary tenders or other payments of duties under this subsection only if the drawback claimant and any other party responsible for the payment of the voluntary tenders or other payments of duties each files a written request for payment of each drawback claim based on such voluntary tenders or other payments of duties, waiving any claim to payment or refund under other provisions of law, to the extent that the voluntary tenders or other payment of duties under this paragraph are included in the drawback claim for which drawback on the voluntary tenders or other payment of duties is requested under this paragraph.

(d) *Claims based on liquidated duties.* Drawback will be based on the final liquidated duties paid that have been made final by operation of law (except in the case of the written request for payment of drawback on the basis of estimated duties, voluntary tender of duties, and other payments of duty, and waiver, provided for in paragraphs (b) and (c) of this section).

(e) *Liquidation procedure.* (1) *General.* When the drawback claim has been completed by the filing of the entry and other required documents, and exportation (or destruction) of the merchandise or articles has been established, CBP will determine drawback due on the basis of the complete drawback claim, the applicable general manufacturing drawback ruling or specific manufacturing drawback ruling, and any other relevant evidence or information. Notice of liquidation will be given electronically as provided in §§ 159.9 and 159.10(c)(3) of this chapter.

(2) *Liquidation by operation of law.* (i) *Liquidated import entries.* A drawback claim that satisfies the requirements of paragraph (d) that is not liquidated within 1 year from the date of the drawback claim (*see* § 190.51(e)(1)(i)) will be deemed liquidated for the purpose of the drawback claim at the drawback amount asserted by the claimant or claim, unless the time for liquidation is extended in accordance with § 159.12 or if liquidation is suspended as required by statute or court order.

(ii) *Unliquidated import entries.* A drawback claim that satisfies the requirements of paragraphs (b) or (c) of this section will be deemed liquidated upon the deposit of estimated duties on the unliquidated imported merchandise (*see* § 190.81(b)).

(f) *Relative value; multiple products*—(1) *Distribution.* Where two or more products result from the manufacture or production of merchandise, drawback will be distributed to the several products in accordance with their relative values at the time of separation.

(2) *Values.* The values to be used in computing the distribution of drawback where two or more products result from the manufacture or production of merchandise under drawback conditions must be the market value (as provided for in the definition of relative value in § 190.2), unless other values are approved by CBP.

(g) *Payment.* CBP will authorize the amount of the refund due as drawback to the claimant.

§ 190.82 Person entitled to claim drawback.

Unless otherwise provided in this part (*see* §§ 190.42(b), 190.162, 190.175(a), 190.186), the exporter (or destroyer) will be entitled to claim drawback, unless the exporter (or destroyer), by means of a certification, waives the right to claim drawback and assigns such right to the manufacturer, producer, importer, or intermediate party (in the case of drawback under 19 U.S.C. 1313(j)(1) and (2), see § 190.33(a) and (b)). Such certification must also affirm that the exporter (or destroyer) has not assigned and will not assign the right to claim drawback on the particular exportation or destruction to any other party. The certification provided for in this section may be a blanket certification for a stated period.

§ 190.83 Person entitled to receive payment.

Drawback is paid to the claimant (*see* § 190.82).

§ 190.84 Protests.

Procedures to protest the denial, in whole or in part, of a drawback entry must be in accordance with part 174 of this chapter (19 CFR part 174).

Subpart I—Waiver of Prior Notice of Intent To Export or Destroy; Accelerated Payment of Drawback

§ 190.91 Waiver of prior notice of intent to export or destroy.

(a) *General*—(1) *Scope.* The requirement in § 190.35 for prior notice of intent to export or destroy merchandise which may be the subject of an unused merchandise drawback claim under section 313(j) of the Act, as amended (19 U.S.C. 1313(j)), or a rejected merchandise drawback claim under section 313(c), as amended (19 U.S.C. 1313(c)), may be waived under the provisions of this section.

(2) *Effective date for claimants with existing approval.* For claimants approved for waiver of prior notice before February 24, 2019, and under 19 CFR part 191, such approval of waiver of prior notice will remain in effect, but only if the claimant provides the following certification as part of each complete claim filed on or after that date, pursuant to § 190.51(a)(2)(xvi): ''The undersigned acknowledges the current statutory requirements under 19 U.S.C. 1313 and the regulatory requirements in 19 CFR part 190, and hereby certifies continuing eligibility for the waiver of prior notice (granted prior to February 24, 2019) in compliance therewith.'' This certification may only be made for waiver of prior notice for the specific type of drawback claim for which the application was previously approved under 19 CFR 191, except that applications approved under 19 U.S.C. 1313(j)(1) will also be applicable to claims for the same type of merchandise if made under 19 U.S.C. 1313(j)(2).

(3) *Limited successorship for waiver of prior notice.* When a claimant

(predecessor) is approved for waiver of prior notice under this section and all of the rights, privileges, immunities, powers, duties and liabilities of the claimant are transferred by written agreement, merger, or corporate resolution to a successor, such approval of waiver of prior notice will remain in effect for a period of 1 year after such transfer. The approval of waiver of prior notice will terminate at the end of such 1-year period unless the successor applies for waiver of prior notice under this section. If such successor applies for waiver of prior notice under this section within such 1-year period, the successor may continue to operate under the predecessor's waiver of prior notice until CBP approves or denies the successor's application for waiver of prior notice under this section, subject to the provisions in this section (*see,* in particular, paragraphs (d) and (e) of this section).

(b) *Application*—(1) *Who may apply.* A claimant for unused merchandise drawback under 19 U.S.C. 1313(j) or rejected merchandise drawback under 19 U.S.C. 1313(c) may apply for a waiver of prior notice of intent to export or destroy merchandise under this section.

(2) *Contents of application.* An applicant for a waiver of prior notice under this section must file a written application (which may be physically delivered or delivered via email) with the drawback office where the claims will be filed. Such application must include the following:

(i) Required information:

(A) Name, address, and Internal Revenue Service (IRS) number (with suffix) of applicant;

(B) Name, address, and Internal Revenue Service (IRS) number (with suffix) of current exporter(s) or destroyer(s) (if more than 3 exporters or destroyers, such information is required only for the 3 most frequently used exporters or destroyers), if applicant is not the exporter or destroyer;

(C) Export or destruction period covered by this application;

(D) Commodity/product lines of imported and exported or destroyed merchandise covered by this application;

(E) Origin of merchandise covered by this application;

(F) Estimated number of export transactions or destructions during the next calendar year covered by this application;

(G) Port(s) of exportation or location of destruction facilities to be used during the next calendar year covered by this application;

(H) Estimated dollar value of potential drawback during the next calendar year covered by this application;

(I) The relationship between the parties involved in the import and export transactions or destructions; and

(J) Provision(s) of drawback covered by the application.

(ii) A written declaration whether or not the applicant has previously been denied a waiver request, or had an approval of a waiver revoked, by any other drawback office, and whether the applicant has previously requested a 1-time waiver of prior notice under § 190.36, and whether such request was approved or denied; and

(iii) A certification that the following documentary evidence will be made available for CBP review upon request:

(A) For the purpose of establishing that the imported merchandise was not used in the United States (for purposes of drawback under 19 U.S.C. 1313(j)(1)) or that the exported or destroyed merchandise was not used in the United States and satisfies the requirements for substitution with the imported merchandise (for purposes of drawback under 19 U.S.C. 1313(j)(2)) or that the rejected merchandise that was exported or destroyed satisfies the relevant requirements (for purposes of drawback under 19 U.S.C. 1313(c)), and, as applicable:

(1) Records;

(2) Laboratory records prepared in the ordinary course of business; and/or

(3) Inventory records prepared in the ordinary course of business tracing all relevant movements and storage of the imported merchandise, substituted merchandise, and/or exported or destroyed merchandise; and

(B) Any other evidence establishing compliance with other applicable drawback requirements, upon CBP's request under paragraph (b)(2)(iii) of this section.

(3) *Samples of records to accompany application.* To expedite the processing of applications under this section, the application should contain at least one sample of each of the records to be used to establish compliance with the applicable requirements (that is, sample of import document (for example, CBP Form 7501, or its electronic equivalent), sample of export document (for example, bill of lading) or sample of evidence of destruction, and samples of business, laboratory, and inventory records certified, under paragraph (b)(2)(iii)(A)(1) through (3) of this section, to be available to CBP upon request).

(c) *Action on application*—(1) *CBP review.* The drawback office will review and verify the information submitted on and with the application. CBP will notify the applicant in writing within 90 days of receipt of the application of its decision to approve or deny the application, or of CBP's inability to approve, deny, or act on the application and the reason therefor. In order for CBP to evaluate the application, CBP may request any of the information listed in paragraph (b)(2)(iii)(A)(*1*) through (*3*) of this section. Based on the information submitted on and with the application and any information so requested, and based on the applicant's record of transactions with CBP, the drawback office will approve or deny the application. The criteria to be considered in reviewing the applicant's record with CBP include, but are not limited to:

(i) The presence or absence of unresolved CBP charges (duties, taxes, or other debts owed CBP);

(ii) The accuracy of the claimant's past drawback claims;

(iii) Whether waiver of prior notice was previously revoked or suspended; and

(iv) The presence or absence of any failure to present merchandise to CBP for examination after CBP had timely notified the party filing a Notice of Intent to Export, Destroy, or Return Merchandise for Purposes of Drawback on CBP Form 7553 of CBP's intent to examine the merchandise (*see* § 190.35).

(2) *Approval.* The approval of an application for waiver of prior notice of intent to export or destroy, under this section, will operate prospectively, applying only to those export shipments or destructions occurring after the date of the waiver. It will be subject to a stay, as provided in paragraph (d) of this section.

(3) *Denial.* If an application for waiver of prior notice of intent to export or destroy, under this section, is denied, the applicant will be given written notice, specifying the grounds therefor, together with what corrective action may be taken, and informing the applicant that the denial may be appealed in the manner prescribed in paragraph (g) of this section. The applicant may not reapply for a waiver until the reason for the denial is resolved.

(d) *Stay.* An approval of waiver of prior notice may be stayed, for a specified reasonable period, should CBP desire for any reason to examine the merchandise being exported or destroyed with drawback prior to its exportation or destruction for purposes of verification. CBP will provide written notice, by registered or certified mail, of such a stay to the person for whom waiver of prior notice was approved.

CBP will specify the reason(s) for the stay in such written notice. The stay will take effect 2 working days after the date the person signs the return post office receipt for the registered or certified mail. The stay will remain in effect for the period specified in the written notice, or until such earlier date as CBP notifies the person for whom waiver of prior notice was approved in writing that the reason for the stay has been satisfied. After the stay is lifted, operation under the waiver of prior notice procedure may resume for exports on or after the date the stay is lifted.

(e) *Proposed revocation.* CBP may propose to revoke the approval of an application for waiver of prior notice of intent to export or destroy, under this section, for good cause (such as, noncompliance with the drawback law and/or regulations). CBP will give written notice of the proposed revocation of a waiver of prior notice of intent to export or destroy. The notice will specify the reasons for CBP's proposed action and provide information regarding the procedures for challenging CBP's proposed revocation action as prescribed in paragraph (g) of this section. The written notice of proposed revocation may be included with a notice of stay of approval of waiver of prior notice as provided under paragraph (d) of this section. The revocation of the approval of waiver of prior notice will take effect 30 days after the date of the proposed revocation if not timely challenged under paragraph (g) of this section. If timely challenged, the revocation will take effect after completion of the challenge procedures in paragraph (g) of this section unless the challenge is successful.

(f) *Action by drawback office controlling.* Action by the drawback office to approve, deny, stay, or revoke waiver of prior notice of intent to export or destroy, unless reversed by CBP Headquarters, will govern the applicant's eligibility for this procedure in all CBP drawback offices. If the application for waiver of prior notice of intent to export or destroy is approved, the claimant must refer to such approval in the first drawback claim filed after such approval in the drawback office approving waiver of prior notice and must submit a copy of the approval letter with the first drawback claim filed in any drawback office other than the approving office, when the export or destruction upon which the claim is based was without prior notice, under this section.

(g) *Appeal of denial or challenge to proposed revocation.* An appeal of a denial of an application under this section, or challenge to the proposed revocation of an approved application under this section, may be made by letter to the drawback office issuing the denial or proposed revocation and must be filed within 30 days of the date of denial or proposed revocation. A denial of an appeal or challenge made to the drawback office may itself be appealed to CBP Headquarters, Office of Trade, Trade Policy and Programs, and must be filed within 30 days of the denial date of the initial appeal or challenge. The 30-day period for appeal or challenge to the drawback office or to CBP Headquarters may be extended for good cause, upon written request by the applicant or holder for such extension filed with the appropriate office within the 30-day period.

§ 190.92 Accelerated payment.

(a) *General*—(1) *Scope.* Accelerated payment of drawback is available under this section on drawback claims under this part, unless specifically excepted from such accelerated payment. Accelerated payment of drawback consists of the payment of estimated drawback before liquidation of the drawback entry. Accelerated payment of drawback is only available when CBP's review of the request for accelerated payment of drawback does not find omissions from, or inconsistencies with the requirements of the drawback law and part 190 (*see,* especially, subpart E of this part). Accelerated payment of a drawback claim does not constitute liquidation of the drawback entry.

(2) *Effective date for claimants with existing approval.* For claimants approved for accelerated payment of drawback before February 24, 2019, and under 19 CFR part 191, such approval of accelerated payment will remain in effect, but only if the claimant provides the following certification as part of each complete claim filed after that date, pursuant to § 190.51(a)(2)(xvi): ''The undersigned acknowledges the current statutory requirements under 19 U.S.C. 1313 and the regulatory requirements in 19 CFR part 190, and hereby certifies continuing eligibility for accelerated payment (granted prior to February 24, 2019) in compliance therewith.'' This certification may only be made for accelerated payment for the specific type of drawback claim for which the application was previously approved under 19 CFR 191, except that applications approved under 19 U.S.C. 1313(j)(1) will also be applicable to claims for the same type of merchandise if made under 19 U.S.C. 1313(j)(2).

(3) *Limited successorship for approval of accelerated payment.* When a claimant (predecessor) is approved for accelerated payment of drawback under this section and all of the rights, privileges, immunities, powers, duties and liabilities of the claimant are transferred by written agreement, merger, or corporate resolution to a successor, such approval of accelerated payment will remain in effect for a period of 1 year after such transfer. The approval of accelerated payment of drawback will terminate at the end of such 1-year period unless the successor applies for accelerated payment of drawback under this section. If such successor applies for accelerated payment of drawback under this section within such 1-year period, the successor may continue to operate under the predecessor's approval of accelerated payment until CBP approves or denies the successor's application for accelerated payment under this section, subject to the provisions in this section (*see,* in particular, paragraph (f) of this section).

(b) *Application for approval; contents.* A person who wishes to apply for accelerated payment of drawback must file a written application (which may be physically delivered or delivered via email) with the drawback office where claims will be filed.

(1) *Required information.* The application must contain:

(i) Company name and address;

(ii) Internal Revenue Service (IRS) number (with suffix);

(iii) Identity (by name and title) of the person in claimant's organization who will be responsible for the drawback program;

(iv) Description of the bond coverage the applicant intends to use to cover accelerated payments of drawback (*see* paragraph (d) of this section), including:

(A) Identity of the surety to be used;

(B) Dollar amount of bond coverage for the first year under the accelerated payment procedure; and

(C) Procedures to ensure that bond coverage remains adequate (that is, procedures to alert the applicant when and if its accelerated payment potential liability exceeds its bond coverage);

(v) Description of merchandise and/or articles covered by the application;

(vi) Provision(s) of drawback covered by the application; and

(vii) Estimated dollar value of potential drawback during the next 12-month period covered by the application.

(2) *Previous applications.* In the application, the applicant must state whether or not the applicant has previously been denied an application for accelerated payment of drawback, or

had an approval of such an application revoked by any drawback office.

(3) *Certification of compliance.* In or with the application, the applicant must also submit a certification, signed by the applicant, that all applicable statutory and regulatory requirements for drawback will be met.

(4) *Description of claimant's drawback program.* With the application, the applicant must submit a description (with sample documents) of how the applicant will ensure compliance with its certification that the statutory and regulatory drawback requirements will be met. This description may be in the form of a booklet. The detail contained in this description should vary depending on the size and complexity of the applicant's accelerated drawback program (for example, if the dollar amount is great and there are several kinds of drawback involved, with differing inventory, manufacturing, and shipping methods, greater detail in the description will be required). The description must include at least:

(i) The name of the official in the claimant's organization who is responsible for oversight of the claimant's drawback program;

(ii) The procedures and controls demonstrating compliance with the statutory and regulatory drawback requirements;

(iii) The parameters of claimant's drawback recordkeeping program, including the retention period and method (for example, paper, electronic, etc.);

(iv) A list of the records that will be maintained, including at least sample import documents, sample export documents or evidence of destruction, sample inventory and transportation documents (if applicable), sample laboratory or other documents establishing the qualification of merchandise or articles for substitution under the drawback law (if applicable), and sample manufacturing documents (if applicable);

(v) The procedures that will be used to notify CBP of changes to the claimant's drawback program, variances from the procedures described in this application, and violations of the statutory and regulatory drawback requirements; and

(vi) The procedures for an annual review by the claimant to ensure that its drawback program complies with the statutory and regulatory drawback requirements and that CBP is notified of any modifications from the procedures described in this application.

(c) *Sample application.* The drawback office, upon request, will provide applicants for accelerated payment with a sample letter format to assist them in preparing their submissions.

(d) *Bond required.* If approved for accelerated payment, the claimant must furnish a properly executed bond in an amount sufficient to cover the estimated amount of drawback to be claimed during the term of the bond. If outstanding accelerated drawback claims exceed the amount of the bond, the drawback office will require additional bond coverage as necessary before additional accelerated payments are made.

(e) *Action on application*—(1) *CBP review.* The drawback office will review and verify the information submitted in and with the application. In order for CBP to evaluate the application, CBP may request additional information (including additional sample documents) and/or explanations of any of the information provided for in paragraph (b)(4) of this section. Based on the information submitted on and with the application and any information so requested, and based on the applicant's record of transactions with CBP, the drawback office will approve or deny the application. The criteria to be considered in reviewing the applicant's record with CBP include, but are not limited to (as applicable):

(i) The presence or absence of unresolved CBP charges (duties, taxes, fees, or other debts owed CBP);

(ii) The accuracy of the claimant's past drawback claims; and

(iii) Whether accelerated payment of drawback or waiver of prior notice of intent to export was previously revoked or suspended.

(2) *Notification to applicant.* CBP will notify the applicant in writing within 90 days of receipt of the application of its decision to approve or deny the application, or of CBP's inability to approve, deny, or act on the application and the reason therefor.

(3) *Approval.* The approval of an application for accelerated payment, under this section, will be effective as of the date of CBP's written notification of approval under paragraph (e)(2) of this section. Accelerated payment of drawback will be available under this section to unliquidated drawback claims filed before and after such date. For claims filed before such date, accelerated payment of drawback will be paid only if the claimant furnishes a properly executed bond covering the claim, in an amount sufficient to cover the amount of accelerated drawback to be paid on the claim.

(4) *Denial.* If an application for accelerated payment of drawback under this section is denied, the applicant will be given written notice, specifying the grounds therefor, together with what corrective action may be taken, and informing the applicant that the denial may be appealed in the manner prescribed in paragraph (i) of this section. The applicant may not reapply for accelerated payment of drawback until the reason for the denial is resolved.

(f) *Revocation.* CBP may propose to revoke the approval of an application for accelerated payment of drawback under this section, for good cause (such as, noncompliance with the drawback law and/or regulations). In case of such proposed revocation, CBP will give written notice, by registered or certified mail, of the proposed revocation of the approval of accelerated payment. The notice will specify the reasons for CBP's proposed action and the procedures for challenging CBP's proposed revocation action as prescribed in paragraph (h) of this section. The revocation will take effect 30 days after the date of the proposed revocation if not timely challenged under paragraph (h) of this section. If timely challenged, the revocation will take effect after completion of the challenge procedures in paragraph (h) of this section unless the challenge is successful.

(g) *Action by drawback office controlling.* Action by the drawback office to approve, deny, or revoke accelerated payment of drawback will govern the applicant's eligibility for this procedure in all CBP drawback offices. If the application for accelerated payment of drawback is approved, the claimant must refer to such approval in the first drawback claim filed after such approval in the drawback office approving accelerated payment of drawback and must submit a copy of the approval letter with the first drawback claim filed in a drawback office other than the approving office.

(h) *Appeal of denial or challenge to proposed revocation.* An appeal of a denial of an application under this section, or challenge to the proposed revocation of an approved application under this section, may be made in writing to the drawback office issuing the denial or proposed revocation and must be filed within 30 days of the date of denial or proposed revocation. A denial of an appeal or challenge made to the drawback office may itself be appealed to CBP Headquarters, Office of Trade, Trade Policy and Programs, and must be filed within 30 days. The 30-day period for appeal or challenge to the drawback office or to CBP Headquarters may be extended for good cause, upon written request by the applicant or holder for such extension filed with the

appropriate office within the 30-day period.

(i) *Payment.* The drawback office approving a drawback claim in which accelerated payment of drawback was requested will certify the drawback claim for payment. After liquidation, the drawback office will certify the claim for payment of any amount due or demand a refund of any excess amount paid. Any excess amount of duty the subject of accelerated payment that is not repaid to CBP within 30 days after the date of liquidation of the related drawback entry will be considered delinquent (*see* §§ 24.3a and 113.65(b) of this chapter).

§ 190.93 Combined applications.

An applicant for the procedures provided for in §§ 190.91 and 190.92 may apply for only one procedure, both procedures separately, or both procedures in one application package (*see* also § 190.195 regarding combined applications for certification in the drawback compliance program and waiver of prior notice and/or approval of accelerated payment of drawback). In the latter instance, the intent to apply for both procedures must be clearly stated. In all instances, all of the requirements for the procedure(s) applied for must be met (for example, in a combined application for both procedures, all of the information required for each procedure, all required sample documents for each procedure, and all required certifications must be included in and with the application).

Subpart J—Internal Revenue Tax on Flavoring Extracts and Medicinal or Toilet Preparations (Including Perfumery) Manufactured From Domestic Tax-Paid Alcohol

§ 190.101 Drawback allowance.

(a) *Drawback.* Section 313(d) of the Act, as amended (19 U.S.C. 1313(d)), provides for drawback of internal revenue tax upon the exportation of flavoring extracts and medicinal or toilet preparations (including perfumery) manufactured or produced in the United States in part from domestic tax-paid alcohol.

(b) *Shipment to Puerto Rico, the Virgin Islands, Guam, and American Samoa.* Drawback of internal revenue tax on articles manufactured or produced under this subpart and shipped to Puerto Rico, the Virgin Islands, Guam, or American Samoa will be allowed in accordance with section 7653(c) of the Internal Revenue Code (26 U.S.C. 7653(c)). However, there is no authority of law for the allowance of drawback of internal revenue tax on flavoring extracts or medicinal or toilet preparations (including perfumery) manufactured or produced in the United States and shipped to Wake Island, Midway Islands, Kingman Reef, Canton Island, Enderbury Island, Johnston Island, or Palmyra Island.

§ 190.102 Procedure.

(a) *General.* Other provisions of this part relating to direct identification drawback (*see* subpart B of this part) will apply to claims for drawback filed under this subpart insofar as applicable to and not inconsistent with the provisions of this subpart.

(b) *Manufacturing record.* The manufacturer of flavoring extracts or medicinal or toilet preparations on which drawback is claimed will record the products manufactured, the quantity of waste, if any, and a full description of the alcohol. These records must be available at all times for inspection by CBP officers.

(c) *Additional information required on the manufacturer's application for a specific manufacturing drawback ruling.* The manufacturer's application for a specific manufacturing drawback ruling, under § 190.8, must state the quantity of domestic tax-paid alcohol contained in each product on which drawback is claimed.

(d) *Variance in alcohol content*—(1) *Variance of more than 5 percent.* If the percentage of alcohol contained in an exported medicinal preparation, flavoring extract or toilet preparation varies by more than 5 percent from the percentage of alcohol in the total volume of the product as stated in a previously approved application for a specific manufacturing drawback ruling, the manufacturer must apply for a new specific manufacturing drawback ruling pursuant to § 190.8. If the variation differs from a previously filed schedule, the manufacturer must file a new schedule incorporating the change.

(2) *Variance of 5 percent or less.* Variances of 5 percent or less of the volume of the product must be reported to the drawback office where the drawback entries are liquidated. In such cases, the drawback office may allow drawback without specific authorization from CBP Headquarters.

(e) *Time period for completing claims.* Drawback claims under this subpart must be completed within 3 years after the date of exportation of the articles upon which drawback is claimed.

(f) *Filing of drawback entries on duty-paid imported merchandise and tax-paid alcohol.* When the drawback claim covers duty-paid imported merchandise in addition to tax-paid alcohol, the claimant must file one set of entries for drawback of customs duty and another set for drawback of internal revenue tax.

(g) *Description of the alcohol.* The description of the alcohol that is the subject of the drawback entry may be obtained from the description on the package containing the tax-paid alcohol.

§ 190.103 Additional requirements.

(a) *Manufacturer claims domestic drawback.* In the case of medicinal preparations and flavoring extracts, the claimant must file with the drawback entry, a declaration of the manufacturer stating whether a claim has been or will be filed by the manufacturer with the Alcohol and Tobacco Tax and Trade Bureau (TTB) for domestic drawback on alcohol under sections 5111, 5112, 5113, and 5114, Internal Revenue Code, as amended (26 U.S.C. 5111, 5112, 5113, and 5114).

(b) *Manufacturer does not claim domestic drawback*—(1) *Submission of statement.* If no claim has been or will be filed with TTB for domestic drawback on medicinal preparations or flavoring extracts, the manufacturer must submit a statement, in duplicate, setting forth that fact to the Director, National Revenue Center, TTB.

(2) *Contents of the statement.* The statement must show the:

(i) Quantity and description of the exported products;

(ii) Identity of the alcohol used by serial number of package or tank car;

(iii) Name and registry number of the distilled spirits plant from which the alcohol was withdrawn;

(iv) Date of withdrawal;

(v) Serial number of the applicable record of tax determination (*see* 27 CFR 17.163(a) and 27 CFR 19.626(c)(7)); and

(vi) Drawback office where the claim will be filed.

(3) *Verification of receipt of the statement.* The Director, National Revenue Center, TTB, will verify receipt of this statement, and transmit a verification of receipt of the statement with a copy of that document to the drawback office designated.

§ 190.104 Alcohol and Tobacco Tax and Trade Bureau (TTB) certificates.

(a) *Request.* The drawback claimant or manufacturer must request that the Director, National Revenue Center, TTB, provide the CBP office where the drawback claim will be processed with a tax-paid certificate on TTB Form 5100.4 (Certificate of Tax-Paid Alcohol).

(b) *Contents.* The request must state the:

(1) Quantity of alcohol in proof gallons;

(2) Serial number of each package;

(3) Amount of tax paid on the alcohol;

(4) Name, registry number, and location of the distilled spirits plant;

(5) Date of withdrawal;

(6) Name of the manufacturer using the alcohol in producing the exported articles;

(7) Address of the manufacturer and its manufacturing plant; and

(8) Customs drawback office where the drawback claim will be processed.

(c) *Extract of TTB certificate.* If a certification of any portion of the alcohol described in the TTB Form 5100.4 is required for liquidation of drawback entries processed in another drawback office, the drawback office, on written application of the person who requested its issuance, will transmit a copy of the extract from the certificate for use at that drawback office. The drawback office will note that the copy of the extract was prepared and transmitted.

§ 190.105 Liquidation.

The drawback office will ascertain the final amount of drawback due by reference to the specific manufacturing drawback ruling under which the drawback claimed is allowable.

§ 190.106 Amount of drawback.

(a) *Claim filed with TTB.* If the declaration required by § 190.103(a) shows that a claim has been or will be filed with TTB for domestic drawback, drawback under § 313(d) of the Act, as amended (19 U.S.C. 1313(d)), will be limited to the difference between the amount of tax paid and the amount of domestic drawback claimed.

(b) *Claim not filed with TTB.* If the declaration and statement required by § 190.103(a) and (b) show that no claim has been or will be filed by the manufacturer with TTB for domestic drawback, the drawback will be the full amount of the tax on the alcohol used. Drawback under this provision may not be granted absent receipt from TTB of a copy of TTB Form 5100.4 (Certificate of Tax-Paid Alcohol) indicating that taxes have been paid on the exported product for which drawback is claimed.

(c) *No deduction of 1 percent.* No deduction of 1 percent may be made in drawback claims under § 313(d) of the Act, as amended (19 U.S.C. 1313(d)).

(d) *Payment.* The drawback due will be paid in accordance with § 190.81(f).

Subpart K—Supplies for Certain Vessels and Aircraft

§ 190.111 Drawback allowance.

Section 309 of the Act, as amended (19 U.S.C. 1309), provides for drawback on articles laden as supplies on certain vessels or aircraft of the United States or as supplies including equipment upon, or used in the maintenance or repair of, certain foreign vessels or aircraft.

§ 190.112 Procedure.

(a) *General.* The provisions of this subpart will override conflicting provisions of this part, such as the export procedures in § 190.72.

(b) *Notice of lading.* The drawback claimant must file with the drawback office a notice of lading.

(c) *Notice of lading.* In the case of drawback in connection with 19 U.S.C. 1309(b), the notice of lading must be filed within 5 years after the date of importation of the imported merchandise.

(d) *Contents of notice.* The notice of lading must show:

(1) The name of the vessel or identity of the aircraft on which articles were or are to be laden;

(2) The number and kind of packages and their marks and numbers;

(3) A description of the articles and their weight (net), gauge, measure, or number; and

(4) The name of the exporter.

(e) *Declaration of Master or other officer*—(1) *Requirement.* The master or an authorized representative of the vessel or aircraft having knowledge of the facts must provide the following declaration on the notice of lading ''I declare that the information given above is true and correct to the best of my knowledge and belief; that I have knowledge of the facts set forth herein; that the articles described in this notice of lading were received in the quantities stated, from the person, and on the date, indicated above; that said articles were laden on the vessel (or aircraft) named above for use on said vessel (or aircraft) as supplies (or equipment), except as noted below; and that at the time of lading of the articles, the said vessel (or aircraft) was engaged in the business or trade checked below: (It is not necessary for a foreign vessel to show its class of trade.).''

(2) *Filing.* The drawback claimant must file with the drawback office both the drawback entry and the notice of lading or separate document containing the declaration of the master or other officer or representative.

(f) *Information concerning class or trade.* Information about the class of business or trade of a vessel or aircraft is required to be furnished in support of the drawback entry if the vessel or aircraft is American.

(g) *Articles laden or installed on aircraft as equipment or used in the maintenance or repair of aircraft.* The drawback office where the drawback claim is filed will require a declaration or other evidence showing to its satisfaction that articles have been laden or installed on aircraft as equipment or used in the maintenance or repair of aircraft.

(h) *Fuel laden on vessels or aircraft as supplies*—(1) *Composite notice of lading.* In the case of fuel laden on vessels or aircraft as supplies, the drawback claimant may file with the drawback office a composite notice of lading for each calendar month. The composite notice of lading must describe all of the drawback claimant's deliveries of fuel supplies during the one calendar month at a single port or airport to all vessels or airplanes of one vessel owner or operator or airline. This includes fuel laden for flights or voyages between the contiguous United States and Hawaii, Alaska, or any U.S. possessions (*see* § 10.59 of this chapter).

(2) *Contents of composite notice.* Composite notice must show for each voyage or flight:

(i) The identity of the vessel or aircraft;

(ii) A description of the fuel supplies laden;

(iii) The quantity laden; and

(iv) The date of lading.

(3) *Declaration of owner or operator.* An authorized vessel or airline representative having knowledge of the facts must complete the ''Declaration of Master or other officer'' (see paragraph (e) of this section).

(i) *Desire to land articles covered by notice of lading.* The master of the vessel or commander of the aircraft desiring to land in the United States articles covered by a notice of lading must apply for a permit to land those articles under CBP supervision. All articles landed, except those transferred under the original notice of lading to another vessel or aircraft entitled to drawback, will be considered imported merchandise for the purpose of § 309(c) of the Act, as amended (19 U.S.C. 1309(c)).

Subpart L—Meats Cured With Imported Salt

§ 190.121 Drawback allowance.

Section 313(f) of the Act, as amended (19 U.S.C. 1313(f)), provides for the allowance of drawback upon the exportation of meats cured with imported salt.

§ 190.122 Procedure.

Other provisions of this part relating to direct identification manufacturing drawback will apply to claims for drawback under this subpart insofar as applicable to and not inconsistent with the provisions of this subpart.

