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FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Parts 303 and 348

RIN 3064–AE92

Depository Institution Management Interlocks Act

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Final rule; technical amendments.

SUMMARY: This final rule is being promulgated in connection with an adjustment of the thresholds for the major assets prohibition of the Depository Institutions Management Interlocks Act (DIMIA) that has been proposed jointly by the FDIC with the Office of the Comptroller of the Currency and the Board of Governors of the Federal Reserve System (collectively, the ''Agencies'') through a notice of proposed rulemaking (NPR) published in the **Federal Register** on January 31, 2019. The FDIC has decided to use this opportunity to make two purely technical corrections to FDIC Regulations, both pertaining to DIMIA implementation, by means of a separate final rule without notice and comment.

DATES: The final rule is effective February 8, 2019.

FOR FURTHER INFORMATION CONTACT: Karen J. Currie, Senior Examination Specialist, *KCurrie@fdic.gov,* Division of Risk Management Supervision, (202) 898–3981; Mark Mellon, Counsel, *mmellon@fdic.gov,* Legal Division, (202) 898–3884; Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.

SUPPLEMENTARY INFORMATION: The FDIC has concluded that good cause exists to publish this rule as final without a period of notice and comment and with an effective date as of the date of its publication in the **Federal Register** because this final rule will only make purely technical corrections and in no way affects or changes any substantive requirements under the DIMIA or its implementing regulation.

I. Background

The Agencies jointly proposed an adjustment of the thresholds for the major assets prohibition of the DIMIA through a NPR published at 84 FR 604 (Jan. 31, 2019). In addition to an adjustment of the thresholds for the major assets prohibition by means of the NPR, the FDIC will use this opportunity to make two technical corrections to FDIC Regulations, both relevant to DIMIA implementation. The first correction pertains to 12 CFR 303.249 and would remove an erroneous statement. The second pertains to 12 CFR 348.4(i) and would correct a citation. Both technical corrections are explained in further detail below.

A. Correct Erroneous Statement in 12 CFR 303.249(c)(3)

12 CFR part 303 of FDIC Regulations pertains to filing procedures. Section 303.249(c)(3) currently states that an applicant seeking an exemption under either § 348.5 or § 348.6 of the FDIC DIMIA regulation needs to provide certain information in connection with an application for an interlocks exemption. The reference to § 348.5 is wrong. This section pertains to the small market share exemption, which was specifically designed by the Federal depository institutions regulatory agencies to be self-executing, that is, an application to the FDIC is not required for the exemption to be effective.[1] The incorrect statement will therefore be removed.

B. Correct Erroneous Citation in 12 CFR 348.4(i)

Section 348.4 pertains to statutory exemptions from the Interlocks Act prohibitions. Section 348.4(i) sets forth the exemption for a management interlock where a director of an unaffiliated depository organization serves as a management official of a diversified savings and loan holding company as that term is defined in section 10(a)(1)(F) of the Home Owners' Loan Act (12 U.S.C. 1467a(a)(1)(F). Section 348.4(i)(3) incorrectly refers to preceding paragraph (h) when it should refer to paragraph (i). This incorrect citation will therefore be corrected.

As noted previously, these two changes to the FDIC Regulations are purely technical, done to correct an erroneous statement and a citation. Since these are merely technical amendments, public notice and comment is unnecessary nor is there any need for a delayed effective date.

II. Administrative Procedure Act

The Administrative Procedure Act (APA) does not require an agency to publish a notice of proposed rulemaking in the **Federal Register** if an ''agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.''[2] The FDIC finds that for purposes of making purely technical corrections, good cause exists to not publish a notice of proposed rulemaking in the **Federal Register** and, therefore, is issuing this rule as a final rule.

Section 553(d)(3) of the APA provides that, for good cause found and published with the rule, an agency does not have to comply with the requirement that a substantive rule be published not less than 30 days before its effective date.[3] The final rule will be effective immediately upon its publication in the **Federal Register**. The FDIC invokes the good cause exception to the APA's 30-day publication requirement for the reasons discussed above.

III. Regulatory Analyses

A. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* (RFA), requires an agency, in connection with a notice of proposed rulemaking, to prepare an Initial Regulatory Flexibility Analysis describing the impact of the proposed rule on small entities (defined by the Small Business Administration for purposes of the RFA to include banking entities with total assets of $550 million or less) or to certify that the proposed rule would not have a significant economic impact on a substantial number of small entities. The RFA also requires an agency, in connection with a final rule, to prepare a Final Regulatory Flexibility Act (FRFA)

[1] See 64 FR at 51676 (Sep. 24, 1999).

[2] 5 U.S.C. 553(b).

[3] 5 U.S.C. 553(d)(3).

analysis describing the impact of the final rule on small entities. Neither an IRFA nor FRFA is required, however, if the rule is issued under the APA provision allowing the agency to forego notice and comment rulemaking for good cause. Therefore, the FDIC has not prepared either an IRFA or an FRFA in connection with this final rule. Nevertheless, the FDIC notes that the final rule does not impose any burden on small banking entities as it only makes technical corrections to already existing requirements.

B. Paperwork Reduction Act

In accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521), the FDIC may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The FDIC reviewed the rule and determined that it does not create any new, or revise any existing, collection of information under section 3504(h) of the Paperwork Reduction Act of 1980. Consequently, no information collection request will be submitted to the OMB for review.

C. Small Business Regulatory Enforcement Fairness Act

The Office of Management and Budget has determined that the final rule is not a ''major rule'' within the meaning of the Small Business Regulatory Enforcement Fairness Act of 1996 (Title II, Pub. L. 104–121).

D. The Treasury and General Government Appropriations Act, 1999—Assessment of Federal Regulations and Policies on Families

The FDIC has determined that the final rule will not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act, enacted as part of the Omnibus Consolidated and Emergency Supplemental Appropriations Act of 1999 (Pub. L. 105–277, 112 Stat. 2681).

E. Plain Language

Section 722 of the Gramm-Leach-Bliley Act requires the federal banking agencies to use plain language in all final rules published after January 1, 2000. The FDIC has sought to present the final rule in a simple and straightforward manner.

F. Riegle Community Development and Regulatory Improvement Act of 1994

Under the Riegle Community Development and Regulatory Improvement Act of 1994, 12 U.S.C. 4802, (RCDRIA), there is a requirement that ''[n]ew regulations and amendments to regulations prescribed by a Federal banking agency which impose additional reporting, disclosures, or other new requirements on insured depository institutions shall take effect on the first day of a calendar quarter which begins on or after the date on which the regulations are published in final form'' absent a good cause determination by the agency.[4] The final rule imposes no additional reporting, disclosure, or other new requirements on insured depository institutions and therefore is not subject to the effective date requirement in RCDRIA.

List of Subjects

12 CFR Part 303

Administrative practice and procedure, Bank deposit insurance, Banks, banking, Reporting and recordkeeping requirements, Savings associations.

12 CFR Part 348

Banks, banking, Savings associations.

For the reasons stated in the preamble, the Federal Deposit Insurance Corporation amends 12 CFR parts 303 and 348 as follows:

PART 303—FILING PROCEDURES

■ 1. The authority citation for part 303 continues to read as follows:

Authority: 12 U.S.C. 378, 1464, 1813, 1815, 1817, 1818, 1819(a), (Seventh and Tenth), 1820, 1823, 1828, 1831a, 1831e, 1831o, 1831p–1, 1831w, 1835a, 1843(1), 3104, 3105, 3108, 3207, 5414; 15 U.S.C. 1601–1607.

■ 2. In § 303.249, paragraph (c)(3) is revised to read as follows:

§ 303.249 Management official interlocks.

* * * * *

(c) * * *

(3) If the applicant is seeking an exemption set forth in § 348.6 of this chapter, a description of the particular exemption which is being requested and a statement of reasons as to why the exemption is applicable.

* * * * *

PART 348—MANAGEMENT OFFICIAL INTERLOCKS

■ 3. The authority citation for part 348 continues to read as follows:

Authority: 12 U.S.C. 1823(k), 3207.

■ 4. In § 348.4, paragraph (i)(3) is revised to read as follows:

§ 348.4 Interlocking relationships permitted by statute.

* * * * *

(i) * * *

(3) The FDIC may require that any interlock permitted under this paragraph (i) be terminated if a change in circumstances occurs with respect to one of the interlocked depository organizations that would have provided a basis for disapproval of the interlock during the notice period.

* * * * *

Dated at Washington, DC, on December 18, 2018.

By order of the Board of Directors.

Valerie Best,

Assistant Executive Secretary.

[FR Doc. 2019–01193 Filed 2–7–19; 8:45 am]

BILLING CODE 6714–01–P

[4] 12 U.S.C. 4802(b).

FARM CREDIT ADMINISTRATION

12 CFR Parts 652

RIN 3052–AC86

Organization; Funding and Fiscal Affairs, Loan Policies and Operations, and Funding Operations; Farmer Mac Investment Eligibility

AGENCY: Farm Credit Administration.

ACTION: Notification of effective date.

SUMMARY: The Farm Credit Administration (FCA or we) issued a final rule adopting amendments to regulations governing the eligibility of non-program investments held by the Federal Agricultural Mortgage Corporation (Farmer Mac) to remove references to, and requirements relating to, credit ratings in compliance with section 939A of the Dodd-Frank Wall Street Reform and Consumer Protection Act. In accordance with law, the effective date of the rule is no earlier than 30 days from the date of publication in the **Federal Register** during which either or both Houses of Congress are in session.

DATES: The regulation amending 12 CFR part 652 published on November 2, 2018 (83 FR 55093), is effective on February 8, 2019.

FOR FURTHER INFORMATION CONTACT:

Technical information: Joseph Connor, Associate Director for Policy and Analysis, Office of Secondary Market Oversight, (703) 883–4364, TTY (703) 883–4056, *connorj@fca.gov.*

Legal information: Laura McFarland, Senior Counsel, Office of General Counsel, (703) 883–4020, TTY (703) 883–4056, *mcfarlandl@fca.gov.*

SUPPLEMENTARY INFORMATION: On November 2, 2018, FCA issued a final

rule adopting amendments to regulations governing the eligibility of non-program investments held by Farmer Mac to remove references to, and requirements relating to, credit ratings. The final rule also revised investment concentration limits and removed both the fixed asset class limits and the related table of eligible asset classes. In accordance with 12 U.S.C. 2252(c)(1), the effective date of the rule is no earlier than 30 days from the date of publication in the **Federal Register** during which either or both Houses of Congress are in session. Based on the records of the sessions of Congress, the effective date of the regulations is February 8, 2019.

Dated: January 31, 2019.

Dale L. Aultman,

Secretary, Farm Credit Administration Board.

[FR Doc. 2019–01072 Filed 2–7–19; 8:45 am]

BILLING CODE 6705–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2018–0635; Product Identifier 2017–NM–183–AD; Amendment 39–19490; AD 2018–23–04]

RIN 2120–AA64

Airworthiness Directives; Bombardier, Inc., Airplanes

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

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain Bombardier, Inc., Model DHC–8–102, –103, and –106 airplanes; Model DHC–8–200 series airplanes; and Model DHC–8–300 series airplanes. This AD was prompted by a report that a certain modification to the auto relight system is incompatible with a certain beta lockout system modification and could result in de-activation of the auto ignition feature of the No. 2 engine. This AD requires an inspection of the auto ignition system and applicable rectification. We are issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective March 15, 2019.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of March 15, 2019.

ADDRESSES: For service information identified in this final rule, contact Bombardier, Inc., Q-Series Technical Help Desk, 123 Garratt Boulevard, Toronto, Ontario M3K 1Y5, Canada; telephone 416–375–4000; fax 416–375–4539; email *thd.qseries@aero.bombardier.com;* internet *http://www.bombardier.com.* You may view this service information at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2018–0635.

Examining the AD Docket

You may examine the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2018–0635; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the regulatory evaluation, any comments received, and other information. The address for Docket Operations (phone: 800–647–5527) is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Joe Catanzaro, Aerospace Engineer, Airframe and Propulsion Section, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7366; fax 516–794–5531; email *9-avs-nyaco-cos@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to certain Bombardier, Inc., Model DHC–8–102, –103, and –106 airplanes; Model DHC–8–200 series airplanes; and Model DHC–8–300 series airplanes. The NPRM published in the **Federal Register** on July 23, 2018 (83 FR 34800). The NPRM was prompted by a report that a certain modification to the auto relight system is incompatible with a certain beta lockout system modification and could result in de-activation of the auto ignition feature of the No. 2 engine. The NPRM proposed to require an inspection of the auto ignition system and applicable rectification. We are issuing this AD to address unintentional de-activation of the auto ignition feature of the No. 2 engine when the beta lockout system is activated, which could result in an uncommanded in-flight shutdown of the No. 2 engine.

Transport Canada Civil Aviation (TCCA), which is the aviation authority for Canada, has issued Canadian AD CF–2017–21R1, dated June 28, 2017 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for certain Bombardier, Inc., Model DHC–8–102, –103, and –106 airplanes; Model DHC–8–200 series airplanes; and Model DHC–8–300 series airplanes. The MCAI states:

> During the incorporation of the Auto Relight modification per Bombardier SB [Service Bulletin] 8–74–02 on an aeroplane with a Beta Lockout System (BLS) installed, it was noticed that if SB 8–74–02 is incorporated in conjunction with, or after the incorporation of BLS SB 8–76–35 ([Canadian] AD CF–2013–15) or SB 8–76–24 (FAA AD 2000–02–13 [Amendment 39–11531 (65 FR 4095, January 26, 2000)]), the #2 engine auto ignition function of the beta lockout system will not be available when the beta lockout system is activated. This condition, if not corrected, may result in a #2 engine uncommanded in-flight shut down.
>
> To preclude any future occurrence of the noted deficiency, Bombardier has issued SB 8–74–02 Revision B to highlight its incompatibility with post SB 8–76–35 or 8–76–24 BLS compliant aeroplanes. In addition, Bombardier issued a new SB, 8–74–06 for Auto Relight System modification that can be incorporated in conjunction with or on those aeroplanes that were previously modified per SB 8–76–35 or 8–76–24.
>
> To address this potentially unsafe condition, Bombardier has also issued SB 8–74–07 to inspect and rectify the system wiring on affected aeroplanes.
>
> The original version of this [Canadian] AD was issued to mandate compliance with the SB 8–74–07 requirements.
>
> Revision 1 of this [Canadian] AD is issued to clarify the Applicability section and correct a typographic error in the SB number referenced in the Corrective Action section of the original [Canadian] AD.

You may examine the MCAI in the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2018–0635.

Comments

We gave the public the opportunity to participate in developing this final rule. We have considered the comment received. The Air Line Pilots Association, International (ALPA) indicated its support for the NPRM.

Conclusion

We reviewed the relevant data, considered the comment received, and determined that air safety and the public interest require adopting this final rule as proposed, except for minor

editorial changes. We have determined that these minor changes:

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

Related Service Information Under 1 CFR Part 51

Bombardier has issued Service Bulletin 8–74–07, dated April 13, 2016. This service information describes procedures for an inspection to determine correct operation of the auto ignition system for airplanes on which a beta lockout system was installed, and rectification to re-activate a previously disabled auto ignition system that will address inadvertent de-activation of the auto ignition feature. 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.

Costs of Compliance

We estimate that this AD affects 185 airplanes of U.S. registry.

We estimate the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspection	1 work-hour × $85 per hour = $85	$0	$85	$15,725

We estimate the following costs to do any necessary on-condition actions that would be required based on the results of the inspection. We have no way of determining the number of aircraft that might need this action:

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Rectification	3 work-hours × $85 per hour = $255	$6	$261

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.

This AD is issued in accordance with authority delegated by the Executive Director, Aircraft Certification Service, as authorized by FAA Order 8000.51C. In accordance with that order, issuance of ADs is normally a function of the Compliance and Airworthiness Division, but during this transition period, the Executive Director has delegated the authority to issue ADs applicable to transport category airplanes and associated appliances to the Director of the System Oversight Division.

Regulatory Findings

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

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

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

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

(3) Will not affect intrastate aviation in Alaska, 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 adding the following new airworthiness directive (AD):

2018–23–04 Bombardier, Inc.: Amendment 39–19490; Docket No. FAA–2018–0635; Product Identifier 2017–NM–183–AD.

(a) Effective Date

This AD is effective March 15, 2019.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Bombardier, Inc., Model DHC–8–102, –103, –106, –201, –202, –301, –311, and –315 airplanes, certificated in any category, serial numbers 003 through 540 inclusive, on which Bombardier Service Bulletin 8–74–02, dated March 3, 2000; or Revision A, dated January 27, 2014; has been accomplished concurrently with or after accomplishment of Bombardier Service Bulletin 8–76–35 or 8–76–24.

(d) Subject

Air Transport Association (ATA) of America Code 74, Ignition; 76, Engine Controls.

(e) Reason

This AD was prompted by a report that a certain modification to the auto relight system is incompatible with a certain beta lockout system modification and could result in de-activation of the auto ignition feature of the No. 2 engine. We are issuing this AD to address unintentional de-activation of the auto ignition feature of the No. 2 engine when the beta lockout system is activated, which could result in an uncommanded in-flight shutdown of the No. 2 engine.

(f) Compliance

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

(g) Inspection and Corrective Action

Within 6,000 flight hours or 36 months, whichever occurs first, after the effective date of this AD, inspect and, as applicable, rectify the auto ignition system in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 8–74–07, dated April 13, 2016.

(h) Credit for Previous Actions

This paragraph provides credit for rectification required by paragraph (g) of this AD, if those actions were performed before the effective date of this AD using Bombardier In-Service Modification Summary Package IS8Q7400001, Revision C, dated November 27, 2015.

(i) Other FAA AD Provisions

The following provisions also apply to this AD:

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

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

(j) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) Canadian AD CF–2017–21R1, dated June 28, 2017, for related information. This MCAI may be found in the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2018–0635.

(2) For more information about this AD, contact Joe Catanzaro, Aerospace Engineer, Airframe and Propulsion Section, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7366; fax 516–794–5531; email *9-avs-nyaco-cos@faa.gov.*

(3) Service information identified in this AD that is not incorporated by reference is available at the addresses specified in paragraphs (k)(3) and (k)(4) of this AD.

(k) Material Incorporated by Reference

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

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

(i) Bombardier Service Bulletin 8–74–07, dated April 13, 2016.

(ii) [Reserved]

(3) For service information identified in this AD, contact Bombardier, Inc., Q-Series Technical Help Desk, 123 Garratt Boulevard, Toronto, Ontario M3K 1Y5, Canada; telephone 416–375–4000; fax 416–375–4539; email *thd.qseries@aero.bombardier.com;* internet *http://www.bombardier.com.*

(4) You may view this service information at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

(5) You may view this service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Des Moines, Washington, on October 26, 2018.

Michael Kaszycki,

Acting Director, System Oversight Division, Aircraft Certification Service.

Editorial Note: This document was received for publication by the Office of the Federal Register on January 30, 2019.

[FR Doc. 2019–00858 Filed 2–7–19; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2019–0042; Product Identifier 2018–NE–25–AD; Amendment 39–19548; AD 2019–02–01]

RIN 2120–AA64

Airworthiness Directives; General Electric Company Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: We are superseding Airworthiness Directive (AD) 2018–16–07, which applied to certain General Electric Company (GE) GEnx turbofan engines. AD 2018–16–07 required removal and replacement of affected high-pressure turbine (HPT) stator cases (HPT cases). This AD retains those requirements, but reduces certain compliance times. This AD was prompted by the discovery of a quality escape at a manufacturing facility and a determination that the compliance time for the removal and replacement of certain HPT cases must be reduced. We are issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective February 25, 2019.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of February 25, 2019.

We must receive any comments on this AD by March 25, 2019.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.
- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this final rule, contact General Electric Company, GE Aviation, Room 285, 1 Neumann Way, Cincinnati, OH 45215; phone: 513–552–3272; email: *aviation.fleetsupport@ge.com.* You may view this service information at the FAA, Engine and Propeller Standards Branch, 1200 District Avenue, Burlington, MA. You may view this service information at the FAA, Engine and Propeller Standards Branch, 1200 District Avenue, Burlington, MA. For information on the availability of this material at the FAA, call 781–238–7759. It is also available on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0042.

Examining the AD Docket

You may examine the AD docket on the internet at *http://www.regulations.gov* by searching for

and locating Docket No. FAA–2019–0042; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the regulatory evaluation, any comments received, and other information. The street address for Docket Operations (phone: 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Herman Mak, Aerospace Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA 01803; phone: 781–238–7147; fax: 781–238–7199; email: *herman.mak@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

We issued AD 2018–16–07, Amendment 39–19347 (83 FR 36724, July 31, 2018) (''AD 2018–16–07''), for certain GE GEnx–1B54, –1B58, –1B64, –1B67, –1B70, –1B54/P1, –1B58/P1, –1B64/P1, –1B67/P1, –1B70/P1, –1B54/P2, –1B58/P2, –1B64/P2, –1B67/P2, –1B70/P2, –1B70C/P1, –1B70/72/P1, –1B70/75/P1, –1B74/75/P1, –1B75/P1, –1B70C/P2, –1B70/72/P2, –1B70/75/P2, –1B74/75/P2, –1B75/P2, –1B76/P2, –1B76A/P2, –1B78/P2, –2B67, –2B67B, and –2B67/P turbofan engines. AD 2018–16–07 required removal of affected HPT cases from service and their replacement with a part eligible for installation. AD 2018–16–07 was prompted by the discovery of a quality escape at a manufacturing facility involving unapproved reworks on HPT cases. We issued AD 2018–16–07 to address failure of the HPT case, which could result in engine fire and damage to the airplane.

Actions Since AD 2018–16–07 was Issued

Since we issued AD 2018–16–07, we have received new data from the manufacturer and have determined that certain HPT cases may have a reduced fatigue life than previously determined. Because of this reduced fatigue life, the HPT cases must be removed and replaced at reduced compliance times. Failure to remove and replace the HPT cases within the reduced compliance times could result in failure of the HPT case resulting in the unsafe condition identified above.

Related Service Information Under 1 CFR Part 51

We reviewed GE Service Bulletin (SB) GEnx–2B S/B 72–0360, Revision 04, dated December 4, 2018, and GE SB GEnx–1B S/B 72–0424, Revision 04, dated December 3, 2018. This service information describes procedures for removing the affected HPT cases from the engine. GE SB GEnx–1B S/B 72–0424 is effective for GEnx–1B engines with the serial numbers of HPT cases listed therein. GE SB GEnx–2B S/B 72–0360 is effective for GEnx–2B engines with the serial numbers of HPT cases listed therein. 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 Inspection 001, Subtask 72–52–01–230–001, of GEnx–1B Cleaning, Inspection, and Repair Manual GEK112862, Rev 27, dated April 30, 2018, and GEnx–2B Cleaning, Inspection, and Repair Manual GEK114120, Rev 20, dated April 30, 2018. These manuals provide guidance for conducting Class A fluorescent penetrant inspections.

FAA's Determination

We are issuing this AD because we evaluated all the relevant information and determined the unsafe condition described previously is likely to exist or develop in other products of the same type design.

AD Requirements

This AD requires removal of the affected HPT cases from service and their replacement with a part eligible for installation.

FAA's Justification and Determination of the Effective Date

An unsafe condition exists that requires the immediate adoption of this AD without providing an opportunity for public comments prior to adoption. The FAA has found that the risk to the flying public justifies waiving notice and comment prior to adoption of this rule because of a quality escape at a manufacturing facility involving unapproved rework on HPT cases, which could result in failure of the HPT case and subsequent engine fire and damage to the airplane. Additionally, the compliance time for the required action is shorter than the time necessary for the public to comment and for publication of the final rule. Therefore, we find good cause that notice and opportunity for prior public comment are impracticable. In addition, for the reasons stated above, we find that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety and was not preceded by notice and an opportunity for public comment. However, we invite you to send any written data, views, or arguments about this final rule. Send your comments to an address listed under the **ADDRESSES** section. Include the docket number FAA–2019–0042 and Product Identifier 2018–NE–25–AD at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this final rule. We will consider all comments received by the closing date and may amend this final rule because of those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this final rule.

Costs of Compliance

We estimate that this AD affects 7 engines installed on airplanes of U.S. registry. We estimate the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Removal and replacement of HPT cases	0 work-hours × $85 per hour = $0	$362,400	$362,400	$2,536,800

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.

This AD is issued in accordance with authority delegated by the Executive Director, Aircraft Certification Service, as authorized by FAA Order 8000.51C. In accordance with that order, issuance of ADs is normally a function of the Compliance and Airworthiness Division, but during this transition period, the Executive Director has delegated the authority to issue ADs applicable to engines, propellers, and associated appliances to the Manager, Engine and Propeller Standards Branch, Policy and Innovation Division.

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, 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) 2018–16–07, Amendment 39–19347 (83 FR 36724, July 31, 2018), and adding the following new AD:

2019–02–01 General Electric Company: Amendment 39–19548; Docket No. FAA–2019–0042; Product Identifier 2018–NE–25–AD.

(a) Effective Date

This AD is effective February 25, 2019.

(b) Affected ADs

This AD replaces AD 2018–16–07, Amendment 39–19347 (83 FR 36724, July 31, 2018) (''AD 2018–16–07'').

(c) Applicability

This AD applies to General Electric Company (GE) GEnx–1B54, –1B58, –1B64, –1B67, –1B70, –1B54/P1, –1B58/P1, –1B64/P1, –1B67/P1, –1B70/P1, –1B54/P2, –1B58/P2, –1B64/P2, –1B67/P2, –1B70/P2, –1B70C/P1, –1B70/72/P1, –1B70/75/P1, –1B74/75/P1, –1B75/P1, –1B70C/P2, –1B70/72/P2, –1B70/75/P2, –1B74/75/P2, –1B75/P2, –1B76/P2, –1B76A/P2, –1B78/P2, –2B67, –2B67B, and –2B67/P turbofan engines with a high-pressure turbine (HPT) stator case (HPT case), part number (P/N) 2302M90G04 installed, and with any serial number (S/N) listed in Table 1, 2, or 3, in the Planning Information section of GE Service Bulletin (SB) GEnx–2B S/B 72–0360, Revision 04, dated December 4, 2018, or GE SB GEnx–1B S/B 72–0424, Revision 04, dated December 3, 2018, installed.

(d) Subject

Joint Aircraft System Component (JASC) Code 7250, Turbine section.

(e) Unsafe Condition

This AD was prompted by the discovery of a quality escape at a manufacturing facility involving unapproved rework on HPT cases. We are issuing this AD to prevent failure of the HPT case and subsequent engine fire and damage to the airplane.

(f) Compliance

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

(g) Required Actions

(1) For HPT cases listed in Planning Information, Table 1 or 2, of GE SB GEnx–2B S/B 72–0360, Revision 04, dated December 4, 2018, or GE SB GEnx–1B S/B 72–0424, Revision 04, dated December 3, 2018, determine the lesser of the following: Cycles since new (CSN) or cycles since Class A fluorescent penetrant inspection (CSFPI) of the entire HPT case.

(2) Using the determination made in paragraph (g)(1) of this AD, remove from service the HPT case before exceeding the applicable cycles in service accrued after August 15, 2018, the effective date of AD 2018–16–07, as specified in Table 1 to paragraph (g)(2) of this AD. Replace the removed HPT case with a part eligible for installation.

Table 1 to paragraph (g)(2) of this AD – *Compliance times*

CSN or CSFPI of HPT case	Remove from service (cycles in service after August 15, 2018, the effective date of AD 2018-16-07)
Fewer than 1000	150 cycles
1000 to 2000	125 cycles
2001 to 3000	100 cycles
3001 to 4000	75 cycles
4001 to 5000	50 cycles
Greater than 5000	25 cycles

(3) For HPT cases listed in Planning Information, Table 3, of GE SB GEnx–2B S/B 72–0360, Revision 04, dated December 4, 2018, determine the lesser of the following: CSN or CSFPI of the entire HPT case.

(4) Using the determination made in paragraph (g)(3) of this AD, remove from service the HPT case before exceeding the cycles in service specified in Table 2 to paragraph (g)(4) of this AD. Replace the removed HPT case with a part eligible for installation.

Table 2 to paragraph (g)(4) of this AD – *Compliance times*

CSN or CSFPI of HPT case	Remove from service (cycles in service after the effective date of this AD)
Fewer than 1000	1400 cycles
1000 to 1500	950 cycles
1501 to 2000	700 cycles
2001 to 3000	375 cycles
3001 to 4000	225 cycles
Greater than 4000	150 cycles

(5) For HPT cases listed in Planning Information, Table 3, of GE SB GEnx–1B S/B 72–0424, Revision 04, dated December 3, 2018, determine the lesser of the following: CSN or CSFPI of the entire HPT case.

(6) Using the determination made in paragraph (g)(5) of this AD, remove from service the HPT case before exceeding the cycles in service specified in Table 3 to paragraph (g)(6) of this AD. Replace the removed HPT case with a part eligible for installation.

Table 3 to paragraph (g)(6) of this AD – *Compliance times*

CSN or CSFPI of HPT case	Remove from service (cycles in service after the effective date of this AD)
Fewer than 1000	700 cycles
1000 to 1500	600 cycles
1501 to 2000	400 cycles
2001 to 3000	200 cycles
3001 to 4000	120 cycles
Greater than 4000	75 cycles

(h) Installation Prohibition

After the effective date of this AD, do not install any affected HPT case onto any engine if the HPT case has been disassembled to piece-part level. Affected HPT cases are identified in paragraphs (g)(1), (g)(3), and (g)(5) of this AD. Piece-part level is defined as when the part is completely disassembled.

(i) Alternative Methods of Compliance (AMOCs)

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

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

(j) Related Information

For more information about this AD, contact Herman Mak, Aerospace Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA 01803; phone: 781–238–7147; fax: 781–238–7199; email: *herman.mak@faa.gov.*

(k) Material Incorporated by Reference

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

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

(i) General Electric Company (GE) Service Bulletin (SB) GEnx–2B S/B 72–0360, Revision 04, dated December 4, 2018.

(ii) GE SB GEnx–1B S/B 72–0424, Revision 04, dated December 3, 2018.

(3) For GE service information identified in this AD, contact General Electric Company, GE Aviation, Room 285, 1 Neumann Way, Cincinnati, OH 45215; phone: 513–552–3272; email: *aviation.fleetsupport@ge.com.*

(4) You may view this service information at the FAA, Engine and Propeller Standards Branch, 1200 District Avenue, Burlington, MA. For information on the availability of this material at the FAA, call 781–238–7759.

(5) You may view this service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Burlington, Massachusetts, on February 1, 2019.

Robert J. Ganley,

Manager, Engine and Propeller Standards Branch, Aircraft Certification Service.

[FR Doc. 2019–01589 Filed 2–7–19; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2019–0050; Product Identifier 2018–NE–35–AD; Amendment 39–19551; AD 2019–02–04]

RIN 2120–AA64

Airworthiness Directives; Engine Alliance Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: We are superseding Airworthiness Directive (AD) 2018–22–05, which applied to Engine Alliance (EA) GP7270, GP7272, and GP7277 turbofan engines with a certain high-pressure turbine (HPT) case installed. AD 2018–22–05 required removal of affected HPT stator cases (HPT cases) from service and their replacement with a part eligible for installation. This AD retains these requirements, reduces the compliance times for the removal and replacement of certain HPT cases, and identifies additional affected parts that must be removed and replaced. This AD was prompted by the discovery of a quality escape at a manufacturing facility involving unapproved welds on HPT cases. Subsequent additional findings suggested the need for an updated risk analysis, resulting in reduced compliance times for those parts and the identification of additional affected parts. We are issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective February 25, 2019.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of February 25, 2019.

The Director of the Federal Register approved the incorporation by reference of certain other publications listed in this AD as of November 23, 2018 (83 FR 55816, November 8, 2018).

We must receive any comments on this AD by March 25, 2019.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.
- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this final rule, contact Engine Alliance, 411 Silver Lane, East Hartford, CT 06118; phone: 800–565–0140; email: *help24@pw.utc.com;* website: *www.enginealliianceportal.com.* You may view this service information at the FAA, Engine and Propeller Standards Branch, 1200 District Avenue, Burlington, MA 01803. For information on the availability of this material at the FAA, call 781–238–7759. It is also available on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0050.

Examining the AD Docket

You may examine the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0050; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the regulatory evaluation, any comments received, and other information. The street address for Docket Operations (phone: 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Matthew Smith, Aerospace Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA 01803; phone: 781–238–7735; fax: 781–238–7199; email: *matthew.c.smith@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

We issued AD 2018–22–05, Amendment 39–19478 (83 FR 55816, November 8, 2018) (''AD 2018–22–05''), for EA GP7270, GP7272, and GP7277 turbofan engines with a certain HPT case installed. AD 2018–22–05 required removal of affected HPT cases from service and their replacement with a part eligible for installation. AD 2018–22–05 was prompted by the discovery of a quality escape at a manufacturing facility involving unapproved welds on HPT cases. We issued AD 2018–22–05 to address failure of the HPT case, which could result in engine fire and damage to the airplane.

Actions Since AD 2018–22–05 Was Issued

Since we issued AD 2018–22–05, another undocumented weld has been found on a part that was previously considered to have enough manufacturing data to perform an updated life analysis. The new findings created more uncertainty about the manufacturing data, creating the need for an updated risk analysis with the new information. As a result, we have determined that the remaining cycles allowed on the affected HPT cases must be reduced and additional affected parts were identified that must be removed and replaced.

Related Service Information Under 1 CFR Part 51

We reviewed Engine Alliance Alert Service Bulletin EAGP7–A72–401, Revision No. 1, dated December 13, 2018, which describes procedures for removing and replacing the affected HPT case within the identified cycles.

We also reviewed Engine Alliance Service Bulletin EAGP7–72–399, dated June 4, 2018, which describes procedures for removing and replacing the affected HPT case within the specified part cycles since new or part cycles since overhaul.

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

FAA's Determination

We are issuing this AD because we evaluated all the relevant information and determined the unsafe condition described previously is likely to exist or develop in other products of the same type design.

AD Requirements

This AD requires removal of the affected HPT cases from service and their replacement with a part eligible for installation.

FAA's Justification and Determination of the Effective Date

An unsafe condition exists that requires the immediate adoption of this AD without providing an opportunity for public comments prior to adoption. The FAA has found that the risk to the flying public justifies waiving notice and comment prior to adoption of this rule because failure of the HPT case

could result in engine fire and damage to the airplane, and the compliance time for the required action is shorter than the time necessary for public comment and publication of the final rule. Additionally, no domestic operators currently use this product. We find good cause that notice and opportunity for prior public comment are impracticable and unnecessary. In addition, for the reasons stated above, we find that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety and was not preceded by notice and an opportunity for public comment. However, we invite you to send any written data, views, or arguments about this final rule. Send your comments to an address listed under the **ADDRESSES** section. Include the docket number FAA–2019–0050 and Product Identifier 2018–NE–35–AD at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this final rule. We will consider all comments received by the closing date and may amend this final rule because of those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this final rule.

Costs of Compliance

We estimate that this AD affects 0 engines installed on airplanes of U.S. registry. We estimate the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
HPT case replacement	20 work-hours × $85 per hour = $1,700	$339,400	$341,100	$0

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.

This AD is issued in accordance with authority delegated by the Executive Director, Aircraft Certification Service, as authorized by FAA Order 8000.51C. In accordance with that order, issuance of ADs is normally a function of the Compliance and Airworthiness Division, but during this transition period, the Executive Director has delegated the authority to issue ADs applicable to engines, propellers, and associated appliances to the Manager, Engine and Propeller Standards Branch, Policy and Innovation Division.

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, 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) 2018–22–05, Amendment 39–19478 (83 FR 55816, November 8, 2018), and adding the following new AD:

2019–02–04 Engine Alliance: Amendment 39–19551; Docket No. FAA–2019–0050; Product Identifier 2018–NE–35–AD.

(a) Effective Date

This AD is effective February 25, 2019.

(b) Affected ADs

This AD replaces AD 2018–22–05, Amendment 39–19478 (83 FR 55816, November 8, 2018) (''AD 2018–22–05'').

(c) Applicability

This AD applies to Engine Alliance (EA) GP7270, GP7272, and GP7277 turbofan engines, with a high-pressure turbine (HPT) stator case (HPT case), part number (P/N) 2060M40G02 or 2137M29G01 installed, and with HPT case serial numbers (S/Ns) listed in Planning Information, Table 1, of Engine Alliance Alert Service Bulletin EAGP7–A72–401, Revision 1, dated December 13, 2018, and in Planning Information, Table 1, of Engine Alliance Service Bulletin EAGP7–72–399, dated June 4, 2018.

(d) Subject

Joint Aircraft System Component (JASC) Code 7250, Turbine section.

(e) Unsafe Condition

This AD was prompted by the discovery of a quality escape at a manufacturing facility involving unapproved welds on HPT cases. We are issuing this AD to address failure of the HPT case, which could result in engine fire and damage to the airplane.

(f) Compliance

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

(g) Required Actions

(1) For HPT cases listed in Planning Information, Table 1, of Engine Alliance Alert Service Bulletin EAGP7–A72–401,

Revision No. 1, dated December 13, 2018, remove the affected HPT case from service within the cycles identified in Table 1 of Engine Alliance Alert Service Bulletin EAGP7–A72–401, Revision No. 1, dated December 13, 2018, after the effective date of this AD.

(2) For HPT cases listed in Planning Information, Table 1, of Engine Alliance Service Bulletin EAGP7–72–399, dated June 4, 2018, remove the affected HPT cases from service, using the number of part cycles since new (PCSN) or part cycles since overhaul (PCSO), whichever is less, as specified in Table 1 to paragraph (g)(2) of this AD.

Table 1 to paragraph (g)(2) of this AD – *Compliance times*

PCSN or PCSO	Remove from service within these cycles after November 23, 2018 (the effective date of AD 2018-22-05)
Fewer than 1000	150 cycles.
1001 to 2000	125 cycles.
2001 to 3000	100 cycles.
3001 to 4000	75 cycles.
4001 to 5000	50 cycles.
5001 or more	25 cycles.

(3) Replace the removed HPT case with a part eligible for installation before further flight.

(h) Definition

For the purpose of this AD, a ''part eligible for installation'' is any HPT case not identified in paragraph (c) of this AD or an HPT case listed in this AD that has been inspected and repaired by a method approved by the Manager, ECO Branch, FAA.

(i) Alternative Methods of Compliance (AMOCs)

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

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

(j) Related Information

For more information about this AD, contact Matthew Smith, Aerospace Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA 01803; phone: 781–238–7735; fax: 781–238–7199; email: *Matthew.C.Smith@faa.gov.*

(k) Material Incorporated by Reference

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

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

(3) The following service information was approved for IBR on February 25, 2019.

(i) Engine Alliance Alert Service Bulletin EAGP7–A72–401, Revision No. 1, dated December 13, 2018.

(ii) [Reserved]

(4) The following service information was approved for IBR on November 23, 2018 (83 FR 55816, November 8, 2018).

(i) Engine Alliance Service Bulletin EAGP7–72–399, dated June 4, 2018.

(ii) [Reserved]

(5) For service information identified in this AD, contact Engine Alliance, 411 Silver Lane, East Hartford, CT 06118; phone: 800–565–0140; email: *help24@pw.utc.com;* website: *www.enginealliance portal.com.*

(6) You may view this service information at FAA, Engine and Propeller Standards Branch, 1200 District Avenue, Burlington, MA 01803. For information on the availability of this material at the FAA, call 781–238–7759.

(7) 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 Burlington, Massachusetts, on February 5, 2019.

Robert J. Ganley,

Manager, Engine and Propeller Standards Branch, Aircraft Certification Service.

[FR Doc. 2019–01614 Filed 2–7–19; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2018–0735; Product Identifier 2018–NE–26–AD; Amendment 39–19505; AD 2018–24–01]

RIN 2120–AA64

Airworthiness Directives; International Aero Engines Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain International Aero Engines (IAE) PW1100G–JM turbofan engine models with certain low-pressure turbine (LPT) 1st- and 3rd-stage disks installed. This AD was prompted by a report of manufacturing defects found on delivered LPT 1st- and 3rd-stage disks. This AD requires removing the LPT 1st- or 3rd-stage disk from service and replacing with a part eligible for installation. We are issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective March 15, 2019.

Examining the AD Docket

You may examine the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2018–0735 or in person at Docket Operations between 9 a.m. and 5 p.m., Monday

through Friday, except Federal holidays. The AD docket contains this final rule, the regulatory evaluation, any comments received, and other information. The address for Docket Operations (phone: 800–647–5527) is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT:

Kevin M. Clark, Aerospace Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA 01803; phone: 781–238–7088; fax: 781–238–7199; email: *kevin.m.clark@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to all International Aero Engines (IAE) PW1133G–JM, PW1133GA–JM, PW1130G–JM, PW1127G–JM, PW1127GA–JM, PW1127G1–JM, PW1124G–JM, PW1124G1–JM, and PW1122G–JM turbofan engines with certain LPT 1st- and 3rd-stage disks installed. The NPRM published in the **Federal Register** on September 7, 2018 (83 FR 45359). The NPRM was prompted by a report that multiple LPT 1st- and 3rd-stage disks were delivered before the ingot lot was rejected due to material inclusion. The suspect LPT 1st- and 3rd-stage disks may include defects that may not have been discovered during inspections. The NPRM proposed to require removing the LPT 1st- or 3rd-stage disk from service and replacing with a part eligible for installation. We are issuing this AD to address the unsafe condition on these products.

Comments

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

Request To Change Compliance Time

IAE requested that we change the compliance time for removing from service the LPT 1st- and 3rd-stage disks from ''at the next shop visit'' to ''within a service period.'' IAE states its safety risk analysis shows that the prescribed corrective action exceeds all required safety risk criteria. Therefore, requiring removal and replacement of the LPT 1st- and 3rd-stage disks with serial numbers (S/Ns) listed in Figure 1 to paragraph (g) of this AD ''at the next shop visit'' is overly restrictive.

We partially agree. We agree that requiring removal and replacement of the LPT 1st- and 3rd-stage disks with S/Ns listed in Figure 1 to paragraph (g) of this AD ''at the next shop visit'' may be overly restrictive based on the risk presented in the safety risk assessment. We disagree with using the words ''within a service period'' because this might allow reinstallation of parts that do not conform to the approved type design. Therefore, we changed the references in paragraphs (g)(1) and (2) of this AD from ''at the next shop visit'' to ''at the next piece-part exposure.'' We find that this change still meets the safety objectives of this AD. We also removed the Definitions paragraph from this AD since it is no longer necessary.

Request To Revise Cost of Compliance

An individual commenter requested that we define the costs associated with the removal of the LPT 1st- or 3rd grade disks from each unit.

We disagree. We did not define a removal cost estimate because removal of the LPT 1st- or 3rd grade disks occurs when the unit is ''at the next piece-part exposure'' level. Therefore, no additional cost is incurred by removal of the LPT disks.

Conclusion

We reviewed the relevant data, considered the comments received, and determined that air safety and the public interest require adopting this final rule with the change described previously. We have determined that these minor changes:

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

We also determined that these changes will not increase the economic burden on any operator or increase the scope of this final rule.

Costs of Compliance

We estimate that this AD affects 0 engines installed on airplanes of U.S. registry.

We estimate the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Remove and replace LPT 1st- or 3rd-stage disk	0 work-hours × $85 per hour = $0 ..	$210,000	$210,000	$0

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.

This AD is issued in accordance with authority delegated by the Executive Director, Aircraft Certification Service, as authorized by FAA Order 8000.51C. In accordance with that order, issuance of ADs is normally a function of the Compliance and Airworthiness Division, but during this transition period, the Executive Director has delegated the authority to issue ADs applicable to engines, propellers, and associated appliances to the Manager, Engine and Propeller Standards Branch, Policy and Innovation Division.

Regulatory Findings

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

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

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

(2) 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, 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 adding the following new airworthiness directive (AD):

2018–24–01 International Aero Engines: Amendment 39–19505; Docket No. FAA–2018–0735; Product Identifier 2018–NE–26–AD.

(a) Effective Date

This AD is effective March 15, 2019.

(b) Affected ADs

None.

(c) Applicability

This AD applies to International Aero Engines (IAE) PW1133G–JM, PW1133GA–JM, PW1130G–JM, PW1127G–JM, PW1127GA–JM, PW1127G1–JM, PW1124G–JM, PW1124G1–JM, and PW1122G–JM turbofan engines with a low-pressure turbine (LPT) 3rd-stage disk with a serial number (S/N) listed in Figure 1 to paragraph (g) of this AD or an LPT 1st-stage disk with an S/N listed in Figure 2 to paragraph (g) of this AD, installed.

(d) Subject

Joint Aircraft System Component (JASC) Code 7250, Turbine Section.

(e) Unsafe Condition

This AD was prompted by a report of manufacturing defects found on delivered LPT 1st- and 3rd-stage disks. We are issuing this AD to prevent failure of the LPT 1st- or 3rd-stage disk. The unsafe condition, if not addressed, could result in uncontained LPT 1st- or 3rd-stage disk release, damage to the engine, and damage to the airplane.

(f) Compliance

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

(g) Required Actions

Remove from service the LPT 1st- and 3rd-stage disk within 30 days after the effective date of this AD, or as identified in paragraphs (g)(1) or (2) of this AD, whichever occurs later, and replace with a part eligible for installation.

(1) Remove the LPT 3rd-stage disk with a serial number (S/N) listed in Figure 1 to paragraph (g) of this AD at the next piece-part exposure, not to exceed 4,800 cycles since new (CSN).

Figure 1 to Paragraph (g) of this AD – S/Ns of LPT 3rd-stage disk

LLDLAJ4516
LLDLAJ4498
LLDLAJ4518
LLDLAJ4499
LLDLAJ4505
LLDLAJ4511
LLDLAJ4512
LLDLAJ4484
LLDLAJ4494
LLDLAJ4495
LLDLAJ4482
LLDLAJ4500

(2) Remove the LPT 1st-stage disk with an S/N listed in Figure 2 to paragraph (g) of this AD at the next piece-part exposure, not to exceed 2,240 CSN.

Figure 2 to Paragraph (g) of this AD – S/Ns of LPT 1st-stage disk

LLDLAJ6110
LLDLAJ6111
LLDLAJ6114

(h) Alternative Methods of Compliance (AMOCs)

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

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

(i) Related Information

For more information about this AD, contact Kevin M. Clark, Aerospace Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA 01803; phone: 781–238–7088; fax: 781–238–7199; email: *kevin.m.clark@faa.gov.*

(j) Material Incorporated by Reference

None.

Issued in Burlington, Massachusetts on January 31, 2019.

Robert J. Ganley,

Manager, Engine and Propeller Standards Branch, Aircraft Certification Service.

[FR Doc. 2019–01127 Filed 2–7–19; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2015–2892; Airspace Docket No. 15–ANE–2]

RIN 2120–AA66

Amendment of Class E Airspace; Jackman, ME, and Revocation of Class E Airspace; Newton Field, ME

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Class E airspace extending upward from 700 feet above the surface at Newton Field, Jackman, ME, to accommodate new area navigation (RNAV) global positioning system (GPS) standard instrument approach procedures serving the airport. Also, this action removes duplicative Class E airspace for Newton Field, ME. Controlled airspace is necessary for the safety and management of instrument flight rules (IFR) operations at this airport. This action also updates the geographic coordinates of this airport to be in concert with the FAA's aeronautical database.

DATES: Effective 0901 UTC, April 25, 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 Fornito, Operations Support Group, Eastern Service Center, Federal Aviation Administration, 1701 Columbia Avenue, College Park, GA 30337; telephone (404) 305–6364.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

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

History

The FAA published a notice of proposed rulemaking in the **Federal Register** (83 FR 51897, October 15, 2018) for Docket No. FAA–2015–2892 to amend Class E airspace at Newton Field, Jackman, ME to support IFR operations at this airport.

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

Class E airspace designations are published in paragraph 6005, of FAA Order 7400.11C dated August 13, 2018, and effective September 15, 2018, which is incorporated by reference in 14 CFR part 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

Availability and Summary of Documents for Incorporation by Reference

This document amends FAA Order 7400.11C, 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 amends Class E airspace extending

upward from 700 feet or more above the surface within an 12.4-mile (increased from a 6-mile) radius of Newton Field, Jackman, ME, providing the controlled airspace required to support the new RNAV (GPS) standard instrument approach procedures for IFR operations at this airport. This action also makes an editorial correction to remove the duplicate airspace published in the Order under the designation Newton Field, ME. In addition, the geographic coordinates of the airport are adjusted to coincide with the FAA's aeronautical database.

Regulatory Notices and Analyses

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

Environmental Review

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

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

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

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

* * * * *

ANE ME E5 Jackman, ME [Amended]

Newton Field, ME

(Lat. 45°37′58″ N, long. 70°14′56″ W)

That airspace extending upward from 700 feet above the surface within a 12.4-mile radius of Newton Field, excluding that airspace outside the United States.

ANE ME E5 Newton Field, ME

[Removed]

Issued in College Park, Georgia, on January 30, 2019.

Ryan W. Almasy,

Manager, Operations Support Group, Eastern Service Center, Air Traffic Organization.

[FR Doc. 2019–01492 Filed 2–7–19; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 31233; Amdt. No. 3835]

Standard Instrument Approach Procedures, and Takeoff Minimums and Obstacle Departure Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rule establishes, amends, suspends, or removes Standard Instrument Approach Procedures (SIAPs) and associated Takeoff Minimums and Obstacle Departure Procedures (ODPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, adding new obstacles, or changing air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: This rule is effective February 8, 2019. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the **Federal Register** as of February 8, 2019.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination

1. U.S. Department of Transportation, Docket Ops-M30, 1200 New Jersey Avenue SE, West Bldg., Ground Floor, Washington, DC 20590–0001.
2. The FAA Air Traffic Organization Service Area in which the affected airport is located;
3. The office of Aeronautical Navigation Products, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 or,
4. 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/code_of_federal_regulations/ibr_locations.html.*

Availability

All SIAPs and Takeoff Minimums and ODPs are available online free of charge. Visit the National Flight Data Center at *nfdc.faa.gov* to register. Additionally, individual SIAP and Takeoff Minimums and ODP copies may be obtained from the FAA Air Traffic Organization Service Area in which the affected airport is located.

FOR FURTHER INFORMATION CONTACT: Thomas J. Nichols, Flight Procedures and Airspace Group, Flight Technologies and Procedures Division, Flight Standards Service, Federal Aviation Administration. Mailing Address: FAA Mike Monroney Aeronautical Center, Flight Procedures and Airspace Group, 6500 South MacArthur Blvd., Registry Bldg 29 Room 104, Oklahoma City, OK 73125. Telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This rule amends Title 14 of the Code of Federal Regulations, Part 97 (14 CFR part 97), by establishing, amending, suspending, or removes SIAPS, Takeoff Minimums and/or ODPS. The complete regulatory description of each SIAP and its associated Takeoff Minimums or ODP for an identified airport is listed on FAA form documents which are incorporated

by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and 14 CFR part 97.20. The applicable FAA forms are FAA Forms 8260–3, 8260–4, 8260–5, 8260–15A, and 8260–15B when required by an entry on 8260–15A.

The large number of SIAPs, Takeoff Minimums and ODPs, their complex nature, and the need for a special format make publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, Takeoff Minimums or ODPs, but instead refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP, Takeoff Minimums and ODP listed on FAA form documents is unnecessary. This amendment provides the affected CFR sections and specifies the types of SIAPs, Takeoff Minimums and ODPs with their applicable effective dates. This amendment also identifies the airport and its location, the procedure, and the amendment number.

Availability and Summary of Material Incorporated by Reference

The material incorporated by reference is publicly available as listed in the **ADDRESSES** section.

The material incorporated by reference describes SIAPS, Takeoff Minimums and/or ODPS as identified in the amendatory language for part 97 of this final rule.

The Rule

This amendment to 14 CFR part 97 is effective upon publication of each separate SIAP, Takeoff Minimums and ODP as Amended in the transmittal. Some SIAP and Takeoff Minimums and textual ODP amendments may have been issued previously by the FAA in a Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts.

The circumstances that created the need for some SIAP and Takeoff Minimums and ODP amendments may require making them effective in less than 30 days. For the remaining SIAPs and Takeoff Minimums and ODPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs and Takeoff Minimums and ODPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these SIAPs and Takeoff Minimums and ODPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs, Takeoff Minimums and ODPs, and safety in air commerce, I find that notice and public procedure under 5 U.S.C. 553(b) are impracticable and contrary to the public interest and, where applicable, under 5 U.S.C 553(d), good cause exists for making some SIAPs effective in less than 30 days.

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

List of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Incorporation by reference, Navigation (Air).

Issued in Washington, DC, on January 11, 2019.

Rick Domingo,

Executive Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Title 14, Code of Federal Regulations, Part 97 (14 CFR part 97) is amended by establishing, amending, suspending, or removing Standard Instrument Approach Procedures and/or Takeoff Minimums and Obstacle Departure Procedures effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

■ 1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

■ 2. Part 97 is amended to read as follows:

Effective 28 February 2019

Napa, CA, Napa County, ILS OR LOC Z RWY 36L, Orig-D
Napa, CA, Napa County, LOC Y RWY 36L, Orig
Napa, CA, Napa County, NAPAA THREE Graphic DP
Napa, CA, Napa County, RNAV (GPS) X RWY 36L, Orig
Leadville, CO, Lake County, DAVVY TWO Graphic DP
Leadville, CO, Lake County, LOZUL FOUR Graphic DP
Leadville, CO, Lake County, RNAV (GPS) RWY 16, Amdt 1
Leadville, CO, Lake County, Takeoff Minimums and Obstacle DP, Amdt 2A
Crestview, FL, Bob Sikes, ILS OR LOC RWY 17, Amdt 1
Crestview, FL, Bob Sikes, RNAV (GPS) RWY 17, Orig-B
Crestview, FL, Bob Sikes, RNAV (GPS) RWY 35, Amdt 1C
Crestview, FL, Bob Sikes, VOR–A, Amdt 12B
Maurice, IA, Sioux County Rgnl, RNAV (GPS) RWY 17, Orig
Maurice, IA, Sioux County Rgnl, RNAV (GPS) RWY 35, Orig
Maurice, IA, Sioux County Rgnl, Takeoff Minimums and Obstacle DP, Orig
Shelbyville, IL, Shelby County, NDB–A, Amdt 3
Shelbyville, IL, Shelby County, RNAV (GPS) RWY 36, Orig-C
Fairmont, MN, Fairmont Muni, COPTER ILS RWY 31, Orig-B, CANCELED
Fairmont, MN, Fairmont Muni, ILS OR LOC RWY 31, Amdt 1
Fairmont, MN, Fairmont Muni, RNAV (GPS) RWY 13, Orig-A
Fairmont, MN, Fairmont Muni, VOR/DME RWY 13, Amdt 1B, CANCELED
Wellsboro, PA, Wellsboro Johnston, RNAV (GPS) RWY 10, Amdt 1
Wellsboro, PA, Wellsboro Johnston, RNAV (GPS) RWY 28, Amdt 1
Laurens, SC, Laurens County, RNAV (GPS) RWY 8, Amdt 1
Laurens, SC, Laurens County, RNAV (GPS) RWY 26, Amdt 1
Spartanburg, SC, Spartanburg Downtown Memorial/Simpson Field, RNAV (GPS) RWY 23, Amdt 1
Spartanburg, SC, Spartanburg Downtown Memorial/Simpson Field, Takeoff Minimums and Obstacle DP, Amdt 2

[FR Doc. 2019–01137 Filed 2–7–19; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 31234; Amdt. No. 3836]

Standard Instrument Approach Procedures, and Takeoff Minimums and Obstacle Departure Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rule amends, suspends, or removes Standard Instrument Approach Procedures (SIAPs) and

associated Takeoff Minimums and Obstacle Departure Procedures for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, adding new obstacles, or changing air traffic requirements. These changes are designed to provide for the safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: This rule is effective February 8, 2019. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of February 8, 2019.

ADDRESSES: Availability of matter incorporated by reference in the amendment is as follows:

For Examination

1. U.S. Department of Transportation, Docket Ops-M30, 1200 New Jersey Avenue SE, West Bldg., Ground Floor, Washington, DC 20590–0001;
2. The FAA Air Traffic Organization Service Area in which the affected airport is located;
3. The office of Aeronautical Navigation Products, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 or,
4. 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/code_of_federal_regulations/ibr_locations.html.*

Availability

All SIAPs and Takeoff Minimums and ODPs are available online free of charge. Visit the National Flight Data Center online at *nfdc.faa.gov* to register. Additionally, individual SIAP and Takeoff Minimums and ODP copies may be obtained from the FAA Air Traffic Organization Service Area in which the affected airport is located.

FOR FURTHER INFORMATION CONTACT: Thomas J. Nichols, Flight Procedures and Airspace Group, Flight Technologies and Procedures Division, Flight Standards Service, Federal Aviation Administration. Mailing Address: FAA Mike Monroney Aeronautical Center, Flight Procedures and Airspace Group, 6500 South MacArthur Blvd., Registry Bldg. 29 Room 104, Oklahoma City, OK 73125. Telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This rule amends Title 14, Code of Federal Regulations, Part 97 (14 CFR part 97) by amending the referenced SIAPs. The complete regulatory description of each SIAP is listed on the appropriate FAA Form 8260, as modified by the National Flight Data Center (NFDC)/Permanent Notice to Airmen (P–NOTAM), and is incorporated by reference under 5 U.S.C. 552(a), 1 CFR part 51, and 14 CFR 97.20. The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained on FAA form documents is unnecessary.

This amendment provides the affected CFR sections, and specifies the SIAPs and Takeoff Minimums and ODPs with their applicable effective dates. This amendment also identifies the airport and its location, the procedure and the amendment number.

Availability and Summary of Material Incorporated by Reference

The material incorporated by reference is publicly available as listed in the **ADDRESSES** section.

The material incorporated by reference describes SIAPs, Takeoff Minimums and ODPs as identified in the amendatory language for part 97 of this final rule.

The Rule

This amendment to 14 CFR part 97 is effective upon publication of each separate SIAP and Takeoff Minimums and ODP as amended in the transmittal. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained for each SIAP and Takeoff Minimums and ODP as modified by FDC permanent NOTAMs.

The SIAPs and Takeoff Minimums and ODPs, as modified by FDC permanent NOTAM, and contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these changes to SIAPs and Takeoff Minimums and ODPs, the TERPS criteria were applied only to specific conditions existing at the affected airports. All SIAP amendments in this rule have been previously issued by the FAA in a FDC NOTAM as an emergency action of immediate flight safety relating directly to published aeronautical charts.

The circumstances that created the need for these SIAP and Takeoff Minimums and ODP amendments require making them effective in less than 30 days.

Because of the close and immediate relationship between these SIAPs, Takeoff Minimums and ODPs, and safety in air commerce, I find that notice and public procedure under 5 U.S.C. 553(b) are impracticable and contrary to the public interest and, where applicable, under 5 U.S.C. 553(d), good cause exists for making these SIAPs effective in less than 30 days.

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

List of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Incorporation by reference, Navigation (Air).

Issued in Washington, DC, on January 11, 2019.

Rick Domingo,

Executive Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Title 14, Code of Federal regulations, Part 97, (14 CFR part 97), is amended by amending Standard Instrument Approach Procedures and Takeoff Minimums and ODPs, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

■ 1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

■ 2. Part 97 is amended to read as follows:

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, Identified as follows:

** * * Effective Upon Publication*

AIRAC date	State	City	Airport	FDC No.	FDC date	Subject
28–Feb–19	IA	Ames	Ames Muni	8/0236	1/8/19	RNAV (GPS) RWY 13, Amdt 1.
28–Feb–19	IA	Ames	Ames Muni	8/0248	1/8/19	RNAV (GPS) RWY 1, Amdt 2.
28–Feb–19	IA	Ames	Ames Muni	8/0250	1/8/19	RNAV (GPS) RWY 31, Amdt 1.
28–Feb–19	WI	Sheboygan	Sheboygan County Memorial	8/0455	1/8/19	ILS OR LOC/DME RWY 22, Amdt 5A.
28–Feb–19	WI	Sheboygan	Sheboygan County Memorial	8/0460	1/8/19	RNAV (GPS) RWY 4, Amdt 3A.
28–Feb–19	WI	Sheboygan	Sheboygan County Memorial	8/0462	1/8/19	RNAV (GPS) RWY 22, Amdt 3A.
28–Feb–19	WI	Sheboygan	Sheboygan County Memorial	8/0463	1/8/19	RNAV (GPS) RWY 31, Orig-A.
28–Feb–19	IN	Goshen	Goshen Muni	8/0748	1/8/19	ILS OR LOC RWY 27, Amdt 1.
28–Feb–19	MI	Mason	Mason Jewett Field	8/0979	1/8/19	RNAV (GPS) RWY 10, Orig-C.
28–Feb–19	MI	Mason	Mason Jewett Field	8/0981	1/8/19	RNAV (GPS) RWY 28, Orig-C.
28–Feb–19	IL	Alton/St Louis	St Louis Rgnl	8/1280	1/8/19	RNAV (GPS) RWY 35, Amdt 1A.
28–Feb–19	FL	Palatka	Palatka Muni—Lt Kay Larkin Field.	8/1650	1/8/19	RNAV (GPS) RWY 27, Orig-A.
28–Feb–19	FL	Palatka	Palatka Muni—Lt Kay Larkin Field.	8/1653	1/8/19	RNAV (GPS) RWY 9 , Orig-B.
28–Feb–19	VA	Fredericksburg	Shannon	8/1909	1/8/19	RNAV (GPS) RWY 24, Orig-A.
28–Feb–19	PA	Chambersburg	Franklin County Rgnl	8/2099	1/8/19	RNAV (GPS) RWY 24, Orig-A.
28–Feb–19	NE	Valentine	Miller Field	8/2262	1/8/19	NDB RWY 32, Amdt 8.
28–Feb–19	NE	Valentine	Miller Field	8/2265	1/8/19	RNAV (GPS) RWY 32, Amdt 1.
28–Feb–19	TN	Cleveland	Cleveland Rgnl Jetport	8/2647	1/8/19	RNAV (GPS) RWY 3, Amdt 2.
28–Feb–19	NY	Weedsport	Whitfords	8/2807	1/8/19	Takeoff Minimums and Obstacle DP, Orig.
28–Feb–19	GA	Jekyll Island	Jekyll Island	8/2891	1/8/19	RNAV (GPS) RWY 18, Orig-A.
28–Feb–19	VA	Charlottesville	Charlottesville-Albemarle	8/3070	1/8/19	RNAV (GPS) Z RWY 21, Amdt 1A.
28–Feb–19	MS	Tunica	Tunica Muni	8/3448	1/8/19	RNAV (GPS) RWY 17, Amdt 3.
28–Feb–19	NC	Goldsboro	Wayne Executive Jetport	8/3790	1/8/19	ILS OR LOC RWY 23, Amdt 2A.
28–Feb–19	NC	Goldsboro	Wayne Executive Jetport	8/3791	1/8/19	RNAV (GPS) RWY 23, Amdt 1A.
28–Feb–19	KY	Louisville	Bowman Field	8/4188	1/8/19	NDB RWY 33, Amdt 16A.
28–Feb–19	KY	Louisville	Bowman Field	8/4190	1/8/19	RNAV (GPS) RWY 24, Amdt 3.
28–Feb–19	TX	Corsicana	C David Campbell Field—Corsicana Muni.	8/4230	1/8/19	NDB RWY 14, Amdt 4B.
28–Feb–19	TX	Corsicana	C David Campbell Field—Corsicana Muni.	8/4236	1/8/19	NDB RWY 32, Amdt 3B.
28–Feb–19	TX	Corsicana	C David Campbell Field—Corsicana Muni.	8/4239	1/8/19	VOR/DME–A, Amdt 1B.
28–Feb–19	TX	Corsicana	C David Campbell Field—Corsicana Muni.	8/4246	1/8/19	RNAV (GPS) RWY 32, Orig-B.
28–Feb–19	WV	Ravenswood	Jackson County	8/4456	1/8/19	RNAV (GPS) RWY 22, Orig-A.
28–Feb–19	VA	New Market	New Market	8/4507	1/8/19	RNAV (GPS)-B, Orig.
28–Feb–19	NM	Albuquerque	Albuquerque Intl Sunport	8/4554	1/8/19	ILS OR LOC RWY 8, Amdt 6.
28–Feb–19	NY	Rome	Griffiss Intl	8/5183	1/8/19	ILS OR LOC RWY 33, Amdt 2.
28–Feb–19	FL	Daytona Beach	Daytona Beach Intl	8/6099	1/8/19	ILS OR LOC RWY 7L, Amdt 32.
28–Feb–19	OR	Redmond	Roberts Field	8/6153	1/8/19	RNAV (GPS) Y RWY 29, Amdt 2A.
28–Feb–19	PR	San Juan	Fernando Luis Ribas Dominicci.	8/7172	1/8/19	RNAV (GPS) RWY 9, Orig.
28–Feb–19	AL	Vernon	Lamar County	8/7374	1/8/19	RNAV (GPS) RWY 35, Orig.
28–Feb–19	NC	Pinehurst/Southern Pines.	Moore County	8/7378	1/8/19	RNAV (GPS) RWY 23, Amdt 2A.
28–Feb–19	TN	Cleveland	Cleveland Rgnl Jetport	8/7395	1/8/19	RNAV (GPS) RWY 21, Amdt 2.
28–Feb–19	ME	Augusta	Augusta State	8/7919	1/8/19	RNAV (GPS)-B, Orig-B.
28–Feb–19	ME	Augusta	Augusta State	8/7920	1/8/19	RNAV (GPS) RWY 35, Orig-A.
28–Feb–19	FL	Williston	Williston Muni	8/8015	1/8/19	VOR RWY 23, Amdt 1A.
28–Feb–19	FL	Williston	Williston Muni	8/8062	1/8/19	RNAV (GPS) RWY 5, Orig-A.
28–Feb–19	FL	Williston	Williston Muni	8/8063	1/8/19	RNAV (GPS) RWY 23, Orig-A.
28–Feb–19	PA	Pottstown	Heritage Field	8/8126	1/8/19	VOR/DME–A, Amdt 4.
28–Feb–19	ME	Lincoln	Lincoln Rgnl	8/8127	1/8/19	RNAV (GPS) RWY 17, Orig-A.
28–Feb–19	PA	Collegeville	Perkiomen Valley	8/8333	1/8/19	RNAV (GPS)-C, Orig.
28–Feb–19	PA	Collegeville	Perkiomen Valley	8/8334	1/8/19	RNAV (GPS)-B, Orig.
28–Feb–19	NY	Olean	Cattaraugus County-Olean	8/8420	1/8/19	Takeoff Minimums and Obstacle DP, Amdt 3.
28–Feb–19	PA	Philadelphia	Philadelphia Intl	8/8689	1/8/19	ILS OR LOC RWY 26, Amdt 4C.
28–Feb–19	MA	Pittsfield	Pittsfield Muni	8/8690	1/8/19	Takeoff Minimums and Obstacle DP, Amdt 2.
28–Feb–19	SC	Georgetown	Georgetown County	8/8983	1/8/19	RNAV (GPS) RWY 23, Amdt 2A.
28–Feb–19	SC	Georgetown	Georgetown County	8/9737	1/8/19	RNAV (GPS) RWY 5, Orig-A.
28–Feb–19	IN	Rensselaer	Jasper County	8/9844	1/8/19	RNAV (GPS) RWY 18, Orig-B.

AIRAC date	State	City	Airport	FDC No.	FDC date	Subject
28–Feb–19	IN	Rensselaer	Jasper County	8/9845	1/8/19	RNAV (GPS) RWY 36, Orig-B.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR 902

50 CFR Parts 679 and 680

[Docket No. 180327320–8999–02]

RIN 0648–BH88

Fisheries of the Exclusive Economic Zone Off Alaska; Prohibit Directed Fishing for American Fisheries Act Program and Crab Rationalization Program Groundfish Sideboard Limits in the BSAI and GOA

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

ACTION: Final rule.

SUMMARY: NMFS issues regulations to modify management of the American Fisheries Act (AFA) Program and Crab Rationalization (CR) Program. This final rule has two actions. The first action modifies regulations for AFA Program and CR Program vessels subject to limits on the catch of specific species (sideboard limits) in the Bering Sea and Aleutian Islands (BSAI) Management Area and Gulf of Alaska (GOA) Management Area. This first action establishes regulations to prohibit directed fishing for specific groundfish species rather than prohibiting directed fishing each year through the BSAI and GOA annual harvest specifications. The second action removes the requirement for the designated representatives of AFA inshore cooperatives to submit a weekly catch report. This rule is intended to reduce administrative burdens associated with managing sideboard limits through annual harvest specifications without changing NMFS's inseason management of sideboard limits. Additionally, this rule reduces reporting burdens for the designated representatives and members of AFA inshore cooperatives. This rule is intended to promote the goals and objectives of the Magnuson-Stevens Fishery Conservation and Management Act, the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area, the Fishery Management Plan for Groundfish of the Gulf of Alaska, the Fishery Management Plan for Bering Sea/Aleutian Islands King and Tanner Crabs, and other applicable laws.

DATES: This rule is effective March 11, 2019.

ADDRESSES: Electronic copies of the final Regulatory Impact Review (the ''Analysis'') and the Categorical Exclusion prepared for this action are available from *www.regulations.gov* or from the NMFS Alaska Region website at *alaskafisheries.noaa.gov.* All public comment letters submitted during the comment period may be obtained from *www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2018-0045.*

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this final rule may be submitted by mail to NMFS Alaska Region, P.O. Box 21668, Juneau, AK 99802–1668, Attn: Ellen Sebastian, Records Officer; in person at NMFS Alaska Region, 709 West 9th Street, Room 420A, Juneau, AK; and to OIRA by email to *OIRA_Submission@omb.eop.gov* or by fax to 202–395–5806.

FOR FURTHER INFORMATION CONTACT: Obren Davis, (907) 586–7228.

SUPPLEMENTARY INFORMATION:

Authority for Action

NMFS manages the groundfish fisheries in the exclusive economic zone of the BSAI and GOA under the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (BSAI FMP), and the Fishery Management Plan for Groundfish of the Gulf of Alaska (GOA FMP), respectively. NMFS manages vessels subject to specific limitations on the catch of specific species or species groups (sideboard limits) under the AFA Program under the BSAI and GOA FMPs, and NMFS manages vessels and License Limitation Program (LLP) licenses subject to sideboard limits under the CR Program under the Fishery Management Plan for Bering Sea/Aleutian Islands King and Tanner Crabs (Crab FMP). The North Pacific Fishery Management Council (Council) prepared these FMPs under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), 16 U.S.C. 1801 *et seq.* Regulations implementing the BSAI and GOA FMPs are located at 50 CFR part 679. Regulations implementing the Crab FMP are located at 50 CFR part 680. General regulations governing U.S. fisheries also appear at 50 CFR part 600.

NMFS published the proposed rule for this action on August 16, 2018 (83 FR 40733), with comments invited through September 17, 2018. NMFS received one comment during the applicable comment period. A summary of this comment and the response by NMFS are provided under the heading ''Comments and Responses'' below.

A detailed review of the regulations to modify the management of AFA Program and CR Program sideboard limits, as well as the removal of the requirement for AFA inshore cooperatives to submit a weekly catch report, and the rationale for these revisions are provided in the preamble to the proposed rule (83 FR 40733, August 16, 2018) and are briefly summarized in this final rule.

Background

This final rule includes two actions. The first action revises §§ 679.64 and 680.22 for sideboard limits that apply to two categories of vessels that operate in the BSAI or GOA: (1) AFA catcher/processors (C/Ps) listed in § 679.4(l)(2)(i) (described as AFA C/Ps in this rule), and AFA catcher vessels (CVs) permitted to harvest Bering Sea pollock as established in § 679.4(l)(3); and (2) vessels and LLP licenses subject to sideboard restrictions in the GOA based on criteria as established in § 680.22(a) under the CR Program. This first action prohibits directed fishing for groundfish species or species groups that are subject to sideboard limits that are not large enough to support directed fishing as that term is defined at § 679.2. In addition, under the first action, this rule removes the regulation at § 679.64(a)(1)(ii)(B) listing a sideboard limit for AFA C/Ps in one management area (Central Aleutian Islands (Central AI)) for one species (Atka mackerel) that is currently subject to a more restrictive harvest limit under existing regulations at § 679.91(c)(2)(ii) and Table 33 to 50 CFR part 679.

The first action under this rule is necessary to streamline and simplify NMFS's management of applicable groundfish sideboard limits. NMFS calculates numerous AFA Program and CR Program sideboard limits as part of

the annual BSAI and GOA harvest specifications process and publishes these limits in the **Federal Register**. Concurrently, NMFS prohibits directed fishing for the majority of the groundfish subject to these sideboard limits because most sideboard limits are too small each year to support directed fishing. The most recent example of the annual BSAI and GOA harvest specifications with the AFA Program and CR Program sideboard limits can be found at 83 FR 8365, February 27, 2018, for the BSAI, and at 83 FR 8768, March 1, 2018, for the GOA. Rather than continue this annual process of calculating all sideboard limits and then closing most of the groundfish species with sideboard limits to directed fishing, the first action of this rule revises regulations to prohibit directed fishing by non-exempt AFA Program and CR Program vessels for those groundfish species and species groups subject to sideboard limits that have not been opened to directed fishing and that are not expected to be opened to directed fishing in the foreseeable future. Also, NMFS will now cease calculating and publishing each year the relevant sideboard limits subject to this final rule and their corresponding directed fishing prohibitions in the BSAI and GOA groundfish harvest specifications.

The second action of this final rule removes the requirement for the designated representatives of AFA inshore cooperatives (described later in this preamble) to submit a weekly catch report described in §§ 679.5(o) and 679.62(b)(3). NMFS is removing this requirement because the information in the weekly catch report is collected by NMFS through other recordkeeping and reporting requirements, and this weekly catch report is no longer necessary for NMFS to manage the AFA inshore pollock allocations.

The following discussion summarizes groundfish sideboard limits, the AFA Program and AFA Program sideboard limits, the CR Program and CR Program sideboard limits, the annual harvest specifications process, and the management of AFA Program and CR Program sideboard limits through that annual harvest specifications process. The discussion also summarizes AFA inshore cooperative reporting requirements.

Groundfish Sideboard Limits

The Council and NMFS generally establish sideboard limits when implementing Limited Access Privilege Programs (LAPP). The term ''limited access privilege'' is defined in section 3(26) of the Magnuson-Stevens Act (16 U.S.C. 1802). Sideboard limits are intended to prevent participants who benefit from receiving exclusive harvesting privileges in a LAPP from shifting effort into other fisheries. Sideboard limits establish limits on the annual amount of a specific groundfish total allowable catch (TAC) limit or prohibited species catch (PSC) limit for participants in a given LAPP.

The AFA Program and AFA Program Sideboard Limits

The Bering Sea pollock fishery is managed under the authority of the AFA (16 U.S.C. 1851 note) and the Magnuson-Stevens Act. The AFA Program is a LAPP that established Bering Sea pollock directed fishing allocations to inshore and offshore components (commonly called the inshore and offshore sectors). The offshore sector includes both C/Ps and motherships, which are processing vessels that take deliveries of fish from CVs. The AFA also determined eligible vessels and processors in the Bering Sea pollock fishery, allowed the formation of cooperatives of CVs in association with specific processors in the inshore sector, established sideboard limits, and imposed special catch weighing and monitoring requirements on AFA C/Ps. The AFA was implemented by Amendment 61 to the BSAI FMP, Amendment 61 to the GOA FMP, Amendment 13 to the Crab FMP, and Amendment 8 to the Fishery Management Plan for the Scallop Fishery off Alaska (67 FR 79692; December 30, 2002). The final rule implementing the AFA (67 FR 79692, December 30, 2002) and Section 2.7.1 of the Analysis describe the AFA Program in detail and the basis for the sideboard limits established under the AFA Program.

The final rule implementing the AFA established several different types of sideboard limits for vessels that are authorized to harvest pollock in the Bering Sea. These sideboard limits were established to protect the interests of fishermen and processors who do not directly benefit from the AFA from those fishermen and processors who received exclusive harvesting and processing privileges under the AFA. Essentially, the AFA Program sideboard limits protect non-AFA fishermen and processors by restricting the ability of AFA pollock fishermen and processors to target non-pollock groundfish species and species groups. Some of these sideboard limits are implemented through directed fishing closures in regulations, such as setting the AFA C/P Atka mackerel harvest limit to zero in the Bering Sea subarea and Eastern AI (§ 679.64(a)(1)(ii)(A)). Other sideboard limits are implemented through the annual harvest specifications process, which is described later in this preamble.

The CR Program and CR Program Sideboard Limits

The CR Program is a LAPP that allocates nine BSAI crab species among harvesters, processors, and coastal communities. Participants in the CR Program receive exclusive harvesting and processing privileges for a portion of the annual TAC established for each crab fishery under the CR Program. The final rule implementing the CR Program describes the different elements of the program, including groundfish sideboard limits in the GOA for vessels and LLP licenses that received allocations of exclusive harvesting privileges under the CR Program (70 FR 10174, March 2, 2005). These sideboard limits were developed to protect participants in other non-CR Program groundfish fisheries from increased participation by CR Program vessels in the GOA groundfish fisheries, as discussed in Section 2.7.2 of the Analysis. Essentially, the CR Program sideboard limits protect non-CR Program participants by restricting the ability of CR Program participants to target non-crab fisheries (*i.e.,* GOA groundfish fisheries). CR Program sideboard limits are established by management areas and for a variety of species and species groups and gear types, including pot, hook-and-line, jig, and trawl gear. CR Program sideboard limits are applicable only in the GOA. Section 680.22 establishes groundfish sideboard limits for vessels and LLP licenses with a history of participation in the Bering Sea snow crab (*Chionoecetes opilio*) fishery.

Annual Harvest Specifications Process and the Management of AFA Program and CR Program Sideboard Limits

NMFS establishes the overfishing level, acceptable biological catch, and TAC for each species or species group through the annual groundfish harvest specifications process. If a species is closed for directed fishing and the TAC has not been reached, NMFS allows vessels to retain incidental catch of species taken in other directed fisheries that are open, up to the maximum retainable amount (MRA) allowed in § 679.20(e). If a species is closed to directed fishing and the TAC for that species is reached, NMFS prohibits retention of that species, and all catch of that species must be discarded. An MRA is calculated as a percentage of the retained amount of a species that is

closed to directed fishing, relative to the retained amount of basis species or species groups open to directed fishing. Amounts that are caught greater than a particular MRA percentage must be discarded.

In the annual harvest specifications, NMFS calculates sideboard limits for the AFA Program and the CR Program fisheries by multiplying a fixed ratio against the annual TAC or portion of the TAC for each BSAI and GOA groundfish species or species group. These ratios are derived based on the specific AFA and CR Program regulations described earlier in this preamble. The annual sideboard limit for most BSAI and GOA groundfish species is an amount that is much smaller than the overall TAC for each species. For the most recent example of the annual groundfish harvest specifications and associated AFA Program and CR Program sideboard limits, see the final 2018 and 2019 harvest specifications for the BSAI and GOA (83 FR 8365, February 27, 2018, and 83 FR 8768, March 1, 2018, respectively).

Consistent with §§ 679.64 and 680.22, NMFS manages the AFA Program and CR Program sideboard limits by establishing directed fishing closures for a species or species group subject to a sideboard limit. These closures could happen during the fishing year if a particular sideboard limit is reached. Alternatively, NMFS may issue a directed fishing closure in the harvest specifications prior to the fishing year, if the sideboard limit is not sufficient to support directed fishing for a species or species group. NMFS has prohibited directed fishing for the majority of AFA CV and C/P sideboard limits since the initial implementation of the AFA Program in 2000 (65 FR 4520, January 28, 2000). NMFS also has prohibited directed fishing for the majority of CR Program sideboard limits in the GOA since CR Program was implemented in 2006. Directed fishing prohibitions have been issued because the sideboard limits for most species were insufficient to provide for both directed fishing of a species and incidental catch of that same species in other target fisheries.

AFA Inshore Cooperative Weekly Catch Report Requirements

NMFS also is removing the requirement for the designated representatives of AFA inshore cooperatives to submit a weekly catch report described in §§ 679.5(o) and 679.62(b)(3) because this report is no longer necessary to manage the AFA inshore pollock allocations. NMFS obtains the necessary information required on the AFA inshore cooperative weekly report through other reporting requirements at § 679.5(e). Removing this reporting requirement will reduce costs for the public to prepare and submit the weekly reports and for NMFS to review and process those weekly reports.

Final Rule

Action 1: Establishing Sideboard Limits in Regulation

Under action 1, NMFS will no longer publish AFA Program and CR Program sideboard limits for specific species or species groups in the **Federal Register** as part of the annual groundfish harvest specifications, but instead will specify in regulation those species with sideboard limits that are subject to a directed fishing closure. Specification in regulation of these directed fishing closures will streamline and simplify NMFS's management of the applicable groundfish sideboard limits. NMFS will no longer need to calculate the applicable sideboards limits, prepare the necessary tables, and publish those sideboard limits and their corresponding directed fishing prohibitions each year in the BSAI and GOA groundfish harvest specifications. This will reduce staff time and annual costs to prepare and publish the BSAI and GOA groundfish harvest specifications.

This final rule will not modify the ability of sideboard-limited vessels to retain incidental catch of species closed to directed fishing while targeting other species. Vessels are allowed to retain incidental catch of species up to the MRA if the TAC of that species has not been reached. Once TAC is reached, NMFS prohibits retention of that species. The regulations governing incidental catch and MRAs apply when a species is closed to directed fishing, whether closed to directed fishing through the annual BSAI and GOA harvest specifications or through a specific regulation. Accordingly, under this final rule, sideboard-limited vessels will remain subject to the same regulations governing the incidental catch of species or species groups with sideboard limits that are closed to directed fishing, and this rule will not change NMFS's inseason management of sideboard limits. Moreover, the approach that continues directed fishing closures for sideboard limits for AFA and CR Program vessels will still protect non-AFA and non-CR Program participants in other fisheries, in accordance with the original intent of creating sideboard limits (see Section 2.7.1 and 2.7.2 of the Analysis).

In both the BSAI and GOA, many of the sideboard limits are not large enough to support directed fishing by AFA CVs and C/Ps and crab vessels. It is highly unlikely that the TACs of any of the sideboard species will increase significantly enough in the foreseeable future to result in a large enough sideboard limit to allow directed fishing of that sideboard limit by AFA vessels and crab vessels. Therefore, NMFS has determined it will be more efficient to close those sideboard limits to directed fishing in regulation, rather than continuing to specify those sideboard limits and close them to directed fishing every year through the annual harvest specifications.

Accordingly, under action 1, this final rule implements the Council's recommendation (Option 1 to Alternative 2, the preferred alternative) to:

- prohibit directed fishing in regulation for most AFA Program groundfish sideboard limits by adding Tables 54, 55, and 56 to 50 CFR part 679 to list the AFA Program sideboard species prohibited to directed fishing;
- prohibit directed fishing in regulation (§ 680.22(e)) for the majority of CR Program groundfish sideboard limits, with the exception of Pacific cod pot gear CV apportionments in the Western and Central Regulatory Areas;
- remove § 679.64(a)(1)(ii)(B), which lists the annual Central AI Atka mackerel sideboard limit for AFA C/Ps; and
- make other minor regulatory amendments necessary to establish directed fishing closures for specific species and species groups in regulation.

This final rule revises § 679.20(d) by adding a new paragraph to prohibit directed fishing for the sideboard-limited groundfish species and species groups listed in Tables 54, 55, and 56 to 50 CFR part 679. Existing regulations associated with establishing directed fishing sideboard limits are retained, as they are needed for those species or species groups that will continue to have sideboard limits established through the annual harvest specifications. In addition, § 679.64(a)(3) is revised to add a paragraph describing that Table 54 to 50 CFR part 679 contains the BSAI species or species groups with sideboard limits prohibited for directed fishing by AFA C/Ps. Similarly, § 679.64(b)(5) is revised to add a paragraph that describes Tables 55 and 56 to 50 CFR part 679. These two tables list the sideboard-limited species or species groups prohibited for directed fishing by AFA CVs in the BSAI and GOA, respectively.

Regarding the Central AI Atka mackerel sideboard limit for AFA C/Ps, this final rule removes

§ 679.64(a)(1)(ii)(B). That regulation specifies the AFA C/Ps Central AI Atka mackerel sideboard limit of 11.5 percent of the annual Central AI TAC, which is based on the sideboard limit set forth in section 211(b)(2)(C)(i) of the AFA. However, since the implementation of the Amendment 80 Program in 2008, the percentage of the initial TAC for the sector in which AFA C/Ps are authorized to participate (the BSAI trawl limited access sector) is only 10 percent. Therefore, the maximum amount of the Central AI Atka mackerel TAC available to AFA C/Ps under regulations implementing Amendment 80 (10 percent) is less than the sideboard limit established for AFA C/Ps when the AFA Program was implemented in 2000 (11.5 percent). Since the BSAI trawl limited access sector allocation is less than the sideboard limit, the sideboard limit no longer constrains AFA C/Ps. This revision to remove the regulation that specifies the sideboard limit for Central AI Atka mackerel for AFA C/Ps is consistent with Section 211 of the AFA. Section 211(a) of the AFA allows the Council to recommend, and NMFS to approve, conservation and management measures necessary to protect other fisheries from the adverse impacts caused by the AFA. The current allocation of Atka mackerel available to AFA C/Ps (10 percent of the TAC) is effectively a conservation and management measure that protects participants in other non-AFA fisheries by limiting the amount of Atka mackerel that AFA C/Ps can potentially harvest to less than 11.5 percent of the TAC available to AFA C/Ps under the existing sideboard limit established under section 211(b)(2)(C)(i) of the AFA. Under this final rule, NMFS will no longer specify the AFA C/P sideboard limit for Central AI Atka mackerel; however, that fishery will remain open to directed fishing, and AFA C/Ps as part of the BSAI trawl limited access sector will remain constrained under existing regulations to harvesting up to 10 percent of the allocation to the BSAI trawl limited access sector (§ 679.91(c)(2)(ii) and Table 33 to 50 CFR part 679).

For the CR Program sideboard limits, this final rule revises § 680.22(e) to describe the prohibition for directed fishing for most sideboard-limited GOA groundfish species by non-AFA crab vessels in the GOA. This revision would note that the directed fishing prohibition does not apply to Pacific cod apportioned to CVs using pot gear in the Western and Central Regulatory Areas.

Action 2: Removal of the AFA Inshore Cooperative Catch Report From Regulation

In addition to the Council's recommendation for revising the management of AFA Program and CR Program sideboard limits, NMFS is removing the requirements for the AFA inshore cooperative weekly catch report described in §§ 679.5(o) and 679.62(b)(3). This report is no longer necessary to manage the AFA inshore pollock allocations. NMFS has direct and immediate access to observer and landings data to track catch by the cooperatives and does not need the information submitted by the cooperatives to monitor the Bering Sea pollock fisheries. Eliminating this weekly reporting requirement will reduce the burden on the designated representatives of AFA inshore cooperatives to prepare and submit these reports to NMFS weekly, will reduce costs to the members of the AFA inshore cooperatives to pay for the preparation and submission of these weekly reports, and will reduce the time and costs that NMFS incurs in processing and reviewing the weekly reports.

Comments and Responses

Comment 1: NMFS received one comment addressing issues outside of the scope of this action. The commenter does not support modifying any regulations, and advocated that wildlife and oceans should be left alone.

Response: This comment is beyond the scope of this regulatory action. This final rule primarily is intended to increase the administrative efficiency associated with managing AFA Program and CR Program groundfish sideboard limits in the BSAI and GOA. This final rule does not change the general management measures that govern the federal groundfish fisheries of these two management areas and does not change the specific measures that govern the management of the sideboard limits under the AFA Program and CR Program.

Changes From the Proposed Rule

This final rule will change the regulatory text by which NMFS is prohibiting directed fishing for CR Program groundfish sideboard limits. NMFS originally proposed adding Table 11 to 50 CFR part 680 to list the GOA groundfish species and species groups for which directed fishing for sideboard limits by non-AFA crab vessels is prohibited, which would have included almost all of the GOA groundfish sideboard limits for non-AFA crab vessels. In this final rule, NMFS will instead specify the directed fishing closures in § 680.22(e)(1)(iii), which will state that directed fishing for groundfish species by non-AFA crab vessels subject to sideboard restrictions is prohibited for all GOA groundfish species, with the exception of Pacific cod apportioned to CVs using pot gear in the Western and Central Regulatory Areas. NMFS believes that this is a simpler approach than initially proposed, as it eliminates the need to add a complex table to regulations. The CR Program sideboard limits for Pacific cod apportioned to CVs using pot gear in the Western and Central GOA are historically the only sideboard limits open to directed fishing. These apportionments have typically been large enough to support directed fishing for Pacific cod by CVs using pot gear. However, if future annual apportionments are not large enough to support directed fishing, NMFS still has the authority under § 679.20(d) to prohibit directed fishing for Pacific cod by CVs using pot gear in the Western and Central Regulatory Areas.

In addition, this final rule revises Tables 54, 55, and 56 to 50 CFR part 679 to clarify that the directed fishing prohibition for ''rougheye rockfish'' actually applies to two distinct rockfish species: rougheye rockfish (*Sebastes aleutianus*) and blackspotted rockfish (*Sebastes melanostictus*). The complete species group (blackspotted rockfish and rougheye rockfish) was inadvertently omitted from these three tables during the regulatory drafting process. The BSAI and the GOA harvest specifications specify annual TACs for these two species as a combined species group. Sideboard limits also are established for the species group, not just rougheye rockfish, and accordingly this final rule establishes regulations that prohibit directed fishing in the GOA and BSAI for these two rockfish species as a combined species group.

OMB Revisions to PRA References in 15 CFR 902.1(b)

Section 3507(c)(B)(i) of the Paperwork Reduction Act (PRA) requires that agencies inventory and display a current control number assigned by the Director of the Office of Management and Budget (OMB) for each agency information collection requirement. Section 902.1(b) identifies the location of NOAA regulations for which OMB approval numbers have been issued. Because this final rule removes a regulation (§ 679.5(o)) with a data element in an approved collection-of-information, 15 CFR 902.1(b) is revised to remove this reference to this regulation.

Classification

The Administrator, Alaska Region, NMFS has determined that this final rule is necessary to modify the management of AFA Program and CR Program groundfish sideboard limits, and that it is consistent with the Magnuson-Stevens Act and other applicable laws.

This final rule has been determined to be not significant for the purposes of Executive Order 12866.

Small Entity Compliance Guide

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a final regulatory flexibility analysis, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as ''small entity compliance guides.'' The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules. The preambles to the proposed rule and this final rule serve as the small entity compliance guide. This action does not require any additional compliance from small entities that is not described in the preambles. Copies of the proposed rule and this final rule are available from the NMFS website at *http://alaskafisheries.noaa.gov.*

Regulatory Impact Review

A Regulatory Impact Review was prepared to assess the costs and benefits of available regulatory alternatives. A copy of this final analysis is available from NMFS (see **ADDRESSES**). The Council recommended the regulatory revisions in this final rule based on those measures that maximized net benefits to the Nation. Specific aspects of the economic analysis related to the impact of this final rule on small entities are discussed below in the Final Regulatory Flexibility Analysis section.

Final Regulatory Flexibility Analysis (FRFA)

This FRFA incorporates the initial regulatory flexibility analysis (IRFA), a summary of the significant issues raised by the public comments in response to the IRFA, if any, and NMFS's responses to those comments, and a summary of the analyses completed to support this action.

Section 604 of the Regulatory Flexibility Act (RFA) (5 U.S.C. 604) requires that, when an agency promulgates a final rule under 5 U.S.C. 553, after being required by that section or any other law to publish a general notice of proposed rulemaking, the agency shall prepare a FRFA. Section 604 describes the required contents of a FRFA: (1) A statement of the need for and objectives of the rule; (2) a statement of the significant issues raised by the public comments in response to the IRFA, a statement of the assessment of the agency of such issues, and a statement of any changes made to the proposed rule as a result of such comments; (3) the response of the agency to any comments filed by the Chief Counsel for Advocacy of the Small Business Administration (SBA) in response to the proposed rule, and a detailed statement of any change made to the proposed rule in the final rule as a result of the comments; (4) a description of 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; (5) 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 type of professional skills necessary for preparation of the report or record; and (6) a description of the steps the agency has taken to minimize the significant 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 this final rule and why each one of the other significant alternatives to the rule considered by the agency which affect the impact on small entities was rejected.

A description of this final rule and the need for and objectives of the rule are contained in the preamble to this final rule and the preamble to the proposed rule (83 FR 40733, August 16, 2018), and are not repeated here.

Public and Chief Counsel for Advocacy Comments on the IRFA

NMFS published the proposed rule on August 16, 2018 (83 FR 40733). An IRFA was prepared and included in the Classification section of the preamble to the proposed rule. The comment period for the proposed rule closed on September 17, 2018. NMFS received one letter of public comment on the proposed rule. NMFS received no comments specifically on the IRFA or on the economic impacts of the rule more generally. The Chief Counsel for Advocacy of the SBA did not file any comments on the proposed rule.

Number and Description of Small Entities Regulated by This Final Rule

This final rule directly regulates those vessel operators that are restricted by AFA Program and CR Program groundfish sideboard limits in the BSAI and GOA, and AFA inshore cooperatives that are required to submit an AFA inshore cooperative weekly report. All persons required to submit an AFA inshore cooperative weekly report are also subject to sideboard limits under the AFA Program, with the exception of CVs exempt from AFA Program sideboard limits. Therefore, the number of directly regulated entities under this final rule is equal to the number of vessel operators restricted by AFA Program and CR Program groundfish sideboard limits in the BSAI and GOA.

For RFA purposes only, NMFS has established a small business size standard for businesses, including their affiliates, whose primary industry is commercial fishing (see 50 CFR 200.2). A business primarily engaged in commercial fishing (NAICS code 11411) is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and has combined annual gross receipts not in excess of $11 million for all its affiliated operations worldwide.

There are 93 active AFA CVs that are restricted by sideboard limits in the BSAI and GOA, 17 active C/Ps that are restricted by sideboard limits in the BSAI, and 95 active CR Program CVs that are restricted by sideboard limits in the GOA. These vessels are members of an AFA cooperative for Bering Sea pollock or a Bering Sea Crab Cooperative and are therefore considered to be large entities via their cooperative affiliation. Other than these vessels, there are 18 vessels that are restricted by sideboard limits in the BSAI and GOA and that are not members of an AFA or crab cooperative. These 18 vessels may be considered small entities under the RFA because they likely have combined annual gross receipts not in excess of $11.0 million.

Recordkeeping, Reporting, and other Compliance Requirements

This final rule removes a recordkeeping and reporting requirement for the submittal of AFA inshore cooperative weekly catch reports. Such reports are no longer necessary to assist NMFS with managing the AFA inshore pollock fisheries, as the information in such reports has been superseded by more contemporary, electronic data reporting.

The proposal to remove these requirements is anticipated to reduce the cost to the public by approximately $8,475 per year, and is anticipated to reduce costs to NMFS by approximately $5,400 per year.

Description of Significant Alternatives Considered to the Final Action That Minimize Adverse Impacts on Small Entities

No significant alternatives were identified that will accomplish the stated objectives for streamlining the management of AFA and CR Program sideboard limits by prohibiting directed fishing in regulation for certain species sideboard limits, that are consistent with applicable statutes, and that will reduce costs to potentially affected small entities more than this final rule. The Council and NMFS considered two alternatives for action 1 of this rule. Alternative 1 is the no action alternative. This alternative would have continued the annual establishment in the harvest specifications of the sideboard limits for all the species and species groups subject to sideboard limits under the AFA Program and CR Program and would have retained the regulation listing the sideboard limit for Central AI Atka mackerel for AFA C/Ps. These sideboard species have insufficient sideboard limits to support directed fishing, are fully allocated to other catch share programs, or for a variety of other reasons are closed to directed fishing. Under Alternative 1, NMFS would continue to prohibit directed fishing for these sideboard limited fisheries through the annual harvest specifications, except for the Central AI Atka mackerel sideboard limit for AFA C/Ps, which remains open for directed fishing.

Alternative 2, along with Option 1 (the preferred alternative), provides the greatest economic benefits. The primary economic benefit of this final rule is to reduce NMFS's administrative burden of managing most AFA Program and CR Program sideboards through the annual harvest specifications process. Implementation of Alternative 2 through this final rule will streamline the preparation of the BSAI and GOA annual harvest specifications, simplify NMFS's annual programming changes to the groundfish catch accounting system, and reduce the future costs of publishing the annual harvest specifications in the **Federal Register** each year. The economic effects on fishery participants that are affected by this action primarily are neutral. The removal of the AFA inshore cooperative weekly catch report requirement should, however, provide a modest economic benefit for AFA inshore cooperatives.

Collection-of-Information Requirements

This final rule addresses a collection-of-information requirement subject to the Paperwork Reduction Act (PRA) and which has been approved by OMB under control number 0648–0401 (AFA Reports). This rule does not add any new information collection requirements, but removes the regulatory requirement for the AFA inshore cooperative weekly catch report. The public reporting burden for the AFA inshore cooperative weekly catch reports is estimated to average 45 minutes per response, which includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments on this or any other aspect of this collection of information, including suggestions for reducing the burden, to NMFS Alaska Region (see **ADDRESSES**) and to OIRA by email to *OIRA_Submission@omb.eop.gov* or by fax to (202) 395–5806.

Notwithstanding any other provision of the law, no person is required to respond to, and no person shall be subject to penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB control number. All currently approved NOAA collections of information may be viewed at *https://www.cio.noaa.gov/services_programs/prasubs.html.*

List of Subjects

15 CFR Part 902

Reporting and recordkeeping requirements.

50 CFR Part 679

Alaska, Fisheries, Reporting and recordkeeping requirements.

50 CFR Part 680

Alaska, Reporting and recordkeeping requirements.

Dated: February 5, 2019.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, NMFS amends 15 CFR part 902 and 50 CFR parts 679 and 680 as follows:

Title 15—Commerce and Foreign Trade

PART 902—NOAA INFORMATION COLLECTION REQUIREMENTS UNDER THE PAPERWORK REDUCTION ACT: OMB CONTROL NUMBERS

■ 1. The authority citation for part 902 continues to read as follows:

Authority: 44 U.S.C. 3501 *et seq.*

§ 902.1 [Amended]

■ 2. In § 902.1, in the table in paragraph (b), under the entry ''50 CFR,'' remove the entry for ''679.5(o).''

Title 50—Wildlife and Fisheries

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

■ 3. The authority citation for part 679 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq.;* 1801 *et seq.;* 3631 *et seq.;* Pub. L. 108–447; Pub. L. 111–281.

§ 679.5 [Amended]

■ 4. In § 679.5, remove and reserve paragraph (o).

■ 5. In § 679.20, add paragraph (d)(1)(iv)(D) to read as follows:

§ 679.20 General limitations.

* * * * *

(d) * * *

(1) * * *

(iv) * * *

(D) Species or species groups for which directed fishing for sideboard limits by AFA vessels is prohibited are listed in Tables 54, 55, and 56 to this part.

* * * * *

§ 679.62 [Amended]

■ 6. In § 679.62, remove paragraph (b)(3).

■ 7. In § 679.64,

■ a. Revise paragraph (a)(1)(ii)(A);

■ b. Remove paragraph (a)(1)(ii)(B);

■ c. Redesignate paragraph (a)(1)(ii)(C) as paragraph (a)(1)(ii)(B); and

■ d. Revise paragraphs (a)(3) and (b)(5) to read as follows:

§ 679.64 Harvesting sideboard limits in other fisheries.

(a) * * *

(1) * * *

(ii) * * *

(A) Bering Sea subarea and Eastern Aleutian Islands, zero; and

* * * * *

(3) *How will AFA catcher/processor sideboard limits be managed?* (i) The Regional Administrator will manage groundfish harvest limits and PSC

bycatch limits for AFA catcher/processors through directed fishing closures in fisheries established under paragraph (a)(1) of this section in accordance with the procedures set out in §§ 679.20(d)(1)(iv) and 679.21(b)(4)(iii).

(ii) Directed fishing for the BSAI groundfish that have sideboard limits listed in Table 54 of this part is prohibited.

* * * * *

(b) * * *

(5) *How will catcher vessel sideboard limits be managed?* (i) The Regional Administrator will manage groundfish harvest limits and PSC bycatch limits for AFA catcher vessels using directed fishing closures according to the procedures set out at §§ 679.20(d)(1)(iv) and 679.21(d)(7) and (e)(3)(v).

(ii) Directed fishing for the BSAI groundfish that have sideboard limits listed in Table 55 of this part and the GOA groundfish that have sideboard limits listed in Table 56 of this part is prohibited.

* * * * *

■ 8. Add Table 54 to part 679 to read as follows:

TABLE 54—BSAI SPECIES AND SPECIES GROUPS FOR WHICH DIRECTED FISHING FOR SIDEBOARD LIMITS BY LISTED AFA CATCHER/PROCESSORS AND CATCHER/PROCESSORS DESIGNATED ON LISTED AFA CATCHER/PROCESSOR PERMITS IS PROHIBITED

Species or species group	Management area or subarea
Sablefish, trawl gear	Bering Sea (BS) subarea of the BSAI.
	Aleutian Islands (AI).
Atka mackerel	BS/Eastern Aleutian District.
	Western Aleutian District.
Rock sole	BSAI.
Greenland turbot	Bering Sea subarea of the BSAI.
	AI.
Arrowtooth flounder	BSAI.
Kamchatka flounder	BSAI.
Flathead sole	BSAI.
Alaska plaice	BSAI.
Other flatfish	BSAI.
Pacific ocean perch	Bering Sea subarea of the BSAI.
	Eastern Aleutian District.
	Central Aleutian District.
	Western Aleutian District.
Northern rockfish	BSAI.
Shortraker rockfish	BSAI.
Blackspotted and Rougheye rockfish	Bering Sea subarea of the BSAI/Eastern Aleutian District.
	Central Aleutian District/Western Aleutian District.
Other rockfish	BS.
	AI.
Skates	BSAI.
Sculpins	BSAI.
Sharks	BSAI.
Octopuses	BSAI.

■ 9. Add Table 55 to part 679 to read as follows:

TABLE 55—BSAI SPECIES AND SPECIES GROUPS FOR WHICH DIRECTED FISHING FOR SIDEBOARD LIMITS BY NON-EXEMPT AFA CATCHER VESSELS IS PROHIBITED

Species or species group	Management area or subarea	Gear type
Pacific cod	BSAI	Jig.
		Hook-and-line catcher vessel ≥ 60 ft.
		Hook-and-line catcher vessel ≤ 60 ft.
		Pot.
Sablefish, trawl gear	Bering Sea subarea of the BSAI	All.
	AI	All.
Atka mackerel	BSAI	All.
Rock sole	BSAI	All.
Greenland turbot	BS	All.
	AI	All.
Arrowtooth flounder	BSAI	All.
Kamchatka flounder	BSAI	All.
Alaska plaice	BSAI	All.
Other flatfish	BSAI	All.
Flathead sole	BSAI	All.
Pacific ocean perch	BS	All.
	Eastern Aleutian District	All.
	Central Aleutian District	All.
	Western Aleutian District	All.

TABLE 55—BSAI SPECIES AND SPECIES GROUPS FOR WHICH DIRECTED FISHING FOR SIDEBOARD LIMITS BY NON-EXEMPT AFA CATCHER VESSELS IS PROHIBITED—Continued

Species or species group	Management area or subarea	Gear type
Northern rockfish	BSAI	All.
Shortraker rockfish	BSAI	All.
Blackspotted and Rougheye rockfish	Bering Sea subarea of the BSAI/Eastern Aleutian District.	All.
	Central Aleutian District/Western Aleutian District.	All.
Other rockfish	Bering Sea subarea of the BSAI	All.
	AI	All.
Skates	BSAI	All.
Sculpins	BSAI	All.
Sharks	BSAI	All.
Octopuses	BSAI	All.

■ 10. Add Table 56 to part 679 to read as follows:

TABLE 56—GOA SPECIES AND SPECIES GROUPS FOR WHICH DIRECTED FISHING FOR SIDEBOARD LIMITS BY NON-EXEMPT AFA CATCHER VESSELS IS PROHIBITED

Species or species group	Management or regulatory area and processing component (if applicable)
Pacific cod	Eastern GOA, inshore component.
	Eastern GOA, offshore component.
Sablefish	Western GOA.
	Central GOA.
	Eastern GOA.
Shallow-water flatfish	Eastern GOA.
Deep-water flatfish	Western GOA.
Rex sole	Western GOA.
	Eastern GOA.
Arrowtooth flounder	Western GOA.
	Eastern GOA.
Flathead sole	Western GOA.
	Eastern GOA.
Pacific ocean perch	Western GOA.
Northern rockfish	Western GOA.
Shortraker rockfish	Western GOA.
	Central GOA.
	Eastern GOA.
Dusky rockfish	Western GOA.
	Central GOA.
	Eastern GOA.
Rougheye and blackspotted rockfish	Western GOA.
	Central GOA.
	Eastern GOA.
Demersal shelf rockfish	Southeast Outside District.
Thornyhead rockfish	Western GOA.
	Central GOA.
	Eastern GOA.
Other rockfish	Central GOA.
	Eastern GOA.
Atka mackerel	GOA.
Big skate	Western GOA.
	Central GOA.
	Eastern GOA.
Longnose skate	Western GOA.
	Central GOA.
	Eastern GOA.
Other skates	GOA.
Sculpins	GOA.
Sharks	GOA.
Octopuses	GOA.

PART 680—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

■ 11. The authority citation for part 680 continues to read as follows:

Authority: 16 U.S.C. 1862; Pub. L. 109–241; Pub. L. 109–479.

■ 12. In § 680.22, revise paragraph (e)(1)(i) and add paragraph (e)(1)(iii) to read as follows:

§ 680.22 Sideboard protections for GOA groundfish fisheries.

* * * * *

(e) * * *

(1) * * *

(i) Except as provided in paragraphs (e)(1)(ii) and (iii) of this section, annual sideboard harvest limits for each groundfish species, except fixed-gear sablefish, will be established by multiplying the sideboard ratios calculated under paragraph (d) of this section by the proposed and final TACs in each area for which a TAC is specified. If a TAC is further apportioned by season, the sideboard harvest limit also will be apportioned by season in the same ratio as the overall TAC. The resulting harvest limits expressed in metric tons will be published in the annual GOA groundfish harvest specification notices.

* * * * *

(iii) NMFS will not establish an annual sideboard harvest limit for groundfish species, other than Pacific cod apportioned to catcher vessels using pot gear in the Western and Central Regulatory Areas. Directed fishing for groundfish species, other than Pacific cod apportioned to catcher vessels using pot gear in the Western and Central Regulatory Areas, is prohibited.

* * * * *

[FR Doc. 2019–01665 Filed 2–7–19; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Federal Highway Administration

23 CFR Parts 1270 and 1275

[Docket No. NHTSA–2016–0099]

RIN 2127–AL45

Transfer and Sanction Programs

AGENCY: National Highway Traffic Safety Administration (NHTSA) and Federal Highway Administration (FHWA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: This final rule responds to comments received on the interim final rule published September 30, 2016, and makes minor clarifications to the Federal implementing regulations for the Section 154 (Open Container) and Section 164 (Repeat Intoxicated Driver) programs.

DATES: This final rule is effective on March 11, 2019.

ADDRESSES: For access to the docket to read comments received, go to *http://www.regulations.gov* and search for docket number NHTSA–2016–0099.

FOR FURTHER INFORMATION CONTACT:

NHTSA: For program issues: Barbara Sauers, Director, Office of Grants Management and Operations, Telephone number: (202) 366–0144, Email: *Barbara.Sauers@dot.gov.* For legal issues: Russell Krupen, Attorney Advisor, Office of the Chief Counsel, Telephone number: (202) 366–1834, Email: *Russell.Krupen@dot.gov*; Facsimile: (202) 366–3820.

FHWA: For program issues: Dana Gigliotti, Team Leader, Safety Programs Implementation Team, Office of Safety Programs, Telephone number: (202) 366–1290, Email: *Dana.Gigliotti@dot.gov.* For legal issues: Dawn Horan, Attorney Advisor, Office of the Chief Counsel, Telephone number: (202) 366–9615, Email: *Dawn.M.Horan@dot.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The Fixing America's Surface Transportation Act (FAST Act), Public Law 114–94, amended 23 U.S.C. 154 (Section 154) and 23 U.S.C. 164 (Section 164), which address the serious national problems of impaired driving by encouraging States to meet minimum standards for their open container laws and repeat intoxicated driver laws. Under Section 154, to avoid the transfer of funds, a State must enact and enforce an open container law ''that prohibits the possession of any open alcoholic beverage container, or the consumption of any alcoholic beverage, in the passenger area of any motor vehicle (including possession or consumption by the driver of the vehicle) located on a public highway, or the right-of-way of a public highway, in the State.'' 23 U.S.C. 154(b)(1). Under Section 164, to avoid the transfer of funds, a State must enact and enforce a repeat intoxicated driver law that establishes, at minimum, certain specified penalties for second and subsequent convictions of driving while intoxicated or driving under the influence. 23 U.S.C. 164(a)(5). All 50 States, the District of Columbia, and Puerto Rico are considered to be ''States'' for the purposes of these programs.

The National Highway Traffic Safety Administration (NHTSA) and the Federal Highway Administration (FHWA) (''the agencies'') jointly issued an interim final rule (IFR), with immediate effectiveness, on September 30, 2016, (81 FR 67158) to ensure that States received instructions that were important to the compliance determinations made on October 1, 2016, when the changes in the FAST Act became effective. The IFR amended the Federal implementing regulations for Section 154 at 23 CFR part 1270 and Section 164 at 23 CFR part 1275 to reflect the changed requirements from the Federal legislation. At the same time, the agencies updated the regulations to improve clarity, codify longstanding interpretation of the statutes and implementing regulations, and streamline procedures for States. The agencies sought public comment to inform the promulgation of a final rule. This action addresses the comments received and makes minor changes to the Federal implementing regulations.

II. Summary of the Interim Final Rule

The IFR implemented the new compliance provisions of the FAST Act and also updated the rules to incorporate prior statutory changes from the Moving Ahead for Progress in the 21st Century Act (MAP–21), Public Law 112–141 (enacted July 6, 2012), and the SAFETEA–LU Technical Corrections Act of 2008, Public Law 110–244 (enacted June 6, 2008). The preamble to the IFR also provided additional information regarding the programs, and the agencies encourage States to review it in conjunction with this preamble and the final implementing regulations.

Some of the revisions in the IFR to the Section 154 and Section 164 implementing regulations in 23 CFR parts 1270 and 1275 were made simply to allow States to better understand the programs and attain and maintain compliance. These revisions did not substantively amend the compliance requirements of the programs. Such revisions included amending or adding definitions, clarifying and broadening permitted exceptions in the Section 154 program, and making technical corrections as necessary.

Because the FAST Act significantly amended the compliance criteria for the Section 164 program, the IFR also made conforming revisions to the Section 164 implementing regulations in 23 CFR part 1275. The IFR implemented the revised one-year license sanction requirement, allowing States three

options for repeat offenders: suspension of all driving privileges, restriction to operating only motor vehicles with an ignition interlock device installed (allowing for limited employment and medical exceptions), or participation in and compliance with a 24–7 sobriety program. It eliminated the vehicle sanction requirement, which was repealed by the FAST Act, but made no changes to the assessment and treatment requirement, which has not changed since its inception. Finally, it made two changes to the minimum sentence requirement: clarifying the hour-equivalents for days served in imprisonment or community service and implementing the annual ''general practice'' certification option for incarceration in lieu of having a compliant mandatory minimum sentence. With regard to the latter, a State may certify for a second offender that its ''general practice is that such an individual will be incarcerated'' and for a third or subsequent offender that its ''general practice is that such an individual will receive 10 days of incarceration.'' 23 U.S.C. 164(a)(5)(C)(i)–(ii). To meet the statutory standard of ''general practice,'' the IFR requires a State to certify that 75 percent of repeat offenders are subject to mandatory incarceration for the minimum sentences specified for the calendar year immediately prior to the certification.

Finally, the IFR updated the non-compliance penalties and procedures in the regulations to reflect amendments made to the Federal statutes by the SAFETEA–LU Technical Corrections Act and MAP–21. The IFR also reorganized the regulations to improve clarity, streamlined some of the procedures that apply to States, reduced paperwork burdens, and better aligned the regulations with the longstanding administrative practices under the programs.

III. Public Comments on the Interim Final Rule

The agencies received only two comments on the IFR: one addressing Section 154 (anonymous commenter; NHTSA–2016–0099–0002) and one addressing Section 164 (Transportation Departments of Idaho, Montana, North Dakota, South Dakota, and Wyoming [''State DOTs'']; NHTSA–2016–0099–0003).

The anonymous commenter requested that the final rule ''provide more information about the exceptions to locations of an open container within the vehicle.'' Specifically, the commenter wanted more information about ''vehicles without the typical trunk that have no cover for the hatch in the back . . . because it could possibly be accessible to a determined passenger and potentially lead me to severe penalties.'' Open container laws differ significantly from State to State. Therefore, the commenter should consult the law of the particular State to determine enforcement details and penalties. However, for purpose of compliance with Section 154, a State may allow possession of an open alcoholic beverage container ''in a locked container (such as a locked glove compartment), or, in a motor vehicle that is not equipped with a trunk, either behind the last upright seat or in an area not normally occupied by the driver or a passenger.'' 23 CFR 1270.4(d)(1). A State would not be determined to be out of compliance with Section 154 if it allows an open container to be possessed in the area behind the last upright seat in a hatchback-style vehicle, regardless of whether that area is covered. The agencies are making no changes in this final rule in response to this comment.

The State DOTs requested greater flexibility in the ''general practice'' certification, allowing for approaches other than 75 percent incarceration during the calendar year prior to the date of certification. The commenters cite to the following statement from Senator John Thune during the Senate floor debate: ''This provision is intended to allow States to certify the general practice on minimum penalties which can meet the definition under the repeat offender law, and we expect that NHTSA should reasonably defer to a State's analysis underpinning such a certification.'' 161 *Congressional Record* S8359 (December 3, 2015, daily ed.). The State DOTs requested that States be permitted to certify with percentages as low as 51 percent, particularly ''if there is evidence of a trend of an increasing percentage or other relevant information provided by the State.''

The agencies do not believe it is appropriate to accept certifications on the basis of 51 percent of repeat offenders receiving the statutorily required penalties, as this essentially renders the practice ''as likely as not'' and does not establish a ''general practice,'' as specified in the statute. The pre-enactment statement in floor debate does not serve to change the meaning of that statutory term. The agencies continue to believe that 75 percent provides a reasonable and appropriate balance between flexibility and mandatory minimum sentences for 100 percent of offenders (as required for States complying on the basis of their law, rather than a ''general practice'' certification). We note that NHTSA did, in fact, defer to States' analyses of their own incarceration data underpinning their ''general practice'' certifications for fiscal year 2017, 2018, and 2019 submissions when they certified to meeting the 75 percent requirement. The agencies are making no changes in this final rule in response to this comment.

IV. Revisions in the Final Rule

The agencies are making two revisions in this final rule. The first relates to the opportunity for States determined to be non-compliant with either Section 154 or Section 164 to submit documentation showing why they are compliant. In the IFR, the agencies gave States 30 days from the date of issuance of the notice of apportionments under 23 U.S.C. 104(e) by FHWA, which normally occurs on October 1, to submit this documentation. 23 CFR 1270.8(b) and 1275.8(b). However, the agencies tied the deadlines for submission of ''shift'' and ''split'' letters to 30 and 60 days, respectively, from the date ''the funds are reserved.'' [1] 23 CFR 1270.6(b), 1270.7(a), 1275.6(b), and 1275.7(a). Although the date of issuance of the notice of apportionments and the reservation of funds is normally the same, in some years FHWA has rescinded and subsequently reissued the notice of apportionments. The agencies do not intend to grant an extension of time for submission of additional documentation or ''shift'' and ''split'' letters in the event of such a reissuance, as the State will already have been on notice of its non-compliance for the fiscal year because of the original reservation of funds. To eliminate confusion and align these deadlines, the agencies are amending the Section 154 and Section 164 regulations to require submission of any additional documentation within ''30 days from the date the funds are reserved.''

The second relates to the ''special exception'' to interlock use under Section 164 for individuals certified by a medical doctor as being unable to provide a deep lung breath sample for analysis by an ignition interlock device. The agencies are changing ''certified by a medical doctor'' to ''certified in writing by a physician'' to align with NHTSA's implementing regulations for

[1] While all non-compliant States are required to submit ''split'' letters to receive the reserved funds (*see* 23 CFR 1270.7(a) and 1275.7(a)), submission of ''shift'' letters by non-compliant States is optional (*see* 23 CFR 1270.6(b) and 1275.6(b)). If FHWA does not receive a ''shift'' letter from a non-compliant State, the default reservation of funds (based on proportionate amounts from each of the apportionments under 23 U.S.C. 104(b)(1) and (b)(2)) will remain.

23 U.S.C. 405(d)(6)(F)(ii). *See* 23 CFR 1300.23(g)(2)(ii). The agencies believe a certification, by definition, must be in writing. Because the statutory language underlying the special exception in Section 164 is identical to the exception permitted in NHTSA's Grants to States with Alcohol-Ignition Interlock Laws program, and the agency's regulatory language in that program also was subject to public notice and comment, it is appropriate to bring the language of the Section 164 implementing regulations into alignment with that program.

V. Effective Date and Future Actions

The agencies issued the IFR with an immediate effective date to ensure that States received instructions that were important to compliance determinations made on October 1, 2016, as the changes in the FAST Act became effective on that date. The effective date for this final rule is March 11, 2019. This final rule has no effect on determinations made on October 1, 2018, for Federal fiscal year 2019.

NHTSA and FHWA are committed to ensuring transparency in the administration of these programs and maintaining open and active communication with States. For example, the agencies will continue to notify States of potential non-compliance issues for the forthcoming fiscal year in FHWA's advance notification of apportionment, normally issued 90 days prior to the official apportionment notice, if such information is available to the agencies at that time. The agencies will also notify States at other points throughout the year if they become aware of potential non-compliance issues. However, to provide this information in a timely fashion for States to react as appropriate, the agencies continue to rely upon States for prompt notification of changes in their laws. *See, e.g.,* 23 CFR 1270.9(b) and 1275.9(b). Although the regulations require a State to ''promptly notify'' the appropriate NHTSA Regional Administrator in writing only of any actual change or change in enforcement of the law, States are invited also to submit prospective changes (*e.g.,* pending legislation) to NHTSA throughout the year for a preliminary review of their impact on compliance.

In addition, the agencies recognize that States would benefit from receiving more information from the agencies regarding compliance requirements, procedures, and relevant points of contact. NHTSA and FHWA are exploring ways to improve the availability of information on the programs for States to better allow them to obtain and maintain compliance, and we are committed to rolling these improvements out in the coming months. The agencies invite States to provide suggestions on how we can improve transparency by contacting the individuals listed in **FOR FURTHER INFORMATION CONTACT** above.

VI. Regulatory Analyses and Notices

A. Executive Order (E.O.) 12866 (Regulatory Planning and Review), E.O. 13563, and DOT Regulatory Policies and Procedures

NHTSA and FHWA have considered the impact of this rulemaking action under Executive Order 12866, Executive Order 13563, and the Department of Transportation's regulatory policies and procedures. This rulemaking document was not reviewed under Executive Order 12866 or Executive Order 13563. This rule will only affect the compliance status of a very small handful of States and will therefore affect far less than $100 million annually. Whether a State chooses to enact a compliant law or make a certification is dependent on many variables, and cannot be linked with specificity to the issuance of this rule. States choose whether to enact and enforce compliant laws, thereby complying with the programs. If a State chooses not to enact and enforce a conforming law, its funds are conditioned, but not withheld. Accordingly, the total amount of funding provided to each State does not change. The costs to States associated with this rule are minimal (*e.g.,* passing and enforcing alcohol impaired driving laws) and are expected to be offset by resulting highway safety benefits. Therefore, this rulemaking has been determined to be not ''significant'' under the Department of Transportation's regulatory policies and procedures and the policies of the Office of Management and Budget.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) of 1980 (5 U.S.C. 601 *et seq.*) requires agencies to evaluate the potential effects of their proposed and final rules on small businesses, small organizations, and small governmental jurisdictions. Section 605 of the RFA allows an agency to certify a rule, in lieu of preparing an analysis, if the proposed rulemaking is not expected to have a significant economic impact on a substantial number of small entities. The Small Business Regulatory Enforcement Fairness Act (SBREFA) amended the RFA to require Federal agencies to provide a statement of the factual basis for certifying that an action would not have a significant economic impact on a substantial number of small entities.

This final rule updates the Section 154 and Section 164 implementing regulations based on recent Federal legislation. The requirements of these programs only affect State governments, which are not considered to be small entities as that term is defined by the RFA. Therefore, we certify that this action will not have a significant impact on a substantial number of small entities and find that the preparation of a Regulatory Flexibility Analysis is unnecessary.

C. Executive Order 13132 (Federalism)

Executive Order 13132 on ''federalism'' requires the agencies to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' 64 FR 43255 (August 10, 1999). ''Policies that have federalism implications'' are defined in the Executive Order to include regulations that 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.'' Under Executive Order 13132, an agency may not issue a regulation with Federalism implications that imposes substantial direct compliance costs and that is not required by statute unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments or the agency consults with State and local governments in the process of developing the proposed regulation. An agency also may not issue a regulation with federalism implications that preempts a State law without consulting with State and local officials.

The agencies have analyzed this rulemaking action in accordance with the principles and criteria set forth in Executive Order 13132, and have determined that this final rule would not have sufficient federalism implications as defined in the order to warrant formal consultation with State and local officials or the preparation of a Federalism summary impact statement. However, the agencies continue to engage with State representatives regarding general implementation of the FAST Act, including these programs, and expects to continue these informal dialogues.

D. Executive Order 12988 (Civil Justice Reform)

Pursuant to Executive Order 12988 (61 FR 4729 (February 7, 1996)), ''Civil Justice Reform,'' the agencies have considered whether this rule would have any retroactive effect. We conclude that it would not have any retroactive or preemptive effect, and judicial review of it may be obtained pursuant to 5 U.S.C. 702. That section does not require that a petition for reconsideration be filed prior to seeking judicial review. This action meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

E. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501, *et seq.*), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct, sponsor, or require through regulations. This rulemaking would not establish any new information collection requirements.

F. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in expenditures by State, local or tribal governments, in the aggregate, or by the private sector, of more than $100 million annually (adjusted annually for inflation with base year of 1995). This final rule would not meet the definition of a Federal mandate because the resulting annual State expenditures to comply with the programs would not exceed the minimum threshold.

G. National Environmental Policy Act

NHTSA has considered the impacts of this rulemaking action for the purposes of the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4347). The agency has determined that this rulemaking would not have a significant impact on the quality of the human environment. FHWA has analyzed this action for the purposes of NEPA and has determined that it would not have any effect on the quality of the environment and meets the criteria for the categorical exclusion at 23 CFR 771.117(c)(20).

H. Executive Order 13175 (Consultation and Coordination With Indian Tribes)

The agencies have analyzed this IFR under Executive Order 13175, and have determined that this action would not have a substantial direct effect on one or more Indian tribes, would not impose substantial direct compliance costs on Indian tribal governments, and would not preempt tribal law. Therefore, a tribal summary impact statement is not required.

I. Regulatory Identifier Number (RIN)

The Department of Transportation assigns a regulation identifier number (RIN) to each regulatory action listed in the Unified Agenda of Regulatory and Deregulatory Actions. The Regulatory Information Service Center publishes the Unified Agenda in or about April and October of each year. You may use the RIN contained in the heading at the beginning of this document to find this action in the Unified Agenda.

J. Privacy Act

Please note that anyone is able to 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.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477) or you may visit *http://dms.dot.gov.*

Authority: 23 U.S.C. 154 and 164; delegation of authority at 49 CFR 1.85 and 1.95.

List of Subjects in 23 CFR Parts 1270 and 1275

Alcohol abuse, Highway safety, Intergovernmental relations, Reservation and transfer programs—transportation.

For the reasons discussed in the preamble, under the authority of 23 U.S.C. 154 and 164, the National Highway Traffic Safety Administration and the Federal Highway Administration amend 23 CFR chapter II as follows:

PART 1270—OPEN CONTAINER LAWS

■ 1. The authority citation for part 1270 continues to read as follows:

Authority: 23 U.S.C. 154; delegation of authority at 49 CFR 1.85 and 1.95.

■ 2. Amend § 1270.8 by revising the first sentence of paragraph (b) to read as follows:

§ 1270.8 Procedures affecting States in noncompliance.

* * * * *

(b) Each State whose funds are reserved under § 1270.6 will be afforded 30 days from the date the funds are reserved to submit documentation showing why it is in compliance. * * *

PART 1275—REPEAT INTOXICATED DRIVER LAWS

■ 3. The authority citation for part 1275 continues to read as follows:

Authority: 23 U.S.C. 164; delegation of authority at 49 CFR 1.85 and 1.95.

■ 4. Amend § 1275.4 by revising paragraph (b)(2) to read as follows:

§ 1275.4 Compliance criteria.

* * * * *

(b) * * *

(2) The individual is certified in writing by a physician as being unable to provide a deep lung breath sample for analysis by an ignition interlock device.

■ 5. Amend § 1275.8 by revising the first sentence of paragraph (b) to read as follows:

§ 1275.8 Procedures affecting States in noncompliance.

* * * * *

(b) Each State whose funds are reserved under § 1275.6 will be afforded 30 days from the date the funds are reserved to submit documentation showing why it is in compliance (which may include a ''general practice'' certification under § 1275.5). * * *

Issued in Washington, DC, on: February 1, 2019.

Under authority delegated in 49 CFR 1.95 and 501.5.

Heidi R. King,

Deputy Administrator, National Highway Traffic Safety Administration.

Issued in Washington, DC, on: February 1, 2019.

Under authority delegated in 49 CFR 1.85.

Brandye L. Hendrickson,

Deputy Administrator, Federal Highway Administration.

[FR Doc. 2019–01647 Filed 2–7–19; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF DEFENSE

Department of the Air Force

32 CFR Part 809a

[Docket ID: USAF–2018–HQ–0007]

RIN 0701–AA84

Civil Disturbance Intervention and Disaster Assistance

AGENCY: Department of the Air Force, DoD.

ACTION: Final rule.

SUMMARY: This final rule amends this part by removing the portion which

addresses the Department of the Air Force Civil Disturbance Intervention and Disaster Assistance. The current version of this rule was published March 26, 2002. This rule provides internal guidance for the use of Air Force resources and personnel in controlling civil disturbances and in supporting disaster relief operations. Subpart B is unnecessary as it restates existing statute, and there exists DoD-level policy for the execution and oversight of Defense Support of Civil Authorities (DSCA). The Air Force also has internal procedures and standards for the DSCA mission and operations. Therefore, this part can be removed from the CFR.

DATES: This rule is effective on February 8, 2019.

FOR FURTHER INFORMATION CONTACT: Maj. Michael, J. Kwon at 703–693–4459.

SUPPLEMENTARY INFORMATION: It has been determined that publication of this CFR subpart removal for public comment is impracticable, unnecessary, and contrary to public interest since it is based on removing information which either restates statue (Stafford Act (42 U.S.C. 5121–5207) and the Economy Act (31 U.S.C. 1535)) or is duplicative of publicly available DoD and Air Force internal policy. Internal guidance for the DoD policy execution and oversight of DSCA will continue to be published in DoD Directive 3025.18, ''Defense Support of Civil Authorities'' (available at *http://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodd/302518p.pdf?ver=2018-03-19-093120-683*). Department of the Air Force internal guidance will continue to be published in Air Force Instruction 10–801 (available at *http://static.e-publishing.af.mil/production/1/af_a3/publication/afi10-801/afi10-801.pdf*).

This rule is not significant under Executive Order (E.O.) 12866, ''Regulatory Planning and Review,'' therefore, E.O. 13771, ''Reducing Regulation and Controlling Regulatory Costs'' does not apply.

List of Subjects in 32 CFR Part 809a

Civil defense, Civil disorders, Disaster assistance, Federal buildings and facilities, Foreign relations, Law enforcement, Military personnel.

Accordingly, 32 CFR part 809a is amended as follows:

PART 809a—INSTALLATION ENTRY POLICY, CIVIL DISTURBANCE INTERVENTION AND DISASTER ASSISTANCE

■ 1. The authority citation for part 809a continues to read as follows:

Authority: 10 U.S.C. 332 and 333.

Subpart B—[Removed and Reserved]

■ 2. Subpart B, consisting of §§ 809a.6 through 809a.11 is removed and reserved vv.

Henry Williams,

Acting Air Force Federal Register Liaison Officer.

[FR Doc. 2019–01666 Filed 2–7–19; 8:45 am]

BILLING CODE 5001–10–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2018–0952]

RIN 1625–AA09

Drawbridge Operation Regulations; Industrial Seaway Canal, MS

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations; request for comments.

SUMMARY: The Coast Guard is issuing a temporary deviation to the operating schedule that regulates the State Route 605 (SR 605), Wilkes Road bascule bridge across the Industrial Seaway Canal, mile 11.3 at Hansboro, Harrison County, Mississippi. This deviation is needed to collect and analyze information on vehicle traffic congestion on SR 605 created when the drawbridge opens to vessel traffic. This deviation allows the bridge to remain closed to navigation. The Coast Guard is seeking comments from the public about the impact to both vehicle and vessel traffic generated by this change.

DATES: This deviation is effective from 6 a.m. February 8, 2019 through 6 p.m. June 10, 2019.

Comments and related material must be received by the Coast Guard on or before June 10, 2019.

ADDRESSES: You may submit comments identified by docket number USCG–2018–0952 using 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: If you have questions about this rulemaking, call or email Mr. Doug Blakemore, Eighth Coast Guard District Bridge Administrator; telephone (504) 671–2128, email *Douglas.A.Blakemore@uscg.mil.*

SUPPLEMENTARY INFORMATION:

Table of Abbreviations

CFR Code of Federal Regulations
DHS Department of Homeland Security
FR Federal Register
MDOT Mississippi Department of Transportation
NPRM Notice of proposed rulemaking
SR State Route
§ Section

I. Background, Purpose and Legal Basis

MDOT has requested to change the operating requirements for the SR 605 bascule bridge across the Industrial Seaway Canal, mile 11.3, at Hansboro, Harrison County, Mississippi. This bridge currently opens on signal according to 33 CFR 117.5. MDOT provided the Coast Guard with a vehicle traffic study that concluded that vehicle traffic becomes very congested on SR 605 during morning and afternoon rush hours and that bridge openings for vessels add to the congestion. MDOT informed the Coast Guard that this traffic congestion backs up from the bridge to the I–10 highway which creates unsafe queues on I–10 and SR 605. This MDOT study and analysis is provided in the docket to this temporary rule.

The 120 day temporary deviation to the regulation will allow MDOT to collect additional vehicle traffic data to measure the impact of bridge closures on traffic congestion. It will also allow the Coast Guard to collect data on the impact of the temporary regulation change on vessels.

This bridge has a vertical clearance of 37.1 feet above mean high water in the closed to vessel position and unlimited vertical clearance in the open to vessel traffic position. From January through December 2017 the bridge opened for vessel traffic 236 times. During this temporary deviation the bridge will operate as follows:

The draw of the SR 605 bascule bridge across the Industrial Seaway Canal, mile 4.5, Hansboro, Harrison County, Mississippi shall open on signal; except the draw need not open 6 a.m. to 8:30 a.m. and 4 p.m. to 6 p.m. Monday through Friday except federal holidays. The bridge will open on signal for emergencies.

The Coast Guard will also inform the users of the waterways through our Local and Broadcast Notices to Mariners of the change in operating schedule for the bridge so that vessel operators can arrange their transits to minimize any impact caused by the temporary deviation.

In accordance with 33 CFR 117.35(e), the drawbridge must return to its regular operating schedule immediately at the

end of the effective period of this temporary deviation. This deviation from the operating regulations is authorized under 33 CFR 117.35.

II. Public Participation and Request for Comments

Public participation is essential to effective rulemaking. The Coast Guard will consider all comments and material received during the comment period. 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 *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).

Documents mentioned in this notification, and all public comments, are 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 a final rule is published.

Dated: January 31, 2019.

Douglas Allen Blakemore, Sr.,

Bridge Administrator, Eighth Coast Guard District.

[FR Doc. 2019–01549 Filed 2–7–19; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2019–0031]

RIN 1625–AA00

Safety Zone; Delaware River Rock Blasting, Marcus Hook, PA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone on the waters of the Delaware River between Marcus Hook Range and Tinicum Range. The safety zone will temporarily restrict vessel traffic from transiting or anchoring in portions of the Delaware River while rock blasting, dredging, and rock removal operations are being conducted to facilitate the Main Channel Deepening project for the Delaware River. The safety zone is needed to protect personnel, vessels, and the marine environment from hazards created by rock blasting, dredging, and rock removal operations. Entry of vessels or persons into this zone is prohibited unless specifically authorized by the COTP or his designated representatives.

DATES: This rule is effective from February 10, 2019, through March 15, 2019.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov,* type USCG–2019–0031 in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions about this rulemaking, call or email Petty Officer Edmund Ofalt, U.S. Coast Guard Sector Delaware Bay, Waterways Management Branch; telephone (215) 271–4889, email *Edmund.J.Ofalt@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 Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because it is impracticable and contrary to the public interest. There is insufficient time to allow for a reasonable comment period prior to the start date for blasting operations. The rule must be in force by February 10, 2019, to serve its purpose of ensuring the safety of personnel, vessels, and the marine environment from hazards associated with rock blasting, dredging, and rock removal operations.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be impracticable and contrary to the public interest because immediate action is needed to mitigate the potential safety hazards associated with rock blasting, dredging and rock removal operations in this location.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 33 U.S.C. 1231. The COTP has determined that there are potential hazards associated with the rock blasting and dredging operations. This rule is needed to ensure the safety of personnel, vessels, and the marine environment within a 500-yard radius of rock blasting, dredging, and rock removal operations

IV. Discussion of the Rule

This rule establishes a safety zone from February 10, 2019, through March 15, 2019. The safety zone covers all navigable waters in the Delaware River within 500 yards of vessels and machinery being used to conduct rock blasting, dredging, and rock removal operations between Marcus Hook Range and Tinicum Range. The safety zone will be enforced in an area and in a manner that does not conflict with transiting commercial and recreational traffic, except for the short periods of time when explosive detonations are being conducted and shortly thereafter, when the channel is being surveyed to ensure the navigational channel is clear for vessels to transit. These detonations will not occur more than three times a day. At all other times, at least one side of the main navigational channel will be open for vessels to transit. This rule describes communications for notifying waterway users of upcoming detonations and provides means for waterway users to request entry into the safety zone.

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 traffic management of the safety zone. The safety zone will be enforced in an area and in a manner that does not conflict with transiting commercial and recreational traffic, except for the short periods of time when explosive detonations are being conducted. The blasting detonations will not occur more than three times a day. At all other times, at least one side of the main navigational channel will be open for vessels to transit. Moreover, the Coast Guard will work in coordination with the pilots to ensure vessel traffic is limited during the times of detonation and Broadcast Notice to Mariners are made via VHF–FM marine channel 13 and 16 when blasting operations will occur.

B. Impact on Small Entities

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

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

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

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 to protect waterway users that would prohibit entry within 500 yards of rock blasting, dredging, and rock removal. 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 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.T05–0031 to read as follows:

§ 165.T05–0031 Safety Zone, Delaware River Rock Blasting; Marcus Hook, PA.

(a) *Location.* The following area is a safety zone: All the navigable waters of the Delaware River within 500 yards of vessels and machinery performing rock blasting, rock removal, and dredging operations, between Marcus Hook Range and Tinicum Range.

(b) *Definitions.* As used in this section, *designated representative* means any Coast Guard commissioned, warrant, or petty officer who has been authorized by the Captain of the Port to assist with enforcement of the safety zone described in paragraph (a) of this section.

(c) *Regulations.* (1) Vessels wishing to transit the safety zone in the main navigational channel may do so if they can make satisfactory passing arrangements with the drill boat APACHE or the dredges TEXAS and NEW YORK, as applicable, in accordance with the Navigational Rules in 33 CFR subchapter E via VHF–FM channel 13 at least 30 minutes prior to arrival. If vessels are unable to make satisfactory passing arrangements with the drill boat APACHE or the dredges TEXAS and NEW YORK, they may request permission from the Captain of the Port, or his designated representative, on VHF–FM channel 16.

(2) The operator of any vessel requesting to transit through the safety zone shall proceed as directed by the drill boat APACHE, the dredges TEXAS and NEW YORK, or the designated representative of the Captain of the Port and must operate at the minimum safe speed necessary to maintain steerage and reduce wake.

(3) No vessel may transit through the safety zone during times of explosive detonation. During explosive detonation, vessels must maintain a 500-yard distance from the drill boat APACHE. The drill boat APACHE will make broadcasts, via VHF–FM Channel 13 and 16, at 15 minutes, 5 minutes, and 1 minute prior to detonation, as well as a countdown to detonation on VHF–FM Channel 16.

(4) After every explosive detonation the dredging contractor will conduct a survey to ensure the navigational channel is clear for vessels to transit. The drill boat APACHE will broadcast, via VHF–FM channel 13 and 16, when the survey has been completed and the channel is clear to transit. Vessels requesting to transit through the safety zone shall proceed as directed by the Captain of the Port and contact the drill boat APACHE on VHF–FM channel 13 to make safe passing arrangements.

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

(e) *Enforcement period.* This rule will be enforced from February 10, 2019, through March 15, 2019, unless cancelled earlier by the Captain of the Port.

Dated: February 4, 2019.

Scott E. Anderson,

Captain, U.S. Coast Guard, Captain of the Port, Delaware Bay.

[FR Doc. 2019–01602 Filed 2–7–19; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R10–OAR–2018–0796; FRL–9987–76–Region 10]

Air Plan Approval; WA; Updates to Materials Incorporated by Reference

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; administrative change.

SUMMARY: The Environmental Protection Agency (EPA) is updating the materials that are incorporated by reference (IBR) into the Washington State Implementation Plan (SIP). The regulations affected by this update have been previously submitted by the Washington State Department of Ecology (Ecology) and approved by the EPA. In this action, the EPA is also notifying the public of corrections to typographical errors and rearranging the contents for clarity. This update affects the SIP materials that are available for public inspection at the National Archives and Records Administration (NARA) and the EPA Regional Office.

DATES: This action is effective February 8, 2019.

ADDRESSES: SIP materials which are incorporated by reference into 40 CFR part 52 are available for inspection at the following locations: Environmental Protection Agency, Region 10, 1200 Sixth Avenue, Seattle, WA 98101, or the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *https://www.archives.gov/federal-register/cfr/ibr-locations.html.*

FOR FURTHER INFORMATION CONTACT: Jeff Hunt, EPA Region 10, (206) 553–0256, *hunt.jeff@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The SIP is a living document which a state revises as necessary to address its unique air pollution problems. Therefore, the EPA from time to time, must take action on SIP revisions containing new and/or revised regulations as being part of the SIP. On May 22, 1997, the EPA revised the procedures for incorporating by reference Federally-approved SIPs, as a result of consultations between the EPA and the Office of the Federal Register (OFR) (62 FR 27968). The description of the revised SIP document, IBR procedures and ''Identification of plan'' format are discussed in further detail in the May 22, 1997 **Federal Register** document. On March 20, 2013, the EPA published a **Federal Register** beginning the new IBR procedure for Washington (78 FR 17108). The EPA subsequently published updates to the IBR material for Washington on December 8, 2014 (79 FR 72548) and April 12, 2016 (70 FR 21470). Since the publication of the last IBR update, the EPA approved and incorporated by reference the changes listed below.

A. Added Regulations

Table 2—Additional Regulations Approved for Washington Department of Ecology (Ecology) Direct Jurisdiction

- Washington Administrative Code, Chapter 173–400, General Regulations for Air Pollution Sources, section 173–400–025 (Adoption of Federal Rules). For more information, see 81 FR 69385 (October 6, 2016).

Table 4—Additional Regulations Approved for the Benton Clean Air Agency (BCAA) Jurisdiction

- Washington Administrative Code, Chapter 173–400, General Regulations for Air Pollution Sources, section 173–400–025 (Adoption of Federal Rules). For more information, see 81 FR 69385 (October 6, 2016).

Table 8—Additional Regulations Approved for the Southwest Clean Air Agency (SWCAA) Jurisdiction

- Southwest Clean Air Agency, SWCAA 400, General Regulations for Air Pollution Sources, sections 400–036 (Portable Sources from Other Washington Jurisdictions), 400–072 (Small Unit Notification for Selected Source Categories), 400–106 (Emission Testing and Monitoring at Air Contaminant Sources), 400–130 (Use of Emission Reduction Credits), 400–131 (Deposit of Emission Reduction Credits Into Bank), 400–136 (Maintenance of Emission Reduction Credits in Bank), 400–800 (Major Stationary Source and

Major Modification in a Nonattainment Area), 400–810 (Major Stationary Source and Major Modification Definitions), 400–820 (Determining if a New Stationary Source or Modification to a Stationary Source is Subject to These Requirements), 400–830 (Permitting Requirements), 400–840 (Emission Offset Requirements), 400–850 (Actual Emissions—Plantwide Applicability Limitation (PAL)), 400–860 (Public Involvement Procedures), Appendix A (SWCAA Method 9 Visual Opacity Determination Method), and Appendix B (Description of Vancouver Ozone and Carbon Monoxide Maintenance Area Boundary). For more information, see 82 FR 17136 (April 10, 2017).

• Washington Administrative Code, Chapter 173–400, General Regulations for Air Pollution Sources, sections 173–400–117 (Special Protection Requirements for Federal Class I Areas), 173–400–118 (Designation of Class I, II, and III Areas), and 173–400–560 (General Order of Approval). For more information, see 82 FR 17136 (April 10, 2017).

B. Revised Regulations

Table 1—Regulations Approved Statewide

• Washington Administrative Code, Chapter 173–476, Ambient Air Quality Standards, sections 173–476–020 (Applicability), 173–476–150 (Ambient Air Quality Standard for Ozone), and 173–476–900 (Table of Standards). For more information, see 81 FR 69385 (October 6, 2016).

Table 2—Additional Regulations Approved for Washington Department of Ecology (Ecology) Direct Jurisdiction

• Washington Administrative Code, Chapter 173–400, General Regulations for Air Pollution Sources, sections 173–400–110 (New Source Review (NSR) for Sources and Portable Sources) and 173–400–112 (Requirements for New Sources in Nonattainment Areas—Review for Compliance with Regulations). For more information, see 81 FR 66823 (September 29, 2016).

• Washington Administrative Code, Chapter 173–400, General Regulations for Air Pollution Sources, sections 173–400–040 (General Standards for Maximum Emissions), 173–400–050 (Emission Standards for Combustion and Incineration Units), 173–400–060 (Emission Standards for General Process Units), 173–400–070 (Emission Standards for Certain Source Categories), 173–400–105 (Records, Monitoring, and Reporting), 173–400–111 (Processing Notice of Construction Applications for Sources, Stationary Sources and Portable Sources), 173–400–116 (Increment Protection), 173–400–171 (Public Notice and Opportunity for Public Comment), 173–400–710 (Definitions), 173–400–720 (Prevention of Significant Deterioration (PSD)), 173–400–730 (Prevention of Significant Deterioration Application Processing Procedures), 173–400–740 (PSD Permitting Public Involvement Requirements), 173–400–810 (Major Stationary Source and Major Modification Definitions), 173–400–830 (Permitting Requirements), 173–400–840 (Emission Offset Requirements), and 173–400–850 (Actual Emissions Plantwide Applicability Limitation (PAL)). For more information, see 81 FR 69385 (October 6, 2016).

Table 3—Additional Regulations Approved for the Energy Facilities Site Evaluation Council (EFSEC) Jurisdiction

• Washington Administrative Code, Chapter 463–78, General and Operating Permit Regulations for Air Pollution Sources, sections 463–78–005 (Adoption by Reference), 463–78–010 (Purpose), 463–78–020 (Applicability), 463–78–030 (Additional Definitions), 463–78–095 (Permit Issuance), and 463–78–120 (Monitoring and Special Report). For more information, see 82 FR 24531 (May 30, 2017).

Table 4—Additional Regulations Approved for the Benton Clean Air Agency (BCAA) Jurisdiction

• Washington Administrative Code, Chapter 173–400, General Regulations for Air Pollution Sources, sections 173–400–040 (General Standards for Maximum Emissions), 173–400–050 (Emission Standards for Combustion and Incineration Units), 173–400–060 (Emission Standards for General Process Units), 173–400–070 (Emission Standards for Certain Source Categories), 173–400–105 (Records, Monitoring, and Reporting), 173–400–111 (Processing Notice of Construction Applications for Sources, Stationary Sources and Portable Sources), 173–400–171 (Public Notice and Opportunity for Public Comment), 173–400–810 (Major Stationary Source and Major Modification Definitions), 173–400–830 (Permitting Requirements), 173–400–840 (Emission Offset Requirements), and 173–400–850 (Actual Emissions Plantwide Applicability Limitation (PAL)). For more information, see 81 FR 69385 (October 6, 2016).

Table 8—Additional Regulations Approved for the Southwest Clean Air Agency (SWCAA) Jurisdiction

• Southwest Clean Air Agency, SWCAA 400, General Regulations for Air Pollution Sources, sections 400–010 (Policy and Purpose), 400–020 (Applicability), 400–030 (Definitions), 400–040 (General Standards for Maximum Emissions), 400–050 (Emission Standards for Combustion and Incineration Units), 400–060 (Emission Standards for General Process Units), 400–070 (General Requirements for Certain Source Categories), 400–074 (Gasoline Transport Tanker Registration), 400–081 (Startup and Shutdown), 400–091 (Voluntary Limits on Emissions), 400–105 (Records, Monitoring and Reporting), 400–109 (Air Discharge Permit Applications), 400–110 (Application Review Process for Stationary Sources (New Source Review)), 400–111 (Requirements for New Sources in a Maintenance Plan Area), 400–112 (Requirements for New Sources in Nonattainment Areas), 400–113 (Requirements for New Sources in Attainment or Nonclassifiable Areas), 400–114 (Requirements for Replacement or Substantial Alteration of Emission Control Technology at an Existing Stationary Source), 400–116 (Maintenance of Equipment), 400–151 (Retrofit Requirements for Visibility Protection), 400–161 (Compliance Schedules), 400–171 (Public Involvement), 400–190 (Requirements for Nonattainment Areas), 400–200 (Vertical Dispersion Requirement, Creditable Stack Height and Dispersion Techniques), 400–205 (Adjustment for Atmospheric Conditions), and 400–210 (Emission Requirements of Prior Jurisdictions). For more information, see 82 FR 17136 (April 10, 2017). We note that we are correcting a typographical error in Table 8 to exclude SWCAA 400–113(5) from the SIP consistent with the original proposal and final rule preamble.

Table 9—Additional Regulations Approved for the Spokane Regional Clean Air Agency (SRCAA) Jurisdiction

• Spokane Regional Clean Air Agency, Regulation I, Article VI—Emissions Prohibited, sections 6.05 (Particulate Matter and Preventing Particulate Matter from Becoming Airborne), 6.14 (Standards for Control of Particulate Matter on Paved Surfaces), and 6.15 (Standards for Control of Particulate Matter on Unpaved Roads). For more information, see 81 FR 21470 (April 12, 2016).

C. Removed Regulations

Table 3—Additional Regulations Approved for the Energy Facilities Site Evaluation Council (EFSEC) Jurisdiction

• Washington Administrative Code (WAC) 463–39–100 (Registration) and WAC 173–400–151 (Retrofit Requirements), as adopted by reference in WAC 463–78–005. For more information, see 82 FR 24531 (May 30, 2017).

Table 8—Additional Regulations Approved For The Southwest Clean Air Agency (SWCAA) Jurisdiction

• Southwest Clean Air Agency, SWCAA 400, General Regulations for Air Pollution Sources, sections 400–052 (Stack Sampling of Major Combustion Sources), 400–090 (Voluntary Limits on Emissions), 400–100 (Registration and Operating Permits), and 400–101 (Sources Exempt from Registration Requirements). For more information, see 82 FR 17136 (April 10, 2017).

• Washington Administrative Code, Chapter 173–400, General Regulations for Air Pollution Sources, sections 173–400–010 (Policy and Purpose), 173–400–020 (Applicability), 173–400–030 (Definitions), 173–400–040 (General Standards for Maximum Emissions), 173–400–050 (Emission Standards for Combustion and Incineration Units), 173–400–060 (Emission Standards for General Process Units), 173–400–070 (Emission Standards for Certain Source Categories), 173–400–081 (Startup and Shutdown), 173–400–091 (Voluntary Limits on Emissions), 173–400–100 (Registration), 173–400–105 (Records, Monitoring and Reporting), 173–400–107 (Excess Emissions), 173–400–110 (New Source Review (NSR)), 173–400–112 (Requirements for New Sources in Nonattainment Areas), 173–400–113 (Requirements for New Sources in Attainment or Unclassifiable Areas), 173–400–151 (Retrofit Requirements for Visibility Protection), 173–400–161 (Compliance Schedules), 173–400–171 (Public Involvement), 173–400–190 (Requirements for Nonattainment Areas), 173–400–200 (Creditable Stack Height & Dispersion Techniques), 173–400–205 (Adjustment for Atmospheric Conditions), and 173–400–210 (Emission Requirements of Prior Jurisdictions). For more information, see 82 FR 17136 (April 10, 2017).

Table 9—Additional Regulations Approved for the Spokane Regional Clean Air Agency (SRCAA) Jurisdiction

• Spokane Regional Clean Air Agency, Regulation I, Article VI—Emissions Prohibited, section 6.16 (Motor Fuel Specifications for Oxygenated Gasoline). In a final action dated June 29, 2005, the EPA approved the request to remove section 6.16 as a control measure for the Spokane carbon monoxide maintenance area (70 FR 37269, page 37271). As discussed in the preamble for that action, the Spokane Regional Clean Air Agency repealed section 6.16 on September 1, 2005, with a commitment approved as part of the maintenance plan they would re-adopt section 6.16 should the Spokane area violate the carbon monoxide National Ambient Air Quality Standards. As part of our March 20, 2013 action beginning the new IBR procedure for Washington, the EPA inadvertently included section 6.16 as an active control measure under 40 CFR 52.2470(c). The EPA is now correcting that typographical error.

D. Revised Source-Specific Requirements

• As part of the EPA's approval of the second 10-year carbon monoxide limited maintenance plan for the Spokane area, we removed the associated order and amendment for the former Kaiser Aluminum and Chemical Corporation's aluminum reduction plant located in Mead, Washington from the incorporation by reference because the facility had been shut down, dismantled, and the operating permit had been revoked. For more information, see 81 FR 45417 (July 14, 2016).

II. EPA Action

In this action, the EPA is announcing the update to the IBR material as of November 1, 2018. The EPA is also correcting minor typographical errors in subsection 52.2470(c), including removing SRCAA, Regulation I, section 6.16 and SWCAA 400–113(5), as discussed above. This action also corrects the EPA's approval date for the Energy Facilities Site Evaluation Council's incorporation by reference of WAC 173–400–060, which was inadvertently omitted in our May 30, 2017 final action (82 FR 24531). Lastly, the EPA is rearranging the content of subsection 52.2470(e) to organize the actions by pollutant and type for clarity. The EPA has determined that today's rule falls under the ''good cause'' exemption in section 553(b)(3)(B) of the Administrative Procedures Act (APA) which, upon finding ''good cause,'' authorizes agencies to dispense with public participation and section 553(d)(3) which allows an agency to make a rule effective immediately (thereby avoiding the 30-day delayed effective date otherwise provided for in the APA). Today's rule simply codifies provisions which are already in effect as a matter of law in federal and approved state programs. Under section 553 of the APA, an agency may find good cause where procedures are ''impractical, unnecessary, or contrary to the public interest.'' Public comment is ''unnecessary'' and ''contrary to the public interest'' since the codification only reflects existing law. Immediate notice in the CFR benefits the public by removing outdated citations and incorrect table entries.

III. Incorporation by Reference

In this rule, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is finalizing the incorporation by reference of previously EPA-approved regulations promulgated by Washington and federally-effective prior to November 1, 2018. The EPA has made, and will continue to make, these materials generally available through *www.regulations.gov* and at the EPA Region 10 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

A. General Requirements

Under the Clean Air Act (CAA), the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, 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 (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 this action does not involve technical standards; and

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

The SIP is not approved to apply on any Indian reservation land in Washington except as specifically noted below and is also not approved to apply 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 as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). Washington's SIP is approved to apply on non-trust land within the exterior boundaries of the Puyallup Indian Reservation, also known as the 1873 Survey Area. Under the Puyallup Tribe of Indians Settlement Act of 1989, 25 U.S.C. 1773, Congress explicitly provided state and local agencies in Washington authority over activities on non-trust lands within the 1873 Survey Area.

In this rule, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is finalizing the incorporation by reference of the Washington regulations described in the amendments to 40 CFR part 52 set forth below. The EPA has made, and will continue to make, these documents generally available electronically through *www.regulations.gov* and/or in hard copy at the appropriate EPA office (see the **ADDRESSES** section of this preamble for more information).

B. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this rule 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**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

C. Petitions for Judicial Review

The EPA has also determined that the provisions of section 307(b)(1) of the CAA pertaining to petitions for judicial review are not applicable to this action. Prior EPA rulemaking actions for each individual component of the Washington SIP compilations had previously afforded interested parties the opportunity to file a petition for judicial review in the United States Court of Appeals for the appropriate circuit within 60 days of such rulemaking action. Thus, the EPA sees no need in this action to reopen the 60-day period for filing such petitions for judicial review for this ''Identification of plan'' update action for Washington.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and record keeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: November 21, 2018.

Michelle L. Pirzadeh,

Acting Regional Administrator, Region 10.

40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart WW—Washington

■ 2. Section 52.2470 is amended by:

■ a. Revising paragraph (b);

■ b. In paragraph (c):

i. Revising entry 173–400–060 in Table 3.

ii. Revising entry 400–113 in Table 8.

iii. Removing entry 6.16 from Table 9.

■ c. In paragraph (e):

i. Amending Table 2 by moving the entry at the end of the table ''Particulate Matter (PM_{10}) 2nd 10-Year Limited Maintenance Plan'' for the Spokane area after the entry ''Particulate Matter (PM_{10}) 2nd 10-Year Limited Maintenance Plan'' for the Kent, Seattle, and Tacoma area.

ii. Removing the undesignated heading ''Recently Approved Plans'' in Table 2.

The revisions read as follows:

§ 52.2470 Identification of plan.

* * * * *

(b) *Incorporation by reference.* (1) Material listed as incorporated by reference in paragraphs (c) and (d) of this section with an EPA approved date of November 1, 2018, was approved for incorporation by reference by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. The material incorporated is as it exists on the date of the approval, and notice of any change in the material will be published in the **Federal Register**. Entries in paragraphs (c) and (d) of this section with EPA approval dates on or after November 1, 2018, will be incorporated by reference in the next update to the SIP compilation.

(2)(i) EPA Region 10 certifies that the rules and regulations provided by the EPA at the addresses in paragraph (b)(3) of this section are an exact duplicate of the officially promulgated state rules and regulations which have been approved as part of the State Implementation Plan as of November 1, 2018.

(ii) EPA Region 10 certifies that the following source-specific requirements provided by the EPA at the addresses in paragraph (b)(3) of this section are an exact duplicate of the officially promulgated State source-specific requirements which have been approved as part of the State Implementation Plan as of November 1, 2018.

(3) Copies of the materials incorporated by reference may be inspected at the EPA Region 10, 1200 Sixth Ave., Seattle, WA 98101; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *https://www.archives.gov/federal-register/cfr/ibr-locations.html.*

(c) * * *

TABLE 3—ADDITIONAL REGULATIONS APPROVED FOR THE ENERGY FACILITIES SITE EVALUATION COUNCIL (EFSEC) JURISDICTION

[See the SIP-approved provisions of WAC 463–78–020 for jurisdictional applicability]

State citation	Title/subject	State effective date	EPA approval date	Explanations
*	*	*	*	*
Washington Administrative Code, Chapter 173–400 Regulations Incorporated by Reference in WAC 463–78–005				
*	*	*	*	*
173–400–060 ..	Emission Standards for General Process Units.	2/10/05	5/30/17, 82 FR 24531.	
*	*	*	*	*

* * * * *

TABLE 8—ADDITIONAL REGULATIONS APPROVED FOR THE SOUTHWEST CLEAN AIR AGENCY (SWCAA) JURISDICTION

[Applicable in Clark, Cowlitz, Lewis, Skamania and Wahkiakum counties, excluding facilities subject to Energy Facilities Site Evaluation Council (EFSEC) jurisdiction, Indian reservations and any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction, and facilities subject to the applicability sections of WAC 173–405–012, 173–410–012, and 173–415–012]

State/local citation	Title/subject	State/local effective date	EPA approval date	Explanations
Southwest Clean Air Agency Regulations				
SWCAA 400—General Regulations for Air Pollution Sources				
*	*	*	*	*
400–113	Requirements for New Sources in Attainment or Nonclassifiable Areas.	10/09/16	04/10/17, 82 FR 17136	Except: 400–113(5).
*	*	*	*	*

* * * * *

[FR Doc. 2018–27774 Filed 2–7–19; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[EPA–HQ–OAR–2017–0358; FRL–9988–69–OAR]

RIN 2060–AT66

National Emission Standards for Hazardous Air Pollutants: Friction Materials Manufacturing Facilities Residual Risk and Technology Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This action finalizes the residual risk and technology review (RTR) conducted for the Friction Materials Manufacturing Facilities source category regulated under national emission standards for hazardous air pollutants (NESHAP). In addition, we are taking final action addressing periods of startup, shutdown, and malfunction (SSM). We are finalizing our proposed determination that the risks from the category are acceptable and that the current NESHAP provides an ample margin of safety to protect public health. We identified no new cost-effective controls under the technology review to achieve further emissions reductions. These final amendments include amendments to revise reporting requirements for deviations. These amendments are made under the authority of the Clean Air Act (CAA) and will improve the effectiveness of the rule. The amendments are environmentally neutral.

DATES: This final rule is effective on February 8, 2019.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–HQ–OAR–2017–0358. All documents in the docket are listed on the *https://www.regulations.gov* website. Although listed, some information is not publicly available, *e.g.,* confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *https://www.regulations.gov,* or in hard copy at the EPA Docket Center, EPA WJC West Building, Room Number 3334, 1301 Constitution Ave. NW, Washington, DC. The Public Reading Room hours of operation are 8:30 a.m. to 4:30 p.m. Eastern Standard Time (EST), Monday through Friday. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Docket Center is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: For questions about this final action, contact Korbin Smith, Sector Policies and Programs Division (D243–04), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina, 27711; telephone number: (919) 541–2416; fax number: (919) 541–4991; and email address: *smith.korbin@epa.gov.* For specific information regarding the risk modeling methodology, contact James Hirtz, Health and Environmental Impacts Division (C539–02), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number: (919) 541–0881; fax number: (919) 541–0840; and email address: *hirtz.james@epa.gov.* For information about the applicability of the NESHAP to a particular entity, contact Sara Ayres, Office of Enforcement and Compliance Assurance, U.S. Environmental Protection Agency, EPA WJC South Building, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone number: (312) 353–6266; and email address: *ayres.sara@epa.gov.*

SUPPLEMENTARY INFORMATION:

Preamble acronyms and abbreviations. We use multiple acronyms and terms in this preamble. While this list may not be exhaustive, to ease the reading of this preamble and for reference purposes, the EPA defines the following terms and acronyms here:

CAA Clean Air Act
CFR Code of Federal Regulations
EPA Environmental Protection Agency
HAP hazardous air pollutant(s)
ICR Information Collection Request
km kilometer
MACT maximum achievable control technology
NAICS North American Industry Classification System
NESHAP national emission standards for hazardous air pollutants
NTTAA National Technology Transfer and Advancement Act
OMB Office of Management and Budget
PRA Paperwork Reduction Act
RFA Regulatory Flexibility Act
RFPC Railroad Friction Products Corporation
RTC response to comment
RTR residual risk and technology review
SSM startup, shutdown, and malfunction
tpy tons per year
UMRA Unfunded Mandates Reform Act

Background information. On May 3, 2018, the EPA proposed revisions to the Friction Materials Manufacturing Facilities NESHAP based on our RTR. In this action, we are finalizing decisions and revisions for the rule. We summarize some of the more significant comments we timely received regarding the proposed rule and provide our responses in this preamble. A summary of all other public comments on the proposal and the EPA's responses to those comments is available in ''Summary of Public Comments and Responses for Friction Materials Manufacturing Facilities Risk and Technology Review,'' Docket ID No. EPA–HQ–OAR–2017–0358. A ''track changes'' version of the regulatory language that incorporates the changes in this action is available in the docket.

Organization of this document. The information in this preamble is organized as follows:

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A. Does this action apply to me?
B. Where can I get a copy of this document and other related information?
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B. What is the Friction Materials Manufacturing Facilities source category and how does the NESHAP regulate HAP emissions from the source category?
C. What changes did we propose for the Friction Materials Manufacturing Facilities source category in our May 3, 2018, proposal?
III. What is included in this final rule?
A. What are the final rule amendments based on the risk review for the Friction Materials Manufacturing Facilities source category?
B. What are the final rule amendments based on the technology review for the Friction Materials Manufacturing Facilities source category?
C. What are the final rule amendments addressing emissions during periods of SSM?
D. What other changes have been made to the NESHAP?
E. What are the effective and compliance dates of the standards?
IV. What is the rationale for our final decisions and amendments for the Friction Materials Manufacturing Facilities source category?
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B. What are the air quality impacts?
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F. What analysis of environmental justice did we conduct?
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VI. Statutory and Executive Order Reviews
A. Executive Orders 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review
B. Executive Order 13771: Reducing Regulation and Controlling Regulatory Costs
C. Paperwork Reduction Act (PRA)
D. Regulatory Flexibility Act (RFA)
E. Unfunded Mandates Reform Act (UMRA)
F. Executive Order 13132: Federalism
G. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments
H. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks
I. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use
J. National Technology Transfer and Advancement Act (NTTAA)
K. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations
L. Congressional Review Act (CRA)

I. General Information

A. Does this action apply to me?

Regulated entities. Categories and entities potentially regulated by this action are shown in Table 1 of this preamble.

TABLE 1—NESHAP AND INDUSTRIAL SOURCE CATEGORIES AFFECTED BY THIS FINAL ACTION

NESHAP and source category	NAICS [1] code
Friction Materials Manufacturing Facilities.	33634, 327999, 333613.

[1] North American Industry Classification System.

Table 1 of this preamble is not intended to be exhaustive, but rather to provide a guide for readers regarding entities likely to be affected by the final action for the source category listed. To determine whether your facility is affected, you should examine the applicability criteria in the appropriate NESHAP. If you have any questions regarding the applicability of any aspect of this NESHAP, please contact the appropriate person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section of this preamble.

B. Where can I get a copy of this document and other related information?

In addition to being available in the docket, an electronic copy of this final action will also be available on the internet. Following signature by the EPA Administrator, the EPA will post a copy of this final action at: *https://*

www.epa.gov/stationary-sources-air-pollution/friction-materials-manufacturing-facilities-national-emission. Following publication in the **Federal Register**, the EPA will post the **Federal Register** version and key technical documents at this same website.

Additional information is available on the RTR website at *https://www.epa.gov/ttn/atw/rrisk/rtrpg.html.* This information includes an overview of the RTR program, links to project websites for the RTR source categories, and detailed emissions and other data we used as inputs to the risk assessments.

C. Judicial Review and Administrative Reconsideration

Under CAA section 307(b)(1), judicial review of this final action is available only by filing a petition for review in the United States Court of Appeals for the District of Columbia Circuit (the Court) by April 9, 2019. Under CAA section 307(b)(2), the requirements established by this final rule may not be challenged separately in any civil or criminal proceedings brought by the EPA to enforce the requirements.

Section 307(d)(7)(B) of the CAA further provides that only an objection to a rule or procedure which was raised with reasonable specificity during the period for public comment (including any public hearing) may be raised during judicial review. This section also provides a mechanism for the EPA to reconsider the rule if the person raising an objection can demonstrate to the Administrator that it was impracticable to raise such objection within the period for public comment or if the grounds for such objection arose after the period for public comment (but within the time specified for judicial review) and if such objection is of central relevance to the outcome of the rule. Any person seeking to make such a demonstration should submit a Petition for Reconsideration to the Office of the Administrator, U.S. EPA, Room 3000, EPA WJC South Building, 1200 Pennsylvania Ave. NW, Washington, DC 20460, with a copy to both the person(s) listed in the preceding **FOR FURTHER INFORMATION CONTACT** section, and the Associate General Counsel for the Air and Radiation Law Office, Office of General Counsel (Mail Code 2344A), U.S. EPA, 1200 Pennsylvania Ave. NW, Washington, DC 20460.

II. Background

A. What is the statutory authority for this action?

Section 112 of the CAA establishes a two-stage regulatory process to address emissions of hazardous air pollutants (HAP) from stationary sources. In the first stage, we must identify categories of sources emitting one or more of the HAP listed in CAA section 112(b) and then promulgate technology-based NESHAP for those sources. ''Major sources'' are those that emit, or have the potential to emit, any single HAP at a rate of 10 tons per year (tpy) or more, or 25 tpy or more of any combination of HAP. For major sources, these standards are commonly referred to as maximum achievable control technology (MACT) standards and must reflect the maximum degree of emission reductions of HAP achievable (after considering cost, energy requirements, and non-air quality health and environmental impacts). In developing MACT standards, CAA section 112(d)(2) directs the EPA to consider the application of measures, processes, methods, systems, or techniques, including, but not limited to, those that reduce the volume of or eliminate HAP emissions through process changes, substitution of materials, or other modifications; enclose systems or processes to eliminate emissions; collect, capture, or treat HAP when released from a process, stack, storage, or fugitive emissions point; are design, equipment, work practice, or operational standards; or any combination of the above.

For these MACT standards, the statute specifies certain minimum stringency requirements, which are referred to as MACT floor requirements, and which may not be based on cost considerations. See CAA section 112(d)(3). For new sources, the MACT floor cannot be less stringent than the emission control achieved in practice by the best-controlled similar source. The MACT standards for existing sources can be less stringent than floors for new sources, but they cannot be less stringent than the average emission limitation achieved by the best-performing 12 percent of existing sources in the category or subcategory (or the best-performing five sources for categories or subcategories with fewer than 30 sources). In developing MACT standards, we must also consider control options that are more stringent than the floor under CAA section 112(d)(2). We may establish standards more stringent than the floor, based on the consideration of the cost of achieving the emissions reductions, any non-air quality health and environmental impacts, and energy requirements.

In the second stage of the regulatory process, the CAA requires the EPA to undertake two different analyses, which we refer to as the technology review and the residual risk review. Under the technology review, we must review the technology-based standards and revise them ''as necessary (taking into account developments in practices, processes, and control technologies)'' no less frequently than every 8 years, pursuant to CAA section 112(d)(6). Under the residual risk review, we must evaluate the risk to public health remaining after application of the technology-based standards and revise the standards, if necessary, to provide an ample margin of safety to protect public health or to prevent, taking into consideration costs, energy, safety, and other relevant factors, an adverse environmental effect. The residual risk review is required within 8 years after promulgation of the technology-based standards, pursuant to CAA section 112(f). In conducting the residual risk review, if the EPA determines that the current standards provide an ample margin of safety to protect public health, it is not necessary to revise the MACT standards pursuant to CAA section 112(f).[1] For more information on the statutory authority for this rule, see 83 FR 19499.

B. What is the Friction Materials Manufacturing Facilities source category and how does the NESHAP regulate HAP emissions from the source category?

The EPA promulgated the Friction Materials Manufacturing Facilities NESHAP on October 18, 2002 (67 FR 64498). The standards are codified at 40 Code of Federal Regulations (CFR) part 63, subpart QQQQQ. The Friction Materials Manufacturing Facilities industry consists of facilities that manufacture friction materials using a solvent-based process. Friction materials are used in the manufacture of products used to accelerate or decelerate objects. Products that use friction materials include, but are not limited to, disc brake pucks, disc brake pads, brake linings, brake shoes, brake segments, blocks, brake discs, clutch facings, and clutches. The source category covered by this MACT standard currently includes two facilities.

[1] The Court has affirmed this approach of implementing CAA section 112(f)(2)(A): *NRDC* v. *EPA,* 529 F.3d 1077, 1083 (D.C. Cir. 2008) (''If EPA determines that the existing technology-based standards provide an 'ample margin of safety,' then the Agency is free to readopt those standards during the residual risk rulemaking.'').

The affected source is each friction material manufacturing solvent mixer. The NESHAP regulates emissions of HAP through emission standards for solvent, which are emitted from solvent mixers. Facilities subject to the NESHAP must reduce the emissions by using solvent recovery or another approved method. The emission standards are the same for new and existing solvent mixers, but are different for small and large solvent mixers. The emission limit for new, reconstructed, and existing large solvent mixers requires each facility that operates a large solvent mixer to limit HAP solvent emissions to the atmosphere to no more than 30 percent of that which would otherwise be emitted in the absence of solvent recovery and/or solvent substitution, based on a 7-day block average. The emission limit for new, reconstructed, and existing small solvent mixers requires facilities operating small solvent mixers to limit HAP solvent emissions to the atmosphere to no more than 15 percent of that which would otherwise be emitted in the absence of solvent recovery and/or solvent substitution, based on a 7-day block average.

C. What changes did we propose for the Friction Materials Manufacturing Facilities source category in our May 3, 2018, proposal?

On May 3, 2018, the EPA published a proposed rule in the **Federal Register** for the Friction Materials Manufacturing Facilities NESHAP, 40 CFR part 63, subpart QQQQQ, that took into consideration the RTR analyses. In the proposed rule, we proposed revisions to the SSM provisions of the MACT rule in order to ensure that they are consistent with the Court decision in *Sierra Club* v. *EPA,* 551 F.3d 1019 (D.C. Cir. 2008), which vacated two provisions in the EPA's ''General Provisions'' implementing CAA section 112 at 40 CFR part 63, subpart A, that exempted sources from the requirement to comply with otherwise applicable CAA section 112(d) emission standards during periods of SSM. In addition, we proposed to revise the rule's reporting requirements for deviations.

III. What is included in this final rule?

This action finalizes the EPA's determinations pursuant to the RTR provisions of CAA section 112 for the Friction Materials Manufacturing Facilities source category. This action also finalizes other changes to the NESHAP, including amendments to the SSM provisions of the MACT rule and revisions to the rule's reporting requirements for deviations.

A. What are the final rule amendments based on the risk review for the Friction Materials Manufacturing Facilities source category?

The EPA proposed no changes to the 40 CFR part 63, subpart QQQQQ, NESHAP based on the risk review conducted pursuant to CAA section 112(f). We are finalizing our proposed determination that risks from the source category following implementation of MACT standards are acceptable, considering all the health information and factors evaluated, and also considering risk estimation uncertainty. The EPA received no new data or other information during the public comment period that affected our determinations. Therefore, we are not requiring additional controls and, thus, are not making any revisions to the existing standards, in order to meet the requirements of CAA section 112(f). (However, as previously noted, we are making limited changes in order to improve implementation and to conform our standards to the 2008 *Sierra Club* ruling regarding SSM.)

B. What are the final rule amendments based on the technology review for the Friction Materials Manufacturing Facilities source category?

We determined that there are no developments in practices, processes, and control technologies that warrant revisions to the MACT standards for this source category. The EPA received no new data or other information during the public comment period that affected our determinations. Therefore, we are not finalizing revisions to the MACT standards in order to meet the requirements of CAA section 112(d)(6). (Again, however, we are making limited changes for other purposes, as previously noted and explained in detail below.)

C. What are the final rule amendments addressing emissions during periods of SSM?

In its 2008 decision in *Sierra Club* v. *EPA,* 551 F.3d 1019 (D.C. Cir. 2008), the Court vacated portions of two provisions in the EPA's CAA section 112 ''General Provisions'' regulations governing the emissions of HAP during periods of SSM. Specifically, the Court vacated the SSM exemption contained in 40 CFR 63.6(f)(1) and 40 CFR 63.6(h)(1), holding that under section 302(k) of the CAA, emissions standards or limitations must be continuous in nature and that the SSM exemption violates the CAA's requirement that some CAA section 112 standards apply continuously.

We have eliminated the SSM exemption in this rule. Consistent with *Sierra Club* v. *EPA,* the EPA has established standards in this rule that apply at all times. We have also revised Table 4 to subpart QQQQQ of Part 63 (the General Provisions applicability table) in several respects as is explained in more detail below. For example, we have eliminated the incorporation of the General Provisions' requirement that the source develop an SSM plan. We have also eliminated and revised certain recordkeeping and reporting that are related to the SSM exemption as described in detail in the proposal and summarized below.

D. What other changes have been made to the NESHAP?

The EPA is promulgating revisions to the rule's reporting requirements at 40 CFR 63.9540(c)(2) for deviations by requiring facilities to now report the date, time, a list of affected sources or equipment, an estimate of the quantity of each regulated pollutant emitted over any emission limit, a description of the method used to estimate the emissions, and the corrective action taken. In addition, facilities must continue to report the number, duration, and cause of deviations (including unknown cause, if applicable). To see how the revised regulatory text compares to the previous text, see the document, ''Redline Version Showing Proposed Changes to 40 CFR part 63 subpart QQQQQ,'' presenting 40 CFR 63.9540(c)(2), in Docket ID No. EPA–HQ–OAR–2017–0358.

E. What are the effective and compliance dates of the standards?

The revisions to the NESHAP being promulgated in this action are effective on February 8, 2019. The compliance date for existing affected sources, whether subject to the existing or new source limits in the original rule, to comply with the revised requirements is no later than 180 days after the effective date of the final rule. Affected sources that commenced construction or reconstruction after May 3, 2018, must comply with the all of the standards immediately upon the effective date of the standard, February 8, 2019, or upon startup, whichever is later.

All affected existing facilities would have to continue to meet the current requirements of 40 CFR part 63, subpart QQQQQ, until the applicable compliance date of the amended rule. The final action is not a ''major rule'' as defined by 5 U.S.C. 804(2), so the effective date of the final rule will be the promulgation date as specified in CAA sections 112(d)(10) and 112(f)(3). For

existing sources, we are finalizing two changes that would impact ongoing compliance requirements for 40 CFR part 63, subpart QQQQQ. As discussed elsewhere in this preamble, we are changing the requirements for SSM by removing the exemption from the requirements to meet the standard during SSM periods and by removing the requirement to develop and implement an SSM plan. Our experience with similar industries shows that this sort of regulated facility generally requires a time period of 180 days to read and understand the amended rule requirements; evaluate their operations to ensure that they can meet the standards during periods of startup and shutdown as defined in the rule, and make any necessary adjustments in their practice of reporting deviations per the rule's revised requirements; adjust parameter monitoring and recording systems to accommodate revisions; and update their operations to reflect the revised requirements. From our assessment of the timeframe needed for compliance with the entirety of the revised requirements, the EPA considers a period of 180 days to be the most expeditious compliance period practicable and, thus, is finalizing that existing affected sources must be in compliance with all of this regulation's revised requirements within 180 days of the regulation's effective date.

IV. What is the rationale for our final decisions and amendments for the Friction Materials Manufacturing Facilities source category?

For each issue, this section provides a description of what we proposed and what we are finalizing, the EPA's rationale for the final decisions and amendments, and a summary of key comments and responses. For all comments not discussed in this preamble, comment summaries and the EPA's responses can be found in the comment summary and response document available in the docket, EPA–HQ–OAR–2017–0358.

A. Residual Risk Review for the Friction Materials Manufacturing Facilities Source Category

1. What did we propose pursuant to CAA section 112(f) for the Friction Materials Manufacturing Facilities source category?

For the 40 CFR part 63, subpart QQQQQ, category risk assessment conducted at proposal, the EPA estimated risks based on actual and allowable emissions from the two facilities subject to the Friction Materials Manufacturing Facilities NESHAP. Allowable emissions for the Railroad Friction Products Corporation (RFPC) at proposal were estimated to be equal to actual emissions. Allowable emissions for Knowlton Technologies LLC were set to the standard minimum of 70 percent of what otherwise would be emitted. The estimated inhalation cancer risk to the individual most exposed to emissions from the source category was less than 1-in-1-million. The assessment showed that no people faced an increased cancer risk greater than 1-in-1 million due to inhalation exposure to HAP emissions from this source category. The risk analysis at proposal indicated very low cancer incidence (0.000005 excess cancer cases per year, or one excess case every 200,000 years), as well as low potential for adverse chronic noncancer health effects. The acute screening assessment indicated no pollutants or facilities exceeding a hazard quotient value of 1. Therefore, we found there was little potential concern of acute noncancer health impacts. In evaluating the potential for multipathway effects, no HAP emissions known to be persistent and bio-accumulative in the environment were found in this source category. Therefore, we estimate that there is no multipathway risk from HAP emissions from this source category. Considering all the health risk information, the EPA proposed that the risks from the Friction Materials Manufacturing Facilities source category were acceptable, and that implementation of the existing standards provide an ample margin of safety to protect public health.

2. How did the risk review change for the Friction Materials Manufacturing Facilities source category?

In response to comments on the proposed 40 CFR part 63, subpart QQQQQ RTR, the EPA acknowledges that, although the EPA's method of calculating cancer incidence was implemented correctly, with the results presented correctly in the RTR risk report, we agree that the average risk values provided for the demographic analysis were calculated incorrectly. The EPA corrected the values for the demographics analysis and provided those corrections in the final RTR risk report for this source category. After making this correction, the EPA finds that the risks presented by HAP emissions from this source category are still acceptable and that the NESHAP protects public health with an ample margin of safety. The demographic analysis provides information about the demographic composition of the populations exposed to HAP emissions from this source category. The correction to the average risk values for the demographic analysis did not affect any decision in this rulemaking. All other parts of the risk review remained unchanged from proposal.

3. What key comments did we receive on the risk review, and what are our responses?

We received several comments regarding the proposed risk review and our determination that no revisions were warranted under CAA section 112(f)(2). Generally, the comments misunderstood the type of data used for the development of the risk review or suggested changes to the underlying risk assessment methodology. After review of these comments, we determined that no changes were necessary. The comments and our specific responses can be found in the document, ''Summary of Public Comments and Responses for Friction Materials Manufacturing Facilities Risk and Technology Review,'' which is available in the docket for this action.

These comments resulted in the EPA correcting the demographic analysis, which did not result in a change in the EPA's determination that the risks for this source category are acceptable and that the NESHAP protects public health with an ample margin of safety.

Additionally, a stakeholder commented on how the EPA set allowable emissions equal to actual emissions at RFPC. The EPA agrees with the stakeholder that allowable emissions should have been calculated by setting the solvent mixer emissions at 30 percent of the total solvent used, which is the requirement in the rule. However, this would result in a lower emissions calculation than what was used at proposal to estimate risk at allowable emission levels. Therefore, the EPA has determined that the proposal risk estimates for allowable emissions were overestimated, and, since we found that even with this overestimate that risks are acceptable and that the current standards provide an ample margin of safety, it is not necessary to re-run the model file in order to reflect such a correction.

Lastly, one comment resulted in the EPA clarifying the inclusion of emissions that do not come from affected sources in the source category. The stakeholder points out that the EPA assumes fugitive emissions are controlled under this standard. The EPA clarifies in the response to comments (RTC) document that phenol and formaldehyde emissions from Knowlton are non-affected source fugitive

emissions. Including phenol and formaldehyde in the risk model results in a conservative assessment of risk presented by emissions that do not come from the affected sources in the source category, but from other points at the facility that are not subject to this NESHAP.

4. What is the rationale for our final approach and final decisions for the risk review?

We evaluated all the comments on the EPA's risk review and determined that other than the change in the demographic analysis calculation, which did not result in a change to the risk determination, no changes to the review are needed. For the reasons explained in the proposed rule, we determined that the risks from the Friction Materials Manufacturing Facilities source category are acceptable, and the current standards provide an ample margin of safety to protect public health and prevent an adverse environmental effect. Therefore, pursuant to CAA section 112(f)(2), we are finalizing our risk review determination as proposed.

B. Technology Review for the Friction Materials Manufacturing Facilities Source Category

1. What did we propose pursuant to CAA section 112(d)(6) for the Friction Materials Manufacturing Facilities source category?

Our review of the developments in technology for the Friction Materials Manufacturing Facilities source category did not reveal any changes in practices, processes, and controls that warrant revisions to the emission standards. Because our review did not identify any cost-effective practices, processes, or controls to reduce emissions in the category since promulgation of the current NESHAP, we proposed that no revisions to the NESHAP are necessary pursuant to CAA section 112(d)(6).

2. How did the technology review change for the Friction Materials Manufacturing Facilities source category?

The technology review did not change from proposal. Therefore, we are finalizing our proposal determination that no revisions to the NESHAP are necessary pursuant to CAA section 112(d)(6).

3. What key comments did we receive on the technology review, and what are our responses?

We received several comments regarding the proposed technology review and our determination that no revisions were warranted under CAA section 112(d)(6). We received no comments that identified improved control technology, work practices, operational procedures, process changes, or pollution prevention approaches to reduce emissions in the category since promulgation of the current NESHAP. Generally, the commenters misunderstood the role of the technology review and the associated evaluations of technological advancements. After review of these comments, we determined that no changes were necessary. The comments and our specific responses can be found in the document, ''Summary of Public Comments and Responses for Friction Materials Manufacturing Facilities Risk and Technology Review,'' which is available in the docket for this action.

Of the comments pertaining to the technology review, there were several comments that addressed the EPA's discussion of non-solvent mixers. Several comments addressed the concern that the EPA was appearing to endorse facilities' averaging among mixers in order to comply with the standard. The EPA stated in the RTC document and reiterates here that compliance determinations are not part of the RTR, that the current standards apply on a mixer-by-mixer basis, and that the EPA is not proposing any changes to the source category or affected source definitions in this action.

4. What is the rationale for our final approach for the technology review?

Our technology review looked for add-on control technology that was not identified during the original NESHAP development and for improvements to existing add-on controls. We also looked for new work practices, operational procedures, process changes, pollution prevention alternatives, coating formulations, or application techniques that have the potential to reduce emissions. Since our review did not identify any cost-effective improved control technology, work practices, operational procedures, process changes, or pollution prevention approaches to reduce emissions in the category since promulgation of the current NESHAP, we proposed that no revisions to the NESHAP are necessary pursuant to CAA section 112(d)(6). Since proposal, no information has been presented to cause us to change the proposed determination. Consequently, we are finalizing our CAA section 112(d)(6) determination as proposed.

C. SSM

1. What did we propose for the Friction Materials Manufacturing Facilities source category?

In its 2008 decision in *Sierra Club* v. *EPA,* 551 F.3d 1019 (D.C. Cir. 2008), the Court vacated portions of two provisions in the EPA's CAA section 112 General Provisions regulations governing the emissions of HAP during periods of SSM. Specifically, the Court vacated the SSM exemption contained in 40 CFR 63.6(f)(1) and 40 CFR 63.6(h)(1), holding that under section 302(k) of the CAA, emissions standards or limitations must be continuous in nature and that the SSM exemption violates the CAA's requirement that some CAA section 112 standards apply continuously.

We proposed amendments to the Friction Materials Manufacturing Facilities NESHAP to remove or revise provisions related to SSM that are not consistent with the requirement that the standards apply at all times. More information concerning SSM is in the preamble to the proposed rule (83 FR 19499).

2. How did the SSM provisions change for the Friction Materials Manufacturing Facilities source category?

The SSM provisions did not change from proposal.

3. What key comments did we receive on the SSM provisions, and what are our responses?

We received one comment supporting our proposed changes to the SSM provisions. The EPA acknowledges the comment supporting the proposed changes.

4. What is the rationale for our final approach for the SSM provisions?

We evaluated the comment on the EPA's proposed amendments to the SSM provisions. For the reasons explained in the proposed rule, we determined that these amendments remove or revise provisions related to SSM that are not consistent with the requirement that the standards apply at all times. More information concerning the proposed amendments to the SSM provisions is in the preamble to the proposed rule (83 FR 19499). We are finalizing the amendments to remove or revise provisions related to SSM, as proposed.

V. Summary of Cost, Environmental, and Economic Impacts and Additional Analyses Conducted

A. What are the affected facilities?

There are currently two friction materials manufacturing facilities operating in the United States that are subject to the Friction Materials Manufacturing Facilities NESHAP. The 40 CFR part 63, subpart QQQQQ, affected source is the solvent mixers used for friction manufacturing products. A new affected source is a completely new friction products manufacturing source where previously no friction products manufacturing had existed.

B. What are the air quality impacts?

At the current level of control, the EPA estimates emissions of total HAP are approximately 240 tpy. Because we are not finalizing revisions to the emission limits other than to make them applicable during SSM periods, we do not anticipate any air quality impacts as a result of the proposed amendments, since facilities are already in compliance with emission limits during all periods, including SSM.

C. What are the cost impacts?

The two existing friction materials manufacturing facilities that are subject to the final amendments would incur a net cost savings resulting from the revised recordkeeping and reporting requirements. The 2016 equivalent annualized value (in 2016 dollars) of these net cost savings from 2019 through 2026 is $5,920 per year when costs are discounted at a 7-percent rate, and $6,648 per year when costs are discounted at a 3-percent rate. For further information on the costs and cost savings associated with the requirements being revised, see the memorandum, ''Economic Impact Analysis for Friction Material Manufacturing Final Rule,'' and the document, ''Friction Materials Manufacturing 2018 Supporting Statement,'' which are both available in the docket for this action.

D. What are the economic impacts?

As noted earlier, this action will result in a net cost savings to affected entities. This cost savings is not expected to have adverse economic impacts.

E. What are the benefits?

The EPA did not change any of the emission limit requirements and estimates the final changes to SSM, recordkeeping, reporting, and monitoring are not economically significant. Because these final amendments are not considered economically significant, as defined by Executive Order 12866 and because no emission reductions were estimated, we did not estimate any benefits from reducing emissions.

F. What analysis of environmental justice did we conduct?

Executive Order 12898 (59 FR 7629, February 16, 1994) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

To examine the potential for any environmental justice issues that might be associated with the source category, we performed a demographic analysis, which is an assessment of risks to individual demographic groups of the populations living within 5 kilometers (km) and within 50 km of the facilities. In the analysis, we evaluated the distribution of HAP-related cancer and noncancer risks from the Friction Materials Manufacturing Facilities source category across different demographic groups within the populations living near facilities.[2]

The results of the demographic analysis was updated from proposal to reflect corrections made to the analysis from comments received by the EPA and are summarized in Table 2 below. These results, for various demographic groups, are based on the estimated risks from actual emissions levels for the population living within 50 km of the facilities.

TABLE 2—FRICTION MATERIALS MANUFACTURING FACILITIES SOURCE CATEGORY DEMOGRAPHIC RISK ANALYSIS RESULTS

	Nationwide	Population with cancer risk at or above 1-in-1 million due to Friction Materials Manufacturing Facilities [1]	Population with chronic hazard index above 1 Friction Materials Manufacturing Facilities
Total Population	317,746,049	0	0
Race by Percent:			
White	62	0	0
All Other Races	38	0	0
Race by Percent:			
White	62	0	0
African American	12	0	0
Native American	0.8	0	0
Other and Multiracial	7	0	0
Ethnicity by Percent:			
Hispanic	18	0	0
Non-Hispanic	82	0	0
Income by Percent:			
Below Poverty Level	14	0	0
Above Poverty Level	86	0	0
Education by Percent:			

[2] Demographic groups included in the analysis are: White, African American, Native American, other races and multiracial, Hispanic or Latino, children 17 years of age and under, adults 18 to 64 years of age, adults 65 years of age and over, adults without a high school diploma, people living below the poverty level, people living two times the poverty level, and linguistically isolated people.

TABLE 2—FRICTION MATERIALS MANUFACTURING FACILITIES SOURCE CATEGORY DEMOGRAPHIC RISK ANALYSIS RESULTS—Continued

	Nationwide	Population with cancer risk at or above 1-in-1 million due to Friction Materials Manufacturing Facilities [1]	Population with chronic hazard index above 1 Friction Materials Manufacturing Facilities
Over 25 and without High School Diploma	14	0	0
Over 25 and with a High School Diploma	86	0	0
Linguistically Isolated by Percent:			
Linguistically Isolated	6	0	0

[1] Based on actual emissions in the category.

The results of the Friction Materials Manufacturing Facilities source category demographic analysis indicate that emissions from the source category do not expose people to a cancer risk at or above 1-in-1 million based on actual or allowable emissions. Also, no people are exposed to a chronic noncancer target organ-specific hazard index greater than 1 based on actual or allowable emissions. The percentages of the at-risk population are much smaller than their respective nationwide percentages for all demographic groups.

The EPA received comment on our proposed rule stating that we ignored unacceptably disproportionate effects on environmental justice communities. As noted above, we corrected our demographic analysis. For this source category, cancer risks were less than 1-in-1 million and the noncancer hazards were less than 1. At these risk levels, all populations are exposed to an acceptable level with an ample margin of safety without any demographic group (including Native American Indians) being disproportionately impacted. A more detailed demographic risk analysis may be conducted at the facility level if risk findings for the source category indicate a level that is unacceptable without an ample margin of safety.

The EPA has, therefore, reaffirmed its determination that this final rule will not have disproportionately high and adverse human health or environmental effects on minority, low income, or indigenous populations because it maintains the level of environmental protection for all affected populations without having any disproportionately high and adverse human health or environmental effects on any population, including any minority, low income, or indigenous populations.

The methodology and the results of the demographic analysis are presented in a technical report, ''Risk and Technology Review—Analysis of Demographic Factors for Populations Living Near Friction Materials Manufacturing Facilities Source Category,'' available in Docket ID No. EPA–HQ–OAR–2017–0358 for this action.

G. What analysis of children's environmental health did we conduct?

This action is not subject to Executive Order 13045 because it is not economically significant as defined in Executive Order 12866, and because the EPA does not believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. This action's health and risk assessments are contained in ''Residual Risk Assessment for the Friction Materials Manufacturing Facilities Source Category in Support of the 2018 Risk and Technology Review Final Rule,'' available in Docket ID No. EPAHQ–OAR–2017–0358 for this action.

VI. Statutory and Executive Order Reviews

Additional information about these statutes and Executive Orders can be found at *https://www.epa.gov/laws-regulations/laws-and-executive-orders.*

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

This action is not a significant regulatory action and was, therefore, not submitted to the Office of Management and Budget (OMB) for review.

B. Executive Order 13771: Reducing Regulations and Controlling Regulatory Costs

This action is considered an Executive Order 13771 deregulatory action. Details on the estimated cost savings of this final rule can be found in the EPA's analysis of the potential costs and benefits associated with this action.

C. Paperwork Reduction Act (PRA)

The information collection activities in this rule have been submitted for approval to OMB under the PRA. The Information Collection Request (ICR) document that the EPA prepared has been assigned EPA ICR number 2025.08. You can find a copy of the ICR in the docket for this rule, and it is briefly summarized here. The information collection requirements are not enforceable until OMB approves them.

We are finalizing changes to the recordkeeping and reporting requirements associated with 40 CFR part 63, subpart QQQQQ, in the form of eliminating the SSM plan and reporting requirements and increasing reporting requirements for the semiannual report of deviation. We also recalculated the estimated recordkeeping burden for records of SSM to more accurately represent the removal of the SSM exemption, which is discussed in more detail in the memorandum, ''Email Correspondence Estimating the Cost of SSM Reporting with Knowlton Technologies, LLC.''

Respondents/affected entities: The respondents to the recordkeeping and reporting requirements are owners or operators of facilities that produce friction products subject to 40 CFR part 63, subpart QQQQQ.

Respondent's obligation to respond: Mandatory (40 CFR part 63, subpart QQQQQ).

Estimated number of respondents: Two facilities.

Frequency of response: Initially and semiannually.

Total estimated burden: The annual recordkeeping and reporting burden for responding facilities to comply with all of the requirements in the NESHAP, averaged over the 3 years of this ICR, is estimated to be 535 hours (per year). Of these, 115 hours (per year) is the reduced burden to comply with the rule amendments. Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: The annual recordkeeping and reporting cost for responding facilities to comply with all of the requirements in the NESHAP, averaged over the 3 years of this ICR, is estimated to be $35,200 (rounded, per year), including $544 annualized capital or operation and maintenance costs. This results in a decrease of $7,400 (rounded, per year) to comply with the amendments to the rule.

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 OMB control numbers for the EPA's regulations in 40 CFR are listed in 40 CFR part 9. When OMB approves this ICR, the Agency will announce that approval in the **Federal Register** and publish a technical amendment to 40 CFR part 9 to display the OMB control number for the approved information collection activities contained in this final rule.

D. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. This action will not impose any requirements on small entities. There are no small entities in this regulated industry.

E. Unfunded Mandates Reform Act (UMRA)

This action does not contain an unfunded mandate of $100 million or more as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. The action imposes no enforceable duty on any state, local, or tribal governments, or the private sector.

F. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

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

This action does not have tribal implications as specified in Executive Order 13175. No tribal facilities are known to be engaged in the friction material manufacturing industry that would be affected by this action. Thus, Executive Order 13175 does not apply to this action.

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

This action is not subject to Executive Order 13045 because it is not economically significant as defined in Executive Order 12866, and because the EPA does not believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. This action's health and risk assessments are contained in sections III.A and IV.A and B of this preamble.

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

This action is not subject to Executive Order 13211 because it is not a significant regulatory action under Executive Order 12866.

J. National Technology Transfer and Advancement Act (NTTAA)

This action involves technical standards. Therefore, the EPA conducted a search to identify potentially applicable voluntary consensus standards. However, the Agency identified no such standards. Therefore, the EPA has decided to continue the use of the weighing procedures based on EPA Method 28 of 40 CFR part 60, appendix A (section 10.1) for weighing of recovered solvent. A thorough summary of the search conducted and results are included in the memorandum titled ''Voluntary Consensus Standard Results for Friction Materials Manufacturing Facilities Residual Risk and Technology Review,'' which is available in the docket for this action.

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

The EPA believes that this action does not have disproportionately high and adverse human health or environmental effects on minority populations, low-income populations, and/or indigenous peoples, as specified in Executive Order 12898 (59 FR 7629, February 16, 1994).

The documentation for this decision is contained in the technical report, ''Friction Materials Manufacturing Demographic Analysis,'' which is available in the docket for this action.

L. Congressional Review Act (CRA)

This action is subject to the CRA, and the EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 63

Environmental protection, Administrative practice and procedures, Air pollution control, Hazardous substances, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: December 20, 2018.

Andrew R. Wheeler,

Acting Administrator.

For the reasons stated in the preamble, title 40, chapter I, part 63 of the Code of Federal Regulations is amended as follows:

PART 63—NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS FOR SOURCE CATEGORIES

■ 1. The authority citation for part 63 continues to read as follows:

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

Subpart QQQQQ—National Emission Standards for Hazardous Air Pollutants for Friction Materials Manufacturing Facilities

■ 2. Section 63.9495 is amended by revising paragraphs (a) and (b) and adding paragraph (e) to read as follows:

§ 63.9495 When do I have to comply with this subpart?

(a) If you have an existing solvent mixer, you must comply with each of the requirements for existing sources no later than October 18, 2005, except as otherwise specified at this section and §§ 63.9505, 63.9530, 63.9540, 63.9545, and Table 1 to this subpart.

(b) If you have a new or reconstructed solvent mixer for which construction or reconstruction commenced after October 18, 2002, but before May 4, 2018, you must comply with the requirements for new and reconstructed sources upon initial startup, except as otherwise specified at this section and §§ 63.9505, 63.9530, 63.9540, 63.9545, and Table 1 to this subpart.

* * * * *

(e) Solvent mixers constructed or reconstructed after May 3, 2018, must be in compliance with this subpart at startup or by February 8, 2019, whichever is later.

■ 3. Revise § 63.9505 to read as follows:

§ 63.9505 What are my general requirements for complying with this subpart?

(a) Before August 7, 2019, for each existing source and each new or reconstructed source for which construction or reconstruction commenced after October 18, 2002, but

before May 4, 2018, you must be in compliance with the emission limitations in this subpart at all times, except during periods of startup, shutdown, or malfunction. On and after August 7, 2019, for each such source you must be in compliance with the emission limitations in this subpart at all times. For new and reconstructed sources for which construction or reconstruction commenced after May 3, 2018, you must be in compliance with the emissions limitations in this subpart at all times.

(b) Before August 7, 2019, for each existing source, and for each new or reconstructed source for which construction or reconstruction commenced after October 18, 2002, but before May 4, 2018, you must always operate and maintain your affected source, including air pollution control and monitoring equipment, according to the provisions in § 63.6(e)(1)(i). On and after August 7, 2019 for each such source, and after February 8, 2019 for new and reconstructed sources for which construction or reconstruction commenced after May 3, 2018, at all times you must operate and maintain any affected source, including associated air pollution control equipment and monitoring equipment, in a manner consistent with safety and good air pollution control practices for minimizing emissions. The general duty to minimize emissions does not require you to make any further efforts to reduce emissions if levels required by the applicable standard have been achieved. Determination of whether a source is operating in compliance with operation and maintenance requirements will be based on information available to the Administrator which may include, but is not limited to, monitoring results, review of operation and maintenance procedures, review of operation and maintenance records, and inspection of the source.

(c) Before August 7, 2019, for each existing source, and for each new or reconstructed source for which construction commenced after October 18, 2002, but before May 4, 2018, you must develop a written startup, shutdown, and malfunction plan according to the provisions in § 63.6(e)(3). For each such source, a startup, shutdown, and malfunction plan is not required on and after August 7, 2019. No startup, shutdown, and malfunction plan is required for any new or reconstructed source for which construction or reconstruction commenced after May 3, 2018.

■ 4. Section 63.9530 is amended by revising paragraphs (a)(1) and (e) to read as follows:

§ 63.9530 How do I demonstrate continuous compliance with the emission limitation that applies to me?

(a) * * *

(1) For existing sources and for new or reconstructed sources for which construction or reconstruction commenced after October 18, 2002, but before May 4, 2018, before August 7, 2019, except for during malfunctions of your weight measurement device and associated repairs, you must collect and record the information required in § 63.9520(a)(1) through (8) at all times that the affected source is operating and record all information needed to document conformance with these requirements. On and after August 7, 2019 for such sources, and after February 8, 2019 for new or reconstructed sources that commenced construction after May 3, 2018, you must collect and record the information required in § 63.9520(a)(1) through (8) at all times that the affected source is operating and record all information needed to document conformance with these requirements.

* * * * *

(e) For existing sources and for new or reconstructed sources which commenced construction or reconstruction after October 18, 2002, but before May 4, 2018, before August 7, 2019, consistent with §§ 63.6(e) and 63.7(e)(1), deviations that occur during a period of startup, shutdown, or malfunction are not violations if you demonstrate to the Administrator's satisfaction that you were operating in accordance with § 63.6(e)(1). The Administrator will determine whether deviations that occur during a period of startup, shutdown, or malfunction are violations, according to the provisions in § 63.6(e). On and after August 7, 2019 for such sources, and after February 8, 2019 for new or reconstructed sources which commence construction or reconstruction after May 3, 2018, all deviations are considered violations.

■ 5. Section 63.9540 is amended by revising paragraphs (b)(4), (c)(2), and (d) to read as follows:

§ 63.9540 What reports must I submit and when?

* * * * *

(b) * * *

(4) For existing sources and for new or reconstructed sources for which construction or reconstruction commenced after October 18, 2002, but before May 4, 2018, before August 7, 2019, if you had a startup, shutdown, or malfunction during the reporting period and you took actions consistent with your startup, shutdown, and malfunction plan, the compliance report must include the information in § 63.10(d)(5)(i). A startup, shutdown, and malfunction plan is not required for such sources on and after August 7, 2019.

* * * * *

(c) * * *

(2) For existing sources and for new or reconstructed sources which commenced construction or reconstruction after October 18, 2002, but before May 4, 2018, before August 7, 2019, information on the number, duration, and cause of deviations (including unknown cause, if applicable), as applicable, and the corrective action taken. On and after August 7, 2019 for such sources, and after February 8, 2019 for new or reconstructed sources which commenced construction or reconstruction after May 3, 2018, information on the number of deviations to meet an emission limitation. For each instance, include the date, time, duration, and cause of deviations (including unknown cause, if applicable), as applicable, a list of the affected source or equipment, an estimate of the quantity of each regulated pollutant emitted over any emission limit, and a description of the method used to estimate the emissions, and the corrective action taken.