§ 190.123 Refund of duties.

Drawback allowed under this subpart will be refunded in aggregate amounts of not less than $100 and will not be subject to the retention of 1 percent of duties paid.

Subpart M—Materials for Construction and Equipment of Vessels and Aircraft Built for Foreign Account and Ownership

§ 190.131 Drawback allowance.

Section 313(g) of the Act, as amended (19 U.S.C. 1313(g)), provides for drawback on imported materials used in the construction and equipment of vessels and aircraft built for foreign account and ownership, or for the government of any foreign country, notwithstanding that these vessels or aircraft may not be exported within the strict meaning of the term.

§ 190.132 Procedure.

Other provisions of this part relating to direct identification manufacturing drawback will apply to claims for drawback filed under this subpart insofar as applicable to and not inconsistent with the provisions of this subpart.

§ 190.133 Explanation of terms.

(a) *Materials.* Section 313(g) of the Act, as amended (19 U.S.C. 1313(g)), applies only to materials used in the original construction and equipment of vessels and aircraft, or to materials used in a ''major conversion,'' as defined in this section, of a vessel or aircraft. Section 313(g) does not apply to materials used for alteration or repair, or to materials not required for safe operation of the vessel or aircraft.

(b) *Foreign account and ownership.* Foreign account and ownership, as used in section 313(g) of the Act, as amended (19 U.S.C. 1313(g)), means only vessels or aircraft built or equipped for the account of an owner or owners residing in a foreign country and having a bona fide intention that the vessel or aircraft, when completed, will be owned and operated under the flag of a foreign country.

(c) *Major conversion.* For purposes of this subpart, a ''major conversion'' means a conversion that substantially changes the dimensions or carrying capacity of the vessel or aircraft, changes the type of the vessel or aircraft, substantially prolongs the life of the vessel or aircraft, or otherwise so changes the vessel or aircraft that it is essentially a new vessel or aircraft, as determined by CBP (*see* 46 U.S.C. 2101(14a)).

Subpart N—Foreign-Built Jet Aircraft Engines Processed in the United States

§ 190.141 Drawback allowance.

Section 313(h) of the Act, as amended (19 U.S.C. 1313(h)), provides for drawback on the exportation of jet aircraft engines manufactured or produced abroad that have been overhauled, repaired, rebuilt, or reconditioned in the United States with the use of imported merchandise, including parts.

§ 190.142 Procedure.

Other provisions of this part will apply to claims for drawback filed under this subpart insofar as applicable to and not inconsistent with the provisions of this subpart.

§ 190.143 Drawback entry.

(a) *Filing of entry.* Drawback entries covering these foreign-built jet aircraft engines must show that the entry covers jet aircraft engines processed under section 313(h) of the Act, as amended (19 U.S.C. 1313(h)).

(b) *Contents of entry.* The drawback entry must indicate the country in which each engine was manufactured and describe the processing performed thereon in the United States.

§ 190.144 Refund of duties.

Drawback allowed under this subpart will be refunded in aggregate amounts of not less than $100, and will not be subject to the deduction of 1 percent of duties paid.

Subpart O—Merchandise Exported From Continuous CBP Custody

§ 190.151 Drawback allowance.

(a) *Eligibility of entered or withdrawn merchandise*—(1) *Under 19 U.S.C. 1557(a).* Section 557(a) of the Act, as amended (19 U.S.C. 1557(a)), provides for drawback on the exportation to a foreign country, or the shipment to the Virgin Islands, American Samoa, Wake Island, Midway Islands, Kingman Reef, Johnston Island, or Guam, of merchandise upon which duties have been paid which has remained continuously in bonded warehouse or otherwise in CBP custody for a period not to exceed 5 years from the date of importation.

(2) *Under 19 U.S.C. 1313.* Imported merchandise that has not been regularly entered or withdrawn for consumption, will not satisfy any requirement for use, importation, exportation or destruction, and will not be available for drawback, under section 313 of the Act, as amended (19 U.S.C. 1313) (*see* 19 U.S.C. 1313(u)).

(b) *Guantanamo Bay.* Guantanamo Bay Naval Station will be considered foreign territory for drawback purposes under this subpart and merchandise shipped there is eligible for drawback. Imported merchandise which has remained continuously in bonded warehouse or otherwise in CBP custody since importation is not entitled to drawback of duty when shipped to Puerto Rico, Canton Island, Enderbury Island, or Palmyra Island.

§ 190.152 Merchandise released from CBP custody.

No remission, refund, abatement, or drawback of duty will be allowed under this subpart because of the exportation or destruction of any merchandise after its release from Government custody, except in the following cases:

(a) When articles are exported or destroyed on which drawback is expressly provided for by law;

(b) When prohibited articles have been regularly entered in good faith and are subsequently exported or destroyed pursuant to statute and regulations prescribed by the Secretary of the Treasury; or

(c) When articles entered under bond are destroyed within the bonded period, as provided in 19 U.S.C. 1557(c), or destroyed within the bonded period by death, accidental fire, or other casualty, and satisfactory evidence of destruction is furnished to CBP (*see* § 190.71), in which case any accrued duties will be remitted or refunded and any condition in the bond that the articles must be exported will be deemed satisfied (*see* 19 U.S.C. 1558).

§ 190.153 Continuous CBP custody.

(a) *Merchandise released under an importer's bond and returned.* Merchandise released to an importer under a bond prescribed by § 142.4 of this chapter and later returned to the public stores upon requisition of the appropriate CBP office will not be deemed to be in the continuous custody of CBP officers.

(b) *Merchandise released under Chapter 98, Subchapter XIII, Harmonized Tariff Schedule of the United States* (*HTSUS).* Merchandise released as provided for in Chapter 98, Subchapter XIII, HTSUS (19 U.S.C. 1202), will not be deemed to be in the continuous custody of CBP officers.

(c) *Merchandise released from warehouse.* For the purpose of this subpart, in the case of merchandise entered for warehouse, CBP custody will be deemed to cease when estimated duty has been deposited and the appropriate CBP office has authorized the withdrawal of the merchandise.

(d) *Merchandise not warehoused, examined elsewhere than in public stores*—(1) *General rule.* Except as stated in paragraph (d)(2) of this section, merchandise examined elsewhere than at the public stores, in accordance with the provisions of § 151.7 of this chapter, will be considered released from CBP custody upon completion of final examination for appraisement.

(2) *Merchandise upon the wharf.* Merchandise which remains on the wharf by permission of the appropriate CBP office will be considered to be in CBP custody, but this custody will be deemed to cease when the CBP officer in charge accepts the permit and has no other duties to perform relating to the merchandise, such as measuring, weighing, or gauging.

§ 190.154 Filing the entry.

(a) *Direct export.* At least 6 working hours before lading the merchandise on which drawback is claimed under this subpart, the importer or the agent designated by him or her in writing must file a direct export drawback entry.

(b) *Merchandise transported to another port for exportation.* The importer of merchandise to be transported to another port for exportation must file an entry naming the transporting conveyance, route, and port of exit. The drawback office will certify one copy and forward it to the CBP office at the port of exit. A bonded carrier must transport the merchandise in accordance with the applicable regulations. Manifests must be prepared and filed in the manner prescribed in § 144.37 of this chapter.

§ 190.155 Merchandise withdrawn from warehouse for exportation.

The regulations in part 18 of this chapter concerning the supervision of lading and certification of exportation of merchandise withdrawn from warehouse for exportation without payment of duty will be followed to the extent applicable.

§ 190.156 Bill of lading.

(a) *Filing.* In order to complete the claim for drawback under this subpart, a bill of lading covering the merchandise described in the drawback entry must be filed within 2 years after the merchandise is exported.

(b) *Contents.* The bill of lading must either show that the merchandise was shipped by the person making the claim or bear an endorsement of the person in whose name the merchandise was shipped showing that the person making the claim is authorized to do so.

(c) *Limitation of the bill of lading.* The terms of the bill of lading may limit and define its use by stating that it is for customs purposes only and not negotiable.

(d) *Inability to produce bill of lading.* When a required bill of lading cannot be produced, the person making the drawback entry may request the drawback office, within the time required for the filing of the bill of lading, to accept a statement setting forth the cause of failure to produce the bill of lading and such evidence of exportation and of that person's right to make the drawback entry as may be available. The request will be granted if the drawback office is satisfied by the evidence submitted that the failure to produce the bill of lading is justified, that the merchandise has been exported, and that the person making the drawback entry has the right to do so. If the drawback office is not so satisfied, such office will transmit the request and its accompanying evidence to the Office of Trade, CBP Headquarters, for final determination.

(e) *Extracts of bills of lading.* Drawback offices may issue extracts of bills of lading filed with drawback claims.

§ 190.157 [Reserved]

§ 190.158 Procedures.

When the drawback claim has been completed and the bill of lading filed, the reports of inspection and lading made, and the clearance of the exporting conveyance established by the record of clearance in the case of direct exportation or by certificate in the case of transportation and exportation, the drawback office will verify the importation by referring to the import records to ascertain the amount of duty paid on the merchandise exported. To the extent appropriate and not inconsistent with the provisions of this subpart, drawback entries will be liquidated in accordance with the provisions of § 190.81.

§ 190.159 Amount of drawback.

Drawback due under this subpart will not be subject to the deduction of 1 percent.

Subpart P—Distilled Spirits, Wines, or Beer Which Are Unmerchantable or Do Not Conform to Sample or Specifications

§ 190.161 Refund of taxes.

Section 5062(c), Internal Revenue Code, as amended (26 U.S.C. 5062(c)), provides for the refund, remission, abatement or credit to the importer of internal revenue taxes paid or determined incident to importation, upon the exportation, or destruction under CBP supervision, of imported distilled spirits, wines, or beer found after entry to be unmerchantable or not to conform to sample or specifications and which are returned to CBP custody.

§ 190.162 Procedure.

The export procedure will be the same as that provided in § 190.42 for rejected merchandise, except that the claimant must be the importer and must comply with all other provisions in this subpart.

§ 190.163 Documentation.

(a) *Entry.* A drawback entry must be filed to claim drawback under this subpart.

(b) *Documentation.* The drawback entry for unmerchantable merchandise must be accompanied by a certificate of the importer setting forth in detail the facts which cause the merchandise to be unmerchantable and any additional evidence that the drawback office requires to establish that the merchandise is unmerchantable.

§ 190.164 Return to CBP custody.

There is no time limit for the return to CBP custody of distilled spirits, wine, or beer subject to refund of taxes under the provisions of this subpart. The claimant must return the merchandise to CBP custody prior to exportation or destruction and claims are subject to the filing deadline set forth in 19 U.S.C. 1313(r)(1).

§ 190.165 No exportation by mail.

Merchandise covered by this subpart must not be exported by mail.

§ 190.166 Destruction of merchandise.

(a) *Action by the importer.* A drawback claimant who proposes to destroy rather than export the distilled spirits, wine, or beer must state that fact on the drawback entry.

(b) *Action by CBP.* Distilled spirits, wine, or beer returned to CBP custody at the place approved by the drawback office where the drawback entry was filed must be destroyed under the supervision of the CBP officer who will certify the destruction on CBP Form 7553.

§ 190.167 Liquidation.

No deduction of 1 percent of the internal revenue taxes paid or determined will be made in allowing entries under section 5062(c), Internal Revenue Code, as amended (26 U.S.C. 5062(c)).

§ 190.168 [Reserved]

Subpart Q—Substitution of Finished Petroleum Derivatives

§ 190.171 General; drawback allowance.

(a) *General.* Section 313(p) of the Act, as amended (19 U.S.C. 1313(p)), provides for drawback for duties, taxes, and fees paid on qualified articles (see definition below) which consist of either petroleum derivatives that are imported, duty-paid, and qualified for drawback under the unused merchandise drawback law (19 U.S.C. 1313(j)(1)), or petroleum derivatives that are manufactured or produced in the United States, and qualified for drawback under the manufacturing drawback law (19 U.S.C. 1313(a) or (b)).

(b) *Allowance of drawback.* Drawback may be granted under 19 U.S.C. 1313(p):

(1) In cases where there is no manufacture, upon exportation of the imported article, an article of the same kind and quality, or any combination thereof; or

(2) In cases where there is a manufacture or production, upon exportation of the manufactured or produced article, an article of the same kind and quality, or any combination thereof.

(c) *Calculation of drawback.* For drawback of finished petroleum derivatives pursuant to section 1313(p), the claimant is required to calculate the total amount of drawback due, for purposes of § 190.51(b), which will not exceed 99 percent of the allowable duties, taxes, and fees, subject to the following:

(1) *Per unit averaging calculation.* The amount of duties, taxes, and fees eligible for drawback is determined by per unit averaging, as defined in § 190.2, for any drawback claim based on 19 U.S.C. 1313(p) pursuant to the standards set forth in § 190.172(b) and without respect to the limitations set forth in subparagraphs (B) and (C) of 19 U.S.C. 1313(l).

(2) *Limitations.* The amount of duties, taxes, and fees eligible for drawback is not subject to the limitations set out in 19 U.S.C. 1313(p)(4) for unused merchandise claims (no manufacture) and manufacturing claims (see 190.173(e) and 190.174(f)).

(3) *Federal excise tax.* For purposes of drawback of internal revenue tax imposed under Chapters 32 and 38 (with the exception of Subchapter A of Chapter 38) of the Internal Revenue Code of 1986, as amended (IRC), drawback granted on the export of substituted merchandise will be limited to the amount of taxes paid (and not returned by refund, credit, or drawback) on the substituted merchandise.

§ 190.172 Definitions.

The following are definitions for purposes of this subpart only:

(a) *Qualified article. Qualified article* means an article described in headings 2707, 2708, 2709.00, 2710, 2711, 2712, 2713, 2714, 2715, 2901, and 2902, and subheadings 2903.21.00, 2909.19.14, 2917.36, 2917.39.04, 2917.39.15, 2926.10.00, 3811.21.00, and 3811.90.00, or 3901 through 3914 of the Harmonized Tariff Schedule of the United States (HTSUS). In the case of an article described in headings 3901 through 3914, the definition covers the article in its primary forms as provided in Note 6 to chapter 39 of the HTSUS.

(b) *Same kind and quality article. Same kind and quality article* means an article which is referred to under the same 8-digit classification of the HTSUS as the article to which it is compared.

(c) *Exported article. Exported article* means an article which has been exported and is a qualified article, an article of the same kind and quality as the qualified article, or any combination thereof.

§ 190.173 Imported duty-paid derivatives (no manufacture).

When the basis for drawback under 19 U.S.C. 1313(p) is imported duty-paid petroleum derivatives (that is, not articles manufactured under 19 U.S.C. 1313(a) or (b)), the requirements for drawback are as follows:

(a) *Imported duty-paid merchandise.* The imported duty-paid merchandise designated for drawback must be a ''qualified article'' as defined in § 190.172(a);

(b) *Exported article.* The exported article on which drawback is claimed must be an ''exported article'' as defined in § 190.172(c);

(c) *Exporter.* The exporter of the exported article must have either:

(1) Imported the qualified article in at least the quantity of the exported article; or

(2) Purchased or exchanged (directly or indirectly) from an importer an imported qualified article in at least the quantity of the exported article;

(d) *Time of export.* The exported article must be exported within 180 days after the date of entry of the designated imported duty-paid merchandise; and

(e) *Amount of drawback.* The amount of drawback payable may not exceed the amount of drawback which would be attributable to the imported qualified article under 19 U.S.C. 1313(j)(1) which serves as the basis for drawback.

§ 190.174 Derivatives manufactured under 19 U.S.C. 1313(a) or (b).

When the exported article which is the basis for a drawback claim under 19 U.S.C. 1313(p) is petroleum derivatives which were manufactured or produced in the United States and qualify for drawback under the manufacturing drawback law (19 U.S.C. 1313(a) or (b)), the requirements for drawback are as follows:

(a) *Merchandise.* The merchandise which is the basis for drawback under 19 U.S.C. 1313(p) must:

(1) Have been manufactured or produced as described in 19 U.S.C. 1313(a) or (b) from crude petroleum or a petroleum derivative; and

(2) Be a ''qualified article'' as defined in § 190.172(a);

(b) *Exported article.* The exported article on which drawback is claimed must be an ''exported article'' as defined in § 190.172(c);

(c) *Exporter.* The exporter of the exported article must have either:

(1) Manufactured or produced the qualified article in at least the quantity of the exported article; or

(2) Purchased or exchanged (directly or indirectly) from a manufacturer or producer described in 19 U.S.C. 1313(a) or (b) the qualified article in at least the quantity of the exported article;

(d) *Manufacture in specific facility.* The qualified article must have been manufactured or produced in a specific petroleum refinery or production facility which must be identified;

(e) *Time of export.* The exported article must be exported either:

(1) During the period provided for in the manufacturer's or producer's specific manufacturing drawback ruling (*see* § 190.8) in which the qualified article is manufactured or produced; or

(2) Within 180 days after the close of the period in which the qualified article is manufactured or produced; and

(f) *Amount of drawback.* The amount of drawback payable may not exceed the amount of drawback which would be attributable to the article manufactured or produced under 19 U.S.C. 1313(a) or (b) which serves as the basis for drawback.

§ 190.175 Drawback claimant; maintenance of records.

(a) *Drawback claimant.* A drawback claimant under 19 U.S.C. 1313(p) must be the exporter of the exported article, or the refiner, producer, or importer of either the qualified article or the exported article. Any of these persons may designate another person to file the drawback claim.

(b) *Transfer of merchandise*—(1) *General.* A drawback claimant under 19

U.S.C. 1313(p) must maintain records (which may be records kept in the normal cause of business) to support the receipt of transferred merchandise and the party transferring the merchandise must maintain records to demonstrate the transfer.

(2) *Article substituted for the qualified article.* (i) Subject to paragraph (b)(2)(iii) of this section, the manufacturer, producer, or importer of a qualified article may transfer to the exporter an article of the same kind and quality as the qualified article in a quantity not greater than the quantity of the qualified article.

(ii) Subject to paragraph (b)(2)(iii) of this section, any intermediate party in the chain of commerce leading to the exporter from the manufacturer, producer, or importer of a qualified article may also transfer to the exporter or to another intermediate party an article of the same kind and quality as the article purchased or exchanged from the prior transferor (whether the manufacturer, producer, importer, or another intermediate transferor) in a quantity not greater than the quantity of the article purchased or exchanged.

(iii) Under either paragraph (b)(2)(i) or (b)(2)(ii) of this section, the article transferred, regardless of its origin (imported, manufactured, substituted, or any combination thereof), will be the qualified article eligible for drawback for purposes of section 1313(p).

(c) *Maintenance of records.* The manufacturer, producer, importer, transferor, exporter and drawback claimant of the qualified article and the exported article must all maintain their appropriate records required by this part.

§ 190.176 Procedures for claims filed under 19 U.S.C. 1313(p).

(a) *Applicability.* The general procedures for filing drawback claims will be applicable to claims filed under 19 U.S.C. 1313(p) unless otherwise specifically provided for in this section.

(b) *Administrative efficiency, frequency of claims, and restructuring of claims.* The procedures regarding administrative efficiency, frequency of claims, and restructuring of claims (as applicable, see § 190.53) will apply to claims filed under this subpart.

(c) *Imported duty-paid derivatives* (*no manufacture).* When the basis for drawback under 19 U.S.C. 1313(p) is imported duty-paid petroleum (not articles manufactured under 19 U.S.C. 1313(a) or (b)), claims under this subpart may be paid and liquidated if:

(1) The claim is filed on the drawback entry; and

(2) The claimant provides a certification stating the basis (such as company records, or customer's written certification), for the information contained therein and certifying that:

(i) The exported merchandise was exported within 180 days of entry of the designated, imported merchandise;

(ii) The qualified article and the exported article are commercially interchangeable or both articles are subject to the same 8-digit HTSUS subheading number;

(iii) To the best of the claimant's knowledge, the designated imported merchandise, the qualified article and the exported article have not served and will not serve as the basis of any other drawback claim;

(iv) Evidence in support of the certification will be retained by the person providing the certification for 3 years after liquidation of the claim; and

(v) Such evidence will be available for verification by CBP.

(d) *Derivatives manufactured under 19 U.S.C. 1313(a) or (b).* When the basis for a claim for drawback under 19 U.S.C. 1313(p) is articles manufactured under 19 U.S.C. 1313(a) or (b), claims under this section may be paid and liquidated if:

(1) The claim is filed on the drawback entry;

(2) All documents required to be filed with a manufacturing claim under 19 U.S.C. 1313(a) or (b) are filed with the claim;

(3) The claim identifies the specific refinery or production facility at which the derivatives were manufactured or produced;

(4) The claim states the period of manufacture for the derivatives; and

(5) The claimant provides a certification stating the basis (such as company records or a customer's written certification), for the information contained therein and certifying that:

(i) The exported merchandise was exported during the manufacturing period for the qualified article or within 180 days after the close of that period;

(ii) The qualified article and the exported article are commercially interchangeable or both articles are classifiable under the same 8-digit HTSUS subheading number;

(iii) To the best of the claimant's knowledge, the designated imported merchandise, the qualified article and the exported article have not served and will not serve as the basis of any other drawback claim;

(iv) Evidence in support of the certification will be retained by the person providing the certification for 3 years after liquidation of the claim; and

(v) Such evidence will be available for verification by CBP.

Subpart R—Merchandise Transferred to a Foreign Trade Zone From Customs Territory

§ 190.181 Drawback allowance.

The fourth proviso of section 3 of the Foreign Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81c), provides that merchandise transferred to a foreign trade zone for the sole purpose of exportation, storage or destruction (except destruction of distilled spirits, wines, and fermented malt liquors), will be considered to be exported for the purpose of drawback, provided there is compliance with the regulations of this subpart.

§ 190.182 Zone-restricted merchandise.

Merchandise in a foreign trade zone for the purposes specified in § 190.181 will be given status as zone-restricted merchandise on proper application (*see* § 146.44 of this chapter).

§ 190.183 Articles manufactured or produced in the United States.

(a) *Procedure for filing documents.* Except as otherwise provided, the drawback procedures prescribed in this part must be followed when claiming drawback under this subpart on articles manufactured or produced in the United States with the use of imported or substituted merchandise, and on flavoring extracts or medicinal or toilet preparations (including perfumery) manufactured or produced with the use of domestic tax-paid alcohol.

(b) *Notice of transfer*—(1) *Evidence of export.* The notice of zone transfer on CBP Form 214 (Application for Foreign-Trade Zone Admission and/or Status Designation) or its electronic equivalent will be in place of the documents under subpart G of this part to establish the exportation.

(2) *Filing procedures.* The notice of transfer (CBP Form 214) will be filed not later than 3 years after the transfer of the articles to the zone. A notice filed after the transfer will state the foreign trade zone lot number.

(3) *Contents of notice.* Each notice of transfer must show the:

(i) Number and location of the foreign trade zone;

(ii) Number and kind of packages and their marks and numbers;

(iii) Description of the articles, including weight (gross and net), gauge, measure, or number; and

(iv) Name of the transferor.

(c) *Action of foreign trade zone operator.* After articles have been received in the zone, the zone operator must certify on a copy of the notice of

transfer (CBP Form 214) the receipt of the articles (*see* § 190.184(d)(2)) and forward the notice to the transferor or the person designated by the transferor. The transferor must verify that the notice has been certified before filing it with the drawback claim.

(d) *Drawback entries.* Drawback entries must indicate that the merchandise was transferred to a foreign trade zone. The ''Declaration of Exportation'' must be modified as follows:

Declaration of Transfer to a Foreign Trade Zone

I,_____(member of firm, officer representing corporation, agent, or attorney), of _____, declare that, to the best of my knowledge and belief, the particulars of transfer stated in this entry, the notices of transfer, and receipts are correct, and that the merchandise was transferred to a foreign trade zone for the sole purpose of exportation, destruction, or storage, not to be removed from the foreign trade zone for domestic consumption.

Dated: _____

_____

Transferor or agent

§ 190.184 Merchandise transferred from continuous CBP custody.

(a) *Procedure for filing claims.* The procedure described in subpart O of this part will be followed as applicable, for drawback on merchandise transferred to a foreign trade zone from continuous CBP custody.

(b) *Drawback entry.* Before the transfer of merchandise from continuous CBP custody to a foreign trade zone, the importer or a person designated in writing by the importer for that purpose must file with the drawback office a direct export drawback entry. CBP will notify the zone operator at the zone.

(c) *Certification by zone operator.* After the merchandise has been received in the zone, the zone operator must certify the receipt of the merchandise (*see* paragraph (d)(2) of this section) and notify the transferor or the person designated by the transferor. After executing the declaration provided for in paragraph (d)(3) of this section, the transferor must resubmit the drawback entry to the drawback office in place of the bill of lading required by § 190.156.

(d) *Modification of drawback entry*—(1) *Indication of transfer.* The drawback entry must include a certification to indicate that the merchandise is to be transferred to a foreign trade zone.

(2) *Endorsement.* The transferor or person designated by the transferor and the foreign trade zone operator must certify transfer to the foreign trade zone, with respect to the drawback entry, as follows:

Certification by Foreign Trade Zone Operator

The merchandise described in the entry was received from _____ on _____, 20____ in Foreign Trade Zone No. ____, (City and State)

Exceptions _____

(Name and title)

By _____

(Name of operator)

(3) *Transferor's declaration.* The transferor must declare, with respect to the drawback entry, as follows:

Transferor's Declaration

I, _____ _____, of the firm of _____, declare that the merchandise described in this entry was duly entered at the customhouse on arrival at this port; that the duties thereon have been paid as specified in this entry; and that it was transferred to Foreign Trade Zone No. ____, located at ____, (City and State) for the sole purpose of exportation, destruction, or storage, not to be removed from the foreign trade zone for domestic consumption. I further declare that to the best of my knowledge and belief, this merchandise is in the same quantity, quality, value, and package, unavoidable wastage and damage excepted, as it was at the time of importation; that no allowance nor reduction of duties has been made for damage or other cause except as specified in this entry; and that no part of the duties paid has been refunded by drawback or otherwise.

Dated: _____

Transferor

§ 190.185 Unused merchandise drawback and merchandise not conforming to sample or specification, shipped without consent of the consignee, found to be defective as of the time of importation, or returned after retail sale.

(a) *Procedure for filing claims.* The procedures described in subpart C of this part relating to unused merchandise drawback, and in subpart D of this part relating to rejected merchandise, must be followed with respect to drawback under this subpart for unused merchandise drawback and merchandise that does not conform to sample or specification, is shipped without consent of the consignee, or is found to be defective as of the time of importation.

(b) *Drawback entry.* Before transfer of the merchandise to a foreign trade zone, the importer or a person designated in writing by the importer for that purpose must file the drawback entry. CBP will notify the zone operator at the zone.

(c) *Certification by zone operator.* After the merchandise has been received in the zone, the zone operator at the zone must certify, with respect to the drawback entry, the receipt of the merchandise and notify the transferor or the person designated by the transferor. After executing the declaration provided for in paragraph (d)(3) of this section, the transferor must resubmit the drawback entry in place of the bill of lading required by § 190.156.

(d) *Modification of drawback entry*—(1) *Indication of transfer.* The drawback entry must indicate that the merchandise is to be transferred to a foreign trade zone.

(2) *Endorsement.* The transferor or person designated by the transferor and the foreign trade zone operator must certify transfer to the foreign trade zone, with respect to the drawback entry, as follows:

Certification by Foreign Trade Zone Operator

The merchandise described in this entry was received from _____ on _____, 20 ____, in Foreign Trade Zone No. ____, ____ (City and State).

Exceptions: _____

_____

(Name of operator)

By _____

(Name and title)

(3) *Transferor's declaration.* The transferor must certify, with respect to the drawback entry, as follows:

Transferor's Declaration

I, _____ of the firm of _____, declare that the merchandise described in the within entry was duly entered at the customhouse on arrival at this port; that the duties thereon have been paid as specified in this entry; and that it was transferred to Foreign Trade Zone No. ____, located at _____ (City and State) for the sole purpose of exportation, destruction, or storage, not to be removed from the foreign trade zone for domestic consumption. I further declare that to the best of my knowledge and belief, said merchandise is the same in quantity, quality, value, and package as specified in this entry; that no allowance nor reduction in duties has been made; and that no part of the duties paid has been refunded by drawback or otherwise.

Dated: _____

Transferor

§ 190.186 Person entitled to claim drawback.

The person named in the foreign trade zone operator's certification on the notice of transfer or the drawback entry, as applicable, will be considered to be the transferor. Drawback may be claimed by, and paid to, the transferor.

Subpart S—Drawback Compliance Program

§ 190.191 Purpose.

This subpart sets forth the requirements for the drawback compliance program in which claimants and other parties in interest, including customs brokers, may participate after being certified by CBP. Participation in the program is voluntary. Under the

program, CBP is required to inform potential drawback claimants and related parties clearly about their rights and obligations under the drawback law and regulations. Reduced penalties and/or warning letters may be issued once a party has been certified for the program, and is in general compliance with the appropriate procedures and requirements thereof.

§ 190.192 Certification for compliance program.

(a) *General.* A party may be certified as a participant in the drawback compliance program after meeting the core requirements established under the program, or after negotiating an alternative drawback compliance program suited to the needs of both the party and CBP. Certification requirements will take into account the size and nature of the party's drawback program, the type of drawback claims filed, and the volume of claims filed. Whether the party is a drawback claimant, a broker, or one that provides data and documentation on which a drawback claim is based, will also be considered.

(b) *Core requirements of program.* In order to be certified as a participant in the drawback compliance program or negotiated alternative drawback compliance program, the party must demonstrate that it:

(1) Understands the legal requirements for filing claims, including the nature of the records that are required to be maintained and produced and the time periods involved;

(2) Has in place procedures that explain the CBP requirements to those employees involved in the preparation of claims, and the maintenance and production of required records;

(3) Has in place procedures regarding the preparation of claims and maintenance of required records, and the production of such records to CBP;

(4) Has designated a dependable individual or individuals who will be responsible for compliance under the program, and maintenance and production of required records;

(5) Has in place a record maintenance program approved by CBP regarding original records, or if approved by CBP, alternative records or recordkeeping formats for other than the original records; and

(6) Has procedures for notifying CBP of variances in, or violations of, the drawback compliance program or other alternative negotiated drawback compliance program, and for taking corrective action when notified by CBP of violations and problems regarding such program.

(c) *Broker certification.* A customs broker may be certified as a participant in the drawback compliance program only on behalf of a given claimant (*see* § 190.194(b)). To do so, a customs broker who assists a claimant in filing for drawback must be able to demonstrate, for and on behalf of such claimant, conformity with the core requirements of the drawback compliance program as set forth in paragraph (b) of this section. The broker must ensure that the claimant has the necessary documentation and records to support the drawback compliance program established on its behalf, and that claims to be filed under the program are reviewed by the broker for accuracy and completeness.

§ 190.193 Application procedure for compliance program.

(a) *Who may apply.* Claimants and other parties in interest may apply for participation in the drawback compliance program. This includes any person, corporation or business entity that provides supporting information or documentation to one who files drawback claims, as well as customs brokers who assist claimants in filing for drawback. Program participants may further consist of importers, manufacturers or producers, agent-manufacturers, complementary recordkeepers, subcontractors, intermediate parties, and exporters.

(b) *Place of filing.* An application in letter format containing the information as prescribed in paragraphs (c) and (d) of this section may be submitted to any drawback office.

(c) *Letter of application; contents.* A party requesting certification to become a participant in the drawback compliance program must file with the drawback office a written application, signed by an authorized individual (*see* § 190.6(c)). The detail required in the application must take into account the size and nature of the applicant's drawback program, the type of drawback claims filed, and the dollar value and volume of claims filed. However, the application must contain at least the following information:

(1) Name of applicant, address, IRS number (with suffix), and the type of business in which engaged, as well as the name(s) of the individual(s) designated by the applicant to be responsible for compliance under the program;

(2) A description of the nature of the applicant's drawback program, including the type of drawback in which involved (such as, manufacturing, or unused or rejected merchandise), and the applicant's particular role(s) in the drawback claims process (such as claimant and/or importer, manufacturer or producer, agent-manufacturer, complementary recordkeeper, subcontractor, intermediate party (possessor or purchaser), or exporter (or destroyer)); and

(3) Size of applicant's drawback program. For example, if the applicant is a claimant, the number of claims filed over the previous 12-month period should be included, along with the number estimated to be filed over the next 12-month period, and the estimated amount of drawback to be claimed annually. Other parties should describe the extent to which they are involved in drawback activity, based upon their particular role(s) in the drawback process; for example, manufacturers should explain how much manufacturing they are engaged in for drawback, such as the quantity of drawback product produced on an annual basis.

(d) *Application package.* Along with the letter of application as prescribed in paragraph (c) of this section, the application package must include a description of how the applicant will ensure compliance with statutory and regulatory drawback requirements. This description may be in the form of a booklet or set forth otherwise. The description must include at least the following:

(1) The name and title of the official in the applicant's organization who is responsible for oversight of the applicant's drawback program, and the name and title, with mailing address and, if available, fax number and email address, of the person(s) in the applicant's organization responsible for the actual maintenance of the applicant's drawback program;

(2) If the applicant is a manufacturer and the drawback involved is manufacturing drawback, a copy of the letter of notification of intent to operate under a general manufacturing drawback ruling or the application for a specific manufacturing drawback ruling (*see* §§ 190.7 and 190.8), as appropriate;

(3) A description of the applicant's drawback recordkeeping program, including the retention period and method (for example, paper, and electronic);

(4) A list of the records that will be maintained, including at least sample import documents, sample export or destruction documents, sample inventory and transportation documents (if applicable), sample laboratory or other documents establishing the qualification of merchandise or articles for substitution under the drawback law

(if applicable), and sample manufacturing documents (if applicable);

(5) A description of the applicant's specific procedures for:

(i) How drawback claims are prepared (if the applicant is a claimant); and

(ii) How the applicant will fulfill any requirements under the drawback law and regulations applicable to its role in the drawback program;

(6) A description of the applicant's procedures for notifying CBP of variances in, or violations of, its drawback compliance program or negotiated alternative drawback compliance program, and procedures for taking corrective action when notified by CBP of violations or other problems in such program; and

(7) A description of the applicant's procedures for annual review to ensure that its drawback compliance program meets the statutory and regulatory drawback requirements and that CBP is notified of any modifications from the procedures described in this application.

§ 190.194 Action on application to participate in compliance program.

(a) *Review by drawback office*—(1) *General.* It is the responsibility of the drawback office to coordinate its decision making on the package with CBP Headquarters and other CBP offices as appropriate. CBP processing of the package will consist of the review of the information contained therein as well as any additional information requested (*see* paragraph (a)(2) of this section).

(2) *Criteria for CBP review.* The drawback office will review and verify the information submitted in and with the application. In order for CBP to evaluate the application, CBP may request additional information (including additional sample documents) and/or explanations of any of the information provided for in § 190.193(c) and (d). Based on the information submitted on and with the application and any information so requested, and based on the applicant's record of transactions with CBP, the drawback office will approve or deny the application. The criteria to be considered in reviewing the applicant's record with CBP will include (as applicable):

(i) The presence or absence of unresolved customs charges (duties, taxes, fees, or other debts owed CBP);

(ii) The accuracy of the claimant's past drawback claims; and

(iii) Whether accelerated payment of drawback or waiver of prior notice of intent to export was previously revoked or suspended.

(b) *Approval.* Certification as a participant in the drawback compliance program will be given to applicants whose applications are approved under the criteria in paragraph (a)(2) of this section. The drawback office will give written notification to an applicant of its certification as a participant in the drawback compliance program. A customs broker obtaining certification for a drawback claimant will be sent written notification on behalf of such claimant, with a copy of the notification also being sent to the claimant.

(c) *Benefits of participation in program.* When a party that has been certified as a participant in the drawback compliance program and is generally in compliance with the appropriate procedures and requirements of the program commits a violation of 19 U.S.C. 1593a(a) (*see* § 190.62(b)), CBP will, in the absence of fraud or repeated violations, and in lieu of a monetary penalty as otherwise provided under section 1593a, issue a written notice of the violation to the party. Repeated violations by a participant, including a customs broker, may result in the issuance of penalties and the removal of certification under the program until corrective action, satisfactory to CBP, is taken.

(d) *Denial.* If certification as a participant in the drawback compliance program is denied, the applicant will be given written notice by the drawback office, specifying the grounds for such denial, together with any action that may be taken to correct the perceived deficiencies, and informing the applicant that such denial may be appealed to the drawback office that issued the notice of denial and then appealed to CBP Headquarters.

(e) *Certification removal*—(1) *Grounds for removal.* The certification for participation in the drawback compliance program by a party may be removed when any of the following conditions are discovered:

(i) The certification privilege was obtained through fraud or mistake of fact;

(ii) The program participant is no longer in compliance with the customs laws and CBP regulations, including the requirements set forth in § 190.192;

(iii) The program participant has repeatedly filed false drawback claims or false or misleading documentation or other information relating to such claims; or

(iv) The program participant is convicted of any felony or has committed acts which would constitute a misdemeanor or felony involving theft, smuggling, or any theft-connected crime.

(2) *Removal procedure.* If CBP determines that the certification of a program participant should be removed, the drawback office will send the program participant a written notice of the removal. Such notice will inform the program participant of the grounds for the removal and will advise the program participant of its right to file an appeal of the removal in accordance with paragraph (f) of this section.

(3) *Effect of removal.* The removal of certification will be effective immediately in cases of willfulness on the part of the program participant or when required by public health, interest, or safety. In all other cases, the removal of certification will be effective when the program participant has received notice under paragraph (e)(2) of this section and either no appeal has been filed within the time limit prescribed in paragraph (f)(2) of this section or all appeal procedures have been concluded by a decision that upholds the removal action. Removal of certification may subject the affected person to penalties.

(f) *Appeal of certification denial or removal*—(1) *Appeal of certification denial.* A party may challenge a denial of an application for certification as a participant in the drawback compliance program by filing a written appeal, within 30 days of issuance of the notice of denial, with the drawback office. A denial of an appeal may itself be appealed to CBP Headquarters, Trade Policy and Programs, Office of Trade, within 30 days after issuance of the drawback office's appeal decision. This office will review the appeal and will respond with a written decision within 30 days after receipt of the appeal unless circumstances require a delay in issuance of the decision. If the decision cannot be issued within the 30-day period, the office will advise the appellant of the reasons for the delay and of any further actions which will be carried out to complete the appeal review and of the anticipated date for issuance of the appeal decision.

(2) *Appeal of certification removal.* A party who has received a CBP notice of removal of certification for participation in the drawback compliance program may challenge the removal by filing a written appeal, within 30 days after issuance of the notice of removal, with the drawback office. A denial of an appeal may itself be appealed to CBP Headquarters, Trade Policy and Programs, Office of Trade, within 30 days after issuance of the drawback office's appeal decision. This office will consider the allegations upon which the removal was based and the responses made to those allegations by the

appellant and will render a written decision on the appeal within 30 days after receipt of the appeal.

§ 190.195 Combined application for certification in drawback compliance program and waiver of prior notice and/or approval of accelerated payment of drawback.

An applicant for certification in the drawback compliance program may also, in the same application, apply for waiver of prior notice of intent to export or destroy and accelerated payment of drawback, under subpart I of this part. Alternatively, an applicant may separately apply for certification in the drawback compliance program and either or both waiver of prior notice and accelerated payment of drawback. In the former instance, the intent to apply for certification and waiver of prior notice and/or approval of accelerated payment of drawback must be clearly stated. In all instances, all of the requirements for certification and the procedure applied for must be met (for example, in a combined application for certification in the drawback compliance program and both procedures, all of the information required for certification and each procedure, all required sample documents for certification and each procedure, and all required certifications must be included with the application).

Appendix A to Part 190—General Manufacturing Drawback Rulings

Table of Contents

I. General Instructions

A. There follow various general manufacturing drawback rulings which have been designed to simplify drawback procedures. Any person that can comply with the conditions of any one of these rulings may notify a CBP drawback office of its intention to operate under the ruling (*see* § 190.7). The letter of notification must be sent, electronically, to the drawback offices at the below listed email accounts:

NewYorkDrawback@cbp.dhs.gov
SanFranciscoDrawback@cbp.dhs.gov
HoustonDrawback@cbp.dhs.gov
ChicagoDrawback@cbp.dhs.gov.

Such letter of notification must include the following information:

1. Name and address of manufacturer or producer;

2. IRS (Internal Revenue Service) number (with suffix) of manufacturer or producer;

3. Location[s] of factory[ies] which will operate under the general ruling;

4. If a business entity, names of persons who will sign drawback documents (*see* § 190.6);

5. Identity (by T.D. number and title, as stated in this Appendix) of general manufacturing drawback ruling under which the manufacturer or producer intends to operate;

6. Description of the merchandise and articles, unless specifically described in the general manufacturing drawback ruling, and 8-digit HTSUS subheading number, and the quantity of the merchandise;

7. Only for General Manufacturing Drawback Ruling Under 19 U.S.C. 1313(b) for Petroleum or Petroleum Derivatives, the name of each article to be exported or, if the identity of the product is not clearly evident by its name, what the product is, and the abstract period to be used for each refinery (monthly or other specified period (not to exceed 1 year)), subject to the conditions in the General Manufacturing Drawback Ruling Under 19 U.S.C. 1313(b) for Petroleum or Petroleum Derivatives, I. Procedures and Records Maintained, 4(a) or (b);

8. Basis of claim used for calculating drawback; and

9. Description of the manufacturing or production process, unless specifically described in the general manufacturing drawback ruling.

For the General Manufacturing Drawback Ruling under § 1313(a), the General Manufacturing Drawback Ruling Under 19 U.S.C. 1313(b) for Component Parts, and the General Manufacturing Drawback Ruling Under 19 U.S.C. 1313(a) or 1313(b) for Agents, if the drawback office has doubts as to whether there is a manufacture or production, as defined in § 190.2, the manufacturer or producer will be asked to provide details of the operation purported to be a manufacture or production.

10. For the General Manufacturing Drawback Ruling where substituted merchandise will be used, include the bill of materials, and/or formulas annotated with the 8-digit HTSUS classifications.

B. These general manufacturing drawback rulings supersede general ''contracts'' previously published under the following Treasury Decisions (T.D.s): 81–74, 81–92, 81–181, 81–234, 81–300, 83–53, 83–59, 83–73, 83–77, 83–80, 83–84, 83–123, 84–49, and 85–110.

Anyone currently operating under any of the above-listed Treasury Decisions will automatically be covered by the superseding general ruling, including all privileges of the previous ''contract''.

II. General Manufacturing Drawback Ruling Under 19 U.S.C. 1313(a) (T.D. 81–234; T.D. 83–123)

A. Imported Merchandise or Drawback Products[1] *Used*

Imported merchandise or drawback products are used in the manufacture of the exported articles upon which drawback claims will be based.

B. Exported Articles on Which Drawback Will Be Claimed

Exported articles on which drawback will be claimed must be manufactured in the United States using imported merchandise or drawback products.

C. General Statement

The manufacturer or producer manufactures or produces for its own account. The manufacturer or producer may manufacture or produce articles for the account of another or another manufacturer or producer may manufacture or produce for the account of the manufacturer or producer under contract within the principal and agency relationship outlined in T.D.s 55027(2) and 55207(1) (*see* § 190.9).

D. Process of Manufacture or Production

The imported merchandise or drawback products will be used to manufacture or produce articles in accordance with § 190.2.

E. Multiple Products

1. Relative Values

Drawback law mandates the assignment of relative values when two or more products necessarily are produced concurrently in the same operation. If multiple products are produced records, which may include records kept in the normal course of business, will be maintained of the market value of each product at the time it is first separated in the manufacturing process.

2. Appearing-In Method

The appearing-in basis may not be used if multiple products are produced.

F. Loss or Gain

Records, which may include records kept in the normal course of business, will be maintained showing the extent of any loss or

[1] Drawback products are those produced in the United States in accordance with the drawback law and regulations.

gain in net weight or measurement of the imported merchandise, caused by atmospheric conditions, chemical reactions, or other factors.

G. [Reserved]

H. Stock in Process

Stock in process does not result; or if it does result, details will be given in claims as filed, and it will not be included in the computation of the merchandise used to manufacture the finished articles on which drawback is claimed.

I. Waste

No drawback is payable on any waste which results from the manufacturing operation. Unless the claim for drawback is based on the quantity of merchandise appearing in the exported articles, records will be maintained to establish the value, quantity, and disposition of any waste that results from manufacturing the exported articles. If no waste results, records will be maintained to establish that fact.

J. Procedures and Records Maintained

Records, which may include records kept in the normal course of business, will be maintained to establish:

1. That the exported articles on which drawback is claimed were produced with the use of the imported merchandise, and

2. The quantity of imported merchandise [2] used in producing the exported articles.

(To obtain drawback the claimant must establish that the completed articles were exported within 5 years after importation of the imported merchandise. Records establishing compliance with these requirements must be available for audit by CBP during business hours. Drawback is not payable without proof of compliance).

K. Inventory Procedures

The inventory records of the manufacturer or producer must show how the drawback recordkeeping requirements set forth in 19 U.S.C. 1313(a) and part 190 of the CBP Regulations will be met, as discussed under the heading Procedures and Records Maintained. If those records do not establish satisfaction of all legal requirements, drawback cannot be paid.

L. Basis of Claim for Drawback

Drawback will be claimed on the full quantity of merchandise used in producing the exported articles only if there is no waste or valueless or unrecovered waste in the manufacturing operation. A drawback claim may be based on the quantity of eligible merchandise that appears in the exported articles, regardless of whether there is waste, and no records of waste need be maintained. If there is valuable waste recovered from the manufacturing operation and records are kept which show the quantity and value of the waste, drawback may be claimed on the quantity of eligible material used to produce the exported articles less the amount of that merchandise which the value of the waste would replace.

[2] If claims are to be made on an ''appearing in'' basis, the remainder of the sentence should read ''appearing in the exported articles.''

M. General Requirements

The manufacturer or producer must:

1. Comply fully with the terms of this general ruling when claiming drawback;

2. Open its factory and records for examination at all reasonable hours by authorized Government officers;

3. Keep its drawback related records and supporting data for at least 3 years from the date of liquidation of any drawback claim predicated in whole or in part upon this general ruling;

4. Keep its letter of notification of intent to operate under this general ruling current by reporting promptly to the drawback office which liquidates its claims any changes in the information required by the General Instructions of this Appendix (I. General Instructions, 1 through 10), the corporate name, or corporate organization by succession or reincorporation;

5. Keep a copy of this general ruling on file for ready reference by employees and require all officials and employees concerned to familiarize themselves with the provisions of this general ruling; and

6. Issue instructions to insure proper compliance with title 19, United States Code, section 1313, part 190 of the CBP Regulations and this general ruling.

III. General Manufacturing Drawback Ruling Under 19 U.S.C. 1313(a) or 1313(b) for Agents (T.D. 81–181)

Manufacturers or producers operating under this general manufacturing drawback ruling must comply with T.D.s 55027(2) and 55207(1), and 19 U.S.C. 1313(b), if applicable, as well as 19 CFR part 190 (*see* particularly, § 190.9).

A. Name and Address of Principal

B. Process of Manufacture or Production

The imported merchandise or drawback products or other substituted merchandise will be used to manufacture or produce articles in accordance with § 190.2.

C. Procedures and Records Maintained

Records, which may include records kept in the normal course of business, will be maintained to establish:

1. Quantity, identity, and 8-digit HTSUS subheading number of merchandise transferred from the principal to the agent;

2. Date of transfer of the merchandise from the principal to the agent;

3. Date of manufacturing or production operations performed by the agent;

4. Total quantity and description of merchandise (including 8-digit HTSUS subheading number) appearing in or used in manufacturing or production operations performed by the agent;

5. Total quantity and description of articles (including 8-digit HTSUS subheading number) produced in manufacturing or production operations performed by the agent;

6. Quantity, identity, and 8-digit HTSUS subheading number of articles transferred from the agent to the principal; and

7. Date of transfer of the articles from the agent to the principal.

D. General Requirements

The manufacturer or producer will:

1. Comply fully with the terms of this general ruling when manufacturing or producing articles for account of the principal under the principal's general manufacturing drawback ruling or specific manufacturing drawback ruling, as appropriate;

2. Open its factory and records for examination at all reasonable hours by authorized Government officers;

3. Keep its drawback related records and supporting data for at least 3 years from the date of liquidation of any drawback claim predicated in whole or in part upon this general ruling;

4. Keep its letter of notification of intent to operate under this general ruling current by reporting promptly to the drawback office which liquidates the claims any changes in the information required by the General Instructions of this Appendix (I. General Instructions, 1 through 10), the corporate name, or corporate organization by succession or reincorporation;

5. Keep a copy of this general ruling on file for ready reference by employees and require all officials and employees concerned to familiarize themselves with the provisions of this general ruling; and

6. Issue instructions to help ensure proper compliance with title 19, United States Code, section 1313, part 190 of the CBP Regulations and this general ruling.

IV. General Manufacturing Drawback Ruling Under 19 U.S.C. 1313(a) for Burlap or Other Textile Material (T.D. 83–53)

Drawback may be allowed under 19 U.S.C. 1313(a) upon the exportation of bags or meat wrappers manufactured with the use of imported burlap or other textile material, subject to the following special requirements:

A. Imported Merchandise or Drawback Products [1] Used

Imported merchandise or drawback products (burlap or other textile material) are used in the manufacture of the exported articles upon which drawback claims will be based.

B. Exported Articles on Which Drawback Will Be Claimed

Exported articles on which drawback will be claimed must be manufactured in the United States using imported merchandise or drawback products.

C. General Statement

The manufacturer or producer manufactures or produces for its own account. The manufacturer or producer may manufacture or produce articles for the account of another, or another manufacturer or producer may manufacture or produce for the account of the manufacturer or producer under contract within the principal and agency relationship outlined in T.D.s 55027(2) and 55207(1) (*see* § 190.9).

[1] Drawback products are those produced in the United States in accordance with the drawback law and regulations.

D. Process of Manufacture or Production

The imported merchandise or drawback products will be used to manufacture or produce articles in accordance with § 190.2.

E. Multiple Products

Not applicable.

F. Loss or Gain

Not applicable.

G. Waste

No drawback is payable on any waste which results from the manufacturing operation. Unless the claim for drawback is based on the quantity of merchandise appearing in the exported articles, records will be maintained to establish the value, quantity, and disposition of any waste that results from manufacturing the exported articles. If no waste results, records will be maintained to establish that fact.

H. Procedures and Records Maintained

Records, which may include records kept in the normal course of business, will be maintained to establish:

1. That the exported articles on which drawback is claimed were produced with the use of the imported merchandise; and

2. The quantity of imported merchandise [2] used in producing the exported articles.

To obtain drawback, the claimant must establish that the completed articles were exported within 5 years after importation of the imported merchandise. Records establishing compliance with these requirements will be available for audit by CBP during business hours. Drawback is not payable without proof of compliance.

I. Inventory Procedures

The inventory records of the manufacturer or producer must show how the drawback recordkeeping requirements set forth in 19 U.S.C. 1313(a) and part 190 of the CBP Regulations will be met, as discussed under the heading ''Procedures and Records Maintained''. If those records do not establish compliance with all legal requirements, drawback cannot be paid. Each lot of imported material received by a manufacturer or producer must be given a lot number and kept separate from other lots until used. The records of the manufacturer or producer must show, as to each manufacturing lot or period of manufacture, the 8-digit HTSUS classification, the quantity of material used from each imported lot, and the number of each kind and size of bags or meat wrappers obtained.

All bags or meat wrappers manufactured or produced for the account of the same exporter during a specified period may be designated as one manufacturing lot. All exported bags or meat wrappers must be identified by the exporter.

J. Basis of Claim for Drawback

Drawback will be claimed on the quantity of merchandise used in producing the exported articles only if there is no waste or valueless or unrecovered waste in the manufacturing operation. Drawback may be claimed on the quantity of eligible merchandise that appears in the exported articles, regardless of whether there is waste, and no records of waste need be maintained. If there is valuable waste recovered from the manufacturing operation, and records are kept which establish the quantity and value of the waste, drawback may be claimed on the quantity of eligible material used to produce the exported articles, less the amount of that merchandise which the value of the waste would replace.

K. General Requirements

The manufacturer or producer must:

1. Comply fully with the terms of this general ruling when claiming drawback;

2. Open its factory and records for examination at all reasonable hours by authorized Government officers;

3. Keep its drawback related records and supporting data for at least 3 years from the date of liquidation of any drawback claim predicated in whole or in part upon this general ruling;

4. Keep its letter of notification of intent to operate under this general ruling current by reporting promptly to the drawback office which liquidates its claims any changes in the information required by the General Instructions of this Appendix (I. General Instructions, 1 through 10), the corporate name, or corporate organization by succession or reincorporation.

5. Keep a copy of this general ruling on file for ready reference by employees and require all officials and employees concerned to familiarize themselves with the provisions of this general ruling; and

6. Issue instructions to help ensure proper compliance with 19, United States Code, § 1313, part 190 of the CBP Regulations and this general ruling.

V. General Manufacturing Drawback Ruling Under 19 U.S.C. 1313(b) for Component Parts (T.D. 81–300)

A. Same 8-Digit HTSUS Classification (Parallel Columns)

Imported merchandise or drawback products [1] to be designated as the basis for drawback on the exported products.	Duty-paid, duty-free, or domestic merchandise classifiable under the same 8-digit HTSUS subheading number as that designated which will be used in the production of the exported products.
Component parts identified by individual part numbers and 8-digit HTSUS subheading number.	Component parts classifiable under the same 8-digit HTSUS subheading number and identified with the same individual part numbers as those in the column immediately to the left.

The designated components must be manufactured in accordance with the same specifications and from the same materials, and must be identified by the same 8-digit HTSUS classification and part number as the substituted components. Further, the designated and substituted components are used interchangeably in the manufacture of the exported articles upon which drawback will be claimed. Specifications or drawings will be maintained and made available for review by CBP Officials.

B. Exported Articles on Which Drawback Will Be Claimed

The exported articles will have been manufactured in the United States using components described in the Parallel Columns above.

C. General Statement

The manufacturer or producer manufactures or produces for its own account. The manufacturer or producer may manufacture or produce articles for the account of another or another manufacturer or producer may manufacture or produce for the account of the manufacturer or producer under contract within the principal and agency relationship outlined in T.D.s 55027(2) and 55207(1) (*see* § 190.9).

D. Process of Manufacture or Production

The components described in the Parallel Columns will be used to manufacture or produce articles in accordance with § 190.2.

E. Multiple Products

Not applicable.

F. Waste

No drawback is payable on any waste which results from the manufacturing operation. Unless the claim for drawback is based on the quantity of components appearing in the exported articles, records will be maintained to establish the value (or the lack of value), quantity, and disposition of any waste that results from manufacturing the exported articles. If no waste results, records will be maintained to establish that fact.

G. [Reserved]

H. Procedures and Records Maintained

Records, which may include records kept in the normal course of business, will be maintained to establish:

1. The identity and 8-digit HTSUS classification of the designated merchandise;

[2] If claims are to be made on an ''appearing in'' basis, the remainder of the sentence should read ''appearing in the exported articles.''

[1] Drawback products are those produced in the United States in accordance with the drawback law and regulations. Such products have ''dual status'' under section 1313(b). They may be designated as the basis for drawback and also may be deemed to be domestic merchandise.

2. The quantity of merchandise classifiable under the same 8-digit HTSUS classification as the designated merchandise [2] used to produce the exported articles;

3. That, within 5 years after the date of importation of the designated merchandise, the manufacturer or producer used the merchandise to produce articles. During the same 5-year period, the manufacturer or producer produced [3] the exported articles. To obtain drawback the claimant must establish that the completed articles were exported within 5 years after the importation of the imported merchandise. Records establishing compliance with these requirements will be available for audit by CBP during business hours. Drawback is not payable without proof of compliance.

I. Inventory Procedures

The inventory records of the manufacturer or producer must show how the drawback recordkeeping requirements set forth in 19 U.S.C. 1313(b) and part 190 of the CBP Regulations will be met, as discussed under the heading ''Procedures and Records Maintained''. If those records do not establish satisfaction of all legal requirements, drawback cannot be paid.

J. Basis of Claim for Drawback

Drawback will be claimed on the quantity of eligible components used in producing the exported articles only if there is no waste or valueless or unrecovered waste in the manufacturing operation. Drawback may be claimed on the quantity of eligible components that appear in the exported articles, regardless of whether there is waste, and no records of waste need be maintained. If there is valuable waste recovered from the manufacturing operation and records are kept which show the quantity and value of the waste, drawback may be claimed on the quantity of eligible components used to produce the exported articles less the amount of those components which the value of the waste would replace.

K. General Requirements

The manufacturer or producer will:

1. Comply fully with the terms of this general ruling when claiming drawback;

2. Open its factory and records for examination at all reasonable hours by authorized Government officers;

3. Keep its drawback related records and supporting data for at least 3 years from the date of liquidation of any drawback claim predicated in whole or in part upon this general ruling;

4. Keep its letter of notification of intent to operate under this general ruling current by reporting promptly to the drawback office which liquidates its claims any changes in the information required by the General Instructions of this Appendix (I. General Instructions, 1 through 10), the corporate name, or corporate organization by succession or reincorporation;

5. Keep a copy of this general ruling on file for ready reference by employees and require all officials and employees concerned to familiarize themselves with the provisions of this general ruling; and

6. Issue instructions to insure proper compliance with title 19, United States Code, section 1313, part 190 of the CBP Regulations and this general ruling.

VI. General Manufacturing Drawback Ruling Under 19 U.S.C. 1313(a) for Flaxseed (T.D. 83–80)

Drawback may be allowed under the provision of 19 U.S.C. 1313(a) upon the exportation of linseed oil, linseed oil cake, and linseed oil meal, manufactured or produced with the use of imported flaxseed, subject to the following special requirements:

A. Imported Merchandise or Drawback Products [1] Used

Imported merchandise or drawback products (flaxseed) are used in the manufacture of the exported articles upon which drawback claims will be based.

B. Exported Articles on Which Drawback Will Be Claimed

Exported articles on which drawback will be claimed must be manufactured in the United States using imported merchandise or drawback products.

C. General Statement

The manufacturer or producer manufactures or produces for its own account. The manufacturer or producer may manufacture or produce articles for the account of another or another manufacturer or producer may manufacture or produce for the account of the manufacturer or producer under contract within the principal and agency relationship outlined in T.D.s 55027(2) and 55207(1) (*see* § 190.9).

D. Process of Manufacture or Production

The imported merchandise or drawback products will be used to manufacture or produce articles in accordance with § 190.2.

E. Multiple Products

Drawback law mandates the assignment of relative values when two or more products necessarily are produced concurrently in the same operation. If multiple products are produced records will be maintained of the market value of each product at the time it is first separated in the manufacturing process (when a claim covers a manufacturing period, the entire period covered by the claim is the time of separation of the products and the value per unit of product is the market value for the period (*see* §§ 190.2, 190.22(e)). The ''appearing in'' basis may not be used if multiple products are produced.

F. Loss or Gain

Records will be maintained showing the extent of any loss or gain in net weight or measurement of the imported merchandise, caused by atmospheric conditions, chemical reactions, or other factors.

G. Waste

No drawback is payable on any waste which results from the manufacturing operation. Unless the claim for drawback is based on the quantity of merchandise appearing in the exported articles, records will be maintained to establish the value, quantity, and disposition of any waste that results from manufacturing the exported articles. If no waste results, records will be maintained to establish that fact.

H. Procedures and Records Maintained

Records, which may include records kept in the normal course of business, will be maintained to establish:

1. That the exported articles on which drawback is claimed were produced with the use of the imported merchandise; and

2. The quantity of imported merchandise [2] used in producing the exported articles.

To obtain drawback the claimant must establish that the completed articles were exported within 5 years after importation of the imported merchandise. Records establishing compliance with these requirements will be available for audit by CBP during business hours. Drawback is not payable without proof of compliance.

I. Inventory Procedures

The inventory records of the manufacturer or producer must show how the drawback recordkeeping requirements set forth in 19 U.S.C. 1313(a) and part 190 of the CBP Regulations will be met, as discussed under the heading ''Procedures and Records Maintained''. If those records do not establish satisfaction of all legal requirements, drawback cannot be paid.

The inventory records of the manufacturer or producer will show: The inclusive dates of manufacture; the quantity, identity, value, and 8-digit HTSUS classification of the imported flaxseed or screenings, scalpings, chaff, or scourings used; the quantity by actual weight and value, if any, of the material removed from the foregoing by screening prior to crushing; the quantity and kind of domestic merchandise added, if any; the quantity by actual weight or gauge and value of the oil, cake, and meal obtained; and the quantity and value, if any, of the waste incurred. The quantity of imported flaxseed, screenings, scalpings, chaff, or scourings used or of material removed will not be estimated nor computed on the basis of the quantity of finished products obtained, but will be determined by actually weighing the said flaxseed, screenings, scalpings, chaff, scourings, or other material; or, at the option of the crusher, the quantities of imported materials used may be determined from CBP weights, as shown by the import entry covering such imported materials, and the Government weight certificate of analysis issued at the time of entry. The entire period covered by an abstract will be deemed the time of separation of the oil and cake covered thereby.

If the records of the manufacturer or producer do not show the quantity of oil cake

[2] If claims are to be made on an ''appearing in'' basis, the remainder of this sentence should read ''appearing in the exported articles produced.''

[3] The date of production is the date an article is completed.

[1] Drawback products are those produced in the United States in accordance with the drawback law and regulations.

[2] If claims are to be made on an ''appearing in'' basis, the remainder of the sentence should read ''appearing in the exported articles.''

used in the manufacture or production of the exported oil meal, and the quantity of oil meal obtained, the net weight of the oil meal exported will be regarded as the weight of the oil cake used in the manufacture thereof.

If various tanks are used for the storage of imported flaxseed, the mill records must establish the tank or tanks in which each lot or cargo is stored. If raw or processed oil manufactured or produced during different periods of manufacture is intermixed in storage, a record must be maintained showing the quantity, identity, and 8-digit HTSUS classification of oil so intermixed. The identity of the merchandise or articles in either instance must be in accordance with § 190.14.

J. Basis of Claim for Drawback

Drawback will be claimed on the quantity of merchandise used in producing the exported articles only if there is no waste or valueless or unrecovered waste in the manufacturing operation. Drawback may be claimed on the quantity of eligible merchandise that appears in the exported articles, regardless of whether there is waste, and no records of waste need be maintained. If there is valuable waste recovered from the manufacturing operation and records are kept which show the quantity and value of the waste, drawback may be claimed on the quantity of eligible material used to produce the exported articles, less the amount of that merchandise which the value of the waste would replace.

K. General Requirements

The manufacturer or producer will:

1. Comply fully with the terms of this general ruling when claiming drawback;

2. Open its factory and records for examination at all reasonable hours by authorized Government officers;

3. Keep its drawback related records and supporting data for at least 3 years from the date of liquidation of any drawback claim predicated in whole or in part upon this general ruling;

4. Keep its letter of notification of intent to operate under this general ruling current by reporting promptly to the drawback office which liquidates its claims any changes in the information required by the General Instructions of this Appendix (I. General Instructions, 1 through 10), the corporate name, or corporate organization by succession or reincorporation.

5. Keep a copy of this general ruling on file for ready reference by employees and require all officials and employees concerned to familiarize themselves with the provisions of this general ruling; and

6. Issue instructions to insure proper compliance with 19, United States Code, § 1313, part 190 of the CBP Regulations and this general ruling.

VII. General Manufacturing Drawback Ruling Under 19 U.S.C. 1313(a) for Fur Skins or Fur Skin Articles (T.D. 83–77)

Drawback may be allowed under 19 U.S.C. 1313(a) upon the exportation of dressed, redressed, dyed, redyed, bleached, blended, or striped fur skins or fur skin articles manufactured or produced by any one, or a combination, of the foregoing processes, with the use of fur skins or fur skin articles, such as plates, mats, sacs, strips, and crosses, imported in a raw, dressed, or dyed condition, subject to the following special requirements:

A. Imported Merchandise or Drawback Products[1] *Used*

Imported merchandise or drawback products (fur skins or fur skin articles) are used in the manufacture of the exported articles upon which drawback claims will be based.

B. Exported Articles on Which Drawback Will Be Claimed

Exported articles on which drawback will be claimed must be manufactured in the United States using imported merchandise or drawback products.

C. General Statement

The manufacturer or producer manufactures or produces for its own account. The manufacturer or producer may manufacture or produce articles for the account of another or another manufacturer or producer may manufacture or produce for the account of the manufacturer or producer under contract within the principal and agency relationship outlined in T.D.s 55027(2) and 55207(1) (*see* § 190.9).

D. Process of Manufacture or Production

The imported merchandise or drawback products will be used to manufacture or produce articles in accordance with § 190.2.

Drawback will not be allowed under this general manufacturing drawback ruling when the process performed results only in the restoration of the merchandise to its condition at the time of importation.