(d) For existing sources and for new or reconstructed sources which commenced construction or reconstruction after October 18, 2002, but before May 4, 2018, before August 7, 2019, if you had a startup, shutdown, or malfunction during the semiannual reporting period that was not consistent with your startup, shutdown, and malfunction plan, you must submit an immediate startup, shutdown, and malfunction report according to the requirements in § 63.10(d)(5)(ii). An immediate startup, shutdown, and malfunction report is not required for such sources on and after August 7, 2019.

* * * * *

■ 6. Section 63.9545 is amended by revising paragraph (a)(2) and adding paragraph (a)(3) to read as follows:

§ 63.9545 What records must I keep?

(a) * * *

(2) For existing sources and for new or reconstructed sources which commenced construction or reconstruction after October 18, 2002, but before May 4, 2018, before August 7, 2019, the records in § 63.6(e)(3)(iii)

through (v) related to startup, shutdown, or malfunction. For such sources, it is not required to keep records in § 63.6(e)(3)(iii) through (v) related to startup, shutdown, or malfunction on and after August 7, 2019.

(3) After February 8, 2019 for new or reconstructed sources which commenced construction or reconstruction after May 3, 2018, and on and after August 7, 2019 for all other affected sources, in the event that an affected unit fails to meet an applicable standard, record the number of deviations. For each deviation, record the date, time and duration of each deviation.

(i) For each deviation, record and retain cause of deviations (including unknown cause, if applicable), a list of the affected source or equipment, an estimate of the quantity of each regulated pollutant emitted over any emission limit, and a description of the method used to estimate the emissions.

(ii) Record actions taken to minimize emissions in accordance with § 63.9505, and any corrective actions taken to return the affected unit to its normal or usual manner of operation.

* * * * *

■ 7. Table 1 to subpart QQQQQ of part 63 is amended by:

■ a. Removing the entry ''§ 63.6(a)–(c), (e)–(f), (i)–(j)'';

■ b. Adding the entries ''§ 63.6(a)–(c), (i)–(j)'', ''§ 63.6(e)(1)(i)–(ii)'', ''§ 63.6(e)(1)(iii), (e)(2)'', ''§ 63.6(e)(3)'', ''§ 63.6(f)(1)'', and ''§ 63.6(f)(2)–(3)'' in numerical order;

■ c. Removing the entry ''§ 63.8(a)(1)–(2), (b), (c)(1)–(3), (f)(1)–(5)'';

■ d. Adding the entries ''§ 63.8(a)(1)–(2)'', ''§ 63.8(b)'', ''§ 63.8(c)(1)(i), (iii)'', ''§ 63.8(c)(1)(ii), (c)(2), (c)(3)'', and ''§ 63.8(f)(1)–(5)'' in numerical order;

■ e. Removing the entry ''§ 63.10(a), (b), (d)(1), (d)(4)–(5), (e)(3), (f)''; and

■ f. Adding the entries ''§ 63.10(a), (b)(1), (d)(1), (d)(4), (e)(3), (f)'', ''§ 63.10(b)(2)(i), (ii), (iv), (v)'', ''§ 63.10(b)(2)(iii), (vi)–(xiv)'', and ''§ 63.10(d)(5)'' in numerical order.

The revisions and additions read as follows:

TABLE 1 TO SUBPART QQQQQ OF PART 63—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART QQQQQ

* * * * * * *

Citation	Subject	Applies to subpart QQQQQ?	Explanation
*	*	*	*
§ 63.6(a)–(c), (i)–(j).	Compliance with Standards and Maintenance Requirements.	Yes.	
*	*	*	*
§ 63.6(e)(1)(i)–(ii)	SSM Operation and Maintenance Requirements.	No, for new or reconstructed sources which commenced construction or reconstruction after May 3, 2018. Yes, for all other affected sources before August 7, 2019, and No thereafter.	Subpart QQQQQ requires affected units to meet emissions standards at all times. See § 63.9505 for general duty requirement.
§ 63.6(e)(1)(iii), (e)(2).	Operation and Maintenance.	Yes.	
§ 63.6(e)(3)	SSM Plan Requirements.	No, for new or reconstructed sources which commenced construction or reconstruction after May 3, 2018. Yes, for all other affected sources before August 7, 2019, and No thereafter.	Subpart QQQQQ requires affected units to meet emissions standards at all times.
§ 63.6(f)(1)	SSM Exemption	No, for new or reconstructed sources which commenced construction or reconstruction after May 3, 2018. Yes, for all other affected sources before August 7, 2019, and No thereafter.	Subpart QQQQQ requires affected units to meet emissions standards at all times.
§ 63.6(f)(2)–(3) ..	Compliance with Nonopacity Emission Standards.	Yes.	
*	*	*	*
§ 63.8(a)(1)–(2)	Applicability and Relevant Standards for CMS.	Yes.	
*	*	*	*
§ 63.8(b)	Conduct of Monitoring.	Yes.	
§ 63.8(c)(1)(i), (iii).	Continuous Monitoring System (CMS) SSM Requirements.	No, for new or reconstructed sources which commenced construction or reconstruction after May 3, 2018. Yes, for all other affected sources before August 7, 2019, and No thereafter..	
§ 63.8(c)(1)(ii), (c)(2), (c)(3).	CMS Repairs, Operating Parameters, and Performance Tests.	Yes.	
*	*	*	*
§ 63.8(f)(1)–(5) ..	Alternative Monitoring Procedure.	Yes.	

TABLE 1 TO SUBPART QQQQQ OF PART 63—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART QQQQQ—Continued

Citation	Subject	Applies to subpart QQQQQ?	Explanation
*	*	*	*
§ 63.10(a), (b)(1), (d)(1), (d)(4), (e)(3), (f).	Recordkeeping and Reporting Requirements.	Yes.	
*	*	*	*
§ 63.10(b)(2)(i), (ii), (iv), (v).	Recordkeeping for Startup, Shutdown and Malfunction.	No, for new or reconstructed sources which commenced construction or reconstruction after May 3, 2018. Yes, for all other affected sources before August 7, 2019, and No thereafter.	See § 63.9545 for recordkeeping requirements.
§ 63.10(b)(2)(iii), (vi)–(xiv).	Owner/Operator Recordkeeping Requirements.	Yes.	
*	*	*	*
§ 63.10(d)(5)	SSM reports	No, for new or reconstructed sources which commenced construction or reconstruction after May 3, 2018. Yes, for all other affected sources before August 7, 2019, and No thereafter.	See § 63.9540 for malfunction reporting requirements.
*	*	*	*

[FR Doc. 2019–00786 Filed 2–7–19; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 0, 1, 5, 73, and 74

[MB Docket No. 18–121; FCC 18–174]

Posting of Station Licenses and Related Information

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Federal Communications Commission (FCC or Commission) eliminates provisions of our rules that require broadcasters to post and maintain copies of their licenses and related information in specific locations. These rules have become redundant and obsolete now that licensing information is readily accessible online through the Commission's databases, including CDBS, LMS, and ULS. It therefore finds that eliminating these rules, which apply in some form to all broadcast licensees, will serve the public interest.

DATES: Effective February 8, 2019.

FOR FURTHER INFORMATION CONTACT: For additional information, contact Jonathan Mark, *Jonathan.Mark@fcc.gov,* of the Media Bureau, Policy Division, (202) 418–3634. Direct press inquiries to Janice Wise at (202) 418–8165.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order (*Order*), FCC 18–174, adopted December 10, 2018 and released on December 11, 2018. The full text of this document is available electronically via the FCC's Electronic Document Management System (EDOCS) website at *http://fjallfoss.fcc.gov/edocs_public/* or via the FCC's Electronic Comment Filing System (ECFS) website at *http://fjallfoss.fcc.gov/ecfs2/.* (Documents will be available electronically in ASCII, Microsoft Word, and/or Adobe Acrobat.) This document is also available for public inspection and copying during regular business hours in the FCC Reference Information Center, which is located in Room CY–A257 at FCC Headquarters, 445 12th Street SW, Washington, DC 20554. The Reference Information Center is open to the public Monday through Thursday from 8:00 a.m. to 4:30 p.m. and Friday from 8:00 a.m. to 11:30 a.m. The complete text may be purchased from the Commission's copy contractor, 445 12th Street, SW, Room CY–B402, Washington, DC 20554. Alternative formats are available for people with disabilities (Braille, large print, electronic files, audio format), by sending an email to *fcc504@fcc.gov* or calling the Commission's Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY).

Synopsis

I. Report and Order

1. In this Report and Order (*Order*), we eliminate the provisions in parts 1, 5, 73 and 74 of our rules that require the posting and maintenance of broadcast licenses and related information in specific locations.[1] In May 2018, the Federal Communications Commission (Commission) issued a Notice of Proposed Rulemaking (*NPRM*) (83 FR 30901) seeking comment on whether to eliminate license posting rules that appeared to be redundant and obsolete now that licensing information is readily accessible online through the Commission's databases. Commenters in this proceeding unanimously support the elimination of these rules. As detailed below, we find that eliminating these requirements, which apply in some form to all broadcast licensees, will serve the public interest. In doing so, we advance the Commission's goal of modernizing our media rules and remove unnecessary regulatory burdens that impede competition and innovation in the media marketplace.

2. Broadcast license posting rules predate the establishment of the Commission. As explained in the *NPRM,* the Federal Radio Commission promulgated the earliest iteration of broadcast license posting requirements on record in 1930. Subsequent Commission decisions revised and

[1] By this Order, we also eliminate provisions in our rules which reference or cross-reference broadcast license posting rules.

expanded to new broadcast services license posting obligations and requirements to maintain records at specific locations, but provided no explicit rationale for such rules. Based on the text and history of these rules, the *NPRM* noted that the intended purpose of the rules may have been to ensure that information regarding station authorizations, ownership, and contact information was readily available and easily accessible to the Commission and public. Commenters in this proceeding do not identify any alternative purpose or use for these rules and maintain that, with the advent of online sources for licensee information, the burdens that compliance with these rules imposes on licensees clearly outweigh any original benefits they may have provided.

3. Consistent with our proposals in the *NPRM,* we eliminate the license posting rules applicable to broadcasters and the related rules that require records to be maintained at specific locations.[2] We agree with commenters that ''while the posting rule[s] may have made sense almost 90 years ago'' they no longer serve the public interest given that all Commission licenses and related authorizations required to be displayed or maintained are now available ''24/7'' through publicly accessible online databases. Specifically, broadcast station licenses and other authorizations are currently accessible online through several Commission databases, including the Commission's Consolidated Database System (CDBS), Licensing Management System (LMS), and Universal Licensing Service (ULS).[3] For full power and Class A television stations and AM and FM radio stations, licenses and related authorizations are also accessible through the Commission's Online Public Inspection File.[4] In addition, the public may access orders and dispositions regarding station construction or facilities operation, which are required to be physically posted pursuant to two of our existing rules, through the Commission's online licensing databases.

4. We also find the additional posting requirements in §§ 74.765(b) and 74.1265(b) of our rules to be unnecessary for similar reasons. These provisions require that LPTV, translator, and booster stations post at the transmitter site the station's call sign; the name, address, and telephone number of the licensee or local representative of the licensee; and ''the name and address of a person and place where the station records are maintained.'' As Nexstar notes in its comments, much of the information required to be posted under these rules is available on the station licenses or authorizations themselves, which as noted above, the public may easily access online via CDBS, LMS, or ULS. This information includes the station's call sign and the name and address of the station's licensee. Although LPTV, translator, and booster stations are not required to maintain public inspection files, they must include the contact information, including a telephone number, of personnel that may serve as a general point of contact on various Commission forms, which are publicly available via our online licensing databases. We therefore find no continued need for broadcasters to separately identify a local representative or a custodian of station records and display such information.[5] Moreover, no commenter has provided any justification for continuing to require broadcasters to post or maintain at specific locations a physical copy of their licenses, authorizations, or general or local contact information.

5. We further find that requirements to physically display licensing documents at the site of broadcast facilities are often ineffective. As NAB illustrates, requirements that mandate posting at the transmission site can be of little benefit to the public because certain transmission sites, including those of booster and translator stations, ''are often in areas surrounded by security fencing, thereby limiting the public access to these facilities and any posted information.'' Further, provisions mandating that broadcasters post licenses and other authorizations at the ''principal [control] point of the transmitter'' have been rendered obsolete by the internet, which has enabled broadcasters to transition to dial-up or IP systems that manage their transmitter stations remotely through a smartphone or personal computer. This trend, in conjunction with the elimination of the broadcast main studio rule, has rendered the physical posting of licenses out of step with technology and our other rules. We agree with NAB that ''posting physical documents at transmission facilities is redundant and provides no meaningful value to the public,'' and we eliminate these requirements.

6. There is no evidence in the record suggesting that eliminating license posting and related requirements would undermine any public safety objectives. HC2 explains that posted information ''is often barely visible because the posting is well above eye level, or obscured by other equipment, or damaged and faded as a result of weather'' and is therefore not useful during emergencies.[6] In these circumstances, the contact information first responders need is readily available through the Commission databases.[7]

[2] Specifically, we eliminate the following rules, each of which applies specifically to broadcast licensees: 47 CFR 73.1230 (all broadcast licensees), 74.564 (aural broadcast auxiliary stations), 74.664 (television broadcast auxiliary stations), 74.765 (LPTV and TV translator stations), and 74.1265 (FM translator and booster stations). In addition, we amend the following rules to eliminate license posting obligations: 47 CFR 1.62(a)(2) (which currently requires all Commission licensees to post information pertaining to license renewal applications as well as the license itself, so that it applies only to non-broadcast licensees), 5.203(b) (removing the requirement to post experimental licenses), 74.432(j) (removing the requirement that remote pickup station licenses be ''posted at the transmitter, or posted at the control point of the station''), 74.832(j) (removing the requirement that low power auxiliary station licenses be ''posted at the transmitter, or posted at the control point of the station''). The NPRM incorrectly proposed to amend paragraph (a)(3)(viii) of 47 CFR 74.787, instead of paragraph (a)(5)(viii). This has been corrected in the Final Rules. We also note that one additional change not captured in the NPRM is in the Final Rules below.

[3] Specifically, this information is readily available through CDBS, *http://licensing.fcc.gov/prod/cdbs/pubacc/prod/app_sear.htm.* Similarly, the public may access copies of a station's license, which includes the station call sign and name, address, and telephone number of the station licensee and point of contact, through LMS, *https://enterpriseefiling.fcc.gov/dataentry/login.html* and/or ULS, *http://wireless.fcc.gov/uls/index.htm?job=home.* While most broadcast licenses are accessible through CDBS and LMS, licenses for aural and television broadcast auxiliary services are accessible through ULS. In addition, information regarding broadcast license renewal applications, which must be posted pursuant to § 1.62(a) of the rules, is available online via CDBS and LMS. 47 CFR 1.62(a) (requiring posting of, ''in addition to the original license, any acknowledgment received from the Commission that the renewal application has been accepted for filing or a signed copy of the application for renewal of license which has been submitted by the licensee'').

[4] Online Public Inspection File, available at *https://publicfiles.fcc.gov/. See* 47 CFR 73.3526 (governing public file obligations of commercial full power AM, FM, and TV stations and Class A television stations); 47 CFR 73.3527 (governing public file obligations of noncommercial educational broadcast stations).

[5] Since we do not find that the public interest necessitates separately compiling custodian of records' contact information online, we decline to adopt HC2's proposal to modify existing Commission forms to solicit this information.

[6] HC2 further notes that posted information often is of limited utility because it is in a different location from the site of an emergency. For example, ''posted contact information at the transmitter, even if perfectly visible and accessible, is not helpful when the emergency is at the antenna site,'' which may be ''some distance away,'' or vice versa. HC2 Comments at 5 (''For example, a firefighter battling a fire at an antenna site would not have any use for contact information posted at the transmitter quite some distance away.'').

[7] We acknowledge that natural disasters may in some instances limit the ability of first responders

Commenters also explain that because licensees typically do not own the towers on which their antennas are placed, eliminating requirements to have licensees' information physically displayed would not likely impede a first responder's ability to contact the appropriate person during an emergency. In many cases, antenna structure registration numbers allow first responders and others to rapidly identify the owner of a tower structure in the event of a tower lighting outage, collision or other problem, removing the need for licensee contact information.

7. For the foregoing reasons, we find that the provisions in parts 1, 5, 73 and 74 of our rules requiring the physical posting and maintenance of broadcast licenses and related information at specific locations are redundant, obsolete, and unduly burdensome. Accordingly, we find that eliminating these requirements, as well as associated cross-references to them and similar requirements, is in the public interest and that the benefits of eliminating these requirements outweigh any costs of doing so.

II. Procedural Matters

A. Final Regulatory Flexibility Act Analysis

8. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),[8] an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *Notice of Proposed Rulemaking* (*NPRM*) in MB Docket 18–121.[9] The Commission sought written public comments on proposals in the *NPRM,* including comment on the IRFA. The Commission received no direct comments on the IRFA. The present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.

9. *Need for, and Objectives of, the Report and Order.* The *Report and Order* (*Order*) arises from a Public Notice issued by the Commission in May 2017, launching an initiative to modernize the Commission's media regulations, and the subsequent *NPRM.*[10] It eliminates provisions of the Commission's rules which require the posting and maintenance of broadcast licenses and related information in specific locations. Numerous parties in those proceedings argued for the elimination of these rules on the basis that they are redundant and obsolete.

10. Specifically, the *Order* eliminates: Section 73.1230, which requires broadcast stations to post their station license and other authorizations at ''the principal control point of the transmitter'' and prescribes the manner of such posting;[11] § 73.801, which applies § 73.1230 to low power stations;[12] § 74.1265, which requires FM booster and translator stations to physically display their call sign and other information at the antenna site;[13] §§ 74.564 and 74.664, applicable to aural and television broadcast auxiliary stations,[14] respectively, which require stations to post licenses and any other authorizations ''in the room in which the transmitter is located'' and prescribes the manner of such posting;[15] §§ 74.432(j) and 74.832(j), which require remote pickup station and low power auxiliary station licensees to post licenses either at the transmitter or station control point;[16] § 5.203(b),[17] which requires broadcast licensees to post experimental authorizations along with their station license; § 1.62(a)(2),[18] which requires all Commission licensees, including broadcast entities, to post information pertaining to license renewal applications as well as the license itself; and § 74.765, which requires LPTV and TV translator to physically display their call sign together with the name, address, and telephone number of the licensee or local representative of the licensee and the name and address of a person and place where station records are maintained at the antenna site. Sections 74.765(a) and 74.1265(a) also contain record maintenance obligations that this *Order* eliminates because they are duplicative of §§ 74.781 and 74.1281, respectively.

11. The *Order* also removes similar requirements and cross-references to licenses posting rules as follows: Section 0.408 (cross-referencing the license posting rules); § 73.158(b), which requires any updated descriptions of directional antenna monitoring points to be ''posted with the existing station license''; § 73.801, which applies § 73.1230 to LPFM stations; § 73.1715(a), which requires broadcast licensees authorized to share time to file written agreements with the Commission and post with the station license; § 73.1725(c), requiring ''the licensee of a secondary station which is authorized to operate limited time'' to post approval of its limited time operating schedule with the station license); § 73.1870(b)(3), which states that ''the designation of the chief operator [for full power and Class A stations] must be in writing with a copy of the designation *posted with the station license.*''; § 74.733(i), which states that ''[t]he provisions of § 74.765 concerning posting of station license shall apply to a UHF translator signal booster . . .''; § 74.781(c), which states that ''[t]he name of the person keeping [LPTV and TV translator] station records, together with the address of the place where the records are kept, shall be posted in accordance with § 74.765(c) of the rules.''; § 74.787(a)(5)(viii), which applies § 74.765 to digital low power television and television translator stations; § 74.789; and § 74.1281, which references § 74.1265(b). These rule changes are intended to reduce outdated regulations and unnecessary regulatory burdens that can impede competition and innovation in media markets.

12. *Summary of Significant Issues Raised by Public Comments in Response to the IRFA.* No comments were filed in response to the IRFA.

13. *Response to Comments by the Chief Counsel for Advocacy of the Small Business Administration.* Pursuant to the Small Business Jobs Act of 2010, which amended the RFA, the Commission is required to respond to any comments filed by the Chief Counsel for Advocacy of the SBA and to provide a detailed statement of any change made to the proposed rules as a result of those comments.[19] The Chief Counsel did not file any comments in response to this proceeding.

14. *Description and Estimate of the Number of Small Entities to Which Rules Will Apply.* The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that will be affected by the rules adopted.[20] The

to access these databases. For instance, immediately after Hurricane Maria, over 95 percent of Puerto Rico's wireless cell sites were out of service. On a going forward basis, we commit to monitoring the impact of this rule change on first responders' ability to access the contact information they need in the event of an emergency.

[8] *See* 5 U.S.C. 603. The RFA, *see* U.S.C. 601–612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Public Law 104–121, Title II, 110 Stat. 857 (1996). The SBREFA was enacted as Title II of the Contract with America Advancement Act of 1996 (CWAAA).

[9] *Amendment of Parts 0, 1, 5, 73, and 74 of the Commission's Rules Regarding Posting of Station Licenses and Related Information,* Notice of Proposed Rulemaking, 33 FCC Rcd 4757 (May 10, 2018) (*NPRM*) (83 FR 30901).

[10] *See id.; Commission Launches Modernization of Media Regulation Initiative,* Public Notice, 32 FCC Rcd 4406 (2017) (initiating a review of rules applicable to media entities to eliminate or modify regulations that are outdated, unnecessary or unduly burdensome).

[11] 47 CFR 73.1230.

[12] 47 CFR 73.801.

[13] 47 CFR 74.1265.

[14] 47 CFR 74.564, 74.664.

[15] 47 CFR 74.565; 47 CFR 74.664.

[16] 47 CFR 74.432(j), 74.832(j).

[17] 47 CFR 5.203(b).

[18] 47 CFR 1.62(a)(2).

[19] 5 U.S.C. 604(a)(3).

[20] *Id.*

RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction'' [21] In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act.[22] A ''small business concern'' is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.[23] The final rules adopted herein affect small television and radio broadcast stations. A description of these small entities, as well as an estimate of the number of such small entities, is provided below.

15. *Television Broadcasting.* This Economic Census category ''comprises establishments primarily engaged in broadcasting images together with sound.'' [24] These establishments operate television broadcast studios and facilities for the programming and transmission of programs to the public.[25] These establishments also produce or transmit visual programming to affiliated broadcast television stations, which in turn broadcast the programs to the public on a predetermined schedule. Programming may originate in their own studio, from an affiliated network, or from external sources. The SBA has created the following small business size standard for such businesses: Those having $38.5 million or less in annual receipts.[26] The 2012 Economic Census reports that 751 firms in this category operated in that year. Of that number, 656 had annual receipts of less than $25,000,000, and 95 had annual receipts of $25,000,000 or more.[27] Based on this data, we estimate that the majority of commercial television broadcasters are small entities under the applicable SBA size standard.

16. In addition, the Commission has estimated the number of licensed commercial television stations to be 1,349.[28] Of this total, 1,277 stations had revenues of $38.5 million or less, according to Commission staff review of the BIA Kelsey Inc. Media Access Pro Television Database (BIA) on October 1, 2018. Such entities, therefore, qualify as small entities under the SBA definition. The Commission has estimated the number of licensed noncommercial educational (NCE) television stations to be 412.[29] The Commission, however, does not compile and does not have access to information on the revenue of NCE stations that would permit it to determine how many such stations would qualify as small entities.

17. We note, however, that in assessing whether a business concern qualifies as ''small'' under the above definition, business (control) affiliations [30] must be included. Our estimate, therefore likely overstates the number of small entities that might be affected by our action, because the revenue figure on which it is based does not include or aggregate revenues from affiliated companies. In addition, another element of the definition of ''small business'' requires that an entity not be dominant in its field of operation. We are unable at this time to define or quantify the criteria that would establish whether a specific television broadcast station is dominant in its field of operation. Accordingly, the estimate of small businesses to which the proposed rules would apply does not exclude any television station from the definition of a small business on this basis and therefore could be over-inclusive.

18. There are also 1,911 LPTV stations and 389 Class A stations.[31] Given the nature of these services, we will presume that all of these entities qualify as small entities under the above SBA small business size standard.

19. *Radio Stations.* This economic Census category ''comprises establishments primarily engaged in broadcasting aural programs by radio to the public.'' [32] The SBA has created the following small business size standard for this category: Those having $38.5 million or less in annual receipts.[33] Census data for 2012 shows that 2,849 firms in this category operated in that year.[34] Of this number, 2,806 firms had annual receipts of less than $25,000,000, and 43 firms had annual receipts of $25,000,000 or more.[35] Therefore, based on the SBA's size standard, the majority of such entities are small entities.

20. Apart from the U.S. Census, the Commission has estimated the number of licensed commercial AM radio stations to be 4,626 stations [36] and the number of commercial FM radio stations to be 6,737, for a total number of 11,363.[37] Of this total, 11,362 stations had revenues of $38.5 million or less, according to Commission staff review of the BIA Kelsey Inc. Media Access Pro Television Database (BIA) on October 1, 2018. In addition, the Commission has estimated the number of noncommercial educational FM radio stations to be 4,130.[38] NCE stations are non-profit, and therefore considered to be small entities.[39] Therefore, we estimate that the majority of radio broadcast stations are small entities.

21. *Low Power FM Stations.* The same SBA definition that applies to radio stations would apply to low power FM stations. As noted above, the SBA has created the following small business size standard for this category: Those having $38.5 million or less in annual receipts.[40] The Commission has estimated the number of licensed low power FM stations to be 1,966.[41] In addition, as of June 30, 2017, there were a total of 7,453 FM translator and FM booster stations.[42] Given the nature of these services, we will presume that these licensees qualify as small entities under the SBA definition.

22. We note again, however, that in assessing whether a business concern

[21] 5 U.S.C. 601(6).

[22] 5 U.S.C. 601(3) (incorporating by reference the definition of ''small-business concern'' in the Small Business Act, 15 U.S.C. 632). Pursuant to 5 U.S.C. 601(3), the statutory definition of a small business applies ''unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the **Federal Register**.''

[23] 15 U.S.C. 632.

[24] U.S. Census Bureau, 2012 North American Industry Classification System (NAICS) Definitions, ''515120 Television Broadcasting,'' *http://www.census.gov./cgi-bin/sssd/naics/naicsrch.*

[25] *Id.*

[26] 13 CFR 121.201; 2012 NAICS Code 515120.

[27] U.S. Census Bureau, Table No. EC1251SSSZ4, *Information: Subject Series—Establishment and Firm Size: Receipts Size of Firms for the United States: 2012* (515120 Television Broadcasting), *https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ4&prodType=table.*

[28] FCC News Release, *Broadcast Station Totals as of September 30, 2018* (rel. Oct. 3, 2018) (*Broadcast Station Totals*), *https://www.fcc.gov/document/broadcast-station-totals-september-30-2018.*

[29] *Id.*

[30] ''[Business concerns] are affiliates of each other when one concern controls or has the power to control the other or a third party or parties controls or has the power to control both.'' 13 CFR 21.103(a)(1).

[31] *Broadcast Station Totals supra* note 28.

[32] U.S. Census Bureau, 2012 NAICS Definitions, ''515112 Radio Stations,'' at *http://www.census.gov/cgi-bin/sssd/naics/naicsrch.* This category description continues, ''Programming may originate in their own studio, from an affiliated network, or from external sources.''

[33] 13 CFR 121.201; NAICS code 515112.

[34] U.S. Census Bureau, Table No. EC0751SSSZ4, *Information: Subject Series—Establishment and Firm Size: Receipts Size of Firms for the United States: 2012* (515112), *http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2007_US_51SSSZ4&prodType=table.*

[35] *Id.*

[36] *Broadcast Station Totals supra* note 28.

[37] *Id.*

[38] *Id.*

[39] 5 U.S.C. 601(4), (6).

[40] 13 CFR 121.201, NAICS Code 515112.

[41] *News Release,* ''Broadcast Station Totals as of June 30, 2017'' (rel. July 11, 2017) (*http://fjallfoss.fcc.gov/edocs_public/attachmatch/DOC-304594A1315231A1.pdf*).

[42] *News Release,* ''Broadcast Station Totals as of June 30, 2017'' (rel. July. 11, 2017).

qualifies as ''small'' under the above definition, business (control) affiliations[43] must be included. Because we do not include or aggregate revenues from affiliated companies in determining whether an entity meets the applicable revenue threshold, our estimate of the number of small radio broadcast stations affected is likely overstated. In addition, as noted above, one element of the definition of ''small business'' is that an entity not be dominant in its field of operation. We are unable at this time to define or quantify the criteria that would establish whether a specific radio broadcast station is dominant in its field of operation. Accordingly, our estimate of small radio stations potentially affected by the proposed rules includes those that could be dominant in their field of operation. For this reason, such estimate likely is over-inclusive.

23. *Description of Reporting, Record Keeping, and Other Compliance Requirements for Small Entities.* In this section, we identify the reporting, recordkeeping, and other compliance requirements in the *Order* and consider whether small entities are affected disproportionately by any such requirements.

24. *Reporting Requirements.* The *Order* does not adopt new reporting requirements.

25. *Recordkeeping Requirements.* The *Order* does not adopt new recordkeeping requirements.

26. *Other Compliance Requirements.* The *Order* does not adopt new compliance requirements. Because no commenter provided information specifically quantifying the costs and administrative burdens of complying with the existing recordkeeping requirements, we cannot precisely estimate the impact on small entities of eliminating them. The adopted rule revisions remove certain record keeping requirements for all affected broadcast licensees, including small entities. Numerous parties in the Modernization of Media Regulation Initiative, including all parties which commented on the *NPRM* have requested that the Commission remove broadcast license posting requirements and related record keeping requirements and no parties in this proceeding opposed such proposals.

27. *Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered.* The RFA requires an agency to describe any significant alternatives that it has considered in reaching its approach, which may include the following four alternatives (among others): (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.[44]

28. The *Order* eliminates recordkeeping obligations requiring the posting of broadcast stations' license and other authorizations.[45] These actions are intended to modernize the Commission's regulations and reduce costs and recordkeeping burdens for affected entities, including small entities. Under the revised rules, affected entities no longer will need to expend time and resources posting licenses and related information already available to the Commission, and most of which is publicly accessible by electronic means.

B. Paperwork Reduction Analysis

29. This document eliminates, and thus does not contain new or revised, information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13, 44 U.S.C. 3501–3520. In addition, therefore, it does not contain any new or modified ''information burden for small business concerns with fewer than 25 employees'' pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, 44 U.S.C. 3506(c)(4).

C. Congressional Review Act

30. The Commission will send a copy of this Order to Congress and the Government Accountability Office pursuant to the Congressional Review Act, see 5 U.S.C. 801(a)(1)(A).

31. *Additional Information.*—For additional information on this proceeding, contact Jonathan Mark, *Jonathan.Mark@fcc.gov,* of the Media Bureau, Policy Division, (202) 418–3634.

III. Ordering Clauses

32. Accordingly, *it is ordered* that, pursuant to the authority found in sections 1, 4(i), 4(j), 303, 309, 310, and 336 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), 303, 309, 310, and 336, this Report and Order *is adopted.*

33. *It is further ordered* that the Commission's rules *are hereby amended* as set forth in the Final Rules below, effective as of the date of publication of a summary in the **Federal Register**.[46]

34. *It is further ordered* that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this Report and Order, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

35. *It is further ordered* that the Commission *shall send* a copy of the Report and Order in a report to Congress and the Government Accountability Office pursuant to the Congressional Review Act (CRA).

List of Subjects

47 CFR Part 0

Reporting and Recordkeeping Requirements.

47 CFR Part 1

Communications common carriers, Radio, Reporting and recordkeeping requirements, Television.

47 CFR Part 5

Radio, Reporting and recordkeeping requirements.

47 CFR Parts 73 and 74

Radio, Reporting and recordkeeping requirements, Television.

Federal Communications Commission.

Katura Jackson,

Federal Register Liaison Officer, Office of the Secretary.

Final Rules

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR parts 0, 1, 5, 73, and 74 as follows:

PART 0—COMMISSION ORGANIZATION

■ 1. The authority citation for part 0 continues to read as follows:

Authority: Sec. 5, 48 Stat. 1068, as amended; 47 U.S.C. 155, 225, unless otherwise noted.

■ 2. Amend § 0.408 in the table in paragraph (b) by revising the entry ''3060–0633'' to read as follows:

§ 0.408 OMB control numbers and expiration dates assigned pursuant to the Paperwork Reduction Act of 1995.

* * * * *

[43] ''[Business concerns] are affiliates of each other when one concern controls or has the power to control the other or a third party or parties controls or has the power to control both.'' 13 CFR 21.103(a)(1).

[44] 5 U.S.C. 603(c)(1)–(4).

[45] *See supra* Section A.

[46] These rules serve to ''reliev[e] a restriction.'' 5 U.S.C. 553(d)(1).

(b) * * *

OMB control No.	FCC form no. or 47 CFR section or part, docket no., or title identifying the collection	OMB expiration date
*	* * * * *	*
3060–0633 ..	Secs. 74.165, 74.432, and 74.832	04/30/18
*	* * * * *	*

PART 1—PRACTICE AND PROCEDURE

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

Authority: 47 U.S.C. chs. 2, 5, 9, 13; Sec. 102(c), Div. P, Public Law 115–141, 132 Stat. 1084; 28 U.S.C. 2461, unless otherwise noted.

■ 4. Amend § 1.62 by revising paragraph (a)(2) to read as follows:

§ 1.62 Operation pending action on renewal application.

(a) * * *

(2) A non-broadcast licensee operating by virtue of this paragraph (a) shall, after the date of expiration specified in the license, post, in addition to the original license, any acknowledgment received from the Commission that the renewal application has been accepted for filing or a signed copy of the application for renewal of license which has been submitted by the licensee, or in services other than common carrier, a statement certifying that the licensee has mailed or filed a renewal application, specifying the date of mailing or filing.

* * * * *

PART 5—EXPERIMENTAL RADIO SERVICE

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

Authority: 47 U.S.C. 154, 301, 302, 303, 307, 336.

■ 6. Amend § 5.203 by revising paragraph (b) to read as follows:

§ 5.203 Experimental authorizations for licensed broadcast stations.

* * * * *

(b) Experimental authorizations for licensed broadcast stations may be requested by filing an informal application with the FCC in Washington, DC, describing the nature and purpose of the experimentation to be conducted, the nature of the experimental signal to be transmitted, and the proposed schedule of hours and duration of the experimentation.

* * * * *

PART 73—RADIO BROADCAST SERVICES

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

Authority: 47 U.S.C. 154, 155, 301, 303, 307, 309, 310, 334, 336, 339.

■ 8. Amend § 73.158 by revising paragraph (b) to read as follows:

§ 73.158 Directional antenna monitoring points.

* * * * *

(b) When the description of the monitoring point as shown on the station license is no longer correct due to road or building construction or other changes, the licensee must prepare and file with the FCC, in Washington, DC, a request for a corrected station license showing the new monitoring point description. The request shall include the information specified in paragraphs (a)(3) and (4) of this section, and a copy of the station's current license.

§ 73.801 [Amended]

■ 9. Amend § 73.801 by removing ''Section 73.1230 Posting of station license''.

§ 73.1230 [Removed]

■ 10. Remove § 73.1230.

■ 11. Amend § 73.1715 by revising paragraph (a) to read as follows:

§ 73.1715 Share time.

* * * * *

(a) If the licenses of stations authorized to share time do not specify hours of operation, the licensees shall endeavor to reach an agreement for a definite schedule of periods of time to be used by each. Such agreement shall be in writing and each licensee shall file it in duplicate original with each application to the FCC in Washington, DC for renewal of license. If and when such written agreements are properly filed in conformity with this section, the file mark of the FCC will be affixed thereto, one copy will be retained by the FCC, and one copy returned to the licensee and will be considered as part of the station's license. If the license specifies a proportionate time division, the agreement shall maintain this proportion. If no proportionate time division is specified in the license, the licensees shall agree upon a division of time. Such division of time shall not include simultaneous operation of the stations unless specifically authorized by the terms of the license

* * * * *

■ 12. Amend § 73.1725 by revising paragraph (c) to read as follows:

§ 73.1725 Limited time.

* * * * *

(c) The licensee of a secondary station which is authorized to operate limited time and which may resume operation at the time the Class A station (or stations) on the same channel ceases operation shall, with each application for renewal of license, file in triplicate a copy of its regular operating schedule. It shall bear a signed notation by the licensee of the Class A station of its objection or lack of objection thereto. Upon approval of such operating schedule, the FCC will affix its file mark and return one copy to the licensee authorized to operate limited time. Such approved operating schedule shall be considered part of the station's license. Departure from said operating schedule will be permitted only pursuant to § 73.1715 (Share time).

■ 13. Amend § 73.1870 by revising paragraph (b)(3) to read as follows:

§ 73.1870 Chief operators.

* * * * *

(b) * * *

(3) The designation of the chief operator must be in writing. Agreements with chief operators serving on a contract basis must be in writing with a copy kept in the station files.

* * * * *

PART 74—EXPERIMENTAL RADIO, AUXILIARY, SPECIAL BROADCAST AND OTHER PROGRAM DISTRIBUTIONAL SERVICES

■ 14. The authority citation for part 74 continues to read as follows:

Authority: 47 U.S.C. 154, 302a, 303, 307, 309, 310, 336 and 554.

■ 15. Amend § 74.432 by revising paragraph (j) and removing the note at the end of the section to read as follows:

§ 74.432 Licensing requirements and procedures.

* * * * *

(j) The license shall be retained in the licensee's files at the address shown on the authorization.

* * * * *

§ 74.564 [Removed]

■ 16. Remove § 74.564.

§ 74.664 [Removed]

■ 17. Remove § 74.664.

§ 74.733 [Amended]

■ 18. Amend § 74.733 by removing paragraph (i), redesignating paragraph (j) as paragraph (i), and removing the note at the end of the section.

§ 74.765 [Removed]

■ 19. Remove § 74.765.

■ 20. Amend § 74.781 by revising paragraph (c) to read as follows:

§ 74.781 Station records.

* * * * *

(c) The station records shall be maintained for inspection at a residence, office, or public building, place of business, or other suitable place, in one of the communities of license of the translator or booster, except that the station records of a booster or translator licensed to the licensee of the primary station may be kept at the same place where the primary station records are kept. The station records shall be made available upon request to any authorized representative of the Commission.

* * * * *

§ 74.787 [Amended]

■ 21. Amend § 74.787(a)(5)(viii) by removing ''§ 74.765 Posting of station and operator licenses''.

§ 74.789 [Amended]

■ 22. Amend § 74.789 by removing ''§ 74.765 Posting of station and operator licenses''.

■ 23. Amend § 74.832 by revising paragraph (j) to read as follows:

§ 74.832 Licensing requirements and procedures.

* * * * *

(j) The license shall be retained in the licensee's files at the address shown on the authorization.

§ 74.1265 [Removed]

■ 24. Remove § 74.1265.

■ 25. Amend § 74.1281 by revising paragraph (c) to read as follows:

§ 74.1281 Station records.

* * * * *

(c) The station records shall be maintained for inspection at a residence, office, or public building, place of business, or other suitable place, in one of the communities of license of the translator or booster, except that the station records of a booster or translator licensed to the licensee of the primary station may be kept at the same place where the primary station records are kept. The station records shall be made available upon request to any authorized representative of the Commission.

* * * * *

[FR Doc. 2019–01491 Filed 2–7–19; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 160426363–7275–02]

RIN 0648–XG762

Coastal Migratory Pelagic Resources of the Gulf of Mexico and Atlantic Region; Commercial Trip Limit Increase for King Mackerel in the Atlantic Southern Zone

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

ACTION: Temporary rule; trip limit increase.

SUMMARY: NMFS increases the commercial trip limit for king mackerel in or from Federal waters in an area off the Florida east coast between the border of Flagler and Volusia Counties and the border of Miami-Dade and Monroe Counties in the Atlantic southern zone to 75 fish per day. This commercial trip limit increase is necessary to maximize the socioeconomic benefits associated with harvesting the commercial quota of Atlantic migratory group king mackerel.

DATES: This temporary rule is effective from 12:01 a.m., local time, on February 7, 2019, through February 28, 2019.

FOR FURTHER INFORMATION CONTACT: Karla Gore, NMFS Southeast Regional Office, telephone: 727–824–5305, email: *karla.gore@noaa.gov.*

SUPPLEMENTARY INFORMATION: The fishery for coastal migratory pelagic fish includes king mackerel, Spanish mackerel, and cobia, and is managed under the Fishery Management Plan for the Coastal Migratory Pelagic Resources of the Gulf of Mexico and Atlantic Region (FMP). The FMP was prepared by the Gulf of Mexico and South Atlantic Fishery Management Councils 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. All weights for Atlantic migratory group king mackerel (Atlantic king mackerel) below apply as either round or gutted weight.

On April 11, 2017, NMFS published a final rule to implement Amendment 26 to the FMP in the **Federal Register** (82 FR 17387). That final rule adjusted the management boundaries, zones, and annual catch limits for Atlantic king mackerel. The commercial quota for Atlantic king mackerel in the southern zone is 4,001,920 lb (1,815,240 kg) for the current fishing year, March 1, 2018, through February 28, 2019 (50 CFR 622.384(b)(2)(ii)). The seasonal quotas are 2,401,152 lb (1,089,144 kg) for the period March 1 through September 30 (50 CFR 622.384(b)(2)(ii)(A)), and 1,600,768 lb (726,096 kg) for October 1 through the end of February (50 CFR 622.384(b)(2)(ii)(B)).

The Atlantic king mackerel southern zone encompasses an area of Federal waters south of a line extending from the state border of North Carolina and South Carolina, as specified in 50 CFR 622.2, and north of a line extending due east from the border of Miami-Dade and Monroe Counties, Florida (50 CFR 622.369(a)(2)(ii)). From October 1 through January 31, the commercial trip limit for king mackerel in or from the southern zone that may be possessed on board or landed from a federally permitted vessel is 50 fish per day (50 CFR 622.385(a)(1)(ii)(C)).

However, if NMFS determines that less than 70 percent of the Atlantic southern zone commercial quota specified in 50 CFR 622.384(b)(2)(ii)(B) has been harvested by February 1, then during the month of February, the commercial trip limit for king mackerel in or from a specified area of the southern zone that may be possessed on board or landed from a federally permitted vessel is increased to 75 fish per day (50 CFR 622.385(a)(1)(ii)(D)). The area of the southern zone in which the commercial trip limit increase applies is in Federal waters south of 29°25′ N lat., which is a line that extends due east from the border of Flagler and Volusia Counties, Florida, and north of 25°20′24″ N lat., which is

a line that extends due east from the border of Miami-Dade and Monroe Counties, Florida.

NMFS has determined that less than 70 percent of the October 1 through the end of February commercial quota for Atlantic king mackerel in the southern zone was harvested by February 1, 2019. Accordingly, a 75-fish commercial trip limit applies to vessels fishing for king mackerel in or from Federal waters south of 29°25′ N lat. and north of 25°20′24″ N lat. off the east coast of Florida in the Atlantic southern zone effective at 12:01 a.m., local time, on February 7, 2019. The 75-fish trip limit will remain in effect through February 28, 2019, or until the commercial quota is reached and the southern zone closes. On March 1, 2019, the new fishing year begins and a commercial trip limit of 50 fish will again be in effect for this area.

Classification

The Regional Administrator for the NMFS Southeast Region has determined this temporary rule is necessary for the conservation and management of Atlantic king mackerel and is consistent with the Magnuson-Stevens Act and other applicable laws.

This action is taken under 50 CFR 622.385(a)(1)(ii)(D) 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 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 commercial trip limit increase 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), because prior notice and opportunity for public comment on this temporary rule is unnecessary and contrary to the public interest. Such procedures are unnecessary because the rule establishing the commercial trip limits has already been subject to notice and comment, and all that remains is to notify the public of the trip limit increase. Such procedures are contrary to the public interest, because prior notice and opportunity for public comment would require time and delay the fishers' ability to catch more king mackerel to harvest the commercial quota and achieve optimum yield, and would prevent fishers from reaping the socioeconomic benefits associated with this increased commercial trip limit.

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

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

Dated: February 1, 2019.

Alan D. Risenhoover,

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

[FR Doc. 2019–01234 Filed 2–7–19; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 181031994–9022–02]

RIN 0648–XG608–X

Magnuson-Stevens Act Provisions; Fisheries of the Northeastern United States; Atlantic Herring Fishery; Adjustment to Atlantic Herring Specifications and Sub-Annual Catch Limits for 2019

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

ACTION: Final rule.

SUMMARY: This action implements an in-season adjustment to the Atlantic herring specifications and sub-annual catch limits for 2019. These adjustments are necessary to reduce 2018 herring catch limits that would otherwise remain in effect for 2019. This action is expected to prevent overfishing of the herring resource and lower the risk of the stock becoming overfished.

DATES: Effective February 8, 2019.

ADDRESSES: Copies of this action, including the Supplemental Environmental Assessment and the Regulatory Impact Review/Initial Regulatory Flexibility Analysis (SEA/RIR/IRFA) prepared in support of this action, are available from Michael Pentony, Regional Administrator, 55 Great Republic Drive, Gloucester, MA 01930. Documents are also accessible via the internet at: *https://www.nefmc.org.*

FOR FURTHER INFORMATION CONTACT: Carrie Nordeen, Fishery Policy Analyst, 978–281–9272.

SUPPLEMENTARY INFORMATION:

Background

We published a proposed rule for the in-season adjustment to Atlantic herring specifications and sub-annual catch limits (ACLs) for 2019 on November 30, 2018 (83 FR 61593). The comment period on the proposed rule ended on December 31, 2018. We received 22 comment letters on the proposed rule, which are summarized in the Comments and Responses section of this final rule.

We implemented 2016–2018 herring specifications on November 1, 2016 (81 FR 75731), as recommended by the New England Fishery Management Council. The specifications included an overfishing limit (OFL) of 111,000 mt for 2018. The acceptable biological catch (ABC) for 2018 was also set at 111,000 mt. The ABC was based on the Council's interim control rule, set equal to the OFL with at least a 50-percent probability of preventing overfishing, and consistent with the Council's Scientific and Statistical Committee's (SSC) advice. The annual catch limit (ACL) for 2018 was 104,800 mt.

In June 2018, a new Northeast Regional Stock Assessment Workshop (SAW) for herring, reviewed by the Stock Assessment Review Committee (SARC), was completed. The assessment concluded that although herring was not overfished and overfishing was not occurring in 2017, poor recruitment would likely result in a substantial decline in herring biomass. The stock assessment estimated that recruitment had been at historic lows during the most recent 5 years (2013–2017). The assessment projected that biomass could increase, after reaching a low in 2019, if recruitment returns to average levels, but that herring catch would need to be reduced, starting in 2018, to prevent overfishing and lower the risk of the stock becoming overfished. The final assessment summary report is available on the Northeast Fisheries Science Center (NEFSC) website (*www.nefsc.noaa.gov/publications/*).

The Atlantic Herring Fishery Management Plan (FMP) allows NMFS to make in-season adjustments to the herring specifications and sub-ACLs to achieve conservation and management objectives, after consultation with the Council, consistent with the Herring FMP's objectives and other FMP provisions. In August 2018, at the request of the Council, we used an in-season adjustment to reduce the 2018 ACL from 104,800 mt to 49,900 mt to reduce the risk of overfishing in 2018 (83 FR 42450, August 22, 2018). This resulted in at least a 50-percent probability of preventing overfishing projected for 2018. However, assessment projections indicated that catch would need to be further reduced in 2019 to prevent overfishing and lower the risk of the stock becoming overfished.

By regulation, herring catch limits for 2018, as modified by the 2018 in-season adjustment, remain in effect until replaced. At its September 2018 meeting, the Council adopted a new ABC control rule for the herring fishery developed in Amendment 8 to the Herring FMP and requested we use an in-season adjustment to reduce 2018 herring catch limits for 2019 while it develops new specifications starting in 2020. The Council was scheduled to begin developing the 2019–2021 herring specifications at its September meeting and take final action on the new specifications at its December 2018 meeting. The Council planned for us to implement the new specifications during 2019, based on the new ABC control rule it adopted in Amendment 8. However, because of the time required for the Council to prepare the necessary documentation and for us to review and approve the control rule in Amendment 8 and implement final approved measures, the new specifications would not have been effective early enough to prevent catch from exceeding the lower catch limits required to prevent overfishing in 2019.

To assist us with developing the 2019 in-season adjustment, the Council discussed options for 2019 catch limits at its September 2018 meeting and recommended that we:

- Use the most recent assessment and projections to develop the 2019 specifications;
- Use the ABC control rule approved by the Council in Amendment 8;
- Maintain the sub-ACLs for herring management areas based on the proportions allocated in the 2016–2018 specifications package, including;
  - Area 1A: 28.9 percent,
  - Area 1B: 4.3 percent,
  - Area 2: 27.8 percent,
  - Area 3: 39 percent;
- Proportionally reduce the fixed gear set-aside allocation which is based on a small weir fishery west of Cutler, ME; and
- Set the border transfer (which allows U.S. vessels to transfer herring to Canadian vessels to be processed as food) at 0 mt.

The SSC met on October 10, 2018, to review the recent herring stock assessment and consider herring catch limits. The term of reference for the meeting specified that the SSC use the new ABC control rule adopted by the Council in Amendment 8 to recommend the OFL and ABCs for 2019–2021. After reviewing the results of the stock assessment and information compiled by the Council's Herring Plan Development Team (PDT), the SSC recommended herring OFLs of 30,688 mt in 2019, 38,878 mt in 2020, and 59,788 mt in 2021. The SSC also recommended that herring ABCs should not exceed 21,266 mt in 2019, 16,131 mt in 2020, and 16,131 mt in 2021. The SSC was concerned that the new assessment's recruitment projections used a long-term average, rather than weighting recent low recruitment, resulting in a substantial projected biomass increase for 2021. To mitigate its concerns, the SSC recommended maintaining the 2020 ABC (16,131 mt) for 2021, updating the herring assessment in 2020, and investigating herring's recent low recruitment. The assessment update would enable the SSC to reconsider its 2021 ABC recommendation based on updated estimates of recruitment and biomass.

In response to the Council's request for an in-season adjustment of 2018 herring catch limits for 2019, we proposed reduced catch limits for 2019 in November 2018. The herring ABC we proposed for 2019, as well as the resulting ACL and sub-ACLs, while consistent with methods used to set recent specifications, were higher than limits recommended by the Council and SSC. Our proposed herring catch limits were based on an ABC with a 50-percent probability of preventing overfishing (30,688 mt). In contrast, the Council's recommended 2019 catch limits were based on an ABC of 21,266 mt, generated using the new control rule developed in Amendment 8, and estimated to have a 15-percent probability of overfishing. While the sub-ACL values we proposed for 2019 were higher than those recommended by the Council, our proposed method to allocate catch to the sub-ACLs was consistent with Council recommendations. We intended the proposed catch limits to balance preventing overfishing with maintaining a viable herring fishery to achieve optimum yield (OY), while we consider approval and implementation of a long-term ABC control rule in Amendment 8.

The Council discussed our proposed 2019 herring catch limits at its December 2018 meeting, at which time it firmly reiterated its original recommendations that catch limits be based on an ABC of 21,266 mt and sub-ACL allocations be consistent with recent specifications. The Council explained the necessity of lowering the risks of overfishing and the stock becoming overfished, especially given the uncertainty associated with the assessment's projections of herring biomass and recruitment. It expressed concern that higher catch in 2019 would result in even lower catch limits for 2020. While the Council acknowledged that negative economic impacts on the fishing industry would be greater under the lower catch limits, it stressed that conservation benefits outweighed the short-term revenue considerations. The Council also explained that maintaining recent sub-ACL allocations prevents overfishing on any one sub-component of the herring stock and helps minimize negative economic impacts associated with reduced catch limits by providing fishery access to all gear types and management areas. Following the Council meeting, the Council further detailed its rationale for its recommended 2019 herring catch limits in a December 13, 2018, letter to us.

We work closely with the Council for sustainable management of New England fisheries. The Council develops harvest policies for its fisheries and we tend to defer harvest policy decisions to the Council, unless those policies are inconsistent with the Magnuson-Stevens Fishery Conservation and Management Act or other applicable law. The Council expressed concern with our proposed herring catch limits for 2019 and recommended limits be lowered to prevent overfishing and lower the risk of the stock becoming overfished. After considering the Council's policy concerns and to better account for scientific uncertainty, we are adjusting the 2018 herring specifications and sub-ACLs for 2019 to achieve conservation and management objectives, consistent with the Council's recommendations, Herring FMP objectives, and other Herring FMP provisions. The final 2019 herring catch limits implemented in this in-season adjustment are shown in Table 1 below.

TABLE 1—FINAL ATLANTIC HERRING SPECIFICATIONS AND SUB-ACLS FOR 2019 (mt)

Overfishing Limit	30,668.
ABC	21,266.
Management Uncertainty	6,200.
OY/ACL	15,065.*
Domestic Annual Harvest	15,065.
Border Transfer	0.
Domestic Annual Processing	15,065.
U.S. At-Sea Processing	0.
Area 1A Sub-ACL (28.9%)	4,354.*
Area 1B Sub-ACL (4.3%)	647.
Area 2 Sub-ACL (27.8%)	4,188.
Area 3 Sub-ACL (39%)	5,876.
Fixed Gear Set-Aside	39.
Research Set-Aside	3% of sub-ACLs.

*If New Brunswick weir fishery catch through October 1 is less than 4,000 mt, then 1,000 mt will be subtracted from the management uncertainty buffer and added to the ACL and Area 1A Sub-ACL.

Based on the best available science, we are reducing the OFL for 2019 to 30,668 mt. Please note that a typographic error in the PDT's October 2018 report changed the ABC with a 50-percent probability of preventing overfishing from 30,668 mt to 30,688 mt. That mistake was perpetuated in the SSC's OFL recommendation for 2019 and in our November 2018 proposed rule. The correct value for an OFL with a 50-percent probability of preventing overfishing in 2019 is 30,668 mt. The Herring FMP specifies that the OFL must be equal to catch resulting from applying the maximum fishing mortality threshold to a current or projected estimate of stock size. When the stock is not overfished and overfishing is not occurring, this is usually the fishing rate supporting maximum sustainable yield. Catching in excess of this amount is considered to be overfishing. An OFL of 30,668 mt would result in approximately a 50-percent probability of preventing overfishing in 2019. This OFL is based on projections by the SAW/SARC, as updated by NOAA's NEFSC staff using 2018 catch, and is consistent with the SSC recommendation.

The Herring FMP specifies that the ABC may be equal to or less than the OFL depending on scientific uncertainty concerning stock size estimates, variability around recruitment estimates, and consideration of ecosystem issues. We are reducing the ABC to 21,266 mt for 2019. This ABC accounts for scientific uncertainty in the stock assessment's projected estimates of herring biomass and recruitment and we expect it will prevent overfishing, lower the risk of the stock becoming overfished, and reduce catch level variability between 2019 and 2020. Our decision to implement a 2019 ABC consistent with the Council's recommendation for this in-season adjustment is independent of and involves different considerations than our consideration of the Council's recommended control rule in Amendment 8. We expect the Council to submit Amendment 8 to us for review and approval in early 2019.

The Herring FMP specifies that the ACL is reduced from the ABC to account for management uncertainty, and the primary source of management uncertainty is catch in the New Brunswick weir fishery. We are maintaining the current management uncertainty buffer (6,200 mt), as recommended by the Council, so the resulting herring ACL/OY is 15,065 mt for 2019. Catch in the New Brunswick weir fishery is variable. The value of the current buffer is based on average catch during 2009–2011. Like catch in 2010 (10,958 mt), New Brunswick weir catch in 2018 was much higher than average (11,500 mt). Because the average of recent New Brunswick weir catch (2016–2018) is 5,900 mt and years with high weir catches are typically not consecutive, we expect a buffer of 6,200 mt to appropriately account for management uncertainty in 2019.

We are maintaining the sub-ACL allocations used in the recent specifications (2016–2018) for 2019. This means that 28.9 percent of the ACL is allocated to Area 1A, 4.3 percent is allocated to Area 1B, 27.8 percent is allocated to Area 2, and 39 percent is allocated to Area 3. These sub-ACL allocations were recommended by the Council for past specifications, as well as for 2019, because they do not substantially impact one stock component (inshore versus offshore) more than the other while providing fishing opportunities for all gears types and all management areas.

Based on the Council's recommendations, we are reducing border transfer to 0 mt and the fixed gear set-aside to 39 mt for 2019. Border transfer is a processing quota and is the maximum amount of herring that can be transshipped to Canada via Canadian carrier vessels for human consumption. Border transfer has been under-utilized in recent years, and there has been no border transfer since 2015. Reducing the border transfer to 0 mt for 2019 would ensure all herring caught in U.S. waters are available to U.S. federally permitted dealers for lobster bait or human consumption. Additionally, we are proportionally reducing the fixed gear set-aside, relative to the Area 1A sub-ACL, to 39 mt. The Herring FMP allows up to 500 mt of the Area 1A sub-ACL to be allocated for the fixed gear fisheries in Area 1A (weirs and stop seines) that occur west of 67°16.8′ W long. (Cutler, Maine). This set-aside is available for harvest by fixed gear within the specified area until November 1 of each fishing year. Any portion of this allocation that has not been harvested by November 1 is transferred back to the sub-ACL allocation for Area 1A. We expect that reducing the fixed gear set aside will allow additional herring harvest to be available to both fixed and mobile gears in Area 1A helping ensure OY is achieved. As with the border transfer, the fixed gear set-aside has been under-utilized in recent years. Fixed gear landings tracked against the set-aside have averaged less than 12 mt in the past 5 years.

The Herring FMP requires we adjust for catch overages and underages in a subsequent year. Total catch in 2017 did not reach or exceed any of the management area sub-ACLs, so typically we would carryover those underages, or a portion of the underages, to increase sub-ACLs in 2019. However, to help ensure catch does not exceed the ABC in 2019, we are not increasing any sub-ACLs in 2019 to adjust for underages in 2017.

Values for domestic annual harvest and domestic annual processing in 2019 are adjusted consistent with the specifications for OY and border transfer. All other herring specifications for 2019, including the river herring and shad catch caps, remain unchanged from 2018.

Changes From the Proposed Rule

This in-season adjustment implements herring specifications and sub-ACLs for 2019 that are lower than our proposed 2019 herring limits. All changes from the proposed rule are consistent with Council recommendations and intended to lower the risks of overfishing and the stock becoming overfished. Changes between our proposed and final herring specifications and sub-ACLs are shown in Table 2 below. While the values for sub-ACLs and the fixed gear set-aside are different than those proposed, the methods to allocate sub-ACLs and adjust the fixed gear set-aside are the same. The specifications for management uncertainty, domestic annual harvest, border transfer, domestic annual processing, and research set-aside are the same as those proposed. All other specifications, including river herring and shad catch caps, remain unchanged from 2018.

TABLE 2—DIFFERENCE IN PROPOSED AND FINAL ATLANTIC HERRING SPECIFICATIONS AND SUB-ACLS FOR 2019

Specifications	Proposed for 2019 (mt)	Final for 2019 (mt)	Difference (mt)
OFL	30,688	30,668	* – 20

TABLE 2—DIFFERENCE IN PROPOSED AND FINAL ATLANTIC HERRING SPECIFICATIONS AND SUB-ACLS FOR 2019—Continued

Specifications	Proposed for 2019 (mt)	Final for 2019 (mt)	Difference (mt)
ABC	30,688	21,266	−9,422
OY/ACL	24,488	15,065	−9,423
Domestic Annual Harvest	24,488	15,065	−9,423
Domestic Annual Processing	24,488	15,065	−9,423
Area 1A Sub-ACL (28.9%)	7,077	4,354	−2,723
Area 1B Sub-ACL (4.3%)	1,053	647	−406
Area 2 Sub-ACL (27.8%)	6,808	4,188	−2,620
Area 3 Sub-ACL (39%)	9,550	5,876	−3,674
Fixed Gear Set-Aside	64	39	−25

* Difference due to correcting a typographical error in the value of the OFL.

Projections used to generate the proposed 2019 ABC assumed 49,900 mt of herring catch in 2018. After publication of the proposed rule, we learned that total herring catch for 2018, including 11,500 mt of catch in the New Brunswick weir fishery that is not counted against the ACL but used for assessing status of the herring stock, actually totaled 54,896 mt. This means that the proposed ABC likely has less than a 50-percent probability of preventing overfishing in 2019. We intended to explore ABC options for this final rule that were lower than 30,688 mt but higher than 21,266 mt, in hopes of finding a balance between conserving the herring stock and minimizing negative economic impacts on the fishing industry. However, the lapse in appropriations resulting in the partial government shutdown starting on December 22, 2018, prevented us from working with staff from the NEFSC to analyze additional alternatives. Setting the final ABC lower than the OFL better accounts for scientific uncertainty to ensure catch limits will prevent overfishing and meet the Herring FMP's goals and objectives.

Herring Research Set-Aside Exempted Fishing Permits

In the proposed rule, we solicited public comment on exempted fishing permits (EFPs) used to exempt vessels from certain herring management regulations to support herring research set-aside (RSA) compensation fishing. Consistent with previous herring RSA EFPs, vessels would be allowed to harvest herring RSA in a management area after a sub-ACL had been caught and the herring fishery is limited to 2,000 lb (907 kg) of herring per day/trip in that area. EFPs would also allow vessels to harvest RSA during times when the sub-ACLs are not seasonally available for harvest, specifically during January through May in Area 1A and January through April in Area 1B. We received no comments on the EFPs, so we intend to issue EFPs to facilitate herring RSA compensation fishing in support of the projects funded under the 2019 Herring RSA Program.

Comments and Responses

We received 22 comment letters on the proposed rule: 11 from participants in the herring and lobster fisheries; 2 from fishing industry organizations (Maine Lobstermen's Association (MLA) and New England Purse Seiner's Alliance (NEPSA)); 2 from states (Massachusetts Division of Marine Fisheries (MA DMF) and Maine Division of Marine Resources (ME DMR)); 2 from environmental advocacy groups (Conservation Law Foundation (CLF)/Natural Resources Defense Council (NRDC) and Earthjustice); 2 from participants in other fisheries (tuna and recreational); 1 from the Council; 1 from the Town of Wellfleet; and 1 from a member of the public.

Comment 1: Several commenters supported the Council's recommended herring ABC of 21,266 mt including: MA DMF; CLF/NRDC; Earthjustice; Town of Wellfleet; and one recreational fisheries participant. These commenters echoed the Council's rationale for supporting a lower ABC in 2019 and that rationale is as follows:

- A buffer is needed between the OFL and ABC to account for scientific uncertainty associated with the assessment's recruitment and biomass projections;
- The lower ABC performs better across several metrics than the proposed ABC, including lower probability of overfishing (15 percent versus 50 percent) and lower variability in yield (between 2019 and 2020);
- Maintaining fishing mortality at the rate to support maximum sustainable yield is not consistent with the Council's risk tolerance for herring and applying a lower fishing mortality rate would help the stock rebuild more quickly;
- Actual catch in 2018 exceeded 49,900 mt so the proposed ABC would have less than a 50-percent probability of preventing overfishing in 2019;
- It is uncertain what higher than average catch in the New Brunswick weir fishery will mean for stock recruitment;
- The 2020 ABC can be higher under the lower ABC than under the proposed ABC;
- The higher ABC results in additional risk to the stock that is not justified given the marginal increase in short-term revenue; and
- The lower ABC balances the goals and objectives of the Herring FMP.

Additionally, MA DMF commented that the herring stock is less likely to become overfished under the lower ABC than under the proposed ABC, especially if recruitment projections are not realized. It also speculated that the lower ABC in 2020, resulting from higher limits in 2019, may cause more economic hardship, threaten the viability of the herring fishery, and have serious implications for vessels fishing for mackerel. Earthjustice and CLF/NRDC contend that the Magnuson-Stevens Act prohibits ACLs from being set higher than ABC recommendations by the SSC. The Town of Wellfleet commented that the lower ABC better provides for herring predators than the proposed ABC.

Response: We understand the comments made by these stakeholders and why they advocate for a lower herring ABC in 2019, even though we do not agree that the Magnuson-Stevens Act prohibits us from setting harvest limits higher than those recommended by the SSC in this in-season adjustment.

For all the reasons we previously described, we are implementing the lower ABC (21,266 mt) recommended by the Council for 2019.

Comment 2: Several commenters supported the proposed ABC of 30,688 mt including: ME DMR; NEPSA; MLA; some participants in the herring and lobster fisheries; and one participant in the tuna fishery. Their rationale for supporting a higher ABC in 2019 is as follows:

- The 2019 ABC should be set consistent with recent specifications until the new control rule is reviewed and approved as part of Amendment 8;
- The maximum fishing mortality rate of 80 percent associated the new control rule is redundant as the stock assessment already accounts for the consumption of herring by predators;
- The lower ABC is too restrictive, in hopes of rebuilding the stock by limiting fishing, but herring recruitment is primarily environmentally-driven;
- The higher ABC helps achieve OY by accounting for social, economic, and ecological factors while preventing overfishing and mitigating severe economic hardship on the herring and lobster fisheries;
- The higher ABC helps support a mackerel fishery in 2019;
- The new control rule would not have prevented the current condition of the herring stock and it is an overreaction to the 2018 stock assessment without consideration for the economic impacts on herring, lobster, and mackerel fisheries;
- Leaving an extra 9,000 mt of herring in the water will not make an appreciable impact on the future health of herring stock, but not doing so will devastate the herring and lobster fisheries;
- The economic impacts of the lower ABC on the fishing industry will be severe with participants in the herring fishery struggling to maintain their businesses, crews, and facilities and the lobster fishery losing access to millions of pounds of lobster bait resulting in high prices and shortages; and
- A higher ABC in 2019 would allow the lobster industry time to identify alternative sources of bait, coordinate bait distribution, and grow infrastructure and storage capacity to minimize the economic impacts of reduced herring catch limits.

Response: We also understand the comments made by these stakeholders and why they advocate for a higher herring ABC in 2019. While the impacts of less catch and less revenue associated with either ABC alternative will negatively impact the fishing industry, we agree with the commenters that economic impacts on the fishing industry will likely be more severe with implementation of the lower ABC. Because actual catch in 2018 was higher than anticipated, the proposed ABC of 30,688 mt likely has less than a 50-percent probability of preventing overfishing in 2019. This means that the higher ABC is no longer a viable alternative for 2019. The partial government shutdown that began on December 22, 2018, prevented us from analyzing additional ABC alternatives. Therefore, to better account for scientific uncertainty and prevent overfishing and lower the risk of the stock becoming overfished, we are implementing the lower ABC recommended by the Council for 2019.

Comment 3: The Council and some participants in the herring trawl fishery expressed support for maintaining recent sub-ACL allocations. They commented that the proposed sub-ACL allocations provide harvesting opportunities for vessels fishing in offshore areas, small-mesh bottom trawl fishing in Area 2, and vessels fishing for mackerel in Area 2.

Response: We acknowledge these comments and are maintaining the recent herring sub-ACL allocations in 2019.

Comment 4: Several commenters opposed maintaining the recent sub-ACLs allocations including the MLA, NEPSA, ME DMR, some participants in the herring purse seine fishery, some participants in the lobster fishery, and one participant in the tuna fishery. They commented that more herring should be allocated to Area 1A because:

- Recent allocations do not reflect the availability of the herring resource or the effort of the herring fishery;
- Recent allocations do not equally distribute the impact of a low ABC across states, so Maine will be more severely impacted than other states because of its need for lobster bait;
- If the largest percentage of the ACL is not allocated to Area 1A, the ACL may not be harvested;
- Purse seine vessels will be more impacted by a low ABC than trawl vessels because they only fish in Area 1A;
- Timing of the Area 1A fishery coincides with the lobster fishery's need for fresh bait;
- Allocating the most harvest to Area 1A will help lessen the impact of the ABC reduction on the lobster fishery; and
- Unharvested catch should be transferred into areas where it can be harvested.

Response: We understand the concerns expressed in these comments. Because sub-ACL allocations have the potential for biological impacts on the herring stock and economic impacts on the fishing industry, we are deferring to the Council's recommendations for sub-ACL allocations. The Council will soon begin developing herring specifications for 2020–2021 and will likely reconsider sub-ACL allocations at that time. Because herring revenue makes up a larger percentage of total revenue for purse seine vessels than trawl vessels, we agree that purse seine vessels may be more negatively affected by low catch limits than trawl vessels. We disagree that sub-ACL allocations will prevent the ACL from being harvested in 2019 because recent catch (2016–2018) in each of the management areas has been higher than the 2019 sub-ACLs, with the exception of Area 2 in 2017. But if there is unharvested herring catch available in any of the management areas near the end of the fishing year, the Council could request we use an additional in-season adjustment to reallocate unharvested catch.

Comment 5: Earthjustice and CLF/NRDC commented on the river herring and shad catch caps for 2019. They cautioned that maintaining the current catch caps would allow disproportionately high catch of river herring and shad, compared to herring catch, and would not encourage vessels to avoid river herring and shad catch or minimize bycatch in violation of the Magnuson-Stevens Act.

Response: We disagree with these comments. In January 2017, midwater vessels had only harvested about 3,000 mt of herring from Area 3 when their catch of river herring and shad approached 80-percent of the Cape Cod catch cap. Because the midwater trawl fleet quickly modified their fishing behavior to avoid river herring and shad, they were able to avoid fully harvesting the Cape Cod catch cap for the remainder of 2017. In March 2018, midwater trawl vessels fully harvested the Southern New England catch cap, triggering the 2,000-lb herring possession limit in the catch cap closure area, in combination with less than 6,500 mt of herring from Area 2. Herring catch from Area 2 remained low for the rest of the year and totaled approximately 7,000 mt at the end of 2018. These examples illustrate that even at low levels of herring catch, the current river herring and shad catch caps provide an incentive to avoid river herring and shad and minimize bycatch.

Comment 6: The Council expressed support for reducing border transfer to zero so that more herring would be available to the bait market. Both the Council and ME DMR expressed support for a fixed gear set-aside and the Council noted that the fixed gear set-aside should be reduced in proportion to the ABC.

Response: We acknowledge these comments and are reducing border transfer to zero mt and implementing a fixed gear set-aside of 39 mt for 2019, reduced proportionally relative to the Area 1A sub-ACL.

Comment 7: The NEPSA and one participant in the herring fishery supported the in-season transfer of unharvested herring.

Response: We expect the fishery to be able to fully harvest the ACL/OY in 2019, but if there is unharvested herring catch available in any of the management areas near the end of the fishing year, the Council could request we use an additional in-season adjustment to reallocate unharvested catch.

Comment 8: One participant in the herring fishery expressed support for the research set-aside because of the value of the compensation fishery, especially if it helps provide access to the mackerel fishery.

Response: We acknowledge this comment and are setting aside 3-percent of each sub-ACL for research, consistent with recent specifications.

Comment 9: Several commenters expressed concern with weekly landing limits and measures restricting the activity of herring carrier vessels in Area 1A.

Response: Because these measures are recommended by the Atlantic States Marine Fisheries Commission and implemented and enforced by individual states, they are outside the scope of this action.

Classification

The Administrator, Greater Atlantic Region, NMFS determined that this final rule is necessary for the conservation and management of the herring fishery and that it is consistent with the Magnuson-Stevens Act and other applicable law.

There is good cause under 5 U.S.C. 553(d)(3) to waive the 30-day delay in effectiveness so the purpose of this action is not undermined. This action reduces 2018 herring specifications and sub-ACLs to prevent overfishing in 2019 with the goals of increasing herring biomass and providing future fishery opportunities. This action must be in effect as soon as practicable to realize these intended benefits. Because this action reduces catch limits that directly relate to preventing overfishing while allowing the herring fishery to achieve OY, a 30-day delay would be contrary to the public interest.

The 2018 herring stock assessment concluded that catch would need to be reduced in 2019 to prevent overfishing and lower the risk of the stock becoming overfished. Before taking this action, we consulted with the Council at its September and December 2018 meetings. At those meetings, the Council requested that we use an in-season adjustment to reduce 2018 herring specifications and sub-ACLs for 2019 to prevent overfishing and lower the risk of the stock becoming overfished.

A delay in implementing these new herring catch limits will increase the likelihood that 2019 herring catch will exceed these lower limits. These new catch limits are almost 70 percent lower than 2018 catch limits. Exceeding these limits would result in a lower herring biomass and negative economic impacts on the herring industry due to further reduced catch limits in 2020 and beyond. Because herring is a critical source of bait for the lobster fishery, these negative economic impacts are also expected to affect the lobster fishery by reducing its bait supply.

Additionally, we are required to implement a 2,000-lb (907-kg) herring possession limit for the remainder of the year in each management area once we project 92-percent of an area's sub-ACL is harvested. We are also required to implement a 2,000-lb (907-kg) herring possession limit for the remainder of the year in all management areas once we project 95-percent of the herring ACL is harvested. If a delay in implementing this action results in catch approaching, or exceeding, the new 2019 catch limits, implementation of a herring possession limit is more likely. Early implementation of a herring possession limit would be counter to the goals and objectives of this action, which is intended to reduce 2019 catch, but also continue to provide fishing opportunities for the remainder of the 2019 fishing year.

This action is necessary to help rebuild the herring stock and maintain the viability of the herring fishing industry and other fisheries that rely on herring. Waiving the 30-day delay in effectiveness is necessary to fully achieve the conservation and economic benefits this action is intended to provide. A 30-day delay in effectiveness is unnecessary because it provides no benefit to herring conservation or the herring fishing industry. Conversely, a 30-day delay could result in a lower herring biomass and negative economic impacts to the herring industry due to further reduced catch limits in 2020 and beyond. For these reasons, NMFS has determined that a 30-day delay in the effectiveness of this action is contrary to the public interest.

This final rule is exempt from review under Executive Order 12866.

A final regulatory flexibility analysis (FRFA) was prepared in support of this action. The FRFA incorporates the IRFA, a summary of the significant issues raised by the public comments in response to the IRFA, NMFS responses to those comments, and a summary of the analyses completed in support of this action. A description of why this action was considered, the objectives of, and the legal basis for this rule is contained in in the preamble to the proposed and this final rule, and is not repeated here. All of the documents that constitute the FRFA and a copy of the SEA/RIR/IRFA are available upon request (see **ADDRESSES**) or via the internet at *https://www.nefmc.org*.

A Statement of the Significant Issues Raised by the Public in Response to the IRFA, a Statement of the Agency's Assessment of Such Issues, and a Statement of Any Changes Made in the Final Rule as a Result of Such Comments

We received 22 comment letters on the proposed rule. Those comments, and our responses, are contained in the Comments and Responses section of this final rule and are not repeated here. All changes from the proposed rule, as well as the rationale for those changes, are described in the Changes from the Proposed Rule section of this final rule and are not repeated here.

Description and Estimate of Number of Small Entities to Which the Rule Would Apply

The RFA recognizes three kinds of small entities: Small businesses; small organizations; and small governmental jurisdictions. For purposes of the RFA only, the small business criteria in the finfish fishing industry (NAICS 114111) is a firm that is independently owned and operated and not dominant in its field of operation, with gross annual receipts of $11 million or less. Small organizations and small governmental jurisdictions are not directly regulated by this action.

There are five permit categories in the herring fishery: (1) Limited access permit for all management areas (Category A); (2) limited access permit for access to Areas 2 and 3 only (Category B); (3) limited access incidental catch permit for 25 mt per trip (Category C); (4) an open access incidental catch permit for 3 mt per trip (Category D); and (5) an open access permit for limited access mackerel permit holders authorizing up to 9 mt per trip (Category E) in Areas 2 and 3.

In 2017, there were a total of 1,566 permitted herring vessels. Of those, 1,434 were exclusively Category D

vessels. Of the remaining 132 permitted herring vessels, 22 belonged to large businesses. Every Category B permit was also authorized for Category C, and all but one Category E permitted vessel also carried a Category D authorization. We included Category E vessels that also have Category D authorization in the analysis. Table 3 presents the counts of permitted vessels by category along with their affiliated entity's small or large business status (the status of the company that holds the herring permit).

TABLE 3—NUMBER OF HERRING PERMITS BY CATEGORY, 2015–2017

Herring permit categories	Number of herring permits					
	2015		2016		2017	
	Large	Small	Large	Small	Large	Small
A	5	32	5	30	6	30
B/C	4	4	4	4	4	4
C (exclusive)	3	37	3	37	3	37
D (exclusive)	112	1,222	115	1,306	114	1,320
E	9	39	9	40	9	39
Total	133	1,334	136	1,417	136	1,430

Source: NMFS.

Table 4 refines the counts from Table 3 to include only those vessels that had revenue from herring at least once in the 3-year period of analysis. In 2017, there were 4 large businesses and 69 small that had revenue from herring.

TABLE 4—NUMBER OF HERRING PERMITS WITH HERRING REVENUE, 2015–2017

Herring permit categories	Number of herring permits					
	2015		2016		2017	
	Large	Small	Large	Small	Large	Small
A	4	20	4	19	4	19
B/C	0	2	0	2	0	3
C (exclusive)	0	11	0	9	0	12
D (exclusive)	0	27	0	29	0	31
E	0	4	0	1	0	4
Total	4	64	4	60	4	69

Source: NMFS.

Finally, Table 5 defines the small entities affected by this proposed action—small businesses with a Herring Category A, B, C, or E permit and revenue from herring during the 2015–2017 period of analysis. There were 37, 31, and 38 such vessels in 2015, 2016, and 2017 respectively.

TABLE 5—AFFECTED SMALL ENTITIES, PERMITTED HERRING VESSELS WITH HERRING REVENUE, 2015–2017

Herring permit categories	Number of herring permits					
	2015		2016		2017	
	Large	Small	Large	Small	Large	Small
A	4	20	4	19	4	19
B/C	0	2	0	2	0	3
C (exclusive)	0	11	0	9	0	12
E	0	4	0	1	0	4
Total	4	37	4	31	4	38

Source: NMFS.

To better understand the impact of this action on the affected small businesses, we compared the revenue from herring fishing to total revenue brought in by the entity (business) that holds the herring permit. The 17 to 18 small entities with Category A permits show the most dependence on the herring fishery, with 49.75 percent to 62.03 percent of their revenue coming from herring landings. The 4 small Category E permitted entities have the least dependence on the herring fishery with less than one percent of total entity revenue coming from the herring fishery.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

This final rule does not introduce any new reporting, recordkeeping, or other compliance requirements.

Description of the Steps the Agency Has Taken To Minimize the Significant Economic Impact on Small Entities Consistent With the Stated Objectives of Applicable Statutes

Regulations at 50 CFR 648.200(e) allow us to make in-season adjustments to the herring specifications and sub-ACLs to achieve conservation and management objectives, after consultation with the Council, consistent with the Herring FMP's objectives and other FMP provisions. Specifications and sub-ACLs must also be based on the best available scientific information, consistent with National Standard 2 of the Magnuson-Stevens Act. The adjustments to 2018 herring specifications and sub-ACLs for 2019 implemented in this final rule satisfy regulatory and statutory requirements while achieving conservation and management objectives. Other options that we considered, including those that would have had less of an impact on small entities, failed to meet one or more of these stated objectives and, therefore, could not be implemented.

Alternative 1 (2018 catch limits) has less than a 50-percent probability of preventing overfishing in 2019 and, thus, is inconsistent the Magnuson-Stevens Act. Alternative 1 would also negatively impact the herring stock by increasing the risk that it would become overfished. The primary difference between Alternative 2 (final 2019 catch limits) and Alternative 3 (catch limits based on an ABC of 30,668) are specifications for ABC and the resulting ACL and sub-ACLs for 2019. The ABC associated with the Alternative 3 (30,668 mt) is 9,402 mt higher than the ABC associated with Alternative 2 (21,266 mt). Projections used to generate Alternative 3 assumed 49,900 mt of herring catch in 2018. After publication of the proposed rule, we learned that total herring catch for 2018, including catch in the New Brunswick weir fishery, actually totaled 54,896 mt. This means that Alternative 3, like Alternative 1, has less than a 50-percent probability of preventing overfishing in 2019 and is also inconsistent with the Magnuson-Stevens Act. In its comment letter on the proposed rule, the Council also cautioned that Alternative 3's higher ABC is inconsistent with the Council's risk tolerance for the herring resource. While Alternatives 1 and 3 would have allowed for higher total revenue and higher herring revenue than Alternative 2, Alternative 2 is the only alternative that meets the conservation and management objectives of the regulatory and statutory requirements. The impacts of adjustments to herring specifications and sub-ACLs for 2019, as implemented by this final rule, are not expected to disproportionately affect large or small entities.

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as ''small entity compliance guides.'' The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules. As part of this rulemaking process, a letter to permit holders that also serves as small entity compliance guide was prepared. Copies of this final rule are available from the Greater Atlantic Regional Fisheries Office (GARFO), and the compliance guide (*i.e.,* fishery bulletin) will be sent to all holders of permits for the herring fishery. The guide and this final rule will be posted on the GARFO website.

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

Dated: February 5, 2019.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

[FR Doc. 2019–01658 Filed 2–7–19; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 665

[Docket No. 180202118–8999–01]

RIN 0648–BH63

Pacific Island Fisheries; Reclassifying Management Unit Species to Ecosystem Component Species

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

ACTION: Final rule.

SUMMARY: This final rule reclassifies certain management unit species in the Pacific Islands as ecosystem component species. The rule also updates the scientific and local names of certain species. The intent of this final rule is to prioritize conservation and management efforts and to improve efficiency of fishery management in the region.

DATES: This rule is effective March 11, 2019.

ADDRESSES: The Western Pacific Fishery Management Council (Council) prepared Amendment 4 to the Fishery Ecosystem Plan (FEP) for American Samoa, Amendment 5 to the FEP for the Marianas Archipelago, and Amendment 5 to the FEP for Hawaii. Those amendments, available as a single document, include an environmental assessment (EA) that describes the potential impacts on the human environment that would result from the action. This document is available at *http://www.regulations.gov* or from the Council, 1164 Bishop St., Suite 1400, Honolulu, HI 96813, tel (808) 522–8220, fax (808) 522–8226, or *https://www.wpcouncil.org.*

FOR FURTHER INFORMATION CONTACT: Kate Taylor, NMFS PIR Sustainable Fisheries, 808–725–5182.

SUPPLEMENTARY INFORMATION: The Council and NMFS manage fishing in the U.S. Exclusive Economic Zone (EEZ) around the U.S. Pacific Islands pursuant to the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). In this rule, NMFS, as recommended by the Council, is reclassifying certain bottomfish, coral reef ecosystem, precious coral, and crustacean management unit species (MUS) in the three FEPs as ecosystem component species (ECS). The action focuses Federal conservation and management on the MUS (*i.e.,* the targets of Federal fisheries).

The Council recommended amending the three FEPs to reclassify certain management unit species as ecosystem component species. The intent of these amendments is to focus management efforts on species that are in need of conservation and management, and improve efficiency of fishery management in the region. On August 8, 2018, NMFS published a notice of availability of the amendments, including an environmental assessment, and request for public comments (83 FR 39039); the comment period ended October 9, 2018. NMFS did not receive any comments directly related to the amendments, and on November 5, 2018, the Secretary of Commerce approved the FEP amendments. This final rule implements the FEP amendments.

This action does not change any fishery operations in terms of location, target and non-target species, catch,

effort, fishermen participation, gear composition, seasonality, intensity, or bycatch. For newly designated ECS, the Council and NMFS would no longer establish annual catch limits or associated accountability measures. The Council and NMFS, in cooperation with the State of Hawaii, Territory of American Samoa and Guam and the Commonwealth of the Northern Mariana Islands will continue to monitor fisheries that catch ECS. If an ECS stock becomes a target of a Federal fishery in the future, NMFS and the Council may consider including that stock in the management unit to actively manage that stock.

This rule reduces the number of MUS from 205 species or families to 11 in the American Samoa FEP, from 227 species or families to 13 in the Marianas FEP, and from 173 species or families to 20 in the Hawaii FEP. Appendix B of the EA contains the complete list of ECS. This rule also updates several scientific and common names according to current scientific classifications. All existing management measures, including reporting and record keeping, prohibitions, and experimental fishing regulations apply to the associated ECS, unless otherwise specified.

You may find additional background information on this action in the preamble to the proposed rule (83 FR 46466, September 13, 2018).

Comments and Responses

On September 13, 2018, NMFS published a proposed rule and request for public comments (83 FR 46466). The comment period ended October 29, 2018. NMFS received one comment that generally supported the rule.

Changes From the Proposed Rule

This final rule contains no changes from the proposed rule.

Classification

The Administrator, Pacific Islands Region, NMFS, determined that this action is necessary for the conservation and management of Pacific Island fisheries, and that it is consistent with the Magnuson-Stevens Act and other applicable laws.

This final rule has been determined to be not significant for purposes of Executive Order 12866.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration during the proposed rule stage that this action would not have a significant economic impact on a substantial number of small entities. The factual basis for the certification was published in the proposed rule and is not repeated here. NMFS did not receive any comments regarding this certification. As a result, a regulatory flexibility analysis was not required and none was prepared.

List of Subjects in 50 CFR Part 665

Administrative practice and procedure, American Samoa, Ecosystem, Fisheries, Fishing, Guam, Hawaii, Northern Mariana Islands, Permits, Reporting and recordkeeping requirements.

Dated: February 1, 2019.

Samuel D. Rauch, III,

Deputy Assistant Administrator for Regulatory Programs National Marine Fisheries Service.

For the reasons set out in the preamble, NMFS amends 50 CFR part 665 as follows:

PART 665—FISHERIES IN THE WESTERN PACIFIC

■ 1. The authority citation for 50 CFR part 665 continues to read as follows:

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

■ 2. In § 665.1, revise paragraph (a) to read as follows:

§ 665.1 Purpose and scope.

(a) The regulations in this part govern fishing for Pacific Island management unit species (MUS) and ecosystem component species (ECS) by vessels of the United States that operate or are based inside the outer boundary of the U.S. EEZ around American Samoa, Hawaii, Guam, the Northern Mariana Islands, Palmyra Atoll, Kingman Reef, Jarvis Island, Baker Island, Howland Island, Johnston Atoll, and Wake Island.

* * * * *

■ 3. In § 665.4, revise paragraph (c) to read as follows:

§ 665.4 Annual catch limits.

* * * * *

(c) *Exceptions.* The Regional Administrator is not required to specify an annual catch limit for an ECS, or for an MUS that is statutorily excepted from the requirement pursuant to 50 CFR 600.310(h)(2).

* * * * *

■ 4. In § 665.12:

■ a. Revise the definition of ''American Samoa FEP'';

■ b. Remove the definition of ''Currently harvested coral reef taxa'';

■ c. Revise the definitions of ''Ecosystem component species'', ''First level buyer'', ''Hawaii FEP'', ''Mariana FEP,'' ''No-take MPA'', ''Offload'', and ''Pelagics FEP'';

■ d. Remove the definition of ''Potentially harvested coral reef taxa''; and

■ e. Revise the definitions of ''PRIA FEP'', ''Special permit'', and ''Transship''.

The revisions read as follows:

§ 665.12 Definitions.

* * * * *

American Samoa FEP means the Fishery Ecosystem Plan for American Samoa, available from the Western Pacific Fishery Management Council or PIRO.

* * * * *

Ecosystem component species (ECS) means a stock that a Council or the Secretary has determined does not require conservation and management, but is identified in an FEP to achieve ecosystem management objectives.

* * * * *

First level buyer means:

(1) The first person who purchases, with the intention to resell, management unit species (MUS) or ECS, or portions thereof, that were harvested by a vessel that holds a permit or is otherwise regulated under crustacean fisheries in subparts B through E of this part; or

(2) A person who provides recordkeeping, purchase, or sales assistance in the first transaction involving MUS or ECS (such as the services provided by a wholesale auction facility).

* * * * *

Hawaii FEP means the Fishery Ecosystem Plan for the Hawaiian Archipelago, available from the Western Pacific Fishery Management Council or PIRO.

* * * * *

Mariana FEP means the Fishery Ecosystem Plan for the Mariana Archipelago, available from the Western Pacific Fishery Management Council or PIRO.

* * * * *

No-take MPA means an area of the U.S. EEZ that is closed to fishing for or harvesting of any MUS or ECS, as defined in subparts B through F of this part.

Offload means to remove MUS or ECS from a vessel.

* * * * *

Pelagics FEP means the Fishery Ecosystem Plan for Pelagic Fisheries of the Western Pacific, available from the Western Pacific Fishery Management Council or PIRO.

* * * * *

PRIA FEP means the Fishery Ecosystem Plan for the Pacific Remote Island Areas of Palmyra Atoll, Kingman

Reef, Jarvis Island, Baker Island, Howland Island, Johnston Atoll, and Wake Island, available from the Western Pacific Fishery Management Council or PIRO.

* * * * *

Special permit means a permit issued to allow fishing for coral reef ECS in low-use MPAs or with any gear not specifically allowed under § 665.127, § 665.227, or § 665.427.

* * * * *

Transship means to offload or otherwise transfer MUS or ECS or products thereof to a receiving vessel.

* * * * *

■ 5. In § 665.13, revise paragraph (k) to read as follows:

§ 665.13 Permits and fees.

* * * * *

(k) *Display.* Any permit issued under this subpart, or a facsimile of such permit, must be on board the vessel at all times while the vessel is fishing for, taking, retaining, possessing, or landing MUS or ECS shoreward of the outer boundary of the fishery management area. Any permit issued under this section must be displayed for inspection upon request of an authorized officer.

* * * * *

■ 6. In § 665.14, revise paragraphs (a), (c), (d), (g)(2) introductory text, (g)(2)(ii), and (g)(3) and (4) to read as follows:

§ 665.14 Reporting and recordkeeping.

(a) *State reporting.* Except for precious coral and crustacean fisheries, any person who is required to do so by applicable state law or regulation must make and/or file all reports of MUS or ECS landings containing all data and in the exact manner required by applicable state law or regulation.

* * * * *

(c) *Transshipment logbooks.* Any person subject to the requirements of § 665.124(a)(2), § 665.224(a)(2), § 665.424(a)(2), § 665.624(a)(2), or § 665.801(e) must maintain on board the vessel an accurate and complete NMFS transshipment logbook containing report forms provided by the Regional Administrator. All information specified on the forms must be recorded on the forms within 24 hours after the day of transshipment. Each form must be signed and dated by the receiving vessel operator. The original logbook for each day of transshipment activity must be submitted to the Regional Administrator within 72 hours of each landing of western Pacific pelagic MUS. The original logbook for each day of transshipment activity must be submitted to the Regional Administrator within 7 days of each landing of coral reef ECS.

(d) *Sales report.* The operator of any fishing vessel subject to the requirements of § 665.142, § 665.242, § 665.442, or § 665.642, or the owner of a medium or large fishing vessel subject to the requirements of § 665.404(a)(2) must submit to the Regional Administrator, within 72 hours of offloading of crustacean MUS or ECS, an accurate and complete sales report on a form provided by the Regional Administrator. The form must be signed and dated by the fishing vessel operator.

* * * * *

(g) * * *

(2) *Crustaceans.* Upon request, any first-level buyer must immediately allow an authorized officer and any employee of NMFS designated by the Regional Administrator, to access, inspect, and copy all records relating to the harvest, sale, or transfer of crustacean MUS or ECS taken by vessels that have permits issued under this subpart or §§ 665.140 through 665.145, §§ 665.240 through 665.252, §§ 665.440 through 665.445, or §§ 665.640 through 665.645. This requirement may be met by furnishing the information on a worksheet provided by the Regional Administrator. The information must include, but is not limited to:

* * * * *

(ii) The amount, number, and size of each MUS or ECS involved in each transaction.

* * * * *

(3) *Bottomfish and seamount groundfish.* Any person who is required by state laws and regulations to maintain records of landings and sales for vessels regulated by this subpart and by §§ 665.100 through 665.105, 665.200 through 665.212, 665.400 through 665.407, and 665.600 through 665.606 must make those records immediately available for Federal inspection and copying upon request by an authorized officer.

(4) *Coral reefs.* Any person who has a special permit and who is required by state laws and regulations to maintain and submit records of catch and effort, landings and sales for coral reef ECS by this subpart and §§ 665.120 through 665.128, §§ 665.220 through 665.228, §§ 665.420 through 665.428, or §§ 665.620 through 665.628 must make those records immediately available for Federal inspection and copying upon request by an authorized officer as defined in § 600.10 of this chapter.

* * * * *

■ 7. In § 665.15, revise paragraphs (l), (n), and (o) to read as follows:

§ 665.15 Prohibitions.

* * * * *

(l) Fish for, take or retain within a no-take MPA, defined in § 665.99, § 665.199, § 665.399, or § 665.599, any bottomfish MUS or ECS, crustacean MUS or ECS, western Pacific pelagic MUS, precious coral MUS or ECS, seamount groundfish MUS, or coral reef ecosystem ECS.

* * * * *

(n) Fish for, catch, or harvest MUS or ECS without an operational VMS unit on board the vessel after installation of the VMS unit by NMFS, in violation of § 665.19(e)(2).

(o) Possess MUS or ECS, that were harvested after NMFS has installed the VMS unit on the vessel, on board that vessel without an operational VMS unit, in violation of § 665.19(e)(2).

* * * * *

■ 8. In § 665.17, revise paragraphs (a) and (b) to read as follows:

§ 665.17 Experimental fishing.

(a) *General.* The Regional Administrator may authorize, for limited purposes, the direct or incidental harvest of MUS or ECS that would otherwise be prohibited by this part. No experimental fishing may be conducted unless authorized by an EFP issued by the Regional Administrator in accordance with the criteria and procedures specified in this section. EFPs will be issued without charge.

(b) *Observers.* No experimental fishing for crustacean MUS or ECS may be conducted unless a NMFS observer is aboard the vessel.

* * * * *

■ 9. Revise § 665.101 to read as follows:

§ 665.101 Definitions.

As used in §§ 665.100 through 665.119:

American Samoa bottomfish ecosystem component species (American Samoa bottomfish ECS) means those species identified as ECS in the American Samoa FEP and not defined as American Samoa bottomfish MUS.

American Samoa bottomfish management unit species (American Samoa bottomfish MUS) means the following species:

Local name	Common name	Scientific name
palu-gutusiliva	red snapper, silvermouth	*Aphareus rutilans.*
asoama	gray snapper, jobfish	*Aprion virescens.*
tafauli	black trevally, jack	*Caranx lugubris.*
papa, velo	lunartail grouper	*Variola louti.*
palu malau	red snapper	*Etelis carbunculus.*
palu-loa	red snapper	*Etelis coruscans.*
filoa-paomumu	redgill emperor	*Lethrinus rubrioperculatus.*
savane	blueline snapper	*Lutjanus kasmira.*
palu-èna èna	pink snapper	*Pristipomoides filamentosus.*
palu-sina	yelloweye snapper	*Pristipomoides flavipinnis.*
palu-ula, palu-sega	Snapper	*Pristipomoides zonatus.*

■ 10. Revise § 665.103 to read as follows:

§ 665.103 Prohibitions.

In addition to the general prohibitions specified in § 600.725 of this chapter and § 665.15, it is unlawful for any person to fish for American Samoa bottomfish MUS or ECS using gear prohibited under § 665.104.

■ 11. In § 665.104, revise paragraph (a) to read as follows:

§ 665.104 Gear restrictions.

(a) *Bottom trawls and bottom set gillnets.* Fishing for American Samoa bottomfish MUS or ECS with bottom trawls and bottom set gillnets is prohibited.

* * * * *

■ 12. Revise § 665.121 to read as follows:

§ 665.121 Definitions.

As used in §§ 665.120 through 665.139, *American Samoa coral reef ecosystem component species (American Samoa coral reef ECS)* means those species identified as ECS in the American Samoa FEP and not defined as MUS or another ECS in this subpart.

■ 13. Revise § 665.123 to read as follows:

§ 665.123 Relation to other laws.

To ensure consistency between the management regimes of different Federal agencies with shared management responsibilities of fishery resources within the American Samoa fishery management area, fishing for American Samoa coral reef ECS is not allowed within the boundary of a National Wildlife Refuge unless specifically authorized by the USFWS, regardless of whether that refuge was established by action of the President or the Secretary of the Interior.

■ 14. In § 665.124, revise paragraphs (a)(1) and (2) and (a)(3)(i) and (ii) to read as follows:

§ 665.124 Permits and fees.

(a) * * *

(1) *Special permit.* Any person of the United States fishing for, taking or retaining American Samoa coral reef ECS must have a special permit if they fish, or if a vessel which they operate is used to fish, for any:

(i) American Samoa coral reef ECS in low-use MPAs as defined in § 665.99;

(ii) American Samoa coral reef ECS in the coral reef ecosystem management area; or

(iii) American Samoa coral reef ECS in the coral reef ecosystem management area with any gear not specifically allowed in this subpart.

(2) *Transshipment permit.* A receiving vessel must be registered for use with a transshipment permit if that vessel is used in the American Samoa coral reef ecosystem management area to land or transship American Samoa coral reef ECS harvested within low-use MPAs.

(3) * * *

(i) Any person issued a permit to fish under any FEP who incidentally catches American Samoa coral reef ECS while fishing for bottomfish MUS or ECS, crustacean ECS, western Pacific pelagic MUS, precious coral ECS, or seamount groundfish MUS;

(ii) Any person fishing for American Samoa coral reef ECS outside of an MPA, who does not retain any American Samoa coral reef ECS; and

* * * * *

■ 15. In § 665.125, revise paragraphs (a) introductory text, (a)(3), and (b) introductory text to read as follows:

§ 665.125 Prohibitions.

* * * * *

(a) Fish for, take, retain, possess or land any American Samoa coral reef ecosystem ECS in any low-use MPA as defined in § 665.99 unless:

* * * * *

(3) The American Samoa coral reef ECS possessed on board the vessel originated outside the management area, and this can be demonstrated through receipts of purchase, invoices, fishing logbooks or other documentation.

(b) Fish for, take, or retain any American Samoa coral reef ECS:

* * * * *

■ 16. Revise § 665.126 to read as follows:

§ 665.126 Notifications.

Any special permit holder subject to the requirements of this subpart must contact the appropriate NMFS enforcement agent in American Samoa, Guam, or Hawaii at least 24 hours before landing any American Samoa coral reef ECS harvested under a special permit and report the port and the approximate date and time at which the catch will be landed.

■ 17. In § 665.127, revise paragraphs (a) introductory text and (b) to read as follows:

§ 665.127 Allowable gear and gear restrictions.

(a) American Samoa coral reef ECS may be taken only with the following allowable gear and methods:

* * * * *

(b) American Samoa coral reef ECS may not be taken by means of poisons, explosives, or intoxicating substances. Possession or use of these materials by any permit holder under this subpart who is established to be fishing for coral reef ECS in the management area is prohibited.

* * * * *

■ 18. In § 665.128, revise paragraph (a) to read as follows:

§ 665.128 Gear identification.

(a) *Gear marking.* The vessel number must be affixed to all fish and crab traps on board the vessel or deployed in the water by any vessel or person holding a permit under § 665.13 or § 665.124 or that is otherwise established to be fishing for American Samoa coral reef ecosystem ECS in the management area.

* * * * *

■ 19. In § 665.141, add a definition for ''American Samoa crustacean ecosystem component species (American Samoa crustacean ECS)'' in alphabetical order and remove the definition of ''American

Samoa crustacean management unit species''.

The addition reads as follows:

§ 665.141 Definitions.

* * * * *

American Samoa crustacean ecosystem component species (American Samoa crustacean ECS) means those species identified as ECS in the American Samoa FEP.

* * * * *

■ 20. In § 665.161, add a definition for ''American Samoa precious coral ecosystem component species (American Samoa precious coral ECS)'' in alphabetical order and remove the definition of ''American Samoa precious coral management unit species''.

The addition reads as follows:

§ 665.161 Definitions.

* * * * *

American Samoa precious coral ecosystem component species (American Samoa precious coral ECS) means those species identified as ECS in the American Samoa FEP.

* * * * *

■ 21. In § 665.162, revise paragraph (a) to read as follows:

§ 665.162 Permits.

(a) Any vessel of the United States fishing for, taking, or retaining American Samoa precious coral ECS in any American Samoa precious coral permit area must have a permit issued under § 665.13.

* * * * *

■ 22. In § 665.163, revise the introductory text of paragraphs (b) and (c) to read as follows:

§ 665.163 Prohibitions.

* * * * *

(b) Fish for, take, or retain any species of American Samoa precious coral ECS in any precious coral permit area:

* * * * *

(c) Take and retain, possess, or land any live *Hemicorallium laauense, Pleurocorallium secundum, Corallium* sp., or live black coral from any precious coral permit area that is less than the minimum height specified in § 665.165 unless:

* * * * *

■ 23. In § 665.165, revise paragraphs (a) and (b) to read as follows:

§ 665.165 Size restrictions.

* * * * *

(a) Live *Hemicorallium laauense, Pleurocorallium secundum,* or *Corallium* sp. harvested from any precious coral permit area must have attained a minimum height of 10 inches (25.4 cm).

(b) Live black coral harvested from any precious coral permit area must have attained either a minimum stem diameter of 1 inch (2.54 cm), or a minimum height of 48 inches (122 cm).

■ 24. In § 665.167, revise paragraph (d) to read as follows:

§ 665.167 Quotas.

* * * * *

(d) *Exploratory areas.* The American Samoa exploratory permit area X–P–AS has an annual quota of 1,000 kg for all American Samoa precious coral ECS combined with the exception of black corals.

■ 25. In § 665.201, add a definition for ''Hawaii bottomfish ecosystem component species (Hawaii bottomfish ECS)'' in alphabetical order, revise the definitions of ''Hawaii bottomfish management unit species (Hawaii bottomfish MUS)'' and ''Main Hawaiian Islands non-commercial bottomfish permit'', and in the definition of ''Seamount Groundfish'', revise the entry for ''Armorhead'' to read as follows:

§ 665.201 Definitions.

* * * * *

Hawaii bottomfish ecosystem component species (Hawaii bottomfish ECS) means those species that are not listed as Hawaii bottomfish MUS and that are identified as ECS in Table 4 of the Hawaii FEP.

Hawaii bottomfish management unit species (Hawaii bottomfish MUS) means the following species:

Local name	Common name	Scientific name
lehi	silver jaw jobfish	*Aphareus rutilans.*
uku	gray jobfish	*Aprion virescens.*
hapu'upu'u	sea bass	*Hyporthodus quernus.*
ehu	squirrelfish snapper	*Etelis carbunculus.*
onaga	longtail snapper	*Etelis coruscans.*
'opakapaka	pink snapper	*Pristipomoides filamentosus.*
kalekale	pink snapper	*Pristipomoides seiboldii.*
gindai	snapper	*Pristipomoides zonatus.*

* * * * *

Main Hawaiian Islands non-commercial bottomfish permit means the permit required by § 665.203(a)(2) to own or fish from a vessel that is used in any non-commercial vessel-based fishing, landing, or transshipment of any Hawaii bottomfish MUS or ECS in the MHI Management Subarea.

* * * * *

SEAMOUNT GROUNDFISH * * *

Common name	Scientific name
Armorhead	*Pentaceros wheeleri.*

* * * * *

■ 26. In § 665.203, revise paragraphs (a)(1) and (2), (e)(1), and (j)(1) to read as follows:

§ 665.203 Permits.

(a) * * *

(1) *Northwestern Hawaiian Islands.* The owner of any vessel used to fish for, land, or transship Hawaii bottomfish MUS or ECS shoreward of the outer boundary of the NWHI subarea must have a permit issued under this section, and the permit must be registered for use with that vessel. PIRO will not register a single vessel for use with a Ho'omalu Zone permit and a Mau Zone permit at the same time. Mau Zone permits issued before June 14, 1999, became invalid June 14, 1999, except that a permit issued to a person who submitted a timely application under paragraph (b)(3) of this section is valid until the permit holder either receives a Mau Zone limited entry permit or until final agency action is taken on the permit holder's application. The Ho'omalu Zone and the Mau Zone limited entry systems described in this section are subject to abolition, modification, or additional effort limitation programs.

(2) *MHI non-commercial.* The owner of a vessel that is used for and any person who participates in non-commercial, vessel-based fishing, landing, or transshipment of Hawaii bottomfish MUS or ECS in the MHI management subarea is required to

obtain an MHI non-commercial bottomfish permit or a State of Hawaii Commercial Marine License. If one or more persons on a vessel-based bottomfish fishing trip holds an MHI non-commercial permit, then the entire trip is considered non-commercial, and not commercial. However, if any commercial fishing occurs during or as a result of a vessel-based fishing trip, then the fishing trip is considered commercial, and not non-commercial. Charter boat customers are not subject to the requirements of the section.

* * * * *

(e) * * *

(1) A qualifying landing for Ho'omalu Zone permit renewal is a landing of at least 2,500 lb (1,134 kg) of Hawaii bottomfish MUS or ECS from the Ho'omalu Zone or a landing of at least 2,500 lb (1,134 kg) of fish from the Ho'omalu Zone, of which at least 50 percent by weight was Hawaii bottomfish MUS or ECS. A permit is eligible for renewal for the next calendar year if the vessel covered by the permit made three or more qualifying landings during the current calendar year.

* * * * *

(j) * * *

(1) A Mau Zone permit will be eligible for renewal if the vessel for which the permit is registered for use made at least five separate fishing trips with landings of at least 500 lb (227 kg) of Hawaii bottomfish MUS or ECS per trip during the calendar year. Only one landing of bottomfish MUS or ECS per fishing trip to the Mau Zone will be counted toward the landing requirement.

* * * * *

■ 27. In § 665.204, revise paragraphs (a), (b), (g), and (k) to read as follows:

§ 665.204 Prohibitions.

* * * * *

(a) Fish for Hawaii bottomfish MUS or ECS, or seamount groundfish MUS using gear prohibited under § 665.206.

(b) Fish for, or retain on board a vessel, Hawaii bottomfish MUS or ECS in the Ho'omalu Zone or the Mau Zone without the appropriate permit registered for use with that vessel issued under § 665.13.

* * * * *

(g) Own a vessel or fish from a vessel that is used to fish non-commercially for any Hawaii bottomfish MUS or ECS in the MHI management subarea without either a MHI non-commercial bottomfish permit or a State of Hawaii Commercial Marine License, in violation of § 665.2 or § 665.203(a)(2).

* * * * *

(k) Fish for or possess any Hawaii bottomfish MUS or ECS, or seamount groundfish MUS in the Hancock Seamounts Ecosystem Management Area, in violation of § 665.209.

■ 28. In § 665.205, revise paragraph (b) to read as follows:

§ 665.205 Notification.

* * * * *

(b) The operator of a fishing vessel that has taken Hawaii bottomfish MUS or ECS in the Ho'omalu Zone must contact the USCG, by radio or otherwise, at the 14th District, Honolulu, HI; Pacific Area, San Francisco, CA; or 17th District, Juneau, AK, at least 24 hours before landing, and report the port and the approximate date and time at which the bottomfish will be landed.

■ 29. Revise § 665.206 to read as follows:

§ 665.206 Gear restrictions.

(a) *Bottom trawls and bottom set gillnets.* Fishing for Hawaii bottomfish MUS or ECS, or seamount groundfish MUS with bottom trawls and bottom set gillnets is prohibited.

(b) *Possession of gear.* Possession of a bottom trawl and bottom set gillnet by any vessel having a permit under § 665.203 or otherwise established to be fishing for Hawaii bottomfish MUS or ECS, or seamount groundfish MUS in the management subareas is prohibited.

(c) *Poisons and explosives.* The possession or use of any poisons, explosives, or intoxicating substances for the purpose of harvesting Hawaii bottomfish MUS or ECS, or seamount groundfish MUS is prohibited.

■ 30. Revise § 665.209 to read as follows:

§ 665.209 Fishing moratorium at Hancock Seamounts.

Fishing for, and possession of, Hawaii bottomfish MUS or ECS, or seamount groundfish MUS in the Hancock Seamounts Ecosystem Management Area is prohibited until the Regional Administrator determines that the armorhead stock is rebuilt.

■ 31. Revise § 665.210 to read as follows:

§ 665.210 Hawaii restricted bottomfish species.

Hawaii restricted bottomfish species means the following species:

Local name	Common name	Scientific name
lehi	silver jaw jobfish	*Aphareus rutilans.*
ehu	squirrelfish snapper	*Etelis carbunculus.*
onaga	longtail snapper	*Etelis coruscans.*
'opakapaka	pink snapper	*Pristipomoides filamentosus.*
kalekale	pink snapper	*Pristipomoides sieboldii.*
gindai	snapper	*Pristipomoides zonatus.*
hapu'upu'u	sea bass	*Hyporthodus quernus.*

■ 32. Revise § 665.221 to read as follows:

§ 665.221 Definitions.

As used in §§ 665.220 through 665.239, *Hawaii coral reef ecosystem component species (Hawaii coral reef ECS)* means those species identified as ECS in the Hawaii FEP and are not defined as MUS or another ECS in this subpart.

■ 33. Revise § 665.223 to read as follows:

§ 665.223 Relation to other laws.

To ensure consistency between the management regimes of different Federal agencies with shared management responsibilities of fishery resources within the Hawaii coral reef ecosystem management area, fishing for Hawaii coral reef ECS is not allowed within the boundary of a National Wildlife Refuge unless specifically authorized by the USFWS, regardless of whether that refuge was established by action of the President or the Secretary of the Interior.

■ 34. In § 665.224, revise paragraphs (a)(1) and (2) and (a)(3)(i) and (ii) to read as follows:

§ 665.224 Permits and fees.

(a) * * *

(1) *Special permit.* Any person of the United States fishing for, taking or retaining Hawaii coral reef ECS must have a special permit if they, or a vessel which they operate, is used to fish for any:

(i) Hawaii coral reef ECS in low-use MPAs as defined in § 665.199;

(ii) Hawaii coral reef ECS in the coral reef ecosystem management area; or

(iii) Hawaii coral reef ECS in the coral reef ecosystem management area with any gear not specifically allowed in this subpart.

(2) *Transshipment permit.* A receiving vessel must be registered for use with a transshipment permit if that vessel is used in the Hawaii coral reef ecosystem management area to land or transship Hawaii coral reef ECS harvested within low-use MPAs.

(3) * * *

(i) Any person issued a permit to fish under any FEP who incidentally catches Hawaii coral reef ECS while fishing for bottomfish MUS or ECS, crustacean MUS, western Pacific pelagic MUS, precious corals, or seamount groundfish;

(ii) Any person fishing for Hawaii coral reef ECS outside of an MPA, who does not retain any Hawaii coral reef ECS; and

* * * * *

■ 35. In § 665.225, revise paragraphs (a) introductory text, (a)(3), and (b) introductory text to read as follows:

§ 665.225 Prohibitions.

* * * * *

(a) Fish for, take, retain, possess or land any Hawaii coral reef ECS in any low-use MPA as defined in § 665.99 unless:

* * * * *

(3) The Hawaii coral reef ECS possessed on board the vessel originated outside the management area and this can be demonstrated through receipts of purchase, invoices, fishing logbooks or other documentation.

(b) Fish for, take, or retain any Hawaii coral reef ECS:

* * * * *

■ 36. Revise § 665.226 to read as follows:

§ 665.226 Notifications.

Any special permit holder subject to the requirements of this subpart must contact the appropriate NMFS enforcement agent in American Samoa, Guam, or Hawaii at least 24 hours before landing any Hawaii coral reef ECS harvested under a special permit, and report the port and the approximate date and time at which the catch will be landed.

■ 37. In § 665.227, revise paragraphs (a) introductory text and (b) to read as follows:

§ 665.227 Allowable gear and gear restrictions.

(a) Hawaii coral reef ECS may be taken only with the following allowable gear and methods:

* * * * *

(b) Hawaii coral reef ECS may not be taken by means of poisons, explosives, or intoxicating substances. Possession or use of these materials by any permit holder under this subpart who is established to be fishing for coral reef ECS in the management area is prohibited.

* * * * *

■ 38. In § 665.228, revise paragraph (a) to read as follows:

§ 665.228 Gear identification.

(a) The vessel number must be affixed to all fish and crab traps on board the vessel or deployed in the water by any vessel or person holding a permit under § 665.13 or § 665.124 or that is otherwise established to be fishing for Hawaii coral reef ECS in the management area.

* * * * *

■ 39. In § 665.241, add a definition for ''Hawaii crustacean ecosystem component species (Hawaii crustacean ECS)'' in alphabetical order and revise the definition of ''Hawaii crustacean management unit species (Hawaii crustacean MUS)'' to read as follows:

§ 665.241 Definitions.

* * * * *

Hawaii crustacean ecosystem component species (Hawaii crustacean ECS) means those species identified as ECS in the Hawaii FEP.

* * * * *

Hawaii crustacean management unit species (Hawaii crustacean MUS) means the following crustaceans:

Local name	Common name	Scientific name
papa'i kua loa	Kona crab	*Ranina ranina.*
	deepwater shrimp, nylon shrimp	*Heterocarpus* sp.

* * * * *

■ 40. In § 665.242, revise paragraph (a)(4) to read as follows:

§ 665.242 Permits.

(a) * * *

(4) Harvest of Hawaii crustacean MUS or ECS within the Northwestern Hawaiian Islands Marine National Monument is subject to the requirements of 50 CFR part 404.

* * * * *

■ 41. In § 665.261, add a definition for ''Hawaii precious coral ecosystem component species (Hawaii precious coral ECS)'' in alphabetical order and revise the definition of ''Hawaii precious coral management unit species (Hawaii precious coral MUS)'' to read as follows:

§ 665.261 Definitions.

* * * * *

Hawaii precious coral ecosystem component species (Hawaii precious coral ECS) means those species identified as ECS in the Hawaii FEP.

Hawaii precious coral management unit species (Hawaii precious coral MUS) means the following species:

Common name	Scientific name
Pink coral	*Pleurocorallium secundum.*
Red coral	*Hemicorallium laauense.*
Gold coral	*Kulamanamana haumeaae.*
Bamboo coral	*Acanella* sp.
Black coral	*Antipathes griggi, Antipathes grandis, Myriopathes ulex.*

* * * * *

■ 42. In § 665.262, revise paragraph (a) to read as follows:

§ 665.262 Permits.

(a) Any vessel of the United States fishing for, taking, or retaining Hawaii precious coral MUS or ECS in any Hawaiian Archipelago precious coral permit area must have a permit issued under § 665.13.

* * * * *

■ 43. In § 665.263, revise the introductory text of paragraphs (b) and (c) to read as follows:

§ 665.263 Prohibitions.

* * * * *

(b) Fish for, take, or retain any species of Hawaii precious coral MUS or Hawaii precious coral ECS in any precious coral permit area:

* * * * *

(c) Take and retain, possess, or land any live *Hemicorallium laauense, Pleurocorallium secundum, Corallium* sp., or live black coral from any precious coral permit area that is less

than the minimum height specified in § 665.265 unless:

* * * * *

■ 44. In § 665.265, revise paragraphs (a) and (b) to read as follows:

§ 665.265 Size restrictions.

* * * * *

(a) Live *Hemicorallium laauense, Pleurocorallium secundum,* or *Corallium* sp. harvested from any precious coral permit area must have attained a minimum height of 10 inches (25.4 cm).

(b) Live black coral harvested from any precious coral permit area must have attained either a minimum stem diameter of 1 inch (2.54 cm), or a minimum height of 48 inches (122 cm).

■ 45. Revise § 665.270 to read as follows:

§ 665.270 Gold coral harvest moratorium.

Fishing for, taking, or retaining any gold coral MUS or ECS in any precious coral permit area is prohibited through June 30, 2023.

■ 46. In § 665.401, add a definition for ''Mariana bottomfish ecosystem component species (Mariana bottomfish ECS)'' in alphabetical order and revise the definition of ''Mariana bottomfish management unit species (Mariana bottomfish MUS)'' to read as follows:

§ 665.401 Definitions.

* * * * *

Mariana bottomfish ecosystem component species (Mariana bottomfish ECS) means those species identified as ECS in the Marianas Archipelago FEP and not defined as Mariana bottomfish MUS.

Mariana bottomfish management unit species (Mariana bottomfish MUS) means the following fish:

Local name	Common name	Scientific name
lehi/maroobw	red snapper, silvermouth	*Aphareus rutilans.*
tarakitu/etam	giant trevally, jack	*Caranx ignobilis.*
tarakiton attelong, orong	black trevally, jack	*Caranx lugubris.*
bueli, bwele	lunartail grouper	*Variola louti.*
buninas agaga', falaghal moroobw	red snapper	*Etelis carbunculus.*
abuninas, taighulupegh	red snapper	*Etelis coruscans.*
mafuti, atigh	redgill emperor	*Lethrinus rubrioperculatus.*
funai, saas	blueline snapper	*Lutjanus kasmira.*
buninas, falaghal-maroobw	yellowtail snapper	*Pristipomoides auricilla.*
buninas, pakapaka, falaghal-maroobw,	pink snapper	*Pristipomoides filamentosus.*
buninas, falaghal-maroobw	yelloweye snapper	*Pristipomoides flavipinnis.*
	pink snapper	*Pristipomoides seiboldii.*
buninas rayao amariyu, falaghal-maroobw	flower snapper	*Pristipomoides zonatus.*

■ 47. In § 665.403, revise paragraph (a) introductory text to read as follows:

§ 665.403 Bottomfish fishery area management.

(a) *Guam large vessel bottomfish prohibited area (Area GU–1).* A large vessel of the United States, as defined in § 665.12, may not be used to fish for Mariana bottomfish MUS or ECS in the Guam large vessel bottomfish prohibited area, defined as the U.S. EEZ waters surrounding Guam that are enclosed by straight lines connecting the following coordinates in the order listed:

* * * * *

■ 48. In § 665.404, revise paragraphs (a)(1) and (2) to read as follows:

§ 665.404 Permits.

(a) * * *

(1) *Guam large vessel.* The owner of any large vessel used to fish for, land, or transship Mariana bottomfish MUS or ECS shoreward of the outer boundary of the Guam subarea must have a permit issued under this section, and the permit must be registered for use with that vessel.

(2) *Commonwealth of the Northern Mariana Islands (CNMI) commercial.* The owner of any vessel used to commercially fish for, transship, receive, or land Mariana bottomfish MUS or ECS shoreward of the outer boundary of the CNMI management subarea must have a permit issued under this section, and the permit must be registered for use with that vessel.

* * * * *

■ 49. Revise § 665.405 to read as follows:

§ 665.405 Prohibitions.

In addition to the general prohibitions specified in § 600.725 of this chapter and § 665.15, it is unlawful for any person to do any of the following:

(a) Fish for Mariana bottomfish MUS or ECS using gear prohibited under § 665.406.

(b) Use a large vessel that does not have a valid Guam bottomfish permit registered for use with that vessel to fish for, land, or transship Mariana bottomfish MUS or ECS shoreward of the outer boundary of the Guam management subarea of the bottomfish fishery management area in violation of § 665.404(a).

(c) Use a large vessel to fish for Mariana bottomfish MUS or ECS within the Guam large vessel bottomfish prohibited area, as defined in § 665.403(a).

(d) Land or transship, shoreward of the outer boundary of the Guam management subarea of the bottomfish fishery management area, Mariana bottomfish MUS or ECS that were harvested in violation of § 665.405(c).

(e) Use a vessel to fish commercially for Mariana bottomfish MUS or ECS in the CNMI management subarea without a valid CNMI commercial bottomfish permit registered for use with that vessel, in violation of § 665.404(a)(2).

(f) Falsify or fail to make, keep, maintain, or submit a Federal logbook as required under § 665.14(b) when using a vessel to engage in commercial fishing for Mariana bottomfish MUS or ECS in the CNMI management subarea in violation of § 665.14(b).

■ 50. Revise § 665.421 to read as follows:

§ 665.421 Definitions.

As used in §§ 665.420 through 665.439, *Mariana coral reef ecosystem component species* (*Mariana coral reef ECS)* are those species identified in the Marianas Archipelago FEP and are not defined as MUS or another ECS in this subpart.

■ 51. Revise § 665.423 to read as follows:

§ 665.423 Relation to other laws.

To ensure consistency between the management regimes of different Federal agencies with shared management responsibilities of fishery resources within the Mariana coral reef ecosystem management area, fishing for Mariana coral reef ECS is not allowed within the boundary of a National

Wildlife Refuge unless specifically authorized by the USFWS, regardless of whether that refuge was established by action of the President or the Secretary of the Interior.

■ 52. In § 665.424, revise paragraphs (a)(1) and (2) and (a)(3)(i) and (ii) to read as follows:

§ 665.424 Permits and fees.

(a) * * *

(1) *Special permit.* Any person of the United States fishing for, taking or retaining Mariana coral reef ECS must have a special permit if they, or a vessel which they operate, is used to fish for any:

(i) Mariana coral reef ecosystem MUS ECS in low-use MPAs as defined in § 665.399;

(ii) Mariana coral reef ECS in the coral reef ecosystem management area; or

(iii) Mariana coral reef ECS in the Mariana coral reef ecosystem management area with any gear not specifically allowed in this subpart.

(2) *Transshipment permit.* A receiving vessel must be registered for use with a transshipment permit if that vessel is used in the Mariana coral reef ecosystem management area to land or transship any Mariana coral reef ECS harvested within low-use MPAs.

(3) * * *

(i) Any person issued a permit to fish under any FEP who incidentally catches Mariana coral reef ECS while fishing for bottomfish MUS or ECS, crustacean ECS, western Pacific pelagic MUS, precious coral ECS, or seamount groundfish MUS.

(ii) Any person fishing for Mariana coral reef ECS outside of an MPA, who does not retain any Mariana coral reef ECS.

* * * * *

■ 53. In § 665.425, revise paragraphs (a) introductory text, (a)(3), and (b) introductory text to read as follows:

§ 665.425 Prohibitions.

* * * * *

(a) Fish for, take, retain, possess or land any Mariana coral reef ECS in any low-use MPA as defined in § 665.12 unless:

* * * * *

(3) The Mariana coral reef ECS possessed on board the vessel originated outside the management area, and this can be demonstrated through receipts of purchase, invoices, fishing logbooks or other documentation.

(b) Fish for, take, or retain any Mariana coral reef ECS species:

* * * * *

■ 54. Revise § 665.426 to read as follows:

§ 665.426 Notifications.

Any special permit holder subject to the requirements of this subpart must contact the appropriate NMFS enforcement agent in American Samoa, Guam, or Hawaii at least 24 hours before landing any Mariana coral reef ECS harvested under a special permit, and report the port and the approximate date and time at which the catch will be landed.

■ 55. In § 665.427, revise paragraphs (a) introductory text and (b) to read as follows:

§ 665.427 Allowable gear and gear restrictions.

(a) Mariana coral reef ECS may be taken only with the following allowable gear and methods:

* * * * *

(b) Mariana coral reef ECS may not be taken by means of poisons, explosives, or intoxicating substances. Possession or use of these materials by any permit holder under this subpart who is established to be fishing for coral reef ECS in the management area is prohibited.

* * * * *

■ 56. In § 665.441, add a definition for ''Mariana crustacean ecosystem component species (Mariana crustacean ECS)'' in alphabetical order and remove the definition of ''Mariana crustacean management unit species''.

The addition reads as follows:

§ 665.441 Definitions.

* * * * *

Mariana crustacean ecosystem component species (Mariana crustacean ECS) means those species identified as ECS in the Marianas Archipelago FEP.

■ 57. In § 665.442, revise paragraph (a)(2) to read as follows:

§ 665.442 Permits.

(a) * * *

(2) The owner of any vessel used to fish for *Heterocarpus* sp. in Crustacean Permit Area 5 must have a permit issued for that vessel.

* * * * *

■ 58. Revise § 665.443 to read as follows:

§ 665.443 Prohibitions.

In addition to the general prohibitions specified in § 600.725 of this chapter and § 665.15, it is unlawful for any person in Crustacean Permit Area 5 to fish for, take, or retain *Heterocarpus* sp. without a permit issued under § 665.442.

■ 59. In § 665.461, add introductory text and a definition for ''Mariana precious coral ecosystem component species (Mariana precious coral ECS)'' in alphabetical order and remove the definition of ''Mariana precious coral management unit species'' to read as follows:

§ 665.461 Definitions.

As used in §§ 665.460 through 665.470:

Mariana precious coral ecosystem component species (Mariana precious coral ECS) means those species identified as ECS in the Marianas Archipelago FEP.

* * * * *

■ 60. In § 665.462, revise paragraph (a) to read as follows:

§ 665.462 Permits.

(a) Any vessel of the United States fishing for, taking, or retaining Mariana precious coral ECS in any Mariana Archipelago precious coral permit area must have a permit issued under § 665.13.

* * * * *

■ 61. In § 665.463, revise paragraphs (a), (b) introductory text, and (c) introductory text to read as follows:

§ 665.463 Prohibitions.

* * * * *

(a) Use any vessel to fish for, take, retain, possess or land Mariana precious coral ECS in any Mariana precious coral permit area, unless a permit has been issued for that vessel and area as specified in § 665.13 and that permit is on board the vessel.

(b) Fish for, take, or retain any species of Mariana precious coral ECS in any Mariana precious coral permit area:

* * * * *

(c) Take and retain, possess, or land any live *Hemicorallium laauense, Pleurocorallium secundum, Corallium* sp., or live black coral from any precious coral permit area that is less than the minimum height specified in § 665.465 unless:

* * * * *

■ 62. In § 665.465, revise paragraphs (a) and (b) to read as follows:

§ 665.465 Size restrictions.

* * * * *

(a) Live *Hemicorallium laauense, Pleurocorallium secundum,* or *Corallium* sp. harvested from any precious coral permit area must have attained a minimum height of 10 inches (25.4 cm).

(b) Live black coral harvested from any precious coral permit area must have attained either a minimum stem diameter of 1 inch (2.54 cm), or a minimum height of 48 inches (122 cm).

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 170817779–8161–02]

RIN 0648–XG756

Fisheries of the Exclusive Economic Zone Off Alaska; Reallocation of Pollock in the Bering Sea and Aleutian Islands

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

ACTION: Temporary rule.

SUMMARY: NMFS is reallocating the projected unused amounts of the Community Development Quota (CDQ) pollock directed fishing allowances (DFA) from the Aleutian Islands subarea to the Bering Sea subarea directed fishery. This action is necessary to provide opportunity for harvest of the 2019 total allowable catch of pollock, consistent with the goals and objectives of the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (BSAI).

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), February 8, 2019, through 2400 hrs, A.l.t., December 31, 2019.

FOR FURTHER INFORMATION CONTACT: Steve Whitney, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI exclusive economic zone according to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP) prepared by the North Pacific Fishery Management Council (Council) under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

In the Aleutian Islands subarea, the portion of the 2019 pollock total allowable catch (TAC) allocated to the CDQ DFA is 1,900 mt as established by the final 2018 and 2019 harvest specifications for groundfish in the BSAI (83 FR 8365, February 27, 2018), and as adjusted by an inseason adjustment (83 FR 67144, December 28, 2018).

As of January 30, 2019, the Administrator, Alaska Region, NMFS, (Regional Administrator) has determined that 1,900 mt of pollock CDQ DFA in the Aleutian Islands subarea will not be harvested. Therefore, in accordance with § 679.20(a)(5)(iii)(B)(*4*), NMFS reallocates 1,900 mt of pollock CDQ DFA from the Aleutian Islands subarea to the 2019 Bering Sea subarea. The 1,900 mt of pollock CDQ DFA is added to the 2019 Bering Sea CDQ DFA. The 2019 Bering Sea subarea pollock incidental catch allowance remains at 46,520 mt. As a result, the 2019 harvest specifications for pollock in the Aleutian Islands subarea included in the final 2018 and 2019 harvest specifications for groundfish in the BSAI (83 FR 11826, February 27, 2018) and as adjusted by an inseason adjustment (83 FR 67144, December 28, 2018) are revised as follows: 0 mt to CDQ DFA. Furthermore, pursuant to § 679.20(a)(5), Table 5 of the final 2018 and 2019 harvest specifications for groundfish in the BSAI (83 FR 11826, February 27, 2018), as adjusted by the inseason adjustment (83 FR 67144, December 28, 2018), is revised to make 2019 pollock allocations consistent with this reallocation. This reallocation results in an adjustment to the 2019 CDQ pollock allocation established at § 679.20(a)(5).

TABLE 5—FINAL 2019 ALLOCATIONS OF POLLOCK TACS TO THE DIRECTED POLLOCK FISHERIES AND TO THE CDQ DIRECTED FISHING ALLOWANCES (DFA) [1]

[Amounts are in metric tons]

Area and sector	2019 Allocations	2019 A season [1]		2019 B season [1]
		A season DFA	SCA harvest limit [2]	B season DFA
Bering Sea subarea TAC [1]	1,398,900	n/a	n/a	n/a
CDQ DFA	141,600	63,720	39,648	77,880
ICA [1]	46,520	n/a	n/a	n/a
Total Bering Sea non-CDQ DFA	1,210,780	544,851	339,018	665,929
AFA Inshore	605,390	272,425	169,509	332,964
AFA Catcher/Processors [3]	484,312	217,940	135,607	266,372
Catch by C/Ps	443,145	199,415	n/a	243,730
Catch by CVs [3]	41,167	18,525	n/a	22,642
Unlisted C/P Limit [4]	2,422	1,090	n/a	1,332
AFA Motherships	121,078	54,485	33,902	66,593
Excessive Harvesting Limit [5]	211,886	n/a	n/a	n/a
Excessive Processing Limit [6]	363,234	n/a	n/a	n/a
Aleutian Islands subarea ABC	52,887	n/a	n/a	n/a
Aleutian Islands subarea TAC [1]	17,100	n/a	n/a	n/a
CDQ DFA	.....	.....	n/a	
ICA	2,400	1,200	n/a	1,200
Aleut Corporation	14,700	14,700	n/a	
Area harvest limit [7]	n/a	n/a	n/a	n/a
541	15,866	n/a	n/a	n/a
542	7,933	n/a	n/a	n/a
543	2,644	n/a	n/a	n/a
Bogoslof District ICA [8]	75	n/a	n/a	n/a

[1] Pursuant to § 679.20(a)(5)(i)(A), the Bering Sea subarea pollock, after subtracting the CDQ DFA (10 percent) and the ICA (3.7 percent), is allocated as a DFA as follows: Inshore sector—50 percent, catcher/processor sector (C/P)—40 percent, and mothership sector—10 percent. In the Bering Sea subarea, 45 percent of the DFA is allocated to the A season (January 20–June 10) and 55 percent of the DFA is allocated to the B season (June 10–November 1). Pursuant to § 679.20(a)(5)(iii)(B)(*2*)(*i*) through (*iii*), the annual Aleutian Islands pollock TAC, after subtracting first for the CDQ DFA (10 percent) and second for the ICA (2,400 mt), is allocated to the Aleut Corporation for a pollock directed fishery. In the Aleutian Islands subarea, the A season is allocated up to 40 percent of the ABC.

[2] In the Bering Sea subarea, pursuant to § 679.20(a)(5)(i)(C), no more than 28 percent of each sector's annual DFA may be taken from the SCA before noon, April 1.

[3] Pursuant to § 679.20(a)(5)(i)(A)(*4*), 8.5 percent of the DFA allocated to listed C/Ps shall be available for harvest only by eligible catcher vessels with a C/P endorsement delivering to listed C/Ps, unless there is a C/P sector cooperative for the year.

[4] Pursuant to § 679.20(a)(5)(i)(A)(*4*)(*iii*), the AFA unlisted catcher/processors are limited to harvesting not more than 0.5 percent of the catcher/processors sector's allocation of pollock.

[5] Pursuant to § 679.20(a)(5)(i)(A)(*6*), NMFS establishes an excessive harvesting share limit equal to 17.5 percent of the sum of the non-CDQ pollock DFAs.

[6] Pursuant to § 679.20(a)(5)(i)(A)(*7*), NMFS establishes an excessive processing share limit equal to 30.0 percent of the sum of the non-CDQ pollock DFAs.

[7] Pursuant to § 679.20(a)(5)(iii)(B)(*6*), NMFS establishes harvest limits for pollock in the A season in Area 541 of no more than 30 percent, in Area 542 of no more than 15 percent, and in Area 543 of no more than 5 percent of the Aleutian Islands pollock ABC.

[8] Pursuant to § 679.22(a)(7)(i)(B), the Bogoslof District is closed to directed fishing for pollock. The amounts specified are for incidental catch only and are not apportioned by season or sector.

Note: Seasonal or sector apportionments may not total precisely due to rounding.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the reallocation of Aleutian Islands pollock. Since the pollock fishery opened January 20, 2019, it is important to immediately inform the industry as to the final Bering Sea subarea pollock CDQ DFA. Immediate notification is necessary to allow for the orderly conduct and efficient operation of this fishery; allow the industry to plan for the fishing season and avoid potential disruption to the fishing fleet as well as processors; and provide opportunity to harvest increased seasonal pollock allocations while value is optimum. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of January 30, 2019.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

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

Dated: February 1, 2019.

Alan D. Risenhoover,

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

[FR Doc. 2019–01218 Filed 2–7–19; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register

Vol. 84, No. 27

Friday, February 8, 2019

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TREASURY

Office of the Comptroller of the Currency

12 CFR Part 44

[Docket No. OCC–2018–0029]

RIN 1557–AE47

FEDERAL RESERVE SYSTEM

12 CFR Part 248

[Docket No. R–1643]

RIN 7100–AF 33

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 351

RIN 3064–AE88

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 75

RIN 3038–AE72

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 255

[Release no. BHCA–5; File no. S7–30–18]

RIN 3235–AM43

Proposed Revisions to Prohibitions and Restrictions on Proprietary Trading and Certain Interests In, and Relationships With, Hedge Funds and Private Equity Funds

AGENCY: Office of the Comptroller of the Currency, Treasury (OCC); Board of Governors of the Federal Reserve System (Board); Federal Deposit Insurance Corporation (FDIC); Securities and Exchange Commission (SEC); and Commodity Futures Trading Commission (CFTC).

ACTION: Notice of proposed rulemaking.

SUMMARY: The OCC, Board, FDIC, SEC, and CFTC (individually, an Agency, and collectively, the Agencies) are inviting comment on a proposal to amend the regulations implementing the Bank Holding Company Act's (BHC Act) prohibitions and restrictions on proprietary trading and certain interests in, and relationships with, hedge funds and private equity funds in a manner consistent with the statutory amendments made pursuant to certain sections of the Economic Growth, Regulatory Relief, and Consumer Protection Act. The statutory amendments exclude from these restrictions certain firms that have total consolidated assets equal to $10 billion or less and total trading assets and liabilities equal to five percent or less of total consolidated assets and amend the restrictions applicable to the naming of a hedge fund or private equity fund to permit an investment adviser that is a banking entity to share a name with the fund under certain circumstances.

DATES: *Comment date:* Comments must be received on or before March 11, 2019. Comments on the Paperwork Reduction Act burden estimates must be received on or before April 9, 2019.

ADDRESSES: Interested parties are encouraged to submit written comments jointly to all of the Agencies. Commenters are encouraged to use the title ''Proposed Revisions to Restrictions on Proprietary Trading and Certain Interests in, and Relationships with, Hedge Funds and Private Equity Funds'' to facilitate the organization and distribution of comments among the Agencies. Commenters are also encouraged to identify the number of the specific question for comment to which they are responding. Comments should be directed to:

OCC: You may submit comments to the OCC by any of the methods set forth below. Commenters are encouraged to submit comments through the Federal eRulemaking Portal or email, if possible. Please use the title ''Proposed Revisions to Prohibitions and Restrictions on Proprietary Trading and Certain Interests in, and Relationships with, Hedge Funds and Private Equity Funds'' to facilitate the organization and distribution of the comments. You may submit comments by any of the following methods:

- *Federal eRulemaking Portal—''regulations.gov'':* Go to *www.regulations.gov.* Enter ''Docket ID OCC–2018–0029'' in the Search Box and click ''Search.'' Click on ''Comment Now'' to submit public comments.
- Click on the ''Help'' tab on the *Regulations.gov* home page to get information on using *Regulations.gov,* including instructions for submitting public comments.
- *Email: regs.comments@occ.treas.gov.*
- *Mail:* Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 400 7th Street SW, Suite 3E–218, Washington, DC 20219.
- *Hand Delivery/Courier:* 400 7th Street SW, Suite 3E–218, Washington, DC 20219.
- *Fax:* (571) 465–4326.

Instructions: You must include ''OCC'' as the agency name and ''Docket ID OCC–2018–0029'' in your comment. In general, the OCC will enter all comments received into the docket and publish the comments on the *Regulations.gov* website without change, including any business or personal information that you provide such as name and address information, email addresses, or phone numbers. Comments received, including attachments and other supporting materials, 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.

You may review comments and other related materials that pertain to this rulemaking action by any of the following methods:

- *Viewing Comments Electronically:* Go to *www.regulations.gov.* Enter ''Docket ID OCC–2018–0029'' in the Search box and click ''Search.'' Click on ''Open Docket Folder'' on the right side of the screen. Comments and supporting materials can be viewed and filtered by clicking on ''View all documents and comments in this docket'' and then using the filtering tools on the left side of the screen.
- Click on the ''Help'' tab on the *Regulations.gov* home page to get information on using *Regulations.gov.* The docket may be viewed after the

close of the comment period in the same manner as during the comment period.

• *Viewing Comments Personally:* You may personally inspect comments at the OCC, 400 7th Street SW, Washington, DC 20219. For security reasons, the OCC requires that visitors make an appointment to inspect comments. You may do so by calling (202) 649–6700 or, for persons who are deaf or hearing impaired, TTY, (202) 649–5597. Upon arrival, visitors will be required to present valid government-issued photo identification and submit to security screening in order to inspect comments.

Board: You may submit comments, identified by [Docket No. R–1643; RIN 7100–AF 33], by any of the following methods:

• *Agency Website: http://www.federalreserve.gov.* Follow the instructions for submitting comments at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm.*

• *Email: regs.comments@federalreserve.gov.* Include docket and RIN numbers in the subject line of the message.

• *Fax:* (202) 452–3819 or (202) 452–3102.

• *Mail:* Ann E. Misback, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW, Washington, DC 20551. All public comments will be made available on the Board's website at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm* as submitted, unless modified for technical reasons or to remove personally identifiable information at the commenter's request. Accordingly, comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper in Room 3515, 1801 K Street NW (between 18th and 19th Streets NW), between 9:00 a.m. and 5:00 p.m. on weekdays.

FDIC: You may submit comments, identified by [RIN 3064–AE88] by any of the following methods:

• *Agency Website: https://www.FDIC.gov/regulations/laws/federal/propose.html.* Follow instructions for submitting comments on the Agency website.

• *Mail:* Robert E. Feldman, Executive Secretary, Attention: Comments/Legal ESS, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.

• *Hand Delivered/Courier:* Comments may be hand-delivered to the guard station at the rear of the 550 17th Street NW, building (located on F Street) on business days between 7:00 a.m. and 5:00 p.m.

• *Email: comments@FDIC.gov.* Include the [RIN 3064–AE88] on the subject line of the message.

• *Public Inspection:* All comments received must include the agency name and [RIN 3064–AE88] for this rulemaking. All comments received will be posted without change to *http://www.fdic.gov/regulations/laws/federal/,* including any personal information provided. Paper copies of public comments may be ordered from the FDIC Public Information Center, 3501 North Fairfax Drive, Room E–1002, Arlington, VA 22226 or by telephone at (877) 275–3342 or (703) 562–2200.

SEC: You may submit comments by the following methods:

Electronic Comments

• Use the SEC's internet comment form (*http://www.sec.gov/rules/proposed.shtml*); or Send an email to *rule-comments@sec.gov.* Please include [File Number S7–30–18] on the subject line.

Paper Comments

• Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to [File Number S7–30–18]. This file number should be included on the subject line if email is used. To help us process and review your comments more efficiently, please use only one method. The SEC will post all comments on the SEC's website (*http://www.sec.gov/rules/proposed.shtml*). Comments are also available for website viewing and printing in the SEC'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. All comments received will be posted without change. Persons submitting comments are cautioned that the SEC does not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly.

Studies, memoranda, or other substantive items may be added by the SEC or SEC staff to the comment file during this rulemaking. A notification of the inclusion in the comment file of any materials will be made available on the SEC's website. To ensure direct electronic receipt of such notifications, sign up through the ''Stay Connected'' option at *www.sec.gov* to receive notifications by email.

CFTC: You may submit comments, identified by [RIN 3038–AE72] and ''Proposed Revisions to Prohibitions and Restrictions on Proprietary Trading and certain Interests in, and Relationships with, Hedge Funds and Private Equity Funds,'' by any of the following methods:

• *Agency Website: https://comments.cftc.gov.* Follow the instructions on the website for submitting comments.

• *Mail:* Send to Christopher Kirkpatrick, Secretary, Commodity Futures Trading Commission, 1155 21st Street, NW, Washington, DC 20581.

• *Hand Delivery/Courier:* Same as Mail above.

Please submit your comments using only one method. All comments must be submitted in English, or if not, accompanied by an English translation. Comments will be posted as received to *www.cftc.gov* and the information you submit will be publicly available. If, however, you submit information that ordinarily is exempt from disclosure under the Freedom of Information Act, you may submit a petition for confidential treatment of the exempt information according to the procedures set forth in CFTC Regulation 145.9.1. The CFTC reserves the right, but shall have no obligation, to review, pre-screen, filter, redact, refuse or remove any or all of your submission from *www.cftc.gov* that it may deem to be inappropriate for publication, such as obscene language. All submissions that have been redacted or removed that contain comments on the merits of the rulemaking will be retained in the public comment file and will be considered as required under the Administrative Procedure Act and other applicable laws, and may be accessible under the Freedom of Information Act.

FOR FURTHER INFORMATION CONTACT:

OCC: Roman Goldstein, Risk Specialist, Treasury and Market Risk Policy, 202–649–6360; Tabitha Edgens, Senior Attorney; Mark O'Horo, Attorney, Chief Counsel's Office, (202) 649–5510; for persons who are deaf or hearing impaired, TTY, (202) 649–5597, Office of the Comptroller of the Currency, 400 7th Street SW, Washington, DC 20219.

Board: Page Conkling, Senior Supervisory Financial Analyst, (202) 912–4647, Kevin Tran, Supervisory Financial Analyst, (202) 452–2309, Amy Lorenc, Financial Analyst, (202) 452–5293, David Lynch, Deputy Associate Director, (202) 452–2081, David McArthur, Senior Economist, (202) 452–2985, Division of Supervision and Regulation; Flora Ahn, Special Counsel, (202) 452–2317, Gregory Frischmann, Senior Counsel, (202) 452–2803, or Kirin Walsh, Attorney, (202) 452–3058, Legal Division, Board of Governors of

the Federal Reserve System, 20th and C Streets NW, Washington, DC 20551. For the hearing impaired only, Telecommunication Device for the Deaf (TDD), (202) 263–4869.

FDIC: Bobby R. Bean, Associate Director, *bbean@fdic.gov,* Andrew D. Carayiannis, Senior Policy Analyst, *acarayiannis@fdic.gov,* or Brian Cox, Capital Markets Policy Analyst, *brcox@fdic.gov,* Capital Markets Branch, (202) 898–6888; Michael B. Phillips, Counsel, *mphillips@fdic.gov,* Benjamin J. Klein, Counsel, *bklein@fdic.gov,* or Annmarie H. Boyd, Counsel, *aboyd@fdic.gov,* Legal Division, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.

SEC: Andrew R. Bernstein, Senior Special Counsel, Sam Litz, Attorney-Adviser, Aaron Washington, Special Counsel, Elizabeth Sandoe, Senior Special Counsel, Carol McGee, Assistant Director, or Josephine J. Tao, Assistant Director, at (202) 551–5777, Office of Derivatives Policy and Trading Practices, Division of Trading and Markets, and Nicholas Cordell, Senior Counsel, Matthew Cook, Senior Counsel, Aaron Gilbride, Branch Chief, Brian McLaughlin Johnson, Assistant Director, and Sara Cortes, Assistant Director, at (202) 551–6787 or *IArules@sec.gov,* Division of Investment Management, U.S. Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549.

CFTC: Cantrell Dumas, Special Counsel, (202) 418–5043, *cdumas@cftc.gov;* Jeffrey Hasterok, Data and Risk Analyst, (646) 746–9736, *jhasterok@cftc.gov,* Division of Swap Dealer and Intermediary Oversight; Mark Fajfar, Assistant General Counsel, (202) 418–6636, *mfajfar@cftc.gov,* Office of the General Counsel; Stephen Kane, Research Economist, (202) 418–5911, *skane@cftc.gov,* Office of the Chief Economist; Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581.

SUPPLEMENTARY INFORMATION:

I. Background

Section 13 of the Bank Holding Company Act of 1956 (''BHC Act''),[1] also known as the Volcker Rule, generally prohibits any banking entity from engaging in proprietary trading or from acquiring or retaining an ownership interest in, sponsoring, or having certain relationships with a hedge fund or private equity fund, subject to certain exemptions.[2]

Under the statute, authority for developing and adopting regulations to implement the prohibitions and restrictions of section 13 of the BHC Act is shared among the Agencies.[3] The Agencies adopted final rules implementing section 13 of the BHC Act in December 2013.[4] The Agencies recently proposed amendments to these rules to provide clarity about what activities are prohibited and to improve supervision and implementation of section 13 of the BHC Act.[5]

II. Recently Enacted Statutory Revisions to the Volcker Rule

The Economic Growth, Regulatory Relief, and Consumer Protection Act (EGRRCPA), enacted on May 24, 2018, amended section 13 of the BHC Act by modifying the definition of ''banking entity,'' to exclude certain small firms from section 13's restrictions and by permitting a banking entity to share a name with a hedge fund or private equity fund that it organizes and offers under certain circumstances.[6]

The Agencies are proposing to amend the regulations implementing section 13 of the BHC Act in a manner consistent with the statutory amendments made by EGRRCPA.

A. Definition of Banking Entity

Prior to the enactment of EGRRCPA, the definition of ''banking entity,'' for purposes of section 13 of the BHC Act, included any insured depository institution, as defined in the Federal Deposit Insurance Act (FDI Act),[7] any company that controls an insured depository institution, or that is treated as a bank holding company for purposes of section 8 of the International Banking Act of 1978 (IBA), and any affiliate or subsidiary of such entity (excluding from the term insured depository institution certain insured depository institutions that function solely in a trust or fiduciary capacity, subject to a variety of conditions).[8]

EGRRCPA modifies the scope of the term ''banking entity'' to exclude certain community banks and their affiliates. Therefore, an insured depository institution and its affiliates generally are not ''banking entities'' if each affiliated insured depository institution meets the statutory exclusion.[9] However, EGRRCPA did not amend the definition of ''banking entity'' as it relates to a company that is treated as a bank holding company for purposes of section 8 of the IBA. Therefore, the statutory exclusion does not apply to a foreign banking organization with a U.S. branch or agency, which continues to be subject to the prohibitions in section 13 of the BHC Act.

Pursuant to Section 203 of EGRRCPA, the term ''insured depository institution'' does not include an institution that does not have, and is not controlled by a company that has: (i) More than $10 billion in total consolidated assets; and (ii) total trading assets and trading liabilities, as reported on the most recent applicable regulatory filing filed by the institution, that are more than 5 percent of total consolidated assets. Consistent with the

[1] 12 U.S.C. 1851. The Dodd-Frank Wall Street Reform and Consumer Protection Act (the Dodd-Frank Act) was enacted on July 21, 2010. Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203, 124 Stat. 1376 (2010). Section 619 of the Dodd-Frank Act added a new section 13 to the Bank Holding Company Act of 1956.

[2] *See* 12 U.S.C. 1851.

[3] *See* 12 U.S.C. 1851(b)(2). Under section 13(b)(2)(B) of the BHC Act, rules implementing section 13's prohibitions and restrictions must be issued by: (i) The appropriate Federal banking agencies (*i.e.,* the Board, the OCC, and the FDIC), jointly, with respect to insured depository institutions; (ii) the Board, with respect to any company that controls an insured depository institution, or that is treated as a bank holding company for purposes of section 8 of the International Banking Act, any nonbank financial company supervised by the Board, and any subsidiary of any of the foregoing (other than a subsidiary for which an appropriate Federal banking agency, the SEC, or the CFTC is the primary financial regulatory agency); (iii) the CFTC with respect to any entity for which it is the primary financial regulatory agency, as defined in section 2 of the Dodd-Frank Act; and (iv) the SEC with respect to any entity for which it is the primary financial regulatory agency, as defined in section 2 of the Dodd-Frank Act. *See id.*

[4] *See* ''Prohibitions and Restrictions on Proprietary Trading and Certain Interests in, and Relationships with, Hedge Funds and Private Equity Funds; Final Rule,'' 79 FR 5535 (Jan. 31, 2014) (the ''2013 final rule'').

[5] *See* ''Proposed Revisions to Prohibitions and Restrictions on Proprietary Trading and Certain Interests in, and Relationships With, Hedge Funds and Private Equity Funds,'' 83 FR 33432 (July 17, 2018).

[6] *See* Economic Growth, Regulatory Relief, and Consumer Protection Act, Pub. L. 115–174, sections 203, 204 (May 24, 2018). These provisions were effective upon EGRRCPA's enactment.

[7] Section 3(c)(2) of the FDI Act defines an insured depository institution to include any bank or savings association the deposits of which are insured by the FDIC under the FDI Act. 12 U.S.C. 1813(c)(2).

[8] 12 U.S.C. 1813(c)(2), 1851(h)(1).

[9] Economic Growth, Regulatory Relief, and Consumer Protection Act, Public Law 115–174, sections 203, 204 (May 24, 2018). Section 203 amended section 13(h)(1)(B) of the BHC Act to narrow the scope of the term ''banking entity'' by excluding certain institutions from the term ''insured depository institution'' exclusively for the purposes of section 13. Insured banks and savings associations that qualify for this exclusion for the purposes of section 13 of the BHC Act remain insured depository institutions under section 3(c)(2) of the FDI Act. Additionally, an institution that meets the criteria to be excluded from the definition of insured depository institution under EGRRCPA may still be a banking entity by virtue of its affiliation with another insured depository institution or a company that is treated as a bank holding company under section 8 of the IBA.

statute, the Agencies are proposing to modify the definition of ''insured depository institution'' in § __.2(r) of the 2013 final rule in order to conform that definition with Section 203 of EGRRCPA. Under the proposal, an insured depository institution would need to satisfy two conditions to qualify for the exclusion from the definition of ''banking entity.'' First, the insured depository institution, and every entity that controls it, must have total consolidated assets equal to or less than $10 billion. Second, total consolidated trading assets and liabilities of the insured depository institution, and every entity that controls it, must be equal to or less than five percent of its total consolidated assets.

As described above, the exclusion would be available only if both the threshold regarding total consolidated assets and the threshold regarding total consolidated trading assets and liabilities are not exceeded. The Agencies believe that insured depository institutions that qualify for the exclusion in this proposal regularly monitor their total consolidated assets and total trading assets and liabilities for other purposes. Therefore, the Agencies do not believe that the test described above would impose any new burden on banking institutions. Rather, the Agencies would expect to use available information, including information reported on regulatory reporting forms available to each Agency, with respect to whether financial institutions qualify for the exclusion described above.

B. Modification of Name-Sharing Restrictions of the Volcker Rule

Prior to enactment of EGRRCPA, section 13 provided that a banking entity (or an affiliate of the banking entity), including an investment adviser, that organized and offered a hedge fund or private equity fund could not share the same name or a variation of the same name with the fund (the name-sharing restriction).[10] Section 204 of EGRRCPA amended section 13 of the BHC Act to permit a hedge fund or private equity fund [11] organized and offered by a banking entity to share the same name or a variation of the same name as a banking entity that is an investment adviser to the hedge fund or private equity fund, if: (1) The investment adviser is not an insured depository institution, a company that controls an insured depository institution, or a company that is treated as a bank holding company for purposes of section 8 of the IBA; [12] (2) the investment adviser does not share the same name or a variation of the same name with any such entities; and (3) the name does not contain the word ''bank.''

Consistent with the statute, the Agencies are proposing to modify the 2013 final rule's name-sharing restriction to conform that restriction with Section 204 of EGRRCPA. Under the proposal, a hedge fund or private equity fund sponsored by a banking entity would be permitted to share the same name or a variation of the same name with a banking entity that is an investment adviser to the fund, subject to the conditions specified in the statute.[13] Specifically, these conditions would require that the investment adviser is not, and does not share the same name (or a variation of the same name) as, an insured depository institution, a company that controls an insured depository institution, or a company that is treated as a bank holding company for purposes of section 8 of the International Banking Act of 1978.[14] The third condition—that the name does not contain the word ''bank''—was included in the name-sharing restriction by Section 204 of EGRRCPA but already is a condition under the 2013 final rule. Accordingly, the Agencies believe no additional modifications to the 2013 final rule are necessary to reflect this condition.

The proposal would also conform the 2013 final rule to the statutory change to the definition of ''sponsor.'' [15] Pursuant to Section 204 of EGRRCPA, the definition of the term ''sponsor'' includes a banking entity that shares the same name or a variation of the same name with a fund, for corporate, marketing, promotional, or other purposes, ''except as permitted under subsection (d)(1)(G)(vi)''—that is, except as permitted pursuant to the name-sharing restriction as amended by EGRRCPA. Consistent with the statute, the Agencies are proposing to modify the definition of ''sponsor'' in § __ .10(d)(9) of the 2013 final rule in order to conform that definition with Section 204 of EGRRCPA.

III. Request for Comment

The Agencies invite comment from all members of the public regarding all aspects of the proposal. This request for comment is limited to this proposal. The Agencies will carefully consider all comments that relate to the proposal. In particular, the Agencies invite comment on the following questions:

Question [__]. Does the proposal provide sufficient clarity for firms to determine whether they qualify for the exclusion from the ''banking entity'' definition? If not, please explain why.

Question [__]. Does the proposal provide sufficient clarity for firms to determine whether a hedge fund or private equity fund sponsored by a banking entity is permitted to share the same name or a variation of the same name with an affiliated banking entity? If not, please explain why.

IV. Administrative Law Matters

A. Paperwork Reduction Act

Certain provisions of the proposal contain ''collection of information'' requirements within the meaning of the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521). In accordance with the requirements of the PRA, the Agencies may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The Agencies reviewed and determined that the proposal would not change the current reporting, recordkeeping or third-party disclosure requirements associated with section 13 of the BHC Act under the PRA. However, the proposal would reduce the number of respondents for the Board (including OCC-, FDIC-, SEC-, and CFTC-supervised institutions under a holding company), FDIC (with respect to supervised institutions not under a holding company), and OCC (supervised institutions not under a holding company), which will be addressed as a nonmaterial change to OMB.

B. Solicitation of Comments on the Use of Plain Language

Section 722 of the Gramm-Leach Bliley Act [16] requires the OCC, Board, and FDIC (Federal banking agencies) to use plain language in all proposed and final rules published after January 1, 2000. The Federal banking agencies invite comments on whether there are additional steps the Federal banking agencies could take to make the

[10] 12 U.S.C. 1851(d)(1)(G)(vi) (2017).

[11] 12 U.S.C. 1851(h)(2). *See also* 12 CFR 44.10(b); 12 CFR 248.10(b); 12 CFR 351.10(b); 17 CFR 255.10(b); 17 CFR 75.10(b).

[12] 12 U.S.C. 3106.

[13] Economic Growth, Regulatory Relief, and Consumer Protection Act, Public Law 115–174, section 204 (May 24, 2018).

[14] 12 U.S.C. 1851(d)(1)(G)(vi)(I); 12 U.S.C. 1851(d)(1)(G)(vi)(II).

[15] Economic Growth, Regulatory Relief, and Consumer Protection Act, Public Law 115–174, section 204 (May 24, 2018).

[16] Public Law 106–102, section 722, 113 Stat. 1338, 1471, 12 U.S.C. 4809 (1999).

proposed rule easier to understand. For example:

- *Have the Agencies presented the material in an organized manner that meets your needs? If not, how could this material be better organized?*
- *Are the requirements in the proposal clearly stated? If not, how could the proposal be more clearly stated?*
- *Does the proposal contain language or jargon that is not clear? If so, which language requires clarification?*
- *Would a different format (grouping and order of sections, use of headings, paragraphing) make the proposal easier to understand? If so, what changes to the format would make the proposal easier to understand?*
- *What else could the Agencies do to make the regulation easier to understand?*

C. Initial Regulatory Flexibility Act Analysis

The Regulatory Flexibility Act (RFA) [17] imposes certain requirements on agencies regarding any potential significant economic impact that a proposal may have on a substantial number of small entities. The U.S. Small Business Administration (SBA) establishes size standards that define which entities are small businesses for purposes of the RFA.[18] Except as otherwise specified below, the size standard to be considered a small business for banking entities subject to the proposal is $550 million or less in consolidated assets.[19] The Agencies are separately publishing initial regulatory flexibility analyses for the proposals as set forth in this proposal.

Board

The Board is providing an initial regulatory flexibility analysis with respect to this proposed rule. The RFA requires an agency to consider whether the rules it proposes will have a significant economic impact on a substantial number of small entities. In connection with a proposed rule, the RFA requires an agency to prepare an Initial Regulatory Flexibility Analysis describing the impact of the rule on small entities or to certify that the proposed rule would not have a significant economic impact on a substantial number of small entities. An initial regulatory flexibility analysis must contain (1) a description of the reasons why action by the agency is being considered; (2) a succinct statement of the objectives of, and legal basis for, the proposed rule; (3) a description of, and, where feasible, an estimate of the number of small entities to which the proposed rule will apply; (4) a description of the projected reporting, recordkeeping, and other compliance requirements of the proposed rule, including an estimate of the classes of small entities that will be subject to the requirement and the type of professional skills necessary for preparation of the report or record; (5) an identification, to the extent practicable, of all relevant Federal rules which may duplicate, overlap with, or conflict with the proposed rule; and (6) a description of any significant alternatives to the proposed rule which accomplish its stated objectives.

The Board has considered the potential impact of the proposed rule on small entities in accordance with the RFA. Based on its analysis and for the reasons stated below, the Board believes that this proposed rule will not have a significant economic impact on a substantial number of small entities. Nevertheless, the Board is publishing and inviting comment on this initial regulatory flexibility analysis. A final regulatory flexibility analysis will be conducted after comments received during the public comment period have been considered.

The Board welcomes comment on all aspects of its analysis. In particular, the Board requests that commenters describe the nature of any impact on small entities and provide empirical data to illustrate and support the extent of the impact.

1. Reasons for the Proposal

As discussed in the **SUPPLEMENTARY INFORMATION**, the Agencies are proposing to revise the regulations implementing section 13 of the BHC Act in conformance with the amendments to section 13 implemented by EGRRCPA. The proposal would therefore exclude from the definition of ''banking entity'' certain firms that have total consolidated assets equal to $10 billion or less and total trading assets and liabilities equal to five percent or less of total consolidated assets. Qualifying institutions eligible for this exclusion would consist of state member banks, bank holding companies, and savings and loan holding companies that meet the eligibility criteria for the exclusion. Such institutions would be exempt from the prohibitions and restrictions under section 13 of the BHC Act.

2. Statement of Objectives and Legal Basis

As discussed above, the Agencies' objective in proposing amendments to the regulations implementing section 13 of the BHC Act is to conform the regulations to changes recently implemented by sections 203 and 204 of EGRRCPA. The Agencies are explicitly authorized under section 13(b)(2) of the BHC Act to adopt rules implementing section 13.[20]

3. Description of Small Entities to Which the Regulation Applies

The Agencies' proposal would apply to state member banks, bank holding companies, and savings and loan holding companies supervised by the Board that are small entities for purposes of the RFA.[21]

4. Projected Reporting, Recordkeeping, and Other Compliance Requirements

As discussed previously in the Paperwork Reduction Act section, the proposal would not change the current reporting, recordkeeping or third-party disclosure requirements associated with section 13 of the BHC Act under the PRA. However, the proposal would exempt small entities supervised by the Board from the reporting, recordkeeping, and all other requirements associated with section 13 of the BHC Act.

5. Identification of Duplicative, Overlapping, or Conflicting Federal Regulations

The Board has not identified any federal statutes or regulations that would duplicate, overlap, or conflict with the proposed revisions.

6. Discussion of Significant Alternatives

The Board believes the proposed amendments will not have a significant economic impact on small banking entities supervised by the Board and therefore believes that there are no significant alternatives to the proposal that would reduce the economic impact on small banking entities supervised by the Board.

OCC

The RFA requires an agency, in connection with a proposed rule, to prepare an Initial Regulatory Flexibility

[17] 5 U.S.C. 601 *et seq.*

[18] U.S. SBA, Table of Small Business Size Standards Matched to North American Industry Classification System Codes, *available at https://www.sba.gov/sites/default/files/files/Size_Standards_Table.pdf.*

[19] *See id.* Pursuant to SBA regulations, the asset size of a concern includes the assets of the concern whose size is at issue and all of its domestic and foreign affiliates. 13 CFR 121.103(6).

[20] 12 U.S.C. 1851(b)(2).

[21] Under regulations issued by the Small Business Administration, a small entity includes a depository institution, bank holding company, or savings and loan holding company with total assets of $550 million or less and trust companies with total assets of $38.5 million or less. As of June 30, 2018, there were approximately 3,053 small bank holding companies, 184 small savings and loan holding companies, and 541 small state member banks.

Analysis describing the impact of the proposed rule on small entities, or to certify that the proposed rule would not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, the SBA includes as small entities those with $550 million or less in assets for commercial banks and savings institutions, and $38.5 million or less in assets for trust companies.

The OCC currently supervises approximately 886 small entities.[22]

Pursuant to section 203 of EGRRCPA, OCC-supervised institutions are not ''banking entities'' within the scope of Section 13 of the BHCA if the OCC-supervised institution, and any company that controls the OCC-supervised institution, meet the statutory exclusion. The EGRRCPA statutory provisions took effect upon enactment. Because the statutory provisions are already in effect, and this proposal would only revise the OCC's existing regulations to conform to this statutory change, this proposal would not affect a substantial number of small entities. Section 204 of EGRRCPA generally does not apply to OCC-supervised institutions.

The OCC's threshold for a significant effect is whether cost increases associated with a proposed rule are greater than or equal to either 5 percent of a small bank's total annual salaries and benefits or 2.5 percent of a small bank's total non-interest expense. Even if the proposal affected a substantial number of small banks, the OCC does not believe that the proposal would have a significant economic impact on small banks because OCC-supervised institutions that qualify for the exclusion under section 203 of the EGRRCPA should not have compliance costs associated with 12 CFR part 44. OCC-supervised institutions can determine their eligibility for the exclusion at the national bank level and federal savings association level on the basis of information they are separately required to file in their Consolidated Reports of Condition and Income.

For these reasons, the OCC certifies that the proposal would not have a significant economic impact on a substantial number of small entities.

FDIC

The RFA generally requires that, in connection with a proposed rulemaking, an agency prepare and make available for public comment an initial regulatory flexibility analysis describing the impact of the rulemaking on small entities.[23] A regulatory flexibility analysis is not required, however, if the agency certifies that the rule would not have a significant economic impact on a substantial number of small entities. The SBA has defined ''small entities'' to include banking organizations with total assets less than or equal to $550 million.[24] The FDIC supervises 3,575 depository institutions,[25] of which 2,763 are defined as small banking entities by the terms of the RFA.[26] Of the 2,763 small, FDIC-supervised institutions, all report having total consolidated assets less than or equal to $10 billion, and total trading assets and liabilities less than or equal to five percent of total consolidated assets, and are therefore, covered by the proposed rule.

Although the proposed rule would conform the FDIC's regulation to the statute in a way that is relevant to 2,763 small, FDIC-supervised institutions, the effects of the proposed rule itself would not have a significant economic impact. The statutory changes established by EGRRCPA enabled certain institutions to engage in proprietary trading,[27] thereby potentially increasing the volume of such activity for affected banking entities. The proposed rule would amend the FDIC's regulations to conform to this exemption established in EGRRCPA. Therefore, this component of the rule would have no direct effect on small, FDIC-supervised institutions.

As previously stated, EGRRCPA permits a covered fund organized and offered by a banking entity to share the same name, or a variation of the same name, as a banking entity that is an affiliated investment adviser to the hedge fund or private equity fund, with some restrictions. By permitting a covered fund to share the name of a banking entity, or variation thereof, the fund can utilize the franchise value of the banking entity to more effectively market the fund to the bank's current account holders or the public. The size of this potential benefit is difficult to accurately estimate with available data because it depends on the business model of individual banks and funds, the propensity of those funds to advertise to particular groups, and the decisions of customers, among other things. However, since the proposed rule would conform FDIC regulations with the statutory language enacted by EGRRCPA, this component of the proposed rule would have no direct effect on small, FDIC-supervised institutions.

Finally, the proposed rule would introduce conforming changes that would reduce recordkeeping, reporting, and disclosure costs for affected FDIC-supervised institutions. EGRRCPA states that certain institutions with total consolidated assets less than or equal to $10 billion, and total trading assets and liabilities less than or equal to five percent of total consolidated assets, are excluded from restrictions on engaging in proprietary trading activity. The proposed rule would amend the FDIC's regulations to conform to this exclusion established in EGRRCPA. In so doing, the proposed rule would make conforming changes to reduce the recordkeeping and reporting requirements for small, FDIC-supervised institutions that were excluded from proprietary trading restriction by EGRRCPA. Although the vast majority of small, FDIC-supervised institutions are not currently required to comply with the recordkeeping, reporting, or disclosure requirements associated with proprietary trading, the proposed rule would introduce conforming changes that would exclude some small, FDIC-supervised institutions. Of these newly excluded institutions, the proposed rule would conform the Section 203 of EGRRCPA, which reduced recordkeeping, reporting, or disclosure requirements by up to 8 hours per institution, or approximately $514.40 per year.[28] [29] The estimated reduction in

[22] The number of small entities supervised by the OCC is determined using the SBA's size thresholds for commercial banks and savings institutions, and trust companies, which are $550 million and $38.5 million, respectively. Consistent with the General Principles of Affiliation 13 CFR 121.103(a), the OCC counts the assets of affiliated financial institutions when determining if they should classify an OCC-supervised institution as a small entity. The OCC used December 31, 2017, to determine size because a ''financial institution's assets are determined by averaging the assets reported on its four quarterly financial statements for the preceding year.'' See footnote 8 of the U.S. Small Business Administration's *Table of Size Standards.*

[23] 5 U.S.C. 601 *et seq.*

[24] The SBA defines a small banking organization as having $550 million or less in assets, where ''a financial institution's assets are determined by averaging the assets reported on its four quarterly financial statements for the preceding year.'' 13 CFR 121.201 n.8 (2018). ''SBA counts the receipts, employees, or other measure of size of the concern whose size is at issue and all of its domestic and foreign affiliates. . . .'' 13 CFR 121.103(a)(6) (2018). Following these regulations, the FDIC uses a covered entity's affiliated and acquired assets, averaged over the preceding four quarters, to determine whether the covered entity is ''small'' for the purposes of RFA.

[25] FDIC-supervised institutions are set forth in 12 U.S.C. 1813(q)(2).

[26] Call Report: June 30, 2018.

[27] 12 CFR 351.3(a).

[28] 8 hours * $64.30 per hour = $514.40.

[29] The estimated reduction in costs is calculated by multiplying 8 hours by an estimated total hourly compensation rate of $64.30 per hour. According to the May 2017 National Industry-Specific Occupational Employment and Wage Estimates for the Depository Credit Intermediation sector the 75th percentile wages for a compliance officer is $40.55

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recordkeeping, reporting, or disclosure costs per institution represents less than 0.01 percent of non-interest expenses, on average, for small, FDIC-supervised institution.[30] Thus, the FDIC believes the proposed rule would not have a significant economic impact on small, FDIC-supervised institutions.

For the reasons described above and under section 605(b) of the RFA, the FDIC certifies that the proposed rule would not have a significant economic impact on a substantial number of small entities.

The FDIC invites comments on all aspects of the supporting information provided in this RFA section. In particular, would this rule have any significant effects on small entities that the FDIC has not identified?

SEC

Pursuant to 5 U.S.C. 605(b), the SEC hereby certifies that the proposed amendments to the 2013 final rule would not, if adopted, have a significant economic impact on a substantial number of small entities.

As discussed in the **SUPPLEMENTARY INFORMATION**, the Agencies are proposing to revise the 2013 final rule in order to be consistent with statutory amendments made by EGRRCPA to section 13 of the BHC Act. The statutory amendments (a) modified the scope of the term ''banking entity'' to exclude certain community banks and their affiliates and (b) permitted any banking entity to share a name with a hedge fund or private equity fund that it organizes and offers under certain circumstances.

The proposed revisions would generally apply to banking entities, including certain SEC-registered entities. These entities include bank-affiliated SEC-registered broker-dealers, investment advisers, security-based swap dealers, and major security-based swap participants. Based on information in filings submitted by these entities, the SEC preliminarily believes that there are no banking entity registered investment advisers,[31] broker-dealers [32] security-based swap dealers, or major security-based swap participants that are small entities for purposes of the RFA.[33] For this reason, the SEC believes that the proposed amendments to the 2013 final rule would not, if adopted, have a significant economic impact on a substantial number of small entities.

The SEC encourages written comments regarding this certification. Specifically, the SEC solicits comment as to whether the proposed amendments could have an impact on small entities that has not been considered. Commenters should describe the nature of any impact on small entities and provide empirical data to support the extent of such impact.

CFTC

Pursuant to 5 U.S.C. 605(b), the CFTC hereby certifies that the proposed amendments to the 2013 final rule would not, if adopted, have a significant economic impact on a substantial number of small entities for which the CFTC is the primary financial regulatory agency.

As discussed in this **SUPPLEMENTARY INFORMATION**, the Agencies are proposing to revise the 2013 final rule in order to be consistent with statutory amendments made by EGRRCPA to section 13 of the BHC Act. The statutory amendments (a) modified the scope of the term ''banking entity'' to exclude certain community banks and their affiliates and (b) permitted any banking entity to share a name with a hedge fund or private equity fund that it organizes and offers under certain circumstances.

The proposed revisions would generally apply to banking entities, including certain CFTC-registered entities. These entities include bank-affiliated CFTC-registered swap dealers, futures commission merchants, commodity trading advisors and commodity pool operators.[34] The CFTC has previously determined that swap dealers, futures commission merchants and commodity pool operators are not small entities for purposes of the RFA and, therefore, the requirements of the RFA do not apply to those entities.[35] As for commodity trading advisors, the CFTC has found it appropriate to consider whether such registrants should be deemed small entities for purposes of the RFA on a case-by-case basis, in the context of the particular regulation at issue.[36]

In the context of the proposed revisions to the 2013 final rule, the CFTC believes it is unlikely that a substantial number of the commodity trading advisors that are potentially affected are small entities for purposes of the RFA. In this regard, the CFTC notes that only commodity trading advisors that are registered with the CFTC are covered by the 2013 final rule, and generally those that are registered have larger businesses. Similarly, the

per hour. The wage information reported by the BLS in the Specific Occupational Employment and Wage Estimates does not include health benefits and other non-monetary benefits. According to the March 2018 Employer Cost of Employee Compensation data compensation rates for health and other benefits are 35.5 percent of total compensation. The wage is also inflation adjusted according to the BLS data on the Consumer Price Index for Urban Consumers (CPI–U) so that it is contemporaneous with the non-wage compensation statistic. The inflation rate was 2.28 percent between May 2017 and June 2018. Therefore, the adjusted average wage for a compliance officer is $64.30 per hour.

[30] Call Report, June 30, 2018.

[31] For the purposes of an SEC rulemaking in connection with the RFA, an investment adviser generally is a small entity if it: (1) Has assets under management having a total value of less than $25 million; (2) did not have total assets of $5 million or more on the last day of the most recent fiscal year; and (3) does not control, is not controlled by, and is not under common control with another investment adviser that has assets under management of $25 million or more, or any person (other than a natural person) that had total assets of $5 million or more on the last day of its most recent fiscal year. *See* 17 CFR 275.0–7.

[32] For the purposes of an SEC rulemaking in connection with the RFA, a broker-dealer will be deemed a small entity if it: (1) Had total capital (net worth plus subordinated liabilities) of less than $500,000 on the date in the prior fiscal year as of which its audited financial statements were prepared pursuant to 17 CFR 240.17a-5(d), or, if not required to file such statements, had total capital (net worth plus subordinated liabilities) of less than $500,000 on the last day of the preceding fiscal year (or in the time that it has been in business, if shorter); and (2) is not affiliated with any person (other than a natural person) that is not a small business or small organization. *See* 17 CFR 240.0–10(c). Under the standards adopted by the SBA, small entities also include entities engaged in financial investments and related activities with $38.5 million or less in annual receipts. *See* 13 CFR 121.201 (Subsector 523).

[33] Based on SEC analysis of Form ADV data, the SEC preliminarily believes that there are not a substantial number of registered investment advisers affected by the proposed amendments that would qualify as small entities under RFA. Based on SEC analysis of broker-dealer FOCUS filings and NIC relationship data, the SEC preliminarily believes that there are no SEC-registered broker-dealers affected by the proposed amendments that would qualify as small entities under RFA. With respect to security-based swap dealers and major security-based swap participants, based on feedback from market participants and information about the security-based swap markets, the Commission believes that the types of entities that would engage in more than a de minimis amount of dealing activity involving security-based swaps—which generally would be large financial institutions—would not be ''small entities'' for purposes of the RFA. *See* Regulation SBSR—Reporting and Dissemination of Security-Based Swap Information, 81 FR 53546, 53553 (Aug. 12, 2016).

[34] The proposed revisions may also apply to other types of CFTC registrants that are banking entities, such as introducing brokers, but the CFTC believes it is unlikely that such other registrants will have significant activities that would implicate the proposed revisions. *See* 79 FR 5808, 5813 (Jan. 31, 2014) (CFTC version of 2013 final rule).

[35] *See* Policy Statement and Establishment of Definitions of ''Small Entities'' for Purposes of the Regulatory Flexibility Act, 47 FR 18618 (Apr. 30, 1982) (futures commission merchants and commodity pool operators); Registration of Swap Dealers and Major Swap Participants, 77 FR 2613, 2620 (Jan. 19, 2012) (swap dealers and major swap participants).

[36] *See* Policy Statement and Establishment of Definitions of ''Small Entities'' for Purposes of the Regulatory Flexibility Act, 47 FR 18618, 18620 (Apr. 30, 1982).

2013 final rule applies to only those commodity trading advisors that are affiliated with banks, which the CFTC expects are larger businesses. The CFTC requests that commenters address in particular whether any of these commodity trading advisors, or other CFTC registrants covered by the proposed revisions to the 2013 final rule, are small entities for purposes of the RFA.

Because the CFTC believes that there are not a substantial number of registered, banking entity-affiliated commodity trading advisors that are small entities for purposes of the RFA, and the other CFTC registrants that may be affected by the proposed revisions have been determined not to be small entities, the CFTC believes that the proposed revisions to the 2013 final rule would not, if adopted, have a significant economic impact on a substantial number of small entities for which the CFTC is the primary financial regulatory agency.

The CFTC encourages written comments regarding this certification. Specifically, the CFTC solicits comment as to whether the proposed amendments could have a direct impact on small entities that were not considered. Commenters should describe the nature of any impact on small entities and provide empirical data to support the extent of such impact.

D. Riegle Community Development and Regulatory Improvement Act

Pursuant to section 302(a) of the Riegle Community Development and Regulatory Improvement Act (RCDRIA),[37] in determining the effective date and administrative compliance requirements for a new regulation that imposes additional reporting, disclosure, or other requirements on insured depository institutions, each Federal banking agency must consider any administrative burdens that such regulation would place on insured depository institutions and the benefits of such regulation. In addition, section 302(b) of RCDRIA requires such new regulation to take effect on the first day of a calendar quarter that begins on or after the date on which the regulations are published in final form, with certain exceptions.

The proposed rule would reduce burden and would not impose any reporting, disclosure, or other new requirements on insured depository institutions. Accordingly, the Agencies are not required by RCDRIA to consider the administrative burdens and benefits of the rule or delay its effective date.[38] Because delaying the effective date of the rule is not required and would serve no purpose, the Agencies propose to make the threshold increase effective on the first day after publication of the final rule in the **Federal Register**. The Agencies invite any comments that would inform the Agencies' consideration of RCDRIA.

E. OCC Unfunded Mandates Reform Act Determination

The OCC analyzed the proposed rule under the factors set forth in the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1532). Under this analysis, the OCC considered whether the proposed rule includes a federal mandate that may result in the expenditure by state, local, and Tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year (adjusted annually for inflation).

The proposed rule does not impose new mandates. Therefore, the OCC concludes that implementation of the proposed rule would not result in an expenditure of $100 million or more annually by state, local, and tribal governments, or by the private sector.

F. SEC: Small Business Regulatory Enforcement Fairness Act

For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996, or ''SBREFA,'' [39] the SEC requests comment on the potential effect of the proposed amendments on the U.S. economy on an annual basis; any potential increase in costs or prices for consumers or individual industries; and any potential effect on competition, investment or innovation. Commenters are requested to provide empirical data and other factual support for their views to the extent possible.

G. SEC Economic Analysis

The Agencies are proposing amendments to the 2013 final rule to implement the statutory mandates of sections 203 and 204 of EGRRCPA. In accordance with Section 203 of EGRRCPA,[40] the proposal would amend the definition of ''insured depository institution'' in § _____.2(r) of the 2013 final rule to exclude an institution so long as it, and every company that controls it, has both (1) $10 billion or less in total consolidated assets and (2) total consolidated trading assets and liabilities that are 5 percent or less of total consolidated assets. The proposal would also amend the 2013 final rule to reflect the changes made by Section 204 of EGRRCPA. That provision modified section 13 of the BHC Act to permit, in certain circumstances, bank-affiliated investment advisers to share their name with the hedge funds or private equity funds they organize and offer.

The amendments to the 2013 final rule would reflect the statutory provisions of EGRRCPA that are already in effect, and we preliminarily believe that market participants are already responding to the statutory changes. Thus, the baseline against which we are assessing the effects of these proposed amendments incorporates both: (i) The enacted statutory provisions of sections 203 and 204 of EGRRCPA, and (ii) our understanding that banking entities with both total consolidated assets of $10 billion or less and total consolidated trading assets and liabilities that are 5 percent or less of total consolidated assets are, consistent with EGRRCPA, no longer complying with the 2013 final rule. Any costs, benefits, and economic effects of the proposed amendments, including those on efficiency, competition, and capital formation, stem entirely from these statutory provisions and not from the conforming amendments to the 2013 final rule.[41]

The SEC is mindful of the costs and benefits imposed by its rules. Certain SEC-regulated entities, such as broker-dealers (''BDs'') and registered investment advisers (''RIAs''), that fell under the definition of ''banking entity'' for the purposes of the Volcker Rule before the enactment of EGRRCPA are within the scope of the proposed amendments implementing sections 203 and 204 of EGRRCPA.[42] We estimate

[37] 12 U.S.C. 4802(a).

[38] Additionally, the 30-day delayed effective date requirement under the Administrative Procedure Act is not applicable to a rule, such as the one proposed herein, that grants or recognizes an exemption or relieves a burden. 5 U.S.C. 553(d)(1).

[39] Public Law 104–121, Title II, 110 Stat. 857 (1996) (codified in various sections of 5 U.S.C., 15 U.S.C. and as a note to 5 U.S.C. 601).

[40] Specifically, Section 203 of EGRRCPA provides that the term ''insured depository institution,'' for purposes of the definition of ''banking entity'' in section 13(h)(1) of the BHC Act (12 U.S.C. 1851(h)(1)), does not include an insured depository institution that does not have, and is not controlled by a company that has: (1) More than $10 billion in total consolidated assets; and (2) total trading assets and trading liabilities, as reported on the most recent applicable regulatory filing filed by the institution, that are more than 5 percent of total consolidated assets.

[41] Because EGRRCPA was enacted recently, the economic effects of sections 203 and 204 may not yet be fully realized in the relevant securities markets.

[42] We believe that all bank-affiliated entities that may register with the SEC as security-based swap dealers and major security-based swap participants are unaffected by the amendments due to the size of the balance sheet and the amount of trading activity of their affiliated banking entities. Our analysis is based on DTCC Derivatives Repository Limited Trade Information Warehouse data on

Continued

that there are as many as 126 bank-affiliated BDs with aggregate assets of approximately $126.2 billion and aggregate holdings of approximately $12.3 billion that are within the scope of these proposed amendments.[43] We estimate that, at most, 308 bank-affiliated RIAs could be affected by the proposed amendments.[44]

The statutory exemption in section 203 of EGRRCPA provided entities thereby excluded from the Volcker Rule with greater flexibility in pursuing certain types of trading and covered fund activities that could be profitable and, thus, may have enhanced their profitability. To the extent that the compliance costs related to the Volcker Rule would otherwise have been passed along to clients and counterparties of the affected entities, the cost reductions associated with section 203 of EGRRCPA may be flowing through to counterparties and clients in the form of reduced transaction costs and increased willingness to engage in trading activity, including intermediation that facilitates risk-sharing, as well as covered fund activities.[45] Additionally, to the extent that the Volcker Rule may have reduced the ability or willingness of affected entities to engage in permitted hedging, underwriting or market-making due to compliance costs, the statutory exemption may have facilitated access to capital and trading activity. The costs of the 2013 final rule will no longer apply to the entities affected by the statutory exemption, which, as discussed above, is already fully in effect.[46]

Some entities with $10 billion or less in total consolidated assets and trading assets and liabilities equal to or less than 5 percent of its total consolidated assets may have responded to the statutory exemption by increasing or planning to increase their trading activity and covered funds activities, while still remaining under the applicable thresholds at the consolidated holding company level. We estimate that 23 such holding companies with broker-dealer affiliates and available information about trading assets and liabilities have, on aggregate, total consolidated assets of approximately $94.9 billion and gross consolidated trading assets and liabilities of approximately $0.6 billion.[47] Although we do not have information about the remaining holding companies, we know that 111 parent firms with affiliated broker-dealers can have, on aggregate, total gross consolidated trading assets and liabilities of no more than $55.5 billion without exceeding either threshold and becoming subject to the Volcker Rule. Therefore, we estimate that aggregate trading assets and liabilities of the affected holding companies with SEC-regulated affiliates that would not result in any of these companies becoming subject to the Volcker Rule is likely no more than $54.9 billion.[48] We note that, if an increase in risk-taking by affected entities is observed by market participants that provide capital to them, these capital providers may demand additional compensation for bearing more financial risk, which may decrease the profitability of the entity's trading and covered fund activities.

Banking entities with more than $10 billion in total consolidated assets and/or trading assets and liabilities greater than 5 percent of total consolidated assets are incentivized to shrink their balance sheets or trading activity under the thresholds.[49] This may reduce the willingness of such banking entities to serve as intermediaries. At the same time, because the statutory exemption incentivizes such banking entities to have smaller balance sheets and trading books, section 203 may have reduced the potential for market impacts from the failure of a given entity. On aggregate, potential decreases in the balance sheets and trading activity of unaffected banking entities may partly offset increases in balance sheets and trading activity of affected entities. To the degree that statutory changes in section 203 of EGRRCPA increase the gross volume of trading assets and liabilities, there may be an increase in risk-taking. However, this need not always be the case. For example, a hedging transaction that offsets a risk exposure from an existing asset would increase the reported gross trading assets and liabilities without necessarily producing a net increase in risk exposure. We note that the affected bank-affiliated BDs account only for approximately 3.2% of aggregate BD assets and 1.24% of aggregate BD holdings. Thus, the statutory exemption affects only a small fraction of the broker-dealer industry. Nevertheless, even in the absence of significant aggregate effects, both the risks and the returns from newly permissible trading and covered fund activity by individual

single-name credit-default swaps. Throughout this economic analysis, the term ''banking entity'' generally refers only to banking entities that are subject to the Volcker Rule and for which the SEC is the primary financial regulatory agency as defined in section 2(12)(B) of the Dodd-Frank Act. *See* 12 U.S.C. 1851(b)(2); 12 U.S.C. 5301(12)(B). In addition, the use of the term ''we'' throughout this economic analysis refers only to the SEC and not to the other Agencies, except where otherwise indicated.

[43] These 126 broker-dealers are affiliated with 111 banks or bank holding companies. This estimate has been revised since the July 2018 release proposing amendments to the Volcker Rule based on a manual reclassification of the number of entities affected by EGRRCPA. This estimate includes broker-dealers for which data on total assets and/or trading assets and liabilities are not available. Based on a manual search of regulatory filings for holding companies with missing assets and liabilities data and current FR Y–9C and FR Y–9SP reporting requirements, we believe that entities with missing data have low levels of trading activity and are likely affected by section 203 of EGRRCPA. To the degree that this may not be the case for some bank-affiliated broker-dealers, these figures may overestimate the number of affected entities. Broker-dealer holdings are estimated based on FOCUS reports data and defined as securities and spot commodities owned at market value, including: Bankers' acceptances, certificates of deposit and commercial paper, state and municipal government obligations, corporate obligations, stocks and warrants, options, arbitrage, other securities, U.S. and Canadian government obligations, and spot commodities.

[44] As estimated in the July 2018 release proposing amendments to the Volcker Rule (83 FR at 33525), there are, approximately, 308 bank-affiliated RIAs. We do not have information or data that would allow us to estimate how many of these bank-affiliated RIAs would have preferred to share a name with funds they advise. For the purposes of this analysis, we estimate that these 308 banking-entity RIAs and 126 bank-affiliated BDs are also the SEC-regulated entities that may be able to engage in covered fund activities as a result of section 203 of EGRRCPA. We do not have information or data that would allow us to estimate how many of these entities would have preferred to engage in covered fund activities.

[45] *See* 79 FR 5778 for the Agencies' estimated ongoing compliance and recordkeeping burdens related to the requirements of the 2013 final rule.

[46] Based on the hourly burdens estimated in the release adopting the 2013 final rule (79 FR at 5778) and the BD weight estimates in the July 2018 release proposing amendments to the Volcker Rule (83 FR at 33539), annual compliance cost savings for SEC-regulated entities due to section 203 of EGRRCPA may be as high as approximately $16,626,385 (= 2,035 hours × 0.18 x (Attorney at $409 per hour) × 111).

[47] The current FR Y–9C and FR Y–9SP filing requirements limit data availability and, due to data completeness and delays, we base estimates on filings for the third quarter of 2017. We have information about trading assets and liabilities of 23 holding companies with 24 broker-dealer affiliates.

[48] This figure is calculated as follows: $55.5 bln—$0.6 bln = $54.9 bln. We recognize that these estimates may under- or overestimate the increases in trading activity that may occur as a result of section 203 of EGRRCPA for four primary reasons. First, the profitability of trading activity is likely to strongly influence incentives to engage in trading activity and may vary depending on trading strategy, market sector, and time period measured. Second, growth in a holding company's total consolidated assets is influenced by business models, prevailing market conditions, industry competition, bank merger and acquisition activity, among other factors. Third, this estimate assumes that no affected entity will enter or exit the industry as a result of the statutory exclusion. Fourth, this estimate assumes for purposes of this economic analysis that small holding companies that file form FR Y–9SP, which does not contain data on trading assets and liabilities, do not currently have any trading assets or liabilities.

[49] The extent to which this happens will depend on the size and complexity of each banking entity's trading activities and organizational structure, along with those of its affiliated entities and the magnitude of expected compliance savings from not being subject to the Volcker Rule.

BDs are likely to be passed along to their investors and customers.

Potential shifts in risk-taking attributable to the statutory changes contained in section 203 of EGRRCPA and discussed above may result in two competing effects. On the one hand, if affected entities are now able to bear risk at a lower cost than their customers, increased risk-taking could promote secondary market trading activity and capital formation in primary markets, and thus increase access to capital for issuers. Similarly, the statutory exemption may increase banking entities' covered fund activities, which may broaden investment opportunities for investors in covered funds and facilitate access to capital by companies in which those funds invest. On the other hand, the statutory exemption may increase risk-taking by individual SEC-regulated entities, the amount of covered fund activity in which they engage, as well as total risk in the financial system, which may ultimately negatively impact issuers and investors. However, as noted above, the maximum potential increase in aggregate trading activity of affected entities that would not trigger Volcker Rule compliance is likely limited to $54.9 billion. We continue to recognize that, if observed by providers of capital, an increase in risk-taking by affected entities may increase their cost of capital and reduce the profitability of such risk-taking.

Entities exempt from the Volcker Rule under EGRRCPA are no longer required to incur related compliance costs and may, thus, have a competitive advantage relative to similarly situated entities just above the thresholds. This may incentivize entities above the thresholds to decrease the size of their balance sheet, trading activity, or both in order to become exempt from the Volcker Rule, resulting in greater competition between entities with consolidated assets and trading assets and liabilities near the thresholds. Moreover, section 203 of EGRRCPA may have placed affected domestic entities on a more even competitive footing with foreign firms that are also not subject to the substantive prohibitions and compliance costs related to the Volcker Rule and its implementing regulations. In addition, it may have placed affected domestic entities in a potentially better competitive position relative to foreign banking entities that are subject to the Volcker Rule but may avail themselves of the exemptions related to activity outside of the United States.[50]

Prior to the enactment of EGRRCPA, a banking-entity RIA could not share the same name or a variation of the same name as a hedge fund or private equity fund that it organized and offered under an exemption in the Volcker Rule.[51] Section 204 of EGRRCPA changed this condition for banking-entity RIAs that meet certain requirements and provided them with flexibility in name sharing for corporate, marketing, promotional, or other purposes. To the extent that name sharing effectively and easily conveys the identity of a fund's RIA and preserves the brand value, section 204 of EGRRCPA improved bank-affiliated RIAs' ability to compete for investor capital with RIAs that are not affiliated with banks. Section 204 also provided bank-affiliated RIAs that can share a name with a fund with a competitive advantage over those bank-affiliated RIAs that cannot share a name with a fund because they do not meet the statutory conditions for name sharing. In addition, the statutory name-sharing provision may have made it easier for some investors to identify the adviser of a fund, which may have reduced search costs related to the capital allocation process for some investors.

We reiterate that the economic effects discussed above stem from the statutory provisions of EGRRCPA that are fully in effect, and, therefore, we believe that these effects may be already partially realized. We believe that the conforming amendments to the implementing regulations will have no additional costs, benefits, or effects on efficiency, competition, and capital formation.

As discussed above, the proposed amendments conform the regulations implementing section 13 of the BHC Act with the statutory amendments made pursuant to sections 203 and 204 of EGRRCPA with no exercise of agency discretion. As such, we believe there are no reasonable alternatives to the proposed rules.

Request for Comment

The SEC requests comment on all aspects of the economic analysis of the proposed amendments. In particular, the SEC asks commenters to consider the following question:

1. Has the SEC accurately characterized the baseline, costs, benefits, and effects on competition, efficiency, and capital formation of the proposed amendments and alternatives with respect to SEC-regulated entities and securities markets? If not, why not? Should any of the costs or benefits be modified? What, if any, other costs or benefits should the SEC take into account? Please provide quantitative information and ways of estimating any of the costs and benefits associated with the proposed amendments.

List of Subjects

12 CFR Part 44

Banks, Banking, Compensation, Credit, Derivatives, Government securities, Insurance, Investments, National banks, Penalties, Reporting and recordkeeping requirements, Risk, Risk retention, Securities, Trusts and trustees.

12 CFR Part 248

Administrative practice and procedure, Banks, Banking, Conflict of interests, Credit, Foreign banking, Government securities, Holding companies, Insurance, Insurance companies, Investments, Penalties, Reporting and recordkeeping requirements, Securities, State nonmember banks, State savings associations, Trusts and trustees.

12 CFR Part 351

Banks, Banking, Capital, Compensation, Conflicts of interest, Credit, Derivatives, Government securities, Insurance, Insurance companies, Investments, Penalties, Reporting and recordkeeping requirements, Risk, Risk retention, Securities, Trusts and trustees.

17 CFR Part 75

Banks, Banking, Compensation, Credit, Derivatives, Federal branches and agencies, Federal savings associations, Government securities, Hedge funds, Insurance, Investments, National banks, Penalties, Proprietary trading, Reporting and recordkeeping requirements, Risk, Risk retention, Securities, Swap dealers, Trusts and trustees, Volcker rule.

17 CFR Part 255

Banks, Brokers, Dealers, Investment advisers, Recordkeeping, Reporting, Securities.

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Chapter I

Authority and Issuance

For the reasons stated in the Common Preamble, the Office of the Comptroller of the Currency proposes to amend chapter I of Title 12, Code of Federal Regulations as follows:

[50] *See* §§ _____.6(e) and _____.13(b) of the 2013 final rule; *See* 12 U.S.C. 1851(d)(1)(H) and (I) (2017).

[51] *See* § __.11 of the 2013 final rule; 12 U.S.C. 1851(d)(1)(G) (2017).

PART 44—PROPRIETARY TRADING AND CERTAIN INTERESTS IN AND RELATIONSHIPS WITH COVERED FUNDS

■ 1. The authority citation for part 44 continues to read as follows:

Authority: 7 U.S.C. 27 *et seq.,* 12 U.S.C. 1, 24, 92a, 93a, 161, 1461, 1462a, 1463, 1464, 1467a, 1813(q), 1818, 1851, 3101 3102, 3108, 5412.

Subpart A—Authority and Definitions

■ 2. In subpart A, § 44.1 is amended by revising paragraph (c) to read as follows:

§ 44.1 Authority, purpose, scope, and relationship to other authorities.

* * * * *

(c) *Scope.* This part implements section 13 of the Bank Holding Company Act with respect to banking entities for which the OCC is authorized to issue regulations under section 13(b)(2) of the Bank Holding Company Act (12 U.S.C. 1851(b)(2)) and take actions under section 13(e) of that Act (12 U.S.C. 1851(e)). These include national banks, Federal branches and Federal agencies of foreign banks, Federal savings associations, Federal savings banks, and any of their respective subsidiaries (except a subsidiary for which there is a different primary financial regulatory agency, as that term is defined in this part), but do not include such entities to the extent they are not within the definition of banking entity in § 44.2(c) of this subpart.

* * * * *

■ 3. In subpart A, § 44.2 is amended by revising paragraph (r) to read as follows:

§ 44.2 Definitions

* * * * *

(r) *Insured depository institution,* unless otherwise indicated, has the same meaning as in section 3(c) of the Federal Deposit Insurance Act (12 U.S.C. 1813(c)), but does not include:

(1) An insured depository institution that is described in section 2(c)(2)(D) of the BHC Act (12 U.S.C. 1841(c)(2)(D)); or

(2) An insured depository institution if it has, and if every company that controls it has, total consolidated assets of $10 billion or less and total trading assets and trading liabilities, on a consolidated basis, that are 5 percent or less of total consolidated assets.

* * * * *

Subpart C—Covered Funds Activities and Investments

■ 4. In subpart C, § 44.10 is amended by revising paragraph (d)(9)(iii) to read as follows:

§ 44.10 Prohibition on acquiring or retaining an ownership interest in and having certain relationships with a covered fund

* * * * *

(d) * * *

(9) * * *

(iii) To share with a covered fund, for corporate, marketing, promotional, or other purposes, the same name or a variation of the same name, except as permitted under § 44.11(a)(6).

* * * * *

■ 5. In subpart C, § 44.11 is amended by revising paragraph (a)(6) to read as follows:

§ 44.11 Permitted organizing and offering, underwriting, and market making with respect to a covered fund

(a) * * *

(6) The covered fund, for corporate, marketing, promotional, or other purposes:

(i) Does not share the same name or a variation of the same name with the banking entity (or an affiliate thereof) except that a covered fund may share the same name or a variation of the same name with a banking entity that is an investment adviser to the covered fund if:

(A) The investment adviser is not an insured depository institution, a company that controls an insured depository institution, or a company that is treated as a bank holding company for purposes of section 8 of the International Banking Act of 1978 (12 U.S.C. 3106); and

(B) The investment adviser does not share the same name or a variation of the same name as an insured depository institution, a company that controls an insured depository institution, or a company that is treated as a bank holding company for purposes of section 8 of the International Banking Act of 1978 (12 U.S.C. 3106); and

(ii) Does not use the word ''bank'' in its name.

* * * * *

BOARD OF GOVERNORS OF THE FEDERAL RESERVE

12 CFR Chapter II

Authority and Issuance

For the reasons set forth in the Common Preamble the Board proposes to amend chapter II of title 12 of the Code of Federal Regulations as follows:

PART 248—PROPRIETARY TRADING AND CERTAIN INTERESTS IN AND RELATIONSHIPS WITH COVERED FUNDS (Regulation VV)

■ 6. The authority citation for part 248 continues to read as follows:

Authority: 12 U.S.C. 1851, 12 U.S.C. 221 *et seq.,* 12 U.S.C. 1818, 12 U.S.C. 1841 *et seq.,* and 12 U.S.C. 3103 *et seq.*

Subpart A—Authority and Definitions

■ 7. In subpart A, § 248.1 is amended by revising paragraph (c) to read as follows:

§ 248.1 Authority, purpose, scope, and relationship to other authorities

* * * * *

(c) *Scope.* This part implements section 13 of the Bank Holding Company Act with respect to banking entities for which the Board is authorized to issue regulations under section 13(b)(2) of the Bank Holding Company Act (12 U.S.C. 1851(b)(2)) and take actions under section 13(e) of that Act (12 U.S.C. 1851(e)). These include any state bank that is a member of the Federal Reserve System, any company that controls an insured depository institution (including a bank holding company and savings and loan holding company), any company that is treated as a bank holding company for purposes of section 8 of the International Banking Act (12 U.S.C. 3106), and any subsidiary of the foregoing other than a subsidiary for which the OCC, FDIC, CFTC, or SEC is the primary financial regulatory agency (as defined in section 2(12) of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (12 U.S.C. 5301(12)), but do not include such entities to the extent they are not within the definition of banking entity in § 248.2(c) of this subpart.

* * * * *

■ 8. In subpart A, § 248.2 is amended by revising paragraph (r) to read as follows:

§ 248.2 Definitions

* * * * *

(r) *Insured depository institution,* unless otherwise indicated, has the same meaning as in section 3(c) of the Federal Deposit Insurance Act (12 U.S.C. 1813(c)), but does not include:

(1) An insured depository institution that is described in section 2(c)(2)(D) of the BHC Act (12 U.S.C. 1841(c)(2)(D)); or

(2) an insured depository institution if it has, and if every company that controls it has, total consolidated assets of $10 billion or less and total trading assets and trading liabilities, on a consolidated basis, that are 5 percent or less of total consolidated assets.

* * * * *

Subpart C—Covered Funds Activities and Investments

■ 9. In subpart C, § 248.10 is amended by revising paragraph (d)(9)(iii) to read as follows:

§ 248.10 Prohibition on acquiring or retaining an ownership interest in and having certain relationships with a covered fund

* * * * *

(d) * * *

(9) * * *

(iii) To share with a covered fund, for corporate, marketing, promotional, or other purposes, the same name or a variation of the same name, except as permitted under § 248.11(a)(6).

* * * * *

■ 10. In subpart C, § 248.11 is amended by revising paragraph (a)(6) to read as follows:

§ 248.11 Permitted organizing and offering, underwriting, and market making with respect to a covered fund

(a) * * *

(6) The covered fund, for corporate, marketing, promotional, or other purposes:

(i) Does not share the same name or a variation of the same name with the banking entity (or an affiliate thereof) except that a covered fund may share the same name or a variation of the same name with a banking entity that is an investment adviser to the covered fund if:

(A) The investment adviser is not an insured depository institution, a company that controls an insured depository institution, or a company that is treated as a bank holding company for purposes of section 8 of the International Banking Act of 1978 (12 U.S.C. 3106); and

(B) The investment adviser does not share the same name or a variation of the same name as an insured depository institution, a company that controls an insured depository institution, or a company that is treated as a bank holding company for purposes of section 8 of the International Banking Act of 1978 (12 U.S.C. 3106); and

(ii) Does not use the word ''bank'' in its name.

* * * * *

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Chapter III

Authority and Issuance

For the reasons set forth in the Common Preamble, the Federal Deposit Insurance Corporation proposes to amend chapter III of Title 12, Code of Federal Regulations as follows:

PART 351—PROPRIETARY TRADING AND CERTAIN INTERESTS IN AND RELATIONSHIPS WITH COVERED FUNDS

■ 11. The authority citation for part 351 continues to read as follows:

Authority: 12 U.S.C. 1851; 1811 *et seq.;* 3101 *et seq.;* and 5412.

Subpart A—Authority and Definitions

■ 12. In Subpart A, § 351.1 is amended by revising paragraph (c) to read as follows:

§ 351.1 Authority, purpose, scope and relationship to other authorities.

* * * * *

(c) *Scope.* This part implements section 13 of the Bank Holding Company Act with respect to insured depository institutions for which the FDIC is the appropriate Federal banking agency, as defined in section 3(q) of the Federal Deposit Insurance Act, and certain subsidiaries of the foregoing, but does not include such entities to the extent they are not within the definition of banking entity in § 351.2(c) of this subpart.

* * * * *

■ 13. In subpart A, § 351.2 is amended by revising paragraph (r) to read as follows:

§ 351.2 Definitions

* * * * *

(r) *Insured depository institution,* unless otherwise indicated, has the same meaning as in section 3(c) of the Federal Deposit Insurance Act (12 U.S.C. 1813(c)), but does not include:

(1) an insured depository institution that is described in section 2(c)(2)(D) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(c)(2)(D)); or

(2) an insured depository institution if it has, and if every company that controls it has, total consolidated assets of $10 billion or less and total trading assets and trading liabilities, on a consolidated basis, that are 5 percent or less of total consolidated assets.

* * * * *

Subpart C—Covered Funds Activities and Investments

■ 14. In subpart C, § 351.10 is amended by revising paragraph (d)(9)(iii) to read as follows:

§ 351.10 Prohibitions on acquiring or retaining an ownership interest in and having certain relationships with a covered fund.

* * * * *

(d) * * *

(9) * * *

(iii) To share with a covered fund, for corporate, marketing, promotional, or other purposes, the same name or a variation of the same name, except as permitted under § 351.11(a)(6).

* * * * *

■ 15. In subpart C, section 351.11 is amended by revising paragraph (a)(6) to read as follows:

§ 351.11 Permitted organizing and offering, underwriting, and market making with respect to a covered fund.

(a) * * *

(6) The covered fund, for corporate, marketing, promotional, or other purposes:

(i) Does not share the same name or a variation of the same name with the banking entity (or an affiliate thereof), except that a covered fund may share the same name or a variation of the same name with a banking entity that is an investment adviser to the covered fund if:

(A) The investment adviser is not an insured depository institution, a company that controls an insured depository institution, or a company that is treated as a bank holding company for purposes of section 8 of the International Banking Act of 1978 (12 U.S.C. 3106); and

(B) The investment adviser does not share the same name or a variation of the same name as an insured depository institution, a company that controls an insured depository institution, or a company that is treated as a bank holding company for purposes of section 8 of the International Banking Act of 1978 (12 U.S.C. 3106); and

(ii) Does not use the word ''bank'' in its name.

* * * * *

COMMODITY FUTURES TRADING COMMISSION

17 CFR Chapter I

Authority and Issuance

For the reasons set forth in the Common Preamble, the Commodity Futures Trading Commission amends Part 75 to chapter I of Title 17 of the Code of Federal Regulations as follows:

PART 75—PROPRIETARY TRADING AND CERTAIN INTERESTS IN AND RELATIONSHIPS WITH COVERED FUNDS

■ 21. The authority citation for Part 75 continues to read as follows:

Authority: 12 U.S.C. 1851.

■ 22. In Subpart A, § 75.1 is amended by revising paragraph (c) to read as follows:

§ 75.1 Authority, purpose, scope and relationship to other authorities.

* * * * *

(c) *Scope.* This part implements section 13 of the Bank Holding Company Act with respect to banking entities for which the CFTC is the primary financial regulatory agency, as defined in section 2(12) of the Dodd-Frank Act, but does not include such entities to the extent they are not within the definition of banking entity in § 75.2(c) of this subpart.

* * * * *

■ 23. In subpart A, § 75.2 is amended by revising paragraph (r) to read as follows:

§ 75.2 Definitions

* * * * *

(r) *Insured depository institution,* unless otherwise indicated, has the same meaning as in section 3(c) of the Federal Deposit Insurance Act (12 U.S.C. 1813(c)), but does not include:

(1) an insured depository institution that is described in section 2(c)(2)(D) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(c)(2)(D)); or

(2) an insured depository institution if it has, and if every company that controls it has, total consolidated assets of $10 billion or less and total trading assets and trading liabilities, on a consolidated basis, that are 5 percent or less of total consolidated assets.

* * * * *

Subpart C—Covered Funds Activities and Investments

■ 24. In subpart C, § 75.10 is amended by revising paragraph (d)(9)(iii) to read as follows:

§ 75.10 Prohibitions on acquiring or retaining an ownership interest in and having certain relationships with a covered fund.

* * * * *

(d) * * *

(9) * * *

(iii) To share with a covered fund, for corporate, marketing, promotional, or other purposes, the same name or a variation of the same name, except as permitted under § 75.11(a)(6).

* * * * *

■ 25. In subpart C, § 75.11 is amended by revising paragraph (a) to read as follows:

§ 75.11 Permitted organizing and offering, underwriting, and market making with respect to a covered fund.

(a) * * *

(6) The covered fund, for corporate, marketing, promotional, or other purposes:

(i) Does not share the same name or a variation of the same name with the banking entity (or an affiliate thereof), except that a covered fund may share the same name or a variation of the same name with a banking entity that is an investment adviser to the covered fund if:

(A) The investment adviser is not an insured depository institution, a company that controls an insured depository institution, or a company that is treated as a bank holding company for purposes of section 8 of the International Banking Act of 1978 (12 U.S.C. 3106); and

(B) The investment adviser does not share the same name or a variation of the same name as an insured depository institution, a company that controls an insured depository institution, or a company that is treated as a bank holding company for purposes of section 8 of the International Banking Act of 1978 (12 U.S.C. 3106); and

(ii) Does not use the word ''bank'' in its name.

* * * * *

SECURITIES AND EXCHANGE COMMISSION

17 CFR Chapter II

Authority and Issuance

For the reasons set forth in the Common Preamble, the Securities and Exchange Commission proposes to amend Part 255 to chapter II of Title 17 of the Code of Federal Regulations as follows:

PART 255—PROPRIETARY TRADING AND CERTAIN INTERESTS IN AND RELATIONSHIPS WITH COVERED FUNDS

■ 16. The authority for part 255 continues to read as follows:

Authority: 12 U.S.C. 1851

Subpart A—Authority and Definitions

■ 17. In Subpart A, § 255.1 is amended by revising paragraph (c) to read as follows:

§ 255.1 Authority, purpose, scope and relationship to other authorities.

* * * * *

(c) *Scope.* This part implements section 13 of the Bank Holding Company Act with respect to banking entities for which the SEC is the primary financial regulatory agency, as defined in this part, but does not include such entities to the extent they are not within the definition of banking entity in § 255.2(c) of this subpart.

* * * * *

■ 18. In subpart A, § 255.2 is amended by revising paragraph (r) to read as follows:

§ 255.2 Definitions

* * * * *

(r) *Insured depository institution,* unless otherwise indicated, has the same meaning as in section 3(c) of the Federal Deposit Insurance Act (12 U.S.C. 1813(c)), but does not include:

(1) an insured depository institution that is described in section 2(c)(2)(D) of the BHC Act (12 U.S.C. 1841(c)(2)(D)); or

(2) an insured depository institution if it has, and if every company that controls it has, total consolidated assets of $10 billion or less and total trading assets and trading liabilities, on a consolidated basis, that are 5 percent or less of total consolidated assets.

* * * * *

Subpart C—Covered Funds Activities and Investments

■ 19. In subpart C, section 255.10 is amended by revising paragraph (d)(9)(iii) to read as follows:

§ 255.10 Prohibition on acquiring or retaining an ownership interest in and having certain relationships with a covered fund

* * * * *

(d) * * *

(9) * * *

(iii) To share with a covered fund, for corporate, marketing, promotional, or other purposes, the same name or a variation of the same name, except as permitted under § 255.11(a)(6).

* * * * *

■ 20. In subpart C, § 255.11 is amended by revising paragraph (a)(6) to read as follows:

§ 255.11 Permitted organizing and offering, underwriting, and market making with respect to a covered fund

(a) * * *

(6) The covered fund, for corporate, marketing, promotional, or other purposes:

(i) Does not share the same name or a variation of the same name with the banking entity (or an affiliate thereof) except that a covered fund may share the same name or a variation of the same name with a banking entity that is an investment adviser to the covered fund if:

(A) The investment adviser is not an insured depository institution, a company that controls an insured depository institution, or a company that is treated as a bank holding company for purposes of section 8 of the International Banking Act of 1978 (12 U.S.C. 3106); and

(B) The investment adviser does not share the same name or a variation of the same name as an insured depository

institution, a company that controls an insured depository institution, or a company that is treated as a bank holding company for purposes of section 8 of the International Banking Act of 1978 (12 U.S.C. 3106); and

(ii) Does not use the word ''bank'' in its name.

* * * * *

Dated: December 18, 2018

William A. Rowe,

Chief Risk Officer.

By order of the Board of Governors of the Federal Reserve System, December 20, 2018.

Ann E. Misback,

Secretary of the Board.

Dated at Washington, DC, on December 18, 2018.

By order of the Board of Directors.

Federal Deposit Insurance Corporation.

Valerie J. Best,

Assistant Executive Secretary.

By the Securities and Exchange Commission.

Date: December 20, 2018.

Brent J. Fields,

Secretary.

Issued in Washington, DC, on December 20, 2018, by the Commodities Futures Trading Commission.

Christopher Kirkpatrick,

Secretary of the Commodities Futures Trading Commission.

[FR Doc. 2019–00797 Filed 2–7–19; 8:45 am]

BILLING CODE 4810–33–P; 6210–01–P; 6714–01–P; 8011–01–P; 6351–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2018–1070; Product Identifier 2018–NM–154–AD]

RIN 2120–AA64

Airworthiness Directives; Viking Air Limited (Type Certificate Previously Held by Bombardier, Inc.; Canadair Limited) Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for certain Viking Air Limited Model CL–215–6B11 (CL–215T Variant) and CL–215–6B11 (CL–415 Variant) airplanes. This proposed AD was prompted by a report that a supplier fabricated Teflon parts with a charge of 15 percent fiberglass content instead of the specified 5 percent fiberglass content. This proposed AD would require repetitive detailed visual inspections of the aileron control system cables and flap interconnect system cables for damage or disconnected cables, corrective actions if necessary, and replacement of the Teflon parts in the aileron control systems, aileron/rudder interconnect, and aileron power unit beam. The replacement of these parts would terminate the repetitive inspections. We are proposing this AD to address the unsafe condition on these products.

DATES: We must receive comments on this proposed AD by March 25, 2019.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.
- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this NPRM, contact Viking Air Limited, 1959 de Havilland Way, Sidney, British Columbia V8L 5V5, Canada; telephone +1–250–656–7227; fax +1–250–656–0673; email *acs-technical.publications@vikingair.com;* internet *http://www.vikingair.com.* You may view this service information at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

Examining the AD Docket

You may examine the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2018–1070; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, the regulatory evaluation, any comments received, and other information. The street address for Docket Operations (phone: 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

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

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2018–1070; Product Identifier 2018–NM–154–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this NPRM. We will consider all comments received by the closing date and may amend this NPRM because of those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this NPRM.

Discussion

Transport Canada Civil Aviation (TCCA), which is the aviation authority for Canada, has issued Canadian AD CF–2018–27, dated October 12, 2018 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for certain Viking Air Limited Model CL–215–6B11 (CL–215T Variant) and CL–215–6B11 (CL–415 Variant) airplanes. The MCAI states:

> It was found that a supplier fabricated Teflon™ parts with a charge of 15% fiberglass content in lieu of the required 5%. Parts manufactured with this higher percentage of fiberglass may cause wear and rupture of control cables due to greater friction if contacted [which could lead to reduced controllability of the airplane].
>
> This [Canadian] AD mandates a [detailed] visual inspection of the aileron control system cables and flap interconnect system cables in the area of the aileron power control unit. The inspection is required to ensure that there is no cable damage or disconnect until the replacement of the Teflon™ parts has been completed in the aileron control system, the aileron/rudder interconnect and the aileron power unit beam. This [Canadian] AD also requires replacement of the Teflon™ parts.

Signs of damage include broken wires, unusual wear, or fraying cables. You may examine the MCAI in the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2018–1070.

Related Service Information Under 1 CFR Part 51

Bombardier has issued Service Bulletin 215–3185, Revision 1, dated January 28, 2014; and Service Bulletin 215–4476, Revision 1, dated January 28, 2014. The service information describes procedures for a detailed visual inspection in the area of the aileron power control unit for damaged or disconnected aileron control system cables or flap interconnect system cables, and corrective actions. These documents are distinct since they apply to different airplane models in different configurations.

Bombardier has also issued Service Bulletin 215–3186, Revision 3, dated September 29, 2015; and Service Bulletin 215–4477, Revision 2, dated September 29, 2015. The service information describes procedures for replacement of Teflon parts in the aileron control system, the aileron/rudder interconnect, and the aileron power unit beam. These documents are distinct since they apply to different airplane models in different configurations.

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

FAA's Determination

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

Proposed Requirements of This NPRM

This proposed AD would require accomplishing the actions specified in the service information described previously.

Costs of Compliance

We estimate that this proposed AD affects 1 airplane of U.S. registry. We estimate the following costs to comply with this proposed AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Labor cost	Parts cost	Cost per product	Cost on U.S. operators
66 work-hours × $85 per hour = $5,610	$16,456	$22,066	$22,066

We have received no definitive data that would enable us to provide cost estimates for the on-condition actions specified in this proposed AD.

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.

This proposed AD is issued in accordance with authority delegated by the Executive Director, Aircraft Certification Service, as authorized by FAA Order 8000.51C. In accordance with that order, issuance of ADs is normally a function of the Compliance and Airworthiness Division, but during this transition period, the Executive Director has delegated the authority to issue ADs applicable to transport category airplanes to the Director of the System Oversight Division.

Regulatory Findings

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

For the reasons discussed above, I certify this proposed regulation:

1. Is not a ''significant regulatory action'' under Executive Order 12866;

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

3. Will not affect intrastate aviation in Alaska; 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.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Viking Air Limited (Type Certificate Previously Held by Bombardier, Inc.; Canadair Limited): Docket No. FAA–2018–1070; Product Identifier 2018–NM–154–AD.

(a) Comments Due Date

We must receive comments by March 25, 2019.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Viking Air Limited (Type Certificate previously held by Bombardier, Inc.; Canadair Limited) airplanes, certificated in any category, as identified in paragraphs (c)(1) and (c)(2) of this AD.

(1) Model CL–215–6B11 (CL–215T Variant) airplanes, serial numbers 1085, 1086, 1093, 1094, and 1098 through 1101 inclusive.

(2) Model CL–215–6B11 (CL–415 Variant) airplanes, serial numbers 2076 through 2090 inclusive.

(d) Subject

Air Transport Association (ATA) of America Code 27, Flight controls.

(e) Reason

This AD was prompted by a report that a supplier fabricated Teflon parts with a charge of 15 percent fiberglass content instead of the specified 5 percent fiberglass content. We are issuing this AD to address parts manufactured with this higher percentage of fiberglass, which may cause deterioration of control cables and adjacent parts due to greater friction should they come into contact, which could lead to reduced controllability of the airplane.

(f) Compliance

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

(g) Inspection

Within 50 flight hours after the effective date of this AD: Accomplish a detailed visual inspection of the aileron control systems cables and flap interconnect system cables for disconnected or damaged cables in accordance with paragraph 2.A. of the Accomplishment Instructions of Bombardier Service Bulletin 215–3185, Revision 1, dated January 28, 2014; or Bombardier Service Bulletin 215–4476, Revision 1, dated January 28, 2014; as applicable. Repeat the inspection thereafter at intervals not to exceed 50 flight hours.

(h) Corrective Action

If any disconnected or damaged (including broken wires, unusual wear, or fraying) cables are found during any inspection required by paragraph (g) of this AD: Before further flight, obtain corrective actions approved by the Manager, New York ACO Branch, FAA; or Transport Canada Civil Aviation (TCCA); or Viking Air Limited's TCCA Design Approval Organization (DAO). If approved by the DAO, the approval must include the DAO-authorized signature. Accomplish the corrective actions within the compliance time specified therein. If no compliance time is specified in the corrective actions instructions, accomplish the corrective action before further flight.

(i) Replacement

Within 29 months after the effective date of this AD: Replace the Teflon parts in the aileron control system, the aileron/rudder interconnect, and the aileron power unit beam in accordance with Parts A, B, and C of the Accomplishment Instructions of Bombardier Service Bulletin 215–3186, Revision 3, dated September 29, 2015; or Bombardier Service Bulletin 215–4477, Revision 2, dated September 29, 2015.

(j) Terminating Action for Inspections

Accomplishing the replacement required by paragraph (i) of this AD on an airplane constitutes terminating action for the inspections required by paragraph (g) of this AD for that airplane.

(k) Credit for Previous Actions

This paragraph provides credit for actions required by paragraph (i) of this AD, if those actions were performed before the effective date of this AD using the service information specified in paragraphs (k)(1) through (k)(5) of this AD.

(1) Bombardier Service Bulletin 215–3186, dated September 30, 2013.

(2) Bombardier Service Bulletin 215–3186, Revision 1, dated November 26, 2014.

(3) Bombardier Service Bulletin 215–3186, Revision 2, dated December 5, 2014.

(4) Bombardier Service Bulletin 215–4477, dated September 30, 2013.

(5) Bombardier Service Bulletin 215–4477, Revision 1, dated November 26, 2014.

(l) No Reporting Requirement

Although Bombardier Service Bulletin 215–3185, Revision 1, dated January 28, 2014; Bombardier Service Bulletin 215–3186, Revision 3, dated September 29, 2015; Bombardier Service Bulletin 215–4476, Revision 1, dated January 28, 2014; and Bombardier Service Bulletin 215–4477, Revision 2, dated September 29, 2015; specify to submit certain information to the manufacturer, this AD does not include that requirement.

(m) Other FAA AD Provisions

The following provisions also apply to this AD:

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

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain corrective actions from a manufacturer, the action must be accomplished using a method approved by the Manager, New York ACO Branch, FAA; or TCCA; or Viking Air Limited's TCCA DAO. If approved by the DAO, the approval must include the DAO-authorized signature.

(n) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) Canadian AD CF–2018–27, dated October 12, 2018, for related information. This MCAI may be found in the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2018–1070.

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

(3) For service information identified in this AD, contact Viking Air Limited, 1959 de Havilland Way, Sidney, British Columbia V8L 5V5, Canada; telephone +1–250–656–7227; fax +1–250–656–0673; email *acs-technical.publications@vikingair.com;* internet *http://www.vikingair.com.* You may view this service information at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

Issued in Des Moines, Washington, on January 10, 2019.

Jeffrey E. Duven,

Director, System Oversight Division, Aircraft Certification Service.

[FR Doc. 2019–01524 Filed 2–7–19; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2019–0046; Product Identifier 2018–CE–040–AD]

RIN 2120–AA64

Airworthiness Directives; Learjet, Inc. Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to supersede Airworthiness Directive (AD) 2017–11–09, which applies to certain Learjet, Inc. (Learjet), Model 60 airplanes. AD 2017–11–09 requires a one-time inspection of the fuselage skin for corrosion and, as necessary, additional related inspections and corrective actions. Since we issued AD 2017–11–09, we identified an error in the fluorescent dye penetrant inspection of the fuselage skin and an ambiguity in the compliance time for the fluorescent dye penetrant inspection. We are proposing this AD to clarify the compliance time and correct an error for the fluorescent dye penetrant inspection of the fuselage skin.

DATES: We must receive comments on this proposed AD by March 25, 2019.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

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

For service information identified in this NPRM, contact Learjet, Inc., One Learjet Way, Wichita, KS 67209–2942; telephone: 316–946–2000; fax: 316–946–2220; email: *ac.ict@aero.bombardier.com;* internet: *http://www.bombardier.com.* You may view this service information at the FAA, Policy and Innovation Division, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148.

Examining the AD Docket

You may examine the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0046; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, the regulatory evaluation, any comments received, and other information. The street address for Docket Operations (phone: 800–647–5527) is listed above. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Tara Shawn, Aerospace Engineer, Wichita ACO Branch, 1801 Airport Road, Room 100, Wichita, Kansas 67209; telephone: (316) 946–4141; fax: (316) 946–4107; email: *tara.shawn@faa.gov* or *Wichita-COS@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2019–0046; Product Identifier 2018–CE–040–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this NPRM. We will consider all comments received by the closing date and may amend this NPRM because of those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

Discussion

We issued AD 2017–08–07, Amendment 39–18856 (82 FR 18084, April 17, 2017) (''2017–08–07'') for certain serial-numbered Learjet Model 60 airplanes. AD 2017–08–07 required a one-time inspection of the fuselage skin for corrosion and, as necessary, additional related inspections and corrective actions. AD 2017–08–07 resulted from an evaluation by the design approval holder that indicated the upper fuselage skin under the aft oxygen line fairing is subject to multi-site damage. We issued AD 2017–08–07 to detect and correct corrosion of the fuselage skin, which could result in reduced structural integrity of the airplane.

After we issued AD 2017–08–07, we determined that only certain airplanes listed in the applicability of AD 2017–08–07 are affected by the unsafe condition. Therefore, we issued AD 2017–11–09, Amendment 39–18908 (82 FR 24462, May 30, 2017) (''AD 2017–11–09'') to supersede AD 2017–08–07. AD 2017–11–09 retained all of the actions of AD 2017–08–07 but revised the applicability to identify only airplanes with a dorsal-mounted oxygen bottle and airplanes that have had the dorsal-mounted oxygen bottle removed but have retained the oxygen line fairing installed on top of the fuselage.

Actions Since AD 2017–11–09 Was Issued

Since we issued AD 2017–11–09, we identified an error in the area of the fluorescent dye penetrant inspection requirement. AD 2017–11–09 requires the fluorescent penetrant inspection of the fuselage skin between stringers (S)–2L and S–2R. Bombardier Learjet 60 Service Bulletin (SB) 60–53–19, Recommended, Revision 3, dated August 29, 2016, specifies inspecting a smaller area, only out to the fairing end caps.

We also identified an ambiguity in the compliance time for the inspection of the fuselage skin. Paragraphs (g)(1) through (3) of AD 2017–11–09 do not specify that the date of issuance of the original airworthiness certificate or the date of issuance of the original export certificate of airworthiness should be whichever date is earlier.

We are proposing this AD to correct the error of the inspection area and clarify the compliance times for the fluorescent dye penetrant inspection of the fuselage skin. This proposed AD will detect and correct corrosion of the fuselage skin, which could result in reduced structural integrity of the airplane.

Related Service Information Under 1 CFR Part 51

We reviewed Bombardier Learjet 60 Service Bulletin (SB) 60–53–19, Revision 3, dated August 29, 2016. This service information was previously approved for incorporation by reference in AD 2017–08–07 and AD 2017–11–09 retained the incorporation by reference of this SB. The service information describes procedures for inspections of the fuselage crown skin for corrosion and, as necessary, related investigative inspections and corrective actions. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

FAA's Determination

We are proposing this AD because we evaluated all the relevant information and determined the unsafe condition described previously is likely to exist or develop in other products of the same type design.

Proposed AD Requirements

This proposed AD would retain all requirements of AD 2017–11–09. However, we removed the language in paragraph (g) that identified the area of the fuselage skin to be inspected as ''between stringers (S)–2L and S–2R.'' Both this proposed AD and AD 2017–11–09 require following the instructions in Bombardier Learjet 60, Service Bulletin SB 60–53–19, Revision 3, dated August 29, 2016, which requires inspection of a smaller area (only out to the fairing end caps).

Costs of Compliance

We estimate that this proposed AD affects 284 airplanes of U.S. registry.

We estimate the following costs to comply with this proposed AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspection (retained action from AD 2017–11–09).	46 work-hours × $85 per hour = $3,910	$265	$4,175	$1,185,700

ESTIMATED COSTS—Continued

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Reporting (retained action from AD 2017–11–09).	1 work-hour × $85 per hour = $85	0	85	24,140

This AD adds no additional economic burden. We have received no definitive data that would enable us to provide cost estimates for the on-condition actions specified in this AD. According to the manufacturer, some of the costs of this AD may be covered under warranty, thereby reducing the cost impact on affected individuals. We do not control warranty coverage for affected individuals. As a result, we have included all known costs in our cost estimate.

Paperwork Reduction Act

A federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a currently valid OMB Control Number. The OMB Control Number for this information collection is 2120–0056. Public reporting for this collection of information is estimated to be approximately 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, completing and reviewing the collection of information. All responses to this collection of information are mandatory. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to: Information Collection Clearance Officer, Federal Aviation Administration, 10101 Hillwood Parkway, Fort Worth, TX 76177–1524.

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.

This AD is issued in accordance with authority delegated by the Executive Director, Aircraft Certification Service, as authorized by FAA Order 8000.51C. In accordance with that order, issuance of ADs is normally a function of the Compliance and Airworthiness Division, but during this transition period, the Executive Director has delegated the authority to issue ADs applicable to small airplanes, gliders, balloons, airships, domestic business jet transport airplanes, and associated appliances to the Director of the Policy and Innovation Division.

Regulatory Findings

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

For the reasons discussed above, I certify that the proposed regulation:

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

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

(3) Will not affect intrastate aviation in Alaska, 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.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing Airworthiness Directive (AD) 2017–11–09, Amendment 39–18908 (82 FR 24462, May 30, 2017) and adding the following new AD:

Learjet, Inc.: Docket No. FAA–2019–0046; Product Identifier 2018–CE–040–AD.

(a) Comments Due Date

The FAA must receive comments on this AD action by March 25, 2019.

(b) Affected ADs

This AD replaces AD 2017–11–09, Amendment 39–18908 (82 FR 24462, May 30, 2017) (''AD 2017–11–09'').

(c) Applicability

This AD applies to Learjet, Inc., Model 60 airplanes, certificated in any category, having serial numbers 60–002 through 60–430 inclusive, and having a configuration identified in paragraph (c)(1) or (2) of this AD.

(1) Airplanes with a dorsal-mounted oxygen bottle.

(2) Airplanes that have had the dorsal mounted oxygen bottle removed but have retained the oxygen line fairing installed on top of the fuselage.

(d) Subject

Joint Aircraft System Component (JASC)/ Air Transport Association (ATA) of America Code 53, Fuselage.

(e) Unsafe Condition

This AD was prompted by an evaluation by the design approval holder indicating that the upper fuselage skin under the aft oxygen line fairing is subject to multi-site damage. We are issuing this AD to detect and correct corrosion of the fuselage skin, which could result in reduced structural integrity of the airplane.

(f) Compliance

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

(g) Inspection of the Fuselage Skin, Related Investigative Inspections, and Corrective Actions

At the applicable compliance times specified in paragraphs (g)(1) through (3) of this AD, do the fluorescent dye penetrant inspection of the fuselage skin for corrosion. Before further flight, do all related investigative and corrective actions. Follow the Accomplishment Instructions of Bombardier Learjet 60 Service Bulletin 60–53–19 Revision 3, dated August 29, 2016, (SB 60–53–19, Revision 3) except as required by paragraph (h) of this AD.

(1) As of May 22, 2017 (the effective date of AD 2017–08–07, Amendment 39–18856 (82 FR 18084, April 17, 2017) (''2017–08–07''), which was superseded by AD 2017–11–09), any airplanes with more than 12 years since the date of issuance of the original airworthiness certificate or the date of issuance of the original export certificate of airworthiness, whichever date is earlier: Inspect within 12 months after May 22, 2017 (the effective date of AD 2017–08–07, which was superseded by 2017–11–09).

(2) As of May 22, 2017 (the effective date of AD 2017–08–07, which was superseded by AD 2017–11–09), any airplanes with more than 6 years but equal to or less than 12 years since the date of issuance of the original airworthiness certificate or the date of issuance of the original export certificate of airworthiness, whichever date is earlier: Inspect within 24 months after May 22, 2017 (the effective date of AD 2017–08–07, which was superseded by AD 2017–11–09).

(3) As of May 22, 2017 (the effective date of AD 2017–08–07, which was superseded by AD 2017–11–09), any airplanes with 6 years or less since the date of issuance of the original airworthiness certificate or the date of issuance of the original export certificate of airworthiness, whichever date is earlier: Inspect within 36 months after May 22, 2017 (the effective date of AD 2017–08–07, which was superseded by AD 2017–11–09).

(h) Retained Service Information Exception, With No Changes

This paragraph restates the requirements of paragraph (h) of AD 2017–11–09, with no changes. Where SB 60–53–19, Revision 3, specifies contacting Learjet, Inc., for appropriate action: Before further flight, repair using a method approved in accordance with the procedures specified in paragraph (l) of this AD.

(i) Retained Reporting, With No Changes

This paragraph restates the requirements of paragraph (i) of AD 2017–11–09, with no changes. At the applicable time specified in paragraph (i)(1) or (i)(2) of this AD: Submit a report of the findings (both positive and negative) of the inspection required by the introductory text of paragraph (g) of this AD to: *Wichita-COS@faa.gov;* or Ann Johnson, Wichita ACO Branch, 1801 Airport Road, Wichita, KS 67209. The report must include the name of the owner, the address of the owner, the name of the organization incorporating Learjet 60 Service Bulletin 60–53–19, the date that inspection was completed, the name of the person submitting the report, the address, telephone number, and email of the person submitting the report, the airplane serial number, the total time (flight hours) on the airplane, the total number of landings on the airplane, whether corrosion was detected, whether corrosion was repaired, the structural repair manual (SRM) chapter and revision used (if repaired), and whether corrosion exceeded the minimum thickness specified in Bombardier Learjet 60 SB 60–53–19 (and specify the SRM chapter and revision, if used as an aid to determine minimum thickness).

(1) If the inspection was done on or after May 22, 2017 (the effective date of AD 2017–08–07, which was superseded by AD 2017–11–09): Submit the report within 30 days after the inspection.

(2) If the inspection was done before May 22, 2017 (the effective date of AD 2017–08–07, which was superseded by AD 2017–11–09): Submit the report within 30 days after May 22, 2017 (the effective date of AD 2017–08–07, which was superseded by AD 2017–11–09).

(j) Credit for Previous Actions

This AD allows credit for the actions required in the introductory text of paragraph (g) if completed before the effective date of this AD using the Accomplishment Instructions in Learjet 60 SB 60–53–19, dated November 23, 2015; Learjet 60 SB 60–53–19 Revision 1, dated April 4, 2016; or Learjet 60 SB 60–53–19 Revision 2, dated April 18, 2016.

(k) Paperwork Reduction Act Burden Statement

A federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a current valid OMB Control Number. The OMB Control Number for this information collection is 2120–0056. Public reporting for this collection of information is estimated to be approximately 1 hour per response, including the time for reviewing instructions, completing and reviewing the collection of information. All responses to this collection of information are mandatory. Comments concerning the accuracy of this burden and suggestions for reducing the burden should be directed to the FAA at: 800 Independence Ave. SW, Washington, DC 20591, Attn: Information Collection Clearance Officer, AES–200.

(l) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Wichita ACO Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the ACO Branch, send it to the attention of the person identified in paragraph (m)(1) of this AD.

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

(3) An AMOC that provides an acceptable level of safety may be used for any repair, modification, or alteration required by this AD if it is approved by a Learjet, Inc., Designated Engineering Representative (DER), or a Unit Member (UM) of the Learjet Organization Designation Authorization (ODA), that has been authorized by the Manager, Wichita ACO Branch, to make those findings. To be approved, the repair, modification deviation, or alteration deviation must meet the certification basis of the airplane, and the approval must specifically refer to this AD.

(4) AMOCs approved previously for AD 2017–08–07 or AD 2017–11–09 should continue to be considered approved for the corresponding requirements in paragraph (g) of this AD.

(m) Related Information

(1) For more information about this AD, contact Tara Shawn, Aerospace Engineer, Wichita ACO Branch, 1801 Airport Road, Room 100, Wichita, Kansas 67209; telephone: (316) 946–4141; fax: (316) 946–4107; email: *tara.shawn@faa.gov* or *Wichita-COS@faa.gov.*

(2) For service information identified in this AD, contact Learjet, Inc., One Learjet Way, Wichita, KS 67209–2942; telephone: 316–946–2000; fax: 316–946–2220; email: *ac.ict@aero.bombardier.com;* internet: *http://www.bombardier.com.* You may view this service information at the FAA, Policy and Innovation Division, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148.

Issued in Kansas City, Missouri, on January 31, 2019.

Melvin J. Johnson,

Aircraft Certification Service, Deputy Director, Policy and Innovation Division, AIR–601.

[FR Doc. 2019–01500 Filed 2–7–19; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2018–1071; Product Identifier 2018–NM–119–AD]

RIN 2120–AA64

Airworthiness Directives; Fokker Services B.V. Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for all Fokker Services B.V. Model F28 Mark 0070 and 0100 airplanes. This proposed AD was prompted by a determination

that new or more restrictive airworthiness limitations are necessary. This proposed AD would require revising the existing maintenance or inspection program, as applicable, to incorporate new or more restrictive airworthiness limitations. We are proposing this AD to address the unsafe condition on these products.

DATES: We must receive comments on this proposed AD by March 25, 2019.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.
- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this NPRM, contact Fokker Services B.V., Technical Services Dept., P.O. Box 1357, 2130 EL Hoofddorp, the Netherlands; telephone +31 (0)88–6280–350; fax +31 (0)88–6280–111; email *technicalservices@fokker.com;* internet *http://www.myfokkerfleet.com.* You may view this service information at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

Examining the AD Docket

You may examine the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2018–1071; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, the regulatory evaluation, any comments received, and other information. The street address for Docket Operations (phone: 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Tom Rodriguez, Aerospace Engineer, International Section, Transport Standards Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3226.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2018–1071; Product Identifier 2018–NM–119–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this NPRM. We will consider all comments received by the closing date and may amend this NPRM because of those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this NPRM.

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2018–0159, dated July 25, 2018 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for all Fokker Services B.V. Model F28 Mark 0070 and 0100 airplanes. The MCAI states:

> Fokker Services Engineering Report SE–623 contains the Airworthiness Limitation Items (ALIs) and Safe Life Items (SLIs) for Fokker F28 Mark 0070 and Mark 0100 aeroplanes. This report is Part 2 of the Airworthiness Limitations Section of the Instructions for Continued Airworthiness, referred to in Section 06, Appendix 1, of the Fokker 70/100 Maintenance Review Board document.
>
> The complete Airworthiness Limitations Section consists of:
>
> Part 1—Report SE–473, Certification Maintenance Requirements (CMRs)—ref. EASA AD 2015–0027 [corresponds to FAA AD 2016–11–22, Amendment 39–18549 (81 FR 36438, June 7, 2016)],
>
> Part 2—Report SE–623, ALIs and SLIs—ref. EASA AD 2017–0095 [corresponds to FAA AD 2017–06–06, Amendment 39–18830 (83 FR 8328, February 27, 2018), (''AD 2017–06–06'')], and
>
> Part 3—Report SE–672, Fuel ALIs and CDCCLs—ref. EASA AD 2015–0032 [corresponds to FAA AD 2016–11–15, Amendment 39–18542 (81 FR 36447, June 7, 2016)].
>
> The instructions contained in those reports have been identified as mandatory actions for continued airworthiness. Failure to accomplish these actions could result in an unsafe condition.
>
> EASA previously issued [EASA] AD 2017–0095, requiring the actions described in Report SE–623 at issue 17. Since that [EASA] AD was issued, Fokker Services published issue 18 of Report SE–623, containing new and/or more restrictive maintenance tasks.
>
> For the reason described above, this [EASA] AD retains the requirements of [EASA] AD 2017–0095, which is superseded, and requires implementation of the maintenance actions as specified in the ALS.

You may examine the MCAI in the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2018–1071.

Relationship Between Proposed AD and Related ADs

This NPRM does not propose to supersede AD 2017–06–06. Rather, we have determined that a stand-alone AD is more appropriate to address the changes in the MCAI. This proposed AD would require revising the existing maintenance or inspection program, as applicable, to incorporate new or more restrictive airworthiness limitations. Accomplishment of the proposed actions would then terminate all of the requirements of AD 2017–06–06, and, as pursuant to AD 2017–06–06, would continue to provide terminating action for paragraph (g) of AD 2012–12–07, Amendment 39–17087 (77 FR 37788, June 25, 2012).

Related Service Information Under 1 CFR Part 51

Fokker Services B.V. has issued Fokker Engineering Report SE–623, Fokker 70/100 Airworthiness Limitations Section (ALS), Part 2—(Structure ALI's and Safe Life Items), Issue 18, dated June 14, 2018. This service information describes airworthiness limitations for safe life limits. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

FAA's Determination

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

Proposed Requirements of This NPRM

This proposed AD would require revising the existing maintenance or inspection program, as applicable, to incorporate new or more restrictive airworthiness limitations.

This proposed AD would require revisions to certain operator maintenance documents to include new actions (*e.g.,* inspections). Compliance with these actions is required by 14 CFR 91.403(c). For airplanes that have been previously modified, altered, or repaired in the areas addressed by this proposed AD, the operator may not be able to accomplish the actions described in the revised maintenance documents. In this situation, to comply with 14 CFR 91.403(c), the operator must request approval for an alternative method of compliance according to paragraph (j)(1) of this proposed AD.

Costs of Compliance

We estimate that this proposed AD affects 4 airplanes of U.S. registry. We estimate the following costs to comply with this proposed AD:

We have determined that revising the existing maintenance or inspection program takes an average of 90 work-hours per operator, although we recognize that this number may vary from operator to operator. In the past, we have estimated that this action takes 1 work-hour per airplane. Since operators incorporate maintenance or inspection program changes for their affected fleet(s), we have determined that a per-operator estimate is more accurate than a per-airplane estimate. Therefore, we estimate the total cost per operator to be $7,650 (90 work-hours × $85 per work-hour).

Authority for This Rulemaking

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

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.

This proposed AD is issued in accordance with authority delegated by the Executive Director, Aircraft Certification Service, as authorized by FAA Order 8000.51C. In accordance with that order, issuance of ADs is normally a function of the Compliance and Airworthiness Division, but during this transition period, the Executive Director has delegated the authority to issue ADs applicable to transport category airplanes and associated appliances to the Director of the System Oversight Division.

Regulatory Findings

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

For the reasons discussed above, I certify this proposed regulation:

1. Is not a ''significant regulatory action'' under Executive Order 12866;

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

3. Will not affect intrastate aviation in Alaska; 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.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Fokker Services B.V.: Docket No. FAA–2018–1071; Product Identifier 2018–NM–119–AD.

(a) Comments Due Date

We must receive comments by March 25, 2019.

(b) Affected ADs

(1) This AD affects AD 2017–06–06, Amendment 39–18830 (83 FR 8328, February 27, 2018) (''AD 2017–06–06'').

(2) This AD affects AD 2012–12–07, Amendment 39–17087 (77 FR 37788, June 25, 2012) (''AD 2012–12–07'').

(c) Applicability

This AD applies to all Fokker Services B.V. Model F28 Mark 0070 and 0100 airplanes, certificated in any category.

(d) Subject

Air Transport Association (ATA) of America Code 05, Time Limits/Maintenance Checks.

(e) Reason

This AD was prompted by a determination that new or more restrictive airworthiness limitations are necessary. We are issuing this AD to address reduced structural integrity of the airplane.

(f) Compliance

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

(g) Maintenance or Inspection Program Revision

Within 90 days after the effective date of this AD, revise the existing maintenance or inspection program, as applicable, to incorporate the information specified in Fokker Engineering Report SE–623, Fokker 70/100 Airworthiness Limitations Section Part 2—(Structure ALI's and Safe Life Items), Issue 18, dated June 14, 2018.

(1) The initial compliance time for doing the tasks is at the time specified in Fokker Engineering Report SE–623, Fokker 70/100 Airworthiness Limitations Section Part 2—(Structure ALI's and Safe Life Items), Issue 18, dated June 14, 2018, or within 90 days after the effective date of this AD, whichever occurs later.

(2) If any discrepancy is found, before further flight, repair using a method approved by the Manager, International Section, Transport Standards Branch, FAA; or the European Aviation Safety Agency (EASA); or Fokker B.V. Service's EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

(h) No Alternative Actions or Intervals

After the maintenance or inspection program has been revised as required by paragraph (g) of this AD, no alternative actions (*e.g.,* inspections) or intervals may be used unless the actions or intervals are approved as an alternative method of compliance (AMOC) in accordance with the procedures specified in paragraph (j)(1) of this AD.

(i) Terminating Action for Affected ADs

(1) Accomplishing the actions required by this AD terminates all requirements of AD 2017–06–06.

(2) Accomplishing the actions required by this AD terminates the requirements of paragraph (g) of AD 2012–12–07.

(j) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International

Section, Transport Standards Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Section, send it to the attention of the person identified in paragraph (k)(2) of this AD. Information may be emailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain corrective actions from a manufacturer, the action must be accomplished using a method approved by the Manager, International Section, Transport Standards Branch, FAA; or the EASA; or Fokker Services B.V.'s EASA DOA. If approved by the DOA, the approval must include the DOA-authorized signature.

(k) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) EASA AD 2018–0159, dated July 25, 2018, for related information. This MCAI may be found in the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2018–1071.

(2) For more information about this AD, contact Tom Rodriguez, Aerospace Engineer, International Section, Transport Standards Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3226.

(3) For service information identified in this AD, contact Fokker Services B.V., Technical Services Dept., P.O. Box 1357, 2130 EL Hoofddorp, the Netherlands; telephone +31 (0)88–6280–350; fax +31 (0)88–6280–111; email *technicalservices@fokker.com;* internet *http://www.myfokkerfleet.com.* You may view this service information at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

Issued in Des Moines, Washington, on January 10, 2019.

Jeffrey E. Duven,

Director, System Oversight Division, Aircraft Certification Service.

[FR Doc. 2019–01527 Filed 2–7–19; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 154

[Docket Number USCG–1999–5705]

RIN 1625–AA–12 and 2115–AE87

Marine Transportation-Related Facility Response Plans for Hazardous Substances

AGENCY: Coast Guard, DHS.

ACTION: Proposed rule; withdrawal.

SUMMARY: The Coast Guard is withdrawing its notice of proposed rulemaking entitled ''Marine Transportation-Related Facility Response Plans for Hazardous Substances'' that we published on March 31, 2000. The Coast Guard is withdrawing this rulemaking based on findings that the proposed rules are no longer appropriate to the current state of spill response in the chemical industry.

DATES: The notice of proposed rulemaking published March 31, 2000, at 65 FR 17416, is withdrawn as of February 8, 2019.

ADDRESSES: The docket for this withdrawn rulemaking is available by searching docket number USCG–1999–5705 using the Federal portal at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: If you have questions about this notice of withdrawal, call or email Mr. Christopher Friese, Commercial Vessel Safety Specialist, Office of Marine Environmental Response Policy (CG–MER–1), Coast Guard; telephone 202–372–1227.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

FR Federal Register
NPRM Notice of Proposed Rulemaking
OPA 90 Oil Pollution Act of 1990
CTAC Chemical Transportation Advisory Committee

II. Background

The Clean Water Act,[1] as amended by section 4202(a)(6) of the Oil Pollution Act of 1990 (OPA 90),[2] requires owners or operators of tank vessels, offshore facilities, and onshore facilities to prepare response plans to mitigate spills of both oils and hazardous substances. These plans must address measures to respond, to the maximum extent practicable, to a worst-case discharge or a substantial threat of such a discharge, of oil or a hazardous substance into or on navigable waters, adjoining shorelines, or the exclusive economic zone of the United States. The primary purpose of requiring response plans is to minimize the impact of a discharge of oil or hazardous substances into the navigable waters of the United States.

On May 3, 1996, we published an advance notice of proposed rulemaking soliciting public input on regulations concerning response plans for certain tank vessels and marine transportation-related facilities (61 FR 20083), and subsequently held two public meetings on the subject that were announced in the **Federal Register** (61 FR 34775). On March 31, 2000, we published a notice of proposed rulemaking (NPRM) in the **Federal Register** entitled ''Marine Transportation-Related Facility Response Plans for Hazardous Substances'' (65 FR 17416). In the NPRM, we proposed regulations requiring response plans for certain Marine Transportation-Related facilities. The Coast Guard received feedback from concerned citizens, commercial entities, and trade associations regarding the proposed rulemaking. These comments were made available in the docket. Since then, further analysis by the Coast Guard and the Chemical Transportation Advisory Committee (CTAC) has shown that implementation of the rules as laid out in the 2000 NPRM would not significantly increase response effectiveness at this time.

CTAC also identified many areas in which the NPRM may overlap with existing local and state regulatory schemes as well as current industry practice. Most coastal states already have regulations in place governing spill response at facilities that handle hazardous substances. Area Planning Committees have also been voluntarily incorporating hazardous substances into their contingency plans, as facilities that handle hazardous chemicals are often located near sites that process oil. Furthermore, organizations like the Chemical Transportation Emergency Center and Spill Center have demonstrated that synergies from oil response may also be utilized in hazardous substance response. Marine transportation related facilities handling oil products must also comply with the Coast Guard's Facility Response Plan requirements.[3] Although these requirements address planning for oil spill response, these best practices may also be applied to hazardous substance response to an extent. Due to the services and requirements industry frequently engages in to satisfy

[1] 33 U.S.C. 1321(j)(5).

[2] Public Law 101–380, 104 Stat. 484.

[3] 33 CFR part 154, subpart F.

insurance requirements and company sustainability polices, together with the existence of new terminal inspection protocols like that developed by the Chemical Distribution Institute, CTAC was unable to identify any significant gaps in hazardous substance spill response planning at marine transportation-related facilities that would be reduced by the 2000 proposed rulemaking.

III. Withdrawal

The Coast Guard is withdrawing the proposed rulemaking so as to better analyze the current spill response capabilities of the chemical industry before conducting any further rulemaking on hazardous substance response plans for marine transportation-related facilities. The Coast Guard remains committed to fulfilling its OPA 90 mandate, however we believe the proposed rules are no longer appropriate as proposed.

The Coast Guard has determined that withdrawing the proposed rule is appropriate based on findings that the proposed rules are no longer applicable to the current state of spill response in the chemical industry. Accordingly, the Coast Guard is withdrawing the ''Marine Transportation-Related Facility Response Plans for Hazardous Substances'' proposed rulemaking announced in an NPRM published March 31, 2000 (65 FR 17416).

IV. Executive Order 13771

The withdrawal of the NPRM qualifies as a deregulatory action under Executive Order 13771 (Reducing Regulation and Controlling Regulatory Costs), which 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.'' *See* the OMB Memorandum titled ''Guidance Implementing Executive Order 13771, Titled 'Reducing Regulation and Controlling Regulatory Costs' '' (April 5, 2017).

Dated: February 4, 2019.

Anthony J. Vogt,

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

[FR Doc. 2019–01591 Filed 2–7–19; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 155

[Docket Number USCG–1998–4354]

RIN 1625–AA13 and 2115–AE88

Tank Vessel Response Plans for Hazardous Substances

AGENCY: Coast Guard, DHS.

ACTION: Proposed rule; withdrawal.

SUMMARY: The Coast Guard is withdrawing its notice of proposed rulemaking entitled ''Tank Vessel Response Plans for Hazardous Substances'' that we published on March 22, 1999. The Coast Guard is withdrawing this rulemaking based on findings that the proposed rules are no longer appropriate to the current state of spill response in the chemical industry.

DATES: The notice of proposed rulemaking published March 22, 1999, at 64 FR 13734, is withdrawn as of February 8, 2019.

ADDRESSES: The docket for this withdrawn rulemaking is available by searching docket number USCG–1998–4354 using the Federal portal at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: If you have questions about this notice of withdrawal, call or email Mr. Christopher Friese, Commercial Vessel Safety Specialist, Office of Marine Environmental Response Policy (CG–MER–1), Coast Guard; telephone 202–372–1227.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

FR Federal Register
NPRM Notice of Proposed Rulemaking
OPA 90 Oil Pollution Act of 1990
CTAC Chemical Transportation Advisory Committee

II. Background

The Clean Water Act,[1] as amended by section 4202(a)(6) of the Oil Pollution Act of 1990 (OPA 90),[2] requires owners or operators of tank vessels, offshore facilities, and onshore facilities to prepare response plans to mitigate spills of both oils and hazardous substances. These plans must address measures to respond, to the maximum extent practicable, to a worst-case discharge or a substantial threat of such a discharge, of oil or a hazardous substance into or on navigable waters, adjoining shorelines, or the exclusive economic zone of the United States. The primary purpose of requiring response plans is to minimize the impact of a discharge of oil or hazardous substances into the navigable waters of the United States.

On May 3, 1996, we published an advance notice of proposed rulemaking soliciting public input on regulations concerning response plans for certain tank vessels and marine transportation-related facilities (61 FR 20083), and subsequently held two public meetings on the subject that were announced in the **Federal Register** (61 FR 34775). On March 22, 1999, we published a notice of proposed rulemaking (NPRM) in the **Federal Register** entitled ''Tank Vessel Response Plans for Hazardous Substances'' (64 FR 13734). In the NPRM, we proposed regulations that would require response plans for certain tank vessels operating on the navigable waters of the United States. The Coast Guard received feedback from concerned citizens, commercial entities, and trade associations regarding the proposed rulemaking. These comments were made available in the docket. Since then, further analysis by the Coast Guard and the Chemical Transportation Advisory Committee (CTAC) has shown that implementation of the proposed rules as structured in the 1999 NPRM would not significantly increase response effectiveness at this time.

CTAC also identified many areas in which the NPRM may overlap with existing local, state, and international regulatory schemes as well as current industry practice. The International Maritime Organization's Shipboard Marine Pollution Emergency Plan already requires all foreign flagged vessels and U.S. vessels on international routes carrying noxious liquid substance cargos, to develop and implement spill response plans. U.S. flagged vessels and foreign flag vessels calling on ports or places in the U.S. and carrying oil in bulk as cargo or using oil as fuel for main propulsion, must comply with the Coast Guard's Vessel Response Plan requirements.[3] Although these requirements address planning for oil spill response, many of these practices may also be applied to hazardous substance responses. Vessels also must comply with numerous state response planning requirements when operating in state waters. The Coast Guard is concerned the proposed rules may create redundancy with some existing rules and be unnecessary due to industry's increased awareness and readiness since OPA 90 was passed. Between the above-mentioned

[1] 33 U.S.C. 1321(j)(5).

[2] Public Law 101–380, 104 Stat. 484.

[3] 33 CFR part 155, subpart D.

regulations already in place for oil spill response, industry initiatives such as the American Chemistry Council's Responsible Care and the American Waterways Operators' Responsible Carrier programs, and the sustainability policies of individual companies, CTAC was unable to identify large gaps in hazardous substance spill response planning for vessels that would be improved by the 1999 proposed rulemaking.

III. Withdrawal

The Coast Guard is withdrawing its proposed rulemaking in order to better analyze the current spill response capabilities of the chemical industry and gaps in the current regulatory regime before conducting any further rulemaking on hazardous substance response plans for tank vessels. While the Coast Guard remains committed to fulfilling its OPA 90 mandate, we believe the proposed rules are no longer appropriate in their 1999 form.

The Coast Guard has determined that withdrawing the proposed rule is appropriate based on findings that the 1999 proposed rules are no longer applicable to the current state of spill response in the chemical industry. Accordingly, the Coast Guard is withdrawing the ''Tank Vessel Response Plans for Hazardous Substances'' proposed rulemaking published March 22, 1999 (64 FR 13734).

IV. Executive Order 13771

The withdrawal of the NPRM qualifies as a deregulatory action under Executive Order 13771 (Reducing Regulation and Controlling Regulatory Costs), which 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.'' *See* the OMB Memorandum titled ''Guidance Implementing Executive Order 13771, Titled 'Reducing Regulation and Controlling Regulatory Costs' '' (April 5, 2017).

Dated: February 4, 2019.

Anthony J. Vogt,

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

[FR Doc. 2019–01593 Filed 2–7–19; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R06–OAR–2017–0558; FRL–9988–27–Region 6]

Approval and Promulgation of State Implementation Plan, Louisiana; Attainment Demonstration for the St. Bernard Parish 2010 SO_2 Primary National Ambient Air Quality Standard Nonattainment Area; Supplemental Notice of Proposed Rulemaking

AGENCY: Environmental Protection Agency (EPA).

ACTION: Supplemental notice of proposed rulemaking.

SUMMARY: In this supplemental notice of proposed rulemaking (SNPRM), the Environmental Protection Agency (EPA) is supplementing our proposed approval document, concerning the 2010 Sulfur Dioxide (SO_2) Primary National Ambient Air Quality Standard (NAAQS) Nonattainment Area State Implementation Plan (SIP) revision for St. Bernard Parish. The EPA is also reopening the public comment period.

DATES: Written comments must be received on or before March 11, 2019.

ADDRESSES: Submit your comments, identified by Docket No. EPA–R06–OAR–2017–0558, at *https://www.regulations.gov*. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. 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 Mr. Robert Imhoff, (214) 665–7262, *imhoff.robert@epa.gov*. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www2.epa.gov/dockets/commenting-epa-dockets.*

Docket: The index to the docket for this action is available electronically at *www.regulations.gov* and in hard copy at the EPA Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (*e.g.,* copyrighted material), and some may not be publicly available at either location (*e.g.,* CBI).

FOR FURTHER INFORMATION CONTACT: Mr. Robert Imhoff, (214) 665–7262; *imhoff.robert@epa.gov*. To inspect the hard copy materials, please schedule an appointment with Mr. Robert Imhoff.

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

I. Background

On April 19, 2018, we published a proposed rulemaking action to approve the 2010 SO_2 Primary NAAQS Nonattainment Area SIP revision for St. Bernard Parish, submitted by the State of Louisiana on November 9, 2017 and first supplemented on February 8, 2018.[1] The April 19, 2018 action proposed approval of the following CAA SIP elements: The attainment demonstration for the SO_2 NAAQS and enforceable emissions limits, which included an Agreed Order on Consent (AOC) dated February 2, 2018 for the Rain CII Carbon, LLC. (Rain) facility; the reasonable further progress (RFP) plan; the reasonably available control measures (RACM) and reasonably available control technology (RACT) demonstration; the emission inventories; and the contingency measures. We also proposed to find that the State had demonstrated that its current Nonattainment New Source Review (NNSR) program covered the 2010 SO_2 NAAQS; therefore, no revision to the SIP was required for the NNSR element.

Comments on the proposal were required to be received by May 21, 2018. We received timely comments on the proposal, and as stated further below, we will address all comments received on the original proposal and on this supplemental action in our final action.[2]

II. Additional Information Submitted by Louisiana

After the close of the public comment period to the April 19, 2018 proposal, the Louisiana Department of Environmental Quality (LDEQ) submitted additional information to

[1] 83 FR 17349.

[2] See our detailed discussion below that involves an evaluation of the supplemental information submitted by the LDEQ to EPA, partly in response to a public comment received on the original **Federal Register** action at 83 FR 17349, April 19, 2018 proposal.

EPA on August 24, 2018.[3] The additional information was submitted to us partly in response to a public comment received on the April 19, 2018 proposal by United States Senator from Louisiana, Bill Cassidy.[4] In particular, Senator Cassidy submitted a comment letter that expressed concern that Rain would need to modify the February 2018 AOC entered between Rain and LDEQ as Rain did not believe that it could meet the limits set forth in the AOC without an additional extension to the compliance dates. In response to the comment, and in order to determine feasible emission limits for operations during transitions from exhaust flow through the hot stack to flow through the heat recovery boiler (referred to as the cold stack), LDEQ granted an extension of the deadline of the February 2018 AOC on April 27, 2018.[5] LDEQ then issued a revised AOC on August 2, 2018. A model analysis was submitted to EPA on August 24, 2018[6] to specifically demonstrate attainment of the NAAQS with the revised limits in the August 2018 AOC. EPA reviewed the new modeling analysis[7] and found some errors and omissions. In response, LDEQ submitted an updated modeling analysis on October 9, 2018.[8] The AOC (signed by LDEQ and Rain August 2, 2018 and submitted to EPA on August 24, 2018), and the October 9, 2018 modeling files (also submitted by LDEQ) serve as a supplement to the November 9, 2017 and February 8, 2018 SIP submittals and are intended to address the public comment by incorporating certain additional AOC revisions (dated 8/2/2018) and supporting modeling into the 2010 SO_2 Primary NAAQS Nonattainment Area SIP revision for St. Bernard Parish.

III. Public Comment

The EPA is reopening the public comment period. Comments are due March 11, 2019. The reopening of the comment period is strictly limited to additional supplemental information submitted by Louisiana on August 24, 2018 and October 9, 2018, and our additional analysis contained in this supplemental action and Supplemental Technical Support Document (TSD) now available in the docket. The supplemental information submitted to us seeks to address, in part, a public comment received on our original April 19, 2018 proposal action. The EPA will address all comments received on the original April 19, 2018 proposal and on this SNPRM in our final action.

IV. EPA's Evaluation and Analysis

We have reviewed the supplemental information submitted by LDEQ on August 24, 2018, and October 9, 2018 to further assist in our evaluation of the state's previous November 9, 2017 (as supplemented on February 8, 2018) SIP submittal and the public comment received by Senator Cassidy. As explained above, the revised AOC made changes in response to comments received regarding Rain's ability to meet transitional emissions limits. We have included our detailed evaluation and additional analysis of the revisions contained in the August 2, 2018 AOC and supporting modeling in a supplement to the TSD which may be found in the docket and titled as ''Supplement to Technical Support Document for Approval and Promulgation of Implementation Plans; Louisiana; Attainment Demonstration for the St. Bernard Parish 2010 SO_2 Primary National Ambient Air Quality Standard Nonattainment Area.'' The TSD examines LDEQ's supplemental modeling reflecting the changes in Rain's AOC and the updates to the contributing sources inventory. See the TSD supplement for a complete discussion of our evaluation and analysis.

A. Emissions Data and Limits

There were two main changes in the emissions data and limits used in the October 9, 2018 supplemental modeling from the original SIP modeling in the proposal. The first is due to the revision of the AOC for Rain reflecting conditions consistent with the design throughput for the facility and the second is to reflect recent revisions to permits for the contributing sources. The August 2, 2018 AOC incorporated updated information from the facility regarding the emission rates, temperatures, and flowrates to be expected from the facility for the various operating scenarios. Since these parameters differed from those in the previous AOC, additional modeling to demonstrate attainment of the NAAQS was conducted. The August 2, 2018 AOC has a compliance date of August 2, 2018.

TABLE 1—CONTROL CHART OF THE SO_2 EMISSION LIMITS IN POUNDS PER HOUR FOR THE RAIN COLD AND HOT STACKS

Stage	Cold stack conditions for stage as measured by CEMS	Cold stack SO_2 limits pounds per hour (lb/hr)	Hot stack SO_2 limits (lb/hr) and associated hot stack parameters
Cold Stack Stand-alone Low.	During normal, steady state operations, and damper to EQT 0004 is closed, Stack flow rate ≥46,000 ACFM and <90,000 ACFM, Temperature ≥150 °F.	200	0 lb/hr, Hot Stack flow rate = 0.
Cold Stack Stand-alone Medium Low.	During normal, steady state operations, and damper to EQT 0004 is closed, If Stack flow rate ≥90,000 ACFM and <120,000 ACFM, Temperature ≥210 °F.	380	0 lb/hr, Hot Stack flow rate = 0.
Cold Stack Stand-alone Medium High.	During normal, steady state operations, and damper to EQT 0004 is closed, Stack flow rate ≥120,000 ACFM and <140,000 ACFM, Temperature ≥210 °F.	420	0 lb/hr, Hot Stack flow rate = 0.
Cold Stack Stand-alone High.	During normal, steady state operations, and damper to EQT 0004 is closed, Stack flow rate ≥140,000 ACFM, Stack temperature ≥210 °F.	510	0 lb/hr, Hot Stack flow rate = 0.

[3] Letter from Secretary Brown to Anne Idsal, August 24, 2018, St. Bernard 2008 Sulfur Dioxide State Implementation Plan Supplemental Information and Executed Administrative Order on Consent (AOC) included in the docket for this action.

[4] See the April 24, 2018 letter (in the docket to this action) from Senator Cassidy to EPA that referred to Rain's need to modify the February 2, 2018 AOC.

[5] See April 27, 2018 Letter from Secretary Chuck Carr Brown to Rain in the docket for this action.

[6] See Email from Vivian Aucoin to Michael Feldman September 28, 2018 in the docket to this action.

[7] See Email Erik Snyder to Vivian Aucoin September 11, 2018 with attachment in the docket to this action ''Chalmette_LDEQ_7_2018_Sources emissions verifications—R6.xlsx''.

[8] See Email from Vennetta Hayes to Robert Imhoff October 9, 2018 in the docket to this action.

TABLE 1—CONTROL CHART OF THE SO_2 EMISSION LIMITS IN POUNDS PER HOUR FOR THE RAIN COLD AND HOT STACKS—Continued

Stage	Cold stack conditions for stage as measured by CEMS	Cold stack SO_2 limits pounds per hour (lb/hr)	Hot stack SO_2 limits (lb/hr) and associated hot stack parameters
1	Stack flow rate is >0 ACFM and <45,000 ACFM or Temperature <60 °F.	4.5	1,600 lb/hr, Hot Stack flow rate ≥400,000 ACFM, Temperature ≥1,600 °F.
2	Stack gas flow rate ≥45,000 ACFM and <60,000 ACFM, Temperature ≥110 °F.	49.5	1,400 lb/hr, Hot Stack flow rate ≥375,000 ACFM, Temperature ≥1,600 °F.
3	Stack gas flow rate ≥60,000 ACFM and <85,000 ACFM, Temperature ≥150 °F.	90	1,200 lb/hr, Hot Stack flow rate ≥375,000 ACFM, Temperature ≥1,600 °F.
4	Transition Stage 4: When the flue gas flow rate ≥85,000 ACFM and <110,000 ACFM: Temperature ≥160 °F.	108	≤1,000 lb/hr, Hot Stack flow rate ≥310,000 ACFM, Temperature ≥1,600 °F.
5	Transition Stage 5: When the flue gas flow rate ≥110,000 ACFM and <140,000 ACFM: Temperature ≥210 °F.	171	900 lb/hr, Hot Stack flow rate ≥310,000 ACFM, Temperature ≥1,600 °F.
6	Transition Stage 6: When the flue gas flow rate ≥140,000 ACFM: Temperature ≥210 °F.	189	800 lb/hr, Hot Stack flow rate ≥220,000 ACFM, Temperature ≥1,400 °F.
Hot Stack Standalone.	Non-transition operations: When the damper to EQT 0003 is closed.	0	2,020 lb/hr.

The emission rates used in the previous modeling for contributing sources were accurate and complete at the time they were compiled in 2017. Because of subsequent permit modifications in 2018 for the Valero and Chalmette refineries, the do not accurately reflect current allowable emission rates. EPA and LDEQ consulted on updates to the original allowable rates for the contributing sources.[9] LDEQ used the updated current allowable emission rates in their modeling. The revised contributing source inventory contained sources, not including Rain, totaling 4,435 tons per year compared to the previous inventory which contained 6,382 tons per year.

B. Summary of Results

LDEQ's October 2018 modeling analysis, including the revised August 2, 2018 AOC emission limits for the Rain facility, resulted in concentrations below the level of the 1-hour primary SO_2 NAAQS. The EPA has reviewed Louisiana's supplemental modeling and agrees that Louisiana's supplemental materials, along with the new AOC limits (August 2, 2018), result in demonstrating attainment of the 1-hour SO_2 primary NAAQS before the attainment deadline of October 4, 2018.

TABLE 2—SUMMARY OF EPA MODEL RESULTS WITH NUMBER OF OPERATING SCENARIOS MODELED, IF GREATER THAN ONE

Operational status	Design value µg/m³
Cold Stack Normal Operations (Low)	189.8
Cold Stack Normal Operations (Medium Low)	189.8
Cold Stack Normal Operations (Medium High)	183.9
Cold Stack Normal Operations (High)	190.8
Hot Stack Normal Operations	176.6
Transition (Six Scenarios)	185.6
Rain Property	160.5
Valero Property	147.7
Chalmette Refinery Property	130.3

The result of our evaluation and analysis of the supplemental information continues to support the proposed approval of the SIP revisions identified in the **Federal Register** at 83 FR 17349, April 19, 2018, proposal.

V. Supplemental Proposal Action

On April 19, 2018, EPA originally proposed to approve the 2010 SO_2 Nonattainment Area SIP revision for St. Bernard Parish, as submitted by the State of Louisiana on November 9, 2017 and supplemented on February 8, 2018. In this supplemental proposal, EPA is proposing to approve LDEQ's August 24, 2018 and October 9, 2018 supplements to the November 9, 2017 SIP and February 8, 2018 submittals that were provided partly in response to a comment received on our April 19, 2018 proposal (83 FR 17349). Specifically, we are proposing to approve the August 2, 2018 AOC as a source-specific SIP revision that serves to replace the original February 2018 AOC. We propose to find that the supplemental October 9, 2018 modeling provides continued support for a proposed approval of the attainment demonstration that was originally submitted in November 2017. EPA solicits comments on this SNPRM, with

[9] September 11, 2018 Email From: Snyder, Erik to Vivian. Aucoin with attachment ''Chalmette_LDEQ_7_2018_Sources emissions verifications—R6.xlsx'' in the docket for this action.

respect to only the specific information raised in this supplemental proposal—that being (a) the modifications from the original modeling required for the supplemental October 9, 2018 modeling, *i.e.,* the revised stack parameters and emissions for Rain and the contributing source inventory and (b) the revised August 2018 AOC. EPA is not reopening the comment period on any other aspect of the April 19, 2018 proposal, as there was an opportunity to comment provided at the time of that proposal on all other elements of the submittals and those elements remain unchanged from the original proposal. The purpose of this SNPRM is limited to an evaluation of LDEQ's August 24, 2018 submission of the AOC and supporting October 2018 modeling, as well as the supplement to the TSD, all of which are contained in the docket for this rulemaking. We are reopening the comment period until March 11, 2019. The scope of this supplemental document and the reopening of the comment period is strictly limited to only the supplemental information. The EPA will not respond to comments received during the reopened comment period outside the above-defined scope. This action will allow interested persons additional time to review the supplemental information to prepare and submit relevant comments. The EPA will address all comments received on the original proposal and on this supplemental action in our final action.

VI. Incorporation by Reference

In this action, we are proposing to include in a final rule regulatory text that includes incorporation by reference. In accordance with the requirements of 1 CFR 51.5, we are proposing to incorporate by reference revisions to the Louisiana source-specific requirements as described in the Proposed Action section above. We have made, and will continue to make, these documents generally available electronically through *www.regulations.gov* and in hard copy at the EPA Region 6 office (please contact Mr. Robert Imhoff for more information).

VII. Statutory and Executive Order Reviews

Under the Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Act. Accordingly, 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 action:

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Order 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 Act; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the proposed rulemaking 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, Reporting and recordkeeping requirements, Sulfur oxides.

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

Dated: December 20, 2018.

Anne Idsal,

Regional Administrator, Region 6.

[FR Doc. 2018–28171 Filed 2–7–19; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 563

[Docket No. NHTSA–2012–0177]

RIN 2127–AK86

Federal Motor Vehicle Safety Standards; Event Data Recorders

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Proposed rule; withdrawal.

SUMMARY: NHTSA withdraws its December 13, 2012 notice of proposed rulemaking (NPRM) that proposed a new Federal motor vehicle safety standard (FMVSS) mandating installation of an Event Data Recorder (EDR) that meets NHTSA's current EDR standard in most light vehicles. At the time NHTSA published the NPRM, the agency noted that a significant number of light vehicles were being sold without EDRs, and said it believed a mandate was needed. Today, EDRs are installed on nearly all new light vehicles. In light of these changed circumstances, NHTSA believes that a mandate for today's EDRs is no longer necessary and withdrawal of the NPRM is therefore warranted.

DATES: The NPRM ''Federal Motor Vehicle Safety Standards; Event Data Recorders,'' RIN 2127–AK86, published December 13, 2012 (77 FR 74144), is withdrawn as of February 8, 2019.

ADDRESSES: Electronic Access: You can view and download related documents and public comments by going to the website *https://www.regulations.gov.* Enter the docket number NHTSA–2012–0177 in the search field.

FOR FURTHER INFORMATION CONTACT: For technical issues, contact Ms. Carla Rush, Office of Crashworthiness Standards, Telephone: 202–366–4583, Facsimile: 202–493–2739. For legal issues, contact Mr. Daniel Koblenz, Office of Chief Counsel, Telephone: 202–366–2992, Facsimile: 202–366–3820. The mailing address for these officials is: National Highway Traffic Safety Administration,

1200 New Jersey Avenue SE, Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

Background

Event data recorders (EDRs) are an invaluable tool for aiding and validating crash reconstruction, investigation, and analysis. An EDR is a function or device installed in a motor vehicle to record technical information about the status and operation of vehicle systems for a few seconds immediately before and during a crash for the primary purpose of post-crash assessment.[1] EDRs are regulated under 49 CFR part 563.

Part 563 was established on August 28, 2006 (71 FR 50998) and requires that light vehicles [2] equipped with EDRs meet certain requirements for data elements, data capture and format, data retrieval, and data crash survivability. An EDR as defined by Part 563 is not required to record data such as audio or video recordings and does not log commercial operator-associated data, such as hours of service.[3]

The requirements of Part 563 apply only to those light vehicles that are voluntarily equipped with EDRs that were manufactured on or after September 1, 2012. In the 2006 rulemaking, NHTSA chose not to mandate installation of EDRs in order to encourage voluntary development and installation, while alleviating costs on manufacturers and consumers. The agency stated at the time that the ''marketplace appears to be adopting EDRs and we do not currently see a need to mandate their installation.'' [4]

The NPRM

On December 13, 2012, NHTSA published a notice of proposed rulemaking (NPRM) proposing to convert Part 563's ''if-installed'' requirements for EDRs into a new Federal motor vehicle safety standard (FMVSS) mandating installation of EDRs in most light vehicles.[5] The NPRM did not propose making any changes to the current EDR regulation's performance requirements, including those for the required data elements. At the time that NHTSA issued the NPRM, the agency estimated that about 92 percent of model year (MY) 2010 light vehicles had some EDR capability. NHTSA believed that the universal installation of EDRs would improve vehicle safety by aiding the agency in investigating potential safety defects and developing new standards. Absent a mandate, it appeared that manufacturers of the remaining 8 percent of light vehicles would not equip those vehicles with EDRs. Thus, the agency believed that a safety need existed to mandate the installation of EDRs on light vehicles.

NHTSA Decision To Withdraw the NPRM

NHTSA has decided to withdraw the December 2012 NPRM because the agency has determined that a mandate is not necessary at this time to achieve the nearly universal installation of EDRs on new light vehicles. This is because NHTSA's internal analysis shows that, for Model Year (MY) 2017, 99.6 percent of new light vehicles sold were equipped with EDRs that meet Part 563's requirements. Given the near-universal installation of EDRs in light vehicles, NHTSA no longer believes that the safety benefits of mandating EDRs justifies the expenditure of limited agency resources.

Because NHTSA has determined not to move forward with a mandate for EDRs at this time, the agency is withdrawing the December 2012 NPRM from consideration. However, the agency will continue its other efforts to modernize and improve EDRs regulations, including fulfilling the agency's statutory mandate to promulgate regulations establishing an appropriate recording duration for EDR data to ''provide accident investigators with vehicle-related information pertinent to crashes involving such motor vehicles.'' [6] In addition, NHTSA is actively investigating whether the agency should consider revising the data elements covered by Part 563 to account for advanced safety features.

Note on Comments on the NPRM

While NHTSA's decision to withdraw the NPRM was made for reasons unrelated to the issues raised by commenters, the agency believes it would be beneficial to the public to briefly describe and explain the agency's views on some key concerns due to the large number of comments received on them.

In response to the December 2012 NPRM, NHTSA received over 1,000 comments from a wide variety of commenters, including trade associations, vehicle manufacturers, safety and privacy advocacy groups, equipment suppliers, standards development organizations, crash reconstructionists, attorney organizations, and over 950 individuals. Safety advocacy organizations, crash reconstructionists, and several other commenting organizations generally supported mandating the installation of EDRs, citing the importance of the information for vehicle safety. Vehicle manufacturers, equipment suppliers, and some crash reconstructionists, were supportive of the idea of requiring EDRs, but opposed placing the mandate and associated EDR requirements in a FMVSS. In addition, a number of individuals also supported the mandate, though many indicated that their support was conditional on the adoption of provisions to protect the privacy of individuals. Other commenters urged NHTSA to expand the list of required data elements in order to better support traffic safety research and thus, improve the safety of motor vehicles.

The majority of comments raised a variety of privacy concerns associated with EDRs and the data they record. Many commenters seemed to believe that Part 563 requires EDRs to extensively record potentially sensitive driver-related information, such as vehicle location or driving behavior, on an ongoing basis. This belief was incorrect. The agency recognizes the importance of privacy to consumer acceptance of technology and that the agency has a legal obligation to assess and be transparent about the impacts of Federal activities on individual privacy.[7] Part 563 requires only that EDRs capture a narrow set of data elements that are designed to assist investigators with the reconstruction of crashes, such as data relating to the operational status of the vehicle at the time of the crash.[8] Moreover, Part 563 requires that EDRs capture this data to the device or function only for the few seconds leading up to a rare event, the deployment of air bags, (*i.e.,* not on an ongoing basis).

Second, many commenters expressed concerns with regard to who owns EDR data, who has access to EDR data and under what circumstances, and the purposes for which it may be used. NHTSA believes that Congress resolved many of these concerns when it enacted

[1] *See* 49 CFR 563.5.

[2] As used in this notice, ''light vehicles'' includes passenger cars, multipurpose passenger vehicles, trucks, and buses with a gross vehicle weight rating (GVWR) of 3,855 kilograms (kg) (8,500 pounds) or less and an unloaded vehicle weight of 2,495 kg (5,500 pounds) or less, except for walk-in van-type trucks or vehicles designed to be sold exclusively to the U.S. Postal Service. *See* 49 CFR part 563.3.

[3] 49 CFR 563.5.

[4] 71 FR 50998, 51011 (Aug. 28, 2006).

[5] 77 FR 74144 (Dec. 13, 2012).

[6] See the Fixing America's Surface Transportation (FAST) Act Public Law 114–94 (Dec. 4, 2015), Section 24303.

[7] *See* E-Government Act of 2002, Public Law 107–347, 208, 116 Stat. 2899, 2921–23; Consolidated Appropriations Act, 2005, Public Law 108–447, § 522, 118 Stat. 2809, 3268–69.

[8] 49 CFR 563, Tables I & II.

the Driver Privacy Act of 2015 (DPA), part of the Fixing America's Surface Transportation (FAST) Act,[9] which addresses issues of EDR data ownership and access. Specifically, the DPA states that EDR data are the ''property of the owner, or, in the case of a leased vehicle, the lessee of the motor vehicle in which the event data recorder is installed.'' [10] It also specifies that data recorded or transmitted by an EDR is accessible only to the vehicle owner or lessee, unless access falls into one of several enumerated exceptions.[11]

Finally, many of the privacy-related comments requested that NHTSA mandate consumer notification of the existence of EDRs. NHTSA agrees with commenters that ensuring consumer awareness is an important goal. A vital tool the agency uses to inform consumers about the existence and function of various aspects of motor vehicles, including the existence of and function of EDRs, is the owner's manual that accompanies motor vehicles sold in the U.S. Part 563 currently requires that vehicle manufacturers that choose to equip their vehicles with EDRs include a standardized statement in the owner's manual indicating that the vehicle is equipped with an EDR and describing the functions and capabilities of the EDR.[12]

Issued on February 5, 2019 in Washington, DC, under authority delegated in 49 CFR 1.95 and 501.5.

Heidi Renate King,

Deputy Administrator.

[FR Doc. 2019–01651 Filed 2–7–19; 8:45 am]

BILLING CODE 4910–59–P

[9] Public Law 114–94, §§ 24301–24302, 129 Stat. 1312, 1713–14 (2015).

[10] *Id.*

[11] *See id.*

[12] 49 CFR 563.11.

Notices

Federal Register
Vol. 84, No. 27
Friday, February 8, 2019

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

February 5, 2019.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments are requested regarding (1) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments regarding this information collection received by March 11, 2019 will be considered. Written comments should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_Submission@omb.eop.gov* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Copies of the submission(s) may be obtained by calling (202) 720–8958.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Food and Nutrition Service

Title: Supplemental Nutrition Assistance Program—Store Applications.

OMB Control Number: 0584–0008.

Summary of Collection: Section 9(a) of the Food and Nutrition Act of 2008 as amended, (7 U.S.C. 2018 *et seq.*) requires that the Food and Nutrition Service (FNS) provide for the submission of applications for approval by retailers, wholesalers, meal service providers, certain types of group homes, shelters, and state-contracted restaurants that wish to participate in the Supplemental Nutrition Program (SNAP). FNS is responsible for reviewing the application in order to determine whether or not applicants meet eligibility requirements, and make determinations whether to grant or deny authorization to accept and redeem SNAP benefits. FNS will collect information using forms FNS–252, Supplemental Nutrition Assistance Program Application for Store, FNS–252–E, On line Supplemental Nutrition Assistance Program Application for Store, FNS 252–2, Supplemental Nutrition Assistance Program for Meal Service Application, FNS–252–C, Corporate Supplemental Application, and FNS 252–R, Supplemental Nutrition Assistance Program for Stores Reauthorization and FNS–252FE, Supplemental Nutrition Assistance Program Farmer's Market Application.

Need and Use of the Information: FNS will collect information to determine the eligibility of retail food stores, wholesale food concern, and food service organizations applying for authorization to accept and redeem SNAP benefits and to monitor these firms for continued eligibility, and to sanction stores for noncompliance with the Act, and for Program management. Disclosure of information other than Employer Identification Numbers and Social Security Numbers may be made to Federal and State law enforcement or investigative agencies or instrumentalities administering or enforcing specified Federal or State laws, or regulations issued under those laws. Without the information on the application or reauthorization application, the consequence to the Federal program is the Agency's reduced ability to effectively monitor accountability for program compliance and to detect fraud and abuse would be severely jeopardized.

Description of Respondents: Business for-and-not-for-profit, Farms; Federal Military Commissaries.

Number of Respondents: 143,357.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 20,004.

Food and Nutrition Service

Title: Evaluation of Supplemental Nutrition Assistance Program (SNAP) Employment and Training (E&T) Pilots.

OMB Control Number: 0584–0604.

Summary of Collection: The SNAP Employment and Training (E&T) program provides assistance to unemployed and underemployed clients in the form of job search, job skills training, education (basic, post-secondary, vocational), work experience or training and workfare. The Agriculture Act of 2014 (Pub. L. 113–79, Section 4022), authorized grants for up to 10 pilot sites to develop and rigorously test innovative SNAP E&T strategies for engaging more SNAP work registrants in employment, increasing participants' earnings and reducing reliance on public assistance.

Need and Use of the Information: An evaluation of the pilot sites will be critical in helping Congress and FNS identify strategies that effectively assist SNAP participants to succeed in the labor market and become self-sufficient. The data collected for this evaluation will be used for implementation, impact, participant and cost-benefit analyses for each pilot site.

Description of Respondents: Individual/Households; Business for-not-for-Profit; State, Local, or Tribal Government.

Number of Respondents: 53,830.

Frequency of Responses: Reporting: Annually.

Total Burden Hours: 17,965.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2019–01615 Filed 2–7–19; 8:45 am]

BILLING CODE 3410–30–P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the West Virginia 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 West Virginia Advisory Committee to the Commission will convene by conference call at 12 p.m. (EST) on Friday, February 15, 2019. The purpose of the meeting is to discuss plans for preparing the Committee report on the collateral consequences of a felony record on West Virginians' access to employment, housing, professional licenses and public benefits.

DATES: Friday, February 15, 2019 at 12 p.m. EST.

Public Call-in Information: Conference call-in number: 1–855–719–5012 and conference call ID number: 5938398.

FOR FURTHER INFORMATION CONTACT: Ivy Davis at *ero@usccr.gov* or by phone at 202–376–7533.

SUPPLEMENTARY INFORMATION: Interested members of the public may listen to the discussion by calling the following toll-free conference call-in number: 1–855–719–5012 and conference call ID number: 5938398. Please be advised that before being placed 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 1–888–364–3109 and providing the operator with the toll-free conference call-in number: 1–855–719–5012 and conference call ID number: 5788080.

Members of the public are invited to make statements during the Public Comments section of the Agenda. They are also invited to submit written comments, which must be received in the regional office approximately 30 days after the scheduled meeting. Written comments may be mailed to the Eastern Regional Office, U.S. Commission on Civil Rights, 1331 Pennsylvania Avenue, Suite 1150, Washington, DC 20425 or emailed to Corrine Sanders at *ero@usccr.gov.* Persons who desire additional information may 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://www.facadatabase.gov/FACA/FACAPublicViewCommitteeDetails?id=a10t0000001gzmCAAQ;* 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

February 15, 2019 at 12:00 p.m. (EST)

I. Rollcall
II. Welcome
III. Project Planning Discussion
IV. Other Business
V. Open Comments
VI. Adjourn

Exceptional Circumstance: Pursuant to 41 CFR 102–3.150, the notice for this meeting is given less than 15 calendar days prior to the meeting because of the exceptional circumstances of the federal government shutdown.

Dated: February 4, 2019.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2019–01558 Filed 2–7–19; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Vermont 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 Vermont Advisory Committee to the Commission will convene by conference call at 11:00 a.m. (EST) on: Monday, February 11, 2019. The purpose of the meeting is to discuss planning community forums in Brattleboro and Rutland and briefing in Montpelier on disparities in schools.

DATES: Monday, February 11, 2019, at 11:00 a.m. EST.

Public Call-In Information: Conference call-in number: 1–877–260–1479 and conference call 7886261.

FOR FURTHER INFORMATION CONTACT: Barbara De la Viez 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: 1–877–260–1479 and conference call 7886261. 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: 1–877–260–1479 and conference call 7886261.

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://www.facadatabase.gov/FACA/FACAPublicViewCommitteeDetails?id=a10t0000001gzmXAAQ,* 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

Monday, February 11, 2019 at 11:00 a.m. (EST)

- Rollcall
- Discussion of Community Forums and Briefing in Vermont
- Next Steps
- Other Business
- Open Comment
- Adjourn

Exceptional Circumstance: Pursuant to 41 CFR 102–3.150, the notice for this meeting is given less than 15 calendar days prior to the meeting because of the exceptional circumstances of the Federal Government shutdown.

Dated: February 4, 2019

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2019–01587 Filed 2–7–19; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Ohio Advisory Committee to the U.S. Commission on Civil Rights

AGENCY: U.S. Commission on Civil Rights.

ACTION: Announcement of meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act that the Ohio Advisory Committee (Committee) will hold a meeting via teleconference on Wednesday, February 27, 2019, from 12–1 p.m. EST for the purpose of reviewing received testimony and planning for future testimony on education funding in the state.

DATES: The meeting will be held on Wednesday, February 27, 2019, at 12:00 p.m. EST.

Public Call Information: Dial: 855–719–5012, Conference ID: 6812888.

FOR FURTHER INFORMATION CONTACT: Melissa Wojnaroski, DFO, at *mwojnaroski@usccr.gov* or 312–353–8311.

SUPPLEMENTARY INFORMATION: Members of the public can listen to the discussion. This meeting is available to the public through the above listed toll free number. An open comment period will be provided to allow members of the public to make a statement as time allows. The conference call operator will ask callers to identify themselves, the organization they are affiliated with (if any), and an email address prior to placing callers into the conference room. Callers can expect to incur regular charges for calls they initiate over wireless lines, according to their wireless plan. The Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–877–8339 and providing the Service with the conference call number and conference ID number.

Members of the public are also entitled to submit written comments; the comments must be received in the regional office within 30 days following the meeting. Written comments may be mailed to the Regional Programs Unit Office, U.S. Commission on Civil Rights, 230 S Dearborn, Suite 2120, Chicago, IL 60604. They may also be faxed to the Commission at (312) 353–8324, or emailed to Carolyn Allen at *callen@usccr.gov.* Persons who desire additional information may contact the Regional Programs Unit Office at (312) 353–8311.

Records generated from this meeting may be inspected and reproduced at the Regional Programs Unit Office, as they become available, both before and after the meeting. Records of the meeting will be available via *www.facadatabase.gov* under the Commission on Civil Rights, Ohio Advisory Committee link. Persons interested in the work of this Committee are also directed to the Commission's website, *http://www.usccr.gov,* or may contact the Regional Programs Unit office at the above email or street address.

Agenda

Welcome and Roll Call
Discussion: Education Funding in Ohio
Public Comment
Adjournment

Dated: February 4, 2019.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2019–01563 Filed 2–7–19; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meetings of the New York 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 meeting of the New York Advisory Committee to the Commission will convene by conference call at 12 p.m. (EST) on: Friday, February 15, 2019. The purpose of the meeting is to discuss civil rights topics for committee study.

DATES: Friday, February 15, 2019 at 12 p.m. EST.

Public Call–in Information: Conference call-in number: 1–855–719–5012 and conference ID# 5850663.

FOR FURTHER INFORMATION CONTACT: David Barreras, at *dbarreras@usccr.gov* or by phone at 312–353–8311.

SUPPLEMENTARY INFORMATION: Interested members of the public may listen to the discussion by calling the following toll-free conference call-in number: 1–855–719–5012 and conference ID# 5850663. 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: 1–855–719–5012 and conference ID# 5850663.

Members of the public are invited to make statements during the open comment period of the meetings 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 Midwest Regional Office, U.S. Commission on Civil Rights, 230 S Dearborn Street, Suite 2120, Chicago, IL 60604, faxed to (312) 353–8324, or emailed to David Barreras at *dbarreras@usccr.gov.* Persons who desire additional information may contact the Midwest Regional Office at (312) 353–8311.

Records and documents discussed during the meeting will be available for public viewing as they become available at *https://database.faca.gov/committee/meetings.aspx?cid=265*; 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 Midwest Regional Office at the above phone numbers, email or street address.

Agenda

Friday, February 15, 2019

- Open—Roll Call
- Discussion of and vote on Study Topics
- Open Comment
- Adjourn

Exceptional Circumstance: Pursuant to 41 CFR 102–3.150, the notice for this meeting is given less than 15 calendar days prior to the meeting because of the exceptional circumstances of the federal government shutdown.

Dated: February 4, 2019.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2019–01567 Filed 2–7–19; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Pennsylvania Advisory Committee

AGENCY: Commission on Civil Rights.

ACTION: Announcement of meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission), and the Federal Advisory Committee Act (FACA) that a meeting of the Pennsylvania Advisory Committee to the Commission will convene by conference call at 11:30 a.m. (EST) on Tuesday, February 12, 2019. The purpose of the meeting is to discuss and vote on the topic for its civil rights project.

DATES: Tuesday, February 12, 2019, at 11:30 a.m. (EDT).

Public Call-in Information: Conference call-in number: 800–949–2175 and conference call ID number: 8426059.

FOR FURTHER INFORMATION CONTACT: Ivy Davis at *ero@usccr.gov* or by phone at 202–376–7533.

SUPPLEMENTARY INFORMATION: Interested members of the public may listen to the discussion by calling the following toll-free conference call-in number: 800–949–2175 and conference call ID number: 8426059. Please be advised that before placing them into the conference call, the conference call operator will ask callers to provide their names, their organizational affiliations (if any), and email addresses (so that callers may be notified of future meetings). Callers can expect to incur charges for calls they initiate over wireless lines, and the Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free conference call-in number.

Persons with hearing impairments may also follow the discussion by first calling the Federal Relay Service at 1–800–877–8339 and providing the operator with the toll-free conference call-in number: 800–949–2175 and conference call ID number: 8426059.

Members of the public are invited to make statements during the Public Comment section of the meeting or to submit written comments. The statements must be received in the regional office approximately 30 days after the scheduled meeting. Written comments may be mailed to the Eastern Regional Office, U.S. Commission on Civil Rights, 1331 Pennsylvania Avenue, Suite 1150, Washington, DC 20425, or emailed to Corrine Sanders at *ero@usccr.gov.* Persons who desire additional information may phone the Eastern Regional Office at (202) 376–7533.

Records and documents discussed during the meeting will be available for public viewing as they become available at: *https://www.facadatabase.gov/FACA/FACAPublicViewCommitteeDetails?id=a10t0000001gzjZAAQ*; click the ''Meeting Details'' and ''Documents'' links. Records generated from this meeting may also be inspected and reproduced at the Eastern Regional Office, as they become available, both before and after the meeting. Persons interested in the work of this advisory committee are advised to go to the Commission's website, *www.usccr.gov,* or to contact the Eastern Regional Office at the above phone number, email or street address.

Agenda

Tuesday, February 12, 2019

I. Rollcall
II. Welcome
III. Project Planning
—Discuss and Vote on Topic for Committee's Civil Rights Project
IV. Other Business
V. Public Comments
VI. Adjourn

Exceptional Circumstance: Pursuant to 41 CFR 102–3.150, the notice for this meeting is given less than 15 calendar days prior to the meeting because of the exceptional circumstances of the federal government shutdown.

Dated: February 4, 2019.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2019–01557 Filed 2–7–19; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Invitation for Membership on Advisory Committees

AGENCY: United States Commission on Civil Rights.

ACTION: Notice of Request for Applications.

SUMMARY: Congress has mandated the United States Commission on Civil Rights (Commission) create advisory committees (committees) in all 50 states and the District of Columbia. These committees assist in the examination of civil rights issues and policies by conducting public meetings to hear testimony and by providing reports with findings and recommendations to the Commission in accordance with the provisions of the Federal Advisory Committee Act (FACA). The Commission is requesting applications to those advisory committees whose members' terms expire in the next 12 months and to those advisory committees in need of interim appointments. The Commission is accepting applications and appointing members for four-year terms for the following 12 advisory committees: Virginia, Kentucky, Oregon, South Carolina, Illinois, Massachusetts, South Dakota, Wisconsin, Maryland, West Virginia, Georgia, and Maine. The Commission is also accepting applications to fill the remaining of the terms for the following 6 advisory committees: California, Idaho, Indiana, Iowa, Washington, and Wyoming.

DATES: Applications for membership on the Virginia Advisory Committee should be received no later than March 7, 2019.

Applications for membership on the Kentucky, Oregon, and South Carolina Advisory Committees should be received no later than April 16, 2019.

Applications for membership on the Illinois, Massachusetts, South Dakota, and Wisconsin Advisory Committee should be received no later than May 16, 2019.

Applications for membership on the Maryland and West Virginia Advisory Committees should be received no later than August 17, 2019.

Applications for membership on the Georgia and Maine Advisory Committees should be received no later than January 14, 2020.

Applications for membership on the California, Idaho, Indiana, Iowa, Washington, and Wyoming Advisory Committees will be received until all interim appointments are made.

ADDRESSES: Applications for all advisory committees must be submitted through the following website: *https://www.surveymonkey.com/r/S7WCLL6.* The applications will be received by the Regional Programs Unit, 230 South Dearborn St., Suite 2120, Chicago, IL 60604.

FOR FURTHER INFORMATION CONTACT: David Mussatt, Supervisory Chief, Regional Programs Unit, 230 South Dearborn St., Suite 2120, Chicago, IL 60604, (312) 353–8311. Questions can also be directed via email to *dmussatt@usccr.gov.*

SUPPLEMENTARY INFORMATION:

1. Background

Congress has mandated that the U.S. Commission on Civil Rights' establish an advisory committee in each of the 50 states and the District of Columbia. *See* 42 U.S.C. 1975a. These committees operate under the provisions of the Federal Advisory Committee Act, as amended, 5 U.S.C. Appendix 2.

2. Scope of Advisory Committee Duties

The committees advise the Commission on matters in its respective locale regarding alleged deprivations of voting rights or discrimination or denials of the equal protection of the laws because of race, color, religion, sex, age, disability, or national origin, or in the administration of justice. Committees advise the Commission by conducting public meetings to hear testimony from diverse experts, government officials, advocacy groups, individuals directly impacted, and members of the general public. Committees then forward their advice and recommendations to the Commission.

3. Member Term and Responsibilities

Each advisory committee consists of not more than 19 members, each of whom will serve a four-year term. Members are expected to attend approximately four meetings per year and make a meaningful contribution to the committee's work.

4. Member Selection

The Commission appoints members to advisory committees at their regularly scheduled business meetings. Every effort is made to ensure diverse points of view are represented on each committee. The Commission also appoints the chair of each committee.

5. Member Designation

Members serve as unpaid Special Government Employees who are reimbursed for travel and expenses. As Special Government Employees, Advisory Committee members must follow the executive branch's ethics rules, which includes submitting a conflicts form and notifying Commission staff of any financial conflicts with a proposed topic the committee is evaluating. Members also must take an annual ethics training.

6. Application Requirements

To be eligible to be on an advisory committee, applicants must be residents of the respective state or district, and have demonstrated expertise or interest in civil rights issues. All applicants must complete the on-line application form found at *https://www.surveymonkey.com/r/S7WCLL6.* The Commission invites any individual who is eligible to be appointed a member of an advisory committee covered by this notice to apply.

Dated: February 4, 2019.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2019–01574 Filed 2–7–19; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Illinois Advisory Committee to the U.S. Commission on Civil Rights

AGENCY: U.S. Commission on Civil Rights.

ACTION: Announcement of meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act that the Illinois Advisory Committee (Committee) will hold a meeting on Tuesday, February 19, 2019, at 12 p.m. CST for the purpose of discussing the implementation of the Committee's study of fair housing issues.

DATES: The meeting will be held on Tuesday, February 19, 2019, at 12 p.m. CST.

Public Call Information: Dial: 855–719–5012. Conference ID: 5793230.

FOR FURTHER INFORMATION CONTACT: Alejandro Ventura, Designated Federal Official, at *aventura@usccr.gov* or 213–894–3437.

SUPPLEMENTARY INFORMATION: Members of the public may listen to the discussion. This meeting is available to the public through the call in information listed above. Any interested member of the public may call this number and listen to the meeting. An open comment period will be provided to allow members of the public to make a statement to the Committee as time allows. The conference call operator will ask callers to identify themselves, the organization they are affiliated with (if any), and an email address prior to placing callers into the conference room. Callers can expect to incur regular charges for calls they initiate over wireless lines, according to their wireless plan. The Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–877–8339 and providing the Service with the conference call number and conference ID number.

Members of the public are also entitled to submit written comments; the comments must be received in the regional office within 30 days following the meeting. Written comments may be mailed to the Midwestern Regional Office, U.S. Commission on Civil Rights, 230 South Dearborn St., Suite 2120, Chicago, IL 60604. They may also be faxed to the Commission at (312) 353–8324, or emailed to Carolyn Allen at *callen@usccr.gov.* Persons who desire additional information may contact the Midwestern Regional Office at (312) 353–8311.

Records generated from this meeting may be inspected and reproduced at the Midwestern Regional Office, as they become available, both before and after the meeting. Records of the meeting will be available via *www.facadatabase.gov* under the Commission on Civil Rights, Illinois Advisory Committee link. Persons interested in the work of this Committee are directed to the Commission's website, *http://www.usccr.gov,* or may contact the Midwestern Regional Office at the above email or street address.

Agenda

I. Welcome and Roll Call
II. Approval of Minutes
III. Discussion on Implementing the Project on Fair Housing
IV. Public Comment
V. Next Steps
VI. Adjournment

Exceptional Circumstance: Pursuant to 41 CFR 102–3.150, the notice for this meeting is given less than 15 calendar days prior to the meeting because of the exceptional circumstances of the federal government shutdown.

Dated: February 4, 2019.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2019–01559 Filed 2–7–19; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–01–2019]

Foreign-Trade Zone (FTZ) 193—Clearwater, Florida; Notification of Proposed Production Activity; Catalent Pharma Solutions, LLC; (Pharmaceutical Products); St. Petersburg, Florida

Catalent Pharma Solutions, LLC (Catalent) submitted a notification of proposed production activity to the FTZ Board for its facility in St. Petersburg, Florida. The notification conforming to the requirements of the regulations of the FTZ Board (15 CFR 400.22) was received on January 30, 2019.

Catalent's facility is located within Subzone 193A. The facility is used to produce certain pharmaceutical products. Pursuant to 15 CFR 400.14(b), FTZ activity would be limited to the specific foreign-status materials and components and specific finished products described in the submitted notification (as described below) and subsequently authorized by the FTZ Board.

Production under FTZ procedures could exempt Catalent from customs duty payments on the foreign-status components used in export production. On its domestic sales, Catalent would be able to choose the duty rate during customs entry procedures that applies to tafamidis pharmaceutical capsules (duty free) in finished product and bulk form for the foreign-status input noted below. Catalent would be able to avoid duty on foreign-status material which becomes scrap/waste. Customs duties also could possibly be deferred or reduced on foreign-status production equipment.

The material/component sourced from abroad is tafamidis—active pharmaceutical ingredient (duty rate 6.5%).

Public comment is invited from interested parties. Submissions shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is March 20, 2019.

A copy of the notification will be available for public inspection at the Office of the Executive Secretary, Foreign-Trade Zones Board, Room 21013, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230–0002, and in the ''Reading Room'' section of the Board's website, which is accessible via *www.trade.gov/ftz.*

For further information, contact Christopher Wedderburn at *Chris.Wedderburn@trade.gov* or (202) 482–1963.

Dated: February 4, 2019.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2019–01661 Filed 2–7–19; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–54–2018]

Foreign-Trade Zone (FTZ) 75—Phoenix, Arizona; Authorization of Production Activity; Microchip Technology, Inc.; (Semiconductor Devices and Related Products); Chandler and Tempe, Arizona

On August 28, 2018, Microchip Technology, Inc. submitted a notification of proposed production activity to the FTZ Board for its facility within Subzone 75H, in Chandler and Tempe, Arizona.

The notification was processed in accordance with the regulations of the FTZ Board (15 CFR part 400), including notice in the **Federal Register** inviting public comment (83 FR 45094, September 5, 2018). On February 4, 2019, the applicant was notified of the FTZ Board's decision that no further review of the activity is warranted at this time. The production activity described in the notification was authorized, subject to the FTZ Act and the FTZ Board's regulations, including Section 400.14.

Dated: February 4, 2019.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2019–01663 Filed 2–7–19; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[S–8–2019]

Foreign-Trade Zone 271—Jo-Daviess & Carroll Counties, Illinois; Application for Subzone; Hartland Controls, LLC; Rock Falls, Illinois

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Jo-Carroll Foreign Trade Zone Board, grantee of FTZ 271, requesting subzone status for the facility of Hartland Controls, LLC (Hartland), located in Rock Falls, Illinois. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally docketed on February 4, 2019.

The proposed subzone (4.973 acres) is located at 805, 807 and 809 Antec Road, Rock Falls, Whiteside County, Illinois. No authorization for production activity has been requested at this time. The proposed subzone would be subject to the existing activation limit of FTZ 271.

In accordance with the Board's regulations, Elizabeth Whiteman of the FTZ Staff is designated examiner to review the application and make recommendations to the Executive Secretary.

Public comment is invited from interested parties. Submissions shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is March 20, 2019. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to April 4, 2019.

A copy of the application will be available for public inspection at the Office of the Executive Secretary, Foreign-Trade Zones Board, Room 21013, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230–0002, and in the ''Reading Room'' section of the Board's website, which is accessible via *www.trade.gov/ftz.*

For further information, contact Elizabeth Whiteman at *Elizabeth.Whiteman@trade.gov* or (202) 482–0473.

Dated: February 4, 2019.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2019–01662 Filed 2–7–19; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–53–2018]

Foreign-Trade Zone (FTZ) 127—West Columbia, South Carolina; Authorization of Production Activity; Constantia Blythewood, LLC; (Flexible Packaging and Engineered Industrial Films); Blythewood, South Carolina

On August 27, 2018, the Richland-Lexington Airport District, Columbia

Metropolitan Airport, grantee of FTZ 127, submitted a notification of proposed production activity to the FTZ Board on behalf of Constantia Blythewood, LLC, within Subzone 127E, in Blythewood, South Carolina. The notification was subsequently amended to remove a finished product and several components on October 9, 2018.

The notification was processed in accordance with the regulations of the FTZ Board (15 CFR part 400), including notice in the **Federal Register** inviting public comment (83 FR 44859, September 4, 2018). On February 4, 2019, the applicant was notified of the FTZ Board's decision that no further review of the amended activity is warranted at this time. The production activity described in the amended notification was authorized, subject to the FTZ Act and the FTZ Board's regulations, including Section 400.14.

Dated: February 4, 2019.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2019–01664 Filed 2–7–19; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Submission for OMB Review; Comment Request; Procedures for Submitting Request for Objections From the Section 232 National Security Adjustments of Imports of Aluminum and Steel

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of Industry and Security.

Title: Procedures for Submitting Request for Objections from the Section 232 National Security Adjustments of Imports of Aluminum and Steel.

Form Number(s): N/A.

OMB Control Number: 0694–0138.

Type of Review: Regular submission.

Estimated Total Annual Burden Hours: 155,124.

Estimated Number of Respondents: 38,781.

Estimated Time per Response: 4 hours.

Needs and Uses: This collection of information supports Presidential Proclamations 9704 *Adjusting Imports of Aluminum into the United States* and 9705 *Adjusting Imports of Steel into the United States.* On March 8, 2018, the President issued Proclamations 9704 and 9705 concurring with the findings of the two investigation reports submitted by the Secretary of Commerce pursuant to section 232 of the Trade Expansions Act of 1962 (19 U.S.C. 1862) and determining that adjusting imports through the imposition of duties on aluminum and steel is necessary so that imports of aluminum and steel will no longer threaten to impair the national security.

Affected Public: Business or other for-profit organizations.

Frequency: On Occasion.

Respondent's Obligation: Voluntary.

This information collection request may be viewed at *reginfo.gov: http://www.reginfo.gov/public/*. Follow the instructions to view Department of Commerce collections currently under review by OMB.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *OIRA_Submission@omb.eop.gov*.

Sheleen Dumas,

Departmental Lead PRA Officer, Office of the Chief Information Officer, Commerce Department.

[FR Doc. 2019–01592 Filed 2–7–19; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–073]

Common Alloy Aluminum Sheet From the People's Republic of China: Antidumping Duty Order

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: Based on affirmative final determinations by the Department of Commerce (Commerce) and the International Trade Commission (ITC), Commerce is issuing an antidumping duty (AD) order on common alloy aluminum sheet (common alloy sheet) from the People's Republic of China (China).

DATES: Applicable February 8, 2019.

FOR FURTHER INFORMATION CONTACT: Scott Hoefke or Julie Geiger, AD/CVD Operations, Office VI, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone (202) 482–4947 and (202) 482–2057, respectively.

SUPPLEMENTARY INFORMATION:

Background

On November 15, 2018, Commerce published its final determination in the less-than-fair-value (LTFV) investigation of common alloy sheet from China.[1] On January 30, 2019, the ITC notified Commerce of its final determination, pursuant to section 735(b)(1)(A)(i) of the Tariff Act of 1930, as amended (the Act), that an industry in the United States is materially injured within the meaning of section 735(b)(1)(A)(i) of the Act, by reason of the LTFV imports of common alloy sheet from China.[2] Further, the ITC determined that critical circumstances do not exist with respect to imports of common alloy sheet from China.

Scope of the Order

The product covered by this order is common alloy sheet from China. For a complete description of the scope of this order, *see* the Appendix to this notice.

Antidumping Duty Order

On January 30, 2019, in accordance with sections 735(b)(1)(A)(i) and 735(d) of the Act, the ITC notified Commerce of its final determination in this investigation, in which it found that imports of common alloy sheet are materially injuring a U.S. industry.[3] Therefore, in accordance with section 735(c)(2) of the Act, we are publishing this AD order.

As a result of the ITC's final determination, in accordance with section 736(a)(1) of the Act, Commerce will direct U.S. Customs and Border Protection (CBP) to assess, upon further instruction by Commerce, antidumping duties on unliquidated entries of subject merchandise from China entered, or withdrawn from warehouse, for consumption on or after June 22, 2018, the date on which Commerce published its preliminary antidumping duty determination in the **Federal Register**,[4] and before November 4, 2018, the

[1] *See Antidumping Duty Investigation of Common Alloy Aluminum Sheet from the People's Republic of China: Affirmative Final Determination of Sales at Less-Than-Fair Value,* 83 FR 57421 (November 15, 2018) (*Final Determination*).

[2] *See* ITC Notification Letter to the Deputy Assistant Secretary for Enforcement and Compliance, referencing ITC Investigation Nos. 701–TA–591 and 731–TA–1399, dated January 30, 2019 (ITC Notification).

[3] *See* ITC Notification*; see also Common Alloy Aluminum Sheet from China* (Inv. Nos. 701–TA–591 and 731–TA–1399 (Final), USITC Publication 4861, December 2018).

[4] *See Antidumping Duty Investigation of Common Alloy Aluminum Sheet from the People's Republic of China: Affirmative Preliminary Determination of Sales at Less-Than-Fair Value, Preliminary Affirmative Determination of Critical Circumstance,* 83 FR 29088 (June 22, 2018) (*Preliminary Determination*).

effective date on which Commerce instructed CBP to discontinue the suspension of liquidation in accordance with section 733(d) of the Act. Section 733(d) of the Act states that the suspension of liquidation pursuant to a preliminary determination may not remain in effect for more than four months. Therefore, entries of subject merchandise from China made on or after November 4, 2018, and prior to the date of publication of the ITC's final determination in the **Federal Register** are not liable for the assessment of antidumping duties due to Commerce's discontinuation of the suspension of liquidation.

Suspension of Liquidation

In accordance with section 735(c)(1)(B) of the Act, Commerce will direct CBP to continue to suspend liquidation on all relevant entries of subject merchandise from China, effective the date of publication of the ITC's notice of final determination in the **Federal Register**, and to assess, upon further instruction by Commerce pursuant to section 735(c)(1)(B) of the Act, cash deposits equal to the amounts as indicated below. On or after the date of publication of the ITC's final injury determination in the **Federal Register**, we will instruct CBP to require, at the same time as importers would normally deposit estimated duties on this merchandise, a cash deposit equal to the cash deposit rates listed below. These instructions suspending liquidation will remain in effect until further notice. The all-others rate applies to all producers or exporters not specifically listed, as appropriate.

Provisional Measures

Section 733(d) of the Act states that the suspension of liquidation pursuant to an affirmative preliminary determination may not remain in effect for more than four months, except where exporters representing a significant proportion of exports of the subject merchandise request Commerce to extend that four-month period to no more than six months. At the request of exporters that account for a significant proportion of common alloy sheet from China, we extended the four-month period to six months. Commerce's preliminary determination was published on June 22, 2018. Therefore, the extended period, beginning on the date of publication of the preliminary determinations, ended on December 18, 2018. Pursuant to section 737(b) of the Act, the collection of cash deposits at the rates listed below will begin on the date of publication of the ITC's final injury determination.

Therefore, in accordance with section 733(d) of the Act, Commerce will instruct CBP to terminate the suspension of liquidation and to liquidate, without regard to antidumping duties, unliquidated entries of common alloy sheet from China entered, or withdrawn from warehouse, for consumption after December 18, 2018, the date on which the provisional measures expired, through the day preceding the date of publication of the ITC's final injury determinations in the **Federal Register**. Suspension of liquidation will resume on the date of publication of the ITC's final determination in the **Federal Register**.

Estimated Weighted-Average Dumping Margins

The estimated weighted-average AD margins are as follows:

Exporter	Producer	Weighted-average margin (percent)	Cash deposit adjusted for subsidy offset (percent)
Henan Mingtai Al Industrial Co., Ltd./Zhengzhou Mingtai Industry Co., Ltd.	Henan Mingtai Al Industrial Co., Ltd./Zhengzhou Mingtai Industry Co., Ltd.	49.85	49.85
Alcha International Holdings Limited	Jiangsu Alcha Aluminium Co., Ltd	49.85	49.85
Alumax Composite Material (Jiangyin) Co., Ltd	Chalco Ruimin Co., Ltd	49.85	49.85
Granges Aluminum (Shanghai) Co., Ltd	Granges Aluminum (Shanghai) Co., Ltd	49.85	49.85
Henan Founder Beyond Industry Co., Ltd	Henan Xintai Aluminum Industry Co., Ltd	49.85	49.85
Huafon Nikkei Aluminium Corporation	Huafon Nikkei Aluminium Corporation	49.85	49.85
Jiangsu Lidao New Material Co., Ltd	Henan Jinyang Luyue Co., Ltd	49.85	49.85
Jiangsu Lidao New Material Co., Ltd	Jiangsu Zhong He Aluminum Co., Ltd	49.85	49.85
Jiangyin Litai Ornamental Materials Co., Ltd	Jiangyin Litai Ornamental Materials Co., Ltd	49.85	49.85
Jiangyin New Alumax Composite Material Co. Ltd	Chalco Ruimin Co., Ltd	49.85	49.85
Shandong Fuhai Industrial Co., Ltd	Shandong Fuhai Industrial Co., Ltd	49.85	49.85
Tianjin Zhongwang Aluminium Co., Ltd	Tianjin Zhongwang Aluminium Co., Ltd	49.85	49.85
Xiamen Xiashun Aluminum Foil Co., Ltd	Xiamen Xiashun Aluminum Foil Co., Ltd	49.85	49.85
Yantai Jintai International Trade Co., Ltd	Shandong Nanshan Aluminium Co., Ltd	49.85	49.85
Yinbang Clad Material Co., Ltd	Yinbang Clad Material Co., Ltd	49.85	49.85
Zhengzhou Silverstone Limited	Henan Zhongyuan Aluminum Co., Ltd	49.85	49.85
Zhengzhou Silverstone Limited	Luoyang Xinlong Aluminum Co., Ltd	49.85	49.85
Zhengzhou Silverstone Limited	Shanghai Dongshuo Metal Trade Co., Ltd	49.85	49.85
Zhengzhou Silverstone Limited	Zhengzhou Mingtai Industry Co., Ltd	49.85	49.85
China-Wide Entity [5]		59.72	59.72

Critical Circumstances

With regard to the ITC's negative critical circumstances determination on imports of common alloy sheet from China, we will instruct CBP to lift suspension and to refund any cash deposits made to secure the payment of estimated antidumping duties with respect to entries of subject merchandise ordered, or withdrawn from warehouse, for consumption on or after March 24, 2018 (*i.e.,* 90 days prior to the date of publication of the *Preliminary Determination*), but before June 22, 2018 (*i.e.,* the date of publication of the *Preliminary Determination*).

[5] The China-wide entity also includes the following companies that filed separate rate applications: Nanjie Resources Co., Limited, Yong Jie New Material Co., Ltd., and Zhejiang Yongjie Aluminum Co., Ltd., Zhejiang GKO Aluminium Stock Co., Ltd.; Alnan Aluminium Inc.; Chalco Ruimin Co., Ltd.; CHALCO–SWA Cold Rolling Co., Ltd.; Luoyang Wanji Aluminium Processing Co., Ltd.; and Wanji Global (Singapore) PTE. LTD.

Notification to Interested Parties

This notice constitutes the AD order with respect to common alloy sheet from China pursuant to section 736(a) of the Act. Interested parties can find a list of AD orders currently in effect at *https://enforcement.trade.gov/stats/iastats1.html.*

This order is issued and published in accordance with section 736(a) of the Act and 19 CFR 351.211.

Dated: February 5, 2019.

Christian Marsh,

Deputy Assistant Secretary for Enforcement and Compliance.

Appendix

Scope of the Order

The merchandise covered by this order is aluminum common alloy sheet (common alloy sheet), which is a flat-rolled aluminum product having a thickness of 6.3 mm or less, but greater than 0.2 mm, in coils or cut-to-length, regardless of width. Common alloy sheet within the scope of this order includes both not clad aluminum sheet, as well as multi-alloy, clad aluminum sheet. With respect to not clad aluminum sheet, common alloy sheet is manufactured from a 1XXX-, 3XXX-, or 5XXX-series alloy as designated by the Aluminum Association. With respect to multi-alloy, clad aluminum sheet, common alloy sheet is produced from a 3XXX-series core, to which cladding layers are applied to either one or both sides of the core.

Common alloy sheet may be made to ASTM specification B209–14, but can also be made to other specifications. Regardless of specification, however, all common alloy sheet meeting the scope description is included in the scope. Subject merchandise includes common alloy sheet that has been further processed in a third country, including but not limited to annealing, tempering, painting, varnishing, trimming, cutting, punching, and/or slitting, or any other processing that would not otherwise remove the merchandise from the scope of the order if performed in the country of manufacture of the common alloy sheet.

Excluded from the scope of this order is aluminum can stock, which is suitable for use in the manufacture of aluminum beverage cans, lids of such cans, or tabs used to open such cans. Aluminum can stock is produced to gauges that range from 0.200 mm to 0.292 mm, and has an H–19, H–41, H–48, or H–391 temper. In addition, aluminum can stock has a lubricant applied to the flat surfaces of the can stock to facilitate its movement through machines used in the manufacture of beverage cans. Aluminum can stock is properly classified under Harmonized Tariff Schedule of the United States (HTSUS) subheadings 7606.12.3045 and 7606.12.3055.

Where the nominal and actual measurements vary, a product is within the scope if application of either the nominal or actual measurement would place it within the scope based on the definitions set for the above.

Common alloy sheet is currently classifiable under HTSUS subheadings 7606.11.3060, 7606.11.6000, 7606.12.3090, 7606.12.6000, 7606.91.3090, 7606.91.6080, 7606.92.3090, and 7606.92.6080. Further, merchandise that falls within the scope of this order may also be entered into the United States under HTSUS subheadings 7606.11.3030, 7606.12.3030, 7606.91.3060, 7606.91.6040, 7606.92.3060, 7606.92.6040, 7607.11.9090. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this order is dispositive.

[FR Doc. 2019–01836 Filed 2–6–19; 4:15 pm]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Renewable Energy and Energy Efficiency Advisory Committee; Meeting

AGENCY: International Trade Administration, U.S. Department of Commerce.

ACTION: Notice of an open meeting.

SUMMARY: The Renewable Energy and Energy Efficiency Advisory Committee (REEEAC or the Committee) will hold a meeting on Thursday, February 28, 2019 at the U.S. Department of Commerce Herbert C. Hoover Building in Washington, DC. The meeting is open to the public with registration instructions provided below.

DATES: February 28, 2019, from approximately 9 a.m. to 5 p.m. Eastern Standard Time (EST). Members of the public wishing to participate must register in advance with Victoria Gunderson at the contact information below by 5 p.m. EST on Friday, February 22, 2019 in order to pre-register, including any requests to make comments during the meeting or for accommodations or auxiliary aids.

ADDRESSES: To register, please contact Victoria Gunderson, Designated Federal Officer, Office of Energy and Environmental Industries (OEEI), Industry and Analysis, International Trade Administration, U.S. Department of Commerce at (202) 482–7890; email: *Victoria.Gunderson@trade.gov.*

FOR FURTHER INFORMATION CONTACT: Victoria Gunderson, Designated Federal Officer, Office of Energy and Environmental Industries (OEEI), Industry and Analysis, International Trade Administration, U.S. Department of Commerce at (202) 482–7890; email: *Victoria.Gunderson@trade.gov.*

SUPPLEMENTARY INFORMATION:

Background: The Secretary of Commerce established the REEEAC pursuant to discretionary authority and in accordance with the Federal Advisory Committee Act, as amended (5 U.S.C. App.), on July 14, 2010. The REEEAC was re-chartered most recently on June 7, 2018. The REEEAC provides the Secretary of Commerce with consensus advice from the private sector on the development and administration of programs and policies to expand the export competitiveness of U.S. renewable energy and energy efficiency products and services. More information regarding the REEEAC is available online at *http://export.gov/reee/reeeac.*

On February 28, 2019, the REEEAC will hold the second in-person meeting of its current charter term. The Committee, with officials from the Department of Commerce and other agencies, will discuss major issues affecting the competitiveness of the U.S. renewable energy and energy efficiency industries, hold subcommittee work sessions to discuss draft recommendations, and hear about new U.S. government financing initiatives. An agenda will be made available by February 22, 2019 upon request.

The meeting will be open to the public and will be accessible to people with disabilities. All guests are required to register in advance by the deadline identified under the **DATE** caption. Requests for auxiliary aids must be submitted by the registration deadline. Last minute requests will be accepted but may be impossible to fill.

A limited amount of time before the close of the meeting will be available for oral comments from members of the public attending the meeting. To accommodate as many speakers as possible, the time for public comments will be limited to two to five minutes per person (depending on number of public participants). Individuals wishing to reserve speaking time during the meeting must contact Ms. Gunderson and submit a brief statement of the general nature of the comments, as well as the name and address of the proposed participant, by 5 p.m. EST on Friday, February 22, 2019. If the number of registrants requesting to make statements is greater than can be reasonably accommodated during the meeting, the International Trade Administration may conduct a lottery to determine the speakers. Speakers are requested to submit a copy of their oral comments by email to Ms. Gunderson for distribution to the participants in advance of the meeting.

Any member of the public may submit written comments concerning the REEEAC's affairs at any time before or after the meeting. Comments may be submitted to the Renewable Energy and Energy Efficiency Advisory Committee,

c/o: Victoria Gunderson, Designated Federal Officer, Office of Energy and Environmental Industries, U.S. Department of Commerce, 1401 Constitution Avenue NW, Mail Stop: 28018, Washington, DC 20230. To be considered during the meeting, public comments must be transmitted to the REEEAC prior to the meeting. As such, written comments must be received no later than 5 p.m. EST on Friday, February 22, 2019. Comments received after that date will be distributed to the members but may not be considered at the meeting.

Copies of REEEAC meeting minutes will be available within 30 days following the meeting.

Dated: February 4, 2019.

Man Cho,

Deputy Director, Office of Energy and Environmental Industries.

[FR Doc. 2019–01560 Filed 2–7–19; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

International Trade Administration

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

FOR FURTHER INFORMATION CONTACT: Brenda E. Brown, Office of AD/CVD Operations, Customs Liaison Unit, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230, telephone: (202) 482–4735.

Background

Each year during the anniversary month of the publication of an antidumping or countervailing duty order, finding, or suspended investigation, an interested party, as defined in section 771(9) of the Tariff Act of 1930, as amended (the Act), may request, in accordance with 19 CFR 351.213, that the Department of Commerce (Commerce) conduct an administrative review of that antidumping or countervailing duty order, finding, or suspended investigation.

All deadlines for the submission of comments or actions by Commerce discussed below refer to the number of calendar days from the applicable starting date.

Respondent Selection

In the event Commerce limits the number of respondents for individual examination for administrative reviews initiated pursuant to requests made for the orders identified below, except for the administrative review of the antidumping duty order on wooden bedroom furniture from the People's Republic of China and the reviews of the antidumping duty orders on certain crystalline silicon photovoltaic products from Taiwan and the People's Republic of China, Commerce intends to select respondents based on U.S. Customs and Border Protection (CBP) data for U.S. imports during the period of review. We intend to release the CBP data under Administrative Protective Order (APO) to all parties having an APO within five days of publication of the initiation notice and to make our decision regarding respondent selection within 21 days of publication of the initiation **Federal Register** notice. Therefore, we encourage all parties interested in commenting on respondent selection to submit their APO applications on the date of publication of the initiation notice, or as soon thereafter as possible. Commerce invites comments regarding the CBP data and respondent selection within five days of placement of the CBP data on the record of the review.

In the event Commerce decides it is necessary to limit individual examination of respondents and conduct respondent selection under section 777A(c)(2) of the Act:

In general, Commerce finds that determinations concerning whether particular companies should be ''collapsed'' (*i.e.,* treated as a single entity for purposes of calculating antidumping duty rates) require a substantial amount of detailed information and analysis, which often require follow-up questions and analysis. Accordingly, Commerce will not conduct collapsing analyses at the respondent selection phase of a review and will not collapse companies at the respondent selection phase unless there has been a determination to collapse certain companies in a previous segment of this antidumping proceeding (*i.e.,* investigation, administrative review, new shipper review or changed circumstances review). For any company subject to a review, if Commerce determined, or continued to treat, that company as collapsed with others, Commerce will assume that such companies continue to operate in the same manner and will collapse them for respondent selection purposes. Otherwise, Commerce will not collapse companies for purposes of respondent selection. Parties are requested to (a) identify which companies subject to review previously were collapsed, and (b) provide a citation to the proceeding in which they were collapsed. Further, if companies are requested to complete a Quantity and Value Questionnaire for purposes of respondent selection, in general each company must report volume and value data separately for itself. Parties should not include data for any other party, even if they believe they should be treated as a single entity with that other party. If a company was collapsed with another company or companies in the most recently completed segment of a proceeding where Commerce considered collapsing that entity, complete quantity and value data for that collapsed entity must be submitted.

Deadline for Withdrawal of Request for Administrative Review

Pursuant to 19 CFR 351.213(d)(1), a party that requests a review may withdraw that request within 90 days of the date of publication of the notice of initiation of the requested review. The regulation provides that Commerce may extend this time if it is reasonable to do so. Determinations by Commerce to extend the 90-day deadline will be made on a case-by-case basis.

Deadline for Particular Market Situation Allegation

Section 504 of the Trade Preferences Extension Act of 2015 amended the Act by adding the concept of particular market situation (PMS) for purposes of constructed value under section 773(e) of the Act.[1] Section 773(e) of the Act states that ''if a particular market situation exists such that the cost of materials and fabrication or other processing of any kind does not accurately reflect the cost of production in the ordinary course of trade, the administering authority may use another calculation methodology under this subtitle or any other calculation methodology.'' When an interested party submits a PMS allegation pursuant to section 773(e) of the Act, Commerce will respond to such a submission consistent with 19 CFR 351.301(c)(v). If Commerce finds that a PMS exists under section 773(e) of the Act, then it will modify its dumping calculations appropriately.

Neither section 773(e) of the Act nor 19 CFR 351.301(c)(v) set a deadline for the submission of PMS allegations and supporting factual information. However, in order to administer section

[1] *See* Trade Preferences Extension Act of 2015, Public Law 114–27, 129 Stat. 362 (2015).

773(e) of the Act, Commerce must receive PMS allegations and supporting factual information with enough time to consider the submission. Thus, should an interested party wish to submit a PMS allegation and supporting new factual information pursuant to section 773(e) of the Act, it must do so no later than 20 days after submission of initial Section D responses.

Opportunity to Request a Review: Commerce exercised its discretion to toll all deadlines affected by the partial federal government closure from December 22, 2018, through the resumption of operations on January 29, 2019.[2] Accordingly, not later than February 28, 2019,[3] interested parties may request administrative review of the following orders, findings, or suspended investigations, with anniversary dates in December, January and February for the following periods. With regard to properly filed requests for review that have already been filed for AD and CVD orders or suspension agreements with December or January anniversary dates, Commerce will consider such requests as timely filed.

Antidumping Duty Proceedings for December 2018

Please see the notice of opportunity to request administrative reviews that published on December 3, 2018 (83 FR 62293) for a list of relevant antidumping duty proceedings.

Countervailing Duty Proceedings for December 2018

Please see the notice of opportunity to request administrative reviews that published on December 3, 2018 (83 FR 62293) for a list of relevant countervailing duty proceedings.

Suspension Agreements for December 2018

Please see the notice of opportunity to request administrative reviews that published on December 3, 2018 (83 FR 62293) for a list of relevant suspension agreements.

	Period of review
Suspension Agreements for December 2019	
MEXICO: Sugar,[4] C–201–846	1/1/18–12/31/18
Antidumping Duty Proceedings for January 2019	
BELARUS: Carbon and Alloy Steel Wire Rod, A–822–806	9/12/17–12/31/18
BRAZIL: Prestressed Concrete Steel Wire Strand, A–351–837	1/1/18–12/31/18
CANADA: Softwood Lumber, A–122–857	6/30/17–12/31/18
INDIA: Prestressed Concrete Steel Wire Strand, A–533–828	1/1/18–12/31/18
MEXICO: Prestressed Concrete Steel Wire Strand, A–201–831	1/1/18–12/31/18
REPUBLIC OF KOREA: Prestressed Concrete Steel Wire Strand, A–580–852	1/1/18–12/31/18
RUSSIA: Carbon and Alloy Steel Wire Rod, A–821–824	9/12/17–12/31/18
SOUTH AFRICA: Ferrovanadium, A–791–815	1/1/18–12/31/18
THAILAND: Prestressed Concrete Steel Wire Strand, A–549–820	1/1/18–12/31/18
THE PEOPLE'S REPUBLIC OF CHINA:	
Calcium Hypochlorite, A–570–008	1/1/18–12/31/18
Carbon and Certain Alloy Steel Wire Rod, A–570–012	1/1/18–12/31/18
Crepe Paper Products, A–570–895	1/1/18–12/31/18
Ferrovanadium, A–570–873	1/1/18–12/31/18
Folding Gift Boxes, A–570–866	1/1/18–12/31/18
Hardwood Plywood Products, A–570–051	6/23/17–12/31/18
Potassium Permanganate, A–570–001	1/1/18–12/31/18
Wooden Bedroom Furniture, A–570–890	1/1/18–12/31/18
UNITED ARAB EMIRATES: Carbon and Alloy Steel Wire Rod, A–520–808	9/12/17–12/31/18
ARGENTINA: Biodiesel, C–357–821	8/28/17–12/31/18
CANADA: Softwood Lumber, C–122–858	4/28/17–12/31/18
INDONESIA: Biodiesel, C–560–831	8/28/17–12/31/18
THE PEOPLE'S REPUBLIC OF CHINA:	
Calcium Hypochlorite, C–570–009	1/1/18–12/31/18
Carbon and Certain Alloy Steel Wire Rod, C–570–013	1/1/18–12/31/18
Circular Welded Carbon Quality Steel Line Pipe, C–570–936	1/1/18–12/31/18
Hardwood Plywood Products, C–570–052	4/25/17–12/31/18
Oil Country Tubular Goods, C–570–944	1/1/18–12/31/18
Tool Chests and Cabinets, C–570–057	9/15/17–12/31/18
Suspension Agreements for January 2019	
RUSSIA: Certain Cut-To-Length Carbon Steel Plate, A–821–808	1/1/18–12/31/18
Antidumping Duty Proceedings for February 2019	
BRAZIL: Carbon and Alloy Steel Cut-to-Length Plate, A–351–847	2/1/18–1/31/19
FRANCE: Uranium, A–427–818	2/1/18–1/31/19
INDIA:	
Certain Cut-To-Length Carbon-Quality Steel Plate, A–533–817	2/1/18–1/31/19
Certain Preserved Mushrooms, A–533–813	2/1/18–1/31/19
Frozen Warmwater Shrimp, A–533–840	2/1/18–1/31/19
Stainless Steel Bar, A–533–810	2/1/18–1/31/19
INDONESIA:	
Certain Cut-To-Length Carbon-Quality Steel Plate, A–560–805	2/1/18–1/31/19
Certain Preserved Mushrooms, A–560–802	2/1/18–1/31/19

[2] *See* Memorandum to the Record from Gary Taverman, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance, ''Deadlines Affected by the Partial Shutdown of the Federal Government,'' dated January 28, 2019.

[3] Or the next business day, if the deadline falls on a weekend, federal holiday or any other day when Commerce is closed.

[4] In the notice of opportunity to request administrative reviews that published on December 3, 2018 (83 FR 62293) Commerce listed the incorrect period of review for the CVD Sugar from Mexico case. The correct period of review is listed in this notice.

	Period of review
ITALY: Stainless Steel Butt-Weld Pipe Fittings, A–475–828	2/1/18–1/31/19
JAPAN:	
Carbon Steel Butt-Weld Pipe Fittings, A–588–602	2/1/18–1/31/19
Stainless Steel Bar, A–588–833	2/1/18–1/31/19
MALAYSIA: Stainless Steel Butt-Weld Pipe Fittings, A–557–809	2/1/18–1/31/19
MEXICO: Large Residential Washers, A–201–842	2/1/18–1/31/19
PHILIPPINES: Stainless Steel Butt-Weld Pipe Fittings, A–565–801	2/1/18–1/31/19
REPUBLIC OF KOREA:	
Certain Cut-To-Length Carbon-Quality Steel Plate, A–580–836	2/1/18–1/31/19
Large Residential Washers, A–580–868	2/1/18–1/31/19
SOCIALIST REPUBLIC OF VIETNAM:	
Frozen Warmwater Shrimp, A–552–802	2/1/18–1/31/19
Steel Wire Garment Hangers, A–552–812	2/1/18–1/31/19
Utility Scale Wind Towers, A–552–814	2/1/18–1/31/19
SOUTH AFRICA: Carbon and Alloy Steel Cut-To-Length Plate, A–791–822	2/1/18–1/31/19
TAIWAN: Crystalline Silicon Photovoltaic Products, A–583–853	2/1/18–1/31/19
THAILAND: Frozen Warmwater Shrimp, A–549–822	2/1/18–1/31/19
THE PEOPLE'S REPUBLIC OF CHINA:	
Certain Preserved Mushrooms, A–570–851	2/1/18–1/31/19
Crystalline Silicon Photovoltaic Products, A–570–010	2/1/18–1/31/19
Frozen Warmwater Shrimp, A–570–893	2/1/18–1/31/19
Heavy Forged Hand Tools, With or Without Handles, A–570–803	2/1/18–1/31/19
Large Residential Washers, A–570–033	2/1/18–1/31/19
Small Diameter Graphite Electrodes, A–570–929	2/1/18–1/31/19
Uncovered Innerspring Units, A–570–928	2/1/18–1/31/19
Utility Scale Wind Towers, A–570–981	2/1/18–1/31/19
TURKEY: Carbon and Alloy Steel Cut-To-Length Plate, A–489–828	2/1/18–1/31/19
INDIA:	
Certain Cut-To-Length Carbon-Quality Steel Plate, C–533–818	1/1/18–12/31/18
Prestressed Concrete Steel Wire Strand, C–533–829	1/1/18–12/31/18
Cold-Drawn Mechanical Tubing, C–533–874	9/25/17–12/31/18
INDONESIA: Certain Cut-To-Length Carbon-Quality Steel Plate, C–560–806	1/1/18–12/31/18
REPUBLIC OF KOREA:	
Certain Cut-To-Length Carbon-Quality Steel Plate, C–580–837	1/1/18–12/31/18
Large Residential Washers, C–580–869	1/1/18–12/31/18
SOCIALIST REPUBLIC OF VIETNAM: Steel Wire Garment Hangers, C–552–813	1/1/18–12/31/18
THE PEOPLE'S REPUBLIC OF CHINA:	
Cold-Drawn Mechanical Tubing, C–570–059	9/25/17–12/31/18
Crystalline Silicon Photovoltaic Products, C–570–011	1/1/18–12/31/18
Utility Scale Wind Towers, C–570–982	1/1/18–12/31/18

Suspension Agreements for February 2019

None.

In accordance with 19 CFR 351.213(b), an interested party as defined by section 771(9) of the Act may request in writing that the Secretary conduct an administrative review. For both antidumping and countervailing duty reviews, the interested party must specify the individual producers or exporters covered by an antidumping finding or an antidumping or countervailing duty order or suspension agreement for which it is requesting a review. In addition, a domestic interested party or an interested party described in section 771(9)(B) of the Act must state why it desires the Secretary to review those particular producers or exporters. If the interested party intends for the Secretary to review sales of merchandise by an exporter (or a producer if that producer also exports merchandise from other suppliers) which was produced in more than one country of origin and each country of origin is subject to a separate order, then the interested party must state specifically, on an order-by-order basis, which exporter(s) the request is intended to cover.

Note that, for any party Commerce was unable to locate in prior segments, Commerce will not accept a request for an administrative review of that party absent new information as to the party's location. Moreover, if the interested party who files a request for review is unable to locate the producer or exporter for which it requested the review, the interested party must provide an explanation of the attempts it made to locate the producer or exporter at the same time it files its request for review, in order for the Secretary to determine if the interested party's attempts were reasonable, pursuant to 19 CFR 351.303(f)(3)(ii).

As explained in *Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003), and *Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties,* 76 FR 65694 (October 24, 2011), Commerce clarified its practice with respect to the collection of final antidumping duties on imports of merchandise where intermediate firms are involved. The public should be aware of this clarification in determining whether to request an administrative review of merchandise subject to antidumping findings and orders.[5]

Commerce no longer considers the non-market economy (NME) entity as an exporter conditionally subject to an antidumping duty administrative reviews.[6] Accordingly, the NME entity will not be under review unless Commerce specifically receives a request for, or self-initiates, a review of

[5] *See also* the Enforcement and Compliance website at *http://trade.gov/enforcement/.*

[6] *See Antidumping Proceedings: Announcement of Change in Department Practice for Respondent Selection in Antidumping Duty Proceedings and Conditional Review of the Nonmarket Economy Entity in NME Antidumping Duty Proceedings,* 78 FR 65963 (November 4, 2013).

the NME entity.[7] In administrative reviews of antidumping duty orders on merchandise from NME countries where a review of the NME entity has not been initiated, but where an individual exporter for which a review was initiated does not qualify for a separate rate, Commerce will issue a final decision indicating that the company in question is part of the NME entity. However, in that situation, because no review of the NME entity was conducted, the NME entity's entries were not subject to the review and the rate for the NME entity is not subject to change as a result of that review (although the rate for the individual exporter may change as a function of the finding that the exporter is part of the NME entity). Following initiation of an antidumping administrative review when there is no review requested of the NME entity, Commerce will instruct CBP to liquidate entries for all exporters not named in the initiation notice, including those that were suspended at the NME entity rate.

All requests must be filed electronically in Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS) on Enforcement and Compliance's ACCESS website at *http://access.trade.gov*.[8] Further, in accordance with 19 CFR 351.303(f)(l)(i), a copy of each request must be served on the petitioner and each exporter or producer specified in the request.

Commerce will publish in the **Federal Register** a notice of ''Initiation of Administrative Review of Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation'' for requests received by February 28, 2019. If Commerce does not receive, by February 28, 2019, a request for review of entries covered by an order, finding, or suspended investigation listed in this notice and for any of the periods identified above, Commerce will instruct CBP to assess antidumping or countervailing duties on those entries at a rate equal to the cash deposit of estimated antidumping or countervailing duties required on those entries at the time of entry, or withdrawal from warehouse, for consumption and to continue to collect the cash deposit previously ordered.

For the first administrative review of any order, there will be no assessment of antidumping or countervailing duties on entries of subject merchandise entered, or withdrawn from warehouse, for consumption during the relevant provisional-measures ''gap'' period of the order, if such a gap period is applicable to the period of review.

This notice is not required by statute but is published as a service to the international trading community.

Dated: February 4, 2019.

James Maeder,

Associate Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations performing the duties of Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2019–01660 Filed 2–7–19; 8:45 am]

BILLING CODE 3510–DS–P

[7] In accordance with 19 CFR 351.213(b)(1), parties should specify that they are requesting a review of entries from exporters comprising the entity, and to the extent possible, include the names of such exporters in their request.

[8] *See Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures,* 76 FR 39263 (July 6, 2011).

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Proposed Information Collection; Comment Request; SURF Fellow Housing Application

AGENCY: National Institute of Standards and Technology (NIST), Department of Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before April 9, 2019.

ADDRESSES: Direct all written comments to Jennifer Jessup, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6616, 1401 Constitution Avenue NW, Washington, DC 20230 (or via the internet at *PRAcomments@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Dr. Brandi Toliver, NIST, 100 Bureau Drive, Stop 1090, Gaithersburg, MD 20899–1090, tel. (301) 972–2371, or *brandi.toliver@nist.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

The purpose of this collection is to gather information requested on behalf of the NIST Summer Undergraduate Research Fellowship (SURF) Program for both Gaithersburg and Boulder locations. Students participating in the program receive a fellowship which includes lodging arranged by the agency. To coordinate the lodging, information is submitted by accepted students who require lodging during the program dates. The student information is utilized for roommate matching based on gender and common interests. The information includes: Identification of accepted laboratory, housing requirement (yes or no), first name, last name, dates requesting housing, gender, roommate identification, name of academic institution of enrollment, preferences (night owl, early bird, neatness, smoking), and special requests.

II. Method of Collection

The information will be collected electronically. Accepted students will receive a link to the Housing Application administered on Google Documents (a NIST approved platform). The application must be completed by a required deadline. The provided link will be inactive after the deadline.

III. Data

OMB Control Number: New collection. 0693–XXXX.

Form Number(s): None.

Type of Review: Regular submission (new information collection).

Affected Public: Individuals or households.

Estimated Number of Respondents: 220.

Estimated Time per Response: 30 minutes.

Estimated Total Annual Burden Hours: 110 hours.

Estimated Total Annual Cost to Public: $0.

IV. Request for Comments

NIST invites comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection 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 on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB

approval of this information collection; they also will become a matter of public record.

Sheleen Dumas,

Department Lead PRA Officer, Office of the Chief Information Officer, Commerce Department.

[FR Doc. 2019–01554 Filed 2–7–19; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XG767

North Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of telephonic and in-person meeting.

SUMMARY: The North Pacific Fishery Management Council (Council) Trawl Electronic Monitoring Committee will meet March 4, 2019 through March 5, 2019.

DATES: The meeting will be held on Monday, March 4, 2019, from 9 a.m. to 5 p.m. and on Tuesday, March 5, 2019, from 9 a.m. to 5 p.m. (or as necessary), Pacific Standard Time.

ADDRESSES: The meeting will be held in the Traynor Room, Building 4 at the Alaska Fisheries Science Center, 7600 Sand Point Way NE, Seattle, WA 98115. Teleconference number: (907) 245–3900, Pin is 2809.

Council address: North Pacific Fishery Management Council, 605 W 4th Ave., Suite 306, Anchorage, AK 99501–2252; telephone: (907) 271–2809.

FOR FURTHER INFORMATION CONTACT: Elizabeth Figus, Council staff; telephone: (907) 271–2801.

SUPPLEMENTARY INFORMATION:

Agenda

Monday, March 4, 2019 to Tuesday, March 5, 2019

The agenda will include: Updates since the last meeting in November 2018; staff presentations about marine mammals and EM, the Chordata platform; reviewing edits to the white paper on retention and a data streams draft document, and lists of vessels included in the research plans; discussing funding development and timelines; planning for EFP applications, a Commissioner's Permit from ADFG, and potential IPHC exemptions; and, scheduling and other issues. The Agenda is subject to change, and the latest version will be posted at *www.npfmc.org* prior to the meeting, along with meeting materials.

Public Comment

Public comment letters will be accepted and should be submitted either electronically to *www.meetings.npfmc.org* or through the mail: North Pacific Fishery Management Council, 605 W 4th Ave., Suite 306, Anchorage, AK 99501–2252. In-person oral public testimony will be accepted at the discretion of the chair.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Shannon Gleason at (907) 271–2809 at least 7 working days prior to the meeting date.

Dated: February 5, 2019.

Tracey L. Thompson,

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

[FR Doc. 2019–01608 Filed 2–7–19; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XG774

Mid-Atlantic Fishery Management Council (MAFMC); Public Meetings

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

ACTION: Notice of public meetings.

SUMMARY: The Mid-Atlantic Fishery Management Council (Council) will hold public meetings of the Council and its Committees.

DATES: The meetings will be held Wednesday, March 6, 2019 through Thursday, March 7, 2019. For agenda details, see **SUPPLEMENTARY INFORMATION.**

ADDRESSES: The meeting will be held at the Hilton Virginia Beach Oceanfront, 3001 Atlantic Ave., Virginia Beach, VA 23451; telephone: (757) 213–3000.

Council address: Mid-Atlantic Fishery Management Council, 800 N State St., Suite 201, Dover, DE 19901; telephone: (302) 674–2331.

FOR FURTHER INFORMATION CONTACT: Christopher M. Moore, Ph.D., Executive Director, Mid-Atlantic Fishery Management Council; telephone: (302) 526–5255. The Council's website, *www.mafmc.org* also has details on the meeting location, proposed agenda, webinar listen-in access, and briefing materials.

SUPPLEMENTARY INFORMATION: The following items are on the agenda, though agenda items may be addressed out of order (changes will be noted on the Council's website when possible.)

Wednesday, March 6, 2019

Summary of Stock Assessment Workshop/Stock Assessment Review Committee 66

Summer Flounder 2019–21 Specifications

Review SSC, Monitoring Committee, staff, and Advisory Panel recommendations and adopt revised specifications for 2019 and new specifications for 2020–21.

Summer Flounder 2019 Recreational Measures

Review Monitoring Committee, staff, and Advisory Panel recommendations and recommend Conservation Equivalency or coastwide management and associated measures for 2019.

Summer Flounder Commercial Issues and Goals and Objectives Amendment

Final action.

Thursday, March 7, 2019

Interim 2020 Specifications for Black Sea, Bass, Scup, and Bluefish

Adopt interim 2020 specifications.

Black Sea Bass Management Reform

Status of the joint working group and a possible amendment.

Kitty Hawk Wind Project

Chub Mackerel Amendment

Review public hearing comments and AP and Committee recommendations and take final action.

Business Session

Committee Reports (SSC); Executive Director's Report (Review and approve current SSC membership); Organization Reports; and, Liaison Reports

Continuing and New Business

Although non-emergency issues not contained in this agenda may come before this group for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), those issues may not be the subject of formal action during these meetings. Actions will be restricted to those issues

specifically identified in this notice and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aid should be directed to M. Jan Saunders, (302) 526–5251, at least 5 days prior to the meeting date.

Dated: February 5, 2019.

Tracey L. Thompson,

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

[FR Doc. 2019–01609 Filed 2–7–19; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XG766

Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting (webinar).

SUMMARY: The Pacific Fishery Management Council (Pacific Council) will convene a webinar meeting of its Habitat Committee (HC) to discuss items on the Pacific Council's March 2019 meeting agenda. The meeting is open to the public.

DATES: The webinar meeting will be held Tuesday, February 26, 2019, from 10:30 a.m. to 1 p.m. Pacific Standard Time. The scheduled ending time for the HC webinar is an estimate, the meeting will adjourn when business for the day has been completed.

ADDRESSES: This meeting will be held via webinar. A public listening station is available at the Pacific Council office (address below). To attend the webinar: (1) Join the GoToWebinar by visiting this link *https://www.gotomeeting.com/* (Click ''Join a Webinar'' in top right corner of page), (2) Enter the Webinar ID: 504–836–765 and (3) enter your name and email address (required). After logging into the webinar, you must use your telephone for the audio portion of the meeting. Dial this TOLL number: 669–224–3412, enter the attendee phone audio access code 504–836–765, and enter your audio phone pin (shown after joining the webinar). System Requirements: For PC-based attendees: Required: Windows® 10, 8, 7, Vista, or XP; for Mac®-based attendees: Required: Mac OS® X 10.5 or newer; for mobile attendees: Required: iPhone®, iPad®, Android™ phone or Android tablet (see the *https://www.gotomeeting.com/webinar/ipad-iphone-android-webinar-apps*). You may send an email to Mr. Kris Kleinschmidt or contact him at 503–820–2411 for technical assistance.

Council address: Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 101, Portland, OR 97220.

FOR FURTHER INFORMATION CONTACT: Jennifer Gilden, Staff Officer; telephone: (503) 820–2418.

SUPPLEMENTARY INFORMATION: The primary purpose of the HC webinar is to prepare for the Pacific Council's March 2019 agenda items. The HC's task is to develop recommendations for consideration by the Pacific Council at its March 2019 meeting. The HC will discuss items related to salmon rebuilding plans, essential fish habitat for groundfish, and marine spatial planning. A detailed agenda for the webinar will be available on the Pacific Council's website prior to the meeting. No management actions will be decided by the HC.

Although non-emergency issues not contained in the meeting agenda may be discussed, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the HC's intent to take final action to address the emergency.

Special Accommodations

The public listening station is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Mr. Kris Kleinschmidt at (503) 820–2411 at least 10 days prior to the meeting date.

Dated: February 5, 2019.

Tracey L. Thompson,

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

[FR Doc. 2019–01607 Filed 2–7–19; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XG 773

New England Fishery Management Council; Public Meeting

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

ACTION: Notice; public meeting.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a public meeting of its Groundfish Committee to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from this group will be brought to the full Council for formal consideration and action, if appropriate.

DATES: This meeting will be held on Tuesday, February 26, 2019 at 9 a.m.

ADDRESSES:

Meeting address: The meeting will be held at the DoubleTree by Hilton, 50 Ferncroft Road, Danvers, MA 01950; phone: (978) 777–2500.

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Thomas A. Nies, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492.

SUPPLEMENTARY INFORMATION:

Agenda

The committee will review the recreational advisory panel recommendations and then provide recommendations to the Council on fishing year 2019 recreational measures for Gulf of Maine cod and haddock, and Georges Bank cod. They will discuss and review input from the Recreational Advisory Panel on the possibility of public listening sessions for limited access program. The committee plans to discuss the Marine Recreational Information Program (MRIP) allocation of sampling by wave, and available for-hire vessel trip report data on effort and landings by wave. They will discuss groundfish priorities for 2019 and receive an update on progress of Amendment 23/Groundfish Monitoring and to be initiated Framework 59/Specifications and Management Measures as appropriate. Other business will be discussed as necessary.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal

action during these meetings. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Thomas A. Nies, Executive Director, at (978) 465–0492, at least 5 days prior to the meeting date. This meeting will be recorded. Consistent with 16 U.S.C. 1852, a copy of the recording is available upon request.

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

Dated: February 5, 2019.

Tracey L. Thompson,

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

[FR Doc. 2019–01637 Filed 2–7–19; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XG752

Mid-Atlantic Fishery Management Council (MAFMC); Public Meeting

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

ACTION: Notice; public meeting.

SUMMARY: The Mid-Atlantic Fishery Management Council's (MAFMC's) Summer Flounder, Scup, and Black Sea Bass Monitoring Committee will hold a public meeting.

DATES: The meeting will be held on Wednesday, February 27, 2019, from 10 a.m. through 3 p.m. See **SUPPLEMENTARY INFORMATION** for agenda details.

ADDRESSES: The meeting will take place over webinar with a telephone-only connection option. Details on how to connect to the webinar by computer and by telephone will be available at: *http://www.mafmc.org/.*

Council address: Mid-Atlantic Fishery Management Council, 800 N State Street, Suite 201, Dover, DE 19901; telephone: (302) 674–2331; website: *www.mafmc.org.*

FOR FURTHER INFORMATION CONTACT: Christopher M. Moore, Ph.D., Executive Director, Mid-Atlantic Fishery Management Council, telephone: (302) 526–5255.

SUPPLEMENTARY INFORMATION: The purpose of this meeting is to review updated summer flounder stock assessment information and recommend revised 2019 and new 2020–21 commercial and recreational Annual Catch Limits (ACLs), Annual Catch Targets (ACTs), commercial quotas, and recreational harvest limits for summer flounder. The Committee will also recommend recreational management measures for summer flounder in 2019, including either the use of conservation equivalency or coastwide recreational management measures to achieve but not exceed the revised 2019 recreational harvest limit. A detailed agenda and background documents will be made available on the Council's website (*www.mafmc.org*) prior to the meeting.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aid should be directed to M. Jan Saunders, (302) 526–5251, at least 5 days prior to the meeting date.

Dated: February 5, 2019.

Tracey L. Thompson,

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

[FR Doc. 2019–01605 Filed 2–7–19; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XG754

Mid-Atlantic Fishery Management Council (MAFMC); Public Meeting

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

ACTION: Notice; public meeting.

SUMMARY: The Mid-Atlantic Fishery Management Council's (Council's) Summer Flounder, Scup, and Black Sea Bass Advisory Panel will hold a public meeting, jointly with the Atlantic States Marine Fisheries Commission's (ASMFC) Summer Flounder, Scup, and Black Sea Bass Advisory Panel.

DATES: The meeting will be held on Friday, March 1, 2019, from 9 a.m. until 12 p.m.

ADDRESSES: The meeting will be held via webinar with a telephone-only connection option. Details on webinar registration and telephone-only connection details will be posted at: *http://www.mafmc.org.*

Council address: Mid-Atlantic Fishery Management Council, 800 N State Street, Suite 201, Dover, DE 19901; telephone: (302) 674–2331; *www.mafmc.org.*

FOR FURTHER INFORMATION CONTACT: Christopher M. Moore, Ph.D., Executive Director, Mid-Atlantic Fishery Management Council, telephone: (302) 526–5255.

SUPPLEMENTARY INFORMATION: The Council's Summer Flounder, Scup, and Black Sea Bass Advisory Panel (AP) will meet jointly with the ASMFC's Summer Flounder, Scup, and Black Sea Bass AP. The purpose of this meeting is for the Advisory Panels to review and comment on recent stock assessment information for summer flounder, as well as the reports and recommendations of the Council's Scientific and Statistical Committee (SSC) and the Summer Flounder, Scup, and Black Sea Bass Monitoring Committee regarding revised 2019 fishery specifications (*i.e.,* catch and landings limits and management measures) for summer flounder as well as expected new specifications for 2020–21. The AP will also be asked for recommendations on recreational management measures for summer flounder in 2019. The Council and ASMFC will consider input from the AP when adopting 2019–21 catch and landings limits and 2019 recreational measures for summer flounder.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aid should be directed to M. Jan Saunders, (302) 526–5251, at least 5 days prior to the meeting date.

Dated: February 5, 2019.

Tracey L. Thompson,

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

[FR Doc. 2019–01606 Filed 2–7–19; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XG745

Mid-Atlantic Fishery Management Council (MAFMC); Public Meeting

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

ACTION: Notice; public meeting.

SUMMARY: The Tilefish Monitoring Committee of the Mid-Atlantic Fishery Management Council (Council) will hold a meeting.

DATES: The meeting will be held on Friday, March 22, 2019, beginning at 9 a.m. and conclude by 1 p.m. For agenda details, see **SUPPLEMENTARY INFORMATION**.

ADDRESSES: The meeting will be held via webinar with a telephone-only connection option.

Council address: Mid-Atlantic Fishery Management Council, 800 N State Street, Suite 201, Dover, DE 19901; telephone: (302) 674–2331 or on their website at *www.mafmc.org.*

FOR FURTHER INFORMATION CONTACT: Christopher M. Moore, Ph.D., Executive Director, Mid-Atlantic Fishery Management Council, telephone: (302) 526–5255.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is for the Tilefish Monitoring Committee to review the recommended annual catch limits, trip limits, discards and other management measures for the blueline and golden tilefish fisheries.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aid should be directed to M. Jan Saunders, (302) 526–5251, at least 5 days prior to the meeting date.

Dated: February 5, 2019.

Tracey L. Thompson,

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

[FR Doc. 2019–01604 Filed 2–7–19; 8:45 am]

BILLING CODE 3510–22–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed Additions to the Procurement List.

SUMMARY: The Committee is proposing to add products to the Procurement List that will be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

DATES: *Comments must be received on or before:* March 10, 2019.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, 1401 S. Clark Street, Suite 715, Arlington, Virginia 22202–4149.

FOR FURTHER INFORMATION CONTACT: For further information or to submit comments contact: Michael R. Jurkowski, Telephone: (703) 603–2117, Fax: (703) 603–0655, or email *CMTEFedReg@AbilityOne.gov.*

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 8503(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the proposed actions.

Additions

If the Committee approves the proposed additions, the entities of the Federal Government identified in this notice will be required to procure the products listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

The following products are proposed for addition to the Procurement List for production by the nonprofit agencies listed:

Products

NSN—Product Name: 8465–01–F05–2045—Airborne Tactical Assault Panel (ATAP)
Mandatory Source of Supply: Southeastern Kentucky Rehabilitation Industries, Inc. (SEKRI), Corbin, KY
Mandatory for: 50% of the requirement for the U.S. Army
Contracting Activity: Army Contracting Command—Aberdeen Proving Ground, Natick Contracting Division

NSN—Product Name: MR 13009—MR Salad Chopper with Bowl
Mandatory Source of Supply: Cincinnati Association for the Blind, Cincinnati, OH
Mandatory for: The requirements of military commissaries and exchanges in accordance with the Code of Federal Regulations 41 CFR 51–6.4.
Contracting Activity: Defense Commissary Agency

Patricia Briscoe,

Deputy Director, Business Operations, (Pricing and Information Management).

[FR Doc. 2019–01657 Filed 2–7–19; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Addition

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Addition to the Procurement List.

SUMMARY: This action adds a product to the Procurement List that will be furnished by nonprofit agency employing persons who are blind or have other severe disabilities.

DATES: *Date added to the Procurement List:* March 10, 2019.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, 1401 S. Clark Street, Suite 715, Arlington, Virginia, 22202–4149.

FOR FURTHER INFORMATION CONTACT: Michael R. Jurkowski, Telephone: (703) 603–2117, Fax: (703) 603–0655, or email *CMTEFedReg@AbilityOne.gov.*

SUPPLEMENTARY INFORMATION:

Addition

On June 4, 2018 (83 FR 107), the Committee for Purchase From People Who Are Blind or Severely Disabled published notice of proposed addition to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agency to provide the product and impact of the addition on the current or most recent contractors, the Committee has determined that the product listed below is suitable for procurement by the Federal Government under 41 U.S.C. 8501–8506 and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organization that will furnish the product to the Government.

2. The action will result in authorizing small entities to furnish the product to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 8501–8506) in connection with the product proposed for addition to the Procurement List.

End of Certification

Accordingly, the following product is added to the Procurement List:

Product

NSN—Product Name: 2530–01–337–7324—Parts Kit, Air Filter
Mandatory for: 100% of the requirement of the Department of Defense
Mandatory Source of Supply: RLCB, Inc., Raleigh, NC
Contracting Activity: Defense Logistics

Agency Land And Maritime

Patricia Briscoe,

Deputy Director, Business Operations, (Pricing and Information Management).

[FR Doc. 2019–01650 Filed 2–7–19; 8:45 am]

BILLING CODE 6353–01–P

BUREAU OF CONSUMER FINANCIAL PROTECTION

Fair Lending Report of the Bureau of Consumer Financial Protection, December 2018

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Fair Lending Report of the Bureau of Consumer Financial Protection.

SUMMARY: The Bureau of Consumer Financial Protection (Bureau) is issuing its sixth Fair Lending Report of the Bureau of Consumer Financial Protection (Fair Lending Report) to Congress. The Bureau is committed to ensuring fair access to credit and eliminating discriminatory lending practices. This report describes the Bureau's fair lending activities in prioritization, supervision, enforcement, rulemaking, interagency coordination, and outreach for calendar year 2017.

DATES: The Bureau released the December 2018 Fair Lending Report on its website on December 4, 2018.

FOR FURTHER INFORMATION CONTACT: Anita Visser, Senior Policy Advisor to the Director of Fair Lending, Office of Fair Lending and Equal Opportunity, at 1–855–411–2372. If you require this document in an alternative electronic format, please contact *CFPB_Accessibility@cfpb.gov.*

SUPPLEMENTARY INFORMATION:

1. Fair Lending Report of the Bureau of Consumer Financial Protection, December 2018

Message from Mick Mulvaney, Acting Director

This Fair Lending Report of the Bureau of Consumer Financial Protection describes the Bureau's fair lending activities for 2017, consistent with its statutory mandate to ensure that consumers are protected from discrimination (12 U.S.C. 5511(b)(2)). These efforts included:

- Providing oversight and enforcement of Federal laws intended to ensure the fair, equitable, and nondiscriminatory access to credit for both individuals and communities that are enforced by the Bureau, including the Equal Credit Opportunity Act (ECOA) [1] and the Home Mortgage Disclosure Act (HMDA); [2]
- Coordinating fair lending efforts of the Bureau with other Federal agencies and State regulators, as appropriate, to promote consistent, efficient, and effective enforcement of Federal fair lending laws; and
- Working with private industry, fair lending, civil rights, consumer and community advocates on the promotion of fair lending compliance and education.

This report fulfills the Bureau's statutory responsibility to, among other things, report annually to Congress on public enforcement actions taken by other agencies with administrative enforcement responsibilities under ECOA, and assessments of the extent to which compliance with ECOA has been achieved (15 U.S.C. 1691f). It also fulfills the statutory requirement that the Bureau, in consultation with HUD, report annually on the utility of HMDA's requirement that covered lenders itemize certain mortgage loan data (12 U.S.C. 2807).

Sincerely,

Mick Mulvaney,

Message from Patrice Alexander Ficklin Director, Office of Fair Lending and Equal Opportunity.

In 2017, the Office of Fair Lending and Equal Opportunity completed its sixth full year of stewardship over the Bureau's efforts to fulfill its fair lending mandate. 2017 was distinguished as a year in which the Office continued to focus on promoting fair, equitable and nondiscriminatory access to credit in mortgage lending, deepened its supervisory work in servicing and small business lending, and embarked on new efforts to encourage innovation in expanding credit access.

Mortgage lending remained a priority for the Bureau's fair lending supervisory and enforcement activity, focusing on redlining, underwriting, pricing, steering, servicing and HMDA data integrity. The Bureau announced a significant HMDA enforcement action in 2017, reinforcing the importance of the legal requirement that covered mortgage lenders must report accurate data about mortgage transactions. HMDA data is a critical component of the effective enforcement of fair lending laws.

Beyond mortgages, we know that other lending markets play a vital role in allowing consumers to fully participate as stakeholders in our economy, strengthening our communities, and expanding opportunities to build wealth for businesses and consumers alike. In 2017, the Bureau announced an enforcement action addressing discrimination in the terms and conditions of credit cards, and conducted significant fair lending supervisory activity in student loan servicing and small business lending.

The Office continued to partner with colleagues across the Bureau in outreach to support innovation that promotes ''fair, equitable, and nondiscriminatory access to credit for both individuals and communities,'' culminating in the Bureau's issuance of its first no-action letter (NAL) to Upstart Network, Inc., a company that uses alternative data in making credit and pricing decisions. I led the Bureau's engagement with Upstart, in furtherance of our interest in exploring methods of achieving fair lending compliance in conjunction with the use of alternative data and the potential benefits of such data in expanding credit access.

As 2017 drew to a close, the Office welcomed Acting Director Mick Mulvaney, and began work to implement his commitment to enforce the fair lending laws under the Bureau's jurisdiction.

I am proud of the Office's work not only in 2017, but also throughout its history in fulfilling its Dodd-Frank mandate to protect America's consumers from lending discrimination and promote credit access. To that end, I am excited to share our progress with this, our sixth, Fair Lending Report.[3]

Sincerely,

Patrice Alexander Ficklin

Executive Summary

The Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank or Dodd-Frank Act) [4] established the Office of Fair Lending and Equal Opportunity (the Office of Fair Lending) within the Bureau, and vested it with such powers and duties as the Bureau's Director may delegate to it, including:

(A) Providing oversight and enforcement of Federal laws intended to ensure the fair, equitable, and nondiscriminatory access to credit for both individuals and communities that are enforced by the Bureau, including the Equal Credit Opportunity Act and the Home Mortgage Disclosure Act;

(B) Coordinating fair lending efforts of the Bureau with other Federal agencies and State regulators, as appropriate, to promote consistent, efficient, and

[1] 15 U.S.C. 1691 *et seq.*

[2] 12 U.S.C. 2801 *et seq.*

[3] *See* Dodd-Frank Act section 1013(c)(2)(D) (codified at 12 U.S.C. 5493(c)(2)(D)).

[4] Public Law 111–203, 124 Stat. 1376 (2010).

effective enforcement of Federal fair lending laws;

(C) Working with private industry, fair lending, civil rights, consumer and community advocates on the promotion of fair lending compliance and education; and

(D) Providing annual reports to Congress on the efforts of the Bureau to fulfill its fair lending mandate.[5]

The law also requires the Bureau to file an annual report to Congress describing the administration of its functions under the Equal Credit Opportunity Act (ECOA), summarizing public enforcement actions taken by other agencies with administrative enforcement responsibilities under ECOA, and providing an assessment of the extent to which compliance with ECOA has been achieved.[6] In addition, the law requires the Bureau, in consultation with U.S. Department of Housing and Urban Development (HUD), to report annually on the utility of the Home Mortgage Disclosure Act's (HMDA) requirement that covered lenders itemize certain mortgage loan data.[7] This report to Congress from the Office of Fair Lending is intended to fulfill those requirements and report on the Bureau's efforts to fulfill its fair lending mandate during calendar year 2017.[8]

1. Interagency Reporting on ECOA and HMDA

The law requires the Bureau to file a report to Congress annually describing the administration of its functions under ECOA, summarizing public enforcement actions taken by other agencies with administrative enforcement responsibilities under ECOA, and providing an assessment of the extent to which compliance with ECOA has been achieved.[9] In addition, the Bureau's annual HMDA reporting requirement calls for the Bureau, in consultation with HUD, to report annually on the utility of HMDA's requirement that covered lenders itemize certain mortgage loan data.[10]

1.1 ECOA Enforcement

The enforcement efforts and compliance assessments made by all the agencies assigned enforcement authority under section 704 of ECOA are discussed in this section.

1.1.1 Public Enforcement Actions

In addition to the Bureau, the agencies charged with administrative enforcement of ECOA under section 704 include: The Federal Deposit Insurance Corporation (FDIC), the Federal Reserve Board (FRB), the National Credit Union Administration (NCUA), and the Office of the Comptroller of the Currency (OCC), (collectively, the Federal Financial Institutions Examination Council (FFIEC) agencies);[11] Agricultural Marketing Service (AMS) of the U.S. Department of Agriculture (USDA),[12] the Department of Transportation (DOT), the Farm Credit Administration (FCA), the Federal Trade Commission (FTC), the Securities and Exchange Commission (SEC), and the Small Business Administration (SBA).[13]

In 2017, the Bureau brought one public enforcement action for violations of ECOA, and the other agencies reported that they brought no public enforcement actions related to ECOA in 2017.

1.1.2 Violations Cited During ECOA Examinations

Among institutions examined for compliance with ECOA and Regulation B, the FFIEC agencies reported that the most frequently-cited violations were:

TABLE 1—REGULATION B VIOLATIONS CITED BY FFIEC AGENCIES: 2017

FFIEC Agencies reporting	Regulation B violations: 2017
The Bureau, FDIC, FRB, NCUA, OCC	12 CFR 1002.4(a): Discrimination on a prohibited basis in a credit transaction. 12 CFR 1002.5(b): Improperly inquiring about the race, color, religion, national origin, or sex of an applicant or any other person in connection with a credit transaction. 12 CFR 1002.7(d)(1), (d)(6): Improperly requiring the signature of an applicant's spouse or other person if the applicant qualifies under the creditor's standards of creditworthiness for the amount and terms of the credit requested; improperly imposing requirements upon an additional party that the creditor is prohibited from imposing upon an applicant. 12 CFR 1002.9(a)(1), (a)(1)(i), (a)(2), (b), (b)(2), (c)(1)(i): Failure to provide notice to the applicant 30 days after receiving a completed application concerning the creditor's approval of, counteroffer or adverse action on the application; failure to provide appropriate notice to the applicant 30 days after taking adverse action on an incomplete application; failure to provide sufficient information in an adverse action notification, including the specific reasons for the action taken. 12 CFR 1002.12(b)(1): Failure to preserve records of actions taken on an application or of incompleteness. 12 CFR 1002.13(a)(1)(i), (b): Failure to request information on an application regarding an applicant's ethnicity, race, sex, marital status, and age, or note, to the extent possible, the ethnicity, race, and sex of an applicant on the basis of visual observation or surname if not provided by the applicant. 12 CFR 1002.14(a), (a)(2): Failure to routinely provide an applicant with a copy of all appraisals and other written valuations developed in connection with an application for credit that is to be secured by a first lien on a dwelling, and/or failure to provide an applicant with a copy of an appraisal report upon an applicant's written request.

[5] Dodd-Frank Act section 1013(c)(2)(A), (B) and (C) (codified at 12 U.S.C. 5493(c)(2)(A), (B), and (C)).

[6] 15 U.S.C. 1691f.

[7] 12 U.S.C. 2807.

[8] *See* Dodd-Frank Act section 1013(c)(2)(D), Public Law 111–203, 124 Stat. 1376 (2010) (codified at 12 U.S.C. 5493(c)(2)(D)).

[9] 15 U.S.C. 1691f.

[10] 12 U.S.C. 2807.

[11] The FFIEC is a ''formal interagency body empowered to prescribe uniform principles, standards, and report forms for the Federal examination of financial institutions'' by the member agencies listed above and the State Liaison Committee ''and to make recommendations to promote uniformity in the supervision of financial institutions.'' Federal Financial Institutions Examination Council, *http://www.ffiec.gov* (last visited April 5, 2018). The FFIEC member agencies are the Board of Governors of the Federal Reserve System (FRB), the Federal Deposit Insurance Corporation (FDIC), the National Credit Union Administration (NCUA), the Office of the Comptroller of the Currency (OCC), and the Bureau of Consumer Financial Protection (Bureau). The State Liaison Committee was added to FFIEC in 2006 as a voting member.

[12] The Grain Inspection, Packers and Stockyards Administration (GIPSA) was eliminated as a stand-alone agency within USDA in 2017. The functions previously performed by GIPSA have been incorporated into the Agricultural Marketing Service (AMS), and ECOA reporting now comes from the Packers and Stockyards Division, Fair Trade Practices Program, AMS.

[13] 15 U.S.C. 1691c.

TABLE 2—REGULATION B VIOLATIONS CITED BY OTHER ECOA AGENCIES: 2017

Other ECOA agencies	Regulation B violations: 2017
FCA	12 CFR 1002.9(a)(1)(i): Failure to provide notice to the applicant 30 days after receiving a completed application concerning the creditor's approval of, counteroffer or adverse action on the application. 12 CFR 1002.13: Failure to request and collect information for monitoring purposes.

The AMS, the SEC, and the SBA reported that they received no complaints based on ECOA or Regulation B in 2017. In 2017, the DOT reported that it received a ''small number of consumer inquiries or complaints concerning credit matters possibly covered by ECOA,'' which it ''processed informally.'' The FTC is an enforcement agency and does not conduct compliance examinations.

1.2 Referrals to the Department of Justice

In 2017, the FFIEC agencies including the Bureau, referred a total of 11 ECOA matters involving discrimination in violation of ECOA to the Department of Justice (DOJ or Justice Department). The FDIC referred four matters to the DOJ involving discrimination in credit transactions on the prohibited bases of age, marital status, sex, and national origin. The FRB referred three matters to the DOJ involving discrimination in credit transactions on the prohibited basis of marital status. The NCUA referred two matters to the DOJ involving discrimination in credit transactions on the prohibited bases of marital status, receipt of public assistance income, and sex. The Bureau referred two matters to the DOJ involving discrimination in mortgage servicing on the prohibited basis of the receipt of public assistance income, and discrimination in credit card account management, installment lending, and mortgage servicing on the prohibited bases of national origin and race.

1.3 Reporting on the Home Mortgage Disclosure Act

The Bureau's annual HMDA reporting requirement calls for the Bureau, in consultation with HUD, to report annually on the utility of HMDA's requirement that covered lenders itemize loan data in order to disclose the number and dollar amount of certain mortgage loans and applications, grouped according to various characteristics.[14] The Bureau, in consultation with HUD, finds that itemization and tabulation of these data further the purposes of HMDA. For more information on HMDA and its implementing regulation, Regulation C with regard to guidance and rulemaking, please see the Rulemaking section of this report (Section 5).[15]

2. The Bureau's Fair Lending Prioritization

2.1 Risk-Based Prioritization

Because Congress charged the Bureau with responsibility for overseeing many lenders and products, the Office uses a risk-based approach to prioritize supervisory examinations and enforcement activity, to help ensure focus on areas that present substantial risk of credit discrimination for consumers.

As part of the prioritization process, the Bureau identifies emerging developments and trends by monitoring key consumer financial markets. If this market intelligence identifies fair lending risks in a particular market that require further attention, that information is incorporated into the prioritization process to determine the type and extent of attention required to address those risks. For instance, our monitoring highlighted potential steering risks in student loan servicing, which resulted in the prioritization of this market in our supervisory work in 2017.

The fair lending prioritization process incorporates a number of additional factors as well, including: Consumer complaints; tips and leads from advocacy groups, whistleblowers, and government agencies; supervisory and enforcement history; and results from analysis of HMDA and other data.

Once Fair Lending has evaluated these inputs to prioritize institutions, products, and markets based on an assessment of fair lending risk posed to consumers, it considers how best to address those risks as part of its annual strategic planning process. Potential actions include scheduling an institution for a supervisory review, opening an enforcement investigation where appropriate, conducting further research, policy development, or outreach. Once this strategic planning process is complete, we regularly coordinate with other regulators so we can inform each other's work, complement each other's efforts where appropriate, and reduce burden on subject institutions.

Risk-based prioritization is an ongoing process, and the Bureau continues to receive and evaluate relevant information even after priorities are identified. Such information may include new tips and leads about specific institutions, consumer complaints, additional risks identified in current supervisory and enforcement activities, and compliance issues self-identified by institutions. In determining how best to address this additional information, Fair Lending considers several factors, including (1) the nature and extent of the fair lending risk, (2) the degree of consumer harm, and (3) whether the risk was self-identified and/or self-reported to the Bureau. It also takes account of well-developed fair lending compliance management systems[16] and other responsible conduct as set forth in CFPB Bulletin 2013–06, Responsible Business Conduct: Self-Policing, Self-Reporting, Remediation, and Cooperation.[17]

2.2 Fair Lending Priorities

As a result of its annual risk-based prioritization analyses, in 2017 the Bureau focused on:[18]

- Redlining: Whether lenders intentionally discouraged prospective applicants in minority neighborhoods from applying for credit.
- Mortgage and Student Loan Servicing: Whether some borrowers who were behind on their mortgage or student loan payments may have been negatively impacted in their ability to

[14] *See* 12 U.S.C. 2807.

[15] For more information on recent developments in HMDA and Regulation C, see: *https://www.consumerfinance.gov/about-us/newsroom/bureau-consumer-financial-protection-issues-statement-implementation-economic-growth-regulatory-relief-and-consumer-protection-act-amendments-home-mortgage-disclosure-act/.*

[16] The Bureau previously has identified common features of a well-developed fair lending compliance management system: Consumer Financial Protection Bureau, Fair Lending Report of the Consumer Financial Protection Bureau at 13–14 (Apr. 2014), *http://files.consumerfinance.gov/f/201404_cfpb_report_fair-lending.pdf.*

[17] Consumer Financial Protection Bureau, *Responsible Business Conduct: Self-Policing, Self-Reporting, Remediation, and Cooperation,* CFPB Bulletin 2013–06 (June 25, 2013), *http://files.consumerfinance.gov/f/201306_cfpb_bulletin_responsible-conduct.pdf.*

[18] Patrice Ficklin, *Fair Lending priorities in the new year,* Consumer Financial Protection Bureau (Dec. 16, 2016), *http://www.consumerfinance.gov/about-us/blog/fair-lending-priorities-new-year/.*

work out a new solution with the servicer because of their race, ethnicity, sex, or age.

• Small Business Lending: Whether institutions are complying with the Congressional mandate to not discriminate on a prohibited basis in small business lending. Focus in this area includes improving Bureau understanding of: Small business lending credit processes; existing data collection processes; and the nature, extent, and management of fair lending risk in small business lending. Congress required the Bureau to promulgate a regulation governing small business loan data collection in order to ''facilitate enforcement of fair lending laws and enable communities, governmental entities, and creditors to identify business and community development needs and opportunities of women-owned, minority-owned, and small businesses.'' [19] Small business lending supervisory activity has helped expand and enhance the Bureau's knowledge in this area, including the credit process; existing data collection processes; and the nature, extent, and management of fair lending risk.

• The Bureau remains committed to ensuring that consumers are protected from discrimination in all credit markets under its legal authority.

3. Fair Lending Supervision

The Bureau's Fair Lending Supervision program assesses compliance with ECOA and HMDA at banks and nonbanks over which the Bureau has supervisory authority. Supervision activities in 2017 ranged from assessments of institutions' fair lending compliance management systems to in-depth reviews of products or activities that may pose heightened fair lending risks to consumers. As part of its Fair Lending Supervision program, the Bureau conducted three types of fair lending reviews: ECOA baseline reviews, ECOA targeted reviews, and HMDA data integrity reviews.

As a general matter, if such a review finds that an institution's fair lending compliance is inadequate, the Bureau communicates its supervisory expectations to the institution to help the institution establish fair lending compliance programs commensurate with the size and complexity of the institution and its lines of business.[20] Institutions may provide remediation and restitution to consumers in response to violations of fair lending laws identified in the review, and the Bureau may pursue other appropriate relief. The Bureau also refers matters to the Justice Department when it has reason to believe that a creditor has engaged in a pattern or practice of lending discrimination in violation of ECOA.[21] The Bureau also may refer other potential ECOA violations to the Justice Department.[22]

3.1 Fair Lending Supervisory Observations

The Bureau published results of certain 2017 supervisory exams in *Supervisory Highlights*. Those findings are also summarized below.

3.1.1 Update to Proxy Methodology

The Spring 2017 edition of *Supervisory Highlights,*[23] published in April 2017, discussed updates to the Bayesian Improved Surname Geocoding (BISG) proxy methodology for race and ethnicity,[24] which relies in part on publically available information from the Census. In December 2016, the U.S. Census Bureau released a list of the most frequently-occurring surnames based on the most recent census, which includes values for total counts and race and ethnicity shares associated with each surname. In total, the list provides information on the 162,253 surnames that appear at least 100 times in the most recent census, covering approximately 90% of the population.[25] In April 2017, examination teams began relying on an updated proxy methodology that reflected the newly available surname data from the Census Bureau.[26]

3.1.2 Mortgage Servicing

The Summer 2017 edition of *Supervisory Highlights*[27] reported on the Bureau's fair lending work in mortgage servicing. As part of its fair lending work, the Bureau seeks to ensure that creditors do not discriminate on any prohibited bases. Mortgage servicing, and specifically default servicing, may introduce fair lending risks because of the complexity of certain processes, the range of default servicing options, and the discretion that can sometimes exist in evaluating and selecting among available default servicing options.

In mortgage servicing, the Bureau's supervisory work has included use of the Mortgage Servicing Exam Procedures and the ECOA Baseline Modules, both of which are part of the Bureau's publically-available Supervision and Examination Manual. Bureau examination teams use these procedures to conduct ECOA Baseline Reviews, which evaluate institutions' compliance management systems (CMS), or ECOA Targeted Reviews, which are more in-depth reviews of activities that may pose heightened fair lending risks to consumers. These exam procedures contain questions about, among other things, the fair lending training of servicing staff, fair lending monitoring of servicing, and servicing of consumers with limited English proficiency.

In one or more ECOA targeted reviews of mortgage servicers, Bureau examiners found weaknesses in fair lending CMS. In general, examiners found deficiencies in oversight by board and senior management, monitoring and corrective action processes, compliance audits, and oversight of third-party service providers.

In one or more examinations, data quality issues, which were related to a lack of complete and accurate loan servicing records, made certain fair lending analyses difficult or impossible to perform. Examiners attributed these data quality issues to significant weaknesses in CMS-related policies, procedures, and service provider oversight.

Separately, fair lending analysis at one or more mortgage servicers was affected by a lack of readily-accessible information concerning a borrower's ethnicity, race, and sex information that had been collected pursuant to Regulation C and transferred to the

[19] *See* Dodd-Frank Act, Public Law 111–203, sec. 1071, 704B(a).

[20] For recent updates to the types of supervisory communications, see *https://s3.amazonaws.com/files.consumerfinance.gov/f/documents/bcfp_bulletin-2018-01_changes-to-supervisory-communications.pdf.*

[21] 15 U.S.C. 1691e(g).

[22] Id.

[23] Consumer Financial Protection Bureau, *Supervisory Highlights Spring 2017* at 14–15 (April 26, 2017), *https://www.consumerfinance.gov/documents/4608/201704_cfpb_Supervisory-Highlights_Issue-15.pdf.*

[24] For more information on the Bureau's use of BISG in 2017 and previously, see Consumer Financial Protection Bureau, *Supervisory Highlights Summer 2014* at 10–13 (September 17, 2014), *http://files.consumerfinance.gov/f/201409_cfpb_supervisory-highlights_auto-lending_summer-2014.pdf.*

[25] The surname data are available on the Census Bureau's website, *see* Frequently Occurring Surnames from the 2010 Census (last revised December 27, 2016), *https://www.census.gov/topics/population/genealogy/data/2010_surnames.html.*

[26] The new surname list; statistical software code, written in Stata; and other publicly available data used to build the BISG proxy are available at: *https://github.com/cfpb/proxy-methodology.*

[27] Consumer Financial Protection Bureau, *Supervisory Highlights Summer 2017* at 32–33 (September 12, 2017), *https://www.consumerfinance.gov/documents/5386/201709_cfpb_Supervisory-Highlights_Issue-16.pdf.*

servicer. One or more mortgage servicers acknowledged the importance of retaining in readily-accessible format—for the express purpose of performing future fair lending analyses—ethnicity, race, and sex data that it had received in the borrower's origination file.

4. Fair Lending Enforcement

The Bureau conducts investigations of potential violations of HMDA and ECOA, and if it believes a violation has occurred, can file a complaint either through its administrative enforcement process or in Federal court. Like the other Federal bank regulators, the Bureau refers matters to the DOJ when it has reason to believe that a creditor has engaged in a pattern or practice of lending discrimination.[28] However, when the Bureau makes a referral to the DOJ, the Bureau can still take its own independent action to address a violation. In 2016, the Bureau announced two fair lending enforcement actions in mortgage origination and indirect auto lending. The Bureau also has a number of ongoing fair lending investigations and has authority to settle or sue in a number of matters. In addition, the Bureau issued warning letters to mortgage lenders and mortgage brokers that may be in violation of HMDA requirements to report on housing-related lending activity.

4.1 Fair Lending Public Enforcement Actions

4.1.1 Mortgage

Nationstar Mortgage LLC

On March 15, 2017, the Bureau resolved an enforcement action against Nationstar Mortgage LLC (Nationstar) for violating HMDA by submitting mortgage loan data for 2012 through 2014 containing substantial errors. HMDA requires many mortgage lenders to collect and report data about their mortgage lending to appropriate Federal agencies and make it available to the public. The consent order requires Nationstar to pay a $1.75 million penalty to the Bureau's Civil Penalty Fund. The Nationstar action is the largest HMDA civil penalty imposed to date by the Bureau, which stems from Nationstar's market size, the substantial magnitude of its errors, and its history of previous violations.

In addition to paying the civil penalty, Nationstar must take the necessary steps to improve its compliance management and prevent future violations.[29] Nationstar also must review, correct, and make available its corrected HMDA data from 2012–14. Since the Bureau's examination, Nationstar has been taking steps to improve its HMDA compliance management system and increase the accuracy of its HMDA reporting.

Nationstar, a nationwide nonbank mortgage lender headquartered in Coppell, Texas (now doing business as Mr. Cooper), is a wholly-owned subsidiary of Nationstar Mortgage Holdings Inc. With nearly 3 million customers, Nationstar Mortgage Holdings is a major participant in the mortgage servicing and origination markets. According to 2014 data, Nationstar was the ninth-largest HMDA reporter by total mortgage originations, the sixth largest by applications received, and the thirteenth largest by money lent. From 2010 to 2014, Nationstar's number of HMDA mortgage loans increased by nearly 900 percent.

In its supervision process, the Bureau found that Nationstar's HMDA compliance systems were deficient, and not reasonably adapted to avoid the identified errors. Specifically, Nationstar failed to maintain detailed HMDA data collection and validation procedures, and failed to implement adequate compliance procedures, even after it knew was required to improve its HMDA compliance. It also produced HMDA data discrepancies by failing to consistently define data among its various lines of business. Nationstar has a history of HMDA non-compliance. In 2011, the Commonwealth of Massachusetts Division of Banks reached a settlement with Nationstar to address HMDA compliance deficiencies. The samples reviewed by the Bureau showed substantial error rates in three consecutive reporting years, even after the Massachusetts settlement was reached. In the samples reviewed, the Bureau found error rates of 13 percent in 2012, 33 percent in 2013, and 21 percent in 2014.

4.1.2 Credit Cards

American Express Centurion Bank and American Express Bank, FSB

On August 23, 2017, the Bureau took action against American Express Centurion Bank and American Express Bank, FSB (collectively referred to as American Express), for violating ECOA by discriminating against consumers in Puerto Rico, the U.S. Virgin Islands, and other U.S. territories by providing them with credit and charge card terms that were inferior in many respects to those available in the 50 U.S. states. American Express also discriminated against certain consumers with Spanish-language preferences by not providing them certain charge card collection offers that were provided to similarly-situated consumers without Spanish-language preferences. Over the course of at least ten years, more than 200,000 of these consumers were harmed by American Express's discriminatory practices. American Express has paid approximately $95 million in consumer redress during the course of the Bureau's review and American Express's review, and the Bureau Order requires it to pay at least another $1 million to fully compensate harmed consumers.[30]

Beginning in 2013, American Express self-reported to the Bureau differences between terms associated with its Puerto Rico and U.S. Virgin Islands cards (collectively, Puerto Rico cards) and its cards offered in the 50 U.S. states (U.S. cards), as well as differences with respect to certain consumers with a Spanish-language preference. Through the course of a supervisory review, the Bureau concluded that, from at least 2005 to 2015, American Express's Puerto Rico cards had different, and often worse, pricing, rebates, promotional offers, underwriting, customer and account management services, and collections practices than its U.S. cards. These differences spanned the product lifecycle and included: Charging higher fees and interest rates and offering less advantageous pricing on promotional offers; imposing more stringent credit score cutoffs and lower credit limits; applying certain inferior servicing policies; and requiring more money to settle debt. The Bureau's review found that these differences constituted discrimination on the prohibited bases of race and national origin in violation of ECOA.

Under the terms of the Bureau Order, American Express must develop and implement a comprehensive compliance plan to ensure that it provides credit and charge cards in a non-discriminatory manner to consumers in Puerto Rico, the U.S. territories, and customers in collection who prefer Spanish-language communications. The compliance plan must include any

[28] 15 U.S.C. 1691e(g).

[29] Consent Order, *In the Matter of Nationstar Mortgage LLC,* File No. 2017–CFPB–0011 (Mar. 15, 2017), *http://files.consumerfinance.gov/f/documents/201703_cfpb_Nationstar-Mortgage-consent-order.pdf.*

[30] Consent Order, *In the Matter of American Express Centurion Bank and American Express Bank, FSB,* File No. 2017–CFPB–0016 (Aug. 23, 2017), *https://s3.amazonaws.com/files.consumerfinance.gov/f/documents/201708_cfpb_american-express_content-order.pdf.*

necessary additional improvements to its compliance management system; compliance audit program; credit and charge card business structure, policies, and procedures; employee training procedures; and complaints procedures.

During the Bureau's review, American Express provided monetary and non-monetary relief to harmed consumers, resulting in approximately $95 million of remediation. The Bureau did not assess penalties based on a number of factors, including that American Express self-reported the violations to the Bureau, self-initiated remediation for the harm done to affected consumers, and fully cooperated with the Bureau's review and investigation.

4.2 Implementing Enforcement Orders

When an enforcement action is resolved through a public enforcement order, the Bureau (together with the Justice Department, when relevant) takes steps to ensure that the respondent or defendant complies with the requirements of the order. As appropriate to the specific requirements of individual public enforcement orders, the Bureau may take steps to ensure that borrowers who are eligible for compensation receive remuneration and that the defendant has complied with the injunctive provisions of the order, including implementing a comprehensive fair lending compliance management system. Throughout 2017, the Bureau worked to implement and oversee compliance with the pending public enforcement orders that were entered by Federal courts or issued by the Bureau's Director in prior years.

4.2.1 Settlement Administration

Settlement Administration

Toyota Motor Credit Corporation

On December 29, 2017, participation materials were mailed to potentially eligible African-American and Asian and Pacific Islander borrowers whom Toyota Motor Credit overcharged for their auto loans notifying them how to participate in the settlement, resulting from a 2016 enforcement action brought by the Bureau and Justice Department against Toyota for alleged discrimination in auto lending.[31]

Provident Funding Associates

On November 2, 2017, the Bureau announced the mailing of remuneration checks to consumers, totaling $9 million, plus accrued interest, to eligible borrowers resulting from a 2015 enforcement action brought by the Bureau and Justice Department against Provident for alleged discrimination in mortgage lending.[32]

American Honda Finance Corporation

On October 2, 2017, participating African-American, Hispanic, and Asian and/or Pacific Islander borrowers, whom Honda Finance overcharged for their auto loans, were mailed checks totaling $24 million, plus accrued interest, resulting from a 2015 enforcement action brought by the Bureau and Justice Department against Honda for alleged discrimination in auto lending.[33]

Ally Financial Inc. and Ally Bank

In 2017, Ally Financial Inc. and Ally Bank completed their payments totaling $48.8 million to consumers whom Ally determined were both eligible and overcharged on auto loans booked during 2016 pursuant to the December 2013 enforcement actions and consent orders with the Justice Department and the Bureau.

4.3 ECOA Referrals to the Department of Justice

The Bureau must refer to the Justice Department a matter when it has reason to believe that a creditor has engaged in a pattern or practice of lending discrimination in violation of ECOA.[34] The Bureau also may refer other potential ECOA violations to the DOJ.[35] In 2017, the Bureau referred two matters with ECOA violations to the Justice Department. In both of the matters, the DOJ deferred to the Bureau's handling of the matters and declined to open its own investigation. The Bureau's referrals to the DOJ in 2017 involved discrimination in mortgage servicing on the basis of the receipt of public assistance income, and discrimination in credit card account management, installment lending, and mortgage servicing on the bases of national origin and race.

4.4 Pending Fair Lending Investigations

In 2017, the Bureau had a number of ongoing fair lending investigations of a number of institutions involving a variety of consumer financial products. Consistent with the Bureau's risk-based priorities, one key area on which the Bureau focused its fair lending enforcement efforts was addressing potential discrimination in mortgage lending, including the unlawful practice of redlining. Redlining occurs when a lender provides unequal access to credit, or unequal terms of credit, because of the racial or ethnic composition of a neighborhood. At the end of 2017, the Bureau had a number of pending investigations in this and other areas.

5. Guidance and Rulemaking

5.1 HMDA and Regulation C

Consistent with the Bureau's obligation to work with private industry to ''promot[e] fair lending . . . compliance,'' in 2017 the Bureau published several regulatory and guidance documents related to HMDA and Regulation C, as reported below.[36]

On August 22, 2017, the Bureau, together with the other member agencies of the FFIEC, announced new FFIEC HMDA Examiner Transaction Testing Guidelines (Guidelines) for all financial institutions that report HMDA data.[37] The Guidelines will apply to the examination of HMDA data collected beginning in 2018, and reported beginning in 2019.

The Bureau issued a proposed rule in April 2017 [38] seeking comment on amendments to certain provisions of the 2015 HMDA Final Rule to make technical corrections and to clarify certain requirements under Regulation C, and issued a second proposal in July 2017 [39] to increase temporarily the institutional and transactional coverage thresholds for open-end lines of credit. On August 24, 2017, after reviewing the

[31] Consent Order, *In re Toyota Motor Credit Corp.*, CFPB No. 2016–CFPB–0002 (Feb. 2, 2016), *http://files.consumerfinance.gov/f/201602_cfpb_consent-order-toyota-motor-credit-corporation.pdf.*

[32] Patrice Alexander Ficklin, *African-American and Hispanic borrowers harmed by Provident will receive $9 million in compensation,* Consumer Financial Protection Bureau (Nov. 2, 2017), *https://www.consumerfinance.gov/about-us/blog/african-american-and-hispanic-borrowers-harmed-provident-will-receive-9-million-compensation/.*

[33] Consent Order, *In re American Honda Finance Corp.,* CFPB No. 2015–CFPB–0014 (July 14, 2015), *http://files.consumerfinance.gov/f/201507_cfpb_consent-order_honda.pdf.*

[34] 15 U.S.C. 1691e(g).

[35] Id.

[36] *See* Dodd-Frank Act section 1013(c)(2)(C), Public Law 111–203, 124 Stat. 1376 (2010) (codified at 12 U.S.C. 5493(c)(2)(C)).

[37] FFIEC HMDA Examiner Transaction Testing Guidelines, *https://s3.amazonaws.com/files.consumerfinance.gov/f/documents/201708_cfpb_ffiec-hmda-examiner-transaction-testing-guidelines.pdf.*

[38] Technical Corrections and Clarifying Amendments to the Home Mortgage Disclosure (Regulation C) October 2015 Final Rule, *https://www.consumerfinance.gov/policy-compliance/rulemaking/rules-under-development/technical-corrections-and-clarifying-amendments-home-mortgage-disclosure-october-2015-final-rule/.*

[39] Home Mortgage Disclosure (Regulation C), Temporary Increase in Institutional and Transactional Coverage Thresholds for Open-End Lines of Credit, *https://www.consumerfinance.gov/policy-compliance/rulemaking/rules-under-development/home-mortgage-disclosure-regulation-c-temporary-increase-institutional-and-transactional-coverage-thresholds-open-end-lines-credit/.*

comments received, the Bureau issued a final rule amending Regulation C.[40]

On September 20, 2017, the Bureau issued proposed policy guidance regarding the data the Bureau may make available to the public beginning in 2019 from the HMDA data collected by financial institutions in or after 2018. The proposal described the modifications that the Bureau intends to apply to the loan-level HMDA data to protect applicant and borrower privacy, and it sought comment on those proposals.[41]

In December 2017, the FFIEC agencies issued public statements on HMDA implementation announcing that the Bureau does not intend to require data resubmission unless data errors are material or assess penalties with respect to errors in data collected in 2018 and reported in 2019 under HMDA. The Bureau's statement also announced that the Bureau intends to engage in a rulemaking to reconsider various aspects of the 2015 HMDA Rule such as the institutional and transactional coverage tests and the rule's discretionary data points.[42]

5.1.1 HMDA Announcement

On December 21, 2017, the Bureau issued the following public statement regarding HMDA implementation:

Recognizing the impending January 1, 2018 effective date of the Bureau's amendments to Regulation C and the significant systems and operational challenges needed to adjust to the revised regulation, for HMDA data collected in 2018 and reported in 2019 the Bureau does not intend to require data resubmission unless data errors are material. Furthermore, the Bureau does not intend to assess penalties with respect to errors in data collected in 2018 and reported in 2019. Collection and submission of the 2018 HMDA data will provide financial institutions an opportunity to identify any gaps in their implementation of amended Regulation C and make improvements in their HMDA compliance management systems for future years. Any examinations of 2018 HMDA data will be diagnostic to help institutions identify compliance weaknesses and will credit good faith compliance efforts. The Bureau intends to engage in a rulemaking to reconsider various aspects of the 2015 HMDA Rule such as the institutional and transactional coverage tests and the rule's discretionary data points.

For data collected in 2017, financial institutions will submit their reports in 2018 in accordance with the current Regulation C using the Bureau's HMDA Platform.[43]

5.2 ECOA and Regulation B

On March 24, 2017, the Bureau issued a proposed rule seeking comment on amendments to Regulation B providing creditors additional flexibility in complying with Regulation B in order to facilitate compliance with Regulation C, adding certain model forms and removing others from Regulation B, and making various other amendments to Regulation B and its commentary to facilitate the collection and retention of information about the ethnicity, sex, and race of certain mortgage applicants.[44] After considering the comments received, the Bureau issued a final rule on September 20, 2017, amending Regulation B.[45]

On November 20, 2017, the Bureau issued an official approval pursuant to section 706(e) of ECOA of the final redesigned Uniform Residential Loan Application that included a question asking applicant language preference.[46] Bureau staff determined that the final redesigned URLA is in compliance with Regulation B § 1002.5(b) through (d), which provide rules regarding requests for information.[47]

5.3 Small Business Data Collection

Section 1071 of the Dodd-Frank Act amends ECOA to require financial institutions to collect, report, and make public certain information concerning credit applications made by women-owned, minority-owned, and small businesses. The amendments to ECOA made by the Dodd-Frank Act require that specific data be collected, maintained, and reported, including but not limited to the type of loan applied for, the amount of credit applied for, the type of action taken with regard to each application, the census tract of the principal place of business of the loan applicant, and the race, sex, and ethnicity of the principal owners of the business. The Dodd-Frank Act also provides authority for the Bureau to require any additional data that the Bureau determines would aid in fulfilling the purposes of section 1071. The Bureau issued a Request for Information in 2017 seeking public comment on, among other things, the types of credit products offered and the types of data currently collected by small business lenders and the potential complexity, cost of, and privacy issues related to, small business lending data collection. The information received will help the Bureau determine how to implement efficiently the Dodd-Frank Act's mandate regarding small business lending data reporting, while minimizing burdens on lenders.

5.4 Amicus Program

The Bureau's Amicus Program files amicus, or friend-of-the-court, briefs in court cases concerning the Federal consumer financial protection laws that the Bureau is charged with implementing, including ECOA. These amicus briefs provide the courts with Bureau views on significant consumer financial protection issues and help ensure that consumer financial protection statutes and regulations are correctly and consistently interpreted by the courts.

On September 13, 2017, the Bureau filed an amicus brief in *Regions Bank* v. *Legal Outsource PA,* in the United States Court of Appeals for the Eleventh Circuit.[48] This case involves claims under ECOA against a bank that allegedly required a business owner's spouse to guarantee a loan to the business because of the fact that the business owner was married. The

[40] Consumer Financial Protection Bureau, *Home Mortgage Disclosure (Regulation C) Final Rule, https://www.consumerfinance.gov/policy-compliance/rulemaking/final-rules/regulation-c-home-mortgage-disclosure-act/.*

[41] Disclosure of Loan-Level HMDA Data, *http://files.consumerfinance.gov/f/documents/201709_cfpb_hmda-disclosure-policy-guidance.pdf.*

[42] Consumer Financial Protection Bureau, *CFPB Issues Public Statement On Home Mortgage Disclosure Act Compliance,* (December 21, 2017), *https://www.consumerfinance.gov/about-us/newsroom/cfpb-issues-public-statement-home-mortgage-disclosure-act-compliance/.*

[43] *CFPB Issues Public Statement On Home Mortgage Disclosure Act Compliance* (December 21, 2017), *https://www.consumerfinance.gov/about-us/newsroom/cfpb-issues-public-statement-home-mortgage-disclosure-act-compliance/.*

[44] Proposed Amendments to Equal Credit Opportunity Act (Regulation B) Ethnicity and Race Information Collection, *https://s3.amazonaws.com/files.consumerfinance.gov/f/documents/201703_cfpb_NPRM-to-amend-Regulation-B.pdf.*

[45] Amendments to Equal Credit Opportunity Act (Regulation B) Ethnicity and Race Information Collection, *https://www.consumerfinance.gov/policy-compliance/rulemaking/final-rules/amendments-equal-credit-opportunity-act-regulation-b-ethnicity-and-race-information-collection/.*

[46] Consumer Financial Protection Bureau, *Final Redesigned Uniform Residential Loan Application Status under Regulation B,* (Nov. 20, 2017), *https://s3.amazonaws.com/files.consumerfinance.gov/f/documents/cfpb_urla-language-preference-question_bureau-official-approval_112017.pdf.*

[47] Regulation B § 1002.5(b) provides rules concerning requests for information about race, color, religion, national origin, or sex. Section 1002.5(c) provides rules concerning requests for information about a spouse or former spouse. Section 1002.5(d) provides rules concerning requests for information regarding marital status; income from alimony, child support, or separate maintenance; and childbearing or childrearing.

[48] A copy of the Bureau's amicus brief is available on its amicus web page, *https://www.consumerfinance.gov/policy-compliance/amicus/briefs/regions-bank-v-legal-outsource-pa/.*

Bureau filed an amicus brief arguing that the district court erred in rejecting claims by the business and various guarantors of the loan. First, the brief argued that a business entity can state a claim for ECOA discrimination based on its owner's marital status. Second, the brief argued that regulations issued pursuant to ECOA reasonably interpret the term ''applicant'' to encompass guarantors such that non-borrowers who are required to guarantee their spouse's loans can state claims for marital-status discrimination.

5.5 No-Action Letter

In 2017, the Bureau maintained a ''No Action Letter'' policy [49] that allowed companies to apply for a statement from Bureau staff regarding an innovative product or service that offers the potential for significant consumer benefit where there is substantial uncertainty about whether or how specific provisions of law would be applied. A no-action letter issued pursuant to that policy would advise a recipient that staff has no present intention to recommend initiation of an enforcement or supervisory action with respect to the specific matter.

On September 14, 2017, Bureau staff issued its first no-action letter to Upstart Network, Inc., a company that uses alternative data in making credit and pricing decisions.[50] The Bureau's no-action letter stated that Bureau staff had no present intention to recommend initiation of an enforcement or supervisory action against Upstart with regard to application of ECOA and Regulation B. The letter applies to Upstart's automated model for underwriting applicants for unsecured non-revolving credit, as that model is described in the company's application materials. The letter is specific to the facts and circumstances of Upstart and does not serve as an endorsement of the use of any particular variables or modeling techniques in credit underwriting.

Upstart Network, Inc. is based in San Carlos, California, and provides an online lending platform for consumers to apply for personal loans, including credit card refinancing, student loans, and debt consolidation. Upstart evaluates consumer loan applications using traditional factors such as credit score and income, as well as incorporating non-traditional sources of data such as education and employment history.

Under the terms of the no-action letter, Upstart will share certain information with the Bureau regarding the loan applications it receives, how it decides which loans to approve, and how it will mitigate risk to consumers, as well as information on how its model expands access to credit for traditionally-underserved populations. The Bureau expects that this information will further its understanding of the use of alternative data in credit decision-making.

The Upstart no-action letter was part of the Bureau's continued exploration in 2017 of innovation through the use of alternative data to help expand responsible and fair credit access for consumers who are credit invisible or lack sufficient credit history to provide them traditional access to credit markets.

6. Interagency Coordination

6.1 Interagency Coordination and Engagement

The Office of Fair Lending regularly coordinates the Bureau's fair lending regulatory, supervisory, and enforcement activities with those of other Federal agencies and State regulators to promote consistent, efficient, and effective enforcement of Federal fair lending laws.[51] Through our interagency engagement, we work to address current and emerging fair lending risks.

On August 22, 2017, the FFIEC agencies announced new HMDA Examiner Transaction Testing Guidelines (Guidelines).[52] The new Guidelines were accompanied by the release of a blog post by the Bureau.[53] The Guidelines represent a joint effort led by the Bureau, together with the FDIC, the FRB, the NCUA, and the OCC to provide—for the first time—uniform guidelines across all Federal HMDA supervisory agencies. This collaboration began with the Bureau issuing a Request for Information [54] and holding outreach meetings in which the other supervisory agencies participated. The agencies then worked together to develop the Guidelines.

The Bureau, along with the FTC, DOJ, HUD, FDIC, FRB, NCUA, OCC, and the Federal Housing Finance Agency, comprise the *Interagency Task Force on Fair Lending*. The Task Force meets regularly to discuss fair lending enforcement efforts, share current methods of conducting supervisory and enforcement fair lending activities, and coordinate fair lending policies.

The Bureau belongs to a standing working group of Federal agencies—with the DOJ, HUD, and FTC—that meets regularly to discuss issues relating to fair lending enforcement. These agencies constitute the *Interagency Working Group on Fair Lending Enforcement*. The agencies use these meetings to discuss fair lending developments and trends, methodologies for evaluating fair lending risks and violations, and coordination of fair lending enforcement efforts. In addition to these interagency working groups, we meet periodically and on an ad hoc basis with the Justice Department and prudential regulators to coordinate our fair lending work.

In 2017, the Bureau chaired the *FFIEC HMDA/Community Reinvestment Act Data Collection Subcommittee,* a subcommittee of the FFIEC Task Force on Consumer Compliance (Task Force), that oversees FFIEC projects and programs involving HMDA data collection and dissemination, the preparation of the annual FFIEC budget for processing services, and the development and implementation of other related HMDA processing projects as directed by the Task Force.

7. Outreach: Promoting Fair Lending Compliance and Education

Pursuant to Dodd-Frank,[55] the Office of Fair Lending regularly engages in outreach with industry, bar associations, consumer advocates, civil rights organizations, academia, and other government agencies, to help educate and inform our stakeholders about fair lending as well as learn about emerging trends or products that pose fair lending risk. The Bureau is committed to communicating directly with all stakeholders on its policies, compliance expectations, and fair lending priorities, and to receiving valuable input on fair

[49] See proposed policy at: *https://www.consumerfinance.gov/policy-compliance/notice-opportunities-comment/archive-closed/proposed-policy-on-no-action-letters/.*

[50] *CFPB Announces First No-Action Letter to Upstart Network,* Consumer Financial Protection Bureau (Sept. 14, 2017), *https://www.consumerfinance.gov/about-us/newsroom/cfpb-announces-first-no-action-letter-upstart-network/.*

[51] Dodd-Frank Act section 1013(c)(2)(B) (codified at 12 U.S.C. 5493(c)(2)(B)).

[52] FFIEC HMDA Examiner Transaction Testing Guidelines, *https://s3.amazonaws.com/files.consumerfinance.gov/f/documents/201708_cfpb_ffiec-hmda-examiner-transaction-testing-guidelines.pdf.*

[53] Tim Lambert & Eric Wang, *Here's what you need to know about the new FFIEC HMDA Examiner Transaction Testing Guidelines,* Consumer Financial Protection Bureau (Aug. 22, 2017), *https://www.consumerfinance.gov/about-us/blog/heres-what-you-need-know-about-new-ffiec-hmda-examiner-transaction-testing-guidelines/.*

[54] Request for Info. Regarding Home Mortgage Disclosure Act Resubmission Guidelines, 81 FR 1,405 (Jan. 12, 2016), *https://www.gpo.gov/fdsys/pkg/FR-2016-01-12/pdf/2016-00442.pdf.*

[55] Dodd-Frank Act section 1013(c)(2)(C) (codified at 12 U.S.C. 5493(c)(2)(C)).

lending issues. Outreach is accomplished through issuance of Reports to Congress, Interagency Statements, *Supervisory Highlights,* Compliance Bulletins, letters, blog posts, speeches and presentations at conferences and trainings, and participation in meetings to discuss fair lending and access to credit.