E. Multiple Products

Not applicable.

F. Loss or Gain

Records will be maintained showing the extent of any loss or gain in net weight or measurement of the imported merchandise, caused by atmospheric conditions, chemical reactions, or other factors.

G. Waste

No drawback is payable on any waste which results from the manufacturing operation. Unless the claim for drawback is based on the quantity of merchandise appearing in the exported articles, records will be maintained to establish the value, quantity, and disposition of any waste that results from manufacturing the exported articles. If no waste results, records will be maintained to establish that fact.

H. Procedures and Records Maintained

Records, which may include records kept in the normal course of business, will be maintained to establish:

1. That the exported articles on which drawback is claimed were produced with the use of the imported merchandise; and

2. The quantity of imported merchandise[2] used in producing the exported articles.

To obtain drawback the claimant must establish that the completed articles were exported within 5 years after importation of the imported merchandise. Records establishing compliance with these requirements will be available for audit by CBP during business hours. Drawback is not payable without proof of compliance.

I. Inventory Procedures

The inventory records of the manufacturer or producer must show how the drawback recordkeeping requirements set forth in 19 U.S.C. 1313(a) and part 190 of the CBP Regulations will be met, as discussed under the heading ''Procedures and Records Maintained''. If those records do not establish satisfaction of all legal requirements, drawback cannot be paid.

The records of the manufacturer or producer must show, as to each lot of fur skins and/or fur skin articles used in the manufacture or production of articles for exportation with benefit of drawback, the lot number and date or inclusive dates of manufacture or production, the quantity, identity, description, and 8-digit HTSUS classification of the imported merchandise used, the condition in which imported, the process or processes applied thereto, the quantity, description, and 8-digit HTSUS classification of the finished articles obtained, and the quantity of imported pieces rejected, if any, or spoiled in manufacture or production.

J. Basis of Claim for Drawback

Drawback will be claimed on the quantity of merchandise used in producing the exported articles only if there is no waste or valueless or unrecovered waste in the manufacturing operation. Drawback may be claimed on the quantity of eligible merchandise that appears in the exported articles, regardless of whether there is waste, and no records of waste need be maintained. If there is valuable waste recovered from the manufacturing operation and records are kept which show the quantity and value of the waste, drawback may be claimed on the quantity of eligible material used to produce the exported articles, less the amount of that merchandise which the value of the waste would replace. (If rejects and/or spoilage are incurred, the quantity of imported merchandise used will be determined by deducting from the quantity of fur skins or fur skin articles put into manufacture or production the quantity of such rejects and/or spoilage.)

K. General Requirements

The manufacturer or producer will:

1. Comply fully with the terms of this general ruling when claiming drawback;

2. Open its factory and records for examination at all reasonable hours by authorized Government officers;

3. Keep its drawback related records and supporting data for at least 3 years from the date of liquidation of any drawback claim

[1] Drawback products are those produced in the United States in accordance with the drawback law and regulations.

[2] If claims are to be made on an ''appearing in'' basis, the remainder of the sentence should read ''appearing in the exported articles.''

predicated in whole or in part upon this general ruling;

4. Keep its letter of notification of intent to operate under this general ruling current by reporting promptly to the drawback office which liquidates its claims any changes in the information required by the General Instructions of this Appendix (I. General Instructions, 1 through 10), the corporate name, or corporate organization by succession or reincorporation.

5. Keep a copy of this general ruling on file for ready reference by employees and require all officials and employees concerned to familiarize themselves with the provisions of this general ruling; and

6. Issue instructions to insure proper compliance with 19, United States Code, § 1313, part 190 of the CBP Regulations and this general ruling.

VIII. General Manufacturing Drawback Ruling Under 19 U.S.C. 1313(b) for Orange Juice (T.D. 85–110)

A. Same 8-Digit HTSUS Classification (Parallel Columns)

Imported merchandise or drawback products [1] to be designated as the basis for drawback on the exported products.	Duty-paid, duty-free, or domestic merchandise, classifiable under the same 8-digit HTSUS subheading number as that designated which will be used in the production of the exported products.
Concentrated orange juice for manufacturing (of not less than 55° Brix), as defined in the standard of identity of the Food and Drug Administration (21 CFR 146.53), which meets the Grade A standard of the U.S. Dept. of Agriculture (7 CFR 52.1557, Table IV).	Concentrated orange juice for manufacturing as described in the left-hand parallel column.

The imported merchandise designated on drawback claims must be classifiable under the same 8-digit HTSUS classification as the merchandise used in producing the exported articles on which drawback is claimed.

B. Exported Articles on Which Drawback Will Be Claimed

1. Orange juice from concentrate (reconstituted juice).
2. Frozen concentrated orange juice.
3. Bulk concentrated orange juice.

C. General Statement

The manufacturer or producer manufactures or produces for its own account. The manufacturer or producer may manufacture or produce articles for the account of another or another manufacturer or producer may manufacture or produce for the account of the manufacturer or producer under contract within the principal and agency relationship outlined in T.D.s 55027(2) and 55207(1) (*see* § 190.9).

D. Process of Manufacture or Production

1. Orange juice from concentrate (reconstituted juice). Concentrated orange juice for manufacturing is reduced to a desired 11.8° Brix by a blending process to produce orange juice from concentrate. The following optional blending processes may be used:

i. The concentrate is blended with fresh orange juice (single strength juice); or

ii. The concentrate is blended with essential oils, flavoring components, and water; or

iii. The concentrate is blended with water and is heat treated to reduce the enzymatic activity and the number of viable microorganisms.

2. Frozen concentrated orange juice. Concentrated orange juice for manufacturing is reduced to a desired degree Brix of not less than 41.8° Brix by the following optional blending processes:

i. The concentrate is blended with fresh orange juice (single strength juice); or

ii. The concentrate is blended with essential oils and flavoring components and water.

3. Bulk concentrated orange juice. Concentrated orange juice for manufacturing is blended with essential oils and flavoring components which would enable another processor such as a dairy to prepare finished frozen concentrated orange juice or orange juice from concentrate by merely adding water to the (intermediate) bulk concentrated orange juice.

E. Multiple Products, Waste, Loss or Gain

Not applicable.

F. [Reserved]

G. Procedures and Records Maintained

Records, which may include records kept in the normal course of business, will be maintained to establish:

1. The 8-digit HTSUS classification and identity of the designated merchandise;

2. The quantity of merchandise classifiable under the same 8-digit HTSUS classification as the designated merchandise [2] used to produce the exported articles;

3. That, within 5 years after the date of importation of the designated merchandise, the manufacturer or producer used the designated merchandise to produce articles. During the same 5-year period, the manufacturer or producer produced [3] the exported articles.

To obtain drawback it must be established that the completed articles were exported within 5 years after the importation of the imported merchandise. Records establishing compliance with these requirements must be available for audit by CBP during business hours. No drawback is payable without proof of compliance.

H. Inventory Procedures

The inventory records of the manufacturer or producer must show how the drawback recordkeeping requirements set forth in 19 U.S.C. 1313(b) and part 190 of the CBP Regulations will be met, as discussed under the heading ''Procedures and Records Maintained'', and will show what components were blended with the concentrated orange juice for manufacturing. If those records do not establish satisfaction of all legal requirements drawback cannot be paid.

I. Basis of Claim for Drawback

The basis of claim for drawback will be the quantity of concentrated orange juice for manufacturing used in the production of the exported articles. It is understood that when fresh orange juice is used as ''cutback'', it will not be included in the ''pound solids'' when computing the drawback due.

J. General Requirements

The manufacturer or producer will:

1. Comply fully with the terms of this general ruling when claiming drawback;

2. Open its factory and records for examination at all reasonable hours by authorized Government officers;

3. Keep its drawback related records and supporting data for at least 3 years from the date of liquidation of any drawback claim predicated in whole or in part upon this general ruling;

4. Keep its letter of notification of intent to operate under this general ruling current by reporting promptly to the drawback office which liquidates its claims any changes in the information required by the General Instructions of this Appendix (I. General Instructions, 1 through 10), the corporate name, or corporate organization by succession or reincorporation;

5. Keep a copy of this general ruling on file for ready reference by employees and require all officials and employees concerned to familiarize themselves with the provisions of this general ruling; and

6. Issue instructions to insure proper compliance with title 19, United States Code, section 1313, part 190 of the CBP Regulations and this general ruling.

IX. General Manufacturing Drawback Ruling Under 19 U.S.C. 1313(b) for Petroleum or Petroleum Derivatives (T.D. 84–49)

A. Same 8-Digit HTSUS Classification (Parallel Columns)

[1] Drawback products are those produced in the United States in accordance with the drawback law and regulations. Such products have ''dual status'' under section 1313(b). They may be designated as the basis for drawback and also may be deemed to be domestic merchandise.

[2] If claims are to be made on an ''appearing in'' basis, the remainder of this sentence should read ''appearing in the exported articles produced.''

[3] The date of production is the date an article is completed.

Imported merchandise or drawback products[1] to be designated as the basis for drawback on the exported products.	Duty-paid, duty-free, or domestic merchandise, classifiable under the same 8-digit HTSUS subheading number as that designated which will be used in the production of the exported products.

B. Exported Articles Produced From Fractionation

1. Motor Gasoline
2. Aviation Gasoline
3. Special Naphthas
4. Jet Fuel
5. Kerosene & Range Oils
6. Distillate Oils
7. Residual Oils
8. Lubricating Oils
9. Paraffin Wax
10. Petroleum Coke
11. Asphalt
12. Road Oil
13. Still Gas
14. Liquified Petroleum Gas
15. Petrochemical Synthetic Rubber
16. Petrochemical Plastics & Resins
17. All Other Petrochemical Products

C. Exported Articles on Which Drawback Will Be Claimed

See the General Instructions, I.A.7., for this general drawback ruling. Each article to be exported must be named. When the identity of the product is not clearly evident by its name, there must be a statement as to what the product is, *e.g.,* a herbicide.

D. General Statement

The manufacturer or producer manufactures or produces for its own account. The manufacturer or producer may manufacture or produce articles for the account of another or another manufacturer or producer may manufacture or produce for the account of the manufacturer or producer under contract within the principal and agency relationship outlined in T.D.s 55027(2) and 55207(1) (*see* § 190.9).

E. Process of Manufacture or Production

Heated crude oil is charged to an atmospheric distillation tower where it is subjected to fractionation. The charge to the distillation tower consists of a single crude oil, or of commingled crudes which are fed to the tower simultaneously or after blending in a tank. During fractionation, components of different boiling ranges are separated.

F. Multiple Products

1. Relative Values

Fractionation results in 17 products. In order to insure proper distribution of drawback to each of these products, the manufacturer or producer agrees to record the relative values at the time of separation. The entire period covered by an abstract is to be treated as the time of separation. The value per unit of each product will be the average market value for the abstract period.

2. Producibility

The manufacturer or producer can vary the proportionate quantity of each product. The manufacturer or producer understands that drawback is payable on exported products only to the extent that these products could have been produced from the designated merchandise. The records of the manufacturer or producer must show that all of the products exported, for which drawback will be claimed under this general manufacturing drawback ruling could, have been produced concurrently on a practical operating basis from the designated merchandise.

The manufacturer or producer agrees to establish the amount to be designated by reference to the Industry Standards of Potential Production published in T.D. 66–16.[2]

There are no valuable wastes as a result of the processing.

G. Loss or Gain

Because the manufacturer or producer keeps records on a volume basis rather than a weight basis, it is anticipated that the material balance will show a volume gain. For the same reason, it is possible that occasionally the material balance will show a volume loss. Fluctuations in type of crude used, together with the type of finished product desired make an estimate of an average volume gain meaningless. However, records will be kept to show the amount of loss or gain with respect to the production of export products.

H. Exchange

The use of any domestic merchandise acquired in exchange for imported merchandise that meets the same kind and quality specifications contained in the Parallel Columns of this general ruling shall be treated as use of the imported merchandise.

I. Procedures and Records Maintained

Records, which may include records kept in the normal course of business, will be maintained to establish:

1. The identity, and 8-digit HTSUS classification of the merchandise designated;

2. The quantity of merchandise classifiable under the same 8-digit HTSUS classification as the designated merchandise used to produce the exported articles.

3. That, within 5 years after importation, the manufacturer or producer used the designated merchandise to produce articles. During the same 5-year period, the manufacturer or producer produced the exported articles.

4(a). The manufacturer or producer agrees to use a 28–31 day period (monthly) abstract period for each refinery covered by this general manufacturing drawback ruling, or

(b). The manufacturer or producer agrees to use an abstract period (not to exceed 1 year) for each refinery covered by this general manufacturing drawback ruling. The manufacturer or producer certifies that if it were to file abstracts covering each manufacturing period, of not less than 28 days and not more than 31 days (monthly) within the longer period, in no such monthly abstract would the quantity of designated merchandise exceed the material introduced into the manufacturing process during that monthly period. (Select (a) or (b), and state which is selected in the application, and, if (b) is selected, specify the length of the particular abstract period chosen (not to exceed 1 year (*see* General Instruction I.A.7.)).)

5. On each abstract of production the manufacturer or producer agrees to show the value per barrel to five decimal places.

6. The manufacturer or producer agrees to file claims in the format set forth in exhibits A through F which are attached to this general manufacturing drawback ruling. The manufacturer or producer realizes that to obtain drawback the claimant must establish that the completed articles were exported within 5 years after importation of the imported merchandise. Records establishing compliance with these requirements will be available for audit by CBP during business hours. It is understood that drawback is not payable without proof of compliance. Records will be kept in accordance with T.D. 84–49, as amended by T.D. 95–61.

J. Residual Rights

It is understood that the refiner can reserve as the basis for future payment the right to drawback only on the number of barrels of raw material computed by subtracting from Line E the larger of Lines A or B, of a given Exhibit E. It is further understood that this right to future payment can be claimed only against products concurrently producible with the products listed in Column 21, in the quantities shown in Column 22 of such Exhibit E. Such residual right can be transferred to another refinery of the same refiner only when Line B of Exhibit E is larger than Line A. Unless the number of residual barrels is specifically computed, and rights thereto are expressly reserved on Exhibit E, such residual rights will be deemed waived. The procedure the manufacturer or producer must follow in preparing drawback entries claiming this residual right is illustrated in the attached sample Exhibit E–1. It is understood that claims involving residual rights must be filed only at the port where the Exhibit E reserving such right was filed.

K. Inventory Procedures

The manufacturer or producer realizes that inventory control is of major importance. In

[1] Drawback products are those produced in the United States in accordance with the drawback law and regulations. Such products have ''dual status'' under section 1313(b). They may be designated as the basis for drawback and also may be deemed to be domestic merchandise.

[2] A manufacturer who proposes to use standards other than those in T.D. 66–16 must state the proposed standards and provide sufficient information to CBP in order for those proposed standards to be verified in accordance with T.D. 84–49.

accordance with the normal accounting procedures of the manufacturer or producer, each refinery prepares a monthly stock and yield report, which accounts for inventories, production, and disposals, from time of receipt to time of disposition. This provides an audit trail of all products.

The above-noted records will provide the required audit trail from the initial source documents to the drawback claims of the manufacturer or producer and will support adherence with the requirements discussed under the heading Procedures and Records Maintained.

L. Basis of Claim for Drawback

The amount of raw material on which drawback may be based will be computed by multiplying the quantity of each product exported by the drawback factor for that product. The amount of raw material which may be designated as the basis for drawback on the exported products produced at a given refinery and covered by a drawback entry must not exceed the quantity of such raw material used at the refinery during the abstract period or periods from which the exported products were produced. The quantity of raw material to be designated as the basis for drawback on exported products must be at least as great as the quantity of raw material which would be required to produce the exported products in the quantities exported.

M. Agreements

The manufacturer or producer specifically agrees that it will:

1. Comply fully with the terms of this general ruling when claiming drawback;
2. Open its refinery and records for examination at all reasonable hours by authorized Government officers;
3. Keep its drawback related records and supporting data for at least 3 years from the date of liquidation of any drawback claim predicated in whole or in part upon this application;
4. Keep this application current by reporting promptly to the drawback office which liquidates its claims any changes in the information required by the General Instructions of this Appendix (I. General Instructions, 1 through 10), the corporate name, or corporate organization by succession or reincorporation;
5. Keep a copy of this general ruling on file for ready reference by employees and require all officials and employees concerned to familiarize themselves with the provisions of this general ruling; and
6. Issue instructions to insure proper compliance with title 19, United States Code, section 1313, part 190 of the CBP Regulations and this general ruling.

BILLING CODE 9111–14–P

Exhibit A

ABSTRACT OF MANUFACTURING RECORDS
ABC OIL CO. – BEAUMONT, TEXAS REFINERY
PERIOD FROM JANUARY 1, 2019 TO JANUARY 31, 2019

Material Used (in Bbls. At 60°)

		CRUDES				DERIVATIVES	
	TOTALS	CLASS I	CLASS II	CLASS III	CLASS IV	CRUDE TOPS CLASS IV	UNFINISHED NAPHTHA CLASS IV
1) Opening Inventory	4,007,438						
2) Material Introduced*	7,450,732	- 0 -	619,473	6,367,991	- 0 -	101,224	362,044
3) Closing Inventory	3,671,005						
4) Total Consumption	7,787,165						

Line (1) – Stock in process at beginning of manufacturing period.

Line (2) – Raw material introduced into manufacturing process during the period. The amount, by type and class, shown hereon, shall be the maximum that may be designated under T.D. 84-49.

Line (3) - Stock in process at end of period.

Line (4) - Total Consumed, namely, line 1 plus line 2 less line 3.

*All raw materials of a type and class not to be designated may be shown as a total.

EXHIBIT B
ABSTRACT OF PRODUCTION
ABC OIL CO., INC. – BEAUMONT, TEXAS REFINERY
PERIOD FROM JANUARY 1, 2019 TO JANUARY 31, 2019

(5) Product	(6) Quantity in Bbls.	(7) Value per Bbl.	(8) Value of Product	(9) Drawback Factor per Bbl.
1. Motor Gasoline	2,699,934	$6.14333	$16,586,586	1.06678
2. Aviation Gasoline	108,269	5.83363	631,601	1.01300
3. Special Naphthas	372,676	8.06356	3,005,095	1.40023
4. Jet Fuel	249,386	3.95698	986,815	0.68712
5. Kerosine and Range Oil	321,263	4.69857	1,509,477	0.81590
6. Distillate Oils	2,567,975	4.45713	11,445,798	0.77398
7. Residual Oils	308,002	2.51322	774,077	0.43642
8. Lubricating Oils	292,492	26.72296	7,816,252	4.64041
9. Paraffin Wax	19,063	10.49642	200,093	1.82269
10. Petroleum Coke	122,353	1.24291	152,074	0.21583
11. Asphalt	75,231	3.59105	270,158	0.62358
12. Road Oil	- 0 -	- 0 -	- 0 -	- 0 -
13. Still Gas	245,784	1.00530	247,087	0.17457
14. Liquified Refinery Gas	524,423	2.23013	1,169,531	0.38726
15. Petrochemical Synthetic Rubber	- 0 -	- 0 -	- 0 -	- 0 -
16. Petrochemical Plastics & Resins	- 0 -	- 0 -	- 0 -	- 0 -
17. All Other Petrochemical Products	7,996	6.21343	49,683	1.07895
Loss (or Gain)	(127,682)			
Total	7,787,165		$44,844,327	

Col. (6) Products are shown in the net quantities realized in the refining process and do not include non-petroleum additives.

Col. (7) Weighted average realization for the period covered.

Col. (8) Column 6 multiplied by column 7.

Col. (9) Quantity of raw materials allowable per barrel of products. (Formula for obtaining drawback factors: $44,844,327 ÷ 7,787,165 bbls. = $5.75875 divided into product values per barrel equals drawback factor.)

BILLING CODE 9111–14–C

EXHIBIT C—INVENTORY CONTROL SHEET: ABC OIL CO., INC.; BEAUMONT, TEXAS REFINERY, PERIOD FROM JANUARY 1, 2019 TO JANUARY 31, 2019

[All quantities exclude non-petroleum additives]

	Aviation gasoline		Residual oils		Lubricating oils		Petrochemicals, all other	
	Bbls.	Drawback factor	Bbls.	Drawback factor	Bbls.	Drawback factor	Bbls.	Drawback factor
(10) Opening Inventory	11,218	1.00126	21,221	.45962	9,242	4.52178	891	1.00244
(11) Production	108,269	1.01300	308,002	.43642	292,492	4.64041	7,996	1.07895
(11–A) Receipts.								
(12) Exports	11,218	1.00126	21,221	.45962	8,774	4.52178	195	1.00244
	176	1.01300	104,397	.43642				
(13) Drawback Deliveries	.....	.....	.....	.....	.....	.....	696	1.00244
							319	1.07895
(14) Domestic Shipments	97,863	1.01300	180,957	.43642	468	4.52178	6,867	1.07895
					278,286	4.64041		
(15) Closing Inventory	10,230	1.01300	22,648	.43642	14,206	4.64041	810	1.07895

Line (10)—Opening inventory from previous period's closing inventory.
Line (11)—From production period under consideration.
Line (11–A)—Product received from other sources.
Line (12)—From earliest on hand (inventory or production). Totals from drawback entry or entries recapitulated (*see* column 18).
Line (13)—Deliveries for export or for designation against further manufacture—earliest on hand after exports are deducted.
Line (14)—From earliest on hand after lines (12) and (13) are deducted.

Line (15)—Balance on hand.

BILLING CODE 9111–14–P

EXHIBIT D
RECAPITULATION OF DRAWBACK ENTRY
ABC OIL CO., INC - BEAUMONT, TEXAS REFINERY
PERIOD FROM JANUARY 1, 2019 TO JANUARY 31, 2019

(16)	(17)	(18)	(19)	(20)	(20a)
Product	Quantity in Bbls. Exported	Quantity in Bbls. In the Terms of the Abstract	Drawback Factor per Bbl.	Crude Allowed for Drawback in Bbls.	Crude to be Allowed for Drawback Deliveries in Bbls.
Aviation Gasoline	11,410	11,216 176	1.00126 1.01300	11,232 176	
Residual Oils	125,618	21,221 104,397	0.45962 0.43642	9,754 45,561	
Lubricating Oils	8,875	8,774	4.52178	36,674	
Petrochemicals – Other	195	696 319 195	1.00244 1.07895 1.00244	195	698 344
Total	146,098	146,996		106,594	1,042

Duty paid on raw material selected for designation - $.1050 per bbl. (class III crude)
Amount of drawback claimed - gross - 106,594 x .1050 = $11,192
Less 1% - 112
Amount of drawback claimed - net $11,080

Col. (16) Lists only products exported.
Col. (17) Quantities in condition as shown on the notices of exportation and notices of lading.
Col. (18) Quantities in condition as shown on the abstract (i.e., less additives if any). These quantities will appear in line 12.
Col. (19) The drawback factor(s) shown on line 12.
Col (20) Raw material (crude or derivatives) allowable, determined by multiplying column 18 by 19.
Col (20a) Raw material (crude or derivatives) allowable, for drawback deliveries determined by multiplying column 18 by column 19.

EXHIBIT E
PRODUCIBILITY TEST FOR PRODUCTS EXPORTED (INCLUDING DRAWBACK DELIVERIES) ABC OIL CO., INC - BEAUMONT, TEXAS REFINERY PERIOD FROM JANUARY 1, 2019 TO JANUARY 31, 2019

Type and Class of Raw Material Designated - Crude, Class III

(21) Product	(22) Quantity in Barrels	(23) Industry Standard	(24) Quantity of Raw Material of Type and Class Designated Needed to Produce Product
Aviation Gasoline	11,394	40%	28,485
Residual Oils	125,618	83%	151,347
Lubricating Oils	8,774	50%	17,548
Petrochemicals, other	(195)		
Petrochemicals, other (drawback deliveries)	(1,015)		
Petrochemicals, other (Total)	1,210	29%	4,172
Total	146,996		

A - Crude allowed (column 20: 106,594 plus column 20a: 1,042	107,636 bbls.
B - Total Quantity exported (including drawback deliveries (column 22):	146,996 "
C - Largest quantity of raw material needed to produce an individual exported product (see column 24):	151,347 "
D - The excess of raw material over the largest of lines A, B, or C, required to produce concurrently on a practical operating basis, using the most efficient processing equipment existing within the domestic industry, the exported articles (including drawback deliveries) in the quantities exported (or delivered).	NONE
E - Minimum quantity of raw material required to be designated (which is A, B, or C, whichever is largest, plus D, if applicable):	151,347 "

I hereby certify that all the above drawback deliveries and products exported by the Beaumont Refinery of ABC Oil Co., Inc. during the period from January 1, 2019 to January 31, 2019 could have been produced concurrently on a practical operating basis from 151,347 barrels of imported Class III crude against which drawback is claimed.

Signature

EXHIBIT E-1
PRODUCIBILITY TEST FOR PRODUCTS ON WHICH RESIDUAL RIGHT TO DRAWBACK IS NOW CLAIMED AND PRODUCTS COVERED BY ABSTRACTS ON WHICH RAW MATERIALS COVERED WERE PREVIOUSLY DESIGNATED
ABC OIL CO., INC - TULSA, OKLAHOMA REFINERY
PERIOD FROM JANUARY 1, 2019 TO JANUARY 31, 2019

Type and Class of Raw Material Designated - Crude, Class III

(21)	(22)	(23)	(24)			(19)	(20)
Product	Quantity in Barrels	Industry Standard	Quantity of Raw Material of Type & Class Designated Needed to Produce Product		Covered by: 1. Period 2. Refinery	Drawback Factor per Barrel	Crude allowed for drawback
			Separate	Combined			
Aviation Gasoline	11,394	40%	28,485	29,125		1.00126	11,232
						1.01300	178
Residual Oils	125,618	83%	151,347	151,347	1. Jan. 2019	0.45962	9,754
						0.43642	45,561
Lubricating Oils	8,774	50%	17,548	17,932	2. Beaumont	4.52178	39,674
Petrochemicals, other	(195)					1.00244	195
Petrochemicals, other (drawback deliveries)	(1,015)						
Petrochemicals, other (Total)	1,210	29%	4,172	4,503			
(Residual Rights)							
Aviation Gasoline	256	40%	640	29,125		1.01265	259
Lubricating Oils	192	50%	384	17,932	1. Jan. 2019	4.59006	881
Petrochemicals, other	96	29%	331	4,503	2. Tulsa	1.12412108	108
Distillate Oils	3,807	89%	4,278	4,278		0.76624	2917
	151,347					Subtotal	4165
						Total	110759

A - Crude allowed (column 20: 110,759; plus crude allowed for drawback deliveries: 1,042)	111,801 bbls.	Drawback Computation
B - Total quantity exported (including drawback deliveries (column 22):	151,347 "	4,165* bbls. @ 10½ = $437.33
C - Largest quantity of raw material needed to produce an individual exported product (see col. 24):	151,347	Less 1% 4.37
D - The excess of raw material over the largest of line A, B, or C, required to produce concurrently on a practical operating basis, using the most efficient processing equipment existing within		Amount of Drawback
$432.96		
the domestic industry, the exported articles (including drawback deliveries) in the quantities exported or delivered):		Claim - Net
E - Minimum quantity of raw material required to be designated (which is A, B, or C, whichever is largest, plus D, if applicable):		See subtotal, col. 20, for Residual Rights above 151,347

Certificate

I hereby certify that all the above drawback deliveries and products exported by the Tulsa, Oklahoma refinery of ABC Oil Co., Inc. during the period from January 1, 2019 to January 31, 2019 could have been produced concurrently on a practical operating basis together with all drawback deliveries and products exported covered by Exhibit E of the abstract for the period January 1, 2019 to January 31, 2019, filed by the Beaumont, Texas refinery from 151,347 barrels of imported Class III crude against which drawback is claimed.

Signature

BILLING CODE 9111–14–C

EXHIBIT E (COMBINATION)—PRODUCIBILITY TEST FOR PRODUCTS EXPORTED (INCLUDING DRAWBACK DELIVERIES) ABC OIL CO., INC.; BEAUMONT, TEXAS REFINERY, PERIOD FROM JANUARY 1, 2019 TO JANUARY 31, 2019

[Type and class of raw material designated—Crude, Class III]

Product	Quantity in barrels	Industry standard (%)	Quantity of raw material of type and class designated needed to produce product per barrel	Drawback factor	Crude allowed for drawback
(21)	(22)	(23)	(24)	(19)	(20)
Aviation Gasoline [1]	[1] 11,218	40	28,045	1.00126	11,232
	[1] 176	40	440	1.01300	178
Residual Oils [1]	[1] 21,221	83	25,567	.45962	9,754
	[1] 104,397	83	125,780	.43642	45,561
Lubricating Oils [1]	[1] 8,774	50	17,548	4.52178	39,674
Petrochemicals, Other [1]	[1] 195	29	672	1.00244	195
Petrochemicals, Other [2]	[2] 696	29	2,400	1.00244	698
Petrochemicals, Other [2]	[2] *319*	29	1,100	1.07895	344
Total	146,996				107,636

[1] Exports.

[2] Drawback deliveries.

A—Crude allowed (column 20: 107,636 bbls. (106,594 for export, plus 1,042 for drawback deliveries)).

B—Total quantity exported (including drawback deliveries) (column 22): 146,996.

C—Largest quantity of raw material needed to produce an individual exported product (*see* column 24): 151,347.

D—The excess of raw material over the largest of lines A, B, or C, required to produce concurrently on a practical operating basis, using the most efficient processing equipment existing within the domestic industry, the exported articles (including drawback deliveries) in the quantities exported (or delivered): None.

E—Minimum quantity of raw material required to be designated (which is A, B, or C, whichever is largest, plus D, if applicable): 151,347 bbs.

I hereby certify that all the above drawback deliveries and products exported by the Beaumont refinery of ABC Oil Co., Inc. during the period from January 1, 2019 to January 31, 2019, could have been produced concurrently on a practical operating basis from 151,347 barrels of imported Class III crude against which drawback is claimed.

BILLING CODE 9111–14–P

The attached sample, **EXHIBIT E (COMBINATION)**, illustrates the procedures to be followed when two classes or types of raw material are designated on a given abstract. For purposes of illustration it is assumed that the refiner has only 100,000 barrels of Class III crude to designate, but adequate supplies of Class II to designate.

In addition, please note that the computation of drawback on **EXHIBIT D** will be as follows:

Duty paid on raw material selected for designation:

$.1050 per barrel (Class III crude)
$.0525 per barrel (Class II crude)

Amount of drawback claimed- gross: 81,638 x .1050=$8,571.99
24,956 x .0525= $1,310.19
$9,882.18
(Rounded off) 9,882
Less 1% -99
Amount of drawback claimed- net: $9,783

BILLING CODE 9111–14–C

EXHIBIT F—DESIGNATIONS FOR DRAWBACK CLAIM, ABC OIL CO., INC.; BEAUMONT, TEXAS REFINERY

[Period from January 1, 2019 to January 31, 2019]

Entry No.	Date of importation	Kind of materials	Quantity of materials in barrels	Date received	Date consumed	Rate of duty
26192	04/13/17	Class III Crude	75,125	04/13/17	May 2017	$.1050
23990	08/04/18	.....do	37,240	08/04/18	Oct. 2018	.1050
22517	10/05/18	.....do	38,982	10/05/18	Nov. 2018	.1050

X. General Manufacturing Drawback Ruling Under 19 U.S.C. 1313(b) for Piece Goods (T.D. 83–73)

A. Same 8-Digit HTSUS Classification (Parallel Columns)

Imported merchandise or drawback products[1] to be designated as the basis for drawback on the exported products.	Duty-paid, duty-free or domestic merchandise classifiable under the same 8-digit HTSUS subheading number as that designated which will be used in the production of the exported products.
Piece goods.	Piece goods.

The piece goods used in manufacture will be classifiable under the same 8-digit HTSUS classification as the piece goods designated as the basis of claim for drawback, and are used interchangeably without change in manufacturing processes or resultant products (including, if applicable, multiple products), or wastes. Some tolerances between imported-designated piece goods and the used-exported piece goods will be permitted to accommodate variations which are normally found in piece goods. These tolerances are no greater than the tolerances generally allowed in the industry for piece goods classifiable under the same 8-digit HTSUS classification as follows:

1. A 4% weight tolerance so that the piece goods used in manufacture will be not more than 4% lighter or heavier than the imported piece goods which will be designated;

2. A tolerance of 4% in the aggregate thread count per square inch so that the piece goods used in manufacture will have an aggregate thread count within 4%, more or less of the aggregate thread count of the imported piece goods which will be designated. In each case, the average yarn number of the domestic piece goods will be the same or greater than the average yarn number of the imported piece goods designated, and in each case, the substitution and tolerance will be employed only within the same family of fabrics, *i.e.,* print cloth for print cloth, gingham for gingham, greige for greige, dyed for dyed, bleached for bleached, etc. The piece goods used in manufacture of the exported articles will be designated as containing the identical percentage of identical fibers as the piece goods designated as the basis for allowance of drawback; for example, piece goods containing 65% cotton and 35% dacron will be designated against the use of piece goods shown to contain 65% cotton and 35% dacron. The actual fiber composition may vary slightly from that described on the invoice or other acceptance of the fabric as having the composition described on documents in accordance with trade practices.

B. Exported Articles on Which Drawback Will Be Claimed

Finished piece goods.

C. General Statement

The manufacturer or producer manufactures or produces for its own account. The manufacturer or producer may manufacture or produce articles for the account of another or another manufacturer or producer may manufacture or produce for the account of the manufacturer or producer under contract within the principal and agency relationship outlined in T.D.s. 55027(2) and 55207(1) (*see* § 190.9).

D. Process of Manufacture or Production

Piece goods are subject to any one of the following finishing productions:

1. Bleaching,
2. Mercerizing,
3. Dyeing,
4. Printing,
5. A combination of the above, or
6. Any additional finishing processes.

E. Multiple Products

Not applicable.

F. Waste

Rag waste may be incurred. No drawback is payable on any waste which results from the manufacturing operation. Unless the claim for drawback is based on the quantity of merchandise appearing in the exported articles, the records of the manufacturer or producer must show the quantity of rag waste, if any, and its value. In instances where rag waste occurs and it is impractical to account for the actual quantity of rag waste incurred, it may be assumed that such rag waste constituted 2% of the piece goods put into the finishing processes. If necessary to establish the quantity of merchandise (eligible piece goods) appearing in the exported articles, such waste records must also be kept.

G. Shrinkage, Gain, and Spoilage

Unless the claim for drawback is based on the quantity of merchandise appearing in the exported articles, the records of the manufacturer or producer must show the yardage lost by shrinkage or gained by stretching during manufacture or production, and the quantity of remnants resulting and of spoilage incurred, if any. If necessary to establish the quantity of merchandise (eligible piece goods) appearing in the exported articles, such records for shrinkage, gain and spoilage will also be kept.

H. [Reserved]

I. Procedures and Records Maintained

Records, which may include records kept in the normal course of business, will be maintained to establish:

1. The identity and 8-digit HTSUS classification of the designated merchandise;

2. The quantity of merchandise classifiable under the same 8-digit HTSUS classification as the designated merchandise[2] used to produce the exported articles;

3. That, within 5 years after the date of importation of the designated merchandise, the manufacturer or producer used the merchandise to produce articles. During the same 5-year period, the manufacturer or producer produced[3] the exported articles.

To obtain drawback the claimant must establish that the completed articles were exported within 5 years after the importation of the imported merchandise. Records establishing compliance with these requirements will be available for audit by CBP during business hours. Drawback is not payable without proof of compliance.

J. Inventory Procedures

The inventory records of the manufacturer or producer must show how the drawback recordkeeping requirements set forth in 19 U.S.C. 1313(b) and part 190 of the CBP Regulations will be met, as discussed under the heading ''Procedures and Records Maintained''. If those records do not establish satisfaction of all legal requirements, drawback cannot be paid.

K. Basis of Claim for Drawback

Drawback will be claimed on the quantity of eligible piece goods used in producing the exported articles only if there is no waste or valueless or unrecovered waste in the manufacturing operation. Drawback may be claimed on the quantity of eligible piece goods that appears in the exported articles, regardless of whether there is waste, and no records of waste need be maintained. If there is valuable waste recovered from the manufacturing operation and records are kept which show the quantity and value of the waste from each lot of piece goods, drawback may be claimed on the quantity of eligible piece goods used to produce the exported articles less the amount of piece goods which the value of the waste would replace.

L. General Requirements

The manufacturer or producer will:

1. Comply fully with the terms of this general ruling when claiming drawback;

2. Open its factory and records for examination at all reasonable hours by authorized Government officers;

3. Keep its drawback related records and supporting data for at least 3 years from the

[1] Drawback products are those produced in the United States in accordance with the drawback law and regulations. Such products have ''dual status'' under 19 U.S.C. 1313(b). They may be designated as the basis for drawback and also may be deemed to be domestic merchandise.

[2] If claims are to be made on an ''appearing in'' basis, the remainder of this sentence should read ''appearing in the exported articles produced.''

[3] The date of production is the date an article is completed.

date of liquidation of any drawback claim predicated in whole or in part upon this general ruling;

4. Keep its letter of notification of intent to operate under this general ruling current by reporting promptly to the drawback office which liquidates its claims any changes in the information required by the General Instructions of this Appendix (I. General Instructions, 1 through 10), the corporate name, or corporate organization by succession or reincorporation;

5. Keep a copy of this general ruling on file for ready reference by employees and require all officials and employees concerned to familiarize themselves with the provisions of this general ruling; and

6. Issue instructions to insure proper compliance with title 19, United States Code, section 1313, part 190 of the CBP Regulations and this general ruling.

XI. General Manufacturing Drawback Ruling Under 19 U.S.C. 1313(b) for Raw Sugar (T.D. 83–59)

Drawback may be allowed under 19 U.S.C. 1313(b) upon the exportation of hard or soft refined sugars and sirups manufactured from raw sugar, subject to the following special requirements:

A. The drawback allowance must not exceed an amount calculated pursuant to regulations prescribed by the Secretary of the Treasury, of the duties, taxes, and fees paid on a quantity of raw sugar designated by the refiner which contains a quantity of sucrose not in excess of the quantity required to manufacture the exported sugar or sirup, ascertained as provided in this general rule.

B. The refined sugars and sirups must have been manufactured with the use of duty-paid, duty-free, or domestic sugar, or combinations thereof, within 5 years after the date of importation, and must have been exported within 5 years from the date of importation of the designated sugar.

C. All granulated sugar testing by the polariscope 99.5 [degrees] and over will be deemed hard refined sugar. All refined sugar testing by the polariscope less than 99.5 [degrees] will be deemed soft refined sugar. All ''blackstrap,'' ''unfiltered sirup,'' and ''final molasses'' will be deemed sirup.

D. The imported duty-paid sugar selected by the refiner as the basis for the drawback claim (designated sugar) must be classifiable under the same 8-digit HTSUS classification as that used in the manufacture of the exported refined sugar or sirup and must have been used within 5 years after the date of importation. Duty-paid sugar which has been used at a plant of a refiner within 5 years after the date on which it was imported by such refiner may be designated as the basis for the allowance of drawback on refined sugars or sirups manufactured at another plant of the same refiner.

E. For the purpose of distributing the drawback, relative values must be established between hard refined (granulated) sugar, soft refined (various grades) sugar, and sirups at the time of separation. The entire period covered by an abstract will be deemed the time of separation of the sugars and sirups covered by such abstract.

F. The sucrose allowance per pound on hard refined (granulated) sugar established by an abstract, as provided for in this general ruling, will be applied to hard refined sugar commercially known as loaf, cut loaf, cube, pressed, crushed, or powdered sugar manufactured from the granulated sugar covered by the abstract.

G. The sucrose allowance per gallon on sirup established by an abstract, as provided for in this general ruling, will be applied to sirup further advanced in value by filtration or otherwise, unless such sirup is the subject of a special manufacturing drawback ruling.

H. As to each lot of imported or domestic sugar used in the manufacture of refined sugar or sirup on which drawback is to be claimed, the raw stock records must show the refiner's raw lot number, the number and character of the packages, the settlement weight in pounds, the settlement polarization, and the 8-digit HTSUS classification. Such records covering imported sugar must show, in addition to the foregoing, the import entry number, date of importation, name of importing carrier, country of origin, the Government weight, and the Government polarization.

I. The melt records must show the date of melting, the number of pounds of each lot of raw sugar melted, and the full analysis at melting.

J. There must be kept a daily record of final products boiled showing the date of the melt, the date of boiling, the magma filling serial number, the number of the vacuum pan or crystallizer filling, the date worked off, and the sirup filling serial number.

K. The sirup manufacture records must show the date of boiling, the period of the melt, the sirup filling serial number, the number of barrels in the filling, the magma filling serial number, the quantity of sirup, its disposition in tanks or barrels and the refinery serial manufacture number.

L. The refined sugar stock records must show the refinery serial manufacture number, the period of the melt, the date of manufacture, the grade of sugar produced, its polarization, the number and kind of packages, and the net weight. When soft sugars are manufactured, the commercial grade number and quantity of each must be shown.

M. Each lot of hard or soft refined sugar and each lot of sirup manufactured, regardless of the character of the containers or vessels in which it is packed or stored, must be marked immediately with the date of manufacture and the refinery manufacture number applied to it in the refinery records provided for and shown in the abstract, as provided for in this general ruling, from such records. If all the sugar or sirup contained in any lot manufactured is not intended for exportation, only such of the packages as are intended for exportation need be marked as prescribed above, provided there is filed with the drawback office immediately after such marking a statement showing the date of manufacture, the refinery manufacture number, the number of packages marked, and the quantity of sugar or sirup contained therein. No drawback will be allowed in such case on any sugar or sirup in excess of the quantity shown on the statement as having been marked. If any packages of sugar or sirup so marked are repacked into other containers, the new containers must be marked with the marks which appeared on the original containers and a revised statement covering such repacking and remarking must be filed with the drawback office. If sirups from more than one lot are stored in the same tank, the refinery records must show the refinery manufacture number and the quantity of sirup from each lot contained in such tank.

N. An abstract from the foregoing records covering manufacturing periods of not less than 1 month nor more than 3 months, unless a different period will have been authorized, must be filed when drawback is to be claimed on any part of the refined sugar or sirup manufactured during such period. Such abstract must be filed by each refiner with the drawback office where drawback claims are filed on the basis of this general ruling. Such abstract must consist of: (1) A raw stock record (accounting for Refiner's raw lot No., Import entry No., Packages No. and kind, Pounds, Polarization, By whom imported or withdrawn, Date of importation, Date of receipt by refiner, Date of melt, Importing carrier, Country of origin); (2) A melt record [number of pounds in each lot melted] (accounting for Lot No. Pounds, and Polarization degrees and pounds sucrose); (3) Sirup stock records (accounting for Date of boiling, Refinery serial manufacture No., Quantity of sirup in gallons, and Pounds sucrose contained therein); (4) Refined sugar stock record (accounting for Refinery serial production No., Date of manufacture, Hard or soft refined, Polarization and No., Net weight in pounds); (5) Recapitulation (consisting of (in pounds): (a) Sucrose in process at beginning of period, (b) sucrose melted during period, (c) sucrose in process at end of period, (d) sucrose used in manufacture, and (e) sucrose contained in manufacture, in which item (a) plus item (b), minus item (c), should equal item (d)); and (6) A statement as follows:

I, _____, the _____ refiner at the _____ refinery of _____, located at _____, do solemnly and truly declare that each of the statements contained in the foregoing abstract is true to the best of my knowledge and belief and can be verified by the refinery records, which have been kept in accordance with Treasury Decision 83–59 and Appendix A of 19 CFR part 190 and which are at all times open to the inspection of CBP.

Date _____

Signature _____

O. The refiner must file with each abstract a statement, showing the average market values of the products specified in the abstract and including a statement as follows: I, _____, (Official capacity) of the _____ (Refinery), do solemnly and truly declare that the values shown above are true to the best of my knowledge and belief, and can be verified by our records.

Date _____

Signature _____

P. At the end of each calendar month the refiner must furnish to the drawback office a statement showing the actual sales of sirup and the average market values of refined sugars for the calendar month.

Q. The sucrose allowance to be applied to the various products based on the abstract

and statement provided for in this general ruling will be in accordance with the example set forth in Treasury Decision 83–59.

R. [Reserved]

S. Drawback entries under this general ruling must state the polarization in degrees and the sucrose in pounds for the designated imported sugar. Drawback claims under this general ruling must include a statement as follows:

I, _____, the _____ of _____, located at _____ declare that the sugar (or sirup) described in this entry, was manufactured by said company at its refinery at _____ and is part of the sugar (or sirup) covered by abstract No. ____, filed at the port of _____; that, subject to 19 U.S.C. 1508 and 1313(t), the refinery and other records of the company verifying the statements contained in said abstract are now and at all times hereafter will be open to inspection by CBP. I further declare that the above-designated imported sugar (upon which the duties have been paid) was received by said company on _____ and was used in the manufacture of sugar and sirup during the period covered by abstract No. ____, CBP No. ____, on file with the port director at _____ __. I further declare that the sugar or sirup specified therein was exported as stated in the entry.

Date _____

Signature _____

T. General Statement. The refiner manufactures or produces for its own account. The refiner may manufacture or produce articles for the account of another or another manufacturer or producer may manufacture or produce for the refiner's account under contract within the principal and agency relationship outlined in T.D.s 55027(2) and 55207(1) (*see* § 190.9).

U. Waste. No drawback is payable on any waste which results from the manufacturing operation. Unless drawback claims are based on the ''appearing in'' method, records will be maintained to establish the value (or the lack of value), quantity, and disposition of any waste that results from manufacturing the exported articles. If no waste results, records to establish that fact will be maintained.

V. Loss or Gain. The refiner will maintain records showing the extent of any loss or gain in net weight or measurement of the sugar caused by atmospheric conditions, chemical reactions, or other factors.

W. [Reserved]

X. Procedures and Records Maintained.

Records, which may include records kept in the normal course of business, will be maintained to establish:

1. The identity and 8-digit HTSUS classification of the designated merchandise;

2. The quantity of merchandise classifiable under the same 8-digit HTSUS classification as the designated merchandise [1] used to produce the exported articles; and

3. That, within 5 years of the date of importation of the designated merchandise, the refiner used the designated merchandise to produce articles. During the same 5-year period, the refiner produced [2] the exported articles.

To obtain drawback the claimant must establish that the completed articles were exported within 5 years after the importation of the imported merchandise. Records establishing compliance with these requirements will be available for audit by CBP during business hours. Drawback is not payable without proof of compliance.

Y. General requirements. The refiner will:

1. Comply fully with the terms of this general ruling when claiming drawback;

2. Open its factory and records for examination at all reasonable hours by authorized Government officers;

3. Keep its drawback related records and supporting data for at least 3 years from the date of liquidation of any drawback claim predicated in whole or in part upon this general ruling;

4. Keep its letter of notification of intent to operate under this general ruling current by reporting promptly to the drawback office which liquidates its claims any changes in the information required by the General Instructions of this Appendix (I. General Instructions, 1 through 10), the corporate name, or corporate organization by succession or reincorporation;

5. Keep a copy of this general ruling on file for ready reference by employees and require all officials and employees concerned to familiarize themselves with the provisions of this general ruling; and

6. Issue instructions to insure proper compliance with title 19, United States Code, section 1313, part 190 of the CBP Regulations and this general ruling.

XII. General Manufacturing Drawback Ruling Under 19 U.S.C. 1313(b) for Steel (T.D. 81–74)

A. Same 8-Digit HTSUS Classification (Parallel Columns)

Imported merchandise or drawback products [1] to be designated as the basis for drawback on the exported products.	Duty-paid, duty-free or domestic merchandise classifiable under the same 8-digit HTSUS subheading number as that designated which will be used in the production of the exported products.
Steel of one general class, *e.g.,* an ingot, falling within on SAE, AISI, or ASTM [2] specification and, if the specification contains one or more grades, falling within one grade of the specification.	Steel of the same general class, specification, and grade as the steel in the column immediately to the left hereof.

1. The duty-paid, duty-free, or domestic steel used instead of the imported, duty-paid steel (or drawback products) will be interchangeable for manufacturing purposes with the duty-paid steel. To be interchangeable a steel must be able to be used in place of the substituted steel without any additional processing step in the manufacture of the article on which drawback is to be claimed.

2. Because the duty-paid steel (or drawback products) that is to be designated as the basis for drawback is dutiable according to its value, the amount of duty can vary with its size (gauge, width, or length) or composition (*e.g.,* chrome content). If such variances occur, designation will be by ''price extra,'' and in no case will drawback be claimed in a greater amount than that which would have accrued to that steel used in manufacture of or appearing in the exported articles. Price extra is not available for coated or plated steel, covered in paragraph 4, infra, insofar as the coating or plating is concerned.

3. If the steel is coated or plated with a base metal, in addition to meeting the requirements for uncoated or unplated steel set forth in the Parallel Columns, the base-metal coating or plating on the duty-paid, duty-free, or domestic steel used in place of the duty-paid steel (or drawback products) will have the same composition and thickness as the coating or plating on the duty-paid steel. If the coated or plated duty-paid steel is within an SAE, AISI, ASTM specification, then any duty-paid, duty-free, or domestic coated or plated steel must be covered by the same specification and grade (if two or more grades are in the specification).

B. Exported Articles on Which Drawback Will Be Claimed

The exported articles will have been manufactured in the United States using steels described in the Parallel Columns above.

C. General Statement

The manufacturer or producer manufactures or produces for its own account.

The manufacturer or producer may manufacture or produce articles for the account of another or another manufacturer or producer may manufacture or produce for the account of the manufacturer or producer under contract within the principal and agency relationship outlined in T.D.s 55027(2) and 55207(1) (*see* § 190.9).

[1] If claims are to be made on an ''appearing in'' basis, the remainder of this sentence should read ''appearing in the exported articles produced.''

[2] The date of production is the date an article is completed.

[1] Drawback products are those produced in the United States in accordance with the drawback law and regulations. Such products have ''dual status'' under section 1313(b). They may be designated as the basis for drawback and also may be deemed to be domestic merchandise.

[2] Standards set by the Society of Automotive Engineers (SAE), the American Iron and Steel Institute (AISI), or the American Society for Testing and Materials (ASTM).

D. Process of Manufacture or Production

The steel described in the Parallel Columns will be used to manufacture or produce articles in accordance with § 190.2.

E. Multiple Products

Not applicable.

F. Waste

No drawback is payable on any waste which results from the manufacturing operation. Unless the claim for drawback is based on the quantity of steel appearing in the exported articles, records will be maintained to establish the value (or the lack of value), quantity, and disposition of any waste that results from manufacturing the exported articles. If no waste results, records to establish that fact will be maintained.

G. Loss or Gain

The manufacturer or producer will maintain records showing the extent of any loss or gain in net weight or measurement of the steel caused by atmospheric conditions, chemical reactions, or other factors.

H. [Reserved]

I. Procedures and Records Maintained

Records, which may include records kept in the normal course of business, will be maintained to establish:

1. The identity and 8-digit HTSUS classification of the designated merchandise;
2. The quantity of merchandise of the designated merchandise [3] used to produce the exported articles;
3. That, within 5 years of the date of importation of the designated merchandise, the manufacturer or producer used the merchandise to produce articles. During the same 5-year period, the manufacturer or producer produced [4] the exported articles.

To obtain drawback the claimant must establish that the completed articles were exported within 5 years after the importation of the imported merchandise. Records establishing compliance with these requirements will be available for audit by CBP during business hours. Drawback is not payable without proof of compliance.

J. Inventory Procedures

The inventory records of the manufacturer or producer must show how the drawback recordkeeping requirements set forth in 19 U.S.C. 1313(b) and part 190 of the CBP Regulations will be met, as discussed under the heading ''Procedures and Records Maintained.'' If those records do not establish satisfaction of all legal requirements, drawback cannot be paid.

K. Basis of Claim for Drawback

Drawback will be claimed on the quantity of steel used in producing the exported articles only if there is no waste or valueless or unrecovered waste in the manufacturing operation. Drawback may be claimed on the quantity of eligible steel that appears in the exported articles, regardless of whether there is waste, and no records of waste need be maintained. If there is valuable waste recovered from the manufacturing operation and records are kept which show the quantity and value of the waste from each lot of steel, drawback may be claimed on the quantity of eligible steel used to produce the exported articles less the amount of that steel which the value of the waste would replace.

L. General Requirements

The manufacturer or producer will:

1. Comply fully with the terms of this general ruling when claiming drawback;
2. Open its factory and records for examination at all reasonable hours by authorized Government officers;
3. Keep its drawback related records and supporting data for at least 3 years from the date of liquidation of any drawback claim predicated in whole or in part upon this general ruling;
4. Keep its letter of notification to operate under this general ruling current by reporting promptly to the drawback office which liquidates its claims any changes in the information required by the General Instructions of this Appendix (I. General Instructions, 1 through 10), the corporate name, or corporate organization by succession or reincorporation;
5. Keep a copy of this general ruling on file for ready reference by employees and require all officials and employees concerned to familiarize themselves with the provisions of this general ruling; and
6. Issue instructions to insure proper compliance with title 19, United States Code, section 1313, part 190 of the CBP Regulations and this general ruling.

XIII. General Manufacturing Drawback Ruling Under 19 U.S.C. 1313(b) for Sugar (T.D. 81–92)

A. Same 8-Digit HTSUS Classification (Parallel Columns)

Imported merchandise or drawback products [1] to be designated as the basis for drawback on the exported products.	Duty-paid, duty-free or domestic merchandise classifiable under the same 8-digit HTSUS subheading number as that designated which will be used in the production of the exported products.
1. Granulated or liquid sugar for manufacturing, containing sugar solids of not less than 99.5 sugar degrees.	1. Granulated or liquid sugar for manufacturing, containing sugar solids of less than 99.5 sugar degrees.
2. Granulated or liquid sugar for manufacturing, containing sugar solids of not less than 99.5 sugar degrees.	2. Granulated or liquid sugar for manufacturing, containing sugar solids of less than 99.5 sugar degrees.

The sugars listed above test within three-tenths of a degree on the polariscope. Sugars in each column are completely interchangeable with the sugars directly opposite and designation will be made on this basis only. The designated sugar on which claims for drawback will be based will be classifiable under the same 8-digit HTSUS classification.

B. Exported Articles on Which Drawback Will Be Claimed

Edible substances (including confectionery) and/or beverages and/or ingredients therefor.

C. General Statement

The manufacturer or producer manufactures or produces for its own account. The manufacturer or producer may manufacture or produce articles for the account of another or another manufacturer or producer may manufacture or produce for the account of the manufacturer or producer under contract within the principal and agency relationship outlined in T.D.s 55027(2) and 55207(1) (*see* § 190.9).

D. Process of Manufacture or Production

The sugars are subjected to one or more of the following operations to form the desired product(s):

1. Mixing with other substances,
2. Cooking with other substances,
3. Boiling with other substances,
4. Baking with other substances,
5. Additional similar processes.

E. Multiple Products

Not applicable.

F. Waste

No drawback is payable on any waste which results from the manufacturing operation. Unless the claim for drawback is based on the quantity of sugar appearing in the exported articles, records will be maintained to establish the value (or the lack of value), quantity, disposition of any waste that results from manufacturing the exported articles. If no waste results, records to establish that fact will be maintained.

G. Loss or Gain

The manufacturer or producer will maintain records showing the extent of any loss or gain in net weight or measurement of the sugar caused by atmospheric conditions, chemical reactions, or other factors.

[3] If claims are to be made on an ''appearing in'' basis, the remainder of this sentence should read ''appearing in the exported articles produced.''

[4] The date of production is the date an article is completed.

[1] Drawback products are those produced in the United States in accordance with the drawback law and regulations. Such products have ''dual status'' under section 1313(b). They may be designated as the basis for drawback and also may be deemed to be domestic merchandise.

H. [Reserved]

I. Procedures and Records Maintained

Records, which may include records kept in the normal course of business, will be maintained to establish:

1. The identity and 8-digit HTSUS classification of the designated merchandise;

2. The quantity of merchandise classifiable under the same 8-digit HTSUS classification as the designated merchandise [2] used to produce the exported articles;

3. That, within 5 years of the date of importation of the designated merchandise, the manufacturer or producer used the merchandise to produce articles. During the same 5-year period, the manufacturer or producer produced [3] the exported articles.

To obtain drawback the claimant must establish that the completed articles were exported within 5 years after the importation of the imported merchandise. Records establishing compliance with these requirements will be available for audit by CBP during business hours. Drawback is not payable without proof of compliance.

J. Inventory Procedures

The inventory records of the manufacturer or producer, will show how the drawback recordkeeping requirements set forth in 19 U.S.C. 1313(b) and part 190 of the CBP Regulations will be met, as discussed under the heading ''Procedures and Records Maintained.'' If those records do not establish satisfaction of all legal requirements, drawback cannot be paid.

K. Basis of Claim for Drawback

Drawback will be claimed on the quantity of sugar used in producing the exported articles only if there is no waste or valueless or unrecovered waste in the manufacturing operation. Drawback may be claimed on the quantity of eligible sugar that appears in the exported articles regardless of whether there is waste, and no records of waste need be maintained. If there is valuable waste recovered from the manufacturing operation and records are kept which show the quantity and value of the waste, drawback may be claimed on the quantity of eligible material used to produce the exported articles less the amount of that sugar which the value of the waste would replace.

L. General Requirements

The manufacturer or producer will:

1. Comply fully with the terms of this general ruling when claiming drawback;

2. Open its factory and records for examination at all reasonable hours by authorized Government officers;

3. Keep its drawback related records and supporting data for at least 3 years from the date of liquidation of any drawback claim predicated in whole or in part upon this general ruling;

4. Keep its letter of notification of intent to operate under this general ruling current by reporting promptly to the drawback office which liquidates its claims any changes in the information required by the General Instructions of this Appendix (I. General Instructions, 1 through 10), the corporate name, or corporate organization by succession or reincorporation;

5. Keep a copy of this general ruling on file for ready reference by employees and require all officials and employees concerned to familiarize themselves with the provisions of this general ruling; and

6. Issue instructions to insure proper compliance with title 19, United States Code, section 1313, part 190 of the CBP Regulations and this general ruling.

XIV. General Manufacturing Drawback Ruling Under 19 U.S.C. 1313(a) for Woven Piece Goods (T.D. 83–84)

Drawback may be allowed under 19 U.S.C. 1313(a) upon the exportation of bleached, mercerized, printed, dyed, or redyed piece goods manufactured or produced by any one or a combination of the foregoing processes with the use of imported woven piece goods, subject to the following special requirements:

A. Imported Merchandise or Drawback Products [1] Used

Imported merchandise or drawback products (woven piece goods) are used in the manufacture of the exported articles upon which drawback claims will be based.

B. Exported Articles on Which Drawback Will Be Claimed

Exported articles on which drawback will be claimed must be manufactured in the United States using imported merchandise or drawback products.

C. General Statement

The manufacturer or producer manufactures or produces for its own account. The manufacturer or producer may manufacture or produce articles for the account of another or another manufacturer or producer may manufacture or produce for the account of the manufacturer or producer under contract within the principal and agency relationship outlined in T.D.s 55027(2) and 55207(1) (*see* § 190.9).

D. Process of Manufacture or Production

The imported merchandise or drawback products will be used to manufacture or produce articles in accordance with § 190.2.

The piece goods used in manufacture or production under this general manufacturing drawback ruling may also be subjected to one or more finishing processes. Drawback will not be allowed under this general manufacturing drawback ruling when the process performed results only in the restoration of the merchandise to its condition at the time of importation.

E. Multiple Products

Not applicable.

F. Waste

Rag waste may be incurred. No drawback is payable on any waste which results from the manufacturing operation. Unless the claim for drawback is based on the quantity of merchandise appearing in the exported articles, the records of the manufacturer or producer must show the quantity of rag waste, if any, its value, and its disposition. If no waste results, records will be maintained to establish that fact. In instances where rag waste occurs and it is impractical to account for the actual quantity of rag waste incurred, it may be assumed that such rag waste constituted 2% of the woven piece goods put into process. If necessary to establish the quantity of merchandise (eligible piece goods) appearing in the exported articles, such waste records will also be kept.

G. Shrinkage, Gain, and Spoilage

Unless the claim for drawback is based on the quantity of merchandise appearing in the exported articles, the records of the manufacturer or producer must show the yardage lost by shrinkage or gained by stretching during manufacture, and the quantity of remnants resulting and of spoilage incurred, if any. If necessary to establish the quantity of merchandise (eligible piece goods) appearing in the exported articles, such records for shrinkage, gain, and spoilage will also be kept.

H. Procedures and Records Maintained

Records, which may include records kept in the normal course of business, will be maintained to establish:

1. That the exported articles on which drawback is claimed were produced with the use of the imported merchandise; and

2. The quantity of imported merchandise [2] used in producing the exported articles.

To obtain drawback the claimant must establish that the completed articles were exported within 5 years after importation of the imported merchandise. Records establishing compliance with these requirements will be available for audit by CBP during business hours. Drawback is not payable without proof of compliance.

I. Inventory Procedures

The inventory records of the manufacturer or producer must show how the drawback recordkeeping requirements set forth in 19 U.S.C. 1313(a) and part 190 of the CBP Regulations will be met, as discussed under the heading ''Procedures and Records Maintained''. If those records do not establish satisfaction of all legal requirements, drawback cannot be paid.

The records of the manufacturer or producer must show, as to each lot of piece goods manufactured or produced for exportation with benefit of drawback, the lot number and the date or inclusive dates of manufacture or production, the quantity, identity, value, and 8-digit HTSUS classification of the imported (or drawback product) piece goods used, the condition in which imported or received (whether in the gray, bleached, dyed, or mercerized), the working allowance specified in the contract under which they are received, the process

[2] If claims are to be made on an ''appearing in'' basis, the remainder of this sentence should read ''appearing in the exported articles produced.''

[3] The date of production is the date an article is completed.

[1] Drawback products are those produced in the United States in accordance with the drawback law and regulations.

[2] If claims are to be made on an ''appearing in'' basis, the remainder of the sentence should read ''appearing in the exported articles.''

or processes applied thereto, and the quantity and description of the piece goods obtained. The records must also show the yardage lost by shrinkage or gained by stretching during manufacture or production, and the quantity of remnants resulting and of spoilage incurred.

J. Basis of Claim for Drawback

Drawback will be claimed on the quantity of merchandise used in producing the exported articles only if there is no waste or valueless or unrecovered waste in the manufacturing operation. Drawback may be claimed on the quantity of eligible merchandise that appears in the exported articles, regardless of whether there is waste, and no records of waste need be maintained. If there is valuable waste recovered from the manufacturing operation and records are kept which show the quantity and value of the waste, drawback may be claimed on the quantity of eligible material used to produce the exported articles, less the amount of that merchandise which the value of the waste would replace. (If remnants and/or spoilage occur during manufacture or production, the quantity of imported merchandise used will be determined by deducting from the quantity of piece goods received and put into manufacture or production the quantity of such remnants and/or spoilage. The remaining quantity will be reduced by the quantity thereof which the value of the rag waste, if any, would replace.)

K. General Requirements

The manufacturer or producer will:

1. Comply fully with the terms of this general ruling when claiming drawback;
2. Open its factory and records for examination at all reasonable hours by authorized Government officers;
3. Keep its drawback related records and supporting data for at least 3 years from the date of liquidation of any drawback claim predicated in whole or in part upon this general ruling;
4. Keep its letter of notification of intent to operate under this general ruling current by reporting promptly to the drawback office which liquidates its claims any changes in the information required by the General Instructions of this Appendix (I. General Instructions, 1 through 10), the corporate name, or corporate organization by succession or reincorporation.
5. Keep a copy of this general ruling on file for ready reference by employees and require all officials and employees concerned to familiarize themselves with the provisions of this general ruling; and
6. Issue instructions to insure proper compliance with 19 U.S.C. 1313, part 190 of the CBP Regulations and this general ruling.

Appendix B to Part 190—Sample Formats for Applications for Specific Manufacturing Drawback Rulings

Table of Contents

I. General

Applications for specific manufacturing drawback rulings using these sample formats must be submitted to, reviewed, and approved by CBP Headquarters. *See* 19 CFR 190.8(d). Applications must be submitted electronically to *HQDrawback@cbp.dhs.gov.* In these application formats, remarks in parentheses and footnotes are for explanatory purposes only and should not be copied. Other material should be quoted directly in the applications.

II. Format for Application for Specific Manufacturing Drawback Ruling Under 19 U.S.C. 1313(a) and 1313(b) (Combination).

COMPANY LETTERHEAD (Optional)

U.S. Customs and Border Protection, Entry Process and Duty Refunds, Regulations and Rulings, Office of Trade, 90 K Street NE—10th Floor (Mail Stop 1177), Washington, DC 20229–1177.

Dear Sir or Madam: We, (Applicant's Name), a (State, *e.g.,* Delaware) corporation (or other described entity) submit this application for a specific manufacturing drawback ruling that our manufacturing operations qualify for drawback under title 19, United States Code, §§ 1313(a) & (b), and part 190 of the CBP Regulations. We request that CBP authorize drawback on the basis of this application.