7.1 Blog Posts

The Bureau regularly uses its blog as a tool to communicate effectively to consumers and other stakeholders on timely issues, emerging areas of concern, Bureau initiatives, and more. In 2017 we published five blog posts related to fair lending topics including: Providing consumers updated information about a fair lending enforcement action,[56] announcing the Bureau's first no-action letter,[57] announcing new guidelines on HMDA examiner transaction testing,[58] issuing an official approval of the final redesigned Uniform Residential Loan Application,[59] and noting the release of the fair lending annual report on 2016 activities.[60]

The blog posts may be accessed at *www.consumerfinance.gov/blog.*

7.2 Supervisory Highlights

Supervisory Highlights reports anchor the Bureau's efforts to communicate about the Bureau's supervisory activity. More information about the topics discussed this year in *Supervisory Highlights* can be found in Section 3.1 of this Report. As with all Bureau resources, all editions of *Supervisory Highlights* are available on *www.consumerfinance.gov/reports.*

7.3 Speaking Engagements & Roundtables

Staff from the Bureau's Office of Fair Lending and Equal Opportunity participated in a number of outreach speaking events and roundtables throughout 2017 to further the Bureau's mission of educating and informing stakeholders about fair lending and receiving input from stakeholders. In these events, staff shared information on fair lending priorities, emerging issues, and heard feedback from stakeholders on Bureau fair-lending work. Some examples of the topics covered include fair lending priorities, fair lending modeling and governance, redlining, HMDA, small business lending, alternative data, and installment lending contracts.

APPENDIX A: DEFINED TERMS

Term	Definition
AMS	Agricultural Marketing Service of the U.S. Department of Agriculture.
Bureau	The Bureau of Consumer Financial Protection.
CMS	Compliance Management System.
CRA	Community Reinvestment Act.
Dodd-Frank Act	The Dodd-Frank Wall Street Reform and Consumer Protection Act.
DOJ	The U.S. Department of Justice.
DOT	The U.S. Department of Transportation.
ECOA	The Equal Credit Opportunity Act.
FCA	Farm Credit Administration.
FDIC	The U.S. Federal Deposit Insurance Corporation.
Federal Reserve Board	The U.S. Board of Governors of the Federal Reserve System.
FFIEC	The U.S. Federal Financial Institutions Examination Council—the FFIEC member agencies are the Board of Governors of the Federal Reserve System (FRB), the Federal Deposit Insurance Corporation (FDIC), the National Credit Union Administration (NCUA), the Office of the Comptroller of the Currency (OCC), and the Bureau of Consumer Financial Protection (BCFP). The State Liaison Committee was added to FFIEC in 2006 as a voting member.
FRB	The U.S. Board of Governors of the Federal Reserve System.
FTC	The U.S. Federal Trade Commission.
GIPSA	Grain Inspection, Packers and Stockyards Administration (GIPSA) of the U.S. Department of Agriculture.
HMDA	The Home Mortgage Disclosure Act.
HUD	The U.S. Department of Housing and Urban Development.
NCUA	The National Credit Union Administration.
OCC	The U.S. Office of the Comptroller of the Currency.
SBA	Small Business Administration.
SEC	U.S. Securities and Exchange Commission.
USDA	U.S. Department of Agriculture.

[2]. Regulatory Requirements

This Fair Lending Report of the Bureau of Consumer Financial Protection summarizes existing requirements under the law, and summarizes findings made in the course of exercising the Bureau's supervisory and enforcement authority. It is therefore exempt from notice and comment rulemaking requirements under the Administrative Procedure Act pursuant to 5 U.S.C. 553(b). Because no

[56] Patrice Alexander Ficklin, *African-American and Hispanic borrowers harmed by Provident will receive $9 million in compensation,* Consumer Financial Protection Bureau (Nov. 2, 2017), *https://www.consumerfinance.gov/about-us/blog/african-american-and-hispanic-borrowers-harmed-provident-will-receive-9-million-compensation/.*

[57] Patrice Alexander Ficklin and Dan Quan, *Supporting consumer-friendly innovation: Announcing our first no-action letter,* Consumer Financial Protection Bureau (Sept. 14, 2017), *https://www.consumerfinance.gov/about-us/blog/supporting-consumer-friendly-innovation-announcing-our-first-no-action-letter/.*

[58] Tim Lambert & Eric Wang, *Here's what you need to know about the new FFIEC HMDA Examiner Transaction Testing Guidelines,* Consumer Financial Protection Bureau (Aug. 22, 2017), *https://www.consumerfinance.gov/about-us/blog/heres-what-you-need-know-about-new-ffiec-hmda-examiner-transaction-testing-guidelines/.*

[59] J. Frank Vespa-Papaleo, *Identification of language preference on the Uniform Residential Loan Application,* Consumer Financial Protection Bureau (Nov. 20, 2017), *https://www.consumerfinance.gov/about-us/blog/identification-language-preference-uniform-residential-loan-application/.*

[60] Patrice Alexander Ficklin, *Safeguarding against credit discrimination: 2016 Fair Lending Report* (April 14, 2017), *https://www.consumerfinance.gov/about-us/blog/safeguarding-against-credit-discrimination-2016-fair-lending-report/.*

notice of proposed rulemaking is required, the Regulatory Flexibility Act does not require an initial or final regulatory flexibility analysis. 5 U.S.C. 603(a), 604(a). The Bureau has determined that this Fair Lending Report does not impose any new or revise any existing recordkeeping, reporting, or disclosure requirements on covered entities or members of the public that would be collections of information requiring OMB approval under the Paperwork Reduction Act, 44 U.S.C. 3501, *et seq.*

Dated: February 1, 2019.

Kathleen L. Kraninger,

Director, Bureau of Consumer Financial Protection.

[FR Doc. 2019–01568 Filed 2–7–19; 8:45 am]

BILLING CODE 4810–AM–P

DEPARTMENT OF DEFENSE

Department of the Air Force

Notice of Intent To Grant an Exclusive Patent License

AGENCY: Department of the Air Force, Department of Defense.

ACTION: Notice of Intent.

SUMMARY: Pursuant to the Bayh-Dole Act and implementing regulations, the Department of the Air Force hereby gives notice of its intent to grant an exclusive patent license agreement to VyrticalXpress LLC, a corporation of the State of Ohio, having a place of business at 5200 Springfield Road, Suite 300, Dayton, Ohio 45431.

DATES: Written objections must be filed no later than fifteen (15) calendar days after the date of publication of this Notice.

ADDRESSES: Submit written objections to the Air Force Materiel Command Law Office, AFMCLO/JAZ, 2240 B Street, Room 260, Wright-Patterson AFB, OH 45433–7109; Facsimile: (937) 255–3733; or Email: *afmclo.jaz.tech@us.af.mil.* Include Docket No. ARH–190107B–PL in the subject line of the message.

FOR FURTHER INFORMATION CONTACT: Air Force Materiel Command Law Office, AFMCLO/JAZ, 2240 B Street, Rm. 260, Wright-Patterson AFB, OH 45433–7109; Facsimile: (937) 255–3733; Email: *afmclo.jaz.tech@us.af.mil.*

SUPPLEMENTARY INFORMATION: The Department of the Air Force intends to grant an exclusive patent license agreement for the invention described in:

—U.S. Patent No. 9,230,549, entitled, ''MULTI-MODAL COMMUNICATIONS,'' filed May 18, 2011, and issued January 5, 2016.

The Department of the Air Force may grant the prospective license unless a timely objection is received that sufficiently shows the grant of the license would be inconsistent with the Bayh-Dole Act or implementing regulations. A competing application for a patent license agreement, completed in compliance with 35 U.S.C. 209; 37 CFR 404.8 and received by the Air Force within the period for timely objections, will be treated as an objection and may be considered as an alternative to the proposed license.

Henry Williams,

Acting Air Force Federal Register Liaison Officer.

[FR Doc. 2019–01590 Filed 2–7–19; 8:45 am]

BILLING CODE 5001–10–P

DEPARTMENT OF DEFENSE

Department of the Army

[Docket ID: USA–2019–HQ–0004]

Proposed Collection; Comment Request

AGENCY: Department of the Army, DoD.

ACTION: Information collection notice.

SUMMARY: In compliance with the *Paperwork Reduction Act of 1995,* the Department of the Army announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the agency's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by April 9, 2019.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.

Mail: Department of Defense, Office of the Chief Management Officer, Directorate for Oversight and Compliance, 4800 Mark Center Drive, Mailbox #24, Suite 08D09, Alexandria, VA 22350–1700.

Instructions: All submissions received must include the agency name, docket number and title 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: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the Department of the Army, Military Surface Deployment and Distribution Command, 1 Soldier Way, Scott AFB IL 62225–5006, ATTN: Mr. J.D. Ranbarger, or call Department of the Army Reports Clearance Officer at (703) 428–6440.

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Department of Defense Standard Tender of Freight Services; SDDC Form 364–R; OMB Control Number 0704–0261.

Needs and Uses: The information derived from the DoD tenders on file with the Military Surface Deployment and Distribution Command (SDDC) is used by SDDC subordinate commands and DoD shippers to select the best value carriers to transport surface freight shipments. Freight carriers furnish information in a uniform format so that the Government can determine the cost of transportation, accessorial, and security services, and select the best value carriers for 1.1 million Bill of Lading shipments annually. The DoD tender is the source document for the General Services Administration post-shipment audit of carrier freight bills.

Affected Public: Business or other for-profit.

Annual Burden Hours: 27,351.

Number of Respondents: 82,053.

Responses per Respondent: 1.

Annual Responses: 82,053.

Average Burden per Response: 20 minutes.

Frequency: On occasion.

The DoD tender format was developed to take advantage of improved information collection technology and to connect with ongoing initiatives to implement automated systems to file tenders, select carriers, quote rates, and audits. The disciplined data fields of the tenders will facilitate the Electronic Data Interchange of tender data between carriers and SDDC, also between SDDC

subordinate commands and DoD shippers. This initiative ultimately will permit electronic filing of the tender and eliminate mailing paper documents, which are manually processed.

Dated: February 5, 2019.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2019–01671 Filed 2–7–19; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Army

[Docket ID USA–2019–HQ–0003]

Proposed Collection; Comment Request

AGENCY: Department of the Army, DoD.

ACTION: Information collection notice.

SUMMARY: In compliance with the *Paperwork Reduction Act of 1995,* the Department of the Army announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the agency's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by April 9, 2019.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.

Mail: Department of Defense, Office of the Chief Management Officer, Directorate for Oversight and Compliance, 4800 Mark Center Drive, Mailbox #24, Suite 08D09, Alexandria, VA 22350–1700.

Instructions: All submissions received must include the agency name, docket number and title 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: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to Department of the Army, Operations & Plans Officer Mortuary Affairs and Casualty Support Division, PERSCOM, (ATTN: Mr. Harold Campbell), 200 Stovall Street, Hoffman I, Alexandria, Virginia 22332–0300, or call the Department of the Army Reports Clearance Officer at (703) 428–6440.

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Disposition of Remains—Reimbursable Basis and Request for Payment of Funeral and/or Interment Expense; DD Forms 2065 and 1375; OMB Control Number 0704–0030.

Needs and Uses: DD Form 2065 records disposition instructions and costs for preparation and final disposition of remains. DD Form 1375 provides next-of-kin an instrument to apply for reimbursement of funeral/interment expenses. This information is used to adjudicate claims for reimbursement of these expenses.

Affected Public: Individuals or Households.

Annual Burden Hours: 612.5.

Number of Respondents: 2,450.

Responses per Respondent: 1.

Annual Responses: 2,450.

Average Burden per Response: 15 minutes.

Frequency: On occasion.

DD Forms 2065 and 1375 are initially prepared by military authorities and presented to the next-of-kin or sponsor to fill-in the reimbursable costs or desired disposition of remains. Without the information on these forms the government would not be able to respond to the survivor's wishes or justify its expenses in handling the deceased. Also available at government expense is transportation of the remains to a port of entry in the United States.

Dated: February 5, 2019.

Shelly E. Finke,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. 2019–01598 Filed 2–7–19; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

Availability of the Draft Feasibility Report and Environmental Impact Statement/Environmental Impact Report for the Prado Basin Ecosystem Restoration and Water Conservation Integrated Feasibility Study, Riverside, San Bernardino and Orange Counties, California

AGENCY: U. S. Army Corps of Engineers, DoD.

ACTION: Notice of availability.

SUMMARY: The U.S. Army Corps of Engineers (Corps) in cooperation with the Orange County Water District announces the availability of a Draft Feasibility Report and Environmental Impact Statement/Environmental Impact Report (FR/EIS/EIR) for the Prado Basin Ecosystem Restoration and Water Conservation Integrated Feasibility Study for review and comment. The study area is located within and downstream of Prado Dam Reservoir and includes portions of Riverside, San Bernardino and Orange Counties, California. The study evaluates alternatives for the restoration of degraded ecosystem structure, function, and dynamic processes to a less degraded, more natural condition within Prado Dam Reservoir and the Santa Ana River downstream of the dam. The study also includes water conservation through re-operation of Prado Dam to capture, retain and release additional water volumes impounded during flood risk management operations. Details of the potential ecosystem restoration measures, water conservation plan and an array of alternatives are identified in the Draft FR/EIS/EIR. Four alternatives are evaluated in the Draft FR/EIS/EIR, including the No Federal Action/No Project Alternative. Potential environmental impacts associated with these project alternatives are addressed in the Draft FR/EIS/EIR. A Notice of Intent for the EIS/EIR was published on November 16, 2012 (73 FR 72455).

DATES: The Draft FR/EIS/EIR is available for a 45-day review period from February 11, 2019 through March 27, 2019 pursuant to the National Environmental Policy Act (NEPA) and California Environmental Quality Act (CEQA). Written comments pursuant to NEPA will be accepted until the close of public review at close of business on March 27, 2019.

ADDRESSES: Comments shall be submitted to: Mr. Eduardo Demesa, U.S.

Army Corps of Engineers, Los Angeles District, Planning Division, 915 Wilshire Boulevard, Los Angeles, CA 90017; ATTN: Ms. Megan Wong, CESPL–PDR–N.

FOR FURTHER INFORMATION CONTACT: Ms. Megan Wong, Environmental Coordinator, Ecosystem Planning Section, *Megan.T.Wong@usace.army.mil,* telephone (213) 448–4517; or Mr. Stuart Strum, Senior Planner, Plan Formulation Branch/Section A, *Stuart.R.Strum@usace.army.mil,* telephone (213) 452–3862.

SUPPLEMENTARY INFORMATION: As part of the public involvement process, notice is hereby given by the Corps Los Angeles District of a public meeting to be held at the Prado Dam Resident Office, Visitor Center, 2493 Pomona-Rincon Road, Corona, CA 92880, at 2:00 p.m. and at 6:00 p.m. (Pacific Standard Time), Thursday, March 7, 2019. The public meeting will allow participants the opportunity to comment on the Draft FR/EIS/EIR. Attendance at the public hearing is not necessary to provide comments. Written comments may also be given to the contacts listed under **ADDRESSES**.

The document is available for review at:

(1) Online at *https://www.spl.usace.army.mil/Missions/Civil-Works/Projects-Studies/Prado-Basin-Feasibility-Study/.*

(2) List of Libraries; CD and Hard Copy.

Anaheim Public Library, 500 West Broadway, Anaheim, CA 92805
Yorba Linda Public Library, 18181 Imperial Highway, Yorba Linda, CA 92886
Corona Public Library, 650 Main Street, Corona, CA 92882
Norco Public Library, 3240 Hamner Ave., Suite 101B, Norco, CA 91760
Eastvale Branch Library, 7447 Scholar Way, Eastvale, CA 92880
Riverside Public Library, 3581 Mission Inn Avenue, Riverside, CA 92501
UC Riverside General Library, PO Box 5900, Riverside, CA 92517
San Bernardino County Library, 555 West 6th Street, San Bernardino, CA 92410
Chino Branch Library, 13180 Central Ave., Chino, CA 91710
Chino Hills Branch Library, 14020 City Center Drive, Chino Hills, CA 91709

Dated: February 1, 2019.

Aaron C. Barta,

Colonel, U.S. Army, Commander and District Engineer.

[FR Doc. 2019–01649 Filed 2–7–19; 8:45 am]

BILLING CODE 3720–58–P

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

Notice of Intent To Prepare an Environmental Impact Statement for Implementing Test Releases From Fort Peck Dam, Montana

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DoD.

ACTION: Notice.

SUMMARY: Pursuant to the National Environmental Policy Act of 1969 (NEPA), as amended, the U.S. Army Corps of Engineers (USACE), Omaha District, intends to prepare an Environmental Impact Statement (EIS) for implementing test flow releases from Fort Peck Dam, Montana, intended to benefit the federally endangered pallid sturgeon *(Scaphirynchus albus).*

FOR FURTHER INFORMATION CONTACT: Tiffany Vanosdall, U.S. Army Corps of Engineers at (402) 995–2695 or by email at *tiffany.k.vanosdall@usace.army.mil.*

SUPPLEMENTARY INFORMATION: In the January 19, 2018 amendment to the October 30, 2017 Biological Assessment (BA) for the Operation of the Missouri River Mainstem Reservoir System, the Operation and Maintenance of the Bank Stabilization and Navigation Project, the Operation of the Kansas River Reservoir System, and the Implementation of the Missouri River Recovery Management Plan (MRRMP), the USACE proposed, among other things to work with the U.S. Fish and Wildlife Service (USFWS) and the Missouri River Recovery Implementation Committee (MRRIC) to ''review previous information and information generated since the effects analysis to formulate test flow releases from Fort Peck Dam and an adaptive management framework for their implementation.'' This commitment was relied upon by the USFWS in its 2018 Biological Opinion (BiOp) finding that the USACE's proposed action is 'not likely to jeopardize' pallid sturgeon. The EIS will document the formulation and evaluation of test-flow alternatives from Fort Peck Dam intended to benefit pallid sturgeon.

The EIS scoping period will extend from February 8, 2019 through March 11, 2019. Public comments are invited to assist in identifying the scope of potentially affected environmental, social, and economic issues relevant to the proposed Federal action and determining reasonable alternatives to be considered in the EIS.

In-person public scoping meetings will be held from 5:30 p.m. to 7:30 p.m. on:

- Tuesday, February 19 at the Fort Peck Interpretive Center, Yellowstone Road, Fort Peck, Montana 59223.
- Wednesday, February 20 at the Williams County Administrative Building, 206 East Broadway, Williston, North Dakota 58801.

Scoping comments can be given in writing at the in-person scoping meetings or can be emailed to: *cenwo-planning@usace.army.mil.*

Scoping comments can also be mailed to: U.S. Army Corps of Engineers, Omaha District, ATTN: CENWO–PM–AC–Fort Peck EIS, 1616 Capitol Avenue, Omaha, NE 68102.

Please note that before including your address, phone number, email address, or any other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made available to the public at any time. While you can request us to withhold your personal identifying information from public review, was cannot guarantee that we will be able to do so.

People needing special assistance to attend and/or participate in the meetings should contact: U.S. Army Corps of Engineers, Omaha District, ATTN: CENWO–PM–AC, 1616 Capitol Ave, Omaha, NE 68102 or email *cenwo-planning@usace.army.mil.* To allow sufficient time to process special requests. Please contact no later than one week before the public meeting.

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. 2019–01469 Filed 2–7–19; 8:45 am]

BILLING CODE 3720–58–P

DEPARTMENT OF EDUCATION

Applications for New Awards; College Assistance Migrant Program

AGENCY: Office of Elementary and Secondary Education, Department of Education.

ACTION: Notice.

SUMMARY: The Department of Education is issuing a notice inviting applications for fiscal year (FY) 2019 for the College Assistance Migrant Program (CAMP), Catalog of Federal Domestic Assistance (CFDA) number 84.149A.

DATES:

Applications Available: February 8, 2019.

Deadline for Transmittal of Applications: April 9, 2019.

Deadline for Intergovernmental Review: June 10, 2019.

Pre-Application Webinar Information: The Department will hold a pre-

application workshop via webinar for prospective applicants on February 20, 2019, 1:30 p.m. Eastern Time.

ADDRESSES: For the addresses for obtaining and submitting an application, please refer to our Common Instructions for Applicants to Department of Education Discretionary Grant Programs, published in the **Federal Register** on February 12, 2018 (83 FR 6003) and available at *www.govinfo.gov/content/pkg/FR-2018-02-12/pdf/2018-02558.pdf.*

FOR FURTHER INFORMATION CONTACT: Carla Kirksey, U.S. Department of Education, 400 Maryland Avenue SW, Room 3E337, Washington, DC 20202. Telephone: (202) 260–2114. Email: *carla.kirksey@ed.gov.*

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: CAMP is designed to assist eligible persons who are enrolled or are admitted for enrollment on a full-time basis at an institution of higher education (IHE) complete their first academic year.

Priorities: This competition includes two competitive preference priorities. Competitive Preference Priority 1 is from the Secretary's Final Supplemental Priorities and Definitions for Discretionary Grant Programs (Supplemental Priorities) published in the **Federal Register** on March 2, 2018 (83 FR 9096). In accordance with 34 CFR 75.105(b)(2)(iv), Competitive Preference Priority 2 is from section 418A of the Higher Education Act of 1965, as amended (HEA) (20 U.S.C. 1070d–2(e)).

Competitive Preference Priorities: For FY 2019 and any subsequent year in which we make awards from the list of unfunded applications from this competition, these priorities are competitive preference priorities. Under 34 CFR 75.105(c)(2)(i) we award an additional 3 points to an application that meets Competitive Preference Priority 1, and we award up to an additional 15 points to an application, depending on how well the application meets Competitive Preference Priority 2.

These priorities are:

Competitive Preference Priority 1—Promoting Science, Technology, Engineering, or Math (STEM) Education, With a Particular Focus on Computer Science. (0 or 3 points)

Projects designed to improve student achievement or other educational outcomes in one or more of the following areas: Science, technology, engineering, math, or computer science. These projects must address the following priority area: Creating or expanding partnerships between schools, local educational agencies, State educational agencies, businesses, not-for-profit organizations, or IHEs to give students access to internships, apprenticeships, or other work-based learning experiences in STEM fields, including computer science (as defined in the Supplemental Priorities).

Competitive Preference Priority 2—Consideration of Prior Experience. (0 to 15 points)

Projects that are expiring (current CAMP grantees in their fifth year) will be considered for additional points under Competitive Preference Priority 2. In accordance with section 418A(e) of the HEA, the Department will award up to 15 points for this priority. The Secretary will consider the applicant's prior experience in implementing its expiring CAMP project, based on performance report information to include, but not limited to, the percentage of CAMP participants completing the first academic year of their postsecondary program and the percentage of CAMP participants who, after completing the first academic year of college, continue their postsecondary education.

Program Authority: 20 U.S.C. 1070d–2.

Applicable Regulations: (a) The Education Department General Administrative Regulations in 34 CFR parts 75, 77, 79, 81, 82, 84, 86, 97, 98, and 99. (b) The Office of Management and Budget Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement) in 2 CFR part 180, as adopted and amended as regulations of the Department in 2 CFR part 3485. (c) The Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards in 2 CFR part 200, as adopted and amended as regulations of the Department in 2 CFR part 3474. (d) The regulations for this program in 34 CFR part 206. (e) The definitions in the Elementary and Secondary Education Act of 1965, as amended (ESEA), of ''migratory agricultural worker'' (section 1309(2)), ''migratory child'' (section 1309(3)), and ''migratory fisher'' (section 1309(4)). (f) The National Farmworker Jobs Program (NFJP) definitions in 20 CFR 685.110 and eligibility regulations in 20 CFR 685.320. (g) The Supplemental Priorities.

Note: The regulations in 34 CFR part 86 apply to IHEs only.

Note: The ESEA definitions and NFJP definitions and eligibility regulations apply to individuals seeking to qualify for CAMP based on past participation in the Migrant Education Program or NFJP.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: $4,823,000.

Contingent upon the availability of funds and the quality of applications, we may make additional awards in subsequent years from the list of unfunded applications from this competition.

Estimated Range of Awards: $180,000–$425,000.

Estimated Average Size of Awards: $402,000.

Maximum Award: We will not make an award exceeding $425,000 for a single budget period of 12 months. Under 34 CFR 75.104(b) the Secretary may reject without consideration or evaluation any application that proposes a project funding level that exceeds the stated maximum award amount.

Minimum Award: The Department will not make an award for less than the amount of $180,000 for a single budget period of 12 months. Under section 418A of the HEA, the Secretary is prohibited from making an award for less than the stated award amount. Therefore, we will reject any application that proposes a CAMP award that is less than the stated minimum award amount.

Estimated Number of Awards: 12.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months (five 12-month budget periods). Except under extraordinary circumstances, the Secretary shall award grants for a five-year period. Applicants under this competition are required to provide detailed budget information for each year of the proposed project and for the total grant, and we may reject any application that does not do so as reflected on the applicant's ED 524 form, Table A, submitted as a part of the application.

III. Eligibility Information

1. *Eligible Applicants:* An IHE or a private nonprofit organization may apply for a grant to operate a CAMP project. If a private nonprofit organization other than an IHE applies for a CAMP grant, that agency must plan the project in cooperation with an IHE

and must propose to operate the project with the facilities of that IHE.

2. *Cost Sharing or Matching:* This competition does not require cost sharing or matching. However, consistent with 34 CFR 75.700, which requires an applicant to comply with its approved application, an applicant that proposes non-Federal matching funds and is awarded a grant must provide those funds for each year that the funds are proposed.

3. *Subgrantees:* Under 34 CFR 75.708(b) and (c) a grantee under this competition may award subgrants—to directly carry out project activities described in its application—to the following types of entities: IHEs and nonprofit organizations. The grantee may award subgrants to entities it has identified in an approved application or that it selects through a competition under procedures established by the grantee.

4. *Other:* Projects funded under this competition must budget for a three-day Office of Migrant Education annual meeting for CAMP Directors in the Washington, DC area during each year of the project period.

IV. Application and Submission Information

1. *Application Submission Instructions:* Applicants are required to follow the Common Instructions for Applicants to Department of Education Discretionary Grant Programs, published in the **Federal Register** on February 12, 2018 (83 FR 6003) and available at *www.govinfo.gov/content/pkg/FR-2018-02-12/pdf/2018-02558.pdf,* which contain information on how to submit an application.

2. *Submission of Proprietary Information:* Given the types of projects that may be proposed in applications for CAMP, your application may include business information that you consider proprietary. In 34 CFR 5.11 we define ''business information'' and describe the process we use in determining whether any of that information is proprietary and, thus, protected from disclosure under Exemption 4 of the Freedom of Information Act (5 U.S.C. 552, as amended).

Because we plan to make successful applications available to the public, you may wish to request confidentiality of business information.

Consistent with Executive Order 12600, please designate in your application any information that you believe is exempt from disclosure under Exemption 4. In the appropriate Appendix section of your application, under ''Other Attachments Form,'' please list the page number or numbers on which we can find this information. For additional information please see 34 CFR 5.11(c).

3. *Intergovernmental Review:* This competition is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this competition.

4. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

5. *Recommended Page Limit:* The application narrative is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. We recommend that you (1) limit the application narrative to no more than 25 pages and (2) use the following standards:

- A ''page'' is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).
- Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial.

The recommended page limit does not apply to the cover sheet; the budget section, including the narrative budget justification; the assurances and certifications; or the one-page abstract, the resumes, the bibliography, or the letters of support. However, the recommended page limit does apply to all of the application narrative.

V. Application Review Information

1. *Selection Criteria:* The selection criteria for this competition are from 34 CFR 75.210 and are as follows:

(a) Need for project (up to 20 points).

(1) The Secretary considers the need for the proposed project.

(2) In determining the need for the proposed project, the Secretary considers the following factors:

(i) The magnitude of the need for the services to be provided or the activities to be carried out by the proposed project. (up to 10 points)

(ii) The extent to which the proposed project will focus on serving or otherwise addressing the needs of disadvantaged individuals. (up to 10 points)

(b) Quality of the project design (up to 28 points).

(1) The Secretary considers the quality of the design of the proposed project.

(2) In determining the quality of the design of the proposed project, the Secretary considers one or more of the following factors:

(i) The extent to which the goals, objectives, and outcomes to be achieved by the proposed project are clearly specified and measurable. (up to 7 points)

(ii) The extent to which the design of the proposed project is appropriate to, and will successfully address, the needs of the target population or other identified needs. (up to 7 points)

(iii) The extent to which the proposed project will establish linkages with other appropriate agencies and organizations providing services to the target population. (up to 7 points)

(iv) The extent to which the proposed project demonstrates a rationale (as defined in 34 CFR 77.1(c)). (up to 7 points)

(c) Quality of project services (up to 12 points).

(1) The Secretary considers the quality of the services to be provided by the proposed project.

(2) In determining the quality of the services to be provided by the proposed project, the Secretary considers the quality and sufficiency of strategies for ensuring equal access and treatment for eligible project participants who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability.

(3) In addition, the Secretary considers the following factor:

(i) The extent to which the services to be provided by the proposed project are appropriate to the needs of the intended recipients or beneficiaries of those services. (up to 12 points)

(d) Quality of project personnel (Up to 10 points).

(1) The Secretary considers the quality of the personnel who will carry out the proposed project.

(2) In determining the quality of project personnel, the Secretary considers the extent to which the applicant encourages applications for employment from persons who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability.

(3) In addition, the Secretary considers the following factors:

(i) The qualifications, including relevant training and experience, of the project director or principal investigator. (up to 7 points)

(ii) The qualifications, including relevant training and experience, of key project personnel. (up to 3 points)

(e) Adequacy of resources (up to 10 points).

(1) The Secretary considers the adequacy of resources for the proposed project.

(2) In determining the adequacy of resources for the proposed project, the Secretary considers the following factors:

(i) The adequacy of support, including facilities, equipment, supplies, and other resources, from the applicant organization or the lead applicant organization. (up to 3 points)

(ii) The relevance and demonstrated commitment of each partner in the proposed project to the implementation and success of the project. (up to 3 points)

(iii) The extent to which the costs are reasonable in relation to the objectives, design, and potential significance of the proposed project. (up to 4 points)

(f) Quality of the project evaluation (up to 20 points).

(1) The Secretary considers the quality of the evaluation to be conducted of the proposed project.

(2) In determining the quality of the evaluation, the Secretary considers the following factors:

(i) The extent to which the methods of evaluation are thorough, feasible, and appropriate to the goals, objectives, and outcomes of the proposed project. (up to 10 points)

(ii) The extent to which the methods of evaluation will provide performance feedback and permit periodic assessment of progress toward achieving intended outcomes. (up to 5 points)

(iii) The extent to which the methods of evaluation will, if well implemented, produce promising evidence (as defined in 34 CFR 77.1(c)) about the project's effectiveness. (up to 5 points)

2. *Review and Selection Process:* We remind potential applicants that in reviewing applications in any discretionary grant competition, the Secretary may consider, under 34 CFR 75.217(d)(3), the past performance of the applicant in carrying out a previous award, such as the applicant's use of funds, achievement of project objectives, and compliance with grant conditions. The Secretary may also consider whether the applicant failed to submit a timely performance report or submitted a report of unacceptable quality.

In addition, in making a competitive grant award, the Secretary requires various assurances, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

Additional factors we consider in selecting an application for an award are in section 418A of the HEA. In accordance with section 418A, the Secretary makes CAMP awards based on the number, quality, and promise of the applications. Additionally, the Secretary will consider the need to provide an equitable geographic distribution of CAMP awards.

3. *Risk Assessment and Specific Conditions:* Consistent with 2 CFR 200.205, before awarding grants under this competition the Department conducts a review of the risks posed by applicants. Under 2 CFR 3474.10, the Secretary may impose specific conditions and, in appropriate circumstances, high-risk conditions on a grant if the applicant or grantee is not financially stable; has a history of unsatisfactory performance; has a financial or other management system that does not meet the standards in 2 CFR part 200, subpart D; has not fulfilled the conditions of a prior grant; or is otherwise not responsible.

4. *Integrity and Performance System:* If you are selected under this competition to receive an award that over the course of the project period may exceed the simplified acquisition threshold (currently $250,000), under 2 CFR 200.205(a)(2) we must make a judgment about your integrity, business ethics, and record of performance under Federal awards—that is, the risk posed by you as an applicant—before we make an award. In doing so, we must consider any information about you that is in the integrity and performance system (currently referred to as the Federal Awardee Performance and Integrity Information System (FAPIIS)), accessible through the System for Award Management. You may review and comment on any information about yourself that a Federal agency previously entered and that is currently in FAPIIS.

Please note that, if the total value of your currently active grants, cooperative agreements, and procurement contracts from the Federal Government exceeds $10,000,000, the reporting requirements in 2 CFR part 200, Appendix XII, require you to report certain integrity information to FAPIIS semiannually. Please review the requirements in 2 CFR part 200, Appendix XII, if this grant plus all the other Federal funds you receive exceed $10,000,000.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN); or we may send you an email containing a link to access an electronic version of your GAN. We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Open Licensing Requirements:* Unless an exception applies, if you are awarded a grant under this competition, you will be required to openly license to the public grant deliverables created in whole, or in part, with Department grant funds. When the deliverable consists of modifications to pre-existing works, the license extends only to those modifications that can be separately identified and only to the extent that open licensing is permitted under the terms of any licenses or other legal restrictions on the use of pre-existing works. Additionally, a grantee or subgrantee that is awarded competitive grant funds must have a plan to disseminate these public grant deliverables. This dissemination plan can be developed and submitted after your application has been reviewed and selected for funding. For additional information on the open licensing requirements please refer to 2 CFR 3474.20.

4. *Reporting:* (a) If you apply for a grant under this competition, you must ensure that you have in place the necessary processes and systems to comply with the reporting requirements in 2 CFR part 170 should you receive funding under the competition. This does not apply if you have an exception under 2 CFR 170.110(b).

(b) At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multiyear award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR

75.720(c). For specific requirements on reporting, please go to *www.ed.gov/fund/grant/apply/appforms/appforms.html.*

5. *Performance Measures:* Under the Government Performance and Results Act of 1993 (GPRA), the Department developed the following performance measures to evaluate the overall effectiveness of CAMP: (1) The percentage of CAMP participants completing the first academic year of their postsecondary program, and (2) the percentage of CAMP participants who, after completing the first academic year of college, continue their postsecondary education.

Applicants must propose annual targets for these measures in their applications. The national target for GPRA measure 1 for FY 2019 is that 86 percent of CAMP participants will complete the first academic year of their postsecondary program. The national target for GPRA measure 2 for FY 2019 is that 85 percent of CAMP participants continue their postsecondary education after completing the first academic year of college. The national targets for subsequent years may be adjusted based on additional baseline data. The panel readers will score related selection criteria on the basis of how well an applicant addresses these GPRA measures. Therefore, applicants will want to consider how to demonstrate a sound capacity to provide reliable data on the GPRA measures, including the project's annual performance targets for addressing the GPRA performance measures, as is required by the Office of Management and Budget approved annual performance report that is included in the application package. All grantees will be required to submit, as part of their annual performance report, information with respect to these GPRA performance measures.

6. *Continuation Awards:* In making a continuation award under 34 CFR 75.253, the Secretary considers, among other things: Whether a grantee has made substantial progress in achieving the goals and objectives of the project; whether the grantee has expended funds in a manner that is consistent with its approved application and budget; and, if the Secretary has established performance measurement requirements, the performance targets in the grantee's approved application.

In making a continuation award, the Secretary also considers whether the grantee is operating in compliance with the assurances in its approved application, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

VII. Other Information

Accessible Format: Individuals with disabilities can obtain this document and a copy of the application package in an accessible format (*e.g.,* braille, large print, audiotape, or compact disc) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. You may access the official edition of the **Federal Register** and the Code of Federal Regulations at *www.govinfo.gov.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Dated: February 5, 2019.

Frank Brogan,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 2019–01701 Filed 2–7–19; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Applications for New Awards; High School Equivalency Program

AGENCY: Office of Elementary and Secondary Education, Department of Education.

ACTION: Notice.

SUMMARY: The Department of Education is issuing a notice inviting applications for fiscal year (FY) 2019 for the High School Equivalency Program (HEP), Catalog of Federal Domestic Assistance (CFDA) number 84.141A.

DATES:

Applications Available: February 8, 2019.

Deadline for Transmittal of Applications: April 9, 2019.

Deadline for Intergovernmental Review: June 10, 2019.

Pre-Application Webinar Information: The Department will hold a pre-application workshop via webinar for prospective applicants on February 20, 2019, 1:30 p.m. Eastern Time.

ADDRESSES: For the addresses for obtaining and submitting an application, please refer to our Common Instructions for Applicants to Department of Education Discretionary Grant Programs, published in the **Federal Register** on February 12, 2018 (83 FR 6003) and available at *www.govinfo.gov/content/pkg/FR-2018-02-12/pdf/2018-02558.pdf.*

FOR FURTHER INFORMATION CONTACT: Steven Carr, U.S. Department of Education, 400 Maryland Avenue SW, Room 3E321, Washington, DC 20202. Telephone: (202) 260–2067. Email: *steven.carr@ed.gov.*

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The HEP is designed to assist eligible persons to obtain the equivalent of a secondary school diploma and subsequently to gain improved employment, enter into military service, or be placed in an institution of higher education (IHE) or other postsecondary education or training.

Priorities: This competition includes two competitive preference priorities. Competitive Preference Priority 1 is from the Secretary's Final Supplemental Priorities and Definitions for Discretionary Grant Programs (Supplemental Priorities) published in the **Federal Register** on March 2, 2018 (83 FR 9096). In accordance with 34 CFR 75.105(b)(2)(iv), Competitive Preference Priority 2 is from section 418A of the Higher Education Act of 1965, as amended (HEA) (20 U.S.C. 1070d–2(e)).

Competitive Preference Priorities: For FY 2019 and any subsequent year in which we make awards from the list of unfunded applications from this competition, these priorities are competitive preference priorities. Under 34 CFR 75.105(c)(2)(i) we award an additional 3 points to an application that meets Competitive Preference Priority 1, and we award up to an additional 15 points to an application, depending on how well the application meets Competitive Preference Priority 2.

These priorities are:

Competitive Preference Priority 1—Fostering Flexible and Affordable Paths to Obtaining Knowledge and Skills. (0 or 3 points)

Projects that are designed to address the following priority area will be considered for additional points under Competitive Preference Priority 1:

Improving collaboration between education providers and employers to ensure student learning objectives are aligned with the skills or knowledge required for employment in in-demand industry sectors or occupations (as defined in section 3(23) of the Workforce Innovation and Opportunity Act of 2014).

Competitive Preference Priority 2—Consideration of Prior Experience. (0 to 15 points)

Projects that are expiring (current HEP grantees in their fifth year) will be considered for additional points under Competitive Preference Priority 2. In accordance with section 418A(e) of the HEA, the Department will award up to 15 points for this priority. The Secretary will consider the applicant's prior experience in implementing its expiring HEP project, based on performance report information to include, but not limited to, the percentage of HEP participants exiting the program having received a High School Equivalency (HSE) diploma and the percentage of HSE diploma recipients who enter postsecondary education or training programs, upgraded employment, or the military.

Program Authority: 20 U.S.C. 1070d–2.

Applicable Regulations: (a) The Education Department General Administrative Regulations in 34 CFR parts 75, 77, 79, 81, 82, 84, 86, 97, 98, and 99. (b) The Office of Management and Budget Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement) in 2 CFR part 180, as adopted and amended as regulations of the Department in 2 CFR part 3485. (c) The Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards in 2 CFR part 200, as adopted and amended as regulations of the Department in 2 CFR part 3474. (d) The regulations for this program in 34 CFR part 206. (e) The definitions in the Elementary and Secondary Education Act of 1965, as amended (ESEA), of ''migratory agricultural worker'' (section 1309(2)), ''migratory child'' (section 1309(3)), and ''migratory fisher'' (section 1309(4)). (f) The National Farmworker Jobs Program (NFJP) definitions in 20 CFR 685.110 and eligibility regulations in 20 CFR 685.320. (g) The Supplemental Priorities.

Note: The regulations in 34 CFR part 86 apply to IHEs only.

Note: The ESEA definitions and NFJP definitions and eligibility regulations apply to individuals seeking to qualify for HEP based on past participation in the Migrant Education Program or NFJP.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: $6,431,000.

Contingent upon the availability of funds and the quality of applications, we may make additional awards in subsequent years from the list of unfunded applications from this competition.

Estimated Range of Awards: $180,000–$475,000.

Estimated Average Size of Awards: $459,000.

Maximum Award: We will not make an award exceeding $475,000 for a single budget period of 12 months. Under 34 CFR 75.104(b) the Secretary may reject without consideration or evaluation any application that proposes a project funding level that exceeds the stated maximum award amount.

Minimum Award: The Department will not make an award for less than the amount of $180,000 for a single budget period of 12 months. Under section 418A of the HEA, the Secretary is prohibited from making an award for less than the stated award amount. Therefore, we will reject any application that proposes a HEP award that is less than the stated minimum award amount.

Estimated Number of Awards: 14.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months (five 12-month budget periods). Except under extraordinary circumstances, the Secretary shall award grants for a five-year period. Applicants under this competition are required to provide detailed budget information for each year of the proposed project and for the total grant, and we may reject any application that does not do so as reflected on the applicant's ED 524 form, Table A, submitted as a part of the application.

III. Eligibility Information

1. *Eligible Applicants:* An IHE or a private nonprofit organization may apply for a grant to operate a HEP project. If a private nonprofit organization other than an IHE applies for a HEP grant, that agency must plan the project in cooperation with an IHE and must propose to operate some aspects of the project with the facilities of that IHE.

2. *Cost Sharing or Matching:* This competition does not require cost sharing or matching. However, consistent with 34 CFR 75.700, which requires an applicant to comply with its approved application, an applicant that proposes non-Federal matching funds and is awarded a grant must provide those funds for each year that the funds are proposed.

3. *Subgrantees:* Under 34 CFR 75.708(b) and (c) a grantee under this competition may award subgrants—to directly carry out project activities described in its application—to the following types of entities: IHEs and nonprofit organizations. The grantee may award subgrants to entities it has identified in an approved application or that it selects through a competition under procedures established by the grantee.

4. *Other:* Projects funded under this competition must budget for a three-day Office of Migrant Education annual meeting for HEP Directors in the Washington, DC area during each year of the project period.

IV. Application and Submission Information

1. *Application Submission Instructions:* Applicants are required to follow the Common Instructions for Applicants to Department of Education Discretionary Grant Programs, published in the **Federal Register** on February 12, 2018 (83 FR 6003) and available at *www.govinfo.gov/content/pkg/FR-2018-02-12/pdf/2018-02558.pdf,* which contain information on how to submit an application.

2. *Submission of Proprietary Information:* Given the types of projects that may be proposed in applications for HEP, your application may include business information that you consider proprietary. In 34 CFR 5.11 we define ''business information'' and describe the process we use in determining whether any of that information is proprietary and, thus, protected from disclosure under Exemption 4 of the Freedom of Information Act (5 U.S.C. 552, as amended).

Because we plan to make successful applications available to the public, you may wish to request confidentiality of business information.

Consistent with Executive Order 12600, please designate in your application any information that you believe is exempt from disclosure under Exemption 4. In the appropriate Appendix section of your application, under ''Other Attachments Form,'' please list the page number or numbers on which we can find this information.

For additional information please see 34 CFR 5.11(c).

3. *Intergovernmental Review:* This competition is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this competition.

4. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

5. *Recommended Page Limit:* The application narrative is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. We recommend that you (1) limit the application narrative to no more than 25 pages and (2) use the following standards:

- A ''page'' is 8.5″ x 11″, on one side only, with 1'' margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).
- Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial.

The recommended page limit does not apply to the cover sheet; the budget section, including the narrative budget justification; the assurances and certifications; or the one-page abstract, the resumes, the bibliography, or the letters of support. However, the recommended page limit does apply to all of the application narrative.

V. Application Review Information

1. *Selection Criteria:* The selection criteria for this competition are from 34 CFR 75.210 and are as follows:

(a) Need for project (up to 20 points).

(1) The Secretary considers the need for the proposed project.

(2) In determining the need for the proposed project, the Secretary considers the following factors:

(i) The magnitude of the need for the services to be provided or the activities to be carried out by the proposed project. (up to 10 points)

(ii) The extent to which the proposed project will focus on serving or otherwise addressing the needs of disadvantaged individuals. (up to 10 points)

(b) Quality of the project design (up to 28 points).

(1) The Secretary considers the quality of the design of the proposed project.

(2) In determining the quality of the design of the proposed project, the Secretary considers one or more of the following factors:

(i) The extent to which the goals, objectives, and outcomes to be achieved by the proposed project are clearly specified and measurable. (up to 7 points)

(ii) The extent to which the design of the proposed project is appropriate to, and will successfully address, the needs of the target population or other identified needs. (up to 7 points)

(iii) The extent to which the proposed project will establish linkages with other appropriate agencies and organizations providing services to the target population. (up to 7 points)

(iv) The extent to which the proposed project demonstrates a rationale (as defined in 34 CFR 77.1(c)). (up to 7 points)

(c) Quality of project services (up to 12 points).

(1) The Secretary considers the quality of the services to be provided by the proposed project.

(2) In determining the quality of the services to be provided by the proposed project, the Secretary considers the quality and sufficiency of strategies for ensuring equal access and treatment for eligible project participants who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability.

(3) In addition, the Secretary considers the following factor:

(i) The extent to which the services to be provided by the proposed project are appropriate to the needs of the intended recipients or beneficiaries of those services. (up to 12 points)

(d) Quality of project personnel (Up to 10 points).

(1) The Secretary considers the quality of the personnel who will carry out the proposed project.

(2) In determining the quality of project personnel, the Secretary considers the extent to which the applicant encourages applications for employment from persons who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability.

(3) In addition, the Secretary considers the following factors:

(i) The qualifications, including relevant training and experience, of the project director or principal investigator. (up to 7 points)

(ii) The qualifications, including relevant training and experience, of key project personnel. (up to 3 points)

(e) Adequacy of resources (up to 10 points).

(1) The Secretary considers the adequacy of resources for the proposed project.

(2) In determining the adequacy of resources for the proposed project, the Secretary considers the following factors:

(i) The adequacy of support, including facilities, equipment, supplies, and other resources, from the applicant organization or the lead applicant organization. (up to 3 points)

(ii) The relevance and demonstrated commitment of each partner in the proposed project to the implementation and success of the project. (up to 3 points)

(iii) The extent to which the costs are reasonable in relation to the objectives, design, and potential significance of the proposed project. (up to 4 points)

(f) Quality of the project evaluation (up to 20 points).

(1) The Secretary considers the quality of the evaluation to be conducted of the proposed project.

(2) In determining the quality of the evaluation, the Secretary considers the following factors:

(i) The extent to which the methods of evaluation are thorough, feasible, and appropriate to the goals, objectives, and outcomes of the proposed project. (up to 10 points)

(ii) The extent to which the methods of evaluation will provide performance feedback and permit periodic assessment of progress toward achieving intended outcomes. (up to 5 points)

(iii) The extent to which the methods of evaluation will, if well implemented, produce promising evidence (as defined in 34 CFR 77.1(c)) about the project's effectiveness. (up to 5 points)

2. *Review and Selection Process:* We remind potential applicants that in reviewing applications in any discretionary grant competition, the Secretary may consider, under 34 CFR 75.217(d)(3), the past performance of the applicant in carrying out a previous award, such as the applicant's use of funds, achievement of project objectives, and compliance with grant conditions. The Secretary may also consider whether the applicant failed to submit a timely performance report or submitted a report of unacceptable quality.

In addition, in making a competitive grant award, the Secretary requires various assurances, including those applicable to Federal civil rights laws that prohibit discrimination in programs

or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

Additional factors we consider in selecting an application for an award are in section 418A of the HEA. In accordance with section 418A, the Secretary makes HEP awards based on the number, quality, and promise of the applications. Additionally, the Secretary will consider the need to provide an equitable geographic distribution of HEP awards.

3. *Risk Assessment and Specific Conditions:* Consistent with 2 CFR 200.205, before awarding grants under this competition the Department conducts a review of the risks posed by applicants. Under 2 CFR 3474.10, the Secretary may impose specific conditions and, in appropriate circumstances, high-risk conditions on a grant if the applicant or grantee is not financially stable; has a history of unsatisfactory performance; has a financial or other management system that does not meet the standards in 2 CFR part 200, subpart D; has not fulfilled the conditions of a prior grant; or is otherwise not responsible.

4. *Integrity and Performance System:* If you are selected under this competition to receive an award that over the course of the project period may exceed the simplified acquisition threshold (currently $250,000), under 2 CFR 200.205(a)(2) we must make a judgment about your integrity, business ethics, and record of performance under Federal awards—that is, the risk posed by you as an applicant—before we make an award. In doing so, we must consider any information about you that is in the integrity and performance system (currently referred to as the Federal Awardee Performance and Integrity Information System (FAPIIS)), accessible through the System for Award Management. You may review and comment on any information about yourself that a Federal agency previously entered and that is currently in FAPIIS.

Please note that, if the total value of your currently active grants, cooperative agreements, and procurement contracts from the Federal Government exceeds $10,000,000, the reporting requirements in 2 CFR part 200, Appendix XII, require you to report certain integrity information to FAPIIS semiannually. Please review the requirements in 2 CFR part 200, Appendix XII, if this grant plus all the other Federal funds you receive exceed $10,000,000.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN); or we may send you an email containing a link to access an electronic version of your GAN. We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Open Licensing Requirements:* Unless an exception applies, if you are awarded a grant under this competition, you will be required to openly license to the public grant deliverables created in whole, or in part, with Department grant funds. When the deliverable consists of modifications to pre-existing works, the license extends only to those modifications that can be separately identified and only to the extent that open licensing is permitted under the terms of any licenses or other legal restrictions on the use of pre-existing works. Additionally, a grantee or subgrantee that is awarded competitive grant funds must have a plan to disseminate these public grant deliverables. This dissemination plan can be developed and submitted after your application has been reviewed and selected for funding. For additional information on the open licensing requirements please refer to 2 CFR 3474.20.

4. *Reporting:* (a) If you apply for a grant under this competition, you must ensure that you have in place the necessary processes and systems to comply with the reporting requirements in 2 CFR part 170 should you receive funding under the competition. This does not apply if you have an exception under 2 CFR 170.110(b).

(b) At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multiyear award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *www.ed.gov/fund/grant/apply/appforms/appforms.html.*

5. *Performance Measures:* Under the Government Performance and Results Act of 1993 (GPRA), the Department developed the following performance measures to evaluate the overall effectiveness of HEP: (1) The percentage of HEP participants exiting the program having received a HSE diploma (GPRA 1), and (2) the percentage of HSE diploma recipients who enter postsecondary education or training programs, upgraded employment, or the military (GPRA 2).

Applicants must propose annual targets for these measures in their applications. The national target for GPRA 1 for FY 2019 is that 69 percent of HEP participants exit the program having received an HSE credential. The national target for GPRA 2 for FY 2019 is that 80 percent of HEP HSE diploma recipients will enter postsecondary education or training programs, upgraded employment, or the military. The national targets for subsequent years may be adjusted based on additional baseline data. The panel readers will score related selection criteria on the basis of how well an applicant addresses these GPRA measures. Therefore, applicants will want to consider how to demonstrate a sound capacity to provide reliable data on the GPRA measures, including the project's annual performance targets for addressing the GPRA performance measures, as is required by the Office of Management and Budget approved annual performance report that is included in the application package. All grantees will be required to submit, as part of their annual performance report, information with respect to these GPRA performance measures.

6. *Continuation Awards:* In making a continuation award under 34 CFR 75.253, the Secretary considers, among other things: Whether a grantee has made substantial progress in achieving the goals and objectives of the project; whether the grantee has expended funds in a manner that is consistent with its approved application and budget; and, if the Secretary has established performance measurement requirements, the performance targets in the grantee's approved application.

In making a continuation award, the Secretary also considers whether the grantee is operating in compliance with the assurances in its approved application, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance

from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

VII. Other Information

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Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. You may access the official edition of the **Federal Register** and the Code of Federal Regulations at *www.govinfo.gov.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Dated: February 5, 2019.

Frank Brogan,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 2019–01700 Filed 2–7–19; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL19–40–000]

Florida Municipal Power Agency v. Duke Energy Florida, LLC; Notice of Complaint

Take notice that on January 30, 2019, pursuant to sections 206, 306 and 309 of the Federal Power Act, 16 U.S.C. 824e, 825e and 825h and Rule 206 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure, 18 CFR 385.206, Florida Municipal Power Agency (FMPA or Complainant) filed a formal complaint against Duke Energy Florida, LLC (Respondent) alleging that the Respondent violated its Open Access Transmission Tariff by rejecting requests for transmission delivery service submitted by FMPA and its members for deliveries from the Poinsett Solar Facility, all as more fully explained in the complaint.

Florida Municipal Power Agency certifies that a copy of the complaint was served on Duke Energy Florida, LLC's corporate representative designated on the Commission's list of Corporate Officials.

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 and 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. The Respondent's answer and all interventions, or protests must be filed on or before the comment date. The Respondent's answer, motions to intervene, and protests must be served on the Complainant.

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.

Comment Date: 5 p.m. Eastern Time on February 19, 2019.

Issued: February 1, 2019.

Kimberly D. Bose,

Secretary.

[FR Doc. 2019–01655 Filed 2–7–19; 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: ER19–938–000.
Applicants: Midcontinent Independent System Operator, Inc.
Description: § 205(d) Rate Filing: 2019–01–31_SA 3228 EDF Renewables—ITC Midwest GIA (J495) to be effective 1/16/2019.
Filed Date: 1/31/19.
Accession Number: 20190131–5197.
Comments Due: 5 p.m. ET 2/21/19.

Docket Numbers: ER19–939–000.
Applicants: Central Maine Power Company.
Description: § 205(d) Rate Filing: Bilateral, Cost-Based TSAs Incorporating First Amendments (HQUS Eversource) to be effective 4/2/2019.
Filed Date: 1/31/19.
Accession Number: 20190131–5199.
Comments Due: 5 p.m. ET 2/21/19.

Docket Numbers: ER19–940–000.
Applicants: Central Maine Power Company.
Description: § 205(d) Rate Filing: Bilateral, Cost-Based TSAs Incorporating First Amendments (HQUS National Grid) to be effective 4/2/2019.
Filed Date: 1/31/19.
Accession Number: 20190131–5200.
Comments Due: 5 p.m. ET 2/21/19.

Docket Numbers: ER19–941–000.
Applicants: Central Maine Power Company.
Description: § 205(d) Rate Filing: Bilateral, Cost-Based TSAs Incorporating First Amendments (HQUS Unitil) to be effective 4/2/2019.
Filed Date: 1/31/19.
Accession Number: 20190131–5201.
Comments Due: 5 p.m. ET 2/21/19.

Docket Numbers: ER19–942–000.
Applicants: Central Maine Power Company.
Description: § 205(d) Rate Filing: Bilateral, Cost-Based TSAs Incorporating First Amendments (HQUS Additional) to be effective 4/2/2019.
Filed Date: 1/31/19.
Accession Number: 20190131–5202.
Comments Due: 5 p.m. ET 2/21/19.

Docket Numbers: ER19–943–000.
Applicants: Midcontinent Independent System Operator, Inc.
Description: § 205(d) Rate Filing: 2019–01–31_SA 2786 ITC Midwest-Interstate Power & Light GIA (J233 J514) to be effective 1/23/2019.
Filed Date: 1/31/19.
Accession Number: 20190131–5206.
Comments Due: 5 p.m. ET 2/21/19.

Docket Numbers: ER19–944–000.
Applicants: Pacific Gas and Electric Company.
Description: § 205(d) Rate Filing: Q4 2018 Quarterly Filing of City and County of San Francisco's WDT SA (SA 275) to be effective 12/31/2018.

Filed Date: 1/31/19.
Accession Number: 20190131–5225.
Comments Due: 5 p.m. ET 2/21/19.

Docket Numbers: ER19–945–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Revisions to Att Q. re FTR Mark to Auction Credit Revisions to be effective 4/4/2019.
Filed Date: 1/31/19.
Accession Number: 20190131–5236.
Comments Due: 5 p.m. ET 2/21/19.

Docket Numbers: ER19–946–000.
Applicants: Southwest Power Pool, Inc.
Description: § 205(d) Rate Filing: 3127R1 Montana-Dakota Utilities Co. NITSA and NOA to be effective 4/1/2019.
Filed Date: 1/31/19.
Accession Number: 20190131–5239.
Comments Due: 5 p.m. ET 2/21/19.

Docket Numbers: ER19–947–000.
Applicants: Alabama Power Company.
Description: § 205(d) Rate Filing: Exelon Generation GISA Filing to be effective 1/1/2019.
Filed Date: 1/31/19.
Accession Number: 20190131–5244.
Comments Due: 5 p.m. ET 2/21/19.

Docket Numbers: ER19–948–000.
Applicants: Alabama Power Company.
Description: § 205(d) Rate Filing: Shell Energy North America GISA Filing to be effective 1/1/2019.
Filed Date: 1/31/19.
Accession Number: 20190131–5245.
Comments Due: 5 p.m. ET 2/21/19.

Docket Numbers: ER19–949–000.
Applicants: Westar Energy, Inc.
Description: § 205(d) Rate Filing: Revisions, Full Requirements Electric Service Agreements to be effective 4/1/2019.
Filed Date: 1/31/19.
Accession Number: 20190131–5246.
Comments Due: 5 p.m. ET 2/21/19.

Docket Numbers: ER19–950–000.
Applicants: Alabama Power Company.
Description: § 205(d) Rate Filing: SCPSA Interchange Contract Amendment Filing (To Remove Gulf) to be effective 1/1/2019.
Filed Date: 1/31/19.
Accession Number: 20190131–5248.
Comments Due: 5 p.m. ET 2/21/19.

Docket Numbers: ER19–951–000.
Applicants: California Independent System Operator Corporation.
Description: § 205(d) Rate Filing: 2019–01–31 Commitment Cost Enhancements & Reliability Services Clarification to be effective 4/1/2019.
Filed Date: 1/31/19.
Accession Number: 20190131–5249.
Comments Due: 5 p.m. ET 2/21/19.

Docket Numbers: ER19–952–000.
Applicants: Alabama Power Company.
Description: § 205(d) Rate Filing: Raven Solar LGIA Amendments Filing (to Remove Gulf) to be effective 1/1/2019.
Filed Date: 1/31/19.
Accession Number: 20190131–5279.
Comments Due: 5 p.m. ET 2/21/19.

Docket Numbers: ER19–953–000.
Applicants: Southern California Edison Company.
Description: § 205(d) Rate Filing: Amended LGIA Solar Star California XIX, LLC True-Up SA No. 110 to be effective 4/3/2019.
Filed Date: 2/1/19.
Accession Number: 20190201–5071.
Comments Due: 5 p.m. ET 2/22/19.

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.

Issued: February 1, 2019.

Kimberly D. Bose,

Secretary.

[FR Doc. 2019–01652 Filed 2–7–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP19–52–000]

Natural Gas Pipeline Company of America LLC; Notice of Application

Take notice that on January 18, 2019, Natural Gas Pipeline Company of America LLC (Natural), 3250 Lacey Road, Downers Grove, IL 60615, filed in Docket No. CP19–52–000 an application pursuant to section 7(c) of the Natural Gas Act (NGA) and Part 157 of the Commission's regulations for authorization to construct, install, modify, operate, and maintain a new 16.84 mile 30-inch pipeline extension which will be located in Ward, Reeves and Pecos Counties, Texas, as well as a new bidirectional interconnect, including two 10-inch meter runs and a 30-inch tap located in Pecos County, Texas. Natural states that the proposed facilities will enable it to provide 500,000 dekatherms per day (Dth/d) of incremental firm transportation capacity southbound on Natural's existing Lockridge Pipeline and the proposed pipeline extension to the new bidirectional interconnect with Trans-Pecos Pipeline, LLC at the Waha Hub. Natural estimates the cost of the project to be $51,611,669, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

The filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website web 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 at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Any questions regarding this application should be directed to Bruce H. Newsome, Vice President, Natural Gas Pipeline Company of America LLC, 3250 Lacey Road, Suite 700, Downers Grove, IL 60515, by telephone at (630)725–3070, or by email at *bruce_newsome@kindermorgan.com.*

Pursuant to section 157.9 of the Commission's rules (18 CFR 157.9), within 90 days of this Notice, the Commission staff will either: Complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below, file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 3 copies of filings made with the Commission and must provide a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commentors will be placed on the Commission's environmental mailing list and will be notified of any meetings associated with the Commission's environmental review process. Environmental commentors will not be required to serve copies of filed documents on all other parties. However, the non-party commentors will not receive copies of all documents filed by other parties or issued by the Commission and will not have the right to seek court review of the Commission's final order.

As of the February 27, 2018 date of the Commission's order in Docket No. CP16–4–001, the Commission will apply its revised practice concerning out-of-time motions to intervene in any new Natural Gas Act section 3 or section 7 proceeding.[1] Persons desiring to become a party to a certificate proceeding are to intervene in a timely manner. If seeking to intervene out-of-time, the movant is required to ''show good cause why the time limitation should be waived,'' and should provide justification by reference to factors set forth in Rule 214(d)(1) of the Commission's Rules and Regulations.[2]

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 3 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

Comment Date: 5 p.m. Eastern Time on February 22, 2019.

Issued: February 1, 2019.

Kimberly D. Bose,

Secretary.

[FR Doc. 2019–01654 Filed 2–7–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #2

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–1484–018; ER13–1069–007; ER12–2381–004.
Applicants: Shell Energy North America (US), L.P., MP2 Energy LLC, MP2 Energy NE LLC.
Description: Notice of Non-Material Change in Status of Shell Energy North America (US), L.P., et al.
Filed Date: 1/31/19.
Accession Number: 20190131–5308.
Comments Due: 5 p.m. ET 2/21/19.

Docket Numbers: ER17–2341–001.
Applicants: CA Flats Solar 130, LLC.
Description: Compliance filing: Notice of Change in Category Status to be effective 6/19/2018.
Filed Date: 2/1/19.
Accession Number: 20190201–5126.
Comments Due: 5 p.m. ET 2/22/19.

Docket Numbers: ER19–954–000.
Applicants: Alta Wind VIII, LLC.
Description: § 205(d) Rate Filing: Amendment to Market Base Rate Tariff to be effective 10/16/2017.
Filed Date: 2/1/19.
Accession Number: 20190201–5087.
Comments Due: 5 p.m. ET 2/22/19.

Docket Numbers: ER19–955–000.
Applicants: Brookfield Energy Marketing Inc.
Description: § 205(d) Rate Filing: Amendment to Market Base Rate Tariff to be effective 10/16/2017.
Filed Date: 2/1/19.
Accession Number: 20190201–5088.
Comments Due: 5 p.m. ET 2/22/19.

Docket Numbers: ER19–956–000.
Applicants: ITC Midwest LLC, Midcontinent Independent System Operator, Inc.
Description: § 205(d) Rate Filing: 2019–02–01_ITCM Attachment O Filing for Intangible Plant to be effective 1/1/2020.
Filed Date: 2/1/19.
Accession Number: 20190201–5089.
Comments Due: 5 p.m. ET 2/22/19.

Docket Numbers: ER19–957–000.
Applicants: Brookfield Energy Marketing LP.
Description: § 205(d) Rate Filing: Amendment to Market Base Rate Tariff to be effective 10/16/2017.
Filed Date: 2/1/19.
Accession Number: 20190201–5090.
Comments Due: 5 p.m. ET 2/22/19.

Docket Numbers: ER19–958–000.
Applicants: Brookfield Energy Marketing US LLC.
Description: § 205(d) Rate Filing: Amendment to Market Base Rate Tariff to be effective 10/16/2017.
Filed Date: 2/1/19.
Accession Number: 20190201–5092.
Comments Due: 5 p.m. ET 2/22/19.

Docket Numbers: ER19–959–000.
Applicants: Mesa Wind Power Corporation.
Description: § 205(d) Rate Filing: Amendment to Market Base Rate Tariff to be effective 10/16/2017.
Filed Date: 2/1/19.
Accession Number: 20190201–5094.
Comments Due: 5 p.m. ET 2/22/19.

Docket Numbers: ER19–960–000.
Applicants: Windstar Energy, LLC.
Description: § 205(d) Rate Filing: Amendment to Market Base Rate Tariff to be effective 10/16/2017.
Filed Date: 2/1/19.
Accession Number: 20190201–5096.
Comments Due: 5 p.m. ET 2/22/19.

Docket Numbers: ER19–961–000.
Applicants: Southern California Edison Company.
Description: § 205(d) Rate Filing: Amended LGIA Solar Star California XX, LLC True-Up SA No. 111 to be effective 4/3/2019.
Filed Date: 2/1/19.
Accession Number: 20190201–5097.
Comments Due: 5 p.m. ET 2/22/19.

Docket Numbers: ER19–962–000.

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[1] *Tennessee Gas Pipeline Company, L.L.C.,* 162 FERC ¶ 61,167 at ¶ 50 (2018).

[2] 18 CFR 385.214(d)(1).

Applicants: Duke Energy Florida, LLC.

Description: Notice of Cancellation of Service Agreement for Firm Point-To-Point Transmission Service of Duke Energy Florida, LLC.

Filed Date: 1/31/19.

Accession Number: 20190131–5323.

Comments Due: 5 p.m. ET 2/21/19.

Docket Numbers: ER19–963–000.

Applicants: Duke Energy Ohio, Inc., PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Duke Energy Ohio, Inc. submits IA SA No. 1491 to be effective 12/12/2018.

Filed Date: 2/1/19.

Accession Number: 20190201–5121.

Comments Due: 5 p.m. ET 2/22/19.

Docket Numbers: ER19–964–000.

Applicants: Alabama Power Company.

Description: Notice of Termination of Agreement for Transmission and Other Complementary Services of Alabama Power Company.

Filed Date: 1/31/19.

Accession Number: 20190131–5329.

Comments Due: 5 p.m. ET 2/21/19.

Docket Numbers: ER19–965–000.

Applicants: Alabama Power Company, Georgia Power Company, Mississippi Power Company.

Description: Notice of Termination of Large Generator Interconnection Agreement of Alabama Power Company, et al.

Filed Date: 1/31/19.

Accession Number: 20190131–5331.

Comments Due: 5 p.m. ET 2/21/19.

Docket Numbers: ER19–966–000.

Applicants: Fairless Energy, L.L.C.

Description: § 205(d) Rate Filing: Notice of Succession to be effective 12/17/2018.

Filed Date: 2/1/19.

Accession Number: 20190201–5172.

Comments Due: 5 p.m. ET 2/22/19.

Docket Numbers: ER19–967–000.

Applicants: Fairless Energy, L.L.C.

Description: § 205(d) Rate Filing: Notice of Succession to be effective 12/17/2018.

Filed Date: 2/1/19.

Accession Number: 20190201–5173.

Comments Due: 5 p.m. ET 2/22/19.

Docket Numbers: ER19–968–000.

Applicants: Manchester Street, L.L.C.

Description: § 205(d) Rate Filing: Notice of successionj. to be effective 12/14/2018.

Filed Date: 2/1/19.

Accession Number: 20190201–5174.

Comments Due: 5 p.m. ET 2/22/19.

Docket Numbers: ER19–969–000.

Applicants: Midcontinent Independent System Operator, Inc.

Description: § 205(d) Rate Filing: 2019–02–01_SA 3229 ITC-MidAmerican FCA (J475) to be effective 1/17/2019.

Filed Date: 2/1/19.

Accession Number: 20190201–5176.

Comments Due: 5 p.m. ET 2/22/19.

Docket Numbers: ER19–970–000.

Applicants: Tucson Electric Power Company.

Description: Tariff Cancellation: Cancellation of Service Agreement No. 363 to be effective 2/1/2019.

Filed Date: 2/1/19.

Accession Number: 20190201–5202.

Comments Due: 5 p.m. ET 2/22/19.

Take notice that the Commission received the following electric securities filings:

Docket Numbers: ES19–5–000.

Applicants: Cube Yadkin Transmission LLC.

Description: Amendment to December 12, 2018 Application under for Authorization Section 204 of the Federal Power Act of Cube Yadkin Transmission LLC.

Filed Date: 1/31/19.

Accession Number: 20190131–5332.

Comments Due: 5 p.m. ET 2/21/19.

Take notice that the Commission received the following foreign utility company status filings:

Docket Numbers: FC19–3–000.

Applicants: I Squared Capital.

Description: Notification of Self-Certification of Foreign Utility Company Status of the Conrad Companies.

Filed Date: 2/1/19.

Accession Number: 20190201–5111.

Comments Due: 5 p.m. ET 2/22/19.

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.

Issued: February 1, 2019.

Kimberly D. Bose,

Secretary.

[FR Doc. 2019–01653 Filed 2–7–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC19–8–000]

Commission Information Collection Activities (FERC–606, and FERC–607); Consolidated Comment Request; Extension

AGENCY: Federal Energy Regulatory Commission, Department of Energy.

ACTION: Notice of information collections 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 following information collections: FERC–606, Notification of Request for Federal Authorization and Requests for Further Information, and FERC–607, Report on Decision or Action on Request for Federal Authorization.

DATES: Comments on the collections of information are due April 9, 2019.

ADDRESSES: You may submit comments (identified by Docket No. IC19–8–000) 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.

Please reference the specific collection number and/or title in your comments.

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–606, Notification of Request for Federal Authorization and Requests for Further Information; FERC–607, Report on Decision or

Action on Request for Federal Authorization.

OMB Control No.: 1902–0241.

Type of Request: Three-year extension of these information collection requirements for all collections described below with no changes to the current reporting requirements. Please note that each collection is distinct from the other.

Abstract: FERC–606 requires agencies and officials responsible for issuing, conditioning, or denying requests for federal authorizations necessary for a proposed natural gas project to report to the Commission regarding the status of an authorization request. This reporting requirement is intended to allow agencies to assist the Commission to make better informed decisions in establishing due dates for agencies' decisions.

FERC–607 requires agencies or officials to submit to the Commission a copy of a decision or action on a request for federal authorization and an accompanying index to the documents and materials relied on in reaching a conclusion.

The information collections can neither be discontinued nor collected less frequently because of statutory requirements. The consequences of not collecting this information are that the Commission would be unable to fulfill its statutory mandate under the Energy Policy Act of 2005 to:

- Establish a schedule for agencies to review requests for federal authorizations required for a project, and
- Compile a record of each agency's decision, together with the record of the Commission's decision, to serve as a consolidated record for the purpose of appeal or review, including judicial review.

Type of Respondent: Agencies with federal authorization responsibilities.

Estimate of Annual Burden: [1] The Commission estimates the annual public reporting burden and cost [2] (rounded) for the information collection as follows:

FERC–606 (NOTIFICATION OF REQUEST FOR FEDERAL AUTHORIZATION AND REQUESTS FOR FURTHER INFORMATION), AND FERC–607 (REPORT ON DECISION OR ACTION ON REQUEST FOR FEDERAL AUTHORIZATION)

	Number of respondents (1)	Annual number of responses per respondent (2)	Total number of responses (1) * (2) = (3)	Average burden hours & cost per response (4)	Total annual burden hours & total annual cost (3) * (4) = (5)	Cost per respondent ($) (5) ÷ (1)
FERC–606	6	1	6	4 hrs.; $316	24 hrs.; $1,896	$316
FERC–607	1	1	1	1 hr.; $79	1 hr.; $79	79
Total	7		7		25 hrs.; $1,975	

Comments: Comments are invited on: (1) Whether the collections of information are 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 estimates of the burden and cost of the collections of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information collections; and (4) ways to minimize the burden of the collections of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Issued: February 1, 2019.

Kimberly D. Bose,

Secretary.

[FR Doc. 2019–01656 Filed 2–7–19; 8:45 am]

BILLING CODE 6717–01–P

[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, refer to 5 CFR 1320.3.

[2] The estimates for cost per response are derived using the formula: Average Burden Hours per Response * 79.00 per hour = Average Cost per Response. The hourly cost figure comes from the FERC average salary plus benefits of $164,820 per year (or $79.00/hour). These estimates were updated in May 2018. This figure is being used because the staff thinks industry is similarly situated in terms of average hourly cost.

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPPT–2013–0677; FRL–9987–29]

Receipt of Information Under the Toxic Substances Control Act

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA is announcing its receipt of information submitted pursuant to a rule, order, or consent agreement issued under the Toxic Substances Control Act (TSCA). As required by TSCA, this document identifies each chemical substance and/or mixture for which information has been received; the uses or intended uses of such chemical substance and/or mixture; and describes the nature of the information received. Each chemical substance and/or mixture related to this announcement is identified in Unit I. under **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT:

For technical information contact: John Schaeffer, Chemical Control Division (7405M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; telephone number: (202) 564–8173; email address: *schaeffer.john@epa.gov.*

For general information contact: The TSCA-Hotline, ABVI-Goodwill, 422 South Clinton Ave., Rochester, NY 14620; telephone number: (202) 554–1404; email address: *TSCA-Hotline@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Chemical Substances and/or Mixtures

Information received about the following chemical substance and/or mixture is provided in Unit IV.: 2-Butenedioic acid (2E)-, di-C8-18-alkyl esters (CASRN 68610–90–2).

II. Authority

Section 4(d) of TSCA (15 U.S.C. 2603(d)) requires EPA to publish a notice in the **Federal Register** reporting the receipt of information submitted

pursuant to a rule, order, or consent agreement promulgated under TSCA section 4 (15 U.S.C. 2603).

III. Docket Information

A docket, identified by the docket identification (ID) number EPA–HQ–OPPT–2013–0677, has been established for this **Federal Register** document, which announces the receipt of the information. Upon EPA's completion of its quality assurance review, the information received will be added to the docket identified in Unit IV., which represents the docket used for the TSCA section 4 rule, order, and/or consent agreement. In addition, once completed, EPA reviews of the information received will be added to the same docket. Use the docket ID number provided in Unit IV. to access the information received and any available EPA review.

EPA's dockets are available electronically at *http://www.regulations.gov* or in person at the Office of Pollution Prevention and Toxics Docket (OPPT Docket), Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW, Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPPT Docket is (202) 566–0280. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets.*

IV. Information Received

As specified by TSCA section 4(d), this unit identifies the information received by EPA: 2-Butenedioic acid (2E)-, di-C8-18-alkyl esters (CASRN 68610–90–2).

1. *Chemical Use:* Industrial manufacturing lubricant.

2. *Applicable Rule, Order, or Consent Agreement:* Chemical testing requirements for third group of high production volume chemicals (HPV3), 40 CFR 799.5089.

3. *Information Received:* The following listing describes the nature of the information received. The information will be added to the docket for the applicable TSCA section 4 rule, order, or consent agreement and can be found by referencing the docket ID number provided. EPA reviews of information will be added to the same docket upon completion.

Water Solubility Analytical Report. The docket ID number assigned to this information is EPA–HQ–OPPT–2009–0112.

Authority: 15 U.S.C. 2601 *et seq.*

Dated: December 7, 2018.

Lynn Vendinello,

Acting Director, Chemical Control Division, Office of Pollution Prevention and Toxics.

[FR Doc. 2019–01547 Filed 2–7–19; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OECA–2018–0843; FRL–9988–78–OECA]

Public Comment on EPA's National Compliance Initiatives for Fiscal Years 2020–2023

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public comment period.

SUMMARY: The Environmental Protection Agency (EPA) is soliciting public comment and recommendations on the National Compliance Initiatives (NCIs) to be undertaken in fiscal years 2020–2023. The EPA focuses enforcement and compliance resources on the most serious environmental violations by developing and implementing national program priorities, previously called National Enforcement Initiatives. The NCIs currently underway, as well as potential modifications to these NCIs under consideration, are described in the **SUPPLEMENTARY INFORMATION** section of this document, with additional descriptions and data on the current NCIs available on our website: *http://www.epa.gov/enforcement/national-compliance-initiatives.*

DATES: Comments must be received on or before March 11, 2019.

ADDRESSES: You may send comments, identified by Docket ID No. EPA–HQ–OECA–2018–0843; to *https://www.regulations.gov.* Follow the online instructions for submitting comments.

Instructions: All submissions received must include the Docket ID No. for this notice. Comments received will be posted without change to *https://www.regulations.gov/,* including any personal information provided. For detailed instructions on sending comments and additional information on the notice process, see the ''Written Comments'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Michele McKeever, Chief, National Planning and Measures Branch, Office of Enforcement and Compliance Assurance, Mail Code: M2221A, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone number: 202–564–3688; fax number: 202–564–0027; email address: *mckeever.michele@epa.gov.*

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

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I. Written Comments

Submit your comments, identified by Docket ID No. EPA–HQ–OECA–2018–0843; at *https://www.regulations.gov.* Once submitted, comments cannot be edited or removed from *Regulations.gov.* 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, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets.*

II. What are EPA's National Compliance Initiatives?

The EPA is soliciting public comment and recommendations on the NCIs to be undertaken by EPA over the four-year period of fiscal years 2020–2023. This notice is an agency planning document and does not impose any legally binding requirements on any outside parties.

The EPA focuses enforcement and compliance resources on the most serious environmental violations by developing and implementing national

enforcement and compliance program priorities, previously called National Enforcement Initiatives (NEIs). As part of EPA's ongoing efforts to increase the environmental law compliance rate and reduce the average time from violation identification to correction, EPA recently has adjusted and renamed the NEIs program to the NCIs program to better convey the overarching goal of increased compliance and the use of not only enforcement actions, but the full range of compliance assurance tools. These tools include helping regulated entities understand their compliance obligations, helping facilities return to compliance through informal actions, building state capacity, supporting state actions, bringing Federal civil administrative actions, and bringing Federal civil or criminal judicial enforcement actions.

III. On what is the EPA requesting comment?

The EPA's Office of Enforcement and Compliance Assurance is collecting comment on which of the current national initiatives should continue, be modified, or returned to the standard (''core'') enforcement program. Current initiatives may be carried forward into the FY 2020–2023 NCI cycle, as is or modified, or an NCI may be concluded at the end of FY 2019. The public also is invited to propose other areas for consideration as an NCI, keeping in mind resource constraints.

For this upcoming NCI cycle, the EPA has provided new opportunities for early and meaningful input from the states and federally-recognized Indian tribes regarding the identification and development of the NCIs. In Fall 2018, EPA Regional offices solicited input from the states and federally-recognized Indian tribes. The EPA also reached out to a number of state and tribal associations for early input into the NCI program. EPA looks forward to considering the state and tribal input on the current initiatives—such as whether to continue, modify, or conclude them—as well as suggestions for new NCIs. The EPA welcomes active state and tribal participation in implementing the NCI if the state or tribe is authorized for the particular program.

IV. What are the current FY 2017–2019 National Compliance Initiatives?

The U.S. Environmental Protection Agency, Office of Enforcement and Compliance Assurance, has seven initiatives underway from the FY 2017–2019 cycle (with modified implementation in FY 2019, described below).[1] These initiatives are:

1. Cutting Hazardous Air Pollutants (HAPs)
2. Reducing Toxic Air Emissions from Hazardous Waste Facilities
3. Reducing Risks of Accidental Releases at Industrial and Chemical Facilities
4. Keeping Industrial Pollutants Out of the Nation's Waters
5. Ensuring Energy Extraction Activities Comply with Environmental Laws
6. Keeping Raw Sewage and Contaminated Stormwater Out of Our Nation's Waters
7. Reducing Air Pollution from the Largest Sources

Additional descriptions and data on these initiatives are available online at: *http://www.epa.gov/enforcement/national-compliance-initiatives.*

V. What are the potential initiatives under consideration for FY 2020–2023?

For the seven active initiatives from the FY 2017–2019 cycle, EPA is soliciting input on whether we should continue, modify, or conclude the initiative and return it to the ''core'' or standard enforcement program. For all initiatives, EPA intends to focus on environmental and public health risks, not specific industry sectors.

A. Extensions of Initiatives

The EPA is seeking comment on plans to extend the following three current initiatives into the FY 2020–2023 cycle:

Cutting Hazardous Air Pollutants. Leaks, flares, and excess emissions from refineries, chemical plants and other industries emit hazardous air pollutants (HAPs), or air toxics, that are known or suspected to cause cancer, birth defects, and seriously impact the environment. Recent monitoring shows that facilities still often emit more HAP emissions than they actually report. Leaking equipment and improperly operated flares remain some of the largest sources of HAP emissions from petroleum refineries and chemical manufacturing facilities. Improper operation of an industrial flare can result in hundreds of tons of excess HAP emissions. The EPA has worked to identify and address illegal and excess emissions of toxic air pollutants from leaks and flares at facilities that have a significant impact on air quality and health in communities since this initiative began in 2004. The Agency believes that continuing this NCI will help to achieve EPA Strategic Plan objectives of addressing vulnerable populations, addressing Clean Air Act (CAA) non-attainment areas. The Agency also believes that EPA expertise will help improve compliance and facilitate a timely return to compliance where noncompliance is found.

Reducing Toxic Air Emissions from Hazardous Waste Facilities. EPA has found that air emission violations associated with the improper management of hazardous waste remain widespread. The Resource Conservation and Recovery Act requires effective monitoring to identify and repair leaks from certain hazardous waste storage tanks, containers, pipes, valves, and other equipment. Releases from hazardous waste facilities can include releases of constituents known or suspected to cause cancer, birth defects, or that seriously impact the environment. The Agency began this initiative in 2017 and believes that continuing this initiative will help to achieve EPA Strategic Plan objectives of addressing vulnerable populations and reducing non-attainment areas. The Agency also believes that its expertise will help improve compliance rates and facilitate a timely return to compliance where noncompliance is found. Accordingly, we plan to continue our work, including efforts to build state capacity in this program.

Reducing Risks of Accidental Releases at Industrial and Chemical Facilities. Thousands of facilities nationwide, many of which are in low income or minority communities, make, use and store extremely hazardous substances. Catastrophic accidents at these facilities—historically about 150 each year—can result in fatalities and serious injuries, evacuations, and harm to human health and the environment. EPA regulates these facilities under section 112(r) of the CAA and through the Chemical Accident Prevention regulations, also known as the Risk Management Program (RMP). The regulations apply to stationary sources that have a listed chemical in a process at or above an established threshold quantity. A broader statutory obligation under CAA section 112(r)(1), the General Duty Clause (GDC), applies to all stationary sources with regulated substances or other extremely hazardous substances, regardless of the quantity of chemical involved. This has been an NCI since 2016, and EPA has found that many regulated facilities are not adequately managing the risks they pose or ensuring the safety of their facilities to protect surrounding communities.

[1] There were originally eight initiatives in the FY 2017–2019 cycle. The initiative to ''Prevent Animal Waste from Contaminating Surface and Ground Water'' was moved to the core program by the EPA Memorandum, ''Transition from National Enforcement Initiatives to National Compliance Initiatives,'' August 21, 2018.

Therefore, the EPA plans to continue this NCI with a focus on the most serious situations of non-compliance and attention to the EPA Strategic Plan objective of addressing vulnerable populations. The Agency believes that its expertise will help improve compliance rates and facilitate a timely return to compliance where noncompliance is found. The EPA also plans to enhance the use of compliance assistance and expedited settlement agreements to address smaller sources.

B. Modifications of Initiatives

The EPA is seeking comment on plans to transition two current initiatives into new initiatives for FY 2020–2023. A brief description of the proposed changes is provided below.

Transitioning ''Keeping Industrial Pollutants Out of the Nation's Waters'' NCI to ''National Pollutant Discharge Elimination System (NPDES) Significant Non-Compliance (SNC) Reduction'': In FY 2018, the EPA initiated a new NCI focused on achieving the goal established in EPA's FY 2018–2022 Strategic Plan: ''By September 30, 2022, increase the environmental law compliance rate.'' As described in the Strategic Plan, this concept is first being piloted by focusing, through the new NCI, on reducing the rate of significant noncompliance in the Clean Water Act (CWA) NPDES program by 50 percent by the end of FY 2022. The NCI has incorporated the existing ''Industrial Pollutants'' NCI with a broader focus of increasing the percentage of all NPDES permittees in compliance with their permit (as measured by reducing the rate of permittees in SNC). This effort could establish a model for improving environmental program compliance rates that could be used in other programs. EPA is seeking comment on how to best pursue and achieve this goal of reducing NPDES SNC in the FY 2020–2023 NCI cycle.

Transitioning the ''Ensuring Energy Extraction Activities Comply with Environmental Laws'': Beginning in 2011, this initiative focused on one industrial sector, natural gas extraction, implying that the EPA considers all problems in this sector—large or small—to be a priority. Rather than focus on any single sector, the EPA proposes to focus on significant public health and environmental problems without regard to sector. Specifically, for the FY 2020–2023 NCI cycle the EPA is proposing to transition this NCI to an initiative that will focus on significant sources of volatile organic compounds (VOCs) that have a substantial impact on air quality (without regard to sector), and that may adversely affect vulnerable populations or an area's CAA attainment status. We also will evaluate the idea of merging this work into the ''Cutting Hazardous Air Pollutants'' NCI.

C. Return of Initiatives to the Core Program

The EPA expects to return the following two current initiatives to the standard ''core'' enforcement program having largely achieved EPA's goals for these NCIs:

Reducing Air Pollution from the Largest Sources. The New Source Review (NSR) and Prevention of Significant Deterioration (PSD) requirements of the CAA require certain large industrial facilities to install state-of-the-art air pollution controls when they build new facilities or make significant modifications to existing facilities. The EPA began this initiative as it relates to the power sector in 1998, after EPA investigations revealed that many facilities had failed to install pollution controls after modifications, causing them to emit pollutants that can impact air quality and public health. The EPA and state regulatory approaches and enforcement efforts in this sector have resulted in a 90 percent reduction in sulfur dioxide emissions and an 83 percent reduction in nitrogen oxide emissions since 1997, while gross generation has increased by 10 percent. The EPA has required controls or commenced investigations at 91 percent, 96 percent, and 90 percent of facilities in the glass, cement, and acid manufacturing sectors, respectively. Accordingly, the Agency believes that this NCI no longer presents a significant opportunity to affect nonattainment areas or vulnerable populations nationwide. The EPA proposes to return work in these areas to the core program in FY 2020. EPA will continue to monitor the progress of existing settlement agreements to ensure actions required under those settlements are implemented and air pollution reduction targets are met.

Keeping Raw Sewage and Contaminated Stormwater Out of Our Nation's Waters. Since this NCI began in 2000, the EPA, in conjunction with state co-plaintiffs, has taken enforcement actions at the largest municipal sewer systems with CWA violations to reduce pollution and to reduce unlawful discharges of raw sewage that degrade water quality in communities. The EPA has obtained significant improvement in compliance and major reductions in water pollution. Under this initiative, 97 percent of large combined sewer systems, 92 percent of large sanitary sewer systems and 79 percent of Phase 1 municipal separate stormwater systems are now either in compliance or are on an agreed-upon schedule to come into compliance. Accordingly, the Agency believes that this NCI no longer presents a significant opportunity to correct water quality impairment nationwide. The EPA proposes to return work in this area to the core program in FY 2020. EPA and states will continue to monitor implementation of these long-term agreements, and to adapt them to changing circumstances and new information, such as the increasing commitment of cities to implement green infrastructure, changes in financial capability, or technological advances.

D. New NCIs

The EPA specifically invites comment on two new NCIs under consideration:

a. *NCI to increase compliance with drinking water standards.* Each year thousands of community water systems (CWSs) violate one or more health-based drinking water standards promulgated under the Safe Drinking Water Act (SDWA), which exposes millions of people to potential health risks. Thousands more CWSs repeatedly fail to collect water samples or report test results making difficult to know if the drinking water is safe. CWSs exceeding action levels or other regulatory triggers may not complete required follow-up actions. In addition to these known violations, significant deficiencies in the design, operation or maintenance of the CWS may go unreported and uncorrected. Recent events at a few large CWSs indicate that current practices and use of existing data, tools, and policies have not always proved sufficient to prevent CWSs from moving toward serious noncompliance that may threaten human health. This potential NCI would focus on EPA working jointly with states to identify how we can collaborate to use our resources more effectively and efficiently to focus efforts where they can make the biggest difference as we work together to increase compliance with primary drinking water standards thus improving public health protection at CWSs most at risk. This NCI would support the Agency's Strategic Plan objective to reduce the number of community water systems out of compliance with health-based standards.

b. *NCI to reduce children's exposure to lead.* A potential lead NCI would support various agency efforts to tackle lead contamination in all environmental media and could present an opportunity to use consumer education to increase compliance. This NCI would support

the Agency's Strategic Plan focus on vulnerable populations, as well as the interagency Federal Lead Action Plan.

Finally, the public is invited to propose any other areas for consideration as new NCIs.

E. Public Comments

The EPA will consider all comments to these proposals as it moves forward in the decision-making process. NCIs will be incorporated into the EPA Office of Enforcement and Compliance Assurance FY 2020–2021 National Program Guidance (NPG) that provides national program direction for all EPA regional offices. Information in support of this Notice of Public Comment is available online at: *http://www.epa.gov/enforcement/national-compliance-initiatives.*

VI. Can the deadline for comments be extended?

The EPA will include NCIs in the Office of Enforcement and Compliance Assurance (OECA) draft NPG that will be released for public comment to allow the EPA regions, as well as states and federally-recognized tribes with approved programs, to consider the guidance fully in their annual planning processes that direct the use of resources according to the fiscal calendar. As a result, EPA must receive public comments on potential NCIs by March 11, 2019 in order to complete consideration of NCIs before the NPG is released for public comment. However, the public will have a second opportunity to provide comments on the NCIs when commenting on OECA's draft NPG.

Dated: December 20, 2018.

Susan Parker Bodine,

Assistant Administrator, Office of Enforcement and Compliance Assurance.

[FR Doc. 2019–01548 Filed 2–7–19; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPPT–2019–0021; FRL–9989–21]

Extension of Review Periods Under the Toxic Substances Control Act; Certain Chemicals and Microorganisms; Premanufacture, Significant New Use, and Exemption Notices; Delay in Processing Due to Lack of Authorized Funding

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Due to a partial Federal government shutdown related to the lack of authorized funding (*i.e.,* a Fiscal Year 2019 Appropriations Bill or a Continuing Resolution), EPA is extending the review periods for all Premanufacture Notices (PMNs), Significant New Use Notices (SNUNs), Microbial Commercial Activity Notices (MCANs), and exemption notices submitted to the Agency under section 5 of the Toxic Substances Control Act (TSCA) received by EPA on or before December 29, 2018, and for which the review period had not expired as of December 29, 2018. Additionally, EPA did not receive notifications or process such submissions on or after December 29, 2018, and before the date on which the shutdown terminated on January 25, 2019, and the affected operations for the TSCA New Chemicals Program fully resumed on January 31, 2019. Also, during the shutdown, submissions made through e-PMN/CDX or other methods were not processed by EPA. Consequently, the review period for any TSCA section 5 notice submitted during the shutdown did not begin until TSCA New Chemical operations fully resumed on January 31, 2019.

DATES: The duration of this extension period is equivalent to the time period from December 29, 2018 (*i.e.,* the date on which EPA operations shutdown) and the date on which EPA operations for the TSCA New Chemicals Program fully resumed (*i.e.,* January 31, 2019), or a total of 33 days.

FOR FURTHER INFORMATION CONTACT:

For technical information contact: Greg Schweer, Chemical Control Division (7405M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; telephone number: (202) 564–8469; email address: *schweer.greg@epa.gov.*

For general information contact: The TSCA-Hotline, ABVI-Goodwill, 422 South Clinton Ave., Rochester, NY 14620; telephone number: (202) 554–1404; email address: *TSCA-Hotline@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are a manufacturer (which includes importers) or processor of a chemical substance that requires submission under section 5 of TSCA (15 U.S.C. 2604) and applicable EPA regulations. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

- Manufacturers or processors of one or more subject chemical substances (NAICS codes 325 and 324110), *e.g.,* chemical manufacturing and petroleum refineries.

B. How can I get copies of this document and other related information?

The docket for this action, identified by docket identification (ID) number EPA–HQ–OPPT–2019–0021, is available at *http://www.regulations.gov* or at the Office of Pollution Prevention and Toxics Docket (OPPT Docket), Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW, Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPPT Docket is (202) 566–0280. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets.*

Information on the shutdown can be found at *http://www.opm.gov.* Information about the TSCA section 5 requirements can be found at *http://www.epa.gov/oppt/newchems/.*

C. What is the Agency's authority for taking this action?

Under TSCA section 5(c), 15 U.S.C. 2604(c), EPA may unilaterally extend the notice review period for PMNs, MCANs, and SNUNs, thereby extending the period before manufacturing or processing the subject chemical substances may begin. (See also 40 CFR 720.75(c) for PMNs and SNUNs, and 40 CFR 725.56 for MCANs.) Section 26(c) of TSCA (15 U.S.C. 2625(c)), authorizes EPA to take action with respect to a category of chemical substances; in this case, the category is all chemical substances that are the subject of the specified notices and exemption applications, for which the notice review period would otherwise expire on or after December 29, 2018. Under TSCA section 5(c), extensions of the review period for an individual TSCA section 5 notice shall not total more than 90 days. Because the extension described in this **Federal Register** notice (*i.e.,* 33 days) is less than 90 days, EPA reserves the right under TSCA section 5(c) to issue, for good cause, future additional extensions for individual cases up to a total of 90 days.

Section 5(h) of TSCA (15 U.S.C. 2604(h)) authorizes EPA to exempt

manufacturers and/or processors of chemical substances from all or part of the requirements of section 5 of TSCA if EPA determines that the proposed manufacture, processing, distribution in commerce, use, or disposal of such chemical substance will not present an unreasonable risk to health or the environment. Pursuant to this and other authorities, EPA has concluded that the additional time specified in this notice is required to evaluate the exemption applications described in Unit II.A. and determine whether the chemical substances that are the subject of these exemption applications will not present an unreasonable risk.

II. Extension of Review Periods

A. Which TSCA review periods are affected?

Section 5 of TSCA and 40 CFR part 720 require any person who intends to manufacture (defined by statute to include import) a new chemical substance (*i.e.,* a chemical not on the TSCA section 8(b) Inventory) to notify EPA at least 90 days before commencing non-exempt commercial manufacture in the form of a PMN. Similarly, at least 90 days advance notice for manufacture of new microorganisms is required under 40 CFR part 725, in the form of an MCAN. Under section 5 of TSCA and 40 CFR part 721, any person intending to manufacture or process a chemical substance for a significant new use, as designated by EPA in a SNUR, must also give EPA at least 90 days advance notice in the form of a SNUN. SNURs for microorganisms appear at 40 CFR part 725, subpart M. The required notifications initiate EPA's evaluation of the new chemical or the intended significant new use within the applicable review period. Persons may not commence manufacture of a new chemical substance, or manufacture of processing of a chemical substance for a significant new use, until EPA has conducted a review of the relevant notice, made an appropriate determination on the notice, and has taken such actions as are required with that determination.

There are several of exemptions from the above-described 90-day PMN, MCAN, and SNUN notice requirements. Many of these exemptions require submitting to EPA a written notice or application, which is subject to a review period shorter than 90 days. For example, pursuant to TSCA section 5(h)(1) EPA has promulgated a Test Market Exemption (TME) from the PMN, MCAN, and SNUN 90-day notice requirements. The TME from the PMN requirement appears at 40 CFR 720.38; the TME from the MCAN requirement is codified in 40 CFR part 725, subpart F (40 CFR 725.300 through 725.370); and the TME from the SNUN requirement appears at 40 CFR 721.45(a). Under TSCA section 5(h)(4), EPA promulgated at 40 CFR 723.50 a Low Volume Exemption (LVE) and a Low Release/Low Exposure (LOREX) Exemption from the PMN requirement. The regulations at 40 CFR part 725 pertaining to genetically engineered microorganisms provide several exemptions from the 90-day MCAN requirement, including the TSCA Experimental Release Application (TERA) at 40 CFR part 725, subpart E, and the Tier I and Tier II Exemptions at 40 CFR part 725, subpart G.

B. What action is the Agency taking?

Effective December 29, 2018, due to the lack of authorized funding (*i.e.,* a Fiscal Year 2019 Appropriations Bill or a Continuing Resolution), certain EPA functions were suspended. During the shutdown, no review work was performed on the TSCA section 5 notifications received by EPA on or before December 29, 2018, and for which the review period had not yet expired as of December 29, 2018. Because of the shutdown, EPA is now extending, pursuant to sections 5(c) and 26(c) of TSCA and 40 CFR 720.75(c), the review periods of all TSCA section 5 notifications received on or before December 29, 2018, and for which the review period has not yet expired as of December 29, 2018.

The Agency requires an extension of the review periods to complete its risk assessments, to examine its regulatory options, and to prepare the necessary documents associated with the relevant determination under TSCA section 5(a)(3). Therefore, EPA has determined that good cause exists to extend, under TSCA section 5(c), the review period for each such TSCA section 5 notification.

The duration of this extension period is equivalent to the time period from December 29, 2018 (*i.e.,* the date on which EPA operations shutdown) and the date on which EPA operations for the TSCA New Chemicals Program fully resumed (*i.e.,* January 31, 2019), or a total of 33 days. Although EPA reopened following the partial government shutdown on January 28, 2019, EPA set January 31 as the day that normal operations of the TSCA section 5 New Chemicals Program fully resumed. These additional days beyond January 28 reflect the additional time that was needed to ensure that: EPA data systems were fully operational; EPA and contractor staff have ID badges, passwords and access to systems were reset; EPA and contractor staff whose 1-year approvals to access TSCA CBI expired during the shutdown were reestablished; and contractor staff who were reassigned to other contracts not affected by the shutdown were reassigned to contracts supporting the New Chemicals Program.

Under TSCA section 5(c), the total extensions of the review period for an individual PMN shall not exceed 90 days. Thus, since the extension described in this notice is for less than 90 days, EPA reserves the right to issue additional extensions under TSCA section 5(c) in the future for good cause up to a total of 90 days.

Because of these circumstances, EPA is taking the following actions and is requesting the assistance of notifiers as described in this unit:

Category 1—TSCA section 5 notices and exemptions submitted to EPA on or after December 29, 2018, and before the date on which the affected operations fully resumed on January 31, 2019. During the shutdown, submissions made through e-PMN/CDX or other methods were not processed. Consequently, the review period for any TSCA section 5 notice submitted during the shutdown did not begin until TSCA New Chemicals Program operations fully resumed on January 31, 2019.

Category 2—TSCA section 5 exemption notices scheduled to expire on or after December 29, 2018. For any exemption notices that have not been granted by EPA and for which the review period was scheduled to expire on or after December 29, 2018, EPA is hereby extending the notice review period by 33 days (the number of days equivalent to the duration of the shutdown until affected operations fully resumed). This additional time is required to ensure there is sufficient opportunity to determine that the chemical substances that are the subject of the exemption applications will not present an unreasonable risk.

Category 3—TSCA section 5 PMNs, MCANs, and SNUNs scheduled to expire on or after December 29, 2018. For any PMN, MCAN, or SNUN for which the review period was scheduled to expire on or after December 29, 2018, EPA is hereby extending the notice review period by 33 days (the number of days equivalent to the duration of the shutdown until affected operations fully resumed).

C. Was this action submitted to Congress and the Comptroller General?

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* generally provides that before the Agency can impose binding requirements like those contained in a rule, the Agency must

submit a rule report, which includes a copy of the document, to each House of the Congress and to the Comptroller General of the United States. Although this document is not a rule, it is binding in the sense that the suspensions announced in here are binding. EPA has submitted a report to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to its publication in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects

Environmental protection, Chemical, Microorganisms, Premanufacture Notices, Test Marketing Exemptions.

Dated: February 1, 2019.

Lynn Vendinello, Acting,

Director, Chemical Control Division, Office of Pollution Prevention and Toxics.

[FR Doc. 2019–01684 Filed 2–7–19; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2007–0358; FRL–9988–84–OAR]

Proposed Agency Information Collection Request; Comment Request; Responsible Appliance Disposal Program (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) is planning to submit an information collection request (ICR), ''EPA's Responsible Appliance Disposal (RAD) Program (Renewal)'' (EPA ICR No. 2254.02, OMB Control No. 2060–0703) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act. Before doing so, EPA is soliciting public comments on specific aspects of the proposed information collection as described below. This is a proposed extension of the ICR, which is currently approved through August 31, 2019. 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.

DATES: Comments must be submitted on or before April 9, 2019.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–OAR–2007–0358, online using *www.regulations.gov* (our preferred method), by email to *a-and-r-docket@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW, Washington, DC 20460.

EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION CONTACT: Sally Hamlin, Stratospheric Protection Division, Office of Atmospheric Programs (Mail Code 6205T), Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone number: (202) 343–9711; fax number: (202) 343–2362; email address: *Hamlin.Sally@epa.gov.*

SUPPLEMENTARY INFORMATION: Supporting documents which explain in detail the information that the EPA will be collecting are available in the public docket for this ICR. The docket can be viewed online at *www.regulations.gov* or in person at the EPA Docket Center, WJC West, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit *https://www.epa.gov/dockets.*

Pursuant to section 3506(c)(2)(A) of the PRA, EPA is soliciting comments and information to enable it to: (i) 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; (ii) 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; (iii) enhance the quality, utility, and clarity of the information to be collected; and (iv) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* allowing electronic submission of responses. EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval. At that time, EPA will issue another **Federal Register** notice to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB.

Abstract: The Responsible Appliance Disposal Program (RAD) is a voluntary partnership program sponsored by the Environmental Protection Agency (EPA) that reduces emissions of ozone depleting substances (ODS) that can be attributed to improper disposal of appliances. Appliances can contain ozone depleting refrigerants and foams as well as universal wastes such as mercury, used oil, and polychlorinated biphenyls (PCB). Federal law requires refrigerant recovery and proper management of universal waste but does not require the recovery of appliance foam. In addition to being ODS, foam blowing agents and refrigerants in appliances may also have high global warming potentials (GWPs). The RAD program works with utilities, retailers, manufacturers, state agencies, affiliates, and others to dispose of appliances using best environmental practices.

Form Numbers: 5900–32

Respondents/affected entities: The following is a list of North American Industry Classification System (NAICS) codes for organizations potentially affected by the information requirements covered under this ICR are:

2211	Utilities
3352	Manufacturers
443141	Retailers
611310	Universities
999300	State/Municipality

Respondent's obligation to respond: Voluntary.

Estimated number of respondents: 48 (over three years).

Frequency of response: Annual, and when desired.

Total estimated burden: 292 hours (per year). Burden is defined at 5 CFR 1320.03(b).

Total estimated cost: $36,753 (per year), includes $0 annualized capital or operation & maintenance costs.

Changes in estimates: There is a decrease of 33 hours in the total estimated respondent burden compared with the 325 hours for the ICR currently approved by OMB. This decrease is due in part to a decrease in the number of respondents due to recycling industry changes, as well as a reduction in the number of partners participating in the program each year.

Dated: December 14, 2018.

Cynthia A. Newberg,

Director, Stratospheric Protection Division.

[FR Doc. 2019–01536 Filed 2–7–19; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OLEM–2018–0756, FRL–9988–67–OLEM]

Agency Information Collection Activities; Proposed Collection; Comment Request; Requirements for Generators, Transporters, and Waste Management Facilities Under the RCRA Hazardous Waste Manifest System

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) is planning to submit the information collection request (ICR), Requirements for Generators, Transporters, and Waste Management Facilities Under the RCRA Hazardous Waste Manifest System (EPA ICR No. 0801.23, OMB Control No. 2050–0039) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act (PRA). Before doing so, the EPA is soliciting public comments on specific aspects of the proposed information collection as described below. This is a proposed extension of the ICR, which is currently approved through May 31, 2019. 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.

DATES: Comments must be submitted on or before April 9, 2019.

ADDRESSES: Submit your comments, referencing by Docket ID No. EPA–HQ–OLEM–2018–0756, online using *www.regulations.gov* (our preferred method), by email to *rcra-docket@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW, Washington, DC 20460.

EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION CONTACT: Bryan Groce, Office of Resource Conservation and Recovery, Program Implementation and Information Division, (5304P), Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone number: (703) 308–8750; fax number: (703) 308–0514; email address: *groce.bryan@epa.gov.*

SUPPLEMENTARY INFORMATION: Supporting documents which explain in detail the information that EPA will be collecting are available in the public docket for this ICR. The docket can be viewed online at *www.regulations.gov* or in person at the EPA Docket Center, WJC West, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit *http://www.epa.gov/dockets.*

Pursuant to section 3506(c)(2)(A) of the PRA, EPA is soliciting comments and information to enable it to: (i) 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; (ii) 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; (iii) enhance the quality, utility, and clarity of the information to be collected; and (iv) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* allowing electronic submission of responses.

EPA is also proposing and soliciting comments and information to: (1) Improve the precision of waste quantities and units of measure reported in Items 11 and 12 of the hazardous waste manifest (both paper and electronic), respectively; (2) enhance the quality of international shipment data reported on the manifest; and (3) assist EPA with integrating e-Manifest and biennial reporting (BR) requirements. These improvements are discussed in more detail below.

Abstract: The hazardous waste manifest (paper and electronic) and system cover recordkeeping and reporting activities under the Resource Conservation and Recovery Act (RCRA) and the Hazardous Waste Electronic Manifest Establishment Act (Pub. L. 112–195). EPA's authority to require use of a manifest system stems primarily from RCRA 3002(a)(5) (also RCRA Sections 3003(a)(3) and 3004.) Regulations are found in 40 CFR part 262 (registrant organizations and generators), part 263 (transporters), and parts 264 and 265 (TSDFs). The manifest lists the wastes that are being shipped and the treatment, storage, or disposal facility (TSDF) to which the wastes are bound. Generators, transporters, and TSDFs handling hazardous waste are required to complete the data requirements for manifests and other reports primarily to: (1) Track each shipment of hazardous waste from the generator to a designated facility; (2) provide information requirements sufficient to allow the use of a manifest in lieu of a DOT shipping paper or bill of lading, thereby reducing the duplication of paperwork to the regulated community; (3) provide information to transporters and waste management facility workers on the hazardous nature of the waste; (4) inform emergency response teams of the waste's hazard in the event of an accident, spill, or leak; and (5) ensure that shipments of hazardous waste are managed properly and delivered to their designated facilities. The Hazardous Waste Electronic Manifest Establishment Act provided EPA authority to establish the national electronic hazardous waste manifest system to track hazardous waste shipments electronically. The Act also provided EPA authority to adopt regulations that (1) allow it to accept electronic-manifests originated in the e-Manifest system as the legal equivalent to paper manifests; (2) require manifest users to submit paper copies of the manifest to the system for data processing; (3) collect manifests in the e-Manifest system for hazardous waste subject to federal or state law; and (4) set up user fees to offset the costs of developing and operating the e-Manifest system.

Pursuant to the Act, EPA modified the manifest regulations on February 7, 2014 (The e-Manifest ''One Year Rule''), to authorize use of electronic manifests (or e-Manifests) for tracking offsite shipments of hazardous waste from a generator's site to the site of the receipt and disposition of the hazardous waste. On January 3, 2018, EPA finalized the e-Manifest User Fee Final Rule which established the fee methodology that EPA uses to determine the user fees applicable to the electronic and paper manifests submitted to the national system. EPA launched the e-Manifest system on June 30, 2018. TSDF and other receiving facilities must submit manifests, both paper and electronic, to EPA. In addition to fees for RCRA wastes, EPA is charging TSDFs and other facilities receiving state-only regulated wastes a fee for each manifest submitted to the system. Regulations regarding copy submission requirements for interstate shipments and the

applicability of e-Manifest system and fees to facilities receiving state-only regulated wastes are found in 40 CFR part 260 (Hazardous Waste Management System). Regulations regarding imposition of user fees on receiving facilities for their manifest submissions, with references to key fee methodology, fee dispute, and fee sanction requirements are found in Parts 264 and 265.

For this renewal, EPA is proposing several improvements/enhancements, discussed below.

I. Improve Precision of Waste Quantities and Units of Measure

A. Use of Decimals

EPA is proposing to modify the manifest instructions to Item 11 of the manifest to grant manifest users the option to report waste quantities using decimals or fractions. The effect of this change would afford generators, and others completing the manifest, the ability to report more accurate wastes quantities in Item 11 of the manifest using decimals, rather than rounding partial units to the nearest whole unit or selecting smaller units of measure (*e.g.,* pounds instead of tons).

EPA has provided guidance on this issue in past manifest rulemakings. In March 2001, we explained that the Agency has historically discouraged use of fractions or decimals and referenced EPA's March 1984 Uniform Manifest Rule, which stated quantity descriptions should be as accurate as possible without using fractions or decimals. We also said that states reasonably may have relied upon EPA's 1984 guidance recommending against fractions and decimals when they designed their data systems. As a result, many state databases are not set up to receive data reported as fractions or decimals. The March 2001 proposal, however, acknowledged that a strict exclusion of fractional quantities could cause waste handlers to report waste quantities that lacked precision. For example, for waste quantities reported in tons, a waste quantity reported as 1.5 tons is far more precise than the alternative of truncating the quantity reported to only 1 ton or rounding up the quantity reported to 2 tons. As a result, we proposed to revise the manifest instructions to require only whole numbers to describe non-bulk shipments but allow use of fractions for bulk shipments, where necessary.

In its March 2005 final rule, EPA decided against allowing use of fractions or decimals to report waste quantities on the manifest based on a few adverse comments received to the proposal. First, state commenters confirmed that many state databases are not set up to receive data reported as fractions or decimals. Second, states argued frequent use of fractional or decimal entries could cause a significant number of errors resulting from attempts to interpret the fractions or to determine when and where a decimal point was present. Finally, states argued waste quantity reporting entries on the manifest could be misinterpreted and accuracy and precision compromised, because decimals or fractions may not transmit clearly to the bottom copies of the carbonless and non-carbon papers of the manifest forms.

Although EPA elected not to adopt use of fractions or decimals in the March 2005 final rule, we are revisiting this issue in light of implementation of the e-Manifest system, which the Agency launched on June 30, 2018. The issue of whether to allow decimals was also raised during the September 2017 e-Manifest Advisory Board meeting. Hazardous waste shipments now can be tracked electronically in e-Manifest and, unlike the paper manifest form, the e-Manifest system could be designed to accept fractions or decimal entries in Item 11 of the manifest without concern of misinterpretation of waste quantities due to decimal misplacement. Additionally, all manifests, paper and electronic, are now submitted to one central system—EPA's e-Manifest system, which is then used to disseminate manifest data to the states. This central collection may alleviate some of the state-specific issues related to integrating decimals into the state databases. Furthermore, EPA believes the allowance of decimals in Item 11 of the manifest will greatly enhance the accuracy of waste quantities reported to EPA. Consequently, EPA requests comment on whether the agency should revise the manifest instructions to allow reporting of decimals or fractions in Item 11 of the manifest.

Specifically, EPA asks, would use of decimals or fractions present issues for paper manifests? Should EPA limit use of decimals for certain shipment types—*i.e.,* limit use of fractions and decimals to certain shipments as proposed in March 2001 by granting use of decimals for bulk shipments (greater than 119 gallons), but require use of whole numbers for non-bulk shipments (less than or equal to 119 gallons)? What are the impacts to state and industry database systems, if EPA elects to allow use of decimals for waste quantity descriptions?

B. Alternative Set of Units of Measure

In addition, or as an alternative, to using decimals or fractions on the manifest, we believe the regulated community could more precisely report waste quantity by also using smaller units of measure (*e.g.,* ounces, grams, milliliters). The current set of units of measure specified in the manifest instructions to Item 12 of the manifest limit use to gallons, kilograms, liters, metric tons, cubic meters, pounds, tons, or cubic yards. This set can cause waste quantity reporting imprecision if waste quantity data must be rounded to the nearest whole number. If, however, the current set also included smaller units of measure, waste quantity reporting precision may possibly be improved if quantities are expressed as whole numbers. EPA requests comment on whether the agency should revise Table II of the manifest instructions to Item 12 to include ounces, grams, and milliliters. Additionally, EPA asks what other smaller units of measure could offer greater waste quantity reporting precision?

II. Enhance Quality of International Shipment Data

A. Addition of a New Field for Consent Numbers for Import and Export Shipments

EPA is proposing to add a new data field on the paper and electronic manifest so hazardous waste stream consent numbers can be recorded in a separate, distinct field on a manifest. Current export regulations at 40 CFR 262.83(c)(3) require exporters to record the consent numbers on the manifest for each waste stream listed in Item 9b of the manifest. Similarly, import-related regulations at 40 CFR 264.71(a)(3)(i) require U.S. facilities receiving hazardous waste subject to 40 CFR part 262, subpart H, from a foreign entity to record the relevant waste stream consent number from consent documentation supplied by EPA to the facility for each waste listed on the manifest. Currently, EPA has recommended listing the consent numbers in Item 14 ''Special Handling Instructions and Additional Information'' on the paper manifest form due to the lack of dedicated fields for listing such numbers. For electronic manifests, consent numbers are collected in e-Manifest for each waste stream as part of Item 9b, the U.S. Department of Transportation (DOT) shipping description.

EPA believes the addition of a separate data field to the paper and electronic manifest for consent numbers would facilitate the electronic upload or manual data entry of data from paper export and import manifests as the manifest would more clearly list the

consent number for each waste stream. The additional field would also facilitate the retrieval of import manifest data from e-Manifest for all manifested import shipments; the retrieval of export manifest data could also occur once EPA begins collecting export manifests in the e-Manifest system.

EPA requests comment on its proposal to add a new data element on the manifest for the consent number for each waste stream.

B. Capturing Exporter EPA ID Number on the Manifest

EPA explained in the 2018 e-Manifest User Fee Final Rule that it has not yet determined who in the export shipment chain of custody (*i.e.,* primary exporter vs. transporter moving waste from U.S. or other entity) is best suited for making the submission of the export manifest to the system and paying the requisite processing fee. EPA also explained that the Agency plans to consult the Advisory Board on future e-Manifest system enhancements and expansions and thus will bring the issue of export manifests before the Advisory Board in the near future. If, however, EPA ultimately decides that the exporter is the party best suited to be billed for export manifests collected in e-Manifest, the current manifest doesn't provide adequate information required to invoice them.

While EPA has designated a specific data element on the manifest form to report transporter ID numbers (Items 6 and 7 for Transporter 1 and Transporter 2), it has not designated a similar data element for exporter ID numbers. Current export regulations at 40 CFR 262.83(c) require the exporter to comply with the manifest requirements of 40 CFR 262.20 through 262.23 except that in lieu of the name, site address, and EPA ID number of the designated permitted facility, the exporter must enter the name and site address of the foreign receiving facility, the exporter must check the export box and enter the U.S. port of exit (city and state) from the United States in Item 16, and as previously discussed, the exporter must record the waste stream consent number for each waste listed on the manifest. If the exporter is the generator or the site from where the export manifest is initiated, the exporter's information will be listed in Item 1 and Item 5. But if the exporter is a recognized trader located separate from the site initiating the export shipment, then while the exporter must ensure that the items noted above are recorded on the manifest, Item 1 and Item 5 will reflect the generator or shipping site's information rather than the exporter's information.

Therefore, in anticipation of promulgating a regulation requiring the collection of export manifests in e-Manifest, we are considering revising the manifest instructions for both the paper and electronic forms so that if the responsible exporter is separate from the site initiating the export shipment, the exporter can clearly identify itself by entering its EPA ID number on the manifest, either in addition to or in lieu of the EPA ID number for the generator site. Alternatively, EPA could rely on the waste stream consent numbers already required to be recorded on the manifest, as each waste stream consent number is associated with a unique U.S. exporter in EPA's Waste Import Export Tracking System (WIETS). Relying on the waste stream consent numbers would require e-Manifest obtaining reference data on the exporter EPA ID number for each waste stream consent number from WIETS, while adding a new element for entering the exporter's EPA ID number could be used directly by e-Manifest.

EPA requests comment on whether the agency should revise the instructions for export manifests to clarify that the primary exporter must enter its EPA ID in Item 1 and its name and address on the left side of Item 5 and supply the name and address of the generator site on the right side of Item 5, if not the same as primary exporter, or, if an additional field should be added to capture the primary exporter's EPA ID number so that the generator site's EPA ID number is retained in Item 1 of the manifest. Or, alternatively, should EPA rely on the waste stream consent numbers from WIETS instead of adding a new data element on the manifest?

C. How To Incorporate New Fields on Manifest and Whether To Consolidate With Movement Document

How To Incorporate New Fields on Paper Manifests

As mentioned above, EPA is considering several data element additions to the manifest (both paper and electronic) for international shipments. While the proposed additions for consent numbers are being implemented easily in the e-Manifest system for electronic tracking, these additions would be problematic with the paper forms. The one-page paper manifest is already full of many data elements and does not have much space left for new additions. EPA requests comment on whether there are other options to accommodate these additions on the paper forms.

For example, is another option for international shipments to add space to Item 16, the International Shipment field, on the paper manifest to accommodate the four, 12-digit consent numbers corresponding to each of the four waste streams listed in Item 9 of the manifest? As an alternative, could we revise the Continuation Sheet so that the International Shipment Field is removed from the paper manifest and appears instead on a Continuation Sheet with an expanded area that is able to more easily accommodate four 12-digit consent numbers and the primary exporter's EPA ID number, if necessary? This would free up space on the paper manifest form for other tracking elements, including data elements needed for biennial reporting, or additional space needed for Item 14 entries. Both options would require revisions to the instructions for export manifests to clarify that the primary exporter must enter its EPA ID in Item 1 and its name and address on the left side of Item 5 and supply the name and address of the generator site on the right side of Item 5, if not the same as the primary exporter. Alternatively, we could modify the instructions under both options to clarify that the primary exporter must enter its EPA ID number in a separate new data field so that the generator site's EPA ID number is retained in Item 1 of the manifest. With respect to import manifests, the manifest instructions would also need to be revised to instruct the receiving facility to list the consent numbers for each waste stream.

How To Incorporate Import and Export Data for the Movement Document on the Manifest

Besides the proposed revision to the Continuation Sheet for international shipment information, should EPA also revise the Continuation Sheet with a more expanded International Field that is sufficient to collect all the information that is required on a movement document? For hazardous waste shipments leaving the U.S., the hazardous waste export regulations require both an export manifest and movement document to accompany the shipment. For hazardous waste shipments entering the U.S., the hazardous waste import regulations similarly require both an import manifest and movement document to accompany the shipment. The movement document must accompany the shipment from its initiation in the country of export to its delivery to the receiving facility in the country of

import. The movement document contains many of the same data required on the manifest; both documents identify the site from which the shipment originates in the country of export, the wastes being exported or imported, the applicable consent number for each waste stream from the relevant Acknowledge of Consent letters, the transporters or other persons taking custody of the waste during its movement, and the receiving facility in the country of import.

The movement document also includes some additional information currently not required on export manifests. The additional information includes, but is not limited to, (1) more contact information for the company originating the shipment (if different than the exporter), exporter, transporters and handlers of the export shipment, foreign importer (if different than the foreign receiving facility), and foreign receiving facility; (2) international recovery or disposal operation codes for the hazardous waste management processes to be used at the consignee facility, as defined in 40 CFR 262.81; (3) and international waste codes from the OECD Decision's Green, or Amber Lists, as incorporated by reference in 40 CFR 260.11. Both the manifest and movement document require the name and identifying information about the company initiating the waste shipment (*i.e.,* EPA identification number, address, telephone). The export manifest, however, would not include the exporter's information if the exporter is not the generator but is a recognized trader located separate from the site initiating the export shipment; the movement document includes this information and also requires the email address, phone number and fax number (if they have one) for the exporter, shipping site company (if different than the exporter), transporters, foreign importer (if different than the receiving facility) and receiving site. Second, the movement document also requires additional information regarding the technologies to be employed by the foreign receiving facility, and the applicable international recovery or disposal operations must be included on the movement document as defined in 40 CFR 262.81; these codes serve the same purpose as the management method codes for domestic hazardous shipments, which describe the type of hazardous waste management system used to treat, recover, or dispose of a hazardous waste. Third, both the export manifest and movement document must include in the description of waste sections of the documents the RCRA waste codes and the applicable UN/DOT identification numbers. Besides this description information, the movement document must also include the applicable OECD waste codes from the Green or Amber Lists of wastes as set forth in the OECD Council Decision and incorporated by reference in 40 CFR 260.11(g). Finally, another difference between export manifests and movement documents is that movement documents must also be signed by the foreign receiving facility. The signed copy is then used to provide the exporter with confirmation of receipt. Lastly, any rejection of a waste in the shipment must be noted on the movement document.

If EPA expanded the continuation sheet to include space for: (1) Additional contact information for the generator, exporter, transporters and handlers, importer (if different than the receiving facility) and receiving facility; (2) additional international codes for the recovery or disposal processes to be used at the consignee facility; (3) additional international waste codes from the OECD Decision's Green or Amber Lists; and (4) the foreign receiving facility's signature, it would eliminate the necessity for export shipments to be tracked with separate manifests and movement documents. Expansion of the Continuation Sheet to accommodate these movement document data elements would also aid in the electronic sharing of shipment data with the waste handlers and the national governments involved in the exports.

III. Biennial Reporting and e-Manifest Integration

Pursuant to the Hazardous Waste Electronic Manifest Establishment Act, EPA is required to build the e-Manifest system to afford users the ability to report hazardous waste receipt data applicable to the biennial hazardous waste report in e-Manifest. To meet the conditions under the e-Manifest Act, EPA is proposing to revise the paper manifest and continuation sheet (EPA Form 8700–22 and 8700–22A) to include source and form codes and density information.

The current manifest form already collects certain waste receipt data for biennial reporting: Facility's EPA ID number (Item 1); facility's name and address (Item 5); total quantities of waste shipped off-site for hazardous management (Item 11); and management method codes for hazardous waste treatment, storage, and disposal (Item 19). Generators and other manifest preparers can voluntarily report specific gravity or density for each waste stream in Item 14 ''Special Handling Instructions and Additional Information'' on the paper manifest form due to the lack of dedicated fields for listing such information. However, the paper manifest form does not provide BR data that describes how the hazardous waste originated (source code) nor does it provide waste information about the physical form or chemical composition of the hazardous waste (form code). The densities for each waste stream must also be reported for BR purposes if total hazardous waste quantities are reported using volumetric measure (gallons, liters, or cubic yards). (*Note:* The e-Manifest system allows users to voluntarily report source and form codes, and density data in the system.) If adopted, certain hazardous waste generators would be required to enter source and form codes and density information on the manifest for each RCRA waste listed on paper and electronic manifests. Currently, federal regulations only require large quantity generators (LQGs) to submit the Biennial Report (see § 262.41). Small quantity generators (SQGs) and very small quantity generators (VSQGs) are not subject to the federal biennial reporting requirements, but such generators could be subject to BR requirements under state law since states can have more stringent reporting requirements. Thus, hazardous waste generators who are required to complete the Waste Generation and Management (GM) Form under federal law or state law would be expected to enter source and form codes and density information, if necessary, on paper and electronic manifests. Because the e-Manifest Act extends to federally and state-regulated wastes requiring manifests, the e-Manifest system also collects manifests for state-only regulated hazardous wastes shipped on a manifest. Therefore, if a waste has a manifesting requirement under the law of either the origination (generator) state or the destination state, EPA would also require the generator of such wastes to enter source and form codes and density information, if applicable, on paper and electronic manifests. Similarly, an entity preparing a manifest on behalf of the generator, meeting the BR conditions above, would be expected to also enter source and form codes and density information, if applicable, on the paper and electronic manifests.

EPA believes the addition of these BR data elements to the paper manifest form is an important step towards full integration of e-Manifest with BR. These codes will enable users to report waste receipt data in the e-Manifest system

and ultimately assist them in the preparation of their biennial hazardous waste report. EPA requests comment on its proposal to require the reporting of form and source codes and density information, if applicable, on the manifest; these codes and density data would also be mandatory for manifest completion in e-Manifest. EPA requests comment on how the Agency should add the new data elements on the paper manifest for BR integration. Should EPA expand Item 19 of the manifest to include source code, form code, and density information, or create separate new data fields for each? Are the additions of these elements to the manifest sufficient enough to ensure that waste receipt data can be collected in the e-Manifest system and ultimately used for biennial hazardous waste reporting? If these additions are insufficient for BR integration, what other data entries must be recorded on the manifest for Biennial Reporting purposes?

EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval. At that time, EPA will issue another **Federal Register** notice to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB.

Form numbers: Form 8700–22 and 8700–22A.

Respondents/affected entities: Business or other for-profit.

Respondent's obligation to respond: Mandatory (RCRA 3002(a)(5)).

Estimated number of respondents: 203,927.

Frequency of response: Each shipment.

Total estimated burden: 2,608,292 hours per year. Burden is defined at 5 CFR 1320.03(b).

Total estimated cost: $131,925,993 (per year), includes $38,784,093 annualized capital and operation & maintenance costs.

Changes in estimates: The burden hours are likely to increase but not substantially, if EPA adopts the proposed manifest modifications detailed above in the **SUPPLEMENTARY INFORMATION** section.

Dated: December 11, 2018.

Barnes Johnson,

Director, Office of Resource Conservation and Recovery.

[FR Doc. 2019–01538 Filed 2–7–19; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2018–0226; FRL–9989–06–OAR]

RIN 2060–AT97

Public Hearing and Reopening of Comment Period for Proposed Determinations of Attainment by the Attainment Date, Extensions of the Attainment Date and Reclassification of Several Areas Classified as Moderate for the 2008 Ozone National Ambient Air Quality Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public hearing and reopening of public comment period.

SUMMARY: On November 14, 2018, the Environmental Protection Agency (EPA) proposed a rule titled ''Determinations of Attainment by the Attainment Date, Extensions of the Attainment Date and Reclassification of Several Areas Classified as Moderate for the 2008 Ozone National Ambient Air Quality Standards,'' which allowed for a 30-day public review and comment period that closed on December 14, 2018. In the proposal, the EPA offered to hold a public hearing if one was requested by November 29, 2018. The EPA received multiple requests for a public hearing, and, therefore, is announcing in this notice details for a scheduled public hearing. The hearing will provide the public with an opportunity to present oral testimony on the proposal. In addition, the EPA is reopening the public comment period on the proposed rule. The additional comment period will ensure the public has sufficient time to comment on the proceedings of the public hearing and the proposal.

DATES: The public hearing will be held on Friday, February 15, 2019, from 9 a.m. until 5 p.m. Eastern Standard Time (EST). The public comment period for the proposal will reopen beginning on the date this notice is published in the **Federal Register** and will close 7 days following the public hearing, on February 22, 2019.

ADDRESSES: The public hearing will be held at the William Jefferson Clinton East Building, 1301 Constitution Avenue NW, Washington, DC 20004, in Room 1153. Individuals planning to attend or testify at the hearing should be prepared to show valid picture identification, such as a driver's license, to the security staff to gain access to the meeting room (see under **SUPPLEMENTARY INFORMATION** the subsection, ''*Identification Requirements Under the REAL ID Act*'').

FOR FURTHER INFORMATION CONTACT: If you have any questions about the public hearing, you may contact Ms. Yvonne W. Johnson at (919) 541–3921 or *johnson.yvonnew@epa.gov.* If you need further information about this notice or the proposed rule, please contact Ms. Virginia Raps, Office of Air Quality Planning and Standards (OAQPS), Air Quality Policy Division, U.S. Environmental Protection Agency, Mail Code C539–01, Research Triangle Park, NC 27711; telephone number: (919) 541–4383; fax number: (919) 541–5315; email: *raps.virginia@epa.gov.*

Please note that any updates made to any aspect of the hearing will be posted online at *https://www.epa.gov/ground-level-ozone-pollution/2008-ozone-national-ambient-air-quality-standards-naaqs-nonattainment.* While the EPA expects the hearing to go forward as set forth under **DATES**, please monitor the website or contact Ms. Yvonne W. Johnson at (919) 541–3921 or *johnson.yvonnew@epa.gov.* The EPA does not intend to publish a document in the **Federal Register** announcing updates.

SUPPLEMENTARY INFORMATION: On November 14, 2018, the EPA proposed to make determinations for eleven areas classified as Moderate nonattainment for the 2008 ozone National Ambient Air Quality Standards (NAAQS) and determine whether each area attained the standards by the attainment date, July 20, 2018 (*see* 83 FR 56781). The EPA proposed to determine attainment by the attainment date, grant attainment date extensions, or identify areas that will be reclassified, by operation of law, from Moderate to Serious nonattainment for failure to attain the standards. The EPA also proposed new State Implementation Plan (SIP) due dates for the seven areas that failed to attain the standards by the attainment date. In its proposal, the EPA offered to hold a public hearing to hear public testimony on the proposal if one was requested by November 29, 2018. The EPA received multiple requests for a public hearing that are posted in the docket for the rulemaking (EPA–HQ–OAR–2018–0226).

Testifying at the Public Hearing. If you would like to present oral testimony at the public hearing, please register by contacting Ms. Yvonne W. Johnson at (919) 541–3921 or *johnson.yvonnew@epa.gov.* The hearing schedule, including the list of speakers, periodic breaks in the testimony throughout the day, and a lunch hour will be posted prior to the hearing on the EPA's website at *https://www.epa.gov/ground-level-ozone-pollution/2008-ozone-*

national-ambient-air-quality-standards-naaqs-nonattainment. The EPA will make every effort to follow the schedule as closely as possible on the day of the hearing by limiting each testimony to 5 minutes. The EPA will make every effort to accommodate all individuals interested in providing oral testimony at the hearing. The EPA will not respond to presentations at the hearing. However, the EPA may ask clarifying questions during oral testimony. The hearing will end at 5:00 p.m. EST or 2 hours after the end of testimony from the last registered speaker, whichever is earlier. A verbatim transcript of the hearing will be included in the docket for the rulemaking.

Instructions to Provide a Copy of Testimony Prior to the Hearing. The EPA encourages those planning to present oral testimony at the hearing to provide the EPA with a copy of their testimony electronically, *i.e.,* via email or in hard copy form. You may provide a copy of the oral testimony to Ms. Yvonne W. Johnson at *johnson.yvonnew@epa.gov,* or you may contact Ms. Virginia Raps at *raps.virginia@epa.gov.*

Instructions for Submitting Comments During the Reopened Comment Period. Comments on the proceedings of the public hearing may be submitted to the EPA until the end of the reopened comment period, February 22, 2019, which is seven days following the scheduled hearing date. When submitting your comments during the reopened comment period, identify your comments by noting the docket identification—EPA–HQ–OAR–2018–0226—and include discussion of all points you wish to make. The EPA will generally not consider comments located outside your primary submission (*e.g.,* on the Web, Cloud, or other file sharing system). Follow the online instructions to post your comment to the federal eRulemaking Portal: *https://www.regulations.gov.* Your written comment, as submitted online, is considered the official comment, and your comment cannot be edited or withdrawn after submission. Written statements and supporting information submitted during the reopened comment period will be considered with the same weight as any oral testimony or supporting information presented at the public hearing. 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. For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www2.epa.gov/dockets/commenting-epa-dockets.*

How to obtain copies of this document and other related information. The EPA has established a docket for this action—EPA–HQ–OAR–2018–0226—and an index of the contents of the docket can be accessed at *https://www.regulations.gov.* The EPA has also made available information related to the proposed rule on the following website: *https://www.epa.gov/ground-level-ozone-pollution/2008-ozone-national-ambient-air-quality-standards-naaqs-nonattainment.*

Identification requirements under the REAL ID Act. Individuals possessing a driver's license from states and territories that do not comply with the REAL ID Act will not be accepted as identification to allow entrance into the Federal building in which the hearing will be held. The REAL ID Act, passed by Congress in 2005, established new requirements for entering federal facilities. These requirements took effect on July 21, 2014. Acceptable alternative forms of identification include: Passports, enhanced driver's licenses, military identification cards and Federal employee badges. For additional information for the status of your state regarding the REAL ID Act, go to *https://www.dhs.gov/real-id.* For additional information on building access and alternative forms of identification, go to *https://www.epa.gov/aboutepa/visiting-epa-headquarters.*

Docket Access. All available documents are listed in the docket index at *https://www.regulations.gov.* Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information for which disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available electronically in *https://www.regulations.gov* or in hard copy at the EPA Docket Center Reading Room, William Jefferson Clinton Building, 1301 Constitution Avenue NW, Washington, DC 20004. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m. EST, Monday through Friday, excluding federal holidays. The phone number for the Public Reading Room is (202) 566–1744.

Dated: February 4, 2019.

Panagiotis Tsirigotis,

Director, Office of Air Quality Planning and Standards.

[FR Doc. 2019–01562 Filed 2–7–19; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–R07–OW–2018–0565; FRL–9988–85–Region 7]

Notice of Approval of the Primacy Revision Application for the Public Water System Supervision Program From the State of Kansas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of approval and solicitation of requests for a public hearing.

SUMMARY: The Environmental Protection Agency (EPA) is hereby giving notice that the state of Kansas is revising its approved Public Water System Supervision Program delegated to the Kansas Department of Health and Environment. EPA has reviewed the application and intends to approve these program revisions.

DATES: This determination to approve the Kansas program revision is made pursuant to 40 CFR 142.12(d)(3). This determination shall become final and effective on March 11, 2019, unless (1) a timely and appropriate request for a public hearing is received or (2) the Regional Administrator elects to hold a public hearing on his own motion. Any interested person, other than Federal Agencies, may request a public hearing.

A request for a public hearing must be submitted to the Regional Administrator at the address shown below by March 11, 2019. If a request for a public hearing is made within the requested thirty-day time frame, a public hearing will be held and a notice will be given in the **Federal Register** and a newspaper of general circulation. Frivolous or insubstantial requests for a hearing may be denied by the Regional Administrator. If no timely and appropriate request for a hearing is received, and the Regional Administrator does not elect to hold a hearing on his own motion, this determination will become effective on March 11, 2019.

All interested parties may request a public hearing on the approval to the Regional Administrator at the EPA Region 7 address shown below.

ADDRESSES: Any request for a public hearing shall include the following

information: (1) Name, address and telephone number of the individual, organization or other entity requesting a hearing; (2) a brief statement of the requesting person's interest in the Regional Administrator's determination and a brief statement on information that the requesting person intends to submit at such hearing; (3) the signature of the individual making the request or, if the request is made on behalf of an organization or other entity, the signature of a responsible official of the organization or other entity. Requests for Public Hearing shall be addressed to: Regional Administrator, Environmental Protection Agency, Region 7, 11201 Renner Boulevard, Lenexa, Kansas 66219.

All documents relating to this determination are available for inspection between the hours of 9:00 a.m. and 3:00 p.m., Monday through Friday at the following offices: (1) Environmental Protection Agency, Region 7, Drinking Water Management Branch, Water Wetlands and Pesticides Division, 11201 Renner Boulevard, Lenexa, Kansas 66219 and (2) the Kansas Department of Health and Environment Natural Resources, Public Water Supply Section, Bureau of Water, Curtis State Office Building, 1000 SW Jackson, Suite 420, Topeka, Kansas 66612.

FOR FURTHER INFORMATION CONTACT: Douglas J. Brune, Environmental Protection Agency, Region 7, Drinking Water Management Branch, (913) 551–7178, or by email at *brune.doug@epa.gov.*

SUPPLEMENTARY INFORMATION: The EPA is hereby giving notice that the state of Kansas is revising its approved Public Water System Supervision Program delegated to the Kansas Department of Health and Environment. The Kansas Department of Health and Environment revised their program by incorporating the following EPA National Primary Drinking Water Regulation: Stage 2 Disinfectants and Disinfection Byproducts Rule (Vol. 71, No. 2, Jan. 4, 2006, Pages 387–493), Long Term 2 Enhanced Surface Water Treatment Rule (Vol. 71, No. 3, Jan. 5, 2006, Pages 653–786), Ground Water Rule (Vol. 71, No. 216, Nov. 8, 2006, Pages 65573–65660), Lead and Copper Rule: Short-Term Regulatory Revisions and Clarifications (Vol. 72, No. 195, Oct. 10, 2007, Pages 57781–57820), and Revised Total Coliform Rule (Vol. 78, No. 30, Feb. 13, 2013, Pages 10269–10365). EPA has reviewed the application and determined that the revisions are no less stringent than the corresponding Federal regulations and that the state of Kansas continues to meet all requirements for primary enforcement responsibility as specified in 40 CFR 142.10. Therefore, EPA intends to approve these program revisions.

(Authority: Section 1413 of the Safe Drinking Water Act, as amended, and 40 CFR 142.10, 142.12(d) and 142.13)

Dated: December 18, 2018.

James B. Gulliford,

Regional Administrator, Region 7.

[FR Doc. 2019–01551 Filed 2–7–19; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–9043–3]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information 202–564–5632 or *https://www.epa.gov/nepa/.*

Weekly receipt of Environmental Impact Statements

Filed 01/28/2019 Through 02/01/2019

Pursuant to 40 CFR 1506.9.

Notice

Section 309(a) of the Clean Air Act requires that EPA make public its comments on EISs issued by other Federal agencies. EPA's comment letters on EISs are available at: *https://cdxnodengn.epa.gov/cdx-enepa-public/action/eis/search.*

EIS No. 20180315, Final, USFWS, NE, Issuance of an Incidental Take Permit and Implementation of a Habitat Conservation Plan for the R-Project Transmission Line, Review Period Ends: 03/11/2019, Contact: Drue DeBerry 303–236–4774

EIS No. 20190001, Final, DOE, LA, ADOPTION—Driftwood LNG Project, Contact: Brian Lavoie 202–586–2459

The Department of Energy (DOE) has adopted the Federal Energy Regulatory Commission's Final EIS No. 20180331, filed 01/18/2019 with the EPA. DOE was a cooperating agency on this project. Therefore, recirculation of the document is not necessary under Section 1506.3(c) of the CEQ regulations.

EIS No. 20190002, Final, HUD, VA, Ohio Creek Watershed Project, Review Period Ends: 03/11/2019, Contact: Kerry Johnson 804–822–4803

EIS No. 20190003, Final, FERC, LA, Port Arthur Liquefaction Project, Texas Connector Project, and Louisiana Connector Project, Review Period Ends: 03/11/2019, Contact: Office of External Affairs 866–208–3372

EIS No. 20190004, Final, NMFS, OR, Final Environmental Impact Statement to Analyze Impacts of NOAA's National Marine Fisheries Service Proposed Approval of Hatchery and Genetic Management Plans for spring Chinook salmon, steelhead, and rainbow trout in the Upper Willamette River Basin Pursuant to Section 7 and 4(d) of the Endangered Species Act, Review Period Ends: 03/11/2019, Contact: Lance Kruzic 541–957–3381

EIS No. 20190005, Draft, USACE, CA, Prado Basin Ecosystem Restoration and Water Conservation Study, Comment Period Ends: 03/27/2019, Contact: Megan Wong 213–448–4517

Amended Notices

EIS No. 20180244, Draft, USFS, CA, Plumas National Forest Over-Snow Vehicle (OSV) Use Designation, Comment Period Ends: 03/01/2019, Contact: Katherine Carpenter 530–283–7742, Revision to FR Notice Published 12/07/2019; Extending the Comment Period from 01/24/2019 to 03/01/2019.

EIS No. 20180260, Draft Supplement, USFS, ND, Northern Great Plains Management Plans Revision (Dakota Prairie Oil and Gas RFDS SEIS), Comment Period Ends: 02/20/2019, Contact: Leslie Ferguson 701–989–7308, Revision to FR Notice Published 12/14/2018; Extending Comment Period from 01/16/2019 to 02/20/2019.

EIS No. 20180289, Draft, USFS, AZ, Fossil Creek Wild and Scenic River Comprehensive River Management Plan, Comment Period Ends: 04/04/2019, Contact: Marcos Roybal 928–203–2915, Revision to FR Notice Published 11/30/2018; Extending the Comment Period from 02/28/2019 to 04/04/2019.

EIS No. 20180292, Draft, RUS, WI, Cardinal-Hickory Creek 345-kV Transmission Line Project, Comment Period Ends: 04/01/2019, Contact: Dennis Rankin 202–720–1953, Revision to FR Notice Published 12/07/2018; Extending the Comment Period from 02/05/2019 to 04/01/2019.

EIS No. 20180304, Draft, VA, CA, Draft Programmatic Environmental Impact Statement and National Historic Preservation Act Section 106 Consultation West Los Angeles Medical Center Campus Proposed Master Plan for Improvements and Reconfiguration, Comment Period Ends: 02/13/2019, Contact: Glenn Elliott 202–632–5879, Revision to FR Notice Published 12/14/2018;

Extending the Comment Period from 01/26/2019 to 02/13/2019.

EIS No. 20180307, Draft, USFS, OR, Black Mountain Vegetation Management Project, Comment Period Ends: 02/28/2019, Contact: Elysia Retzlaff 541–416–6436, Revision to FR Notice Published 12/14/2018; Extending the Comment Period from 01/28/2019 to 02/28/2019.

EIS No. 20180316, Draft Supplement, USFS, SC, AP Loblolly Pine Removal and Restoration Project, Comment Period Ends: 02/25/2019, Contact: Victor Wyant 864–638–9568, Revision to FR Notice Published 12/21/2018; Extending the Comment Period from 02/04/2019 to 02/25/2019.

EIS No. 20180322, Draft, APHIS, PRO, Rangeland Grasshopper and Mormon Cricket Suppression Program, Comment Period Ends: 03/11/2019, Contact: Jim Warren 202–316–3216, Revision to FR Notice Published 12/28/2018; Extending the Comment Period from 02/11/2019 to 03/18/2019.

EIS No. 20180323, Draft Supplement, DOE, KY, Disposition of Depleted Uranium Oxide Conversion Product Generated from DOE's Inventory of Depleted Uranium Hexafluoride, Comment Period Ends: 03/04/2019, Contact: Jaffet Ferrer-Torres 202–586–0730, Revision to FR Notice Published 12/28/2018; Extending the Comment Period from 02/11/2019 to 03/04/2019.

Dated: February 5, 2019.

Robert Tomiak,

Director, Office of Federal Activities.

[FR Doc. 2019–01638 Filed 2–7–19; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPPT–2018–0097; FRL–9986–72]

Certain New Chemicals or Significant New Uses; Statements of Findings for September 2018

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(g) of the Toxic Substances Control Act (TSCA) requires EPA to publish in the **Federal Register** a statement of its findings after its review of TSCA section 5(a) notices when EPA makes a finding that a new chemical substance or significant new use is not likely to present an unreasonable risk of injury to health or the environment. Such statements apply to premanufacture notices (PMNs), microbial commercial activity notices (MCANs), and significant new use notices (SNUNs) submitted to EPA under TSCA section 5. This document presents statements of findings made by EPA on TSCA section 5(a) notices during the period from September 1, 2018 to September 30, 2018.

FOR FURTHER INFORMATION CONTACT:

For technical information contact: Greg Schweer, Chemical Control Division (7405M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; telephone number: 202–564–8469; email address: *schweer.greg@epa.gov.*

For general information contact: The TSCA-Hotline, ABVI-Goodwill, 422 South Clinton Ave., Rochester, NY 14620; telephone number: (202) 554–1404; email address: *TSCA-Hotline@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

This action is directed to the public in general. As such, the Agency has not attempted to describe the specific entities that this action may apply to. Although others may be affected, this action applies directly to the submitters of the PMNs addressed in this action.

B. How can I get copies of this document and other related information?

The docket for this action, identified by docket identification (ID) number EPA–HQ–OPPT–2018–0097, is available at *http://www.regulations.gov* or at the Office of Pollution Prevention and Toxics Docket (OPPT Docket), Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW, Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPPT Docket is (202) 566–0280. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets.*

II. What action is the Agency taking?

This document lists the statements of findings made by EPA after review of notices submitted under TSCA section 5(a) that certain new chemical substances or significant new uses are not likely to present an unreasonable risk of injury to health or the environment. This document presents statements of findings made by EPA during the period from September 1, 2018 to September 30, 2018.

III. What is the Agency's authority for taking this action?

TSCA section 5(a)(3) requires EPA to review a TSCA section 5(a) notice and make one of the following specific findings:

- The chemical substance or significant new use presents an unreasonable risk of injury to health or the environment;
- The information available to EPA is insufficient to permit a reasoned evaluation of the health and environmental effects of the chemical substance or significant new use;
- The information available to EPA is insufficient to permit a reasoned evaluation of the health and environmental effects and the chemical substance or significant new use may present an unreasonable risk of injury to health or the environment;
- The chemical substance is or will be produced in substantial quantities, and such substance either enters or may reasonably be anticipated to enter the environment in substantial quantities or there is or may be significant or substantial human exposure to the substance; or
- The chemical substance or significant new use is not likely to present an unreasonable risk of injury to health or the environment.

Unreasonable risk findings must be made without consideration of costs or other non-risk factors, including an unreasonable risk to a potentially exposed or susceptible subpopulation identified as relevant under the conditions of use. The term ''conditions of use'' is defined in TSCA section 3 to mean ''the circumstances, as determined by the Administrator, under which a chemical substance is intended, known, or reasonably foreseen to be manufactured, processed, distributed in commerce, used, or disposed of.''

EPA is required under TSCA section 5(g) to publish in the **Federal Register** a statement of its findings after its review of a TSCA section 5(a) notice when EPA makes a finding that a new chemical substance or significant new use is not likely to present an unreasonable risk of injury to health or the environment. Such statements apply to PMNs, MCANs, and SNUNs submitted to EPA under TSCA section 5.

Anyone who plans to manufacture (which includes import) a new chemical substance for a non-exempt commercial purpose and any manufacturer or processor wishing to engage in a use of

a chemical substance designated by EPA as a significant new use must submit a notice to EPA at least 90 days before commencing manufacture of the new chemical substance or before engaging in the significant new use.

The submitter of a notice to EPA for which EPA has made a finding of ''not likely to present an unreasonable risk of injury to health or the environment'' may commence manufacture of the chemical substance or manufacture or processing for the significant new use notwithstanding any remaining portion of the applicable review period.

IV. Statements of Administrator Findings Under TSCA Section 5(a)(3)(C)

In this unit, EPA provides the following information (to the extent that such information is not claimed as Confidential Business Information (CBI)) on the PMNs, MCANs and SNUNs for which, during this period, EPA has made findings under TSCA section 5(a)(3)(C) that the new chemical substances or significant new uses are not likely to present an unreasonable risk of injury to health or the environment:

- EPA case number assigned to the TSCA section 5(a) notice.
- Chemical identity (generic name, if the specific name is claimed as CBI).
- Website link to EPA's decision document describing the basis of the ''not likely to present an unreasonable risk'' finding made by EPA under TSCA section 5(a)(3)(C).

EPA Case Number: P–18–0231; *Chemical Identity:* Alkanoic acid, substituted alkyl-, polymer with isocyanatoalkane, alkyl carbonate, alkanediol and polyalkylene glycol ether with alkyl (substituted alkyl) alkanediol alkenoate, glycerol monoacrylate alkanoate-blocked (generic name); *website link: https://www.epa.gov/reviewing-new-chemicals-under-toxic-substances-control-act-tsca/tsca-section-5a3c-determination-101.*

EPA Case Number: J–18–0022 to 0025; *Chemical Identity:* Modified *Saccharomyces cerevisiae* (generic name); *website link: https://www.epa.gov/reviewing-new-chemicals-under-toxic-substances-control-act-tsca/tsca-section-5a3c-determination-100.*

EPA Case Number: P–18–0230; *Chemical Identity:* Waxes and waxy substances, rice bran, oxidized, calcium salts (CASRN 1850357–57–1); *website link: https://www.epa.gov/reviewing-new-chemicals-under-toxic-substances-control-act-tsca/tsca-section-5a3c-determination-99.*

EPA Case Number: P–17–0332; *Chemical Identity:* Benzenesulfonic acid, (alkenediyl)bis[[[(hydroxyalkyl)amino]-(phenylamino)-triazin-2-yl]amino]-, N-(hydroxyalkyl) derivs., salts (generic name); *website link: https://www.epa.gov/reviewing-new-chemicals-under-toxic-substances-control-act-tsca/tsca-section-5a3c-determination-98.*

EPA Case Number: J–18–0028 to 0030; *Chemical Identity: Saccharomyces cerevisiae,* modified (generic name); *website link: https://www.epa.gov/reviewing-new-chemicals-under-toxic-substances-control-act-tsca/tsca-section-5a3c-determination-97.*

EPA Case Number: P–16–0532; *Chemical Identity:* Substituted heteromonocycle (generic name); *website link: https://www.epa.gov/reviewing-new-chemicals-under-toxic-substances-control-act-tsca/tsca-section-5a3c-determination-96.*

EPA Case Number: J–18–0004 to 0009; *Chemical Identity:* Biofuel-Baproducing modified microorganisms, with chromosomally-borne modifications (generic name); *website link: https://www.epa.gov/reviewing-new-chemicals-under-toxic-substances-control-act-tsca/tsca-section-5a3c-determination-95.*

Authority: 15 U.S.C. 2601 *et seq.*

Dated: December 18, 2018.

Greg Schweer,

Chief, New Chemicals Management Branch, Chemical Control Division, Office of Pollution Prevention and Toxics.

[FR Doc. 2019–01535 Filed 2–7–19; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–SFUND–2012–0104; FRL–9988–97–OLEM]

Proposed Information Collection Request; Comment Request; Brownfields Program—Accomplishment Reporting (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency is planning to submit an information collection request (ICR), ''Brownfields Program—Accomplishment Reporting (Renewal)'' (EPA ICR No. 2104.07, OMB Control No. 2050–0192 to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act. Before doing so, EPA is soliciting public comments on specific aspects of the proposed information collection as described below. This is a proposed extension of the ICR, which is currently approved through July 31, 2019. 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.

DATES: Comments must be submitted on or before April 9, 2019.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–SFUND–2012–0104 online using *www.regulations.gov* (our preferred method), by email to *docket.superfund@epa.gov* or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW, Washington, DC 20460.

EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION CONTACT: Kelly Gorini, Office of Brownfields and Land Revitalization, (5105T), Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone number: (202) 566–1702; fax number: (202) 566–1476; email address: *gorini.kelly@epa.gov*

SUPPLEMENTARY INFORMATION: Supporting documents which explain in detail the information that the EPA will be collecting are available in the public docket for this ICR. The docket can be viewed online at *www.regulations.gov* or in person at the EPA Docket Center, WJC West, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit *http://www.epa.gov/dockets.*

Pursuant to section 3506(c)(2)(A) of the PRA, EPA is soliciting comments and information to enable it to: (i) 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; (ii) 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; (iii) enhance the quality, utility, and clarity of the information to be collected; and (iv) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other

technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses. EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval. At that time, EPA will issue another **Federal Register** notice to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB.

Abstract: This ICR covers the collection of information from those organizations that receive cooperative agreements from EPA under the authority of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) as amended by the Brownfields Utilization, Investment, and Local Development (BUILD) Act (Pub. L. 115–141). CERCLA, as amended, authorizes EPA to award grants or cooperative agreements to states, tribes, local governments, and other eligible entities to support the assessment and cleanup of brownfields sites. Under the Brownfields Amendments, a brownfields site means real property, the expansion, redevelopment, or reuse of which may be complicated by the presence or potential presence of a hazardous substance, pollutant, or contaminant. For funding purposes, EPA uses the term ''brownfields property(ies)'' synonymously with the term ''brownfields sites.'' The Brownfields Amendments authorize EPA to award several types of cooperative agreements to eligible entities on a competitive basis.

Under subtitle A of the Small Business Liability Relief and Brownfields Revitalization Act, states, tribes, local governments, and other eligible entities can receive assessment cooperative agreements to inventory, characterize, assess, and conduct planning and community involvement related to brownfields properties; cleanup cooperative agreements to carry out cleanup activities at brownfields properties; multipurpose cooperative agreements to conduct activities allowed under both assessment and cleanup cooperative agreements; cooperative agreements to capitalize revolving loan funds and provide subgrants for cleanup activities; area-wide planning cooperative agreements to develop revitalization plans for brownfields; and environmental workforce and development job training and placement programs. Under subtitle C of the Small Business Liability Relief and Brownfields Revitalization Act, states and tribes can receive cooperative agreements to establish and enhance their response programs through the four elements and meet the public record requirements under the statute. Cooperative agreement recipients (''recipients'') have general reporting and record keeping requirements as a condition of their cooperative agreement that result in burden. A portion of this reporting and record keeping burden is authorized under 2 CFR part 1500 and identified in the EPA's general grants ICR (OMB Control Number 2030–0020). EPA requires Brownfields program recipients to maintain and report additional information to EPA on the uses and accomplishments associated with funded brownfields activities. EPA uses several forms to assist recipients in reporting the information and to ensure consistency of the information collected. EPA uses this information to meet Federal stewardship responsibilities to manage and track how program funds are being spent, to evaluate the performance of the Brownfields Cleanup and Land Revitalization Program, to meet the Agency's reporting requirements under the Government Performance Results Act, and to report to Congress and other program stakeholders on the status and accomplishments of the program.

Form numbers: EPA ICR No. 2104.06, OMB Control No. 2050–0192.

Respondents/affected entities: State/local/tribal governments; Non-Profits.

Respondent's obligation to respond: Required to obtain or Retain Benefits (2 CFR part 1500).

Estimated number of respondents: 5,517 (total).

Frequency of response: Bi-annual for subtitle C recipients; quarterly for subtitle A recipients.

Total estimated burden: 6,144 hours (per year). Burden is defined at 5 CFR 1320.03(b).

Total estimated cost: $712,108 (per year), includes $0 annualized capital or operation & maintenance costs.

Changes in estimates: There is an increase of 2,267 hours in the total estimated respondent burden compared with the ICR currently approved by OMB. This increase is partially the result of adding the new Program Activity Levels Form for 128(a) recipients to fill out annually. The remainder of the burden increase is the result of an overall increase in wages and the large increase in the number of responses submitted to ACRES annually as a result of more grants being awarded. Even with this increase, respondents indicated that improvements in the ACRES reporting system and increased familiarity with the program lead to a lower burden per individual entry.

Dated: December 19, 2018.

David R. Lloyd,

Director, Office of Brownfields and Land Revitalization.

[FR Doc. 2019–01539 Filed 2–7–19; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[CG Docket No. 18–307; DA 18–1196]

Waivers of Wireline Telephone Volume Control Reset Rules

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: In this document, the Consumer and Governmental Affairs Bureau announces a new docket and modified filing procedures for requesting waiver of the volume control reset requirements for wireline telephones.

DATES: The modified filing procedures are effective February 8, 2019.

FOR FURTHER INFORMATION CONTACT: Suzy Rosen Singleton, Disability Rights Office, Consumer and Governmental Affairs Bureau, at (202) 510–9446 or by email at *Suzanne.Singleton@fcc.gov.*

SUPPLEMENTARY INFORMATION: The full text of document DA 18–1196, released on November 27, 2018, including filing instructions for volume control reset waiver requests, and copies of any subsequently filed documents in this matter will be available for public inspection and copying via ECFS at *https://www.fcc.gov/ecfs/* and during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street SW, Room CY–A257, Washington, DC 20554. Document DA 18–1196 can also be downloaded in Word and Portable Document Format (PDF) at *https://www.fcc.gov/general/disability-rights-office-headlines.*

To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov,* or call the Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice) or (202) 418–0432 (TTY).

Federal Communications Commission.

Suzy Rosen Singleton,

Chief, Disability Rights Office, Consumer and Governmental Affairs Bureau.

[FR Doc. 2019–01552 Filed 2–7–19; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0439, 3060–0665, 3060–0973 and 3060–1190]

Information Collections Being Reviewed by the Federal Communications Commission Under Delegated Authority

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995, the Federal Communications Commission (FCC or Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid 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 PRA comments should be submitted on or before April 9, 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 contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Cathy Williams, FCC, via email *PRA@fcc.gov* and to *Cathy.Williams@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Cathy Williams at (202) 418–2918.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0439.

Title: Section 64.201, Regulations Concerning Indecent Communications by Telephone.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities; Individuals or households.

Number of Respondents and Responses: 10,200 respondents; 30,000 responses.

Estimated Time per Response: .166 hours (10 minutes average per response).

Frequency of Response: On occasion reporting requirements; Third party disclosure.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for the information collection requirements is found at Section 223 of the Communications Act of 1934, as amended (the Act), 47 U.S.C. 223, Obscene or Harassing Telephone Calls in the District of Columbia or in Interstate or Foreign Communications.

Total Annual Burden: 4,980 hours.

Total Annual Cost: None.

Nature and Extent of Confidentiality: Confidentiality is an issue to the extent that individuals and households provide personally identifiable information, which is covered under the FCC's updated system of records notice (SORN), FCC/CGB–1, ''Informal Complaints, Inquiries, and Request for Dispute Assistance''; published in the **Federal Register** on August 15, 2014, at 79 FR 48152, and became effective on September 24, 2014.

Privacy Impact Assessment: The FCC completed a Privacy Impact Assessment (PIA) on June 28, 2007. The PIA may be reviewed at *https://www.fcc.gov/general/privacy-act-information.* The FCC is in the process of updating the PIA to incorporate various revisions made to the SORN.

Needs and Uses: Under section 223 of the Act, common carriers are required, to the extent technically feasible, to prohibit access to obscene or indecent communications from the telephone of a subscriber who has not previously requested such access in writing, if the carrier collects charges from subscribers for such communications. 47 CFR 64.201 implements section 223 of the Act, and also include the following information collection requirements: (1) Adult message service providers notify their carriers in writing of the nature of their service; and (2) A provider of adult message services request that its carriers identify these services as such in bills to their subscribers. The information requirements are imposed on carriers, and on adult message service providers and those who solicit their services, to ensure that minors and anyone who has not consented to access such material are denied access to such material in adult message services.

OMB Control Number: 3060–0665.

Title: Section 64.707, Public Dissemination of Information by Providers of Operator Services.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents and Responses: 448 respondents; 448 responses.

Estimated Time per Response: 4 hours (average per response).

Frequency of Response: On occasion reporting requirements; Third party disclosure.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority citation for the information collection requirements is found at Section 226 of the Act, 47 U.S.C. 226.

Total Annual Burden: 1,792 hours.

Total Annual Cost: $44,800.

Nature and Extent of Confidentiality: An assurance of confidentiality is not offered because this information collection does not require the collection of personally identifiable information (PII) from individuals.

Privacy Impact Assessment: No impact(s).

Needs and Uses: Pursuant to 47 CFR 64.707, providers of operator services must regularly publish and make available at no cost to requesting consumers written materials that describe any recent changes in operator services and choices available to consumers. Consumers use the information to increase their knowledge of the choices available to them in the operator services marketplace.

OMB Control Number: 3060–0973.

Title: Section 64.1120(e), Verification of Orders for Telecommunications Service.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents and Responses: 50 respondents; 150 responses.

Estimated Time per Response: 1 to 5 hours (average per response).

Frequency of Response: On occasion reporting requirements; Third-party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority citation for the information

collection requirements is found at Section 258 of the Act, 47 U.S.C. 258.

Total Annual Burden: 350 hours.

Total Annual Cost: None.

Nature and Extent of Confidentiality: An assurance of confidentiality is not offered because this information collection does not require the collection of personally identifiable information (PII) from individuals.

Privacy Impact Assessment: No impact(s).

Needs and Uses: Pursuant to 47 CFR 64.1120(e), a carrier acquiring all or part of another carrier's subscriber base without obtaining each subscriber's authorization and verification will file a letter specifying certain information with the Commission, in advance of the transfer, and it will also certify that the carrier will comply with required procedures, including giving advance notice to the affected subscribers.

These streamlined carrier change rules balance the protection of consumers' interests with ensuring that the Commission's rules do not unnecessarily inhibit routine business transactions.

OMB Control Number: 3060–1190.

Title: Section 87.287(b), Aeronautical Advisory Stations (Unicoms)—''Squitters.''

Form No.: N/A.

Respondents: Business or other for-profit entities, not for profit institutions and state, local or tribal government.

Number of Respondents and Responses: 200 respondents; 200 responses.

Estimated Time per Response: 1 hour.

Frequency of Response: On-occasion reporting requirement and third party disclosure requirement.

Total Annual Burden: 85 hours.

Annual Cost Burden: $28,750.

Obligation to Respond: Require to obtain or retain benefits. The statutory authority for this collection is contained in 47 U.S.C. 151, 154(i), 154(j), 155, 157, 225, 303(r), and 309 of the Communications Act of 1934, as amended.

Privacy Act Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: There is no need for confidentiality with this collection of information.

Needs and Uses: The information collection requirements contained under Section 87.287(b) require that before submitting an application for an aircraft data link land test station, an applicant must obtain written permission from the licensee of the aeronautical enroute stations serving the areas in which the aircraft data link land test station will operate on a co-channel basis. The Commission may request an applicant to provide documentation as to this fact.

The written permissions will aid the Commission in ensuring that licensees are complying with its policies and rules, while allowing the owners of antenna structures and other aviation obstacles to use Audio Visual Warning Systems (AVWS) stations, thereby helping aircraft avoid potential collisions and enhancing aviation safety, without causing harmful interference to other communications.

Federal Communications Commission.

Katura Jackson,

Federal Register Liaison Officer, Office of the Secretary.

[FR Doc. 2019–01644 Filed 2–7–19; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice to All Interested Parties of Intent To Terminate Receiverships

NOTICE IS HEREBY GIVEN that the Federal Deposit Insurance Corporation (FDIC or Receiver), as Receiver for the institutions listed below, intends to terminate its receivership for said institutions.

NOTICE OF INTENT TO TERMINATE RECEIVERSHIPS

Fund	Receivership name	City	State	Date of appointment of receiver
10034	County Bank	Merced	CA	02/06/2009
10042	Heritage Community Bank	Glenwood	IL	02/27/2009
10044	Freedom Bank Of Georgia	Commerce	GA	03/06/2009
10052	American Sterling Bank	Sugar Creek	MO	04/17/2009
10094	Mutual Bank	Harvey	IL	07/31/2009
10154	Benchmark Bank	Aurora	IL	12/04/2009
10191	Bank Of Illinois	Normal	IL	03/05/2010
10280	Imperial Savings and Loan Association	Martinsville	VA	08/20/2010
10307	First Vietnamese American Bank	Westminster	CA	11/05/2010
10332	Evergreen State Bank	Stoughton	WI	01/28/2011
10501	Valley Bank	Fort Lauderdale	FL	06/20/2014
10514	Edgebrook Bank	Chicago	IL	05/08/2015

The liquidation of the assets for each receivership has been completed. To the extent permitted by available funds and in accordance with law, the Receiver will be making a final dividend payment to proven creditors.

Based upon the foregoing, the Receiver has determined that the continued existence of the receiverships will serve no useful purpose. Consequently, notice is given that the receiverships shall be terminated, to be effective no sooner than thirty days after the date of this notice. If any person wishes to comment concerning the termination of any of the receiverships, such comment must be made in writing, identify the receivership to which the comment pertains, and be sent within thirty days of the date of this notice to: Federal Deposit Insurance Corporation, Division of Resolutions and Receiverships, Attention: Receivership Oversight Department 34.6, 1601 Bryan Street, Dallas, TX 75201.

No comments concerning the termination of the above-mentioned receiverships will be considered which are not sent within this time frame.

Dated at Washington, DC, on February 4, 2019.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2019–01542 Filed 2–7–19; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (''Act'') (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than February 26, 2019.

A. Federal Reserve Bank of Chicago (Colette A. Fried, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. *Heron Bay Partners, LLC, Bloomfield Hills, Michigan, with the Joel Marvin Dorfman Trust dated May 22, 2004, Bloomfield Hills, Michigan, and Joel M. Dorfman, individually and as trustee of the Joel Marvin Dorfman Trust dated May 22, 2004 serving as manager of Heron Bay Partners, LLC, Bloomfield Hills, Michigan, together with Carolyn Dorfman, Short Hills, New Jersey, The Henry S. Dorfman Irrevocable Trust f/b/o Carolyn Dorfman, Short Hills, New Jersey, Gayle Weiss Revocable Trust dated August 3, 2010, Bloomfield Hills, Michigan, Gayle Weiss, as trustee of the Gayle Weiss Revocable Trust dated August 3, 2010, Bloomfield Hills, Michigan, The Henry S. Dorfman Irrevocable Trust f/b/o Gayle Weiss, Bloomfield Hills, Michigan, Joel Marvin Dorfman Trust dated May 22, 2004, Bloomfield Hills, Michigan, Joel M. Dorfman, as trustee of the Joel Marvin Dorfman Trust dated May 22, 2004, Bloomfield Hills, Michigan, The Henry S. Dorfman Irrevocable Trust f/b/o Joel M. Dorfman, Bloomfield Hills, Michigan, the H.S. Dorfman GST Trust, Bloomfield Hills, Michigan, Mala Dorfman, as trustee of the H.S. Dorfman GST Trust, Bal Harbour, Florida, together as members of North Star Partners, LLC, Bloomfield Hills, Michigan, and Jordan Dorfman, Bloomfield Hills, Michigan, and Noah Dorfman, Ferndale, Michigan, as a group acting in concert, to join the Dorfman Family Control Group approved on June 16, 2005;* to retain voting shares of North Star Financial Holdings, Inc., Bingham Farms, Michigan, and thereby indirectly retain Main Street Bank, Bingham Farms, Michigan.

Board of Governors of the Federal Reserve System, February 5, 2019.

Yao-Chin Chao,

Assistant Secretary of the Board.

[FR Doc. 2019–01646 Filed 2–7–19; 8:45 am]

BILLING CODE P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 7, 2019.

A. Federal Reserve Bank of Richmond (Adam M. Drimer, Assistant Vice President) 701 East Byrd Street, Richmond, Virginia 23219. Comments can also be sent electronically to or *Comments.applications@rich.frb.org*:

1. *Delmar Bancorp, Salisbury, Maryland;* to acquire 100 percent of the voting shares of Virginia Partners Bank, Fredericksburg, Virginia.

B. Federal Reserve Bank of St. Louis (David L. Hubbard, Senior Manager) P.O. Box 442, St. Louis, Missouri 63166–2034. Comments can also be sent electronically to *Comments.applications@stls.frb.org*:

1. *Stifel Financial Corp., St. Louis, Missouri;* to retain voting shares of Stifel Trust Company, National Association, St. Louis, Missouri, upon its conversion from a non-depository trust company to a depository trust company that qualifies as a limited purpose bank.

Board of Governors of the Federal Reserve System, February 5, 2019.

Yao-Chin Chao,

Assistant Secretary of the Board.

[FR Doc. 2019–01645 Filed 2–7–19; 8:45 am]

BILLING CODE P

FEDERAL RESERVE SYSTEM

Privacy Act of 1974; System of Records

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice of a new system of records.

SUMMARY: Pursuant to the provisions of the Privacy Act of 1974, notice is given that the Board of Governors of the Federal Reserve System (Board) proposes the establishment of a new system of records, BGFRS–42 ''FRB—General File of the Insurance Policy Advisory Committee.'' This system will store information relevant for the selection of individuals for membership on the Insurance Policy Advisory Commission (IPAC). The system will also store information to facilitate the Board's operations of the IPAC, including information necessary to pay IPAC members an honorarium for their service.

DATES: Comments must be received on or before March 11, 2019. This new system of records will become effective March 11, 2019, without further notice, unless comments dictate otherwise.

The Office of Management and Budget (OMB), which has oversight responsibility under the Privacy Act, requires a 30-day period prior to publication in the **Federal Register** in which to review the system and to provide any comments to the agency. The public is then given a 30-day period in which to comment, in accordance with 5 U.S.C. 552a(e)(4) and (11).

ADDRESSES: You may submit comments, identified by *BGFRS–42: FRB—General File of the Insurance Policy Advisory Committee,* by any of the following methods:

- *Agency Website: http://www.federalreserve.gov*. Follow the instructions for submitting comments at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm*.

• *Email: regs.comments@federalreserve.gov.* Include SORN name and number in the subject line of the message.

• *Fax:* (202) 452–3819 or (202) 452–3102.

• *Mail:* Ann E. Misback, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW, Washington, DC 20551.

All public comments are available from the Board's website at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm* as submitted, unless modified for technical reasons or to remove personally identifiable information at the commenter's request. Public comments may also be viewed electronically or in paper in Room 146, 1709 New York Avenue NW, Washington, DC 20006, between 9:00 a.m. and 5:00 p.m. on weekdays.

FOR FURTHER INFORMATION CONTACT: David B. Husband, Senior Attorney, (202) 530–6270, or *david.b.husband@frb.gov;* Alye S. Foster, Assistant General Counsel, or (202) 452–5289, or *alye.s.foster@frb.gov;* Legal Division, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW, Washington, DC 20551. Telecommunications Device for the Deaf (TDD) users may contact (202) 263–4869.

SUPPLEMENTARY INFORMATION: This new system of records will aid the Board in its operation and management of the IPAC, which Congress established in section 211(b) of the Economic Growth, Regulatory Relief, and Consumer Protection Act, Public Law 115–74 (EGRRCPA). EGRRCPA established the IPAC to advise the Board on international capital standards and other insurance matters.

SYSTEM NAME AND NUMBER

BGFRS–42 ''FRB—General File of the Insurance Policy Advisory Committee.''

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Records will be maintained at the Board's central offices located at: Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW, Washington, DC 20551.

SYSTEM MANAGER(S):

Linda Duzick, Manager, Insurance Policy Section, Division of Supervision & Regulation, Board of Governors of the Federal Reserve System, Washington, DC 20551, or 202–728–5881, or *linda.l.duzick@frb.gov.*

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 211(b) of the Economic Growth, Regulatory Relief, and Consumer Protection Act (31 U.S.C. 313 note) and Section 10 of the Federal Reserve Act (12 U.S.C. 244).

PURPOSE(S) OF THE SYSTEM:

This system aids the Board in its operation and management of the IPAC, including the selection and appointment of members to the IPAC.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

This system maintains information on individuals considered for membership on the IPAC and individuals selected to serve on the IPAC.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records in the system include identifying information about individuals seeking to become IPAC members and members of the IPAC, information relating to the selection and appointment of individuals to the IPAC, and records relating to service on the IPAC. Individual information in the system includes, but is not limited to, name, work address, telephone number, email address, organization, and title. The system stores additional information including, but not limited to, the individual or IPAC member's education, work experience, and qualifications. The system will also store records relating to the management of the IPAC, such as payment information for travel or honoraria.

RECORD SOURCE CATEGORIES:

Information is provided by the individual or IPAC member to whom the record pertains. Board staff may also independently obtain available information regarding individuals seeking to become IPAC members.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

General routine uses A, B, C, D, E, F, G, I, and J apply to this system. These general routine uses are located at: *https://www.federalreserve.gov/files/SORN-page-general-routine-uses-of-board-systems-of-records.pdf* and are published in the **Federal Register** at 83 FR 43872 (August 28, 2018) at 43873–74.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Paper records in this system are stored in file folders with access limited to staff with a need-to-know. Electronic records are stored on a secure server. Records are also stored in FIRMA, the Federal Reserve's official recordkeeping system, on an annual basis.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Electronic records can be retrieved by name or other identifying aspects.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Pending establishing of an approved retention period, the records will be retained indefinitely.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Access to records in the system is limited to those Board staff whose official duties require it. This is accomplished through user roles, which provide differential access levels to users based on their official duties and need-to-know.

RECORD ACCESS PROCEDURES:

The Privacy Act allows individuals the right to access records maintained about them in a Board system of records. Your request for access must: (1) Contain a statement that it is made pursuant to the Privacy Act of 1974; (2) provide either the name of the Board system of records expected to contain the record requested or a concise description of the system of records; (3) provide the information necessary to verify your identity; and (4) provide any other information that may assist in the rapid identification of the record for which you are requesting access.

The Board handles all Privacy Act requests as both a Privacy Act request and as a Freedom of Information Act request. The Board does not charge fees to a requestor seeking to access or amend his/her Privacy Act records.

You may submit your Privacy Act request to the—Secretary of the Board, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW, Washington DC 20551.

You may also submit your Privacy Act request electronically through the Board's FOIA ''Electronic Request Form'' located here: *https://www.federalreserve.gov/secure/forms/efoiaform.aspx.*

CONTESTING RECORD PROCEDURES:

The Privacy Act allows individuals to seek amendment of information that is erroneous, irrelevant, untimely, or incomplete and is maintained in a system of records about you. To request an amendment to your record, you should clearly mark the request as a ''Privacy Act Amendment Request.'' You have the burden of proof for demonstrating the appropriateness of the requested amendment and you must provide relevant and convincing evidence in support of your request.

Your request for amendment must: (1) Provide the name of the specific Board system of records containing the record you seek to amend; (2) identify the specific portion of the record you seek to amend; (3) describe the nature of and reasons for each requested amendment; (4) explain why you believe the record is not accurate, relevant, timely, or complete; and (5) unless you have already done so in a Privacy Act request for access, provide the necessary information to verify your identity.

NOTIFICATION PROCEDURES:

Same as ''Access procedures'' above. You may also follow this procedure in order to request an accounting of previous disclosures of records pertaining to you as provided for by 5 U.S.C. 552a(c).

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

None.

Board of Governors of the Federal Reserve System, February 4, 2019.

Ann Misback,

Secretary of the Board.

[FR Doc. 2019–01639 Filed 2–7–19; 8:45 am]

BILLING CODE P

FEDERAL TRADE COMMISSION

Agency Information Collection Activities; Proposed Collection; Comment Request

AGENCY: Federal Trade Commission (FTC or Commission).

ACTION: Notice.

SUMMARY: The information collection requirements described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act (PRA). The FTC seeks public comment on its proposal to extend, for three years, the current PRA clearance for information collection requirements contained in the Health Breach Notification Rule. That clearance expires on March 31, 2019.

DATES: Comments must be received on or before April 8, 2019.

ADDRESSES: Interested parties may file a comment online or on paper by following the instructions in the Request for Comments part of the **SUPPLEMENTARY INFORMATION** section below. Write ''Paperwork Reduction Act: FTC File No. P072108'' on your comment, and file your comment online at *https://www.regulations.gov* by following the instructions on the web-based form. If you prefer to file your comment on paper, mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Suite CC–5610 (Annex J), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW, 5th Floor, Suite 5610 (Annex J), Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Robin Wetherill, 202–326–2220, Attorney, Privacy & Identity Protection, Bureau of Consumer Protection, 600 Pennsylvania Ave. NW, Washington, DC 20580.

SUPPLEMENTARY INFORMATION: On February 17, 2009, President Obama signed the American Recovery and Reinvestment Act of 2009 (the Recovery Act or the Act) into law. The Act included provisions to advance the use of health information technology and, at the same time, strengthen privacy and security protections for health information. The Act required the FTC to adopt a rule implementing the breach notification requirements applicable to vendors of personal health records, ''PHR related entities,'' and third-party service providers, and the Commission issued a final rule on August 25, 2009. 74 FR 42962.

The Health Breach Notification Rule (Rule), 16 CFR part 318 (OMB Control Number 3084–0150), requires vendors of personal health records and PHR related entities to provide: (1) Notice to consumers whose unsecured personally identifiable health information has been breached; and (2) notice to the Commission. Under the Rule, consumers whose information has been affected by a breach receive notice ''without unreasonable delay and in no case later than 60 calendar days'' after discovery of the breach. Among other information, the notices must provide consumers with steps they can take to protect themselves from harm. To notify the FTC of a breach, the Commission developed a simple, two-page form requesting minimal information and consisting mainly of check boxes, which is posted at *www.ftc.gov/healthbreach.* For breaches involving the health information of 500 or more individuals, entities must notify the Commission as soon as possible, and in any event no later than ten business days after discovering the breach. Entities may report all breaches involving the information of fewer than 500 individuals in an annual submission for the calendar year. The Commission uses entities' notifications to compile a list of breaches affecting 500 or more individuals that is publicly available on the FTC's website. The list provides businesses with information about potential sources of data breaches, which is helpful to those developing data security procedures. It also provides the public with information about the extent of data breaches.

The Rule also requires third-party service providers (*i.e.,* those companies that provide services such as billing or data storage) to vendors of personal health records and PHR related entities to provide notification to such vendors and PHR related entities following the discovery of a breach. The Rule only applies to electronic health records and does not include recordkeeping requirements.

These notification requirements are subject to the provisions of the PRA, 44 U.S.C. Chapter 35. Under the PRA, federal agencies must get OMB approval for each collection of information they conduct, sponsor, or require. ''Collection of information'' means agency requests or requirements to submit reports, keep records, or provide information to a third party. 44 U.S.C. 3502(3); 5 CFR 1320.3(c). As required by Section 3506(c)(2)(A) of the PRA, the FTC is providing this opportunity for public comment before requesting that OMB extend the existing PRA clearance for the information collection requirements associated with the Rule.

The FTC invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond. All comments must be received on or before April 8, 2019.

Burden Estimates

The PRA burden of the Rule's requirements depends on a variety of factors, including the number of covered firms; the percentage of such firms that will experience a breach requiring further investigation and, if necessary, the sending of breach notices; and the number of consumers notified. The annual hours and cost estimates below likely overstate the burden because, among other things, they assume, though it is not necessarily so, that all covered firms experiencing breaches

subject to the Rule's notification requirements will be required to take all of the steps described below.

The analysis may also overstate the burden of the Rule's requirements because it assumes that covered firms would not take any of the steps described were it not for the requirements of the Rule. For example, the analysis incorporates labor costs associated with understanding what information has been breached. It seems likely that some firms would incur such costs even in the absence of the Rule's requirements because the firms are independently interested in identifying, understanding, and remediating security risks. A company that investigates, for its own purposes, what information has been breached is unlikely to fully duplicate the costs of that investigation in complying with the Rule. Therefore, it may not be correct in all cases that complying with the Rule results in added labor costs for this activity. Nevertheless, in order to allow for a complete understanding of all the potential costs associated with compliance, these costs are included in this analysis.

At the time the Rule was issued in 2009, insufficient data was available about the incidence of breaches in the PHR industry. Accordingly, staff based its burden estimate on data pertaining to private sector breaches across multiple industries. Staff estimated that there would be 11 breaches per year requiring notification of 232,000 consumers.

In 2016, based on available data from the years 2010 through 2014, staff arrived at new estimates, projecting an average of two breaches per year affecting a total of 40,000 individual consumers.

The Rule has now been in effect for over eight years, and new data regarding the number and scale of reported breaches from 2015 through 2017 allow staff to update its burden estimates. A review of the breach reports received by the FTC from 2010 through 2017 reveals that there are two primary categories of breaches reported: (1) ''single-person breaches,'' incidents in which a single individual's information is potentially compromised; and (2) what are hereafter described as ''major breaches,'' in which multiple—and typically, many—individuals are affected. These two categories of breaches are addressed separately in this analysis because the frequency and costs of the categories differ significantly.

Nearly all of the submissions received between 2010 and 2017—over 99.99% of them—reported single-person breaches related to an individual's loss of control over his or her login credentials. The rate of such breaches has increased significantly since the Rule went into effect; the year-to-year average rate of increase during this period was nearly 70%. Whereas from 2011 to 2014 the average annual number of single-person breaches was 7,502, from 2014 to 2017 the average was almost 15,000. Assuming that this rate of increase continues, staff estimates that between 2019 and 2022 the agency will receive, on average, about 25,000 single-person breach reports per year.

By contrast, major breach reports are quite infrequent. On average, the FTC receives one major breach report approximately every two and a half years, with an average of approximately 200,000 persons affected. Given the low frequency at which major breaches occur, FTC staff are unable to identify any meaningful trends in the frequency of major breach reports. FTC staff has not identified any existing research allowing us to make specific projections about future variation in the frequency of major breaches. Consequently, FTC staff has assumed that the average frequency and scale of major breaches will remain more or less static. Staff's calculations are based on the estimate that a major breach will occur approximately every two and a half years and that 200,000 people will be affected by each major breach, for an annual average of 80,000 individuals affected per year.

Estimated Annual Burden Hours: 4,779.

As explained in more detail within the next section, FTC staff projects that the employee time required for each single-person breach is quite minimal because the processes for notifying consumers are largely automated and single-person breaches can be reported to the FTC in an aggregate annual notification using the FTC's two-page form. On average, staff estimates that covered firms will require approximately 20 seconds of employee labor per single-person breach. With an estimated 25,000 single-person breaches per year, the total estimated burden hours for single-person breaches is approximately 139 hours.

For each major breach, covered firms will require on average 100 hours of employee labor to determine what information has been breached, the identification of affected customers, preparation of the breach notice, and submission of the required report to the Commission. Based on staff's estimate that one major breach occurs every two and a half years, the average annual burden of major breaches amounts to 40 hours per year.

Additionally, covered firms will incur labor costs associated with processing calls they may receive in the event of a major breach. The Rule requires that covered firms that fail to contact 10 or more consumers because of insufficient or out-of-date contact information must provide substitute notice through either a clear and conspicuous posting on their website or media notice. Such substitute notice must include a toll-free number for the purpose of allowing a consumer to learn whether or not his/her information was affected by the breach.

Individuals contacted directly will have already received this information. Staff estimates that no more than 10 percent of affected consumers will utilize the offered toll-free number. Thus, of the 200,000 consumers affected by a major breach, staff estimates that 20,000 may call the companies over the 90 days they are required to provide such access. Staff additionally projects that 10,000 additional consumers who are not affected by the breach will also call the companies during this period. Staff estimates that processing all 30,000 calls will require an average of 11,500 hours of employee labor resulting in an average annual burden of 4,600 labor hours.

Given the low frequency of major breaches, the annual average requirement for major breaches is 4,640 hours.

The combined annual hours burden for both single-person and major breaches therefore is 4,779 (4,640 + 139).

Estimated Annual Labor Costs: $91,836.

For each single-person breach, FTC staff estimates that the average 20 seconds of employee labor to provide (likely automated) notification to affected individuals and produce an annual breach notification for submission to the FTC will cost approximately $0.27 per breach. With an estimated 25,000 single-person breaches per year, the annual labor costs associated with all single-person breaches come to $6,570.

For major breaches, FTC staff projects that the average 100 hours of employee labor costs (excluding outside forensic services, discussed below as estimated non-labor costs) to determine what information has been breached, identify the affected customers, prepare the breach notice, and report to the Commission will cost an average of $61.66 per hour for a total of $6,166.[1]

[1] Hourly wages throughout this document are based on mean hourly wages found at *http://www.bls.gov/news.release/ocwage.htm*

Continued

Based on an estimated one breach every two and a half years, the annual employee labor cost burden for affected entities to perform these tasks is $2,466.

Additionally, staff expects covered firms will require, for each major breach, 11,500 hours of labor associated with answering consumer telephone calls at a cost of $207,000.[2] Since a major breach occurs approximately every two and a half years, the average annual burden of 4,600 labor hours results in annualized labor cost of approximately $82,800.

Accordingly, estimated cumulative annual labor costs, excluding outside forensic services, for both single-person and major breaches, is $91,836 ($82,800 + $2,466 + $6,570).

Estimated Annual Capital and Other Non-Labor Costs: $29,446.

Commission staff estimates that capital and other non-labor costs associated with single-person breaches will be negligible. Companies generally use automated notification systems to notify consumers of single-person breaches. Automated notifications are typically delivered by email or other electronic methods. The costs of providing such electronic notifications are minimal.

Commission staff anticipates that capital and other non-labor costs associated with major breaches will consist of the following:

1. Services of a forensic expert in investigating the breach;
2. notification of consumers via email, mail, web posting, or media; and
3. the cost of setting up a toll-free number, if needed.

Staff estimates that, for each major breach, covered firms will require 240 hours of a forensic expert's time, at a cumulative cost of $34,560 for each breach. This estimate is based on a projection that an average major breach will affect approximately 20 machines and that a forensic analyst will require about 12 hours per machine to conduct his or her analysis. The projected cost of retaining the forensic analyst consists of the hourly wages of an information security analyst ($48), tripled to reflect profits and overhead for an outside consultant ($144), and multiplied by 240 hours. Based on the estimate that there will be one major breach every two and a half years, the annual cost associated with the services of an outside forensic expert is $13,824.

As explained above, staff estimates that an average of 200,000 consumers will be entitled to notification of each major breach. Given the online relationship between consumers and vendors of personal health records and PHR related entities, most notifications will be made by email and the cost of such notifications will be minimal.

In some cases, however, vendors of personal health records and PHR related entities will need to notify individuals by postal mail, either because these individuals have asked for such notification, or because the email addresses of these individuals are not current or not working. Staff estimates that the cost of a mailed notice is $0.11 for the paper and envelope, and $0.55 for a first class stamp. Assuming that vendors of personal health records and PHR related entities will need to notify by postal mail 10 percent of the 200,000 customers whose information is breached, the estimated cost of this notification will be $13,200 per breach. The annual cost will be around $5,280.

In addition, vendors of personal health records and PHR related entities may need to notify consumers by posting a message on their home page, or by providing media notice. Staff estimates the cost of providing notice via website posting to be $0.08 per breached record, and the cost of providing notice via published media to be $0.04 per breached record. Applied to the above-stated estimate of 200,000 affected consumers, the estimated total cost of website notice will be $16,000, and the estimated total cost of media notice will be $8,000, yielding an estimated total per-breach cost for both forms of notice to consumers of $24,000. Annualized, this number is approximately $9,600 per year.

Finally, staff estimates that the cost of providing a toll-free number will depend on the costs associated with T1 lines sufficient to handle the projected call volume and the cost of obtaining a toll-free telephone number. Based on industry research, staff projects that affected entities may need two T1 lines at a cost of $1,800 for the 90-day period. In addition, staff estimates the cost of obtaining a dedicated toll-free line to be $100 per month. Accordingly, staff projects that the cost of obtaining two toll-free lines for 90 days will be $2,400. The total annualized cost for providing a toll-free number will be $960.

In sum, the total annual estimate for non-labor costs associated with major breaches is $29,664: $13,824 (services of a forensic expert) + $5,280 (cost of mail notifications) + $9,600 (cost of website and media notice) + $960 (cost of providing a toll-free number). Negligible non-labor costs are associated with single-person breaches.

The total estimated PRA annual cost burden is $91,836 for labor costs and $29,446 for non-labor costs, totaling approximately $121,500.

Request for Comments

You can file a comment online or on paper. April 9, 2019. Write ''Paperwork Reduction Act: FTC File No. P072108'' on your comment. Postal mail addressed to the Commission is subject to delay due to heightened security screening. As a result, we encourage you to submit your comments online. To make sure that the Commission considers your online comment, you must file it through the *https://www.regulations.gov* website by following the instructions on the web-based form provided. Your comment—including your name and your state—will be placed on the public record of this proceeding, including at the *https://www.regulations.gov* website.

If you file your comment on paper, write ''Paperwork Reduction Act: FTC File No. P072108'' on your comment and on the envelope, and mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Suite CC–5610 (Annex C), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW, 5th Floor, Suite 5610, Washington, DC 20024. If possible, submit your paper comment to the Commission by courier or overnight service.

Because your comment will be placed on the publicly accessible website at *www.regulations.gov,* you are solely responsible for making sure that your comment does not include any sensitive or confidential information. In particular, your comment should not include any sensitive personal information, such as your or anyone else's Social Security number; date of birth; driver's license number or other state identification number, or foreign country equivalent; passport number; financial account number; or credit or debit card number. You are also solely responsible for making sure that your comment does not include any sensitive health information, such as medical records or other individually

(''Occupational Employment and Wages—May 2017,'' U.S. Department of Labor, released March 2018, Table 1 (''National employment and wage data from the Occupational Employment Statistics survey by occupation, May 2017'').

The breakdown of labor hours and costs is as follows: 50 hours of computer and information systems managerial time at approximately $72 per hour; 12 hours of marketing manager time at $70 per hour; 33 hours of computer programmer time at $42 per hour; and 5 hours of legal staff time at $68 per hour.

[2] The cost of telephone operators is estimated at $18/hour.

identifiable health information. In addition, your comment should not include any ''trade secret or any commercial or financial information which . . . . is privileged or confidential''—as provided by Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2)—including in particular competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

Comments containing material for which confidential treatment is requested must be filed in paper form, must be clearly labeled ''Confidential,'' and must comply with FTC Rule 4.9(c). In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. See FTC Rule 4.9(c). Your comment will be kept confidential only if the General Counsel grants your request in accordance with the law and the public interest. Once your comment has been posted publicly at *www.regulations.gov,* we cannot redact or remove your comment, unless you submit a confidentiality request that meets the requirements for such treatment under FTC Rule 4.9(c), and the General Counsel grants that request.

The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before April 8, 2019. You can find more information, including routine uses permitted by the Privacy Act, in the Commission's privacy policy, at *https://www.ftc.gov/site-information/privacy-policy.*

Heather Hippsley,

Deputy General Counsel.

[FR Doc. 2019–01530 Filed 2–7–19; 8:45 am]

BILLING CODE 6750–01–P

GENERAL SERVICES ADMINISTRATION

[NOTICE PBS–2019–02; DOCKET NO. 2019–002; SEQUENCE NO. 2]

Notice of Availability and Announcement of Public Meeting for the Final Supplemental Environmental Impact Statement for the San Ysidro Land Port of Entry Improvements Project, San Ysidro, California

AGENCY: Public Buildings Service (PBS), General Services Administration (GSA).

ACTION: Notice of availability; announcement of public meeting.

SUMMARY: This notice announces the availability of the Final Supplemental Environmental Impact Statement (SEIS), which examines the potential impacts of a proposal by the GSA, to reconfigure and expand the existing San Ysidro Land Port of Entry (LPOE) located at the United States (U.S.)-Mexico border in the City of San Diego community of San Ysidro, in San Diego County, California. The Final SEIS describes the reason the project is being proposed; the alternatives considered; the potential impacts of each of the alternatives on the existing environment; and the proposed avoidance, minimization, and/or mitigation measures related to those alternatives. As the lead agency for this undertaking, GSA is acting on behalf of its major tenant at this facility, the Department of Homeland Security's Customs and Border Protection.

DATES: A public meeting for the Final SEIS will be held on Wednesday, February 20th, 2019, from 4:00 p.m. to 7:00 p.m., Pacific Standard Time. Interested parties are encouraged to attend. The availability period for the Final SEIS ends on Monday, March 11th, 2019.

ADDRESSES: The public meeting will be held at The Front, 147 West San Ysidro Boulevard, San Diego, CA, 92173. Further information, including an electronic copy of the Final SEIS, may be found online on the following website: *https://www.gsa.gov/about-us/regions/welcome-to-the-pacific-rim-region-9/land-ports-of-entry/san-ysidro-land-port-of-entry.* Questions or comments concerning the Final SEIS should be directed to: Osmahn Kadri, Regional Environmental Quality Advisor/NEPA Project Manager, 50 United Nations Plaza, 3345, Mailbox #9, San Francisco, CA, 94102, or via email to *osmahn.kadri@gsa.gov.*

FOR FURTHER INFORMATION CONTACT: Osmahn Kadri, Regional Environmental Quality Advisor/NEPA Project Manager, GSA, at (415) 522–3617. Please also call this number if special assistance is needed to attend and participate in the public meeting.

SUPPLEMENTARY INFORMATION:

Background

The SEIS for the San Ysidro LPOE Improvements Project is intended to supplement the Final Environmental Impact Statement (EIS) that was adopted for the San Ysidro LPOE Improvements Project in August 2009 (2009 Final EIS). In September 2009, GSA prepared a Record of the Decision (ROD) that approved the Preferred Alternative (2009 Approved Project) that was identified in the 2009 Final EIS. In May 2014, GSA adopted a Final SEIS that evaluated changed circumstances and proposed modifications to the 2009 Approved Project that identified a Preferred Alternative that was approved by GSA through a ROD in August 2014 (2014 Approved Supplemental Project).

In August 2015, GSA prepared a Revision to the 2014 Final SEIS to document minor design changes and provide specific information that was not available or known at the time when the 2009 Final EIS or 2014 Final SEIS was prepared (2015 Revision). The 2009 Approved Project, 2014 Approved Supplemental Project, and 2015 Revision are collectively referred to as the ''Approved Project.''

This SEIS documents and evaluates changed circumstances and proposed modifications to the Approved Project since adoption of the 2009 Final EIS and 2014 Final SEIS and preparation of the 2015 Revision. The Approved Project with proposed modifications is referred to as the ''Revised Project.''

The Approved Project and Revised Project entail the reconfiguration and expansion of the San Ysidro LPOE in three independent phases to improve overall capacity and operational efficiency at the LPOE. The San Ysidro LPOE is located along Interstate 5 (I–5) at the U.S.-Mexico border in the San Ysidro community of the City of San Diego, California.

GSA is proposing the following changes to the Approved Project: A redesign of the proposed pedestrian plaza on the east side of the LPOE. The pedestrian plaza would be expanded to the north to include an additional parcel adjacent to the LPOE. GSA proposes acquisition of the adjacent 0.24-acre parcel to the north that contains two commercial buildings and incorporation of this parcel (Additional Land Area) into the pedestrian plaza. In addition to these proposed changes to the Approved Project, the Revised Project also includes the other components of the

Approved Project that have not changed.

The changed circumstances associated with the Approved Project include new information regarding the condition of existing structures adjacent to the LPOE that affect the ability of GSA to implement the Approved Project. The Approved Project anticipated that construction of the pedestrian plaza would require demolition of the existing Milo Building within the LPOE. During final design, it was discovered that two existing buildings adjacent to the Milo Building on the Additional Land Area would likely collapse when the Milo Building is removed. The condition of these adjacent buildings was not known at the time the 2009 Final EIS or 2014 Final SEIS were prepared and this changed circumstance has bearing on the ability to implement the Approved Project.

Due to the changed circumstances and changes to the Approved Project, GSA made the decision to prepare an SEIS for the Revised Project.

The purpose of the Revised Project is the same as the Approved Project that was identified in the 2009 Final EIS and 2014 Final SEIS. The purpose of the Revised Project is to improve operational efficiency, security, and safety for cross-border travelers and federal agencies at the San Ysidro LPOE.

The Draft SEIS analyzed two alternatives of the Revised Project, as well as the No Action Alternative. Both of the Action Alternatives include the proposed modifications described above, as well as the other improvements originally proposed as part of the Approved Project. Alternative 1 would include demolition of the two existing buildings within the Additional Land Area that would be added to the LPOE and incorporated into the pedestrian plaza. Alternative 2 would involve renovation/adaptive reuse of the existing buildings on the Additional Land Area that would be added to the LPOE and incorporated into the design of the pedestrian plaza and LPOE. Under the No Action Alternative, GSA would continue to implement the Approved Project except that the Milo Building would not be demolished.

The Draft SEIS was made publicly available on September 24, 2018 for a 45-day period. The Notice of Availability for the Draft SEIS was published in the **Federal Register** on September 24, 2018. A public meeting took place on October 17, 2018 in the San Ysidro community. In preparing this Final SEIS, GSA considered public comments received regarding the Draft SEIS during the public review period.

After careful consideration of the environmental analysis and associated environmental effects of the action alternatives and No Action Alternative, the needs of the federal agencies operating at the San Ysidro LPOE, and comments received on the Draft SEIS, GSA identified Alternative 1 as the Preferred Alternative.

This Alternative would best satisfy the Purpose and Need of the Revised Project and would result in greater benefits to cross-border circulation and mobility within the project area compared to Alternative 2.

Dated: February 4, 2019.

Matthew Jear,

Director, Portfolio Management Division, Pacific Rim Region, Public Buildings Service.

[FR Doc. 2019–01690 Filed 2–7–19; 8:45 am]

BILLING CODE 6820–YF–P

GENERAL SERVICES ADMINISTRATION

[OMB Control No. 3090–0044; Docket No. 2018–0001; Sequence No. 11]

Submission for OMB Review; Application/Permit for Use of Space in Public Buildings and Grounds, GSA Form 3453

AGENCY: Public Buildings Service, General Services Administration (GSA).

ACTION: Notice of request for comments regarding an extension to an existing OMB clearance.

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 extension of a previously approved information collection requirement regarding the Application/Permit for Use of Space in Public Buildings and Grounds, GSA Form 3453.

DATES: Submit comments on or before: March 11, 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:

- *Regulations.gov: http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by searching the OMB control number. Select the link ''Submit a Comment'' that corresponds with ''Information Collection 3090–0044, Application/Permit for Use of Space in Public Buildings and Grounds, GSA Form 3453.'' Follow the instructions provided at the ''Submit a Comment'' screen. Please include your name, company name (if any), and ''Information Collection 3090–0044, Application/Permit for Use of Space in Public Buildings and Grounds, GSA Form 3453,'' on your attached document.
- *Mail:* General Services Administration, Regulatory Secretariat Division (MVCB), 1800 F Street NW, Washington, DC 20405. ATTN: Ms. Mandell/IC 3090–0044, Application/Permit for Use of Space in Public Buildings and Grounds, GSA Form 3453.

Instructions: Please submit comments only and cite Information Collection 3090–0044, Application/Permit for Use of Space in Public Buildings and Grounds, GSA Form 3453, in all correspondence related to this collection. Comments received generally will be posted without change to *regulations.gov,* including any personal and/or business confidential information provided. To confirm receipt of your comment(s), please check *regulations.gov,* approximately two-to-three business days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

FOR FURTHER INFORMATION CONTACT: Ms. Karen Handsfield, Public Buildings Service, at telephone 202–208–2444, or via email to *karen.handsfield@gsa.gov.*

SUPPLEMENTARY INFORMATION:

A. Purpose

The general public uses Application/Permit for Use of Space in Public Buildings and Grounds, GSA Form 3453, to request the use of public space in Federal buildings and on Federal grounds for cultural, educational, or recreational activities. A copy, sample, or description of any material or item proposed for distribution or display must also accompany this request.

B. Annual Reporting Burden

Respondents: 8,000.
Responses per Respondent: 1.
Hours per Response: 0.05.
Total Burden Hours: 400.

C. Public Comments

A notice was published in the **Federal Register** at 83 FR 48314 on September 24, 2018. No comments were received. Public comments are particularly invited on: Whether this collection of information is necessary and whether it will have practical utility; whether our estimate of the public burden of this

collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected.

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. 3090–0044, Application/Permit for Use of Space in Public Buildings and Grounds, GSA Form 3453, in all correspondence.

Dated: December 19, 2018.

David A. Shive,

Chief Information Officer.

[FR Doc. 2019–01689 Filed 2–7–19; 8:45 am]

BILLING CODE 6820–34–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request Proposed Projects: Domestic Victims of Human Trafficking Program

Title: Domestic Victims of Human Trafficking Program Data.

OMB No.: 0970–NEW.

Description: The Trafficking Victims Protection Act of 2000 (TVPA), as amended, authorizes the Secretary of Health and Human Services to establish a program to assist United States citizens and lawful permanent residents who are victims of severe forms of trafficking (22 U.S.C. 7105(f)). The Office on Trafficking in Persons (OTIP) awarded thirteen cooperative agreements to implement the Domestic Victims of Human Trafficking (DVHT) Program. The DVHT Program provides funding for comprehensive case management services to domestic victims of severe forms of trafficking to ensure the provision of services with an emphasis on long-term housing, substance abuse treatment, and the integration of survivor-led services.

The intent of this program is to build, expand, and sustain organizational and community capacity to deliver trauma-informed, strengths-based, and person-centered services for domestic victims of human trafficking through coordinated case management, a system of agency services, and community partnerships. The DVHT Program encourages innovative practices and collaboration efforts among community stakeholders to ensure long-term outcomes for domestic victims of severe forms of trafficking.

OTIP proposes to collect information from DVHT grantees on a semi-annual and annual basis to help measure each grant project's performance and the success of the program in assisting participants, to assist grantees to assess and improve their projects over the course of the project period, and to fulfill congressional reporting requests. The proposed information collection includes elements on participant demographics (*e.g.,* age, sex, and country of origin), types of trafficking experienced (sex, labor, or both), types of enrollment, types of services requested and provided, barriers to service delivery, types of partnerships developed through the grant, and the types of training and technical assistance provided to subrecipient organizations or other partners.

This information will help OTIP assess the project's performance in assisting victims of trafficking and will better enable DVHT grantees to meet the program objectives and to monitor and evaluate the quality of case management services provided to victims. OTIP will also include aggregate information in reports to Congress to help inform strategies and policies to assist domestic victims of human trafficking.

Respondents: Domestic Victims of Human Trafficking Program Grantees.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Client Characteristics and Enrollment Form	636	1	.3	190.8
Client Service Use and Delivery Form	636	1	.25	159
Client Case Closure Form	636	1	.167	106.212
Barriers to Service Delivery Form	36	5	.167	30.06
Partnership Development Enrollment Form	172	1	.25	43
Partnership Development Exit Form	172	1	.083	14.276
Training Form	36	4	.5	72
Technical Assistance Form	36	4	.5	72

Estimated Total Annual Burden Hours: 687.

In compliance with the requirements of the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chap 35), the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Planning, Research and Evaluation, 330 C Street SW, Washington, DC 20201. Attn: ACF Reports Clearance Officer. Email address: *infocollection@acf.hhs.gov.* All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Mary B. Jones,

ACF/OPRE Certifying Officer.

[FR Doc. 2019–01691 Filed 2–7–19; 8:45 am]

BILLING CODE 4184–47–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Youth Empowerment Information, Data Collection, and Exploration on Avoidance of Sex (IDEAS) (New Collection)

AGENCY: Office of Planning, Research, and Evaluation; Administration for Children and Families; HHS.

ACTION: Request for public comment.

SUMMARY: The Office of Planning, Research, and Evaluation (OPRE), Administration for Children and Families (ACF), at the U.S. Department of Health and Human Services (HHS), proposes data collection activities as part of the Youth Empowerment IDEAS study. The goal of this project is to collect data that will inform educational topics and strategies for an optimal-health sexual risk avoidance (SRA) approach to reducing teen pregnancy and improving youth well-being. The project will identify strategies, skills, messages, and themes that are most likely to resonate with youth. The project will inform hypotheses on how to increase the effectiveness of sex education approaches so that more youth avoid the risks associated with teen sex, and teen pregnancy rates are reduced. To support these efforts, we seek OMB approval to collect survey information from a nationally-representative sample of youth and young adults age 14–24 and a nationally-representative sample of parents of teens ages 14–18.

DATES: *Comments due within 60 days of publication.* In compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above.

ADDRESSES: Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Planning, Research, and Evaluation, 330 C Street SW, Washington, DC 20201, Attn: OPRE Reports Clearance Officer. Email address: *OPREinfocollection@acf.hhs.gov.* All requests should be identified by the title of the information collection.

SUPPLEMENTARY INFORMATION:

Description: We propose the following data collection instruments:

(1) *Parent Survey:* Information collected through the Parent Survey will be used to report on demographics, the parent-child relationship, parents' attitudes and beliefs about youth sex education and sexual behaviors, and parental knowledge about youth sexual risk-taking. We will use both random-digit-dialing and a web survey.

(2) *Youth Survey:* We will administer a web survey in two parts. Information collected on Part I of the survey will be used to report on demographics, the parent-child relationship, future aspirations, and attitudes and beliefs about youth sexual behavior. Information collected on Part II of the survey will include knowledge about sexual risk, experience with sex education, and sexual risk behaviors.

Respondents: A nationally representative sample of parents of teens ages 14–18 and a nationally representative sample of youth and young adults ages 14–24.

ANNUAL BURDEN ESTIMATES

Instrument	Total number of respondents	Annual number of respondents	Number of responses per respondent	Average burden hours per response	Annual burden hours
Parent Survey—Screener	7500	2500	1	.083	208
Parent Survey—Telephone Mode (RDD)	600	200	1	.500	100
Parent Survey—Web	900	300	1	.333	100
Part I Youth Web Survey	1500	500	1	.333	167
Part II Youth Web Survey	1200	400	1	.333	133

Estimated Total Annual Burden Hours: 708.

Comments: The Department specifically requests comments on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Authority: Sec. 510. [42 U.S.C. 710]

Mary B. Jones,

ACF/OPRE Certifying Officer.

[FR Doc. 2019–01566 Filed 2–7–19; 8:45 am]

BILLING CODE 4184–83–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Community Living

Administration on Intellectual and Developmental Disabilities, President's Committee for People With Intellectual Disabilities

AGENCY: Administration for Community Living, HHS.

ACTION: Notice.

SUMMARY: The President's Committee for People with Intellectual Disabilities (PCPID) will host a webinar/conference call for its members to discuss the potential topics of the Committee's 2019 Report to the President. All the PCPID meetings, in any format, are open to the public. This virtual meeting will be conducted in a discussion format.

DATES:

Webinar/Conference Call: Monday, March 4, 2019 from 11:00 a.m. to 12:30 p.m. (EST).

Agenda: The Committee will discuss the preparation of the PCPID 2019 Report to the President, including its content and format, and related data collection and analysis required to complete the writing of the Report.

Additional Information: For further information and accommodations needs, please contact Ms. Allison Cruz, Director, Office of Innovation, 330 C Street, SW, Switzer Building, Room 1114, Washington, DC 20201. Telephone: 202–795–7334. Fax: 202–

795–7334. Email: *allison.cruz@acl.hhs.gov*

Supplemental Information: The purpose of this virtual meeting is to discuss the Committee's preparation of the 2019 Report to the President, including its content and format, and related data collection and analysis required to complete the writing of the Report.

Webinar/Conference Call: The webinar/conference call is scheduled for Monday, March 4, 2019 from 11:00 a.m. to 12:30 p.m. (EST) and may end early if discussions are finished.

Instructions to Participate in the Webinar/Conference Call on Monday, March 4, 2019: Please dial: (888) 949–2790; Pass Code: 1989852.

Background Information on the Committee: The PCPID acts in an advisory capacity to the President and the Secretary of Health and Human Services on a broad range of topics relating to programs, services and support for individuals with intellectual disabilities. The PCPID executive order stipulates that the Committee shall: (1) Provide such advice concerning intellectual disabilities as the President or the Secretary of Health and Human Services may request; and (2) provide advice to the President concerning the following for people with intellectual disabilities: (A) Expanding employment opportunities; (B) connecting people to services; (C) supporting families and caregivers; (D) strengthening the networks; and (E) protecting rights and preventing abuse.

Dated: February 4, 2018.

Julie Hocker,

Commissioner, Administration on Disabilities (AoD).

[FR Doc. 2019–01698 Filed 2–7–19; 8:45 am]

BILLING CODE 4154–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2018–N–3918]

Request for Nomination From Industry Organizations Interested in Participating in the Selection Process for Nonvoting Industry Representatives and Request for Nominations for Nonvoting Industry Representatives on Public Advisory Committees

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or the Agency) is requesting that any industry organizations interested in participating in the selection of nonvoting industry representatives to serve on its public advisory committees for the Center for Drug Evaluation and Research (CDER) notify FDA in writing. FDA is also requesting nominations for nonvoting industry representatives to serve on CDER's public advisory committees. A nominee may either be self-nominated or nominated by an organization to serve as a nonvoting industry representative. Nominations will be accepted for vacancies which become available on November 1, 2019, for the 4-year term of November 1, 2019 to October 31, 2023.

DATES: Any industry organization interested in participating in the selection of an appropriate nonvoting member to represent industry interests must send a letter stating that interest to FDA by March 11, 2019, (see sections I and II of this document for further details). Concurrently, nomination materials for prospective candidates should be sent to FDA by March 11, 2019.

ADDRESSES: All statements of interest from industry organizations interested in participating in the selection process of nonvoting industry representative nominations should be sent to Cicely Reese (see **FOR FURTHER INFORMATION CONTACT**). All nominations for nonvoting industry representatives may be submitted electronically by accessing the FDA Advisory Committee Membership Nomination Portal: *https://www.accessdata.fda.gov/scripts/FACTRSPortal/FACTRS/index.cfm* or by mail to: Division of Advisory Committee and Consultant Management, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 31, Rm. 2417, Silver Spring, MD 20993–0002. Information about becoming a member of an FDA advisory committee can also be obtained by visiting FDA's website at: *http://www.fda.gov/AdvisoryCommittees/default.htm.*

FOR FURTHER INFORMATION CONTACT: Cicely Reese, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 31, Rm. 2417, Silver Spring, MD 20993–0002, 301–796–9001, Fax: 301–847–8533, email: *Cicely.Reese@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: The Agency intends to add a nonvoting industry representative to the following advisory committees:

I. CDER Advisory Committees

A. Anesthetic and Analgesic Drug Products Advisory Committee

Reviews and evaluates available data concerning the safety and effectiveness of marketed and investigational human drug products for use in anesthesiology and surgery.

B. Antimicrobial Drugs Advisory Committee

Reviews and evaluates available data concerning the safety and effectiveness of marketed and investigational human drug products for use in the treatment of infectious diseases and disorders.

C. Arthritis Advisory Committee

Reviews and evaluates available data concerning the safety and effectiveness of marketed and investigational human drug products for use in the treatment of arthritis, rheumatism, and related diseases.

D. Bone, Reproductive, and Urologic Drugs Advisory Committee

Reviews and evaluates available data on the safety and effectiveness of marketed and investigational human drugs for use in the practice of obstetrics, gynecology, urology, and related specialties.

E. Cardiovascular and Renal Drugs Advisory Committee

Reviews and evaluates available data on the safety and effectiveness of marketed and investigational human drug products for use in the treatment of cardiovascular and renal disorders.

F. Dermatologic and Ophthalmic Drugs Advisory Committee

Reviews and evaluates available data concerning the safety and effectiveness of marketed and investigational human drug products for use in the treatment of dermatologic and ophthalmic disorders.

G. Drug Safety and Risk Management Advisory Committee

Reviews and evaluates information on risk management, risk communication, and quantitative evaluation of spontaneous reports for drugs for human use.

H. Endocrinologic and Metabolic Drugs Advisory Committee

Reviews and evaluates available data concerning the safety and effectiveness of marketed and investigational human drug products for use in the treatment of endocrine and metabolic disorders.

I. Gastrointestinal Drugs Advisory Committee

Reviews and evaluates available data concerning the safety and effectiveness of marketed and investigational human drug products for use in the treatment of gastrointestinal diseases.

J. Medical Imaging Drugs Advisory Committee

Reviews and evaluates available data concerning the safety and effectiveness of marketed and investigational human drug products for use in diagnostic and therapeutic procedures using radioactive pharmaceuticals and contrast media used in diagnostic radiology.

K. Nonprescription Drugs Advisory Committee

Reviews and evaluates available data concerning the safety and effectiveness of over-the-counter (nonprescription) human drug products for use in the treatment of a broad spectrum of human symptoms and diseases.

L. Oncologic Drugs Advisory Committee

Reviews and evaluates available data concerning the safety and effectiveness of marketed and investigational human drug products for use in the treatment of cancer.

M. Peripheral and Central Nervous System Drugs Advisory Committee

Reviews and evaluates available data concerning the safety and effectiveness of marketed and investigational human drug products for use in the treatment of neurologic diseases.

N. Pharmaceutical Science and Clinical Pharmacology Advisory Committee

Reviews and evaluates scientific, clinical, and technical issues related to the safety and effectiveness of drug products for use in the treatment of a broad spectrum of human diseases.

O. Pharmacy Compounding Advisory Committee

Provides advice on scientific, technical, and medical issues concerning drug compounding.

P. Psychopharmacologic Drugs Advisory Committee

Reviews and evaluates available data concerning the safety and effectiveness of marketed and investigational human drug products for use in the practice of psychiatry and related fields.

Q. Pulmonary-Allergy Drugs Advisory Committee

Reviews and evaluates available data concerning the safety and effectiveness of marketed and investigational human drug products for use in the treatment of pulmonary disease and diseases with allergic and/or immunologic mechanisms.

II. Selection Procedure

Any industry organization interested in participating in the selection of an appropriate nonvoting member to represent industry interests should send a letter stating that interest to the FDA contact (see **FOR FURTHER INFORMATION CONTACT**) within 30 days of publication of this document (see **DATES**). Within the subsequent 30 days, FDA will send a letter to each organization that has expressed an interest, attaching a complete list of all such organizations; and a list of all nominees along with their current resumès. The letter will also state that it is the responsibility of the interested organizations to confer with one another and to select a candidate, within 60 days after the receipt of the FDA letter, to serve as the nonvoting member to represent industry interests for the committee. The interested organizations are not bound by the list of nominees in selecting a candidate. However, if no individual is selected within 60 days, the Commissioner will select the nonvoting member to represent industry interests.

III. Application Procedure

Individuals may self-nominate and/or an organization may nominate one or more individuals to serve as a nonvoting industry representative. Contact information, current curriculum vitae, and the name of the committee of interest should be sent to the FDA Advisory Committee Membership Nomination Portal (see **ADDRESSES**) within 30 days of publication of this document (see **DATES**). FDA will forward all nominations to the organizations expressing interest in participating in the selection process for the committee. (Persons who nominate themselves as nonvoting industry representatives will not participate in the selection process.)

FDA seeks to include the views of women and men, members of all racial and ethnic groups, and individuals with and without disabilities on its advisory committees and, therefore, encourages nominations of appropriately qualified candidates from these groups.

This notice is issued under the Federal Advisory Committee Act (5 U.S.C. app. 2) and 21 CFR part 14, relating to advisory committees.

Dated: February 4, 2019.

Lowell J. Schiller,

Acting Associate Commissioner for Policy.

[FR Doc. 2019–01555 Filed 2–7–19; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2016–D–3548]

Public Warning and Notification of Recalls; Guidance for Industry and FDA Staff; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or we) is announcing the availability of a final guidance for industry and FDA staff entitled ''Public Warning and Notification of Recalls.'' The guidance establishes guidance for industry and FDA staff regarding the use, content, and circumstances for issuance of public warnings and public notification of recalls under federal regulations. The intent of the guidance is to increase and expedite the appropriate and accurate use of public warnings and public notification and to increase public health protection by better informing the public about violative products being recalled. The guidance clarifies and supplements existing policy for industry and FDA staff regarding the use of public warnings and public notification.

DATES: The announcement of the guidance is published in the **Federal Register** on February 8, 2019.

ADDRESSES: You may submit either electronic or written comments on Agency guidances at any time as follows:

Electronic Submissions

Submit electronic comments in the following way:

• *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or

confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*

• If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

• *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

• For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2016–D–3548 for ''Public Warning and Notification of Recalls '' 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.gpo.gov/fdsys/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

You may submit comments on this guidance at any time (see 21 CFR 10.115(g)(5)).

Submit written requests for single copies of the guidance to the Office of Strategic Planning and Operational Policy, Office of Regulatory Affairs, Food and Drug Administration, 12420 Parklawn Dr., Element Building, Rockville, MD 20857. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

FOR FURTHER INFORMATION CONTACT: For questions or information regarding this document, contact Chris Henderson, Office of Regulatory Affairs, Office of Strategic Planning and Operational Policy, Human and Animal Food Policy Branch, Food and Drug Administration, 12420 Parklawn Dr., Rockville, MD 20857, 240–402–8186, *Christopher.henderson@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

We are announcing the availability of a guidance for industry and FDA staff entitled ''Public Warning and Notification of Recalls under 21 CFR part 7, subpart C.'' We are issuing this guidance consistent with our good guidance practices regulation (21 CFR 10.115). The guidance represents the current thinking of FDA on this topic. It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations. This guidance is not subject to Executive Order 12866.

In the **Federal Register** of January 19, 2018 (83 FR 2758), we made available a draft guidance for industry and FDA Staff entitled ''Public Warning and Notification of Recalls under 21 CFR part 7, subpart C, Draft Guidance for Industry and FDA staff'' and gave interested parties an opportunity to submit comments by March 20, 2018, for us to consider before beginning work on the final version of the guidance. We received comments on the draft guidance. We considered every comment and made changes, where appropriate. The guidance announced in this notice finalizes the draft guidance dated January 17, 2018.

The guidance establishes official guidance for industry and FDA staff regarding the use, content, and circumstances for issuance of public warnings and public notification of recalls under 21 CFR part 7, subpart C. The intent of the guidance is to increase and expedite the appropriate and accurate use of public warnings and public notification and to increase public health protection by better informing the public about violative products being recalled. The guidance clarifies and supplements existing policy for industry and FDA staff regarding the use of public warnings and public notification.

II. Paperwork Reduction Act of 1995

This guidance refers to previously approved collections of information that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). Any collection of information, such as a firm's public warning (21 CFR 7.42(b)(2)), has been approved under OMB control number 0910–0249.

III. Electronic Access

Persons with access to the internet may obtain the guidance at either *https://www.fda.gov/Safety/Recalls/default.htm* or *https://www.regulations.gov.* Use the FDA website listed in the previous sentence to find the most current version of the guidance.

Dated: January 16, 2019.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2019–01603 Filed 2–7–19; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–N–0449]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Sun Protection Factor Labeling and Testing Requirements for Over-the-Counter Sunscreen Drug Products

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by March 11, 2019.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, Fax: 202–395–7285, or emailed to *oira_submission@omb.eop.gov.* All comments should be identified with the OMB control number 0910–0717. Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: JonnaLynn Capezzuto, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 301–796–3794, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

SPF Labeling and Testing Requirements for OTC Sunscreen Products—21 CFR 201.327(a)(1) and (i), 21 CFR 201.66(c) and (d)

OMB Control Number 0910–0717—Extension

In the **Federal Register** of June 17, 2011 (76 FR 35620), we published a final rule establishing labeling and effectiveness testing requirements for certain OTC sunscreen products containing specified active ingredients without approved applications (2011 sunscreen final rule; § 201.327 (21 CFR 201.327)). In addition to establishing testing requirements, the 2011 sunscreen final rule lifted the delay of implementing the prior 1999 sunscreen final rule (published in the **Federal Register** of May 21, 1999 (64 FR 27666), and stayed in the **Federal Register** of December 31, 2001 (66 FR 67485), from complying with the 1999 Drug Facts labeling final rule (published in the **Federal Register** of March 17, 1999 (64 FR 13254)), in which we amended our regulations governing requirements for human drug products to establish standardized format and content requirements for the labeling of all marketed OTC drug products in part 201 (21 CFR part 201). Specifically, the 1999 Drug Facts labeling final rule added new § 201.66 (21 CFR 201.66) to part 201. Section 201.66 establishes content and format requirements for the Drug Facts portion of OTC drug product labels. We specifically exempted OTC sunscreen products from complying with the 1999 Drug Facts labeling final rule until we lifted the stay of the 1999 sunscreen final rule. The 2011 sunscreen final rule became effective December 17, 2012, for sunscreen products with annual sales of $25,000 or more and December 17, 2013, for sunscreen products with annual sales of less than $25,000 when we published an extension date notice in the **Federal Register** of May 11, 2012 (77 FR 27591) (2012 extension date notice).

SPF Labeling and Testing for OTC Sunscreens Containing Specified Active Ingredients and Marketed Without Approved Applications

In the **Federal Register** of June 17, 2011 (76 FR 35678), we published a 60-day notice requesting public comment on the collection of information regarding SPF labeling and testing requirements for OTC sunscreen products containing specified ingredients and marketed without approved applications (2011 60-day notice). In that notice, we stated that § 201.327(a)(1) requires the principal display panel (PDP) labeling of a sunscreen covered by the 2011 sunscreen final rule to include the SPF value determined by conducting the SPF test outlined in § 201.327(i). Therefore, that provision resulted in an information collection with a third-party disclosure burden for manufacturers of OTC sunscreens covered by the 2011 sunscreen rule. We determined that products need only complete the testing and labeling required by the 2011 sunscreen rule once and then continue to use the resultant labeling (third-party disclosure) going forward without additional burden. This one-time testing would need to be conducted within the first 3 years after publication of the 2011 sunscreen final rule for all OTC sunscreens covered by that rule.

We determined that the third-party disclosure burden by manufacturers of OTC sunscreens covered by the 2011 sunscreen rule was based on: (1) An estimate of the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing each collection of information; (2) the conduct of SPF testing based on the estimated number of existing formulations; (3) an estimate of the time to relabel currently marketed OTC sunscreens containing specified ingredients and marketed without approved applications; and (4) testing and labeling of new products introduced each year. The estimate for this burden in the 2011 60-day notice was a total of 30,066 hours in years one and two and a total of 966 in each subsequent year.

All currently marketed OTC sunscreen drug products are already required to comply with the SPF labeling requirements specified by the 2011 sunscreen final rule. However, our original estimate also included the burden of new products introduced each year. We estimated that as many as 60 new OTC sunscreen products stock keeping units (SKUs) may be introduced each year, which must be tested and labeled with the SPF value determined in the test. We estimated that the 60 new sunscreen SKUs represent 39 new formulations. The burden for testing and labeling these formulations was estimated at 30 hours per year.

Drug Facts Labeling for OTC Sunscreens

Because the 2011 sunscreen final rule also lifted the delay of implementing the Drug Facts regulations (§ 201.66) for OTC sunscreens, the rule also modified the information collection associated with § 201.66 (currently approved under OMB control number 0910–0340) and added a third-party disclosure burden resulting from requiring OTC sunscreen products to comply with Drug Facts regulations. In the 1999 Drug Facts labeling final rule, we amended our regulations governing requirements for human drug products to establish standardized format and content requirements for the labeling of all marketed OTC drug products, codified in § 201.66. This section establishes requirements for the Drug Facts portion of labels on OTC drug products requiring such labeling, to include uniform headings and subheadings,

presented in a standardized order with minimum standards for type size and other graphical features. Therefore, OTC sunscreen products already on the market at that time incurred a one-time burden to comply with the requirements in § 201.66(c) and (d). In the 60-day notice, the burden was estimated as 43,200 hours for existing sunscreen SKUs and 720 hours for new sunscreen SKUs.

The compliance dates for the 2011 sunscreen final rule that lifted the delay of the § 201.66 labeling implementation data for OTC sunscreen products were December 17, 2012, for sunscreen products with annual sales of $25,000 or more and December 17, 2013, for sunscreen products with annual sales of less than $25,000, respectively, when we published the 2012 extension date notice. All currently marketed sunscreen products are, therefore, already required to comply with the Drug Facts labeling requirements in § 201.66 and will incur no further burden in the 1999 Drug Facts labeling final rule. However, new OTC sunscreen drug products will be subject to a one-time burden to comply with Drug Facts labeling requirements in § 201.66. In the 2011 60-day notice, we estimated that as many as 60 new product SKUs marketed each year must comply with Drug Facts regulations. We estimated that these 60 SKUs would be marketed by 30 manufacturers, which will spend approximately 12 hours on each label based on the most recent estimate used for other OTC drug products to comply with the 1999 Drug Facts labeling final rule, including public comments received on this estimate in 2010 that addressed sunscreens. This is equal to 720 hours annually (60 SKUs, 12 hours per SKU). We stated that we do not expect any OTC sunscreens to apply for exemptions or deferrals of the Drug Facts regulations in § 201.66(e). However, we considered this in 2013 and estimated the burden for an exemption or deferral by considering the number of exemptions or deferrals we have received since publication of the 1999 Drug Facts labeling final rule (one response) and estimating that a request for deferral or exemption would require 24 hours to complete. Multiplying the annual frequency of response (0.125) by the number of hours per response (24) gives a total response time for requesting an exemption or deferral equal to 3 hours.

In the **Federal Register** of August 22, 2018 (83 FR 42509), FDA published a 60-day notice requesting public comment on the proposed collection of information. No comments were received.

We estimate the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL THIRD-PARTY DISCLOSURE BURDEN

[New sunscreens] [1]

Activity	Number of respondents	Number of disclosures per respondent	Total annual disclosures	Average burden per disclosure	Total hours
Conduct SPF testing in accordance with § 201.327(i) for new sunscreens.	20	1.95	39	24	936
Create PDP labeling in accordance with § 201.327(a)(1) for new sunscreen SKUs.	20	3	60	0.5 (30 minutes)	30
Total					966

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 2—ESTIMATED ANNUAL THIRD-PARTY DISCLOSURE BURDEN

[Drug facts labeling] [1]

Activity	Number of respondents	Number of disclosures per respondent	Total annual disclosures	Average burden per disclosure	Total hours
Format labeling in accordance with § 201.66(c) and (d) for new sunscreen SKUs.	20	3	60	12	720
Request for Drug Facts exemption or deferral § 201.66(e).	1	0.125	0.125 (7 minutes)	24	3
Total					723

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

We note that these estimates may be adjusted in the future as the result of a detailed analysis of sunscreen market data conducted by FDA as part of the development of an upcoming proposed rule on OTC sunscreen products (RIN 0910–AA01). FDA intends to either or both amend this information collection or seek approval of additional information collections, as appropriate, concurrent with publication of the proposed rule.

Dated: February 4, 2019.

Lowell J. Schiller,

Acting Associate Commissioner for Policy.

[FR Doc. 2019–01529 Filed 2–7–19; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2016–N–0407]

Pilot Project Program Under the Drug Supply Chain Security Act; Program Announcement

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the start of the Pilot Project Program Under the Drug Supply Chain Security Act (DSCSA Pilot Project Program). The DSCSA Pilot Project Program is intended to assist FDA and members of the pharmaceutical distribution supply chain in the development of the electronic, interoperable system that will identify and trace certain prescription drugs as they are distributed within the United States. Under this program, FDA will work with stakeholders to establish one or more pilot projects to explore and evaluate methods to enhance the safety and security of the pharmaceutical distribution supply chain. Participation in the DSCSA Pilot Project Program is voluntary and will be open to pharmaceutical distribution supply chain members to apply to the program. FDA will ensure that participation reflects the diversity of the supply chain, including large and small entities from all industry sectors. This notice establishes the DSCSA Pilot Project Program and includes instructions for submitting a request to participate and expectations for program participants.

DATES: FDA will be accepting applications for participation in the DSCSA Pilot Project Program beginning February 8, 2019 and continuing through March 11, 2019. The duration of the DSCSA Pilot Project Program will depend on the pilot project(s) accepted into the program and when the projects are completed.

FOR FURTHER INFORMATION CONTACT: Daniel Bellingham, Office of Compliance, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Silver Spring, MD 20993–0002, 301–796–3130, *DSCSAPilotProjects@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On November 27, 2013, the Drug Supply Chain Security Act (DSCSA) (Title II of Pub. L. 113–54) was signed into law. The DSCSA outlines critical steps to build an electronic, interoperable system by November 27, 2023, that will identify and trace certain prescription drugs as they are distributed within the United States. Section 202 of the DSCSA added sections 581 and 582 to the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 360eee and 360eee–1, respectively). Under section 582(j) of the FD&C Act, FDA is required to establish one or more pilot projects, in coordination with authorized manufacturers, repackagers, wholesale distributors, and dispensers, to explore and evaluate methods to enhance the safety and security of the pharmaceutical distribution supply chain.

FDA is establishing the DSCSA Pilot Project Program to implement section 582(j) of the FD&C Act. This program is intended to assist FDA and members of the pharmaceutical distribution supply chain in the development of the interoperable electronic system to be established by 2023. The 2023 system has the potential to reduce diversion of drugs distributed domestically as well as help deter counterfeit drugs from entering the supply chain. The pilot program will be designed to explore issues related to utilizing the product identifier for product tracing, improving the technical capabilities of the supply chain, identifying the system attributes that are necessary to implement the requirements established under the DSCSA, and any other issues identified by FDA (see section 582(j)(2)(B) of the FD&C Act).

Particular program goals include: (1) Identifying the system attributes needed to implement the requirements of section 582 of the FD&C Act, particularly the requirement to utilize a product identifier for product tracing and verification purposes and (2) assessing the ability of supply chain members to satisfy the requirements of section 582 of the FD&C Act; identify, manage, and prevent the distribution of suspect and illegitimate products as defined in section 581(21) and 581(8) of the FD&C Act, respectively, and exchange product tracing information across the pharmaceutical distribution supply chain in an electronic and interoperable manner. FDA plans to coordinate with stakeholders to ensure that pilot projects reflect the diversity of the pharmaceutical distribution supply chain, including large and small entities from all industry sectors. The DSCSA Pilot Project Program is intended to help identify and evaluate the most efficient processes and/or systems to operationalize supply chain security requirements.

II. The DSCSA Pilot Project Program

FDA is seeking pilot project participants from the pharmaceutical distribution supply chain (*e.g.,* authorized manufacturers, repackagers, wholesale distributors, and dispensers) and other stakeholders. FDA expects potential participants to propose the design and execution of their pilot project in their submission to FDA; however, FDA intends to meet with selected pilot project participants to ensure that the learnings from the pilot project(s) will be complementary in informing all stakeholders in the development of the electronic, interoperable system that will go into effect in 2023. FDA encourages potential participants to focus their proposed pilot project(s) on the DSCSA requirements related to the interoperable, electronic tracing of products at the package level. Specifically, the pilot project(s) should focus on the enhanced requirements for package-level tracing and verification that go into effect in 2023. Such pilot projects will likely be more useful than pilot projects dedicated to lot-level tracing. If there is an adequate number of pilot project submissions, FDA may establish more than one pilot project to accomplish the goals of the DSCSA Pilot Project Program.

A. Products Eligibility

Pilot projects should focus on applicable requirements to any prescription drug that is a ''product'' within the meaning of section 581(13) of the FD&C Act. FDA anticipates that packages and homogenous cases of product that are part of a pilot project will generally bear a ''product identifier'' as described in sections 581(14) and 582(a)(9) of the FD&C Act. FDA may also consider proposed pilot projects involving product that may be subject to a waiver, exception or exemption of certain DSCSA requirements, products that are grandfathered, in addition to products that are outside the scope of section 581(13) of the FD&C Act (*e.g.,* over-the-counter medicines) if such project(s) could further the objectives of the DSCSA Pilot Project Program.

B. Potential Issues To Examine and Evaluation Methods To Use in Pilot Projects

On April 5–6, 2016, FDA held a public workshop entitled ''Proposed Pilot Project(s) Under the Drug Supply Chain Security Act (DSCSA).'' This public workshop provided a forum for members of the pharmaceutical distribution supply chain to discuss the design objectives of pilot projects established by FDA under section 582(j) of the FD&C Act. Based on the information gathered at that workshop and from the comments submitted to the public docket for the workshop (Docket No. FDA–2016–N–0407), FDA identified several potential issues to examine, and evaluation methods to use, in pilot projects established under the DSCSA Pilot Project Program. These potential

issues and evaluation methods are summarized in table 1. This table is intended only to assist in the design of potential pilot projects; it does not represent FDA's views or policies regarding the issues described in the table. For ease of reference, the potential issues to examine and evaluation methods have been grouped by focus areas for the pilot projects.

TABLE 1—POTENTIAL ISSUES TO EXAMINE AND EVALUATION METHODS TO USE IN PILOT PROJECTS

Pilot project focus area	Potential issues to examine	Potential evaluation methods
Product Identifier	• Processes related to the requirement for manufacturers to affix or imprint a product identifier to each package and homogenous case of product intended to be introduced in a transaction into commerce. • Methods used to issue and manage serial numbers (*e.g.,* including a contract manufacturer's role if applicable or how a repackager associates its product identifier with the product identifier assigned by the original manufacturer). • Different representations for the product identifier (*e.g.,* different formats of the National Drug Code or serial number).	• Impacts of different representations of the product identifier on systems or processes: —Number of errors. —Time to process. —Time to reconcile differences.
Barcodes	• Readability of a barcode either printed or affixed to product, including impact of environmental and human factors. • Application of linear barcode and 2D barcode on product. • Distinguishing which barcode to read/use	• Barcode read error rates: —Number of items unnecessarily quarantined or held up. —Time and resource impacts.
Interoperability	• Process and technical challenges due to a variety of potential solutions (*e.g.,* type of database used and system architecture for exchanging information among trading partners). • Maintaining the integrity of information contained in the barcode of serialized product throughout the distribution supply chain (*e.g.,* a trading partner goes out of business or one acquires another business). • Different methods for exchanging information (*e.g.,* the use of Electronic Data Interchange, Electronic Product Code Information Services, and other solutions separately).	• For both decentralized and centralized models, time implications: —To investigate suspect and illegitimate products. —For notifications required within the statutory timelines. —Related to scaling up from pilot to full production. • Product tracing information (across multiple partners): —Capability to retrieve the information. —Accuracy of the information (within and between systems). • Security and access: —Evaluate and document access levels for trading partners.
Data/Database/System Issues.	• Data quality from beginning to end of the product lifecycle and vice versa. • System performance when full or partially loaded with data. • Data format or processes for data transfer: —Use of technical standards for defining data attributes to enable interoperable transfers. —Methods to handle the "master data" (product-specific data) and transaction data separately to minimize "master data" redundancy. • Integration into individual/company data systems • Control and access to data by trading partners, FDA, or other federal or state officials (data governance). • Ability of the system to record product status (*e.g.,* to indicate expired, illegitimate, in error, quarantined) at all packaging levels.	• System Performance and Effectiveness: —Time to access and use product tracing information once that data is received into a system. —Quality of product tracing information. —Number of breaches to system. —Number of attempts to breach the system that were prevented or minimized. • Data and product flow. —Number of unsuccessful attempts to access data and operational impacts. —Number of system interactions within one, and amongst multiple, trading partners. —Time and resource changes on operations when data and product not moving at same time (*e.g.,* product arrives before data arrives). —Time for location/ownership/status changes to be reflected in the system. —Time of product flow delays and associated costs due to system or data problems.
Aggregation/Disaggregation	• Multiple levels of adoption of inference, by different trading partners. Impact of inference gaps, changes or errors in data, particularly downstream when searching or examining the data; how can errors be corrected.	• Number of system and product interactions within one, and amongst multiple, trading partners. • Time required to conduct aggregate/disaggregate operations and transactions. • Accuracy of aggregation data (measure error counts). • Time to gather aggregation/disaggregation data for investigations and notifications. • Time to resolve errors in data.

TABLE 1—POTENTIAL ISSUES TO EXAMINE AND EVALUATION METHODS TO USE IN PILOT PROJECTS—Continued

Pilot project focus area	Potential issues to examine	Potential evaluation methods
Verification/Notification	• Process for investigation of suspect or illegitimate product, including any communication or coordination:. —Making and responding to verification requests .. —Making, responding to, and termination of notifications. —Responding to requests for information ..... —Testing boundaries of the system	• Response times: Current vs. future process. • Time needed to obtain product tracing information to respond to a request for verification. • Time needed to make, respond to, or terminate a notification. • Time to gather product tracing information to support an investigation for a suspect or illegitimate product, or a recall. • Percentage of items that are successfully verified vs. those that were targeted for verification. • Number of connections/queries needed to gather product tracing information in response to a verification or notification request.
Exception Handling/Errors/ Inconsistencies.	• Identify 'honest errors' (*e.g.,* over/under shipments, clerical errors, or aggregation errors). • Correcting 'honest errors'	• Percent of errors detected: Compare exceptions introduced vs. exceptions detected: —Identify the first step in the process where an error is detected. • Number of new or changed processes needed to accomplish DSCSA goals: —Time and resource impacts. • 'Honest Errors': —Number of items unnecessarily quarantined and held up. —Time required to detect and correct errors. —Impact on trading partners to correct errors. • Barcode read error rates: —Number of items unnecessarily quarantined or held up. —Time and resource impacts.
Special Scenarios	• Situations when data and product do not move together. • Situations when serialized product are sold and distributed along with non-serialized product.	• Error rates for special processes: —Number of items unnecessarily quarantined or held up. —Time and resource impacts. • Accuracy of linkage between original manufacturer product identifier and repackager-issued product identifier.

In addition to the information in table 1, workshop participants and comments submitted to the public docket recommended factors that FDA should take into consideration when establishing pilot projects. The recommended factors include the extent to which the pilot projects:

- Represent the mix of products and levels of packaging in the supply chain
- Include a diverse set of supply chain stakeholders (types and sizes) and transaction types
- Use adaptive design to make the pilot projects more efficient.
- Target known weaknesses in the supply chain
- Can be completed in such a time frame to provide useful information for trading partners
- Evaluate human factors that could present implementation challenges
- Simulate illegitimate products/ transactions to test a process or system
- Document costs to implement, use, and maintain piloted solutions

Although the Agency intends to take these factors into consideration when establishing pilot projects, FDA also recognizes that a single pilot project is unlikely to satisfy every factor. Accordingly, requests to establish a pilot project need not satisfy all the factors listed in this document.

C. Instructions for Submitting a Request To Participate in the DSCSA Pilot Project Program

Stakeholders interested in participating in the DSCSA Pilot Project Program may submit a request to participate by email to *DSCSAPilotProjects@fda.hhs.gov.* For a group of entities that partner to participate in a pilot project, only one submission and one point-of-contact for the proposed pilot project should be provided in the request to participate. Requests to participate may also consider other ideas for a pilot project that are not included in this notice.

D. Submission Content for Requesting To Participate in the DSCSA Pilot Project Program

The following information should be included in the request:

- Contact information for the submitter or point of contact, if different from the submitter (name, mailing address, phone number, email address)
- Names of all partnering entities that would participate in the pilot project (name of company and name of company representative)
- Type(s) of each partnering entity participating in the pilot project (*e.g.,* manufacturer, repackagers, wholesale distributor, dispenser, third-party logistics provider, solution provider, trade association, etc.); Partnering entities may include authorized trading partners or other supply chain stakeholders
- Number of employees for each partnering entity to reflect company size
- Proposed start and finish dates of the pilot project
- Commitment to start the pilot project within 4 months of receiving a letter of acceptance from FDA
- Product(s) that will be used in the pilot project
- Location(s) where pilot project will be performed (facility address)

- Description of the proposed pilot project, including, but not limited to, the goals, objectives, processes that will be studied, and evaluation methods

E. Initiation and Duration of Pilot Projects

The selected participants should be ready to start their pilot project within 4 months of receiving a letter of acceptance from FDA into the program. The duration of a pilot project should not exceed 6 months. FDA may consider a pilot project with a later start date or longer duration depending on the proposed goal(s) and objective(s). Each pilot project is expected to be completed within the proposed duration time period. This time period does not include an additional 30 days for completion of a final report (see Section II.G. Reports).

F. Participation in Pilot Projects

Each participant that is selected into the program will be responsible for conducting its pilot project. A group of entities (*e.g.,* members of the pharmaceutical distribution supply chain or other stakeholders, including trade associations) that partners to conduct a pilot project will be considered a single participant for purposes of the DSCSA Pilot Project Program. The participant will be responsible for the funding and resources necessary to conduct the pilot project, and for determining each partner's role and responsibility in its pilot project.

Prior to launch of a pilot project, FDA intends to hold a design strategy meeting with the selected pilot participant(s) to review the goal(s) and objective(s)s for the pilot project and discuss the project plans and other pertinent details. FDA also expects pilot project participants to submit reports on the progress of their pilot projects to FDA (see Section II.G. Reports). Participants should evaluate their pilot projects using the evaluation methods they identified during the pilot project design process.

G. Reports

Each pilot project is expected to be completed within the proposed duration time period, and FDA asks that all participants submit periodic progress reports to FDA while the pilot project is being conducted, in addition to submitting a final report after completing the pilot project. These reports will provide insight into the systems and process needed to comply with certain DSCSA requirements for enhanced drug distribution security.

1. Progress Report(s)

Each pilot project program participant is expected to provide reports on the progress of its pilot project to FDA. The progress reports are intended to capture the ongoing work during the pilot project, including but not limited to, status or results, changes, challenges, and/or lessons learned. FDA will work with participants to develop an appropriate schedule for the submission of progress reports based on the design and duration of the pilot project. Because the duration of a pilot project should not exceed 6 months, the frequency of progress reports will vary based on the length of the individual pilot project. Pilot projects of relatively shorter duration may result in shorter time intervals between progress reports. For example, FDA may ask for monthly progress reports for a 6-month pilot project, however for a 1-month pilot project, FDA may ask for weekly progress reports.

2. Final Report

Within 30 to 45 business days of completing a pilot project, each participant is expected to provide a final report to FDA that captures the description, objectives, methods, evaluation, costs and key findings, and lessons learned from the project. Timely completion of pilot projects and the final report will support FDA's DSCSA implementation, including the statutory requirements under section 582(j) of the FD&C Act to consider information from pilot projects in the development of guidances for unit-level tracing and standards for the interoperable data exchange in section 582(h)(3) and (4) of the FD&C Act. FDA may also request that the participants meet with the Agency upon the completion of their pilot project or the final report.

H. Final DSCSA Pilot Project Program Report

To ensure that all supply chain members benefit from the information generated by the DSCSA Pilot Project Program, FDA intends to make the following information about each pilot project of the program available to the public in a final program report: (1) The names and industry sector(s) of the pilot project participant(s); (2) the pilot project's objectives and evaluation methods; (3) the duration of the pilot project; and (4) the key findings and lessons learned from the pilot project. FDA intends to post the information related to the DSCSA Pilot Project Program and the final program report on FDA's website.

I. Recordkeeping

Any records generated by a participant while conducting a pilot project should be maintained in accordance with the participant's normal recordkeeping practices. For pilot projects that involve partnering entities, the partnering entities should decide who is responsible for the records generated in the course of conducting the pilot project. FDA recommends that participants maintain the progress reports and final report for its pilot project for at least 1 year after completion of the pilot project.

III. Paperwork Reduction Act of 1995

This notice contains information collection provisions that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collection of information in this notice was approved under OMB control number 0910–0859.

Dated: February 4, 2019.

Lowell J. Schiller,

Acting Associate Commissioner for Policy.

[FR Doc. 2019–01561 Filed 2–7–19; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Request for Information (RFI): Improving Efficiency, Effectiveness, Coordination, and Accountability of HIV and Viral Hepatitis Prevention, Care, and Treatment Programs

AGENCY: Office of HIV/AIDS and Infectious Disease Policy, Office of the Assistant Secretary for Health, Office of the Secretary, Department of Health and Human Services.

ACTION: Notice.

SUMMARY: Both the *National HIV/AIDS Strategy* (NHAS) and the *National Viral Hepatitis Action Plan* (NVHAP) expire in 2020. The Department of Health and Human Services (HHS) Office of HIV/AIDS and Infectious Disease Policy (OHAIDP), in collaboration with federal partners, is leading development of the next iterations of these two separate and distinct national strategies. To help inform the next iterations of the NHAS and NVHAP, HHS seeks input from external stakeholders for improving efficiency, effectiveness, coordination, and accountability of HIV and viral hepatitis prevention, care, treatment, and cure policies, services, and programs.

DATES: To be assured consideration, comments must be received at the

address provided below, no later than 5:00 p.m. ET on March 11, 2019.

ADDRESSES: Electronic responses are strongly preferred and may be addressed to *HepHIVStrategies@hhs.gov.* Written responses should be addressed to: U.S. Department of Health and Human Services, Room L001, 330 C Street SW, Washington, DC 20024. Attention HIV/Viral Hepatitis RFI.

FOR FURTHER INFORMATION CONTACT: Nathan Fecik, MPH regarding HIV or Corinna Dan, RN, MPH regarding viral hepatitis, in the Office of HIV/AIDS and Infectious Disease Policy, (202) 795–7697.

SUPPLEMENTARY INFORMATION: The NHAS and NVHAP have served as roadmaps for the national response to HIV and viral hepatitis in the United States. They have been of great value in establishing and monitoring indicators of progress toward important national public health goals, setting expectations, identifying opportunities for stakeholder engagement across sectors, and improving transparency and accountability. As a nation, we have made significant progress toward achieving the goals for both strategies, but ongoing challenges and disparities remain.

The NHAS and the NVHAP were developed with input from nonfederal stakeholders who are committed to working toward shared national goals and aligning efforts across sectors. The strategies allow flexibility to adapt to: Scientific advances; changes in the needs of people with and at-risk for these infections; emerging threats to our progress toward eliminating HIV and viral hepatitis, such as the opioid crisis; and other factors including social determinants of health and stigma that affect the health of people with and at risk for these infections.

This request for information seeks public input on improving efficiency, effectiveness, coordination, and accountability of HIV and viral hepatitis prevention, care, treatment, and cure policies, services, and programs at all levels and for all types of stakeholders. The feedback received will inform the next edition of two separate strategies: (1) The National HIV/AIDS Strategy; and (2) the National Viral Hepatitis Action Plan. Please indicate the national strategy to which each comment applies. If submitting comments for both strategies please submit two separate responses. Topics of interest include, but are not limited to, the following:

(1a) What components of the NHAS do you think should be maintained? What changes should be made to the NHAS? This may include changes to the structure, goals, and indicators, key areas of focus and/or populations, and annual reporting processes by federal agencies. This may also include areas of the current strategy that should be scaled back or areas of the current strategy that should be expanded or scaled up.

(1b) What components of the NVHAP do you think should be maintained? What changes should be made to the NVHAP? This may include changes to the structure, goals, and indicators, key areas of focus and/or populations, and annual reporting processes by federal agencies. This may also include areas of the current strategy that should be scaled back or areas of the current strategy that should be expanded or scaled up.

(2a) Specific recommendations you think will improve the efficiency, effectiveness, accountability, and impact of the national response to HIV.

(2b) Specific recommendations you think will improve the efficiency, effectiveness, accountability, and impact of the national response to viral hepatitis.

(3a) What specific actions should the federal government and others take to improve the coordination of funding and delivery of HIV services?

(3b) What specific actions should the federal government and others take to improve the coordination of funding and delivery of viral hepatitis services?

(4a) What monitoring and evaluation strategies would further improve HIV prevention, care, and treatment?

(4b) What monitoring and evaluation strategies would further improve viral hepatitis prevention, care, and treatment?

Dated: January 29, 2019.

Tammy R. Beckham,

Director, Office of HIV/AIDS and Infectious Disease Policy.

[FR Doc. 2019–01695 Filed 2–7–19; 8:45 am]

BILLING CODE 4150–28–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

[Document Identifier: OS–0937–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 March 11, 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 0937–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: SMARTool Pilot Replication Project.

Type of Collection: OMB No. 0937–NEW—Office of the Assistant Secretary for Health (OASH).

Abstract: The Office of the Assistant Secretary for Health (OASH), U.S. Department of Health and Human Services (HHS), is requesting approval by OMB of a new information collection request. OASH is updating the Center for Relationship Education's Systematic Method for Assessing Risk-Avoidance Tool (SMARTool), a tool for sexual risk avoidance (SRA) curriculum developers and implementing organizations (IOs) to ensure that their SRA curricula are grounded in evidence. In an effort to assess the SMARTool's impact, OASH aims to conduct a formative evaluation to (1) provide preliminary evidence on the effectiveness of SRA curricula that are aligned with the SMARTool, (2) derive lessons learned to improve the implementation of SRA curricula, and (3) develop and test baseline and follow-up questionnaires that assess SRA program effects on the key SMARTool constructs. The evaluation will be conducted with an estimated four IOs. The evaluation will use quantitative and qualitative methods and will include both a process evaluation and an outcome evaluation.

Need and Proposed Use of the Information: To enhance the rigor of the evaluation, a comparison group will be identified for each IO, if possible. This

would enable an assessment of whether any changes identified in individual and contextual risk and protective factors in the intervention group differ from those in the comparison group. The process evaluation will describe in detail each IO's program, how it was delivered, and factors that may have influenced the success of the program's implementation. Process evaluation data are necessary for the interpretation of outcome findings and to inform efforts to improve program implementation. Depending on their performance on measures of reliability and validity, the baseline and follow-up questionnaires may be made available to organizations planning to evaluate curricula that are aligned with the SMARTool.

Likely Respondents: Respondents will include participants in each of the IOs' SRA programs (9th or 10th grade youth), their parent(s), program facilitators, representatives of schools participating in the program (*e.g.,* school principals), and school or school district administrative staff.

EXHIBIT 1—TOTAL ESTIMATED ANNUALIZED BURDEN HOURS

Respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden (hours)
Outcome Evaluation					
Parents	Parental consent	2,356	1	5/60	196
High school students	Youth Assent	2,356	1	5/60	196
	Baseline survey	2,356	1	30/60	1,178
	Follow-up survey	2,120	1	30/60	1,060
School or school district administrative staff.	Classroom roster report	24	1	120/60	48
Process Evaluation					
Program Facilitators	Process Evaluation Facilitator Session Log.	48	20	15/60	240
Program Facilitators	Process Evaluation Facilitator Survey.	38	1	25/60	16
High school students	Process Evaluation Participant Survey.	1,060	1	10/60	177
Program facilitators, site representatives.	Process Evaluation Key Informant Interviews.	24	1	60/60	24
Teachers	Attendance form	48	20	5/60	80
Total burden					3,135

Terry Clark,

Office of the Secretary, Paperwork Reduction Act Reports Clearance Officer.

[FR Doc. 2019–01595 Filed 2–7–19; 8:45 am]

BILLING CODE 4150–34–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Meeting of the National Vaccine Advisory Committee

AGENCY: National Vaccine Program Office, Office of the Assistant Secretary for Health, Office of the Secretary, Department of Health and Human Services.

ACTION: Notice.

SUMMARY: As stipulated by the Federal Advisory Committee Act, the Department of Health and Human Services (HHS) is hereby giving notice that a meeting is scheduled to be held of the National Vaccine Advisory Committee (NVAC). The meeting will be open to the public via teleconference; a public comment session will be held during the meeting.

DATES: The meeting will be held on Monday, March 25, 2019. The confirmed meeting times and agenda will be posted on the NVAC website at *http://www.hhs.gov/nvpo/nvac/meetings/index.html* as soon as they become available.

ADDRESSES: Instructions regarding attending this meeting will be posted one week prior to the meeting at: *http://www.hhs.gov/nvpo/nvac/meetings/index.html.* Pre-registration is required for members of the public who wish to attend the meeting and who wish to participate in the public comment session. Individuals who wish to attend the meeting and/or participate in the public comment session should register at *http://www.hhs.gov/nvpo/nvac/meetings/index.html.*

FOR FURTHER INFORMATION CONTACT: Ann Aikin, Acting Designated Federal Officer, at the National Vaccine Program Office, U.S. Department of Health and Human Services, Room 715H, Hubert H. Humphrey Building, 200 Independence Avenue SW, Washington, DC 20201. Phone: (202) 690–5566; email: *nvac@hhs.gov.*

SUPPLEMENTARY INFORMATION: Pursuant to Section 2101 of the Public Health Service Act (42 U.S.C. 300aa–1), the Secretary of HHS was mandated to establish the National Vaccine Program to achieve optimal prevention of human infectious diseases through immunization and to achieve optimal prevention against adverse reactions to vaccines. The NVAC was established to provide advice and make recommendations to the Director of the National Vaccine Program on matters related to the Program's responsibilities. The Assistant Secretary for Health serves as Director of the National Vaccine Program.

During the March 2019 NVAC meeting, sessions will consist of presentations on reducing disparities, removing barriers to adult immunization, and reducing financial burdens to vaccination. Please note that agenda items will be related to the charge of the Committee and are subject to change as priorities dictate. Information on the final meeting agenda will be posted prior to the meeting on

the NVAC website: *http://www.hhs.gov/nvpo/nvac/index.html.*

Members of the public will have the opportunity to provide comments at the NVAC meeting during the public comment periods designated on the agenda. Public comments made during the meeting will be limited to three minutes per person to ensure time is allotted for all those wishing to speak. Individuals are also welcome to submit their written comments. Written comments should not exceed three pages in length. Individuals submitting written comments should email their comments to the National Vaccine Program Office (*nvac@hhs.gov*) at least five business days prior to the meeting.

Ann Aikin,

Acting Designated Federal Officer.

[FR Doc. 2019–01694 Filed 2–7–19; 8:45 am]

BILLING CODE 4150–44–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

[Document Identifier: HHS–OS–0990–College Sexual Assault Policy]

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 March 11, 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: Cross-Site Evaluation on the Women's Health College Sexual Assault Policy and Prevention Initiative.

Type of Collection: New.

OMB No.: 0990–College Sexual Assault Policy; Office of Women's Health within OS.

Abstract: The Office of Women's Health is seeking an approval by OMB on a new information collection, Cross-Site Evaluation on the Women's Health College Sexual Assault. The purpose of this data collection is to gather qualitative data across the nine grantee organizations and partners via interviews to gain a full understanding of grantee and partner perceived success over the course of the three-year project; grantee and partner experiences with the initiative; barriers and facilitators to project implementation; sustainability of grantee efforts; and anecdotal or other evidence of reductions in campus sexual violence. Interviews conducted with individuals representing the grantee organizations and campus partners, and will occur once per respondent in the spring of 2019.

The CDC estimates that 23 million women have experienced completed or attempted rape in their lifetimes. (National Intimate Partner and Sexual Violence Survey, *https://www.cdc.gov/mmwr/preview/mmwrhtml/ss6308a1.htm*). A September 2015 Association of American Universities (AAU) survey of 150,000 students across 27 colleges and universities indicated that 23% of female undergraduate students reported experiencing sexual assault since enrolling in college (AAU Campus Climate Survey on Sexual Assault and Sexual Misconduct, *https://www.aau.edu/sites/default/files/%40%20Files/Climate%20Survey/Executive%20Summary%2012-14-15.pdf*).

The College Sexual Assault Policy, and Prevention Initiative of the Department of Health and Human Services, Office of Women's Health, has three main goals: (1) Disseminate sexual assault policy and prevention information to organizations in a position to influence and implement policies and practices at post-secondary schools; (2) provide technical assistance to post-secondary schools to establish policies and practices that prevent sexual assault; and (3) assess the success of policy establishment and sustained prevention strategies enacted by partnering organizations and post-secondary schools.

ESTIMATED ANNUALIZED BURDEN TABLE

Type of respondent	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden hours
Grantee organization representative	9	1	1	9
Partner campus representative	36	1	1	36
Total				45

Terry Clark,

Office of the Secretary, Paperwork Reduction Act Reports Clearance Officer.

[FR Doc. 2019–01596 Filed 2–7–19; 8:45 am]

BILLING CODE 4150–33–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Announcement of Meeting of the Secretary's Advisory Committee on National Health Promotion and Disease Prevention Objectives for 2030

AGENCY: Office of Disease Prevention and Health Promotion, Office of the Assistant Secretary for Health, Office of the Secretary, Department of Health and Human Services.

ACTION: Notice.

SUMMARY: The U.S. Department of Health and Human Services (HHS) announces the next two meetings of the Secretary's Advisory Committee on National Health Promotion and Disease

Prevention Objectives for 2030 (Committee) regarding the development of national health promotion and disease prevention objectives for 2030. These meetings will be held online via webinar and are open to the public. The Committee will discuss the nation's proposed health promotion and disease prevention objectives and will provide recommendations to improve health status and reduce health risks for the nation by the year 2030. The Committee will deliberate recommendations regarding the proposed Healthy People 2030 objectives, activities designed to implement the disease prevention and health promotion goals and objectives for the nation, and graphics for communicating key Healthy People 2030 elements. Pursuant to the Committee's charter, the Committee's advice must assist the Secretary in reducing the number of objectives while ensuring that the selection criteria identifies the most critical public health issues that are high-impact priorities supported by current national data.

DATES: The Committee will meet on February 26, 2019, from 11:30 a.m. to 1:30 p.m. Eastern Time (ET) and March 27, 2019, from 2:00 p.m. to 5:00 p.m. ET.

ADDRESSES: The meetings will be held online via webinar. Registration for the February 26, 2019 meeting will open on February 11, 2019 at the Healthy People website at *http://www.healthypeople.gov.* Registration for the March 27, 2019 meeting will open on March 1, 2019 at the Healthy People website at *http://www.healthypeople.gov.*

FOR FURTHER INFORMATION CONTACT: Emmeline Ochiai, Designated Federal Official, Secretary's Advisory Committee on National Health Promotion and Disease Prevention Objectives for 2030, U.S. Department of Health and Human Services, Office of the Assistant Secretary for Health, Office of Disease Prevention and Health Promotion, 1101 Wootton Parkway, Room LL–100, Rockville, MD 20852, (240) 453–8280 (telephone), (240) 453–8281 (fax). Additional information is available on the Healthy People website at *http://www.healthypeople.gov.*

SUPPLEMENTARY INFORMATION: The names and biographies of the Committee members are available at *https://www.healthypeople.gov/2020/about/history-development/healthy-people-2030-advisory-committee.*

Purpose of Meetings: Through the Healthy People initiative, HHS leverages scientific insights and lessons from the past decade, along with new knowledge of current data, trends, and innovations, to develop the next iteration of national health promotion and disease prevention objectives. Healthy People provides science-based, 10-year national objectives for promoting health and preventing disease. Since 1979, Healthy People has set and monitored national health objectives that meet a broad range of health needs, encourage collaboration across sectors, guide individuals toward making informed health decisions, and measure the impact of our prevention and health promotion activities. Healthy People 2030 health objectives will reflect assessments of major risks to health and wellness, changing public health priorities, and emerging technologies related to our nation's health preparedness and prevention. During the February 26, 2019 Committee meeting, the Committee will discuss and deliberate recommendations regarding the proposed Healthy People 2030 objectives. During the March 27, 2019 Committee meeting, the Committee will develop recommendations regarding activities designed to implement the disease prevention and health promotion goals and objectives for the nation and graphics for communicating key Healthy People 2030 elements.

Public Participation at Meeting: Members of the public are invited to join the online Committee meetings. There will be no opportunity for oral public comments during the online Committee meetings. Written comments are welcome throughout the entire development process of the national health promotion and disease prevention objectives for 2030 and may be emailed to *HP2030@hhs.gov.*

To join the Committee meeting, individuals must pre-register at the Healthy People website at *http://www.healthypeople.gov.* Participation in the meeting is limited. Registrations will be accepted until maximum webinar capacity is reached. Registration for the February 26, 2019 meeting must be completed by 9:00 a.m. ET on February 26, 2019. Registration for the March 27, 2019 meeting must be completed by 9:00 a.m. ET on March 27, 2019. A waiting list will be maintained should registrations exceed capacity, and individuals on the wait list will be contacted as additional space for the meeting becomes available. Registration questions may be directed to *HealthyPeople@norc.org.*

Authority: 42 U.S.C. 300u and 42 U.S.C. 217a. The Secretary's Advisory Committee on National Health Promotion and Disease Prevention Objectives for 2030 is governed by provisions of the Federal Advisory Committee Act (FACA), Public Law 92–463, as amended (5 U.S.C., App.) which sets forth standards for the formation and use of federal advisory committees.

Dated: January 31, 2019.

Don Wright,

Deputy Assistant Secretary for Health, (Disease Prevention and Health Promotion).

[FR Doc. 2019–01696 Filed 2–7–19; 8:45 am]

BILLING CODE 4150–32–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

[Document Identifier: OS–0990–New]

Agency Information Collection Request: 60-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 April 9, 2019.

ADDRESSES: Submit your comments to *Sherrette.Funn@hhs.gov* or by calling (202) 795–7714.

FOR FURTHER INFORMATION CONTACT: When submitting comments or requesting information, please include the document identifier 0990–New–60D and project title for reference, to *Sherrette.funn@hhs.gov,* or call the Reports Clearance Officer.

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: Cross-site Study Data for Improving Implementation Evaluation among Office of Adolescent Health (OAH) TPP Grantees to inform National Implementations (IMAGIN).

Type of Collection: New.

OMB No.: 0990–NEW—Office of Adolescent Health—OASH–OS.

Abstract: The Office of Adolescent Health (OAH), U.S. Department of Health and Human Services (HHS) is requesting 3 years of approval by OMB on a new collection. The IMAGIN Cross-Site Study will examine the process that federal grantees follow to get their programs and staff ready for full implementation by exploring specific factors related to the program models' readiness for implementation and evaluation, the grantee organizations' capacity to operate and deliver the program as intended, and the local enabling context. The data from this study will be used to identify meaningful lessons, targeted resources, and timely guidance that could help both current and future federal grantees get their programs ready to implement, and add to the evidence on the successes and challenges of implementing a program. The cross-site study will be conducted with leadership, key program staff and community stakeholders from Fiscal Year 2018 and Fiscal Year 2019, if awarded, grantees of the OAH Teen Pregnancy Prevention Program. It will include semi-structured interviews with grantee leadership, site visits that will include in-person discussions with key program staff and community stakeholders and a front-line staff web survey with up to 8 front line staff per grantee.

ANNUALIZED BURDEN HOUR TABLE

Forms (if necessary)	Respondents (if necessary)	Number of respondents	Number of responses per respondents	Average burden per response	Total burden hours
Grantee Leadership Staff Interview Topic Guide: Initial.	Grantee leadership staff	15	1	90/60	22
Grantee Leadership Staff Interview Topic Guide: Follow-up.	Grantee leadership staff	15	1	1	15
Key Program Staff Interview topic guide	Front line staff and supervisors.	47	1	1	47
Community Stakeholder Interview Topic Guide	Key community stakeholders.	9	1	45/60	7
Frontline Staff Survey	Frontline staff	117	1	30/60	59
Total			5		150

Terry Clark,

Office of the Secretary, Paperwork Reduction Act Reports Clearance Officer.

[FR Doc. 2019–01597 Filed 2–7–19; 8:45 am]

BILLING CODE 4168–11–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Library of Medicine; Notice of Closed Meetings

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 materials, 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 Library of Medicine Special Emphasis Panel; COI/Career Award.

Date: March 22, 2019.

Time: 11:00 a.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Library of Medicine/Center for Scientific Review, 6701 Rockledge Drive, Room 2141, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Yanli Wang, Ph.D., Health Data Scientist, Division of Extramural Programs, National Library of Medicine, NIH, 6705 Rockledge Drive, Suite 301, Bethesda, MD 20892–7968, 301–594–4933, *yanli.wang@.nih.gov.*

(Catalogue of Federal Domestic Assistance Program No. 93.879, Medical Library Assistance, National Institutes of Health, HHS)

Dated: February 4, 2019.

Ronald J. Livingston, Jr.,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–01586 Filed 2–7–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Complementary & Integrative Health; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the National Advisory Council for Complementary and Integrative Health. 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 Advisory Council for Complementary and Integrative Health.

Date: August 15, 2019.

Closed: 2:00 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Boulevard, 6707 Democracy Boulevard, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Partap Singh Khalsa, Ph.D., DC, Director, Division of Extramural Activities, National Center for Complementary and, Integrative Health, NIH, National Institutes of Health, 6707 Democracy Blvd., Ste. 401, Bethesda, MD 20892–5475, (301) 594–3462, *khalsap@mail.nih.gov.*

Information is also available on the Institute's/Center's home page: *https://nccih.nih.gov/about/naccih/,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.213, Research and Training in Complementary and Integrative Health, National Institutes of Health, HHS)

Dated: February 4, 2019.

Ronald J. Livingston, Jr.,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–01577 Filed 2–7–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health & Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel; Loan Repayment Meeting.

Date: March 19, 2019.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6710 B Rockledge Drive, Bethesda, MD 20817 (Telephone Conference Call).

Contact Person: Sathasiva B. Kandasamy, Ph.D., Scientific Review Officer, Eunice Kennedy Shriver National Institute of Children Health and Human Development, 6701B Rockledge Drive, Room 2127B Bethesda, MD 20892, (301) 435–6680, *skandasa@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: February 4, 2019.

Ronald J. Livingston, Jr.,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–01580 Filed 2–7–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Library of Medicine; Notice of Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the Board of Regents of the National Library of Medicine.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the 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 materials, 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: Board of Regents of the National Library of Medicine Extramural Programs Subcommittee.

Date: May 14, 2019.

Closed: 7:45 a.m. to 8:45 a.m.

Agenda: To review and evaluate grant applications.

Place: National Library of Medicine, Building 38, Conference Room B, 8600 Rockville Pike, Bethesda, MD 20892.

Contact Person: Christine Ireland, Committee Management Officer, Division of Extramural Programs, National Library of Medicine, 6705 Rockledge Drive, Suite 301, Bethesda, MD 20892, 301–594–4929, *irelanc@mail.nih.gov.*

Name of Committee: Board of Regents of the National Library of Medicine.

Date: May 14–15, 2019.

Open: May 14, 2019, 9:00 a.m. to 4:00 p.m.

Agenda: Program Discussion.

Place: National Library of Medicine, Building 38, 2nd Floor, The Lindberg Room, 8600 Rockville Pike, Bethesda, MD 20892.

Closed: May 14, 2019, 4:00 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Library of Medicine, Building 38, 2nd Floor, The Lindberg Room, 8600 Rockville Pike, Bethesda, MD 20892.

Open: May 15, 2019, 9:00 a.m. to 12:00 p.m.

Agenda: Program Discussion.

Place: National Library of Medicine, Building 38, 2nd Floor, The Lindberg Room, 8600 Rockville Pike, Bethesda, MD 20892.

Contact Person: Christine Ireland, Committee Management Officer, Division of Extramural Programs, National Library of Medicine, 6705 Rockledge Drive, Suite 301, Bethesda, MD 20892, 301–594–4929, *irelanc@mail.nih.gov.*

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page: *www.nlm.nih.gov/od/bor/bor.html,* where an agenda and any additional information for the meeting will be posted when available. This meeting will be broadcast to the public, and available for viewing at *http://videocast.nih.gov* on May 14–15, 2019.

(Catalogue of Federal Domestic Assistance Program No. 93.879, Medical Library Assistance, National Institutes of Health, HHS)

Dated: February 5, 2019.

Ronald J. Livingston, Jr.,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–01680 Filed 2–7–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Office of the Director, National Institutes of Health; Notice of Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the meetings of the Council of Councils.

The meetings will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting. The open session will be videocast and can be accessed from the NIH Videocasting and Podcasting website (*http://videocast.nih.gov*).

A portion of 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: Council of Councils.
Open: May 17, 2019.
Time: 8:15 a.m. to 12:00 p.m.
Agenda: Call to Order and Introductions; Announcements and Updates; Scientific Talks; NIH Program Updates.
Place: National Institutes of Health, Building 60, The Cloisters, Lecture Hall, Chapel, 1 Cloister Court, Bethesda, MD 20892.
Closed: May 17, 2019.
Time: 12:00 p.m. to 1:30 p.m.
Agenda: Review of Grant Applications.
Place: National Institutes of Health, Building 60, Cloisters, Lecture Hall, Chapel, 1 Cloister Court, Bethesda, MD 20892.
Open: May 17, 2019.
Time: 1:30 p.m. to 4:00 p.m.
Agenda: Scientific Talks and NIH Program Updates.
Place: National Institutes of Health, Building 60, Cloisters, Lecture Hall, Chapel, 1 Cloister Court, Bethesda, MD 20892.
Contact Person: Franziska Grieder, D.V.M., Ph.D., Executive Secretary, Council of Councils Director, Office of Research Infrastructure Programs, Division of Program Coordination, Planning, and Strategic Initiatives, Office of the Director, NIH, 6701 Democracy Boulevard, Room 948, Bethesda, MD 20892, *GriederF@mail.nih.gov,* 301–435–0744.

Name of Committee: Council of Councils.
Open: September 6, 2019.
Time: 8:15 a.m. to 12:00 p.m.
Agenda: Call to Order and Introductions; Announcements and Updates; Scientific Talks; NIH Program Updates.
Place: National Institutes of Health, Natcher Building, Building 45, Room E, 45 Center Drive, Bethesda, MD 20892.
Closed: September 6, 2019.
Time: 12:00 p.m. to 1:30 p.m.
Agenda: Review of Grant Applications.
Place: National Institutes of Health, Natcher Building, Building 45, Room E, 45 Center Drive, Bethesda, MD 20892.
Open: September 6, 2019.
Time: 1:30 p.m. to 4:00 p.m.
Agenda: Scientific Talks and NIH Program Updates.
Place: National Institutes of Health, Natcher Building, Building 45, Room E, 45 Center Drive, Bethesda, MD 20892.
Contact Person: Franziska Grieder, D.V.M., Ph.D., Executive Secretary, Council of Councils Director, Office of Research Infrastructure Programs, Division of Program Coordination, Planning, and Strategic Initiatives, Office of the Director, NIH, 6701 Democracy Boulevard, Room 948, Bethesda, MD 20892, *GriederF@mail.nih.gov,* 301–435–0744.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Council of Council's home page at *http://dpcpsi.nih.gov/council/* where an agenda will be posted before the meeting date.

(Catalogue of Federal Domestic Assistance Program Nos. 93.14, Intramural Research Training Award; 93.22, Clinical Research Loan Repayment Program for Individuals from Disadvantaged Backgrounds; 93.232, Loan Repayment Program for Research Generally; 93.39, Academic Research Enhancement Award; 93.936, NIH Acquired Immunodeficiency Syndrome Research Loan Repayment Program; 93.187, Undergraduate Scholarship Program for Individuals from Disadvantaged Backgrounds, National Institutes of Health, HHS)

Dated: February 5, 2019.

Ronald J. Livingston, Jr.,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–01681 Filed 2–7–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Complementary & Integrative Health; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the National Advisory Council for Complementary and Integrative Health.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the 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 Advisory Council for Complementary and Integrative Health.
Date: June 7, 2019.
Closed: 8:30 a.m. to 9:45 a.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, Natcher Building, 45 Center Drive, Bethesda, MD 20892.
Open: 10:00 a.m. to 4:00 p.m.
Agenda: A report from the Center Director and Other Staff.
Place: National Institutes of Health, Natcher Building, 45 Center Drive, Bethesda, MD 20892.
Contact Person: Partap Singh Khalsa, Ph.D., DC, Director, Division of Extramural Activities, National Center for Complementary and Integrative Health, NIH, National Institutes of Health, 6707 Democracy Blvd., Ste. 401, Bethesda, MD 20892–5475, (301) 594–3462, *khalsap@mail.nih.gov.*

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page: *https://nccih.nih.gov/about/naccih/,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.213, Research and Training in Complementary and Integrative Health, National Institutes of Health, HHS)

Dated: February 4, 2019.

Ronald J. Livingston, Jr.,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–01576 Filed 2–7–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as

amended, notice is hereby given of the National Advisory Neurological Disorders and Stroke Council.

The meetings will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

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 materials, 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 Advisory Neurological Disorders and Stroke Council.

Date: May 23–24, 2019.

Open: May 23, 2019, 12:30 p.m. to 6:00 p.m.

Agenda: Report by the Director, NINDS; Report by the Director, Division of Extramural Activities; and Administrative and Program Developments. And Overview of the NINDS Intramural Program.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Bethesda, MD 20892.

Closed: May 24, 2019, 8:30 a.m. to 1:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center, Drive, Bethesda, MD 20892.

Contact Person: Robert Finkelstein, Ph.D., Director, Division of Extramural Activities, National Institute of Neurological Disorders and Stroke, NIH, 6001 Executive Blvd., Suite 3309, MSC 9531, Bethesda, MD 20892, (301) 496–9248, *finkelsr@ninds.nih.gov*.

Name of Committee: National Advisory Neurological Disorders and Stroke Council.

Date: September 4–5, 2019.

Open: September 4, 12:30 p.m. to 6:00 p.m.

Agenda: Report by the Director, NINDS; Report by the Director, Division of Extramural Activities; and Administrative and Program Developments.

Place: National Institutes of Health, Porter Neuroscience Research Center, Building 35A Convent Drive, Bethesda, MD 20892.

Closed: September 5, 2019, 8:30 a.m. to 1:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Porter Neuroscience Research Center, Building 35A Convent Drive, Bethesda, MD 20892.

Contact Person: Robert Finkelstein, Ph.D., Director, Division of Extramural Activities, National Institute of Neurological Disorders and Stroke, NIH, 6001 Executive Blvd., Suite 3309, MSC 9531, Bethesda, MD 20892, (301) 496–9248, *finkelsr@ninds.nih.gov*.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance into Federal buildings. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page: *http://www.ninds.nih.gov,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: February 5, 2019.

Sylvia L. Neal,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–01679 Filed 2–7–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Complementary & Integrative Health; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the National Advisory Council for Complementary and Integrative Health.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the 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 Advisory Council for Complementary and Integrative Health.

Date: September 20, 2019.

Closed: 8:30 a.m. to 9:45 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Porter Neuroscience Research Center, Building 35A Convent Drive, Bethesda, MD 20892.

Open: 10:00 a.m. to 4:00 p.m.

Agenda: A report from the Center Director and Other Staff.

Place: National Institutes of Health, Porter Neuroscience Research Center, Building 35A Convent Drive, Bethesda, MD 20892.

Contact Person: Partap Singh Khalsa, Ph.D., DC, Director, Division of Extramural Activities, National Center for Complementary and Integrative Health, NIH, National Institutes of Health, 6707 Democracy Blvd., Ste. 401, Bethesda, MD 20892–5475, (301) 594–3462, *khalsap@mail.nih.gov*.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person. In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit. Information is also available on the Institute's/Center's home page: *https://nccih.nih.gov/about/naccih/,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.213, Research and Training in Complementary and Integrative Health, National Institutes of Health, HHS)

Dated: February 4, 2019.

Ronald J. Livingston, Jr.,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–01578 Filed 2–7–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Library of Medicine; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as

amended, notice is hereby given of the 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 materials, 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: Biomedical Informatics, Library and Data Sciences Review Committee.

Date: March 7, 2019.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Hyatt, 1 Metro Center, Bethesda, MD 20814.

Contact Person: Zoe E. Huang, MD, Chief Scientific Review Officer, Scientific Review Office, Extramural Programs, National Library of Medicine, NIH, 6705 Rockledge Drive, Suite 301, Bethesda, MD 20892–7968, 301–594–4937, *huangz@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program No. 93.879, Medical Library Assistance, National Institutes of Health, HHS)

Dated: February 4, 2019.

Ronald J. Livingston, Jr.,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–01584 Filed 2–7–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Library of Medicine; Notice of Closed Meetings

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 materials, 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 Library of Medicine Special Emphasis Panel G08.

Date: March 8, 2019.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Hyatt, One Metro Center, Bethesda, MD 20814.

Contact Person: Zoe E. Huang, MD, Chief Scientific Review Officer, Division of Extramural Programs, National Library of Medicine, NIH, 6705 Rockledge Drive, Suite 301, Bethesda, MD 20892–7968, 301–594–4933, *huangz@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program No. 93.879, Medical Library Assistance, National Institutes of Health, HHS)

Dated: February 4, 2019.

Ronald J. Livingston, Jr.,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–01585 Filed 2–7–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health & Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Initial Review Group; Developmental Biology Subcommittee.

Date: March 15, 2019.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites at the Chevy Chase, Pavilion, 4300 Military Road NW, Washington, DC 20015.

Contact Person: Cathy J. Wedeen, Ph.D., Scientific Review Officer, Division of Scientific Review, Division of Scientific Review, OD, Eunice Kennedy Shriver National Institute of Child Health and Human Development, NIH, DHHS, 6710B Rockledge Drive, Rm. 2121D, Bethesda, MD 20892–7501, 301–435–6878, *wedeenc@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: February 4, 2019.

Ronald J. Livingston, Jr.,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–01582 Filed 2–7–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Minority Health and Health Disparities; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), 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 materials, 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 Minority Health and Health Disparities Special Emphasis Panel; NIMHD Research Centers in Minority Institutions (RCMI).

Date: March 6–8, 2019.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Rd. NW, Washington, DC 20015 (Face-to-Face).

Contact Person: Maryline Laude-Sharp, Ph.D., Scientific Review Officer, National Institute on Minority Health, and Health Disparities, National Institutes of Health, 7201 Wisconsin Ave., Bethesda, MD 20814, (301) 451–9536, *mlaudesharp@nih.gov.*

Dated: February 4, 2019.

Ronald J. Livingston, Jr.,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–01583 Filed 2–7–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; 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: Heart, Lung, and Blood Initial Review Group; Heart, Lung, and Blood Program Project Review Committee.

Date: March 22, 2019.

Time: 8:00 a.m. to 1:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Sheraton BWI (Baltimore), 1100 Old Elkridge Landing Road, Linthicum Heights, MD 21090.

Contact Person: Jeffrey H. Hurst, Ph.D., Scientific Review Officer, Office of Scientific Review/DERA, National Heart, Lung, and Blood Institute, National Institutes of Health, 6701 Rockledge Drive, Room 7208, Bethesda, MD 20892, 301–435–0303, *hurstj@nhlbi.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: February 5, 2019.

Ronald J. Livingston, Jr.,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–01676 Filed 2–7–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health & Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Initial Review Group; Function, Integration, and Rehabilitation Sciences Subcommittee.

Date: March 8, 2019.

Time: 8:30 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites Chevy Chase, 4300 Military Rd. NW, Washington, DC 20019.

Contact Person: Joanna Kubler-Kielb, Ph.D., Scientific Review Officer, Scientific Review Branch, Eunice Kennedy Shriver National Institute of Child Health and Human Development, NIH, 6710B Rockledge Dr., Bethesda, MD 20817, 301–435–6916, *kielbj@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: February 4, 2019.

Ronald J. Livingston, Jr.,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–01581 Filed 2–7–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health & Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel; Development of Novel Nonsteroidal Contraceptive Methods.

Date: March 15, 2019.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott, 5151 Pooks Hill, Road Bethesda, MD 20814.

Contact Person: Helen Huang, Scientific Review Officer, Scientific Review Branch, Eunice Kennedy Shriver National Institute of Child Health and Human Development, NIH, 6710B Rockledge Dr., Bethesda, MD 20817, 301–435–8380, *helen.huang@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: February 4, 2019.

Ronald J. Livingston, Jr.,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–01579 Filed 2–7–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; 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 Neurological Disorders and Stroke Special Emphasis Panel; Program Project Grant P01.

Date: February 21–22, 2019.

Time: 11:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Virtual Meeting).

Contact Person: Anna Olairu, Ph.D., Scientific Review Officer, Scientific Review

Branch, Division of Extramural Activities, NINDS/NIH/DHHS, NSC, 6001 Executive Blvd., Suite 3208, MSC 9529, Bethesda, MD 20892–9529, (301) 496–9223, *Ana.Olairu@nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel; BRAIN Initiative—Postdoctoral Career Transition Award to Promote Diversity (K99/R00).

Date: February 25, 2019.

Time: 10:00 a.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852.

Contact Person: Elizabeth Webber, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Activities, NINDS/NIH/DHHS, NSC, 6001 Executive Blvd., Suite 3208, MSC 9529, Bethesda, MD 20892–9529, (301) 496–1917, *Webbere@nih.gov.*

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel; IGNITE Translational Programs.

Date: February 25, 2019.

Time: 3:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852.

Contact Person: Joel Saydoff, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Activities, NINDS/NIH/DHHS, NSC, 6001 Executive Blvd., Suite 3205, MSC 9529, Bethesda, MD 20892–9529, (301) 496–9223, *Webbere@nih.gov.*

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel; National Institute of Neurological Disorders and Stroke Special Emphasis Panel.

Date: February 26, 2019.

Time: 8:00 a.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Bourbon Orleans Hotel, 717 Orleans Street, New Orleans, LA 70116.

Contact Person: Natalia Strunnikova, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Activities, NINDS/NIH/DHHS, NSC, 6001 Executive Blvd., Suite 3208, MSC 9529, Bethesda, MD 20892–9529, (301) 453–3755, *natalia.strunnikova@nih.gov.*

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel; BRAIN Initiative Research Opportunities in Human U01 Review.

Date: February 27, 2019.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Crystal City, 2399 Jefferson Davis Hwy., Arlington, VA 22202.

Contact Person: Ernest Lyons, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Activities, NINDS/NIH/DHHS, NSC, 6001 Executive Blvd., Suite 3208, MSC 9529, Bethesda, MD 20892–9529, (301) 496–9223, *Lyonse@ninds.nih.gov.*

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel; DSPAN F99 Application Review.

Date: February 27, 2019.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Bourbon Orleans Hotel, 717 Orleans Street, New Orleans, LA 70116.

Contact Person: William Benzing, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Activities, NINDS/NIH/DHHS, NSC, 6001 Executive Blvd., Suite 3204, MSC 9529, Bethesda, MD 20892–9529, (301) 496–0660, *benzingw@mail.nih.gov.*

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel; NINDS Diversity K Grant Application Review.

Date: February 27, 2019.

Time: 1:00 a.m. to 7:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Bourbon Orleans Hotel, 717 Orleans Street, New Orleans, LA 70116.

Contact Person: William Benzing, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Activities, NINDS/NIH/DHHS, NSC, 6001 Executive Blvd., Suite 3204, MSC 9529, Bethesda, MD 20892–9529, (301) 496–0660, *benzingw@mail.nih.gov.*

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel; Stroke Net Clinical Trials and Biomarkers.

Date: March 1, 2019.

Time: 10:00 a.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852.

Contact Person: Marilyn Moore-Hoon, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Activities, NINDS/NIH/DHHS, NSC, 6001 Executive Blvd., Suite 3205, MSC 9529, Bethesda, MD 20892–9529, (301) 827–9087, *mooremar@mail.nih.gov.*

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel; BRAIN Initiative U24 Review.

Date: March 11, 2019.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852.

Contact Person: Jimok Kim, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Activities, NINDS/NIH/DHHS, NSC, 6001 Executive Blvd., Suite 3226, MSC 9529, Bethesda, MD 20892–9529, (301) 496–9223, *Jimok.kim@nih.gov.*

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel; R13 Review.

Date: March 11–12, 2019.

Time: 9:00 a.m. to 1:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852.

Contact Person: Ernest Lyons, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Activities, NINDS/NIH/DHHS, NSC, 6001 Executive Blvd., Suite 3208, MSC 9529, Bethesda, MD 20892–9529, (301) 496–9223, *Lyonse@ninds.nih.gov.*

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel; Translational Neural, Brain, and Pain treatment Device Review Meeting.

Date: March 15, 2019.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Melrose Hotel, 2430 Pennsylvania Ave. NW, Washington, DC 20037.

Contact Person: Joonil Seog, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Activities, NINDS/NIH/DHHS, NSC, 6001 Executive Blvd., Suite 3284, MSC 9529, Bethesda, MD 20892–9529, (301) 827–6383, *joonil.seog@nih.gov.*

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel; NINDS Stroke Preclinical Assessment Network (SPAN).

Date: March 18–19, 2019.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda North Marriott Hotel & Conference Center, 5701 Marinelli Road, Bethesda, MD 20852.

Contact Person: Deanna Lynn Adkins, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Activities, NINDS/NIH/DHHS, NSC, 6001 Executive Blvd., Bethesda, MD 20892–9529, (301) 496–9223, *deanna.adkins@nih.gov.*

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel; LBD CWOW.

Date: March 18, 2019.

Time: 8:00 a.m. to 7:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda North Marriott Hotel & Conference Center, 5701 Marinelli Road, Bethesda, MD 20852.

Contact Person: Ana Olariu, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Activities, NINDS/NIH/DHHS, NSC, 6001 Executive Blvd., Suite 3208, MSC 9529, Bethesda, MD 20892–9529, (301) 496–9223, *Ann.olariu@nih.gov.*

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel; BRAIN Circuit U19 programs.

Date: March 27–29, 2019.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Fairmont Hotel, 2401 M St. NW, Washington, DC 20037.

Contact Person: Natalia Strunnikova, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Activities, NINDS/NIH/DHHS, NSC, 6001 Executive Blvd., Suite 3208, MSC 9529, Bethesda, MD 20892–9529, (301) 496–9223, *natalia.strunnikova@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: February 5, 2019.

Sylvia L. Neal,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–01678 Filed 2–7–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; 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 section 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: Heart, Lung, and Blood Initial Review Group; NHLBI Mentored Patient-Oriented Research Review Committee.

Date: February 28, 2019–March 1, 2019.

Time: 8:30 a.m. to 1:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Washington DC/Rockville, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Stephanie Johnson Webb, Ph.D., Scientific Review Officer, Office of Scientific Review/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7196, Bethesda, MD 20892, 301–827–7992, *stephanie.webb@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: February 5, 2019.

Ronald J. Livingston, Jr.,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–01675 Filed 2–7–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Office of the Director, National Institutes of Health; Notice of Meetings

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended, notice is hereby given of meetings of the Advisory Committee on Research on Women's Health.

The meetings will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meetings. The meetings will also be videocast and can be accessed from the NIH Videocasting and Podcasting website (*http://videocast.nih.gov/*).

Name of Committee: Advisory Committee on Research on Women's Health.

Date: April 10, 2019.

Time: 9:00 a.m. to 4:00 p.m.

Agenda: Opening Remarks, Director's Report, and Scientific Presentations.

Place: National Institutes of Health, Natcher Building, Conference Room D, 45 Center Drive, Bethesda, MD 20892.

Contact Person: Elizabeth Spencer, R.N., Deputy Director, Office of Research on Women's Health, Executive Secretary, ACRWH, National Institutes of Health, 6707 Democracy Blvd., Room 7W444, Bethesda, MD 20817, 301–402–1770, *elizabeth.spencer@nih.gov.*

Name of Committee: Advisory Committee on Research on Women's Health.

Date: October 23, 2019.

Time: 9:00 a.m. to 4:30 p.m.

Agenda: Opening Remarks, Director's Report, and Scientific Presentations.

Place: National Institutes of Health, Natcher Building, Conference Room E1/E2, 45 Center Drive, Bethesda, MD 20892.

Contact Person: Elizabeth Spencer, R.N., Deputy Director, Office of Research on Women's Health, Executive Secretary, ACRWH, National Institutes of Health, 6707 Democracy Blvd., Room 7W444, Bethesda, MD 20817, 301–402–1770, *elizabeth.spencer@nih.gov.*

Any member of the public interested in presenting oral comments to the committee may notify the Contact Person listed on this notice at least 10 days in advance of the meetings. Interested individuals and representatives of organizations may submit a letter of intent, a brief description of the organization represented, and a short description of the oral presentation. Only one representative of an organization may be allowed to present oral comments and if accepted by the committee, presentations may be limited to five minutes. Both printed and electronic copies are requested for the record. In addition, any interested person may file written comments with the committee by forwarding their statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page: *https://orwh.od.nih.gov/,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.14, Intramural Research Training Award; 93.22, Clinical Research Loan Repayment Program for Individuals from Disadvantaged Backgrounds; 93.232, Loan Repayment Program for Research Generally; 93.39, Academic Research Enhancement Award; 93.936, NIH Acquired Immunodeficiency Syndrome Research Loan Repayment Program; 93.187, Undergraduate Scholarship Program for Individuals from Disadvantaged Backgrounds, National Institutes of Health, HHS)

Dated: February 5, 2019.

Ronald J. Livingston, Jr.,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–01672 Filed 2–7–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Fogarty International Center; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the Fogarty International Center Advisory Board.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the 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/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 the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Fogarty International Center Advisory Board.
Date: May 6–7, 2019.
Closed: May 06, 2019, 2:00 p.m. to 5:00 p.m.
Agenda: Second level review of grant applications.
Place: National Institutes of Health, Lawton L. Chiles International House, Building 16, Conference Room, 16 Center Drive, Bethesda, MD 20892.
Open: May 07, 2019, 9:00 a.m. to 3:00 p.m.
Agenda: Update and discussion of current and planned FIC activities.
Place: National Institutes of Health, Lawton L. Chiles International House, Building 16, Conference Room, 16 Center Drive, Bethesda, MD 20892.
Contact Person: Kristen Weymouth, Executive Secretary, Fogarty International Center, National Institutes of Health, 31 Center Drive, Room B2C02, Bethesda, MD 20892, (301) 496–1415, *kristen.weymouth@nih.gov.*

Name of Committee: Fogarty International Center Advisory Board.
Date: September 5–6, 2019.
Closed: September 05, 2019, 2:00 p.m. to 5:00 p.m.
Agenda: Second level review of grant applications.
Place: National Institutes of Health, Lawton L. Chiles International House, Building 16, Conference Room, 16 Center Drive, Bethesda, MD 20892.
Open: September 06, 2019, 9:00 a.m. to 3:00 p.m.
Agenda: Update and discussion of current and planned FIC activities.
Place: National Institutes of Health, Lawton L. Chiles International House, Building 16, Conference Room, 16 Center Drive, Bethesda, MD 20892.
Contact Person: Kristen Weymouth, Executive Secretary, Fogarty International Center, National Institutes of Health, 31 Center Drive, Room B2C02, Bethesda, MD 20892, (301) 496–1415, *kristen.weymouth@nih.gov.*

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page: *http://www.fic.nih.gov/About/Advisory/Pages/default.aspx,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.106, Minority International Research Training Grant in the Biomedical and Behavioral Sciences; 93.154, Special International Postdoctoral Research Program in Acquired Immunodeficiency Syndrome; 93.168, International Cooperative Biodiversity Groups Program; 93.934, Fogarty International Research Collaboration Award; 93.989, Senior International Fellowship Awards Program, National Institutes of Health, HHS)

Dated: February 4, 2019.

Natasha M. Copeland,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–01575 Filed 2–7–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the Board of Scientific Counselors, NIAMS.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the National Institute of Arthritis and Musculoskeletal and Skin Diseases, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors, NIAMS.
Date: April 30–May 1, 2019.
Date: April 30, 2019.
Time: 6:00 p.m. to 9:00 p.m.
Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.
Place: National Institutes of Health Building 31, Room 4C32, 31 Center Drive, Bethesda, MD 20892.
Date: May 1, 2019.
Time: 8:00 a.m. to 4:30 p.m.
Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.
Place: National Institutes of Health Building 31, Room 4C32, 31 Center Drive, Bethesda, MD 20892.
Contact Person: John J. O'Shea, MD, Ph.D., Scientific Director, National Institute of Arthritis & Musculoskeletal and Skin Diseases, Building 10, Room 9N228, MSC 1820, Bethesda, MD 20892, (301) 496–2612, *osheaj@arb.niams.nih.gov.*

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: February 5, 2019.

Sylvia L. Neal,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–01677 Filed 2–7–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the Center for Scientific Review Advisory Council.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: Center for Scientific Review Advisory Council.
Date: March 25, 2019.
Time: 8:30 a.m. to 3:00 p.m.
Agenda: Provide advice to the Director, Center for Scientific Review (CSR), on

matters related to planning, execution, conduct, support, review, evaluation, and receipt and referral of grant applications at CSR.

Place: National Institutes of Health, Third Floor Conference Center, 6701 Rockledge Drive, Bethesda, MD 20892.

Contact Person: Cathleen L. Cooper, Ph.D., Executive Secretary, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3030, Bethesda, MD 20892, 301–435–1111, *cooperc@csr.nih.gov.*

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance into NIH buildings.

Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit. Information is also available on the Institute's/Center's home page: *http://public.csr.nih.gov/aboutcsr/CSROrganization/Pages/CSRAC.aspx,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: February 5, 2019.

Ronald J. Livingston, Jr.,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–01674 Filed 2–7–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review: Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Integrative, Functional and Cognitive Neuroscience Integrated Review Group; Neurobiology of Motivated Behavior Study Section.

Date: February 28–March 1, 2019.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: St. Gregory Hotel, 2033 M Street NW, Washington, DC 20036.

Contact Person: Jasenka Borzan, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4214, MSC 7814, Bethesda, MD 20892–7814, 301–435–1260, *borzanj@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: February 5, 2019.

Sylvia L. Neal,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–01673 Filed 2–7–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

Determination Pursuant to Section 102 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, as Amended

AGENCY: Office of the Secretary, Department of Homeland Security.

ACTION: Notice of determination.

SUMMARY: The Secretary of Homeland Security has determined, pursuant to law, that it is necessary to waive certain laws, regulations, and other legal requirements in order to ensure the expeditious construction of barriers and roads in the vicinity of the international land border near the City of San Diego in the State of California.

DATES: This determination takes effect on February 8, 2019.

SUPPLEMENTARY INFORMATION: Important mission requirements of the Department of Homeland Security (''DHS'') include border security and the detection and prevention of illegal entry into the United States. Border security is critical to the nation's national security. Recognizing the critical importance of border security, Congress has mandated DHS to achieve and maintain operational control of the international land border. Secure Fence Act of 2006, Public Law 109–367, § 2, 120 Stat. 2638 (Oct. 26, 2006) (8 U.S.C. 1701 note). Congress defined ''operational control'' as the prevention of all unlawful entries into the United States, including entries by terrorists, other unlawful aliens, instruments of terrorism, narcotics, and other contraband. *Id.* Consistent with that mandate from Congress, the President's Executive Order on Border Security and Immigration Enforcement Improvements directed executive departments and agencies to deploy all lawful means to secure the southern border. Executive Order 13767, § 1. In order to achieve that end, the President directed, among other things, that I take immediate steps to prevent all unlawful entries into the United States, including the immediate construction of physical infrastructure to prevent illegal entry. Executive Order 13767, § 4(a).

Congress has provided to the Secretary of Homeland Security a number of authorities necessary to carry out DHS's border security mission. One of those authorities is found at section 102 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, as amended (''IIRIRA''). Public Law 104–208, Div. C, 110 Stat. 3009–546, 3009–554 (Sept. 30, 1996) (8 U.S.C 1103 note), as amended by the REAL ID Act of 2005, Public Law 109–13, Div. B, 119 Stat. 231, 302, 306 (May 11, 2005) (8 U.S.C. 1103 note), as amended by the Secure Fence Act of 2006, Public Law 109–367, § 3, 120 Stat. 2638 (Oct. 26, 2006) (8 U.S.C. 1103 note), as amended by the Department of Homeland Security Appropriations Act, 2008, Public Law 110–161, Div. E, Title V, § 564, 121 Stat. 2090 (Dec. 26, 2007). In section 102(a) of IIRIRA, Congress provided that the Secretary of Homeland Security shall take such actions as may be necessary to install additional physical barriers and roads (including the removal of obstacles to detection of illegal entrants) in the vicinity of the United States border to deter illegal crossings in areas of high illegal entry into the United States. In section 102(b) of IIRIRA, Congress mandated the installation of additional fencing, barriers, roads, lighting, cameras, and sensors on the southwest border. Finally, in section 102(c) of IIRIRA, Congress granted to the Secretary of Homeland Security the authority to waive all legal requirements that I, in my sole discretion, determine necessary to ensure the expeditious construction of barriers and roads authorized by section 102 of IIRIRA.

Determination and Waiver

Section 1

The United States Border Patrol's San Diego Sector is an area of high illegal entry. For example, in fiscal year 2018 alone, the United States Border Patrol (''Border Patrol'') apprehended over

38,000 illegal aliens in the San Diego Sector. In that same year Border Patrol seized approximately 8,700 pounds of marijuana and approximately 1,800 pounds of cocaine in the San Diego Sector.

In order to satisfy the need for additional border infrastructure in the San Diego Sector, DHS will take action to construct barriers and roads. Specifically, construction of secondary barriers and roads will occur within an approximately fourteen mile segment of the border within the San Diego Sector that starts at approximately the Pacific Ocean and extends eastward. The segment of the border within which such construction will occur is referred to herein as the ''project area'' and is more specifically described in Section 2 below.

Section 2

I determine that the following area in the vicinity of the United States border, located in the State of California within the United States Border Patrol's San Diego Sector, is an area of high illegal entry (the ''project area''): Starting at approximately the Pacific Ocean and extending eastward to approximately Border Monument 251.

There is presently an acute and immediate need to construct physical barriers and roads in the vicinity of the border of the United States in order to prevent unlawful entries into the United States in the project area. In order to ensure the expeditious construction of the barriers and roads in the project area, I have determined that it is necessary that I exercise the authority that is vested in me by section 102(c) of IIRIRA.

Accordingly, pursuant to section 102(c) of IIRIRA, I hereby waive in their entirety, with respect to the construction of roads and physical barriers (including, but not limited to, accessing the project area, creating and using staging areas, the conduct of earthwork, excavation, fill, and site preparation, and installation and upkeep of physical barriers, roads, supporting elements, drainage, erosion controls, safety features, lighting, cameras, and sensors) in the project area, all of the following statutes, including all federal, state, or other laws, regulations, and legal requirements of, deriving from, or related to the subject of, the following statutes, as amended:

The National Environmental Policy Act (Pub. L. 91–190, 83 Stat. 852 (Jan. 1, 1970) (42 U.S.C. 4321 *et seq.*)); the Endangered Species Act (Pub. L. 93–205, 87 Stat. 884 (Dec. 28, 1973) (16 U.S.C. 1531 *et seq.*)); the Federal Water Pollution Control Act (commonly referred to as the Clean Water Act (33 U.S.C. 1251 *et seq.*)); the National Historic Preservation Act (Pub. L. 89–665, 80 Stat. 915 (Oct. 15, 1966), as amended, repealed, or replaced by Pub. L. 113–287 (Dec. 19, 2014) (formerly codified at 16 U.S.C. 470 *et seq.,* now codified at 54 U.S.C. 100101 note and 54 U.S.C. 300101 *et seq.*)); the Migratory Bird Treaty Act (16 U.S.C. 703 *et seq.*); the Migratory Bird Conservation Act (16 U.S.C. 715 *et seq.*); the Clean Air Act (42 U.S.C. 7401 *et seq.*); the Archeological Resources Protection Act (Pub. L. 96–95 (16 U.S.C. 470aa *et seq.*)); the Paleontological Resources Preservation Act (16 U.S.C. 470aaa *et seq.*); the Federal Cave Resources Protection Act of 1988 (16 U.S.C. 4301 *et seq.*); the National Trails System Act (16 U.S.C. 1241 *et seq.*), the Safe Drinking Water Act (42 U.S.C. 300f *et seq.*); the Noise Control Act (42 U.S.C. 4901 *et seq.*); the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act (42 U.S.C. 6901 *et seq.*); the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. 9601 *et seq.*); the Archaeological and Historic Preservation Act (Pub. L. 86–523, as amended, repealed, or replaced by Pub. L. 113–287 (Dec. 19, 2014) (formerly codified at 16 U.S.C. 469 *et seq.,* now codified at 54 U.S.C. 312502 *et seq.*)); the Antiquities Act (formerly codified at 16 U.S.C. 431 *et seq.,* now codified 54 U.S.C. 320301 *et seq.*); the Historic Sites, Buildings, and Antiquities Act (formerly codified at 16 U.S.C. 461 *et seq.,* now codified at 54 U.S.C. 3201–320303 & 320101–320106); the Wild and Scenic Rivers Act (Pub. L. 90–542 (16 U.S.C. 1281 *et seq.*)); the Farmland Protection Policy Act (7 U.S.C. 4201 *et seq.*); the Coastal Zone Management Act (Pub. L. 92–583 (16 U.S.C. 1451 *et seq.*)); the Wilderness Act (Pub. L. 88–577 (16 U.S.C. 1131 *et seq.*)); the Federal Land Policy and Management Act (Pub L. 94–579 (43 U.S.C. 1701 *et seq.*)); the National Wildlife Refuge System Administration Act (Pub. L. 89–669 (16 U.S.C. 668dd-668ee)); the National Wildlife Refuge System Improvement Act of 1997 (Pub. L. 105–57); National Fish and Wildlife Act of 1956 (Pub. L. 84–1024 (16 U.S.C. 742a, *et seq.*)); the Fish and Wildlife Coordination Act (Pub. L. 73–121 (16 U.S.C. 661 *et seq.*)); the Wild Horse and Burro Act (16 U.S.C. 1331 *et seq.*); an Act of Oct. 30, 2000, Pub. L. 106–398, 1, 114 Stat. 1654 (enacting into law § 2848 of Part II of Subtitle D of Title XXVIII of Division B of H.R. 5408 (114 Stat. 1654A–426), as introduced on Oct. 6, 2000); the Administrative Procedure Act (5 U.S.C. 551 *et seq.*); the Otay Mountain Wilderness Act of 1999 (Pub. L. 106–145); sections 102(29) and 103 of Title I of the California Desert Protection Act (Pub. L. 103–433); the Rivers and Harbors Act of 1899 (33 U.S.C. 403); the Eagle Protection Act (16 U.S.C. 668 *et seq.*); the Native American Graves Protection and Repatriation Act (25 U.S.C. 3001 *et seq.*); and the American Indian Religious Freedom Act (42 U.S.C. 1996).

This waiver does not revoke or supersede previous waivers published in the **Federal Register** on September 22, 2005 (70 FR 55622), and August 2, 2017 (82 FR 35984), which shall remain in full force and effect in accordance with their terms. I reserve the authority to execute further waivers from time to time as I may determine to be necessary under section 102 of IIRIRA.

Kirstjen M. Nielsen,

Secretary of Homeland Security.

[FR Doc. 2019–01379 Filed 2–7–19; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

[Docket No. DHS–2019–0001]

DHS Data Privacy and Integrity Advisory Committee

AGENCY: Privacy Office, Department of Homeland Security (DHS).

ACTION: Committee management; notice of Federal Advisory Committee meeting.

SUMMARY: The DHS Data Privacy and Integrity Advisory Committee will meet on Tuesday, February 26, 2019, via teleconference. The meeting will be open to the public.

DATES: The DHS Data Privacy and Integrity Advisory Committee will meet on Tuesday, February 26, 2019, from 9:00 a.m. to 10:30 a.m. Please note that the teleconference may end early if the Committee has completed its business.

ADDRESSES: The meeting will be held via teleconference and an online forum (URL will be posted on the Privacy Office website in advance of the meeting at *www.dhs.gov/privacy-advisory-committees*). For information on facilities or services for individuals with disabilities, or to request special assistance during the meeting, please contact Sandra Taylor, Designated Federal Officer, DHS Data Privacy and Integrity Advisory Committee, as soon as possible.

To facilitate public participation, we invite public comment on the issues to be considered by the Committee as listed in the **SUPPLEMENTARY INFORMATION** section below. A public comment period will be held during the meeting from 10:15 a.m.–10:30 a.m., and speakers are requested to limit their comments to three minutes. If you would like to address the Committee at the meeting, we request that you register in advance by contacting Sandra Taylor at the address provided below. The names and affiliations, if any, of individuals who address the Committee are included in the public record of the meeting. Please note that the public comment period may end before the time indicated, following the last call for comments. Written comments should be sent to Sandra Taylor, Designated Federal Officer, DHS Data Privacy and Integrity Advisory Committee, by February 21, 2019. Persons who wish to submit comments and who are not able to participate or speak at the meeting may submit comments at any time. All submissions must include the Docket Number (DHS–2019–0001) and may be submitted by any *one* of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *E-mail: PrivacyCommittee@hq.dhs.gov.* Include the Docket Number (DHS–2019–0001) in the subject line of the message.
- *Fax:* (202) 343–4010.
- *Mail:* Sandra Taylor, Designated Federal Officer, Data Privacy and Integrity Advisory Committee, Department of Homeland Security, 245 Murray Lane SW, Mail Stop 0655, Washington, DC 20528.

Instructions: All submissions must include the words ''Department of Homeland Security Data Privacy and Integrity Advisory Committee'' and the Docket Number (DHS–2019–0001). Comments received will be posted without alteration at *http://www.regulations.gov,* including any personal information provided.

If you wish to attend the meeting, please plan to call in no later than 8:50 a.m. The DHS Privacy Office encourages you to register for the meeting in advance by contacting Sandra Taylor, Designated Federal Officer, DHS Data Privacy and Integrity Advisory Committee, at *PrivacyCommittee@hq.dhs.gov.* Advance registration is voluntary. The Privacy Act Statement below explains how DHS uses the registration information you may provide and how you may access or correct information retained by DHS, if any.

Docket: For access to the docket to read background documents or comments received by the DHS Data Privacy and Integrity Advisory Committee, go to *http://www.regulations.gov* and search for docket number DHS–2019–0001.

FOR FURTHER INFORMATION CONTACT: Sandra Taylor, Designated Federal Officer, DHS Data Privacy and Integrity Advisory Committee, Department of Homeland Security, 245 Murray Lane SW, Mail Stop 0655, Washington, DC 20528, by telephone (202) 343–1717, by fax (202) 343–4010, or by email to *PrivacyCommittee@hq.dhs.gov.*

SUPPLEMENTARY INFORMATION: Notice of this meeting is given under the Federal Advisory Committee Act (FACA), Title 5, U.S.C. The DHS Data Privacy and Integrity Advisory Committee provides advice at the request of the Secretary of Homeland Security and the DHS Chief Privacy Officer on programmatic, policy, operational, administrative, and technological issues within DHS that relate to personally identifiable information, as well as data integrity and other privacy-related matters. The Committee was established by the Secretary of Homeland Security under the authority of 6 U.S.C. 451.

Proposed Agenda

During the meeting, the Committee will review and vote on the Policy Subcommittee's report to the Department providing recommendations on privacy considerations in biometric facial recognition technology. The draft report will be posted on the Committee's website at *www.dhs.gov/dhs-data-privacy-and-integrity-advisory-committee-meeting-information* in advance of the meeting. If you wish to submit written comments on the draft report, you may do so in advance of the meeting by forwarding them to the Committee at the locations listed under **ADDRESSES**. The final agenda will be posted on or before February 18, 2019, on the Committee's website at *www.dhs.gov/dhs-data-privacy-and-integrity-advisory-committee-meeting-information.* Please note that the meeting may end early if all business is completed.

Privacy Act Statement: DHS's Use of Your Information

Authority: DHS requests that you voluntarily submit this information under its following authorities: The *Federal Records Act,* 44 U.S.C. 3101; the FACA, 5 U.S.C. appendix; and the *Privacy Act of 1974,* 5 U.S.C. 552a.

Principal Purposes: When you register to attend a DHS Data Privacy and Integrity Advisory Committee meeting, DHS collects your name, contact information, and the organization you represent, if any. We use this information to contact you for purposes related to the meeting, such as to confirm your registration, to advise you of any changes in the meeting, or to assure that we have sufficient materials to distribute to all attendees. We may also use the information you provide for public record purposes such as posting publicly available transcripts and meeting minutes.

Routine Uses and Sharing: In general, DHS will not use the information you provide for any purpose other than the Principal Purposes, and will not share this information within or outside the agency. In certain circumstances, DHS may share this information on a case-by-case basis as required by law or as necessary for a specific purpose, as described in the DHS/ALL–002 Mailing and Other Lists System of Records Notice (November 25, 2008, 73 FR 71659).

Effects of Not Providing Information: You may choose not to provide the requested information or to provide only some of the information DHS requests. If you choose not to provide some or all of the requested information, DHS may not be able to contact you for purposes related to the meeting.

Accessing and Correcting Information: If you are unable to access or correct this information by using the method that you originally used to submit it, you may direct your request in writing to the DHS Deputy Chief FOIA Officer at *foia@hq.dhs.gov.* Additional instructions are available at *http://www.dhs.gov/foia* and in the DHS/ALL–002 Mailing and Other Lists System of Records referenced above.

Dated: February 4, 2019.

Philip S. Kaplan,

Chief Privacy Officer, Department of Homeland Security.

[FR Doc. 2019–01682 Filed 2–7–19; 8:45 am]

BILLING CODE 9110–9L–P

DEPARTMENT OF HOMELAND SECURITY

[Docket No. DHS–2019–0003]

Homeland Security Advisory Council

AGENCY: Office of Partnership and Engagement (OPE), Department of Homeland Security (DHS).

ACTION: Notice of open teleconference federal advisory committee meeting.

SUMMARY: The Homeland Security Advisory Council (''HSAC'' or

''Council'') will meet via teleconference on February 28, 2019. The meeting will be open to the public.

DATES: The Council conference call will take place from 2:00 p.m. to 4:00 p.m. EDT on Thursday, February 28, 2019. Please note that the meeting may end early if the Council has completed its business.

ADDRESSES: The HSAC meeting will be held via teleconference. Members of the public interested in participating may do so by following the process outlined below (see ''Public Participation''). Written comments must be submitted and received by Tuesday, February 26, 2019 to Friday, March, 29, 2019. Comments must be identified by Docket No. DHS–2019–0003 and may be submitted by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: HSAC@hq.dhs.gov.* Include Docket No. DHS–2019–0003 in the subject line of the message.
- *Fax:* (202) 282–9207. Include Mike Miron and the Docket No. DHS–2019–0003 in the subject line of the message.
- *Mail:* Homeland Security Advisory Council, Attention Mike Miron, Department of Homeland Security, Mailstop 0445, 245 Murray Lane SW, Washington, DC 20528.

Instructions: All submissions received must include the words ''Department of Homeland Security'' and ''DHS–2019–0003,'' the docket number for this action. Comments received will be posted without alteration at *http://www.regulations.gov,* including any personal information provided.

Docket: For access to the docket to read comments received by the Council, go to *http://www.regulations.gov,* search ''DHS–2019–0003,'' ''Open Docket Folder'' and provide your comments.

FOR FURTHER INFORMATION CONTACT: Mike Miron at *HSAC@hq.dhs.gov* or at (202) 447–3135.

SUPPLEMENTARY INFORMATION: Notice of this meeting is given under Section 10(a) of the Federal Advisory Committee Act (FACA), Public Law 92–463 (5 U.S.C. Appendix), which requires each FACA committee meeting to be open to the public.

The Council provides organizationally independent, strategic, timely, specific, actionable advice, and recommendations to the Secretary of Homeland Security on matters related to homeland security. The Council is comprised of leaders of local law enforcement, first responders, Federal, State, and local government, the private sector, and academia.

The agenda for the meeting is as follows: The Council will receive briefings from senior officials, and receive progress updates from the CBP Families and Children Care Panel, Countering Foreign Influence, Emerging Technologies, and the State, Local, Tribal, and Territorial Cybersecurity Subcommittees.

Participation: Members of the public will be in listen-only mode. The public may register to participate in this Council teleconference via the following procedures. Each individual must provide his or her full legal name and email address no later than 5:00 p.m. EDT on Tuesday, February 26, 2019 to Mike Miron of the Council via email to *HSAC@hq.dhs.gov* or via phone at (202) 447–3135. The conference call details will be provided to interested members of the public after the closing of the public registration period and prior to the start of the meeting.

For information on services for individuals with disabilities, or to request special assistance at the meeting, contact Mike Miron at *HSAC@hq.dhs.gov* or (202) 447–3135 as soon as possible.

Information on Services for Individuals with Disabilities: For information on facilities or services for individuals with disabilities, or to request special assistance during the teleconference contact Mike Miron at (202) 447–3135.

Dated: February 5, 2019.

Mike Miron,

Deputy Executive Director, Homeland Security Advisory Council, DHS.

[FR Doc. 2019–01683 Filed 2–7–19; 8:45 am]

BILLING CODE 9110–9B–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[Docket No. FWS–R6–ES–2014–0048; FF06E220000–178–FXES11140600000]

Endangered and Threatened Wildlife and Plants; Incidental Take Permit and Habitat Conservation Plan for the R-Project Transmission Line; Final Environmental Impact Statement

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the availability of the final environmental impact statement (EIS), final habitat conservation plan (HCP), and associated documents for the R-Project transmission line in north-central Nebraska. The Nebraska Public Power District (NPPD) applied for an incidental take permit for take of the American burying beetle (*Nicrophorus americanus*), which is listed as endangered under the Endangered Species Act of 1973 (ESA), as amended. The permit would authorize take likely to result from the construction, operation, and maintenance of the transmission line. The HCP describes the applicant's actions and required measures to minimize, mitigate, and monitor incidental take. The final EIS analyzes the effects of authorizing the take and implementation of the HCP on the natural and human environment in accordance with the National Environmental Policy Act (NEPA).

DATES: Our decision whether to issue the permit will occur no sooner than 30 days after the U.S. Environmental Protection Agency publishes its notice of the final EIS in the **Federal Register**. We will document our decision in a record of decision (ROD).

ADDRESSES: You may obtain copies of the documents by any of the following methods:

Internet: Federal eRulemaking Portal (*http://www.regulations.gov*) under Docket No. FWS–R6–ES–2014–0048.

Upon Request: You may call 308–382–6468 (extension 204) to request alternative formats of the documents or make an appointment to inspect the documents during normal business hours at U.S. Fish and Wildlife Service, Nebraska Field Office, 9325 South Alda Road, Wood River, NE 68883.

In Person:

- North Platte Public Library, 120 West 4th Street, North Platte, Nebraska.
- Logan County Library, 317 Main Street, Stapleton, Nebraska.
- Hooker County Library, 102 North Cleveland Avenue, Mullen, Nebraska.
- Garfield County Library, 217 G Street, Burwell, Nebraska.
- Ewing Township Library, 202 East Nebraska, Ewing, Nebraska.
- Ainsworth Public Library, 455 North Main Street, Ainsworth, Nebraska.
- Valentine Public Library, 324 North Main Street, Valentine, Nebraska.
- Thomas County Library, 501 Main Street, Thedford, Nebraska.

FOR FURTHER INFORMATION CONTACT: Drue DeBerry, 303–236–4774 or *RProject_FEIS@fws.gov* (email). If you use a telecommunications device for the deaf, hard-of-hearing, or speech disabled, please call the Federal Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION: This notice announces that the final EIS, HCP, and associated documents for the

R-Project transmission line in Nebraska is available for the public to read. NPPD applied for a permit to authorize incidental take of the federally endangered American burying beetle resulting from the construction, operation, and maintenance of the proposed R-Project transmission line and substations. As part of its application, NPPD prepared an HCP that describes actions to avoid, minimize, mitigate, and monitor impacts of incidental take of the American burying beetle. According to NEPA (42 U.S.C. 4321 *et seq.*) and its implementing regulations (40 CFR 1500 *et seq.*), we analyze in the final EIS the effects of our preferred alternative to authorize incidental take of the beetle and NPPD's implementation of the HCP required by the permit. The final EIS also analyzes potential effects from two alternatives and identifies alternatives that we considered but eliminated from further analysis.

Background

Section 9 of the ESA prohibits take of fish and wildlife species listed as endangered (16 U.S.C. 1538). Under section 3 of the ESA, the term ''take'' means to ''harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or attempt to engage in any such conduct'' (16 U.S.C. 1532(19)).

Under section 10(a)(1)(B) of the ESA (16 U.S.C. 1539(a)(1)(B)), the Service may issue permits to authorize take of listed fish and wildlife species that is incidental to, and not the purpose of, carrying out an otherwise lawful activity. The Service shall issue an incidental take permit to non-Federal entities, provided the following criteria are met:

- The taking will be incidental.
- The applicant will minimize and mitigate, to the maximum extent practicable, the impact of such taking.
- The applicant will develop an HCP and ensure that adequate funding for the plan will be provided.
- The taking will not appreciably reduce the likelihood of the survival and recovery of the species in the wild.
- The applicant will carry out any other measures that the Secretary of the Interior may require as being necessary or appropriate for the purposes of the HCP.

Regulations governing permits for endangered species are set forth in title 50 of the Code of Federal Regulations (CFR) at part 17, section 17.22 (50 CFR 17.22).

NEPA requires that Federal agencies analyze their proposed actions to determine whether the actions may significantly affect the human environment. Under NEPA and its implementing regulations, Federal agencies must also compare effects of a reasonable range of alternatives to the proposed action. In these analyses, the Federal agency will identify potentially significant direct, indirect, and cumulative effects, as well as possible mitigation for any significant effects, on biological resources, land use, air quality, water resources, socioeconomics, environmental justice, cultural resources, and other environmental resources that could occur with the implementation of the proposed action and alternatives.

In accordance with NEPA, we announced public scoping to prepare an EIS in the **Federal Register** on October 30, 2014 (79 FR 64619). We published a notice of availability of the draft EIS and draft HCP, and requested public comments on those draft documents, in the **Federal Register** on May 12, 2017 (82 FR 22153). The May 12, 2017, notice also announced three public meetings on the draft EIS and draft HCP, which we held in June 2017, in three Nebraska cities. We reopened the comment period for the draft EIS and draft HCP in the **Federal Register** on September 8, 2017 (82 FR 42561). The final EIS addresses public comments on the draft EIS.

Proposed Action

We propose to issue a 50-year permit for incidental take of the American burying beetle if NPPD's HCP meets all the ESA's section 10(a)(1)(B) permit issuance criteria. The permit would authorize take of the American burying beetle incidental to the proposed construction, operation, and maintenance, including emergency repairs, of the R-Project. The permit would require NPPD to implement the final HCP, which includes measures to avoid, minimize, mitigate, and monitor the impacts of the authorized take. NPPD would avoid the incidental take of other federally listed species by implementing avoidance measures identified in the final HCP.

The 345-kilovolt R-Project transmission line would be approximately 225 miles long in north-central Nebraska. The permit would authorize take within 1 mile on each side of the R-Project centerline from Stapleton, Nebraska, north to the Thedford Substation and 4 miles on each side of the centerline from the Thedford Substation east to a new Holt County Substation.

Construction of the R-Project would permanently remove 33 acres and temporarily disturb 1,250 acres of American burying beetle habitat over the term of the permit. To fully offset these impacts to the beetle, the HCP commits NPPD to work with the Service to protect at least 500 acres of occupied American burying beetle habitat in Nebraska in perpetuity. The HCP's commitments for NPPD to restore beetle habitat would also minimize and mitigate impacts.

Public Review

We are not requesting public comments on the final EIS and HCP, but any written comments we receive will become part of the public record associated with this action. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you may request in your comment that we withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. All submissions from organizations or businesses and from individuals identifying themselves as representatives or officials of organizations or businesses will be made available for public disclosure in their entirety.

Next Steps

We will evaluate the permit application, final HCP, and public comments to determine whether the application meets the requirements of section 10(a) of the ESA. This determination includes our compliance with section 7 of the ESA through an intra-Service consultation. We will rely on the results of this consultation, our ROD under NEPA, and the above findings on permit issuance criteria to decide whether to issue the permit with appropriate terms and conditions. If all requirements are met, we will sign the ROD and issue the permit to NPPD. We will post the signed ROD and related documents on our website at *https://www.fws.gov/nebraskaes/R-Project.php.*

Authority

We provide this notice under section 10(c) of the ESA (16 U.S.C. 1531 *et seq.*) and its implementing regulations for incidental take permits (50 CFR 17.22) and NEPA (42 U.S.C. 4321 *et seq.*) and

its implementing regulations (40 CFR 1506.6; 43 CFR part 46).

Michael Thabault,

Assistant Regional Director—Ecological Services, Mountain-Prairie Region, U.S. Fish and Wildlife Service, Lakewood, Colorado.

[FR Doc. 2019–01600 Filed 2–7–19; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R7–MB–2018–N137; FXMB12610700000–190–FF07M01000; OMB Control Number 1018–0124]

Agency Information Collection Activities; Alaska Subsistence Bird Harvest Survey

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of Information Collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, we, the U.S. Fish and Wildlife Service (Service) are proposing to renew an information collection.

DATES: Interested persons are invited to submit comments on or before April 9, 2019.

ADDRESSES: Send your comments on the information collection request (ICR) by mail to the Service Information Collection Clearance Officer, U.S. Fish and Wildlife Service, MS: BPHC, 5275 Leesburg Pike, Falls Church, VA 22041–3803 (mail); or by email to *Info_Coll@fws.gov.* Please reference OMB Control Number 1018–0124 in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Madonna L. Baucum, Service Information Collection Clearance Officer, by email at *Info_Coll@fws.gov,* or by telephone at (703) 358–2503.

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.

We are 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 Service; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Service enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Service 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 Migratory Bird Treaty Act of 1918 (16 U.S.C. 703–712) and the Fish and Wildlife Act of 1956 (16 U.S.C. 742d) designate the Department of the Interior as the key agency responsible for managing migratory bird populations that frequent the United States and for setting harvest regulations that allow for the conservation of those populations. These responsibilities include gathering data on various aspects of migratory bird harvest. We use harvest data to review regulation proposals and to issue harvest regulations.

The Migratory Bird Treaty Act Protocol Amendment (1995) (Amendment) provides for the customary and traditional use of migratory birds and their eggs for subsistence use by indigenous inhabitants of Alaska. The Amendment states that its intent is not to cause significant increases in the take of species of migratory birds relative to their continental population sizes. A submittal letter from the Department of State to the White House (May 20, 1996) accompanied the Amendment and specified the need for harvest monitoring. The submittal letter stated that the Service, the Alaska Department of Fish and Game (ADF&G), and Alaska Native organizations would collect harvest information cooperatively within the subsistence eligible areas. Harvest data help to ensure that customary and traditional subsistence uses of migratory birds and their eggs by indigenous inhabitants of Alaska do not significantly increase the take of species of migratory birds relative to their continental population sizes.

We monitored subsistence harvest of migratory birds using household surveys in the Yukon-Kuskokwim Delta region in 1985–2002 and in the Bristol Bay region in 1995–2002. Since 2004, the Alaska Migratory Bird Co-Management Council—Harvest Assessment Program (AMBCC–HAP) conducts regular surveys across Alaska to document the subsistence harvest of birds and their eggs. The statewide harvest assessment program helps to describe geographical and seasonal harvest patterns, and to track trends in harvest levels. The program relies on collaboration among the Service, the ADF&G, and diverse Alaska Native organizations.

We collect harvest data for about 60 bird species/categories and their eggs (ducks, geese, swans, cranes, seabirds, shorebirds, grebes and loons, and grouse and ptarmigan) in the subsistence eligible areas of Alaska. The survey covers spring, summer, and fall harvest in most regions.

In collaboration with Alaska Native organizations, we hire local resident surveyors to collect the harvest data. The surveyors list all households in the communities, randomly selects households to be surveyed, and interview households that have agreed to participate. To ensure anonymity of harvest information, we identify households by a numeric code. Since the beginning of the survey in 2004, twice we have re-evaluated and revised survey methods to streamline procedures and minimize respondent burden. We use the following forms for household participation:

- FWS Form 3–2380 (Tracking Sheet and Household Consent). The surveyor visits each household selected to participate in the survey to obtain household consent to participate. The surveyor uses this form to record household consent.
- FWS Forms 3–2381–1, 3–2381–2, 3–2381–3, and 3–2381–4 (Harvest Report). The Harvest Report has drawings of bird species most commonly available for harvest in different regions of Alaska, with fields for recording numbers of birds and eggs taken. There are four versions of this form: Interior Alaska, North Slope, Southern Coastal Alaska, and Western Alaska. This form has a sheet for each season surveyed, and each sheet has fields for the household code, community name, harvest year, date of completion, and comments.

Following the most recent re-evaluation of survey methods, the

sampling design was revised to include only 5 of 12 management regions as an index to the statewide harvest, these 5 regions representing about 90% of the statewide subsistence bird harvest. This modification was needed to make survey effort compatible with the funding available for the survey. The number of communities and households to be surveyed each year were also adjusted based on statistical methods to maximize accuracy of harvest estimates given the survey funding. We also reduced the number of household visits from seasonal (3 times per year) to annual (once a year). These modifications much reduced the estimated survey burden.

Title of Collection: Alaska Migratory Bird Subsistence Harvest Household Survey.

OMB Control Number: 1018–0124.

Form Number: 3–2380, 3–2381–1, 3–2381–2, 3–2381–3, and 3–2381–4.

Type of Review: Extension of a currently approved collection.

Respondents/Affected Public: Households within subsistence eligible areas of Alaska.

Respondent's Obligation: Voluntary.

Frequency of Collection: Annually.

Total Estimated Annual Nonhour Burden Cost: None.

Activity	Average number of annual respondents	Average number of annual responses	Completion time per response (minutes)	Total annual burden hours
3–2380 Tracking Sheet and Household Consent	723	723	5	58
3–2381–1 thru 3–2381–4 Harvest Report (three seasonal sheets)	645	645	15	155
Totals	1,368	1,368		213

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

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Dated: February 5, 2019.

Madonna L. Baucum,

Information Collection Clearance Officer, U.S. Fish and Wildlife Service.

[FR Doc. 2019–01601 Filed 2–7–19; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0027204; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: The State Center Community College District—Fresno City College, Fresno, CA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The State Center Community College District—Fresno City College has completed an inventory of human remains and associated funerary objects, in consultation with the appropriate Indian Tribes or Native Hawaiian organizations, and has determined that there is a cultural affiliation between the human remains and associated funerary objects and present-day Indian Tribes or Native Hawaiian organizations. Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request to the State Center Community College District—Fresno City College. If no additional requestors come forward, transfer of control of the human remains and associated funerary objects to the lineal descendants, Indian Tribes, or Native Hawaiian organizations stated in this notice may proceed.

DATES: Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to the State Center Community College District—Fresno City College at the address in this notice by March 11, 2019.

ADDRESSES: Mary Beth Miller, Interim Dean of Social Sciences, in care of Jill Minar, Ph.D., Fresno City College of The State Center Community College District, 1101 E University Avenue, Fresno, CA 93741, telephone (559) 442–8210, email *jill.minar@fresnocitycollege.edu.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects under the control of the State Center Community College District—Fresno City College, Fresno, CA. The human remains and associated funerary objects were removed from CA–FRE–2481, Fresno County, CA.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains was made by the State Center Community College District—Fresno City College professional staff in consultation with representatives of the Big Sandy Rancheria of Western Mono Indians of California (previously listed as the Big Sandy Rancheria of Mono Indians of California); Buena Vista Rancheria of Me-Wuk Indians of California; Cold Springs Rancheria of Mono Indians of California; Middletown Rancheria of Pomo Indians of California; Northfork Rancheria of Mono Indians of California; Picayune Rancheria of Chukchansi Indians of California; Santa Rosa Indian Community of the Santa Rosa Rancheria, California; Shingle Springs Band of Miwok Indians, Shingle Springs Rancheria (Verona Tract), California; Table Mountain Rancheria (previously listed as the Table Mountain Rancheria of California) Tejon Indian Tribe; Tule River Indian Tribe of the Tule River Reservation, California; and Tuolumne Band of Me-Wuk Indians of the Tuolumne Rancheria of California.

The California Valley Miwok Tribe, California; Chicken Ranch Rancheria of Me-Wuk Indians of California; Fort McDermitt Paiute and Shoshone Tribes of the Fort McDermitt Indian Reservation, Nevada and Oregon; Ione Band of Miwok Indians of California; Jackson Band of Miwuk Indians (previously listed as the Jackson Rancheria of Me-Wuk Indians of California); Pyramid Lake Paiute Tribe of the Pyramid Lake Reservation,

Nevada; Reno-Sparks Indian Colony, Nevada; Walker River Paiute Tribe of the Walker River Reservation, Nevada; and the Yerington Paiute Tribe of the Yerington Colony & Campbell Ranch, Nevada were contacted and invited to consult, but did not participate.

Two non-federally recognized groups, the Dunlap Band of Mono Indians and the Traditional Choinumni Tribe, participated in consultation. One non-federally recognized group, the Wukchumni Tribe, was invited to consult, but did not participate.

Hereafter, all the Indian Tribes and non-federally recognized Indian groups listed in this section are referred to as ''The Consulted and Notified Tribes and Groups.''

History and Description of the Remains

In 1996 and 1998, human remains representing, at minimum, one individual were removed from CA–FRE–2481 in Fresno County, CA. This site was excavated by Don Wren and his field archeology class for the Wiser Project, and is located on private property. In January 2017, funded by a 2016 NAGPRA Consultation/Documentation grant awarded to the State Center Community College District, an osteological examination of the faunal collections was conducted to determine if human remains were present. That examination resulted in the identification of the human remains described in this inventory. The human remains belong to one adult of indeterminate sex, and are represented by one tooth and three tooth fragments. No known individuals were identified. The three associated funerary objects are one steatite rim sherd, one blue hexagonal trade bead, and one ochre fragment.

Determinations Made by the State Center Community College District—Fresno City College

Officials of the State Center Community College District—Fresno City College have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of one individual of Native American ancestry, based on archeological context.
- Pursuant to 25 U.S.C. 3001(3)(A), the three objects described in this notice are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and associated funerary objects and the Big Sandy Rancheria of Western Mono Indians of California (previously listed as the Big Sandy Rancheria of Mono Indians of California), based on geography and oral tradition.

Additional Requestors and Disposition

Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to Mary Beth Miller, Interim Dean of Social Sciences, in care of Jill Minar, Ph.D., Fresno City College of The State Center Community College District, 1101 E University Avenue, Fresno, CA 93741, telephone (559) 442–8210, email *jill.minar@fresnocitycollege.edu,* by March 11, 2019. After that date, if no additional requestors have come forward, transfer of control of the human remains and associated funerary objects to the Big Sandy Rancheria of Western Mono Indians of California (previously listed as the Big Sandy Rancheria of Mono Indians of California) may proceed.

The State Center Community College District—Fresno City College is responsible for notifying The Consulted and Notified Tribes and Groups that this notice has been published.

Dated: December 18, 2018.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2019–01628 Filed 2–7–19; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0027203: PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Morris Museum, Morristown, NJ

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The Morris Museum has completed an inventory of human remains, in consultation with the appropriate Indian Tribes or Native Hawaiian organizations, and has determined that there is a cultural affiliation between the human remains and present-day Indian Tribes or Native Hawaiian organizations. Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request to the Morris Museum. If no additional requestors come forward, transfer of control of the human remains to the lineal descendants, Indian Tribes, or Native Hawaiian organizations stated in this notice may proceed.

DATES: Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to the Morris Museum at the address in this notice by March 11, 2019.

ADDRESSES: Maria Ribaudo, Collections Manager, Morris Museum, 6 Normandy Heights Road, Morristown, NJ 07960, telephone (973) 971–3735, email *mribaudo@morrismuseum.org.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains under the control of the Morris Museum, Morristown, NJ. The human remains were removed from Minisink Island, Sussex County, NJ.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains was made by the Morris Museum professional staff in 1995. The Morris Museum invited the Delaware Nation, Oklahoma, and Stockbridge Munsee Community, Wisconsin, to consult, but did not receive any requests to review the human remains.

History and Description of the Remains

On April 4, 1942, human remains representing, at minimum, one individual, were removed from Minisink Island, Sussex County, NJ, by Phillip Launer and J.P. Clark. The human remains, consisting of bone fragments ranging in size from half an inch to four inches, were donated to the Morris Museum by J.P. Clark. Geographic affiliation was attributed to the Munsee-Lenape-Delaware of New Jersey and Pennsylvania. There are no additional records or information known about the human remains. No known individuals were identified. No associated funerary objects are present.

Determinations Made by the Morris Museum

Officials of the Morris Museum have determined that:

• Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of one individual of Native American ancestry.

• Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and the Delaware Nation, Oklahoma, and Stockbridge Munsee Community, Wisconsin.

Additional Requestors and Disposition

Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to Maria Ribaudo, Collections Manager, Morris Museum, 6 Normandy Heights Road, Morristown, NJ 07960, telephone (973) 971–3735, email *mribaudo@morrismuseum.org,* by March 11, 2019. After that date, if no additional requestors have come forward, transfer of control of the human remains to the Delaware Nation, Oklahoma, and Stockbridge Munsee Community, Wisconsin, may proceed.

The Morris Museum is responsible for notifying the Delaware Nation, Oklahoma, and Stockbridge Munsee Community, Wisconsin, that this notice has been published.

Dated: December 18, 2018.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2019–01611 Filed 2–7–19; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0027166; PPWOCRADN0–PCU00RP14.R50000]

Notice of Intent To Repatriate Cultural Items: St. Joseph Museums, Inc., St. Joseph, MO

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The St. Joseph Museum, in consultation with the appropriate Indian Tribes or Native Hawaiian organizations, has determined that the cultural items listed in this notice meet the definition of objects of cultural patrimony. Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to claim these cultural items should submit a written request to the St. Joseph Museum. If no additional claimants come forward, transfer of control of the cultural items to the lineal descendants, Indian Tribes, or Native Hawaiian organizations stated in this notice may proceed.

DATES: Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to claim these cultural items should submit a written request with information in support of the claim to the St. Joseph Museum, at the address in this notice by March 11, 2019.

ADDRESSES: Trevor Tutt, St. Joseph Museums, Inc., 3406 Frederick Avenue, St. Joseph, MO 64506, telephone (816) 232–8471, email *trevor@stjosephmuseum.org.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3005, of the intent to repatriate cultural items under the control of the St. Joseph Museums, Inc., St. Joseph, MO, that meet the definition of objects of cultural patrimony under 25 U.S.C. 3001.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American cultural items. The National Park Service is not responsible for the determinations in this notice.

History and Description of the Cultural Items

The three objects of cultural patrimony are a Life Stick, tattooing needle from a sacred bundle, and a stick bundle. In October 1915, Harry L. George purchased an ''Osage Life Stick'' from Vern Thornburgh of Lincoln, NE, for $12.50. Francis La Flesche was in correspondence with Mr. Thornburgh regarding the Life Stick and stated that it belonged to ''See Haw'' before his death. La Flesche also stated that the Life Stick had belonged to one of the Buffalo clans of the Osage tribe and was used in ceremonies. Based on consultation and the available information, the Life Stick fits the NAGPRA definition of an object of cultural patrimony.

In March 1916, Harry L. George purchased a tattooing needle from the Indian Curio Company of Oklahoma City, OK, for $10. According to correspondence, George was trading items purchased from Thornburgh with the Indian Curio Company. Based on consultation with the Osage Nation, the tattooing needle was a component of a sacred bundle, was removed from the bundle, and was sold to Mr. George.

On an unknown date, Harry L. George acquired a bundle of counting sticks. During consultation with the Osage Nation, the bundle of counting sticks was identified as a consecrated item and an object of cultural patrimony.

Consultation with the Osage Nation on these three objects began in July 2015. Representatives of the Osage Nation visited the St. Joseph Museum in July 2017 to view the Harry L. George collection. During consultation, the Osage Nation identified the objects listed above as objects of cultural patrimony. After consulting with the Osage Traditional Cultural Advisors Committee, in July 2018, the Osage Nation requested the repatriation of these three cultural items.

Determinations Made by the St. Joseph Museum

Officials of the St. Joseph Museum have determined that:

• Pursuant to 25 U.S.C. 3001(3)(D), the three cultural items described above have ongoing historical, traditional, or cultural importance central to the Native American group or culture itself, rather than property owned by an individual.

• Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the objects of cultural patrimony and The Osage Nation (previously listed as the Osage Tribe).

Additional Requestors and Disposition

Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to claim these cultural items should submit a written request with information in support of the claim to Trevor Tutt, St. Joseph Museums, Inc., 3406 Frederick Avenue, St. Joseph, MO 64506, telephone (816) 232–8471, email *trevor@stjosephmuseum.org,* by March 11, 2019. After that date, if no additional claimants have come forward, transfer of control of the objects of cultural patrimony to The Osage Nation (previously listed as the Osage Tribe) may proceed.

The St. Joseph Museum is responsible for notifying The Osage Nation (previously listed as the Osage Tribe) that this notice has been published.

Dated: December 11, 2018.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2019–01640 Filed 2–7–19; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0027195; PPWOCRADN0–PCU00RP14.R50000]

Notice of Intent To Repatriate Cultural Items: San Diego Museum of Man, San Diego, CA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The San Diego Museum of Man, in consultation with the appropriate Indian Tribes or Native Hawaiian organizations, has determined that the cultural items listed in this notice meet the definition of unassociated funerary objects, sacred objects, and/or objects of cultural patrimony. Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to claim these cultural items should submit a written request to the San Diego Museum of Man. If no additional claimants come forward, transfer of control of the cultural items to the lineal descendants, Indian Tribes, or Native Hawaiian organizations stated in this notice may proceed.

DATES: Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to claim these cultural items should submit a written request with information in support of the claim to the San Diego Museum of Man at the address in this notice by March 11, 2019.

ADDRESSES: Ben Garcia, San Diego Museum of Man, 1350 El Prado, San Diego, CA 92101, telephone (619) 239–2001, email *bgarcia@museumofman.org*.

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3005, of the intent to repatriate cultural items under the control of the San Diego Museum of Man, San Diego, CA, that meet the definition of unassociated funerary objects, sacred objects, and objects of cultural patrimony under 25 U.S.C. 3001.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American cultural items. The National Park Service is not responsible for the determinations in this notice.

History and Description of the Cultural Items

In 1928, one cultural item was bequeathed to the San Diego Museum of Man by Abbie Warren Goodale Boutelle. The item was collected by Mrs. Boutelle from an unknown context. Beginning in 1895, Mrs. Boutelle and her husband acquired extensive collections of cultural items made by California indigenous communities. At the time of her death, Mrs. Boutelle left more than 300 Native American cultural resources to the San Diego Museum of Man. The one object of cultural patrimony is a storage basket.

In 1931, three cultural items were donated to the San Diego Museum of Man by Mrs. Stewart Kendall. These items were collected from an unknown context by the donor's father-in-law, most likely between 1890 and 1906. The two sacred objects are a basket cap, and an apron made of twisted strands of yellow and brown colored grass and decorated with a band of seed pods. The one object of cultural patrimony is a basket tray.

In 1931, 13 cultural items were donated to the San Diego Museum of Man by Commander and Mrs. Earl B. Brix. These items were collected from an unknown context by Mrs. Brix's father, Dr. William L. Kneedler, a U.S. Army surgeon whose various Army appointments enabled him to collect cultural items from various locales. The one unassociated funerary object is a basket cap. The six sacred objects are basket caps. The six objects of cultural patrimony are four mush baskets, one storage basket, and one burden basket.

In 1936, two cultural items were donated to the San Diego Museum of Man by Dr. J. H. Mallery. These items were collected from an unknown context by Dr. Mallery. The two objects of cultural patrimony are one burden basket and one baby basket.

In 1939, one cultural item was donated to the San Diego Museum of Man by Mrs. Herbert Doolittle. This item was collected from an unknown context. The sacred item is a basket cap.

In 1941, one cultural item was donated to the San Diego Museum of Man by Mrs. Emma A. Davis. This item was collected from an unknown context. The sacred item is a basket cap.

In 1945, two cultural items were donated to the San Diego Museum of Man by Ruth Ingersoll Baily. These items were collected from an unknown context. The two objects of cultural patrimony are one cooking basket and one burden basket.

In 1946, three cultural items were donated to the San Diego Museum of Man by the heirs of Edith H. Williams. These items were collected by Mrs. Williams from an unknown context. The two sacred objects are basket caps. The one object of cultural patrimony is a mush basket.

In 1951, one cultural item was donated to the San Diego Museum of Man by Dr. Henry Stoever. These items were collected from an unknown context. The object of cultural patrimony is a mush basket.

In 1953, two cultural items were donated to the San Diego Museum of Man by Mrs. Irving T. Snyder. These items were collected by Mrs. Snyder from an unknown context prior to 1935, but most likely around 1900. The one unassociated funerary object is a puberty basket. The one sacred objects is a basket cap.

In 1956, one cultural item was purchased by the San Diego Museum of Man from Fred T. Wheeler Curios. This item was collected from an unknown context. The sacred item is a drum. The drum is rawhide stretched over a square wooden frame with a braided leather loop handle at top. The drum is painted red with black and yellow geometric designs.

In 1956, one cultural item was received by the San Diego Museum of Man as part of an exchange with the Denver Museum of Art. The item was collected by Grace Nicholson at an unknown date and from an unknown context. The sacred item is a headband. The headband is made of white buckskin adorned with red woodpecker scalps, woodpecker feathers, cormorant or mallard feathers, and white deer hair. When not in use, the headband is wrapped on a cylindrical log of wood.

In 1957, seven cultural items were received at the San Diego Museum of Man as part of an exchange with the State Indian Museum. These objects were acquired by the State Indian Museum through an unknown context. The three sacred items are one headdress, one set of feather plumes, and one otter-skin quiver. The four unassociated funerary objects are two obsidian blades and two steatite pipes. The headdress is a buckskin hoop stuffed with bark fiber and covered with woodpecker and duck feathers, as well as deer hair. Small slits on either side of the hoop are for the holding ceremonial feather plumes. The accompanying feather plumes are of

great blue heron feathers attached with sinew to a pointed stick.

In 1961, one cultural item was purchased by the San Diego Museum of Man from Ralph Altman of Altman Antiques. No additional information exists as to the context from which this item was collected. The sacred object is a buckskin and abalone shell dress with glass beading.

In 1963, two cultural items were donated to the San Diego Museum of Man by Dr. Janice Kelly. These objects were collected by the donor's mother from an unknown context sometime around 1900. The two objects of cultural patrimony are one storage basket and one basket tray.

In 1964, six cultural items were donated to the San Diego Museum of Man by Mr. Robert Whitson Jr. These objects were collected from an unknown context by the donor's grand-father, Mr. W. W. Whitson, who operated a curio shop in Coronado, CA prior to 1900. The one sacred object is a basket cap. The five objects of cultural patrimony are one hopper basket, three mush baskets, and one basket tray.

In 1969, one cultural item was donated to the San Diego Museum of Man by the Serra Museum, San Diego Historical Society. This object was collected by the Serra Museum from an unknown context. The object of cultural patrimony is a storage basket.

In 1975, one cultural resource was donated to the San Diego Museum of Man by Mrs. I. Norman Lawson. This item was collected by Mrs. Lawson sometime around 1925 from an unknown source in the Santa Fe area of New Mexico. The sacred item is a basket cap.

In 1984, one cultural item was donated to the San Diego Museum of Man by Dorothy Copeland and Walter D. Cannon, Jr. This item was collected by the donors' parents, Walter and Lucia Cannon, around 1916. The Cannons were prolific basket collectors in Southern California between 1906 and 1942, and operated a general store in Campo, CA beginning in 1932. They regularly traded goods and commodities with local indigenous people in exchange for cultural items. The one sacred item is a basket cap.

In 1989, three cultural items were donated to the San Diego Museum of Man by Mrs. Margaret Barlow. These items were collected from an unknown context. The three sacred items are basket caps.

In 2002, one cultural item was donated to the San Diego Museum of Man by Ira Feinswog. This item was collected from an unknown context. The one sacred item is a basket cap.

Sometime, prior to 1957, and most likely around 1929, one cultural item was donated to the San Diego Museum of Man by a Mrs. Carter. No additional information exists as to the context from which the item was collected. The one object of cultural patrimony is a mush basket.

At an unknown date, the San Diego Museum of Man acquired four cultural objects that lack information and documentation concerning the donor or the context of collection. The three unassociated funerary objects are one mush basket, one obsidian blade, and one cluster of deer hooves. The one object of cultural patrimony is a mush basket.

Information provided during consultation between the San Diego Museum of Man and the Tolowa Dee-ni' Nation (previously listed as the Smith River Rancheria, California) documented and confirmed the identification and affiliation of these cultural items. Representatives from the Tolowa Dee-ni' Nation (previously listed as the Smith River Rancheria, California) informed the Museum that the items identified above as sacred objects are needed by present-day religious leaders for use in modern day religious ceremonies by the Tolowa Dee-ni' adherents, including the *Naa-yvlh-sri-nee-dash* (World Renewal Feather Dance), the *Ch'a~lh-day wvn Srdee-yvn* (Flower Dance), and the *Shin-chu Nee-dash* (Summer solstice Nee-dash).

Certain indicators on the items identified above as unassociated funerary objects show they are funerary, and to have been buried with individual human remains at the time of death as part of the death rite of the Tolowa Dee-ni' culture. As the San Diego Museum of Man does not possess or control any human remains of Tolowa Dee-ni, these objects are unassociated funerary objects.

Those items identified above as objects of cultural patrimony were shown by Tolowa Dee-ni' representatives to have an ongoing and historical cultural importance to the people of the Nation. The Tolowa Dee-ni' consider these objects to be communally owned by the Tolowa Dee-ni' Nation (previously listed as the Smith River Rancheria, California) and to be inalienable by any individual.

Determinations Made by the San Diego Museum of Man

Officials of the San Diego Museum of Man have determined that:

- Pursuant to 25 U.S.C. 3001(3)(B), the nine cultural items identified above as unassociated funerary objects are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony and are believed, by a preponderance of the evidence, to have been removed from a specific burial site of a Native American individual.
- Pursuant to 25 U.S.C. 3001(3)(C), the 26 cultural items identified above as sacred objects are specific ceremonial objects needed by traditional Native American religious leaders for the practice of traditional Native American religions by their present-day adherents.
- Pursuant to 25 U.S.C. 3001(3)(D), the 24 cultural items identified above as objects of cultural patrimony have ongoing historical, traditional, or cultural importance central to the Native American group or culture itself, rather than property owned by an individual.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the unassociated funerary objects, sacred objects, and objects of cultural patrimony and the Tolowa Dee-ni' Nation (previously listed as the Smith River Rancheria, California).

Additional Requestors and Disposition

Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to claim these cultural items should submit a written request with information in support of the claim to Ben Garcia, San Diego Museum of Man, 1350 El Prado, San Diego, CA 92101, telephone (619) 239–2001, email *bgarcia@museumofman.org,* by March 11, 2019. After that date, if no additional claimants have come forward, transfer of control of unassociated funerary objects, sacred objects, and objects of cultural patrimony to the Tolowa Dee-ni' Nation (previously listed as the Smith River Rancheria, California) may proceed.

The San Diego Museum of Man is responsible for notifying the Tolowa Dee-ni' Nation (previously listed as the Smith River Rancheria, California) that this notice has been published.

Dated: December 17, 2018.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2019–01617 Filed 2–7–19; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0027160; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Pueblo Grande Museum, City of Phoenix, AZ

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The Pueblo Grande Museum has completed an inventory of human remains and associated funerary objects, in consultation with the appropriate Indian Tribes or Native Hawaiian organizations, and has determined that there is a cultural affiliation between the human remains and associated funerary objects and present-day Indian Tribes or Native Hawaiian organizations. Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request to the Pueblo Grande Museum. If no additional requestors come forward, transfer of control of the human remains and associated funerary objects to the lineal descendants, Indian Tribes, or Native Hawaiian organizations stated in this notice may proceed.

DATES: Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to the Pueblo Grande Museum at the address in this notice by March 11, 2019.

ADDRESSES: Lindsey Vogel-Teeter, Pueblo Grande Museum, 4619 E Washington Street, Phoenix, AZ 85331, telephone (602) 495–0901, email *lindsey.vogel-teeter@phoenix.gov.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects under the control of the Pueblo Grande Museum, Phoenix, AZ. The human remains and associated funerary objects were removed from Maricopa County, AZ, and central or southern AZ.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains was made by the Pueblo Grande Museum professional staff in consultation with representatives of the Gila River Indian Community of the Gila River Indian Reservation, Arizona; Hopi Tribe of Arizona; Salt River Pima-Maricopa Indian Community of the Salt River Reservation, Arizona; and the Zuni Tribe of the Zuni Reservation, New Mexico.

History and Description of the Remains

On September 10, 2009, human remains representing, at minimum, 19 individuals, and 34 associated funerary objects were transferred from the Phoenix Museum of History (which closed in 2009) to the Pueblo Grande Museum. On February 4, 2011 human remains representing, at minimum, one individual, and two associated funerary objects were transferred from the Phoenix Museum of History (which closed in 2009) to the Pueblo Grande Museum. The collection history information regarding these 20 individuals and 36 associated funerary objects follows.

At an unknown date, likely during the late 1800s or early 1900s, human remains representing, at minimum, one individual were removed from a site in Maricopa County, AZ, by James H. McClintock. The site was identified as ''the great ruin on the Tempe Road,'' which is consistent with either AZ U:9:1(ASM)/Pueblo Grande or AZ T:12:1(ASM)/La Ciudad. At an unknown date, the human remains and associated funerary objects were loaned to the Arizona Museum, which later became the Phoenix Museum of History. No known individual was identified. The fragmentary and cremated human remains belong to a young to middle-aged adult of indeterminate sex. The two associated funerary objects are a partial Gila Red Ware ceramic jar and a Tucson Polychrome ceramic sherd. Tucson Polychrome dates between A.D. 1275 and 1450, which is within the Hohokam Classic period. Both AZ U:9:1(ASM) and AZ T:12:1(ASM) were located on the north side of the Salt River, along Canal System Two, and were occupied throughout the Hohokam cultural sequence, reaching their greatest extent during the Hohokam Classic period (between A.D. 1150 and 1450).

Between 1910 and 1911, human remains representing, at minimum, four individuals were removed from the area near 32nd Avenue and Buckeye Road in Maricopa County, AZ by an unknown individual. On October 20, 1928, the human remains and associated funerary object were donated by Florence Blackmer to the Arizona Museum, which later became the Phoenix Museum of History. No known individuals were identified. The fragmentary and cremated human remains belong to four adults. One is possibly male, another is possibly female, and the other two are of indeterminate sex. The one associated funerary object is a Hohokam Sacaton Red-on-Buff ceramic jar. The location where the human remains and associated funerary object were collected is not a known archeological site. The Sacaton Red-on-Buff jar dates between A.D. 900 and 1150, which is within the Hohokam Sedentary period. The lower Salt River Valley was intensively occupied by the prehistoric Hohokam archeological culture during this time.

At an unknown date, human remains representing, at minimum, one individual were removed from the area near the site of AZ T:12:256(ASM)/Grand Canal Ruin in Maricopa County, AZ by an unknown collector. The human remains and associated funerary objects were identified in the collection of the Phoenix Museum of History in 2002. No known individuals were identified. The fragmentary and cremated human remains belong to a young adult of indeterminate sex. The two associated funerary objects are one plain ware sherd and one daub fragment. Grand Canal Ruin is a prehistoric Hohokam habitation site that was heavily occupied from A.D. 1100 to 1450.

At an unknown date, likely during the late 1800s or early 1900s, human remains representing, at minimum, one individual were removed by an unknown individual from a location about 100 yards away from the redwood pipeline intake on the Verde River in Maricopa County, AZ. On October 27, 1932, the human remains and associated funerary objects were donated by Mrs. J.A.R. Irvine to the Arizona Museum, which later became the Phoenix Museum of History. No known individuals were identified. The fragmentary and cremated human remains belong to a middle-aged to old adult of indeterminate sex. The two associated funerary objects are a Hohokam Gila Plain Ware ceramic jar

and one lot of plain ware sherds. The location where the human remains and associated funerary objects were collected is not a known archeological site. While the redwood pipeline intake itself was located on the Fort McDowell Yavapai Nation Indian Reservation, whether or not these human remains and associated funerary objects were collected on tribal lands is unclear. This area of the lower Verde River was occupied by the Hohokam archeological culture between A.D. 1 and 1450.

At an unknown date, likely during the late 1800s or early 1900s, human remains representing, at minimum, six individuals were removed by Herbert R. Patrick from an unknown location somewhere in the lower Salt River Valley (Maricopa County, AZ). On May 20, 1921, the human remains were donated to the Arizona Museum, which later became the Phoenix Museum of History. No known individuals were identified. The co-mingled and partial to fragmentary human remains were likely obtained from inhumations or surface collections. The preservation state of these individuals varies, and includes some organic materials, which suggests that individuals of both prehistoric and historic date are present. The human remains are those of one child, one sub-adult, three young adults, and one young to middle-aged adult. One individual is male, one is female, and the other individuals are of an indeterminate sex. No associated funerary objects are present. Herbert R. Patrick documented canals and prehistoric architecture in the lower Salt River Valley, and wrote a booklet called *The Ancient Canal Systems and Pueblos of the Salt River Valley* in 1903. According to a deed dated April 8, 1884, and an article in the Arizona Weekly Gazette (1/28/1899 pg. 4:4), Herbert R. Patrick lived within 100 feet of a Hohokam platform mound, and owned land within the site boundaries of AZ T:12:1(ASM)/La Ciudad. Historic documents and consultation with the Gila River Indian Community and the Salt River Pima-Maricopa Indian Community demonstrate that Herbert R. Patrick was a collector of Hohokam, O'odham, and Hopi material culture. More likely than not, these individuals are Hohokam or historic O'odham, and were collected in the lower Salt River Valley. This area of Arizona was intensively occupied by the prehistoric Hohokam archeological culture between A.D. 1 and 1450, and continues to be occupied by the O'odham people.

At an unknown date, human remains representing, at minimum, one individual were removed from an unknown location by an unknown collector. The human remains were identified in the collection of the Phoenix Museum of History in 2002. No known individuals were identified. The fragmentary and cremated human remains belong to an older adolescent or adult of indeterminate sex. The one associated funerary object is a partial, burnt Glycymeris shell bracelet. The presence of this funerary object and the preservation of the human remains are consistent with the Hohokam archeological culture, which intensively occupied Central Arizona between A.D. 1 and 1450.

At an unknown date, human remains representing, at minimum, one individual were removed from an unknown location by an unknown collector. The human remains were identified in the collection of the Phoenix Museum of History in 2002. No known individuals were identified. The fragmentary and cremated human remains belong to an older, possibly male, adult. The one associated funerary object is a plain ware ceramic sherd that is tempered with platy schist. A ceramicist identified the temper in the funerary object as being consistent with phyllite tempered ceramics produced along the middle Gila River and associated with the Hohokam archeological culture. Central Arizona was intensively occupied by the Hohokam archeological culture between A.D. 1 and 1450. A piece of paper with the human remains reading ''Sallie Medina'' might identify the donor.

Around 1900, human remains representing, at minimum, three individuals were collected by Thomas Whitney from an unknown location in central or southern Arizona. Thomas Whitney (d. 3/1/1919) lived in California between 1880 and 1910, and while there is no record of him living in Arizona, his son, John Thomas Whitney (d. 12/2/1939), was an undertaker and partial owner of the Whitney and Murphy Funeral Home in Phoenix, AZ, between 1900 and 1939. On February 21, 1951, the granddaughter of Thomas Whitney, Marion Russell, donated the human remains and associated funerary objects to the Arizona Museum, which later became the Phoenix Museum of History. No known individuals were identified. The human remains are those of three children who were naturally mummified. All three are of indeterminate sex. They include a perinatal (pre-term) infant, an infant between one and two years of age, and an infant under six months of age. The individuals—who are wrapped in Hohokam textiles, were displayed at the Arizona Museum for an unspecified length of time. The 24 associated funerary objects are seven textile fragments associated with the perinatal infant, six textile fragments associated with the infant who is one to two years old, and nine textile fragments, one leather sandal, and one woven sandal associated with the infant under six months old. Although provenience information for these individuals does not exist, the associated funerary objects are consistent with known examples of Hohokam textiles, as identified by the two conservators and a representative of the Salt River Pima-Maricopa Indian Community. One associated textile has brocade ornamentation that has been observed at the Hohokam site of Casa Grande. Mummified human remains and complete textiles from the Hohokam archeological culture are usually found in dry cave contexts. The Hohokam archeological culture was present across central and southern Arizona between A.D. 1 and 1450.

At an unknown date, likely during the late 1800s or early 1900s, human remains representing, at minimum, two individuals were removed by Herbert R. Patrick from an unknown location, somewhere in the lower Salt River Valley (Maricopa County, AZ). On May 20, 1921, the human remains and associated funerary objects were donated to the Arizona Museum, which later became the Phoenix Museum of History. No known individuals were identified. The fragmentary and cremated human remains belong to a middle-aged, possibly adult, and a young to middle-aged adult of indeterminate sex. The three associated funerary objects are two Hohokam Gila Red Ware ceramic jars, and one lot of sherds. Herbert R. Patrick documented canals and prehistoric architecture in the lower Salt River Valley, and wrote a booklet called *The Ancient Canal Systems and Pueblos of the Salt River Valley* in 1903. According to a deed dated April 8, 1884, and an article in the Arizona Weekly Gazette (1/28/1899 pg. 4:4), Herbert R. Patrick lived within 100 feet of a Hohokam platform mound, and owned land within the site boundaries of AZ T:12:1(ASM)/La Ciudad. Historic documents and consultation with the Gila River Indian Community and the Salt River Pima-Maricopa Indian Community demonstrate that Herbert R. Patrick was a collector of Hohokam, O'odham, and Hopi material culture. More likely than not, the associated funerary object types suggest that these individuals belong to the Hohokam archeological culture, and were collected in the lower Salt River Valley, which was intensively occupied by the

prehistoric Hohokam archeological culture between A.D. 1 and 1450.

The Ak Chin Indian Community of the Maricopa (Ak Chin) Indian Reservation, Arizona; Gila River Indian Community of the Gila River Indian Reservation, Arizona; Salt River Pima-Maricopa Indian Community of the Salt River Reservation, Arizona; and the Tohono O'odham Nation of Arizona comprise one cultural group known as the O'odham. Cultural continuity between the prehistoric Hohokam and present day O'odham peoples is supported by continuities in settlement pattern, architectural technologies, basketry, textiles, ceramic technology, and ritual practices. Oral traditions that are documented for the Ak Chin Indian Community of the Maricopa (Ak Chin) Indian Reservation, Arizona; Gila River Indian Community of the Gila River Indian Reservation, Arizona; Salt River Pima-Maricopa Indian Community of the Salt River Reservation, Arizona; and the Tohono O'odham Nation of Arizona support their cultural affiliation with Hohokam sites in central and southern Arizona.

The Hopi Tribe of Arizona considers all of Arizona to be within traditional Hopi lands or within areas where Hopi clans migrated in the past. Oral traditions and material culture that are documented for the Hopi Tribe support their cultural affiliation with Hohokam sites in central and southern Arizona. Several Hopi clans and religious societies are derived from ancestors who migrated from the south, and likely identified with the Hohokam tradition.

Migration from portions of the Southwest to present day Zuni are documented in the oral traditions of kivas, priesthoods, and medicine societies of the Zuni Tribe of the Zuni Reservation, New Mexico. These traditions support their affiliation with the central and southern Arizona Hohokam archeological culture. Historical linguistic analysis also suggests interaction between ancestral Zuni and Uto-Aztecan speakers during the late Hohokam period.

Determinations Made by the Pueblo Grande Museum

Officials of the Pueblo Grande Museum have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of 20 individuals of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(3)(A), the 36 objects described in this notice are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and associated funerary objects and the Ak-Chin Indian Community (previously listed as the Ak Chin Indian Community of the Maricopa (Ak Chin) Indian Reservation, Arizona); Gila River Indian Community of the Gila River Indian Reservation, Arizona; Hopi Tribe of Arizona; Salt River Pima-Maricopa Indian Community of the Salt River Reservation, Arizona; Tohono O'odham Nation of Arizona; and the Zuni Tribe of the Zuni Reservation, New Mexico (hereafter referred to as ''The Tribes'').

Additional Requestors and Disposition

Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to Lindsey Vogel-Teeter, Pueblo Grande Museum, 4619 E Washington Street, Phoenix, AZ 85331, telephone (602) 495–0901, email *lindsey.vogel-teeter@phoenix.gov,* by March 11, 2019. After that date, if no additional requestors have come forward, transfer of control of the human remains and associated funerary objects to The Tribes may proceed.

The Pueblo Grande Museum is responsible for notifying The Tribes that this notice has been published.

Dated: December 11, 2018.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2019–01629 Filed 2–7–19; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0027140; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Princeton University, Princeton, NJ

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: Princeton University has completed an inventory of human remains, in consultation with the appropriate Indian Tribes or Native Hawaiian organizations, and has determined that there is no cultural affiliation between the human remains and any present-day Indian Tribes or Native Hawaiian organizations. Representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request to Princeton University. If no additional requestors come forward, transfer of control of the human remains to the Indian Tribes or Native Hawaiian organizations stated in this notice may proceed.

DATES: Representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to Princeton University at the address in this notice by March 11, 2019.

ADDRESSES: Bryan R. Just, Princeton University Art Museum, Princeton, NJ 08544, telephone (609) 258–8805, email *bjust@princeton.edu.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains under the control of Princeton University, Princeton, NJ. The human remains were removed from Circular Mound, Detroit River, Wayne County, MI; Great Mound, Rouge River, Wayne County, MI; and Mound at Beaver Harbor, Charlevoix County, MI.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3) and 43 CFR 10.11(d). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains was made by Princeton University professional staff in consultation with representatives of the Bay Mills Indian Community, Michigan; Grand Traverse Band of Ottawa and Chippewa Indians, Michigan; Hannahville Indian Community, Michigan; Keweenaw Bay Indian Community, Michigan; Lac Vieux Desert Band of Lake Superior Chippewa Indians of Michigan, Little River Band of Ottawa Indians, Michigan; Little Traverse Bay Bands of Odawa Indians, Michigan; Match-e-be-nash-she-wish Band of Pottawatomi Indians of Michigan; Nottawaseppi Huron Band of the Potawatomi, Michigan (previously listed as the Huron Potawatomi, Inc.);

Pokagon Band of Potawatomi Indians, Michigan and Indiana; Saginaw Chippewa Indian Tribe of Michigan, and the Sault Ste. Marie Tribe of Chippewa Indians, Michigan, hereafter referred to as ''The Consulted Tribes.''

Additional invitations to consult were sent to the Absentee-Shawnee Tribe of Indians of Oklahoma; Bad River Band of the Lake Superior Tribe of Chippewa Indians of the Bad River Reservation, Wisconsin; Chippewa Cree Indians of the Rocky Boy's Reservation, Montana (previously listed as the Chippewa-Cree Indians of the Rocky Boy's Reservation, Montana); Citizen Potawatomi Nation, Oklahoma; Delaware Nation, Oklahoma; Delaware Tribe of Indians; Eastern Shawnee Tribe of Oklahoma; Kickapoo Traditional Tribe of Texas; Kickapoo Tribe of Indians of the Kickapoo Reservation in Kansas; Kickapoo Tribe of Oklahoma; Lac Courte Oreilles Band of the Lake Superior Chippewa Indians of Wisconsin; Lac du Flambeau Band of the Lake Superior Chippewa Indians of the Lac du Flambeau Reservation of Wisconsin; Miami Tribe of Oklahoma; Minnesota Chippewa Tribe, Minnesota (Six component reservations: Bois Forte Band (Nett Lake); Fond du Lac Band; Grand Portage Band; Leech Lake Band; Mille Lacs Band; White Earth Band); Ottawa Tribe of Oklahoma; Peoria Tribe of Indians of Oklahoma; Prairie Band Potawatomi Nation (previously listed as the Prairie Band of Potawatomi Nation, Kansas); Red Cliff Band of Lake Superior Chippewa Indians of Wisconsin; Red Lake Band of Chippewa Indians, Minnesota; Sac & Fox Nation of Missouri in Kansas and Nebraska; Sac & Fox Nation, Oklahoma; Sac & Fox Tribe of the Mississippi in Iowa; Seneca Nation of Indians (previously listed as the Seneca Nation of New York); Seneca-Cayuga Nation (previously listed as the Seneca-Cayuga Tribe of Oklahoma); Shawnee Tribe; Sokaogon Chippewa Community, Wisconsin; St. Croix Chippewa Indians of Wisconsin; Tonawanda Band of Seneca (previously listed as the Tonawanda Band of Seneca Indians of New York); Turtle Mountain Band of Chippewa Indians of North Dakota; and the Wyandotte Nation, hereinafter referred to as ''The Invited Tribes.''

History and Description of the Remains

In 1871–1873, human remains representing, at minimum, 12 individuals were removed from Circular Mound, Detroit River, Wayne County, MI; Great Mound, Rouge River, Wayne County, MI; and Mound at Beaver Harbor, Charlevoix County, MI, by Henry Gillman. Mr. Gillman donated the human remains to Princeton University on April 18, 1874. The human remains are grouped together and thus cannot be linked to any of the specific three locations listed as the sources. Analysis of the human remains suggests that between twelve and eighteen individuals are represented. Sex cannot be determined due to the lack of pelves or intact crania. At least one individual was in early childhood (from 2–6 years old), at least one was an adolescent (from 16–21 years old), and the remainder were adults. No known individuals were identified. No associated funerary objects are present.

Determinations Made by Princeton University

Officials of Princeton University have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice are Native American based on associated records and Henry Gillman's 1874 publication ''The Mound-Builders and Platycnemism in Michigan'' (Smithsonian Report for 1975).
- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of 12 individuals of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(2), a relationship of shared group identity cannot be reasonably traced between the Native American human remains and any present-day Indian Tribe.
- According to the final judgments of the Indian Claims Commission or the Court of Federal Claims, Treaties, Acts of Congress, or Executive Orders, the land from which the Native American human remains were removed is the aboriginal land of The Consulted Tribes and The Invited Tribes.
- Pursuant to 43 CFR 10.11(c)(1), the disposition of the human remains may be to The Consulted Tribes and The Invited Tribes.

Additional Requestors and Disposition

Representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to Bryan R. Just, Princeton University Art Museum, Princeton, NJ 08544, telephone (609) 258–8805, email *bjust@princeton.edu,* by March 11, 2019. After that date, if no additional requestors have come forward, transfer of control of the human remains to The Consulted Tribes and The Invited Tribes may proceed.

Princeton University is responsible for notifying The Consulted Tribes and The Invited Tribes that this notice has been published.

Dated: December 11, 2018.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2019–01610 Filed 2–7–19; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0027191; PPWOCRADN0–PCU00RP14.R50000]

Notice of Intent To Repatriate Cultural Items: U.S. Fish and Wildlife Service, Office of Law Enforcement, Rio Rico, AZ

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The U.S. Fish and Wildlife Service, in consultation with the appropriate Indian Tribes or Native Hawaiian organizations, has determined that the cultural item listed in this notice meets the definition of object of cultural patrimony. Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to claim this cultural item should submit a written request to the U.S. Fish and Wildlife Service, Office of Law Enforcement, Rio Rico, AZ. If no additional claimants come forward, transfer of control of the cultural item to the lineal descendants, Indian Tribes, or Native Hawaiian organizations stated in this notice may proceed.

DATES: Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to claim this cultural item should submit a written request with information in support of the claim to the U.S. Fish and Wildlife Service, Office of Law Enforcement at the address in this notice by March 11, 2019.

ADDRESSES: Jeff Moore, Wildlife Inspector, U.S. Fish and Wildlife Service, P.O. Box 4405, Rio Rico, AZ 85648, telephone (520) 287–4625, email *jeffery_moore@fws.gov.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3005, of the intent to repatriate a cultural item under the control of the U.S. Fish and Wildlife Service, Office of Law Enforcement, Rio Rico, AZ, that meets the definition of an object of cultural patrimony under 25 U.S.C. 3001.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American cultural item. The National Park Service is not responsible for the determinations in this notice.

History and Description of the Cultural Item

On January 30, 2018, one cultural item was seized at the Port of Entry in Nogales, AZ. The object seized is a deer head. The object has been identified by the Pascua Yaqui Tribe of Arizona as a Yaqui ceremonial deer head.

Determinations Made by the U.S. Fish and Wildlife Service

Officials of the U.S. Fish and Wildlife Service have determined that:

- Pursuant to 25 U.S.C. 3001(3)(D), the one cultural item described above has ongoing historical, traditional, or cultural importance central to the Native American group or culture itself, rather than property owned by an individual.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the object of cultural patrimony and the Pascua Yaqui Tribe of Arizona.

Additional Requestors and Disposition

Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to claim the cultural item should submit a written request with information in support of the claim to Jeff Moore, Wildlife Inspector, U.S. Fish and Wildlife Service, P.O. Box 4405, Rio Rico, AZ 85648, telephone (520) 287–4625, email *jeffery_moore@fws.gov,* by March 11, 2019. After that date, if no additional claimants have come forward, transfer of control of the object of cultural patrimony to the Pascua Yaqui Tribe of Arizona may proceed.

The U.S. Fish and Wildlife Service is responsible for notifying the Pascua Yaqui Tribe of Arizona that this notice has been published.

Dated: December 17, 2018.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2019–01612 Filed 2–7–19; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0027114; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: U.S. Department of Interior, Bureau of Reclamation, Upper Colorado Region, Salt Lake City, UT; Museum of New Mexico, Museum of Indian Arts and Culture, Santa Fe, NM; and Arizona State University, School of Human Evolution and Social Change, Tempe, AZ

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The U.S. Department of the Interior, Bureau of Reclamation, Upper Colorado Region (Reclamation); Museum of New Mexico, Museum of Indian Arts and Culture (Museum of Indian Arts and Culture); and Arizona State University, School of Human Evolution and Social Change (ASU) have completed an inventory of human remains and associated funerary objects, in consultation with the appropriate Indian Tribes or Native Hawaiian organizations, and have determined that there is a cultural affiliation between the human remains and associated funerary objects and present-day Indian Tribes or Native Hawaiian organizations. Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request to Reclamation. If no additional requestors come forward, transfer of control of the human remains and associated funerary objects to the lineal descendants, Indian Tribes, or Native Hawaiian organizations stated in this notice may proceed.

DATES: Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to Reclamation at the address in this notice by March 11, 2019.

ADDRESSES: Nancy Coulam, U.S. Department of Interior, Bureau of Reclamation, Upper Colorado Region, 125 South State Street, Room 8100, Salt Lake City, UT 84138, telephone (801) 524–3684, email *ncoulam@usbr.gov*.

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects under the control of the U.S. Department of Interior, Bureau of Reclamation, Salt Lake City, UT. The human remains and associated funerary objects were removed from 22 archeological sites in the Navajo Reservoir District in Rio Arriba County, NM; San Juan County, NM; and Archuleta County, CO from 1956 to 1963 by archeologists from the Museum of New Mexico and School for Advanced Research (then known as the School of American Research) under contract with the National Park Service. Additional excavations were conducted at one of the sites in Archuleta County, CO, during 1987 by Complete Archaeological Service Associates under contract with Reclamation. This notice includes cultural items dating from the Los Pinos Phase (A.D. 1–400), Sambrito Phase (A.D. 400–700), Rosa Phase (A.D. 750–850), Piedra Phase (A.D. 800–1000), and Arboles Phase (A.D. 950–1050).

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains was made by Reclamation, Museum of Indian Arts and Culture, and ASU professional staff in consultation with representatives of the Hopi Tribe of Arizona; Navajo Nation, Arizona, New Mexico & Utah; Ohkay Owingeh, New Mexico (previously listed as the Pueblo of San Juan); Pueblo of Acoma, New Mexico; Pueblo of Jemez, New Mexico; Pueblo of Pojoaque, New Mexico; Pueblo of Santa Ana, New Mexico; Pueblo of Santa Clara, New Mexico; Pueblo of Zia, New Mexico; Southern Ute Indian Tribe of the Southern Ute Reservation, Colorado; Ute Mountain Ute Tribe (previously listed as the Ute Mountain Tribe of the Ute Mountain Reservation, Colorado, New Mexico & Utah); and the Zuni Tribe of the Zuni Reservation, New Mexico (hereafter referred to as ''The Tribes'').

History and Description of the Remains

In 1961, human remains representing, at minimum, one individual were removed from LA 3430, in San Juan County, NM. No known individuals

were identified. No associated funerary objects are present.

In 1957, human remains representing, at minimum, one individual were removed from LA 3434 (ASU 3483), San Juan County, NM. No known individuals were identified. No associated funerary objects are present.

In 1957, human remains representing, at minimum, one individual were removed from ASU 4048, San Juan County, NM. No known individuals were identified. No associated funerary objects are present.

In 1959, human remains representing, at minimum, one individual were removed from LA 4053, Archuleta County, CO. No known individuals were identified. The six associated funerary objects are three worked bone tools, two elk bones, and one shell beads from a bracelet.

In 1958, human remains representing, at minimum, three individuals were removed from LA 4054 (ASU 4056), San Juan County, NM. No known individuals were identified. No associated funerary objects are present.

In 1961, human remains representing, at minimum, 58 individuals were removed from LA 4086, the Sanchez Site, Archuleta County, CO. No known individuals were identified. The 11 associated funerary objects are four pottery vessels, two worked bones, one groundstone, one antler, one adobe plug, one pot rest, and one lot of corn cobs.

In 1961, human remains representing, at minimum, three individuals were removed from LA 4088, Archuleta County, CO. No known individuals were identified. The 12 associated funerary objects are five pottery vessels, two pipes, one shell necklace, one projectile point, one stone, one lot of sherds, and one lot of faunal remains.

In 1961, human remains representing, at minimum, two individuals were removed from LA 4103, the Railroad Site, Archuleta County, CO. No known individuals were identified. The one associated funerary object is a pottery vessel.

In 1961, human remains representing, at minimum, one individual were removed from LA 4120, Archuleta County, CO. No known individuals were identified. No associated funerary objects are present.

In 1963, human remains representing, at minimum, 71 individuals were removed from LA 4131, Sandoval Village, Archuleta County, CO. No known individuals were identified. The 76 associated funerary objects are 29 pottery vessels, 12 stones, nine lots of sherds, six worked bones, six faunal remains, four crystals, two chipped stone tools, one adobe, one antler, one groundstone, one lot of debitage, one lot of corn cob, one mollusk cast, one worked stone, and one pipe fragment.

In 1960, human remains representing, at minimum, nine individuals were removed from LA 4148, Archuleta County, NM. No known individuals were identified. No associated funerary objects are present.

In 1960, human remains representing, at minimum, two individuals were removed from LA 4151, Archuleta County, CO. No known individuals were identified. The one associated funerary object is one pottery vessel.

From 1962–1963, human remains representing, at minimum, 16 individuals were removed from LA 4169, the Oven Site, Archuleta County, CO. No known individuals were identified. The 39 associated funerary objects are 10 faunal remains, eight pottery vessels, six stones, four sherds, three worked bones, two chipped stone tools, one ground stone, one lot of corn cobs, one lot of shells, one bead, one shell bracelet, and one mat fragment.

In 1987, additional human remains representing, at minimum, eight individuals were removed from LA 4169, the Oven Site. No known individuals were identified. The 44 associated funerary objects are 11 faunal remains, 10 worked bones, eight pottery vessels, four lots of sherds, three shells, two stones, two chipped stone tools, two groundstone, one clay ball, and one basket fragment.

From 1960–1963, human remains representing, at minimum, 142 individuals were removed from LA 4195, Sambrito Village, San Juan County, NM. No known individuals were identified. The 88 associated funerary objects are 38 pottery vessels, 12 stones, 11 lots of sherds, seven worked bones, six shells, five beads, four faunal remains, one chipped stone tool, one crystal, one corn cob, one bracelet, and one basket fragment.

In 1963, human remains representing, at minimum, six individuals were removed from LA 4198, the Mascarenas Site, San Juan County, NM. No known individuals were identified. The seven associated funerary objects are six pottery vessels, and one chipped stone tool.

In 1960, human remains representing, at minimum, one individual were removed from LA 4242, Rio Arriba County, NM. No known individuals were identified. No associated funerary objects are present.

In 1960, human remains representing, at minimum, one individual were removed from LA 4247, Rio Arriba County, NM. No known individuals were identified. No associated funerary objects are present.

From 1961–1962, human remains representing, at minimum, four individuals were removed from LA 4363, the Uells Site, San Juan County, NM. No known individuals were identified. The four associated funerary objects are two beads, one pottery vessel, and one sherd.

In 1962, human remains representing, at minimum, 52 individuals were removed from LA 4380, Bancos Village, San Juan County, NM. No known individuals were identified. The seven associated funerary objects are five pottery vessels, one adobe pot stopper, and one clay object.

In 1962, human remains representing, at minimum, 10 individuals were removed from LA 4384, the Cemetery Site, San Juan County, NM. No known individuals were identified. The 35 associated funerary objects are 14 pottery vessels, seven gaming pieces, six worked bones, three stones, two chipped stone tools, two faunal remains, and one lot of shells.

In 1962, human remains representing, at minimum, one individual was removed from ASU 4385, San Juan County, NM. No known individuals were identified. No associated funerary objects are present.

In 1959, human remains representing, at minimum, four individuals were removed from LA 4406, the Candelaria Site, San Juan County, NM. No known individuals were identified. No associated funerary objects are present.

Osteological analysis indicates the individuals are Native American. No known individuals or lineal descendants have been identified. The evidence shows that the individuals are culturally affiliated with the Pueblo of Jemez, New Mexico.

Determinations Made by the U.S. Department of Interior, Bureau of Reclamation

Officials of the U.S. Department of Interior, Bureau of Reclamation has determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of 398 individuals of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(3)(A), the 331 objects described in this notice are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the Native American human

remains and associated funerary objects and the Pueblo of Jemez, New Mexico.

Additional Requestors and Disposition

Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to Nancy Coulam, U.S. Department of the Interior, Bureau of Reclamation, Upper Colorado Region, 125 South State Street, Room 8100, Salt Lake City, UT 84138 telephone, (801) 524–3684, email *ncoulam@usbr.gov,* by March 11, 2019. After that date, if no additional requestors have come forward, transfer of control of the human remains and associated funerary objects to the Pueblo of Jemez, New Mexico may proceed.

The U.S. Department of Interior, Bureau of Reclamation is responsible for notifying The Tribes that this notice has been published.

Dated: December 4, 2018.

Melanie O'Brien,

Program Manager, National NAGPRA Program.

[FR Doc. 2019–01618 Filed 2–7–19; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0027194; PPWOCRADN0–PCU00RP14.R50000]

Notice of Intent To Repatriate Cultural Items: Thomas Burke Memorial Washington State Museum, University of Washington, Seattle, WA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The Thomas Burke Memorial Washington State Museum (Burke Museum), in consultation with the appropriate Indian Tribes or Native Hawaiian organizations, has determined that the cultural item listed in this notice meets the definition of an unassociated funerary object. Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to claim this cultural item should submit a written request to the Burke Museum. If no additional claimants come forward, transfer of control of the cultural item to the lineal descendants, Indian Tribes, or Native Hawaiian organizations stated in this notice may proceed.

DATES: Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to claim this cultural item should submit a written request with information in support of the claim to the Burke Museum at the address in this notice by March 11, 2019.

ADDRESSES: Peter Lape, Burke Museum, University of Washington, Box 353010, Seattle, WA 98195, telephone (206) 685–3849 Ext 2, email *plape@uw.edu.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3005, of the intent to repatriate a cultural item under the control of the Thomas Burke Memorial Washington State Museum, University of Washington, Seattle, WA, that meets the definition of an unassociated funerary object under 25 U.S.C. 3001.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American cultural items. The National Park Service is not responsible for the determinations in this notice.

History and Description of the Cultural Item(s)

In 1946, one cultural item was removed from site 45–SJ–21, Guss Island, in San Juan County, WA, during a survey by B. Lane and F. Barnett. Lane and Barnett were accompanied by Arden King, who directed a University of Washington field school on San Juan Island from 1946–1947. The cultural item was accessioned by the Burke Museum in 1951 (Burke Accn. #3649) along with other archeological material from the field school. The one unassociated funerary object is a broken hammerstone.

Guss Island, located in Garrison Bay on San Juan Island, is within the aboriginal territory of the Lummi Tribe of the Lummi Reservation. Information provided during consultation indicates that it was used as a burial island, which corresponds with archeological evidence of Native American canoe burials on Guss Island. Lummi oral tradition and anthropological data clearly associate the Lummi with San Juan Island, including Guss Island (Suttles 1951, 1990). The archeological record shows continuous habitation from approximately 2000 years ago through the mid-19th century by Northern Straits peoples who were ancestral to the Lummi Tribe. Oral tradition, archeological evidence and ethnographic accounts all support a cultural affiliation between the unassociated funerary object from Guss Island and the Lummi Tribe of the Lummi Reservation.

Determinations Made by the Thomas Burke Memorial Washington State Museum

Officials of the Thomas Burke Memorial Washington State Museum have determined that:

- Pursuant to 25 U.S.C. 3001(3)(B), the one cultural item described above is reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony and are believed, by a preponderance of the evidence, to have been removed from a specific burial site of a Native American individual.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the unassociated funerary object and the Lummi Tribe of the Lummi Reservation.

Additional Requestors and Disposition

Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to claim this cultural item should submit a written request with information in support of the claim to Peter Lape, Burke Museum, University of Washington, Box 353010, Seattle, WA 98195, telephone (206) 685–3849 Ext 2, email *plape@uw.edu,* by March 11, 2019. After that date, if no additional claimants have come forward, transfer of control of the unassociated funerary object to the Lummi Tribe of the Lummi Reservation may proceed.

The Burke Museum is responsible for notifying the Lummi Tribe of the Lummi Reservation that this notice has been published.

Dated: December 17, 2018.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2019–01627 Filed 2–7–19; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0027164; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Pueblo Grande Museum, Phoenix, AZ

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The Pueblo Grande Museum has completed an inventory of human remains, in consultation with the appropriate Indian Tribes or Native Hawaiian organizations, and has determined that there is a cultural affiliation between the human remains and present-day Indian Tribes or Native Hawaiian organizations. Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request to the Pueblo Grande Museum. If no additional requestors come forward, transfer of control of the human remains to the lineal descendants, Indian Tribes, or Native Hawaiian organizations stated in this notice may proceed.

DATES: Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to the Pueblo Grande Museum at the address in this notice by March 11, 2019.

ADDRESSES: Lindsey Vogel-Teeter, Pueblo Grande Museum, 4619 E Washington Street, Phoenix, AZ 85331, telephone (602) 495–0901, email *lindsey.vogel-teeter@phoenix.gov.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains under the control of the Pueblo Grande Museum, Phoenix, AZ. The human remains were removed from Tuzigoot pueblo, Yavapai County, AZ.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains was made by the Pueblo Grande Museum professional staff in consultation with representatives of the Fort McDowell Yavapai Nation, Arizona; Gila River Indian Community of the Gila River Indian Reservation, Arizona; Hopi Tribe of Arizona; Salt River Pima-Maricopa Indian Community of the Salt River Reservation, Arizona; Yavapai-Apache Nation of the Camp Verde Indian Reservation, Arizona; Yavapai-Prescott Indian Tribe (previously listed as the Yavapai-Prescott Tribe of the Yavapai Reservation, Arizona); and the Zuni Tribe of the Zuni Reservation, New Mexico.

National Park Service staff in the Southern Arizona Office and the Intermountain Region Museum Services Program were consulted regarding the control of these human remains. In an email on 5/14/2018, they stated that Pueblo Grande Museum has control of these human remains.

History and Description of the Remains

At an unknown date prior to 1950, human remains representing, at minimum, three individuals were removed from Tuzigoot pueblo in Yavapai County, AZ, by an unknown collector. Around 1950, the human remains were donated by Mrs. Adele DeLong (or Mrs. Adelede Long) to the Arizona Museum, which later became the Phoenix Museum of History. On September 10, 2009, the human remains were transferred from the Phoenix Museum of History (which closed in 2009) to the Pueblo Grande Museum. The fragmentary human remains belong to one, possibly male, adult; one, possibly female, young-adult; and one child of indeterminate sex between the ages of 7–8 years old. No known individuals were identified. No associated funerary objects are present. Tuzigoot pueblo is a large, prehistoric Sinagua habitation site occupied between A.D. 1125 and A.D. 1425.

The Ak-Chin Indian Community (previously listed as the Ak Chin Indian Community of the Maricopa (Ak Chin) Indian Reservation, Arizona); Gila River Indian Community of the Gila River Indian Reservation, Arizona; Salt River Pima-Maricopa Indian Community of the Salt River Reservation, Arizona; and the Tohono O'odham Nation of Arizona comprise one cultural group known as the O'odham. The material culture found at Tuzigoot pueblo demonstrates continuity between the earlier people at the prehistoric site and the present-day O'odham.

The Fort McDowell Yavapai Nation, Arizona; Yavapai-Apache Nation of the Camp Verde Indian Reservation, Arizona; and theYavapai-Prescott Indian Tribe (previously listed as the Yavapai-Prescott Tribe of the Yavapai Reservation, Arizona) comprise one cultural group known as the Yavapai. They trace their ancestry to bands once living in the Verde Valley. Archeological sites identified as Yavapai and located within Yavapai traditional lands have also been found in and near Tuzigoot pueblo.

The Hopi Tribe of Arizona considers all of Arizona to be within traditional Hopi lands or within areas where Hopi clans migrated in the past. Oral traditions and material culture, including pottery traditions, demonstrate continuity between the prehistoric village of Tuzigoot pueblo and the Hopi people.

The Zuni Tribe of the Zuni Reservation, New Mexico, considers the Verde Valley to be within the migration path of ancestral Zuni people. Archeological evidence, including similarities in ceramic designs demonstrates continuity between the prehistoric people of the Verde Valley and the people of Zuni.

Determinations Made by the Pueblo Grande Museum

Officials of the Pueblo Grande Museum have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of three individuals of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and the Ak-Chin Indian Community (previously listed as the Ak Chin Indian Community of the Maricopa (Ak Chin) Indian Reservation, Arizona); Fort McDowell Yavapai Nation, Arizona; Gila River Indian Community of the Gila River Indian Reservation, Arizona; Hopi Tribe of Arizona; Salt River Pima-Maricopa Indian Community of the Salt River Reservation, Arizona; Tohono O'odham Nation of Arizona; Yavapai-Apache Nation of the Camp Verde Indian Reservation, Arizona; Yavapai-Prescott Indian Tribe (previously listed as the Yavapai-Prescott Tribe of the Yavapai Reservation, Arizona); and the Zuni Tribe of the Zuni Reservation, New Mexico, hereafter referred to as ''The Tribes.''

Additional Requestors and Disposition

Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to Lindsey Vogel-Teeter, Pueblo Grande Museum, 4619 E Washington Street, Phoenix, AZ 85331, telephone (602) 495–0901, email *lindsey.vogel-teeter@phoenix.gov,* by

March 11, 2019. After that date, if no additional requestors have come forward, transfer of control of the human remains to The Tribes may proceed.

The Pueblo Grande Museum is responsible for notifying The Tribes that this notice has been published.

Dated: December 11, 2018.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2019–01626 Filed 2–7–19; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0027144; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: U.S. Fish and Wildlife Service, Anchorage, AK

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The U.S. Fish and Wildlife Service, Alaska Region (Alaska Region USFWS) has completed an inventory of human remains, in consultation with the appropriate Indian Tribes or Native Hawaiian organizations, and has determined that there is a cultural affiliation between the human remains and present-day Indian Tribes or Native Hawaiian organizations. Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request to the Alaska Region USFWS. If no additional requestors come forward, transfer of control of the human remains to the lineal descendants, Indian Tribes, or Native Hawaiian organizations stated in this notice may proceed.

DATES: Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to the Alaska Region USFWS at the address in this notice by March 11, 2019.

ADDRESSES: Edward DeCleva, Regional Historic Preservation Officer, Alaska Region U.S. Fish and Wildlife Service, 1011 East Tudor Road MS–235, Anchorage, AK 99503, telephone (907) 786–3399, email *edward_decleva@fws.gov.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains under the control of the Alaska Region, USFWS, Anchorage, AK. The human remains were removed from Simeonof Island, Aleutians East Borough, AK.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains was made by the Alaska Region USFWS professional staff in consultation with representatives of Native Village of Unga and Qagan Tayagungin Tribe of Sand Point Village. Also consulted were four non-federally recognized groups—the Aleutian Pribilof Islands Association, Inc.; Shumagin Corporation; The Aleut Corporation; and Unga Corporation. Hereafter, all the entities listed in this section are referred to as ''The Consulting Tribes.''

History and Description of the Remains

In 1977, human remains representing, at minimum, one individual were removed from Simeonof Island in the Aleutians East Borough, AK. Little information regarding the circumstances of removal was available to the Alaska Region USFWS. The human remains—a cranium were recovered on Simeonof Island by J. Beck on September 22, 1977. The cranium was turned over to the Alaska Region USFWS in Anchorage and later sent to the Alaska State Office of History and Archeology for inventory in 2008. The cranium consists of several fragmentary pieces. No known individuals were identified. No associated funerary objects are present.

The cranium is that of an adult female, approximately 40 years old. Metric and non-metric cranial features were utilized to determine cultural affiliation. The human remains indicate the person to be of Native Alaskan descent, most likely Aleut.

Determinations Made by the Alaska Region USFWS

Officials of the Alaska Region USFWS have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of one individual of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and the Qagan Tayagungin Tribe of Sand Point.

Additional Requestors and Disposition

Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to Edward DeCleva, Regional Historic Preservation Officer, Alaska Region U.S. Fish and Wildlife Service, 1011 East Tudor Road, MS–235, Anchorage, AK 99503, telephone (907) 786–3399, email *edward_decleva@fws.gov,* by March 11, 2019. After that date, if no additional requestors have come forward, transfer of control of the human remains to the Qagan Tayagungin Tribe of Sand Point may proceed.

The Alaska Region USFWS is responsible for notifying The Consulting Tribes that this notice has been published.

Dated: December 11, 2018.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2019–01613 Filed 2–7–19; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0027116; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: U.S. Department of the Interior, Bureau of Reclamation, Upper Colorado Region, Salt Lake City, UT

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The U.S. Department of the Interior, Bureau of Reclamation, Upper Colorado Region (Reclamation) has completed an inventory of human remains and associated funerary objects, in consultation with the appropriate Indian Tribes or Native Hawaiian organizations, and has determined that there is a cultural affiliation between the human remains and associated funerary objects and present-day Indian Tribes or Native Hawaiian organizations. Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request to Reclamation. If no additional requestors come forward, transfer of control of the human remains and associated funerary objects to the lineal descendants, Indian Tribes, or Native Hawaiian organizations stated in this notice may proceed.

DATES: Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to Reclamation at the address in this notice by March 11, 2019.

ADDRESSES: Bill R. Chada, U.S. Department of the Interior, Bureau of Reclamation, Upper Colorado Region, 125 South State Street, Room 8100, Salt Lake City, UT 84138, telephone (801) 524–3646, email *bchada@usbr.gov.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects under the control of the U.S. Department of the Interior, Bureau of Reclamation, Upper Colorado Region, Salt Lake City, UT, and in the custody of the University of Utah, Utah Museum of Natural History, Salt Lake City, UT. The human remains and associated funerary objects were removed from multiple locations in Kane and San Juan Counties, UT.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains was made by the Reclamation professional staff in consultation with representatives of the Havasupai Tribe of the Havasupai Reservation, Arizona; Hopi Tribe of Arizona; Hualapai Indian Tribe of the Hualapai Indian Reservation, Arizona; Kaibab Band of Paiute Indians of the Kaibab Indian Reservation, Arizona; Navajo Nation, Arizona, New Mexico, & Utah; Paiute Indian Tribe of Utah (Cedar Band of Paiutes, Kanosh Band of Paiutes, Koosharem Band of Paiutes, Indian Peaks Band of Paiutes, and Shivwits Band of Paiutes (formerly Paiute Indian Tribe of Utah (Cedar City Band of Paiutes, Kanosh Band of Paiutes, Koosharem Band of Paiutes, Indian Peaks Band of Paiutes, and Shivwits Band of Paiutes)); Pueblo of Jemez, New Mexico; Pueblo of Pojoaque, New Mexico; Pueblo of Santa Clara, New Mexico; Pueblo of Zia, New Mexico; Southern Ute Indian Tribe of the Southern Ute Reservation, Colorado; Ute Mountain Ute Tribe (previously listed as the Ute Mountain Tribe of the Ute Mountain Reservation, Colorado, New Mexico & Utah); and the Zuni Tribe of the Zuni Reservation, New Mexico (hereafter referred to as ''The Consulted Tribes'').

History and Description of the Remains

In 1957, human remains representing, at minimum, one individual were removed from 42KA172, the Alvey Site, a rockshelter adjacent to a tributary of the Escalante River, Kane County, UT. No known individuals were identified. No associated funerary objects are present.

In 1960, human remains representing, at minimum, two individuals were removed from 42SA314, on Cedar Mesa, San Juan County, UT. No known individuals were identified. No associated funerary objects are present.

In 1959, human remains representing, at minimum, two individuals were removed from 42SA366 (NA5501), Husteds Well, a Kayenta Anasazi pithouse in Forgotten Canyon, San Juan County, UT. No known individuals were identified. No associated funerary objects are present.

In 1958, human remains representing, at minimum, two individuals were removed from 42SA396, a surface scatter in Catfish Canyon, San Juan County, UT. No known individuals were identified. No associated funerary objects are present.

In 1962, human remains representing, at minimum, three individuals were removed from 42SA454, Steer Palace, in Castle Wash, San Juan County, UT. No known individuals were identified. The seven associated funerary objects are five pottery vessels, one stone bead necklace, and one turquoise and black bead bracelet.

In 1960, human remains representing, at minimum, two individuals were removed from 42SA544, Horsefly Hollow, in Lake Canyon, San Juan County, UT. No known individuals were identified. The six associated funerary objects are two pottery vessels, two manos, one pottery sherd, and one stone tool.

In 1960, human remains representing, at minimum, four individuals were removed from 42SA554, Rogers House, in Lake Canyon, San Juan County, UT. No known individuals were identified. No associated funerary objects are present.

In 1960, human remains representing, at minimum, two individuals were removed from 42SA623, Lyman Flat, in Lake Canyon, San Juan County, UT. No known individuals were identified. No associated funerary objects are present.

In 1961, human remains representing, at minimum, five individuals were removed from 42SA738, Ivy Shelter, in Moqui Canyon, San Juan County, UT. No known individuals were identified. The 28 associated funerary objects are eight pottery vessels, five baskets fragments, five cordage fragments, five projectile points, two wooden foot boards, one cradleboard in fragments, one digging stick, and one forked stick.

In 1962, human remains representing, at minimum, one individual were removed from 42SA1010, Scorup Pasture, in Castle Wash, San Juan County, UT. No known individuals were identified. No associated funerary objects are present.

Excavation of all the above sites was carried out from 1957 to 1962 by

University of Utah archeologists under contract with the National Park Service, prior to the construction of Glen Canyon Dam, as part of the Upper Colorado River Basin Archaeological Salvage Project. The human remains and associated funerary objects date from the Pueblo I through Pueblo III period (approximately A.D. 750–1350).

Determinations Made by U.S. Department of the Interior, Bureau of Reclamation

Officials of the U.S. Department of the Interior, Bureau of Reclamation has determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of 24 individuals of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(3)(A), the 41 objects described in this notice are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and associated funerary objects and the Hopi Tribe of Arizona, based on lifeway, oral tradition, folklore, geography, anthropology, ceramic design, rock art, basketry, kiva plan, kinship and linguistics, dentition, mitochondrial DNA, and expert opinion.

Additional Requestors and Disposition

Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to Bill R. Chada, U.S. Department of the Interior, Bureau of Reclamation, Upper Colorado Region, 125 South State Street, Room 8100, Salt Lake City, UT 84138, telephone (801) 524–3646, email *bchada@usbr.gov,* by March 11, 2019. After that date, if no additional requestors have come forward, transfer of control of the human remains and associated funerary objects to the Hopi Tribe of Arizona may proceed.

The U.S. Department of the Interior, Bureau of Reclamation is responsible for notifying The Consulted Tribes that this notice has been published.

Dated: December 4, 2018.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2019–01620 Filed 2–7–19; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0027190; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Oregon Parks and Recreation Department, Salem, OR, and Oregon State University, Department of Anthropology, Corvallis, OR

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The Oregon State University, Department of Anthropology and the Oregon Parks and Recreation Department (OPRD) has completed an inventory of human remains and associated funerary objects, in consultation with the appropriate Indian Tribes or Native Hawaiian organizations, and has determined that there is a cultural affiliation between the human remains and associated funerary objects and present-day Indian Tribes or Native Hawaiian organizations. Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request to the Oregon Parks and Recreation Department. If no additional requestors come forward, transfer of control of the human remains and associated funerary objects to the lineal descendants, Indian Tribes, or Native Hawaiian organizations stated in this notice may proceed.

DATES: Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to the Oregon Parks and Recreation Department at the address in this notice by March 11, 2019.

ADDRESSES: Nancy Nelson, Oregon Parks and Recreation Department Archaeologist, 725 Summer Street NE, Suite C, Salem, OR 97301, telephone (503) 986–0578.

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects under the control of the Oregon Parks and Recreation Department, Salem, OR, and in the custody of the Oregon State University, Department of Anthropology, Corvallis, OR. The human remains and associated funerary objects were removed from Oceanside Beach State Recreation Site (35TI47) in Tillamook County, OR.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains was made by Oregon Parks and Recreation Department and Oregon State University, Department of Anthropology professional staff in consultation with representatives of the Confederated Tribes of Siletz Indians of Oregon (previously listed as the Confederated Tribes of the Siletz Reservation) and the Confederated Tribes of the Grand Ronde Community of Oregon, hereafter referred to as ''The Consulted Tribes.''

The Burns Paiute Tribe (previously listed as the Burns Paiute Tribe of the Burns Paiute Indian Colony of Oregon); Confederated Tribes of the Coos, Lower Umpqua and Siuslaw Indians; Confederated Tribes of the Umatilla Indian Reservation (previously listed as the Confederated Tribes of the Umatilla Reservation, Oregon); Confederated Tribes of the Warm Springs Reservation of Oregon; Coquille Indian Tribe (previously listed as the Coquille Tribe of Oregon); Cow Creek Band of Umpqua Tribe of Indians (previously listed as the Cow Creek Band of Umpqua Indians of Oregon); and the Klamath Tribes were notified, but did not participate in consultation. Hereafter, these tribes are referred to as ''The Invited Tribes.''

History and Description of the Remains

In 1977, human remains representing, at minimum, three individuals were removed from 35TI47, Oceanside Beach State Recreation Site in Tillamook County, OR, by Oregon State University. The excavation took place at the request of the OPRD to assess the impacts of proposed park improvements. The 20 associated funerary objects are ten olivella shell beads; one antler or bone

wedge; one blade; one modified bone; one non-human bone fragment; one unidentified lithic; three projectile points; one camas bulb; and one lot of bagged flakes, glass, shell, ecofacts, lithics, and unidentified botanical remains.

Ethnographic records indicate that Oceanside, located on the sand spit that defines the southern edge of Tillamook Bay, was occupied by the Tillamook. Based on geographical, ethnographic, linguistic, kinship, oral historical and historical evidence, a relationship of shared group identity between the Confederated Tribes of Siletz Indians of Oregon (previously listed as the Confederated Tribes of the Siletz Reservation) and the Tillamook at Oceanside can be reasonably traced historically. Based on geographical, ethnographic, linguistic and historical evidence, a relationship of shared group identity between the Confederated Tribes of the Grand Ronde Community of Oregon and the Tillamook at Oceanside also can be reasonably traced historically.

Determinations Made by the Oregon Parks and Recreation Department

Officials of the Oregon Parks and Recreation Department have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of three individuals of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(3)(A), the 20 objects described in this notice are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and associated funerary objects and The Consulted Tribes.

Additional Requestors and Disposition

Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to Nancy Nelson, Oregon Parks and Recreation Department Archaeologist, 725 Summer Street NE, Suite C, Salem, OR 97301, telephone (503) 986–0578, by March 11, 2019. After that date, if no additional requestors have come forward, transfer of control of the human remains and associated funerary objects to The Consulted Tribes may proceed.

The Oregon Parks and Recreation Department is responsible for notifying The Consulted Tribes and the Invited Tribes that this notice has been published.

Dated: December 17, 2018.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2019–01624 Filed 2–7–19; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0027158; PPWOCRADN0–PCU00RP14.R50000]

Notice of Intent To Repatriate Cultural Items: New York State Museum, Albany, NY

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The New York State Museum, in consultation with the appropriate Indian Tribes or Native Hawaiian organizations, has determined that the cultural item listed in this notice meets the definition of objects of cultural patrimony. Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to claim this cultural item should submit a written request to the New York State Museum. If no additional claimants come forward, transfer of control of the cultural item to the lineal descendants, Indian Tribes, or Native Hawaiian organizations stated in this notice may proceed.

DATES: Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to claim this cultural item should submit a written request with information in support of the claim to the New York State Museum at the address in this notice by March 11, 2019.

ADDRESSES: Lisa Anderson, NAGPRA Coordinator, New York State Museum, 3049 Cultural Education Center, Albany, NY 12230, telephone (518) 486–2020, email *lisa.anderson@nysed.gov.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3005, of the intent to repatriate cultural items under the control of the New York State Museum, Albany, NY that meet the definition of objects of cultural patrimony under 25 U.S.C. 3001.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American cultural items. The National Park Service is not responsible for the determinations in this notice.

History and Description of the Cultural Item

In the late nineteenth century, one cultural item was acquired by the New York State Museum through Harriet Maxwell Converse (E–37417). The one cultural item is a wampum belt known as the Ransom wampum belt. It is composed of six rows of purple beads interspersed with white beads forming five diagonal bands and two white open hexagons. The wampum belt is strung on leather warps with thread wefts and mounted on linen backing. The wampum belt measures 24¾ inches long and 1¾ inches wide.

Museum records indicate Converse identified the Ransom wampum belt as ''Onondaga.'' She reported that this wampum belt was used by women as ransom to spare the life of a prisoner. As such, the Ransom wampum belt symbolizes the role of women in the adoption of captives.

The records of the New York State Museum establish the cultural affiliation of this wampum belt with the Haudenosaunee Confederacy, and specifically with the Onondaga Nation. Based on consultation with the Onondaga Nation, the Ransom wampum belt is an object of cultural patrimony, as it relates to the civil functions of a Council.

Determinations Made by the New York State Museum

Officials of the New York State Museum have determined that:

- Pursuant to 25 U.S.C. 3001(3)(D), the one cultural item described above has ongoing historical, traditional, or cultural importance central to the Native American group or culture itself, rather than property owned by an individual.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the object of cultural patrimony and the Onondaga Nation.

Additional Requestors and Disposition

Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to claim this cultural item should submit a written request with

information in support of the claim to Lisa Anderson, NAGPRA Coordinator, New York State Museum, 3049 Cultural Education Center, Albany, NY 12230, telephone (518) 486–2020, email *lisa.anderson@nysed.gov,* by March 11, 2019. After that date, if no additional claimants have come forward, transfer of control of the object of cultural patrimony to the Onondaga Nation may proceed.

The New York State Museum is responsible for notifying the Onondaga Nation that this notice has been published.

Dated: December 11, 2018.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2019–01616 Filed 2–7–19; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–NRSS–WRD–NPS0027123; PPWONRADW0, PPMRSNR1Y.NM0000 (199); OMB Control Number 1024–NEW]

Agency Information Collection Activities; National Park Service Watercraft Inspection Decontamination Regional Data-Sharing for Trailered Recreational Boats

AGENCY: National Park Service, Interior.

ACTION: Notice of Information Collection Request; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, we, the National Park Service (NPS) are proposing a new information collection.

DATES: Interested persons are invited to submit comments on or before April 9, 2019.

ADDRESSES: Send your comments on this Information Collection Request (ICR) by mail to Phadrea Ponds, Acting, Information Collection Clearance Officer, National Park Service, 1201 Oakridge Drive, Fort Collins, CO 80525 (mail); or *phadrea_ponds@nps.gov* (email). Please reference Information Collection Request 1024–NEW (Quagga) in the subject line.

FOR FURTHER INFORMATION CONTACT: To request additional information about this IC, contact John Wullschleger, Fish Program Lead Water Resources Division, Natural Resource Stewardship and Science Directorate, National Park Service, 1201 Oakridge Dr., Suite 20, Fort Collins, CO 80525 (mail); *john_wullschleger@nps.gov* (email); or 970–225–3572 (phone).

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.

We are 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 NPS; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the NPS enhance the quality, utility, and clarity of the information to be collected; and (5) how might the NPS 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 IC. 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 NPS is authorized by the Lacey Act (18 U.S.C. 42, 16 U.S.C. 3371–3378 et seq) to collect this information. The NPS is requesting approval to collect information from recreational boaters entering or exiting water areas managed by the agency. The data will help document the presence and evaluate any risks associated with the unintentional introduction of quagga/zebra mussels in waters managed by the NPS in waters managed by the agency. Collection of this information is mandatory for all watercrafts entering and exiting waters managed by the NPS with an active Watercraft inspection and decontamination programs.