NAME AND ADDRESS AND IRS NUMBER (WITH SUFFIX) OF APPLICANT

(Section 190.8(a) of the CBP Regulations provides that each manufacturer or producer of articles intended for exportation with the benefit of drawback must apply for a specific manufacturing drawback ruling, unless operating under a general manufacturing drawback ruling under § 190.7 of the CBP Regulations. CBP will not approve an application which shows an unincorporated division or company as the applicant (*see* § 190.8(a)).)

LOCATION OF FACTORY

(Provide the address of the factory(s) where the process of manufacture or production will take place. Indicate if the factory is a different legal entity from the applicant, and indicate if operating under an Agent's general manufacturing drawback ruling.)

PERSONS WHO WILL SIGN DRAWBACK DOCUMENTS

(List persons legally authorized to bind the corporation who will sign drawback documents. Section 190.6 of the CBP Regulations permits only the president, vice president, secretary, treasurer, and any employee legally authorized to bind the corporation to sign for a corporation. In addition, a person within a business entity with a customs power of attorney for the company may sign. A customs power of attorney may also be given to a licensed customs broker. This heading should be changed to Names of Partners or Proprietor in the case of a partnership or sole proprietorship, respectively (*see* footnote at end of this sample format for persons who may sign applications for specific manufacturing drawback rulings).)

GENERAL STATEMENT

(The following questions must be answered:)

1. Who will be the importer of the designated merchandise?

(If the applicant will not always be the importer of the designated merchandise, specify that the applicant understand its obligations to maintain records to support the transfer under § 190.10, and its liability under § 190.63.)

2. Will an agent be used to process the designated or the substituted merchandise into articles?

(If an agent is to be used, the applicant must state it will comply with T.D.s 55027(2) and 55207(1) and § 190.9, as applicable, and that its agent will submit a letter of notification of intent to operate under the general manufacturing drawback ruling for agents (*see* § 190.7 and Appendix A) or an application for a specific manufacturing drawback ruling (*see* § 190.8 and this Appendix B).)

3. Will the applicant be the exporter? (If the applicant will not be the exporter in every case, but will be the claimant, the manufacturer must state that it will reserve the right to claim drawback with the knowledge and written consent of the exporter (19 CFR 190.82).)

PROCEDURES UNDER SECTION 1313(b) (PARALLEL COLUMNS—SAME 8-DIGIT CLASSIFICATION)

Imported merchandise or drawback products [1] to be designated as the basis for drawback on the exported products.	Duty-paid, duty-free, or domestic merchandise, of the same 8-digit HTSUS subheading number as that designated which will be used in the production of the exported products.
1.	1.
2.	2.
3.	3.

(Following the items listed in the Parallel Columns, the applicant must make a statement affirming the same 8-digit HTSUS classification of the merchandise. This statement should be included in the application exactly as it is stated below:)

The imported merchandise designated in our claims will be classifiable under the same 8-digit HTSUS classification as the merchandise used in producing the exported articles on which we claim drawback.

(In order to successfully claim drawback it is necessary to prove that the duty-paid, duty-free, or domestic merchandise, which is to be substituted for the imported merchandise, is classifiable under the same 8-digit HTSUS classification. To enable CBP to rule on the same 8-digit HTSUS classification, the application must include a detailed description of the designated imported merchandise and of the substituted duty-paid, duty-free, or domestic merchandise to be used to produce the exported articles. The application must also include the Bill of Materials and/or formulas annotated with the HTSUS classifications.)

(It is essential that all the characteristics which determine the identity of the merchandise are specified in the application in order to substantiate that the merchandise meets the the same 8-digit HTSUS classification statutory requirement. These characteristics should clearly distinguish merchandise of different identities.)

(The descriptions should be sufficient to classify the merchandise in the same 8-digit HTSUS subheading number included in the Parallel Columns. The left-hand column will consist of the name and the 8-digit HTSUS subheading number of the imported merchandise. The right-hand column will consist of the name and the 8-digit HTSUS subheading number for the duty-paid, duty-free, or domestic designated merchandise. Amendments to rulings will be required if any changes to the HTSUS classifications occur.)

EXPORTED ARTICLES ON WHICH DRAWBACK WILL BE CLAIMED

(Name each article to be exported. When the identity of the product is not clearly evident by its name, state what the product is (*e.g.,* a herbicide). There must be a match between each article described under the PROCESS OF MANUFACTURE OR PRODUCTION section below and each article listed here.)

PROCESS OF MANUFACTURE OR PRODUCTION

(Drawback under § 1313(b) is not allowable except where a manufacture or production exists. Manufacture or production is defined, for drawback purposes, in § 190.2. In order to obtain drawback under § 1313(b), it is essential for the applicant to show use in manufacture or production by providing a thorough description of the manufacturing process. This description should include the name and exact condition of the merchandise listed in the Parallel Columns, a complete explanation of the processes to which it is subjected in this country, the effect of such processes, the name and exact description of the finished article, and the use for which the finished article is intended. When applicable, include equations of any chemical reactions. Including a flow chart in the description of the manufacturing process is an excellent means of illustrating how a manufacture or production occurs. Flow charts can clearly illustrate if and at what point during the manufacturing process by-products and wastes are generated.)

(This section should contain a description of the process by which each item of merchandise listed in the Parallel Columns above is used to make or produce every article that is to be exported.)

MULTIPLE PRODUCTS

1. Relative Values

(Some processes result in the separation of the merchandise into two or more products. If applicable, list all of the products. State that you will record the market value of each product at the time it is first separated in the manufacturing process. If this section is not applicable to you, then state so.)

(Drawback law mandates the assignment of relative values when two or more products are necessarily produced in the same operation. For instance, the refining of flaxseed necessarily produces linseed oil and linseed husks (animal feed), and drawback must be distributed to each product in accordance with its relative value. However, the voluntary election of a steel fabricator, for instance, to use part of a lot of imported steel to produce automobile doors, and part of the lot to produce automobile fenders, does not call for relative value distribution.)

(The relative value of a product is its value divided by the total value of all products, whether or not exported. For example, 100 gallons of drawback merchandise are used to produce 100 gallons of products, including 60 gallons of product A, 20 gallons of product B, and 20 gallons of product C. At the time of separation, the unit values of products A, B, and C are $5, $10, and $50 respectively. The relative value of product A is $300 divided by $1,500 or 1/5. The relative value of B is 2/15 and of product C is 2/3, calculated in the same manner. This means that 1/5 of the drawback product payments will be distributed to product A, 2/15 to product B, and 2/3 to product C.)

(Drawback is allowable on exports of any of multiple products, but is not permitted on exports of valuable waste. In making this distinction between a product and valuable waste, the applicant should address the following significant elements: (1) The nature of the material of which the residue is composed; (2) the value of the residue as compared to the value of the principal manufactured product and the raw material; (3) the use to which it is put; (4) its status under the tariff laws, if imported; (5) whether it is a commodity recognized in commerce; (6) whether it must be subjected to some process to make it saleable.)

2. Producibility

(Some processes result in the separation of fixed proportions of each product, while other processes afford the opportunity to increase or decrease the proportion of each product. An example of the latter is petroleum refining, where the refiner has the option to increase or decrease the production of one or more products relative to the others. State under this heading whether you can or cannot vary the proportionate quantity of each product.)

(The MULTIPLE PRODUCTS section consists of two sub-sections: Relative Values and Producibility. If multiple products do not result from your operation state ''Not Applicable'' for the entire section. If multiple products do result from your operation Relative Values will always apply. However, Producibility may or may not apply. If Producibility does not apply to your multiple product operation state ''Not Applicable'' for this sub-section.)

WASTE

(Many processes result in residue materials which, for drawback purposes, are treated as wastes. Describe any residue materials which you believe should be so treated. If no waste results, include a statement to that effect.)

(If waste occurs, state: (1) Whether or not it is recovered, (2) whether or not it is valueless, and (3) what you do with it. This information is required whether claims are made on a ''used in'' or ''appearing in'' basis and regardless of the amount of waste incurred.)

(Irrecoverable wastes are those consisting of materials which are lost in the process. Valueless wastes are those which may be recovered but have no value. These irrecoverable and valueless wastes do not reduce the drawback claim provided the claim is based on the quantity of imported material used in manufacturing. If the claim is based upon the quantity of imported merchandise appearing in the exported article, irrecoverable and valueless waste will cause a reduction in the amount of drawback.)

(Valuable wastes are those recovered wastes which have a value either for sale or for use in a different manufacturing process. However, it should be noted that this standard applies to the entire industry and is not a selection on your part. An option by you not to choose to sell or use the waste in some different operation does not make it valueless if another manufacturer can use the waste. State what you do with the waste. If you have to pay someone to get rid of it, or if you have buyers for the waste, you must state so in your application regardless of what basis you are using.)

(If you recover valuable waste and you choose to claim on the basis of the quantity of merchandise used in producing the exported articles (less any valuable waste), state that you will keep records to establish the quantity and value of the waste recovered. *See* ''Basis of Claim for Drawback'' section below.)

STOCK IN PROCESS

(Some processes result in another type of residual material, namely, stock in process, which affects the allowance of drawback.

[1] Drawback products are those produced in the United States in accordance with the drawback law and regulations. Such products have ''dual status'' under section 1313(b). They may be designated as the basis for drawback and also may be deemed to be domestic merchandise.

Stock in process may exist when residual material resulting from a manufacturing or processing operation is reintroduced into a subsequent manufacturing or processing operation; *e.g.,* trim pieces from a cast article. The effect of stock in process on a drawback claim is that the amount of drawback for the period in which the stock in process was withdrawn from the manufacturing or processing operation (or the manufactured article, if manufacturing or processing periods are not used) is reduced by the quantity of merchandise or drawback products used to produce the stock in process if the ''used in'' or ''used in less valuable waste'' methods are used (if the ''appearing in'' method is used, there will be no effect on the amount of drawback), and the quantity of merchandise or drawback products used to produce the stock in process is added to the merchandise or drawback products used in the subsequent manufacturing or production period (or the subsequently produced article)).

(If stock in process occurs and claims are to be based on stock in process, the application must include a statement to that effect. The application must also include a statement that merchandise is considered to be used in manufacture at the time it was originally processed, so that the stock in process will not be included twice in the computation of the merchandise used to manufacture the finished articles on which drawback is claimed.)

LOSS OR GAIN (Separate and distinct from WASTE)

(Some manufacturing processes result in an intangible loss or gain of the net weight or measurement of the merchandise used. This loss or gain is caused by atmospheric conditions, chemical reactions, or other factors. If applicable, state the approximate usual percentage or quantity of such loss or gain. Note that percentage values will be considered to be measured by weight unless otherwise specified. Loss or gain does not occur during all manufacturing processes. If loss or gain does not apply to your manufacturing process, state ''Not Applicable.'')

PROCEDURES AND RECORDS MAINTAINED

We will maintain records to establish:

1. The identity and 8-digit HTSUS subheading number of the merchandise we designate;

2. The quantity of merchandise classifiable under the same 8-digit HTSUS subheading number as the designated merchandise [2] we used to produce the exported articles;

3. That, within 5 years after the date of importation, we used the designated merchandise to produce articles. During the same 5-year period, we produced [3] the exported articles.

We realize that to obtain drawback the claimant must establish that the completed articles were exported within 5 years after the importation of the imported merchandise. Our records establishing our compliance with these requirements will be available for audit by CBP during business hours. We understand that drawback is not payable without proof of compliance.

INVENTORY PROCEDURES

(Describe your inventory records and state how those records will meet the drawback recordkeeping requirements set forth in 19 U.S.C. 1313(b) and part 190 of the CBP Regulations as discussed under the heading ''PROCEDURES AND RECORDS MAINTAINED''. To insure compliance the following areas, as applicable, should be included in your discussion:)

RECEIPT AND STORAGE OF DESIGNATED MERCHANDISE

RECORDS OF USE OF DESIGNATED MERCHANDISE

BILLS OF MATERIALS

MANUFACTURING RECORDS

WASTE RECORDS

RECORDS OF USE OF DUTY-PAID, DUTY-FREE OR DOMESTIC MERCHANDISE OF THE REQUIRED SAME 8-DIGIT HTSUS SUBHEADING NUMBER WITHIN 5 YEARS AFTER THE DATE OF IMPORTATION

FINISHED STOCK STORAGE RECORDS

SHIPPING RECORDS

(Proof of time frames may be specific or inclusive, *e.g.,* within 120 days, but specific proof is preferable. Separate storage and identification of each article or lot of merchandise usually will permit specific proof of exact dates. Proof of inclusive dates of use, production or export may be acceptable, but in such cases it is best to describe very specifically the data you intend to use to establish each legal requirement, thereby avoiding misunderstandings at the time of audit.) (If you do not describe the inventory records that you will use, you must state: ''All legal requirements will be met by our inventory procedures.'' However, it should be noted that without a detailed description of the inventory procedures set forth in the application, a judgment as to the adequacy of such a statement cannot be made until a drawback claim is verified. Approval of this application for a specific manufacturing drawback ruling merely constitutes approval of the ruling application as submitted; it does not constitute approval of the applicant's recordkeeping procedures if those procedures are solely described as meeting the legal requirements, without specifically stating how the requirements will be met. Drawback is not payable without proof of compliance.)

BASIS OF CLAIM FOR DRAWBACK

(There are three different bases that may be used to claim drawback: (1) Used in; (2) appearing in; and (3) used in less valuable waste.)

(The ''used in'' basis may be employed only if there is either no waste, or the waste is valueless or unrecovered. Irrecoverable or valueless waste does not reduce the amount of drawback when claims are based on the ''used in'' basis. Drawback is payable in the amount of 99 percent of the duties, taxes, and fees, paid on the quantity of imported material designated as the basis for the allowance of drawback on the exported articles. The designated quantity may not exceed the quantity of material actually used in the manufacture of the exported articles.) (For example, if 100 pounds of material, valued at $1.00 per pound, were used in manufacture resulting in 10 pounds of irrecoverable or valueless waste, the 10 pounds of irrecoverable or valueless waste would not reduce the drawback. In this case drawback would be payable on 99% of the duties, taxes, and fees paid on the 100 pounds of designated material used to produce the exported articles.)

(The ''appearing in'' basis may be used regardless of whether there is waste. If the ''appearing in'' basis is used, the claimant does not need to keep records of waste and its value. However, the manufacturer must establish the identity and quantity of the merchandise appearing in the exported product and provide this information. Waste reduces the amount of drawback when claims are made on the ''appearing in'' basis. Drawback is payable on 99 percent of the duties, taxes, and fees paid on the quantity of material designated, which may not exceed the quantity of eligible material that appears in the exported articles. ''Appearing in'' may not be used if multiple products are involved.)

(Based on the previous example, drawback would be payable on the 90 pounds of merchandise which actually went into the exported product (appearing in) rather than the 100 pounds used in as set forth previously.)

(The ''used in less valuable waste'' basis may be employed when the manufacturer recovers valuable waste, and keeps records of the quantity and value of waste from each lot of merchandise. The value of the waste reduces the amount of drawback when claims are based on the ''used in less valuable waste'' basis. When valuable waste is incurred, the drawback allowance on the exported article is based on the duties, taxes, and fees, paid on the quantity of merchandise used in the manufacture, as reduced by the quantity of such merchandise which the value of the waste would replace. In such a case, drawback is claimed on the quantity of eligible material actually used to produce the exported product, less the amount of such material which the value of the waste would replace. Note section 190.26(c) of the CBP Regulations.)

(Based on the previous examples, if the 10 pounds of waste had a value of $.50 per pound, then the 10 pounds of waste, having a total value of $5.00, would be equivalent in value to 5 pounds of the designated material. Thus the value of the waste would replace 5 pounds of the merchandise used, and drawback is payable on 99 percent of the duties, taxes, and fees paid on the 95 pounds of imported material designated as the basis for the allowance of drawback on the exported article rather than on the 100 pounds ''used in'' or the 90 pounds ''appearing in'' as set forth in the above examples.)

[2] If claims are to be made on an ''appearing in'' basis, the remainder of this sentence should read ''appearing in the exported articles we produce.''

[3] The date of production is the date an article is completed.

(Two methods exist for the manufacturer to show the quantity of material used or appearing in the exported article: (1) Schedule or (2) Abstract.)

(A ''schedule'' shows the quantity of material used in producing each unit of product. The schedule method is usually employed when a standard line of merchandise is being produced according to fixed formulas. Some schedules will show the quantity of merchandise used to manufacture or produce each article and others will show the quantity appearing in each finished article. Schedules may be prepared to show the quantity of merchandise either on the basis of percentages or by actual weights and measurements. A schedule determines the amount of material that is needed to produce a unit of product before the material is actually used in production.)

(An ''abstract'' is the summary of the records which shows the total quantity of merchandise used in producing all articles during the period covered by the abstract. The abstract looks at a period of time, for instance 3 months, in which the quantity of material has been used. An abstract looks back at how much material was actually used after a production period has been completed.)

(An applicant who fails to indicate a ''schedule'' choice must base its claims on the ''abstract'' method. State which Basis and Method you will use. An example of Used In by Schedule follows:)

We will claim drawback on the quantity of (specify material) used in manufacturing (exported article) according to the schedule set forth below.

(Section 190.8(f) of the CBP Regulations requires submission of the schedule with the application for a specific manufacturing drawback ruling. An applicant who desires to file supplemental schedules with the drawback office whenever there is a change in the quantity or material used should state:)

We request permission to file supplemental schedules with the drawback office covering changes in the quantities of material used to produce the exported articles, or different styles or capacities of containers of such exported merchandise.

(Neither the ''appearing in'' basis nor the ''schedule'' method for claiming drawback may be used where the relative value procedure is required.)

PROCEDURES UNDER SECTION 1313(a)

IMPORTED MERCHANDISE OR DRAWBACK PRODUCTS USED UNDER 1313(a)

(List the imported merchandise or drawback products.)

EXPORTED ARTICLES ON WHICH DRAWBACK WILL BE CLAIMED

(Name each article to be exported. When the identity of the product is not clearly evident by its name state what the product is, *e.g.,* a herbicide. There must be a match between each article described under the PROCESS OF MANUFACTURE AND PRODUCTION section below and each article listed here.)

(If the merchandise used under § 1313(a) is not also used under § 1313(b), the sections entitled PROCESS OF MANUFACTURE OR PRODUCTION, BY-PRODUCTS, LOSS OR GAIN, and STOCK IN PROCESS should be included here to cover merchandise used under § 1313(a). However, if the merchandise used under § 1313(a) is also used under § 1313(b) these sections need not be repeated unless they differ in some way from the § 1313(b) descriptions.)

PROCEDURES AND RECORDS MAINTAINED

We will maintain records to establish:

1. That the exported articles on which drawback is claimed were produced with the use of the imported merchandise, and

2. The quantity of imported merchandise [4] we used in producing the exported articles.

We realize that to obtain drawback the claimant must establish that the completed articles were exported within 5 years after importation of the imported merchandise. We understand that drawback is not payable without proof of compliance.

INVENTORY PROCEDURES

(This section must be completed separately from that set forth under the § 1313(b) portion of your application. The legal requirements under § 1313(a) differ from those under § 1313(b).) (Describe your inventory procedures and state how you will identify the imported merchandise from date of importation until it is incorporated in the articles to be exported. Also describe how you will identify the finished articles from the time of manufacture until shipment.)

BASIS OF CLAIM FOR DRAWBACK

(*See* section with this title for procedures under § 1313(b). Either repeat the same basis of claim or use a different basis of claim, as described above, specifically for drawback claimed under § 1313(a).)

AGREEMENTS

The Applicant specifically agrees that it will:

1. Operate in full conformance with the terms of this application for a specific manufacturing drawback ruling when claiming drawback;

2. Open its factory and records for examination at all reasonable hours by authorized Government officers;

3. Keep its drawback related records and supporting data for at least 3 years from the date of liquidation of any drawback claim predicated in whole or in part upon this application;

4. Keep this application current by reporting promptly to the drawback office which liquidates its claims any changes in the number or locations of its offices or factories, the corporate name, the persons who will sign drawback documents, the basis of claim used for calculating drawback, the decision to use or not to use an agent under § 190.9 or the identity of an agent under that section, or the corporate organization by succession or reincorporation;

5. Keep this application current by reporting promptly to CBP Headquarters all other changes affecting information contained in this application;

6. Keep a copy of this application and the letter of approval by CBP Headquarters on file for ready reference by employees and require all officials and employees concerned to familiarize themselves with the provisions of this application and that letter of approval; and

7. Issue instructions to insure proper compliance with title 19, United States Code, section 1313, part 190 of the CBP Regulations and this application and letter of approval.

DECLARATION OF OFFICIAL

I declare that I have read this application for a specific manufacturing drawback ruling; that I know the averments and agreements contained herein are true and correct; and that my signature on this ____ day of _____ 20____, makes this application binding on

_____

(Name of Applicant Corporation, Partnership, or Sole Proprietorship)

By [5] _____

(Signature and Title)

_____

(Print Name)

III. Format for Application for Specific Manufacturing Drawback Ruling Under 19 U.S.C. 1313(b)

COMPANY LETTERHEAD (Optional)

U.S. Customs and Border Protection, Entry Process and Duty Refunds Branch, Commercial and Trade Facilitation Division, Regulations and Rulings, Office of Trade, 90 K Street NE—10th Floor (Mail Stop 1177), Washington, DC 20229–1177.

Dear Sir or Madam: We, (Applicant's Name), a (State, *e.g.,* Delaware) corporation (or other described entity) submit this application for a specific manufacturing drawback ruling that our manufacturing operations qualify for drawback under title 19, United States Code, section 1313(b), and part 190 of the CBP Regulations. We request that CBP authorize drawback on the basis of this application.

NAME AND ADDRESS AND IRS NUMBER (WITH SUFFIX) OF APPLICANT

(Section 190.8(a) of the CBP Regulations provides that each manufacturer or producer of articles intended for exportation with the benefit of drawback will apply for a specific manufacturing drawback ruling, unless operating under a general manufacturing drawback ruling under § 190.7 of the CBP Regulations. CBP will not approve an application which shows an unincorporated

[4] If claims are to be made on an ''appearing in'' basis, the remainder of the sentence should read ''appearing in the exported articles we produce.''

[5] Section 190.6(a) requires that applications for specific manufacturing drawback rulings be signed or electronically certified by any individual legally authorized to bind the person (or entity) for whom the application is signed or the owner of a sole proprietorship, a full partner in a partnership, an individual acting on his or her own behalf, or, if a corporation, the president, a vice president, secretary, treasurer or employee legally authorized to bind the corporation. In addition, any employee of a business entity with a customs power of attorney may sign such an application, as may a licensed customs broker with a customs power of attorney.

division or company as the applicant (*see* § 190.8(a)).)

LOCATION OF FACTORY

(Provide the address of the factory(s) where the process of manufacture or production will take place. Indicate if the factory is a different legal entity from the applicant, and indicate if the applicant is operating under an Agent's general manufacturing drawback ruling.)

PERSONS WHO WILL SIGN DRAWBACK DOCUMENTS

(List persons legally authorized to bind the corporation who will sign drawback documents. Section 190.6 of the CBP Regulations permits only the president, vice president, secretary, treasurer, and any employee legally authorized to bind the corporation to sign for a corporation. In addition, a person within a business entity with a customs power of attorney for the company may sign. A customs power of attorney may also be given to a licensed customs broker. This heading should be changed to NAMES OF PARTNERS or PROPRIETOR in the case of a partnership or sole proprietorship, respectively (*see* footnote at end of this sample format for persons who may sign applications for specific manufacturing drawback rulings).)

GENERAL STATEMENT

(The following questions must be answered:)

1. Who will be the importer of the designated merchandise?

(If the applicant will not always be the importer of the designated merchandise, specify that the applicant understand its obligations to maintain records to support the transfer under § 190.10, and its liability under § 190.63.)

2. Will an agent be used to process the designated or the substituted merchandise into articles?

(If an agent is to be used, the applicant must state it will comply with T.D.s 55027(2) and 55207(1), and § 190.9, as applicable, and that its agent will submit a letter of notification of intent to operate under the general manufacturing drawback ruling for agents (*see* § 190.7 and Appendix A), or an application for a specific manufacturing drawback ruling (*see* § 190.8 and this Appendix B).)

3. Will the applicant be the exporter?

(If the applicant will not be the exporter in every case, but will be the claimant, the manufacturer must state that it will reserve the right to claim drawback with the knowledge and written consent of the exporter (19 CFR 190.82).)

PARALLEL COLUMNS—''SAME 8-DIGIT HTSUS CLASSIFICATION''

Imported merchandise or drawback products[1] to be designated as the basis for drawback on the exported products.	Duty-paid, duty-free or domestic merchandise of the Same 8-digit HTSUS subheading number as that designated which will be used in the production of the exported products.
1.	1.
2.	2.
3.	3.

(Following the items listed in the Parallel Columns, the applicant must make a statement affirming the same 8-digit HTSUS subheading numberof the merchandise. This statement should be included in the application exactly as it is stated below:)

The imported merchandise designated in our claims will be classifiable under the same 8-digit HTSUS subheading number as the merchandise used in producing the exported articles on which we claim drawback, such that the merchandise used would, if imported, be subject to the same rate of duty as the designated merchandise.

(In order to successfully claim drawback it is necessary to prove that the duty-paid, duty-free, or domestic merchandise, which is to be substituted for the imported merchandise, is ''classifiable under the same 8-digit HTSUS subheading number.'' To enable CBP to rule on the proper ''same 8-digit HTSUS subheading number,'' the application must include a detailed description of the designated imported merchandise, and of the substituted duty-paid, duty-free, or domestic merchandise used to produce the exported articles. The application must also include the Bill of Materials and/or formulas annotated with the HTSUS classification.)

(It is essential that all the characteristics which determine the identity of the merchandise are provided in the application in order to substantiate that the merchandise meets the ''same 8-digit HTSUS subheading number'' statutory requirement. These characteristics should clearly distinguish merchandise of different identities.

(The descriptions of the ''same 8-digit HTSUS subheading number'' merchandise should be included in the Parallel Columns. The left-hand column will consist of the name and 8-digit HTSUS subheading number of the imported merchandise. The right-hand column will consist of the name and 8-digit HTSUS subheading number for the duty-paid, duty-free, or domestic designated merchandise. Amendments to the ruling will be required if any changes to the HTSUS classifications occur.)

EXPORTED ARTICLES ON WHICH DRAWBACK WILL BE CLAIMED

(Name each article to be exported. When the identity of the product is not clearly evident by its name state what the product is, *e.g.,* a herbicide. There must be a match between each article described under the PROCESS OF MANUFACTURE AND PRODUCTION section below and each article listed here.)

PROCESS OF MANUFACTURE OR PRODUCTION

(Drawback under § 1313(b) is not allowable except where a manufacture or production exists. Manufacture or production is defined, for drawback purposes, in § 190.2. In order to obtain drawback under § 1313(b), it is essential for the applicant to show use in manufacture or production by providing a thorough description of the manufacturing process. This description should include the name and exact condition of the merchandise listed in the Parallel Columns, a complete explanation of the processes to which it is subjected in this country, the effect of such processes, the name and exact description of the finished article, and the use for which the finished article is intended. When applicable, include equations of any chemical reactions. Including a flow chart in the description of the manufacturing process is an excellent means of illustrating how manufacture or production occurs. Flow charts can clearly illustrate if and at what point during the manufacturing process by-products and wastes are generated.)

(This section should contain a description of the process by which each item of merchandise listed in the Parallel Columns above is used to make or produce every article that is to be exported.)

MULTIPLE PRODUCTS

1. Relative Values

(Some processes result in the separation of the merchandise into two or more products. If applicable, list all of the products. State that you will record the market value of each product or by-product at the time it is first separated in the manufacturing process. If this section is not applicable to you, then state so.)

(Drawback law mandates the assignment of relative values when two or more products are necessarily produced in the same operation. For instance, the refining of flaxseed necessarily produces linseed oil and linseed husks (animal feed), and drawback must be distributed to each product in accordance with its relative value. However, the voluntary election of a steel fabricator, for instance, to use part of a lot of imported steel to produce automobile doors, and part of the lot to produce automobile fenders, does not call for relative value distribution.)

[1] Drawback products are those produced in the United States in accordance with the drawback law and regulations. Such products have ''dual status'' under section 1313(b). They may be designated as the basis for drawback and also may be deemed to be domestic merchandise.

(The relative value of a product is its value divided by the total value of all products, whether or not exported. For example, 100 gallons of drawback merchandise are used to produce 100 gallons of products, including 60 gallons of product A, 20 gallons of product B, and 20 gallons of product C. At the time of separation, the unit values of products A, B, and C are $5, $10, and $50 respectively. The relative value of product A is $300 divided by $1,500 or 1/5. The relative value of B is 2/15 and of product C is 2/3, calculated in the same manner. This means that 1/5 of the drawback product payments will be distributed to product A, 2/15 to product B, and 2/3 to product C.)

(Drawback is allowable on exports of any of multiple products, but is not permitted on exports of valuable waste. In making this distinction between a product and valuable waste, the applicant should address the following significant elements: (1) The nature of the material of which the residue is composed; (2) the value of the residue as compared to the value of the principal manufactured product and the raw material; (3) the use to which it is put; (4) its status under the tariff laws, if imported; (5) whether it is a commodity recognized in commerce; (6) whether it must be subjected to some process to make it saleable.)

2. Producibility

(Some processes result in the separation of fixed proportions of each product, while other processes afford the opportunity to increase or decrease the proportion of each product. An example of the latter is petroleum refining, where the refiner has the option to increase or decrease the production of one or more products relative to the others. State under this heading whether you can or cannot vary the proportionate quantity of each product.)

(The MULTIPLE PRODUCTS section consists of two sub-sections: Relative Values and Producibility. If multiple products do not result from your operation state ''Not Applicable'' for the entire section. If multiple products do result from your operation Relative Values will always apply. However, Producibility may or may not apply. If Producibility does not apply to your multiple product operation, then state ''Not Applicable'' for this sub-section.)

WASTE

(Many processes result in residue materials which, for drawback purposes, are treated as waste. Describe any residue materials which you believe should be so treated. If no waste results, include a statement to that effect.)

(If waste occurs, state: (1) Whether or not it is recovered, (2) whether or not it is valueless, and (3) what you do with it. This information is required whether claims are made on a ''used in'' or ''appearing in'' basis, and regardless of the amount of waste incurred.)

(Irrecoverable wastes are those consisting of materials which are lost in the process. Valueless wastes are those which may be recovered, but have no value. These irrecoverable and valueless wastes do not reduce the drawback claim provided the claim is based on the quantity of imported material used in manufacturing. If the claim is based upon the quantity of imported merchandise appearing in the exported article, irrecoverable and valueless waste will cause a reduction in the amount of drawback.)

(Valuable wastes are those recovered wastes which have a value either for sale or for use in a different manufacturing process. However, it should be noted that this standard applies to the entire industry and is not a selection on your part. An option by you not to choose to sell or use the waste in some different operation does not make it valueless if another manufacturer can use the waste. State what you do with the waste. If you have to pay someone to get rid of it, or if you have buyers for the waste, you must state so in your application regardless of what basis you are using.)

(If you recover valuable waste and if you choose to claim on the basis of the quantity of merchandise used in producing the exported articles less any valuable waste, state that you will keep records to establish the quantity and value of the waste recovered. *See* ''Basis of Claim for Drawback'' section below.)

STOCK IN PROCESS

(Some processes result in another type of residual material, namely, stock in process, which affects the allowance of drawback. Stock in process may exist when residual material resulting from a manufacturing or processing operation is reintroduced into a subsequent manufacturing or processing operation; *e.g.,* trim pieces from a cast article. The effect of stock in process on a drawback claim is that the amount of drawback for the period in which the stock in process was withdrawn from the manufacturing or processing operation (or the manufactured article, if manufacturing or processing periods are not used) is reduced by the quantity of merchandise or drawback products used to produce the stock in process if the ''used in'' or ''used in less valuable waste'' methods are used (if the ''appearing in'' method is used, there will be no effect on the amount of drawback), and the quantity of merchandise or drawback products used to produce the stock in process is added to the merchandise or drawback products used in the subsequent manufacturing or production period (or the subsequently produced article)).

(If stock in process occurs and claims are to be based on stock in process, the application must include a statement to that effect. The application must also include a statement that merchandise is considered to be used in manufacture at the time it was originally processed, so that the stock in process will not be included twice in the computation of the merchandise used to manufacture the finished articles on which drawback is claimed.)