Title of Collection: National Park Service Watercraft Inspection Decontamination Regional Data-sharing for Trailered Recreational Boats.

OMB Control Number: 1024–NEW.

Form Number: None.

Type of Review: Regular.

Respondents/Affected Public: Individual/households.

Total Estimated Number of Annual Respondents: 160,000.

Total Estimated Number of Annual Responses: 160,000.

Estimated Completion Time per Response: 1 minute for 120,000 low-risk watercrafts and 3 minutes for 40,000 high-risk watercrafts.

Total Estimated Number of Annual Burden Hours: 4,000 hours.

Respondent's Obligation: Mandatory.

Frequency of Collection: One time per launch site.

Total Estimated Annual Nonhour Burden Cost: None.

An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid 0MB control number.

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Phadrea Ponds,

Acting NPS Information Collections Clearance Officer, National Park Service.

[FR Doc. 2019–01564 Filed 2–7–19; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0027196; PCU00RP14.R50000–PPWOCRDN0]

Notice of Inventory Completion: U.S. Department of the Interior, Bureau of Indian Affairs, Washington, DC

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The U.S. Department of the Interior, Bureau of Indian Affairs, has completed an inventory of human remains and associated funerary objects, in consultation with the appropriate Indian Tribes or Native Hawaiian organizations, and has determined that there is no cultural affiliation between the human remains and associated funerary objects and any present-day Indian Tribes or Native Hawaiian organizations. Representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request to the Bureau of Indian Affairs. If no additional requestors come forward, transfer of control of the human remains and associated funerary objects to the Indian Tribes or Native Hawaiian organizations stated in this notice may proceed.

DATES: Representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to the Bureau of Indian Affairs at the address in this notice by March 11, 2019.

ADDRESSES: Anna Pardo, Museum Program Manager/NAGPRA Coordinator, U.S. Department of the Interior, Bureau of Indian Affairs, 12220 Sunrise Valley Drive, Room 6084, Reston, VA 20191, telephone (703) 390–6343, email *Anna.Pardo@bia.gov.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects under the control of the U.S. Department of the Interior, Bureau of Indian Affairs, Washington, DC. The human remains and associated funerary objects were removed from sites on and around Black Mesa and Klethla Valley in Coconino and Navajo Counties, AZ.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3) and 43 CFR 10.11(d). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains was made by the U.S. Department of the Interior, Bureau of Indian Affairs professional staff in consultation with representatives of the Hopi Tribe of Arizona; Navajo Nation, Arizona, New Mexico & Utah; and the Zuni Tribe of the Zuni Reservation, New Mexico.

History and Description of the Remains

From 1967 to 1983, the Bureau of Indian Affairs (BIA) issued Antiquities Act permits authorizing excavations in the Black Mesa region of Arizona. Black Mesa, an area of roughly 49,300 hectares, was leased to Peabody Coal Company (now Peabody Energy) by the Hopi Tribe of Arizona and Navajo Nation, Arizona, New Mexico & Utah for the purpose of mining coal deposits. The Black Mesa Archaeological Project (BMAP), conducted by staff and students from Prescott College and later, Southern Illinois University at Carbondale (SIU), gathered archeological and anthropological data on Black Mesa. In 1974, Prescott College declared bankruptcy and closed. In 1976, after being housed at Fort Lewis College in Durango, CO, for one year, the BMAP collections and records were transferred to SIU. In or about 1979, SIU entered into a long-term loan agreement with Debra Martin for the human remains from BMAP. Dr. Martin transported the human remains to the University of Massachusetts, Amherst, and in or about 1986, Dr. Martin moved the human remains to Hampshire College. In or about 2006, Dr. Martin, with approval from SIU, relocated the human remains to the University of Nevada, Las Vegas. BIA was never consulted nor advised of any of these loans or moves. The associated funerary objects remained at SIU. In March and May 2018, the BIA, in consultation with the Hopi Tribe of Arizona and Navajo Nation, Arizona, New Mexico & Utah, authorized the physical transfer of all BMAP human remains and associated funerary objects to the Museum of Northern Arizona (MNA) in Flagstaff, AZ. The human remains were transferred to MNA in May 2018, and the associated funerary objects were transferred from SIU to MNA in October 2018.

In 1960 and 1971–72, additional excavations were conducted under Antiquities Act permits issued by the BIA on ten sites in Klethla Valley, AZ. One site was excavated in 1960 as part of the construction of a highway. Nine sites were excavated in 1971 and 1972 within the right-of-way corridor for the Black Mesa and Lake Powell Railroad. Human remains and associated funerary objects were removed and have been housed at MNA since their removal.

From 1960 to 1983, human remains representing, at minimum, 341 individuals were removed from numerous sites on Black Mesa and in Klethla Valley in Coconino and Navajo Counties, AZ. No known individuals were identified. The 10,889 associated funerary objects include ceramic vessels, beads, pollen and soil samples, sherds, lithics, plant and wood materials, groundstone, shells, and faunal remains. A complete, detailed inventory is on file with the National NAGPRA Program and available upon written request to the BIA.

Determinations Made by the Bureau of Indian Affairs

Officials of the Bureau of Indian Affairs have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice are Native American based on studies conducted by physical anthropologists.
- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of 341 individuals of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(3)(A), the 10,889 objects described in this notice are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- Pursuant to 25 U.S.C. 3001(2), a relationship of shared group identity cannot be reasonably traced between the Native American human remains and associated funerary objects and any present-day Indian Tribe.
- Pursuant to 25 U.S.C. 3001 (15), the land from which the Native American human remains and associated funerary objects were removed is the tribal land of the Hopi Tribe of Arizona and Navajo Nation, Arizona, New Mexico & Utah.
- Pursuant to 43 CFR 10.11(c)(1), the disposition of the human remains and associated funerary objects may be to the Hopi Tribe of Arizona and Navajo Nation, Arizona, New Mexico & Utah.

Additional Requestors and Disposition

Representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to Anna Pardo, Museum Program Manager/NAGPRA Coordinator, U.S. Department of the Interior, Bureau of Indian Affairs, 12220 Sunrise Valley Drive, Room 6084, Reston, VA 20191, telephone (703) 390–6343, email *Anna.Pardo@bia.gov,* by March 11, 2019. After that date, if no additional requestors have come forward, transfer of control of the human remains and associated funerary objects to the Hopi Tribe of Arizona and Navajo Nation, Arizona, New Mexico & Utah, may proceed.

The BIA is responsible for notifying the Hopi Tribe of Arizona; Navajo Nation, Arizona, New Mexico & Utah; and the Zuni Tribe of the Zuni Reservation, New Mexico, that this notice has been published.

Dated: December 17, 2018.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2019–01623 Filed 2–7–19; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0027115; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: U.S. Department of the Interior, Bureau of Reclamation, Upper Colorado Region, Salt Lake City, UT, and the Museum of Northern Arizona, Flagstaff, AZ

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The U.S. Department of the Interior, Bureau of Reclamation, Upper Colorado Region (Reclamation) and the Museum of Northern Arizona (MNA) have completed an inventory of human remains and associated funerary objects, in consultation with the appropriate Indian Tribes or Native Hawaiian organizations, and have determined that there is a cultural affiliation between the human remains and associated funerary objects and present-day Indian Tribes or Native Hawaiian organizations. Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request to Reclamation. If no additional requestors come forward, transfer of control of the human remains and associated funerary objects to the lineal descendants, Indian Tribes, or Native Hawaiian organizations stated in this notice may proceed.

DATES: Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to Reclamation at the address in this notice by March 11, 2019.

ADDRESSES: Bill R. Chada, U.S. Department of the Interior, Bureau of Reclamation, Upper Colorado Region, 125 South State Street, Room 8100, Salt Lake City, UT 84138, telephone (801) 524–3646, email *bchada@usbr.gov*.

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects under the control of the U.S. Department of the Interior, Bureau of Reclamation, Upper Colorado Region, Salt Lake City, UT. The human remains and associated funerary objects were removed from 12 locations in San Juan County, UT, and Coconino County, AZ.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains was made by Reclamation and MNA professional staff in consultation with representatives of Havasupai Tribe of the Havasupai Reservation, Arizona; Hopi Tribe of Arizona; Hualapai Indian Tribe of the Hualapai Indian Reservation, Arizona; Kaibab Band of Paiute Indians of the Kaibab Indian Reservation, Arizona; Navajo Nation, Arizona, New Mexico, & Utah; Paiute Indian Tribe of Utah (Cedar Band of Paiutes, Kanosh Band of Paiutes, Koosharem Band of Paiutes, Indian Peaks Band of Paiutes, and Shivwits Band of Paiutes (formerly Paiute Indian Tribe of Utah (Cedar City Band of Paiutes, Kanosh Band of Paiutes, Koosharem Band of Paiutes, Indian Peaks Band of Paiutes, and Shivwits Band of Paiutes)); Pueblo of Jemez, New Mexico; Pueblo of Pojoaque, New Mexico; Pueblo of Santa Clara, New Mexico; Pueblo of Zia, New Mexico; Southern Ute Indian Tribe of the Southern Ute Reservation, Colorado; Ute Mountain Ute Tribe (previously listed as the Ute Mountain Tribe of the Ute Mountain Reservation, Colorado, New Mexico & Utah); and the Zuni Tribe of the Zuni Reservation, New Mexico (hereafter referred to as ''The Consulted Tribes'').

History and Description of the Remains

In 1960, human remains representing, at minimum, two individuals were removed from NA2691, in San Juan County, UT. No known individuals were identified. No associated funerary objects are present.

In 1961, human remains representing, at minimum, one individual were removed from NA4075, the Guardian Pueblo on Segazlin Mesa, Coconino County, AZ. No known individuals were identified. No associated funerary objects are present.

In 1961, human remains representing, at minimum, one individual were removed from NA5815, Upper Desha Pueblo in San Juan County, UT. No known individuals were identified. No associated funerary objects are present.

In 1959, human remains representing, at minimum, two individuals were removed from NA7166, in San Juan County, UT. No known individuals were identified. No associated funerary objects are present.

In 1961, human remains representing, at minimum, two individuals were removed from NA7486, Cummings Mesa in Coconino County, AZ. The site was excavated with permission of the Navajo Nation Council and the Navajo Mountain Chapter of the Navajo Nation, Arizona, New Mexico & Utah. No known individuals were identified. The 25 associated funerary objects are 11 pottery vessels, six manos, five utilized flakes, one lot of pottery sherds, one flaked stone, and one bone awl.

In 1961, human remains representing, at minimum, eight individuals were removed from NA7498, from Cummings Mesa in Coconino County, AZ. The site was excavated with permission of the Navajo Nation Council and the Navajo Mountain Chapter of the Navajo Nation, Arizona, New Mexico & Utah. No known individuals were identified. The 58 associated funerary objects include 21 pottery vessels, eight lots of pottery sherds, seven worked pottery sherds, seven bone awls, two worked pottery sherd discs, two bifacially flaked stones, faunal remains of two dogs, one pottery sherd, one unifacially flaked stone, one worked animal bone, one animal bone, one corn cob, one lot of shell beads, one lot of squash seeds, one lot of wood fragments, and one lot of calcite.

In 1960, human remains representing, at minimum, one individual were removed from NA7508, Trail Shelter in lower Glen Canyon in San Juan County, UT. No known individuals were identified. The 23 associated funerary objects include 12 bifaces, three pottery vessels, two worked stones, two stone flakes, one chopper, one mano, one cobble, and one pebble.

In 1961, human remains representing, at minimum, one individual were removed from NA7537, Small Jar Pueblo on Segazlin Mesa, Navajo Mountain in San Juan County, UT. The site was excavated with permission of the Navajo Nation Council and the Navajo Mountain Chapter of the Navajo Nation, Arizona, New Mexico & Utah. No known individuals were identified. No associated funerary objects are present.

In 1962, human remains representing, at minimum, 30 individuals were removed from NA7713, Pottery Pueblo on Paiute Mesa in San Juan County, UT. The site was excavated with permission of the Navajo Nation, Arizona, New Mexico & Utah Navajo Nation Council and the Navajo Mountain Chapter. No known individuals were identified. The

68 associated funerary objects include 27 pottery vessels, five animal bones, three clay figurines, three hafted projectile points, two projectile points, two basket fragments, two lots of corn cobs, two lots of squash seeds, two unidentified vegetal fragments, one cradleboard, one stone bead bracelet, one lot of beads, one sandstone disc, one lot of corn seeds, one stick, one lot of cordage fragments, and one medicine bundle containing four projectile points, one shark tooth, one crinoid fragment, one stick, one lot of rocks, one lot of shell, one worked stone, one stone ball, and 1 green marble.

In 1962, human remains representing, at minimum, 25 individuals were removed from NA7719, Neskahi Village on Paiute Mesa in San Juan County, UT. The site was excavated with permission of the Navajo Nation Council and the Navajo Mountain Chapter of the Navajo Nation, Arizona, New Mexico & Utah. No known individuals were identified. The 67 associated funerary objects include 44 pottery vessels, seven bone game pieces, six bone awls, three pottery sherds, three shell beads, one projectile point, one stone disc, one stone ball, and one incised bone disc.

In 1962, human remains representing, at minimum, three individuals were removed from NA8317, on Paiute Mesa in San Juan County, UT. The site was excavated with permission of the Navajo Nation, Arizona, New Mexico & Utah Navajo Nation Council and the Navajo Mountain Chapter. No known individuals were identified. The seven associated funerary objects include five pottery vessels, one metate, and one worked bone.

In 1962, human remains representing, at minimum, one individual were removed from NA8321, on Paiute Mesa in San Juan County, UT. No known individuals were identified. No associated funerary objects are present.

Excavation of all the above sites was carried out from 1957 to 1962 by Museum of Northern Arizona (MNA) archeologists under contract with the National Park Service, prior to the construction of Glen Canyon Dam, as part of the Upper Colorado River Basin Archaeological Salvage Project. The human remains and associated funerary objects date from the Pueblo I through Pueblo III period (approximately A.D. 750–1350).

Determinations Made by U.S. Department of the Interior, Bureau of Reclamation

Officials of the U.S. Department of the Interior, Bureau of Reclamation has determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of 77 individuals of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(3)(A), the 248 objects described in this notice are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and associated funerary objects and the Hopi Tribe of Arizona, based on lifeway, oral tradition, folklore, geography, anthropology, ceramic design, rock art, basketry, kiva plan, kinship and linguistics, dentition, mitochondrial DNA, and expert opinion.

Additional Requestors and Disposition

Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to Bill R. Chada, U.S. Department of the Interior, Bureau of Reclamation, Upper Colorado Region, 125 South State Street, Room 8100, Salt Lake City, UT 84138, telephone (801) 524–3646, email *bchada@usbr.gov,* by March 11, 2019. After that date, if no additional requestors have come forward, transfer of control of the human remains and associated funerary objects to the Hopi Tribe of Arizona may proceed.

The U.S. Department of the Interior, Bureau of Reclamation is responsible for notifying The Consulted Tribes that this notice has been published.

Dated: December 4, 2018.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2019–01619 Filed 2–7–19; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0027159; PPWOCRADN0–PCU00RP14.R50000]

Notice of Intent To Repatriate Cultural Items: George Fox University, Newberg, OR

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The George Fox University, in consultation with the appropriate Indian Tribes or Native Hawaiian organizations, has determined that the cultural items listed in this notice meet the definition of sacred objects and objects of cultural patrimony. Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to claim these cultural items should submit a written request to George Fox University. If no additional claimants come forward, transfer of control of the cultural items to the lineal descendants, Indian Tribes, or Native Hawaiian organizations stated in this notice may proceed.

DATES: Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to claim these cultural items should submit a written request with information in support of the claim to George Fox University at the address in this notice by March 11, 2019.

ADDRESSES: Rachel Thomas, George Fox University, 414 N Meridian #6109, Newberg, OR 97132, telephone (503) 554–2415, email *rthomas@georgefox.edu.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3005, of the intent to repatriate cultural items under the control of George Fox University, Newberg, OR, that meet the definition of sacred objects and objects of cultural patrimony under 25 U.S.C. 3001.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American cultural items. The National Park Service is not responsible for the determinations in this notice.

History and Description of the Cultural Item(s)

From 1880–1920, 26 cultural items were removed from Kake, AK, by missionaries and others visiting the area from Quaker congregations in Oregon. The 26 items are one 2018–023 woven basket, one 91–55 basket, one 032 wooden canoe paddle, one 033 wooden canoe paddle, one 2018–021 native basket, one 2018–022 native woven basket, one 2018–020 small basket, one 2018–020 small basket, one 2018–025 basket, one 87–29 Indian drum handle, one 2018–024 woven basket with

handle, one 2018–067 pillow top, one part of a face from a totem pole, one ladle made from bone, one Cedarbark headdress, one medicine man mask, one rattle used by medicine man Rattle/Charm with Eagle and killer whale design, one carving-top for hat, one woven basket with initials FB, one beaded basket with initials FB, one 2018–081 miniature paddle, one 2018–078 miniature paddle, one 2018–079 miniature paddle, one Spruceroot basket, one red cedar charm used by Medicine man, and one 2018–080 model canoe.

Consultation with Frank Hughes, NAGPRA and Historic Properties coordinator for the Organized Village of Kake, has revealed the identity of these items. Hughes also was able to identify unique weaving patterns and other details indicating that the items were from Kake, and were created by members of the Tlingit tribe.

Determinations Made by George Fox University

Officials of George Fox University have determined that:

- Pursuant to 25 U.S.C. 3001(3)(C), the 26 cultural items described above are specific ceremonial objects needed by traditional Native American religious leaders for the practice of traditional Native American religions by their present-day adherents.
- Pursuant to 25 U.S.C. 3001(3)(D), the 26 cultural items described above have ongoing historical, traditional, or cultural importance central to the Native American group or culture itself, rather than property owned by an individual.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the sacred objects and objects of cultural patrimony, and the Organized Village of Kake.

Additional Requestors and Disposition

Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to claim these cultural items should submit a written request with information in support of the claim to Rachel Thomas, George Fox University, 414 N Meridian #6109, Newberg, OR 97132, telephone (503) 554–2415, email *rthomas@georgefox.edu,* by March 11, 2019. After that date, if no additional claimants have come forward, transfer of control of the sacred objects and objects of cultural patrimony to the Organized Village of Kake may proceed.

The George Fox University is responsible for notifying the Metlakatla Indian Community, Annette Island River Reserve; Native Village of Eyak (Cordova); Native Village of Kotzebue; Native Village of Selawik; Native Village of Shishmaref; Noorvick Native Community; Organized Village of Kake; and the Sitka Tribe of Alaska that this notice has been published.

Dated: December 11, 2018.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2019–01632 Filed 2–7–19; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0027161; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Pueblo Grande Museum, Phoenix, AZ

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The Pueblo Grande Museum has completed an inventory of human remains and associated funerary objects, in consultation with the appropriate Indian Tribes or Native Hawaiian organizations, and has determined that there is a cultural affiliation between the human remains and associated funerary objects and present-day Indian Tribes or Native Hawaiian organizations. Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request to the Pueblo Grande Museum. If no additional requestors come forward, transfer of control of the human remains and associated funerary objects to the lineal descendants, Indian Tribes, or Native Hawaiian organizations stated in this notice may proceed.

DATES: Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to the Pueblo Grande Museum at the address in this notice by March 11, 2019.

ADDRESSES: Lindsey Vogel-Teeter, Pueblo Grande Museum, 4619 E Washington Steet, Phoenix, AZ 85331, telephone (602) 495–0901, email *lindsey.vogel-teeter@phoenix.gov.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects under the control of the Pueblo Grande Museum, Phoenix, AZ. The human remains and associated funerary objects were removed from Greenlee County, AZ.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains was made by the Pueblo Grande Museum professional staff in consultation with representatives of the Hopi Tribe of Arizona; Pueblo of Acoma, New Mexico; and the Zuni Tribe of the Zuni Reservation, New Mexico (hereafter referred to as ''The Tribes'').

History and Description of the Remains

At an unknown date, human remains representing, at minimum, one individual were removed from the Double Circle Ranch near Eagle Creek in Greenlee County, AZ, by an unknown collector. In 1986, the human remains and associated funerary objects were identified in the collections of the Arizona Museum, which later became the Phoenix Museum of History. On September 10, 2009, the human remains and associated funerary objects were transferred from the Phoenix Museum of History (which closed in 2009) to the Pueblo Grande Museum. No known individual was identified. The fragmentary and cremated human remains belong to an adult, and are possibly male. The two associated funerary objects include an Alameda Brown ware ceramic jar and a red ware sherd. Alameda Brown ware dates between A.D. 700 and 1300. Based on the collecting location and associated funerary object type, these human remains are likely from the Mogollon archeological culture, which is Ancestral Puebloan.

Cultural continuity between Ancestral Puebloans and modern day Puebloan tribes is demonstrated by geographical, archeological, historical, architectural, and oral traditional evidence.

The Hopi Tribe of Arizona considers all of Arizona to be within traditional Hopi lands or within areas where Hopi

clans migrated in the past. Oral traditions and material culture demonstrate continuity between the prehistoric Mogollon archeological culture and the Hopi people.

The Pueblo of Acoma, New Mexico and the Zuni Tribe of the Zuni Reservation, New Mexico, are also affiliated with the Mogollon archeological culture.

Determinations Made by the Pueblo Grande Museum

Officials of the Pueblo Grande Museum have determined that:

• Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of one individual of Native American ancestry.

• Pursuant to 25 U.S.C. 3001(3)(A), the two objects described in this notice are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony.

• Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and associated funerary objects and The Tribes.

Additional Requestors and Disposition

Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to Lindsey Vogel-Teeter, Pueblo Grande Museum, 4619 E Washington Street, Phoenix, AZ 85331, telephone (602) 495–0901, *email lindsey.vogel-teeter@phoenix.gov,* by March 11, 2019. After that date, if no additional requestors have come forward, transfer of control of the human remains and associated funerary objects to The Tribes may proceed.

The Pueblo Grande Museum is responsible for notifying The Tribes that this notice has been published.

Dated: December 11, 2018.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2019–01625 Filed 2–7–19; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

Bureau of Ocean Energy Management

[Docket No. BOEM–2018–0069]

Notice of Rescheduled Public Hearings and Reopening of the Public Comment Period for the Draft Environmental Impact Statement for Vineyard Wind LLC's Proposed Wind Energy Facility Offshore Massachusetts

AGENCY: Bureau of Ocean Energy Management, Interior.

ACTION: Notice to reschedule public hearings and reopen public comment period.

SUMMARY: The Bureau of Ocean Energy Management (BOEM), as the National Environmental Policy Act (NEPA) Federal lead agency, has rescheduled the public hearings and reopened the public comment period for the Draft Environmental Impact Statement (EIS) for the Construction and Operation Plan (COP) submitted by Vineyard Wind LLC (Vineyard Wind).

DATES: The comment period for the Draft EIS that was first opened when BOEM published a Notice of Availability of the Draft EIS on December 7, 2018, (83 FR 63184) is being reopened. Comments should be submitted no later than February 22, 2019. BOEM's public hearings have been rescheduled and will be held at the following dates and times. Please see the **ADDRESSES** section for the specific locations.

▪ Nantucket, Massachusetts: Monday, February 11, 2019.

▪ Vineyard Haven, Massachusetts: Tuesday, February 12, 2019.

▪ Hyannis, Massachusetts: Wednesday, February 13, 2019.

▪ New Bedford, Massachusetts: Thursday, February 14, 2019.

▪ Narragansett, Rhode Island: Friday, February 15, 2019.

ADDRESSES: The Draft EIS and detailed information about the proposed wind energy facility, including the COP, can be found on BOEM's website at: *https://www.boem.gov/Vineyard-Wind/.* Comments can be submitted in any of the following ways:

• In written form, delivered by U.S. Postal Service or other delivery service, enclosed in an envelope labeled ''Vineyard Wind COP Draft EIS'' and addressed to Program Manager, Office of Renewable Energy, Bureau of Ocean Energy Management, 45600 Woodland Road, Sterling, Virginia 20166. Comments must be received or postmarked no later than February 22, 2019; or

• *Through the regulations.gov web portal:* Navigate to htttp://*www.regulations.gov* and search for Docket No. BOEM–2018–0069. Click on the ''Comment Now!'' button to the right of the document link. Enter your information and comment, then click ''Submit.''

Since publication in December 2018, copies of the Draft EIS have been and are still available for public review on BOEM's website and at the following locations:

Massachusetts

Aquinnah Public Library, Aquinnah
Boston Public Library, Boston
Chilmark Free Public Library, Chilmark
Edgartown Public Library, Edgartown
Hyannis Public Library, Hyannis
New Bedford Free Public Library, New Bedford
Oak Bluffs Public Library, Oak Bluffs
Nantucket Atheneum, Nantucket
Vineyard Haven Public Library, Vineyard Haven
West Tisbury Free Public Library, Vineyard Haven
Woods Hole Public Library, Woods Hole

Rhode Island

Maury Loontjens Memorial Library, Narragansett

The public hearings for the Draft EIS for the Vineyard Wind COP have been rescheduled and will be held at the following places and times.

▪ Nantucket, Massachusetts: Monday, February 11, 2019; Nantucket Atheneum, 1 India Street, Nantucket, Massachusetts 02554; Open House 5:00–7:30 p.m.; Presentation and Q&A 6:00 p.m.

▪ Vineyard Haven, Massachusetts: Tuesday, February 12, 2019; Martha's Vineyard Hebrew Center, 130 Center Street, Vineyard Haven, Massachusetts 02568; Open House 5:00–8:00 p.m.; Presentation and Q&A 6:00 p.m.

▪ Hyannis, Massachusetts: Wednesday, February 13, 2019; Double Tree Hotel, Cape Cod Room, 287 Iyannough Road, Hyannis, Massachusetts 02601; Open House 5:00–8:00 p.m.; Presentation and Q&A 6:00 p.m.

▪ New Bedford, Massachusetts: Thursday, February 14, 2019; Fairfield Inn and Suites Waypoint Event Center, 185 MacArthur Drive, New Bedford, Massachusetts 02740; Open House 5:00–8:00 p.m.; Presentation and Q&A 6:00 p.m.

▪ Narragansett, Rhode Island: Friday, February 15, 2019; Narragansett Community Center, 53 Mumford Road, Narragansett, RI 02882; Open House 5:00–8:00 p.m.; Presentation and Q&A 6:00 p.m.

FOR FURTHER INFORMATION CONTACT: For information on the Vineyard Wind COP

Draft EIS please contact Michelle Morin, BOEM Office of Renewable Energy Programs, 45600 Woodland Road, Sterling, Virginia 20166, (703) 787–1722 or *michelle.morin@boem.gov.*

BOEM does not consider anonymous comments. Please include your name and address as part of your submittal. BOEM makes all comments, including the name and addresses of respondents, available for public review during regular business hours. Individual respondents may request that BOEM withhold their names or addresses from the public record; however, BOEM cannot guarantee that it will be able to do so. If you wish your name or address to be withheld, you must state your preference prominently at the beginning of your comment. All submissions from organizations or businesses and from individuals identifying themselves as representatives or officials of organizations or businesses will be made available for public inspection in their entirety.

Authority: This notice was prepared pursuant to NEPA and implementing regulations at 40 CFR 1506.6 and 43 CFR 46.435.

Dated: February 5, 2019.

William Yancey Brown,

Chief Environmental Officer, Bureau of Ocean Energy Management.

[FR Doc. 2019–01705 Filed 2–7–19; 8:45 am]

BILLING CODE 4310–MR–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–488 and 731–TA–1199–1200 (Review)]

Certain Large Residential Washers From Korea and Mexico; Revised Schedule for Full Five-Year Reviews

AGENCY: United States International Trade Commission.

ACTION: Notice.

DATES: February 4, 2019.

FOR FURTHER INFORMATION CONTACT: Nathanael Comly (202–205–3174), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*https://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION: On September 7, 2018, the Commission established a schedule for the conduct of the full five-year reviews (83 FR 46757, September 14, 2018). Due to the lapse in appropriations and ensuing cessation of Commission operations, the Commission is revising its schedule.

The Commission's revised dates in the schedule are as follows: Deadline for filing prehearing briefs is February 12, 2019; requests to appear at the hearing should be filed on or before February 14, 2019; prehearing conference to be held, if deemed necessary, is on February 20, 2019; the hearing is on Thursday, February 21, 2019 beginning at 9:30 a.m.; the deadline for filing posthearing briefs is March 1, 2019; any person who has not entered an appearance as a party to the reviews may submit a written statement of information pertinent to the subject of the reviews on or before March 1, 2019; final release of information is on March 22, 2019; and party final comments are due on March 26, 2019.

For further information concerning these reviews, see the Commission's notice cited above and the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

Authority: These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

By order of the Commission.

Issued: February 5, 2019.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2019–01634 Filed 2–7–19; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–592 and 731–TA–1400 (Final)]

Plastic Decorative Ribbon From China; Revised Schedule for Final Phase Investigations

AGENCY: United States International Trade Commission.

ACTION: Notice.

DATES: February 4, 2019.

FOR FURTHER INFORMATION CONTACT: Calvin Chang (202–205–3062), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*https://www.usitc.gov*). The public record for these investigations may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION: On August 24, 2018, the Commission established a schedule for the final phase of these antidumping and countervailing duty investigations (83 FR 44302, August 30, 2018). Due to the lapse in appropriations and ensuing cessation of Commission operations, the Commission is revising its schedule.

The Commission's revised dates in the schedule are as follows: Final release of information is on February 19, 2019; and final party comments are due on February 21, 2019.

For further information concerning these investigations, see the Commission's notice cited above and the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

Authority: These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.21 of the Commission's rules.

By order of the Commission.

Issued: February 4, 2019.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2019–01569 Filed 2–7–19; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–486 and 731–TA–1195–1196 (Review)]

Utility Scale Wind Towers From China and Vietnam; Revised Schedule for Full Five-Year Reviews

AGENCY: United States International Trade Commission.

ACTION: Notice.

DATES: February 4, 2019.

FOR FURTHER INFORMATION CONTACT: Keysha Martinez (202–205–2136), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*https://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION: On September 7, 2018, the Commission established a schedule for the conduct of the full five-year reviews (83 FR 46516, September 13, 2018). Due to the lapse in appropriations and ensuing cessation of Commission operations, the Commission is revising its schedule.

The Commission's revised dates in the schedule are as follows: Deadline for filing prehearing briefs is February 14, 2019; requests to appear at the hearing should be filed on or before February 21, 2019; the prehearing conference, if necessary, is on February 25, 2019; the hearing is on Thursday, February 28, 2019 beginning at 9:30 a.m.; the deadline for filing posthearing briefs is March 7, 2019; any person who has not entered an appearance as a party to the reviews may submit a written statement of information pertinent to the subject of the reviews on or before March 7, 2019; final release of information is on April 1, 2019; and final party comments are due on April 4, 2019.

For further information concerning these reviews, see the Commission's notice cited above and the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

Authority: These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

By order of the Commission.
Issued: February 4, 2019.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2019–01570 Filed 2–7–19; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

Notice of Receipt of Complaint; Solicitation of Comments Relating to the Public Interest

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has received a complaint entitled *Certain Blood Separation and Cell Preparation Devices, DN 3361;* the Commission is soliciting comments on any public interest issues raised by the complaint or complainant's filing pursuant to the Commission's Rules of Practice and Procedure.

FOR FURTHER INFORMATION CONTACT: Lisa R. Barton, Secretary to the Commission, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205–2000. The public version of the complaint can be accessed on the Commission's Electronic Document Information System (EDIS) at *https://edis.usitc.gov,* and 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 at United States International Trade Commission (USITC) at *https://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's Electronic Document Information System (EDIS) at *https://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission has received a complaint and a submission pursuant to § 210.8(b) of the Commission's Rules of Practice and Procedure filed on behalf of RegenLab USA LLC on February 4, 2019. The complaint alleges violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain blood separation and cell preparation devices. The complaint names as respondents: Estar Technologies, Ltd. of Israel; and Eclipse MedCorp, LLC of The Colony, TX. The complainant requests that the Commission issue a limited exclusion order, cease and desist orders and impose a bond during the 60-day review period pursuant to 19 U.S.C. 1337(j).

Proposed respondents, other interested parties, and members of the public are invited to file comments, not to exceed five (5) pages in length, inclusive of attachments, on any public interest issues raised by the complaint or § 210.8(b) filing. Comments should address whether issuance of the relief specifically requested by the complainant in this investigation would affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers.

In particular, the Commission is interested in comments that:

(i) Explain how the articles potentially subject to the requested remedial orders are used in the United States;

(ii) identify any public health, safety, or welfare concerns in the United States relating to the requested remedial orders;

(iii) identify like or directly competitive articles that complainant, its licensees, or third parties make in the United States which could replace the subject articles if they were to be excluded;

(iv) indicate whether complainant, complainant's licensees, and/or third party suppliers have the capacity to replace the volume of articles potentially subject to the requested exclusion order and/or a cease and desist order within a commercially reasonable time; and

(v) explain how the requested remedial orders would impact United States consumers.

Written submissions on the public interest must be filed no later than by close of business, eight calendar days after the date of publication of this notice in the **Federal Register**. There will be further opportunities for comment on the public interest after the issuance of any final initial determination in this investigation. Any written submissions on other issues should be filed no later than by close of business nine calendar days after the date of publication of this notice in the **Federal Register**. Complainant may file a reply to any written submission no later than the date on which complainant's reply would be due under § 210.8(c)(2) of the Commission's Rules of Practice and Procedure (19 CFR 210.8(c)(2)).

Persons filing written submissions must file the original document electronically on or before the deadlines stated above and submit 8 true paper copies to the Office of the Secretary by noon the next day pursuant to § 210.4(f) of the Commission's Rules of Practice and Procedure (19 CFR 210.4(f)). Submissions should refer to the docket number (''Docket No. 3361) in a prominent place on the cover page and/or the first page. (*See* Handbook for Electronic Filing Procedures, Electronic Filing Procedures).[1] 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 must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All information, including confidential business information and documents for which confidential treatment is properly sought, submitted to the Commission for purposes of this Investigation may be disclosed to and used: (i) By the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel,[2] solely for cybersecurity purposes. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.[3]

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and of §§ 201.10 and 210.8(c) of the Commission's Rules of Practice and Procedure (19 CFR 201.10, 210.8(c)).

By order of the Commission.

Issued: February 4, 2019.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2019–01573 Filed 2–7–19; 8:45 am]

BILLING CODE 7020–02–P

[1] Handbook for Electronic Filing Procedures: *https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf.*

[2] All contract personnel will sign appropriate nondisclosure agreements.

[3] Electronic Document Information System (EDIS): *https://edis.usitc.gov.*

DEPARTMENT OF JUSTICE

[OMB Number 1105–0080]

Agency Information Collection Activities: Extension of a Currently Approved Collection: Annuity Broker Declaration Form

ACTION: 30-Day notice of information collection under review.

The Department of Justice (DOJ), Civil Division, will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for 30 days until March 11, 2019.

If you have questions concerning the collection, please contact James G. Touhey, Jr., Director, Torts Branch, Civil Division, U.S. Department of Justice, P.O. Box 888, Benjamin Franklin Station, Washington, DC 20044, Telephone: (202) 616–4400. Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agencies 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 through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Revision of a currently approved collection.

(2) *Title of the Form/Collection:* Annuity Broker Qualification Declaration Form.

(3) *Agency form number, if any, and the applicable component of the Department sponsoring the collection:* U.S. Department of Justice, Civil Division.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals. *Abstract:* This declaration is to be submitted annually to determine whether a broker meets the qualifications to be listed as an annuity broker pursuant to Section 111015(b) of Public Law 107–273.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* It is estimated that 300 respondents will complete the form annually within approximately 1 hour.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual burden hours to complete the certification form is 300 hours.

If additional information is required contact: Melody Braswell, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE, Suite 3E.405B, Washington, DC 20530.

Dated: February 5, 2019.

Melody Braswell,

Department Clearance Officer, PRA, U.S. Department of Justice.

[FR Doc. 2019–01621 Filed 2–7–19; 8:45 am]

BILLING CODE 4410–12–P

DEPARTMENT OF JUSTICE

[OMB Number 1122–0028]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Extension of a Currently Approved Collection

AGENCY: Office on Violence Against Women, Department of Justice.

ACTION: 30-Day notice.

SUMMARY: The Department of Justice, Office on Violence Against Women (OVW) will be submitting the following information collection request to the Office of Management and Budget

(OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

DATES: Comments are encouraged and will be accepted for 30 days until March 11, 2019.

FOR FURTHER INFORMATION CONTACT: Written comments and/or suggestion regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to Cathy Poston, Office on Violence Against Women, at 202–514–5430 or *Catherine.poston@usdoj.gov*.

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Semi-annual Progress Report for Children and Youth Exposed to Violence Program.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: 1122–0028. U.S. Department of Justice, Office on Violence Against Women.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* The affected public includes the approximately 25 grantees under the Consolidated Grant Program to Address Children and Youth Experiencing Domestic and Sexual Assault and Engage Men and Boys as Allies (hereafter referred to as the Consolidated Youth Program) enacted in the FY 2012–2018 appropriation acts, which consolidated four previously authorized and appropriated programs into one comprehensive program. The four programs included in these consolidations were: Services to Advocate for and Respond to Youth (Youth Services), Grants to Assist Children and Youth Exposed to Violence (CEV), Engaging Men and Youth in Preventing Domestic Violence (EMY), and Supporting Teens through Education and Prevention (STEP).

The Consolidated Youth Program supports projects designed to provide coordinated community responses that support child, youth and young adult victims through direct services, training, coordination and collaboration, effective intervention, treatment, response, and prevention strategies. The Consolidated Youth Program creates a unique opportunity for communities to increase collaboration among non-profit victim service providers; violence prevention, and children (0–10), youth (11–18), young adult (19–24) and men-serving organizations; tribes and tribal governments; local government agencies; schools; and programs that support men's role in combating sexual assault, domestic violence, dating violence and stalking.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* It is estimated that it will take the approximately 25 respondents (grantees from the Consolidated Youth Program) approximately one hour to complete a semi-annual progress report. The semi-annual progress report is divided into sections that pertain to the different types of activities in which grantees may engage. A Consolidated Youth Program grantee will only be required to complete the sections of the form that pertain to its own specific activities.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total annual hour burden to complete the data collection forms is 50 hours, that is 25 grantees completing a form twice a year with an estimated completion time for the form being one hour.

If additional information is required contact: Melody Braswell, Deputy Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE, 3E, 405B, Washington, DC 20530.

Dated: February 5, 2019.

Melody Braswell,

Department Clearance Officer, PRA, U.S. Department of Justice.

[FR Doc. 2019–01599 Filed 2–7–19; 8:45 am]

BILLING CODE 4410–FX–P

DEPARTMENT OF JUSTICE

[OMB Number 1121–New]

Agency Information Collection Activities; Proposed eCollection eComments Requested; New Collection

AGENCY: Bureau of Justice Assistance, Department of Justice.

ACTION: 60 Day notice.

SUMMARY: The Department of Justice, Bureau of Justice Assistance, is submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

DATES: The Department of Justice encourages public comment and will accept input until April 9, 2019.

FOR FURTHER INFORMATION CONTACT: If you have additional comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Gregory Torain, Policy Advisor, Office of Justice Programs, Bureau of Justice Assistance, 810 Seventh Street NW, Washington, DC 20531, *Gregory.Torain@usdoj.gov,* O) 202–305–4485.

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Bureau of Justice Assistance, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Evaluate whether and if so how the quality, utility, and clarity of the information to be collected can be enhanced; and

— Minimize the burden of the collection of information on those

who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

1. *Type of Information Collection:* New collection.

2. *The Title of the Form/Collection:* Annual Treatment Court Survey Series.

3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* [Insert Agency Form Number(s) from Question 8 on OMB Form 83–I, or if there is no form number insert ''There is no agency form number for this collection.'']. The applicable component within the Department of Justice is the Bureau of Justice Assistance.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:* The Local ATCS (N=4,172 courts), Tribal ATCS (N=117 courts), and State Coordinator (N=54 state/territory court coordinators) address the structure (*e.g.,* funding, personnel, partnerships), operation (*e.g.,* services offered, eligibility, decision making), and successes and challenges (*e.g.,* adherence to or deviance from best practices; racial, ethnic, and gender disparity or equity). The purpose of the ATCS is to develop a current portrait of treatment courts including needs and emerging trends.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* Overall, the ATCS Series uses three national population frames, totaling 4,343 courts and offices for court administration. Data collection uses these full population frames; samples from these population frames are not created for collection purposes. The national population frame for the Local ATCS contains each of the treatment courts across the country (N=4,172) with one respondent from each court, and the tribal courts across the country constitute the population frame for the Tribal ATCS (N=117) with one respondent from each court. All state/territory court coordinators (N=54) comprise the population frame for the State Coordinator ATCS. Estimated amounts of time to complete the surveys in the ATCS Series are 20 minutes for the State Coordinator ATCS, 35 minutes for the Local ATCs, and 35 for the Tribal ATCS.

6. *An estimate of the total public burden (in hours) associated with the collection:* Using the maximum response rate of 100%, the total annual hours for the ATCS Series is approximately 2,502 hours across the 4,343 courts in the population frames. Specifically, total completion time of the State Coordinator ATCS is an estimated 18 hours (20 minutes for each of the 54 potential respondents); the Local ATCS's total completion time is estimated at 2,433.67 hours (35 minutes for each of the 4,172 potential courts). The total time to complete the Tribal ATCS across the tribal population frame is 68.25 hours (35 minutes for each of the 117 tribal courts).

If additional information is required contact: Melody Braswell, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE, 3E.405A, Washington, DC 20530.

Dated: February 5, 2019.

Melody Braswell,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2019–01670 Filed 2–7–19; 8:45 am]

BILLING CODE 4410–18–P

LIBRARY OF CONGRESS

Copyright Royalty Board

[Consolidated Docket No. 16–CRB–0009 CD (2014–17)]

Distribution of Cable Royalty Funds

AGENCY: Copyright Royalty Board, Library of Congress.

ACTION: Notice announcing commencement of distribution proceeding with request for Petitions to Participate.

SUMMARY: The Copyright Royalty Judges (Judges) announce commencement of a proceeding to determine distribution of 2014, 2015, 2016, and 2017 royalties deposited with the Copyright Office under the statutory license for secondary transmissions by cable systems. The Judges also set the date by which all parties wishing to participate and share in the distribution of cable retransmission royalties for the years 2014 through 2017 must file a Petition to Participate and the accompanying $150 filing fee, if applicable. The Judges seek a single Petition to Participate from any entity intending to participate in the Allocation Phase or the Distribution Phase of this proceeding, or both Phases. ANY PARTY THAT FILED A PETITION TO PARTICIPATE IN ANY OF THE PROCEEDINGS CONSOLIDATED IN THIS PROCEEDING MUST NONETHELESS FILE A PETITION TO PARTICIPATE IN THIS CONSOLIDATED PROCEEDING. ANY PARTY THAT FAILS TO FILE A PETITION TO PARTICIPATE IN THIS CONSOLIDATED PROCEEDING BY THE TIME SET IN THIS NOTICE SHALL NOT BE A PARTICIPANT AT ANY STAGE OF THIS CONSOLIDATED PROCEEDING.

DATES: Petitions to Participate and the filing fee, if applicable, are due on or before March 11, 2019.

ADDRESSES: Interested claimants must submit petitions to participate and the filing fee, if applicable. Each petition to participate must identify the proceeding by docket number 16–CRB–0009 CD (2014–17). Participants must file using the CRB's electronic filing application, eCRB, at *https://app.crb.gov/.* Claimants without access to the internet may file using any of the following methods:

U.S. mail: Copyright Royalty Board, P.O. Box 70977, Washington, DC 20024–0977; or

Overnight service (only USPS Express Mail is acceptable): Copyright Royalty Board, P.O. Box 70977, Washington, DC 20024–0977; or

Commercial courier: Address package to: Copyright Royalty Board, Library of Congress, James Madison Memorial Building, LM–403, 101 Independence Avenue SE, Washington, DC 20559–6000. Deliver to: Congressional Courier Acceptance Site, 2nd Street NE and D Street NE, Washington, DC; or

Hand delivery: Library of Congress, James Madison Memorial Building, LM–401, 101 Independence Avenue SE, Washington, DC 20559–6000.

Instructions: Unless submitting online, claimants must submit an original, two paper copies, and an electronic version on a CD. All submissions must include the Copyright Royalty Board name and docket number. All submissions received will be posted without change on eCRB including any personal information provided.

Docket: For access to the docket to read background documents, go to eCRB, the Copyright Royalty Board's electronic filing and case management system, at *https://app.crb.gov/* and search for docket number 16–CRB–0009 CD (2014–17). To access documents not yet uploaded to eCRB (because it is a new system), go to the agency website at *https://www.crb.gov/* or contact the CRB Program Specialist.

FOR FURTHER INFORMATION CONTACT: Anita Blaine, CRB Program Specialist, by telephone at (202) 707–7658 or email at *crb@loc.gov.*

SUPPLEMENTARY INFORMATION:

Background

Twice each year, cable system operators must deposit with the Copyright Office royalties payable for the privilege of retransmitting by cable over-the-air television and radio broadcast signals. 17 U.S.C. 111. The Judges oversee distribution of the royalties to copyright owners whose works are included in the retransmissions and who have filed a timely claim for royalties. This notice announces the commencement of a proceeding under 17 U.S.C. 803(b)(1) for distribution of cable royalties deposited for transmissions made in 2014, 2015, 2016, and 2017.

ANY PARTY WISHING TO RECEIVE ROYALTIES PAYABLE FOR 2014 THROUGH 2017 MUST FILE A PETITION TO PARTICIPATE AT THIS TIME. THE JUDGES SHALL DEEM ANY PETITION TO PARTICIPATE FILED PURSUANT TO THIS NOTICE AS A PETITION TO PARTICIPATE IN BOTH THE ALLOCATION PHASE AND THE DISTRIBUTION PHASE OF THIS PROCEEDING. IN ORDER TO PARTICIPATE IN THE DISTRIBUTION PHASE, ALL PETITIONERS MUST PARTICIPATE FULLY AND IN GOOD FAITH IN THE ALLOCATION PHASE. IF AN INTERESTED PARTY FAILS TO FILE A PETITION TO PARTICIPATE IN RESPONSE TO THIS NOTICE, THAT PARTY SHALL NOT BE ELIGIBLE FOR DISTRIBUTION OF ROYALTY FUNDS FOR 2014 THROUGH 2017. ANY PARTY THAT FILED A PETITION TO PARTICIPATE IN ANY OF THE PROCEEDINGS CONSOLIDATED IN THIS PROCEEDING MUST NONETHELESS FILE A PETITION TO PARTICIPATE IN THIS CONSOLIDATED PROCEEDING.

The Judges will resolve all issues relating to distribution of cable royalty funds for 2014 through 2017 in this proceeding, Docket No. 16–CRB–0009 CD (2014–17). *See* 37 CFR 351.1(b)(2)

Commencement of Distribution Proceeding

As required by 17 U.S.C. 804(b)(8), the Judges gave notice of their intention to commence this consolidated proceeding in order to determine whether a controversy exists. *See* 83 FR 56106 (Nov. 9, 2018). The Judges received responses from 12 entities representing claimants to the royalty funds at issue. The responsive comments establish that controversies exist with respect to distribution of royalties in each year's fund. The Judges, therefore, commence this proceeding to determine appropriate allocation of the royalty funds among claimant groups and ultimate distribution of royalties to eligible claimants.

Petitions To Participate

Parties filing Petitions to Participate must comply with the requirements of § 351.1(b) of the Judges' regulations. In addition, each Petition to Participate must identify for each claim year, the name of each claimant, the corresponding claim number, an indication of whether the claim is an individual or joint claim, and the program category into which the claim may fall.

Any claimant whose claim does not exceed $1,000 in value and who includes a statement in its Petition to Participate that the claimant will not seek distribution of more than $1,000 may file the Petition to Participate without payment of the filing fee. 37 CFR 351.1(b)(4).

How To Submit Petitions To Participate

Interested parties with claims exceeding $1,000 must submit a filing fee of $150 with their Petition to Participate, or the Judges will reject the petition. THE COPYRIGHT ROYALTY BOARD WILL NOT ACCEPT CASH.

Parties filing online through eCRB must pay the filing fee, if applicable, by credit card using the payment portal on eCRB. Any party without access to the internet must pay the filing fee by check or money order made payable to the ''Copyright Royalty Board'' and mailed or delivered with its filed paper documents and CD as described in the **ADDRESSES** section above. If a check is returned for lack of sufficient funds, the Judges will dismiss the corresponding Petition to Participate.

Any participant that is an individual may represent herself or himself; all other participants must be represented by counsel. In accordance with 37 CFR 350.2, only attorneys who are members of the bar in one or more states or the District of Columbia and in good standing will be allowed to represent parties before the Copyright Royalty Judges. The Judges will address further procedural matters, including scheduling, after receiving Petitions to Participate.

Dated: January 3, 2019.

Suzanne M. Barnett,

Chief Copyright Royalty Judge.

[FR Doc. 2019–01571 Filed 2–7–19; 8:45 am]

BILLING CODE 1410–72–P

LIBRARY OF CONGRESS

Copyright Royalty Board

[Consolidated Docket No. 16–CRB–0010 SD (2014–17)]

Distribution of Satellite Royalty Funds

AGENCY: Copyright Royalty Board, Library of Congress.

ACTION: Notice announcing commencement of distribution proceeding with request for Petitions to Participate.

SUMMARY: The Copyright Royalty Judges (Judges) announce commencement of a proceeding to determine distribution of 2014, 2015, 2016, and 2017 royalties deposited with the Copyright Office under the statutory license for secondary transmissions satellite television services. The Judges also set the date by which all parties wishing to participate and share in the distribution of satellite retransmission royalties for the years 2014 through 2017 must file a Petition to Participate and the accompanying $150 filing fee, if applicable. The Judges seek a single Petition to Participate from any entity intending to participate in the Allocation Phase or the Distribution Phase of this proceeding, or both Phases. ANY PARTY THAT FILED A PETITION TO PARTICIPATE IN ANY OF THE PROCEEDINGS CONSOLIDATED IN THIS PROCEEDING MUST NONETHELESS FILE A PETITION TO PARTICIPATE IN THIS CONSOLIDATED PROCEEDING. ANY PARTY THAT FAILS TO FILE A PETITION TO PARTICIPATE IN THIS CONSOLIDATED PROCEEDING BY THE TIME SET IN THIS NOTICE SHALL NOT BE A PARTICIPANT AT ANY STAGE OF THIS CONSOLIDATED PROCEEDING.

DATES: Petitions to Participate and the filing fee, if applicable, are due on or before March 11, 2019.

ADDRESSES: Interested claimants must submit petitions to participate and the filing fee, if applicable. Each petition to participate must identify the proceeding by docket number 16–CRB–0010 SD (2014–17). Participants must file using the CRB's electronic filing application, eCRB, at *https://app.crb.gov/.* Claimants without access to the internet may file using any of the following methods:

U.S. mail: Copyright Royalty Board, P.O. Box 70977, Washington, DC 20024–0977; or

Overnight service (only USPS Express Mail is acceptable): Copyright Royalty Board, P.O. Box 70977, Washington, DC 20024–0977; or

Commercial courier: Address package to: Copyright Royalty Board, Library of Congress, James Madison Memorial Building, LM–403, 101 Independence Avenue SE, Washington, DC 20559–6000. Deliver to: Congressional Courier Acceptance Site, 2nd Street NE and D Street NE, Washington, DC; or

Hand delivery: Library of Congress, James Madison Memorial Building, LM–401, 101 Independence Avenue SE, Washington, DC 20559–6000.

Instructions: Unless submitting online, claimants must submit an original, two paper copies, and an electronic version on a CD. All submissions must include the Copyright Royalty Board name and docket number. All submissions received will be posted without change on eCRB including any personal information provided.

Docket: For access to the docket to read background documents, go to eCRB, the Copyright Royalty Board's electronic filing and case management system, at *https://app.crb.gov/* and search for docket number 16–CRB–0010 SD (2014–17). To access documents not yet uploaded to eCRB (because it is a new system), go to the agency website at *https://www.crb.gov/* or contact the CRB Program Specialist.

FOR FURTHER INFORMATION CONTACT: Anita Blaine, CRB Program Specialist, by telephone at (202) 707–7658 or email at *crb@loc.gov.*

SUPPLEMENTARY INFORMATION:

Background

Twice each year, satellite television services must deposit with the Copyright Office royalties payable for the privilege of retransmitting by satellite over-the-air television and radio broadcast signals. 17 U.S.C. 119. The Judges oversee distribution of the royalties to copyright owners whose works are included in the retransmissions and who have filed a timely claim for royalties. This notice announces the commencement of a proceeding under 17 U.S.C. 803(b)(1) for distribution of satellite royalties deposited for transmissions made in 2014, 2015, 2016, and 2017.

ANY PARTY WISHING TO RECEIVE ROYALTIES PAYABLE FOR 2014 THROUGH 2017 MUST FILE A PETITION TO PARTICIPATE AT THIS TIME. THE JUDGES SHALL DEEM ANY PETITION TO PARTICIPATE FILED PURSUANT TO THIS NOTICE AS A PETITION TO PARTICIPATE IN BOTH THE ALLOCATION PHASE AND THE DISTRIBUTION PHASE OF THIS PROCEEDING. IN ORDER TO PARTICIPATE IN THE DISTRIBUTION PHASE, ALL PETITIONERS MUST PARTICIPATE FULLY AND IN GOOD FAITH IN THE ALLOCATION PHASE. IF AN INTERESTED PARTY FAILS TO FILE A PETITION TO PARTICIPATE IN RESPONSE TO THIS NOTICE, THAT PARTY SHALL NOT BE ELIGIBLE FOR DISTRIBUTION OF ROYALTY FUNDS FOR 2014 THROUGH 2017. ANY PARTY THAT FILED A PETITION TO PARTICIPATE IN ANY OF THE PROCEEDINGS CONSOLIDATED IN THIS PROCEEDING MUST NONETHELESS FILE A PETITION TO PARTICIPATE IN THIS CONSOLIDATED PROCEEDING.

The Judges will resolve all issues relating to distribution of satellite royalty funds for 2014 through 2017 in this proceeding, Docket No. 16–CRB–0010 SD (2014–17). *See* 37 CFR 351.1(b)(2)

Commencement of Distribution Proceeding

As required by 17 U.S.C. 804(b)(8), the Judges gave notice of their intention to commence this consolidated proceeding in order to determine whether a controversy exists. *See* 83 FR 56106 (Nov. 9, 2018). The Judges received responses from 12 entities representing claimants to the royalty funds at issue. The responsive comments establish that controversies exist with respect to distribution of royalties in each year's fund. The Judges, therefore, commence this proceeding to determine appropriate allocation of the royalty funds among claimant groups and ultimate distribution of royalties to eligible claimants.

Petitions To Participate

Parties filing Petitions to Participate must comply with the requirements of § 351.1(b) of the Judges' regulations. In addition, each Petition to Participate must identify for each claim year, the name of each claimant, the corresponding claim number, an indication of whether the claim is an individual or joint claim, and the program category into which the claim may fall.

Any claimant whose claim does not exceed $1,000 in value and who includes a statement in its Petition to Participate that the claimant will not seek distribution of more than $1,000 may file the Petition to Participate without payment of the filing fee. 37 CFR 351.1(b)(4).

How To Submit Petitions To Participate

Interested parties with claims exceeding $1,000 must submit a filing fee of $150 with their Petition to Participate, or the Judges will reject the petition. THE COPYRIGHT ROYALTY BOARD WILL NOT ACCEPT CASH.

Parties filing online through eCRB must pay the filing fee, if applicable, by credit card using the payment portal on eCRB. Any party without access to the internet must pay the filing fee by check or money order made payable to the ''Copyright Royalty Board'' and mailed or delivered with its filed paper documents and CD as described in the **ADDRESSES** section above. If a check is returned for lack of sufficient funds, the Judges will dismiss the corresponding Petition to Participate.

Any participant that is an individual may represent herself or himself; all other participants must be represented by counsel. In accordance with 37 CFR 350.2, only attorneys who are members of the bar in one or more states or the District of Columbia and in good standing will be allowed to represent parties before the Copyright Royalty Judges. The Judges will address further procedural matters, including scheduling, after receiving Petitions to Participate.

Dated: January 3, 2019.

Suzanne M. Barnett,

Chief Copyright Royalty Judge.

[FR Doc. 2019–01572 Filed 2–7–19; 8:45 am]

BILLING CODE 1410–72–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts

Arts Advisory Panel Meetings

AGENCY: National Endowment for the Arts.

ACTION: Notice of meetings.

SUMMARY: Pursuant to the Federal Advisory Committee Act, as amended, notice is hereby given that 3 meetings of the Arts Advisory Panel to the National Council on the Arts will be held by teleconference.

DATES: See the **SUPPLEMENTARY INFORMATION** section for individual meeting times and dates. All meetings are Eastern time and ending times are approximate:

ADDRESSES: National Endowment for the Arts, Constitution Center, 400 7th St. SW, Washington DC 20506.

FOR FURTHER INFORMATION CONTACT: Further information with reference to these meetings can be obtained from Ms. Sherry Hale, Office of Guidelines & Panel Operations, National Endowment for the Arts, Washington, DC 20506 *hales@arts.gov,* or call 202/682–5696.

SUPPLEMENTARY INFORMATION: The closed portions of meetings are for the purpose of Panel review, discussion, evaluation, and recommendations on financial assistance under the National Foundation on the Arts and the

Humanities Act of 1965, as amended, including information given in confidence to the agency. In accordance with the determination of the Chairman of July 5, 2016, these sessions will be closed to the public pursuant to subsection (c)(6) of section 552b of title 5, United States Code.

The Upcoming Meetings Are

Jazz Masters Fellowships (review of applications): This meeting will be closed.

Date and time: February 19, 2019; 2:00 p.m. to 3:00 p.m.

Jazz Masters Fellowships (review of applications): This meeting will be closed.

Date and time: February 19, 2019; 3:00 p.m. to 4:00 p.m.

National Heritage Fellowships (review of applications): This meeting will be closed.

Date and time: February 28, 2019; 1:00 p.m. to 4:00 p.m.

Dated: February 4, 2019.

Sherry Hale,

Staff Assistant, National Endowment for the Arts.

[FR Doc. 2019–01543 Filed 2–7–19; 8:45 am]

BILLING CODE 4537–01–P

NATIONAL SCIENCE FOUNDATION (NSF)

Sunshine Act Meetings; National Science Board

The National Science Board (NSB), pursuant to NSF regulations (45 CFR part 614), the National Science Foundation Act, as amended, (42 U.S.C. 1862n–5), and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice of the scheduling of meetings for the transaction of NSB business as follows:

TIME AND DATE: Tuesday, February 12, 2019 from 8:00 a.m. to 5:15 p.m. EST.

PLACE: These meetings will be held at the NSF headquarters, 2415 Eisenhower Avenue, Alexandria, VA 22314. Meetings are held in the boardroom on the 2nd Floor. The public may observe public meetings held in the boardroom. All visitors must contact the Board Office (call 703–292–7000 or send an email to *nationalsciencebrd@nsf.gov*) at least 24 hours prior to the meeting and provide your name and organizational affiliation. Visitors must report to the NSF visitor's desk in the building lobby to receive a visitor's badge.

STATUS: Some of these meetings will be open to the public. Others will be closed to the public. See full description below.

MATTERS TO BE CONSIDERED:

Tuesday, February 12, 2019

Plenary Board Meeting

Open session: 8:00–9:30 a.m.

- NSB Chair's Opening Remarks
- NSB Vision Presentation
  - Dr. Vinton Cerf
  - Dr. Anita Jones
  - Dr. Barry Barish
- NSF Director's Remarks
- Summary of Activities

Committee on Awards and Facilities (A&F)

Closed Session: 9:30 a.m.–12:00 noon

- Committee Chair's Opening Remarks
- Approval of Prior Minutes
- Action Item: Antarctic Infrastructure Modernization for Science (AIMS)
- Action Item: International Ocean Discovery Program (IODP)
- Update on Cornell High Energy Synchrotron Source
- Context Item: Green Bank Observatory
- Update on National Ecological Observatory Network

Plenary Board

Open Session: 1:00–2:00 p.m.

- Chair's Opening Remarks and Introductions
  - Mr. Chris Liddell, White House Deputy Chief of Staff for Policy Coordination

Plenary Board

Closed Session: 2:00–3:15 p.m.

- Chair's Opening Remarks
- Director's Remarks
  - Impact of Lapse in Appropriations
- Approval of Prior Minutes
- Closed Committee Reports
- Vote: International Ocean Discovery Program Operations and Maintenance
- Vote: Antarctic Infrastructure Modernization for Science

Plenary Board (Executive)

Closed Session: 3:15–3:30 p.m.

- Chair's Opening Remarks
- Approval of Prior Minutes
- Director's Remarks
  - Senior Personnel Update
  - Waterman Award Update

Committee on Strategy (CS)

Closed Session: 3:45–4:30 p.m.

- Committee Chair's Opening Remarks
- Approval of Prior Minutes
- FY 2019 and 2020 Budget Updates and FY 2020 Passback

Plenary Board

Open Session: 4:30–5:15 p.m.

- Chair's Opening Remarks
  - New Member Swearing-in
- Director's Remarks
  - Senior Executive Updates
  - Office of Legislative and Public Affairs Update
- Approval of Prior Minutes
- Committee Chair Updates
  - *Science and Engineering Indicators* Update
  - Merit Review Report Update
  - Awards & Facilities Retreat Update
  - NSB One-Pager on *Foreign Born Students and Workers in the U.S. S&E Enterprise*
  - Committee on Strategy Update
  - Skilled Technical Workforce Update
- Vote: OIG Semiannual Report and Management Response
- Chair's Closing Remarks

Meeting Adjourns: 5:15 p.m.

MEETINGS THAT ARE OPEN TO THE PUBLIC:

Wednesday, November 28, 2018

8:00–9:30 a.m. Plenary NSB
1:00–2:00 p.m. Plenary
4:30–5:15 p.m. Plenary

MEETINGS THAT ARE CLOSED TO THE PUBLIC:

Wednesday, November 28, 2018

9:30 a.m.–12:00 noon (A&F)
2:00–3:15 p.m. Plenary
3:15–3:30 p.m. Plenary Executive
3:45–4:30 p.m. (CS)

CONTACT PERSONS FOR MORE INFORMATION: The NSB Office contact is Brad Gutierrez, *bgutierr@nsf.gov,* 703–292–7000. The NSB Public Affairs contact is Nadine Lymn, *nlymn@nsf.gov,* 703–292–2490.

SUPPLEMENTAL INFORMATION: Public meetings and public portions of meetings held in the 2nd Floor boardroom will be webcast. To view these meetings, go to: *http://www.tvworldwide.com/events/nsf/190212/* follow the instructions. The public may observe public meetings held in the boardroom. The address is 2415 Eisenhower Avenue, Alexandria, VA 22314.

Please refer to the NSB website for additional information. You will find any updated meeting information and schedule updates (time, place, subject matter, or status of meeting) at *https://www.nsf.gov/nsb/meetings/notices.jsp#sunshine.*

The NSB provides some flexibility around meeting times. After the first meeting of each day, actual meeting start and end times will be allowed to vary by no more than 15 minutes in either direction. As an example, if a 10:00 meeting finishes at 10:45, the meeting scheduled to begin at 11:00

may begin at 10:45 instead. Similarly, the 10:00 meeting may be allowed to run over by as much as 15 minutes if the Chair decides the extra time is warranted. The next meeting would start no later than 11:15. Arrive at the NSB boardroom or check the webcast 15 minutes before the scheduled start time of the meeting you wish to observe.

Chris Blair,

Executive Assistant to the National Science Board Office.

[FR Doc. 2019–01762 Filed 2–6–19; 11:15 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[[NRC–2019–0041]

Instrument Sensing Lines

AGENCY: Nuclear Regulatory Commission.

ACTION: Draft regulatory guide; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing for public comment draft regulatory guide (DG), DG–1352, ''Instrument Sensing Lines.'' DG–1352 describes an approach that is acceptable to the staff of the NRC to meet regulatory requirements for instrument sensing lines in nuclear power plants. The DG would endorse, with certain clarifications, standards that were updated and corrected subsequent to the last time the NRC endorsed them. More information on updates can be found in the ''Additional Information'' section below.

DATES: Submit comments by April 9, 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. Although a time limit is given, comments and suggestions in connection with items for inclusion in guides currently being developed or improvements in all published guides are encouraged at any time.

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–2019–0041. Address questions about NRC dockets to Krupskaya Castellon; telephone: 301–287–9122; email: *Krupskaya.Castellon@nrc.gov.* For technical questions, contact the individual(s) listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *Mail comments to:* Office of Administration, Mail Stop: TWFN–7A06M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN: Program Management, Announcements and Editing Staff.

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

FOR FURTHER INFORMATION CONTACT: David Dawood, Telephone: 301–415–2389, email: *David.Dawood@nrc.gov,* Yaguang, Yang, Telephone: 301–415–0655, email: *Yaguang.Yang@nrc.gov,* and Michael Eudy, Telephone: 301–415–3104, email: *Michael.Eudy@nrc.gov.* All are staff members of the Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2019–0041 when contacting the NRC about the availability of information regarding this action. You may obtain publically-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–2019–0041.
- *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.* DG–1352 and the Regulatory Analysis are available in ADAMS under Accession No. ML18158A303 and ML18158A301 respectfully.
- *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–2019–0041 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 posts all comment submissions at *http://www.regulations.gov* as well as enters the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

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

II. Additional Information

The NRC is issuing for public comment a DG in the NRC's ''Regulatory Guide'' series. This series was developed to describe and make available to the public information regarding methods that are acceptable to the NRC staff for implementing specific parts of the NRC's regulations, techniques that the staff uses in evaluating specific issues or postulated events, and data that the staff needs in its review of applications for permits and licenses.

The DG, entitled, ''Instrument Sensing Lines,'' is a proposed revision temporarily identified by its task number, DG–1352. DG–1352 is proposed revision 2 of RG 1.151, ''Instrument Sensing Line.'' DG–1352 describes an approach that is acceptable to the staff of the NRC to meet regulatory requirements for instrument sensing lines in nuclear power plants. It endorses, with certain clarifying regulatory positions, American National Standards Institute/International Society of Automation (ANSI/ISA)–67.02.01–2014, ''Nuclear Safety-Related Instrument Sensing Line Piping and Tubing Standard for Use in Nuclear Power Plants.'' The revision of ANSI/ISA–67.02.01 previously endorsed by the NRC was revised by ANSI/ISA in 2014. This DG also references the International Organization for Standardization (ISO) standard ISO 2186–2007, ''Fluid Flow in Closed Conduits—Connections for Pressure Signal Transmissions between Primary and Secondary Elements.'' In addition, this DG incorporates recent operating experience, as described in NRC Information Notice (IN) 2013–12, ''Improperly Sloped Instrument Sensing Lines,'' dated July 3, 2013.

III. Backfitting and Issue Finality

This DG may be applied to applications for operating licenses under title 10 of the *Code of Federal*

Regulations (10 CFR) part 50 or combined licenses under 10 CFR part 52 docketed by the NRC as of the date of issuance of the final regulatory guide, as well as future applications submitted after the issuance of the regulatory guide. Such action would not constitute backfitting as defined in the 10 CFR 50.109 or be otherwise inconsistent with the applicable issue finality provision in 10 CFR part 52, inasmuch as such applicants or potential applicants, with certain exceptions, are not within the scope of entities that are the subject of the Backfit Rule or an issue finality provision in part 52. The exceptions are whenever an applicant references a part 50 or part 52 license (*e.g.,* a construction permit) and/or regulatory approval (*e.g.,* a design certification or a standard design approval) with specified backfitting or issue finality provisions.

Dated at Rockville, Maryland, this 4th day of February, 2019.

For the Nuclear Regulatory Commission.

Thomas H. Boyce,

Chief, Regulatory Guidance and Generic Issues Branch, Division of Engineering, Office of Nuclear Regulatory Research.

[FR Doc. 2019–01556 Filed 2–7–19; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 40–8907; NRC–2019–0026]

United Nuclear Corporation (UNC) Church Rock Project

AGENCY: Nuclear Regulatory Commission.

ACTION: Intent to prepare an environmental impact statement (EIS) and conduct a scoping process; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) received a license application by letter dated September 24, 2018, from United Nuclear Corporation (UNC). By this application, UNC is requesting authorization to amend its license (SUA–1475) to excavate approximately 1 million cubic yards (CY) of mine spoil from the Northeast Church Rock Mine Site and dispose of it at the existing mill site in Church Rock, New Mexico (the proposed action). The NRC staff will prepare an EIS to document the potential environmental impacts from the proposed action and reasonable alternatives. As part of the EIS development process, the NRC is seeking comments on the scope of its environmental review.

DATES: Comments must be filed by April 19, 2019. Comments received after this date will be considered, if it is practical to do so, but the Commission is able to ensure consideration only for comments received on or before this date.

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–2019–0026. 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:* Office of Administration, Mail Stop: TWFN–7–A60M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN: Program Management, Announcements and Editing Staff.
- *Email comments to: UNC-ChurchRockEIS.resource@nrc.gov*.

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: Ashley Waldron, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–7317; email: *Ashley.Waldron@nrc.gov*.

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2019–0026 when contacting the NRC about the availability of information regarding this document. You may obtain publicly-available information related to this action by the following methods:

- *Federal Rulemaking Website:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2019–0026.
- *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.* In addition, for the convenience of the reader, instructions about obtaining materials referenced in this document are provided in a table in Section VII of this notice entitled, Availability of Documents.
- *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.
- *Project web page:* Information related to the UNC Church Rock project can be accessed on the NRC's project web page at: *https://www.nrc.gov/info-finder/decommissioning/uranium/united-nuclear-corporation-unc-.html.*

B. Submitting Comments

Please include Docket ID NRC–2019–0026 in your comment submission. Written comments may be submitted during the scoping period as described in the **ADDRESSES** section of the document.

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 posts all comment submissions at *http://www.regulations.gov* as well as entering the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

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

II. Background

By letter dated September 24, 2018, UNC, a wholly owned, indirect subsidiary of General Electric (GE) submitted an application to amend its license SUA–1475. UNC is seeking to move approximately 1,000,000 CY of mine spoils from the Northeast Church Rock Mine Site (Mine Site) onto the Church Rock Mill Site (mill site) in McKinley County, New Mexico.

The NRC staff has completed an acceptance review of UNC Church Rock license amendment application. By email dated January 4, 2019, the NRC notified UNC that the staff determined the application contains sufficient information for the NRC to conduct a detailed technical review (ADAMS Package Accession No. ML18360A424).

The applicant's environmental report (ER) can be found under ADAMS Accession No. ML18267A387.

The purpose of this notice is to: (1) Inform the public that the NRC staff will prepare an EIS as part of its review of UNC Church Rock license amendment application in accordance with title 10 of the *Code of Federal Regulations* (10 CFR) Part 51 ''Environmental Protection Regulations for Domestic Licensing and Related Regulatory Functions,'' and (2) provide the public with an opportunity to participate in the environmental scoping process as defined in 10 CFR 51.29. In addition, as outlined in 36 CFR 800.8, ''Coordination with the National Environmental Policy Act,'' the NRC plans to coordinate compliance with Section 106 of the National Historic Preservation Act in meeting the requirements of the National Environmental Policy Act of 1969 (NEPA). The NRC staff also will document its compliance with other applicable Federal statutes, such as the Endangered Species Act, in the EIS.

III. Environmental Review

The EIS prepared by the NRC staff will examine the potential environmental impacts of the proposed action. The NRC staff will evaluate the potential impacts to various environmental resources, such as air quality, surface and ground water, transportation, geology and soils, and socioeconomics. The EIS will analyze potential impacts of UNC's proposal on historic and cultural resources and on threatened and endangered species. Additionally, the economic, technical, and other benefits and costs of the proposed action and alternatives will be considered in the EIS.

The NRC staff will also conduct a safety review to determine UNC's compliance with NRC's regulations, including 10 CFR part 20, ''Standards for Protection Against Radiation'' and 10 CFR part 40, ''Domestic Licensing of Source Material.'' The NRC staff's findings would be published in a safety evaluation report.

IV. Church Rock Mill Site

The NRC's Federal action is to either grant or deny UNC's license amendment request. If the NRC approves UNC's request, then UNC could proceed with the proposed project—as described in its application and summarized here.

UNC proposes to excavate approximately 1,000,000 CY of mine spoils from the Northeast Church Rock Mine site (mine site) onto the adjacent Church Rock Mill Site (mill site). Both the mine and mill sites are located in McKinley County, New Mexico. The former uranium-ore processing mill is licensed under NRC license SUA–1475. A byproduct material tailings impoundment currently exists within the mill site. Both the mine and mill sites are listed on the National Priorities List under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA, also called Superfund). This license amendment is part of the proposed remediation and disposal of mine site waste. Waste that meets the Environmental Protection Agency (EPA) action levels for cleanup [2.24 picocuries per gram (pCi/g) of radium-226 and 230 mg/kg natural uranium or less] would be moved from the mine site and placed within the footprint the existing tailings impoundment on the mill site. Any waste that contains 200 pCi/g or more of radium-226 or 500 mg/kg of total uranium would be segregated and transported to an offsite licensed facility for disposal and therefore would not be placed at the mill site. Construction of a cover between the underlying tailings and the mine spoils is proposed as well as a cover over the final mine waste surface.

V. Alternatives To Be Evaluated

The EIS will analyze the environmental impacts of the proposed action, the no-action alternative, and reasonable alternatives. A brief description of each is provided below.

No-Action Alternative—The no-action alternative would be to deny the license application. Under this alternative, the NRC would not issue the license amendment and UNC would not be authorized to accept the waste from the Northeast Church Rock Mine site. This alternative serves as a baseline for the comparison of environmental impacts of the proposed action and the reasonable alternatives.

Proposed Action—The proposed Federal action is to issue a license amendment to UNC authorizing the company to amend its license SUA–1475 to move mine waste from the Northeast Church Rock Mine site onto the mill site for disposal.

Alternatives to the Proposed Action—Other alternatives not listed here may be identified during scoping or through the environmental review process.

VI. Scope of the Environmental Review

The NRC staff is conducting a scoping process for the UNC Church Rock EIS, which begins on the day this notice appears in the **Federal Register**. In accordance with 10 CFR 51.29, the NRC seeks public input to help the NRC determine the appropriate scope of the EIS, including significant environmental issues to be analyzed in depth, as well as those that should be eliminated from detailed study because they are peripheral or are not significant. The NRC staff is planning to publish information related to this action in newspapers serving communities near the Church Rock site requesting information and comments from the public. Additionally, the NRC is planning to hold public scoping meetings to receive comments in person in accordance with 10 CFR 51.26. The dates, times, and locations for the meetings will be provided on NRC's public web page at: *https://www.nrc.gov/pmns/mtg*.

After the close of the scoping period, the NRC staff will prepare a concise summary of its scoping process, the comments received, as well as the NRC's responses. The Scoping Summary Report will be included in NRC's draft EIS as an appendix and sent to each participant in the scoping process for whom the staff has an address or email address.

The UNC Church Rock EIS will address the potential impacts from the proposed action. The anticipated scope of the EIS will consider both radiological and non-radiological impacts associated with the proposed project and its alternatives. The EIS will also consider unavoidable adverse environmental impacts, the relationship between short-term uses of resources and long-term productivity, and irreversible and irretrievable commitments of resources. The following resource areas have been tentatively identified for analysis in the EIS: Land use, transportation, geology and soils, water resources, ecological resources, air quality and climate change, noise, historical and cultural resources, visual and scenic resources, socioeconomics, public and occupational health, waste management, environmental justice, and cumulative impacts. This list is not intended to be exhaustive, nor is it a predetermination of potential environmental impacts. The EIS will describe the NRC staff's approach and methodology undertaken to determine the resource areas that will be studied in detail and the NRC staff's evaluation of potential impacts to those resource areas.

The NRC encourages members of the public, local, State, Tribal, and Federal government agencies to participate in the scoping process. Written comments may be submitted during the scoping period as described in the **ADDRESSES** and **SUPPLEMENTARY INFORMATION** section of this document. Participation in the scoping process for the UNC Church Rock EIS does not entitle participants to

become parties to any proceeding to which the EIS relates.

In addition to requesting scoping comments through this **Federal Register** notice, the NRC staff also intends to reach out to interested stakeholders, including other Federal and State agencies and Indian Tribes. The NRC staff seeks to identify, among other things, all review and consultation requirements related to the proposed action, and agencies with jurisdiction by law or with special expertise with respect to any environmental impact involved. The NRC invites such agencies to participate in the scoping process and, as appropriate, cooperate in the preparation of the EIS.

The NRC staff will continue its environmental review of UNC Church Rock license amendment application, and with its contractor, prepare a draft EIS and, as soon as practicable, publish it for public comment. The NRC staff plans to have a public comment period for the draft EIS. Availability of the draft EIS and the dates of the public comment period will be announced in a future **Federal Register** notice. The final EIS will include NRC's responses to public comments received on the draft EIS.

VII. Availability of Documents

The documents identified in this **Federal Register** notice are accessible to interested persons by the means indicated in either the **SUPPLEMENTARY INFORMATION** section of this notice or in the table below.

Document	ADAMS accession No.
UNC Church Rock license amendment application and ER (September 2018)	ML18267A235 (Package). ML18267A387.
NRC's acceptance of the application for docketing and detailed review	ML18360A424 (Package).

Dated at Rockville, Maryland, this 5th day of February, 2019.

For the U.S. Nuclear Regulatory Commission.

Michael F. King,

Director, Division of Fuel Cycle Safety, Safeguards, and Environmental Review, Office of Nuclear Material Safety, and Safeguards.

[FR Doc. 2019–01642 Filed 2–7–19; 8:45 am]

BILLING CODE 7509–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 33367; File No. 812–14937]

Special Opportunities Fund, Inc. and Bulldog Investors, LLC

February 4, 2019.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice.

Notice of an application under section 6(c) of the Investment Company Act of 1940 (''Act'') for an exemption from section 19(b) of the Act and rule 19b–1 under the Act to permit a registered closed-end investment company to make periodic distributions of long-term capital gains more frequently than permitted by section 19(b) or rule 19b–1.

APPLICANTS: Special Opportunities Fund, Inc. (''SPE''), a diversified closed-end investment company registered under the Act and organized as a corporation under the laws of Maryland, and Bulldog Investors, LLC (''Bulldog'') (together with SPE, the ''Applicants''), registered under the Investment Advisers Act of 1940, organized as a limited liability company under the laws of Delaware, and serving as investment adviser to the Fund.[1]

FILING DATES: The application was filed on August 3, 2018, and amended on November 14, 2018.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on March 1, 2019, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Pursuant to Rule 0–5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: The Commission: Secretary, U.S. Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090. Applicants: Phillip Goldstein, Chairman, Special Opportunities Fund, Inc. c/o U.S. Bancorp Fund Services, LLC, 615 East Michigan Street, Milwaukee, WI 53202, and Andrew Dakos, Managing Member, Bulldog Investors, LLC, Park 80 West, 250 Pehle Avenue, Suite 708, Saddle Brook, NJ 07663.

FOR FURTHER INFORMATION CONTACT: Laura L. Solomon, Senior Counsel at (202) 551–6915, or Kaitlin C. Bottock, Branch Chief, at (202) 551–6825 (Division of Investment Management, Chief Counsel's Office).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's website by searching for the file number, or for an applicant using the Company name box, at *http://www.sec.gov/search/search.htm,* or by calling (202) 551–8090.

SUMMARY OF THE APPLICATION:

1. Section 19(b) of the Act generally makes it unlawful for any registered investment company to make long-term capital gains distributions more than once every twelve months. Rule 19b–1 under the Act limits to one the number of capital gain dividends, as defined in section 852(b)(3)(C) of the Internal Revenue Code of 1986 (''Code,'' and such dividends, ''distributions''), that a registered investment company may make with respect to any one taxable year, plus a supplemental distribution made pursuant to section 855 of the Code not exceeding 10% of the total amount distributed for the year, plus one additional capital gain dividend made in whole or in part to avoid the excise tax under section 4982 of the Code.

2. Applicants believe that investors in certain closed-end funds may prefer an investment vehicle that provides regular current income through a fixed distribution policy (''Distribution Policy''). Applicants propose that the

[1] Applicants request that the order also apply to each other registered closed-end investment company advised or to be advised in the future by Bulldog or by an entity controlling, controlled by, or under common control (within the meaning of section 2(a)(9) of the Act) with Bulldog (including any successor in interest) (each such entity, including Bulldog, the ''Adviser'') that in the future seeks to rely on the order (such investment companies, together with SPE, are collectively the ''Funds'' and, individually, a ''Fund''). A successor in interest is limited to entities that result from a reorganization into another jurisdiction or a change in the type of business organization.

Fund be permitted to adopt a Distribution Policy, pursuant to which the Fund would distribute periodically to its stockholders a fixed percentage of the market price of the Fund's common stock at a particular point in time or a fixed percentage of net asset value (''NAV'') at a particular time or a fixed amount per share of common stock, any of which may be adjusted from time to time.

3. Applicants request an order under section 6(c) of the Act granting an exemption from section 19(b) of the Act and rule 19b–1 to permit a Fund to distribute periodic capital gain dividends (as defined in section 852(b)(3)(C) of the Code) as frequently as twelve times in any one taxable year in respect of its common stock (and as often as specified by, or determined in accordance with the terms of, any preferred stock issued by the Fund). Section 6(c) of the Act provides, in relevant part, that the Commission may exempt any person or transaction from any provision of the Act to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

4. Applicants state that any order granting the requested relief will be subject to the terms and conditions stated in the application, which generally are designed to address the concerns underlying section 19(b) and rule 19b–1, including concerns about proper disclosures and shareholders' understanding of the source(s) of a Fund's distributions and concerns about improper sales practices. Among other things, such terms and conditions require that (1) the board of directors or trustees of the Fund (the ''Board'') review such information as is reasonably necessary to make an informed determination of whether to adopt the proposed Distribution Policy and that the Board periodically review the amount of the distributions in light of the investment experience of the Fund, and (2) that the Fund's shareholders receive appropriate disclosures concerning the distributions.

For the Commission, by the Division of Investment Management, under delegated authority.

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2019–01531 Filed 2–7–19; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–85047; File No. SR–ICC–2019–001]

Self-Regulatory Organizations; ICE Clear Credit LLC; Proposed Rule Change Relating to the ICE CDS Clearing: Back-Testing Framework

February 4, 2019.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934,[1] and Rule 19b–4,[2] notice is hereby given that on January 28, 2019, ICE Clear Credit LLC (''ICC'') 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 ICC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change

The principal purpose of the proposed rule change is to revise the ICE CDS Clearing: Back-Testing Framework (''Back-Testing Framework''). These revisions do not require any changes to the ICC Clearing Rules (''Rules'').

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, ICC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. ICC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.

(A) Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) Purpose

ICC proposes to update and formalize the Back-Testing Framework that describes ICC's back-testing approach, back-testing procedures, and guidelines for remediating poor back-testing results. ICC proposes to formalize the Back-Testing Framework following Commission approval of the proposed rule change.

ICC's Back-Testing Framework includes a discussion of ICC's back-testing approach to verify that the number of actual losses is consistent with the number of projected losses. Generally, ICC's back-testing analysis counts the number of occurrences, also referred to as exceedances, when the observed portfolio loss for a given horizon is greater than the model projected risk measure, defined as the sum of the selected initial margin components. The total number of exceedances is evaluated against the desired risk quantile and the model is considered well calibrated if the number of exceedances is consistent with the chosen risk quantile. The Back-Testing Framework also addresses multi-currency portfolios by accounting for the foreign exchange risk exposure and summarizes the associated back-testing analysis, which is performed in the clearinghouse base currency (*i.e.,* U.S. Dollar).

ICC utilizes the Basel Traffic Light System (''BTLS'') to assess the soundness of its risk management model (''model''). The Back-Testing Framework contains a summary of the BTLS, including descriptions and calculations associated with each zone of the BTLS. The BTLS is based on three zones: Green, yellow, and red. Each zone is defined by the maximum number of acceptable exceedances. In practice, the more portfolios that fall within the green zone, the sounder the model. The BTLS does not penalize the model for conservativeness.

The Back-Testing Framework contains ICC's procedures for performing back-testing analyses. The ICC Risk Management Department (''ICC Risk'') performs daily, weekly, monthly, and quarterly portfolio-level back-testing analyses. The Back-Testing Framework sets forth ICC's calculation of the observed loss, which is referred to as the N-day worst unrealized profit/loss (''P/L''), using the changes in portfolio net asset values (''NAVs''). The initial margin risk horizon is reflected as ''N-day'' where N≥5 is the initial margin risk horizon or the Margin Period of Risk (''MPOR''). The back-testing analysis is based on the greatest MPOR, rounded up to the nearest integer, for instruments in the considered portfolio. For example, if an instrument is subject to 5.5-day MPOR estimations, then the back-testing analysis is performed by comparing the model projected risk measure to the N-day worst unrealized P/L with N=6. The model projected risk measure, which is subject to back-testing, is the sum of the following selected initial margin components: Integrated spread response, basis risk, and interest rate sensitivity (''back-tested components''). Under the Back-

[1] 15 U.S.C. 78s(b)(1)

[2] 17 CFR 240.19b–4.

Testing Framework, the remaining components of initial margin are excluded because they are not always market observed and statistically modeled.

ICC back-tests its model with Clearing Participant (''CP'') portfolios and a hypothetical set of portfolios (''special strategy portfolios'') at the 99.5% risk quantile. Under the Back-Testing Framework, back-testing analysis is performed for the model at the 99.5% risk quantile for all CP-related portfolios. The Back-Testing Framework also includes a sample set of special strategy portfolios, which allow ICC to consider a range of hypothetical but realistic portfolios in its back-testing analysis. Back-testing results for the special strategy portfolios are reviewed periodically to identify and assess potential weaknesses in model assumptions.

The Back-Testing Framework describes ICC's procedures for reporting back-testing results. Daily portfolio back-testing results are reported on a periodic basis for each CP based on the appropriate MPOR. The Back-Testing Framework provides example computations for a sample MPOR of 5 days (*i.e.,* all instruments in the considered portfolio are subject to a 5-day MPOR). For each day in the back-testing period, all components of initial margin are provided, and the back-tested components and non-back-tested components are identified. The sum of the back-tested components is given alongside the unrealized P/L and the associated shortfall. An exceedance summary shows the total number of exceedances in the period and states the maximum number of exceedances that satisfy each zone in the BTLS. Back-testing results for the full period are also reported, and the back-tested components and the N-day P/L results for every back-tested day are computed for each portfolio associated with a given CP.

The Back-Testing Framework discusses the exceedance summaries that are provided when ICC back-tests its model with CP and special strategy portfolios at the 99.5% risk quantile. The Back-Testing Framework notes the reporting frequency, along with the information that is delivered as part of an exceedance summary, such as the number of observations and exceedances for the set of back-testing results and the maximum number of exceedances allowed in each zone in the BTLS. Moreover, in addition to assessing the model's performance by back-testing, the Back-Testing Framework directs ICC Risk to conduct monthly parameter reviews and parameter sensitivity analyses.

ICC Risk also periodically reports univariate back-testing results, namely, instrument and Risk Factor [3] (''RF'') back-testing results, depending on market conditions. The Back-Testing Framework discusses how back-testing results are computed and reported for SN RFs and index instruments. As noted above, the back-testing analysis is performed for the model at the 99.5% risk quantile and exceedance summary results are generated. The Back-Testing Framework defines the model projected risk measure with respect to univariate back-testing as the sum of the integrated spread response and the interest rate sensitivity (''univariate back-tested components'') and directs ICC Risk to perform several analyses if an exceedance is observed, which include, among others, an analysis of the spread and recovery rate changes. The Back-Testing Framework also contains information regarding ICC Risk's performance of univariate back-testing analysis in spread log-return space, including the utilization of different mean absolute deviation estimates and an indication of when such analysis may be performed.

The Back-Testing Framework provides guidelines for remediating poor back-testing results. Back-testing results are identified as poor if the number of observed exceedances at the portfolio level falls in the red zone of the BTLS. The Back-Testing Framework discusses various actions to be taken upon the identification of poor back-testing results, which include seeking feedback from the Risk Working Group (''RWG'') [4] and consulting with the Risk Committee on any necessary remedial action. The Back-Testing Framework describes an instance where the number of exceedances falls in the red zone but may not be indicative of poor back-testing results, namely, where overlapping back-testing periods are involved and the effects of one adverse observation are responsible for a cluster of exceedances. The Back-Testing Framework provides the Chief Risk Officer and Risk Oversight Officer with the responsibility and the authority to determine whether the number of exceedances is indicative of poor back-testing results. The Back-Testing Framework also notes the actions to be taken if the number of exceedances falls in the yellow zone, including a review by ICC Risk to determine the cause of the model's worsened performance and, if necessary, a complimentary back-testing analysis without overlapping back-testing periods.

Under the Back-Testing Framework, if poor back-testing results are identified at the portfolio level, individual RF back-testing results are further analyzed. The Back-Testing Framework contains information regarding the analysis if poor back-testing results are identified for certain RFs, including analysis on the spread log-return statistical model assumptions, estimation techniques, and estimated parameters.

To remediate poor back-testing results, the Back-Testing Framework provides ICC Risk with the authority to take various actions depending on the situation, including updating statistical parameters (*i.e.,* parameters estimated by statistical analysis of data sets) and increasing the frequency of parameter updates. The Back-Testing Framework references several situations that may lead to poor back-testing results, along with the actions that ICC Risk may take for remediation, including poor back-testing results associated with distressed SN RFs, poor performance at the portfolio level driven by improper portfolio benefits, and poor back-testing results due to recent changes in the dependence structure among RFs. Under the Back-Testing Framework, ICC Risk may apply additional initial margin while investigating the model's poor performance and, if needed, recommend model enhancements to the Risk Committee and the Board.

(b) Statutory Basis

Section 17A(b)(3)(F) of the Act [5] requires, among other things, that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions, and to the extent applicable, derivative agreements, contracts and transactions; to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible; in general, to protect investors and the public interest; and to comply with the provisions of the Act and the rules and regulations thereunder. ICC believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to ICC, in particular, to Section 17(A)(b)(3)(F),[6] because ICC believes that the proposed rule change to formalize the Back-Testing

[3] ICC deems each index, sub-index, or underlying single name (''SN'') reference entity a separate RF.

[4] The RWG consists of risk personnel from CPs and provides input to help ensure ICC's risk management framework is robust.

[5] 15 U.S.C. 78q–1(b)(3)(F).

[6] *Id.*

Framework promotes the soundness of ICC's risk management model. The Back-Testing Framework describes ICC's back-testing approach, back-testing procedures, and guidelines for remediating poor back-testing results. The various elements set forth in the Back-Testing Framework assess the ability of the model to reliably forecast risk at the selected risk quantile and ensure that ICC takes appropriate remedial action upon the identification of poor back-testing results. The Back-Testing Framework provides assurances as to the appropriateness of the model, including the appropriateness of margin requirements, thereby facilitating ICC's ability to promptly and accurately clear and settle its cleared CDS contracts; enhancing ICC's ability to assure the safeguarding of securities and funds which are in the custody or control of ICC or for which it is responsible; and protecting investors and the public interest. Moreover, ICC believes that having policies and procedures that clearly and accurately document ICC's back-testing procedures are an important component to the effectiveness of ICC's risk management system, which promotes the prompt and accurate clearance and settlement of securities transactions, derivatives agreements, contracts, and transactions; the safeguarding of securities and funds which are in the custody or control of ICC or for which it is responsible; and the protection of investors and the public interest. As such, the proposed rule change is designed to promote the prompt and accurate clearance and settlement of securities transactions, derivatives agreements, contracts, and transactions; to contribute to the safeguarding of securities and funds associated with security-based swap transactions in ICC's custody or control, or for which ICC is responsible; and, in general, to protect investors and the public interest within the meaning of Section 17A(b)(3)(F) of the Act.[7]

In addition, the proposed rule change is consistent with the relevant requirements of Rule 17Ad–22.[8] Rule 17Ad–22(b)(2)[9] requires ICC to establish, implement, maintain and enforce written policies and procedures reasonably designed to use margin requirements to limit its credit exposures to participants under normal market conditions and use risk-based models and parameters to set margin requirements and review such margin requirements and the related risk-based models and parameters at least monthly. The Back-Testing Framework requires the remediation of poor-back-testing results; the performance of daily, weekly, monthly, and quarterly portfolio-level back-testing analyses; and the performance of monthly parameter reviews and parameter sensitivity analyses. Such procedures serve to promote the soundness of ICC's risk management model and to ensure that ICC's risk management system is effective and appropriate in addressing the risks associated with clearing security based swap-related portfolios. Namely, by requiring that ICC review and improve the model, the Back-Testing Framework promotes ICC's use of margin requirements to limit its credit exposures to participants under normal market conditions and ICC's use of risk-based models and parameters to set margin requirements and review such margin requirements and the related risk-based models and parameters at least monthly, consistent with Rule 17Ad–22(b)(2).[10]

Rule 17Ad–22(b)(3)[11] requires ICC to establish, implement, maintain and enforce written policies and procedures reasonably designed to maintain sufficient financial resources to withstand, at a minimum, a default by the two CP families to which it has the largest exposures in extreme but plausible market conditions. The Back-Testing Framework supports ICC's ability to maintain sufficient margin requirements and enhances ICC's approach to identifying potential weaknesses in the risk methodology by measuring the quality of its model using the BTLS, thereby ensuring that ICC continues to maintain sufficient financial resources to withstand, at a minimum, a default by the two CP families to which it has the largest exposures in extreme but plausible market conditions, consistent with the requirements of Rule 17Ad–22(b)(3).[12]

Rule 17Ad–22(d)(8)[13] requires ICC to establish, implement, maintain and enforce written policies and procedures reasonably designed to have governance arrangements that are clear and transparent to fulfill the public interest requirements in Section 17A of the Act.[14] The Back-Testing Framework clearly assigns and documents responsibility and accountability for performing back-testing analyses and remediating poor back-testing results. These governance arrangements are clear and transparent, such that information relating to the assignment of responsibilities and the requisite involvement of the Chief Risk Officer, the Risk Oversight Officer, ICC Risk, the RWG, the Risk Committee, and the Board is clearly documented, consistent with the requirements of Rule 17Ad–22(d)(8).[15]

(B) Clearing Agency's Statement on Burden on Competition

ICC does not believe the proposed rule change would have any impact, or impose any burden, on competition. The proposed change to formalize the Back-Testing Framework will apply uniformly across all market participants. Therefore, ICC does not believe the proposed rule change imposes any burden on competition that is inappropriate in furtherance of the purposes of the Act.

(C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments relating to the proposed rule change have not been solicited or received. ICC will notify the Commission of any written comments received by ICC.

III. Date of Effectiveness of the Proposed Rule Change

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–ICC–2019–001 on the subject line.

[7] *Id.*

[8] 17 CFR 240.17Ad–22.

[9] 17 CFR 240.17Ad–22(b)(2).

[10] *Id.*

[11] 17 CFR 240.17Ad–22(b)(3).

[12] *Id.*

[13] 17 CFR 240.17Ad–22(d)(8).

[14] 15 U.S.C. 78q–1.

[15] 17 CFR 240.17Ad–22(d)(8).

Paper Comments

Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549.

All submissions should refer to File Number SR–ICC–2019–001. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filings will also be available for inspection and copying at the principal office of ICE Clear Credit and on ICE Clear Credit's website at *https://www.theice.com/clear-credit/regulation.*

All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–ICC–2019–001 and should be submitted on or before March 1, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2019–01553 Filed 2–7–19; 8:45 am]

BILLING CODE 8011–01–P

[16] 17 CFR 200.30–3(a)(12).

SOCIAL SECURITY ADMINISTRATION

[Docket No. SSA 2017–0063]

Privacy Act of 1974; Matching Program

AGENCY: Social Security Administration (SSA).

ACTION: Notice of a new matching program.

SUMMARY: In accordance with the provisions of the Privacy Act, as amended, this notice announces a new matching program with the Office of Personnel Management (OPM).

This matching agreement sets forth the terms, conditions, and safeguards under which OPM will provide SSA with civil service benefit and payment data. This disclosure will provide SSA with information necessary to verify an individual's self-certification of eligibility for the Extra Help with Medicare Prescription Drug Plan Costs program (Extra Help). It will also enable SSA to identify individuals who may qualify for Extra Help as part of its Medicare outreach efforts.

DATES: The deadline to submit comments on the proposed matching program is 30 days from the date of publication of this notice in the **Federal Register**. The matching program will be applicable on October 1, 2018, or once a minimum of 30 days after publication of this notice has elapsed, whichever is later. The matching program will be in effect for a period of 18 months.

ADDRESSES: Interested parties may comment on this notice by either telefaxing to (410) 966–0869, writing to Mary Ann Zimmerman, Acting Executive Director, Office of Privacy and Disclosure, Office of the General Counsel, Social Security Administration, G–401 WHR, 6401 Security Boulevard, Baltimore, MD 21235–6401, or emailing *Mary.Ann.Zimmerman@ssa.gov.* All comments received will be available for public inspection by contacting Ms. Zimmerman at this street address.

FOR FURTHER INFORMATION CONTACT: Interested parties may submit general questions about the matching program to Mary Ann Zimmerman, Acting Executive Director, Office of Privacy and Disclosure, Office of the General Counsel, by any of the means shown above.

Mary Zimmerman,

Acting Executive Director, Office of Privacy and Disclosure, Office of the General Counsel.

Participating Agencies: SSA and OPM.

Authority for Conducting the Matching Program: The legal authority for SSA to conduct this matching is sections 1144(a)(1) and (b)(1) and 1860D–14(a)(3) of the Social Security Act (Act) (42 U.S.C. 1320b–14(a)(1) and (b)(1) and 1395w–114(a)(3)). Pursuant to these sections, SSA must determine whether a Social Security Part D eligible individual is a subsidy-eligible individual.

Purpose(s): The purpose of this matching program is to set forth the terms, conditions, and safeguards under which OPM will disclose to SSA civil service benefit and payment data for verifying an individual's self-certification of eligibility for the Prescription Drug Plan Costs program (Extra Help). It will also enable SSA to identify individuals who may qualify for Extra Help as part of its Medicare outreach efforts.

Categories of Individuals: The individuals whose information is involved in this matching program are individuals who self-certify their eligibility for the Extra Help program.

Categories of Records: OPM's data file will consist of approximately 75,000 records of updated payment information for new civil service annuitants and annuitants whose civil service annuity has changed. SSA's comparison file consists of approximately 91 million records from the Medicare Database file. The number of people who apply for Extra Help determines in part the number of records matched.

OPM will provide SSA with electronic files containing civil service benefit and payment data for individuals who apply for the Extra Help program. The file includes:

a. Payee Name and Date of Birth,

b. Payee Social Security number,

c. Payee Civil Service Claim Number, and

d. Amount of current gross civil service benefits.

System(s) of Records: OPM will provide SSA with electronic files containing civil service benefit and payment data from the OPM system of records published as OPM/Central–1 (Civil Service and Insurance Records), on October 8, 1999 (64 FR 54930), as amended on March 20, 2008 (73 FR 15013).

SSA will match OPM data with its system of records 60–0321, Medicare Database file, last fully published at 71 FR 42159 (July 25, 2006), and amended at 72 FR 69723 (December 10, 2007).

[FR Doc. 2019–01693 Filed 2–7–19; 8:45 am]

BILLING CODE 4191–02–P

SURFACE TRANSPORTATION BOARD

[Docket No. FD 36068 (Sub-No. 2)]

The Indiana Rail Road Company—Temporary Trackage Rights Exemption—CSX Transportation, Inc.

On December 21, 2018, The Indiana Rail Road Company (INRD), a Class II

rail carrier, filed a request under 49 CFR 1180.2(d)(8) for a one-year extension of the limited temporary overhead trackage rights previously granted in this sub-docket over a line of railroad of CSX Transportation, Inc. (CSXT), between its connection with CSXT at approximately CSXT milepost OZA 204.5 at Sullivan, Ind., and the connection with trackage serving the Oaktown Mine at approximately CSXT milepost OZA 219.05 at Oaktown, Ind., a distance of approximately 14.55 miles (the Line).

INRD was authorized to acquire these trackage rights over the Line by notice of exemption served and published in the **Federal Register** on December 22, 2017 (82 FR 60,788). The trackage rights permit INRD to handle loaded and empty unit coal trains between the Oaktown Mine and the Kentucky Utilities Generating Station in Harrodsburg, KY, in interline service with other carriers. The rights were scheduled to expire on December 31, 2018.[1]

Under 49 CFR 1180.2(d)(8), the parties may, prior to the expiration of the temporary trackage rights, file a request for a renewal of the temporary rights for an additional period of up to one year, including the reasons for the extension. INRD states that CSXT has agreed to extend the temporary trackage rights for an additional year. INRD states that the reason for the extension is that further short-term traffic movements to the Kentucky Utilities Generating Station appear probable and feasible.

INRD filed a draft copy of the amendment to the temporary trackage rights agreement with its request for the one-year extension, and states that it will submit a finalized version within 10 days of execution. INRD also acknowledges that any further extension of these rights, or a conversion of the rights from temporary to permanent, would require a separate notice of exemption filing pursuant to 49 CFR 1180.4(g).

In accordance with 49 CFR 1180.2(d)(8), INRD's temporary trackage rights over the Line will be extended for one year and will expire on December 31, 2019. The employee protective conditions imposed in the December 22, 2017 notice remain in effect. Notice of the one-year extension will be published in the **Federal Register**.

It is ordered:

1. INRD's temporary trackage rights over the Line are extended for one year and will expire on December 31, 2019.

2. Notice will be published in the **Federal Register**.

3. This decision is effective on its service date.

Decided: February 4, 2019.

By the Board, Allison C. Davis, Acting Director, Office of Proceedings.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. 2019–01594 Filed 2–7–19; 8:45 am]

BILLING CODE 4915–01–P

[1] Because of the partial shutdown of the Federal government from December 22, 2018, through January 25, 2019, INRD's extension request could not be addressed before the trackage rights were scheduled to expire.

SURFACE TRANSPORTATION BOARD

[Docket No. AB 55 (Sub-No. 787X)]

CSX Transportation, Inc.—Abandonment Exemption—in Bronx County, N.Y.

CSX Transportation, Inc. (CSXT), has filed a verified notice of exemption under 49 CFR pt. 1152 subpart F—*Exempt Abandonments* to abandon an approximately 1.8-mile rail line on its Port Morris Branch, Albany Division, between milepost QVP 0.0 and milepost QVP 1.8 in Bronx County, N.Y. (the Line).[1] The Line traverses U.S. Postal Service Zip Codes 10456, 10455, and 10454.

CSXT has certified that: (1) No local traffic has moved over the Line for at least two years; (2) any overhead traffic on the Line can be rerouted over other lines; (3) no formal complaint filed by a user of rail service on the Line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the Line either is pending with the Surface Transportation Board (Board) or any U.S. District Court or has been decided in favor of a complainant within the two-year period; and (4) the requirements at 49 CFR 1105.12 (newspaper publication), 49 CFR 1152.50(d)(1) (notice to governmental agencies), and 49 CFR 1105.7 and 1105.8 (environment and historic report), have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line Railroad—Abandonment Portion Goshen Branch Between Firth & Ammon, in Bingham & Bonneville Counties, Idaho,* 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received,[2] this exemption will be effective on March 12, 2019, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[3] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[4] and interim trail use/rail banking requests under 49 CFR 1152.29 must be filed by February 15, 2019. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by February 28, 2019, with the Surface Transportation Board, 395 E Street SW, Washington, DC 20423–0001.

A copy of any petition filed with the Board should be sent to CSXT's representative, Louis E. Gitomer, Law Offices of Louis E. Gitomer, LLC, 600 Baltimore Avenue, Suite 301, Towson, MD 21204.

If the verified notice contains false or misleading information, the exemption is void ab initio.

CSXT has filed a combined environmental and historic report that addresses the effects, if any, of the abandonment on the environment and historic resources. OEA will issue an environmental assessment (EA) by February 15, 2019. Interested persons may obtain a copy of the EA by writing to OEA (Surface Transportation Board, Washington, DC 20423–0001) or by calling OEA at (202) 245–0305. Assistance for the hearing impaired is available through the Federal Information Relay Service at (800) 877–8339. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), CSXT shall file a notice of

[1] Publication of this notice was delayed due to the partial shutdown of the Federal government from December 22, 2018, through January 25, 2019. *See* 49 CFR 1152.50(d)(3).

[2] The Board modified its OFA procedures effective July 29, 2017. Among other things, the OFA process now requires potential offerors, in their formal expression of intent, to make a preliminary financial responsibility showing based on a calculation using information contained in the carrier's filing and publicly available information. *See Offers of Financial Assistance,* EP 729 (STB served June 29, 2017); 82 FR 30,997 (July 5, 2017).

[3] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Office of Environmental Analysis (OEA) in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Serv. Rail Lines,* 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[4] Each OFA must be accompanied by the filing fee, which currently is set at $1,800. *See* 49 CFR 1002.2(f)(25).

consummation with the Board to signify that it has exercised the authority granted and fully abandoned the Line. If consummation has not been effected by CSXT's filing of a notice of consummation by February 8, 2020, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available at *www.stb.gov.*

Decided: February 5, 2019.

By the Board, Allison C. Davis, Acting Director, Office of Proceedings.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. 2019–01641 Filed 2–7–19; 8:45 am]

BILLING CODE 4915–01–P

SURFACE TRANSPORTATION BOARD

[Docket No. AB 1252X]

Eastern Idaho Railroad, L.L.C.—Abandonment Exemption—in Fremont County, Idaho

Eastern Idaho Railroad, L.L.C. (EIRR) has filed a verified notice of exemption under 49 CFR pt. 1152 subpart F—*Exempt Abandonments* to abandon a five-mile rail line located between milepost 28.80 at Egin and milepost 33.80 at Parker, in Fremont County, Idaho (the Line).[1] The Line traverses U.S. Postal Service ZIP Codes 83445 and 83438.

EIRR has certified that: (1) No local freight traffic has moved over the Line for at least two years; (2) the Line is stub-ended and not capable of handling overhead traffic; (3) no formal complaint filed by a user of rail service on the Line (or a state or local government entity acting on behalf of such user) regarding cessation of service over the Line either is pending with the Surface Transportation Board or any U.S. District Court or has been decided in favor of a complainant within the two-year period; and (4) the requirements at 49 CFR 1105.7 and 1105.8 (environmental and historic report), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line Railroad—Abandonment—Goshen,* 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received,[2] this exemption will be effective on March 12, 2019, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[3] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[4] and interim trail use/rail banking requests under 49 CFR 1152.29 must be filed by February 15, 2019. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by February 28, 2019, with the Surface Transportation Board, 395 E Street SW, Washington, DC 20423–0001.

A copy of any petition filed with the Board should be sent to EIRR's representative, Karl Morell, Karl Morell and Associates, 440 1st Street NW, Suite 440, Washington, DC 20001.

If the verified notice contains false or misleading information, the exemption is void ab initio.

EIRR has filed a combined environmental and historic report that addresses the effects, if any, of the abandonment on the environment and historic resources. OEA will issue an environmental assessment (EA) by February 15, 2019. Interested persons may obtain a copy of the EA by writing to OEA, Surface Transportation Board, Washington, DC 20423–0001, or by calling OEA at (202) 245–0305. Assistance for the hearing impaired is available through the Federal Information Relay Service at (800) 877–8339. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), EIRR shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the Line. If consummation has not been effected by EIRR's filing of a notice of consummation by February 8, 2020, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available at *www.stb.gov.*

Decided: February 5, 2019.

By the Board, Allison C. Davis, Acting Director, Office of Proceedings.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. 2019–01633 Filed 2–7–19; 8:45 am]

BILLING CODE 4915–01–P

[1] Publication of this notice was delayed due to the partial shutdown of the Federal government from December 22, 2018, through January 25, 2019. *See* 49 CFR 1152.50(d)(3).

[2] The Board modified its OFA procedures effective July 29, 2017. Among other things, the OFA process now requires potential offerors, in their formal expression of intent, to make a preliminary financial responsibility showing based on a calculation using information contained in the carrier's filing and publicly available information. *See Offers of Financial Assistance,* EP 729 (STB served June 29, 2017); 82 FR 30997 (July 5, 2017).

[3] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Office of Environmental Analysis (OEA) in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Serv. Rail Lines,* 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[4] Each OFA must be accompanied by the filing fee, which currently is set at $1,800. *See* 49 CFR 1002.2(f)(25).

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Notice of Final Federal Agency Actions on Proposed Highway Project in Rhode Island

AGENCY: Federal Highway Administration (FHWA), Department of Transportation (DOT).

ACTION: Notice of limitation on claims for judicial review of actions by FHWA.

SUMMARY: This notice announces actions taken by the FHWA that are final pursuant to the statute. The actions relate to a proposed highway project, Toll Locations 3,4 & 6 through 13 in the Cities/Towns of Warwick, Providence, Pawtucket, Cranston, Johnston, Cumberland, East Providence, Lincoln and North Smithfield in the State of Rhode Island, FHWA Project Number T0LL002, Rhode Island Department of Transportation (RIDOT) Contract Number 2017–OT–002.

DATES: By this notice, the FHWA is advising the public of final agency actions subject to 23 U.S.C. 139(1)(1). A claim seeking judicial review of the Federal agency actions on the highway project will be barred unless the claim is filed on or before July 8, 2019. If the Federal law that authorizes judicial review of a claim provides a time period of less than 150 days for filing such claim, then that shorter time period still applies.

FOR FURTHER INFORMATION CONTACT: For FHWA: Mr. Carlos E. Padilla-Fresse, MSCE, Program Delivery Supervisor, Federal Highway Administration Rhode Island Division, 380 Westminster Mall, Suite 601, Providence, Rhode Island 02903: telephone: (401) 528–4577;

email: *Carlos.Padilla@dot.gov.* The FHWA Rhode Island Division Office's normal business hours are 8:00 a.m. to 4:30 p.m. (Eastern Standard Time), Monday through Friday, except Federal Holidays. For RIDOT: Mr. David Fish, P.E., Administrator of Project Management, Rhode Island Department of Transportation, Two Capitol Hill, Providence, Rhode Island 02903–1124, telephone: (401) 222–2023, email: *david.fish@dot.ri.gov.* RIDOT normal business hours are 8:00 a.m. to 4:30 p.m. (Eastern Standard Time), Monday through Friday, except Federal Holidays.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the FHWA has taken final agency actions subject to 23 U.S.C. 139(1)(1) by issuing a Finding of No Significant Impact (FONSI) for the following highway project in the State of Rhode Island: Toll Locations 3, 4 & 6 through 13 in the Cities/Towns of Warwick, Providence, Pawtucket, Cranston, Johnston, Cumberland, East Providence, Lincoln and North Smithfield. RIDOT proposes to construct and operate electronic toll systems at ten locations along Interstates 95, 195 and 295, and Route 146 and US Route 6 (Proposed Action). Revenue from Toll Locations 3, 4 & 6 through 13 would be generated and used in accordance with *The Rhode Island Bridge Replacement, Reconstruction and Maintenance Fund Act of 2016.* The proposed toll systems would be used to collect toll revenue from a tractor or truck tractor as defined in 23 CFR 658.5, pulling a trailer or trailers traveling across select bridges associated with the toll locations. Each toll system would be comprised of one or more gantries with communication and electrical connections, a roadside cabinet on a concrete pad, and additional safety guardrail.

The actions by the FHWA, and the laws under which such actions were taken, are described in the Environmental Assessment (EA) for the project approved on November 8, 2018, and a Finding of No Significant Impact (FONSI) issued on December 14, 2018, and in other documents in the project records. The EA, FONSI, and other project records are available by contacting the FHWA or the Rhode Island Department of Transportation at the addresses provided above. The EA and FONSI can be viewed and downloaded from the project website at *http://www.dot.ri.gov/rhodeworks/.*

This notice applies to all Federal agency decisions as of the issuance date of this notice and all laws under which such actions were taken, including but not limited to:

1. General: National Environmental Policy Act (NEPA) [42 U.S.C. 4321–4370h]; Federal-Aid Highway Act [Title 23] and associated regulations [CFR part 23].

2. *Hazardous Materials:* Comprehensive Environmental Response, Compensation, and Liability Act [42 U.S.C. 9601–9675]; Superfund Amendments and Reauthorization Act of 1986 [P.L. 99–499]; Resource Conservation and Recovery Act [42 U.S.C. 6901–6992(k)]; Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 (42 U.S.C. 6901, *et seq.*).

3. *Air:* Clean Air Act, [42 U.S.C. 7401–7671(q)] (transportation conformity).

4. Noise: 23 U.S.C. 109(i) (P.L. 91–605) (P.L. 93–87).

5. *Wildlife:* Endangered Species Act [16 U.S.C. 1531–1544]; Fish and Wildlife Coordination Act [16 U.S.C. 661–667(e)]; Migratory Bird Treaty Act [16 U.S.C. 703–712]. Plant Protection Act [7 U.S.C. 7701 *et seq.*].

6. *Historic and Cultural Resources:* Section 106 of the National Historic Preservation Act of 1966, [54 U.S.C. 306108]; Archeological Resources Protection Act of 1977 [16 U.S.C. 470(aa)–470(mm)]; Archeological and Historic Preservation Act [16 U.S.C. 469–469 c–2]; Native American Grave Protection and Repatriation Act [25 U.S.C. 3001–3013].

7. *Land:* Section 4(f) of The Department of Transportation Act: [49 U.S.C. 303; 23 U.S.C. 138] Farmland Protection Policy Act (FPPA) [7 U.S.C. 4201–4209].

8. *Wetlands and Water Resources:* Clean Water Act [33 U.S.C 1251–1387 (Sections 319, 401, and 404)); Flood Disaster Protection Act (42 U.S.C.4012a 4106).

9. *Executive Orders:* E.O. 11990 Protection of Wetlands; E.O. 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations; E.O. 11988 Floodplain Management; E.O. 13175 Consultation and Coordination with Indian Tribal Governments.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Authority: 23 U.S.C. 139(/)(1).

Issued on: December 20, 2018.

Carlos C. Machado,

FHWA Rhode Island Division Administrator, Providence, Rhode Island.

[FR Doc. 2019–01062 Filed 2–7–19; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Notice of Final Federal Agency Actions on Proposed Highway in Utah

AGENCY: Utah Department of Transportation (UDOT), Federal Highway Administration (FHWA), Department of Transportation.

ACTION: Notice of limitation on claims for judicial review of actions taken by UDOT on behalf of FHWA.

SUMMARY: This notice announces certain actions taken by UDOT that are final Federal agency actions within the meaning of 23 U.S.C. 139(l)(1). These actions relate to a proposed highway project on Interstate 15 (I–15) Northbound, from Bangerter Highway to Interstate 215 (I–215), in the County of Salt Lake, State of Utah. Those actions grant licenses, permits and/or approvals for the project.

DATES: By this notice, the FHWA, on behalf of UDOT, is advising the public of final Federal agency actions subject to 23 U.S.C. 139(l)(1). A claim seeking judicial review of the Federal agency actions on the highway project will be barred unless the claim is filed on or before July 8, 2019. If the Federal law that authorizes judicial review of a claim provides a time period of less than 150 days for filing such claim, then that shorter time period still applies.

FOR FURTHER INFORMATION CONTACT: Brandon Weston, Director of Environmental Services, UDOT Environmental Services, PO Box 143600, Salt Lake City, UT 84114; telephone: (801) 965–4603; email: *brandonweston@utah.gov.* UDOT's normal business hours are 8:00 a.m. to 5:00 p.m. (Mountain Standard Time), Monday through Friday, except State and Federal holidays.

SUPPLEMENTARY INFORMATION: Effective January 17, 2017, FHWA assigned to UDOT certain responsibilities of FHWA for environmental review, consultation, and other actions required by applicable Federal environmental laws and regulations for highway projects in Utah, pursuant to 23 U.S.C. 327. Actions taken by UDOT on FHWA's behalf pursuant to 23 U.S.C. 327 constitute Federal agency actions for purposes of Federal law. Notice is hereby given that

UDOT has taken final agency actions subject to 23 U.S.C. 139(l)(1) by issuing licenses, permits, and approvals for the I–15 Northbound; Bangerter Highway to I–215 project in the State of Utah. This project proposes to address current and future travel demand and improve safety on northbound I–15 between Bangerter Highway and I–215. Improvements include construction of two separate collector-distributor (C–D) systems; each would consist of a three-lane roadway that would be separated from mainline northbound I–15 by a concrete traffic barrier. Northbound C–D System A would separate from I–15 just prior to 9000 South and connect to the I–215 east/westbound entrance ramps and the 7200 South exit ramp. Northbound C–D System B would separate from I–15 at Bangerter Highway and would rejoin I–15 at 9000 South. C–D System B would provide connections to the following locations: 12300 South, 11400 South, 10600 South and 9000 South. These improvements were identified in the Environmental Assessment (EA) as Alternative 3. The actions by UDOT, and the laws under which such actions were taken, are described in the EA and UDOT Finding of No Significant Impact (FONSI) for the project (Finding of No Significant Impact, Environmental Assessment and Section 4(f) Evaluation, 1–15 Northbound; Bangerter Highway to I–215 in Salt Lake County, Utah, Project No. S–I15–7(341)295), issued on November 12, 2018, and in other documents in the UDOT project records. The EA and FONSI, and other project records are available by contacting UDOT at the address provided above. The EA and FONSI can also be viewed and downloaded from the project website at *http://www.udot.utah.gov/i15northbound/.*

This notice applies to the EA, the FONSI, the Section 4(f) Determination, the NHPA Section 106 Review, the noise assessment, the Endangered Species Act and Migratory Bird Treaty Act determinations; and all other UDOT decisions and other actions with respect to the project as of the issuance date of this notice and all laws under which such actions were taken, including but not limited to the following laws (including their implementing regulations):

1. *General:* National Environmental Policy Act (NEPA),42 U.S.C. 4321–4351; Federal-Aid Highway Act, 23 U.S.C. 109 and 23 U.S.C. 128
2. *Air:* Clean Air Act, 42 U.S.C. 7401–7671q
3. *Land:* Section 4(f) of the Department of Transportation Act of 1966, 49 U.S.C. 303; 23 U.S.C. 138; Landscaping and Scenic Enhancement (Wildflowers), 23 U.S.C. 319; Land and Water Conservation Fund (LWCF) Act, 54 U.S.C. 200302–200310
4. *Wildlife:* Endangered Species Act, 16 U.S.C. 1531–1544 and Section 1536; Fish and Wildlife Coordination Act, 16 U.S.C. 661–667d; Migratory Bird Treaty Act, 16 U.S.C. 703–712
5. *Water:* Section 404 of the Clean Water Act, 33 U.S.C. 1344; E.O. 11990, Protection of Wetlands; Section 402 of the Clean Water Act, 33 U.S.C. 1342
6. *Historic and Cultural Resources:* Section 106 of the National Historic Preservation Act of 1966, 16 U.S.C. 470f; Archeological Resources Protection Act of 1977, 16 U.S.C. 470aa–470mm; Archeological and Historic Preservation Act, 16 U.S.C. 469–469c
7. *Noise:* Federal-Aid Highway Act of 1970, Public Law 91–605, 84 Stat. 1713
8. *Executive Orders:* E.O. 11593 Protection and Enhancement of Cultural Resources; E.O. 13287 Preserve America; E.O. 12898, Federal Actions to Address Environmental Justice and Low-Income Populations

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Authority: 23 U.S.C. 139(*l*)(1).

Issued on: December 20, 2018.

Ivan Marrero,

Division Administrator, Federal Highway Administration, Salt Lake City, Utah.

[FR Doc. 2019–01169 Filed 2–7–19; 8:45 am]

BILLING CODE 4910–RY–P

DEPARTMENT OF THE TREASURY

Bureau of the Fiscal Service

Proposed Collection of Information: Pools and Associations—Annual Letter

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995. Currently the Bureau of the Fiscal Service within the Department of the Treasury is soliciting comments concerning Pools and Associations—Annual Letter.

DATES: Written comments should be received on or before April 9, 2019 to be assured of consideration.

ADDRESSES: Direct all written comments and requests for additional information to Bureau of the Fiscal Service, Bruce A. Sharp, Room #4006–A, P.O. Box 1328, Parkersburg, WV 26106–1328, or *bruce.sharp@fiscal.treasury.gov.*

SUPPLEMENTARY INFORMATION:

Title: Pools and Associations—Annual Letter.

OMB Number: 1530–0007.

Abstract: The information is collected for the determinations of an acceptable percentage for each pool and association to allow Treasury certified companies credit on their Schedule F for authorized ceded reinsurance in determining the companies' underwriting limitations.

Current Actions: Extension of a currently approved collection.

Type of Review: Regular.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 84.

Estimated Time per Respondent: 1 hour 30 minutes.

Estimated Total Annual Burden Hours: 126.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: 1. Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; 2. the accuracy of the agency's estimate of the burden of the collection of information; 3. ways to enhance the quality, utility, and clarity of the information to be collected; 4. ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and 5. estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: January 2, 2019.

Bruce A. Sharp,

Bureau Clearance Officer.

[FR Doc. 2019–01697 Filed 2–7–19; 8:45 am]

BILLING CODE 4810–AS–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Notice of OFAC Sanctions Actions

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing the names of one or more persons and one aircraft that have been placed on OFAC's Specially Designated Nationals and Blocked Persons List based on OFAC's determination that one or more applicable legal criteria were satisfied. All property and interests in property subject to U.S. jurisdiction of these persons are blocked, and U.S. persons are generally prohibited from engaging in transactions with them.

DATES: See **SUPPLEMENTARY INFORMATION** section for applicable date(s).

FOR FURTHER INFORMATION CONTACT: OFAC: Associate Director for Global Targeting, tel.: 202–622–2420; Assistant Director for Sanctions Compliance & Evaluation, tel.: 202–622–2490; Assistant Director for Licensing, tel.: 202–622–2480; Assistant Director for Regulatory Affairs, tel.: 202–622–4855; or the Department of the Treasury's Office of the General Counsel: Office of the Chief Counsel (Foreign Assets Control), tel.: 202–622–2410.

SUPPLEMENTARY INFORMATION:

Electronic Availability

The Specially Designated Nationals and Blocked Persons List and additional information concerning OFAC sanctions programs are available on OFAC's website (*https://www.treasury.gov/ofac*).

Notice of OFAC Action(s)

On January 8, 2019, OFAC determined that the property and interests in property subject to U.S. jurisdiction of the following persons, and the following aircraft subject to U.S. jurisdiction, are blocked under the relevant sanctions authorities listed below.

Individuals

1. DIAZ GUILLEN, Claudia Patricia (a.k.a. DIAZ, Claudia; a.k.a. DIAZ–GUILLEN, Claudia), Cap Cana, Dominican Republic; Spain; DOB 25 Nov 1973; citizen Venezuela; Gender Female; Cedula No. 11502896 (Venezuela); Passport 030415788 (Venezuela) expires 22 Nov 2014 (individual) [VENEZUELA–EO13850].

Designated pursuant to section 1(a)(ii) of Executive Order 13850 of November 1, 2018, ''Blocking Property of Additional Persons Contributing to the Situation in Venezuela'' (E.O. 13850), for being responsible for or complicit in, or having directly or indirectly engaged in, any transaction or series of transactions involving deceptive practices or corruption and the Government of Venezuela or projects or programs administered by the Government of Venezuela, or for being an immediate adult family member of such a person.

2. GORRIN BELISARIO, Raul (a.k.a. GORRIN BELISARIO, Raul Antonio; a.k.a. GORRIN BELISARIO, Raul Antonio De La Santisima Trinidad; a.k.a. GORRIN, Raul; a.k.a. GORRIN, Raul A; a.k.a. GORRIN, Raul Antonio; a.k.a. GORRIN–BELISARIO, Raul Antonio De La Santisima), 4100 Salzedo Street, Apt. 1010, Miami, FL 33146, United States; 4100 Salzedo St., Unit 804, Coral Gables, FL 33146, United States; 144 Isla Dorada Blvd., Coral Gables, FL 33143, United States; DOB 22 Nov 1968; citizen Venezuela; Gender Male; Cedula No. 8682996 (Venezuela); Passport 129603081 (Venezuela) expires 14 Oct 2020; alt. Passport 066936455 (Venezuela) expires 10 Jan 2018; alt. Passport 007931220 (Venezuela) expires 24 Jan 2013 (individual) [VENEZUELA–EO13850].

Designated pursuant to section 1(a)(ii) of E.O. 13850 for being responsible for or complicit in, or having directly or indirectly engaged in, any transaction or series of transactions involving deceptive practices or corruption and the Government of Venezuela or projects or programs administered by the Government of Venezuela, or for being an immediate adult family member of such a person.

3. PERDOMO ROSALES, Maria Alexandra (a.k.a. DE PERDOMO, Maria A; a.k.a. DE PERDOMO, Maria Alejandra; a.k.a. PERDOMO, Maria Alexandra; a.k.a. PERDOMO–ROSALES, Maria), 144 Isla Dorada Blvd., Coral Gables, FL 33146, United States; 4100 Salzedo Street, Apt 1010, Miami, FL 33146, United States; DOB 25 Mar 1972; citizen Venezuela; Gender Female; Cedula No. 10538067 (Venezuela); Passport 135278046 (Venezuela) expires 14 Oct 2020; alt. Passport 079280833 (Venezuela) expires 22 Oct 2018; alt. Passport 018516885 (Venezuela) expires 04 Dec 2013 (individual) [VENEZUELA–EO13850] (Linked To: GORRIN BELISARIO, Raul).

Designated pursuant to section 1(a)(ii) of E.O. 13850 for being responsible for or complicit in, or having directly or indirectly engaged in, any transaction or series of transactions involving deceptive practices or corruption and the Government of Venezuela or projects or programs administered by the Government of Venezuela, or for being an immediate adult family member of such a person.

4. PERDOMO ROSALES, Gustavo Adolfo (a.k.a. PERDOMO ROSALES, Gustavo A; a.k.a. PERDOMO, Gustavo; a.k.a. PERDOMO, Gustavo A; a.k.a. PERDOMO, Gustavo Adolfo; a.k.a. PERDOMO–ROSALES, Gustavo), 4100 Salzedo St., Unit 804, Coral Gables, FL 33146, United States; 18555 Collins Avenue, Unit 4405, Sunny Isles, FL 33160, United States; DOB 05 Feb 1979; citizen Venezuela; Gender Male; Cedula No. 14585388 (Venezuela); Passport 083119116 (Venezuela) expires 28 Jan 2019; alt. Passport 023639834 (Venezuela) expires 13 Jun 2014 (individual) [VENEZUELA–EO13850].

Designated pursuant to section 1(a)(ii) of E.O. 13850 for being responsible for or complicit in, or having directly or indirectly engaged in, any transaction or series of transactions involving deceptive practices or corruption and the Government of Venezuela or projects or programs administered by the Government of Venezuela, or for being an immediate adult family member of such a person.

5. TARASCIO–PEREZ, Mayela Antonina (a.k.a. DE PERDOMO, Mayela T; a.k.a. DE PERDOMO, Mayela Tarascio; a.k.a. TARASCIO DE PERDOMO, Mayela A; a.k.a. TARASCIO DE PERDOMO, Mayela Antonina; a.k.a. TARASCIO, Mayela; a.k.a. TARASCIO–PEREZ, Mayela), 4100 Salzedo St., Unit 804, Coral Gables, FL 33146, United States; DOB 20 Feb 1985; citizen Venezuela; Gender Female; Passport 083111668 (Venezuela) expires 28 Jan 2019; alt. Passport 023639818 (Venezuela) expires 13 Jun 2014; alt. Passport C1453352 (Venezuela) expires 02 Nov 2009 (individual) [VENEZUELA–EO13850] (Linked To: PERDOMO ROSALES, Gustavo Adolfo).

Designated pursuant to section 1(a)(ii) of E.O. 13850 for being responsible for or complicit in, or having directly or indirectly engaged in, any transaction or series of transactions involving deceptive practices or corruption and the Government of Venezuela or projects or programs administered by the Government of Venezuela, or for being an immediate adult family member of such a person.

6. VELASQUEZ FIGUEROA, Adrian Jose (a.k.a. VELASQUEZ, Adrian), Cap Cana, Dominican Republic; Spain; DOB 02 Nov 1979; citizen Venezuela; Gender Male; Cedula No. 13813453 (Venezuela); Passport 024421568 (Venezuela) expires 25 Jun 2014 (individual) [VENEZUELA–EO13850].

Designated pursuant to section 1(a)(ii) of E.O. 13850 for being responsible for or complicit in, or having directly or indirectly engaged in, any transaction or series of transactions involving deceptive practices or corruption and the Government of Venezuela or projects or programs administered by the Government of Venezuela, or for being an immediate adult family member of such a person.

7. GONZALEZ DELLAN, Leonardo (a.k.a. GONZALEZ, Leonardo), London, United Kingdom; DOB 11 Sep 1966; citizen Venezuela; Gender Male; Cedula No. 8639102 (Venezuela); Passport 073785390 (Venezuela) expires 01 Jul 2018; alt. Passport 046041771 (Venezuela) expires 24 May 2016; alt. Passport 002272834 (Venezuela) expires 14 Aug 2012 (individual) [VENEZUELA–EO13850].

Designated pursuant to section 1(a)(ii) of E.O. 13850 for being responsible for or complicit in, or having directly or indirectly engaged in, any transaction or series of transactions involving deceptive practices or corruption and the Government of Venezuela or projects or programs administered by the Government of Venezuela, or for being an immediate adult family member of such a person.

Entities

1. CONSTELLO INC., Saint Kitts and Nevis [VENEZUELA–EO13850] (Linked To: TARASCIO–PEREZ, Mayela Antonina; Linked To: PERDOMO ROSALES, Gustavo Adolfo).

Designated pursuant to section 1(a)(iv) of E.O. 13850 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, TARASCIO–PEREZ, Mayela Antonina and PERDOMO ROSALES, Gustavo Adolfo, persons whose property and interests in property are blocked pursuant to E.O. 13850.

2. CONSTELLO NO. 1 CORPORATION, 4100 Salzedo Street, Unit 804, Coral Gables, FL 33146, United States; DE, United States [VENEZUELA–EO13850] (Linked To: TARASCIO–PEREZ, Mayela Antonina; Linked To: PERDOMO ROSALES, Gustavo Adolfo).

Designated pursuant to section 1(a)(iv) of E.O. 13850 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, TARASCIO–PEREZ, Mayela Antonina and PERDOMO ROSALES, Gustavo Adolfo, persons whose property and interests in property are blocked pursuant to E.O. 13850.

3. CORPOMEDIOS GV INVERSIONES, C.A., Calle Alameda Quinta Globovision Pb, Libertador, Caracas, Venezuela [VENEZUELA–EO13850] (Linked To: GORRIN BELISARIO, Raul; Linked To: PERDOMO ROSALES, Gustavo Adolfo).

Designated pursuant to section 1(a)(iv) of E.O. 13850 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, GORRIN BELISARIO, Raul, and PERDOMO ROSALES, Gustavo Adolfo, persons whose property and interests in property are blocked pursuant to E.O. 13850.

4. CORPOMEDIOS LLC, 4100 Salzedo Street, Unit 804, Coral Gables, FL 33146, United States [VENEZUELA–EO13850] (Linked To: GORRIN BELISARIO, Raul; Linked To: PERDOMO ROSALES, Gustavo Adolfo).

Designated pursuant to section 1(a)(iv) of E.O. 13850 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, GORRIN BELISARIO, Raul, and PERDOMO ROSALES, Gustavo Adolfo, persons whose property and interests in property are blocked pursuant to E.O. 13850.

5. GLOBOVISION TELE C.A. (a.k.a. GLOBOVISION), Caracas, Venezuela [VENEZUELA–EO13850] (Linked To: GORRIN BELISARIO, Raul; Linked To: PERDOMO ROSALES, Gustavo Adolfo).

Designated pursuant to section 1(a)(iv) of E.O. 13850 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, GORRIN BELISARIO, Raul, and PERDOMO ROSALES, Gustavo Adolfo, persons whose property and interests in property are blocked pursuant to E.O. 13850.

6. GLOBOVISION TELE CA, CORP., 4100 Salzedo Street, Unit 804, Coral Gables, FL 33146, United States [VENEZUELA–EO13850] (Linked To: GORRIN BELISARIO, Raul; Linked To: PERDOMO ROSALES, Gustavo Adolfo).

Designated pursuant to section 1(a)(iv) of E.O. 13850 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, GORRIN BELISARIO, Raul, and PERDOMO ROSALES, Gustavo Adolfo, persons whose property and interests in property are blocked pursuant to E.O. 13850.

7. MAGUS HOLDING II, CORP., 4100 Salzedo St., Unit 804, Coral Gables, FL 33146, United States; 140 Paloma Drive, Coral Gables, FL 33143, United States [VENEZUELA–EO13850] (Linked To: PERDOMO ROSALES, Gustavo Adolfo).

Designated pursuant to section 1(a)(iv) of E.O. 13850 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, PERDOMO ROSALES, Gustavo Adolfo, a person whose property and interests in property are blocked pursuant to E.O. 13850.

8. MAGUS HOLDING LLC, 4100 Salzedo St., Unit 804, Coral Gables, FL 33146, United States [VENEZUELA–EO13850] (Linked To: PERDOMO ROSALES, Gustavo Adolfo).

Designated pursuant to section 1(a)(iv) of E.O. 13850 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, PERDOMO ROSALES, Gustavo Adolfo, a person whose property and interests in property are blocked pursuant to E.O. 13850.

9. MAGUS HOLDINGS USA, CORP., 4100 Salzedo St., Unit 804, Coral Gables, FL 33146, United States [VENEZUELA–EO13850] (Linked To: PERDOMO ROSALES, Gustavo Adolfo; Linked To: TARASCIO–PEREZ, Mayela Antonina).

Designated pursuant to section 1(a)(iv) of E.O. 13850 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, PERDOMO ROSALES, Gustavo Adolfo, and TARASCIO–PEREZ, Mayela Antonina, persons whose property and interests in property are blocked pursuant to E.O. 13850.

10. PLANET 2 REACHING, INC., DE, United States; 7043 Fisher Dr., Unit 7043, Miami Beach, FL 33109–0064, United States [VENEZUELA–EO13850] (Linked To: GORRIN BELISARIO, Raul).

Designated pursuant to section 1(a)(iv) of E.O. 13850 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, GORRIN BELISARIO, Raul, a person whose property and interests in property are blocked pursuant to E.O. 13850.

11. POSH 8 DYNAMIC, INC., 18555 Collins Avenue, Unit 4401, Sunny Isles, FL 33160, United States; DE, United States [VENEZUELA–EO13850] (Linked To: GORRIN BELISARIO, Raul).

Designated pursuant to section 1(a)(iv) of E.O. 13850 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, GORRIN BELISARIO, Raul, a person whose property and interests in property are blocked pursuant to E.O. 13850.

12. POTRICO CORP., DE, United States [VENEZUELA–EO13850] (Linked To: PERDOMO ROSALES, Gustavo Adolfo).

Designated pursuant to section 1(a)(iv) of E.O. 13850 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, PERDOMO ROSALES, Gustavo Adolfo, a person whose property and interests in property are blocked pursuant to E.O. 13850.

13. RIM GROUP INVESTMENTS I CORP., 4100 Salzedo Street, Apt 1010, Miami, FL 33146, United States; 4100 Salzedo Street, Unit 608, Coral Gables, FL 33146, United States; 4100 Salzedo Street, Unit 807, Coral Gables, FL 33146, United States [VENEZUELA–EO13850] (Linked To: GORRIN BELISARIO, Raul; Linked To: PERDOMO ROSALES, Maria Alexandra).

Designated pursuant to section 1(a)(iv) of E.O. 13850 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, GORRIN BELISARIO, Raul, and PERDOMO ROSALES, Maria Alexandra, persons whose property and interests in property are blocked pursuant to E.O. 13850.

14. RIM GROUP INVESTMENTS II CORP., 4100 Salzedo Street, Apt 1010, Miami, FL 33146, United States; 4100 Salzedo Street, Unit 813, Coral Gables, FL 33146, United States; 4100 Salzedo Street, Unit 913, Coral Gables, FL 33146, United States [VENEZUELA–EO13850] (Linked To: GORRIN BELISARIO, Raul; Linked To: PERDOMO ROSALES, Maria Alexandra).

Designated pursuant to section 1(a)(iv) of E.O. 13850 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, GORRIN BELISARIO, Raul, and PERDOMO ROSALES, Maria Alexandra, persons whose property and interests in property are blocked pursuant to E.O. 13850.

15. RIM GROUP INVESTMENTS III CORP., 4100 Salzedo Street, Apt 1010, Miami, FL 33146, United States; 144 Isla Dorada Blvd., Coral Gables, FL 33143, United States [VENEZUELA–EO13850] (Linked To: GORRIN BELISARIO, Raul; Linked To: PERDOMO ROSALES, Maria Alexandra).

Designated pursuant to section 1(a)(iv) of E.O. 13850 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, GORRIN BELISARIO, Raul, and PERDOMO ROSALES, Maria Alexandra, persons whose property and interests in property are blocked pursuant to E.O. 13850.

16. RIM GROUP INVESTMENTS, CORP., 4100 Salzedo Street, Apt 1010, Coral Gables, FL 33146, United States [VENEZUELA–EO13850] (Linked To: GORRIN BELISARIO, Raul; Linked To: PERDOMO ROSALES, Maria Alexandra).

Designated pursuant to section 1(a)(iv) of E.O. 13850 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, GORRIN BELISARIO, Raul, and PERDOMO ROSALES, Maria Alexandra, persons whose property and interests in property are blocked pursuant to E.O. 13850.

17. RIM GROUP PROPERTIES OF NEW YORK II CORP., 675 Third Avenue, 29th FL., New York, NY 10017, United States; 20 West 53rd Street, Unit 47A, New York, NY 10019, United States; 60 Riverside Boulevard, PH 3602, New York, NY 10069, United States [VENEZUELA–EO13850] (Linked To: GORRIN BELISARIO, Raul).

Designated pursuant to section 1(a)(iv) of E.O. 13850 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, GORRIN BELISARIO, Raul, a person whose property and interests in property are blocked pursuant to E.O. 13850.

18. RIM GROUP PROPERTIES OF NEW YORK, CORP., 4100 Salzedo St., Unit 1010, Coral Gables, FL 33146, United States [VENEZUELA–EO13850] (Linked To: GORRIN BELISARIO, Raul).

Designated pursuant to section 1(a)(iv) of E.O. 13850 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, GORRIN BELISARIO, Raul, a person whose property and interests in property are blocked pursuant to E.O. 13850.

19. SEGUROS LA VITALICIA C.A. (a.k.a. LA VITALICIA), Caracas, Venezuela; National ID No. J310205361 (Venezuela) [VENEZUELA–EO13850] (Linked To: GORRIN BELISARIO, Raul).

Designated pursuant to section 1(a)(iv) of E.O. 13850 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, GORRIN BELISARIO, Raul, a person whose property and interests in property are blocked pursuant to E.O. 13850.

20. TINDAYA PROPERTIES HOLDING USA CORP., 675 Third Avenue, 29th Floor, New York, NY 10017, United States [VENEZUELA–EO13850] (Linked To: PERDOMO ROSALES, Gustavo Adolfo).

Designated pursuant to section 1(a)(iv) of E.O. 13850 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, PERDOMO ROSALES, Gustavo Adolfo, a person whose property and interests in property are blocked pursuant to E.O. 13850.

21. TINDAYA PROPERTIES OF NEW YORK CORP., 155 SW 25th Road, Miami, FL 33129, United States; 330 East 57th Street, Unit 12, New York, NY 10022, United States [VENEZUELA–EO13850] (Linked To: PERDOMO ROSALES, Gustavo Adolfo).

Designated pursuant to section 1(a)(iv) of E.O. 13850 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, PERDOMO ROSALES, Gustavo Adolfo, a person whose property and interests in property are blocked pursuant to E.O. 13850.

22. TINDAYA PROPERTIES OF NEW YORK II CORP., 675 Third Avenue, 29th Floor, New York, NY 10017, United States [VENEZUELA–EO13850] (Linked To: PERDOMO ROSALES, Gustavo Adolfo).

Designated pursuant to section 1(a)(iv) of E.O. 13850 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, PERDOMO ROSALES, Gustavo Adolfo, a person whose property and interests in property are blocked pursuant to E.O. 13850.

23. WINDHAM COMMERCIAL GROUP INC., Panama [VENEZUELA–EO13850] (Linked To: GORRIN BELISARIO, Raul; Linked To: PERDOMO ROSALES, Gustavo Adolfo).

Designated pursuant to section 1(a)(iv) of E.O. 13850 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, GORRIN BELISARIO, Raul, and PERDOMO ROSALES, Gustavo Adolfo, persons whose property and interests in property are blocked pursuant to E.O. 13850.

Aircraft

1. N133JA; Aircraft Model Mystere Falcon 50EX; Aircraft Manufacturer's Serial Number (MSN) 268; Aircraft Tail Number N133JA (aircraft) [VENEZUELA–EO13850] (Linked To: PERDOMO ROSALES, Gustavo Adolfo).

Identified pursuant to E.O. 13850 as property in which PERDOMO ROSALES, Gustavo Adolfo, a person whose property and interested in property are blocked pursuant to E.O. 13850, has an interest.

Dated: January 8, 2019.

Andrea Gacki,

Director, Office of Foreign Assets Control.

[FR Doc. 2019–01643 Filed 2–7–19; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF THE TREASURY

United States Mint

Establish Pricing and Pricing Changes for 2019 United States Mint Numismatic Products

AGENCY: United States Mint, Department of the Treasury.

ACTION: Notice.

FOR FURTHER INFORMATION CONTACT: Katrina McDow, Marketing Specialist, Numismatic and Bullion Directorate; United States Mint; 801 9th Street NW, Washington, DC 20220; or call 202–354–8495.

SUPPLEMENTARY INFORMATION: The United States Mint is announcing pricing changes and new pricing for some 2019 United States Mint Numismatic Products. Please see the table below:

Product	2019 retail price
United States Mint America the Beautiful Quarters Silver Proof Set™	$36.95
United States Mint Silver Proof Set®	54.95
United States Mint Limited Edition Silver Proof Set™	149.95
United States Mint Rocketship™	9.95

Authority: 31 U.S.C. 5111, 5112, 5132, & 9701.

Dated: February 4, 2019.

Mark Teskey,

Deputy Director, United States Mint.

[FR Doc. 2019–01636 Filed 2–7–19; 8:45 am]

BILLING CODE P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0495]

Agency Information Collection Activity: Marital Status Questionnaire

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: Veteran's Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before April 9, 2019.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *www.Regulations.gov* or to Nancy Kessinger, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420 or email to *nancy.kessinger@va.gov.* Please refer to ''OMB Control No. 2900–0495'' in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: Danny S. Green, (202) 421–1354.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995, Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Authority: 38 U.S.C. 101(3), 103.

Title: Marital Status Questionnaire, VA Form 21P–0537.

OMB Control Number: 2900–0495.

Type of Review: Extension without change of a currently approved collection.

Abstract: The Department of Veterans Affairs (VA), through its Veterans Benefits Administration (VBA), administers an integrated program of benefits and services established by law for Veterans, service personnel, and their dependents and/or beneficiaries. VA Form 21P–0537 Marital Status Questionnaire is used to confirm the marital status of a surviving spouse in receipt of Dependency and Indemnity Compensation (DIC) benefits. If a surviving spouse remarries, he or she is no longer entitled to DIC unless the marriage began after age 57 or has been terminated. Information is requested by this form under the authority of 38 U.S.C. 101(3) and 38 U.S.C. 103.

VA Form 21P–0537 is used by VBA to verify a surviving spouse's current marital status to determine his or her continuing entitlement to DIC benefits. The form letter is automatically generated and mailed to DIC beneficiaries. Agency action depends on the information provided by the beneficiary. If the information provided supports the beneficiary's continued entitlement to benefits, no action is taken. If the information provided by the beneficiary does not support continued entitlement to benefits, VA will act to terminate benefit payments, based on the facts found.

Affected Public: Individuals and households.

Estimated Annual Burden: 1,484 hours.

Estimated Average Burden per Respondent: 5 minutes.

Frequency of Response: Once.

Estimated Number of Respondents: 17,808.

By direction of the Secretary.

Danny S. Green,

Acting Interim Clearance Officer, Office of Quality, Performance and Risk (QPR), Department of Veterans Affairs.

[FR Doc. 2019–01692 Filed 2–7–19; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0009]

Agency Information Collection Activity: (Application for Vocational Rehabilitation for Veterans With Service-Connected Disabilities (Chapter 31, Title 38 U.S.C.) (VA Form 28–1900))

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to

publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed revision of a currently approved collection, and allow 60 days for public comment in response to the notice.

VA Form 28–1900 is completed by Veterans with a combined service-connected disability rating of 10 percent or more and Servicemembers awaiting discharge for such disability to apply for vocational rehabilitation benefits. VA provides services and assistance to Veterans with service-connected disabilities, who are determined entitled to such benefits, to obtain and maintain suitable employment. Vocational rehabilitation also provides service to support veterans with service-connected disabilities to achieve maximum independence in their daily living activities if employment is not reasonably feasible. VA use the information collected to determine the claimant's eligibility for vocational rehabilitation benefits.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before March 11, 2019.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *www.Regulations.gov* or to Nancy J. Kessinger, Veterans Benefits Administration (20M33), Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420 or email to *nancy.kessinger@va.gov.* Please refer to ''OMB Control No. 2900–0009'' in any correspondence. During the comment period, comments may be viewed online through the FDMS.

FOR FURTHER INFORMATION CONTACT: Danny S. Green at (202) 421–1354.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995, Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Authority: Public Law 104–13; 44 U.S.C. 3501–3521.

Title: (Application for Vocational Rehabilitation for Veterans with Service-connected Disabilities (Chapter 31, Title 38 U.S.C.) (VA Form 28–1900)).

OMB Control Number: 2900–0009.

Type of Review: Reinstatement With Change to a Previously Approved Collection.

Abstract: VA Form 28–1900 is completed by Veterans with a combined service-connected disability rating of 10 percent or more and Servicemembers awaiting discharge for such disability to apply for vocational rehabilitation benefits. VA provides services and assistance to Veterans with service-connected disabilities, who are determined entitled to such benefits, to obtain and maintain suitable employment. Vocational rehabilitation also provides service to support veterans with service-connected disabilities to achieve maximum independence in their daily living activities if employment is not reasonably feasible. VA use the information collected to determine the claimant's eligibility for vocational rehabilitation benefits.

Affected Public: Individuals or households.

Estimated Annual Burden: 21,419 hours.

Estimated Average Burden per Respondent: 10 minutes.

Frequency of Response: One time.

Estimated Number of Respondents: 128,515.

By direction of the Secretary:

Danny S. Green,

Interim VA Clearance Officer, Office of Quality Performance and Risk (QPR), Department of Veterans Affairs.

[FR Doc. 2019–01687 Filed 2–7–19; 8:45 am]

BILLING CODE 8320–01–P

FEDERAL REGISTER

Vol. 84 Friday,

No. 27 February 8, 2019

Part II

Department of The Treasury

Internal Revenue Service

26 CFR Part 1

Qualified Business Income Deduction; Final Rule and Proposed Rule

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9847]

RIN 1545–BO71

Qualified Business Income Deduction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations concerning the deduction for qualified business income under section 199A of the Internal Revenue Code (Code). The regulations will affect individuals, partnerships, S corporations, trusts, and estates engaged in domestic trades or businesses. The regulations also contain an anti-avoidance rule under section 643 of the Code to treat multiple trusts as a single trust in certain cases, which will affect trusts, their grantors, and beneficiaries. This document also requests additional comments on certain aspects of the deduction.

DATES:

Effective date: These regulations are effective on February 8, 2019. Sections 1.199A–1 through 1.199A–6 are generally applicable to taxable years ending after February 8, 2019. However, taxpayers may rely on the rules set forth in §§ 1.199A–1 through 1.199A–6, in their entirety, or on the proposed regulations under §§ 1.199A–1 through 1.199A–6 issued on August 16, 2018, in their entirety, for taxable years ending in calendar year 2018.

Applicability date: For dates of applicability, see §§ 1.199A–1(f), 1.199A–2(d), 1.199A–3(d), 1.199A–4(e), 1.199A–5(e), 1.199A–6(e), and 1.643(f)–1(b).

FOR FURTHER INFORMATION CONTACT: Vishal R. Amin or Frank J. Fisher at (202) 317–6850 or Robert D. Alinsky, Margaret Burow, or Wendy L. Kribell at (202) 317–5279.

ADDRESSES: Submit electronic submissions to the Federal eRulemaking Portal at *www.regulations.gov* (indicate IRS and REG–107892–18) by following the online instructions for submitting comments. Once submitted to the Federal eRulemaking Portal, comments cannot be edited or withdrawn. The Department of the Treasury (Treasury Department) and the IRS will publish for public availability any comment received to its public docket, whether submitted electronically or in hard copy. Send hard copy submissions to CC:PA:LPD:PR (REG–107892–18), Room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG–107892–18), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in these regulations has been revised and approved by the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507) under control numbers 1545–0123, 1545–0074, and 1545–0092.

Regulations in §§ 1.199A–4 and 1.199A–6 require the collection of information. Section 1.199A–4 requires taxpayers and passthrough entities that choose to aggregate two or more trades or businesses to collect information. Section 1.199A–6 requires passthrough entities to report section 199A information to their owners or beneficiaries. Taxpayers need to report the information to the IRS by attaching the applicable statement to Form 1040 or to the Schedules K–1 for the Form 1041, Form 1065, or Form 1120S, as appropriate, to ensure the correct amount of deduction is reported under section 199A. The collection of information is necessary to ensure tax compliance.

The likely respondents are individuals with qualified business income from more than one trade or business as well as most partnerships, S corporations, trusts, and estates that have qualified business income. More of the paperwork burden analysis details are explained in the Special Analysis Section J, Anticipated impacts on administrative and compliance costs.

Estimated total annual reporting burden: 25 million hours. This estimate primarily reflects two effects of the regulations: A 0.7 million hour increase in reporting burden from compliance with § 1.199A–4 and a 24.2 million hour increase in reporting burden from compliance with § 1.199A–6.

Estimated average annual burden hours per respondent will vary from 30 minutes to 20 hours, depending on individual circumstances, with an estimated average of 2.5 hours.

Estimated number of respondents: 10 million.

Estimated annual frequency of responses: Annually.

Estimated monetized burden: Using the IRS's taxpayer compliance cost estimates, taxpayers who are self-employed with multiple businesses are estimated to have a monetization rate of $39 per hour. Passthroughs that issue K–1s have a monetization rate of $53 per hour. (See ''Taxpayer Compliance Costs for Corporations and Partnerships: A New Look,'' Contos, et al. IRS Research Bulletin (2012) p. 5 for a description of the model.)

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

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

Background

This document contains amendments to the Income Tax Regulations (26 CFR part 1) under sections 199A and 643(f) of the Code. On August 16, 2018, the Department of the Treasury (Treasury Department) and the IRS published a notice of proposed rulemaking (REG–107892–18) in the **Federal Register** (83 FR 40884) containing proposed regulations under sections 199A and 643(f) of the Code (proposed regulations). The Summary of Comments and Explanation of Revisions summarizes the provisions of sections 199A and 643(f) and the provisions of the proposed regulations, which are explained in greater detail in the preamble to the proposed regulations.

The Treasury Department and the IRS received written and electronic comments responding to the proposed regulations and held a public hearing on the proposed regulations on October 16, 2018. After full consideration of the comments received on the proposed regulations and the testimony heard at the public hearing, this Treasury decision adopts the proposed regulations with modifications in response to such comments and testimony as described in the Summary of Comments and Explanation of Revisions. Concurrently with the publication of these final regulations, the Treasury Department and the IRS are publishing in the Proposed Rule section of this edition of the **Federal Register** (RIN 1545–BP12) a notice of proposed rulemaking providing additional proposed regulations under section 199A (REG–134652–18).

Summary of Comments and Explanation of Revisions

The Treasury Department and the IRS received approximately 335 comments in response to the notice of proposed rulemaking. All comments were considered and are available at *www.regulations.gov* or upon request. Most of the comments addressing the proposed regulations are summarized in this Summary of Comments and Explanation of Revisions. However, comments merely summarizing or interpreting the proposed regulations, recommending statutory revisions, or addressing provisions outside the scope of these final regulations are not discussed in this preamble. The Treasury Department and the IRS continue to study comments on issues related to section 199A that are beyond the scope of these final regulations (or the notice of proposed rulemaking on this subject in the Proposed Rules section of this issue of the **Federal Register**) and may discuss those comments that are beyond the scope of the regulations if future guidance on those issues is published.

As discussed in the preamble to the proposed regulations, the purpose and scope of the proposed regulations and these final regulations are primarily limited to determining the amount of the deduction of up to 20 percent of income from a domestic business operated as a sole proprietorship or through a partnership, S corporation (as defined in section 1361(a)(1)), trust, or estate (section 199A deduction). The purpose and scope of the proposed regulations and these final regulations are also to determine when to treat two or more trusts as a single trust for purposes of subchapter J of chapter 1 of subtitle A of the Code (subchapter J). These final regulations are not intended to address section 643 in general.

Commenters and others requested that the proposed regulations be finalized as quickly as possible to provide guidance to practitioners and taxpayers as they prepare returns and determine the section 199A deduction for the first taxable year in which the deduction is allowed. Commenters also requested that the rules for section 199A be simplified and clarified. Accordingly, these final regulations adopt many of the rules described in the proposed regulations, with revisions in response to the comments received and testimony provided at the public hearing, as described in the remainder of this Summary of Comments and Explanation of Revisions. Additionally, clarifying language and additional examples have been added throughout the final regulations.

Part I of this section provides an overview of the sections of the Code addressed by these final regulations. Part II of this section addresses the operational rules, including definitions, computational rules, special rules, and reporting requirements. Part III of this section addresses the determination of W–2 wages and unadjusted basis immediately after acquisition (UBIA) of qualified property. Part IV of this section addresses the determination of qualified business income (QBI), qualified real estate investment trust (REIT) dividends, and qualified publicly traded partnership (PTP) income. Part V of this section addresses the optional aggregation of trades or businesses. Part VI of this section addresses specified services trades or businesses (SSTBs) and the trade or business of being an employee. Part VII of this section addresses the rules for relevant passthrough entities (RPEs), PTPs, beneficiaries, trusts, and estates. Part VIII of this section addresses the treatment of multiple trusts.

I. Overview

A. Section 199A

As noted in the preamble to the proposed regulations, section 199A was enacted on December 22, 2017, by section 11011 of ''An Act to provide for reconciliation pursuant to titles II and V of the concurrent resolution on the budget for fiscal year 2018,'' Public Law 115–97 (*TCJA*), and was amended on March 23, 2018, retroactively to January 1, 2018, by section 101 of Division T of the Consolidated Appropriations Act, 2018, Public Law 115–141, (2018 Act). Section 199A applies to taxable years beginning after 2017 and before 2026.

Section 199A provides a deduction of up to 20 percent of income from a domestic business operated as a sole proprietorship or through a partnership, S corporation, trust, or estate. The section 199A deduction may be taken by individuals and by some estates and trusts. A section 199A deduction is not available for wage income or for business income earned through a C corporation (as defined in section 1361(a)(2)). For taxpayers whose taxable income exceeds a statutorily-defined amount (*threshold amount*), section 199A may limit the taxpayer's section 199A deduction based on (i) the type of trade or business engaged in by the taxpayer, (ii) the amount of W–2 wages paid with respect to the trade or business (W–2 wages), and/or (iii) the UBIA of qualified property held for use in the trade or business (*UBIA of qualified property*). These statutory limitations are subject to phase-in rules based upon taxable income above the threshold amount.

Section 199A also allows individuals and some trusts and estates (but not corporations) a deduction of up to 20 percent of their combined qualified REIT dividends and qualified PTP income, including qualified REIT dividends and qualified PTP income earned through passthrough entities. This component of the section 199A deduction is not limited by W–2 wages or UBIA of qualified property.

The section 199A deduction is the lesser of (1) the sum of the combined amounts described in the prior two paragraphs or (2) an amount equal to 20 percent of the excess (if any) of taxable income of the taxpayer for the taxable year over the net capital gain of the taxpayer for the taxable year.

Additionally, section 199A(g), as amended by the 2018 Act effective as of January 1, 2018, provides that specified agricultural or horticultural cooperatives may claim a special entity-level deduction that is substantially similar to the domestic production activities deduction under former section 199. The Treasury Department and the IRS intend to issue a future notice of proposed rulemaking describing proposed rules for applying section 199A to specified agricultural and horticultural cooperatives and their patrons.

Finally, the statute expressly grants the Secretary authority to prescribe such regulations as are necessary to carry out the purposes of section 199A (section 199A(f)(4)), and provides specific grants of authority with respect to: The treatment of acquisitions, dispositions, and short taxable years (section 199A(b)(5)); certain payments to partners for services rendered in a non-partner capacity (section 199A(c)(4)(C)); the allocation of W–2 wages and UBIA of qualified property (section 199A(f)(1)(A)(iii)); restricting the allocation of items and wages under section 199A and such reporting requirements as the Secretary determines appropriate (section 199A(f)(4)(A)); the application of section 199A in the case of tiered entities (section 199A(f)(4)(B); preventing the manipulation of the depreciable period of qualified property using transactions between related parties (section 199A(h)(1)); and determining the UBIA of qualified property acquired in like-kind exchanges or involuntary conversions (section 199A(h)(2)).

B. Section 643(f)

Part I of subchapter J provides rules related to the taxation of estates, trusts, and beneficiaries. For various subparts of part I of subchapter J, sections 643(a), 643(b), and 643(c) define the terms *distributable net income* (*DNI*), *income,* and *beneficiary,* respectively. Sections 643(d) through 643(i) (other than section 643(f)) provide additional rules. Section 643(f) grants the Secretary authority to treat two or more trusts as a single trust for purposes of subchapter J if (1) the trusts have substantially the same grantors and substantially the same primary beneficiaries and (2) a principal purpose of such trusts is the avoidance of the tax imposed by chapter 1 of the Code. Section 643(f) further provides that, for these purposes, spouses are treated as a single person.

II. Operational Rules

A. Definitions

1. Net Capital Gain

Section 199A(a) provides, in relevant part, that the section 199A deduction is limited to the lesser of the taxpayer's combined QBI or 20 percent of the excess of a taxpayer's taxable income over the taxpayer's *net capital gain* (as defined in section 1(h)) for the taxable year. The proposed regulations do not contain a specific definition of net capital gain. The Treasury Department and the IRS are aware that taxpayers and practitioners have questioned how net capital gain is determined for purposes of section 199A. One commenter suggested that net capital gain, as used to calculate the section 199A deduction, should be defined as excluding qualified dividend income, which is taxed as capital gain.

The final regulations provide a definition of net capital gain for purposes of section 199A. Section 1(h) establishes the maximum capital gains rates imposed on individuals, trusts, and estates that have a net capital gain for the taxable year. Section 1222(11) defines *net capital gain* as the excess of net long-term capital gain for the taxable year over the net short-term capital loss for such year. Section 1(h)(11) provides that for purposes of section 1(h), *net capital gain* means net capital gain (determined without regard to section 1(h)(11)) increased by qualified dividend income. Accordingly, § 1.199A–1(b)(3) defines *net capital gain* for purposes of section 199A as net capital gain within the meaning of section 1222(11) plus any qualified dividend income (as defined in section 1(h)(11)(B)) for the taxable year.

The Treasury Department and the IRS note that under section 1(h)(2), net capital gain is reduced by the amount that the taxpayer takes into account as investment income under section 163(d)(4)(B)(iii). This reduction does not change the definition of net capital gain for purposes of section 1(h). Instead, it reduces the amount of gains that can be taxed at the maximum capital gains rates as a tradeoff for allowing a taxpayer to elect to deduct more investment interest under section 163(d). Consequently, capital gains and qualified dividends treated as investment income are net capital gain for purposes of determining the section 199A deduction.

2. Relevant Passthrough Entity

The proposed regulations define an RPE as a partnership (other than a PTP) or an S corporation that is owned, directly or indirectly, by at least one individual, estate, or trust. A trust or estate is treated as an RPE to the extent it passes through QBI, W–2 wages, UBIA of qualified property, qualified REIT dividends, or qualified PTP income. In response to a comment, the final regulations provide that other passthrough entities, including common trust funds as described in § 1.6032–T and religious or apostolic organizations described in section 501(d), are also treated as RPEs if the entity files a Form 1065, *U.S. Return of Partnership Income,* and is owned, directly or indirectly, by at least one individual, estate, or trust. The Treasury Department and the IRS decline to adopt the recommendation of another commenter to treat regulated investment companies (RICs) as RPEs because RICs are C corporations, not passthrough entities.

3. Trade or Business

a. In General

The calculation of QBI and therefore, the benefits of section 199A, are limited to taxpayers with income from a trade or business. Section 199A and its legislative history, however, do not define the phrase ''trade or business.'' The proposed regulations define *trade or business* by reference to section 162. Section 162(a) permits a deduction for all the ordinary and necessary expenses paid or incurred in carrying on a trade or business. Multiple commenters agreed that section 162 is the most appropriate standard for what constitutes a trade or business for purposes of section 199A, but noted that there are significant uncertainties in the meaning of trade or business under section 162. However, because many taxpayers who will now benefit from the section 199A deduction are already familiar with the trade or business standard under section 162, using the section 162 standard appears to be the most practical for taxpayers and the IRS. Therefore, after considering all relevant comments, the final regulations retain and slightly reword the proposed regulation's definition of trade or business. Specifically, for purposes of section 199A and the regulations thereunder, § 1.199A–1(b)(14) defines *trade or business* as a trade or business under section 162 (section 162 trade or business) other than the trade or business of performing services as an employee.

The Treasury Department and the IRS received a number of comments requesting additional guidance with respect to determining whether an activity rises to the level of a section 162 trade or business, and therefore, will be considered to be a trade or business for purposes of determining the section 199A deduction. Commenters suggested guidance in the form of a regulatory definition, a bright-line test, a factor-based test, or a safe harbor. Whether an activity rises to the level of a section 162 trade or business, however, is inherently a factual question and specific guidance under section 162 is beyond the scope of these regulations. Accordingly, the Treasury Department and the IRS have concluded that the factual setting of various trades or businesses varies so widely that a single rule or list of factors would be difficult to provide in a timely and manageable manner and would be difficult for taxpayers to apply.

In *Higgins* v. *Commissioner,* 312 U.S. 212 (1941), the Supreme Court noted that determining whether a trade or business exists is a factual determination. Specifically, the Court stated that the determination of ''whether the activities of a taxpayer are 'carrying on a business' requires an examination of the facts in each case.'' 312 U.S. at 217. Because there is no statutory or regulatory definition of a section 162 trade or business, courts have established elements to determine the existence of a trade or business. The courts have developed two definitional requirements. One, in relation to profit motive, is said to require the taxpayer to enter into and carry on the activity with a good faith intention to make a profit or with the belief that a profit can be made from the activity. The second is in relation to the scope of the activities and is said to require considerable, regular, and continuous activity. *See generally Commissioner* v. *Groetzinger,* 480 U.S. 23 (1987). In the seminal case of *Groetzinger,* the Supreme Court stated,

''[w]e do not overrule or cut back on the Court's holding in *Higgins* when we conclude that if one's gambling activity is pursued full time, in good faith, and with regularity, to the production of income for a livelihood, and is not a mere hobby, it is a trade or business within the statutes with which we are here concerned.'' *Id.* at 35.

A few commenters suggested adopting the definitions or rules regarding a trade or business found in other provisions of the Code, including sections 469 and 1411. Section 469(c)(6) and § 1.469–4(b)(1) broadly define trade or business activities other than rental activities to include any activity performed: (i) In connection with a trade or business within the meaning of section 162, (ii) with respect to which expenses are allowable as a deduction under section 212, (iii) conducted in anticipation of the commencement of a trade or business, or (iv) that involves research and experimentation expenditures (within the meaning of section 174). Section 1.469–4(b)(2) defines a rental activity as an activity that constitutes a rental activity within the meaning of § 1.469–1T(e)(3). Passive activities for purposes of section 469 are defined as any activity that involves the conduct of a trade or business in which the taxpayer does not materially participate and includes all rental activity. The definition of trade or business for section 469 purposes is significantly broader than the definition for purposes of section 162 as it is intended to capture a larger universe of activities, including passive activities. Section 469 was enacted to limit the deduction of certain passive losses and therefore, serves a very different purpose than the allowance of a deduction under section 199A. Further, section 199A does not require that a taxpayer materially participate in a trade or business in order to qualify for the section 199A deduction. Consequently, the Treasury Department and the IRS decline to adopt the recommendation to define trade or business for purposes of section 199A by reference to section 469. The Treasury Department and the IRS also decline to define trade or business by reference to section 1411 as § 1.1411–1(d)(12) defines trade or business by reference to section 162 in a manner similar to § 1.199A–1(b)(14).

Commenters also suggested that the section 199A regulations incorporate the real estate professional provisions in section 469(c)(7) in a manner similar to the cross references in section 163(j) and § 1.1411–4(g)(7). Under section 469, a real estate professional may treat rental real estate activities described in section 469(c)(7)(C) as nonpassive if the taxpayer materially participates in such activities. Section 1.469–5T(a) provides seven tests to establish material participation, but as noted above, these tests only determine whether an individual materially participates in a rental real estate activity. They cannot be used to determine whether the activity itself is a trade or business. Unlike section 469, whether a taxpayer is entitled to a section 199A deduction is not determined based on the taxpayer's level of participation in a trade or business, nor does it require that an individual materially participate in the trade or business. Instead, section 199A is dependent on whether the individual has QBI from a trade or business. Consequently, the Treasury Department and the IRS decline to adopt these comments because the § 1.469–5T material participation tests are not a proxy to establish regular, continuous, and considerable activity that rises to the level of a trade or business for purposes of section 199A.

b. Rental Real Estate Activities as a Trade or Business

A majority of the comments received on the meaning of a trade or business focus on the treatment of rental real estate activities. Commenters noted inconsistency in the case law in determining whether a taxpayer renting real estate is engaged in a trade or business. Some commenters suggested including safe harbors, tests, or a variety of factors, which if satisfied, would qualify a rental real estate activity as a trade or business. A number of commenters suggested that all rental real estate activity should qualify as a trade or business. Further, one commenter suggested that rental income from real property held for the production of rents within the meaning of section 62(a)(4) should be considered a trade or business for purposes of section 199A. Another commenter suggested that final regulations provide that an individual whose taxable income does not exceed the threshold amount will be considered to be conducting a trade or business with respect to any real estate rental of which the individual owns at least ten percent and in which the individual actively participates within the meaning of section 469(i).

In determining whether a rental real estate activity is a section 162 trade or business, relevant factors might include, but are not limited to (i) the type of rented property (commercial real property versus residential property), (ii) the number of properties rented, (iii) the owner's or the owner's agents day-to-day involvement, (iv) the types and significance of any ancillary services provided under the lease, and (v) the terms of the lease (for example, a net lease versus a traditional lease and a short-term lease versus a long-term lease).

Providing bright line rules on whether a rental real estate activity is a section 162 trade or business for purposes of section 199A is beyond the scope of these regulations. Additionally, the Treasury Department and the IRS decline to adopt a position deeming all rental real estate activity to be a trade or business for purposes of section 199A. However, the Treasury Department and IRS recognize the difficulties taxpayers and practitioners may have in determining whether a taxpayer's rental real estate activity is sufficiently regular, continuous, and considerable for the activity to constitute a section 162 trade or business. Accordingly, Notice 2019–07, 2019–9 IRB, released concurrently with these final regulations, provides notice of a proposed revenue procedure detailing a proposed safe harbor under which a rental real estate enterprise may be treated as a trade or business solely for purposes of section 199A.

Under the proposed safe harbor, a rental real estate enterprise may be treated as a trade or business for purposes of section 199A if at least 250 hours of services are performed each taxable year with respect to the enterprise. This includes services performed by owners, employees, and independent contractors and time spent on maintenance, repairs, collection of rent, payment of expenses, provision of services to tenants, and efforts to rent the property. Hours spent by any person with respect to the owner's capacity as an investor, such as arranging financing, procuring property, reviewing financial statements or reports on operations, planning, managing, or constructing long-term capital improvements, and traveling to and from the real estate are not considered to be hours of service with respect to the enterprise. The proposed safe harbor also would require that separate books and records and separate bank accounts be maintained for the rental real estate enterprise. Property leased under a triple net lease or used by the taxpayer (including an owner or beneficiary of an RPE) as a residence for any part of the year under section 280A would not be eligible under the proposed safe harbor. A rental real estate enterprise that satisfies the proposed safe harbor may be treated as a trade or business solely for purposes of section 199A and such satisfaction does not necessarily determine whether the rental real estate activity is a section 162 trade or business. Likewise, failure

to meet the proposed safe harbor would not necessarily preclude rental real estate activities from being a section 162 trade or business.

Examples 1 and 2 of proposed § 1.199A–1(d)(4) describe a taxpayer who owns several parcels of land that the taxpayer manages and leases to airports for parking lots. The Treasury Department and the IRS are aware that some practitioners and taxpayers questioned whether the use of the lease of unimproved land in these examples was intended to imply that the lease of unimproved land is a trade or business for purposes of section 199A. Proposed § 1.199A–1(d)(4) provides that for purposes of the examples all businesses described in the examples are trades or business for purposes of section 199A. Example 1 was intended to provide a simple illustration of how the calculation would work if a taxpayer lacked sufficient W–2 wages or UBIA of qualified property to claim the deduction. Example 2 built on the fact pattern by adding UBIA of qualified property to the facts. The examples in the proposed regulations were not intended to imply that the lease of the land is, or is not, a trade or business for purposes of section 199A beyond the assumption in the examples. In order to avoid any confusion, the final regulations remove the references to land in both examples.

c. Special Rule for Renting Property to a Related Person

In one instance, the proposed regulations and the final regulations extend the definition of trade or business for purposes of section 199A beyond section 162. Solely for purposes of section 199A, the rental or licensing of tangible or intangible property to a related trade or business is treated as a trade or business if the rental or licensing activity and the other trade or business are commonly controlled under proposed § 1.199A–4(b)(1)(i). This rule also allows taxpayers to aggregate their trades or businesses with the leasing or licensing of the associated rental or intangible property if all of the requirements of proposed § 1.199A–4 are met.

One commenter asked for clarification regarding whether this rule applies to situations in which the rental or licensing is to a commonly controlled C corporation. Another commenter suggested that the rule in the proposed regulations could allow passive leasing and licensing-type activities to benefit from section 199A even if the counterparty is not an individual or an RPE. The commenter recommended that the exception be limited to scenarios in which the related party is an individual or an RPE and that the term related party be defined with reference to existing attribution rules under sections 267, 707, or 414. The final regulations clarify these rules by adopting these recommendations and limiting this special rule to situations in which the related party is an individual or an RPE. Further, as discussed in part V.B. of this Summary of Comments and Explanation of Revisions, the final regulations provide that the related party rules under sections 267(b) or 707(b) will be used to determine relatedness for purposes of § 1.199A–4 and this special rule.

d. Multiple Trades or Businesses Within an Entity

Several commenters suggested that there should be safe harbors or factors to determine how to delineate separate section 162 trades or businesses within an entity and when an entity's combined activities should be considered a single section 162 trade or business. Some of the factors suggested include whether the activities: Have separate books and records, facilities, locations, employees, and bank accounts; operate separate types of businesses or activities; are held out as separate to the public; and are housed in separate legal entities. One commenter suggested adopting the separate trade or business rules provided in regulations under sections 446 and 469.

The Treasury Department and the IRS decline to adopt these recommendations because specific guidance under section 162 is beyond the scope of these final regulations and, as described in part II.A.3.a. of this Summary of Comments and Explanation of Revisions, guidance under section 469 is inapplicable. Further, § 1.446–1(d) does not provide guidance on when trades or businesses will be considered separate and distinct. Instead, it provides that a taxpayer can use different methods of accounting for separate and distinct trades or businesses and specifies two circumstances in which trades or businesses will not be considered separate and distinct. Section 1.446–1(d)(2) provides that no trade or business will be considered separate and distinct unless a complete and separable set of books and records is kept for such trade or business.

The Treasury Department and the IRS acknowledge that an entity can conduct more than one section 162 trade or business. This position is inherent in the reporting requirements detailed in § 1.199A–6, which require an entity to separately report QBI, W–2 wages, UBIA of qualified property, and SSTB information for each trade or business engaged in by the entity. Whether a single entity has multiple trades or businesses is a factual determination. However, court decisions that help define the meaning of ''trade or business'' provide taxpayers guidance in determining whether more than one trades or businesses exist. As discussed in part II.A.3.a. of this Summary of Comments and Explanation of Revisions, generally under section 162, to be engaged in a trade or business, the taxpayer must be involved in the activity with continuity and regularity and the taxpayer's primary purpose for engaging in the activity must be for income or profit. *Groetzinger,* at 35.

The Treasury Department and the IRS also believe that multiple trades or businesses will generally not exist within an entity unless different methods of accounting could be used for each trade or business under § 1.446–1(d). Section 1.446–1(d) explains that no trade or business is considered separate and distinct unless a complete and separable set of books and records is kept for that trade or business. Further, trades or businesses will not be considered separate and distinct if, by reason of maintaining different methods of accounting, there is a creation or shifting of profits and losses between the businesses of the taxpayer so that income of the taxpayer is not clearly reflected.

e. Taxpayer Consistency

In cases in which other Code provisions use a trade or business standard that is the same or substantially similar to the section 162 standard adopted in these final regulations, taxpayers should report such items consistently. For example, if taxpayers who own tenancy in common interests in rental property treat such joint interests as a trade or business for purposes of section 199A but do not treat the joint interests as a separate entity for purposes of § 301.7701–1(a)(2), the IRS will consider the facts and circumstances surrounding the differing treatment. Similarly, taxpayers should consider the appropriateness of treating a rental activity as a trade or business for purposes of section 199A where the taxpayer does not comply with the information return filing requirements under section 6041.

B. Computational Rules

Section 1.199A–1(d)(2)(iii)(A) of the proposed regulations provides that if an individual's QBI from at least one trade or business is less than zero, the individual must offset the QBI

attributable to each trade or business that produced net positive QBI with the QBI from each trade or business that produced net negative QBI in proportion to the relative amounts of net QBI in the trades or businesses with positive QBI. This rule is applied prior to the application of the W–2 wage and UBIA of qualified property limitations. One commenter supported this rule, noting that it leads to fair and administrable results for both the government and taxpayers. Another commenter argued that the rule requiring losses to be allocated to a trade or business with positive QBI should be eliminated. The commenter noted that aggregation is optional and netting provisions force a mathematical aggregation where one is not desired or necessary. The commenter also stated that taxpayers are prevented from claiming an excessive deduction by the taxable income, W–2 wage, and UBIA of qualified property limitations. A third commenter suggested that if the netting rule is retained, a taxpayer should be able to elect to include an unprofitable business with any group of businesses when determining the amount of their W–2 wages and UBIA of qualified property regardless of whether the aggregation factors are met.

The Treasury Department and the IRS decline to adopt these recommendations. The aggregation rules provided in § 1.199A–4 are optional and are intended to assist taxpayers in applying the W–2 wage and UBIA of qualified property limitations in situations in which a unified business is conducted across multiple entities. In contrast, the netting rule is derived from section 199A(b) of the Code, which provides in relevant part that the term ''combined qualified business income amount'' includes the sum of 20 percent of the taxpayer's QBI with respect to each qualified trade or business of the taxpayer. Further, the conference report accompanying the TCJA describes the Senate amendment as providing that ''[i]f the net amount of qualified business income from all qualified trades or businesses during the taxable year is a loss, it is carried forward as a loss from a qualified trade or business in the next taxable year.'' H.R. Rep. No. 115–466, at 214 (2017) (Conference Report). The Conference Report also includes an example, ''For example, an individual has two business activities that give rise to a net business loss of 3 and 4, respectively, in year one, giving rise to a carryover business loss of 7 in year two. If in year two the two business activities each give rise to net business income of 2, a carryover business loss of 3 is carried to year three (that is, <7> − (2 + 2) = <3>).'' *Id.* at 211. This example indicates that QBI is netted in determining combined QBI.

Another commenter asked, in the case of a taxpayer with taxable income within the phase-in range, whether QBI from an SSTB is reduced by the applicable percentage before or after QBI from all of the taxpayer's trades or businesses is netted. The commenter recommended that negative QBI be netted with positive QBI before the reduction amount is applied to the QBI from the SSTB.

The Treasury Department and the IRS agree that clarification is needed regarding the reduction of QBI from an SSTB when a taxpayer has multiple trades or businesses. Section 199A(d)(3)(A)(ii) provides that only the applicable percentage of qualified items of income, gain, deduction, or loss, and the W–2 wages and the unadjusted basis immediately after acquisition of qualified property, of the taxpayer allocable to such specified service trade or business shall be taken into account in computing the qualified business income, W–2 wages, and the unadjusted basis immediately after acquisition of qualified property of the taxpayer for the taxable year for purposes of applying this section. The Treasury Department and the IRS believe this language applies for all purposes in computing the section 199A deduction. Accordingly, the final regulations provide that for taxpayers with taxable income within the phase-in range, QBI from an SSTB must be reduced by the applicable percentage before the application of the netting and carryover rules described in § 1.199A–1(d)(2)(iii)(A). The final regulations clarify that the SSTB limitations also apply to qualified income received by an individual from a PTP.

C. Other Comments

1. Disregarded Entities

The proposed regulations do not address the treatment of disregarded entities for purposes of section 199A. A few commenters questioned whether trades or businesses conducted by disregarded entities would be treated as if conducted directly by the owner of the entity. Section 1.199A–1(e)(2) of the final regulations provides that an entity with a single owner that is treated as disregarded as an entity separate from its owner under any provision of the Code is disregarded for purposes of section 199A and 1.199A–1 through 1.199A–6. Accordingly, trades or businesses conducted by a disregarded entity will be treated as conducted directly by the owner of the entity for purposes of section 199A.

2. Deductions Limited by Taxable Income

One commenter requested clarification that other deductions limited by taxable income, such as the 65-percent-of-taxable-income limit imposed on the deduction for oil and gas percentage depletion under section 613A, are to be computed without regard to any section 199A deduction. The Treasury Department and the IRS decline to adopt this comment as the specific question is answered by section 613A(d)(1)(B), as amended by the TCJA, which provides that taxable income for purposes of the limitation under section 613A(d)(1) is computed without regard to any deduction allowable under 199A. The Treasury Department and the IRS believe that limitations on other deductions provided for under the Code are more properly addressed by guidance under those Code sections.

3. Treatment of Section 199A Deduction for Purposes of Section 162(a)

Another commenter suggested that the final regulations provide that the section 199A deduction is treated as a deduction for purposes of section 199A only and not as a deduction that is paid or incurred for purposes of section 162(a) or for any other purposes of the Code. The Treasury Department and the IRS decline to adopt this recommendation. In making this suggestion, the Treasury Department and the IRS assume the commenter is concerned with how section 199A interacts with the many Code sections that reference a ''trade or business.'' How section 199A interacts with other Code sections must be determined with respect to the particular Code section at issue. Accordingly, the Treasury Department and the IRS decline to adopt this general suggestion.

4. Section 6662(a) Penalty for Underpayment of Tax

Section 6662(a) provides a penalty for an underpayment of tax required to be shown on a return. Under section 6662(b), the penalty applies to the portion of any underpayment that is attributable to a substantial underpayment of income tax. Section 6662(d)(1) defines substantial understatement of tax, which is generally an understatement that exceeds the greater of 10 percent of the tax required to be shown on the return or $5,000. Section 6662(d)(1)(C) provides a special rule in the case of any taxpayer who claims the section 199A deduction for the taxable year, which

requires that section 6662(d)(1)(A) is applied by substituting ''5 percent'' for ''10 percent.'' Section 1.199A–1(e)(6) cross-references this rule. One commenter asked for guidance on how the section 6662 accuracy penalty would be applied if an activity was determined by the IRS not to be a trade or business for purposes of section 199A. The Treasury Department and the IRS decline to adopt this suggestion as guidance regarding the application of section 6662 is beyond the scope of these regulations.

III. Determination of W–2 Wages and Unadjusted Basis Immediately After Acquisition of Qualified Property

A. W–2 Wages

One commenter asked for clarification regarding whether W–2 wages include elective deferrals to self-employed Simplified Employee Pensions (SEP), simple retirement accounts (SIMPLE), and other qualified plans. Revenue Procedure 2019–11, 2019–9 IRB, issued concurrently with these final regulations, provides additional guidance on the definition of W–2 wages, including amounts treated as elective deferrals. A few commenters asked for confirmation that W–2 wages include S corporation owner/employee W–2 wages for purposes of the W–2 wage limitation (assuming the wages are included on the Form W–2 filed within 60 days of the due date). The definition of W–2 wages includes amounts paid to officers of an S corporation and common-law employees of an individual or RPE. Amounts paid as W–2 wages to an S corporation shareholder cannot be included in the recipient's QBI. However, these amounts are included as W–2 wages for purposes of the W–2 wage limitation to the extent that the requirements of § 1.199A–2 are otherwise satisfied.

Another commenter suggested that, for purposes of the W–2 wage limitation, taxpayers should be able to include wages paid during the 12 months prior to the sale, disposition, or other transactions involving a business segment that generates LIFO and depreciation recapture. The Treasury Department and the IRS decline to adopt this comment. Section 199A(b)(4) provides that the term W–2 wages means, with respect to any person for any taxable year of such person, the amounts described in paragraphs (3) and (8) of section 6051(a) paid by such person with respect to employment of employees by such person during the calendar year ending during such taxable year. Therefore, regardless of recapture, wages paid prior to a calendar year cannot be included in determining W–2 wages for such calendar year under the language of the statute.

B. UBIA

1. Qualified Property Held by an RPE

The proposed regulations provide that in the case of qualified property held by an RPE, each partner's or shareholder's share of the UBIA of qualified property is an amount that bears the same proportion to the total UBIA of qualified property as the partner's or shareholder's share of tax depreciation bears to the RPE's total tax depreciation with respect to the property for the year. In the case of a partnership with qualified property that does not produce tax depreciation during the year, each partner's share of the UBIA of qualified property would be based on how gain would be allocated to the partners pursuant to sections 704(b) and 704(c) if the qualified property were sold in a hypothetical transaction for cash equal to the fair market value of the qualified property. Several commenters suggested that only section 704(b) should be used for this purpose, arguing that the use of section 704(c) allocation methods would be unduly burdensome and could lead to unintended results. One commenter recommended that partners should share UBIA of qualified property in the same manner that they share the economic depreciation of the property. Another commenter suggested allocating UBIA based on a ratio of each partner's allocation of depreciation and the partnership's total depreciation of qualified property for the year. One commenter requested clarification regarding how UBIA is allocated when a partner or shareholder has depreciation expense as an ordinary deduction and as a rental real estate deduction and they are allocated differently.

The Treasury Department and the IRS agree with the commenters that relying on section 704(c) to allocate UBIA could lead to unintended shifts in the allocation of UBIA. Therefore, the final regulations provide that each partner's share of the UBIA of qualified property is determined in accordance with how depreciation would be allocated for section 704(b) book purposes under § 1.704–1(b)(2)(iv)(*g*) on the last day of the taxable year. To the extent a partner has depreciation expense as an ordinary deduction and as a rental real estate deduction, the allocation of the UBIA should match the allocation of the expenses. The Treasury Department and the IRS request comments on whether a new regime is necessary in the case of a partnership with qualified property that does not produce tax depreciation during the taxable year. In the case of qualified property held by an S corporation, each shareholder's share of UBIA of qualified property is a share of the unadjusted basis proportionate to the ratio of shares in the S corporation held by the shareholder on the last day of the taxable year over the total issued and outstanding shares of the S corporation.

2. Property Contributed to a Partnership or S Corporation in a Nonrecognition Transfer

The proposed regulations provide that the UBIA of qualified property means the basis on the placed in service date of the property. Therefore, the UBIA of qualified property contributed to a partnership in a section 721 transaction generally equals the partnership's tax basis under section 723 rather than the contributing partner's original UBIA of the property. Similarly, the UBIA of qualified property contributed to an S corporation in a section 351 transaction is determined by reference to section 362. Multiple commenters expressed concern that this treatment could result in a step-down in the UBIA of qualified property used in a trade or business at the time of the contribution due only to the change in entity structure. These commenters suggested that the UBIA of qualified property contributed to a partnership under section 721 or to an S corporation under section 351 should be determined as of the date it was first placed in service by the contributing partner or shareholder. Another commenter suggested that final regulations should generally provide for carryover of UBIA of qualified property in non-recognition transactions, but provide an anti-abuse rule for cases in which a transaction was engaged in with a principal purpose of increasing the section 199A deduction.

The Treasury Department and the IRS agree that qualified property contributed to a partnership or S corporation in a nonrecognition transaction should generally retain its UBIA on the date it was first placed in service by the contributing partner or shareholder. Accordingly, § 1.199A–2(c)(3)(iv) provides that, solely for the purposes of section 199A, if qualified property is acquired in a transaction described in section 168(i)(7)(B), the transferee's UBIA in the qualified property is the same as the transferor's UBIA in the property, decreased by the amount of money received by the transferor in the transaction or increased by the amount of money paid by the transferee to acquire the property in the transaction.

The rules set forth in these regulations are limited solely to the determination of UBIA of qualified property for purposes of section 199A and are not applicable to the determination of gain, loss, basis, or depreciation with respect to transactions described in section 168(i)(7).

3. Property Received in a Section 1031 Like-Kind Exchange or Section 1033 Involuntary Conversion

Section 1.199A–2(c)(3) of the proposed regulations explains that UBIA of qualified property means the basis of qualified property on the placed in service date of the property as determined under applicable sections of chapter 1 of subtitle A of the Code, which includes sections 1012 (Basis of property—cost), 1031 (Exchange of real property held for productive use or investment), and 1033 (Involuntary conversions). Section 1.199A–2(c)(3) of the proposed regulations also explains that UBIA of qualified property is determined without regard to any adjustments for depreciation described in section 1016(a)(2) or (3). Example 2 to proposed § 1.199A–2(c)(4) illustrates that the UBIA of qualified property received in a section 1031 like-kind exchange is the adjusted basis of the relinquished property transferred in the exchange as determined under section 1031(d), which reflects the adjustment in basis for depreciation deductions previously taken under section 168.

Several commenters argued that the proposed regulations discourage like-kind exchanges by providing an incentive to retain property in order to maintain greater UBIA of qualified property. These commenters argue that the UBIA of replacement qualified property should be the taxpayer's UBIA of the relinquished property on the placed in service date by the taxpayer, increased by any additional capital invested by the taxpayer to acquire the replacement property, rather than the adjusted basis of the replacement property at the time of the exchange as determined under section 1031(d). This would be consistent with the step-in-the-shoes rule for determining the depreciable period. Another commenter suggested that if the rule is retained, the provision should be revised to treat the placed in service date as the date of the exchange.

Section 1.1002–1(c) of the Income Tax Regulations generally describes nonrecognition sections, including section 1031, as ''exchanges of property in which at the time of the exchange particular differences exist between the property parted with and the property acquired, but such differences are more formal that substantial,'' so that recognition and income inclusion at that time of the exchange are not appropriate. The underlying assumption of these exceptions to the recognition requirement is that the new property is substantially a continuation of the old investment still unliquidated; and in the case of reorganization, that the new enterprise, the new corporate structure, and the new property are substantially a continuation of the old still unliquidated investment. *Id.*

Application of section 1031(d) in determining UBIA for the replacement property would require, among other possible adjustments, a downward adjustment for depreciation deductions. This approach is contrary to the rule in § 1.199A–2(c)(3) of the proposed regulations that UBIA of qualified property is determined without regard to any adjustments for depreciation described in section 1016(a)(2) or (3).

Accordingly, the final regulations provide that the UBIA of qualified like-kind property that a taxpayer receives in a section 1031 like-kind exchange is the UBIA of the relinquished property. However, if a taxpayer either receives money or property not of a like kind to the relinquished property (other property) or provides money or other property as part of the exchange, the taxpayer's UBIA in the replacement property is adjusted. The taxpayer's UBIA in the replacement property is adjusted downward by the excess of any money or the fair market value of other property received by the taxpayer in the exchange over the taxpayer's appreciation in the relinquished property (excess boot). Appreciation for this purpose is the excess of the relinquished property's fair market value on the date of the exchange over the fair market value of the relinquished property on the date of acquisition by the taxpayer. This reduction for excess boot in the taxpayer's UBIA in the replacement property reflects a partial liquidation of the taxpayer's investment in qualified property.

If the taxpayer adds money or other property to acquire replacement property, the taxpayer's UBIA in the replacement property is adjusted upward by the amount of money paid or the fair market value of the other property transferred to reflect additional taxpayer investment.

If the taxpayer receives other property in the exchange that is qualified property, the taxpayer's UBIA in the qualified other property will equal the fair market value of the other property. Consequently, a taxpayer who receives qualified other property in the exchange is treated, for UBIA purposes, as if the taxpayer receives cash in the exchange and uses that cash to purchase the qualified property.

The rules are similar for qualified property acquired pursuant to an involuntary conversion under section 1033, except that appreciation for this purpose is the difference between the fair market value of the converted property on the date of the conversion over the fair market value of the converted property on the date of acquisition by the taxpayer. In addition, other property is property not similar or related in service or use to the converted property.

The rules set forth in these final regulations are limited solely to the determination of UBIA of qualified property for purposes of section 199A and are not applicable to the determination of gain, loss, basis, or depreciation with respect to transactions governed by sections 1031 or 1033.

In determining the depreciable period of replacement property acquired in a like-kind exchange or in an involuntary conversion, the proposed regulations apply § 1.168(i)–6 which, in turn, follows the rules in section 1031(d) or 1033(b), as applicable. Because the final regulations do not determine the UBIA of replacement property under section 1031(d) or 1033(b), the final regulations correspondingly remove the indirect references to those rules for determining the depreciable period of replacement property. To be consistent with the rules regarding the UBIA of replacement property that is of like kind to the relinquished property or that is similar or related in service or use to the involuntarily converted property, the final regulations provide that (i) for the portion of the individual's or RPE's UBIA in the replacement property that does not exceed the individual's or RPE's UBIA in the relinquished property or involuntarily converted property, the date such portion in the replacement property was first placed in service by the individual or RPE is the date on which the relinquished property or involuntarily converted property was first placed in service by the individual or RPE, and (ii) for the portion of the individual's or RPE's UBIA in the replacement property that exceeds the individual's or RPE's UBIA in the relinquished property or involuntarily converted property, such portion in the replacement property is treated as separate qualified property that the individual or RPE first placed in service on the date on which the replacement property was first placed in service by the individual or RPE. This rule is not a change from the proposed regulations,

but is consistent with the step-in-the-shoes rationale for determining the depreciable period for certain non-recognition transactions described in section 168(i)(7)(B).

In addition, the final regulations provide that when qualified property that is not of like kind to the relinquished property or qualified property that is not similar or related in service or use to involuntarily converted property is received in a section 1031 or 1033 transaction, such qualified property is treated as separate qualified property that the individual or RPE first placed in service on the date on which such qualified property was first placed in service by the individual or RPE. This rule is consistent with the rules regarding the UBIA of such qualified property.

The rules set forth in these final regulations are limited solely to the determination of the depreciable period for purposes of section 199A and are not applicable to the determination of the placed in service date for depreciation or tax credit purposes.

4. Sections 734(b) and 743(b) Special Basis Adjustments

The proposed regulations provide that basis adjustments under sections 734(b) and 743(b) are not treated as qualified property. The preamble to the proposed regulations describes concerns about inappropriate duplication of the UBIA of qualified property in circumstances such as when the fair market value of property has not increased and its depreciable period has not ended. Several commenters agreed that special basis adjustments could result in the duplication of UBIA of qualified property to the extent that the fair market value of the qualified property does not exceed UBIA. However, many of these commenters suggested that basis adjustments under section 734(b) and 743(b) should be treated as qualified property to the extent that the fair market value of the qualified property to which the adjustments relate exceeds the UBIA of such property immediately before the special basis adjustment. Other commenters recommended that both section 734(b) and section 743(b) adjustments should generate new UBIA. Commenters suggested a variety of methods for adjusting UBIA to account for the special basis adjustments. These included incorporating existing principles of sections 734(b), 743(b), 754, and 755 by determining the UBIA of separate qualified property by reference to the difference between the transferee partner's outside basis and its share of UBIA; treating the entire amount of the section 743(b) adjustment as separate qualified property with a new depreciation period, with adjustments to the partner's share of the partnership's UBIA to avoid duplicating UBIA; and creating an entirely new regime mirroring the principles of sections 734(b), 743(b), 754, and 755.

The Treasury Department and the IRS agree that section 743(b) basis adjustments should be treated as qualified property to extent the section 743(b) basis adjustment reflects an increase in the fair market value of the underlying qualified property. Accordingly, the final regulations define an ''excess section 743(b) basis adjustment'' as an amount that is determined with respect to each item of qualified property and is equal to an amount that would represent the partner's section 743(b) basis adjustment with respect to the property, as determined under § 1.743–1(b) and § 1.755–1, but calculated as if the adjusted basis of all of the partnership's property was equal to the UBIA of such property. The absolute value of the *excess section 743(b) basis adjustment* cannot exceed the absolute value of the total section 743(b) basis adjustment with respect to qualified property. The excess section 743(b) basis adjustment is treated as a separate item of qualified property placed in service when the transfer of the partnership interest occurs. This rule is limited solely to the determination of the depreciable period for purposes of section 199A and is not applicable to the determination of the placed in service date for depreciation or tax credit purposes. The recovery period for such property is determined under § 1.743–1(j)(4)(i)(B) with respect to positive basis adjustments and § 1.743–1(j)(4)(ii)(B) with respect to negative basis adjustments.

The Treasury Department and the IRS do not believe that a section 734(b) adjustment is an acquisition of qualified property for purposes of determining UBIA. Section 734(b)(1) provides that, in the case of a distribution of property to a partner with respect to which a section 754 election is in effect (or when there is a substantial basis reduction under section 734(d)), the partnership will increase the adjusted basis of partnership property by the sum of (A) the amount of any gain recognized to the distributee partner under section 731(a)(1), and (B) in the case of distributed property to which section 732(a)(2) or (b) applies, the excess of the adjusted basis of the distributed property to the partnership immediately before the distribution (as adjusted by section 732(d)) over the basis of the distributed property to the distributee, as determined under section 732. The Treasury Department and the IRS do not believe that the adjustment to basis is an acquisition for purposes of section 199A.

Commenters also noted that the failure to adjust UBIA for reduction of basis under section 734 could result in a duplication of UBIA if property is distributed in liquidation of a partner's interest in a partnership and the partner takes that property with the partner's outside basis under section 732(b) without the partnership adjusting the UBIA in the partnership's remaining assets. The Treasury Department and the IRS agree that such a duplication is inappropriate, but do not agree with commenters that such a distribution results in an increase in UBIA. These regulations provide that the partnership's UBIA in the qualified property carries over to a partner that receives a distribution of the qualified property.

The Treasury Department and the IRS continue to study this issue and request additional comments on the interaction of the special basis adjustments under sections 734(b) and 743(b) with section 199A and whether a new regime for calculating adjustments with respect to UBIA is necessary.

5. Qualified Property Held by a Trade or Business at the Close of the Taxable Year

Section 199A(b)(6)(A)(i) and proposed § 1.199A–2(c) provide that qualified property must be held by, and available for use in, the qualified trade or business at the close of the taxable year. One commenter suggested the final regulations contain a rule for determining the UBIA of qualified property in a short year on acquisition or disposition of a trade or business, similar to the guidance provided in § 1.199A–2(b)(2)(v) for purposes of calculating W–2 wages. The commenter suggested that one approach for UBIA could be a pro rata calculation based on the number of days the qualified property is held during the year. The Treasury Department and the IRS decline to adopt this suggestion because the statute looks to qualified property held at the close of the taxable year.

Another commenter asked for additional guidance on this rule with respect to qualified property held by an RPE. The commenter questioned whether the applicable taxable year is that of the taxpayer or the RPE. The commenter also asked how the rule would be applied if a taxpayer transferred his or her interest in an RPE. The Treasury Department and the IRS believe that the UBIA of qualified

property is measured at the trade or business level. Accordingly, in the case of qualified property held by an RPE, the applicable taxable year is that of the RPE. A taxpayer who transfers an interest in an RPE prior to the close of the RPE's taxable year is not entitled to a share of UBIA from the RPE.

In the context of S corporations, one commenter noted that section 1377(a) provides that income for the taxable year is allocated among shareholders on a pro rata basis by assigning a pro rata share of each corporate item to each day of the taxable year. The commenter suggested that all shareholders who were owners during the taxable year should be given access to the UBIA of qualified property held by an S corporation at the close of the S corporation's taxable year. The Treasury Department and the IRS decline to adopt this comment because section 199A does not have a rule comparable to the rule in section 1377(a).

The proposed regulations provide that property is not qualified property if the property is acquired within 60 days of the end of the taxable year and disposed of within 120 days without having been used in a trade or business for at least 45 days prior to disposition, unless the taxpayer demonstrates that the principal purpose of the acquisition and disposition was a purpose other than increasing the section 199A deduction. The Treasury Department and the IRS received no comments with respect to this rule. The final regulations retain the rule but clarify that the 120 day period begins with the acquisition of the property.

6. Qualified Property Acquired From a Decedent

The preamble to the proposed regulations provides that for property acquired from a decedent and immediately placed in service, the UBIA generally will be its fair market value at the time of the decedent's death under section 1014. One commenter recommended that the regulations should clearly state this rule in the regulatory text. The commenter recommended that the regulations should further clarify that the date of the decedent's death should commence a new depreciable period for the property. The Treasury Department and the IRS adopt these comments. The final regulations provide that for qualified property acquired from a decedent and immediately placed in service, the UBIA of the property will generally be the fair market value at the date of the decedent's death under section 1014. Further, the regulations provide that a new depreciable period for the property commences as of the date of the decedent's death.

IV. Qualified Business Income, Qualified REIT Dividends, and Qualified PTP Income

A. Qualified Business Income

1. Items Spanning Multiple Tax Years

Section 1.199A–3(b)(1)(iii) provides that section 481 adjustments (whether positive or negative) are taken into account for purposes of computing QBI to the extent that the requirements of this section and section 199A are otherwise satisfied, but only if the adjustment arises in taxable years ending after December 31, 2017. One commenter suggested that income from installment sales and deferred cancellation of indebtedness income under section 108(i) arising in taxable years ending before January 1, 2018, should not be taken into account for purposes of computing QBI. The commenter also recommended that items deferred under Revenue Procedure 2004–34, 2004–1 C.B. 911 (advanced payments not included in revenue) prior to January 1, 2018, should be included in QBI. The Treasury Department and the IRS continue to study this issue and request additional comments on when items arising in taxable years prior to January 1, 2018, should be taken into account for purposes of computing QBI.

2. Previously Disallowed Losses

The proposed regulations provide that previously disallowed losses or deductions (including under sections 465, 469, 704(d), and 1366(d)) allowed in the taxable year are taken into account for purposes of computing QBI so long as the losses were incurred in a taxable year beginning after January 1, 2018. Because previously disallowed losses incurred for taxable years beginning before January 1, 2018, cannot be taken into account for purposes of computing QBI, several commenters recommended that final regulations provide an ordering rule for the use of such losses. Commenters recommended both ''last-in, first-out'' (LIFO) and ''first-in, first-out'' (FIFO) approaches, with a slight preference for the FIFO approach as consistent with former section 199. The Treasury Department and the IRS agree that taxpayers with previously disallowed losses for taxable years beginning both before and after January 1, 2018, require an ordering rule to determine which portion of a previously disallowed loss can be taken into account for purposes of section 199A. Consistent with regulations under former section 199, these regulations provide that any losses disallowed, suspended, or limited under the provisions of sections 465, 469, 704(d), and 1366(d), or any other similar provisions, shall be used, for purposes of section 199A and these regulations, in order from the oldest to the most recent on a FIFO basis.

One commenter suggested that a special rule should be provided to identify the section 469 trade or business losses that are used to offset income if the taxpayer's section 469 groupings differ from the taxpayer's section 199A aggregations. The commenter recommended that any section 469 loss carryforward that is later used should be allocated across the taxpayer's section 199A aggregations based on income with respect to such aggregations in the year the loss was generated. The Treasury Department and the IRS decline to adopt this comment. Concurrently with the publication of these proposed regulations, the Treasury Department and the IRS are publishing proposed regulations under section 199A (REG–134652–18) that treat previously suspended losses as losses from a separate trade or business for purposes of section 199A.

3. Net Operating Losses and the Interaction of Section 199A With Section 461(l)

The preamble to the proposed regulations requested comments on the interaction of sections 199A and 461(l). Commenters requested guidance in many areas including: Ordering rules for the use of suspended active business losses; methods for tracing losses to a taxpayer's various trades or businesses; whether a loss retains its character; whether a deduction under section 199A is a loss for calculating the loss limitation; and how the section 199A loss carryover rules interact with a loss limited under section 461(l). The Treasury Department and the IRS understand that taxpayers will need guidance as to the interaction of section 199A and section 461(l). However, these issues are beyond the scope of these regulations and will be considered in future guidance under section 461(l). Section 1.199A–3(b)(1)(v) retains and clarifies the rule that while a deduction under section 172 for a net operating loss is generally not considered to be with respect to a trade or business (and thus not taken into account in determining QBI), an excess business loss under section 461(l) is treated as a net operating loss carryover to the following taxable year and is taken into account for purposes of computing QBI

in the subsequent taxable year in which it is deducted.

4. Recapture of Overall Foreign Losses

One commentator requested that Treasury and the IRS provide that U.S.-source taxable income arising upon recapture of an overall foreign loss described in section 904(f) be treated as QBI in the recapture year to the extent the overall foreign loss limited the section 199A deduction in a prior tax year. This comment was not adopted. Section 199A(c)(3)(A)(i) limits QBI to items that are effectively connected to a U.S. trade or business in the tax year concerned and the recapture rules in section 904(f) apply only for purposes of subchapter N, Part III, Subpart A of the Code. In addition, it would not be appropriate to expand the scope of QBI for recaptured foreign losses when no similar relief is available if non-qualifying domestic losses are subsequently offset by non-qualifying domestic income.

5. Treatment of Other Deductions

Section 199A(c)(1) provides that QBI includes the net amount of qualified items of income, gain, deduction, and loss with respect to any qualified trade or business of the taxpayer. Commenters requested additional guidance on whether certain items constitute qualified items under this provision. Several commenters suggested that deductions for self-employment tax, self-employed health insurance, and certain other retirement plan contribution deductions should not reduce QBI. One commenter reasoned that qualified retirement plan contributions should not reduce QBI because they should not be treated as being associated with a trade or business, consistent with the treatment when calculating net operating losses under section 172(d)(4)(D). The commenter also suggested that while self-employed health insurance is treated as associated with a trade or business, such expense should likewise not reduce QBI for purposes of simplification in administering the rule. Another commenter suggested that QBI should not be reduced by these expenses because they are personal adjustments. One commenter also requested guidance on whether unreimbursed partnership expenses, the interest expense to acquire partnership and S corporation interests, and state and local taxes reduce QBI.

The Treasury Department and the IRS have not adopted these recommendations because they are inconsistent with the statutory language of section 199A(c). Whether a deduction is attributable to a trade or business must be determined under the section of the Code governing the deduction. All deductions attributable to a trade or business should be taken into account for purposes of computing QBI except to the extent provided by section 199A and these regulations. Accordingly, § 1.199A–3(b)(1)(vi) provides that, in general, deductions attributable to a trade or business are taken into account for purposes of computing QBI to the extent that the requirements of section 199A and § 1.199A–3 are otherwise satisfied. Thus, for purposes of section 199A, deductions such as the deductible portion of the tax on self-employment income under section 164(f), the self-employed health insurance deduction under section 162(l), and the deduction for contributions to qualified retirement plans under section 404 are considered attributable to a trade or business to the extent that the individual's gross income from the trade or business is taken into account in calculating the allowable deduction, on a proportionate basis. The Treasury Department and the IRS decline to address whether deductions for unreimbursed partnership expenses, the interest expense to acquire partnership and S corporation interests, and state and local taxes are attributable to a trade or business as such guidance is beyond the scope of these regulations.

6. Guaranteed Payments for the Use of Capital

A few commenters suggested that the rule in the proposed regulations which excludes guaranteed payments for the use of capital under section 707(c) should be removed. Commenters argued that while section 199A(c)(4) excludes guaranteed payments paid to a partner for services rendered with respect to a trade or business under section 707(a), the statutory language does not likewise exclude guaranteed payments for the use of capital under section 707(c). The commenters argued that Congress drew a line between payments for services and payments for the use of capital when it drafted section 199A(c) and that even though payments for the use of capital are determined without regard to the partnership's income, that does not mean that they are not attributable to a trade or business. Several commenters stated that contrary to the reasoning in the preamble to the proposed regulations, there is risk involved when making guaranteed payments for the use of capital because the payments do rely to some degree on the partnership's success. Commenters noted that guaranteed payments for the use of capital are generally accepted as part of the partner's distributive share from the partnership and taxed as such, and should be included in calculating QBI. Similarly, another commenter generally requested additional guidance for how to determine when a payment to a partner is considered for the use of capital and excluded from the calculation of QBI. Another commenter suggested that if guaranteed payments for the use of capital under section 707(c) are excluded from the calculation of QBI, a partnership's expense related to guaranteed payments for the use of capital also should be excluded from the calculation of QBI. One commenter suggested that to the extent a guaranteed payment for the use of capital is considered akin to interest income on indebtedness, it is generally appropriate to exclude the payment from QBI but noted the significant uncertainty in determining whether an arrangement is a guaranteed payment for the use of capital, a gross income allocation, or something else. The commenter also noted that guaranteed payments for the use of capital are not necessarily akin to interest income.

The Treasury Department and the IRS decline to adopt the comments suggesting that guaranteed payments for the use of capital are generally attributable to a trade or business. Although section 199A is silent with respect to guaranteed payments for the use of capital, section 199A does limit the deduction under section 199A to income from qualified trades or businesses. The Treasury Department and the IRS believe that guaranteed payments for the use of capital are not attributable to the trade or business of the partnership because they are determined without regard to the partnership's income. Consequently, such payments should not generally be considered part of the recipient's QBI. Rather, for purposes of section 199A, guaranteed payments for the use of capital should be treated in a manner similar to interest income. Interest income other than interest income which is properly allocated to trade or business is specifically excluded from qualified items of income, gain, deduction or loss under section 199A(c)(3)(B)(iii). One commenter noted that if guaranteed payments are treated like interest income for purposes of section 199A, and if such payments are properly allocated to a qualified trade or business of the recipient, they should constitute QBI to that recipient in respect of such qualified trade or business. Although, this is an unlikely fact pattern to occur, the Treasury Department and the IRS agree with this

comment and the final regulations adopt this comment. Further, guidance under sections 707(a) and 707(c) is beyond the scope of these regulations.

7. Section 707(a) Payments for Services

The proposed regulations provide that any payment described in section 707(a) received by a partner for services rendered with respect to a trade or business, regardless of whether the partner is an individual or an RPE, is excluded from QBI. A number of commenters suggested that payments to partners in exchange for services provided to the partnership under section 707(a) should not be excluded from QBI and others suggested a narrowing of the rule for certain circumstances. Some commenters suggested that the payments should be QBI when the arrangement is structured as it would be with a third-party. Many commenters argued that section 707(a) payments should be QBI when the partner who is providing services has its own business separate from that of the partnership. On a related note, one commenter suggested payments for services should be QBI when the services provided are a different business from that of the partnership. Other commenters further suggested that payments should be QBI when the partner is not primarily providing services solely to one partnership. One commenter suggested that the rule excluding section 707(a) payments from QBI should be narrowed to apply only in the context of SSTBs or if the payments would be considered wages by the partner, but that generally payments from the partner's qualified trade or business should be QBI. One commenter suggested that the regulations excluding section 707(a) payments from QBI be applied only to individuals and RPEs that are either (i) not otherwise engaged in a trade or business of providing similar services to other consumers or (ii) whose ownership interests in the partnership exceed a de minimis amount. Another commenter suggested that the exclusion of section 707(a) payments be replaced with a narrowly tailored anti-abuse rule that would exclude from QBI section 707(a) payments (i) paid to a partner owning more than 50 percent of the capital or profits interests in the partnership and (ii) designed with a primary purpose of causing income that would not otherwise have qualified as QBI to be treated as QBI.

The Treasury Department and the IRS decline to adopt these recommendations. As stated in the preamble to the proposed regulations, payments under section 707(a) for services are similar to guaranteed payments, reasonable compensation, and wages, none of which are includable in QBI. Thus, treating section 707(a) payments received by a partner for services rendered to a partnership as QBI would be inconsistent with the statute. Further, as noted by one commenter, it is difficult to distinguish between payments under section 707(c) and payments under section 707(a). Therefore, creating such a distinction would be difficult for both taxpayers and the IRS to administer.

Section 1.199A–3(b)(2) of the proposed regulations addresses items that are not taken into account as qualified items of income, gain, deduction, or loss, and includes all of the items listed in both section 199A(c)(3) (exceptions from qualified items of income, gain, deduction, and loss) and section 199A(c)(4) (treatment of reasonable compensation and guaranteed payments). As suggested by one commenter, the final regulations clarify that amounts received by an S corporation shareholder as reasonable compensation or by a partner as a payment for services under sections 707(a) or 707(c) are not taken into account as qualified items of income, gain, deduction, or loss, and thus are excluded from QBI.

8. Interaction of Sections 875(l) and 199A

Section 199A(c)(3)(A)(i) provides that for purposes of determining QBI, the term qualified items of income, gain, deduction, and loss means items of income, gain, deduction and loss to the extent such items are effectively connected with the conduct of a trade or business within the United States (within the meaning of section 864(c), determined by substituting ''qualified trade or business (within the meaning of section 199A'' for ''nonresident alien individual or a foreign corporation'' or for ''a foreign corporation'' each place it appears). The preamble to the proposed regulations provides that certain items of income, gain, deduction, and loss are treated as effectively connected income but are not with respect to a domestic trade or business (such as items attributable to the election to treat certain U.S. real property sales as effectively connected pursuant to section 871(d)), and are thus not QBI because they are not items attributable to a qualified trade or business for purposes of section 199A. One commenter agreed with this interpretation but requested additional guidance on the interaction between sections 875(l) and 199A, specifically whether the determination of whether an activity is a trade or business is made at the entity level for purposes of section 199A. The commenter also recommended that regulations distinguish between (1) items of income, gain, loss, or deduction that are incurred in a trade or business applying the principles of section 162 and (2) items of income, gain, deduction, or loss that are not incurred in such a trade or business.

For purposes of section 199A, the determination of whether an activity is a trade or business is made at the entity level. If an RPE is engaged in a trade or business, items of income, gain, loss, or deduction from such trade or business retain their character as they pass from the entity to the taxpayer—even if the taxpayer is not personally engaged in the trade or business of the entity. Conversely, if an RPE is not engaged in a trade or business, income, gain, loss, or deduction allocated to a taxpayer from such entity will not qualify for the section 199A deduction even if the taxpayer or an intervening entity is otherwise engaged in a trade or business. As described in part II.A.3 of this Summary of Comments and Explanation of Revisions, a trade or business for purposes of section 199A is generally defined by reference to the standards for a section 162 trade or business. A rental real estate enterprise that meets the safe harbor described in Notice 2017–07, released concurrently with these final regulations, may also treated as trades or businesses for purposes of section 199A. Additionally, the rental or licensing of property if the property is rented or licensed to a trade or business conducted by the individual or an RPE which is commonly controlled under § 1.199A–4(b)(1)(i) is also treated as a trade or business for purposes of section 199A. In addition to these requirements, the items must be effectively connected to a trade or business within the United States as described in section 864(c).

One commenter requested guidance coordinating section 199A with section 751(a) and the rules for dispositions of certain interests by foreign persons in section 864(c)(8). The proposed regulations provide that, with respect to a partnership, if section 751(a) or (b) applies, then gain or loss attributable to assets of the partnership giving rise to ordinary income under section 751(a) or (b) is considered attributable to the trades or businesses conducted by the partnership, and is taken into account for purposes of computing QBI. The commenter questioned whether income treated as ordinary income under section 751 for purposes of section 864(c)(8) should be QBI. The treatment

of ordinary income under section 751 under subchapter N of chapter 1 of subtitle A of the Code is generally a function of section 864(c)(8). On December 27, 2018, the **Federal Register** published a notice of proposed rulemaking (REG–113604–18) at 83 FR 66647 under section 864(c)(8) (proposed section 864(c)(8) regulations). The proposed section 864(c)(8) regulations provide rules for determining the amount of gain or loss treated as effectively connected with the conduct of a trade or business within the United States (''effectively connected gain'' or ''effectively connected loss'') described in section 864(c)(8), including rules coordinating section 864(c)(8) with sections 741 and 751 (relating to the character of gain or loss realized in connection with the sale or exchange of an interest in a partnership). Because the proposed section 864(c)(8) regulations apply the deemed sale construct of section 751(a) to determine whether gain or loss on the sale of a partnership interest is subject to tax under section 864(c)(8), the issue raised in this comment does not arise, and thus this comment is not adopted. The Treasury Department and the IRS request further comments on the interaction of section 199A and the proposed regulations under section 864(c)(8) after the publication of those proposed regulations.

9. Reasonable Compensation

Several commenters were concerned that an overlap of the QBI, W–2 wage limitation, and reasonable compensation rules for S corporations would cause disparities between taxpayers operating businesses in different entity structures. These commenters stated that the rules might have the unintended consequence of encouraging taxpayers to select or avoid certain business entities. For example, one commenter noted that the reasonable compensation requirement for S corporations favors S corporations for purposes of the W–2 wage limitation when calculating the section 199A deduction, compared to sole proprietorships and partnerships which may not pay any wages. That commenter suggested the final regulations include an election for partners or sole proprietors to treat an amount of reasonable compensation paid as wages for purposes of the W–2 wage limitation. Other commenters similarly noted the entity choice issue, but from the perspective that S corporations can be less advantageous. The commenters argued that QBI is reduced for S corporation shareholders because reasonable compensation is not included in QBI and noted there could be further impacts depending on whether the taxpayer is above or below the income thresholds. These commenters suggested that the final regulations should strive for equity between taxpayers operating businesses in different entity structures. Finally, one commenter suggested the need for additional guidance regarding whether and how reasonable compensation paid to an S corporation shareholder is considered wages for purposes of the W–2 wage limitation.

One commenter maintained that to avoid incentivizing minimization of compensation and Federal Insurance Contributions Act tax, the final regulations should provide that deductions with respect to reasonable compensation should not reduce QBI. The commenter stated that reasonable compensation must be added back in calculating QBI.

The Treasury Department and the IRS decline to adopt these suggestions. Section 199A(c)(4) clearly excludes reasonable compensation paid to a taxpayer by any qualified trade or business of the taxpayer for services rendered with respect to the trade or business from QBI. These amounts are attributable to a trade or business and are thus qualified items of deduction as described in section 199A(c)(3) to the extent they are effectively connected with the conduct of a trade or business within the United States and included or allowed in determining taxable income for the taxable year. In addition, reasonable compensation paid to a shareholder-employee is included as W–2 wages for purposes of the W–2 wage limitation to the extent that the requirements of § 1.199A–2 are otherwise satisfied. Further, guaranteed payments and payments to independent contractors are not W–2 wages and therefore, cannot be counted for purposes of the W–2 wage limitation.

A few commenters were concerned about whether tax return preparers would have the responsibility to closely examine whether compensation paid to a shareholder of an S corporation is reasonable before calculating the section 199A deduction, and whether tax return preparers could be subject to penalties. One commenter suggested a small business safe harbor approach where certain cash method S corporations that treat at least 70 percent of dividend distributions to shareholder-employees as wages are deemed to satisfy the reasonable compensation requirement of Rev. Rul. 74–44, 1974–1 C.B. 287. Providing additional guidance with respect to what constitutes reasonable compensation for a shareholder-employee of an S corporation or the application or non-application of assessable penalties applicable to tax return preparers is beyond the scope of these final regulations.

10. Items Treated as Capital Gain or Loss

The proposed regulations provide that any item of short-term capital gain, short-term capital loss, long-term capital gain, or long-term capital loss, including any item treated as one of such items, such as gains or losses under section 1231, that are treated as capital gains or losses, are not taken into account as a qualified item of income, gain, deduction, or loss in computing QBI.

Several commenters suggested that many technical complications arise from the exclusion of section 1231 gain from QBI. Specifically, commenters noted that whether a taxpayer has long-term capital gain or loss under section 1231 is determined at the taxpayer level and not at the level of the various trades or businesses for which QBI is being determined. For example, if a taxpayer has two businesses, the taxpayer may have section 1231 gains in one trade or business and section 1231 losses in the other trade or business. One commenter suggested that both section 1231 gains and losses be included in the calculation of QBI regardless of whether they result in a capital or ordinary amount when combined at the taxpayer level. The commenter asserts that this approach would not affect the overall limitation that restricts a taxpayer's deduction to 20 percent of the excess of taxable income over net capital gain.

The Treasury Department and the IRS acknowledge the added challenges in applying section 1231 in the context of calculating QBI under section 199A. Generally, under section 1231, a taxpayer nets all of its section 1231 gains and losses from multiple trades or businesses before determining their ultimate character. In other words, the section 1231 determination is not made until the taxpayer combines its section 1231 gain or loss from all sources. This does not change in the context of section 199A. Thus, the section 1231 rules remain the same in the context of section 199A. For purposes of calculating QBI, taxpayers should continue to net their section 1231 gains and losses from their multiple trades or businesses to determine whether they have excess gain (which characterizes all of the gain or loss as capital and so all are excluded from QBI) or excess loss (which characterizes all of the gain or loss as ordinary and so all are included in QBI). As would be the case outside the section 199A context, the character

tracks back to the trade or business that disposed of the asset.

Another potential complication noted by commenters is the section 1231(c) recapture rule. Under the rule, a taxpayer that has a section 1231 capital gain in the current year must look back to any section 1231 ordinary loss taken in the previous five years and convert a portion of the current year section 1231 capital gain to ordinary gain, based on the previous losses taken. One commenter asked for further guidance on how to allocate ordinary gains and losses that may result from the section 1231 calculation to multiple trades or businesses. While the Treasury Department and the IRS recognize the complexity in applying the section 1231(c) recapture rules and allocating gain to multiple trades or businesses, providing additional guidance with respect to section 1231(c) is beyond the scope of these regulations. For purposes of determining whether ordinary income is included in QBI, taxpayers should apply the section 1231(c) recapture rules in the same manner as they would otherwise. Notice 97–59, 1997–2 C.B. 309, provides guidance on netting capital gains and losses and how that netting incorporates the section 1231(c) recapture rule.

Given the specific reference to section 1231 gain in the proposed regulations, other commenters requested guidance with respect to whether gain or loss under other provisions of the Code would be included in QBI. One commenter asked for clarification about whether real estate gain, which is taxed at a preferential rate, is included in QBI. Additionally, other commenters requested clarification regarding whether items treated as ordinary income, such as gain under sections 475, 1245, and 1250, are included in QBI.

To avoid any unintended inferences, the final regulations remove the specific reference to section 1231 and provide that any item of short-term capital gain, short-term capital loss, long-term capital gain, or long-term capital loss, including any item treated as one of such items under any other provision of the Code, is not taken into account as a qualified item of income, gain, deduction, or loss. To the extent an item is not treated as an item of capital gain or capital loss under any other provision of the Code, it is taken into account as a qualified item of income, gain, deduction, or loss unless otherwise excluded by section 199A or these regulations.

Similarly, another commenter requested clarification regarding whether income from foreign currencies and notional principal contracts are excluded from QBI if they are ordinary income. Section 199A(c)(3)(B)(iv) and § 1.199A–3(b)(2)(ii)(D) provide that any item of gain or loss described in section 954(c)(1)(C) (transactions in commodities) or section 954(c)(1)(D) (excess foreign currency gains) is not included as a qualified item of income, gain, deduction, or loss. Section 199A(c)(3)(B)(v) and § 1.199A–3(b)(2)(ii)(E) provide any item of income, gain, deduction, or loss described in section 954(c)(1)(F) (income from notional principal contracts) determined without regard to section 954(c)(1)(F)(ii) and other than items attributable to notional principal contracts entered into in transactions qualifying under section 1221(a)(7) is not included as a qualified item of income, gain, deduction, or loss. The statutory language does not provide for the ability to permit an exception to these rules based on the character of the income. Accordingly, income from foreign currencies and notional principal contracts described in the listed sections is excluded from QBI, regardless of whether it is ordinary income.

11. Reasonable Methods for Allocation of Items Among Multiple Trades or Businesses

The proposed regulations provide that if an individual or an RPE directly conducts multiple trades or businesses, and has items of QBI which are properly attributable to more than one trade or business, the individual or RPE must allocate those items among the several trades or businesses to which they are attributable using a reasonable method based on all the facts and circumstances. The chosen reasonable method for each item must be consistently applied from one taxable year to another and must clearly reflect the income and expenses of each trade or business. One commenter suggested that a reasonable approach to allocating items that are not clearly attributable to a single trade or business could be the cost allocation methods used in § 1.199–4(b)(2). The commenter suggested that the reasonableness standard could be applied to determine the allocation of items of QBI among multiple trades or businesses. The commenter also suggested a safe harbor allocation method allowing a taxpayer to bypass direct tracing if the amount of other items of QBI that must be allocated is below a pre-determined threshold, such as a percentage of total QBI or a specified dollar amount.

The Treasury Department and the IRS decline to adopt this comment as the rules under § 1.199–4 were intended solely for the allocation of expenses. By contrast, the rule described in § 1.199A–3(b)(5) requires the allocation of all qualified items of income, gain, loss, and deduction across multiple trades or businesses. Whether direct tracing or allocations based on gross income are reasonable methods depends on the facts and circumstances of each trade or business. Different reasonable methods may be appropriate for different items. Accordingly, the final regulations retain the rule in the proposed regulations. However, once a method is chosen for an item, it must be applied consistently with respect to that item. The Treasury Department and the IRS continue to study this issue and request additional comments, including comments with respect to potential safe harbors.

Another commenter requested guidance on when or how a method can be changed from year to year if, for example, it is no longer reasonable or no longer clearly reflects income. The Treasury Department and the IRS decline to adopt this comment as it is beyond the scope of these regulations. If a method is no longer reasonable or no longer clearly reflects income, the method cannot continue to be used. The individual or RPE must choose a new method that is reasonable under the facts and circumstances and apply it consistently going forward.

B. Qualified REIT Dividends

1. Regulated Investment Companies

A number of commenters requested guidance that would allow a shareholder in a RIC to take a section 199A deduction with respect to certain distributions or deemed distributions from the RIC attributable to qualified REIT dividends received by the RIC. One of these commenters also suggested that RICs should be able to pass through qualified PTP income. As noted in part II.A.2. of this Summary of Comments and Explanation of Revisions, the final regulations do not treat a RIC as an RPE, because a RIC is a C corporation, not a passthrough entity. However, concurrently with the publication of these final regulations, the Treasury Department and the IRS are publishing elsewhere in this issue of the **Federal Register** proposed regulations under section 199A (REG–134652–18, RIN 1545–BP12) that address the payment by RICs of dividends that certain shareholders may include as qualified REIT dividends under section 199A(b)(1)(B). The pass through by RICs of qualified PTP income would raise several novel issues and the commenter suggesting that RICs be allowed to pass through such income did not address

how these issues should be resolved. Accordingly, the proposed regulations do not provide for the pass through of qualified PTP income by RICs, but request comments on the issues that would be presented if RICs were allowed to pass through qualified PTP income.

2. Meaning of Qualified REIT Dividend

The proposed regulations provide that a REIT dividend is not a qualified REIT dividend if the stock with respect to which it is received is held for fewer than 45 days, taking into account the principles of sections 246(c)(3) and (4). One commenter interpreted the rule as requiring the REIT stock to have been held at least 45 days prior to the dividend, and asked that the definition of qualified REIT dividend not be conditioned on a 45-day holding period. The commenter suggested that the reporting entity might not have sufficient information to determine whether the holding period was met and thus whether a particular dividend was in fact a qualified REIT dividend. The commenter also argued that the proposed rule was not part of the statutory text and could create significant administrative burdens, including in situations where there is no abuse and potentially subject a REIT or broker to information reporting penalties. The commenter suggested two alternatives. First, the section 199A deduction could be disallowed to the extent it offsets short-term capital gains. Second, the holding period could be eliminated as part of the definition of qualified REIT dividend and the Treasury Department and the IRS could be given authority to disallow the deduction in the event that the taxpayer held the stock for the period specified in section 246(c)(1)(A).

The Treasury Department and the IRS have determined that a holding period for REIT stock with respect to which a qualified REIT dividend is received is appropriate in order to prevent abuse. The holding period in the proposed regulations requires holding the stock no fewer than any 45 days, not necessarily the 45 days prior to the REIT dividend. To provide additional certainty regarding the holding period requirements, these final regulations define the requisite holding period for the REIT stock as the period described in section 246(c)(1)(A). Generally, use of a holding period to prevent abuse is consistent with established principles under the Code, and the application of these principles and the duration of the holding period should be familiar to affected entities. Furthermore, the Treasury Department and the IRS intend to provide guidance to REITs and brokers on how to report qualified REIT dividends in instances in which it is impractical to determine whether the shareholder has met the requisite holding period. This guidance is expected to be similar to guidance instructing a person required to make a return under section 6042 to report a dividend as a qualified dividend on a Form 1099–DIV if such person determines that the recipient of the dividend has satisfied the holding period test in section 1(h)(11)(B)(iii) or it is impractical for such person to make such determination. See Notice 2003–79, 2003–2 C.B. 1206; Notice 2004–71, 2004–2 C.B. 793 and Notice 2006–3, 2006–1 C.B. 306. The Treasury Department and the IRS also intend to inform REIT shareholders that they may receive Forms 1099–DIV reporting qualified REIT dividends that are not actually qualified REIT dividends because the shareholders have not met the holding period requirement.

V. Aggregation

A. Overview

As described in part II of this Summary of Comments and Explanation of Revisions, the final regulations incorporate the principles of section 162 for determining whether a trade or business exists for purposes of section 199A. A taxpayer can have more than one section 162 trade or business. See § 1.446–1(d)(1). Multiple trades or businesses can also be conducted within one entity. A trade or business, however, cannot generally be conducted across multiple entities for tax purposes. The preamble to the proposed regulations acknowledges that it is not uncommon for what may be thought of as single trades or businesses to be operated across multiple entities, for various legal, economic, or other non-tax reasons. It is because trades or businesses may be structured this way that the proposed regulations permit aggregation.

The proposed regulations provide a set of rules under which an individual can aggregate multiple trades or businesses for purposes of applying the W–2 wage and UBIA of qualified property limitations described in § 1.199A–1(d)(2)(iv). Based on comments received, the final regulations retain these rules with modifications as described in the remainder of this part V. The Treasury Department and the IRS received comments in support of the aggregation rules generally, though some commenters suggested that the grouping rules described in the regulations under section 469 be used to determine when a taxpayer may aggregate. The Treasury Department and the IRS decline to adopt this suggestion. For reasons stated in the proposed regulations (that is, the differences in the definition of trade or business, section 469's reliance on a taxpayer's level of involvement in the trade or business, and the use of separate rules for specified service trades or businesses), the Treasury Department and the IRS do not consider the grouping rules under section 469 an appropriate method for determining whether a taxpayer can aggregate trades or businesses for purposes of applying section 199A. Another commenter suggested looking to the controlled group rules under section 414 rather than creating a new framework for aggregation. The Treasury Department and the IRS decline to adopt the controlled group rules under section 414 as those rules are too specific to be applied as a general aggregation rule under section 199A.

The preamble to the proposed regulations requested comments on whether the aggregation method described in § 1.199A–4 would be an appropriate grouping method for purposes of sections 469 and 1411, in addition to section 199A. One commenter suggested that the section 199A aggregation method would not be an appropriate method for sections 469 and 1411 because the primary focus of grouping under those sections is based on the taxpayer's level of participation. Another commenter, noting that the standard for aggregation under the proposed regulations is narrower than the section 469 grouping requirements, recommended that taxpayers be permitted to adopt their section 199A aggregation for purposes of section 469. The commenter stated that this would provide taxpayers with an option to mitigate the administrative burden of multiple grouping rules. The Treasury Department and the IRS continue to study this issue and request additional comments.

B. General Rules

The proposed regulations provide rules that allow a taxpayer to aggregate trades or businesses based on a 50-percent ownership test, which must be maintained for a majority of the taxable year. The final regulations clarify that majority of the taxable year must include the last day of the taxable year. One commenter requested guidance on whether each individual included in making the ownership determination must own an interest in each trade or business to be aggregated. Another commenter suggested that to avoid

abuse in situations where actual overlapping ownership is low, anyone who owns less than 10 percent of the value of an enterprise could be excluded from the group of owners whose ownership is considered in testing. The commenter suggested clarification or modification of the overlapping ownership requirement including by requiring a minimum ownership threshold of the trades or businesses, or that the 50 percent test use each owner's lowest interest in the RPE. The ownership rule in the proposed regulations does not require that every person involved in the ownership determination own an interest in every trade or business. The rule is satisfied so long as one person or group of persons holds a 50 percent or more ownership interest in each trade or business. The Treasury Department and the IRS decline to require a minimum ownership threshold for purposes of the ownership test as the abuse potential is outweighed by the administrative complexity such a rule would create. The Treasury Department and the IRS note that trades or businesses to be aggregated must meet all of the requirements of § 1.199A–4, not just the ownership requirement.

Other commenters suggested that aggregation should be allowed for trades or businesses that do not meet the common ownership test if the general partner or managing member is the same for each entity. The Treasury Department and the IRS decline to adopt this recommendation. The aggregation rules are intended to allow aggregation of what is commonly thought of as a single trade or business where the business is spread across multiple entities. Common ownership is an essential element of a single trade or business.

Several commenters noted that the family attribution rules under section 199A do not include grandparents, siblings, or adopted children. One commenter requested clarification that the family attribution rules would not cause an aggregated trade or business to cease to qualify for aggregation when children and grandchildren reached adulthood. A few commenters requested guidance on the manner in which beneficial interests in trusts are considered for purposes of the common ownership rule. Other commenters suggested that the attribution rules in sections 267 and 707 should be used in place of the family attribution rule. Another commenter suggested that final regulations provide a specific attribution rule that treats owners of entities as owning a pro rata share of any business owned by the entity for purposes of the 50 percent ownership test. Another commenter recommended defining ''directly or indirectly'' as used in the proposed regulations by reference to a specific ownership rule. The final regulations address these recommendations by requiring that the same person or group of persons, directly or by attribution through sections 267(b) or 707(b), own 50 percent or more of each trade or business. A C corporation may constitute part of this group.

In addition, the proposed regulations require that all items attributable to aggregated trades or businesses be reported on returns for the same taxable year. Several commenters recommended that this requirement be removed, arguing that trades or businesses that meet the ownership and factor tests could have different taxable years. The Treasury Department and the IRS decline to adopt this recommendation because the aggregation rules are intended for use in applying the W–2 wage and UBIA of qualified property limitations. As described in § 1.199A–2(b), W–2 wages are determined based on a calendar year. Allowing trades or businesses with different taxable years to aggregate would require special rules for apportioning W–2 wages for purposes of applying the W–2 wage limitation. Accordingly, the final regulations retain the requirement that all of the items attributable to each trade or business to be aggregated are reported on returns at the trade or business level with the same taxable year, not taking into account short taxable years. One commenter asked for clarification regarding whether the majority of the taxable year requirement refers to the taxable year of the taxpayer claiming the deduction or of the RPE reporting the items. The aggregation rules are applied at the trade or business level. Accordingly, the majority of the taxable year requirement refers to the individual or RPE that conducts the trade or business to be aggregated.

The proposed regulations also provide that an SSTB cannot be aggregated. One commenter requested guidance on whether SSTBs with de minimis gross receipts are permitted to aggregate. A trade or business with gross receipts from a specified service activity below the de minimis thresholds described in § 1.199A–5(c)(1) is not treated as an SSTB and therefore may be aggregated under the rules described in § 1.199A–4. Another commenter suggested that the prohibition on aggregation for SSTBs is unnecessary because a taxpayer must combine W–2 wages and UBIA of qualified property for the aggregated trade or business prior to applying the W–2 wages and UBIA limitations. The commenter recommended that at a minimum, the prohibition be removed for taxpayers within the phase-in range and that taxpayers should be permitted to aggregate SSTBs with other SSTBs for reporting purposes. The Treasury Department and the IRS decline to adopt the recommendation to allow SSTBs to aggregate as doing so would increase administrative burden and complexity without providing significant benefit. Aggregation is intended to assist taxpayers in applying the W–2 wage and UBIA of qualified property limitations. A taxpayer with taxable income below the threshold amount does not need to apply the W–2 wage and UBIA of qualified property limitations and therefore will not benefit from aggregation. Further, the Treasury Department and the IRS decline to adopt the recommendation that the prohibition on aggregation of SSTBs be removed for taxpayers with taxable income within the phase-in range as taxpayers may have taxable income within the phase-in range for some taxable years and taxable income that exceeds the phase-in range in other taxable years.

To determine whether trades or businesses may be aggregated, the proposed regulations provide that multiple trades or businesses must, among other requirements, satisfy two of three listed factors, which demonstrate that the businesses are part of a larger, integrated trade or business. These factors include: (1) The businesses provide products and services that are the same (for example, a restaurant and a food truck) or customarily provided together (for example, a gas station and a car wash); (2) the businesses share facilities or share significant centralized business elements (for example, common personnel, accounting, legal, manufacturing, purchasing, human resources, or information technology resources); or (3) the businesses are operated in coordination with, or reliance on, other businesses in the aggregated group (for example, supply chain interdependencies). Some commenters expressed support for the factors in the proposed regulations while others suggested modifications to the test. One commenter questioned whether, to meet the first factor, trades or businesses must provide both products and services that are the same. Another commenter noted that it is unclear how to apply the first factor with respect to real estate as real estate is neither a product nor a service. In

response to these comments, the final regulations describe the first factor as products, property, or services that are the same or customarily offered together. Additionally, the final regulations add examples clarifying when a real estate trade or business satisfies the aggregation rules. Other commenters requested additional guidance on whether certain fact patterns regarding specific trades or businesses would satisfy a particular factor. The Treasury Department and the IRS decline to address specific fact patterns or trades or businesses because this test is based on all the facts and circumstances. Therefore, specific rules would be impractical and imprecise. Similarly, the Treasury Department and the IRS decline to define ''significant'' in terms of centralized business elements in the second factor because the answer is dependent on the facts and circumstances of each combination of trades and businesses.

Another commenter suggested that operational interdependence could be determined more precisely by using tests such as the twelve factor test outlined in § 1.469–4T(g)(3). The commenter noted that such a test would be less likely to inappropriately preclude a section 199A deduction. Other commenters suggested that taxpayers be permitted to aggregate when two of the four factors are met. The Treasury Department and the IRS have carefully considered alternatives, including the factors outlined in § 1.469–4T(g)(3). Aggregation of multiple trades or businesses is not provided for in the statutory text, but was added to the regulations to enhance administrability for taxpayers and the IRS in situations when what is thought of as a single trade or business is operated across multiple entities for various legal, economic, or other non-tax reasons. Aggregation is optional and the inability to aggregate does not preclude a taxpayer with QBI from multiple trades or businesses from claiming a section 199A deduction on the separate trades or businesses to the extent otherwise allowed by section 199A and these regulations. The Treasury Department and the IRS believe that reducing the required number of factors would allow the aggregation of trades or businesses that are not owned and operated as integrated businesses. Conversely, adding new factors would increase complexity and burden for both taxpayers and the IRS. Accordingly, the final regulations retain the factors provided in the proposed regulations, modified to take real estate into account.

C. Aggregation by RPEs

Multiple commenters recommended that RPEs be permitted to aggregate at the entity level. One commenter suggested that allowing aggregation at the entity level would reduce reporting requirements if the owners or beneficiaries of the entity were required to follow the entity's aggregation. The commenter also suggested that entity aggregation would help non-majority owners by allowing them to benefit from aggregation without requiring the entity to provide ownership information. Another commenter suggested that reporting would be simplified if aggregation was allowed at the entity level when it is known that the owners want to aggregate. A third commenter suggested that aggregation should be allowed where each owner provides consent, including through provisions in the operating agreements. Another commenter suggested that if entity level aggregation is not allowed generally, an exception should be made for disregarded and wholly-owned entities.

The Treasury Department and the IRS agree that aggregation should be allowed at the entity level. Accordingly, the final regulations permit an RPE to aggregate trades or businesses it operates directly or through lower-tier RPEs. The resulting aggregation must be reported by the RPE and by all owners of the RPE. An individual or upper-tier RPE may not separate the aggregated trade or business of a lower-tier RPE, but instead must maintain the lower-tier RPE's aggregation. An individual or upper-tier RPE may aggregate additional trades or businesses with the lower-tier RPE's aggregation if the rules of § 1.199A–4 are otherwise satisfied. Each RPE in a tiered structure is subject to the disclosure and reporting requirements in § 1.199A–4(c)(1). Further, as discussed in part II.C.1 of this Summary of Comments and Explanation of Revisions, § 1.199A–1(e)(2) of the final regulations provides that an entity with a single owner that is treated as disregarded as an entity separate from its owner under any other provision of the Code is disregarded for purposes of section 199A and §§ 1.199A–1 through 1.199A–6.

D. Reporting and Disclosure

The proposed regulations require consistent reporting of aggregated trades or businesses. Each individual who chooses to aggregate must attach a statement to their return annually identifying each trade or business to be aggregated. A few commenters requested clarification of these rules in situations in which a taxpayer did not aggregate or failed to report an aggregation. Several commenters suggested that taxpayers be required to file only one disclosure in the first year the taxpayer chooses to aggregate and that any subsequent aggregation information be reported on the same form used to report a taxpayer's section 199A deduction. Further, these commenters suggested that taxpayers be allowed to remedy a failure to provide the required information by filing an amended return or upon examination, provided that the taxpayer can establish reasonable cause for the failure. One commenter recommended that any required aggregation information be reported on a form for the section 199A deduction instead of as a separate statement. Additionally, commenters requested guidance as to whether a taxpayer is required to aggregate in its first year and if the failure to aggregate precludes aggregation in a later year. Finally, one commenter requested guidance regarding when a taxpayer could re-aggregate. The commenter suggested that options could include during an open season; after a change in circumstances; under a formal process similar to a change in accounting method; or based on a list of circumstances that would allow for automatic permission to re-aggregate.

Based on these comments, the final regulations provide that a taxpayer's failure to aggregate trades or businesses will not be considered to be an aggregation under this rule; that is, later aggregation is not precluded. The final regulations do not generally allow for an initial aggregation to be made on an amended return as this would allow aggregation decisions to be made with the benefit of hindsight. A taxpayer who fails or chooses not to aggregate in Year 1 can still choose to aggregate in Year 2 or other future year (but cannot amend returns to choose to aggregate for Year 1). A taxpayer who chooses to aggregate must continue to aggregate each taxable year unless there is a material change in circumstances that would cause a change to the aggregation. However, the Treasury Department and the IRS acknowledge that many individuals and RPEs may be unaware of the aggregation rules when filing returns for the 2018 taxable year. Therefore, the IRS will allow initial aggregations to be made on amended returns for the 2018 taxable year. The final regulations retain the annual disclosure requirement and, in order to provide flexibility as forms and instructions change, allow the Commissioner to require disclosure of information on aggregated trades or businesses as provided in a variety of

formats including forms, instructions, or published guidance. The final regulations contain similar reporting and disclosure rules for RPEs.

The preamble to the proposed regulations requested comments on whether reporting requirements should be imposed on RPEs requiring majority owners to provide information about all of the other RPEs in which they hold a majority interest. One commenter stated that the extra time and cost of imposing additional reporting requirements on aggregated trades or businesses would not be worth the potential benefit a non-majority owner may gain by having such information. Another commenter suggested that the need for such a rule would be reduced if the final regulations allowed aggregation by RPEs. The Treasury Department and the IRS agree with these comments. Accordingly, the final regulations do not adopt a rule requiring the disclosure of such information to non-majority owners.

The proposed regulations permit the Commissioner to disaggregate trades or businesses if a taxpayer fails to attach the required annual disclosure. The preamble to the proposed regulations requested comments on an administrable standard under which trades or businesses will be disaggregated. One commenter suggested that a disaggregation rule is unnecessary because the Commissioner can always assert that an aggregation that was inappropriate should be disregarded. The commenter suggested that the Treasury Department and the IRS consider a rule allowing the Commissioner to aggregate trades or businesses in which the taxpayer engages in a transaction or series of transactions to divide trades or businesses in a manner that allows the taxpayer to use the aggregation rules to artificially increase the taxpayer's section 199A deduction.

The Treasury Department and the IRS decline to adopt both of these suggestions. Although the Treasury Department and the IRS agree with the commenter that the Commissioner can always assert that an inappropriate aggregation should be disregarded, the reporting requirements, including the disaggregation rule, are necessary for the Commissioner to administer section 199A in accordance with the statutory intent. The final regulations clarify that the disaggregation is not permanent by providing that trades or businesses that are disaggregated by the Commissioner may not be re-aggregated for the three subsequent taxable years, similar to the typical period during which a tax return may be audited. The Treasury Department and the IRS also decline to adopt the commenter's suggestion that the final regulations include an additional anti-abuse rule that would allow the Commissioner to aggregate trades or business in cases in which a division of the taxpayer's trades or businesses is used in conjunction with the aggregation rules with a principal purpose of increasing the taxpayer's section 199A deduction. As explained in part II.D. of this Summary of Comments and Explanation of Revisions, taxpayers and entities can have more than one trade or business. The suggested anti-abuse rule is overly broad and would create unnecessary complexity for both taxpayers and the IRS.

E. Examples

The proposed regulations provide several examples of the aggregation rules. One commenter noted that proposed § 1.199A–4(b)(1)(i) refers to the capital or profits of a partnership while the examples refer to the capital and profits of a partnership. The language in the examples was intended to demonstrate that the taxpayers were sharing proportionately in all items. For clarification, the final regulations retain the reference to capital or profits in § 1.199A–4(b)(1)(i) and update the examples to remove the references to capital and profits.

VI. Specified Service Trades or Businesses and the Trade or Business of Being an Employee

A. Definition of Specified Service Trade or Business

1. In General

The proposed regulations provide definitional guidance on the meaning of a trade or business involving the performance of services in each of the fields listed in section 199A(d)(2). Multiple commenters requested guidance on whether specific trades or businesses would constitute SSTBs. In many cases, the determination of whether a specific trade or business is an SSTB depends on whether the facts and circumstances demonstrate that the trade or business is in one of the listed fields. Although the Treasury Department and the IRS understand the desire for certainty, because the determination of whether a particular trade or business is an SSTB is factually dependent, this analysis is beyond the scope of these regulations.

Several commenters argued that the meaning of performance of services in the various fields should be limited to the definitions provided in § 1.448–1T(e)(4). A few commenters noted that any expansion beyond these definitions is contrary to legislative intent as expressed in ''Tax Cuts and Jobs Act,'' Statement of Managers to the Conference Report to Accompany H.R. 1, H.R. Rept. 115–466 (Dec. 15, 2017), p. 216–222. These commenters argue that the Statement of Managers notes that the committee adopted the Senate Amendment and described the section 448 regulations as an indicator of the meaning of services in the health, performing arts, and consulting fields referenced in section 1202(e)(3)(A) as incorporated by section 199A. The Treasury Department and the IRS decline to adopt these comments. While the Statement of Managers does reference § 1.448–1T(e)(4), nothing in the language of the report limits the definitions for purposes of section 199A to those provided in § 1.448–1T(e)(4). Section 199A does not reference section 448; instead, section 199A incorporates section 1202(e)(3)(A) with modifications. The Treasury Department and the IRS believe it is appropriate to look to the definitions provided for in the regulations under section 448 because guidance under section 1202 is limited. However, as stated in the preamble to the proposed regulations, the existing guidance under section 448 is not a substitute for guidance under section 199A.

The intent of section 448 and the intent of section 199A are different. Section 448 prohibits certain taxpayers from computing taxable income under the cash receipts and disbursements method of accounting. Qualified personal services corporations are excluded from this prohibition. Section 448(d)(2) defines the term qualified personal service corporation to include certain employee-owned corporations, substantially all of the activities of which involve the performance of services in the fields of health, law, engineering architecture, accounting, actuarial sciences, performing arts, or consulting. By contrast, section 199A provides a deduction based on QBI from a qualified trade or business. For taxpayers with taxable income above the phase-in range, an SSTB is not a qualified trade or business. Section 199A, through reference to section 1202, defines an SSTB as a trade or business involving the performance of services in the fields of health, law, accounting, actuarial science, performing arts, consulting, athletics, financial services, brokerage services, or any trade or business where the principal asset of such trade or business is the reputation or skill of one or more of its employees or owners. The trade or business of the

performance of services that consist of investing and investment management, trading, or dealing in securities (as defined in section 475(c)(2)), partnership interests, or commodities (as defined in section 475(e)(2)) is also defined as an SSTB for purposes of section 199A. Further, section 199A looks to the trade or business of performing services involving one or more of the listed fields, and not the performance of services themselves in determining whether a trade or business is an SSTB. The designation of a trade or business as an SSTB applies to owners of the trade or business, regardless of whether the owner is passive or participated in any specified service activity. Accordingly, it is both necessary and consistent with the statute and the legislative history to expand the definitions of the fields of services listed in section 199A(d)(1) and (2) and § 1.199A–5 beyond those provided in § 1.448–1T(e)(4).

One commenter suggested that in order to provide certainty and further economic growth, the final regulations should include a franchising example to clarify that a franchisor will not be considered to be an SSTB based solely on the selling of a franchise in a listed field of service. The Treasury Department and the IRS adopt this comment and have included a franchising example in the final regulations.

Finally, the final regulations add two rules of general application. First, the final regulations specify that the rules for determining whether a business is an SSTB within the meaning of section 199A(d)(2) apply solely for purposes of section 199A and therefore, may not be taken into account for purposes of applying any other provision of law, except to the extent that another provision expressly refers to section 199A(d). Second, the final regulations include a hedging rule that is applicable to any trade or business conducted by an individual or an RPE. The hedging rule provides that income, deduction, gain, or loss from a hedging transaction entered into in the normal course of a trade or business is included as income, deduction, gain, or loss from that trade or business. A *hedging transaction* for these purposes is defined in § 1.1221–2(b) and the timing rules of § 1.446–4 are also applicable.

The remainder of this part VI.A. responds to those comments advocating that a specific category of trade or business should be excluded from one of the listed fields in section 199(d)(2) or from the SSTB provisions entirely.

2. Health

Multiple commenters submitted comments requesting additional guidance on the meaning of performance of services in the field of health. Several commenters recommended that the definition of the performance of services in the field of health should differentiate between institutional health care providers (such as skilled nursing homes), which bill on a fee-for-service or per diem-basis, versus health care providers who provide and bill for professional services (such as a physician's practice). Another commenter suggested a distinction between these types of providers based on whether the trade or business had made the capital investment necessary to function as a custodial institution. One commenter recommended the definition be restricted to health care providers who derive a majority of their revenue from billing patients and third party payers for professional services, thereby excluding health care providers who derive a majority of their revenue from billing for institutional services (skilled nursing facilities, hospitals, ambulatory surgery centers, home health care agencies, outpatient radiology centers, and hospice agencies).

Commenters noted the many services that skilled nursing facilities and assisted living facilities provide are unrelated to health care, including housing, meals, laundry facilities, security, and socialization activities. In some cases, skilled nursing and similar facilities may make available independent contractors who provide services related to health care available to patients, without the facility receiving any payment or revenue with respect to such services. Another commenter suggested that skilled nursing facilities, assisted living, and similar facilities should be excluded from the definition of services in the field of health unless 95 percent or more of the time spent by employees of the facility are directly related to providing medical care.

The Treasury Department and the IRS agree that skilled nursing, assisted living, and similar facilities provide multi-faceted services to their residents. Whether such a facility and its owners are in the trade or business of performing services in the field of health requires a facts and circumstances inquiry that is beyond the scope of these final regulations. The final regulations provide an additional example of one such facility offering services that the Treasury Department and the IRS do not believe rises to the level of the performance of services in the field of health.

Several commenters asked for clarification regarding when two separate activities would generally be viewed separately, particularly in the context of health care facilities such as emergency centers, urgent care centers, and surgical centers that provide improved real estate and equipment but do not directly provide treatment or diagnostic care to service recipients. One commenter noted that there is precedent under section 469 for distinguishing between the provision of direct treatment and diagnostic care versus the business of providing services or facilities ancillary to direct care, even if the physicians own an interest in the entity owning the facilities. The commenter suggested that the final regulations provide examples or other clarification regarding when these and similar facilities will be treated as performing services in the field of health, particularly if one of the owners of a facility also performs medical services in the facility. The final regulations provide an additional example of an outpatient surgical center demonstrating a fact pattern that the Treasury Department and the IRS do not believe is a trade or business providing services in the field of health.

Several commenters requested clarification regarding whether a retail pharmacy selling pharmaceuticals or medical devices is engaged in a health service trade or business. One commenter suggested that final regulations include an example of when a pharmacist would be considered in the health profession. The commenter agreed that a pharmacist working as an independent contractor at various pharmacies, a pharmacist providing inoculations directly to the patient, and a consulting pharmacist working as an independent contractor would all be examples of a pharmacist engaged in an SSTB. Another commenter stated that the inclusion of pharmacists in the definition might be overbroad, suggesting that a pharmacist who was also a pharmacy owner generating revenue from selling pharmaceuticals or medical devices would not be engaged in an SSTB while a pharmacist operating as a consultant and paid as an independent contractor would be engaged in an SSTB. A third commenter suggested that a pharmacist working as an independent contractor for several pharmacies would not be performing services in the field of health unless the pharmacists provides medical services, such as inoculations, directly to a patient.

The Treasury Department and the IRS agree that the sale of pharmaceuticals and medical devices by a retail pharmacy is not by itself a trade or business performing services in the field of health. As the commenters note, however, some services provided by a retail pharmacy through a pharmacist are the performance of services in the field of health. The final regulations provide an additional example of a pharmacist performing services in the field of health.

Another commenter argued that gene therapy and similar injectable products such as stem cell therapy and RNA-based therapies manufactured or produced from the patient's body itself should be treated in the same manner as pharmaceuticals. The commenter argued that their manufacture and production should not be treated as an SSTB, regardless of whether they take place in a hospital or in a separate production facility. The Treasury Department and the IRS decline to adopt this recommendation as this is a question of facts and circumstances.

Another commenter argued that veterinary medicine should not be considered an SSTB. The commenter stated that delivery of veterinary care is different than delivery of human health care because veterinary patients are property and the nature of the animal may dictate the level of veterinary care provided by the owner. Most veterinary practices have other streams of income such as retail, laboratory and diagnostic services, boarding and grooming services, and pharmacies, and the commenter expressed concern that it would be difficult for veterinarians to segregate those other streams of income. The commenter noted that animal boarding and grooming would ordinarily generate income eligible for the deduction and that should not change when services are provided by a veterinarian. The commenter also stated that Federal health legislation does not apply to veterinarians unless the legislation specifically refers to veterinarians, veterinary medicine, or animal health. Finally, the commenter noted that § 1.448–1T(e)(4)(ii) does not reference veterinarians, suggesting that this is an indication that Congress did not intend for veterinary medicine to be treated as a business in the field of health.

Issued nearly three decades ago, Rev. Rul. 91–30, 1991–1 C.B. 61, described a corporation in which employees spend all of their time in the performance of veterinary services, including diagnostic and recuperative services as well as activities, such as the boarding and grooming of animals, that are incident to the performance of these services. The ruling also describes the definition of the performance of services in the field of health contained in § 1.448–1T(e)(4)(ii) and holds that a corporation whose employees perform veterinary services is a qualified personal service corporation within the meaning of sections 448(d)(2) and 11(b)(2) and a personal service corporation within the meaning of section 441(i). Accordingly, the Treasury Department and the IRS believe that it is appropriate to continue the long-standing treatment of veterinary services as the performance of services in the field of health for purposes of section 199A and these final regulations.

Another commenter noted that there is a dividing line between physical therapists and other health-related occupations. For example, reimbursement rates from third-party payers are higher for doctors, nurses, and dentists. The commenter also noted that Congress initially attempted to exclude physical therapists from participating in Medicare and Medicaid incentive programs and health service student loan forgiveness programs. The Treasury Department and the IRS decline to adopt this comment as multiple health services are reimbursed differently, but are still within the field of health.

One commenter suggested that services are not performed in the field of health unless services are performed directly to a patient. As an example, the commenter argued that a physician who reads x-rays for another physician but does not work directly with the patient would not be performing a service in the field of health. Another commenter stated that defining services in the field of health by proximity to patients could lead to arbitrary results, pointing out that a radiologist who acts as an expert consultant to a physician engages in the same exercise of medical skills and judgment as a physician who sees patients. The commenter suggested that technicians who operate medical equipment or test samples, but are not required to exercise medical judgment should not be considered as performing services in the field of health. The Treasury Department and the IRS agree with the second commenter that proximity to patients is not a necessary component of providing services in the field of health. Accordingly, the final regulations remove the requirement that medical services be provided directly to the patient. The final regulations do not adopt the suggestion that technicians who operate medical equipment or test samples are not considered to be performing services in the field of health as this is a question of fact. However, the final regulations do include an additional example related to laboratory services.

3. Accounting

One commenter suggested that real estate settlement agents should be excluded from the definition of those who perform services in the field of accounting. The commenter recommended that final regulations define the performance of services in the field of accounting as the performance of core accounting services such as bookkeeping (including data entry), write-up work, review services, and attest functions, as well as tax preparation and similar functions. As an alternative, the commenter recommends that settlement agents be added as not constituting the practice of accounting. A second commenter stated that the definition of accounting should be narrowed to the ordinary meaning of accounting. This comment noted that the field of accounting should include bookkeeping and financial statement preparation, but not tax return advice and preparation. A third commenter noted that the proposed regulations treat bookkeeping services, which do not require professional training or license, as an accounting service. The commenter argued that if the intent of section 199A is to create parity between C corporations and passthrough entities, the regulations should narrowly define SSTBs, as was done for reputation and skill, and not expand the definitions beyond what was expressly contemplated by Congress.

The Treasury Department and the IRS decline to adopt these comments. As noted in the preamble to the proposed regulations, the provision of services in the field of accounting is not limited to services requiring state licensure. It is based on a common understanding of accounting, which includes tax return and bookkeeping services. Whether a real estate settlement agent is engaged in the performance of services in the field of accounting depends on the facts and circumstances including the specific services offered and performed by the trade or business.

4. Actuarial Science

The proposed regulations provide that the performance of services in the field of actuarial science means the provision of services by individuals such as actuaries and similar professionals performing services in their capacity as such. One commenter stated that the definition creates uncertainty for businesses that employ actuaries but do not separately bill for the services (such

as insurance businesses). The commenter recommended providing a rule similar to the rule for consulting services related to the manufacture and sale of goods for actuarial science. The Treasury Department and the IRS decline to adopt this comment as section 199A looks to the trade or business of performing services rather than the performance of services themselves. As stated in the preamble to the proposed regulations, the field of actuarial science does not include the provision of services by analysts, economists, mathematicians, and statisticians not engaged in analyzing or assessing the financial cost of risk or uncertainty of events. The mere employment of an actuary does not itself cause a trade or business to be treated as performing services in the field of actuarial science. Whether a trade or business is providing actuarial services is a question of fact and circumstance.

5. Performing Arts

Multiple commenters stated that the definition of performance of services in the field of performing arts should be limited to the definition in § 1.448–1T(e)(4)(iii). One commenter argued that the position in the proposed regulations that includes individuals who participate in the creation of the performing arts is not supported by the legislative history, namely the Statement of Managers that references the section 448 regulations. As described in part VII.A.1. of this Summary of Comments and Explanation of Revisions, the Treasury Department and the IRS decline to limit the definition of the performance of services in the field of performing arts to the definition in § 1.448–1T(e)(4)(iii). Another commenter suggested that writers should fall outside the definition of the performance of services in the field of performing arts because writing does not require a skill unique to the creation of performing arts. Further, writers create a wide variety of works not intended to be performed before an audience. The Treasury Department and the IRS also decline to adopt this comment. To the extent that a writer is paid for written material, such as a song or screenplay, that is integral to the creation of the performing arts, the writer is performing services in the field of performing arts.

6. Consulting

One commenter suggested that proposed § 1.199A–5(b)(3), Example 3, should be modified to clarify that C, a taxpayer in the business of providing services that assist unrelated entities in making their personnel structures more efficient, does not provide any temporary workers, and C's compensation and fees are not affected by whether C's clients use temporary workers. The commenter argued that such a change would prevent the example from being interpreted as treating any recommendation for a business to use temporary workers as consulting services. The commenter also suggested that the final regulations include an additional example similar to Example 7 of § 1.448–1T(e)(4)(iv)(B) related to staffing firms. The commenter recommended that the example provide that a business that assists other businesses in meeting their personnel needs by referring job applicants to them does not engage in the performance of services in the field of consulting when the compensation for the business referring job applicants is based on whether the applicants accept employment positions with the businesses searching for employees. The final regulations adopt these suggestions.

Another commenter suggested that final regulations clarify whether services provided by engineers and architects could be considered to be an SSTB if their services meet the definition of consulting services. The Treasury Department and the IRS adopt this comment. Section 1.199A–5(b)(2)(vii) of the final regulations provides that services within the fields of architecture and engineering are not treated as consulting services for purposes of section 199A.

One commenter suggested that the definition of consulting should be narrowed to stand-alone advice and counsel with no link to production, manufacturing, sales, or licensing of products. The Treasury Department and the IRS decline to adopt this suggestion as it would be difficult to administer and subject to manipulation. Another commenter suggested that the phrase ''provision of professional advice and counsel to clients to assist the client in achieving goals and solving problems'' is overly broad as it could apply to almost any service-based business that assists clients in achieving goals and solving problems. The commenter stated that applying the ancillary rule would be difficult where a taxpayer is required to separately bill for embedded consulting services under state or local sales tax laws. The commenter suggested that the consulting field should be limited to taxpayers that fall under a consulting-related business activity code under the North American Industry Classification Systems (NAICS). The Treasury Department and the IRS agree with the commenter that many service-based businesses could be construed as providing professional advice and counsel to clients to assist the client in achieving goals and solving problems; however, the Treasury Department and the IRS decline to adopt the recommendation to limit the consulting field based on NAICS codes. Section 1.199A–5(b)(2)(vii) excludes the performance of services other than providing advice and counsel from the field of consulting. At issue is whether advice and counsel is provided in the context of the provision of goods or services (that are not otherwise SSTBs). This is a question of facts and circumstances. Consulting services that are separately billed are generally not considered to be provided in the context of the provisions of goods or services.

7. Athletics

A few commenters suggested that the definition of a trade or business involving the performance of services in the field of athletics should not include the trade or business of owning a professional sports team. One commenter stated that the definition should be limited to entities that are either owned or controlled by, or whose primary beneficiaries are, professional athletes or that involve the performance of services by those athletes; in other words, the definition should apply solely to athletes' personal services companies.

Another commenter recommended that § 1.199A–5(b)(3) Example 2 be revised to reflect that neither sports clubs nor club owners perform services described in section 1202(e)(3)(A). The commenter stated that a professional sports club and its owners do not perform services in the field of athletics. Instead, a sports club sells tickets, licenses, sponsorships, and other intellectual property, creates digital content, engages in community activities, manages a stadium, and produces an entertainment product. The commenter argued that Congress intended through the SSTB rules to prevent W–2 wage income from being converted to QBI and that only the trade or business of an athlete involves W–2 wage income from athletic performance. The commenter continued, stating that professional sports clubs are not described in section 1202(e)(3)(A) or provided in section 448(d)(2)(A).

The Treasury Department and the IRS decline to adopt this comment. As described in part VII.A.1. of this Summary of Comments and Explanation of Revisions, the Treasury Department and the IRS do not believe that definitional guidance should be limited

to that provided in § 1.448–1T(e)(4)(i) (by analogy to performing arts for athletics). While sports club and team owners are not performing athletic services directly, that is not a requirement of section 199A, which looks to whether there is income attributable to a trade or business involving the performance of services in a specified activity, not who performed the services. A professional sports club may operate more than one trade or business. For example, a team may operate its concession services as a separate trade or business. The Treasury Department and the IRS agree that such concession services generally would not be a trade or business of performing services in the field of athletics. Nonetheless, a professional sports club's operation of an athletic team is a trade or business of performing services in the field of athletics. Income from that trade or business, including income from ticket sales and broadcast rights, is income from a trade or business of performing services in the field of athletics. The performance of services in the field of athletics does not include the provision of services by persons who broadcast or otherwise disseminate video or audio of athletic events to the public.

8. Financial Services

Several commenters suggested that final regulations clarify that financing, including taking deposits, making loans, and entering into financing contracts, is not a financial service. One commenter requested an explicit rule clarifying that non-bank mortgage bankers are not SSTBs and that customary activities of mortgage bankers including mortgage loan origination, sales of mortgage loans, mortgage loan servicing, and sale of mortgage servicing rights are not financial services. The preamble to the proposed regulations provides that the provision of financial services does not include taking deposits or making loans. The final regulations clarify that the provision of financial services does not include taking deposits or making loans.

One commenter stated that the determination that banking is not a financial service appears to be wrong and inconsistent with statutory construction since any common definition of financial services includes banking services. As stated in the preamble to the proposed regulations, banking is listed in section 1202(e)(3)(B) but not section 1202(e)(3)(A). As a matter of statutory construction, the Treasury Department and the IRS believe that banking must therefore be excluded from the definition of financial services for purposes of section 199A. Another commenter suggested that insurance should be categorically excluded from the meaning of financial services because insurance is described in section 1202(e)(3)(B). The Treasury Department and the IRS agree that by operation of section 1202(e)(3)(B), insurance cannot be considered a financial service for purposes of section 199A. The commenter also suggested that a rule similar to the ancillary services rule for consulting should be extended to cover financial services. Another commenter argued that insurance agents and others who provide investment advice are not in the field of financial services, unless the agent receives a fee for the advice, rather than a commission on the sale. The Treasury Department and the IRS decline to categorically exclude services provided by insurance agents from the definition of financial services as financial services such as managing wealth, advising clients with respect to finances, and the provision of advisory and other similar services that can be provided by insurance agents. However, the Treasury Department and the IRS note that the provision of these services to the extent that they are ancillary to the commission-based sale of an insurance policy will generally not be considered the provision of financial services for purposes of section 199A.

9. Brokerage Services

One commenter stated that the ordinary definition of a broker is any person who buys and sells goods or services for others, including agents, and argued that nothing in the statute limits this to stock brokers. The commenter said that the definition in the proposed regulations artificially narrows the standard to appease special interests without any justification. The definition provided for in the proposed regulations applies more broadly than stock brokers and includes all services in which a person arranges transactions between a buyer and a seller with respect to securities (as defined in section 475(c)(2)) for a commission or fee. While the term ''broker'' is sometimes used in a broad sense to include anyone who facilitates the purchase and sale of goods for a fee or commission, the term ''brokerage services'' is most commonly associated with services, such as those provided by brokerage firms, involving the facilitation of purchases and sales of stock and other securities.

Another commenter suggested that final regulations clarify that life insurance products are not securities for purposes of section 199A or that life insurance brokers engaged in their capacity as such are not brokers in securities for purposes of section 199A. Other commenters requested the final regulations clarify that the business of financing or making loans, including the services provided by mortgage banking companies, does not fall within the definition of brokerage services. The Treasury Department and the IRS address this comment in the final regulations by explicitly stating that although the performance of services in the field of financial services does not include taking deposits or making loans, it does include arranging lending transactions between a lender and borrower. The final regulations define securities by reference to section 475(c)(2).

10. Investing and Investment Management

One commenter recommended that the performance of services that consist of investing and investment management be limited to investment management and investment advisory businesses whose income is principally attributable to the performance of personal services involving the provision of investment advice or the regular and contemporaneous management of investors' assets by individual employees or owners of the business. The commenter recommended that the definition exclude large, diversified asset managers that invest significant capital in and derive significant income from the research, development, and sale of investment products. The commenter suggested that rather than making business-by-business determinations, the final regulations should look to rules such as the regulations under now repealed section 1348, which did not treat income from a business in which capital is a material income producing factor as earned income. As an alternative, the commenter suggested that the final regulations could provide a safe harbor for firms that research, develop, and sell investment products, including changes to the de minimis and incidental rules necessary to effectuate the safe harbor. An example of such a rule could be similar to the rule provided for ancillary consulting services.

The Treasury Department and the IRS decline to adopt this comment as the regulations under now repealed section 1348 looked to earned income including fees received by taxpayers engaged in a professional occupation. Section 199A is focused on a trade or business, not a profession of an individual. Accordingly, the determination of whether a trade or business in an SSTB

must be made on a business-by-business basis.

Another commenter suggested that final regulations clarify that investing and investment management does not include the sale of life insurance products and that life insurance products are not investments for purposes of section 199A. The Treasury Department and the IRS decline to define investment for purposes of section 199A but note that commission-based sales of insurance policies generally will not be considered the performance of services in the field of investing and investing management for purposes of section 199A.

Another commenter recommended that final regulations clarify that directly managing real property includes management through agents and affiliates acting as agents for the property manager. The SSTB limitations apply to direct and indirect owners of a trade or business that is an SSTB, regardless of whether the owner is passive or participated in any specified service activity. Accordingly, direct and indirect management of real property includes management through agents, employees, and independent contractors.

11. Dealing

a. Mortgage Banking, Credit Sales, and Non-Bank Lending

Several commenters suggested that the provisions regarding dealing in securities should exclude mortgage banking and other lending activities in which lending is the primary business focus. Several of these commenters noted that the plain language meaning of ''purchasing securities'' does not include making loans. One commenter suggested that the reference to the definition of negligible sales should be clarified to explain that negligible sales as defined in § 1.475(c)–1(c)(2) and (4) does not apply if the loan is in connection with mortgage servicing contracts as excluded in section 451(b)(1)(B). Another commenter suggested that portfolio lenders should also be able to use the negligible sales exemption and all sales of loans outside the ordinary course of business should be excluded from consideration in applying the negligible sales test. A third commenter suggested that the regulation clarify that the negligible sales exception is simply an exception to the general definition of dealing in securities. Another commenter suggested that application of dealing in securities should be limited to taxpayers engaged in broker-dealer activities for which registration under Federal law would be required. Another commenter suggested that the creation of a loan should not be construed as a purchase and a taxpayer should be considered a dealer in securities only if they both purchase and sell securities. As an alternative, this commenter suggested that negligible sales could be defined in terms of the number of customers that the lender sells loans to each year. For this purpose, the Government National Mortgage Association (GNMA) would be considered to be the customer for purpose of sales of GNMA mortgage pools through the issuance of mortgage backed securities. Another commenter suggested that sales of retail installment contracts or loans for purposes of liquidity, portfolio diversification, and similar purposes should be considered to be outside of recurring business activity and thus not dealing in securities. In response to these comments, the final regulations provide that for purposes of section 199A and the definition of performing services that consist of dealing in securities, the performance of services to originate a loan is not treated as the purchase of a security from the borrower. Additionally, the final regulations remove the reference to the negligible sales exception under § 1.475(c)–1(c)(2) and (4) from the definition of dealing in securities.

Another commenter suggested that under section 199A, the term ''securities'' should be defined by reference to section 475 but not the terms ''dealer'' or ''dealer in securities.'' The commenter suggested that a lender should be considered to be a dealer in securities for purposes of section 199A only to the extent that loans, including retail sales contracts, acquired by the lender are held in inventory or held for sale to customers in the ordinary course of a trade or business within the meaning of section 1221. The commenter also suggested that when a loan is acquired with a view towards holding the loan to maturity in the lender's portfolio and the loan is later sold outside the normal course of business; such a sale should not result in the lender being viewed as a dealer in securities. Another commenter suggested that the meaning of sales to customers should be clarified in the context of a mortgage finance business. This commenter requested that the regulations clarify that a mortgage loan originator which transfers mortgages to an agency or broker/dealer for cash or mortgage-backed securities does not engage in a sale by the originator to a customer for purposes of section 199A.

In response to these comments, the final regulations provide that the performance of services to originate a loan is not treated as the purchase of a security from the borrower in determining whether the lender is performing services consisting of dealing in securities. The comment regarding the definition of a dealer in securities, however, is not accepted, as the definition of a securities dealer has never depended on whether securities were held in inventory. The final regulations also do not address loans that are sold outside the normal course of business, which is an inherently factual question. Similarly, the Treasury Department and the IRS decline to address the question of whether a person is a customer as this is a subject which is beyond the scope of these regulations.

b. Banking

Many commenters recommended that traditional banking activities be excluded entirely from the definition of an SSTB, including the performance of services that consist of dealing in securities. The commenters argued that Congress intended banks that elect under section 1362(a) to be S corporations (subchapter S banks) to have the same relative reduction in taxes as C corporation banks after enactment of the TCJA. Many commenters noted that subchapter S bank activities are already strictly limited by the Bank Holding Company Act and this effectively serves as a guardrail against abuse of the section 199A deduction. As an alternative, commenters suggested that the definition of SSTB should be more narrowly drawn to exclude bank services such as trust or fiduciary services, securities brokerage, and the origination and sale of mortgages and loans. Commenters also expressed concern that the de minimis rule is insufficient to protect banks. These commenters suggested revisions including raising the de minimis threshold to 25 percent regardless of the amount of gross receipts and using net income rather than gross receipts for the measure.

The Treasury Department and the IRS decline to accept these comments. Although the final regulations continue to exclude taking deposits or making loans from the definition of an SSTB involving the performance of financial services, and exclude the origination of loans from the definition of dealing in securities for purposes of section 199A, the Treasury Department and the IRS do not believe that there is a broad exemption from the listed SSTBs with respect to all services that may be legally permitted to be performed by

banks. Therefore, to the extent a bank operates a single trade or business that involves the performance of services listed as SSTBs outside of the de minimis exception, such as investing and investment management, the bank's single trade or business will be treated as an SSTB. However, as noted previously, an RPE, including a subchapter S bank, may operate more than one trade or business. Thus, a subchapter S bank could segregate specified service activities from an existing trade or business and operate such specified service activities as an SSTB separate from its remaining trade or business, either within the same legal entity or in a separate entity.

c. Commodities

Several commenters suggested that the final regulations provide that a trade or business is not engaged in the performance of services of investing, trading, or dealing in commodities if it regularly takes physical possession of the underlying commodity in the ordinary course of its trade or business. These commenters also argued that a business that takes physical possession of the commodity should not be treated as an SSTB if it hedges its risk with respect to the commodity as part of the ordinary course of its trade or business. The commenters state that dealing in commodities for purposes of section 199A should be understood to mean an activity similar to dealing in securities and should be limited to the dealing in financial instruments referenced to commodities, such as commodities futures or options that are traded on regulated exchanges. One commenter argued that if the regulations were to apply to physical commodities it would result in different tax treatment depending on whether the commodity is actively traded and that Congress intended the definition of commodities to apply only to commodities derivatives. Another commenter suggested that manufacturing activities as defined under the now repealed section 199 should be expressly excluded from the definition of both trading in commodities and dealing in commodities.

The Treasury Department and the IRS agree with commenters that the definition of dealing in commodities for purposes of section 199A should be limited to a trade or business that is dealing in financial instruments or otherwise does not engage in substantial activities with respect to physical commodities. To distinguish a trade or business that performs substantial activities with physical commodities from a trade or business that engages in a commodities trade or business by dealing or trading in financial instruments that are commodities (within the meaning of section 475(e)(2)), or a trade or business that otherwise does not perform substantial activities with commodities, the final regulations adopt rules similar to the rules that apply to qualified active sales of commodities in § 1.954–2(f)(2)(iii). Those rules generally require a person to be engaged in the active conduct of a commodities business as a producer, processor, merchant, or handler of commodities and to perform certain activities with respect to those commodities.

Accordingly, for purposes of section 199A, gains and losses from the sale of commodities in the active conduct of a commodities business as a producer, processor, merchant, or handler of commodities will be qualified active sales and gains and losses from qualified active sales are not taken into account in determining whether a person is engaged in the trade or business of dealing in commodities. Similarly, income, deduction, gain, or loss from a hedging transaction (as defined in § 1.1221–2(b)) entered into in the normal course of a commodities business conducted by a producer, processor, merchant, or handler of commodities will be treated as gains and losses from qualified active sales that are part of that trade or business. Qualified active sales generally require a taxpayer to hold commodities as inventory or similar property and to satisfy specified conditions regarding substantial and significant activities described in the final regulations. A sale by a trade or business of commodities held for investment or speculation is not a qualified active sale.

13. Reputation/Skill

Many commenters expressed support for the position in the proposed regulations that reputation or skill was intended to describe a narrow set of trades or businesses not otherwise covered by the other listed SSTBs, often writing that a more broad interpretation would be inherently complex and unworkable. Other commenters disagreed with the definition in the proposed regulations, expressing concern that the narrowness of the definition is contrary to the language of the statute and Congressional intent.

The Treasury Department and the IRS remain concerned that a broad interpretation of the reputation and skill clause would result in substantial uncertainty for both taxpayers and the IRS. As stated in the preamble to the proposed regulations, it would be inconsistent with the text, structure, and purpose of section 199A to potentially exclude income from all service businesses from qualifying for the section 199A deduction for taxpayers with taxable income above the threshold amount. If Congressional intent was to exclude all service businesses, Congress clearly could have drafted such a rule. Accordingly, the final regulations retain the proposed rule limiting the meaning of the reputation or skill clause to fact patterns in which an individual or RPE is engaged in the trade or business of receiving income from endorsements, the licensing of an individual's likeness or features, and appearance fees.

One commenter requested additional clarification regarding whether advertising income received for on air advertising spots in which a program host reads a script describing the positive qualities of a product or service, and may also choose to describe his or her own positive experiences with the product, is endorsement income as described in § 1.199A–5(b)(2)(xiv)(A). The commenter argued that such income should not be considered endorsement income because it is not received in connection with a separate trade or business of making endorsements. The Treasury Department and the IRS decline to adopt this suggestion as § 1.199A–5(b)(2)(xiv)(A) looks to whether the individual or RPE is receiving income from the endorsement of products or services, not whether the income is received in connection with a separate trade or business of making endorsements. Whether a taxpayer endorses a product or services is dependent on the facts and circumstances.

B. De Minimis Rule

The proposed regulations provide that for a trade or business with gross receipts of $25 million or less for the taxable year, a trade or business is not an SSTB if less than 10 percent of the gross receipts of the trade or business are attributable to a specified service field. The percentage is reduced to 5 percent in the case of trades or businesses with gross receipts in excess of $25 million. Several commenters requested clarification regarding whether the entire trade or business is designated an SSTB if the threshold is exceeded. Some of these commenters suggested that the rule be modified so that the deduction could be claimed on the portion of the trade or business activity that was not an SSTB. A few suggested that an allocation similar to that in now repealed section 199 could be used. One commenter suggested

using the cost accounting principles of section 861 with a safe harbor allowing a simplified method for entities with average annual gross receipts less than $25 million. Another commenter stated that treating the entire trade or business as an SSTB is a trap for the unwary because well-advised taxpayers could avoid application of the rule by rearranging their activities into separate entities. One commenter suggested that the de minimis rule allow for minor year-to-year changes in gross receipts for businesses that are close to the de minimis thresholds. The commenter also suggested that the thresholds be increased and recommended an incremental approach in which the deduction is calculated based on the portion of the business that is not engaged in an SSTB. Another commenter suggested that if the rule is retained, it should be imposed only at a greater than 50 percent threshold since only at that point would SSTB gross receipts predominate over non-SSTB gross receipts. The commenter also noted that a higher threshold would be easier to track. Several commenters also suggested that the de minimis threshold be raised. One commenter suggested that the de minimis threshold be raised to 20 percent for all qualified businesses, regardless of gross receipts. The commenter argued that a 20 percent threshold is supported by Congress's decision to use section 1202(e) for its definition of an SSTB, noting that section 1202(e)(1)(A) uses an at least 80 percent (by value) rule for determining whether a qualified trade or business satisfies the section's active business requirement. Other commenters recommended that the ten percent threshold should apply for purposes of the de minimis threshold regardless of the amount of gross receipts of the trade or business. Public comments lacked consensus regarding the 5-percent de minimis threshold. After considering all of the comments, the Treasury Department and the IRS chose to retain the 5-percent threshold in the final regulations as it is a de minimis threshold that is generally consistent with prior regulations under the Code in similar circumstances and therefore, such a standard should be familiar to affected entities.

Another commenter suggested that final regulations clarify whether revenue generated from the sale of medical products or devices should be excluded from the overall QBI for trades or businesses that provide services in the field of health. The commenter noted that physicians who provide their patients with medical devices should be able to use the deduction with respect to income from such devices and expressed concern that the de minimis thresholds could limit the ability of some practitioners to use the deduction. Another commenter suggested that a business with SSTB gross receipts in excess of the de minimis should not be entirely disqualified, but that the facts and circumstances should be analyzed to determine the true nature of the trade or business. The commenter also suggested that a safe harbor should be provided in which a business can make an election to deem the SSTB activity as a separate trade or business solely for the purposes of section 199A. Finally, one commenter suggested that final regulations include an example of what result occurs if a taxpayer's SSTB revenue is not de minimis.

The Treasury Department and the IRS decline to adopt most of the recommendations in these comments. As stated in the preamble to the proposed regulations, the statutory language of section 199A does not provide a certain quantum of activity before an SSTB is found. Rather, section 199A looks to whether the trade or business involves the performance of services in the list of SSTBs. The use of the word ''involving'' suggests that any amount of specified service activity causes a trade or business to be an SSTB. Consequently, the Treasury Department and the IRS believe that it would be inappropriate to adopt a pro rata rule. However, requiring all taxpayers to evaluate and quantify any amount of specified service activity would be unduly burdensome and complex for both taxpayers and the IRS. Accordingly, the proposed rule provides a de minimis threshold under which a trade or business will not be considered an SSTB merely because it provides a small amount of services in a specified service activity. Trades or business with gross income from a specified service activity in excess of the de minimis threshold are considered to be SSTBs. The final regulations retain the proposed rule but add an additional example demonstrating the result in which a trade or business has income from a specified service activity in excess of the de minimis threshold.

As discussed in part II of this Summary of Comments and Explanation of Revisions, the Treasury Department and the IRS acknowledge that an RPE can have more than one trade or business for purposes of section 162 and thus for section 199A. However, each trade or business is required under section 199A to be separately tested to determine whether that trade or business is an SSTB. Similarly, the de minimis threshold is applied to each trade or business of an RPE separately, not in the aggregate to all the trades or businesses of the RPE. Thus, to the extent that an individual or RPE has more than one trade or business, the presence of specified service activity in one of those trades or business will not cause the individual's or RPE's other trades or businesses to be considered SSTBs except to the extent that the rules in § 1.199A–5(c)(2) (services or property provided to an SSTB) apply.

C. Services or Property Provided to an SSTB

The proposed regulations provide special rules for service or property provided to an SSTB by a trade or business with common ownership. A trade or business that provides more than 80 percent of its property or services to an SSTB is treated as an SSTB if there is 50 percent or more common ownership of the trades or businesses. In cases in which a trade or business provides less than 80 percent of its property or services to a commonly owned SSTB, the portion of the trade or business providing property to the commonly owned SSTB is treated as part of the SSTB with respect to the related parties.

One commenter suggested that the provision is warranted because of abuse potential but is overbroad and prevents legitimate transactions. The commenter recommended that the rule be modified into a presumption that a taxpayer could rebut with evidence demonstrating that the property or services provided to the SSTB by the related RPE are (1) comparable to those available from competing organizations and (2) that prices charged by the RPE and paid by the SSTB are comparable to those charged in the market. The commenter also suggested that the IRS could examine the totality of facts and circumstances, including historic conduct between the SSTB and RPE. Another commenter suggested that the final rule add an exception to the rule for taxpayers that can demonstrate they have a substantial purpose (apart from Federal income tax effects) for structuring their trade or business in a particular manner. For example, title to a skilled nursing facility could be held by one passthrough entity that is operated by a related passthrough entity in order to satisfy Department of Housing and Urban Development lending requirements. The Treasury Department and the IRS decline to adopt these recommendations. Creating a presumption or substantial purpose test would lead to greater complexity

and administrative burden for both taxpayers and the IRS.

A few commenters requested clarification regarding whether the rule applies when the property or services are provided to a commonly-owned C corporation. One commenter also asked for clarification on the meaning of 50 percent or more common ownership, examples of how ownership is determined, and whether the definition is different than the 50 percent or more common ownership test used in the aggregation rules. One commenter suggested that the rule should apply only to those owners who make up the 50 percent ownership test. Another commenter suggested that the rule should not apply to real estate rentals to a commonly owned SSTB. Another commenter suggested that structures that existed before December 22, 2017, be grandfathered so that the rule would not apply. In response to comments, the final regulations clarify that the rule applies only to those who make up the 50 percent test. As discussed in section V.B. of this Summary of Comments and Explanation of Revisions, the final regulations provide that sections 267(b) and 707(b) apply in determining common ownership for purposes of the aggregation rules. The Treasury Department and the IRS decline to exempt real estate rentals or to structures that existed before December 22, 2017, as the rule is intended to address goods and services that are provided to an SSTB regardless of the type of good or service provided or the date on which the structure was put into place.

One commenter stated that the rule is overbroad and not based on statutory authority and unfairly punishes related party transactions. Other commenters suggested that the rule automatically treating a trade or business that provides more than 80 percent of its goods or services to a commonly owned SSTB as an SSTB is unnecessary, as there are no abuse concerns regarding the portions of goods or services provided to a third party. The Treasury Department and the IRS agree with this comment and have removed the 80 percent rule in the final regulations. Accordingly, the final regulations provide that if a trade or business provides property or services to an SSTB and there is 50 percent or more common ownership of the trade or business, the portion of the trade or business providing property or services to the 50 percent or more commonly-owned SSTB will be treated as a separate SSTB with respect to related parties.

D. Incidental to a Specified Service Trade or Business

The proposed regulations provide that if a trade or business (that would not otherwise be treated as an SSTB) has both 50 percent or more common ownership with an SSTB and shared expenses with an SSTB, then the trade or business is treated as incidental to and, therefore, part of the SSTB, if the gross receipts of the trade or business represent no more than five percent of the total combined gross receipts of the trade or business and the SSTB in a taxable year. One commenter recommended that this rule be removed because it is unnecessary and causes administrative difficulties for taxpayers who must determine whether a trade or business is incidental in order to apply the rule. If the rule is retained, the commenter recommended that final regulations define gross receipts and shared expenses, make adjustments to avoid double counting the same gross receipts, clarify what businesses are taken into account for purposes of the rule, and treat a trade or business to which the anti-abuse rule applies as a separate SSTB rather than as part of the SSTB. Another commenter suggested that the final regulations add an exception for start-ups such as a three to five year grace period and also clarify the ownership standard, how the rule would apply if the trades or business have different tax years, and how shared expenses would be determined. In accordance with the comments, the rule is removed from the final regulations.

E. Trade or Business of Performing Services as an Employee

Multiple commenters expressed support for the rule in the proposed regulations that provides that an individual who was previously treated as an employee and is subsequently treated as other than an employee while performing substantially the same services to the same person, or a related person, will be presumed to be in the trade or business of performing services as an employee for purposes of section 199A. The commenters noted that the presumption furthers the public policy goal of preventing worker misclassification, preserves agency resources, and prevents a decline in Federal and state tax revenues. The commenters also state that regulations should not incentivize workers to accept misclassification by their employer in order to obtain a tax benefit.

Other commenters recommended that the presumption be removed arguing that the common law test under current law is sufficient for determining whether a former employee is properly classified as an employee and that the presumption would impede the objective of ensuring similar treatment of similarly situated taxpayers because two similarly situated taxpayers who provide services to the same company would be treated differently if one was a former employee of the company and the other was not. The commenter also notes that the presumption would create uncertainty for taxpayers and would cause former employees to not claim the deduction in order to avoid a dispute with the IRS.

Another commenter expressed concern that the presumption as written in the proposed regulations could create a dual standard for worker classification under the Code, in which a worker could be classified as an independent contractor for employment tax purposes, and an employee for purposes of claiming section 199A deduction. This could result in an independent contractor being held liable for self-employment taxes and unable to claim the section 199A deduction on income that would otherwise qualify as QBI. The commenter suggested that if the presumption is retained, it should include an exemption for certain independent contractors based on factors including income, source of income, industry practice, and timeframe.

A different commenter suggested that the presumption should provide that an independent contractor is operating as such and that it is up to the relevant Federal agencies to determine whether the business misclassified the individual. The commenter also noted that the IRS is barred from issuing regulations with respect to the employment status of any individual for employment tax purposes under Section 530(b) of the Revenue Act of 1978 (Pub. L. 95–600), as amended by section 9(d)(2) of Public Law 96–167, section 1(a) of Public Law 96–541, and section 269(c) of Public Law 97–248, and that the presumption could result in an individual otherwise subject to self-employment tax to not get the benefit of the section 199A deduction. Another commenter argued that an employee who changes his status from employee to independent contractor so he may deduct business expenses on Schedule C and claim a section 199A deduction is exercising his right to structure his business transactions to minimize his tax liability.

Another commenter questioned how the rule would be applied, asking for clarification on whether the rule is intended to prohibit employers from firing employees and rehiring them as

independent contractors; whether it applies to former employees regardless of current relationship; and how far the IRS would look back at prior employees. Another commenter suggested that a new example be added to the final regulations demonstrating that the presumption is inapplicable when the facts demonstrate that a service recipient and a service provider have materially modified their relationship such that its proper classification is that of a service recipient and a partner.

The Treasury Department and the IRS believe that the presumption is necessary to prevent misclassifications but agree that some clarification of the presumption is necessary. In accordance with commenter's suggestions, the final regulations provide a three-year look back rule for purposes of the presumption. The final regulations provide that an individual may rebut the presumption by showing records, such as contracts or partnership agreements, that are sufficient to corroborate the individual's status as a non-employee for three years from the date a person ceases to treat the individual as an employee for Federal employment taxes. Finally, the final regulations contain an additional example demonstrating the application of the presumption for the situation in which an employee has materially modified his relationship with his employer such that the employee can successfully rebut the presumption.

VII. Relevant Passthrough Entities, Publicly Traded Partnerships, Trusts, and Estates

A. Reporting Rules

The proposed regulations provide that an RPE must determine and separately report QBI, W–2 wages, UBIA of qualified property, and whether the trade or business is an SSTB for each of the RPE's trades or businesses. To help simplify the administration and compliance burden, several commenters suggested that there be an option to compute, aggregate, and report activities at the RPE or entity level. As discussed in part V of this Summary of Comments and Explanation of Revisions, the final regulations allow an RPE to aggregate its trades or businesses provided the rules of § 1.199A–4 are satisfied. An RPE that chooses to aggregate can report combined QBI, W–2 wages, and UBIA of qualified property for the aggregated trade of business. This aggregation must be maintained and reported by all direct and indirect owners of the RPE, including upper-tier RPEs.

The proposed regulations provide that if an RPE fails to separately identify or report any QBI, W–2 wages, UBIA of qualified property, or SSTB determinations, the owner's share (and the share of any upper-tier indirect owner) of QBI, W–2 wages, and UBIA of qualified property attributable to trades or businesses engaged in by that RPE will be presumed to be zero. A few commenters suggested that the final regulations clarify that if an RPE fails to separately identify or report each owner's allocable share of QBI, W–2 wages, or UBIA of qualified property, then only the unidentified or unreported amount is presumed to be zero. Another commenter suggested that a return be considered substantially complete even if an RPE chooses not to report QBI, W–2 wages, and UBIA of qualified property, while other commenters suggested that taxpayers could rebut the presumption. One commenter requested that the final regulations clarify that if an RPE fails to report QBI, W–2 wages, UBIA of qualified property, and SSTB information, the information can still be reported on an amended or late filed return if filed while the period of limitations is still open. Another commenter suggested that to incentivize accurate and timely reporting, taxpayers should be given reasonable opportunities to correct errors and not be subject to penalties for such errors.

The Treasury Department and the IRS agree with commenters that all of an RPE's items related to section 199A should not be presumed to be zero because of a failure to report one item. For example, an RPE may have sufficient W–2 wages and send out that information, but decline to provide information for UBIA of qualified property because it is not necessary or is an insignificant amount. Accordingly, the final regulations retain the reporting requirement but revise the presumption to provide that if an RPE fails to separately identify or report an item of QBI, W–2 wages, or UBIA of qualified property, the owner's share of each unreported item of positive QBI, W–2 wages, or UBIA of qualified property attributable to trades or businesses engaged in by that RPE will be presumed to be zero. The final regulations also provide that such information can be reported on an amended or late filed return for any open tax year. Guidance on the application of penalties is beyond the scope of these regulations.

The preamble to the proposed regulations requested comments regarding whether it is administrable to provide a special rule that if none of the owners of the RPE have taxable income above the threshold amount, the RPE does not need to determine and report W–2 wages, UBIA of qualified property, or whether the trade or business is an SSTB. One commenter recommended that a special rule be provided that an RPE need not determine or report W–2 wages, UBIA of qualified property or whether the trade or business is an SSTB if none of the owners of the RPE have taxable income above the threshold amount. The commenter suggested that the final regulations provide an exception to the reporting requirements if (1) an RPE does not have gross receipts that constitute QBI; (2) none of the owners of the RPE are non-corporate taxpayers; or (3) none of the RPE owners have taxable income above the threshold amount. The commenter suggested that an RPE could establish the taxable income of its owners through the review and maintenance of its owners' tax returns or written statements signed under the penalty of perjury. Another commenter suggested that an RPE should not be subject to the reporting requirements unless the RPE is aware of a non-corporate owner. Another commenter suggested that the RPE only needs to report W–2 wages when it is clear that the amount will result in an amount greater than 20 percent of QBI. Another commenter requested guidance on how to qualify for the special rule and what information the RPE would be required to report to its owners and retain in connection with the rule. One commenter, however, cautioned against a special rule because of the lack of knowledge the RPE has about the owners. The commenter also suggested that a certification process by the owners would create an administrative burden. The commenter requested guidance on who would be responsible for corrections and penalties due to failure to disclose the information on the Schedule K–1 when the determination affects the owner's QBI deduction. One commenter suggested that RPEs should not have to report QBI, W–2 wages, and UBIA of qualified property with respect to trades or businesses not effectively connected with the United States.

The Treasury Department and the IRS remain concerned that RPEs do not have sufficient information to determine an ultimate owner's taxable income or whether the ultimate owner will require W–2 wage or UBIA of qualified property information for the RPE's trades or businesses in order to determine the owner's section 199A deduction. Conversely, the RPE itself, not its ultimate owners, is in the best position to determine the RPE's section 199A

items. Accordingly, the final regulations do not contain a special reporting rule for RPEs based on whether the RPE's owners have taxable income below the threshold amounts. Similarly, the Treasury Department and the IRS decline to create a reporting exception based on whether an RPE has non-corporate owners. Finally, a trade or businesses that is not effectively connected with the United States produces no QBI, W–2 wages, or UBIA of qualified property and thus has no reporting requirement under § 1.199A–6.

B. Application to Trusts and Estates

1. Charitable Remainder Trust Beneficiary's Eligibility for the Deduction

The preamble to the proposed regulations requested comments with respect to whether taxable recipients of annuity and unitrust interests in charitable remainder trusts and taxable beneficiaries of other split-interest trusts may be eligible for the section 199A deduction to the extent that the amounts received by such recipients include amounts that may give rise to the deduction. Concurrently with the publication of these proposed regulations, the Treasury Department and the IRS are publishing proposed regulations under section 199A (REG–134652–18) that address the eligibility of taxable recipients of annuity and unitrust interests in charitable remainder trusts and taxable beneficiaries of other split-interests trusts to receive the section 199A deduction.

2. Tax Exempt Trusts

One commenter requested guidance on whether ''exempt trust organizations'' (that is, trusts that are exempt from income tax under section 501(a) or ''tax exempt trusts'') are entitled to a section 199A deduction in computing their unrelated business taxable income. The commenter also requested confirmation regarding whether the method of determining or separating trades of businesses is the same for sections 199A and 512(a)(6). The Treasury Department and the IRS decline to adopt these comments here because they are beyond the scope of these final regulations. The Treasury Department and the IRS continue to study this issue and request comments on the interaction of sections 199A and 512. We will consider all comments and decide whether further guidance on these issues, including as part of a forthcoming notice of a proposed rulemaking under section 512(a)(6), is warranted.

3. ESBTs

One commenter supported the proposed regulation's position on ESBT's eligibility for the deduction. Another commenter stated that based on § 1.641(c)–1(a) and its reference to an ESBT being two separate trusts for purposes of chapter 1 of subtitle A of the Code (except regarding administrative purposes), the S portion and non-S portion should each have its own threshold. The Treasury Department and the IRS disagree with this comment. Although an ESBT has separate portions, it is one trust. Therefore, in order to provide clarity, the final regulations state that the S and non-S portions of an ESBT are treated as a single trust for purposes of determining the threshold amount.

4. Inclusion of Trust Distributions in Taxable Income

Multiple commenters suggested that distributions should not be counted twice in determining whether the threshold amount is met or exceeded, saying this is counter to the statute and beyond the regulatory authority of the Treasury Department and the IRS. Further, sections 651 and 661 are fundamental principles of fiduciary income taxation and the possible duplication of the threshold is better addressed in anti-abuse provisions. Another commenter suggested that double counted income should be ignored, arguing that double counting is punitive because it fails to take into account the economic consequences of distributions and is inconsistent with the longstanding fundamental principles of subchapter J. Another commenter recommended that the distribution deduction should be given effect in computing thresholds, consistent with section 1411 and fiduciary obligations. The Treasury Department and IRS agree with the commenters that distributions should reduce taxable income because the trust is not taxed on that income. The final regulations remove the provision that would exclude distributions from taxable income for purposes of determining whether taxable income for a trust or estate exceeds the threshold amount. The final regulations specifically provide that for purposes of determining whether a trust or estate has taxable income that exceeds the threshold amount, the taxable income of the trust or estate is determined after taking into account any distribution deduction under sections 651 or 661.

5. Allocation Between Trust or Estate and Beneficiaries

One commenter argued that proposed § 1.199A–6(d)(3)(v)(C) and (D) and the accompanying example are wrong in allocating the whole depreciation deduction to the trust. Instead, the commenter said that the depreciation should be allocated based on fiduciary accounting income. Another commenter stated that the QBI net loss should be allocated entirely to the trust or estate and not passed through to the beneficiaries. Another commenter stated that the example in proposed § 1.199A–6(d)(3)(vi) overlooks section 167(d) and that final regulations should clarify whether reporting of depreciation is being changed. An additional commenter stated that a charitable lead trust's threshold amount should be the same as other trusts after the charitable deduction. Based on comments received, the final regulations provide that the treatment of depreciation applies solely for purposes of section 199A, and the example has been revised to clarify the allocation of QBI and depreciation to the trust and the beneficiaries. As an RPE, the final regulations continue to require that a trust or estate allocates QBI (which may be a negative amount) to its beneficiaries based on the relative portions of DNI distributed to its beneficiaries or retained by the trust or estate.

6. Section 199A Anti-Abuse Rule

One commenter requested clarification on whether a trust with a reasonable estate or business planning purpose would be respected. Another commenter argued that the rule is overbroad and lacks clarity as to what would be abusive and what the consequences would be of not respecting the trust for section 199A purposes. The commenter also stated that the rule is not needed because of § 1.643–1 and if both rules are retained, they should use the same test (principal versus significant purpose). Finally, the commenter asked for clarification on whether the rule applies to a single trust and suggested it should apply on an annual basis. This last suggestion has not been adopted because the test goes to the creation of the trust, factors which would not change in later years. The final regulations clarify that the anti-abuse rule is designed to thwart the creation of even one single trust with a principal purpose of avoiding, or using more than one, threshold amount. If such trust creation violates the rule, the trust will be aggregated with the grantor or other trusts from which it was funded

for purposes of determining the threshold amount for calculating the deduction under section 199A.

VIII. Treatment of Multiple Trusts

Two commenters requested clarification regarding whether multiple trusts will be aggregated if section 643(f) requirements are met. Specifically, the commenters asked for clarification on what it means to form or fund a trust with a significant purpose of receiving a section 199A deduction. These commenters state that trusts should not be combined simply because the section 199A deduction is increased if a legitimate non-tax reason led to the creation of the trusts.

Other commenters objected to the presumption of a tax-avoidance purpose, arguing that it will shift the focus to a requirement that there be a non-tax purpose for creating multiple trusts. The commenters also asked whether the reference to income tax includes state income tax, as the proposed rule refers to the avoidance of more than Federal income tax.

Another commenter agreed with the need for the rule but asked for clarification on the definitions of primary beneficiary, significant tax benefit, principal purpose, and arrangement involving multiple trusts; the application of the substantially the same beneficiary rule; and whether trusts for different children, with other children as default beneficiaries, are the same. Another commenter noted that the use of substantial purpose rather than principal purpose is inconsistent with the statutory language.

Another commenter asked for clarification of the effective date regarding modifications or contributions to pre-effective date trusts, and of the identification of trusts to which the regulation applies. Another commenter requested that final regulations address the applicability of the rule to the conversion of grantor trusts to non-grantor trusts post enactment of the TCJA.

One commenter requested that examples be given for each of the three requirements under section 643(f) and requested that § 1.643(f)–1, Example 2, be clarified to describe the trusts as non-grantor trusts.

Based on the comments received, the Treasury Department and the IRS have removed the definition of ''principal purpose'' and the examples illustrating this rule that had been included in the proposed regulations, and are taking under advisement whether and how these questions should be addressed in future guidance. This includes questions of whether certain terms such as ''principal purpose'' and ''substantially identical grantors and beneficiaries'' should be defined or their meaning clarified in regulations or other guidance, along with providing illustrating examples for each of these terms. Nevertheless, the position of the Treasury Department and the IRS remains that the determination of whether an arrangement involving multiple trusts is subject to treatment under section 643(f) may be made on the basis of the statute and the guidance provided regarding that provision in the legislative history of section 643(f), in the case of any arrangement involving multiple trusts entered into or modified before the effective date of these final regulations.

Availability of IRS Documents

IRS notices cited in this preamble are made available by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

Request for Comments

The Treasury Department and the IRS request comments on various aspects of section 199A and these regulations, as described in this preamble. All comments that are submitted as prescribed in this preamble under the **ADDRESSES** heading will be available at *www.regulations.gov* and upon request.

Effective/Applicability Date

Section 7805(b)(1)(A) and (B) of the Code generally provide that no temporary, proposed, or final regulation relating to the internal revenue laws may apply to any taxable period ending before the earliest of (A) the date on which such regulation is filed with the **Federal Register**, or (B) in the case of a final regulation, the date on which a proposed or temporary regulation to which the final regulation relates was filed with the **Federal Register**.

Consistent with authority provided by section 7805(b)(1)(A), §§ 1.199A–1 through 1.199A–6 generally apply to taxable years ending after February 8, 2019. However, taxpayers may rely on the rules set forth in §§ 1.199A–1 through 1.199A–6, in their entirety, or on the proposed regulations under §§ 1.199A–1 through 1.199A–6 issued on August 16, 2018, in their entirety, for taxable years ending in calendar year 2018. In addition, to prevent abuse of section 199A and the regulations thereunder, the anti-abuse rules in §§ 1.199A–2(c)(1)(iv), 1.199A–3(c)(2)(ii), 1.199A–5(c)(2), 1.199A–5(d)(3), and 1.199A–6(d)(3)(vii) apply to taxable years ending after December 22, 2017, the date of enactment of the TCJA. Finally, the provisions of § 1.643–1, which prevent abuse of the Code generally through the use of trusts, apply to taxable years ending after August 16, 2018.

Section 199A(f)(1) provides that section 199A applies at the partner or S corporation shareholder level, and that each partner or shareholder takes into account such person's allocable share of each qualified item. Section 199A(c)(3) provides that the term ''qualified item'' means items that are effectively connected with a U.S. trade or business, and ''included or allowed in determining taxable income from the taxable year.'' Section 199A applies to taxable years beginning after December 31, 2017. However, there is no statutory requirement under section 199A that a qualified item arise after December 31, 2017.

Section 1366(a) generally provides that, in determining the income tax of a shareholder for the shareholder's taxable year in which the taxable year of the S corporation ends, the shareholder's pro rata share of the corporation's items is taken into account. Similarly, section 706(a) generally provides that, in computing the taxable income of a partner for a taxable year, the partner includes items of the partnership for any taxable year of the partnership ending within or with the partner's taxable year. Therefore, income flowing to an individual from a partnership or S corporation is subject to the tax rates and rules in effect in the year of the individual in which the entity's year closes, not the year in which the item actually arose.

Accordingly, for purposes of determining QBI, W–2 wages, UBIA of qualified property, and the aggregate amount of qualified REIT dividends and qualified PTP income, the effective date provisions provide that if an individual receives QBI, W–2 wages, UBIA of qualified property, and the aggregate amount of qualified REIT dividends and qualified PTP income from an RPE with a taxable year that begins before January 1, 2018, and ends after December 31, 2017, such items are treated as having been incurred by the individual during the individual's tax year during which such RPE taxable year ends.

Special Analyses

I. Regulatory Planning and Review—Economic Analysis

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 both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility.

These final regulations have been designated as subject to review under Executive Order 12866 pursuant to the Memorandum of Agreement (April 11, 2018) between the Treasury Department and the Office of Management and Budget (OMB) regarding review of tax regulations. OIRA has designated this final regulation as economically significant under section 1(c) of the Memorandum of Agreement. Accordingly, these final regulations have been reviewed by the Office of Management and Budget. For more detail on the economic analysis, please refer to the following analysis.

A. Overview

Congress enacted section 199A to provide individuals, estates, and trusts a deduction of up to 20 percent of QBI from domestic businesses, which includes trades or businesses operated as a sole proprietorship or through a partnership, S corporation, trust, or estate. As stated in the Summary of Comments and Explanation of Revisions, these regulations are necessary to provide taxpayers with computational, definitional, and anti-avoidance guidance regarding the application of section 199A. The final regulations provide guidance to taxpayers for purposes of calculating the section 199A deduction. They provide clarity for taxpayers in determining their eligibility for the deduction and the amount of the allowed deduction. Among other benefits, this clarity helps ensure that taxpayers all calculate the deduction in a similar manner, which encourages decision-making that is economically efficient contingent on the provisions of the overall Code.

The final regulations contain seven sections, six under section 199A (§§ 1.199A–1 through 1.199A–6) and one under section 643(f) (§ 1.643(f)–1). Each of §§ 1.199A–1 through 1.199A–6 provides rules relevant to the section 199A deduction and § 1.643(f)–1 would establish anti-abuse rules to prevent taxpayers from establishing multiple non-grantor trusts or contributing additional capital to multiple existing non-grantor trusts in order to avoid Federal income tax, including abuse of section 199A. This economic analysis describes the economic benefits and costs of each of the seven sections of the final regulations.

B. Baseline

The analysis in this section compares the final regulation to a no-action baseline reflecting anticipated Federal income tax-related behavior in the absence of these regulations.

C. Economic Analysis of Changes in Final Regulations

The Treasury Department and the IRS received comments from the public in response to the section 199A proposed regulations. This section discusses significant issues brought up in the comments for which economic reasoning would be particularly insightful. For a full discussion of comments received see the Summary of Comments and Explanation of Revisions section of this preamble.

1. UBIA of Qualified Property

Relative to the proposed 199A regulations, the final regulations make several changes in the determination of UBIA of qualified property. In particular, proposed § 1.199A–2 adjusted UBIA for (i) qualified property contributed to a partnership or S corporation in a nonrecognition transaction, (ii) like-kind exchanges, or (iii) involuntary conversions. Upon review of comments received addressing these rules, the Treasury Department and the IRS have amended these rules in the final regulations such that UBIA of qualified property generally remains unadjusted as a result of these three types of transactions. As several commenters pointed out, the proposed regulations would have introduced distortions into the economic incentives for businesses to invest or earn income. In cases where UBIA would have been reduced following a nonrecognition transfer under the proposed regulations, the treatment under the proposed regulations would have discouraged such transactions by introducing a financial cost (in the form of a reduced 199A deduction) where no resource cost exists. An analogous distortion exists for the other two types of transactions. Such distortions are economically inefficient.

To avoid such distortion, the final regulations establish that qualified property contributed to a partnership or S corporation in a nonrecognition transaction generally retains its UBIA on the date it was first placed in service by the contributing partner or shareholder. Similar rules are adopted for the other two transaction forms mentioned above. In particular, the final regulations provide that the UBIA of qualified property received in a section 1031 like-kind exchange is generally the UBIA of the relinquished property. The rule is the same for qualified property acquired pursuant to an involuntary conversion under section 1033.

2. Entity Aggregation

The final regulations allow an RPE to aggregate trades or businesses it operates directly or through lower-tier RPEs for the purposes of calculating the section 199A deduction in addition to allowing aggregation at the individual owner level. This change to the proposed rules allows RPEs, if they meet the ownership and other tests outlined in the regulations, to aggregate QBI, wages, and capital amounts and report aggregated figures to owners. This change was made in response to comments suggesting that allowing aggregation at the RPE level would simplify reporting and compliance efforts for owners because the RPEs may more easily obtain the information to determine whether the trades or businesses meet the tests for aggregation and whether it is beneficial to aggregate. Because RPEs that aggregate must meet all of the aggregation requirements, the change is consistent with the aggregation concept, which allows trades or businesses that operate across multiple entities but are commonly considered one business to benefit from calculating their section 199A deduction using combined income and expenses.

3. Anti-Abuse Rules

The final regulations removed the ''incidental to an SSTB'' rule requiring that businesses with majority ownership and shared expenses with an SSTB be considered as part of the same trade or business for purposes of the section 199A deduction. This anti-abuse rule was intended to limit the ability of taxpayers to separate their SSTB and non-SSTB income into two trades or businesses in order to receive the deduction on their non-SSTB income. In response to comments, the rule was removed from the final regulations for a number of reasons. First, defining when two businesses have shared expenses is difficult to administer and could be overly inclusive. Second, there was a concern that start-up businesses could be excluded from the section 199A deduction if they shared expenses and ownership with a larger business that could be considered an SSTB.

The final regulations modify the anti-abuse rule concerning services or property provided to an SSTB. The rule is meant to disallow SSTBs from splitting their trade or business into two pieces with one providing services or leasing property to the other. For

example, imagine a dentist office that owns a building. The dental practice would be considered an SSTB. Suppose the dentist split the business into two trades or businesses, the first of which was the dental practice and the second of which owned the building and leased it to the dental practice. This rule states that the income from leasing the building to the dental practice would also be considered SSTB income and ineligible for the section 199A deduction. Under the proposed regulations, a trade or business that provides more than 80 percent of its property or services to an SSTB is treated as an SSTB if there is 50 percent or more common ownership of the trades or businesses. In cases in which a trade or business provides less than 80 percent of its property or services to a commonly owned SSTB, the portion of the trade or business providing property to the commonly owned SSTB is treated as part of the SSTB with respect to the related parties. The final regulations remove the 80 percent threshold and allow any portion that is not provided to an SSTB to be eligible for the section 199A deduction. For example, if the dentist's leasing trade or business leased 90 percent of the building to the dental office and 10 percent to a coffee shop, the 10 percent would now be eligible for the section 199A deduction. This change removed a threshold in the anti-abuse rule, which will remove any incentive to stay below the 80 percent threshold, while still disallowing the income from providing property or services to related SSTBs to be eligible for the deduction.

C. Economic Analysis of § 1.199A–1

1. Background

Because the section 199A deduction has not previously been available, a large number of the relevant terms and necessary calculations taxpayers are currently required to apply under the statute can benefit from greater specificity. For example, the statute uses the term *trade or business* to refer to the enterprise whose income would be potentially eligible for the deduction but does not define what constitutes a trade or business for purposes of section 199A; the final regulations provide that taxpayers should generally apply the trade or business standard used for section 162(a). The definition of trade or business in § 1.199A–1 is extended beyond the section 162 standard if a taxpayer chooses to aggregate businesses under the rules of § 1.199A–4. In addition, solely for purposes of section 199A, the rental or licensing of property to a related trade or business is treated as a trade or business if the rental or licensing and the other trade or business are commonly controlled under § 1.199A–4(b)(1)(i). The regulations also make clear that the section 199A deduction is allowed when calculating alternative minimum taxable income of individuals.

Because the section 199A deduction has multiple components that may interact in determining the deduction, it is also valuable to lay out rules for calculating the deduction since the statute does not provide each of those particulars.

Alternative approaches the Treasury Department and the IRS could have taken would be to remain silent on additional definitional specificities and to allow post-limitation netting in calculating the section 199A deduction. The Treasury Department and the IRS concluded these approaches would likely give rise to less economically efficient tax-related decisions than would relying on statutory language alone and requiring or leaving open the possibility of post-limitation netting.

2. Anticipated Benefits of § 1.199A–1

The Treasury Department and the IRS expect that the definitions and guidance provided in § 1.199A–1 will implement the section 199A deduction in an economically efficient manner. An economically efficient tax system generally aims to treat income derived from similar economic decisions similarly in order to reduce incentives to make choices based on tax rather than market incentives. In this context, the principal benefit of § 1.199A–1 is to reduce taxpayer uncertainty regarding the calculation of the section 199A deduction relative to an alternative scenario in which no such regulations were issued. In the absence of the clarifications in § 1.199A–1 regarding, for example, the definition of an eligible trade or business, similarly situated taxpayers might interpret the statutory rules of section 199A differently, given the statute's limited prescription or absence of implementation details. In addition, without these regulations it is likely that many taxpayers impacted by section 199A would take on more (or less) than the optimal level of risk in allocating resources within or across their businesses. Both of these actions would give rise to economic inefficiencies. The final regulations would provide a uniform signal to businesses and thus lead taxpayers to make decisions that are more economically efficient contingent on the overall Code. As an example, § 1.199A–1 prescribes the steps taxpayers must take to calculate the QBI deduction in a manner that avoids perverse incentives for shifting wages and capital assets across businesses. The statute does not address the ordering for how the W–2 wages and UBIA of qualified property limitations should be applied when taxpayers have both positive and negative QBI from different businesses. The final regulations clarify that in such cases the negative QBI should offset positive QBI prior to applying the wage and capital limitations. For taxpayers who would have assumed in the alternate that negative QBI offsets positive QBI after applying the wage and capital limitations, the regulations weaken the incentive to shift W–2 wage labor or capital (in the form of qualified property) from one business to another to maximize the section 199A deduction.

To illustrate this, consider a taxpayer who is above the statutory threshold and owns two non-service sector businesses, A and B. A has net qualified income of $10,000, while B has net qualified income of −$5,000. Suppose that A paid $3,000 in W–2 wages, B paid $1,000 in W–2 wages, and neither business has tangible capital. If negative QBI offsets positive QBI after applying the wage and capital limitations, then A generates a tentative deduction of $1,500, while B generates a tentative deduction of −$1,000, for a total deduction of $500. After moving B's W–2 wages to A, A's tentative deduction rises to $2,000, while B's remains −$1,000, increasing the total deduction to $1,000. If, on the other hand, negative QBI offsets positive QBI prior to applying the wage and capital limitations (as in the final regulations), then A and B have combined income of $5,000, and the total deduction is $1,000 because the wage and capital limitations are non-binding. After moving B's wages to A, the total deduction remains $1,000. Thus, an incentive to shift wages arises if negative QBI offsets positive QBI after applying the wage and capital limitations. By taking the opposite approach, § 1.199A–1 reduces incentives for such tax-motivated, economically inefficient reallocations of labor (or capital) relative to a scenario in which offsets were taken after wage and capital limitations were applied.

3. Anticipated Costs of § 1.199A–1

The Treasury Department and the IRS do not anticipate any meaningful economic distortions to be induced by § 1.199A–1. However, changes to the collective paperwork burden arising from this and other sections of these regulations are discussed in section J,

Anticipated impacts on administrative and compliance costs, of this analysis.

D. Economic Analysis of § 1.199A–2

1. Background

Section 199A provides a deduction of up to 20 percent of the taxpayer's income from qualifying trades or businesses. Taxpayers with incomes above a threshold amount cannot enjoy the full 20 percent deduction unless they determine that their businesses pay a sufficient amount of wages and/or maintain a sufficient stock of tangible capital, among other requirements.

Because this deduction has not previously been available, § 1.199A–2 provides greater specificity than is available from the statute regarding the definitions of W–2 wages and UBIA of qualified property (that is, depreciable capital stock) relevant to this aspect of the deduction. For example, the final regulations make clear that property that is transferred or acquired within a specific timeframe with a principal purpose of increasing the section 199A deduction is not considered qualified property for purposes of the section 199A deduction. In addition, § 1.199A–2 generally follows prior guidance for the former section 199 deduction in determining which W–2 wages are relevant for section 199A purposes, with additional rules for allocating wages amongst multiple trades or businesses. In these and other cases, the final regulations generally aim, within the context of the legislative language and other tax considerations, to ensure that only genuine business income is eligible for the section 199A deduction, and to reduce business compliance costs and government administrative costs.

Alternative approaches would be to remain silent or to choose different definitions of W–2 wages or qualified property for the purposes of claiming the deduction. The Treasury Department and the IRS rejected these alternatives as being inconsistent with other definitions or requirements under the Code and therefore unnecessarily costly for taxpayers to comply with and the IRS to administer.

2. Anticipated Benefits of § 1.199A–2

The Treasury Department and the IRS expect that § 1.199A–2 will implement the section 199A deduction in an economically efficient manner. For example, § 1.199A–2 will discourage some inefficient transfers of capital given the statute's silence regarding the circumstances in which certain property transfers would or would not be considered under section 199A. Specifically, the final rules make clear that property transferred or acquired within a specific timeframe with a principal purpose of increasing the section 199A deduction is not considered qualified for purposes of the section 199A deduction.

The final regulations will also reduce taxpayer uncertainty regarding the implementation of the section 199A deduction relative to a scenario in which no regulations were issued. In the absence of such clarification, similarly situated taxpayers would likely interpret the section 199A deduction differently to the extent that the statute does not adequately specify the particular implementation issues addressed by § 1.199A–2, such as the determination of UBIA for nonrecognition transfers and like-kind exchanges. As a result, taxpayers might take on more (or less) than the optimal level of risk in their interpretations. The final regulations would lead taxpayers to make decisions that were more economically efficient, conditional on the overall Code.

3. Anticipated Costs of § 1.199A–2

The Treasury Department and the IRS do not anticipate any meaningful economic distortions to be induced by § 1.199A–2. However, changes to the collective paperwork burden arising from this and other sections of these regulations are discussed in section J, *Anticipated impacts on administrative and compliance costs,* of this analysis.

E. Economic Analysis of § 1.199A–3

1. Background

Section 199A provides a deduction of up to 20 percent of the taxpayer's income from qualifying trades or businesses. In the absence of legislative and regulatory constraints, taxpayers would have an incentive to count as income some income that, from an economic standpoint, did not accrue specifically from qualifying economic activity. The final regulations clarify what does and does not constitute QBI for purposes of the section 199A deduction, providing greater implementation specificity than provided by the statute. Because guaranteed payments for capital, for example, are not at risk in the same way as other forms of income, it would generally be economically efficient to exclude them from QBI. Similarly, the Treasury Department and the IRS proposes that income that is a guaranteed payment, but which is filtered through a tiered partnership in order to avoid being labeled as such, should be treated similarly to guaranteed payments in general and therefore excluded from QBI. This principle applies to other forms of income that similarly represent income that either is not at risk or does not flow from the specific economic value provided by a qualifying trade or business, such as returns on investments of working capital.

2. Anticipated Benefits of § 1.199A–3

The Treasury Department and the IRS expect that the § 1.199A–3 regulations will implement the section 199A deduction in an economically efficient manner. For example, § 1.199A–3 will discourage the creation of tiered partnerships purely for the purposes of increasing the section 199A deduction. In the absence of regulation, some taxpayers would likely create tiered partnerships under which a lower-tier partnership would make a guaranteed payment to an upper-tier partnership, and the upper-tier partnership would pay out this income to its partners without guaranteeing it. Such an organizational structure would likely be economically inefficient because it was, apparently, created solely for tax minimization purposes and not for reasons related to efficient economic decision-making.

The Treasury Department and the IRS further expect that the final regulations will reduce uncertainty over whether particular forms of income do or do not constitute QBI relative to a scenario in which no regulations were issued. In the absence of regulations, taxpayers would still need to determine what income is considered QBI and similarly situated taxpayers might interpret the statutory rules differently and pursue income-generating activities based on different assumptions about whether that income would qualify for QBI. Section 1.199A–3 provides clearer guidance for how to determine QBI, helping to ensure that taxpayers face uniform incentives when making economic decisions, a tenet of economic efficiency.

3. Anticipated Costs of § 1.199A–3

The Treasury Department and the IRS do not anticipate any meaningful economic distortions to be induced by § 1.199A–3. However, changes to the collective paperwork burden arising from this and other sections of these regulations are discussed in section J, *Anticipated impacts on administrative and compliance costs,* of this analysis.

F. Economic Analysis of § 1.199A–4

1. Background

Businesses may organize either as C corporations, which are owned by stockholders, or in a form generally

called a passthrough, which may take one of several legal forms including sole proprietorships, under which there does not exist a clear separation between the owners and the business's decision-makers. Each organizational structure, in some circumstance, may be economically efficient, depending on the risk profile, information asymmetries, and decision-making challenges pertaining to the specific business and on the risk preferences and economic situations of the individual owners. An economically efficient tax system would keep the choice among organizational structures neutral contingent on the provisions of the corporate income tax.

This principle of neutral tax treatment further applies to the various organizational structures that qualify as passthroughs. Many passthrough business entities are connected through ownership, management, or shared decision-making. The aggregation rule allows individuals or entities to aggregate their trades or businesses for the purposes of calculating the section 199A deduction. It thus helps ensure that significant choices over ownership and management relationships within businesses are not chosen solely to increase the section 199A deduction.

An alternative approach would be not to allow aggregation for purposes of claiming the deduction. The Treasury Department and the IRS decided to allow aggregation in the specified circumstances to minimize or avoid distortions in organizational form that could arise if aggregation were not allowed.

2. Anticipated Benefits of § 1.199A–4

The Treasury Department and the IRS expect that the aggregation guidance provided in § 1.199A–4 will implement the section 199A deduction in an economically efficient manner. Economic tax principles are called into play here because a large number of businesses that could commonly be thought of as a single trade or business actually may be divided across multiple entities for legal or economic reasons. Allowing individual owners and entities to aggregate trades or businesses offers taxpayers a means of putting together what they think of as their trade or business for the purposes of claiming the deduction under section 199A without otherwise changing market-driven ownership and management structure incentives. If such aggregation were not permitted, certain taxpayers would restructure their businesses solely for tax purposes, with the resulting structures leading to less efficient economic decision-making.

3. Anticipated Costs of § 1.199A–4

The final regulations require common majority ownership, in addition to other requirements, to apply the aggregation rule. If no aggregation were allowed, taxpayers would have to combine businesses to calculate the deduction based on the combined income, wages, and capital. The majority ownership threshold may thus encourage owners to concentrate their ownership in order to benefit from the aggregation rule. The additional costs of the final regulations would be limited to those owners who would find merging entities too costly based on other market conditions, but under these regulations may find it beneficial to increase their ownership share in order to aggregate their businesses and maximize their QBI deduction.

Changes to the collective paperwork burden arising from § 1.199A–4 and other sections of these regulations are discussed in section J, *Anticipated impacts on administrative and compliance costs,* of this analysis.

G. Economic Analysis of § 1.199A–5

1. Background

Section 199A provides a deduction of up to 20 percent of the taxpayer's income from qualifying trades or businesses. In the absence of legislative and regulatory constraints, taxpayers have an incentive to receive labor income as income earned as a an independent contractor or through ownership of an RPE, even though this income may not derive from the risk-bearing or decision-making efficiencies that are unique to being an independent contractor or to owning an equity interest in an RPE. The TCJA provided several provisions that bear on this distinction.

Section 1.199A–5 provides guidance on what trades or businesses would be characterized as an SSTB under each type of services trade or business listed in the legislative text. In addition, § 1.199A–5 provides an exception to the SSTB exclusion if the trade or business only earns a small fraction of its gross income from specified service activities (de minimis exception). Finally, the final regulations state that former employees providing services as independent contractors to their former employer will be presumed to be acting as employees unless they provide evidence that they are providing services in a capacity other than an employee.

An alternative approach to the de minimis exception would be to require businesses or their owners to trigger the SSTB exclusion regardless of the share of gross income from specified service activities. The Treasury Department and the IRS concluded that providing a de minimis exception is necessary to avoid very small amounts of SSTB activity within a trade or business making the entire trade or business ineligible for the deduction, an outcome that is inefficient in the context of section 199A.

2. Anticipated Benefits of § 1.199A–5

The Treasury Department and the IRS expect that § 1.199A–5 will implement the section 199A deduction in an economically efficient manner. To this end, § 1.199A–5 clarifies the definition of an SSTB. In the absence of such clarification, similarly situated taxpayers might interpret the legislative text differently, leading some taxpayers to invest in particular businesses under the assumption income earned from that entity was eligible for the deduction while other taxpayers might forgo that investment due to the opposite assumption. These disparate investment signals generate economic inefficiencies. Additionally, similarly situated taxpayers may interpret the legislative text differently leading to equity concerns and possibly disadvantaging taxpayers who take a less aggressive approach. These distortions are reduced by the specificity provided in these final regulations relative to a scenario without regulations.

Furthermore, in the absence of the regulations, some owners of businesses may find it advantageous to separate their business activity into SSTB and non-SSTB businesses in order to receive the section 199A deduction on their non-SSTB activity. The final regulations would disallow this behavior by stating that a taxpayer that provides property or services to an SSTB that is commonly-owned will have the portion of property or services provided to the SSTB treated as attributable to an SSTB. Additionally without these regulations, some businesses may have an incentive to change employment relationships in favor of independent contractors. Either of these actions would entail some loss of economic efficiency due to changes in businesses' decision-making structures based on tax incentives. The final regulations help to avoid these sources of inefficiency.

In addition to the statutory threshold amount, below which SSTB status is not relevant, § 1.199A–5 provides a de minimis rule with tiered thresholds of gross revenues arising from specified service activity in determining whether a trade or business is classified as an SSTB. The threshold for trades or businesses with less than $25 million of

gross receipts is 10 percent, and for trades or businesses with more than $25 million of gross receipts it is 5 percent. This de minimis rule allows trades and businesses that have very little SSTB activity to benefit from the deduction. Absent these regulations, any income from SSTB activity could make the entire trade or business ineligible for the deduction.

The de minimis thresholds were set at these levels to balance the desire of the Treasury Department and the IRS to allow the deduction for trades and businesses with very small amounts of SSTB activity with the intent of the legislation to disallow the deduction for trades or businesses involving SSTB activity. The $25 million threshold is used in multiple statutory provisions enacted into law by the TCJA as a threshold to apply certain rules to smaller businesses. For example, businesses with average annual gross receipts under $25 million are exempt from the application of the interest deduction limitation under section 163(j), the uniform capitalization (UNICAP) rules under section 263A, and the inventory accounting rules of section 471. The Treasury Department and the IRS chose to adopt this threshold for § 1.199A–5 because of its prevalent use in the TCJA as a threshold applicable to smaller businesses and to avoid a proliferation of varying thresholds applicable to such businesses in TCJA-related rule-making.

The SSTB gross revenue percentages for businesses above and below the $25 million threshold were selected to represent small fractions of income. At present, the Treasury and IRS do not have data to determine what fraction of activity within a trade or business arises from SSTB activity. Treasury and the IRS also do not have data to determine whether or to what extent it would be advantageous for businesses to restructure in order to avoid the SSTB classification based on de minimis standards set at various percentage levels nor, if businesses were to restructure, what the economic consequences would be at those various percentage levels. The stipulated percentages represent the best judgment of Treasury and the IRS regarding percentages that efficiently balance compliance costs for taxpayers, effective administration of section 199A, and revenue considerations. Treasury and the IRS received several comments on these percentages and discuss these comments in the preamble.

3. Anticipated Costs of § 1.199A–5

By providing a de minimis rule to allow a small fraction of gross receipts to be derived from SSTB activity, the regulation may cause businesses near the threshold to decrease their specified service activities or increase their non-specified service activities to avoid being classified as an SSTB. Additionally, the de minimis rule may encourage smaller entities engaged in SSTBs to merge with larger entities not engaged in an SSTB. The economic costs of these mergers are difficult to quantify.

Changes to the collective paperwork burden arising from § 1.199A–5 and other sections of these regulations are discussed in section J, *Anticipated impacts on administrative and compliance costs,* of this analysis.

H. Economic Analysis of § 1.199A–6

1. Background

The section 199A deduction is reduced below 20 percent for some businesses and taxpayers. The attributes that determine any such reduction must be determined by taxpayers claiming the section 199A deduction. Section 1.199A–6 provides rules for RPEs, PTPs, trusts, and estates relevant to making these determinations. In particular, RPEs are required to calculate and report their owners' QBI, SSTB status, W–2 wages, UBIA of qualified property, REIT dividends, and PTP income. Similarly, PTPs must calculate and report their owners' QBI, SSTB status, REIT dividends, and other PTP income.

2. Anticipated Benefits of § 1.199A–6

The Treasury Department and the IRS expect that § 1.199A–6 will implement the section 199A deduction in an economically efficient manner. As with other regulations discussed in these Analyses, a principal benefit of § 1.199A–6 is to increase the likelihood that all taxpayers interpret the statutory rules of section 199A similarly. Additionally, we expect that requiring RPEs to determine and report the information necessary to compute the section 199A deduction will result in a more accurate and uniform application of the regulations and statute relative to an alternative approach under which individual owners would most likely determine these items.

3. Anticipated Costs of § 1.199A–6 Relative to the Baseline

The Treasury Department and the IRS do not anticipate any meaningful economic distortions to be induced by § 1.199A–6. However, changes to the collective paperwork burden arising from this and other sections of these regulations are discussed in section J, *Anticipated impacts on administrative and compliance costs,* of this analysis.

I. Economic Analysis of § 1.643(f)–1

1. Background

Section 1.643(f)–1 provides that taxpayers cannot set up multiple trusts in certain cases with a principal purpose of tax avoidance, which would include the avoidance of the statutory threshold amounts under section 199A.

2. Anticipated Benefits of § 1.643(f)–1 Relative to the Baseline

The Treasury Department and the IRS expect that the § 1.643(f)–1 will implement the section 199A deduction in an economically efficient manner. Because § 1.643(f)–1 defines the manner in which multiple trusts are subject to the threshold amount, the Treasury Department and the IRS anticipate that the final regulations will lead to fewer resources being devoted to setting up trusts in attempts to avoid the threshold amount rules under section 199A. If multiple trusts have substantially the same grantors and beneficiaries, and a principal purpose for establishing such trusts or contributing additional cash or other property to such trusts is the avoidance of Federal income tax, then the various trusts would be generally considered one trust, including for section 199A purposes.

3. Anticipated Costs of § 1.643(f)–1 Relative to the Baseline

The Treasury Department and the IRS do not anticipate any meaningful economic distortions to be induced by § 1.643(f)–1. However, changes to the collective paperwork burden arising from this and other sections of these regulations are discussed in section J, *Anticipated impacts on administrative and compliance costs,* of this analysis.

J. Anticipated Impacts on Administrative and Compliance Costs

1. Discussion

The final regulations have a number of effects on taxpayers' compliance costs. Section 1.199A–2 provides guidance in determining a taxpayer's share of W–2 wages and UBIA of qualified property. The Treasury Department and the IRS expect that this guidance reduces the tax compliance costs of making this determination and reduces uncertainty. In the absence of the regulations, taxpayers would still need to determine how to allocate W–2 wages and UBIA of qualified property, among other calculations. These regulations provide clear instructions for how to do this, simplifying the process of complying with the law.

Section 1.199A–4 requires that owners who decide to aggregate their trades or businesses report the aggregation annually. This reporting requirement adds to the tax compliance burden of these owners. For owners who consider aggregating, these regulations increase compliance costs because the owners must calculate their deduction for both disaggregated and aggregated trades or businesses to make the aggregation decision. These additional compliance costs would be voluntary and accrue only to owners who find it beneficial to aggregate for the purposes of calculating their section 199A deduction. The final regulations also allow for aggregation at the entity level. This will generally reduce reporting and compliance costs for individual owners, relative to allowing aggregation only at the individual owner level, because the entity may have easier access to the facts and circumstances required for aggregation.

Section 1.199A–5 includes a requirement for former employees working as independent contractors for their former employer to show that their employment relationship has changed in order to be eligible for the section 199A deduction. The burden to substantiate employment status exists without these regulations; however, the final regulation may increase these individuals' compliance costs slightly.

Section 1.199A–6 specifies that RPEs must report relevant section 199A information to owners. Due to these entity reporting requirements, the final regulations will increase compliance costs for RPEs. These entities will need to keep records of new information relevant to the calculation of their owners' section 199A deduction, such as QBI, W–2 wages, SSTB status, and UBIA of qualified property. This recordkeeping is costly. Without these regulations, it is likely that only some RPEs would engage in this record keeping.

Section 1.199A–6 reduces the compliance burden on many individuals that own RPEs relative a scenario in which no regulations were issued or regulatory alternatives that assigned each owner of an RPE the responsibility to acquire the required information were issued without any requirement for the RPE to provide such information. Under the final regulations, owners will receive information pertaining to the section 199A deduction from the RPE, such as whether a given trade or business is an SSTB, whereas in the alternate they could have been required to make such determinations themselves.

Overall, it is likely to be more efficient for RPEs, rather than individual owners, to keep records of section 199A deduction information. Therefore, the Treasury Department and the IRS expect that § 1.199A–6 will reduce compliance costs on net and relative to these alternative scenarios.

2. Estimated Effect on Compliance Costs

As explained above, key provisions of §§ 1.199A–1 through 1.199A–6 will reduce compliance costs that taxpayers would likely have incurred in the absence of the regulations. Most notably, the de minimis rule of § 1.199A–5 provides that a trade or business will not be considered to be an SSTB merely because it provides a small amount of services in a specified service activity. This provision is expected to reduce compliance costs associated with section 199A for millions of U.S. businesses. In addition, the aggregation rules will reduce overall costs for taxpayers because some taxpayers would otherwise restructure their business arrangements in order to receive the benefit of the deduction. These and other discretionary choices by the Treasury Department and the IRS in the final regulations will substantially reduce taxpayers' compliance costs.

The Treasury Department and the IRS also assessed the provisions of the final regulations that could increase compliance burdens. The Treasury Department and the IRS estimate that these regulations will lead to a gross (not net) increase in total reporting burden of 25 million hours annually. This estimate primarily reflects two effects of the regulations. First, the Treasury Department and the IRS project that approximately 1.2 million individuals with more than one directly owned or passthrough business who voluntarily choose to aggregate will spend 0.66 hours annually complying with § 1.199A–4, resulting in a 0.7 million hour increase in reporting burden. Second, the Treasury Department and the IRS project that—in complying with the § 1.199A–6 requirement to report relevant section 199A information to their approximately 8.8 million owners—RPEs will spend 2.75 hours annually per owner, resulting in a 24.2 million hour increase in reporting burden. These estimates do not include the decrease in compliance costs to individuals who would no longer find it necessary to compute the quantities detailed in § 1.199A–6 because they would receive this information from each RPE. Nor do these estimates reflect the decrease in compliance costs outlined above.

Valuations of the burden hours of $39/hour in the case of individuals making aggregation decisions and $53/hour in the case of RPEs reporting section 199A information lead to gross reporting annualized costs to taxpayers of $1.36 billion (3 percent rate) to $1.37 billion (7 percent rate) ($2017). These estimates do not account for the provisions of the final regulations that will substantially reduce compliance costs. These estimates assume that the costs are approximately the same proportion of GDP each year. It is possible, however, that costs will be higher in the first years that the deduction is allowed and lower in future years once taxpayers have more experience with the calculations and reporting requirements associated with the deduction. Finally, the estimates reflect data for entities of a size and form expected to be impacted by section 199A. More specifically, because of the scope of the section 199A deduction, the Treasury Department and the IRS expect the majority of affected entities to be primarily small, and medium in size.

The Treasury Department and the IRS received a comment that the hours assumptions for the compliance costs were too small. The hours estimates were not revised because the commenter's discussion focused mainly on the effort required to compute the values necessary to calculate the deduction not on the specific aggregation or reporting requirements estimated here.

Annualized monetized effect on compliance costs from final regulations	Years 2018 to 2027 (3% discount rate, millions $2017)	Years 2018 to 2027 (7% discount rate, millions $2017)
Estimated Gross Costs	$1,357	$1,368.
Estimated Savings	Not quantified	Not quantified.
Estimated net change in compliance costs	Not quantified	Not quantified.

OMB control number 1545–0123 represents a total estimated burden time, including all other related forms and schedules, of 3.157 billion hours and total estimated monetized costs of $58.148 billion (available at: *https://www.federalregister.gov/documents/2018/10/09/2018-21846/proposed-collection-comment-request-for-forms-1065-1065-b-1066-1120-1120-c-1120-f-1120-h-1120-nd*). Likewise, OMB control number 1545–0074 represents a total estimated burden time, including all other related forms and schedules, of 1.784 billion hours and total estimated monetized costs of $31.764 billion. OMB Control number 1545–0092 represents burden hours of roughly 917,800 hours. The burden estimates provided by the IRS under the OMB Numbers listed in the above table are aggregate amounts that relate to the entire package of forms associated with the OMB control number, and do not include the estimated burden changes related to the additional burdens contemplated in this final rule such as attaching the applicable statement to Form 1040 or Schedule K–1 for the Form 1041, Form 1065, or Form 1120S, as appropriate, to ensure the correct amount of deduction is reported under section 199A. The Treasury department anticipates incorporating these burdens in the next annual cycle of the above aggregated collections, and the public will have an opportunity to comment on those estimates at that time.

K. Executive Order 13771

These final regulations have been designated as regulatory under E.O. 13771.

II. Regulatory Flexibility Act

It is hereby certified that the collections of information in §§ 1.199A–4 and 1.199A–6 will not have a significant economic impact on a substantial number of small entities. Based on Joint Committee on Taxation (JCT) analysis of 2014 tax returns, there were approximately 4.3 million S corporations, 3.6 million partnerships, 24.6 million non-farm sole proprietorships with receipts below $10 million, and 1.8 million farm sole proprietorships with gross income below $10 million. See Present Law and Background Regarding the Federal Income Taxation of Small Businesses JCX–32–17. The Treasury Department and the IRS have determined that the regulations may affect a substantial number of small entities (businesses entities with receipts below $10 million) but have also concluded that the economic impact on small entities as a result of the collections of information in this regulation is not expected to be significant.

The collection in § 1.199A–4 may apply to RPEs, individuals, and certain trusts or estates that have qualified business income (QBI) under section 199A and that choose to aggregate two or more trades or businesses for purposes of section 199A. If a taxpayer chooses to aggregate its trades or businesses, the taxpayer, must include an attachment to its tax return identifying and describing each trade or business aggregated, describing changes to the aggregated group, and providing other information as the Commissioner may require in forms, instructions, or other published guidance. Aggregation is not required by a person claiming the section 199A deduction, and therefore, the collection of information in § 1.199A–4 is required only if the person or RPE chooses to aggregate multiple trades or businesses. Because the Treasury Department and the IRS do not yet have data on how many small entities will choose to aggregate multiple trades or businesses, the number of affected entities is not estimated at this time. However, the Treasury Department and the IRS have determined that the majority of businesses and particularly small businesses (businesses entities with receipts below $10 million) will choose not to aggregate or will have no call to do so. Aggregation is potentially beneficial to businesses with individual owners who have taxable income above $315,000 for married filing joint taxpayers and $157,500 for others. Approximately three-quarters of passthrough businesses are structured as a sole proprietorship and therefore only have one owner. The Treasury Department and the IRS estimate that approximately 95 percent of these businesses have owners below the income threshold and therefore, would not need to aggregate to receive the full benefit of the section 199A deduction.

The small entities subject to the collection of information in § 1.199A–6 are business entities formed as estates, trusts, partnerships, or S corporations that conduct, directly or indirectly, one or more trades or businesses. Section 1.199A–6 requires such an entity to attach a statement describing the QBI, W–2 wages, and UBIA of qualified property for each separate trade or business to the Schedule K–1 required under existing law to be issued to each beneficiary, partner, or shareholder. Although data is not available to estimate the number of small entities (business entities with receipts below $10 million) affected by the § 1.199A–6 requirements, the Treasury Department and the IRS project that number would include a substantial number of small entities.

As discussed elsewhere in this preamble, the reporting burden is estimated at 30 minutes to 20 hours, depending on individual circumstances, with an estimated average of 2.5 hours for all affected entities, regardless of size. The burden on entities (those with business receipts below $10 million) is expected to be at the lower end of the range (30 minutes to 2.5 hours). Using the IRS's taxpayer compliance cost estimates, taxpayers who are self-employed with multiple businesses are estimated to have a monetization rate of $39 per hour. Passthroughs that issue K–1s have a monetization rate of $53 per hour. Thus, the annual aggregate burden on businesses with gross receipts below $10 million is between $19.50 and $132.50 per business.

Moreover, the Treasury Department and the IRS have determined that there would be no significant economic impact on affected entities. Based on published information from the Conference Report accompanying the Act, H.R. Rep. No. 155–446, at 683 (2017), and Statistics of Income aggregate data, the projected net tax revenue losses from section 199A are estimated to be only a small fraction of the business receipts of S corporations (including subchapter S banks), partnerships, and non-farm sole proprietorships projected to 2027. See the following table in this Part II. These revenue projections, which represent a reduced tax liability for these businesses, include both the effects of the statute as well as the regulations. The reduction in tax liability varies from 0.02 percent to 0.49 percent of gross receipts, an economic impact that is not regarded as substantial under the Regulatory Flexibility Act.

Fiscal years	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027
Net Tax Reduction [1] ($billions)	27.7	47.1	49.9	51.8	52.8	52.2	53.6	53.2	24.2	1.9
Total Business Receipts [2] ($ billions)	10095.1	10306.7	10415.2	10525.7	10638.0	10752.2	10868.4	10986.5	11106.96	11228.7

Fiscal years	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027
Percent	0.27	0.46	0.48	0.49	0.50	0.49	0.49	0.48	0.22	0.02

[1] Tax revenue effects of 199A are from the Conference Report accompanying the Act.
[2] To the extent that some ''not small'' passthroughs are reflected in this table, the percentages reported represent an underestimate of the tax cut that those small businesses will receive.
[3] Business receipt figures for 2013 S Corp (*https://www.irs.gov/statistics/soi-tax-stats-table-1-returns-of-active-corporations-form-1120s*), 2016 Sole Prop (*https://www.irs.gov/statistics/soi-tax-stats-nonfarm-sole-proprietorship-statistics*), and 2015 Partnerships (*https://www.irs.gov/statistics/soi-tax-stats-partnership-statistics-by-sector-or-industry*) come from published SOI data. Amounts for 2017 through 2029 are projected using historical growth rates.

Finally, no comments regarding the economic impact of these regulations on small entities were received. For these reasons, the Treasury Department and the IRS have determined that the collection of information in this final rulemaking will not have a significant economic impact. Accordingly, a regulatory flexibility analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required.

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

Drafting Information

The principal authors of these regulations are Robert D. Alinsky, Vishal R. Amin, Margaret Burow, Frank J. Fisher, and Wendy L. Kribell, Office of the Associate Chief Counsel (Passthroughs and Special Industries). However, other personnel from the Treasury Department and the IRS participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 is amended by adding sectional authorities for §§ 1.199A–1 through 1.199A–6 and § 1.643(f) to read in part as follows:

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

Section 1.199A–1 also issued under 26 U.S.C. 199A(f)(4).

Section 1.199A–2 also issued under 26 U.S.C. 199A(b)(5), (f)(1)(A), (f)(4), and (h).

Section 1.199A–3 also issued under 26 U.S.C. 199A(c)(4)(C) and (f)(4).

Section 1.199A–4 also issued under 26 U.S.C. 199A(f)(4).

Section 1.199A–5 also issued under 26 U.S.C. 199A(f)(4).

Section 1.199A–6 also issued under 26 U.S.C. 199A(f)(1)(B) and (f)(4).

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Section 1.643(f)–1 also issued under 26 U.S.C. 643(f).

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■ **Par. 2.** Section 1.199A–0 is added to read as follows:

§ 1.199A–0 Table of contents.

This section lists the section headings that appear in §§ 1.199A–1 through 1.199A–6.

§ 1.199A–1 Operational rules.
(a) Overview.
(1) In general.
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(b) Definitions.
(1) Aggregated trade or business.
(2) Applicable percentage.
(3) Net capital gain.
(4) Phase-in range.
(5) Qualified business income (QBI).
(6) QBI component.
(7) Qualified PTP income.
(8) Qualified REIT dividends.
(9) Reduction amount.
(10) Relevant passthrough entity (RPE).
(11) Specified service trade or business (SSTB).
(12) Threshold amount.
(13) Total QBI amount.
(14) Trade or business.
(15) Unadjusted basis immediately after the acquisition of qualified property (UBIA of qualified property).
(16) W–2 Wages.
(c) Computation of the section 199A deduction for individuals with taxable income not exceeding threshold amount.
(1) In general.
(2) Carryover rules.
(i) Negative total QBI amount.
(ii) Negative combined qualified REIT dividends/qualified PTP income.
(3) Examples.
(d) Computation of the section 199A deduction for individuals with taxable income above the threshold amount.
(1) In general.
(2) QBI component.
(i) SSTB exclusion.
(ii) Aggregated trade or business.
(iii) Netting and carryover.
(A) Netting.
(B) Carryover of negative total QBI amount.
(iv) QBI component calculation.
(A) General rule.
(B) Taxpayers with taxable income within phase-in range.
(3) Qualified REIT dividends/qualified PTP income component.
(i) In general.
(ii) SSTB exclusion.
(iii) Negative combined qualified REIT dividends/qualified PTP income.
(4) Examples.
(e) Special rules.
(1) Effect of deduction.
(2) Disregarded entities.
(3) Self-employment tax and net investment income tax.
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(5) Coordination with alternative minimum tax.
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§ 1.199A–2 Determination of W–2 Wages and unadjusted basis immediately after acquisition of qualified property.
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(ii) UBIA of qualified property held by a partnership.
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(C) Computation of partner's share of UBIA with excess section 734(b) basis adjustments.
(D) Examples.
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(2) Definition of W–2 wages.
(i) In general.
(ii) Wages paid by a person other than a common law employer.
(iii) Requirement that wages must be reported on return filed with the Social Security Administration.
(A) In general.
(B) Corrected return filed to correct a return that was filed within 60 days of the due date.
(C) Corrected return filed to correct a return that was filed later than 60 days after the due date.
(iv) Methods for calculating W–2 Wages.
(A) In general.
(B) Acquisition or disposition of a trade or business.
(*1*) In general.
(*2*) Acquisition or disposition.
(C) Application in the case of a person with a short taxable year.
(*1*) In general.
(*2*) Short taxable year that does not include December 31.
(D) Remuneration paid for services performed in the Commonwealth of Puerto Rico.
(3) Allocation of wages to trades or businesses.
(4) Allocation of wages to QBI.
(5) Non-duplication rule.

(c) UBIA of qualified property.
(1) Qualified property.
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(A) Replacement property received in a section 1031 or 1033 transaction.
(B) Other property received in a section 1031 or 1033 transaction.
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§ 1.199A–3 Qualified business income, qualified REIT dividends, and qualified PTP income.

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§ 1.199A–5 Specified service trades or businesses and the trade or business of performing services as an employee.

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§ 1.199A–6 Relevant passthrough entities (RPEs), publicly traded partnerships (PTPs), trusts, and estates.

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■ **Par. 3.** Section 1.199A–1 is added to read as follows:

§ 1.199A–1 Operational rules.

(a) *Overview*—(1) *In general.* This section provides operational rules for calculating the section 199A(a) qualified business income deduction (section 199A deduction) under section 199A of the Internal Revenue Code (Code). This

section refers to the rules in §§ 1.199A–2 through 1.199A–6. This paragraph (a) provides an overview of this section. Paragraph (b) of this section provides definitions that apply for purposes of section 199A and §§ 1.199A–1 through 1.199A–6. Paragraph (c) of this section provides computational rules and examples for individuals whose taxable income does not exceed the threshold amount. Paragraph (d) of this section provides computational rules and examples for individuals whose taxable income exceeds the threshold amount. Paragraph (e) of this section provides special rules for purposes of section 199A and §§ 1.199A–1 through 1.199A–6. This section and §§ 1.199A–2 through 1.199A–6 do not apply for purposes of calculating the deduction in section 199A(g) for specified agricultural and horticultural cooperatives.

(2) *Usage of term individual.* For purposes of applying the rules of §§ 1.199A–1 through 1.199A–6, a reference to an individual includes a reference to a trust (other than a grantor trust) or an estate to the extent that the section 199A deduction is determined by the trust or estate under the rules of § 1.199A–6.

(b) *Definitions.* For purposes of section 199A and §§ 1.199A–1 through 1.199A–6, the following definitions apply:

(1) *Aggregated trade or business* means two or more trades or businesses that have been aggregated pursuant to § 1.199A–4.

(2) *Applicable percentage* means, with respect to any taxable year, 100 percent reduced (not below zero) by the percentage equal to the ratio that the taxable income of the individual for the taxable year in excess of the threshold amount, bears to $50,000 (or $100,000 in the case of a joint return).

(3) *Net capital gain* means *net capital gain* as defined in section 1222(11) plus any *qualified dividend income* (as defined in section 1(h)(11)(B)) for the taxable year.

(4) *Phase-in range* means a range of taxable income between the threshold amount and the threshold amount plus $50,000 (or $100,000 in the case of a joint return).

(5) *Qualified business income (QBI)* means the net amount of qualified items of income, gain, deduction, and loss with respect to any trade or business (or aggregated trade or business) as determined under the rules of § 1.199A–3(b).

(6) *QBI component* means the amount determined under paragraph (d)(2) of this section.

(7) *Qualified PTP income* is defined in § 1.199A–3(c)(3).

(8) *Qualified REIT dividends* are defined in § 1.199A–3(c)(2).

(9) *Reduction amount* means, with respect to any taxable year, the excess amount multiplied by the ratio that the taxable income of the individual for the taxable year in excess of the threshold amount, bears to $50,000 (or $100,000 in the case of a joint return). For purposes of this paragraph (b)(9), the *excess amount* is the amount by which 20 percent of QBI exceeds the greater of 50 percent of W–2 wages or the sum of 25 percent of W–2 wages plus 2.5 percent of the UBIA of qualified property.

(10) *Relevant passthrough entity (RPE)* means a partnership (other than a PTP) or an S corporation that is owned, directly or indirectly, by at least one individual, estate, or trust. Other passthrough entities including common trust funds as described in § 1.6032–T and religious or apostolic organizations described in section 501(d) are also treated as RPEs if the entity files a Form 1065, *U.S. Return of Partnership Income,* and is owned, directly or indirectly, by at least one individual, estate, or trust. A trust or estate is treated as an RPE to the extent it passes through QBI, W–2 wages, UBIA of qualified property, qualified REIT dividends, or qualified PTP income.

(11) *Specified service trade or business (SSTB)* means a specified service trade or business as defined in § 1.199A–5(b).

(12) *Threshold amount* means, for any taxable year beginning before 2019, $157,500 (or $315,000 in the case of a taxpayer filing a joint return). In the case of any taxable year beginning after 2018, the threshold amount is the dollar amount in the preceding sentence increased by an amount equal to such dollar amount, multiplied by the cost-of-living adjustment determined under section 1(f)(3) of the Code for the calendar year in which the taxable year begins, determined by substituting ''calendar year 2017'' for ''calendar year 2016'' in section 1(f)(3)(A)(ii). The amount of any increase under the preceding sentence is rounded as provided in section 1(f)(7) of the Code.

(13) *Total QBI amount* means the net total QBI from all trades or businesses (including the individual's share of QBI from trades or business conducted by RPEs).

(14) *Trade or business* means a trade or business that is a trade or business under section 162 (a section 162 trade or business) other than the trade or business of performing services as an employee. In addition, rental or licensing of tangible or intangible property (rental activity) that does not rise to the level of a section 162 trade or business is nevertheless treated as a trade or business for purposes of section 199A, if the property is rented or licensed to a trade or business conducted by the individual or an RPE which is commonly controlled under § 1.199A–4(b)(1)(i) (regardless of whether the rental activity and the trade or business are otherwise eligible to be aggregated under § 1.199A–4(b)(1)).

(15) *Unadjusted basis immediately after acquisition of qualified property* (*UBIA of qualified property*) is defined in § 1.199A–2(c).

(16) *W–2 wages* means W–2 wages of a trade or business (or aggregated trade or business) properly allocable to QBI as determined under § 1.199A–2(b).

(c) *Computation of the section 199A deduction for individuals with taxable income not exceeding threshold amount*—(1) *In general.* The section 199A deduction is determined for individuals with taxable income for the taxable year that does not exceed the threshold amount by adding 20 percent of the total QBI amount (including the individual's share of QBI from an RPE and QBI attributable to an SSTB) and 20 percent of the combined amount of qualified REIT dividends and qualified PTP income (including the individual's share of qualified REIT dividends and qualified PTP income from RPEs and qualified PTP income attributable to an SSTB). That sum is then compared to 20 percent of the amount by which the individual's taxable income exceeds net capital gain. The lesser of these two amounts is the individual's section 199A deduction.

(2) *Carryover rules*—(i) *Negative total QBI amount.* If the total QBI amount is less than zero, the portion of the individual's section 199A deduction related to QBI is zero for the taxable year. The negative total QBI amount is treated as negative QBI from a separate trade or business in the succeeding taxable years of the individual for purposes of section 199A and this section. This carryover rule does not affect the deductibility of the loss for purposes of other provisions of the Code.

(ii) *Negative combined qualified REIT dividends/qualified PTP income.* If the combined amount of REIT dividends and qualified PTP income is less than zero, the portion of the individual's section 199A deduction related to qualified REIT dividends and qualified PTP income is zero for the taxable year. The negative combined amount must be carried forward and used to offset the combined amount of REIT dividends and qualified PTP income in the succeeding taxable years of the

individual for purposes of section 199A and this section. This carryover rule does not affect the deductibility of the loss for purposes of other provisions of the Code.

(3) *Examples.* The following examples illustrate the provisions of this paragraph (c). For purposes of these examples, unless indicated otherwise, assume that all of the trades or businesses are trades or businesses as defined in paragraph (b)(14) of this section and all of the tax items are effectively connected to a trade or business within the United States within the meaning of section 864(c). Total taxable income does not include the section 199A deduction.

(i) *Example 1.* A, an unmarried individual, owns and operates a computer repair shop as a sole proprietorship. The business generates $100,000 in net taxable income from operations in 2018. A has no capital gains or losses. After allowable deductions not relating to the business, A's total taxable income for 2018 is $81,000. The business's QBI is $100,000, the net amount of its qualified items of income, gain, deduction, and loss. A's section 199A deduction for 2018 is equal to $16,200, the lesser of 20% of A's QBI from the business ($100,000 × 20% = $20,000) and 20% of A's total taxable income for the taxable year ($81,000 × 20% = $16,200).

(ii) *Example 2.* Assume the same facts as in *Example 1* of paragraph (c)(3)(i) of this section, except that A also has $7,000 in net capital gain for 2018 and that, after allowable deductions not relating to the business, A's taxable income for 2018 is $74,000. A's taxable income minus net capital gain is $67,000 ($74,000 − $7,000). A's section 199A deduction is equal to $13,400, the lesser of 20% of A's QBI from the business ($100,000 × 20% = $20,000) and 20% of A's total taxable income minus net capital gain for the taxable year ($67,000 × 20% = $13,400).

(iii) *Example 3.* B and C are married and file a joint individual income tax return. B earns $50,000 in wages as an employee of an unrelated company in 2018. C owns 100% of the shares of X, an S corporation that provides landscaping services. X generates $100,000 in net income from operations in 2018. X pays C $150,000 in wages in 2018. B and C have no capital gains or losses. After allowable deductions not related to X, B and C's total taxable income for 2018 is $270,000. B's and C's wages are not considered to be income from a trade or business for purposes of the section 199A deduction. Because X is an S corporation, its QBI is determined at the S corporation level. X's QBI is $100,000, the net amount of its qualified items of income, gain, deduction, and loss. The wages paid by X to C are considered to be a qualified item of deduction for purposes of determining X's QBI. The section 199A deduction with respect to X's QBI is then determined by C, X's sole shareholder, and is claimed on the joint return filed by B and C. B and C's section 199A deduction is equal to $20,000, the lesser of 20% of C's QBI from the business ($100,000 × 20% = $20,000) and 20% of B and C's total taxable income for the taxable year ($270,000 × 20% = $54,000).

(iv) *Example 4.* Assume the same facts as in *Example 3* of paragraph (c)(3)(iii) of this section except that B also earns $1,000 in qualified REIT dividends and $500 in qualified PTP income in 2018, increasing taxable income to $271,500. B and C's section 199A deduction is equal to $20,300, the lesser of:

(A) 20% of C's QBI from the business ($100,000 × 20% = $20,000) plus 20% of B's combined qualified REIT dividends and qualified PTP income ($1,500 × 20% = $300); and

(B) 20% of B and C's total taxable for the taxable year ($271,500 × 20% = $54,300).

(d) *Computation of the section 199A deduction for individuals with taxable income above threshold amount*—(1) *In general.* The section 199A deduction is determined for individuals with taxable income for the taxable year that exceeds the threshold amount by adding the QBI component described in paragraph (d)(2) of this section and the qualified REIT dividends/qualified PTP income component described in paragraph (d)(3) of this section (including the individual's share of qualified REIT dividends and qualified PTP income from RPEs). That sum is then compared to 20 percent of the amount by which the individual's taxable income exceeds net capital gain. The lesser of these two amounts is the individual's section 199A deduction.

(2) *QBI component.* An individual with taxable income for the taxable year that exceeds the threshold amount determines the QBI component using the following computational rules, which are to be applied in the order they appear.

(i) *SSTB exclusion.* If the individual's taxable income is within the phase-in range, then only the applicable percentage of QBI, W–2 wages, and UBIA of qualified property for each SSTB is taken into account for all purposes of determining the individual's section 199A deduction, including the application of the netting and carryover rules described in paragraph (d)(2)(iii) of this section. If the individual's taxable income exceeds the phase-in range, then none of the individual's share of QBI, W–2 wages, or UBIA of qualified property attributable to an SSTB may be taken into account for purposes of determining the individual's section 199A deduction.

(ii) *Aggregated trade or business.* If an individual chooses to aggregate trades or businesses under the rules of § 1.199A–4, the individual must combine the QBI, W–2 wages, and UBIA of qualified property of each trade or business within an aggregated trade or business prior to applying the netting and carryover rules described in paragraph (d)(2)(iii) of this section and the W–2 wage and UBIA of qualified property limitations described in paragraph (d)(2)(iv) of this section.

(iii) *Netting and carryover*—(A) *Netting.* If an individual's QBI from at least one trade or business (including an aggregated trade or business) is less than zero, the individual must offset the QBI attributable to each trade or business (or aggregated trade or business) that produced net positive QBI with the QBI from each trade or business (or aggregated trade or business) that produced net negative QBI in proportion to the relative amounts of net QBI in the trades or businesses (or aggregated trades or businesses) with positive QBI. The adjusted QBI is then used in paragraph (d)(2)(iv) of this section. The W–2 wages and UBIA of qualified property from the trades or businesses (including aggregated trades or businesses) that produced net negative QBI are not taken into account for purposes of this paragraph (d) and are not carried over to the subsequent year.

(B) *Carryover of negative total QBI amount.* If an individual's QBI from all trades or businesses (including aggregated trades or businesses) combined is less than zero, the QBI component is zero for the taxable year. This negative amount is treated as negative QBI from a separate trade or business in the succeeding taxable years of the individual for purposes of section 199A and this section. This carryover rule does not affect the deductibility of the loss for purposes of other provisions of the Code. The W–2 wages and UBIA of qualified property from the trades or businesses (including aggregated trades or businesses) that produced net negative QBI are not taken into account for purposes of this paragraph (d) and are not carried over to the subsequent year.

(iv) *QBI component calculation*—(A) *General rule.* Except as provided in paragraph (d)(2)(iv)(B) of this section, the QBI component is the sum of the amounts determined under this paragraph (d)(2)(iv)(A) for each trade or business (or aggregated trade or business). For each trade or business (or aggregated trade or business) (including trades or businesses operated through RPEs) the individual must determine the lesser of—

(*1*) 20 percent of the QBI for that trade or business (or aggregated trade or business); or

(*2*) The greater of—

(*i*) 50 percent of W–2 wages with respect to that trade or business (or aggregated trade or business); or

(*ii*) The sum of 25 percent of W–2 wages with respect to that trade or business (or aggregated trade or business) plus 2.5 percent of the UBIA of qualified property with respect to that trade or business (or aggregated trade or business).

(B) *Taxpayers with taxable income within phase-in range.* If the individual's taxable income is within the phase-in range and the amount determined under paragraph (d)(2)(iv)(A)(*2*) of this section for a trade or business (or aggregated trade or business) is less than the amount determined under paragraph (d)(2)(iv)(A)(*1*) of this section for that trade or business (or aggregated trade or business), the amount determined under paragraph (d)(2)(iv)(A) of this section for such trade or business (or aggregated trade or business) is modified. Instead of the amount determined under paragraph (d)(2)(iv)(A)(*2*) of this section, the QBI component for the trade or business (or aggregated trade or business) is the amount determined under paragraph (d)(2)(iv)(A)(*1*) of this section reduced by the reduction amount as defined in paragraph (b)(9) of this section. This reduction amount does not apply if the amount determined in paragraph (d)(2)(iv)(A)(*2*) of this section is greater than the amount determined under paragraph (d)(2)(iv)(A)(*1*) of this section (in which circumstance the QBI component for the trade or business (or aggregated trade or business) will be the unreduced amount determined in paragraph (d)(2)(iv)(A)(*1*) of this section).

(3) *Qualified REIT dividends/qualified PTP income component*—(i) *In general.* The qualified REIT dividend/qualified PTP income component is 20 percent of the combined amount of qualified REIT dividends and qualified PTP income received by the individual (including the individual's share of qualified REIT dividends and qualified PTP income from RPEs).

(ii) *SSTB exclusion.* If the individual's taxable income is within the phase-in range, then only the applicable percentage of qualified PTP income generated by an SSTB is taken into account for purposes of determining the individual's section 199A deduction, including the determination of the combined amount of qualified REIT dividends and qualified PTP income described in paragraph (d)(1) of this section. If the individual's taxable income exceeds the phase-in range, then none of the individual's share of qualified PTP income generated by an SSTB may be taken into account for purposes of determining the individual's section 199A deduction.

(iii) *Negative combined qualified REIT dividends/qualified PTP income.* If the combined amount of REIT dividends and qualified PTP income is less than zero, the portion of the individual's section 199A deduction related to qualified REIT dividends and qualified PTP income is zero for the taxable year. The negative combined amount must be carried forward and used to offset the combined amount of REIT dividends/qualified PTP income in the succeeding taxable years of the individual for purposes of section 199A and this section. This carryover rule does not affect the deductibility of the loss for purposes of other provisions of the Code.

(4) *Examples.* The following examples illustrate the provisions of this paragraph (d). For purposes of these examples, unless indicated otherwise, assume that all of the trades or businesses are trades or businesses as defined in paragraph (b)(14) of this section, none of the trades or businesses are SSTBs as defined in paragraph (b)(11) of this section and § 1.199A–5(b); and all of the tax items associated with the trades or businesses are effectively connected to a trade or business within the United States within the meaning of section 864(c). Also assume that the taxpayers report no capital gains or losses or other tax items not specified in the examples. Total taxable income does not include the section 199A deduction.

(i) *Example 1.* D, an unmarried individual, operates a business as a sole proprietorship. The business generates $1,000,000 of QBI in 2018. Solely for purposes of this example, assume that the business paid no wages and holds no qualified property for use in the business. After allowable deductions unrelated to the business, D's total taxable income for 2018 is $980,000. Because D's taxable income exceeds the applicable threshold amount, D's section 199A deduction is subject to the W–2 wage and UBIA of qualified property limitations. D's section 199A deduction is limited to zero because the business paid no wages and held no qualified property.

(ii) *Example 2.* Assume the same facts as in *Example 1* of paragraph (d)(4)(i) of this section, except that D holds qualified property with a UBIA of $10,000,000 for use in the trade or business. D reports $4,000,000 of QBI for 2020. After allowable deductions unrelated to the business, D's total taxable income for 2020 is $3,980,000. Because D's taxable income is above the threshold amount, the QBI component of D's section 199A deduction is subject to the W–2 wage and UBIA of qualified property limitations. Because the business has no W–2 wages, the QBI component of D's section 199A deduction is limited to the lesser of 20% of the business's QBI or 2.5% of its UBIA of qualified property. Twenty percent of the $4,000,000 of QBI is $800,000. Two and one-half percent of the $10,000,000 UBIA of qualified property is $250,000. The QBI component of D's section 199A deduction is thus limited to $250,000. D's section 199A deduction is equal to the lesser of:

(A) 20% of the QBI from the business as limited ($250,000); or

(B) 20% of D's taxable income ($3,980,000 × 20% = $796,000). Therefore, D's section 199A deduction for 2020 is $250,000.

(iii) *Example 3.* E, an unmarried individual, is a 30% owner of LLC, which is classified as a partnership for Federal income tax purposes. In 2018, the LLC has a single trade or business and reports QBI of $3,000,000. The LLC pays total W–2 wages of $1,000,000, and its total UBIA of qualified property is $100,000. E is allocated 30% of all items of the partnership. For the 2018 taxable year, E reports $900,000 of QBI from the LLC. After allowable deductions unrelated to LLC, E's taxable income is $880,000. Because E's taxable income is above the threshold amount, the QBI component of E's section 199A deduction will be limited to the lesser of 20% of E's share of LLC's QBI or the greater of the W–2 wage or UBIA of qualified property limitations. Twenty percent of E's share of QBI of $900,000 is $180,000. The W–2 wage limitation equals 50% of E's share of the LLC's wages ($300,000) or $150,000. The UBIA of qualified property limitation equals $75,750, the sum of 25% of E's share of LLC's wages ($300,000) or $75,000 plus 2.5% of E's share of UBIA of qualified property ($30,000) or $750. The greater of the limitation amounts ($150,000 and $75,750) is $150,000. The QBI component of E's section 199A deduction is thus limited to $150,000, the lesser of 20% of QBI ($180,000) and the greater of the limitations amounts ($150,000). E's section 199A deduction is equal to the lesser of 20% of the QBI from the business as limited ($150,000) or 20% of E's taxable income ($880,000 × 20% = $176,000). Therefore, E's section 199A deduction is $150,000 for 2018.

(iv) *Example 4.* F, an unmarried individual, owns a 50% interest in Z, an S corporation for Federal income tax purposes that conducts a single trade or business. In 2018, Z reports QBI of $6,000,000. Z pays total W–2 wages of $2,000,000, and its total UBIA of qualified property is $200,000. For the 2018 taxable year, F reports $3,000,000 of QBI from Z. F is not an employee of Z and receives no wages or reasonable compensation from Z. After allowable deductions unrelated to Z and a deductible qualified net loss from a PTP of ($10,000), F's taxable income is $1,880,000. Because F's taxable income is above the threshold amount, the QBI component of F's section 199A deduction will be limited to the lesser of 20% of F's share of Z's QBI or the greater of the W–2 wage and UBIA of qualified property limitations. Twenty percent of F's share of Z's QBI ($3,000,000) is $600,000. The W–2 wage limitation equals 50% of F's share of Z's W–2 wages ($1,000,000) or $500,000. The UBIA of qualified property limitation equals $252,500, the sum of 25%

of F's share of Z's W–2 wages ($1,000,000) or $250,000 plus 2.5% of E's share of UBIA of qualified property ($100,000) or $2,500. The greater of the limitation amounts ($500,000 and $252,500) is $500,000. The QBI component of F's section 199A deduction is thus limited to $500,000, the lesser of 20% of QBI ($600,000) and the greater of the limitations amounts ($500,000). F reports a qualified loss from a PTP and has no qualified REIT dividend. F does not net the ($10,000) loss from the PTP against QBI. Instead, the portion of F's section 199A deduction related to qualified REIT dividends and qualified PTP income is zero for 2018. F's section is 199A deduction is equal to the lesser of 20% of the QBI from the business as limited ($500,000) or 20% of F's taxable income over net capital gain ($1,880,000 x 20% = $376,000). Therefore, F's section 199A deduction is $376,000 for 2018. F must also carry forward the ($10,000) qualified loss from a PTP to be netted against F's qualified REIT dividends and qualified PTP income in the succeeding taxable year.

(v) *Example 5: Phase-in range.* (A) B and C are married and file a joint individual income tax return. B is a shareholder in M, an entity taxed as an S corporation for Federal income tax purposes that conducts a single trade or business. M holds no qualified property. B's share of the M's QBI is $300,000 in 2018. B's share of the W–2 wages from M in 2018 is $40,000. C earns wage income from employment by an unrelated company. After allowable deductions unrelated to M, B and C's taxable income for 2018 is $375,000. B and C are within the phase-in range because their taxable income exceeds the applicable threshold amount, $315,000, but does not exceed the threshold amount plus $100,000, or $415,000. Consequently, the QBI component of B and C's section 199A deduction may be limited by the W–2 wage and UBIA of qualified property limitations but the limitations will be phased in.

(B) Because M does not hold qualified property, only the W–2 wage limitation must be calculated. In order to apply the W–2 wage limitation, B and C must first determine 20% of B's share of M's QBI. Twenty percent of B's share of M's QBI of $300,000 is $60,000. Next, B and C must determine 50% of B's share of M's W–2 wages. Fifty percent of B's share of M's W–2 wages of $40,000 is $20,000. Because 50% of B's share of M's W–2 wages ($20,000) is less than 20% of B's share of M's QBI ($60,000), B and C must determine the QBI component of their section 199A deduction by reducing 20% of B's share of M's QBI by the reduction amount.

(C) B and C are 60% through the phase-in range (that is, their taxable income exceeds the threshold amount by $60,000 and their phase-in range is $100,000). B and C must determine the excess amount, which is the excess of 20% of B's share of M's QBI, or $60,000, over 50% of B's share of M's W–2 wages, or $20,000. Thus, the excess amount is $40,000. The reduction amount is equal to 60% of the excess amount, or $24,000. Thus, the QBI component of B and C's section 199A deduction is equal to $36,000, 20% of B's $300,000 share M's QBI (that is, $60,000), reduced by $24,000. B and C's section 199A deduction is equal to the lesser of 20% of the QBI from the business as limited ($36,000) or 20% of B and C's taxable income ($375,000 × 20% = $75,000). Therefore, B and C's section 199A deduction is $36,000 for 2018.

(vi) *Example 6.* (A) Assume the same facts as in *Example 5* of paragraph (d)(4)(v) of this section, except that M is engaged in an SSTB. Because B and C are within the phase-in range, B must reduce the QBI and W–2 wages allocable to B from M to the applicable percentage of those items. B and C's applicable percentage is 100% reduced by the percentage equal to the ratio that their taxable income for the taxable year ($375,000) exceeds their threshold amount ($315,000), or $60,000, bears to $100,000. Their applicable percentage is 40%. The applicable percentage of B's QBI is ($300,000 × 40% =) $120,000, and the applicable percentage of B's share of W–2 wages is ($40,000 × 40% =) $16,000. These reduced numbers must then be used to determine how B's section 199A deduction is limited.

(B) B and C must apply the W–2 wage limitation by first determining 20% of B's share of M's QBI as limited by paragraph (d)(4)(vi)(A) of this section. Twenty percent of B's share of M's QBI of $120,000 is $24,000. Next, B and C must determine 50% of B's share of M's W–2 wages. Fifty percent of B's share of M's W–2 wages of $16,000 is $8,000. Because 50% of B's share of M's W–2 wages ($8,000) is less than 20% of B's share of M's QBI ($24,000), B and C's must determine the QBI component of their section 199A deduction by reducing 20% of B's share of M's QBI by the reduction amount.

(C) B and C are 60% through the phase-in range (that is, their taxable income exceeds the threshold amount by $60,000 and their phase-in range is $100,000). B and C must determine the excess amount, which is the excess of 20% of B's share of M's QBI, as adjusted in paragraph (d)(4)(vi)(A) of this section or $24,000, over 50% of B's share of M's W–2 wages, as adjusted in paragraph (d)(4)(vi)(A) of this section, or $8,000. Thus, the excess amount is $16,000. The reduction amount is equal to 60% of the excess amount or $9,600. Thus, the QBI component of B and C's section 199A deduction is equal to $14,400, 20% of B's share M's QBI of $24,000, reduced by $9,600. B and C's section 199A deduction is equal to the lesser of 20% of the QBI from the business as limited ($14,400) or 20% of B's and C's taxable income ($375,000 × 20% = $75,000). Therefore, B and C's section 199A deduction is $14,400 for 2018.

(vii) *Example 7.* (A) F, an unmarried individual, owns as a sole proprietor 100 percent of three trades or businesses, Business X, Business Y, and Business Z. None of the businesses hold qualified property. F does not aggregate the trades or businesses under § 1.199A–4. For taxable year 2018, Business X generates $1 million of QBI and pays $500,000 of W–2 wages with respect to the business. Business Y also generates $1 million of QBI but pays no wages. Business Z generates $2,000 of QBI and pays $500,000 of W–2 wages with respect to the business. F also has $750,000 of wage income from employment with an unrelated company. After allowable deductions unrelated to the businesses, F's taxable income is $2,722,000.

(B) Because F's taxable income is above the threshold amount, the QBI component of F's section 199A deduction is subject to the W–2 wage and UBIA of qualified property limitations. These limitations must be applied on a business-by-business basis. None of the businesses hold qualified property, therefore only the 50% of W–2 wage limitation must be calculated. Because QBI from each business is positive, F applies the limitation by determining the lesser of 20% of QBI and 50% of W–2 wages for each business. For Business X, the lesser of 20% of QBI ($1,000,000 × 20 percent = $200,000) and 50% of Business X's W–2 wages ($500,000 × 50% = $250,000) is $200,000. Business Y pays no W–2 wages. The lesser of 20% of Business Y's QBI ($1,000,000 × 20% = $200,000) and 50% of its W–2 wages (zero) is zero. For Business Z, the lesser of 20% of QBI ($2,000 × 20% = $400) and 50% of W–2 wages ($500,000 × 50% = $250,000) is $400.

(C) Next, F must then combine the amounts determined in paragraph (d)(4)(vii)(B) of this section and compare that sum to 20% of F's taxable income. The lesser of these two amounts equals F's section 199A deduction. The total of the combined amounts in paragraph (d)(4)(vii)(B) of this section is $200,400 ($200,000 + zero + 400). Twenty percent of F's taxable income is $544,400 ($2,722,000 × 20%). Thus, F's section 199A deduction for 2018 is $200,400.

(viii) *Example 8.* (A) Assume the same facts as in *Example 7* of paragraph (d)(4)(vii) of this section, except that F aggregates Business X, Business Y, and Business Z under the rules of § 1.199A–4.

(B) Because F's taxable income is above the threshold amount, the QBI component of F's section 199A deduction is subject to the W–2 wage and UBIA of qualified property limitations. Because the businesses are aggregated, these limitations are applied on an aggregated basis. None of the businesses holds qualified property, therefore only the W–2 wage limitation must be calculated. F applies the limitation by determining the lesser of 20% of the QBI from the aggregated businesses, which is $400,400 ($2,002,000 × 20%) and 50% of W–2 wages from the aggregated businesses, which is $500,000 ($1,000,000 x 50%). F's section 199A deduction is equal to the lesser of $400,400 and 20% of F's taxable income ($2,722,000 × 20% = $544,400). Thus, F's section 199A deduction for 2018 is $400,400.

(ix) *Example 9.* (A) Assume the same facts as in *Example 7* of paragraph (d)(4)(vii) of this section, except that for taxable year 2018, Business Z generates a loss that results in ($600,000) of negative QBI and pays $500,000 of W–2 wages. After allowable deductions unrelated to the businesses, F's taxable income is $2,120,000. Because Business Z had negative QBI, F must offset the positive QBI from Business X and Business Y with the negative QBI from Business Z in proportion to the relative amounts of positive QBI from Business X and Business Y. Because Business X and Business Y produced the same amount of positive QBI, the negative QBI from

Business Z is apportioned equally among Business X and Business Y. Therefore, the adjusted QBI for each of Business X and Business Y is $700,000 ($1 million plus 50% of the negative QBI of $600,000). The adjusted QBI in Business Z is $0, because its negative QBI has been fully apportioned to Business X and Business Y.

(B) Because F's taxable income is above the threshold amount, the QBI component of F's section 199A deduction is subject to the W–2 wage and UBIA of qualified property limitations. These limitations must be applied on a business-by-business basis. None of the businesses hold qualified property, therefore only the 50% of W–2 wage limitation must be calculated. For Business X, the lesser of 20% of QBI ($700,000 × 20% = $140,000) and 50% of W–2 wages ($500,000 × 50% = $250,000) is $140,000. Business Y pays no W–2 wages. The lesser of 20% of Business Y's QBI ($700,000 × 20% = $140,000) and 50% of its W–2 wages (zero) is zero.

(C) F must combine the amounts determined in paragraph (d)(4)(ix)(B) of this section and compare the sum to 20% of taxable income. F's section 199A deduction equals the lesser of these two amounts. The combined amount from paragraph (d)(4)(ix)(B) of this section is $140,000 ($140,000 + zero) and 20% of F's taxable income is $424,000 ($2,120,000 × 20%). Thus, F's section 199A deduction for 2018 is $140,000. There is no carryover of any loss into the following taxable year for purposes of section 199A.

(x) *Example 10.* (A) Assume the same facts as in *Example 9* of paragraph (d)(4)(ix) of this section, except that F aggregates Business X, Business Y, and Business Z under the rules of § 1.199A–4.

(B) Because F's taxable income is above the threshold amount, the QBI component of F's section 199A deduction is subject to the W–2 wage and UBIA of qualified property limitations. Because the businesses are aggregated, these limitations are applied on an aggregated basis. None of the businesses holds qualified property, therefore only the W–2 wage limitation must be calculated. F applies the limitation by determining the lesser of 20% of the QBI from the aggregated businesses ($1,400,000 × 20% = $280,000) and 50% of W–2 wages from the aggregated businesses ($1,000,000 × 50% = $500,000), or $280,000. F's section 199A deduction is equal to the lesser of $280,000 and 20% of F's taxable income ($2,120,000 × 20% = $424,000). Thus, F's section 199A deduction for 2018 is $280,000. There is no carryover of any loss into the following taxable year for purposes of section 199A.

(xi) *Example 11.* (A) Assume the same facts as in *Example 7* of paragraph (d)(4)(vii) of this section, except that Business Z generates a loss that results in ($2,150,000) of negative QBI and pays $500,000 of W–2 wages with respect to the business in 2018. Thus, F has a negative combined QBI of ($150,000) when the QBI from all of the businesses are added together ($1 million plus $1 million minus the loss of ($2,150,000)). Because F has a negative combined QBI for 2018, F has no section 199A deduction with respect to any trade or business for 2018. Instead, the negative combined QBI of ($150,000) carries forward and will be treated as negative QBI from a separate trade or business for purposes of computing the section 199A deduction in the next taxable year. None of the W–2 wages carry forward. However, for income tax purposes, the $150,000 loss may offset F's $750,000 of wage income (assuming the loss is otherwise allowable under the Code).

(B) In taxable year 2019, Business X generates $200,000 of net QBI and pays $100,000 of W–2 wages with respect to the business. Business Y generates $150,000 of net QBI but pays no wages. Business Z generates a loss that results in ($120,000) of negative QBI and pays $500 of W–2 wages with respect to the business. F also has $750,000 of wage income from employment with an unrelated company. After allowable deductions unrelated to the businesses, F's taxable income is $960,000. Pursuant to paragraph (d)(2)(iii)(B) of this section, the ($150,000) of negative QBI from 2018 is treated as arising in 2019 from a separate trade or business. Thus, F has overall net QBI of $80,000 when all trades or businesses are taken together ($200,000) plus $150,000 minus $120,000 minus the carryover loss of $150,000). Because Business Z had negative QBI and F also has a negative QBI carryover amount, F must offset the positive QBI from Business X and Business Y with the negative QBI from Business Z and the carryover amount in proportion to the relative amounts of positive QBI from Business X and Business Y. Because Business X produced 57.14% of the total QBI from Business X and Business Y, 57.14% of the negative QBI from Business Z and the negative QBI carryforward must be apportioned to Business X, and the remaining 42.86% allocated to Business Y. Therefore, the adjusted QBI in Business X is $45,722 ($200,000 minus 57.14% of the loss from Business Z ($68,568), minus 57.14% of the carryover loss ($85,710). The adjusted QBI in Business Y is $34,278 ($150,000, minus 42.86% of the loss from Business Z ($51,432) minus 42.86% of the carryover loss ($64,290)). The adjusted QBI in Business Z is $0, because its negative QBI has been apportioned to Business X and Business Y.

(C) Because F's taxable income is above the threshold amount, the QBI component of F's section 199A deduction is subject to the W–2 wage and UBIA of qualified property limitations. These limitations must be applied on a business-by-business basis. None of the businesses hold qualified property, therefore only the 50% of W–2 wage limitation must be calculated. For Business X, 20% of QBI is $9,144 ($45,722 × 20%) and 50% of W–2 wages is $50,000 ($100,000 × 50%), so the lesser amount is $9,144. Business Y pays no W–2 wages. Twenty percent of Business Y's QBI is $6,856 ($34,278 × 20%) and 50% of its W–2 wages (zero) is zero, so the lesser amount is zero.

(D) F must then compare the combined amounts determined in paragraph (d)(4)(xi)(C) of this section to 20% of F's taxable income. The section 199A deduction equals the lesser of these amounts. F's combined amount from paragraph (d)(4)(xi)(C) of this section is $9,144 ($9,144 plus zero) and 20% of F's taxable income is $192,000 ($960,000 × 20%) Thus, F's section 199A deduction for 2019 is $9,144. There is no carryover of any negative QBI into the following taxable year for purposes of section 199A.

(xii) *Example 12.* (A) Assume the same facts as in *Example 11* of paragraph (d)(4)(xi) of this section, except that F aggregates Business X, Business Y, and Business Z under the rules of § 1.199A–4. For 2018, F's QBI from the aggregated trade or business is ($150,000). Because F has a combined negative QBI for 2018, F has no section 199A deduction with respect to any trade or business for 2018. Instead, the negative combined QBI of ($150,000) carries forward and will be treated as negative QBI from a separate trade or business for purposes of computing the section 199A deduction in the next taxable year. However, for income tax purposes, the $150,000 loss may offset taxpayer's $750,000 of wage income (assuming the loss is otherwise allowable under the Code).

(B) In taxable year 2019, F will have QBI of $230,000 and W–2 wages of $100,500 from the aggregated trade or business. F also has $750,000 of wage income from employment with an unrelated company. After allowable deductions unrelated to the businesses, F's taxable income is $960,000. F must treat the negative QBI carryover loss ($150,000) from 2018 as a loss from a separate trade or business for purposes of section 199A. This loss will offset the positive QBI from the aggregated trade or business, resulting in an adjusted QBI of $80,000 ($230,000 − $150,000).

(C) Because F's taxable income is above the threshold amount, the QBI component of F's section 199A deduction is subject to the W–2 wage and UBIA of qualified property limitations. These limitations must be applied on a business-by-business basis. None of the businesses hold qualified property, therefore only the 50% of W–2 wage limitation must be calculated. For the aggregated trade or business, the lesser of 20% of QBI ($80,000 × 20% = $16,000) and 50% of W–2 wages ($100,500 × 50% = $50,250) is $16,000. F's section 199A deduction equals the lesser of that amount ($16,000) and 20% of F's taxable income ($960,000 × 20% = $192,000). Thus, F's section 199A deduction for 2019 is $16,000. There is no carryover of any negative QBI into the following taxable year for purposes of section 199A.

(e) *Special rules*—(1) *Effect of deduction.* In the case of a partnership or S corporation, section 199A is applied at the partner or shareholder level. The rules of subchapter K and subchapter S of the Code apply in their entirety for purposes of determining each partner's or shareholder's share of QBI, W–2 wages, UBIA of qualified property, qualified REIT dividends, and qualified PTP income or loss. The section 199A deduction has no effect on the adjusted basis of a partner's interest in the partnership, the adjusted basis of a shareholder's stock in an S

corporation, or an S corporation's accumulated adjustments account.

(2) *Disregarded entities.* An entity with a single owner that is treated as disregarded as an entity separate from its owner under any provision of the Code is disregarded for purposes of section 199A and §§ 1.199A–1 through 1.199A–6.

(3) *Self-employment tax and net investment income tax.* The deduction allowed under section 199A does not reduce net earnings from self-employment under section 1402 or net investment income under section 1411.

(4) *Commonwealth of Puerto Rico.* If all of an individual's QBI from sources within the Commonwealth of Puerto Rico is taxable under section 1 of the Code for a taxable year, then for purposes of determining the QBI of such individual for such taxable year, the term ''United States'' includes the Commonwealth of Puerto Rico.

(5) *Coordination with alternative minimum tax.* For purposes of determining alternative minimum taxable income under section 55, the deduction allowed under section 199A(a) for a taxable year is equal in amount to the deduction allowed under section 199A(a) in determining taxable income for that taxable year (that is, without regard to any adjustments under sections 56 through 59).

(6) *Imposition of accuracy-related penalty on underpayments.* For rules related to the imposition of the accuracy-related penalty on underpayments for taxpayers who claim the deduction allowed under section 199A, see section 6662(d)(1)(C).

(7) *Reduction for income received from cooperatives.* In the case of any trade or business of a patron of a *specified agricultural or horticultural cooperative,* as defined in section 199A(g)(4), the amount of section 199A deduction determined under paragraph (c) or (d) of this section with respect to such trade or business must be reduced by the lesser of:

(i) Nine percent of the QBI with respect to such trade or business as is properly allocable to qualified payments received from such cooperative; or

(ii) 50 percent of the W–2 wages with respect to such trade or business as are so allocable as determined under § 1.199A–2.

(f) *Applicability date*—(1) *General rule.* Except as provided in paragraph (f)(2) of this section, the provisions of this section apply to taxable years ending after February 8, 2019.

(2) *Exception for non-calendar year RPE.* For purposes of determining QBI, W–2 wages, UBIA of qualified property, and the aggregate amount of qualified REIT dividends and qualified PTP income, if an individual receives any of these items from an RPE with a taxable year that begins before January 1, 2018, and ends after December 31, 2017, such items are treated as having been incurred by the individual during the individual's taxable year in which or with which such RPE taxable year ends.

■ **Par. 4.** Section 1.199A–2 is added to read as follows:

§ 1.199A–2 Determination of W–2 wages and unadjusted basis immediately after acquisition of qualified property.

(a) *Scope*—(1) *In general.* This section provides guidance on calculating a trade or business's W–2 wages properly allocable to QBI (W–2 wages) and the trade or business's unadjusted basis immediately after acquisition of all qualified property (UBIA of qualified property). The provisions of this section apply solely for purposes of section 199A of the Internal Revenue Code (Code).

(2) *W–2 wages.* Paragraph (b) of this section provides guidance on the determination of W–2 wages. The determination of W–2 wages must be made for each trade or business by the individual or RPE that directly conducts the trade or business (or aggregated trade or business). In the case of W–2 wages paid by an RPE, the RPE must determine and report W–2 wages for each trade or business (or aggregated trade or business) conducted by the RPE. W–2 wages are presumed to be zero if not determined and reported for each trade or business (or aggregated trade or business).

(3) *UBIA of qualified property*—(i) *In general.* Paragraph (c) of this section provides guidance on the determination of the UBIA of qualified property. The determination of the UBIA of qualified property must be made for each trade or business (or aggregated trade or business) by the individual or RPE that directly conducts the trade or business (or aggregated trade or business). The UBIA of qualified property is presumed to be zero if not determined and reported for each trade or business (or aggregated trade or business).

(ii) *UBIA of qualified property held by a partnership.* In the case of qualified property held by a partnership, each partner's share of the UBIA of qualified property is determined in accordance with how the partnership would allocate depreciation under § 1.704–1(b)(2)(iv)(*g*) on the last day of the taxable year.

(iii) *UBIA of qualified property held by an S corporation.* In the case of qualified property held by an S corporation, each shareholder's share of the UBIA of qualified property is the share of the unadjusted basis proportionate to the ratio of shares in the S corporation held by the shareholder on the last day of the taxable year over the total issued and outstanding shares of the S corporation.

(iv) *UBIA and section 743(b) basis adjustments*—(A) *In general.* A partner will be allowed to take into account UBIA with respect to an item of qualified property in addition to the amount of UBIA with respect to such qualified property determined under paragraphs (a)(3)(i) and (c) of this section and allocated to such partner under paragraph (a)(3)(ii) of this section to the extent of the partner's excess section 743(b) basis adjustment with respect to such item of qualified property.

(B) *Excess section 743(b) basis adjustments.* A partner's *excess section 743(b) basis adjustment* is an amount that is determined with respect to each item of qualified property and is equal to an amount that would represent the partner's section 743(b) basis adjustment with respect to the same item of qualified property, as determined under §§ 1.743–1(b) and 1.755–1, but calculated as if the adjusted basis of all of the partnership's property was equal to the UBIA of such property. The absolute value of the excess section 743(b) basis adjustment cannot exceed the absolute value of the total section 743(b) basis adjustment with respect to qualified property.

(C) *Computation of partner's share of UBIA with excess section 743(b) basis adjustments.* The partnership first computes its UBIA with respect to qualified property under paragraphs (a)(3)(i) and (c) of this section and allocates such UBIA under paragraph (a)(3)(ii) of this section. If the sum of the excess section 743(b) basis adjustment for all of the items of qualified property is a negative number, that amount will be subtracted from the partner's UBIA of qualified property determined under paragraphs (a)(3)(i) and (c) of this section and allocated under paragraph (a)(3)(ii) of this section. A partner's UBIA of qualified property may not be below $0. Excess section 743(b) basis adjustments are computed with respect to all section 743(b) adjustments, including adjustments made as a result of a substantial built-in loss under section 743(d).

(D) *Examples.* The provisions of this paragraph (a)(3)(iv) are illustrated by the following examples:

(*1*) *Example 1*—(*i*) *Facts.* A, B, and C are equal partners in partnership, PRS. PRS has a single trade or business that generates QBI. PRS has no liabilities and only one asset, a

single item of qualified property with a UBIA equal to $900,000. Each partner's share of the UBIA is $300,000. A sells its one-third interest in PRS to T for $350,000 when a section 754 election is in effect. At the time of the sale, the tax basis of the qualified property held by PRS is $750,000. The amount of gain that would be allocated to T from a hypothetical transaction under § 1.743–1(d)(2) is $100,000. Thus, T's interest in PRS's previously taxed capital is equal to $250,000 ($350,000, the amount of cash T would receive if PRS liquidated immediately after the hypothetical transaction, decreased by $100,000, T's share of gain from the hypothetical transaction). The amount of T's section 743(b) basis adjustment to PRS's qualified property is $100,000 (the excess of $350,000, T's cost basis for its interest, over $250,000, T's share of the adjusted basis to PRS of the partnership's property).

(*iii*) *Analysis.* In order for T to determine its UBIA, T must calculate its excess section 743(b) basis adjustment. T's excess section 743(b) basis adjustment is equal to an amount that would represent T's section 743(b) basis adjustment with respect to the same item of qualified property, as determined under §§ 1.743–1(b) and 1.755–1, but calculated as if the adjusted basis of all of PRS's property was equal to the UBIA of such property. T's section 743(b) basis adjustment calculated as if adjusted basis of the qualified property were equal to its UBIA is $50,000 (the excess of $350,000, T's cost basis for its interest, over $300,000, T's share of the adjusted basis to PRS of the partnership's property). Thus, T's excess section 743(b) basis adjustment is equal to $50,000. For purposes of applying the UBIA limitation to T's share of QBI from PRS's trade or business, T's UBIA is equal to $350,000 ($300,000, T's one-third share of the qualified property's UBIA, plus $50,000, T's excess section 743(b) basis adjustment).

(*2*) *Example 2*—(*i*) *Facts.* Assume the same facts as in *Example 1* of paragraph (a)(3)(iv)(D)(*1*) of this section, except that A sells its one-third interest in PRS to T for $200,000 when a section 754 election is in effect. At the time of the sale, the tax basis of the qualified property held by PRS is $750,000, and the amount of loss that would be allocated to T from a hypothetical transaction under § 1.743–1(d)(2) is $50,000. Thus, T's interest in PRS's previously taxed capital is equal to $250,000 ($200,000, the amount of cash T would receive if PRS liquidated immediately after the hypothetical transaction, increased by $50,000, T's share of loss from the hypothetical transaction). The amount of T's section 743(b) basis adjustment to PRS's qualified property is negative $50,000 (the excess of $250,000, T's share of the adjusted basis to PRS of the partnership's property, over $200,000, T's cost basis for its interest).

(*ii*) *Analysis.* In order for T to determine its UBIA, T must calculate its excess section 743(b) basis adjustment. T's excess section 743(b) basis adjustment is equal to an amount that would represent T's section 743(b) basis adjustment with respect to the same item of qualified property, as determined under §§ 1.743–1(b) and 1.755–1, but calculated as if the adjusted basis of all of PRS's property was equal to the UBIA of such property. T's section 743(b) basis adjustment calculated as if adjusted basis of the qualified property were equal to its UBIA is negative $100,000 (the excess of $300,000, T's share of the adjusted basis to PRS of the partnership's property, over $200,000, T's cost basis for its interest). T's excess section 743(b) basis adjustment to the qualified property is limited to the amount of T's section 743(b) basis adjustment of negative $50,000. Thus, T's excess section 743(b) basis adjustment is equal to negative $50,000. For purposes of applying the UBIA limitation to T's share of QBI from PRS's trade or business, T's UBIA is equal to $250,000 ($300,000, T's one-third share of the qualified property's UBIA, reduced by T's negative $50,000 excess section 743(b) basis adjustment).

(b) *W–2 wages*—(1) *In general.* Section 199A(b)(2)(B) provides limitations on the section 199A deduction based on the W–2 wages paid with respect to each trade or business (or aggregated trade or business). Section 199A(b)(4)(B) provides that W–2 wages do not include any amount which is not properly allocable to QBI for purposes of section 199A(c)(1). This section provides a three step process for determining the W–2 wages paid with respect to a trade or business that are properly allocable to QBI. First, each individual or RPE must determine its total W–2 wages paid for the taxable year under the rules in paragraph (b)(2) of this section. Second, each individual or RPE must allocate its W–2 wages between or among one or more trades or businesses under the rules in paragraph (b)(3) of this section. Third, each individual or RPE must determine the amount of such wages with respect to each trade or business, which are allocable to the QBI of the trade or business (or aggregated trade or business) under the rules in paragraph (b)(4) of this section.

(2) *Definition of W–2 wages*—(i) *In general.* Section 199A(b)(4)(A) provides that the term W–2 wages means with respect to any person for any taxable year of such person, the amounts described in section 6051(a)(3) and (8) paid by such person with respect to employment of employees by such person during the calendar year ending during such taxable year. Thus, the term W–2 wages includes the total amount of wages as defined in section 3401(a) plus the total amount of elective deferrals (within the meaning of section 402(g)(3)), the compensation deferred under section 457, and the amount of designated Roth contributions (as defined in section 402A). For this purpose, except as provided in paragraphs (b)(2)(iv)(C)(*2*) and (b)(2)(iv)(D) of this section, the Forms W–2, ''Wage and Tax Statement,'' or any subsequent form or document used in determining the amount of W–2 wages, are those issued for the calendar year ending during the individual's or RPE's taxable year for wages paid to employees (or former employees) of the individual or RPE for employment by the individual or RPE. For purposes of this section, employees of the individual or RPE are limited to employees of the individual or RPE as defined in section 3121(d)(1) and (2). (For purposes of section 199A, this includes officers of an S corporation and employees of an individual or RPE under common law.)

(ii) *Wages paid by a person other than a common law employer.* In determining W–2 wages, an individual or RPE may take into account any W–2 wages paid by another person and reported by the other person on Forms W–2 with the other person as the employer listed in Box c of the Forms W–2, provided that the W–2 wages were paid to common law employees or officers of the individual or RPE for employment by the individual or RPE. In such cases, the person paying the W–2 wages and reporting the W–2 wages on Forms W–2 is precluded from taking into account such wages for purposes of determining W–2 wages with respect to that person. For purposes of this paragraph (b)(2)(ii), persons that pay and report W–2 wages on behalf of or with respect to others can include, but are not limited to, certified professional employer organizations under section 7705, statutory employers under section 3401(d)(1), and agents under section 3504.

(iii) *Requirement that wages must be reported on return filed with the Social Security Administration (SSA)*—(A) *In general.* Pursuant to section 199A(b)(4)(C), the term W–2 wages does not include any amount that is not properly included in a return filed with SSA on or before the 60th day after the due date (including extensions) for such return. Under § 31.6051–2 of this chapter, each Form W–2 and the transmittal Form W–3, ''Transmittal of Wage and Tax Statements,'' together constitute an information return to be filed with SSA. Similarly, each Form W–2c, ''Corrected Wage and Tax Statement,'' and the transmittal Form W–3 or W–3c, ''Transmittal of Corrected Wage and Tax Statements,'' together constitute an information return to be filed with SSA. In determining whether any amount has been properly included in a return filed with SSA on or before the 60th day after the due date (including extensions) for such return, each Form W–2 together with its accompanying Form W–3 will be considered a separate information return and each Form W–2c together

with its accompanying Form W–3 or Form W–3c will be considered a separate information return. Section 6071(c) provides that Forms W–2 and W–3 must be filed on or before January 31 of the year following the calendar year to which such returns relate (but see the special rule in § 31.6071(a)–1T(a)(3)(1) of this chapter for monthly returns filed under § 31.6011(a)–5(a) of this chapter). Corrected Forms W–2 are required to be filed with SSA on or before January 31 of the year following the year in which the correction is made.

(B) *Corrected return filed to correct a return that was filed within 60 days of the due date.* If a corrected information return (Return B) is filed with SSA on or before the 60th day after the due date (including extensions) of Return B to correct an information return (Return A) that was filed with SSA on or before the 60th day after the due date (including extensions) of the information return (Return A) and paragraph (b)(2)(iii)(C) of this section does not apply, then the wage information on Return B must be included in determining W–2 wages. If a corrected information return (Return D) is filed with SSA later than the 60th day after the due date (including extensions) of Return D to correct an information return (Return C) that was filed with SSA on or before the 60th day after the due date (including extensions) of the information return (Return C), and if Return D reports an increase (or increases) in wages included in determining W–2 wages from the wage amounts reported on Return C, then such increase (or increases) on Return D will be disregarded in determining W–2 wages (and only the wage amounts on Return C may be included in determining W–2 wages). If Return D reports a decrease (or decreases) in wages included in determining W–2 wages from the amounts reported on Return C, then, in determining W–2 wages, the wages reported on Return C must be reduced by the decrease (or decreases) reflected on Return D.

(C) *Corrected return filed to correct a return that was filed later than 60 days after the due date.* If an information return (Return F) is filed to correct an information return (Return E) that was not filed with SSA on or before the 60th day after the due date (including extensions) of Return E, then Return F (and any subsequent information returns filed with respect to Return E) will not be considered filed on or before the 60th day after the due date (including extensions) of Return F (or the subsequent corrected information return). Thus, if a Form W–2c is filed to correct a Form W–2 that was not filed with SSA on or before the 60th day after the due date (including extensions) of the Form W–2 (or to correct a Form W–2c relating to Form W–2 that had not been filed with SSA on or before the 60th day after the due date (including extensions) of the Form W–2), then this Form W–2c will not be considered to have been filed with SSA on or before the 60th day after the due date (including extensions) for this Form W–2c (or corrected Form W–2), regardless of when the Form W–2c is filed.

(iv) *Methods for calculating W–2 wages*—(A) *In general.* The Secretary may provide for methods to be used in calculating W–2 wages, including W–2 wages for short taxable years by publication in the Internal Revenue Bulletin (see § 601.601(d)(2)(ii)(*b*) of this chapter).

(B) *Acquisition or disposition of a trade or business*—(*1*) *In general.* In the case of an acquisition or disposition of a trade or business, the major portion of a trade or business, or the major portion of a separate unit of a trade or business that causes more than one individual or entity to be an employer of the employees of the acquired or disposed of trade or business during the calendar year, the W–2 wages of the individual or entity for the calendar year of the acquisition or disposition are allocated between each individual or entity based on the period during which the employees of the acquired or disposed of trade or business were employed by the individual or entity, regardless of which permissible method is used for reporting predecessor and successor wages on Form W–2, ''Wage and Tax Statement.'' For this purpose, the period of employment is determined consistently with the principles for determining whether an individual is an employee described in paragraph (b) of this section.

(*2*) *Acquisition or disposition.* For purposes of this paragraph (b)(2)(iv)(B), the term *acquisition or disposition* includes an incorporation, a formation, a liquidation, a reorganization, or a purchase or sale of assets.

(C) *Application in the case of a person with a short taxable year*—(*1*) *In general.* In the case of an individual or RPE with a short taxable year, subject to the rules of paragraph (b)(2) of this section, the W–2 wages of the individual or RPE for the short taxable year include only those wages paid during the short taxable year to employees of the individuals or RPE, only those elective deferrals (within the meaning of section 402(g)(3)) made during the short taxable year by employees of the individual or RPE and only compensation actually deferred under section 457 during the short taxable year with respect to employees of the individual or RPE.

(*2*) *Short taxable year that does not include December 31.* If an individual or RPE has a short taxable year that does not contain a calendar year ending during such short taxable year, wages paid to employees for employment by such individual or RPE during the short taxable year are treated as W–2 wages for such short taxable year for purposes of paragraph (b) of this section (if the wages would otherwise meet the requirements to be W–2 wages under this section but for the requirement that a calendar year must end during the short taxable year).

(D) *Remuneration paid for services performed in the Commonwealth of Puerto Rico.* In the case of an individual or RPE that conducts a trade or business in the Commonwealth of Puerto Rico, the determination of W–2 wages of such individual or RPE will be made without regard to any exclusion under section 3401(a)(8) for remuneration paid for services performed in the Commonwealth of Puerto Rico. The individual or RPE must maintain sufficient documentation (for example, Forms 499R–2/W–2PR) to substantiate the amount of remuneration paid for services performed in the Commonwealth of Puerto Rico that is used in determining the W–2 wages of such individual or RPE with respect to any trade or business conducted in the Commonwealth of Puerto Rico.

(3) *Allocation of wages to trades or businesses.* After calculating total W–2 wages for a taxable year, each individual or RPE that directly conducts more than one trade or business must allocate those wages among its various trades or businesses. W–2 wages must be allocated to the trade or business that generated those wages. In the case of W–2 wages that are allocable to more than one trade or business, the portion of the W–2 wages allocable to each trade or business is determined in the same manner as the expenses associated with those wages are allocated among the trades or businesses under § 1.199A–3(b)(5).

(4) *Allocation of wages to QBI.* Once W–2 wages for each trade or business have been determined, each individual or RPE must identify the amount of W–2 wages properly allocable to QBI for each trade or business (or aggregated trade or business). W–2 wages are properly allocable to QBI if the associated wage expense is taken into account in computing QBI under § 1.199A–3. In the case of an RPE, the wage expense must be allocated and reported to the partners or shareholders

of the RPE as required by the Code, including subchapters K and S of chapter 1 of subtitle A of the Code. The RPE must also identify and report the associated W–2 wages to its partners or shareholders.

(5) *Non-duplication rule.* Amounts that are treated as W–2 wages for a taxable year under any method cannot be treated as W–2 wages of any other taxable year. Also, an amount cannot be treated as W–2 wages by more than one trade or business (or aggregated trade or business).

(c) *UBIA of qualified property*—(1) *Qualified property*—(i) *In general.* The term *qualified property* means, with respect to any trade or business (or aggregated trade or business) of an individual or RPE for a taxable year, tangible property of a character subject to the allowance for depreciation under section 167(a)—

(A) Which is held by, and available for use in, the trade or business (or aggregated trade or business) at the close of the taxable year;

(B) Which is used at any point during the taxable year in the trade or business's (or aggregated trade or business's) production of QBI; and

(C) The depreciable period for which has not ended before the close of the individual's or RPE's taxable year.