LOSS OR GAIN (Separate and distinct from WASTE)

(Some manufacturing processes result in an intangible loss or gain of the net weight or measurement of the merchandise used. This loss or gain is caused by atmospheric conditions, chemical reactions, or other factors. If applicable, state the approximate usual percentage or quantity of such loss or gain. Note that percentage values will be considered to be measured ''by weight'' unless otherwise specified. Loss or gain does not occur during all manufacturing processes. If loss or gain does not apply to your manufacturing process, state ''Not Applicable.'')

PROCEDURES AND RECORDS MAINTAINED

We will maintain records to establish:

1. The identity and 8-digit HTSUS subheading number of the merchandise we designate;

2. The quantity of merchandise classifiable under the same 8-digit HTSUS subheading number as the designated merchandise [2] we used to produce the exported articles;

3. That, within 5 years after the date of importation, we used the designated merchandise to produce articles. During the same 5-year period, we produced [3] the exported articles;

We realize that to obtain drawback the claimant must establish that the completed articles were exported within 5 years after the importation of the imported merchandise. Our records establishing our compliance with these requirements will be available for audit by CBP during business hours. We understand that drawback is not payable without proof of compliance.

INVENTORY PROCEDURES

(Describe your inventory records and state how those records will meet the drawback recordkeeping requirements set forth in 19 U.S.C. 1313(b) and part 190 of the CBP Regulations as discussed under the heading PROCEDURES AND RECORDS MAINTAINED. To help ensure compliance the following areas, as applicable, should be included in your discussion:)

RECEIPT AND STORAGE OF DESIGNATED MERCHANDISE

RECORDS OF USE OF DESIGNATED MERCHANDISE

BILLS OF MATERIALS

MANUFACTURING RECORDS

WASTE RECORDS

RECORDS OF USE OF DUTY-PAID, DUTY-FREE OR DOMESTIC MERCHANDISE OF THE REQUIRED SAME 8-DIGIT HTSUS SUBHEADING WITHIN 5 YEARS AFTER IMPORTATION OF THE DESIGNATED MERCHANDISE

FINISHED STOCK STORAGE RECORDS

SHIPPING RECORDS

(Proof of time frames may be specific or inclusive, *e.g.,* within 120 days, but specific proof is preferable. Separate storage and identification of each article or lot of merchandise usually will permit specific proof of exact dates. Proof of inclusive dates of use, production or export may be acceptable, but in such cases it is better to describe very specifically the data you intend

[2] If claims are to be made on an ''appearing in'' basis, the remainder of this sentence should read ''appearing in the exported articles we produce.''

[3] The date of production is the date an article is completed.

to use to establish each legal requirement, thereby avoiding misunderstandings at the time of audit.)

(If you do not describe the inventory records that you will use, you must state: ''All legal requirements will be met by our inventory procedures.'' However, it should be noted that without a detailed description of the inventory procedures set forth in the application, a judgment as to the adequacy of such a statement cannot be made until a drawback claim is verified. Approval of this application for a specific manufacturing drawback ruling merely constitutes approval of the ruling application as submitted; it does not constitute approval of the applicant's recordkeeping procedures if those procedures are solely described as meeting the legal requirements, without specifically stating how the requirements will be met. Drawback is not payable without proof of compliance.)

BASIS OF CLAIM FOR DRAWBACK

(There are three different bases that may be used to claim drawback: (1) Used in; (2) appearing in; and (3) used in less valuable waste.)

(The ''used in'' basis may be employed only if there is either no waste, or the waste is valueless or unrecovered. Irrecoverable or valueless waste does not reduce the amount of drawback when claims are based on the ''used in'' basis. Drawback is payable in the amount of 99 percent of the duties, taxes, and fees, paid on the quantity of imported material designated as the basis for the allowance of drawback on the exported articles. The designated quantity may not exceed the quantity of material actually used in the manufacture of the exported articles.)

(For example, if 100 pounds of material, valued at $1.00 per pound, were used in manufacture resulting in 10 pounds of irrecoverable or valueless waste, the 10 pounds of irrecoverable or valueless waste would not reduce the drawback. In this case drawback would be payable on 99% of the duties, taxes, and fees, paid on the 100 pounds of designated material used to produce the exported articles.)

(The ''appearing in'' basis may be used regardless of whether there is waste. If the ''appearing in'' basis is used, the claimant does not need to keep records of waste and its value. However, the manufacturer must establish the identity and quantity of the merchandise appearing in the exported product and provide this information. Waste reduces the amount of drawback when claims are made on the ''appearing in'' basis. Drawback is payable on 99 percent of the duties, taxes, and fees paid on the quantity of material designated, which may not exceed the quantity of eligible material that appears in the exported articles. ''Appearing in'' may not be used if multiple products are involved.)

(Based on the previous example, drawback would be payable on the 90 pounds of merchandise which actually went into the exported product (appearing in) rather than the 100 pounds used in as set forth previously.)

(The ''used in less valuable waste'' basis may be employed when the manufacturer recovers valuable waste, and keeps records of the quantity and value of waste from each lot of merchandise. The value of the waste reduces the amount of drawback when claims are based on the ''used in less valuable waste'' basis. When valuable waste is incurred, the drawback allowance on the exported article is based on the duties, taxes, and fees paid on the quantity of merchandise used in the manufacture, as reduced by the quantity of such merchandise which the value of the waste would replace. In such a case, drawback is claimed on the quantity of eligible material actually used to produce the exported product, less the amount of such material which the value of the waste would replace. Note section 190.26(c) of the CBP Regulations.)

(Based on the previous examples, if the 10 pounds of waste had a value of $.50 per pound, then the 10 pounds of waste, having a total value of $5.00, would be equivalent in value to 5 pounds of the designated material. Thus the value of the waste would replace 5 pounds of the merchandise used, and drawback is payable on 99 percent of the duties, taxes, and fees paid on the 95 pounds of imported material designated as the basis for the allowance of drawback on the exported article rather than on the 100 pounds ''used in'' or the 90 pounds ''appearing in'' as set forth in the above examples.)

(Two methods exist for the manufacturer to show the quantity of material used or appearing in the exported article: (1) Schedule or (2) Abstract.)

(A ''schedule'' shows the quantity of material used in producing each unit of product. The schedule method is usually employed when a standard line of merchandise is being produced according to fixed formulas. Some schedules will show the quantity of merchandise used to manufacture or produce each article and others will show the quantity appearing in each finished article. Schedules may be prepared to show the quantity of merchandise either on the basis of percentages, or by actual weights and measurements. A schedule determines the amount of material that is needed to produce a unit of product, before the material is actually used in production.)

(An ''abstract'' is the summary of the records which shows the total quantity of merchandise used in producing all articles during the period covered by the abstract. The abstract looks at a period of time, for instance 3 months, in which the quantity of material has been used. An abstract looks back at how much material was actually used after a production period has been completed.)

(An applicant who fails to indicate the ''schedule'' choice must base its claims on the ''abstract'' method. State which Basis and Method you will use. An example of Used In by Schedule would read:)

We will claim drawback on the quantity of (specify material) used in manufacturing (exported article) according to the schedule set forth below.

(Section 190.8(f) of the CBP Regulations requires submission of the schedule with the application for a specific manufacturing drawback ruling. An applicant who desires to file supplemental schedules with the drawback office whenever there is a change in the quantity or material used should state:)

We request permission to file supplemental schedules with the drawback office covering changes in the quantities of material used to produce the exported articles, or different styles or capacities of containers of such exported merchandise.

(Neither the ''appearing in'' basis nor the ''schedule'' method for claiming drawback may be used where the relative value procedure is required.)

AGREEMENTS

The Applicant specifically agrees that it will:

1. Operate in full conformance with the terms of this application for a specific manufacturing drawback ruling when claiming drawback;

2. Open its factory and records for examination at all reasonable hours by authorized Government officers;

3. Keep its drawback related records and supporting data for at least 3 years from the date of liquidation of any drawback claim predicated in whole or in part upon this application;

4. Keep this application current by reporting promptly to the drawback office which liquidates its claims any changes in the number or locations of its offices or factories, the corporate name, the persons who will sign drawback documents, the basis of claim used for calculating drawback, the decision to use or not to use an agent under § 190.9 or the identity of an agent under that section, or the corporate organization by succession or reincorporation;

5. Keep this application current by reporting promptly to CBP Headquarters, all other changes affecting information contained in this application;

6. Keep a copy of this application and the letter of approval by CBP Headquarters on file for ready reference by employees and require all officials and employees concerned to familiarize themselves with the provisions of this application and that letter of approval; and

7. Issue instructions to insure proper compliance with title 19, United States Code, section 1313, part 190 of the CBP Regulations and this application and letter of approval.

Declaration of Official

I declare that I have read this application for a specific manufacturing drawback ruling; that I know the averments and agreements contained herein are true and correct; and that my signature on this ____ day of _____ 20 ____, makes this application binding on

_____

(Name of Applicant Corporation, Partnership, or Sole Proprietorship)

By [4] _____

[4] Section 190.6(a) requires that applications for specific manufacturing drawback rulings be signed or electronically certified by any individual legally authorized to bind the person (or entity) for whom the application is signed or the owner of a sole proprietorship, a full partner in a partnership, an individual acting on his or her own behalf, or, if a corporation, the president, a vice president,

Continued

(Signature and Title)

(Print Name)

IV. Format for Application for Specific Manufacturing Drawback Ruling Under 19 U.S.C. 1313(d)

COMPANY LETTERHEAD (Optional)

U.S. Customs and Border Protection, Entry Process and Duty Refunds Branch, Commercial and Trade Facilitation Division, Regulations and Rulings, Office of Trade, 90 K Street NE—10th Floor (Mail Stop 1177), Washington, DC 20229–1177.

Dear Sir or Madam: We, (Applicant's Name), a (State, *e.g.,* Delaware) corporation (or other described entity) submit this application for a specific manufacturing drawback ruling that our manufacturing operations qualify for drawback under title 19, United States Code, section 1313(d), and part 190 of the CBP Regulations. We request that CBP authorize drawback on the basis of this application.

NAME AND ADDRESS AND IRS NUMBER (WITH SUFFIX) OF APPLICANT

(Section 190.8(a) of the CBP Regulations provides that each manufacturer or producer of articles intended for exportation with the benefit of drawback must apply for a specific manufacturing drawback ruling, unless operating under a general manufacturing drawback ruling under § 190.7 of the CBP Regulations. CBP will not approve an application which shows an unincorporated division or company as the applicant (*see* § 190.8(a)).)

LOCATION OF FACTORY

(Provide the address of the factory(s) where the process of manufacture or production will take place. Indicate if the factory is a different legal entity from the applicant, and indicate if the applicant is operating under an Agent's general manufacturing drawback ruling.)

PERSONS WHO WILL SIGN DRAWBACK DOCUMENTS

(List persons legally authorized to bind the corporation who will sign drawback documents. Section 190.6 of the CBP Regulations permits only the president, vice president, secretary, treasurer, and any employee legally authorized to bind the corporation to sign for a corporation. In addition, a person within a business entity with a customs power of attorney for the company may sign. A customs power of attorney may also be given to a licensed customs broker. This heading should be changed to NAMES OF PARTNERS or PROPRIETOR in the case of a partnership or sole proprietorship, respectively (*see* footnote at end of this sample format for persons who may sign applications for specific manufacturing drawback rulings).)

GENERAL STATEMENT

(The exact material placed under this heading in individual cases will vary, but it should include such information as the type of business in which the manufacturer is engaged, whether the manufacturer is manufacturing for its own account or is performing the operation on a toll basis (including commission or conversion basis) for the account of others, whether the manufacturer is a direct exporter of its products or sells or delivers them to others for export, and whether drawback will be claimed by the manufacturer or by others.)

(If an agent is to be used, the applicant must state it will comply with T.D.s 55027(2) and 55207(1), and § 190.9, as applicable, and that its agent will submit a letter of notification of intent to operate under the general manufacturing drawback ruling for agents (*see* § 190.7 and Appendix A), or an application for a specific manufacturing drawback ruling (*see* § 190.8 and this Appendix B).)

(Regarding drawback operations conducted under § 1313(d), the data may describe the flavoring extracts, medicinal, or toilet preparations (including perfumery) manufactured with the use of domestic tax-paid alcohol; and where such alcohol is obtained or purchased.)

TAX-PAID MATERIAL USED UNDER SECTION 1313(d)

(Describe or list the tax-paid material)

EXPORTED ARTICLES ON WHICH DRAWBACK WILL BE CLAIMED

(Name each article to be exported)

PROCESS OF MANUFACTURE OR PRODUCTION

(Drawback under § 1313(d) is not allowable except where a manufacture or production exists. ''Manufacture or production'' is defined, for drawback purposes, in § 190.2. In order to obtain drawback under § 1313(d), it is essential for the applicant to show use in manufacture or production by providing a thorough description of the manufacturing process. Describe how the tax-paid material is processed into the export article.)

WASTE

(Many processes result in residue materials which, for drawback purposes, are treated as wastes. Describe any residue materials which you believe should be so treated. If no waste results, include a statement to that effect.)

(If waste occurs, state: (1) Whether or not it is recovered, (2) whether or not it is valueless, and (3) what you do with it. This information is required whether claims are made on a ''used in'' or ''appearing in'' basis and regardless of the amount of waste incurred.)

(Irrecoverable wastes are those consisting of materials which are lost in the process. Valueless wastes are those which may be recovered, but have no value. These irrecoverable and valueless wastes do not reduce the drawback claim provided the claim is based on the quantity of domestic tax-paid alcohol used in manufacturing. If the claim is based upon the quantity of domestic tax-paid alcohol appearing in the exported article, irrecoverable and valueless waste will cause a reduction in the amount of drawback.)

(Valuable wastes are those recovered wastes which have a value either for sale or for use in a different manufacturing process. However, it should be noted that this standard applies to the entire industry and is not a selection on your part. An option by you not to choose to sell or use the waste in some different operation, does not make it valueless if another manufacturer can use the waste. State what you do with the waste. If you have to pay someone to get rid of it, or if you have buyers for the waste, you must state so in your application regardless of what basis you are using.)

(If you recover valuable waste and if you choose to claim on the basis of the quantity of domestic tax-paid alcohol used in producing the exported articles (less any valuable waste), state that you will keep records to establish the quantity and value of the waste recovered. *See* ''Basis of Claim for Drawback'' section below.)

STOCK IN PROCESS

(Some processes result in another type of residual material, namely, stock in process, which affects the allowance of drawback. Stock in process may exist when residual material resulting from a manufacturing or processing operation is reintroduced into a subsequent manufacturing or processing operation; *e.g.,* trim pieces from a cast article. The effect of stock in process on a drawback claim is that the amount of drawback for the period in which the stock in process was withdrawn from the manufacturing or processing operation (or the manufactured article, if manufacturing or processing periods are not used) is reduced by the quantity of merchandise or drawback products used to produce the stock in process if the ''used in'' or ''used in less valuable waste'' methods are used (if the ''appearing in'' method is used, there will be no effect on the amount of drawback), and the quantity of merchandise or drawback products used to produce the stock in process is added to the merchandise or drawback products used in the subsequent manufacturing or production period (or the subsequently produced article)).

(If stock in process occurs and claims are to be based on stock in process, the application must include a statement to that effect. The application must also include a statement that the domestic tax-paid alcohol is considered to be used in manufacture at the time it was originally processed, so that the stock in process will not be included twice in the computation of the domestic tax-paid alcohol used to manufacture the finished articles on which drawback is claimed.)

LOSS OR GAIN (Separate and distinct from WASTE)

(Some manufacturing processes result in an intangible loss or gain of the net weight or measurement of the merchandise used. This loss or gain is caused by atmospheric conditions, chemical reactions, or other factors. If applicable, state the approximate usual percentage or quantity of such loss or gain. Note that percentage values will be considered to be measured ''by weight''

secretary, treasurer or employee legally authorized to bind the corporation. In addition, any employee of a business entity with a customs power of attorney filed may sign such an application, as may a licensed customs broker with a customs power of attorney.

unless otherwise specified. Loss or gain does not occur during all manufacturing processes. If loss or gain does not apply to your manufacturing process, state ''Not Applicable.'')

PROCEDURES AND RECORDS MAINTAINED

We will maintain records to establish:

1. That the exported articles on which drawback is claimed were produced with the use of a particular lot (or lots) of domestic tax-paid alcohol, and

2. The quantity of domestic tax-paid alcohol [1] we used in producing the exported articles.

We realize that to obtain drawback the claimant must establish that the completed articles were exported within 5 years after the tax has been paid on the domestic alcohol. Our records establishing our compliance with these requirements will be available for audit by CBP during business hours. We understand that drawback is not payable without proof of compliance.

INVENTORY PROCEDURES

(Describe your inventory records and state how those records will meet the drawback recordkeeping requirements set forth in 19 U.S.C. 1313(d) and part 190 of the CBP Regulations as discussed under the heading PROCEDURES AND RECORDS MAINTAINED. To help ensure compliance the following areas should be included in your discussion:)

RECEIPT AND RAW STOCK STORAGE RECORDS

MANUFACTURING RECORDS

FINISHED STOCK STORAGE RECORDS

BASIS OF CLAIM FOR DRAWBACK

(There are three different bases that may be used to claim drawback: (1) Used in; (2) appearing in; and (3) used in less valuable waste.)

(The ''used in'' basis may be employed only if there is either no waste or valueless or unrecovered waste in the operation. Irrecoverable or valueless waste does not reduce the amount of drawback when claims are based on the ''used in'' basis. Drawback is payable in the amount of 100% of the tax paid on the quantity of domestic alcohol used in the manufacture of flavoring extracts and medicinal or toilet preparation (including perfumery).)

(For example, if 100 gallons of alcohol, valued at $1.00 per gallon, were used in manufacture resulting in 10 gallons of irrecoverable or valueless waste, the 10 gallons of irrecoverable or valueless waste would not reduce the drawback. In this case drawback would be payable on 100% of the tax paid on the 100 gallons of domestic alcohol used to produce the exported articles.)

The ''appearing in'' basis may be used regardless of whether there is waste. If the ''appearing in'' basis is used, the claimant does not need to keep records of waste and its value. However, the manufacturer must establish the identity and quantity of the merchandise appearing in the exported product and provide this information. Waste reduces the amount of drawback when claims are made on the ''appearing in'' basis. Drawback is payable on 100% of the tax paid on the quantity of domestic alcohol which appears in the exported articles.

(Based on the previous example, drawback would be payable on the 90 gallons of domestic alcohol which actually went into the exported product (appearing in) rather than the 100 gallons used in as set forth previously.)

(The ''used in less valuable waste'' basis may be employed when the manufacturer recovers valuable waste, and keeps records of the quantity and value of waste from each lot of domestic tax-paid alcohol. The value of the waste reduces the amount of drawback when claims are based on the ''used in less valuable waste'' basis. When valuable waste is incurred, the drawback allowance on the exported article is based on the quantity of tax-paid alcohol used to manufacture the exported articles, as reduced by the quantity of such alcohol which the value of the waste would replace.)

(Based on the previous examples, if the 10 gallons of waste had a value of $.50 per gallon, then the 10 gallons of waste, having a total value of $5.00, would be equivalent in value to 5 gallons of the tax-paid alcohol. Thus the value of the waste would replace 5 gallons of the alcohol used, and drawback is payable on 100% of the tax paid on 95 gallons of alcohol rather than on the 100 gallons ''used in'' or the 90 gallons ''appearing in'' as set forth in the above examples.)

(Two methods exist for the manufacturer to show the quantity of material used or appearing in the exported article: (1) Schedule or (2) Abstract.)

(A ''schedule'' shows the quantity of material used in producing each unit of product. The schedule method is usually employed when a standard line of merchandise is being produced according to fixed formulas. Some schedules will show the quantity of merchandise used to manufacture or produce each article and others will show the quantity appearing in each finished article. Schedules may be prepared to show the quantity of merchandise either on the basis of percentages or by actual weights and measurements. A schedule determines the amount that will be needed to produce a unit of product before the material is actually used in production.)

(An ''abstract'' is the summary of the records which shows the total quantity used in producing all products during the period covered by the abstract. The abstract looks at a period of time, for instance 3 months, in which the quantity of material has been used. An abstract looks back at how much material was actually used after a production period has been completed.)

(An applicant who fails to indicate the ''schedule'' choice must base its claims on the ''abstract'' method. State which Basis and Method you will use. An example of Used In by schedule follows:)

We will claim drawback on the quantity of (specify material) used in manufacturing (exported article) according to the schedule set forth below.

(Section 190.8(f) of the CBP Regulations requires submission of the schedule with the application for a specific manufacturing drawback ruling. An applicant who desires to file supplemental schedules with the drawback office whenever there is a change in the quantity or material used should state:)

We request permission to file supplemental schedules with the drawback office covering changes in the quantities of material used to produce the exported articles, or different styles or capacities of containers of such exported merchandise.

(Neither the ''appearing in'' basis nor the ''schedule'' method for claiming drawback may be used where the relative value procedure is required.)

AGREEMENTS

The Applicant specifically agrees that it will:

1. Operate in full conformance with the terms of this application for a specific manufacturing drawback ruling when claiming drawback;

2. Open its factory and records for examination at all reasonable hours by authorized Government officers;

3. Keep its drawback related records and supporting data for at least 3 years from the date of liquidation of any drawback claim predicated in whole or in part upon this application;

4. Keep this application current by reporting promptly to the drawback office which liquidates its claims any changes in the number or locations of its offices or factories, the corporate name, the persons who will sign drawback documents, the basis of claim used for calculating drawback, the decision to use or not to use an agent under § 190.9 or the identity of an agent under that section, the drawback office where claims will be filed under the ruling, or the corporate organization by succession or reincorporation;

5. Keep this application current by reporting promptly to CBP Headquarters, all other changes affecting information contained in this application;

6. Keep a copy of this application and the letter of approval by CBP Headquarters on file for ready reference by employees and require all officials and employees concerned to familiarize themselves with the provisions of this application and that letter of approval; and

7. Issue instructions to insure proper compliance with title 19, United States Code, section 1313, part 190 of the CBP Regulations and this application and letter of approval.

DECLARATION OF OFFICIAL

I declare that I have read this application for a specific manufacturing drawback ruling; that I know the averments and agreements contained herein are true and correct; and that my signature on this ____ day of _____ 20 ____, makes this application binding on

_____

(Name of Applicant Corporation, Partnership, or Sole Proprietorship)

[1] If claims are to be made on an ''appearing in'' basis, the remainder of this sentence should read ''appearing in the exported articles we produce.''

By [2] _____
(Signature and Title)

_____
(Print Name)

V. Format for Application for Specific Manufacturing Drawback Ruling Under 19 U.S.C. 1313(g).

COMPANY LETTERHEAD (Optional)

U.S. Customs and Border Protection, Entry Process and Duty Refunds Branch, Commercial and Trade Facilitation Division, Regulations and Rulings, Office of Trade, 90 K Street NE—10th Floor (Mail Stop 1177), Washington, DC 20229–1177.

Dear Sir or Madam: We, (Applicant's Name), a (State, *e.g.,* Delaware) corporation (or other described entity) submit this application for a specific manufacturing drawback ruling that our manufacturing operations qualify for drawback under title 19, United States Code, section 1313(g), and part 190 of the CBP Regulations. We request that CBP authorize drawback on the basis of this application.

NAME AND ADDRESS AND IRS NUMBER (WITH SUFFIX) OF APPLICANT

(Section 190.8(a) of the CBP Regulations provides that each manufacturer or producer of articles intended for exportation with the benefit of drawback must apply for a specific manufacturing drawback ruling, unless operating under a general manufacturing drawback ruling under § 190.7 of the CBP Regulations. CBP will not approve an application which shows an unincorporated division or company as the applicant (*see* § 190.8(a)).)

LOCATION OF FACTORY OR SHIPYARD

(Provide the address of the factory(s) or shipyard(s) at which the construction and equipment will take place. Indicate if the factory or shipyard is a different legal entity from the applicant, and indicate if the applicant is operating under an Agent's general manufacturing drawback ruling.)

PERSONS WHO WILL SIGN DRAWBACK DOCUMENTS

(List persons legally authorized to bind the corporation who will sign drawback documents. Section 190.6 of the CBP Regulations permits only the president, vice president, secretary, treasurer, and any employee legally authorized to bind the corporation to sign for a corporation. In addition, a person within a business entity with a customs power of attorney for the company may sign. A customs power of attorney may also be given to a licensed customs broker. This heading should be changed to NAMES OF PARTNERS or PROPRIETOR in the case of a partnership or sole proprietorship, respectively (*see* footnote at end of this sample format for persons who may sign applications for specific manufacturing drawback rulings).)

GENERAL STATEMENT

(The following questions must be answered:)

1. Who will be the importer of the merchandise? (If the applicant will not always be the importer, specify that the applicant understands its obligations to maintain records to support the transfer under 19 CFR 190.10, and its liability under 19 CFR 190.63.)

2. Who is the manufacturer?

(Is the applicant constructing and equipping for his own account or merely performing the operation on a toll basis for others?)

(If an agent is to be used, the applicant must state it will comply with T.D.s 55027(2) and 55207(1), and § 190.9, as applicable, and that its agent will submit a letter of notification of intent to operate under the general manufacturing drawback ruling for agents (*see* § 190.7 and Appendix A), or an application for a specific manufacturing drawback ruling (*see* § 190.8 and this Appendix B).)

3. Will the applicant be the drawback claimant? (State how the vessel will qualify for drawback under 19 U.S.C. 1313(g). Who is the foreign person or government for whom the vessel is being made or equipped?) (There must be included under this heading the following statement:

We are particularly aware of the terms of § 190.76(a)(1), and subpart M of part 190 of the CBP Regulations, and will comply with these sections where appropriate.)

IMPORTED MERCHANDISE OR DRAWBACK PRODUCTS USED

(Describe the imported merchandise or drawback products.)

ARTICLES CONSTRUCTED AND EQUIPPED FOR EXPORT

(Name the vessel or vessels to be made with imported merchandise or drawback products.)

PROCESS OF CONSTRUCTION AND EQUIPMENT

(Provide a clear and concise description of the process of construction and equipment involved. The description should trace the flow of materials through the manufacturing process for the purpose of establishing physical identification of the imported merchandise or drawback products and of the articles resulting from the processing.)

WASTE

(Many processes result in residue materials which, for drawback purposes, are treated as wastes. Describe any residue materials which you believe should be so treated. If no waste results, include a statement to that effect.)

(If waste occurs, state: (1) Whether or not it is recovered, (2) whether or not it is valueless, and (3) what you do with it. This information is required whether claims are made on a ''used in'' or ''appearing in'' basis and regardless of the amount of waste incurred.)

(Irrecoverable wastes are those consisting of materials which are lost in the process. Valueless wastes are those which may be recovered, but have no value. These irrecoverable and valueless wastes do not reduce the drawback claim provided the claim is based on the quantity of imported material used in manufacturing. If the claim is based upon the quantity of imported merchandise appearing in the exported article, irrecoverable and valueless waste will cause a reduction in the amount of drawback.)

(Valuable wastes are those recovered wastes which have a value either for sale or for use in a different manufacturing process. However, it should be noted that this standard applies to the entire industry and is not a selection on your part. An option by you not to choose to sell or use the waste in some different operation does not make it valueless if another manufacturer can use the waste. State what you do with the waste. If you have to pay someone to get rid of it, or if you have buyers for the waste, you must state so in your application regardless of what basis you are using.)

(If you recover valuable waste, and you choose to claim on the basis of the quantity of merchandise used in producing the exported articles (less any valuable waste), state that you will keep records to establish the quantity and value of the waste recovered. *See* ''Basis of Claim for Drawback'' section below.)

LOSS OR GAIN (Separate and distinct from WASTE)

(Some manufacturing processes result in an intangible loss or gain of the net weight or measurement of the merchandise used. This loss or gain is caused by atmospheric conditions, chemical reactions, or other factors. If applicable, state the approximate usual percentage or quantity of such loss or gain. Note that percentage values will be considered to be measured ''by weight'' unless otherwise specified. Loss or gain does not occur during all manufacturing processes. If loss or gain does not apply to your manufacturing process, state ''Not Applicable.'')

PROCEDURES AND RECORDS MAINTAINED

We will maintain records to establish:

1. That the exported article on which drawback is claimed was constructed and equipped with the use of a particular lot (or lots) of imported material; and

2. The quantity of imported merchandise [1] we used in producing the exported article.

We realize that to obtain drawback the claimant must establish that the completed articles were exported within 5 years after the importation of the imported merchandise. Our records establishing our compliance with these requirements will be available for audit by CBP during business hours. We understand that drawback is not payable without proof of compliance.

[2] Section 190.6(a) requires that applications for specific manufacturing drawback rulings be signed or electronically certified by any individual legally authorized to bind the person (or entity) for whom the application is signed or the owner of a sole proprietorship, a full partner in a partnership, an individual acting on his or her own behalf, or, if a corporation, the president, a vice president, secretary, treasurer or employee legally authorized to bind the corporation. In addition, any employee of a business entity with a customs power of attorney may sign such an application, as may a licensed customs broker with a customs power of attorney.

[1] If claims are to be made on an ''appearing in'' basis, the remainder of this sentence should read ''appearing in the exported articles we produce.''

INVENTORY PROCEDURES

(Describe your inventory records and state how those records will meet the drawback recordkeeping requirements set forth in 19 U.S.C. 1313 and part 190 of the CBP Regulations as discussed under the heading ''PROCEDURES AND RECORDS MAINTAINED''. To help ensure compliance the following should be included in your discussion:)

RECEIPT AND RAW STOCK STORAGE RECORDS

CONSTRUCTION AND EQUIPMENT RECORDS

FINISHED STOCK STORAGE RECORDS

SHIPPING RECORDS

BASIS OF CLAIM FOR DRAWBACK

(There are three different bases that may be used to claim drawback: (1) Used in; (2) appearing in; and (3) used in less valuable waste.)

(The ''used in'' basis may be employed only if there is either no waste or valueless or unrecovered waste in the operation. Irrecoverable or valueless waste does not reduce the amount of drawback when claims are based on the ''used in'' basis. Drawback is payable in the amount of 99 percent of the duties, taxes, and fees, paid on the quantity of imported material used to construct and equip the exported article.)

(For example, if 100 pounds of material, valued at $1.00 per pound, were used in manufacture resulting in 10 pounds of irrecoverable or valueless waste, the 10 pounds of irrecoverable or valueless waste would not reduce the drawback. In this case drawback would be payable on 99% of the duties, taxes, and fees, paid on the 100 pounds of imported material used in constructing and equipping the exported articles.)

(The ''appearing in'' basis may be used regardless of whether there is waste. If the ''appearing in'' basis is used, the claimant does not need to keep records of waste and its value. However, the manufacturer must establish the identity and quantity of the merchandise appearing in the exported product and provide this information. Waste reduces the amount of drawback when claims are made on the ''appearing in'' basis. Drawback is payable on 99 percent of the duties, taxes, and fees, paid on the quantity of imported material which appears in the exported articles. ''Appearing in'' may not be used if multiple products are involved.)

(Based on the previous example, drawback would be payable on the 90 pounds of imported material which actually went into the exported product (appearing in) rather than the 100 pounds used in as set forth previously.)

(The ''used in less valuable waste'' basis may be employed when the manufacturer recovers valuable waste, and keeps records of the quantity and value of waste from each lot of merchandise. The value of the waste reduces the amount of drawback when claims are based on the ''used in less valuable waste'' basis. When valuable waste is incurred, the drawback allowance on the exported article is based on the duties, taxes, and fees, paid on the quantity of imported material used to construct and equip the exported product, as reduced by the quantity of such material which the value of the waste would replace. In such a case, drawback is claimed on the quantity of eligible material actually used to produce the exported product, less the amount of such material which the value of the waste would replace. Note section 190.26(c) of the CBP Regulations.)

(Based on the previous examples, if the 10 pounds of waste had a value of $.50 per pound, then the 10 pounds of waste, having a total value of $5.00, would be equivalent in value to 5 pounds of the imported material. Thus the value of the waste would replace 5 pounds of the merchandise used, and drawback is payable on 99 percent of the duties, taxes, and fees, paid on the 95 pounds of imported material rather than on the 100 pounds ''used in'' or the 90 pounds ''appearing in'' as set forth in the above examples.)

(Two methods exist for the manufacturer to show the quantity of material used or appearing in the exported article: (1) Schedule or (2) Abstract.)

(A ''schedule'' shows the quantity of material used in producing each unit of product. The schedule method is usually employed when a standard line of merchandise is being produced according to fixed formulas. Some schedules will show the quantity of merchandise used to manufacture or produce each article and others will show the quantity appearing in each finished article. Schedules may be prepared to show the quantity of merchandise either on the basis of percentages or by actual weights and measurements. A schedule determines the amount of material that is needed to produce a unit of product before the material is actually used in production.)

(An ''abstract' is the summary of the records which shows the total quantity of merchandise used in producing all articles during the period covered by the abstract. The abstract looks at a period of time, for instance 3 months, in which the quantity of material has been used. An abstract looks back at how much material was actually used after a production period has been completed.)

(An applicant who fails to indicate the ''schedule'' choice must base its claims on the ''abstract' method. State which Basis and Method you will use. An example of Used In by Schedule would read:)

We will claim drawback on the quantity of (specify material) used in manufacturing (exported article) according to the schedule set forth below.

(Section 190.8(f) of the CBP Regulations requires submission of the schedule with the application for a specific manufacturing drawback ruling. An applicant who desires to file supplemental schedules with the drawback office whenever there is a change in the quantity or material used should state:)

We request permission to file supplemental schedules with the drawback office covering changes in the quantities of material used to produce the exported articles, or different styles or capacities of containers of such exported merchandise.

(Neither the ''appearing in'' basis nor the ''schedule method for claiming drawback may be used where the relative value procedure is required.)

AGREEMENTS

The Applicant specifically agrees that it will:

1. Operate in full conformance with the terms of this application for a specific manufacturing drawback ruling when claiming drawback;

2. Open its factory and records for examination at all reasonable hours by authorized Government officers;

3. Keep its drawback related records and supporting data for at least 3 years from the date of liquidation of any drawback claim predicated in whole or in part upon this application;

4. Keep this application current by reporting promptly to the drawback office which liquidates its claims any changes in the number or locations of its offices or factories, the corporate name, the persons who will sign drawback documents, the basis of claim used for calculating drawback, the decision to use or not to use an agent under § 190.9 or the identity of an agent under that section, the drawback office where claims will be filed under the ruling, or the corporate organization by succession or reincorporation;

5. Keep this application current by reporting promptly to CBP Headquarters, all other changes affecting information contained in this application;

6. Keep a copy of this application and the letter of approval by CBP Headquarters on file for ready reference by employees and require all officials and employees concerned to familiarize themselves with the provisions of this application and that letter of approval; and

7. Issue instructions to help ensure proper compliance with title 19, United States Code, section 1313, part 190 of the CBP Regulations and this application and letter of approval.

DECLARATION OF OFFICIAL

I declare that I have read this application for a specific manufacturing drawback ruling; that I know the averments and agreements contained herein are true and correct; and that my signature on this _____ day of _____ 20 ____, makes this application binding on

_____

(Name of Applicant Corporation, Partnership, or Sole Proprietorship)

By [2]

_____

(Signature and Title)

[2] Section 190.6(a) requires that applications for specific manufacturing drawback rulings be signed or electronically certified by any individual legally authorized to bind the person (or entity) for whom the application is signed or the owner of a sole proprietorship, a full partner in a partnership, an individual acting on his or her own behalf, or, if a corporation, the president, a vice president, secretary, treasurer or employee legally authorized to bind the corporation. In addition, any employee of a business entity with a customs power of attorney may sign such an application, as may a licensed customs broker with a customs power of attorney.

PART 191—DRAWBACK

■ 4. The general authority citation for part 191 continues to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States), 1313, 1624;

* * * * *

■ 5. Revise § 191.0 to read as follows:

§ 191.0 Scope.

This part sets forth general provisions applicable to drawback claims and specialized provisions applicable to specific types of drawback claims filed under 19 U.S.C. 1313, prior to the February 24, 2016, amendments to the U.S. drawback law. Drawback claims may not be filed under this part after February 23, 2019. For drawback claims filed under 19 U.S.C. 1313, as amended, see part 190. Additional drawback provisions relating to the North American Free Trade Agreement (NAFTA) are contained in subpart E of part 181 of this chapter.

■ 6. Revise § 191.1 to read as follows:

§ 191.1 Authority of the Commissioner of CBP.

Pursuant to DHS Delegation number 7010.3, the Commissioner of CBP has the authority to prescribe, and pursuant to Treasury Department Order No. 100–16 (set forth in the appendix to part 0 of this chapter), the Secretary of the Treasury has the sole authority to approve, rules and regulations regarding drawback.

■ 7. In § 191.3:

■ a. Revise the section heading;

■ b. Amend paragraph (a)(3) by removing the word ''and'' at the end of the paragraph;

■ c. Amend paragraph (a)(4) by removing the ''(iv).'' and adding in its place the words ''(iv); and'';

■ d. Add paragraph (a)(5).

■ e. Revise paragraph (b).

The revisions and additions read as follows:

§ 191.3 Duties, taxes, and fees subject or not subject to drawback.

(a) * * *

(5) Harbor maintenance taxes (*see* § 24.24 of this chapter) for unused merchandise drawback pursuant to 19 U.S.C. 1313(j), and drawback for substitution of finished petroleum derivatives pursuant to 19 U.S.C. 1313(p)(2)(A)(iii) or (iv).

(b) Duties and fees not subject to drawback include:

(1) Harbor maintenance taxes (*see* § 24.24 of this chapter) except where unused merchandise drawback pursuant to 19 U.S.C. 1313(j) or drawback for substitution of finished petroleum derivatives pursuant to 19 U.S.C. 1313(p)(2)(A)(iii) or (iv) is claimed;

(2) Merchandise processing fees (*see* § 24.23 of this chapter), except where unused merchandise drawback pursuant to 19 U.S.C. 1313(j) or drawback for substitution of finished petroleum derivatives pursuant to 19 U.S.C. 1313(p)(2)(A)(iii) or (iv) is claimed; and

(3) Antidumping and countervailing duties on merchandise entered, or withdrawn from warehouse, for consumption on or after August 23, 1988.

* * * * *

■ 8. Section 191.5 is revised to read as follows:

§ 191.5 Guantanamo Bay, insular possessions, trust territories.

Guantanamo Bay Naval Station is considered foreign territory for drawback purposes and, accordingly, drawback may be permitted on articles shipped there. Drawback is not allowed, except on claims made under 19 U.S.C. 1313(j)(1), on articles shipped to the U.S. Virgin Islands, American Samoa, Wake Island, Midway Islands, Kingman Reef, Guam, Canton Island, Enderbury Island, Johnston Island, or Palmyra Island. Puerto Rico is not considered foreign territory for drawback purposes and, accordingly, drawback may not be permitted on articles shipped there from elsewhere in the customs territory of the United States.

■ 9. In § 191.22, paragraph (a) is amended by adding a sentence to the end of the paragraph to read as follows:

§ 191.22 Substitution drawback.

(a) * * * For purposes of drawback of internal revenue tax imposed under Chapters 32, 38, 51, and 52 of the Internal Revenue Code of 1986, as amended (IRC), drawback granted on the export or destruction of substituted merchandise will be limited to the amount of taxes paid (and not returned by refund, credit, or drawback) on the substituted merchandise.

* * * * *

■ 10. In § 191.32:

■ a. Remove the word ''and'' at the end of paragraph (b)(2);

■ b. Remove ''.'' and add, in its place, ''; and''; at the end of paragraph (b)(3); and

■ c. Add paragraph (b)(4) to read as follows:

§ 191.32 Substitution drawback.

* * * * *

(b) * * *

(4) For purposes of drawback of internal revenue tax imposed under Chapters 32, 38 (with the exception of Subchapter A of Chapter 38), 51, and 52 of the Internal Revenue Code of 1986, as amended (IRC), drawback granted on the export or destruction of substituted merchandise will be limited to the amount of taxes paid (and not returned by refund, credit, or drawback) on the substituted merchandise.

* * * * *

■ 11. Section 191.42 is revised to read as follows:

§ 191.42 Procedures and supporting documentation.

(a) *Time limit for exportation or destruction.* Drawback will be denied on merchandise that is exported or destroyed after the statutory 3-year time period.

(b) *Required documentation.* The claimant must submit documentation to CBP as part of the complete drawback claim (*see* § 191.51) to establish that the merchandise did not conform to sample or specification, was shipped without the consent of the consignee, or was defective as of the time of importation (*see* § 191.45 for additional requirements for claims made with respect to rejected retail merchandise under 19 U.S.C. 1313(c)(1)(C)(ii)). If the claimant was not the importer, the claimant must also:

(1) Submit a statement signed by the importer and every other person, other than the ultimate purchaser, that owned the goods that no other claim for drawback was made on the goods by any other person; and

(2) Certify that records are available to support the statement required in paragraph (b)(1) of this section.

(c) *Notice.* A notice of intent to export or destroy merchandise which may be the subject of a rejected merchandise drawback claim (19 U.S.C. 1313(c)) must be provided to CBP to give CBP the opportunity to examine the merchandise. The claimant, or the exporter (for destruction under CBP supervision, see § 191.71), must file at the port of intended redelivery to CBP custody a Notice of Intent to Export, Destroy, or Return Merchandise for Purposes of Drawback on CBP Form 7553 at least 5 working days prior to the date of intended return to CBP custody.

(d) *Required information.* The notice must provide the bill of lading number, if known, the name and telephone number, mailing address, and, if available, fax number and email address of a contact person, and the location of the merchandise.

(e) *Decision to waive examination.* Within 2 working days after receipt of the Notice of Intent to Export, Destroy, or Return Merchandise for Purposes of

Drawback (*see* paragraph (c) of this section), CBP will notify, in writing, the party designated on the Notice of CBP's decision to either examine the merchandise to be exported or destroyed, or to waive examination. If CBP timely notifies the designated party, in writing, of its decision to examine the merchandise (*see* paragraph (f) of this section), but the merchandise is exported or destroyed without having been presented to CBP for such examination, any drawback claim, or part thereof, based on the Notice of Intent to Export, Destroy, or Return Merchandise for Purposes of Drawback, must be denied. If CBP notifies the designated party, in writing, of its decision to waive examination of the merchandise, or, if timely notification of a decision by CBP to examine or to waive examination is absent, the merchandise may be exported or destroyed without delay and will be deemed to have been returned to CBP custody.

(f) *Time and place of examination.* If CBP gives timely notice of its decision to examine the merchandise to be exported or destroyed, the merchandise to be examined must be promptly presented to CBP. CBP must examine the merchandise within 5 working days after presentation of the merchandise. The merchandise may be exported or destroyed without examination if CBP fails to timely examine the merchandise after presentation to CBP, and in such case the merchandise will be deemed to have been returned to CBP custody. If the examination is to be completed at a port other than the port of actual exportation or destruction, the merchandise must be transported in-bond to the port of exportation or destruction.

(g) *Extent of examination.* The appropriate CBP office may permit release of merchandise without examination, or may examine, to the extent determined to be necessary, the items exported or destroyed.

(h) *Drawback claim.* When filing the drawback claim, the drawback claimant must correctly calculate the amount of drawback due (*see* § 191.51(b)). The procedures for restructuring a claim (*see* § 191.53) apply to rejected merchandise drawback if the claimant has an ongoing export program which qualifies for this type of drawback.

(i) *Exportation.* Claimants must provide documentary evidence of exportation (*see* subpart G of this part). The claimant may establish exportation by mail as set out in § 191.74.

■ 12. Section 191.45 is added to subpart D to read as follows:

§ 191.45 Returned retail merchandise.

(a) *Special rule for substitution.* Section 313(c)(1)(C)(ii) of the Tariff Act of 1930, as amended (19 U.S.C. 1313(c)(1)(C)(ii)), provides for drawback upon the exportation or destruction under CBP supervision of imported merchandise which has been entered, or withdrawn from warehouse, for consumption, duty-paid and ultimately sold at retail by the importer, or the person who received the merchandise from the importer, and for any reason returned to and accepted by the importer, or the person who received the merchandise from the importer.

(b) *Eligibility requirements.* (1) Drawback is allowable, subject to compliance with all requirements set forth in this subpart; and

(2) The claimant must also show by evidence satisfactory to CBP that drawback may be claimed by—

(i) Designating an entry of merchandise that was imported within 1 year before the date of exportation or destruction of the merchandise described in paragraph (a) of this section under CBP supervision.

(ii) Certifying that the same 8-digit HTSUS subheading number and specific product identifier (such as part number, SKU, or product code) apply to both the merchandise designated for drawback (in the import documentation) and the returned merchandise.

(c) *Allowable refund.* The amount of drawback allowable will not exceed 99 percent of the amount of duties, taxes, and fees paid with respect to the imported merchandise.

(d) *Denial of claims.* No drawback will be refunded if CBP is not satisfied that the claimant has provided, upon request, the documentation necessary to support the certification required in paragraph (b)(2)(ii) of this section.

■ 13. Amend § 191.51 by adding paragraph (a)(3) to read as follows:

§ 191.51 Completion of drawback claims.

(a) * * *

(3) *Limitation on eligibility for imported merchandise.* Claimants filing any drawback claims under this part for imported merchandise associated with an entry summary if any other merchandise covered on that entry summary has been designated as the basis of a drawback substitution claim under part 190 of this chapter must provide additional information enabling CBP to verify the availability of drawback for the indicated merchandise and associated line item within 30 days of claim submission. The information to be provided will include, but is not limited to: Summary document specifying the lines used and unused on the import entry; the import entry summary, corresponding commercial invoices, and copies of all drawback claims that previously designated the import entry summary; and post summary/liquidation changes (for imports or drawback claims, if applicable).

* * * * *

■ 14. Section 191.81 is revised to read as follows:

§ 191.81 Liquidation.

(a) *Time of liquidation.* Drawback entries may be liquidated after:

(1) Liquidation of the designated import entry or entries becomes final pursuant to paragraph (e) of this section; or

(2) Deposit of estimated duties on the imported merchandise and before liquidation of the designated import entry or entries.

(b) *Claims based on estimated duties.* (1) Drawback may be paid upon liquidation of a claim based on estimated duties if one or more of the designated import entries have not been liquidated, or the liquidation has not become final (because of a protest being filed) (*see* also § 173.4(c) of this chapter), only if the drawback claimant and any other party responsible for the payment of liquidated import duties each files a written request for payment of each drawback claim, waiving any right to payment or refund under other provisions of law, to the extent that the estimated duties on the unliquidated import entry are included in the drawback claim for which drawback on estimated duties is requested under this paragraph. The drawback claimant must, to the best of its knowledge, identify each import entry that has been protested and that is included in the drawback claim. A drawback entry, once finally liquidated on the basis of estimated duties pursuant to paragraph (e)(2) of this section, will not be adjusted by reason of a subsequent final liquidation of the import entry.

(2) However, if final liquidation of the import entry discloses that the total amount of import duty is different from the total estimated duties deposited, except in those cases when drawback is 100% of the duty, the party responsible for the payment of liquidated duties, as applicable, will:

(i) Be liable for 1 percent of all increased duties found to be due on that portion of merchandise recorded on the drawback entry; or

(ii) Be entitled to a refund of 1 percent of all excess duties found to have been paid as estimated duties on that portion of the merchandise recorded on the drawback entry.

(c) *Claims based on voluntary tenders or other payments of duties*—(1) *General.* Subject to the requirements in paragraph (c)(2) of this section, drawback may be paid upon liquidation of a claim based on voluntary tenders of the unpaid amount of lawful ordinary customs duties or any other payment of lawful ordinary customs duties for an entry, or withdrawal from warehouse, for consumption (*see* § 191.3(a)(1)(iii)), provided that:

(i) The tender or payment is specifically identified as duty on a specifically identified entry, or withdrawal from warehouse, for consumption;

(ii) Liquidation of the specifically identified entry, or withdrawal from warehouse, for consumption became final prior to such tender or payment; and

(iii) Liquidation of the drawback entry in which that specifically identified import entry, or withdrawal from warehouse, for consumption is designated has not become final.

(2) *Written request and waiver.* Drawback may be paid on claims based on voluntary tenders or other payments of duties under this subsection only if the drawback claimant and any other party responsible for the payment of the voluntary tenders or other payments of duties each files a written request for payment of each drawback claim based on such voluntary tenders or other payments of duties, waiving any claim to payment or refund under other provisions of law, to the extent that the voluntary tenders or other payment of duties under this paragraph are included in the drawback claim for which drawback on the voluntary tenders or other payment of duties is requested under this paragraph.

(d) *Claims based on liquidated duties.* Drawback will be based on the final liquidated duties paid that have been made final by operation of law (except in the case of the written request for payment of drawback on the basis of estimated duties, voluntary tender of duties, and other payments of duty, and waiver, provided for in paragraphs (b) and (c) of this section).

(e) *Liquidation procedure.* (1) *General.* When the drawback claim has been completed by the filing of the entry and other required documents, and exportation (or destruction) of the merchandise or articles has been established, CBP will determine drawback due on the basis of the complete drawback claim, the applicable general manufacturing drawback ruling or specific manufacturing drawback ruling, and any other relevant evidence or information. Notice of liquidation will be given electronically as provided in §§ 159.9 and 159.10(c)(3) of this chapter.

(2) *Liquidation by operation of law.* (i) *Liquidated import entries.* A drawback claim that satisfies the requirements of paragraph (d) that is not liquidated within 1 year from the date of the drawback claim (*see* § 190.51(e)(1)(i) of this chapter) will be deemed liquidated for the purposes of the drawback claim at the drawback amount asserted by the claimant or claim, unless the time for liquidation is extended in accordance with § 159.12 of this chapter or if liquidation is suspended as required by statute or court order.

(ii) *Unliquidated import entries.* A drawback claim that satisfies the requirements of paragraphs (b) or (c) of this section will be deemed liquidated upon the deposit of estimated duties on the unliquidated imported merchandise (*see* paragraph (b) of this section).

(iii) *Applicability.* The provisions of paragraphs (e)(2)(i) of this section will apply to drawback entries made on or after December 3, 2004. An entry or claim for drawback filed before December 3, 2004, the liquidation of which was not final as of December 3, 2004, will be deemed liquidated on the date that is 1 year after December 3, 2004, at the drawback amount asserted by the claimant at the time of the entry or claim.

(f) *Relative value; multiple products*—(1) *Distribution.* Where two or more products result from the manufacture or production of merchandise, drawback will be distributed to the several products in accordance with their relative values at the time of separation.

(2) *Values.* The values to be used in computing the distribution of drawback where two or more products result from the manufacture or production of merchandise under drawback conditions must be the market value (as provided for in the definition of relative value in § 191.2(u)), unless other values are approved by CBP.

(g) *Payment.* CBP will authorize payment of the amount of the refund due as drawback to the claimant.

■ 15. Section 191.103 is revised to read as follows:

§ 191.103 Additional requirements.

(a) *Manufacturer claims domestic drawback.* In the case of medicinal preparations and flavoring extracts, the claimant must file with the drawback entry, a declaration of the manufacturer showing whether a claim has been or will be filed by the manufacturer with the Alcohol and Tobacco Tax and Trade Bureau (TTB) for domestic drawback on alcohol under sections 5111, 5112, 5113, and 5114, Internal Revenue Code, as amended (26 U.S.C. 5111, 5112, 5113, and 5114).

(b) *Manufacturer does not claim domestic drawback*—(1) *Submission of statement.* If no claim has been or will be filed with TTB for domestic drawback on medicinal preparations or flavoring extracts, the manufacturer must submit a statement setting forth that fact to the Director, National Revenue Center, TTB.

(2) *Contents of the statement.* The statement must show the:

(i) Quantity and description of the exported products;

(ii) Identity of the alcohol used by serial number of package or tank car;

(iii) Name and registry number of the distilled spirits plant from which the alcohol was withdrawn;

(iv) Date of withdrawal;

(v) Serial number of the applicable record of tax determination (*see* 27 CFR 17.163(a) and 27 CFR 19.626(c)(7)); and

(vi) CBP office where the claim will be filed.

(3) *Verification of the statement.* The Director, National Revenue Center, TTB, will verify receipt of this statement, forward the original of the document to the drawback office designated, and retain the copy.

■ 16. Section 191.104 is revised to read as follows:

§ 191.104 Alcohol and Tobacco Tax and Trade Bureau (TTB) certificates.

(a) *Request.* The drawback claimant or manufacturer must request that the Director, National Revenue Center, TTB, provide the CBP office where the drawback claim will be processed with a tax-paid certificate on TTB Form 5100.4 (Certificate of Tax-Paid Alcohol).

(b) *Contents.* The request must state the:

(1) Quantity of alcohol in proof gallons;

(2) Serial number of each package;

(3) Amount of tax paid on the alcohol;

(4) Name, registry number, and location of the distilled spirits plant;

(5) Date of withdrawal;

(6) Name of the manufacturer using the alcohol in producing the exported articles;

(7) Address of the manufacturer and its manufacturing plant; and

(8) CBP drawback office where the drawback claim will be processed.

(c) *Extract of TTB certificate.* If a certification of any portion of the alcohol described in the TTB Form 5100.4 is required for liquidation of drawback entries processed in another drawback office, the drawback office, on written application of the person who requested its issuance, will transmit a

copy of the extract from the certificate for use at that drawback office. The drawback office will note that the copy of the extract was prepared and transmitted.

■ 17. Section 191.106 is revised to read as follows:

§ 191.106 Amount of drawback.

(a) *Claim filed with TTB.* If the declaration required by § 191.103 shows that a claim has been or will be filed with TTB for domestic drawback, drawback under section 313(d) of the Act, as amended (19 U.S.C. 1313(d)), will be limited to the difference between the amount of tax paid and the amount of domestic drawback claimed.

(b) *Claim not filed with TTB.* If the declaration and verified statement required by § 191.103 show that no claim has been or will be filed by the manufacturer with TTB for domestic drawback, the drawback will be the full amount of the tax on the alcohol used. Drawback under this provision may not be granted absent receipt from TTB of a copy of TTB Form 5100.4 (Certificate of Tax-Paid Alcohol) indicating that taxes have been paid on the exported product for which drawback is claimed.

(c) *No deduction of 1 percent.* No deduction of 1 percent will be made in drawback claims under section 313(d) of the Act, as amended (19 U.S.C. 1313(d)).

(d) *Payment.* The drawback due will be paid in accordance with § 191.81(f).

■ 18. In § 191.171, add paragraph (d) to read as follows:

§ 191.171 General; drawback allowance.

* * * * *

(d) *Federal excise tax.* For purposes of drawback of internal revenue tax imposed under Chapters 32 and 38 (with the exception of Subchapter A of Chapter 38) of the Internal Revenue Code of 1986, as amended (IRC), drawback granted on the export of substituted merchandise will be limited to the amount of taxes paid (and not returned by refund, credit, or drawback) on the substituted merchandise.

Kevin K. McAleenan,

Commissioner, U.S. Customs and Border Protection.

Approved: December 6, 2018.

Timothy E. Skud,

Deputy Assistant Secretary of the Treasury.

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FEDERAL REGISTER

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Part III

The President

Executive Order 13853—Establishing the White House Opportunity and Revitalization Council

Federal Register
Vol. 83, No. 242
Tuesday, December 18, 2018

Presidential Documents

Title 3—

The President

Executive Order 13853 of December 12, 2018

Establishing the White House Opportunity and Revitalization Council

By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows:

Section 1. *Purpose.* Fifty-two million Americans live in economically distressed communities. Despite the growing national economy, these communities are plagued by high poverty levels, failing schools, and a scarcity of jobs. In December 2017, I signed into law a bill originally introduced as the Tax Cuts and Jobs Act (Act), which established a historic new Federal tax incentive that promotes long-term equity investments in low-income communities designated as ''qualified opportunity zones'' by the Governors of States or territories. In order to further facilitate such investment, my Administration will implement reforms that streamline existing regulations, protect taxpayers by optimizing use of Federal resources, stimulate economic opportunity and mobility, encourage entrepreneurship, expand quality educational opportunities, develop and rehabilitate quality housing stock, promote workforce development, and promote safety and prevent crime in urban and economically distressed communities.

This order establishes a White House Council to carry out my Administration's plan to encourage public and private investment in urban and economically distressed areas, including qualified opportunity zones. The Council shall lead joint efforts across executive departments and agencies (agencies) to engage with State, local, and tribal governments to find ways to better use public funds to revitalize urban and economically distressed communities.

Sec. 2. *Establishment.* There is established a White House Opportunity and Revitalization Council (Council). The Council shall be chaired by the Secretary of Housing and Urban Development (HUD), or the Secretary's designee. The Assistant to the President for Domestic Policy, or the designee of the Assistant to the President for Domestic Policy, shall serve as Vice Chair of the Council.

(a) *Membership.* In addition to the Chair and Vice Chair, the Council shall consist of the following members, or their designees:

(i) the Secretary of the Treasury;

(ii) the Attorney General;

(iii) the Secretary of the Interior;

(iv) the Secretary of Agriculture;

(v) the Secretary of Commerce;

(vi) the Secretary of Labor;

(vii) the Secretary of Health and Human Services;

(viii) the Secretary of Transportation;

(ix) the Secretary of Energy;

(x) the Secretary of Education;

(xi) the Administrator of the Environmental Protection Agency;

(xii) the Director of the Office of Management and Budget;

(xiii) the Administrator of the Small Business Administration;

(xiv) the Assistant to the President for Economic Policy;

(xv) the Chairman of the Council of Economic Advisers;

(xvi) the Chairman of the Council on Environmental Quality; and

(xvii) the heads of such other agencies, offices, or independent regulatory agencies as the Chair may, from time to time, designate or invite.

(b) *Administration.* The Vice Chair shall convene regular meetings of the Council, determine its agenda, and direct its work, all under the guidance of the Chair. The Department of Housing and Urban Development shall provide funding and administrative support for the Council to the extent permitted by law and within existing appropriations. The Secretary of HUD shall designate a HUD officer or employee to serve as the Executive Director of the Council, who shall be responsible for coordinating the Council's work.

Sec. 3. *Mission and Function of the Council.* The Council shall, to the extent permitted by law, work across agencies, giving consideration to existing agency initiatives, to:

(a) assess the actions each agency can take under existing authorities to prioritize or focus Federal investments and programs on urban and economically distressed communities, including qualified opportunity zones;

(b) assess the actions each agency can take under existing authorities to minimize all regulatory and administrative costs and burdens that discourage public and private investment in urban and economically distressed communities, including qualified opportunity zones;

(c) regularly consult with officials from State, local, and tribal governments and individuals from the private sector to solicit feedback on how best to stimulate the economic development of urban and economically distressed areas, including qualified opportunity zones;

(d) coordinate Federal interagency efforts to help ensure that private and public stakeholders—such as investors; business owners; institutions of higher education (including Historically Black Colleges and Universities, as defined by 50 U.S.C. 3224(g)(2), and tribally controlled colleges and universities, as defined by 25 U.S.C. 1801(a)(4)); K–12 education providers; early care and education providers; human services agencies; State, local, and tribal leaders; public housing agencies; non-profit organizations; and economic development organizations—can successfully develop strategies for economic growth and revitalization;

(e) recommend policies that would:

(i) reduce and streamline regulatory and administrative burdens, including burdens on applicants applying for multiple Federal assistance awards;

(ii) help community-based applicants, including recipients of investments from qualified opportunity funds, identify and apply for relevant Federal resources; and

(iii) make it easier for recipients to receive and manage multiple types of public and private investments, including by aligning certain program requirements;

(f) evaluate the following:

(i) whether and how agencies can prioritize support for urban and economically distressed areas, including qualified opportunity zones, in their grants, financing, and other assistance;

(ii) appropriate methods for Federal cooperation with and support for States, localities, and tribes that are innovatively and strategically facilitating economic growth and inclusion in urban and economically distressed communities, including qualified opportunity zones, consistent with preserving State, local, and tribal control;

(iii) whether and how to develop an integrated web-based tool through which entrepreneurs, investors, and other stakeholders can see the full

range of applicable Federal financing programs and incentives available to projects located in urban and economically distressed areas, including qualified opportunity zones;

(iv) whether and how to consider urban and economically distressed areas, including qualified opportunity zones, as possible locations for Federal buildings, through consultation with the General Services Administration;

(v) whether and how Federal technical assistance, planning, financing tools, and implementation strategies can be coordinated across agencies to assist communities in addressing economic problems, engaging in comprehensive planning, and advancing regional collaboration; and

(vi) what data, metrics, and methodologies can be used to measure the effectiveness of public and private investments in urban and economically distressed communities, including qualified opportunity zones.

Sec. 4. *Reports.* The Assistant to the President for Domestic Policy shall, on behalf of the Council, be responsible for submitting to the President:

(a) Within 90 days of the date of this order, a detailed work plan for how, and by when, the Council will accomplish the goals detailed in section 3 of this order;

(b) Within 210 days of the date of this order, a list of recommended changes to Federal statutes, regulations, policies, and programs that would encourage public and private investment in urban and economically distressed communities, including qualified opportunity zones;

(c) Within 1 year of the date of this order, a list of recommended changes to Federal statutes, regulations, policies, and programs that would help State, local, and tribal governments to better identify, use, and administer Federal resources in urban and economically distressed communities, including qualified opportunity zones;

(d) Within 1 year of the date of this order, a list of best practices that could be integrated into public and private investments in urban and economically distressed communities, including qualified opportunity zones, in order to increase economic growth, encourage new business formation, and revitalize communities; and

(e) Any subsequent reports that the President may request or that the Council may deem appropriate.

Sec. 5. *Amendments to Executive Order 13845.* Executive Order 13845 of July 19, 2018 (Establishing the President's National Council for the American Worker) is hereby amended as follows:

(a) Subsection 7(d) of the order is deleted and the following text is inserted in lieu thereof: ''consider the recommendations of the American Workforce Policy Advisory Board (Board) established in section 8 of this order and, as appropriate, adopt recommendations that would significantly advance the objectives of the Council;''; and

(b) Subsection 8(b)(i) of the order is amended by deleting the text ''appointed by the President'' and replacing it with the following text: ''appointed by the Secretary of Commerce''.

Sec. 6. *General Provisions.* (a) The heads of agencies shall assist and provide information to the Council, consistent with applicable law, as may be necessary for the Council to carry out its functions.

(b) The heads of agencies shall consider the reports and recommendations of the Council in carrying out their responsibilities related to urban and economically distressed communities.

(c) The Council shall terminate on January 21, 2021, unless extended by the President.

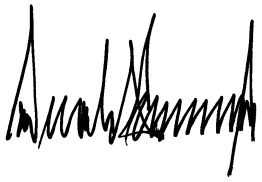
(d) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department, agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(e) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(f) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.



THE WHITE HOUSE,
December 12, 2018.

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To designate the facility of the United States Postal Service located at 306 River Street in Tilden, Texas, as the ''Tilden Veterans Post Office''. (Dec. 13, 2018; 132 Stat. 4428)

S. 2377/P.L. 115–312

To designate the Federal building and United States courthouse located at 200 West 2nd Street in Dayton, Ohio, as the ''Walter H. Rice Federal Building and United States Courthouse''. (Dec. 13, 2018; 132 Stat. 4429)

S. 3414/P.L. 115–313

To designate the facility of the United States Postal Service located at 20 Ferry Road in Saunderstown, Rhode Island, as the ''Captain Matthew J. August Post Office''. (Dec. 13, 2018; 132 Stat. 4430)

S. 3442/P.L. 115–314

To designate the facility of the United States Postal Service located at 105 Duff Street in Macon, Missouri, as the ''Arla W. Harrell Post Office''. (Dec. 13, 2018; 132 Stat. 4431)

H.R. 3946/P.L. 115–315

To name the Department of Veterans Affairs community-based outpatient clinic in Statesboro, Georgia, the Ray Hendrix Department of Veterans Affairs Clinic. (Dec. 14, 2018; 132 Stat. 4432)

H.R. 4407/P.L. 115–316

To designate the facility of the United States Postal Service located at 3s101 Rockwell Street in Warrenville, Illinois, as the ''Corporal Jeffrey Allen Williams Post Office Building''. (Dec. 14, 2018; 132 Stat. 4433)

H.R. 5238/P.L. 115–317

To designate the facility of the United States Postal Service located at 1234 Saint Johns Place in Brooklyn, New York, as the ''Major Robert Odell Owens Post Office''. (Dec. 14, 2018; 132 Stat. 4434)

S. 3209/P.L. 115–318

To designate the facility of the United States Postal Service located at 413 Washington Avenue in Belleville, New Jersey, as the ''Private Henry Svehla Post Office Building''. (Dec. 14, 2018; 132 Stat. 4435)

S. 3237/P.L. 115–319

To designate the facility of the United States Postal Service located at 120 12th Street Lobby in Columbus, Georgia, as the ''Richard W. Williams, Jr., Chapter of the Triple Nickles (555th P.I.A.) Post Office''. (Dec. 14, 2018; 132 Stat. 4436)

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