(ii) *Improvements to qualified property.* In the case of any addition to, or improvement of, qualified property that has already been placed in service by the individual or RPE, such addition or improvement is treated as separate qualified property first placed in service on the date such addition or improvement is placed in service for purposes of paragraph (c)(2) of this section.

(iii) *Adjustments under sections 734(b) and 743(b).* Excess section 743(b) basis adjustments as defined in paragraph (a)(3)(iv)(B) of this section are treated as qualified property. Otherwise, basis adjustments under sections 734(b) and 743(b) are not treated as qualified property.

(iv) *Property acquired at end of year.* Property is not qualified property if the property is acquired within 60 days of the end of the taxable year and disposed of within 120 days of acquisition without having been used in a trade or business for at least 45 days prior to disposition, unless the taxpayer demonstrates that the principal purpose of the acquisition and disposition was a purpose other than increasing the section 199A deduction.

(2) *Depreciable period*—(i) *In general.* The term *depreciable period* means, with respect to qualified property of a trade or business, the period beginning on the date the property was first placed in service by the individual or RPE and ending on the later of—

(A) The date that is 10 years after such date; or

(B) The last day of the last full year in the applicable recovery period that would apply to the property under section 168(c), regardless of any application of section 168(g).

(ii) *Additional first-year depreciation under section 168.* The additional first-year depreciation deduction allowable under section 168 (for example, under section 168(k) or (m)) does not affect the applicable recovery period under this paragraph for the qualified property.

(iii) *Qualified property acquired in transactions subject to section 1031 or section 1033.* Solely for purposes of paragraph (c)(2)(i) of this section, the following rules apply to qualified property acquired in a like-kind exchange or in an involuntary conversion (replacement property).

(A) *Replacement property received in a section 1031 or 1033 transaction.* The date on which replacement property that is of like-kind to relinquished property or is similar or related in service or use to involuntarily converted property was first placed in service by the individual or RPE is determined as follows—

(*1*) For the portion of the individual's or RPE's UBIA, as defined in paragraph (c)(3) of this section, in such replacement property that does not exceed the individual's or RPE's UBIA in the relinquished property or involuntarily converted property, the date such portion in the replacement property was first placed in service by the individual or RPE is the date on which the relinquished property or involuntarily converted property was first placed in service by the individual or RPE; and

(*2*) For the portion of the individual's or RPE's UBIA, as defined in paragraph (c)(3) of this section, in such replacement property that exceeds the individual's or RPE's UBIA in the relinquished property or involuntarily converted property, such portion in the replacement property is treated as separate qualified property that the individual or RPE first placed in service on the date on which the replacement property was first placed in service by the individual or RPE.

(B) *Other property received in a section 1031 or 1033 transaction.* Other property, as defined in paragraph (c)(3)(ii) or (iii) of this section, that is qualified property is treated as separate qualified property that the individual or RPE first placed in service on the date on which such other property was first placed in service by the individual or RPE.

(iv) *Qualified property acquired in transactions described in section 168(i)(7)(B).* If an individual or RPE acquires qualified property in a transaction described in section 168(i)(7)(B) (pertaining to treatment of transferees in certain nonrecognition transactions), the individual or RPE must determine the date on which the qualified property was first placed in service solely for purposes of paragraph (c)(2)(i) of this section as follows—

(A) For the portion of the transferee's UBIA in the qualified property that does not exceed the transferor's UBIA in such property, the date such portion was first placed in service by the transferee is the date on which the transferor first placed the qualified property in service; and

(B) For the portion of the transferee's UBIA in the qualified property that exceeds the transferor's UBIA in such property, such portion is treated as separate qualified property that the transferee first placed in service on the date of the transfer.

(v) *Excess section 743(b) basis adjustment.* Solely for purposes of paragraph (c)(2)(i) of this section, an excess section 743(b) basis adjustment with respect to an item of partnership property that is qualified property is treated as being placed in service when the transfer of the partnership interest occurs, and the recovery period for such property is determined under § 1.743–1(j)(4)(i)(B) with respect to positive basis adjustments and § 1.743–1(j)(4)(ii)(B) with respect to negative basis adjustments.

(3) *Unadjusted basis immediately after acquisition*—(i) *In general.* Except as provided in paragraphs (c)(3)(ii) through (v) of this section, the term *unadjusted basis immediately after acquisition* (UBIA) means the basis on the placed in service date of the property as determined under section 1012 or other applicable sections of chapter 1 of the Code, including the provisions of subchapters O (relating to gain or loss on dispositions of property), C (relating to corporate distributions and adjustments), K (relating to partners and partnerships), and P (relating to capital gains and losses). UBIA is determined without regard to any adjustments described in section 1016(a)(2) or (3), to any adjustments for tax credits claimed by the individual or RPE (for example, under section 50(c)), or to any adjustments for any portion of the basis which the individual or RPE has elected to treat as an expense (for example, under sections 179, 179B, or 179C). However, UBIA does reflect the reduction in basis for the percentage of

the individual's or RPE's use of property for the taxable year other than in the trade or business.

(ii) *Qualified property acquired in a like-kind exchange*—(A) *In general.* Solely for purposes of this section, if property that is qualified property (replacement property) is acquired in a like-kind exchange that qualifies for deferral of gain or loss under section 1031, then the UBIA of such property is the same as the UBIA of the qualified property exchanged (relinquished property), decreased by excess boot or increased by the amount of money paid or the fair market value of property not of a like kind to the relinquished property (other property) transferred by the taxpayer to acquire the replacement property. If the taxpayer acquires more than one piece of qualified property as replacement property that is of a like kind to the relinquished property in an exchange described in section 1031, UBIA is apportioned between or among the qualified replacement properties in proportion to their relative fair market values. Other property received by the taxpayer in a section 1031 transaction that is qualified property has a UBIA equal to the fair market value of such other property.

(B) *Excess boot.* For purposes of paragraph (c)(3)(ii)(A) of this section, *excess boot* is the amount of any money or the fair market value of other property received by the taxpayer in the exchange over the amount of appreciation in the relinquished property. Appreciation for this purpose is the excess of the fair market value of the relinquished property on the date of the exchange over the fair market value of the relinquished property on the date of the acquisition by the taxpayer.

(iii) *Qualified property acquired pursuant to an involuntary conversion*—(A) *In general.* Solely for purposes of this section, if qualified property is compulsorily or involuntarily converted (converted property) within the meaning of section 1033 and qualified replacement property is acquired in a transaction that qualifies for deferral of gain under section 1033, then the UBIA of the replacement property is the same as the UBIA of the converted property, decreased by excess boot or increased by the amount of money paid or the fair market value of property not similar or related in service or use to the converted property (other property) transferred by the taxpayer to acquire the replacement property. If the taxpayer acquires more than one piece of qualified replacement property that meets the similar or related in service or use requirements in section 1033, UBIA is apportioned between the qualified replacement properties in proportion to their relative fair market values. Other property acquired by the taxpayer with the proceeds of an involuntary conversion that is qualified property has a UBIA equal to the fair market value of such other property.

(B) *Excess boot.* For purposes of paragraph (c)(3)(iii)(A) of this section, *excess boot* is the amount of any money or the fair market value of other property received by the taxpayer in the conversion over the amount of appreciation in the converted property. Appreciation for this purpose is the excess of the fair market value of the converted property on the date of the conversion over the fair market value of the converted property on the date of the acquisition by the taxpayer.

(iv) *Qualified property acquired in transactions described in section 168(i)(7)(B).* Solely for purposes of this section, if qualified property is acquired in a transaction described in section 168(i)(7)(B) (pertaining to treatment of transferees in certain nonrecognition transactions), the transferee's UBIA in the qualified property shall be the same as the transferor's UBIA in the property, decreased by the amount of money received by the transferor in the transaction or increased by the amount of money paid by the transferee to acquire the property in the transaction.

(v) *Qualified property acquired from a decedent.* In the case of qualified property acquired from a decedent and immediately placed in service, the UBIA of the property will generally be the fair market value at the date of the decedent's death under section 1014. See section 1014 and the regulations thereunder. Solely for purposes of paragraph (c)(2)(i) of this section, a new depreciable period for the property commences as of the date of the decedent's death.

(vi) *Property acquired in a nonrecognition transaction with principal purpose of increasing UBIA.* If qualified property is acquired in a transaction described in section 1031, 1033, or 168(i)(7) with the principal purpose of increasing the UBIA of the qualified property, the UBIA of the acquired qualified property is its basis as determined under relevant Code sections and not under the rules described in paragraphs (c)(3)(i) through (iv) of this section. For example, in a section 1031 transaction undertaken with the principal purpose of increasing the UBIA of the replacement property, the UBIA of the replacement property is its basis as determined under section 1031(d).

(4) *Examples.* The provisions of this paragraph (c) are illustrated by the following examples:

(i) *Example 1.* (A) On January 5, 2012, A purchases Real Property X for $1 million and places it in service in A's trade or business. A's trade or business is not an SSTB. A's basis in Real Property X under section 1012 is $1 million. Real Property X is qualified property within the meaning of section 199A(b)(6). As of December 31, 2018, A's basis in Real Property X, as adjusted under section 1016(a)(2) for depreciation deductions under section 168(a), is $821,550.

(B) For purposes of section 199A(b)(2)(B)(ii) and this section, A's UBIA of Real Property X is its $1 million cost basis under section 1012, regardless of any later depreciation deductions under section 168(a) and resulting basis adjustments under section 1016(a)(2).

(ii) *Example 2.* (A) The facts are the same as in *Example 1* of paragraph (c)(4)(i) of this section, except that on January 15, 2019, A enters into a like-kind exchange under section 1031 in which A exchanges Real Property X for Real Property Y. Real Property Y has a value of $1 million. No cash or other property is involved in the exchange. As of January 15, 2019, A's basis in Real Property X, as adjusted under section 1016(a)(2) for depreciation deductions under section 168(a), is $820,482.

(B) A's UBIA in Real Property Y is $1 million as determined under paragraph (c)(3)(ii) of this section. Pursuant to paragraph (c)(2)(iii)(A) of this section, Real Property Y is first placed in service by A on January 5, 2012, which is the date on which Real Property X was first placed in service by A.

(iii) *Example 3.* (A) The facts are the same as in *Example 1* of paragraph (c)(4)(i) of this section, except that on January 15, 2019, A enters into a like-kind exchange under section 1031, in which A exchanges Real Property X for Real Property Y. Real Property X has appreciated in value to $1.3 million, and Real Property Y also has a value of $1.3 million. No cash or other property is involved in the exchange. As of January 15, 2019, A's basis in Real Property X, as adjusted under section 1016(a)(2), is $820,482.

(B) A's UBIA in Real Property Y is $1 million as determined under paragraph (c)(3)(ii) of this section. Pursuant to paragraph (c)(2)(iii)(A) of this section, Real Property Y is first placed in service by A on January 5, 2012, which is the date on which Real Property X was first placed in service by A.

(iv) *Example 4.* (A) The facts are the same as in *Example 1* of paragraph (c)(4)(i) of this section, except that on January 15, 2019, A enters into a like-kind exchange under section 1031, in which A exchanges Real Property X for Real Property Y. Real Property X has appreciated in value to $1.3 million, but Real Property Y has a value of $1.5 million. A therefore adds $200,000 in cash to the exchange of Real Property X for Real Property Y. On January 15, 2019, A places Real Property Y in service. As of January 15, 2019, A's basis in Real Property X, as

adjusted under section 1016(a)(2), is $820,482.

(B) A's UBIA in Real Property Y is $1.2 million as determined under paragraph (c)(3)(ii) of this section ($1 million in UBIA from Real Property X plus $200,000 cash paid by A to acquire Real Property Y). Because the UBIA of Real Property Y exceeds the UBIA of Real Property X, Real Property Y is treated as being two separate qualified properties for purposes of applying paragraph (c)(2)(iii)(A) of this section. One property has a UBIA of $1 million (the portion of A's UBIA of $1.2 million in Real Property Y that does not exceed A's UBIA of $1 million in Real Property X) and it is first placed in service by A on January 5, 2012, which is the date on which Real Property X was first placed in service by A. The other property has a UBIA of $200,000 (the portion of A's UBIA of $1.2 million in Real Property Y that exceeds A's UBIA of $1 million in Real Property X) and it is first placed in service by A on January 15, 2019, which is the date on which Real Property Y was first placed in service by A.

(v) *Example 5.* (A) The facts are the same as in *Example 1* of paragraph (c)(4)(i) of this section, except that on January 15, 2019, A enters into a like-kind exchange under section 1031, in which A exchanges Real Property X for Real Property Y. Real Property X has appreciated in value to $1.3 million. Real Property Y has a fair market value of $1 million. As of January 15, 2019, A's basis in Real Property X, as adjusted under section 1016(a)(2), is $820,482. Pursuant to the exchange, A receives Real Property Y and $300,000 in cash.

(B) A's UBIA in Real Property Y is $1 million as determined under paragraph (c)(3)(ii) of this section ($1 million in UBIA from Real Property X, less $0 excess boot ($300,000 cash received in the exchange over $300,000 in appreciation in Property X, which is equal to the excess of the $1.3 million fair market value of Property X on the date of the exchange over $1 million fair market value of Property X on the date of acquisition by the taxpayer)). Pursuant to paragraph (c)(2)(iii)(A) of this section, Real Property Y is first placed in service by A on January 5, 2012, which is the date on which Real Property X was first placed in service by A.

(vi) *Example 6.* (A) The facts are the same as in *Example 1* of paragraph (c)(4)(i) of this section, except that on January 15, 2019, A enters into a like-kind exchange under section 1031, in which A exchanges Real Property X for Real Property Y. Real Property X has appreciated in value to $1.3 million. Real Property Y has a fair market value of $900,000. Pursuant to the exchange, A receives Real Property Y and $400,000 in cash. As of January 15, 2019, A's basis in Real Property X, as adjusted under section 1016(a)(2), is $820,482.

(B) A's UBIA in Real Property Y is $900,000 as determined under paragraph (c)(3)(ii) of this section ($1 million in UBIA from Real Property X less $100,000 excess boot ($400,000 in cash received in the exchange over $300,000 in appreciation in Property X, which is equal to the excess of the $1.3 million fair market value of Property X on the date of the exchange over the $1 million fair market value of Property X on the date of acquisition by the taxpayer)). Pursuant to paragraph (c)(2)(iii)(A) of this section, Real Property Y is first placed in service by A on January 5, 2012, which is the date on which Real Property X was first placed in service by A.

(vii) *Example 7.* (A) The facts are the same as in *Example 1* of paragraph (c)(4)(i) of this section, except that on January 15, 2019, A enters into a like-kind exchange under section 1031, in which A exchanges Real Property X for Real Property Y. Real Property X has declined in value to $900,000, and Real Property Y also has a value of $900,000. No cash or other property is involved in the exchange. As of January 15, 2019, A's basis in Real Property X, as adjusted under section 1016(a)(2), is $820,482.

(B) Even though Real Property Y is worth only $900,000, A's UBIA in Real Property Y is $1 million as determined under paragraph (c)(3)(ii) of this section because no cash or other property was involved in the exchange. Pursuant to paragraph (c)(2)(iii)(A) of this section, Real Property Y is first placed in service by A on January 5, 2012, which is the date on which Real Property X was first placed in service by A.

(viii) *Example 8.* (A) C operates a trade or business that is not an SSTB as a sole proprietorship. On January 5, 2011, C purchases Machinery Y for $10,000 and places it in service in C's trade or business. C's basis in Machinery Y under section 1012 is $10,000. Machinery Y is qualified property within the meaning of section 199A(b)(6). Assume that Machinery Y's recovery period under section 168(c) is 10 years, and C depreciates Machinery Y under the general depreciation system by using the straight-line depreciation method, a 10-year recovery period, and the half-year convention. As of December 31, 2018, C's basis in Machinery Y, as adjusted under section 1016(a)(2) for depreciation deductions under section 168(a), is $2,500. On January 1, 2019, C incorporates the sole proprietorship and elects to treat the newly formed entity as an S corporation for Federal income tax purposes. C contributes Machinery Y and all other assets of the trade or business to the S corporation in a non-recognition transaction under section 351. The S corporation immediately places all the assets in service.

(B) For purposes of section 199A(b)(2)(B)(ii) and this section, C's UBIA of Machinery Y from 2011 through 2018 is its $10,000 cost basis under section 1012, regardless of any later depreciation deductions under section 168(a) and resulting basis adjustments under section 1016(a)(2). The S corporation's basis of Machinery Y is $2,500, the basis of the property under section 362 at the time the S corporation places the property in service. Pursuant to paragraph (c)(3)(iv) of this section, S corporation's UBIA of Machinery Y is $10,000, which is C's UBIA of Machinery Y. Pursuant to paragraph (c)(2)(iv)(A) of this section, for purposes of determining the depreciable period of Machinery Y, the S corporation's placed in service date of Machinery Y will be January 5, 2011, which is the date C originally placed the property in service in 2011. Therefore, Machinery Y may be qualified property of the S corporation (assuming it continues to be used in the business) for 2019 and 2020 and will not be qualified property of the S corporation after 2020, because its depreciable period will have expired.

(ix) *Example 9.* (A) LLC, a partnership, operates a trade or business that is not an SSTB. On January 5, 2011, LLC purchases Machinery Z for $30,000 and places it in service in LLC's trade or business. LLC's basis in Machinery Z under section 1012 is $30,000. Machinery Z is qualified property within the meaning of section 199A(b)(6). Assume that Machinery Z's recovery period under section 168(c) is 10 years, and LLC depreciates Machinery Z under the general depreciation system by using the straight-line depreciation method, a 10-year recovery period, and the half-year convention. As of December 31, 2018, LLC's basis in Machinery Z, as adjusted under section 1016(a)(2) for depreciation deductions under section 168(a), is $7,500. On January 1, 2019, LLC distributes Machinery Z to Partner A in full liquidation of Partner A's interest in LLC. Partner A's outside basis in LLC is $35,000.

(B) For purposes of section 199A(b)(2)(B)(ii) and this section, LLC's UBIA of Machinery Z from 2011 through 2018 is its $30,000 cost basis under section 1012, regardless of any later depreciation deductions under section 168(a) and resulting basis adjustments under section 1016(a)(2). Prior to the distribution to Partner A, LLC's basis of Machinery Z is $7,500. Under section 732(b), Partner A's basis in Machinery Z is $35,000. Pursuant to paragraph (c)(3)(iv) of this section, upon distribution of Machinery Z, Partner A's UBIA of Machinery Z is $30,000, which was LLC's UBIA of Machinery Z.

(d) *Applicability date*—(1) *General rule.* Except as provided in paragraph (d)(2) of this section, the provisions of this section apply to taxable years ending after February 8, 2019.

(2) *Exceptions*—(i) *Anti-abuse rules.* The provisions of paragraph (c)(1)(iv) of this section apply to taxable years ending after December 22, 2017.

(ii) *Non-calendar year RPE.* For purposes of determining QBI, W–2 wages, UBIA of qualified property, and the aggregate amount of qualified REIT dividends and qualified PTP income if an individual receives any of these items from an RPE with a taxable year that begins before January 1, 2018, and ends after December 31, 2017, such items are treated as having been incurred by the individual during the individual's taxable year in which or with which such RPE taxable year ends.

■ **Par. 5.** Section 1.199A–3 is added to read as follows:

§ 1.199A–3 Qualified business income, qualified REIT dividends, and qualified PTP income.

(a) *In general.* This section provides rules on the determination of a trade or

business's qualified business income (QBI), as well as the determination of qualified real estate investment trust (REIT) dividends and qualified publicly traded partnership (PTP) income. The provisions of this section apply solely for purposes of section 199A of the Internal Revenue Code (Code). Paragraph (b) of this section provides rules for the determination of QBI. Paragraph (c) of this section provides rules for the determination of qualified REIT dividends and qualified PTP income. QBI must be determined and reported for each trade or business by the individual or relevant passthrough entity (RPE) that directly conducts the trade or business before applying the aggregation rules of § 1.199A–4.

(b) *Definition of qualified business income*—(1) *In general.* For purposes of this section, the term *qualified business income* or *QBI* means, for any taxable year, the net amount of qualified items of income, gain, deduction, and loss with respect to any trade or business of the taxpayer as described in paragraph (b)(2) of this section, provided the other requirements of this section and section 199A are satisfied (including, for example, the exclusion of income not effectively connected with a United States trade or business).

(i) *Section 751 gain.* With respect to a partnership, if section 751(a) or (b) applies, then gain or loss attributable to assets of the partnership giving rise to ordinary income under section 751(a) or (b) is considered attributable to the trades or businesses conducted by the partnership, and is taken into account for purposes of computing QBI.

(ii) *Guaranteed payments for the use of capital.* Income attributable to a guaranteed payment for the use of capital is not considered to be attributable to a trade or business, and thus is not taken into account for purposes of computing QBI except to the extent properly allocable to a trade or business of the recipient. The partnership's deduction associated with the guaranteed payment will be taken into account for purposes of computing QBI if such deduction is properly allocable to the trade or business and is otherwise deductible for Federal income tax purposes.

(iii) *Section 481 adjustments.* Section 481 adjustments (whether positive or negative) are taken into account for purposes of computing QBI to the extent that the requirements of this section and section 199A are otherwise satisfied, but only if the adjustment arises in taxable years ending after December 31, 2017.

(iv) *Previously disallowed losses.* Generally, previously disallowed losses or deductions (including under sections 465, 469, 704(d), and 1366(d)) allowed in the taxable year are taken into account for purposes of computing QBI. These losses shall be used, for purposes of section 199A and these regulations, in order from the oldest to the most recent on a first-in, first-out (FIFO) basis. However, losses or deductions that were disallowed, suspended, limited, or carried over from taxable years ending before January 1, 2018 (including under sections 465, 469, 704(d), and 1366(d)), are not taken into account in a later taxable year for purposes of computing QBI.

(v) *Net operating losses.* Generally, a net operating loss deduction under section 172 is not considered with respect to a trade or business and therefore, is not taken into account in computing QBI. However, an excess business loss under section 461(l) is treated as a net operating loss carryover to the following taxable year and is taken into account for purposes of computing QBI in the subsequent taxable year in which it is deducted.

(vi) *Other deductions.* Generally, deductions attributable to a trade or business are taken into account for purposes of computing QBI to the extent that the requirements of section 199A and this section are otherwise satisfied. For purposes of section 199A only, deductions such as the deductible portion of the tax on self-employment income under section 164(f), the self-employed health insurance deduction under section 162(l), and the deduction for contributions to qualified retirement plans under section 404 are considered attributable to a trade or business to the extent that the individual's gross income from the trade or business is taken into account in calculating the allowable deduction, on a proportionate basis to the gross income received from the trade or business.

(2) *Qualified items of income, gain, deduction, and loss*—(i) *In general.* The term *qualified items of income, gain, deduction, and loss* means items of gross income, gain, deduction, and loss to the extent such items are—

(A) Effectively connected with the conduct of a trade or business within the United States (within the meaning of section 864(c), determined by substituting ''trade or business (within the meaning of section 199A)'' for ''nonresident alien individual or a foreign corporation'' or for ''a foreign corporation'' each place it appears); and

(B) Included or allowed in determining taxable income for the taxable year.

(ii) *Items not taken into account.* Notwithstanding paragraph (b)(2)(i) of this section and in accordance with section 199A(c)(3)(B) and (c)(4), the following items are not taken into account as qualified items of income, gain, deduction, or loss and thus are not included in determining QBI:

(A) Any item of short-term capital gain, short-term capital loss, long-term capital gain, or long-term capital loss, including any item treated as one of such items under any other provision of the Code. This provision does not apply to the extent an item is treated as anything other than short-term capital gain, short-term capital loss, long-term capital gain, or long-term capital loss.

(B) Any dividend, income equivalent to a dividend, or payment in lieu of dividends described in section 954(c)(1)(G). Any amount described in section 1385(a)(1) is not treated as described in this clause.

(C) Any interest income other than interest income which is properly allocable to a trade or business. For purposes of section 199A and this section, interest income attributable to an investment of working capital, reserves, or similar accounts is not properly allocable to a trade or business.

(D) Any item of gain or loss described in section 954(c)(1)(C) (transactions in commodities) or section 954(c)(1)(D) (excess foreign currency gains) applied in each case by substituting ''trade or business (within the meaning of section 199A)'' for ''controlled foreign corporation.''

(E) Any item of income, gain, deduction, or loss described in section 954(c)(1)(F) (income from notional principal contracts) determined without regard to section 954(c)(1)(F)(ii) and other than items attributable to notional principal contracts entered into in transactions qualifying under section 1221(a)(7).

(F) Any amount received from an annuity which is not received in connection with the trade or business.

(G) Any qualified REIT dividends as defined in paragraph (c)(2) of this section or qualified PTP income as defined in paragraph (c)(3) of this section.

(H) Reasonable compensation received by a shareholder from an S corporation. However, the S corporation's deduction for such reasonable compensation will reduce QBI if such deduction is properly allocable to the trade or business and is otherwise deductible for Federal income tax purposes.

(I) Any guaranteed payment described in section 707(c) received by a partner for services rendered with respect to the trade or business, regardless of whether the partner is an individual or an RPE. However, the partnership's deduction

for such guaranteed payment will reduce QBI if such deduction is properly allocable to the trade or business and is otherwise deductible for Federal income tax purposes.

(J) Any payment described in section 707(a) received by a partner for services rendered with respect to the trade or business, regardless of whether the partner is an individual or an RPE. However, the partnership's deduction for such payment will reduce QBI if such deduction is properly allocable to the trade or business and is otherwise deductible for Federal income tax purposes.

(3) *Commonwealth of Puerto Rico.* For the purposes of determining QBI, the term *United States* includes the Commonwealth of Puerto Rico in the case of any taxpayer with QBI for any taxable year from sources within the Commonwealth of Puerto Rico, if all of such receipts are taxable under section 1 for such taxable year. This paragraph (b)(3) only applies as provided in section 199A(f)(1)(C).

(4) *Wages.* Expenses for all wages paid (or incurred in the case of an accrual method taxpayer) must be taken into account in computing QBI (if the requirements of this section and section 199A are satisfied) regardless of the application of the W–2 wage limitation described in § 1.199A–1(d)(2)(iv).

(5) *Allocation of items among directly-conducted trades or businesses.* If an individual or an RPE directly conducts multiple trades or businesses, and has items of QBI that are properly attributable to more than one trade or business, the individual or RPE must allocate those items among the several trades or businesses to which they are attributable using a reasonable method based on all the facts and circumstances. The individual or RPE may use a different reasonable method with respect to different items of income, gain, deduction, and loss. The chosen reasonable method for each item must be consistently applied from one taxable year to another and must clearly reflect the income and expenses of each trade or business. The overall combination of methods must also be reasonable based on all facts and circumstances. The books and records maintained for a trade or business must be consistent with any allocations under this paragraph (b)(5).

(c) *Qualified REIT Dividends and Qualified PTP Income*—(1) *In general.* Qualified REIT dividends and qualified PTP income are the sum of qualified REIT dividends as defined in paragraph (c)(2) of this section earned directly or through an RPE and the net amount of qualified PTP income as defined in paragraph (c)(3) of this section earned directly or through an RPE.

(2) *Qualified REIT dividend*—(i) The term *qualified REIT dividend* means any dividend from a REIT received during the taxable year which—

(A) Is not a capital gain dividend, as defined in section 857(b)(3); and

(B) Is not qualified dividend income, as defined in section 1(h)(11).

(ii) The term qualified REIT dividend does not include any REIT dividend received with respect to any share of REIT stock—

(A) That is held by the shareholder for 45 days or less (taking into account the principles of section 246(c)(3) and (4)) during the 91-day period beginning on the date which is 45 days before the date on which such share becomes ex-dividend with respect to such dividend; or

(B) To the extent that the shareholder is under an obligation (whether pursuant to a short sale or otherwise) to make related payments with respect to positions in substantially similar or related property.

(3) *Qualified PTP income*—(i) *In general.* The term *qualified PTP income* means the sum of—

(A) The net amount of such taxpayer's allocable share of income, gain, deduction, and loss from a PTP as defined in section 7704(b) that is not taxed as a corporation under section 7704(a); plus

(B) Any gain or loss attributable to assets of the PTP giving rise to ordinary income under section 751(a) or (b) that is considered attributable to the trades or businesses conducted by the partnership.

(ii) *Special rules.* The rules applicable to the determination of QBI described in paragraph (b) of this section also apply to the determination of a taxpayer's allocable share of income, gain, deduction, and loss from a PTP. An individual's allocable share of income from a PTP, and any section 751 gain or loss is qualified PTP income only to the extent the items meet the qualifications of section 199A and this section, including the requirement that the item is included or allowed in determining taxable income for the taxable year, and the requirement that the item be effectively connected with the conduct of a trade or business within the United States. For example, if an individual owns an interest in a PTP, and for the taxable year is allocated a distributive share of net loss which is disallowed under the passive activity rules of section 469, such loss is not taken into account for purposes of section 199A. The specified service trade or business limitations described in §§ 1.199A–1(d)(3) and 1.199A–5 also apply to income earned from a PTP. Furthermore, each PTP is required to determine its qualified PTP income for each trade or business and report that information to its owners as described in § 1.199A–6(b)(3).

(d) [Reserved]

(e) *Applicability date*—(1) *General rule.* Except as provided in paragraph (e)(2) of this section, the provisions of this section apply to taxable years ending after February 8, 2019.

(2) *Exceptions*—(i) *Anti-abuse rules.* The provisions of paragraph (c)(2)(ii) of this section apply to taxable years ending after December 22, 2017.

(ii) *Non-calendar year RPE.* For purposes of determining QBI, W–2 wages, UBIA of qualified property, and the aggregate amount of qualified REIT dividends and qualified PTP income if an individual receives any of these items from an RPE with a taxable year that begins before January 1, 2018, and ends after December 31, 2017, such items are treated as having been incurred by the individual during the individual's taxable year in which or with which such RPE taxable year ends.

■ **Par. 6.** Section 1.199A–4 is added to read as follows:

§ 1.199A–4 Aggregation.

(a) *Scope and purpose.* An individual or RPE may be engaged in more than one trade or business. Except as provided in this section, each trade or business is a separate trade or business for purposes of applying the limitations described in § 1.199A–1(d)(2)(iv). This section sets forth rules to allow individuals and RPEs to aggregate trades or businesses, treating the aggregate as a single trade or business for purposes of applying the limitations described in § 1.199A–1(d)(2)(iv). Trades or businesses may be aggregated only to the extent provided in this section, but aggregation by taxpayers is not required.

(b) *Aggregation rules*—(1) *General rule.* Trades or businesses may be aggregated only if an individual or RPE can demonstrate that—

(i) The same person or group of persons, directly or by attribution under sections 267(b) or 707(b), owns 50 percent or more of each trade or business to be aggregated, meaning in the case of such trades or businesses owned by an S corporation, 50 percent or more of the issued and outstanding shares of the corporation, or, in the case of such trades or businesses owned by a partnership, 50 percent or more of the capital or profits in the partnership;

(ii) The ownership described in paragraph (b)(1)(i) of this section exists for a majority of the taxable year,

including the last day of the taxable year, in which the items attributable to each trade or business to be aggregated are included in income;

(iii) All of the items attributable to each trade or business to be aggregated are reported on returns with the same taxable year, not taking into account short taxable years;

(iv) None of the trades or businesses to be aggregated is a *specified service trade or business* (SSTB) as defined in § 1.199A–5; and

(v) The trades or businesses to be aggregated satisfy at least two of the following factors (based on all of the facts and circumstances):

(A) The trades or businesses provide products, property, or services that are the same or customarily offered together.

(B) The trades or businesses share facilities or share significant centralized business elements, such as personnel, accounting, legal, manufacturing, purchasing, human resources, or information technology resources.

(C) The trades or businesses are operated in coordination with, or reliance upon, one or more of the businesses in the aggregated group (for example, supply chain interdependencies).

(2) *Operating rules*—(i) *Individuals.* An individual may aggregate trades or businesses operated directly or through an RPE to the extent an aggregation is not inconsistent with the aggregation of an RPE. If an individual aggregates multiple trades or businesses under paragraph (b)(1) of this section, QBI, W–2 wages, and UBIA of qualified property must be combined for the aggregated trades or businesses for purposes of applying the W–2 wage and UBIA of qualified property limitations described in § 1.199A–1(d)(2)(iv). An individual may not subtract from the trades or businesses aggregated by an RPE but may aggregate additional trades or businesses with the RPE's aggregation if the rules of this section are otherwise satisfied.

(ii) *RPEs.* An RPE may aggregate trades or businesses operated directly or through a lower-tier RPE to the extent an aggregation is not inconsistent with the aggregation of a lower-tier RPE. If an RPE itself does not aggregate, multiple owners of an RPE need not aggregate in the same manner. If an RPE aggregates multiple trades or businesses under paragraph (b)(1) of this section, the RPE must compute and report QBI, W–2 wages, and UBIA of qualified property for the aggregated trade or business under the rules described in § 1.199A–6(b). An RPE may not subtract from the trades or businesses aggregated by a lower-tier RPE but may aggregate additional trades or businesses with a lower-tier RPE's aggregation if the rules of this section are otherwise satisfied.

(c) *Reporting and consistency requirements*—(1) *Individuals.* Once an individual chooses to aggregate two or more trades or businesses, the individual must consistently report the aggregated trades or businesses in all subsequent taxable years. A failure to aggregate will not be considered to be an aggregation for purposes of this rule. An individual that fails to aggregate may not aggregate trades or businesses on an amended return (other than an amended return for the 2018 taxable year). However, an individual may add a newly created or newly acquired (including through non-recognition transfers) trade or business to an existing aggregated trade or business (including the aggregated trade or business of an RPE) if the requirements of paragraph (b)(1) of this section are satisfied. In a subsequent year, if there is a significant change in facts and circumstances such that an individual's prior aggregation of trades or businesses no longer qualifies for aggregation under the rules of this section, then the trades or businesses will no longer be aggregated within the meaning of this section, and the individual must reapply the rules in paragraph (b)(1) of this section to determine a new permissible aggregation (if any). An individual also must report aggregated trades or businesses of an RPE in which the individual holds a direct or indirect interest.

(2) *Individual disclosure*—(i) *Required annual disclosure.* For each taxable year, individuals must attach a statement to their returns identifying each trade or business aggregated under paragraph (b)(1) of this section. The statement must contain—

(A) A description of each trade or business;

(B) The name and EIN of each entity in which a trade or business is operated;

(C) Information identifying any trade or business that was formed, ceased operations, was acquired, or was disposed of during the taxable year;

(D) Information identifying any aggregated trade or business of an RPE in which the individual holds an ownership interest; and

(E) Such other information as the Commissioner may require in forms, instructions, or other published guidance.

(ii) *Failure to disclose.* If an individual fails to attach the statement required in paragraph (c)(2)(i) of this section, the Commissioner may disaggregate the individual's trades or businesses. The individual may not aggregate trades or businesses that are disaggregated by the Commissioner for the subsequent three taxable years.

(3) *RPEs.* Once an RPE chooses to aggregate two or more trades or businesses, the RPE must consistently report the aggregated trades or businesses in all subsequent taxable years. A failure to aggregate will not be considered to be an aggregation for purposes of this rule. An RPE that fails to aggregate may not aggregate trades or businesses on an amended return (other than an amended return for the 2018 taxable year). However, an RPE may add a newly created or newly acquired (including through non-recognition transfers) trade or business to an existing aggregated trade or business (other than the aggregated trade or business of a lower-tier RPE) if the requirements of paragraph (b)(1) of this section are satisfied. In a subsequent year, if there is a significant change in facts and circumstances such that an RPE's prior aggregation of trades or businesses no longer qualifies for aggregation under the rules of this section, then the trades or businesses will no longer be aggregated within the meaning of this section, and the RPE must reapply the rules in paragraph (b)(1) of this section to determine a new permissible aggregation (if any). An RPE also must report aggregated trades or businesses of a lower-tier RPE in which the RPE holds a direct or indirect interest.

(4) *RPE disclosure*—(i) *Required annual disclosure.* For each taxable year, RPEs (including each RPE in a tiered structure) must attach a statement to each owner's Schedule K–1 identifying each trade or business aggregated under paragraph (b)(1) of this section. The statement must contain—

(A) A description of each trade or business;

(B) The name and EIN of each entity in which a trade or business is operated;

(C) Information identifying any trade or business that was formed, ceased operations, was acquired, or was disposed of during the taxable year;

(D) Information identifying any aggregated trade or business of an RPE in which the RPE holds an ownership interest; and

(E) Such other information as the Commissioner may require in forms, instructions, or other published guidance.

(ii) *Failure to disclose.* If an RPE fails to attach the statement required in paragraph (c)(2)(i) of this section, the Commissioner may disaggregate the RPE's trades or businesses. The RPE may not aggregate trades or businesses

that are disaggregated by the Commissioner for the subsequent three taxable years.

(d) *Examples.* The following examples illustrate the principles of this section. For purposes of these examples, assume the taxpayer is a United States citizen, all individuals and RPEs use a calendar taxable year, there are no ownership changes during the taxable year, all trades or businesses satisfy the requirements under section 162, all tax items are effectively connected to a trade or business within the United States within the meaning of section 864(c), and none of the trades or businesses is an SSTB within the meaning of § 1.199A–5. Except as otherwise specified, a single capital letter denotes an individual taxpayer.

(1) *Example 1*—(i) *Facts.* A wholly owns and operates a catering business and a restaurant through separate disregarded entities. The catering business and the restaurant share centralized purchasing to obtain volume discounts and a centralized accounting office that performs all of the bookkeeping, tracks and issues statements on all of the receivables, and prepares the payroll for each business. A maintains a website and print advertising materials that reference both the catering business and the restaurant. A uses the restaurant kitchen to prepare food for the catering business. The catering business employs its own staff and owns equipment and trucks that are not used or associated with the restaurant.

(ii) *Analysis.* Because the restaurant and catering business are held in disregarded entities, A will be treated as operating each of these businesses directly and thereby satisfies paragraph (b)(1)(i) of this section. Under paragraph (b)(1)(v) of this section, A satisfies the following factors: Paragraph (b)(1)(v)(A) of this section is met as both businesses offer prepared food to customers; and paragraph (b)(1)(v)(B) of this section is met because the two businesses share the same kitchen facilities in addition to centralized purchasing, marketing, and accounting. Having satisfied paragraphs (b)(1)(i) through (v) of this section, A may treat the catering business and the restaurant as a single trade or business for purposes of applying § 1.199A–1(d).

(2) *Example 2*—(i) *Facts.* Assume the same facts as in *Example 1* of paragraph (d)(1) of this section, but the catering and restaurant businesses are owned in separate partnerships and A, B, C, and D each own a 25% interest in each of the two partnerships. A, B, C, and D are unrelated.

(ii) *Analysis.* Because under paragraph (b)(1)(i) of this section A, B, C, and D together own more than 50% of each of the two partnerships, they may each treat the catering business and the restaurant as a single trade or business for purposes of applying § 1.199A–1(d).

(3) *Example 3*—(i) *Facts.* W owns a 75% interest in S1, an S corporation, and a 75% interest in PRS, a partnership. S1 manufactures clothing and PRS is a retail pet food store. W manages S1 and PRS.

(ii) *Analysis.* W owns more than 50% of the stock of S1 and more than 50% of PRS thereby satisfying paragraph (b)(1)(i) of this section. Although W manages both S1 and PRS, W is not able to satisfy the requirements of paragraph (b)(1)(v) of this section as the two businesses do not provide goods or services that are the same or customarily offered together; there are no significant centralized business elements; and no facts indicate that the businesses are operated in coordination with, or reliance upon, one another. W must treat S1 and PRS as separate trades or businesses for purposes of applying § 1.199A–1(d).

(4) *Example 4*—(i) *Facts.* E owns a 60% interest in each of four partnerships (PRS1, PRS2, PRS3, and PRS4). Each partnership operates a hardware store. A team of executives oversees the operations of all four of the businesses and controls the policy decisions involving the business as a whole. Human resources and accounting are centralized for the four businesses. E reports PRS1, PRS3, and PRS4 as an aggregated trade or business under paragraph (b)(1) of this section and reports PRS2 as a separate trade or business. Only PRS2 generates a net taxable loss.

(ii) *Analysis.* E owns more than 50% of each partnership thereby satisfying paragraph (b)(1)(i) of this section. Under paragraph (b)(1)(v) of this section, the following factors are satisfied: Paragraph (b)(1)(v)(A) of this section because each partnership operates a hardware store; and paragraph (b)(1)(v)(B) of this section because the businesses share accounting and human resource functions. E's decision to aggregate only PRS1, PRS3, and PRS4 into a single trade or business for purposes of applying § 1.199A–1(d) is permissible. The loss from PRS2 will be netted against the aggregate profits of PRS1, PRS3, and PRS4 pursuant to § 1.199A–1(d)(2)(iii).

(5) *Example 5*—(i) *Facts.* Assume the same facts as *Example 4* of paragraph (d)(4) of this section, and that F owns a 10% interest in PRS1, PRS2, PRS3, and PRS4.

(ii) *Analysis.* Because under paragraph (b)(1)(i) of this section E owns more than 50% of the four partnerships, F may aggregate PRS 1, PRS2, PRS3, and PRS4 as a single trade or business for purposes of applying § 1.199A–1(d), provided that F can demonstrate that the ownership test is met by E.

(6) *Example 6*—(i) *Facts.* D owns 75% of the stock of S1, S2, and S3, each of which is an S corporation. Each S corporation operates a grocery store in a separate state. S1 and S2 share centralized purchasing functions to obtain volume discounts and a centralized accounting office that performs all of the bookkeeping, tracks and issues statements on all of the receivables, and prepares the payroll for each business. S3 is operated independently from the other businesses.

(ii) *Analysis.* D owns more than 50% of the stock of each S corporation thereby satisfying paragraph (b)(1)(i) of this section. Under paragraph (b)(1)(v) of this section, the grocery stores satisfy paragraph (b)(1)(v)(A) of this section because they are in the same trade or business. Only S1 and S2 satisfy paragraph (b)(1)(v)(B) of this section because of their centralized purchasing and accounting offices. D is only able to show that the requirements of paragraph (b)(1)(v)(B) of this section are satisfied for S1 and S2; therefore, D only may aggregate S1 and S2 into a single trade or business for purposes of § 1.199A–1(d). D must report S3 as a separate trade or business for purposes of applying § 1.199A–1(d).

(7) *Example 7*—(i) *Facts.* Assume the same facts as *Example 6* of paragraph (d)(6) of this section except each store is independently operated and S1 and S2 do not have centralized purchasing or accounting functions.

(ii) *Analysis.* Although the stores provide the same products and services within the meaning of paragraph (b)(1)(v)(A) of this section, D cannot show that another factor under paragraph (b)(1)(v) of this section is present. Therefore, D must report S1, S2, and S3 as separate trades or businesses for purposes of applying § 1.199A–1(d).

(8) *Example 8*—(i) *Facts.* G owns 80% of the stock in S1, an S corporation and 80% of LLC1 and LLC2, each of which is a partnership for Federal tax purposes. LLC1 manufactures and supplies all of the widgets sold by LLC2. LLC2 operates a retail store that sells LLC1's widgets. S1 owns the real property leased to LLC1 and LLC2 for use by the factory and retail store. The entities share common advertising and management.

(ii) *Analysis.* G owns more than 50% of the stock of S1 and more than 50% of LLC1 and LLC2 thus satisfying paragraph (b)(1)(i) of this section. LLC1, LLC2, and S1 share significant centralized business elements and are operated in coordination with, or in reliance upon, one or more of the businesses in the aggregated group. G can treat the business operations of LLC1 and LLC2 as a single trade or business for purposes of applying § 1.199A–1(d). S1 is eligible to be included in the aggregated group because it leases property to a trade or business within the aggregated trade or business as described in § 1.199A–1(b)(14) and meets the requirements of paragraph (b)(1) of this section.

(9) *Example 9*—(i) *Facts.* Same facts as *Example 8* of paragraph (d)(8) of this section, except G owns 80% of the stock in S1 and 20% of each of LLC1 and LLC2. B, G's son, owns a majority interest in LLC2, and M, G's mother, owns a majority interest in LLC1. B does not own an interest in S1 or LLC1, and M does not own an interest in S1 or LLC2.

(ii) *Analysis.* Under the rules in paragraph (b)(1) of this section, B and M's interest in LLC2 and LLC1, respectively, are attributable to G and G is treated as owning a majority interest in LLC2 and LLC1; G thus satisfies paragraph (b)(1)(i) of this section. G may aggregate his interests in LLC1, LLC2, and S1 as a single trade or business for purposes of applying § 1.199A–1(d). Under paragraph (b)(1) of this section, S1 is eligible to be included in the aggregated group because it leases property to a trade or business within the aggregated trade or business as described in § 1.199A–1(b)(14) and meets the requirements of paragraph (b)(1) of this section.

(10) *Example 10*—(i) *Facts.* F owns a 75% interest and G owns a 5% interest in five

partnerships (PRS1–PRS5). H owns a 10% interest in PRS1 and PRS2. Each partnership operates a restaurant and each restaurant separately constitutes a trade or business for purposes of section 162. G is the executive chef of all of the restaurants and as such he creates the menus and orders the food supplies.

(ii) *Analysis.* F owns more than 50% of the partnerships thereby satisfying paragraph (b)(1)(i) of this section. Under paragraph (b)(1)(v) of this section, the restaurants satisfy paragraph (b)(1)(v)(A) of this section because they are in the same trade or business, and paragraph (b)(1)(v)(B) of this section is satisfied as G is the executive chef of all of the restaurants and the businesses share a centralized function for ordering food and supplies. F can show the requirements under paragraph (b)(1) of this section are satisfied as to all of the restaurants. Because F owns a majority interest in each of the partnerships, G can demonstrate that paragraph (b)(1)(i) of this section is satisfied. G can also aggregate all five restaurants into a single trade or business for purposes of applying § 1.199A–1(d). H, however, only owns an interest in PRS1 and PRS2. Like G, H satisfies paragraph (b)(1)(i) of this section because F owns a majority interest. H can, therefore, aggregate PRS1 and PRS2 into a single trade or business for purposes of applying § 1.199A–1(d).

(11) *Example 11*—(i) *Facts.* H, J, K, and L own interests in PRS1 and PRS2, each a partnership, and S1 and S2, each an S corporation. H, J, K, and L also own interests in C, an entity taxable as a C corporation. H owns 30%, J owns 20%, K owns 5%, and L owns 45% of each of the five entities. All of the entities satisfy 2 of the 3 factors under paragraph (b)(1)(v) of this section. For purposes of section 199A the taxpayers report the following aggregated trades or businesses: H aggregates PRS1 and S1 together and aggregates PRS2 and S2 together; J aggregates PRS1, S1 and S2 together and reports PRS2 separately; K aggregates PRS1 and PRS2 together and aggregates S1 and S2 together; and L aggregates S1, S2, and PRS2 together and reports PRS1 separately. C cannot be aggregated.

(ii) *Analysis.* Under paragraph (b)(1)(i) of this section, because H, J, and K together own a majority interest in PRS1, PRS2, S1, and S2, H, J, K, and L are permitted to aggregate under paragraph (b)(1) of this section. Further, the aggregations reported by the taxpayers are permitted, but not required for each of H, J, K, and L. C's income is not eligible for the section 199A deduction and it cannot be aggregated for purposes of applying § 1.199A–1(d).

(12) *Example 12*—(i) *Facts.* L owns 60% of PRS1, a partnership, a business that sells non-food items to grocery stores. L also owns 55% of PRS2, a partnership, which owns and operates a distribution trucking business. The predominant portion of PRS2's business is transporting goods for PRS1.

(ii) *Analysis.* L is able to meet paragraph (b)(1)(i) of this section as the majority owner of PRS1 and PRS2. Under paragraph (b)(1)(v) of this section, L is only able to show the operations of PRS1 and PRS2 are operated in reliance of one another under paragraph (b)(1)(v)(C) of this section. For purposes of applying § 1.199A–1(d), L must treat PRS1 and PRS2 as separate trades or businesses.

(13) *Example 13*—(i) *Facts.* C owns a majority interest in a sailboat racing team and also owns an interest in PRS1 which operates a marina. PRS1 is a trade or business under section 162, but the sailboat racing team is not a trade or business within the meaning of section 162.

(ii) *Analysis.* C has only one trade or business for purposes of section 199A and, therefore, cannot aggregate the interest in the racing team with PRS1 under paragraph (b)(1) of this section.

(14) *Example 14*—(i) *Facts.* Trust wholly owns LLC1, LLC2, and LLC3. LLC1 operates a trucking company that delivers lumber and other supplies sold by LLC2. LLC2 operates a lumber yard and supplies LLC3 with building materials. LLC3 operates a construction business. LLC1, LLC2, and LLC3 have a centralized human resources department, payroll, and accounting department.

(ii) *Analysis.* Because Trust owns 100% of the interests in LLC1, LLC2, and LLC3, Trust satisfies paragraph (b)(1)(i) of this section. Trust can also show that it satisfies paragraph (b)(1)(v)(B) of this section as the trades or businesses have a centralized human resources department, payroll, and accounting department. Trust also can show is meets paragraph (b)(1)(v)(C) of this section as the trades or businesses are operated in coordination, or reliance upon, one or more in the aggregated group. Trust can aggregate LLC1, LLC2, and LLC3 for purposes of applying § 1.199A–1(d).

(15) *Example 15*—(i) *Facts.* PRS1, a partnership, directly operates a food service trade or business and owns 60% of PRS2, which directly operates a movie theater trade or business and a food service trade or business. PRS2's movie theater and food service businesses operate in coordination with, or reliance upon, one another and share a centralized human resources department, payroll, and accounting department. PRS1's and PRS2's food service businesses provide products and services that are the same and share centralized purchasing and shipping to obtain volume discounts.

(ii) *Analysis.* PRS2 may aggregate its movie theater and food service businesses. Paragraph (b)(1)(v) of this section is satisfied because the businesses operate in coordination with one another and share centralized business elements. If PRS does aggregate the two businesses, PRS1 may not aggregate its food service business with PRS2's aggregated trades or businesses. Because PRS1 owns more than 50% of PRS2, thereby satisfying paragraph (b)(1)(i) of this section, PRS1 may aggregate its food service businesses with PRS2's food service business if PRS2 has not aggregated its movie theater and food service businesses. Paragraph (b)(1)(v) of this section is satisfied because the businesses provide the same products and services and share centralized business elements. Under either alternative, PRS1's food service business and PRS2's movie theater cannot be aggregated because there are no factors in paragraph (b)(1)(v) of this section present between the businesses.

(16) *Example 16*—(i) *Facts.* PRS1, a partnership, owns 60% of a commercial rental office building in state A, and 80% of a commercial rental office building in state B. Both commercial rental office building operations share centralized accounting, legal, and human resource functions. PRS1 treats the two commercial rental office buildings as an aggregated trade or business under paragraph (b)(1) of this section.

(ii) *Analysis.* PRS1 owns more than 50% of each trade or business thereby satisfying paragraph (b)(1)(i) of this section. Under paragraph (b)(1)(v) of this section, PRS1 may aggregate its commercial rental office buildings because the businesses provide the same type of property and share accounting, legal, and human resource functions.

(17) *Example 17*—(i) *Facts.* S, an S corporation owns 100% of the interests in a residential condominium building and 100% of the interests in a commercial rental office building. Both building operations share centralized accounting, legal, and human resource functions.

(ii) *Analysis.* S owns more than 50% of each trade or business thereby satisfying paragraph (b)(1)(i) of this section. Although both businesses share significant centralized business elements, S cannot show that another factor under paragraph (b)(1)(v) of this section is present because the two building operations are not of the same type of property. S must treat the residential condominium building and the commercial rental office building as separate trades or businesses for purposes of applying § 1.199A–1(d).

(18) *Example 18*—(i) *Facts.* M owns 75% of a residential apartment building. M also owns 80% of PRS2. PRS2 owns 80% of the interests in a residential condominium building and 80% of the interests in a residential apartment building. PRS2's residential condominium building and residential apartment building operations share centralized back office functions and management. M's residential apartment building and PRS2's residential condominium and apartment building operate in coordination with each other in renting apartments to tenants.

(ii) *Analysis.* PRS2 may aggregate its residential condominium and residential apartment building operations. PRS2 owns more than 50% of each trade or business thereby satisfying paragraph (b)(1)(i) of this section. Paragraph (b)(1)(v) of this section is satisfied because the businesses are of the same type of property and share centralized back office functions and management. M may also add its residential apartment building operations to PRS2's aggregated residential condominium and apartment building operations. M owns more than 50% of each trade or business thereby satisfying paragraph (b)(1)(i) of this section. Paragraph (b)(1)(v) of this section is also satisfied because the businesses operate in coordination with each other.

(e) *Applicability date*—(1) *General rule.* Except as provided in paragraph (e)(2) of this section, the provisions of this section apply to taxable years ending after February 8, 2019.

(2) *Exception for non-calendar year RPE.* For purposes of determining QBI, W–2 wages, and UBIA of qualified property, and the aggregate amount of qualified REIT dividends and qualified PTP income, if an individual receives any of these items from an RPE with a taxable year that begins before January 1, 2018, and ends after December 31, 2017, such items are treated as having been incurred by the individual during the individual's taxable year in which or with which such RPE taxable year ends.

■ **Par. 7.** Section 1.199A–5 is added to read as follows:

§ 1.199A–5 Specified service trades or businesses and the trade or business of performing services as an employee.

(a) *Scope and effect*—(1) *Scope.* This section provides guidance on specified service trades or businesses (SSTBs) and the trade or business of performing services as an employee. This paragraph (a) describes the effect of a trade or business being an SSTB and the trade or business of performing services as an employee. Paragraph (b) of this section provides definitional guidance on SSTBs. Paragraph (c) of this section provides special rules related to SSTBs. Paragraph (d) of this section provides guidance on the trade or business of performing services as an employee. The provisions of this section apply solely for purposes of section 199A of the Internal Revenue Code (Code).

(2) *Effect of being an SSTB.* If a trade or business is an SSTB, no qualified business income (QBI), W–2 wages, or unadjusted basis immediately after acquisition (UBIA) of qualified property from the SSTB may be taken into account by any individual whose taxable income exceeds the phase-in range as defined in § 1.199A–1(b)(4), even if the item is derived from an activity that is not itself a specified service activity. The SSTB limitation also applies to income earned from a publicly traded partnership (PTP). If a trade or business conducted by a relevant passthrough entity (RPE) or PTP is an SSTB, this limitation applies to any direct or indirect individual owners of the business, regardless of whether the owner is passive or participated in any specified service activity. However, the SSTB limitation does not apply to individuals with taxable income below the threshold amount as defined in § 1.199A–1(b)(12). A phase-in rule, provided in § 1.199A–1(d)(2), applies to individuals with taxable income within the phase-in range, allowing them to take into account a certain ''applicable percentage'' of QBI, W–2 wages, and UBIA of qualified property from an SSTB. The phase-in rule also applies to income earned from a PTP. A direct or indirect owner of a trade or business engaged in the performance of a specified service is engaged in the performance of the specified service for purposes of section 199A and this section, regardless of whether the owner is passive or participated in the specified service activity.

(3) *Trade or business of performing services as an employee.* The trade or business of performing services as an employee is not a trade or business for purposes of section 199A and the regulations thereunder. Therefore, no items of income, gain, deduction, or loss from the trade or business of performing services as an employee constitute QBI within the meaning of section 199A and § 1.199A–3. No taxpayer may claim a section 199A deduction for wage income, regardless of the amount of taxable income.

(b) *Definition of specified service trade or business.* Except as provided in paragraph (c)(1) of this section, the term *specified service trade or business (SSTB)* means any of the following:

(1) *Listed SSTBs.* Any trade or business involving the performance of services in one or more of the following fields:

(i) *Health* as described in paragraph (b)(2)(ii) of this section;

(ii) *Law* as described in paragraph (b)(2)(iii) of this section;

(iii) *Accounting* as described in paragraph (b)(2)(iv) of this section;

(iv) *Actuarial science* as described in paragraph (b)(2)(v) of this section;

(v) *Performing arts* as described in paragraph (b)(2)(vi) of this section;

(vi) *Consulting* as described in paragraph (b)(2)(vii) of this section;

(vii) *Athletics* as described in paragraph (b)(2)(viii) of this section;

(viii) *Financial services* as described in paragraph (b)(2)(ix) of this section;

(ix) *Brokerage services* as described in paragraph (b)(2)(x) of this section;

(x) *Investing and investment management* as described in paragraph (b)(2)(xi) of this section;

(xi) *Trading* as described in paragraph (b)(2)(xii) of this section;

(xii) *Dealing in securities (as defined in section 475(c)(2)), partnership interests, or commodities (as defined in section 475(e)(2))* as described in paragraph (b)(2)(xiii) of this section; or

(xiii) *Any trade or business where the principal asset of such trade or business is the reputation or skill of one or more of its employees or owners* as defined in paragraph (b)(2)(xiv) of this section.

(2) *Additional rules for applying section 199A(d)(2) and paragraph (b) of this section*—(i) *In general—(A) No effect on other tax rules.* This paragraph (b)(2) provides additional rules for determining whether a business is an SSTB within the meaning of section 199A(d)(2) and paragraph (b) of this section only. The rules of this paragraph (b)(2) apply solely for purposes of section 199A and therefore may not be taken into account for purposes of applying any provision of law or regulation other than section 199A and the regulations thereunder, except to the extent such provision expressly refers to section 199A(d) or this section.

(B) *Hedging transactions.* Income, deduction, gain or loss from a *hedging transaction* (as defined in § 1.1221–2(b)) entered into by an individual or RPE in the normal course of the individual's or RPE's trade or business is treated as income, deduction, gain, or loss from that trade or business for purposes of this paragraph (b)(2). See also § 1.446–4.

(ii) *Meaning of services performed in the field of health.* For purposes of section 199A(d)(2) and paragraph (b)(1)(i) of this section only, the *performance of services in the field of health* means the provision of medical services by individuals such as physicians, pharmacists, nurses, dentists, veterinarians, physical therapists, psychologists, and other similar healthcare professionals performing services in their capacity as such. The performance of services in the field of health does not include the provision of services not directly related to a medical services field, even though the services provided may purportedly relate to the health of the service recipient. For example, the performance of services in the field of health does not include the operation of health clubs or health spas that provide physical exercise or conditioning to their customers, payment processing, or the research, testing, and manufacture and/or sales of pharmaceuticals or medical devices.

(iii) *Meaning of services performed in the field of law.* For purposes of section 199A(d)(2) and paragraph (b)(1)(ii) of this section only, the *performance of services in the field of law* means the performance of legal services by individuals such as lawyers, paralegals, legal arbitrators, mediators, and similar professionals performing services in their capacity as such. The performance of services in the field of law does not include the provision of services that do not require skills unique to the field of law; for example, the provision of services in the field of law does not include the provision of services by printers, delivery services, or stenography services.

(iv) *Meaning of services performed in the field of accounting.* For purposes of section 199A(d)(2) and paragraph (b)(1)(iii) of this section only, the *performance of services in the field of accounting* means the provision of services by individuals such as accountants, enrolled agents, return preparers, financial auditors, and similar professionals performing services in their capacity as such.

(v) *Meaning of services performed in the field of actuarial science.* For purposes of section 199A(d)(2) and paragraph (b)(1)(iv) of this section only, the *performance of services in the field of actuarial science* means the provision of services by individuals such as actuaries and similar professionals performing services in their capacity as such.

(vi) *Meaning of services performed in the field of performing arts.* For purposes of section 199A(d)(2) and paragraph (b)(1)(v) of this section only, the *performance of services in the field of the performing arts* means the performance of services by individuals who participate in the creation of performing arts, such as actors, singers, musicians, entertainers, directors, and similar professionals performing services in their capacity as such. The performance of services in the field of performing arts does not include the provision of services that do not require skills unique to the creation of performing arts, such as the maintenance and operation of equipment or facilities for use in the performing arts. Similarly, the performance of services in the field of the performing arts does not include the provision of services by persons who broadcast or otherwise disseminate video or audio of performing arts to the public.

(vii) *Meaning of services performed in the field of consulting.* For purposes of section 199A(d)(2) and paragraph (b)(1)(vi) of this section only, the *performance of services in the field of consulting* means the provision of professional advice and counsel to clients to assist the client in achieving goals and solving problems. Consulting includes providing advice and counsel regarding advocacy with the intention of influencing decisions made by a government or governmental agency and all attempts to influence legislators and other government officials on behalf of a client by lobbyists and other similar professionals performing services in their capacity as such. The performance of services in the field of consulting does not include the performance of services other than advice and counsel, such as sales (or economically similar services) or the provision of training and educational courses. For purposes of the preceding sentence, the determination of whether a person's services are sales or economically similar services will be based on all the facts and circumstances of that person's business. Such facts and circumstances include, for example, the manner in which the taxpayer is compensated for the services provided. Performance of services in the field of consulting does not include the performance of consulting services embedded in, or ancillary to, the sale of goods or performance of services on behalf of a trade or business that is otherwise not an SSTB (such as typical services provided by a building contractor) if there is no separate payment for the consulting services. Services within the fields of architecture and engineering are not treated as consulting services.

(viii) *Meaning of services performed in the field of athletics.* For purposes of section 199A(d)(2) and paragraph (b)(1)(vii) of this section only, the *performance of services in the field of athletics* means the performance of services by individuals who participate in athletic competition such as athletes, coaches, and team managers in sports such as baseball, basketball, football, soccer, hockey, martial arts, boxing, bowling, tennis, golf, skiing, snowboarding, track and field, billiards, and racing. The performance of services in the field of athletics does not include the provision of services that do not require skills unique to athletic competition, such as the maintenance and operation of equipment or facilities for use in athletic events. Similarly, the performance of services in the field of athletics does not include the provision of services by persons who broadcast or otherwise disseminate video or audio of athletic events to the public.

(ix) *Meaning of services performed in the field of financial services.* For purposes of section 199A(d)(2) and paragraph (b)(1)(viii) of this section only, the *performance of services in the field of financial services* means the provision of financial services to clients including managing wealth, advising clients with respect to finances, developing retirement plans, developing wealth transition plans, the provision of advisory and other similar services regarding valuations, mergers, acquisitions, dispositions, restructurings (including in title 11 of the Code or similar cases), and raising financial capital by underwriting, or acting as a client's agent in the issuance of securities and similar services. This includes services provided by financial advisors, investment bankers, wealth planners, retirement advisors, and other similar professionals performing services in their capacity as such. Solely for purposes of section 199A, the performance of services in the field of financial services does not include taking deposits or making loans, but does include arranging lending transactions between a lender and borrower.

(x) *Meaning of services performed in the field of brokerage services.* For purposes of section 199A(d)(2) and paragraph (b)(1)(ix) of this section only, the *performance of services in the field of brokerage services* includes services in which a person arranges transactions between a buyer and a seller with respect to securities (as defined in section 475(c)(2)) for a commission or fee. This includes services provided by stock brokers and other similar professionals, but does not include services provided by real estate agents and brokers, or insurance agents and brokers.

(xi) *Meaning of the provision of services in investing and investment management.* For purposes of section 199A(d)(2) and paragraph (b)(1)(x) of this section only, the *performance of services that consist of investing and investment management* refers to a trade or business involving the receipt of fees for providing investing, asset management, or investment management services, including providing advice with respect to buying and selling investments. The performance of services of investing and investment management does not include directly managing real property.

(xii) *Meaning of the provision of services in trading.* For purposes of section 199A(d)(2) and paragraph (b)(1)(xi) of this section only, the *performance of services that consist of trading* means a trade or business of trading in securities (as defined in section 475(c)(2)), commodities (as defined in section 475(e)(2)), or partnership interests. Whether a person is a trader in securities, commodities, or partnership interests is determined by taking into account all relevant facts and circumstances, including the source and type of profit that is associated with engaging in the activity regardless of whether that person trades for the person's own account, for the account of others, or any combination thereof.

(xiii) *Meaning of the provision of services in dealing*—(A) *Dealing in securities.* For purposes of section 199A(d)(2) and paragraph (b)(1)(xii) of this section only, *the performance of services that consist of dealing in securities (as defined in section 475(c)(2))* means regularly purchasing

securities from and selling securities to customers in the ordinary course of a trade or business or regularly offering to enter into, assume, offset, assign, or otherwise terminate positions in securities with customers in the ordinary course of a trade or business. Solely for purposes of the preceding sentence, the performance of services to originate a loan is not treated as the purchase of a security from the borrower in determining whether the lender is dealing in securities.

(B) *Dealing in commodities.* For purposes of section 199A(d)(2) and paragraph (b)(1)(xii) of this section only, *the performance of services that consist of dealing in commodities (as defined in section 475(e)(2))* means regularly purchasing commodities from and selling commodities to customers in the ordinary course of a trade or business or regularly offering to enter into, assume, offset, assign, or otherwise terminate positions in commodities with customers in the ordinary course of a trade or business. Solely for purposes of the preceding sentence, gains and losses from qualified active sales as defined in paragraph (b)(2)(xiii)(B)(*1*) of this section are not taken into account in determining whether a person is engaged in the trade or business of dealing in commodities.

(*1*) *Qualified active sale.* The term *qualified active sale* means the sale of commodities in the active conduct of a commodities business as a producer, processor, merchant, or handler of commodities if the trade or business is as an active producer, processor, merchant or handler of commodities. A hedging transaction described in paragraph (b)(2)(i)(B) of this section is treated as a qualified active sale. The sale of commodities held by a trade or business other than in its capacity as an active producer, processor, merchant, or handler of commodities is not a qualified active sale. For example, the sale by a trade or business of commodities that were held for investment or speculation would not be a qualified active sale.

(*2*) *Active conduct of a commodities business.* For purposes of paragraph (b)(2)(xiii)(B)(*1*) of this section, a trade or business is engaged in the active conduct of a commodities business as a producer, processor, merchant, or handler of commodities only with respect to commodities for which each of the conditions described in paragraphs (b)(2)(xiii)(B)(*3*) through (*5*) of this section are satisfied.

(*3*) *Directly holds commodities as inventory or similar property.* The commodities trade or business holds the commodities directly, and not through an agent or independent contractor, as inventory or similar property. The term inventory or similar property means property that is stock in trade of the trade or business or other property of a kind that would properly be included in the inventory of the trade or business if on hand at the close of the taxable year, or property held by the trade or business primarily for sale to customers in the ordinary course of its trade or business.

(*4*) *Directly incurs substantial expenses in the ordinary course.* The commodities trade or business incurs substantial expenses in the ordinary course of the commodities trade or business from engaging in one or more of the following activities directly, and not through an agent or independent contractor—

(*i*) Substantial activities in the production of the commodities, including planting, tending or harvesting crops, raising or slaughtering livestock, or extracting minerals;

(*ii*) Substantial processing activities prior to the sale of the commodities, including the blending and drying of agricultural commodities, or the concentrating, refining, mixing, crushing, aerating or milling of commodities; or

(*iii*) Significant activities as described in paragraph (b)(2)(xiii)(B)(*5*) of this section.

(*5*) *Significant activities for purposes of paragraph (b)(2)(xiii)(B)(4)(iii) of this section.* The commodities trade or business performs significant activities with respect to the commodities that consists of—

(*i*) The physical movement, handling and storage of the commodities, including preparation of contracts and invoices, arranging transportation, insurance and credit, arranging for receipt, transfer or negotiation of shipping documents, arranging storage or warehousing, and dealing with quality claims;

(*ii*) Owning and operating facilities for storage or warehousing; or

(*iii*) Owning, chartering, or leasing vessels or vehicles for the transportation of the commodities.

(C) *Dealing in partnership interests.* For purposes of section 199A(d)(2) and paragraph (b)(1)(xii) of this section only, *the performance of services that consist of dealing in partnership interests* means regularly purchasing partnership interests from and selling partnership interests to customers in the ordinary course of a trade or business or regularly offering to enter into, assume, offset, assign, or otherwise terminate positions in partnership interests with customers in the ordinary course of a trade or business.

(xiv) *Meaning of trade or business where the principal asset of such trade or business is the reputation or skill of one or more employees or owners.* For purposes of section 199A(d)(2) and paragraph (b)(1)(xiii) of this section only, the term *any trade or business where the principal asset of such trade or business is the reputation or skill of one or more of its employees or owners* means any trade or business that consists of any of the following (or any combination thereof):

(A) A trade or business in which a person receives fees, compensation, or other income for endorsing products or services;

(B) A trade or business in which a person licenses or receives fees, compensation, or other income for the use of an individual's image, likeness, name, signature, voice, trademark, or any other symbols associated with the individual's identity; or

(C) Receiving fees, compensation, or other income for appearing at an event or on radio, television, or another media format.

(D) For purposes of paragraphs (b)(2)(xiv)(A) through (C) of this section, the term *fees, compensation, or other income* includes the receipt of a partnership interest and the corresponding distributive share of income, deduction, gain, or loss from the partnership, or the receipt of stock of an S corporation and the corresponding income, deduction, gain, or loss from the S corporation stock.

(3) *Examples.* The following examples illustrate the rules in paragraphs (a) and (b) of this section. The examples do not address all types of services that may or may not qualify as specified services. Unless otherwise provided, the individual in each example has taxable income in excess of the threshold amount.

(i) *Example 1.* B is a board-certified pharmacist who contracts as an independent contractor with X, a small medical facility in a rural area. X employs one full time pharmacist, but contracts with B when X's needs exceed the capacity of its full-time staff. When engaged by X, B is responsible for receiving and reviewing orders from physicians providing medical care at the facility; making recommendations on dosing and alternatives to the ordering physician; performing inoculations, checking for drug interactions, and filling pharmaceutical orders for patients receiving care at X. B is engaged in the performance of services in the field of health within the meaning of section 199A(d)(2) and paragraphs (b)(1)(i) and (b)(2)(ii) of this section.

(ii) *Example 2.* X is the operator of a residential facility that provides a variety of services to senior citizens who reside on campus. For residents, X offers standard

domestic services including housing management and maintenance, meals, laundry, entertainment, and other similar services. In addition, X contracts with local professional healthcare organizations to offer residents a range of medical and health services provided at the facility, including skilled nursing care, physical and occupational therapy, speech-language pathology services, medical social services, medications, medical supplies and equipment used in the facility, ambulance transportation to the nearest supplier of needed services, and dietary counseling. X receives all of its income from residents for the costs associated with residing at the facility. Any health and medical services are billed directly by the healthcare providers to the senior citizens for those professional healthcare services even though those services are provided at the facility. X does not perform services in the field of health within the meaning of section 199A(d)(2) and paragraphs (b)(1)(i) and (b)(2)(ii) of this section.

(iii) *Example 3.* Y operates specialty surgical centers that provide outpatient medical procedures that do not require the patient to remain overnight for recovery or observation following the procedure. Y is a private organization that owns a number of facilities throughout the country. For each facility, Y ensures compliance with state and Federal laws for medical facilities and manages the facility's operations and performs all administrative functions. Y does not employ physicians, nurses, and medical assistants, but enters into agreements with other professional medical organizations or directly with the medical professionals to perform the procedures and provide all medical care. Patients are billed by Y for the facility costs relating to their procedure and by the healthcare professional or their affiliated organization for the actual costs of the procedure conducted by the physician and medical support team. Y does not perform services in the field of health within the meaning of section 199A(d)(2) and paragraphs (b)(1)(i) and (b)(2)(ii) of this section.

(iv) *Example 4.* Z is the developer and the only provider of a patented test used to detect a particular medical condition. Z accepts test orders only from health care professionals (Z's clients), does not have contact with patients, and Z's employees do not diagnose, treat, or manage any aspect of patient care. A, who manages Z's testing operations, is the only employee with an advanced medical degree. All other employees are technical support staff and not healthcare professionals. Z's workers are highly educated, but the skills the workers bring to the job are not often useful for Z's testing methods. In order to perform the duties required by Z, employees receive more than a year of specialized training for working with Z's test, which is of no use to other employers. Upon completion of an ordered test, Z analyses the results and provides its clients a report summarizing the findings. Z does not discuss the report's results, or the patient's diagnosis or treatment with any health care provider or the patient. Z is not informed by the healthcare provider as to the healthcare provider's diagnosis or treatment. Z is not providing services in the field of health within the meaning of section 199A(d)(2) and paragraphs (b)(1)(i) and (b)(2)(ii) of this section or where the principal asset of the trade or business is the reputation or skill of one or more of its employees within the meaning of paragraphs (b)(1)(xiii) and (b)(2)(xiv) of this section.

(v) *Example 5.* A, a singer and songwriter, writes and records a song. A is paid a mechanical royalty when the song is licensed or streamed. A is also paid a performance royalty when the recorded song is played publicly. A is engaged in the performance of services in an SSTB in the field of performing arts within the meaning of section 199A(d)(2) or paragraphs (b)(1)(v) and (b)(2)(vi) of this section. The royalties that A receives for the song are not eligible for a deduction under section 199A.

(vi) *Example 6.* B is a partner in Movie LLC, a partnership. Movie LLC is a film production company. Movie LLC plans and coordinates film production. Movie LLC shares in the profits of the films that it produces. Therefore, Movie LLC is engaged in the performance of services in an SSTB in the field of performing arts within the meaning of section 199A(d)(2) or paragraphs (b)(1)(v) and (b)(2)(vi) of this section. B is a passive owner in Movie LLC and does not provide any services with respect to Movie LLC. However, because Movie LLC is engaged in an SSTB in the field of performing arts, B's distributive share of the income, gain, deduction, and loss with respect to Movie LLC is not eligible for a deduction under section 199A.

(vii) *Example 7.* C is a partner in Partnership, which solely owns and operates a professional sports team. Partnership employs athletes and sells tickets and broadcast rights for games in which the sports team competes. Partnership sells the broadcast rights to Broadcast LLC, a separate trade or business. Broadcast LLC solely broadcasts the games. Partnership is engaged in the performance of services in an SSTB in the field of athletics within the meaning of section 199A(d)(2) or paragraphs (b)(1)(vii) and (b)(2)(viii) of this section. The tickets sales and the sale of the broadcast rights are both the performance of services in the field of athletics. C is a passive owner in Partnership and C does not provide any services with respect to Partnership or the sports team. However, because Partnership is engaged in an SSTB in the field of athletics, C's distributive share of the income, gain, deduction, and loss with respect to Partnership is not eligible for a deduction under section 199A. Broadcast LLC is not engaged in the performance of services in an SSTB in the field of athletics.

(viii) *Example 8.* D is in the business of providing services that assist unrelated entities in making their personnel structures more efficient. D studies its client's organization and structure and compares it to peers in its industry. D then makes recommendations and provides advice to its client regarding possible changes in the client's personnel structure, including the use of temporary workers. D does not provide any temporary workers to its clients and D's compensation and fees are not affected by whether D's clients used temporary workers. D is engaged in the performance of services in an SSTB in the field of consulting within the meaning of section 199A(d)(2) or paragraphs (b)(1)(vi) and (b)(2)(vii) of this section.

(ix) *Example 9.* E is an individual who owns and operates a temporary worker staffing firm primarily focused on the software consulting industry. Business clients hire E to provide temporary workers that have the necessary technical skills and experience with a variety of business software to provide consulting and advice regarding the proper selection and operation of software most appropriate for the business they are advising. E does not have a technical software engineering background and does not provide software consulting advice herself. E reviews resumes and refers candidates to the client when the client indicates a need for temporary workers. E does not evaluate her clients' needs about whether the client needs workers and does not evaluate the clients' consulting contracts to determine the type of expertise needed. Rather, the client provides E with a job description indicating the required skills for the upcoming consulting project. E is paid a fixed fee for each temporary worker actually hired by the client and receives a bonus if that worker is hired permanently within a year of referral. E's fee is not contingent on the profits of its clients. E is not considered to be engaged in the performance of services in the field of consulting within the meaning of section 199A(d)(2) or (b)(1)(vi) and (b)(2)(vii) of this section.

(x) *Example 10.* F is in the business of licensing software to customers. F discusses and evaluates the customer's software needs with the customer. The taxpayer advises the customer on the particular software products it licenses. F is paid a flat price for the software license. After the customer licenses the software, F helps to implement the software. F is engaged in the trade or business of licensing software and not engaged in an SSTB in the field of consulting within the meaning of section 199A(d)(2) or paragraphs (b)(1)(vi) and (b)(2)(vii) of this section.

(xi) *Example 11.* G is in the business of providing services to assist clients with their finances. G will study a particular client's financial situation, including, the client's present income, savings, and investments, and anticipated future economic and financial needs. Based on this study, G will then assist the client in making decisions and plans regarding the client's financial activities. Such financial planning includes the design of a personal budget to assist the client in monitoring the client's financial situation, the adoption of investment strategies tailored to the client's needs, and other similar services. G is engaged in the performance of services in an SSTB in the field of financial services within the meaning of section 199A(d)(2) or paragraphs (b)(1)(viii) and (b)(2)(ix) of this section.

(xii) *Example 12.* H is in the business of franchising a brand of personal financial planning offices, which generally provide personal wealth management, retirement

planning, and other financial advice services to customers for a fee. H does not provide financial planning services itself. H licenses the right to use the business tradename, other branding intellectual property, and a marketing plan to third-party financial planner franchisees that operate the franchised locations and provide all services to customers. In exchange, the franchisees compensate H based on a fee structure, which includes a one-time fee to acquire the franchise. H is not engaged in the performance of services in the field of financial services within the meaning of section 199A(d)(2) or paragraphs (b)(1)(viii) and (b)(2)(ix) of this section.

(xiii) *Example 13.* J is in the business of executing transactions for customers involving various types of securities or commodities generally traded through organized exchanges or other similar networks. Customers place orders with J to trade securities or commodities based on the taxpayer's recommendations. J's compensation for its services typically is based on completion of the trade orders. J is engaged in an SSTB in the field of brokerage services within the meaning of section 199A(d)(2) or paragraphs (b)(1)(ix) and (b)(2)(x) of this section.

(xiv) *Example 14.* K owns 100% of Corp, an S corporation, which operates a bicycle sales and repair business. Corp has 8 employees, including K. Half of Corp's net income is generated from sales of new and used bicycles and related goods, such as helmets, and bicycle-related equipment. The other half of Corp's net income is generated from bicycle repair services performed by K and Corp's other employees. Corp's assets consist of inventory, fixtures, bicycle repair equipment, and a leasehold on its retail location. Several of the employees and G have worked in the bicycle business for many years, and have acquired substantial skill and reputation in the field. Customers often consult with the employees on the best bicycle for purchase. K is in the business of sales and repairs of bicycles and is not engaged in an SSTB within the meaning of section 199A(d)(2) or paragraphs (b)(1)(xiii) and (b)(2)(xiv) of this section.

(xv) *Example 15.* L is a well-known chef and the sole owner of multiple restaurants each of which is owned in a disregarded entity. Due to L's skill and reputation as a chef, L receives an endorsement fee of $500,000 for the use of L's name on a line of cooking utensils and cookware. L is in the trade or business of being a chef and owning restaurants and such trade or business is not an SSTB. However, L is also in the trade or business of receiving endorsement income. L's trade or business consisting of the receipt of the endorsement fee for L's skill and/or reputation is an SSTB within the meaning of section 199A(d)(2) or paragraphs (b)(1)(xiii) and (b)(2)(xiv) of this section.

(xvi) *Example 16.* M is a well-known actor. M entered into a partnership with Shoe Company, in which M contributed her likeness and the use of her name to the partnership in exchange for a 50% interest in the partnership and a guaranteed payment. M's trade or business consisting of the receipt of the partnership interest and the corresponding distributive share with respect to the partnership interest for M's likeness and the use of her name is an SSTB within the meaning of section 199A(d)(2) or paragraphs (b)(1)(xiii) and (b)(2)(xiv) of this section.

(c) *Special rules*—(1) *De minimis rule*—(i) *Gross receipts of $25 million or less.* For a trade or business with gross receipts of $25 million or less for the taxable year, a trade or business is not an SSTB if less than 10 percent of the gross receipts of the trade or business are attributable to the performance of services in a field described in paragraph (b) of this section. For purposes of determining whether this 10 percent test is satisfied, the performance of any activity incident to the actual performance of services in the field is considered the performance of services in that field.

(ii) *Gross receipts of greater than $25 million.* For a trade or business with gross receipts of greater than $25 million for the taxable year, the rules of paragraph (c)(1)(i) of this section are applied by substituting ''5 percent'' for ''10 percent'' each place it appears.

(iii) *Examples.* The following examples illustrate the provisions of paragraph (c)(1) of this section.

(A) *Example 1.* Landscape LLC sells lawn care and landscaping equipment and also provides advice and counsel on landscape design for large office parks and residential buildings. The landscape design services include advice on the selection and placement of trees, shrubs, and flowers and are considered to be the performance of services in the field of consulting under paragraphs (b)(1)(vi) and (b)(2)(vii) of this section. Landscape LLC separately invoices for its landscape design services and does not sell the trees, shrubs, or flowers it recommends for use in the landscape design. Landscape LLC maintains one set of books and records and treats the equipment sales and design services as a single trade or business for purposes of sections 162 and 199A. Landscape LLC has gross receipts of $2 million. $250,000 of the gross receipts is attributable to the landscape design services, an SSTB. Because the gross receipts from the consulting services exceed 10 percent of Landscape LLC's total gross receipts, the entirety of Landscape LLC's trade or business is considered an SSTB.

(B) *Example 2.* Animal Care LLC provides veterinarian services performed by licensed staff and also develops and sells its own line of organic dog food at its veterinarian clinic and online. The veterinarian services are considered to be the performance of services in the field of health under paragraphs (b)(1)(i) and (b)(2)(ii) of this section. Animal Care LLC separately invoices for its veterinarian services and the sale of its organic dog food. Animal Care LLC maintains separate books and records for its veterinarian clinic and its development and sale of its dog food. Animal Care LLC also has separate employees who are unaffiliated with the veterinary clinic and who only work on the formulation, marketing, sales, and distribution of the organic dog food products. Animal Care LLC treats its veterinary practice and the dog food development and sales as separate trades or businesses for purposes of section 162 and 199A. Animal Care LLC has gross receipts of $3,000,000. $1,000,000 of the gross receipts is attributable to the veterinary services, an SSTB. Although the gross receipts from the services in the field of health exceed 10 percent of Animal Care LLC's total gross receipts, the dog food development and sales business is not considered an SSTB due to the fact that the veterinary practice and the dog food development and sales are separate trades or businesses under section 162.

(2) *Services or property provided to an SSTB*—(i) *In general.* If a trade or business provides property or services to an SSTB within the meaning of this section and there is 50 percent or more common ownership of the trades or businesses, that portion of the trade or business of providing property or services to the 50 percent or more commonly-owned SSTB will be treated as a separate SSTB with respect to the related parties.

(ii) *50 percent or more common ownership.* For purposes of paragraph (c)(2)(i) and (ii) of this section, 50 percent or more common ownership includes direct or indirect ownership by related parties within the meaning of sections 267(b) or 707(b).

(iii) *Examples.* The following examples illustrate the provisions of paragraph (c)(2) of this section.

(A) *Example 1.* Law Firm is a partnership that provides legal services to clients, owns its own office building and employs its own administrative staff. Law Firm divides into three partnerships. Partnership 1 performs legal services to clients. Partnership 2 owns the office building and rents the entire building to Partnership 1. Partnership 3 employs the administrative staff and through a contract with Partnership 1 provides administrative services to Partnership 1 in exchange for fees. All three of the partnerships are owned by the same people (the original owners of Law Firm). Because Partnership 2 provides all of its property to Partnership 1, and Partnership 3 provides all of its services to Partnership 1, Partnerships 2 and 3 will each be treated as an SSTB under paragraph (c)(2) of this section.

(B) *Example 2.* Assume the same facts as in Example 1 of this paragraph (c)(2), except that Partnership 2, which owns the office building, rents 50 percent of the building to Partnership 1, which provides legal services, and the other 50 percent to various unrelated third party tenants. Because Partnership 2 is owned by the same people as Partnership 1, the portion of Partnership 2's leasing activity related to the lease of the building to Partnership 1 will be treated as a separate SSTB. The remaining 50 percent of Partnership 2's leasing activity will not be treated as an SSTB.

(d) *Trade or business of performing services as an employee*—(1) *In general.* The trade or business of performing services as an employee is not a trade or business for purposes of section 199A and the regulations thereunder. Therefore, no items of income, gain, deduction, and loss from the trade or business of performing services as an employee constitute QBI within the meaning of section 199A and § 1.199A–3. Except as provided in paragraph (d)(3) of this section, income from the trade or business of performing services as an employee refers to all wages (within the meaning of section 3401(a)) and other income earned in a capacity as an employee, including payments described in § 1.6041–2(a)(1) (other than payments to individuals described in section 3121(d)(3)) and § 1.6041–2(b)(1).

(2) *Employer's Federal employment tax classification of employee immaterial.* For purposes of determining whether wages are earned in a capacity as an employee as provided in paragraph (d)(1) of this section, the treatment of an employee by an employer as anything other than an employee for Federal employment tax purposes is immaterial. Thus, if a worker should be properly classified as an employee, it is of no consequence that the employee is treated as a non-employee by the employer for Federal employment tax purposes.

(3) *Presumption that former employees are still employees*—(i) *Presumption.* Solely for purposes of section 199A(d)(1)(B) and paragraph (d)(1) of this section, an individual that was properly treated as an employee for Federal employment tax purposes by the person to which he or she provided services and who is subsequently treated as other than an employee by such person with regard to the provision of substantially the same services directly or indirectly to the person (or a related person), is presumed, for three years after ceasing to be treated as an employee for Federal employment tax purposes, to be in the trade or business of performing services as an employee with regard to such services. As provided in paragraph (d)(3)(ii) of this section, this presumption may be rebutted upon a showing by the individual that, under Federal tax law, regulations, and principles (including common-law employee classification rules), the individual is performing services in a capacity other than as an employee. This presumption applies regardless of whether the individual provides services directly or indirectly through an entity or entities.

(ii) *Rebuttal of presumption.* Upon notice from the IRS, an individual rebuts the presumption in paragraph (d)(3)(i) of this section by providing records, such as contracts or partnership agreements, that provide sufficient evidence to corroborate the individual's status as a non-employee.

(iii) *Examples.* The following examples illustrate the provision of paragraph (d)(3) of this section. Unless otherwise provided, the individual in each example has taxable income in excess of the threshold amount.

(A) *Example 1.* A is employed by PRS, a partnership for Federal tax purposes, as a fulltime employee and is treated as such for Federal employment tax purposes. A quits his job for PRS and enters into a contract with PRS under which A provides substantially the same services that A previously provided to PRS in A's capacity as an employee. Because A was treated as an employee for services he provided to PRS, and now is no longer treated as an employee with regard to such services, A is presumed (solely for purposes of section 199A(d)(1)(B) and paragraphs (a)(3) and (d) of this section) to be in the trade or business of performing services as an employee with regard to his services performed for PRS. Unless the presumption is rebutted with a showing that, under Federal tax law, regulations, and principles (including the common-law employee classification rules), A is not an employee, any amounts paid by PRS to A with respect to such services will not be QBI for purposes of section 199A. The presumption would apply even if, instead of contracting directly with PRS, A formed a disregarded entity, or a passthrough entity, and the entity entered into the contract with PRS.

(B) *Example 2.* C is an attorney employed as an associate in a law firm (Law Firm 1) and was treated as such for Federal employment tax purposes. C and the other associates in Law Firm 1 have taxable income below the threshold amount. Law Firm 1 terminates its employment relationship with C and its other associates. C and the other former associates form a new partnership, Law Firm 2, which contracts to perform legal services for Law Firm 1. Therefore, in form, C is now a partner in Law Firm 2 which earns income from providing legal services to Law Firm 1. C continues to provide substantially the same legal services to Law Firm 1 and its clients. Because C was previously treated as an employee for services she provided to Law Firm 1, and now is no longer treated as an employee with regard to such services, C is presumed (solely for purposes of section 199A(d)(1)(B) and paragraphs (a)(3) and (d) of this section) to be in the trade or business of performing services as an employee with respect to the services C provides to Law Firm 1 indirectly through Law Firm 2. Unless the presumption is rebutted with a showing that, under Federal tax law, regulations, and principles (including common-law employee classification rules), C's distributive share of Law Firm 2 income (including any guaranteed payments) will not be QBI for purposes of section 199A. The results in this example would not change if, instead of contracting with Law Firm 1, Law Firm 2 was instead admitted as a partner in Law Firm 1.

(C) *Example 3.* E is an engineer employed as a senior project engineer in an engineering firm, Engineering Firm. Engineering Firm is a partnership for Federal tax purposes and structured such that after 10 years, senior project engineers are considered for partner if certain career milestones are met. After 10 years, E meets those career milestones and is admitted as a partner in Engineering Firm. As a partner in Engineering Firm, E shares in the net profits of Engineering Firm, and also otherwise satisfies the requirements under Federal tax law, regulations, and principles (including common-law employee classification rules) to be respected as a partner. E is presumed (solely for purposes of section 199A(d)(1)(B) and paragraphs (a)(3) and (d) of this section) to be in the trade or business of performing services as an employee with respect to the services E provides to Engineering Firm. However, E is able to rebut the presumption by showing that E became a partner in Engineering Firm as a career milestone, shares in the overall net profits in Engineering Firm, and otherwise satisfies the requirements under Federal tax law, regulations, and principles (including common-law employee classification rules) to be respected as a partner.

(D) *Example 4.* F is a financial advisor employed by a financial advisory firm, Advisory Firm, a partnership for Federal tax purposes, as a fulltime employee and is treated as such for Federal employment tax purposes. F has taxable income below the threshold amount. Advisory Firm is a partnership and offers F the opportunity to be admitted as a partner. F elects to be admitted as a partner to Advisory Firm and is admitted as a partner to Advisory Firm. As a partner in Advisory Firm, F shares in the net profits of Advisory Firm, is obligated to Advisory Firm in ways that F was not previously obligated as an employee, is no longer entitled to certain benefits available only to employees of Advisory Firm, and has materially modified his relationship with Advisory Firm. F's share of net profits is not subject to a floor or capped at a dollar amount. F is presumed (solely for purposes of section 199A(d)(1)(B) and paragraphs (a)(3) and (d) of this section) to be in the trade or business of performing services as an employee with respect to the services F provides to Advisory Firm. However, F is able to rebut the presumption by showing that F became a partner in Advisory Firm by sharing in the profits of Advisory Firm, materially modifying F's relationship with Advisory Firm, and otherwise satisfying the requirements under Federal tax law, regulations, and principles (including common-law employee classification rules) to be respected as a partner.

(e) *Applicability date*—(1) *General rule.* Except as provided in paragraph (e)(2) of this section, the provisions of this section apply to taxable years ending after February 8, 2019.

(2) *Exceptions*–(i) *Anti-abuse rules.* The provisions of paragraphs (c)(2) and

(d)(3) of this section apply to taxable years ending after December 22, 2017.

(ii) *Non-calendar year RPE.* For purposes of determining QBI, W–2 wages, UBIA of qualified property, and the aggregate amount of qualified REIT dividends and qualified PTP income, if an individual receives any of these items from an RPE with a taxable year that begins before January 1, 2018, and ends after December 31, 2017, such items are treated as having been incurred by the individual during the individual's taxable year in which or with which such RPE taxable year ends.

■ **Par. 8.** Section 1.199A–6 is added to read as follows:

§ 1.199A–6 Relevant passthrough entities (RPEs), publicly traded partnerships (PTPs), trusts, and estates.

(a) *Overview.* This section provides special rules for RPEs, PTPs, trusts, and estates necessary for the computation of the section 199A deduction of their owners or beneficiaries. Paragraph (b) of this section provides computational and reporting rules for RPEs necessary for individuals who own interests in RPEs to calculate their section 199A deduction. Paragraph (c) of this section provides computational and reporting rules for PTPs necessary for individuals who own interests in PTPs to calculate their section 199A deduction. Paragraph (d) of this section provides computational and reporting rules for trusts (other than grantor trusts) and estates necessary for their beneficiaries to calculate their section 199A deduction.

(b) *Computational and reporting rules for RPEs*—(1) *In general.* An RPE must determine and report information attributable to any trades or businesses it is engaged in necessary for its owners to determine their section 199A deduction.

(2) *Computational rules.* Using the following four rules, an RPE must determine the items necessary for individuals who own interests in the RPE to calculate their section 199A deduction under § 1.199A–1(c) or (d). An RPE that chooses to aggregate trades or businesses under the rules of § 1.199A–4 may determine these items for the aggregated trade or business.

(i) First, the RPE must determine if it is engaged in one or more trades or businesses. The RPE must also determine whether any of its trades or businesses is an SSTB under the rules of § 1.199A–5.

(ii) Second, the RPE must apply the rules in § 1.199A–3 to determine the QBI for each trade or business engaged in directly.

(iii) Third, the RPE must apply the rules in § 1.199A–2 to determine the W–2 wages and UBIA of qualified property for each trade or business engaged in directly.

(iv) Fourth, the RPE must determine whether it has any qualified REIT dividends as defined in § 1.199A–3(c)(1) earned directly or through another RPE. The RPE must also determine the amount of qualified PTP income as defined in § 1.199A–3(c)(2) earned directly or indirectly through investments in PTPs.

(3) *Reporting rules for RPEs*—(i) *Trade or business directly engaged in.* An RPE must separately identify and report on the Schedule K–1 issued to its owners for any trade or business (including an aggregated trade or business) engaged in directly by the RPE—

(A) Each owner's allocable share of QBI, W–2 wages, and UBIA of qualified property attributable to each such trade or business; and

(B) Whether any of the trades or businesses described in paragraph (b)(3)(i) of this section is an SSTB.

(ii) *Other items.* An RPE must also report on an attachment to the Schedule K–1, any QBI, W–2 wages, UBIA of qualified property, or SSTB determinations, reported to it by any RPE in which the RPE owns a direct or indirect interest. The RPE must also report each owner's allocated share of any qualified REIT dividends received by the RPE (including through another RPE) as well as any qualified PTP income or loss received by the RPE for each PTP in which the RPE holds an interest (including through another RPE). Such information can be reported on an amended or late filed return to the extent that the period of limitations remains open.

(iii) *Failure to report information.* If an RPE fails to separately identify or report on the Schedule K–1 (or any attachments thereto) issued to an owner an item described in paragraph (b)(3)(i) of this section, the owner's share (and the share of any upper-tier indirect owner) of each unreported item of positive QBI, W–2 wages, or UBIA of qualified property attributable to trades or businesses engaged in by that RPE will be presumed to be zero.

(c) *Computational and reporting rules for PTPs*—(1) *Computational rules.* Each PTP must determine its QBI under the rules of § 1.199A–3 for each trade or business in which the PTP is engaged in directly. The PTP must also determine whether any of the trades or businesses it is engaged in directly is an SSTB.

(2) *Reporting rules.* Each PTP is required to separately identify and report the information described in paragraph (c)(1) of this section on Schedules K–1 issued to its partners. Each PTP must also determine and report any qualified REIT dividends or qualified PTP income or loss received by the PTP including through an RPE, a REIT, or another PTP. A PTP is not required to determine or report W–2 wages or the UBIA of qualified property attributable to trades or businesses it is engaged in directly.

(d) *Application to trusts, estates, and beneficiaries*—(1) *In general.* A trust or estate computes its section 199A deduction based on the QBI, W–2 wages, UBIA of qualified property, qualified REIT dividends, and qualified PTP income that are allocated to the trust or estate. An individual beneficiary of a trust or estate takes into account any QBI, W–2 wages, UBIA of qualified property, qualified REIT dividends, and qualified PTP income allocated from a trust or estate in calculating the beneficiary's section 199A deduction, in the same manner as though the items had been allocated from an RPE. For purposes of this section and §§ 1.199A–1 through 1.199A–5, a trust or estate is treated as an RPE to the extent it allocates QBI and other items to its beneficiaries, and is treated as an individual to the extent it retains the QBI and other items.

(2) *Grantor trusts.* To the extent that the grantor or another person is treated as owning all or part of a trust under sections 671 through 679, such person computes its section 199A deduction as if that person directly conducted the activities of the trust with respect to the portion of the trust treated as owned by the grantor or other person.

(3) *Non-grantor trusts and estates*—(i) *Calculation at entity level.* A trust or estate must calculate its QBI, W–2 wages, UBIA of qualified property, qualified REIT dividends, and qualified PTP income. The QBI of a trust or estate must be computed by allocating qualified items of deduction described in section 199A(c)(3) in accordance with the classification of those deductions under § 1.652(b)–3(a), and deductions not directly attributable within the meaning of § 1.652(b)–3(b) (other deductions) are allocated in a manner consistent with the rules in § 1.652(b)–3(b). Any depletion and depreciation deductions described in section 642(e) and any amortization deductions described in section 642(f) that otherwise are properly included in the computation of QBI are included in the computation of QBI of the trust or estate, regardless of how those deductions may otherwise be allocated between the trust or estate and its

beneficiaries for other purposes of the Code.

(ii) *Allocation among trust or estate and beneficiaries.* The QBI (including any amounts that may be less than zero as calculated at the trust or estate level), W–2 wages, UBIA of qualified property, qualified REIT dividends, and qualified PTP income of a trust or estate are allocated to each beneficiary and to the trust or estate based on the relative proportion of the trust's or estate's *distributable net income (DNI),* as defined by section 643(a), for the taxable year that is distributed or required to be distributed to the beneficiary or is retained by the trust or estate. For this purpose, the trust's or estate's DNI is determined with regard to the separate share rule of section 663(c), but without regard to section 199A. If the trust or estate has no DNI for the taxable year, any QBI, W–2 wages, UBIA of qualified property, qualified REIT dividends, and qualified PTP income are allocated entirely to the trust or estate.

(iii) [Reserved]

(iv) *Threshold amount.* The threshold amount applicable to a trust or estate is $157,500 for any taxable year beginning before 2019. For taxable years beginning after 2018, the threshold amount shall be $157,500 increased by the cost-of-living adjustment as outlined in § 1.199A–1(b)(12). For purposes of determining whether a trust or estate has taxable income in excess of the threshold amount, the taxable income of the trust or estate is determined after taking into account any distribution deduction under sections 651 or 661.

(v) [Reserved]

(vi) *Electing small business trusts.* An electing small business trust (ESBT) is entitled to the deduction under section 199A. Any section 199A deduction attributable to the assets in the S portion of the ESBT is to be taken into account by the S portion. The S portion of the ESBT must take into account the QBI and other items from any S corporation owned by the ESBT, the grantor portion of the ESBT must take into account the QBI and other items from any assets treated as owned by a grantor or another person (owned portion) of a trust under sections 671 through 679, and the non-S portion of the ESBT must take into account any QBI and other items from any other entities or assets owned by the ESBT. For purposes of determining whether the taxable income of an ESBT exceeds the threshold amount, the S portion and the non-S portion of an ESBT are treated as a single trust. *See* § 1.641(c)–1.

(vii) *Anti-abuse rule for creation of a trust to avoid exceeding the threshold amount.* A trust formed or funded with a principal purpose of avoiding, or of using more than one, threshold amount for purposes of calculating the deduction under section 199A will not be respected as a separate trust entity for purposes of determining the threshold amount for purposes of section 199A. *See also* § 1.643(f)–1 of the regulations.

(viii) *Example.* The following example illustrates the application of paragraph (d) of this section.

(A) *Example*—(*1*) *Computation of DNI and inclusion and deduction amounts*—(*i*) *Trust's distributive share of partnership items.* Trust, an irrevocable testamentary complex trust, is a 25% partner in PRS, a family partnership that operates a restaurant that generates QBI and W–2 wages. A and B, Trust's beneficiaries, own the remaining 75% of PRS directly. In 2018, PRS properly allocates gross income from the restaurant of $55,000, and expenses directly allocable to the restaurant of $45,000 (including W–2 wages of $25,000, and miscellaneous expenses of $20,000) to Trust. These items are properly included in Trust's DNI. PRS distributes $10,000 of cash to Trust in 2018.

(*ii*) *Trust's activities.* In addition to its interest in PRS, Trust also operates a family bakery conducted through an LLC wholly-owned by the Trust that is treated as a disregarded entity. In 2018, the bakery produces $100,000 of gross income and $155,000 of expenses directly allocable to operation of the bakery (including W–2 wages of $50,000, rental expense of $75,000, miscellaneous expenses of $25,000, and depreciation deductions of $5,000). (The net loss from the bakery operations is not subject to any loss disallowance provisions outside of section 199A.) Trust maintains a reserve of $5,000 for depreciation. Trust also has $125,000 of UBIA of qualified property in the bakery. For purposes of computing its section 199A deduction, Trust and its beneficiaries have properly chosen to aggregate the family restaurant conducted through PRS with the bakery conducted directly by Trust under § 1.199A–4. Trust also owns various investment assets that produce portfolio-type income consisting of dividends ($25,000), interest ($15,000), and tax-exempt interest ($15,000). Accordingly, Trust has the following items which are properly included in Trust's DNI:

TABLE 1 TO PARAGRAPH (d)(3)(viii)(A)(*1*)(*ii*)

Interest Income	15,000
Dividends	25,000
Tax-exempt interest	15,000
Net business loss from PRS and bakery	(45,000)
Trustee commissions	3,000
State and local taxes	5,000

(*iii*) *Allocation of deductions under § 1.652(b)–3 (Directly attributable expenses).* In computing Trust's DNI for the taxable year, the distributive share of expenses of PRS are directly attributable under § 1.652(b)–3(a) to the distributive share of income of PRS. Accordingly, Trust has gross business income of $155,000 ($55,000 from PRS and $100,000 from the bakery) and direct business expenses of $200,000 ($45,000 from PRS and $155,000 from the bakery). In addition, $1,000 of the trustee commissions and $1,000 of state and local taxes are directly attributable under § 1.652(b)–3(a) to Trust's business income. Accordingly, Trust has excess business deductions of $47,000. Pursuant to its authority recognized under § 1.652(b)–3(d), Trust allocates the $47,000 excess business deductions as follows: $15,000 to the interest income, resulting in $0 interest income, $25,000 to the dividends, resulting in $0 dividend income, and $7,000 to the tax exempt interest.

(*iv*) *Allocation of deductions under § 1.652(b)–3 (Non-directly attributable expenses).* The trustee must allocate the sum of the balance of the trustee commissions ($2,000) and state and local taxes ($4,000) to Trust's remaining tax-exempt interest income, resulting in $2,000 of tax exempt interest.

(*v*) *Amounts included in taxable income.* For 2018, Trust has DNI of $2,000. Pursuant to Trust's governing instrument, Trustee distributes 50%, or $1,000, of that DNI to A, an individual who is a discretionary beneficiary of Trust. In addition, Trustee is required to distribute 25%, or $500, of that DNI to B, a current income beneficiary of Trust. Trust retains the remaining 25% of DNI. Consequently, with respect to the $1,000 distribution A receives from Trust, A properly excludes $1,000 of tax-exempt interest income under section 662(b). With respect to the $500 distribution B receives from Trust, B properly excludes $500 of tax exempt interest income under section 662(b). Because the DNI consists entirely of tax-exempt income, Trust deducts $0 under section 661 with respect to the distributions to A and B.

(*2*) *Section 199A deduction*—(*i*) *Trust's W–2 wages and QBI.* For the 2018 taxable year, prior to allocating the beneficiaries' shares of the section 199A items, Trust has $75,000 ($25,000 from PRS + $50,000 of Trust) of W–2 wages. Trust also has $125,000 of UBIA of qualified property. Trust has negative QBI of ($47,000) ($155,000 gross income from aggregated businesses less the sum of $200,000 direct expenses from aggregated businesses and $2,000 directly attributable business expenses from Trust under the rules of § 1.652(b)–3(a)).

(*ii*) *A's Section 199A deduction computation.* Because the $1,000 Trust distribution to A equals one-half of Trust's DNI, A has W–2 wages from Trust of $37,500. A also has W–2 wages of $2,500 from a trade or business outside of Trust (computed without regard to A's interest in Trust), which A has properly aggregated under § 1.199A–4 with the Trust's trade or businesses (the family's restaurant and bakery), for a total of $40,000 of W–2 wages from the aggregate trade or businesses. A also has $62,500 of UBIA from Trust and $25,000 of UBIA of qualified property from the trade or business outside of Trust for $87,500 of total UBIA of qualified property. A has $100,000 of QBI from the non-Trust trade or businesses in which A owns an interest.

Because the $1,000 Trust distribution to A equals one-half of Trust's DNI, A has (negative) QBI from Trust of ($23,500). A's total QBI is determined by combining the $100,000 QBI from non-Trust sources with the ($23,500) QBI from Trust for a total of $76,500 of QBI. Assume that A's taxable income is $357,500, which exceeds A's applicable threshold amount for 2018 by $200,000. A's tentative deductible amount is $15,300 (20% × $76,500 of QBI), limited to the greater of (i) $20,000 (50% × $40,000 of W–2 wages), or (ii) $12,187.50 ($10,000, 25% × $40,000 of W–2 wages, plus $2,187.50, 2.5% × $87,500 of UBIA of qualified property). A's section 199A deduction is equal to the lesser of $15,300, or $71,500 (20% × $357,500 of taxable income). Accordingly, A's section 199A deduction for 2018 is $15,300.

(*iii*) *B's Section 199A deduction computation.* For 2018, B's taxable income is below the threshold amount so B is not subject to the W–2 wage limitation. Because the $500 Trust distribution to B equals one-quarter of Trust's DNI, B has a total of ($11,750) of QBI. B also has no QBI from non-Trust trades or businesses, so B has a total of ($11,750) of QBI. Accordingly, B's section 199A deduction for 2018 is zero. The ($11,750) of QBI is carried over to 2019 as a loss from a qualified business in the hands of B pursuant to section 199A(c)(2).

(*iv*) *Trust's Section 199A deduction computation.* For 2018, Trust's taxable income is below the threshold amount so it is not subject to the W–2 wage limitation. Because Trust retained 25% of Trust's DNI, Trust is allocated 25% of its QBI, which is ($11,750). Trust's section 199A deduction for 2018 is zero. The ($11,750) of QBI is carried over to 2019 as a loss from a qualified business in the hands of Trust pursuant to section 199A(c)(2).

(B) [Reserved]

(e) *Applicability date*—(1) *General rule.* Except as provided in paragraph (e)(2) of this section, the provisions of this section apply to taxable years ending after February 8, 2019.

(2) *Exceptions*—(i) *Anti-abuse rules.* The provisions of paragraph (d)(3)(vii) of this section apply to taxable years ending after December 22, 2017.

(ii) *Non-calendar year RPE.* For purposes of determining QBI, W–2 wages, UBIA of qualified property, and the aggregate amount of qualified REIT dividends and qualified PTP income, if an individual receives any of these items from an RPE with a taxable year that begins before January 1, 2018, and ends after December 31, 2017, such items are treated as having been incurred by the individual during the individual's taxable year in which or with which such RPE taxable year ends.

■ **Par. 9.** Section 1.643(f)–1 is added to read as follows:

§ 1.643(f)–1 Treatment of multiple trusts.

(a) *General rule.* For purposes of subchapter J of chapter 1 of subtitle A of Title 26 of the United States Code, two or more trusts will be aggregated and treated as a single trust if such trusts have substantially the same grantor or grantors and substantially the same primary beneficiary or beneficiaries, and if a principal purpose for establishing one or more of such trusts or for contributing additional cash or other property to such trusts is the avoidance of Federal income tax. For purposes of applying this rule, spouses will be treated as one person.

(b) *Applicability date.* The provisions of this section apply to taxable years ending after August 16, 2018.

Kirsten Wielobob,

Deputy Commissioner for Services and Enforcement.

Approved: December 20, 2018.

David J. Kautter,

Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. 2019–01025 Filed 2–4–19; 4:15 pm]

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–134652–18]

RIN 1545–BP12

Qualified Business Income Deduction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations concerning the deduction for qualified business income under section 199A of the Internal Revenue Code (Code). The proposed regulations will affect certain individuals, partnerships, S corporations, trusts, and estates. The proposed regulations provide guidance on the treatment of previously suspended losses that constitute qualified business income. The proposed regulations also provide guidance on the determination of the section 199A deduction for taxpayers that hold interests in regulated investment companies, charitable remainder trusts, and split-interest trusts.

DATES: Written or electronic comments and requests for a public hearing must be received by April 9, 2019.

ADDRESSES: Submit electronic submissions to the Federal eRulemaking Portal at *www.regulations.gov* (indicate IRS and REG–134652–18) by following the online instructions for submitting comments. Once submitted to the Federal eRulemaking Portal, comments cannot be edited or withdrawn. The Department of the Treasury (Treasury Department) and the IRS will publish for public availability any comment received to its public docket, whether submitted electronically or in hard copy. Send hard copy submissions to CC:PA:LPD:PR (REG–134652–18), Room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG–134652–18), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Concerning § 1.199A–3(d), Michael Y. Chin or Steven Harrison at (202) 317–6842; concerning §§ 1.199A–3(b) and 1.199A–6, Vishal R. Amin or Frank J. Fisher at (202) 317–6850 or Robert D. Alinsky or Margaret Burow at 202–317–5279; concerning submissions of comments or requests for a public hearing, Regina Johnson at (202) 317–6901 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed amendments to the Income Tax Regulations (26 CFR part 1) under section 199A of the Code.

Section 199A was enacted on December 22, 2017, by section 11011 of ''An Act to provide for reconciliation pursuant to titles II and V of the concurrent resolution on the budget for fiscal year 2018,'' Public Law 115–97 (TCJA), and was amended on March 23, 2018, retroactively to January 1, 2018, by section 101 of Division T of the Consolidated Appropriations Act, 2018, Public Law 115–141, (2018 Act). Section 199A applies to taxable years beginning after 2017 and before 2026.

Section 199A provides a deduction of up to 20 percent of qualified business income from a U.S. trade or business operated as a sole proprietorship or through a partnership, S corporation, trust, or estate (section 199A deduction). The section 199A deduction may be taken by individuals and by some estates and trusts. A section 199A deduction is not available for wage income or for income earned by a C corporation. For taxpayers whose taxable income exceeds a statutorily-defined amount (threshold amount), section 199A may limit the taxpayer's section 199A deduction based on (i) the type of trade or business engaged in by the taxpayer, (ii) the amount of W–2 wages paid with respect to the trade or business (W–2 wages), and/or (iii) the unadjusted basis immediately after acquisition (UBIA) of qualified property held for use in the trade or business (UBIA of qualified property). These statutory limitations are subject to phase-in rules based upon taxable income above the threshold amount.

Section 199A also allows individuals and some trusts and estates (but not corporations) a deduction of up to 20 percent of their combined qualified real estate investment trust (REIT) dividends and qualified publicly traded partnership (PTP) income, including qualified REIT dividends and qualified PTP income earned through passthrough entities. This component of the section 199A deduction is not limited by W–2 wages or UBIA of qualified property.

The section 199A deduction is the lesser of (1) the sum of the combined amounts described in the prior two paragraphs or (2) an amount equal to 20 percent of the excess (if any) of taxable income of the taxpayer for the taxable year over the net capital gain of the taxpayer for the taxable year.

Additionally, section 199A(g) provides that specified agricultural or horticultural cooperatives may claim a special entity-level deduction that is substantially similar to the domestic production activities deduction under former section 199.

The statute expressly grants the Secretary authority to prescribe such regulations as are necessary to carry out the purposes of section 199A (section 199A(f)(4)), and also provides specific grants of authority with respect to certain issues: The treatment of acquisitions, dispositions, and short-tax years (section 199A(b)(5)); certain payments to partners for services rendered in a non-partner capacity (section 199A(c)(4)(C)); the allocation of W–2 wages and UBIA of qualified property (section 199A(f)(1)(A)(iii)); restricting the allocation of items and wages under section 199A and such reporting requirements as the Secretary determines appropriate (section 199A(f)(4)(A)); the application of section 199A in the case of tiered entities (section 199A(f)(4)(B); preventing the manipulation of the depreciable period of qualified property using transactions between related parties (section 199A(h)(1)); and determining the UBIA of qualified property acquired in like-kind exchanges or involuntary conversions (section 199A(h)(2)).

The Treasury Department and the Internal Revenue Service published proposed regulations interpreting section 199A on August 16, 2018 (the August Proposed Regulations) (83 FR 40884). The August Proposed Regulations contain six substantive sections, §§ 1.199A–1 through 1.199A–6, each of which provides rules relevant to the calculation of the section 199A deduction. The August Proposed Regulations, with modifications in response to comments and testimony received, were adopted as final regulations in TD 9847, issued concurrently with this notice of proposed rulemaking and published elsewhere in this issue of the **Federal Register**.

Explanation of Provisions

These proposed regulations propose rules addressing issues not addressed in the August Proposed Regulations that are necessary to provide taxpayers with computational, definitional, and anti-avoidance guidance regarding the application of section 199A. Specifically, these proposed regulations contain amendments to two substantive sections of the August Proposed

Regulations, §§ 1.199A–3 and 1.199A–6, each of which provides rules relevant to the calculation of the section 199A deduction. These additional proposed rules respond to comments received on the August Proposed Regulations as well as address certain issues identified after additional study. This Explanation of Provisions describes each of the proposed rules contained in this document in turn. The Treasury Department and the IRS request comments on all aspects of these proposed regulations.

I. Treatment of Previously Suspended Losses That Constitute QBI

Section 1.199A–3(b)(1)(iv) of the final regulations provides that previously disallowed losses or deductions (including under sections 465, 469, 704(d), and 1366(d)) allowed in the taxable year are generally taken into account for purposes of computing QBI except to the extent the losses or deductions were disallowed, suspended, limited, or carried over from taxable years ending before January 1, 2018. The final regulations also provide a first-in-first-out ordering rule. One commenter on the August Proposed Regulations suggested that a special rule should be provided to identify the section 469 trade or business losses that are used to offset income if the taxpayer's section 469 groupings differ from the taxpayer's section 199A aggregations. The commenter recommended that any section 469 loss carryforward that is later used should be allocated across the taxpayer's section 199A aggregations based on income with respect to such aggregations in the year the loss was generated.

The Treasury Department and the IRS believe that that previously disallowed losses should be treated as losses from a separate trade or business for both the reasons stated by the commenter and because the losses may relate to a trade or business that is no longer in existence. Accordingly, these proposed regulations amend § 1.199A–3(b)(1)(iv) to provide that such losses are treated as loss from a separate trade or business. To the extent that losses relate to a PTP, they must be treated as losses from a separate PTP. Section 1.199A–3(b)(1)(iv)(B) provides that attributes of the disallowed loss are determined in the year the loss is incurred.

II. Regulated Investment Companies With Interests in REITs and PTPs

A. REITs

Section 1.199A–3 restates the definitions in section 199A(c) and provides additional guidance on the determination of QBI, qualified REIT dividends, and qualified PTP income. For simplicity, the regulations use the term *individual* when referring to an individual, trust, estate, or other person eligible to claim the section 199A deduction. *See* § 1.199A–1(a)(2). The term *relevant passthrough entity (RPE)* is used to describe passthrough entities that directly operate the trade or business or pass through the trade or business' items of income, gain, loss, or deduction from lower-tier RPEs to the individual. *See* § 1.199A–1(b)(10).

A number of commenters on the August Proposed Regulations requested guidance that would allow a shareholder in a regulated investment company within the meaning of section 851(a) (RIC) to take a section 199A deduction with respect to certain income of, or distributions from, the RIC. Because a RIC is a subchapter C corporation, a shareholder in a RIC generally does not take into account a share of the RIC's items of income, deduction, gain, or loss. Part 1 of subchapter M, however, has features that allow the tax consequences of investing in a RIC to approximate those of a direct investment in the assets of the RIC. The principal feature is the allowance of the deduction for dividends paid under section 852(b)(2)(D). If a corporation qualifies as a RIC under section 851 and meets the distribution requirements and other requirements in section 852(a), the RIC's income tax is computed on its investment company taxable income (ICTI), which is its taxable income with certain adjustments, including the allowance of the deduction for dividends paid. *See* section 852(b)(2). ICTI also excludes the amount of the RIC's net capital gain, but tax is separately imposed on that amount to the extent it exceeds the deduction for dividends paid, taking into account only capital gain dividends. *See* section 852(b)(3)(A). The deduction for dividends paid allows RICs to eliminate all or most of their corporate income tax liability.

If a RIC has certain items of income or gain, subchapter M also provides rules under which a RIC may pay dividends that a shareholder in the RIC may treat in the same manner (or a similar manner) as the shareholder would treat the underlying item of income or gain if the shareholder realized it directly. Although this treatment differs fundamentally from the pass-through treatment of partners or trust beneficiaries, this preamble refers to is as ''conduit treatment.'' For example, under section 852(b)(3), a RIC that has net capital gain for a taxable year generally may pay capital gain dividends, and shareholders receiving the capital gain dividends treat them as gain from the sale or exchange of a capital asset held for more than one year. Section 852(b)(3) provides necessary limits and procedures that apply to capital gain dividends. There are similar statutory provisions for exempt-interest dividends under section 852(b)(5), interest-related dividends under section 871(k)(1), short-term capital gain dividends under section 871(k)(2), dividends eligible for the dividends received deduction under section 854(b)(1)(A), and qualified dividend income under section 854(b)(1)(B). Rules for paying dividends corresponding to different types of long-term capital gain have been provided in guidance under regulatory authority granted in section 1(h). *See* Notice 2015–41, 2015–24 I.R.B. 1058, modifying Notice 2004–39, 2004–1 C.B. 982 and Notice 97–64, 1997–2 C.B. 323.

Investing in RICs enables small investors to gain benefits, such as professional management and broad diversification, that otherwise would be available only to investors with more resources. The House Report for the enactment of the Internal Revenue Code of 1954 explained that the RIC regime ''permits investors to pool their funds through the use of a corporation in order to obtain skilled, diversified investment in corporate securities without having to pay an additional layer of corporate tax.'' H.R. Rep. No. 83–1337, p. 73 (1954). The ability to elect to be taxed as a RIC is available typically only to domestic corporations that, at all times during the taxable year, are registered under the Investment Company Act of 1940, as amended (15 U.S.C. 80a–1 to 80b–2). *See* section 851(a)(1)(A).

Section 199A(f)(4) directs the Secretary to prescribe such regulations as are necessary to carry out the purposes of section 199A, including regulations for its application in the case of tiered entities. The Treasury Department and the IRS have determined that it is consistent with the grant of authority under section 199A and the purposes of part 1 of subchapter M of chapter 1 of the Code to provide for conduit treatment of qualified REIT dividends. The Treasury Department and the IRS continue to consider whether it is appropriate to provide for conduit treatment of qualified PTP income.

These proposed regulations provide rules under which a RIC that receives qualified REIT dividends may pay section 199A dividends. Non-corporate shareholders receiving section 199A dividends would treat them as qualified

REIT dividends under section 199A(e)(3), provided the shareholder meets the holding period requirements for its shares in the RIC.

The rules under which a RIC would compute and report section 199A dividends are based on the rules for capital gain dividends in section 852(b)(3) and exempt-interest dividends in section 852(b)(5). The amount of a RIC's section 199A dividends for a taxable year would be limited to the excess of the RIC's qualified REIT dividends for the taxable year over allocable expenses. Section 199A dividends generally are also subject to the principles that apply to other RIC dividends. *See, e.g.,* Rev. Rul. 2005–31, 2005–1 C.B. 1084; Rev. Rul. 89–81, 1989–1 C.B. 226.

B. PTPs

One of the commenters recommending that the regulations permit conduit treatment for qualified REIT dividends received by a RIC also recommended that the regulations permit conduit treatment for qualified PTP income received by a RIC. In response to this comment, the Treasury Department and the IRS have given significant consideration to including in this notice of proposed rulemaking regulations that would provide conduit treatment for qualified PTP income. However, unlike conduit treatment for qualified REIT dividends received by a RIC, conduit treatment of qualified PTP income received by a RIC presents several novel issues. The commenter recommending this conduit treatment did not address these issues or make any suggestions as to how they should be resolved. The need to resolve these issues in a way that would afford RIC shareholders treatment that is similar to the treatment they would receive if they held the PTP interests directly while preserving the relative simplicity of the tax treatment of RIC investors has prevented the Treasury Department and the IRS from crafting and including appropriate rules in these proposed regulations. As noted later in this part of the Explanation of Provisions, the Treasury Department and the IRS continue to consider permitting conduit treatment for qualified PTP income received by a RIC to further the purposes of section 199A(b)(1)(B) and seek public comment to assist in resolving these novel issues with a view to developing regulations permitting conduit treatment for qualified PTP income.

These issues arise in part from the fact that income attributable to a specified service trade or business within the meaning of section 199A(d)(2) (SSTB) of a PTP may be qualified PTP income for taxpayers with taxable income below the threshold amount, but not for taxpayers with taxable income above the top of the phase-out range. For taxpayers with taxable income in the phase-out range, a portion of PTP income attributable to an SSTB is qualified PTP income. There is no precedent for providing conduit treatment for a RIC (or any other C corporation) with respect to income of a PTP or other partnership taxed in this manner, and the complexity and potential confusion such treatment might create for RIC investors is arguably inconsistent with the relative simplicity that the tax system has historically provided for RIC investors. This is particularly true given the limitation on the portion of a RIC's assets that can be invested in qualified PTPs as defined in section 851(h) (the type of PTP likely to be engaged in a trade or business) and the limited portion of the RIC's dividends that would likely be attributable to income from such PTPs.

Another novel issue is presented by the rules relating to the treatment of losses for purposes of section 199A. First, a PTP may not net losses from an SSTB against income from a non-SSTB, and vice versa, in determining the amounts that it reports to its partners. Thus, PTPs are required to separately calculate income and deductions from SSTBs and non-SSTBs and report that information to their partners. Second, if a taxpayer has a net loss from an SSTB or a non-SSTB that is allowed in determining taxable income for a taxable year, that loss may be required to be carried over to the subsequent year for section 199A attribute purposes. In the case of a RIC, it is not clear to what extent these requirements can be implemented by permitting RIC dividends to reflect attributes of the RIC's investment experiences in PTPs. For example, it is difficult to conceive how losses of a RIC can be passed through to shareholders upon the payment of a dividend, which would be inconsistent with the status of a RIC as a C corporation. *See* section 311(a). In addition, RICs and RIC shareholders would experience complexity inconsistent with the longstanding tax policy of providing simplified reporting for RIC investors.

Consistent with RICs' status as C corporations, RICs could instead offset losses from PTPs against qualified REIT dividends received, with any excess PTP losses carried forward as negative qualified PTP income for section 199A attribute purposes at the RIC level. To the extent RICs would be required to carry forward PTP losses, it would appear that RICs would need to track separate loss carryforwards for SSTB PTP losses and non-SSTB PTP losses. While netting qualified non-SSTB losses from PTPs against larger amounts of qualified REIT dividends would support RIC dividends that could be treated as eligible for the section 199A deduction by the RICs' shareholders regardless of income level, SSTB losses from PTPs would complicate the offset of qualified PTP losses against qualified REIT dividends by RICs because SSTB losses from a PTP do not offset qualified REIT dividends for taxpayers with taxable income above the phase-out range. Such losses do, however, offset qualified REIT dividends for taxpayers with income below the threshold amount. For taxpayers with income in the phase-out range, these losses partially offset qualified REIT dividends to a greater or lesser extent depending on where the taxpayer's income falls in the phase-out range. It is not clear how a conduit regime for qualified PTP income could work in terms of treating RIC shareholders in the phase-out range in a manner that is consistent with the treatment they would receive if they received the qualified REIT dividend and the qualified PTP loss from an SSTB directly rather than through a RIC.

Providing conduit treatment for qualified PTP income would also raise potentially significant issues with respect to the treatment of RIC shareholders that are non-U.S. persons, tax-exempt organizations, and trusts underlying individual retirement accounts (IRAs) and qualified retirement plans. In order to be qualified PTP income, section 199A(c)(3)(A)(i) requires that the income must be effectively connected with a U.S. trade or business. If conduit treatment is afforded to RIC dividends attributable to such PTP income for section 199A purposes, it is not clear that a RIC dividend attributable to such income could be disregarded for purposes of calculating effectively connected income of a non-U.S. shareholder or unrelated business taxable income of a tax-exempt organization or trust underlying an IRA or qualified retirement plan. Given that such investors typically do not hold directly interests in PTPs intentionally, but do so through corporate ''blockers,'' allowing conduit treatment for qualified PTP income through RICs could cause unwelcome results for non-U.S. shareholders, tax-exempt organizations, and trusts underlying IRAs and qualified retirement plans holding RIC stock.

The Treasury Department and the IRS continue to evaluate whether it is appropriate to provide conduit treatment for qualified PTP income through RICs, and request detailed comments on these novel issues. In particular, comments are requested concerning: (1) Whether RICs have sufficient qualified items of PTP income, gain, deduction, or loss to warrant a conduit regime that would permit RICs to pay qualified PTP dividends to shareholders; (2) How to provide conduit treatment for qualified PTP income for taxpayers with income below the threshold amount or within the phase-out range, particularly where a RIC has qualified REIT dividends and a qualified PTP loss from an SSTB; (3) How to treat losses of PTPs arising from SSTBs and non-SSTBs; (4) Whether conduit treatment for qualified PTP income can be disregarded for purposes of determining the effectively connected income or unrelated business taxable income of certain RIC shareholders; (5) Whether SSTB items are sufficiently rare or incidental for PTPs that a conduit regime for PTP dividends should exclude all SSTB items; and (6) How to implement conduit treatment for qualified PTP income in a way that is consistent with the policy goal of preserving the overall relative simplicity of the tax treatment of investors in RICs while still achieving the policy goals of section 199A and section 199A(b)(1)(B) in particular.

III. Special Rules for Trusts and Estates

Section 1.199A–6 provides guidance that certain specified entities (for example, trusts and estates) may need to follow to enable the computation of the section 199A deduction of the entity and each of its owners. Section 1.199A–6(d) contains special rules for applying section 199A to trusts and decedents' estates. The August Proposed Regulations expressly requested comments, and comments were submitted, on whether and how certain trusts and other entities would be able to take a deduction under section 199A. These proposed regulations take those suggestions into consideration in proposing rules applicable to those particular situations identified by commenters.

In the case of a section 199A deduction claimed by a non-grantor trust or estate, section 199A(f)(1)(B) applies rules similar to the rules under former section 199(d)(1)(B)(i) for the apportionment of W–2 wages and the apportionment of UBIA of qualified property. In the case of a non-grantor trust or estate, the QBI and expenses properly allocable to the business, including the W–2 wages relevant to the computation of the wage limitation, and relevant UBIA of depreciable property must be allocated among the trust or estate and its various beneficiaries. Specifically, § 1.199A–6(d)(3)(ii) provides that each beneficiary's share of the trust's or estate's QBI and W–2 wages is determined based on the proportion of the trust's or estate's DNI that is deemed to be distributed to that beneficiary for that taxable year. Similarly, the proportion of the entity's DNI that is not deemed distributed by the trust or estate will determine the entity's share of the QBI and W–2 wages. In addition, if the trust or estate has no DNI in a particular taxable year, any QBI and W–2 wages are allocated to the trust or estate, and not to any beneficiary.

In addition, § 1.199A–6(d)(3)(ii) provides that, to the extent the trust's or estate's UBIA of qualified property is relevant to a trust or estate and any beneficiary, the trust's or estate's UBIA of qualified property will be allocated among the trust or estate and its beneficiaries in the same proportions as is the DNI of the trust or estate. This is the case regardless of how any depreciation or depletion deductions resulting from the same property may be allocated under section 643(c) among the trust or estate and its beneficiaries for purposes other than section 199A.

Under § 1.199A–6(d)(3)(iv), the threshold amount is determined at the trust level after taking into account any distribution deductions. Commenters have noted that taxpayers could circumvent the threshold amount by dividing assets among multiple trusts, each of which would claim its own threshold amount. This result is inappropriate and inconsistent with the purpose of section 199A. Therefore, § 1.199A–6(d)(3)(vii) provides that a trust formed or funded with a principal purpose of receiving a deduction under section 199A will not be respected for purposes of determining the threshold amount under section 199A.

In the August Proposed Regulations, the Treasury Department and the IRS requested comments with respect to whether taxable recipients of annuity and unitrust interests in charitable remainder trusts and taxable beneficiaries of other split-interest trusts may be eligible for the section 199A deduction to the extent that the amounts received by such recipients include amounts that may give rise to the deduction. The request for such comments indicated that such comments should include explanations of how amounts that may give rise to the section 199A deduction would be identified and reported in the various classes of income of the trusts received by such recipients and how the excise tax rules in section 664(c) would apply to such amounts.

A. Charitable Remainder Trust Beneficiary's Eligibility for the Deduction

A few commenters suggested that a charitable remainder trust under section 664 should be allowed to calculate the deduction at the trust level and that the charitable remainder trust should be treated as a single taxpayer for purposes of the thresholds for taxable income, W–2 wages, and UBIA of qualified property.

Several commenters recommended that, if unrelated business taxable income (UBTI) is qualified business income, the section 199A deduction should be allowed before the UBTI excise tax is imposed. However, other commenters disagreed. Another commenter stated that the section 199A deduction should not be allowed when calculating UBTI because it is not a deduction directly connected with carrying on the trade or business and is allowable only for purposes of chapter 1, while the excise tax on UBTI is imposed under chapter 42 (that is, it is not an income tax). Another commenter said the UBTI excise tax under section 664(c) should not affect QBI because that tax is charged to principal.

One commenter recommended that QBI should be allocated to the ordinary income tier. Another recommended that QBI should be the bottom of the first tier (last to be distributed) and section 199A items should be reported on the Schedule K–1 when QBI is deemed distributed. Another commenter stated that a charitable remainder trust has no taxable income and no DNI, so the allocation of QBI, W–2 wages, and UBIA of qualified property should be allocated to beneficiaries based on the percentage of distributions from the ordinary income tier, with QBI allocated to the charitable remainder trust remaining a tier one item. Another commenter stated that QBI cannot be a separate tier because it is a deduction, rather than a rate difference.

The Treasury Department and the IRS believe that, because a charitable remainder trust described in section 664 is not subject to income tax, and because the excise tax imposed by section 664(c) is treated as imposed under chapter 42, the trust does not either have or calculate a section 199A deduction and the threshold amount described in section 199A(e)(2) does not apply to the trust. Furthermore, application of section 199A to

effectively reduce the 100 percent rate of tax imposed by section 664(c) on any UBTI would be inconsistent with the intent of section 664(c) to deter trusts from making investments that generate significant UBTI. However, any taxable recipient of a unitrust or annuity amount from the trust must determine and apply the recipient's own threshold amount for purposes of section 199A, taking into account any annuity or unitrust amounts received from the trust. Therefore, a taxable recipient of a unitrust or annuity amount from a charitable remainder trust may take into account QBI, qualified REIT dividends, and qualified PTP income for purposes of determining the recipient's section 199A deduction for the taxable year to the extent that the unitrust or annuity amount distributed to such recipient consists of such section 199A items under § 1.664–1(d).

In order to determine the order of distribution of the various classes of income of the trust for purposes of applying § 1.664–1(d), QBI, qualified REIT dividends, and qualified PTP income of a charitable remainder trust will be allocated to the classes of income within the category of income described in § 1.664–1(d)(1)(i)(*a*)(*1*) based on the rate of tax that normally would apply to that type of income, not taking into account the characterization of that income as QBI, qualified REIT dividends, or qualified PTP income for purposes of section 199A. Accordingly, any QBI, qualified REIT dividends, and qualified PTP income will be treated as distributed from the trust to a unitrust or annuity recipient only when all other classes of income within the ordinary income category subject to a higher rate of tax (not taking into account section 199A) have been exhausted. The unitrust or annuity recipient will be treated as receiving a proportionate amount of any QBI, qualified REIT dividends, and qualified PTP income that is distributed along with other income in the same class within the ordinary income category. To the extent that a trust is treated as distributing QBI, qualified REIT dividends, or qualified PTP income to more than one unitrust or annuity recipient in the taxable year, the distribution of such income will be treated as made to the recipients proportionately, based on their respective shares of the total of QBI, qualified REIT dividends, and qualified PTP income distributed for that year. The amount of any W–2 wages or UBIA of qualified property of the charitable remainder trust in a taxable year will be allocable to unitrust or annuity recipients based on each recipient's share of the trust's total QBI (whether or not distributed) for that taxable year.

Any QBI, qualified REIT dividends, or qualified PTP income of the trust that is unrelated business taxable income is subject to excise tax and § 1.664–1(c) requires that tax to be allocated to the corpus of the trust. Certain other rules relating to charitable remainder trusts are provided.

B. Split-interest Trusts

The August Proposed Regulations requested comments on whether any special rules were necessary with respect to split-interest trusts. One commenter suggested that additional rules may be necessary for split-interest trusts other than charitable reminder trusts. After considering the comment and studying other split-interest trusts in more depth after the publication of the August Proposed Regulations, the Treasury Department and the IRS have determined that special rules for other split-interest trusts, such as non-grantor charitable lead trusts or pooled income funds, are not necessary because such trusts are taxable under part I, subchapter J, chapter 1 of the Code, except subpart E. Such split-interest trusts would apply the rules for non-grantor trusts and estates set forth in § 1.199A–6(d)(3) to determine any applicable section 199A deduction for the trust or its taxable beneficiaries.

C. Separate Shares

Although no comments were received with respect the application of the threshold amount to separate shares, the Treasury Department and the IRS believe that clarification with respect to this issue may be necessary. These proposed regulations provide that, in the case of a trust described in section 663(c) with substantially separate and independent shares for multiple beneficiaries, such separate shares will not be treated as separate trusts for purposes of applying the threshold amount. Instead, the trust will be treated as a single trust for purposes of determining whether the taxable income of the trust exceeds the threshold amount. The purpose of the separate share rule in section 663(c) is to treat distributions of trust DNI to trust beneficiaries as independent taxable events solely for purposes of applying sections 661 and 662 with respect to each beneficiary's separate share. The rule determines each beneficiary's share of DNI based on the amount of DNI from that beneficiary's separate share, rather than as a percentage of the trust's DNI.

Nevertheless, under the separate share rule, if a trust retains any portion of DNI, the trust will be subject to tax as a single trust with respect to the retained DNI. Only trusts with retained DNI will be eligible for the section 199A deduction, because a trust will be allocated QBI, qualified REIT dividends, and qualified PTP income only in proportion to the amount of DNI retained by the trust for the taxable year. For this reason, a trust, regardless of the number of separate shares it has for its beneficiaries under the separate share rule of section 663(c), will be treated as a single trust for purposes of applying the threshold amount under section 199A. To the extent that a taxable beneficiary of a trust receives a distribution of DNI from the beneficiary's separate share of the trust which includes section 199A items, the beneficiary would apply its own threshold amount to those section 199A items in computing its section 199A deduction in accordance with the rules of § 1.199A–6(d).

Availability of IRS Documents

IRS notices cited in this preamble are made available by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

Proposed Effective/Applicability Date

Section 7805(b)(1)(A) and (B) of the Code generally provide that no temporary, proposed, or final regulation relating to the internal revenue laws may apply to any taxable period ending before the earliest of (A) the date on which such regulation is filed with the **Federal Register**, or (B) in the case of a final regulation, the date on which a proposed or temporary regulation to which the final regulation relates was filed with the **Federal Register**.

The amendments to §§ 1.199A–3 and 1.199A–6 set forth in this notice of proposed rulemaking generally are proposed to apply to taxable years ending after the date of publication of a Treasury decision adopting these rules as final regulations in the **Federal Register**. However, taxpayers may rely on the rules in the amendments to §§ 1.199A–3 and 1.199A–6 set forth in this notice of proposed rulemaking, in their entirety, until the date a Treasury decision adopting these regulations as final regulations is published in the **Federal Register**.

Special Analyses

I. Regulatory Planning and Review—Economic Analysis

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 both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility.

The proposed regulations have been designated by the Office of Management and Budget's (''OMB'') Office of Information and Regulatory Affairs (''OIRA'') as subject to review under Executive Order 12866 pursuant to the Memorandum of Agreement (April 11, 2018) between the Treasury Department and OMB regarding review of tax regulations. It has been determined that the proposed rulemaking is economically significant under section 1(c) of the Memorandum of Agreement and thereby subject to review. Accordingly, the proposed regulations have been reviewed by OMB.

A. Overview

Congress enacted section 199A to provide taxpayers other than corporations a deduction of up to 20 percent of QBI from domestic businesses plus up to 20 percent of their combined qualified REIT dividends and qualified PTP income. As stated in the Explanation of Provisions, these regulations are necessary to provide taxpayers with computational, definitional, and anti-avoidance guidance regarding the application of section 199A. These proposed regulations contain amendments to § 1.199A–3, providing further guidance to taxpayers for purposes of calculating the section 199A deduction. They provide clarity for taxpayers in determining their eligibility for the deduction and the amount of the allowed deduction. Among other benefits, this clarity helps ensure that taxpayers all calculate the deduction in a similar manner, which encourages decision-making that is economically efficient contingent on the provisions of the overall Code.

B. Baseline

The analysis in this section compares the proposed regulation to a no-action baseline reflecting anticipated Federal income tax-related behavior in the absence of these regulations.

C. Economic Analysis of the Proposed Amendments to § 1.199A–3

1. Background

Because the section 199A deduction has not previously been available, §§ 1.199A–1 through 1.199A–6 provide greater specificity for a large number of the relevant terms and necessary calculations taxpayers are currently required to apply under the statute. However, one subject not covered by the August 2018 Proposed Regulations is the treatment of REIT dividends received by RICs. Because RICs are taxed as C corporations, they are ineligible for the section 199A deduction under the statute, which generally does not apply to C corporations. However, the statute also directs the Secretary to prescribe such regulations as are necessary to carry out the purposes of section 199A, including regulations for its application in the case of tiered entities. Thus these proposed regulations establish rules under which a RIC that earns qualified REIT dividends may pay section 199A dividends to its shareholders.

An alternative approach the Treasury Department and the IRS could have taken would be to remain silent on this issue. For reasons given below, the Treasury Department and the IRS concluded such an approach would likely give rise to less economically efficient decisions than the approach taken in these proposed regulations.

2. Anticipated Benefits of the Proposed Amendments to § 1.199A–3

The Treasury Department and the IRS expect that the definitions and guidance provided in the proposed amendments to § 1.199A–3 will implement the section 199A deduction in an economically efficient manner. An economically efficient tax system generally aims to treat income derived from similar economic decisions similarly in order to reduce incentives to make choices based on tax rather than market incentives. In absence of these proposed regulations, the section 199A statute would not accomplish this in the case of REIT dividends. Under the statute and the section 199A final regulations, individuals who directly hold ownership interests in a REIT would generally qualify for the section 199A deduction on their qualified REIT dividends. However, individuals who are shareholders of a RIC that has an ownership interest in a REIT would not receive any benefit from section 199A on REIT dividends received by the RIC, even if the RIC pays dividends to the individual. Thus, in the absence of these supplemental proposed regulations, a market distortion is introduced by section 199A whereby direct ownership of REITs is tax-advantaged relative to indirect ownership of REITs through RICs.

These proposed regulations remove this distortion. The proposed amendments to § 1.199A–3 establish rules under which a RIC that earns qualified REIT dividends may pay section 199A dividends to its shareholders, such that the effective tax treatment of qualified REIT dividends is similar under the proposed regulations regardless of whether a taxpayer invests in a REIT directly or through a RIC.

3. Anticipated Costs of the Proposed Amendments to § 1.199A–3

The Treasury Department and the IRS do not anticipate any meaningful economic distortions to be induced by the proposed amendments to § 1.199A–3 because the proposed amendments seek to continue to provide similar tax treatment to REIT income regardless of whether it is held directly or through a RIC. Prior to TCJA, the tax treatment was similar, but TCJA made REIT dividends eligible for the section 199A deduction, and the section 199A final regulations did not address this uncertainty. This proposed amendment ensures that REIT income earned through a RIC is also eligible for the same deduction. RICs are financial intermediaries, and, as a general rule, economic distortion is minimized to the extent that the tax consequences of investment through an intermediary correspond to the tax consequences of direct investment. The Treasury Department and the IRS request comments regarding any anticipated economic costs. Changes to the collective paperwork burden arising from this and other sections of these regulations are discussed in section D, *Anticipated impacts on administrative and compliance costs,* of this analysis.

D. Anticipated Impacts on Administrative and Compliance Costs

The proposed regulations add to the compliance costs of RICs and intermediaries such as brokerage firms that hold RIC shares. In order for a RIC's shareholders to benefit from the section 199A deduction on qualified REIT dividends earned by the RIC, the proposed regulations require the RIC to compute and report section 199A dividends to its shareholders. Though many RICs keep detailed records of their investment portfolios, this action nonetheless creates non-trivial administrative costs for any RICs and intermediaries that wish to provide section 199A dividends to their shareholders. These costs and the associated impacted tax forms are described in the Paperwork Reduction Act section of this proposed amendment.

E. Executive Order 13771

These regulations have been designated as regulatory under E.O. 13771.

II. Paperwork Reduction Act

The collection of information required by this proposed regulation is in proposed § 1.199A–3. The collection of information in proposed § 1.199A–3 is required for RICs that choose to report information regarding qualified REIT dividends to their shareholders. It is necessary to report the information to the IRS and relevant taxpayers in order to ensure that taxpayers properly report in accordance with the rules of the proposed regulations the correct amount of deduction under section 199A. The collection of information in proposed § 1.199A–3 is satisfied by providing information about section 199A dividends as Form 1099–DIV and its instructions may prescribe.

For purpose of the PRA, the reporting burden associated with § 1.199A–3 will be reflected in the IRS Form 14029, Paperwork Reduction Act Submission, associated with Form 1099–DIV (OMB control number 1545–0110). The burden associated with the information collection in the proposed regulations represents 1.567 million hours and $149 million ($2018) annually to comply with the information collection requirement in the proposed regulations. The burden hours estimate was derived from IRS's legacy burden model and is discussed in further detail on 1545–0110. The hourly rate is derived from RAAS's Business Taxpayer Burden model that relates time and out-of-pocket costs of business tax preparation, derived from survey data, to assets and receipts of affected taxpayers along with other relevant variables, and converted by the Treasury Department to $2017. The Treasury Department and the IRS request comments on all aspects of information collection burdens related to the proposed regulations. In addition, when available, drafts of the applicable IRS forms are posted for comment at *https://www.irs.gov/pub/irs-pdf/f1099div.pdf.*

III. Regulatory Flexibility Act

It is hereby certified that the collections of information in proposed § 1.199A–3 will not have a significant economic impact on a substantial number of small entities.

The collection in proposed § 1.199A–3 applies only to RICs that pay section 199A dividends. As described above, Congress created RICs to give small investors access to the professional management and asset diversification that are available only with very large investment portfolios. To insure appropriate non-tax regulation of these substantial investment portfolios, subchapter M of chapter 1 of subtitle A the Code requires that such RICs must be eligible for registration, and must actually be registered, with the Securities and Exchange Commission under the Investment Company Act of 1940. There are some small businesses that are publicly traded, but most publicly traded businesses are not small entities as defined by the Regulatory Flexibility Act. Thus, the Treasury Department and IRS expect that most RICs are not small entities for purposes of the Regulatory Flexibility Act. Accordingly, the Treasury Department and the IRS have determined that the collection of information in this notice of proposed rulemaking will not have a significant economic impact. Accordingly, a regulatory flexibility analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Notwithstanding this certification, the Treasury Department and the IRS invite comments from interested members of the public on both the number of entities affected and the economic impact on small entities.

Pursuant to section 7805(f) of the Code, this notice of proposed rulemaking has been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Pursuant to section 7805(f) of the Code, this notice of proposed rulemaking has been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Requests for Public Hearing

The Treasury Department and the IRS request comments on all aspects of the proposed rules.

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. All comments will be available at *www.regulations.gov* or upon request. A public hearing will be scheduled if requested in writing by any person that timely submits written comments. If a public hearing is scheduled, then 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 regulations are Michael Y. Chin and Steven Harrison, Office of the Associate Chief Counsel (Financial Institutions and Products) and Robert Alinsky, Vishal R. Amin, Margaret Burow, and Frank J. Fisher, Office of the Associate Chief Counsel (Passthroughs and Special Industries). However, other personnel from the Treasury Department and the IRS 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 citations for part 1 are revised by amending sectional authorities for §§ 1.199A–3 and 1.199A–6 to read in part as follows:

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

Section 1.199A–3 also issued under 26 U.S.C. 199A(c)(4)(C) and (f)(4).

* * * * *

Section 1.199A–6 also issued under 26 U.S.C. 199A(f)(1)(B) and (f)(4).

* * * * *

■ **Par. 2.** Section 1.199A–0 is amended by:

■ 1. Adding entries for § 1.199A–3(b)(1)(iv)(A) and (B).

■ 2. Adding entries for § 1.199A–3(d), (d)(1) and (2), (d)(2)(i) through (iii), (d)(2)(iii)(A) and (B), (d)(3), (d)(3)(i) through (v), (d)(4), (d)(4)(i) and (ii), and (d)(5) and (6).

■ 3. Adding entries for § 1.199A–6(d)(3)(iii) and (v).

The additions read as follows:

§ 1.199A–0 Table of contents.

* * * * *

§ 1.199A–3 Qualified business income, qualified REIT dividends, and qualified PTP income.

* * * * *

(b) * * *

(1) * * *

(iv) * * *

(A) In general.

(B) Attributes of disallowed loss determined in year loss is incurred.

* * * * *

(d) Section 199A dividends paid by a regulated investment company.

(1) In general.

(2) Definition of section 199A dividend.

(i) In general.

(ii) Reduction in the case of excess reported amounts.

(iii) Allocation of excess reported amount.

(A) In general.

(B) Special rule for noncalendar-year RICs.

(3) Definitions.

(i) Reported section 199A dividend amount.

(ii) Excess reported amount.

(iii) Aggregate reported amount.

(iv) Post-December reported amount.

(v) Qualified REIT dividend income.

(4) Treatment of section 199A dividends by shareholders.

(i) In general.

(ii) Holding period.

(5) Example.

(6) Applicability date.

* * * * *

§ 1.199A–6 Relevant passthrough entities (RPEs), publicly traded partnerships (PTPs), trusts, and estates.

* * * * *

(d) * * *

(3) * * *

(iii) Separate shares.

* * * * *

(v) Charitable remainder trusts.

* * * * *

■ **Par. 3.** Section 1.199A–3 is amended by revising paragraph (b)(1)(iv) and adding paragraph (d) to read as follows:

§ 1.199A–3 Qualified business income, qualified REIT dividends, and qualified PTP income.

* * * * *

(b) * * *

(1) * * *

(iv) *Previously disallowed losses*—(A) *In general.* Previously disallowed losses or deductions (including losses disallowed under sections 465, 469, 704(d), and 1366(d)) allowed in the taxable year generally are taken into account for purposes of computing QBI to the extent the disallowed loss or deduction is otherwise allowed by section 199A and this section. These losses shall be used, for purposes of section 199A and these regulations, in order from the oldest to the most recent on a first-in, first-out (FIFO) basis and shall be treated as losses from a separate trade or business. To the extent such losses relate to a PTP, they must be treated as a loss from a separate PTP in the taxable year the losses are taken into account. However, losses or deductions that were disallowed, suspended, limited, or carried over from taxable years ending before January 1, 2018 (including under sections 465, 469, 704(d), and 1366(d)), are not taken into account in a later taxable year for purposes of computing QBI.

(B) *Attributes of disallowed loss determined in year loss is incurred.* Whether a disallowed loss or deduction is attributable to a trade or business, and otherwise meets the requirements of this section is determined in the year the loss is incurred. Whether a disallowed loss or deduction is attributable to a specified service trade or business (including whether an individual has taxable income under the threshold amount, within the phase-in range, or in excess of the phase-in range) also is determined in the year the loss is incurred. To the extent a loss is partially disallowed, QBI in the year of disallowance must be reduced proportionately.

* * * * *

(d) *Section 199A dividends paid by a regulated investment company*—(1) *In general.* If section 852(b) applies to a regulated investment company (RIC) for a taxable year, the RIC may pay section 199A dividends, as defined in this paragraph (d).

(2) *Definition of section 199A dividend*—(i) *In general.* Except as provided in paragraph (d)(2)(ii) of this section, a section 199A dividend is any dividend or part of such a dividend that a RIC pays to its shareholders and reports as a section 199A dividend in written statements furnished to its shareholders.

(ii) *Reduction in the case of excess reported amounts.* If the aggregate reported amount with respect to the RIC for any taxable year exceeds the RIC's qualified REIT dividend income for the taxable year, then a section 199A dividend is equal to—

(A) The reported section 199A dividend amount, reduced by;

(B) The excess reported amount that is allocable to that reported section 199A dividend amount.

(iii) *Allocation of excess reported amount*—(A) *In general.* Except as provided in paragraph (d)(2)(iii)(B) of this section, the excess reported amount (if any) that is allocable to the reported section 199A dividend amount is that portion of the excess reported amount that bears the same ratio to the excess reported amount as the reported section 199A dividend amount bears to the aggregate reported amount.

(B) *Special rule for noncalendar-year RICs.* In the case of any taxable year that does not begin and end in the same calendar year, if the post-December reported amount equals or exceeds the excess reported amount for that taxable year, paragraph (d)(2)(iii)(A) of this section is applied by substituting ''post-December reported amount'' for ''aggregate reported amount,'' and no excess reported amount is allocated to any dividend paid on or before December 31 of that taxable year.

(3) *Definitions.* For purposes of paragraph (d) of this section—

(i) *Reported section 199A dividend amount.* The term *reported section 199A dividend amount* means the amount of a dividend distribution reported to the RIC's shareholders under paragraph (d)(2)(i) of this section as a section 199A dividend.

(ii) *Excess reported amount.* The term *excess reported amount* means the excess of the aggregate reported amount over the RIC's qualified REIT dividend income for the taxable year.

(iii) *Aggregate reported amount.* The term *aggregate reported amount* means the aggregate amount of dividends reported by the RIC under paragraph (d)(2)(i) of this section as section 199A dividends for the taxable year (including section 199A dividends paid after the close of the taxable year and described in section 855).

(iv) *Post-December reported amount.* The term *post-December reported amount* means the aggregate reported amount determined by taking into account only dividends paid after December 31 of the taxable year.

(v) *Qualified REIT dividend income.* The term *qualified REIT dividend income* means, with respect to a taxable year of a RIC, the excess of the amount of qualified REIT dividends, as defined in § 1.199A–3(c)(2), includible in the RIC's taxable income for the taxable year over the amount of the RIC's deductions that are properly allocable to such income.

(4) *Treatment of section 199A dividends by shareholders*—(i) *In general.* For purposes of section 199A and the regulations under section 199A, a section 199A dividend is treated by a taxpayer that receives the section 199A dividend as a qualified REIT dividend.

(ii) *Holding period.* Paragraph (d)(4)(i) does not apply to any dividend received with respect to a share of RIC stock—

(A) That is held by the shareholder for 45 days or less (taking into account the principles of section 246(c)(3) and (4)) during the 91-day period beginning on the date which is 45 days before the date on which the share becomes ex-dividend with respect to such dividend; or

(B) To the extent that the shareholder is under an obligation (whether pursuant to a short sale or otherwise) to make related payments with respect to positions in substantially similar or related property.

(5) *Example.* The following example illustrates the provisions of this paragraph (d).

(i) Example. (A) X is a corporation that has elected to be a RIC. For its taxable year ending March 31, 2019, X has $25,000x of net long-term capital gain, $60,000x of qualified dividend income, $25,000x of taxable interest

income, $15,000x of net short-term capital gain, and $25,000x of qualified REIT dividends. X has $15,000x of deductible expenses, of which $3,000x is allocable to the qualified REIT dividends. On December 31, 2018, X pays a single dividend of $100,000x on December 31, and reports $20,000x of the dividend as a section 199A dividend in written statements to its shareholders. On March 31, 2019, X pays a dividend of $35,000x, and reports $5,000x of the dividend as a section 199A dividend in written statements to its shareholders.

(B) X's qualified REIT dividend income under paragraph (d)(3)(v) of this section is $22,000x, which is the excess of X's $25,000x of qualified REIT dividends over $3,000x in allocable expenses. The reported section 199A dividend amounts for the December 31, 2018, and March 31, 2019, distributions are $20,000x and $5,000x, respectively. For the taxable year ending March 31, 2019, the aggregate reported amount of section 199A dividends is $25,000x, and the excess reported amount under paragraph (d)(3)(ii) of this section is $3,000x. Because X is a noncalendar-year RIC and the post-December reported amount of $5,000x exceeds the excess reported amount of $3,000x, the entire excess reported amount is allocated under paragraphs (d)(2)(iii)(A) and (B) of this section to the reported section 199A dividend amount for the March 31, 2019, distribution. No portion of the excess reported amount is allocated to the reported section 199A dividend amount for the December 31, 2018, distribution. Thus, the section 199A dividend on March 31, 2019, is $2,000x, which is the reported section 199A dividend amount of $5,000x reduced by the $3,000x of allocable excess reported amount. The section 199A dividend on December 31, 2018, is the $20,000x that X reports as a section 199A dividend.

(C) Shareholder A, a United States person, receives a dividend from X of $100x on December 31, 2018, of which $20x is reported as a section 199A dividend. If A meets the holding period requirements in paragraph (d)(4)(ii) of this section with respect to the stock of X, A treats $20x of the dividend from X as a qualified REIT dividend for purposes of section 199A for A's 2018 taxable year.

(D) A receives a dividend from X of $35x on March 31, 2019, of which $5x is reported as a section 199A dividend. If A meets the holding period requirements in paragraph (d)(4)(ii) of this section with respect to the stock of X, A may only treat $2x of the dividend from X as a section 199A dividend for A's 2019 taxable year.

(6) *Applicability date.* The provisions of paragraph (d) of this section apply to taxable years ending after the date the Treasury decision adopting these regulations as final regulations is published in the **Federal Register**. However, taxpayers may rely on the rules of this section until the date the Treasury decision adopting these regulations as final regulations is published in the **Federal Register**.

* * * * *

■ **Par. 4.** Section 1.199A–6 is amended by adding paragraphs (d)(3)(iii) and (v) to read as follows:

§ 1.199A–6 Relevant passthrough entities (RPEs), publicly traded partnerships (PTPs), trusts, and estates.

* * * * *

(d) * * *

(3) * * *

(iii) *Separate shares.* In the case of a trust described in section 663(c) with substantially separate and independent shares for multiple beneficiaries, such trust will be treated as a single trust for purposes of determining whether the taxable income of the trust exceeds the threshold amount.

* * * * *

(v) *Charitable remainder trusts.* A charitable remainder trust described in section 664 is not entitled to and does not calculate a section 199A deduction and the threshold amount described in section 199A(e)(2) does not apply to the trust. However, any taxable recipient of a unitrust or annuity amount from the trust must determine and apply the recipient's own threshold amount for purposes of section 199A taking into account any annuity or unitrust amounts received from the trust. A recipient of a unitrust or annuity amount from a trust may take into account QBI, qualified REIT dividends, or qualified PTP income for purposes of determining the recipient's section 199A deduction for the taxable year to the extent that the unitrust or annuity amount distributed to such recipient consists of such section 199A items under § 1.664–1(d). For example, if a charitable remainder trust has investment income of $500, qualified dividend income of $200, and qualified REIT dividends of $1,000, and distributes $1,000 to the recipient, the trust would be treated as having income in two classes within the category of income described in § 1.664–1(d)(1)(i)(*a*)(*1*), for purposes of § 1.664–1(d)(1)(ii)(*b*). Because the annuity amount first carries out income in the class subject to the highest income tax rate, the entire annuity payment comes from the class with the investment income and qualified REIT dividends. Thus, the charitable remainder trust would be treated as distributing a proportionate amount of the investment income ($500/(1,000+500)*1,000 = $333) and qualified REIT dividends ($1000/(1,000+500)*1000 = $667) because the investment income and qualified REIT dividends are taxed at the same rate and within the same class, which is higher than the rate of tax for the qualified dividend income which is in a separate class. The charitable remainder trust in this example would not be treated as distributing any of the qualified dividend income until it distributed all of the investment income and qualified REIT dividends (more than $1,500 in total) to the recipient. To the extent that a trust is treated as distributing QBI, qualified REIT dividends, or qualified PTP income to more than one unitrust or annuity recipient in the taxable year, the distribution of such income will be treated as made to the recipients proportionately, based on their respective shares of the total of QBI, qualified REIT dividends, or qualified PTP income distributed for that year. The trust allocates and reports any W–2 wages or UBIA of qualified property to the taxable recipient of the annuity or unitrust interest based on each recipient's share of the trust's total QBI (whether or not distributed) for that taxable year. Accordingly, if 10 percent of the QBI of a charitable remainder trust is distributed to the recipient and 90 percent of the QBI is retained by the trust, 10 percent of the W–2 wages and UBIA of qualified property is allocated and reported to the recipient and 90 percent of the W–2 wages and UBIA of qualified property is treated as retained by the trust. However, any W–2 wages retained by the trust do not carry over to subsequent taxable years for section 199A purposes. Any QBI, qualified REIT dividends, or qualified PTP income of the trust that is unrelated business taxable income is subject to excise tax and that tax must be allocated to the corpus of the trust under § 1.664–1(c).

* * * * *

Kirsten Wielobob,

Deputy Commissioner for Services and Enforcement.

[FR Doc. 2019–01023 Filed 2–4–19; 4:15 pm]

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Part III

Department of Labor

Office of Workers' Compensation Programs

20 CFR Part 30

Claims for Compensation Under the Energy Employees Occupational Illness Compensation Program Act; Final Rule

DEPARTMENT OF LABOR

Office of Workers' Compensation Programs

20 CFR Part 30

RIN 1240–AA08

Claims for Compensation Under the Energy Employees Occupational Illness Compensation Program Act

AGENCY: Office of Workers' Compensation Programs, Department of Labor.

ACTION: Final rule.

SUMMARY: The Department of Labor initiated this rulemaking to bring clarity to the regulatory description of the claims adjudication process, and to improve the administration of the program. This final rule updates existing regulations to remove obsolete terms, update references and incorporate policy and procedural changes. It also adds necessary controls to allow the Department to better manage the provision of home health care to beneficiaries.

DATES: *Effective Date:* This final rule is effective on April 9, 2019, and will apply to all claims filed on or after that date. This rule will also apply to any claims that are pending on April 9, 2019.

FOR FURTHER INFORMATION CONTACT: Rachel P. Leiton, Director, Division of Energy Employees Occupational Illness Compensation, Office of Workers' Compensation Programs, U.S. Department of Labor, Room C–3321, 200 Constitution Avenue NW, Washington, DC 20210, Telephone: 202–693–0081 (this is not a toll-free number). Individuals with hearing or speech impairments may access this telephone number via TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Background of This Rulemaking

The Department of Labor (Department) published its Notice of Proposed Rulemaking (NPRM) in the **Federal Register** on November 18, 2015 (80 FR 72296). In its NPRM, the Department proposed amending certain of the existing regulations governing its administration of Parts B and E of the Energy Employees Occupational Illness Compensation Program Act of 2000, as amended (EEOICPA or Act), 42 U.S.C. 7384 *et seq* to conform them to current administrative practice, based on its experience administering the Act since 2001, to bring further clarity to the regulatory description of the claims adjudication process, and to improve the administration of the Act. The majority of the changes in the NPRM consisted of routine updates to the existing regulations to remove obsolete terms, update references and incorporate policy changes that have already been adopted in the Federal (EEOICPA) Procedure Manual. Most significantly, the Department proposed modifying the existing regulations to describe the increased involvement of the National Institute for Occupational Safety and Health (NIOSH), within the Department of Health and Human Services (HHS), in the Office of Workers' Compensation Programs' (OWCP's) consideration of objections to NIOSH's final radiation dose reconstruction reports. Since the beginning of OWCP's administration of Part B of EEOICPA, Final Adjudication Branch (FAB) reviewers have struggled with their regulatory obligation in existing § 30.318 to consider objections to final dose reconstruction reports that have been prepared by NIOSH during its portion of the adjudication process for radiogenic cancer claims. The experience has also been frustrating for claimants, and convinced the Department that FAB reviewers are ill-suited to address objections that concern matters within the particular scientific expertise of NIOSH. Since NIOSH agreed to consider and address claimant concerns in the final dose reconstruction report it sends to OWCP, and also agreed to provide consultation at the request of FAB reviewers to address any objections raised while the claim is pending before FAB, the Department proposed modifying § 30.318(a). That proposed paragraph describes the potential for NIOSH to provide consultation in FAB's consideration of objections to final dose reconstruction reports, and this consultation process will provide for a more complete consideration of the claimant's objections. In addition, the Department proposed changes in the NPRM to align the processing and payment of medical bills with the system that OWCP currently uses for paying medical bills, updated the process for excluding EEOICPA medical service providers and set out a new process for authorizing home health care.

The Department notes that this final rule is largely an update to the existing regulations to reflect the program's current processes, and incorporates the policy and procedural changes that have been implemented since the existing regulations were issued in 2006, rather than imposing any new regulatory burdens. However, it puts necessary controls in place to allow the Department to better manage the provision of home health care to beneficiaries, since these costs have been rising over the past decade, and reduces the likelihood of fraudulent practices by some providers of this care. Accordingly, the Department believes that the likely benefits of this rulemaking for both OWCP and the public, in the form of regularized, simplified, and less costly administrative practices of OWCP, and the reduced need for costly overpayment-recovery efforts, will clearly outweigh any unlikely and presumably intangible burdens on businesses and the public at large.

II. Comments on the Proposed Regulations

The Department originally allowed a 60-day period for interested parties to comment on the NPRM that was scheduled to close on January 19, 2016, but on that date it extended the comment period another 30 days through February 18, 2016 (81 FR 2787). In addition, on April 5, 2016, the Department reopened the comment period for the NPRM through May 9, 2016 (81 FR 19518). During these comment periods, the Department received a total of 493 timely comments from the following 474 unique commenters: 272 individuals; 158 unknown persons or organizations; 25 physicians; 6 claimant representatives; 5 advocacy groups; 3 health care providers; 1 congressional representative; 1 labor organization; 1 Federal employee from an agency other than the Department; 1 law firm and the new Advisory Board on Toxic Substances and Worker Health established under section 7385s–16 of EEOICPA. The Department also received one untimely comment from an individual that raised issues that were also raised by the timely commenters.

Of the 493 timely comments, 220 did not address any aspect of the proposed regulatory changes in the NPRM and are not discussed further in this document. This left 273 comments, of which 128 only asked the Department to extend the comment period for the NPRM, but did not discuss any other aspect of the NPRM. The remaining 145 comments referenced at least one change to the existing regulations suggested in the proposed rule; 7 of these 145 also included an extension request. The Department's section-by-section analysis of the 145 timely comments is set forth below (*see* section III). A brief discussion of the total of 135 extension

requests and other ancillary matters related to this rulemaking is also set forth below (*see* section IV).

III. Section-by-Section Analysis

The analysis in this section provides the Department's response to public comments received on the NPRM. Unless otherwise stated, the section numbers in the text of the analysis refer to the numbering used for the final regulations.

Subpart A—General Provisions

Introduction

In the NPRM, the Department proposed modifying existing § 30.1 to update the Secretary's Order reference and delete the reference to the Assistant Secretary for Employment Standards, since that position, as well as the Employment Standards Administration, no longer exists. A claimant representative agreed with the Department's deletion of those references. An individual commented on other aspects of proposed § 30.1 that are no different from the existing § 30.1. Because the individual's comment did not refer to a change that was proposed in the NPRM, no amendment was made in the final rule with respect to this comment.

Proposed § 30.2(b) added language to that section to note that HHS delegated its dose reconstruction responsibilities to NIOSH in 42 CFR 82.1. A claimant representative suggested that the Department should retain the reference to HHS that appears in existing § 30.2(b). However, the Department believes that explicitly acknowledging this delegation will promote better public understanding of the fact that this particular portion of the claim adjudication process is performed by and under the exclusive control of another Federal agency. Under these circumstances, no changes were made in the final rule with respect to this comment. An individual commented on other aspects of proposed § 30.2(b) that are no different from the existing § 30.2(b). Because the individual's comment did not refer to a change that was proposed in the NPRM, no amendment was made in the final rule with respect to this comment.

Definitions

The Department proposed amending the definition of a *beryllium vendor* in existing § 30.5(i) by removing the language indicating that the Department of Energy (DOE) periodically updated a list of beryllium vendors in the **Federal Register**, since DOE no longer has the statutory authority to designate beryllium vendors, and replaced it with a reference to the final list of beryllium vendors that DOE compiled on December 27, 2002. One individual objected to the proposed language, because he believed that the change did not acknowledge that additional beryllium vendor facilities, *i.e.,* newly identified locations where beryllium vendors performed their work, could still be designated. While DOE's authority to designate new beryllium vendors expired on December 31, 2002 pursuant to 42 U.S.C. 7384m, the Department agrees that there is authority, as the individual pointed out, to designate additional beryllium vendor facilities, and notes that additional beryllium vendor facilities have been designated after December 31, 2002. The Department therefore agrees that the proposed language might cause confusion, and is clarifying it in the final rule by removing the term ''facilities'' and replacing it with ''other entities.'' This change will acknowledge the continuing authority to designate additional beryllium vendor facilities that are, or have been, owned and operated by either a beryllium vendor identified in section 7384l(6) of EEOICPA or a beryllium vendor designated by DOE prior to December 31, 2002. The same individual also suggested that the Department amend proposed § 30.5(i) to clarify the distinction between corporate beryllium vendors identified in EEOICPA and those designated by DOE prior to December 31, 2002. The Department sees no utility in making the suggested distinction, particularly in the context of claims adjudication, and therefore did not alter the text as desired.

In the NPRM, the Department proposed adding a new paragraph, § 30.5(j), to define the term *beryllium vendor facility.* To accommodate this proposed addition, the Department also proposed redesignating existing paragraphs (j) through (hh) as paragraphs (k) through (ii). Proposed § 30.5(j) defined the term *beryllium vendor facility* as ''a facility owned and operated by a beryllium vendor.'' Two claimant representatives and three advocacy groups objected to proposed § 30.5(j) because they believed that the proposed definition would impermissibly narrow the scope of coverage as set out in EEOICPA for both current and potential covered beryllium employees. These commenters suggested that proposed § 30.5(j) be amended to include the words ''occupied by a beryllium vendor'' to specifically align the definition with section 7384l(7)(A) of EEOICPA, which refers to ''a facility owned, operated or occupied by a beryllium vendor.'' While the Department acknowledges that section 7384l(7)(A) refers to ''a facility owned, operated or occupied by a beryllium vendor,'' employees who satisfy that first provision must also show that they were exposed in the performance of duty under section 7384n(a)(2), which refers to ''a facility owned and operated by a beryllium vendor.'' Put simply, an employee must satisfy *both* statutory provisions to be entitled to Part B benefits due to a beryllium illness. Thus, the narrower of those two implicit definitions of a ''beryllium vendor facility'' controls. The Department notes, however, that the proposed definition did not, nor could it, alter the eligibility of workers at beryllium vendor facilities. Accordingly, no changes were made in the final rule with respect to these comments.

Proposed § 30.5(k)(2) suggested replacing the term ''medical doctor'' with ''licensed physician'' in the existing definition of *chronic silicosis* that currently appears in existing § 30.5(j)(2). One claimant representative commented on the language in existing § 30.5(k), which contains a definition of the term *claim,* rather than on the proposed change to the definition of *chronic silicosis.* Since the claimant representative's comment did not refer to a change that was proposed in the NPRM, no amendment was made in the final rule with respect to this comment.

Proposed § 30.5(w) updated the existing definition of the *Department of Energy* or *DOE* to clarify that DOE's predecessor agencies date back to August 13, 1942, which is the date that the Manhattan Engineer District was established. Two advocacy groups asserted that the start date of DOE's predecessor agencies in proposed § 30.5(w) would prevent some employees who worked on the atomic bomb from applying for benefits, and suggested that the start date should conform with the employment eligibility criteria under section 5 of RECA. However, the Department notes that such a proposal is not legally permissible because section 7384l(10) of EEOICPA provides that the term ''Department of Energy'' includes the Manhattan Engineer District, which was established on August 13, 1942, not January 1, 1942. Since the proposed regulatory language aligns with section 7384l(10), no change was made to § 30.5(w) in the final rule. One claimant representative also commented on § 30.5(w), but did not comment on a proposed change in that provision. Because the claimant representative's

comment did not refer to a change that was proposed in the NPRM, no amendment was made in the final rule with respect to this comment.

In proposed § 30.5(x), the Department added § 30.5(x)(2)(iii) to the definition of a *Department of Energy contractor employee* in existing § 30.5(w) to state that a civilian employee of a state or Federal government agency qualifies as a DOE contractor employee if the agency employing that individual is found to have entered into a contract with DOE for the provision of one or more services it was not statutorily obligated to perform and DOE compensated the agency for those services, and also that the delivery or removal of goods from the premises of a DOE facility does not constitute a service for the purposes of determining a worker's coverage under the Act. Four advocacy groups, one claimant representative, two individuals and the labor organization objected to the added language regarding the delivery or removal of goods for the purposes of determining a worker's coverage under the Act. However, that language memorializes a policy that has been followed by OWCP since it issued EEOICPA Bulletin No. 03–27 in 2003, and that policy continues to conform with the eligibility terms of the statute. Because § 30.5(x)(2)(iii) merely updates the current regulations with OWCP's longstanding policy, the requested changes were not made in the final rule. Another claimant representative commented on aspects of existing § 30.5(x), but did not comment on a proposed change in that provision. Since the individual's comment did not refer to a change that was proposed in the NPRM, no amendment was made in the final rule with respect to this comment.

Proposed § 30.5(ee) amended the definition of a *physician* in existing § 30.5(dd), which states that a ''*physician* includes'' a list of types of physicians, by stating that a ''*physician* means'' that same list. Two advocacy groups, one Federal employee, the labor organization and one health care provider suggested that the Department retain the word ''includes'' so that medical doctors and other medical specialists are included in that definition. The Department agrees with these commenters and acknowledges that the proposed change would have had unintended consequences. Accordingly, the Department is reverting back to using the word ''includes'' in the final rule. One of those same advocacy groups and another health care provider suggested adding nurse practitioners and/or physician assistants to this regulatory definition because these practitioners are qualified to prescribe medication in some jurisdictions. However, while the Department acknowledges that nurse practitioners and physician assistants can provide valuable services to patients who reside in remote locations, their written opinions are not widely accepted as probative and persuasive medical evidence. To make that point clear, the Department has added text to this effect to § 30.5(ee) in the final rule. Finally, one claimant representative referred to something that was not changed in proposed § 30.5(ee). Because the claimant representative's comment does not pertain to a change in proposed § 30.5(ee), no change was made in the final rule based on this comment.

Proposed § 30.5(gg) removed references to ''RECA'' and ''EEOICPA'' in the existing definition of a *specified cancer* in § 30.5(ff). One claimant representative suggested that the Department should retain those references. However, the Department notes that these two statutory references are clearly surplusage and serve no useful purpose in the regulatory context. Therefore, the suggested change to this paragraph was not adopted in the final rule.

The Department proposed to expand upon the definition of the term *time of injury* in existing § 30.5(hh) by adding text in proposed § 30.5(ii)(2) to explain that the *time of injury* in a survivor's claim is the ''date of the employee's death.'' Four advocacy groups, a claimant representative, a physician and the labor organization disagreed with the proposed definition, based on their concern that the proposed text could deprive survivors of reimbursement for medical expenses in situations when a covered employee dies after filing a claim, but before such claim is accepted. Section 7385i(a) of EEOICPA is the only place in the statute that Congress used the term ''time of injury,'' and the Department notes that proposed § 30.5(ii)(2) was intended to clarify how the forfeiture provision in section 7385i(a) works when a survivor, as distinguished from an employee, is convicted of fraud in the application for or receipt of EEOICPA benefits or of Federal or state workers' compensation benefits. It was the Department's intention in the NPRM to give full force and effect to this important fraud prevention provision. Because this definition only impacts those survivors who have committed fraud of the sort that triggers the forfeiture provision of section 7385i(a), and the overwhelming majority of survivors who might be eligible to claim this reimbursement do *not* engage in such fraudulent acts, they will not be affected in any way by this clarification. Accordingly, no change was made to § 30.5(ii)(2) in the final rule.

In the NPRM, the Department proposed adding new paragraph § 30.5(jj) to define the terms *time of payment* or *payment.* To accommodate this addition, the Department also proposed redesignating existing paragraphs (ii) and (jj) as paragraphs (kk) and (ll). Proposed § 30.5(jj) defined *time of payment* or *payment* as the date that (1) a paper check issued by the Department of the Treasury was received by the payee or by someone who was legally able to act for the payee, or (2) the date the Department of the Treasury made an Electronic Funds Transfer to the payee's financial institution. One claimant representative objected to the proposed definition and argued that the Department should define this term by referring to the time a payment is issued, rather than received. However, the commenter erroneously believes that it is OWCP that issues payments on claims under EEOICPA, when as noted above, it is the Department of the Treasury that performs these ministerial functions. Therefore, since the date a payment is issued is not entirely within OWCP's control, nothing in this final rule could alter when payment by either paper check or Electronic Funds Transfer occurs. Thus, the suggested change to this paragraph was not made in the final rule.

Subpart B—Filing Claims; Evidence and Burden of Proof; Special Procedures for Certain Cancer Claims

Filing Claims for Benefits Under EEOICPA

Proposed § 30.100(a) and (c)(1) removed language that would allow certain persons other than the employee to sign a written claim with OWCP on the employee's behalf, and instead required that the employee sign his or her own claim. Proposed § 30.101(a) and (d)(1) made the same change with respect to survivor claims. Three claimant representatives, three individuals, two health care providers, one advocacy group and the labor organization objected to the Department's change in proposed § 30.100(a) and (c)(1) to require an employee to sign his or her own written claim. The same three claimant representatives, the same three individuals, the same advocacy group and the same labor organization objected to the same change made in proposed § 30.101(a) and (d)(1). These commenters were concerned that the

requirement would cause undue difficulty and delay in the submission of claims by some elderly or otherwise impaired individuals. However, when signing Forms EE–1 and EE–2, a claimant makes certain certifications with possible legal ramifications, and authorizes the release of information to OWCP. Therefore, it is reasonable to require claimants to sign the form, particularly since doing so will be an objective indication that he or she is aware of these matters. The same advocacy group and one of the three individuals suggested that these sections should be written so as to accommodate those claimants who may be unable to sign a claim form. OWCP already accepts, and will continue to accept, claim forms signed by a valid attorney-in-fact or court-appointed representative. An individual other than a claimant may sign the claim form for the claimant if they have the recognized authority to do so, and are not otherwise prohibited under any other provision in these regulations. Therefore, the Department has not made the suggested changes to § 30.100(a) and (c)(1), or to § 30.101(a) and (d)(1), in the final rule.

Also in proposed §§ 30.100 and 30.101, the Department proposed amending language that currently only recognizes postmark dates as evidence of the time a claim is filed to also recognize the date-markings of other carriers, since other delivery options besides the U.S. Mail are widely used. A claimant representative indicated that she did not see any reason for making these proposed changes, and suggested that the additional language be removed. However, since the proposed language at issue in these two sections adds new ways for a claimant to establish the date he or she filed a claim, which is important because the date of filing also marks the date of commencement for the potential payment of medical benefits, the claimant representative's belief is unfounded. Therefore, no change was made in the final rule in response to this comment.

In the NPRM, proposed § 30.102(a) removed the superfluous word ''minimum'' from the term ''minimum impairment rating'' in existing § 30.102(a). A claimant representative objected to that change, and pointed out that this word appears in the statutory description of impairment ratings found in section 7385s–2(a)(1)(A)(i) of EEOICPA. However, as the Department explained when it published proposed § 30.102(a), the term ''minimum impairment rating'' is an artifact left over from an early draft of the legislation that was later enacted as Part E of EEOICPA and has no intrinsic meaning in the scheme that Congress eventually passed. Since there is no practical difference between a ''minimum impairment rating'' and an ''impairment rating'' when a claimant has reached maximum medical improvement, no amendment was made in the final rule in response to this comment.

Evidence and Burden of Proof

In proposed § 30.110(a)(1), the Department updated a cross-reference to reflect the changed location of the regulatory provision defining the term *covered beryllium illness* from § 30.5(o) to § 30.5(p). Also, in proposed § 30.110(a)(4), the Department updated a cross-reference to reflect the changed location of the regulatory provision defining the term *covered uranium employee* from § 30.5(s) to § 30.5(t). Finally, in proposed § 30.110(b), the Department updated a cross-reference to reflect the changed location of the regulatory provision defining the term *covered Part E employee* from § 30.5(p) to § 30.5(q). A claimant representative questioned the need to change these regulatory cross-references in proposed § 30.110(a) and (b), and suggested that the existing cross-references be retained. However, the Department notes that these changes were necessary to reflect the changed location of the specified regulatory provisions. Therefore, no change was made to § 30.110(a) or (b) in the final rule.

In the NPRM, proposed § 30.112(b)(3) removed the term ''self-serving'' when referring to affidavits submitted to establish covered employment, and also removed language that ''OWCP may reject the claim based upon a lack of evidence of covered employment'' when DOE or another entity either disagrees, or cannot concur or disagree with the assertion in a written affidavit or declaration of covered employment. In its place, proposed § 30.112(b)(3) explained that OWCP will evaluate such an affidavit in conjunction with the other evidence of employment when DOE or another entity either disagrees, or cannot concur or disagree with the assertion, and ''may determine that the claimant has not met his or her burden of proof under § 30.111.'' A claimant representative agreed with removing the term ''self-serving,'' but stated that the added language in that provision might signify that OWCP will always make a finding of no covered employment based on this type of evidence, and suggested adding language that ''objective'' evidence such as statements from co-workers, social security records, and payroll records will be considered as evidence of employment. An advocacy group had the same concern regarding the effect of the changes made in proposed § 30.112(b)(3), and noted that DOE does not have complete employment records. Both commenters asked the Department to clearly define several terms used in the proposed text that explain how OWCP will evaluate affidavit evidence in these situations. However, proposed § 30.112(b)(3) described OWCP's longstanding method of evaluating employment evidence, which necessarily involves a high degree of administrative discretion, and therefore the Department is not persuaded that it would be appropriate to make the above changes in the final rule. An individual mistakenly asserted that OWCP does not accept affidavit evidence to prove covered employment, but did not comment on the proposed change in that provision. Because the individual's comment did not refer to a change that was proposed in the NPRM, no change was made to § 30.112(b)(3) in the final rule with respect to this comment. However, the Department has decided that it needs to conform the regulatory language of § 30.112(b)(3) with the related text of § 30.231(a) in the final rule, by specifying that if the only evidence that the claimant submits to establish covered employment is an affidavit, OWCP will evaluate that affidavit in conjunction with the other available evidence of employment in the record.

Proposed § 30.113(c) removed the term ''self-serving'' when referring to documents submitted to establish a covered medical condition, and instead proposed language codifying OWCP's current method of evaluating all medical evidence in a claim when it decides if the claimant has met his or her burden of proof under § 30.111. A claimant representative and a health care provider suggested that the Department further define several terms it used in proposed § 30.113(c). The Department believes that OWCP's evaluation of medical evidence is a matter of administrative discretion and cannot reasonably be further defined. An individual mistakenly asserted that OWCP does not accept the type of medical evidence described in proposed § 30.113(c), but did not comment on the proposed change in that provision. Because the individual's comment did not refer to a change that was proposed in the NPRM, no change was made to § 30.113(c) in the final rule with respect to this comment.

The Department proposed modifying existing § 30.114(b) in the NPRM to clarify that current paragraphs (b)(1) and (b)(2) pertain to medical evidence

needed to establish a compensable medical condition under Part B, and added paragraph (b)(3) to provide that additional medical evidence, as described in other sections of the regulations, is required to establish claims for covered illness(es), impairment benefits and wage-loss benefits under Part E. A claimant representative agreed with the Department's changes in proposed § 30.114(b)(1) and (2), but asserted that proposed § 30.114(b)(3)(ii) wrongly required a claimant to submit additional medical evidence to establish a wage-loss claim, because she believed that the medical evidence already used to accept a covered illness should be enough to support a claim for wage-loss benefits. This belief does not consider that there are, however, additional eligibility requirements for wage-loss benefits in section 7385s–2(a)(2) of EEOICPA beyond those set out in section 7385s–4 of EEOICPA. Therefore, no change was made to § 30.114(b) in the final rule as a result of this comment.

Special Procedures for Certain Radiogenic Cancer Claims

Proposed § 30.115(a) deleted a reference to an obsolete HHS regulation, and proposed § 30.115(a)(2) deleted language stating that HHS may perform further development of the employee's work history and that it will provide DOE with a copy of the final dose reconstruction report for an employee, since HHS does not perform either of those actions. In addition, proposed § 30.115(a) and (b) replaced references to ''HHS'' with ''NIOSH.'' A claimant representative commented on other aspects of proposed § 30.115(a) that are no different from the existing § 30.115(a). The same claimant representative and the labor organization commented on other aspects of proposed § 30.115(a)(2) that are no different from existing § 30.115(a)(2). Because those commenters did not refer to changes that were proposed in the NPRM, no changes were made to § 30.115(a)(2) in the final rule based on their comments, nor was any change made to § 30.115(b) in the final rule.

Subpart C—Eligibility Criteria

Eligibility Criteria for Claims Relating to Covered Beryllium Illness Under Part B of EEOICPA

In proposed § 30.205(a)(1), the Department updated a cross-reference to reflect the changed location of the regulatory provision defining the term *current or former employee as defined in 5 U.S.C. 8101(1)* from § 30.5(t) to § 30.5(u). In proposed § 30.205(a)(3)(i), the Department updated a cross-reference to reflect the changed location of the regulatory provision defining the term *Department of Energy facility* from § 30.5(x) to § 30.5(y). A claimant representative noted those cross-reference changes in proposed § 30.205. However, because the commenter did not either support or oppose the proposed regulation or offer ideas for changes, no change was made to § 30.205 in the final rule based on this comment.

Proposed § 30.206(a) removed the language ''a facility owned, operated, or occupied by a beryllium vendor'' from existing § 30.206(a), and instead referenced the definition of a *beryllium vendor facility* in proposed § 30.5(j). An advocacy group, a claimant representative, a health care provider and the Advisory Board suggested that the Department should retain the language in current § 30.206(a), and not reference proposed § 30.5(j) because they believed that proposed § 30.5(j) erroneously excluded facilities that were ''occupied by'' a beryllium vendor. As explained above, proposed § 30.5(j) did not alter the eligibility of workers at beryllium vendor facilities; rather, it encompassed the narrower of the two definitions at section 7384n(a)(2) of EEOICPA, which all beryllium vendor employees must satisfy to establish their eligibility. Therefore, the suggested change was not adopted in the final rule. The same advocacy group and another advocacy group commented on other aspects of proposed § 30.206(a) that were no different from existing § 30.206(a). Because the comments submitted by the advocacy groups did not refer to changes that were proposed in the NPRM, no amendments were made to § 30.206(a) in the final rule with respect to those comments.

The Department proposed adding paragraph (d) to existing § 30.207 to memorialize its current practices for determining whether to evaluate an employee's medical evidence under either the pre- or post-1993 criteria outlined in section 7384l(13) of EEOICPA. Proposed § 30.207(d)(1) through (3) explained that OWCP will look to the date that the employee was either treated for or diagnosed with a chronic respiratory disorder when determining whether to use either the pre- or post-1993 criteria. One advocacy group took issue with the portion of proposed § 30.207(d) that refers to a diagnosis of a ''chronic respiratory disorder,'' in the belief that the need to establish this diagnosis might conflict with section 7384l(13)(B)(ii)(IV) of EEOICPA. However, no such conflict exists, since the requirement to establish a diagnosis of a chronic respiratory disorder is one of the ways that would permit the use of the pre-1993 diagnostic criteria (of which the statutory provision referenced above is one of five) for ''established chronic beryllium disease'' under Part B of EEOICPA, rather than, as the commenter posited, a criterion in and of itself. Therefore, the Department made no change to § 30.207(d) as a result of this comment. A claimant representative suggested that the Department further define the term ''chronic'' in proposed § 30.207(d), but she did not suggest any changes to the text of the provision. The Department is unaware of any current or past difficulty regarding the use of this term in the claims adjudication process, and is therefore not persuaded that the term requires any further explanation in the regulations. The same claimant representative suggested that the Department add the words ''tested for'' a chronic respiratory disorder in proposed § 30.207(d)(1) and (2), since that change would be consistent with OWCP's past practice. The Department agrees with this comment; accordingly, text has been added to § 30.207(d)(1) and (2) in the final rule to acknowledge that OWCP will consider whether the employee was ''tested positive for'' a chronic respiratory disorder when it decides whether the criteria in paragraph (c)(1) in § 30.207 can be used.

Eligibility Criteria for Claims Relating to Radiogenic Cancer Under Parts B and E of EEOICPA

In proposed §§ 30.210(a)(1) and 30.211, the Department updated a cross-reference to reflect the changed location of the regulatory provision defining the term *specified cancer* from § 30.5(ff) to § 30.5(gg). A claimant representative noted those cross-reference changes in the above sections. However, because the commenter did not either support or oppose the proposed regulation or offer ideas for changes, no change was made to those sections in the final rule based on this comment.

Proposed § 30.213(a) replaced the words ''the employee's radiation dose reconstruction'' with ''the employee's final dose reconstruction report,'' and replaced a reference to ''HHS'' with ''NIOSH.'' A claimant representative commented on other aspects of proposed § 30.213(a) that are no different from existing § 30.213(a). Because the claimant representative's comment did not refer to a change that was proposed in the NPRM, no amendment was made to § 30.213(a) in the final rule with respect to this comment.

Eligibility Criteria for Claims Relating to Chronic Silicosis Under Part B of EEOICPA

In proposed § 30.220(a), the Department updated cross-references to reflect the changed location of the regulatory provisions defining the terms *Department of Energy facility* and *chronic silicosis,* from § 30.5(x) to § 30.5(y) and from § 30.5(j) to § 30.5(k), respectively. A claimant representative noted those cross-reference changes in § 30.220(a). However, because the commenter did not either support or oppose the proposed regulation or offer ideas for changes, no changes were made to this section in the final rule based on this comment.

In proposed § 30.222(a), the Department updated a cross-reference to reflect the changed location of the regulatory provision defining the term *chronic silicosis* from § 30.5(j) to § 30.5(k). Also in proposed § 30.222(a), the Department replaced the term ''medical doctor'' with ''licensed physician.'' A claimant representative noted the cross-reference change in § 30.222(a). However, because the commenter did not either support or oppose the proposed regulation or offer ideas for changes, no change was made to those sections in the final rule based on this comment.

Eligibility Criteria for Other Claims Under Part E of EEOICPA

In proposed § 30.230(a) and (d)(1), the Department updated a cross-reference to reflect the changed location of the regulatory provision defining the term *Department of Energy contractor employee* from § 30.5(w) to § 30.5(x). A claimant representative noted the cross-reference changes in § 30.230(a) and (d)(1). However, because the commenter did not either support or oppose the proposed regulation or offer ideas for changes, no change was made to those paragraphs in the final rule based on this comment.

The Department proposed to amend § 30.231(a) by adding the same language contained in proposed § 30.112(b)(3) to explain its current practice of evaluating affidavit evidence submitted by a claimant as proof of employment, in conjunction with all evidence of employment, to determine if the claimant has met his or her burden of proof. Four advocacy groups, one of whom submitted two different comments, two claimant representatives and the labor organization objected to the proposed language in § 30.231(a). One of those claimant representatives suggested that the Department replace the proposed language entirely with language stating that it will accept a claimant's affidavit as evidence of covered employment, absent strong evidence discrediting the affidavit. Also, one of the four advocacy groups questioned whether proposed § 30.231(a) would make it more difficult for claimants to meet their burden of proof. While the Department does not agree with the comment submitted by the claimant representative noted above, it nonetheless has added text (as it did for § 30.112(b)(3)) to clarify that if the only evidence that the claimant submits to establish covered employment is an affidavit, OWCP will evaluate that affidavit in conjunction with the other available evidence of employment when it is unable to verify the alleged covered employment through the processes described in 20 CFR 30.105(a) and 30.106. The Department made that same minor change in the text of § 30.231(a). However, the Department notes that the advocacy group's concern about the burden of proof is misplaced, since there is nothing in the text of proposed § 30.231(a) that would alter a claimant's burden of proof to establish covered employment; therefore, no changes were made in § 30.231(a) in the final rule based on this other comment. The other three advocacy groups and the labor organization also asked the Department to define several terms used in the text that explain how OWCP will evaluate affidavit evidence in these situations, while the same three advocacy groups, the two claimant representatives and the first advocacy group discussed above all suggested that neither DOE nor another entity should have any role in OWCP's evaluation of affidavit evidence. However, as it explained above in response to similar comments to proposed § 30.112(b)(3), the Department is not persuaded that it would be appropriate to make such changes. Therefore, no change was made in § 30.231(a) as a result of those comments.

Proposed § 30.231(b) described sources, in addition to the Site Exposure Matrices that are currently listed in that paragraph, that the Department considers to be reliable sources of information to establish whether an employee was exposed to a toxic substance at a DOE facility or a RECA section 5 facility. An advocacy group disagreed in general terms with proposed § 30.231(b). However, the Department believes that the proposed expansion of the list will be helpful for claimants during the claims adjudication process. Another advocacy group suggested that the Department define several terms used in the text that explain OWCP's evaluation of evidence of toxic exposure. However, any such definitions would be unnecessarily specific, and therefore not appropriate for regulatory text. A claimant representative suggested that the Department state in proposed § 30.231(b) that OWCP will only require evidence that the toxic substance was present at a claimed work site and that the employee came in contact with the substance. However, such a change would ignore the explicit requirements of section 7385s–4(c)(1). The Advisory Board requested that the Department include in proposed § 30.231(b) additional potential sources of probative evidence of toxic exposure. Such a change is unnecessary because proposed § 30.231(b)(3) already made clear that OWCP would consider evidence from any entity deemed by OWCP to be a reliable source of information for the purposes of proving toxic exposure information. For the above reasons, the Department did not make any of the suggested changes discussed by these commenters to § 30.231(b) in the final rule.

Proposed § 30.232(a) deleted the former Part D requirements for establishing a covered illness, as Congress abolished Part D and those requirements are now irrelevant. In its place, the Department proposed adding language to describe its current requirements for establishing a covered illness under Part E. A claimant representative questioned why the Department did not retain the requirements stated in § 30.232(a)(2) through (4) of the current regulations. As the Department explained in the preamble to the proposed rule, proposed § 30.232(a) deleted references in that paragraph that referred to the irrelevant requirements in former Part D. The labor organization disagreed with the Department's removal of the reference to DOE's Former Worker Program in current § 30.232(a)(3). However, deleting that reference does not mean that evidence from DOE's Former Worker Program may not be used to establish that a claimant whose employment has been established has been diagnosed with a covered illness under Part E. Thus, the Department did not make any changes to § 30.232(a) based on these comments in the final rule.

Proposed § 30.232(a)(1) required the claimant to submit ''[w]ritten medical evidence containing a physician's diagnosis of the employee's covered illness (as that term is defined in § 30.5(s)), and the physician's reasoning for his or her opinion regarding causation'' to establish that an employee

has been diagnosed with a covered illness. An advocacy group, two claimant representatives and the Advisory Board disagreed with this general requirement in proposed § 30.232(a)(1). One of those claimant representatives suggested that the Department state instead that any credible sources may be provided to prove causation of a covered illness. The other claimant representative suggested that this provision include the words ''aggravating and contributing to.'' The advocacy group believed that proposed § 30.232(a)(1) increased the burden necessary to establish a sick worker's illness by requiring the physician to opine on causation. The Advisory Board had a similar concern, but suggested replacing the proposed text with text that would be essentially identical. However, the Department notes that proposed § 30.232(a)(1) merely recognized a claimant's burden, as authoritatively stated by the U.S. Supreme Court, to provide evidence to meet the causation standard in section 7385s-4(c) of EEOICPA, and the requirement that the physician diagnosing a condition opine on causation. For those reasons, the Department is not persuaded that any change to § 30.232(a)(1) is needed in the final rule based on these comments. The Department also updated a cross-reference in proposed § 30.232(a)(1) to reflect the changed location of the regulatory provision defining the term *covered illness* from § 30.5(r) to § 30.5(s). A claimant representative noted that change. Because the commenter did not either support or oppose the proposed regulation, or offer ideas for changes, no change was made to that section in the final rule based on this comment.

In addition to the requirement in proposed § 30.232(a)(1), proposed § 30.232(a)(2) stated that a claimant must submit ''[a]ny other evidence OWCP may deem necessary to show that the employee has or had an illness that resulted from an exposure to a toxic substance while working at either a DOE facility or a RECA section 5 facility.'' One advocacy group and the Advisory Board asserted that proposed § 30.232(a)(2) unreasonably required a claimant to provide evidence beyond a diagnosis of a covered illness. Another advocacy group asked for clarification and further explanation of certain terms used in the text in proposed § 30.232(a)(2). The Department appreciates these comments and understands the underlying concerns. However, because proposed § 30.232(a)(2) is materially identical to current § 30.232(a)(4) and accurately reflects the claimant's burden of proof to submit medical evidence of causation, which the Department believes is consistent with the statute, the suggested changes to this provision have not been adopted in the final rule.

In proposed § 30.232(b), the Department updated a cross-reference to reflect the changed location of the regulatory provision defining the term *covered illness* from § 30.5(r) to § 30.5(s). Two advocacy groups and an individual commented on other aspects of proposed § 30.232(b) that are no different from the existing § 30.232(b). Because those commenters did not refer to changes that were proposed in the NPRM, no amendments to § 30.232(b) were made in the final rule with respect to their comments.

Subpart D—Adjudicatory Process

General Provisions

In § 30.300, the Department proposed adding language to explain that a claimant may seek judicial review of a final decision issued by FAB by filing an action in Federal district court, since the current regulations do not provide this explanation. A claimant representative agreed with the Department's change. An individual, however, suggested that the Department add regulatory language establishing ''a process for next-higher appeal within the DOL'' in proposed § 30.300. This same suggestion was made by several commenters on this section as it appeared in the first interim final rule governing OWCP's administration of EEOICPA that was published on May 25, 2001 (66 FR 28948). As it did when it subsequently published the first final rule on December 26, 2002 (67 FR 78874), the Department continues to believe that utilizing administrative law judges or another type of independent review body would unnecessarily complicate and delay the claims adjudication process to the detriment of claimants. The commenter did not present any new reasons not previously considered by the Department when it originally decided to retain the adjudicatory structure described in § 30.300, or any evidence of problems with it since its inception in 2001. Therefore, no change was made to § 30.300 in the final rule based on that comment.

In proposed § 30.301(b)(1), the Department proposed amending language that currently only recognizes postmark dates as evidence of a timely request for the issuance of an administrative subpoena to also recognize the date-markings of other carriers, since other delivery options besides the U.S. Mail are widely used. A claimant representative stated that ''the proposed and the current is the same.'' However, since the commenter did not either support or oppose the proposed regulation or offer ideas for changes, no change was made to that paragraph in the final rule based on this comment. An advocacy group requested that proposed § 30.301(b)(1) be amended to allow for the submission of subpoena requests through the Energy Document Portal. This suggestion does not pertain to the changes in proposed § 30.301(b)(1). Because the advocacy group's comment did not refer to a change that was proposed in the NPRM, no amendment was made in the final rule based on this comment.

Recommended Decisions on Claims

Proposed § 30.305(a) replaced references to ''HHS'' with ''NIOSH.'' A claimant representative agreed with that proposed change. Therefore, no change was made to § 30.305(a) in the final rule based on that comment. In addition, the Department proposed modifying the language in § 30.306 to make recommended decisions more understandable by mandating that they include a narrative discussion of the district office's findings of fact and conclusions of law. A claimant representative asked the Department to explain how OWCP will ''enforce the district offices to only list the facts and law in the recommended decisions.'' Since proposed § 30.306 merely codified OWCP's current practice of including a narrative discussion in the recommended decision of the district office's findings of fact and conclusions of law, the comment addressed a matter of enforcement rather than the substance of the proposed change. Thus, no change was made to § 30.306 in the final rule.

In the NPRM, the Department proposed moving the provisions in current § 30.307 to § 30.308. Newly proposed § 30.307(a) informed readers that in most situations, OWCP will issue a single recommended decision to all survivors who filed claims under Part B and/or Part E of EEOICPA relating to the same deceased employee, while newly proposed § 30.307(b) recognized an exception to that policy when another individual subsequently files a claim seeking the same award referenced in § 30.307(a). A claimant representative commented that the proposed language was confusing and would deny a subsequent survivor the opportunity to file a claim. However, proposed § 30.307(b) did not state that OWCP will deny a subsequently claiming survivor

the opportunity to file such a claim, but instead explained that in circumstances where a district office recommends that a subsequently filed claim be denied, the same recommended decision will not address the entitlement of the earlier claimants. Therefore, no change was made to this section in the final rule.

Hearings and Final Decisions on Claims

In the NPRM, proposed § 30.310(a) replaced references to ''HHS'' with ''NIOSH.'' In addition, the Department proposed amending the language in § 30.310(b) that only recognizes postmark dates as evidence of the time a written objection is filed to also recognize the date-markings of other carriers, since other delivery options besides the U.S. Mail are widely used. The Department also changed the wording in proposed § 30.310(b) to reflect recent changes in how the program receives and processes mail. A claimant representative had ''no objections'' to the proposed changes in § 30.310. An advocacy group suggested that proposed § 30.310(b) be amended to allow claimants to submit hearing requests through the Energy Document Portal. As stated above in response to this same request in relation to proposed § 30.301(b)(1), this suggestion does not address the proposed change in that provision. Because the advocacy group's comment did not refer to a change that was proposed in the NPRM, no amendment was made to this paragraph in the final rule based on that comment.

Proposed § 30.313(c) in the NPRM replaced references to ''HHS'' with ''NIOSH.'' A claimant representative and an individual commented on other aspects of proposed § 30.313(c) that were no different from the existing § 30.313(c). Because those comments did not refer to changes that were proposed in the NPRM, no changes to § 30.313(c) were made in the final rule with respect to those comments.

The Department also proposed amending § 30.314(a), which currently provides a FAB reviewer with the discretion to conduct hearings by telephone or teleconference, to also allow the FAB reviewer to conduct hearings by videoconference or other electronic means. A claimant representative stated that there was ''no change'' from the current regulations. Because the commenter did not either support or oppose the proposed regulation or offer ideas for changes, no change was made to that paragraph in the final rule based on this comment. Proposed § 30.314(b) included new language to provide the FAB reviewer with the discretion to mail a hearing notice less than 30 days prior to the hearing if the claimant and/or representative waives the 30-day notice period in writing. A claimant representative agreed with the change in proposed § 30.314(b). An advocacy group suggested that OWCP allow claimants more time to prepare for a hearing if needed, and more time to present evidence at hearings. However, the advocacy group's comments did not pertain to any of the changes made in proposed § 30.314(b). Because the advocacy group's comment did not refer to a change that was proposed in the NPRM, no amendment was made in the final rule based on this comment.

Proposed § 30.315(a) added a provision prohibiting a claimant or representative from making more than one request to reschedule a hearing, since repeated requests to cancel and reschedule hearings can have a negative impact on the claim adjudication process for other claimants. A claimant representative agreed with the change. The labor organization asked whether and how OWCP will notify claimants of this provision prior to their hearing date. The Department does not believe that the issue of notification suggested by the latter comment is appropriate for a regulation, since it involves a purely internal procedure. Thus, no change was made to § 30.315(a) in the final rule.

As the Department explained above in the ''Background of This Rulemaking,'' it proposed to modify § 30.318(a) to describe the potential for NIOSH to provide consultation in FAB's consideration of objections to final dose reconstruction reports. This consultation process will provide for a more complete consideration of the claimant's objections. The Department also proposed to clarify OWCP's obligation to consider objections to how it calculates the probability of causation in new § 30.318(b). One claimant representative commented that the changes in proposed § 30.318 were unnecessary. However, the Department believes that the changes to that section will alleviate the frustration experienced by claimants and FAB reviewers in determining whether an objection to NIOSH's final dose reconstruction report concerned ''methodology'' or ''application.'' The Department further believes that NIOSH's increased involvement in FAB's consideration of objections to NIOSH's final dose reconstruction reports will make this process more efficient and transparent. For those reasons, no changes were made to § 30.318 in the final rule based on this comment. Another claimant representative suggested that NIOSH should indicate in its final dose reconstruction report the calculated recommended probability of causation. While the Department agrees that this suggestion has merit, it is nonetheless contrary to how the President assigned responsibility for this task in E.O. 13179, and the suggested change was not made to § 30.318(b) in the final rule.

In the NPRM, the Department proposed to add language in § 30.319(b), which currently only recognizes postmark dates as evidence of the time a request for reconsideration is filed, to also recognize the date-markings of other carriers, since other delivery options besides the U.S. Mail are widely used. The Department also changed the wording in proposed § 30.319(b) to reflect recent changes in how the program receives and processes mail. A claimant representative commented that the changes in proposed § 30.319(b) were unnecessary. However, as stated above, other carrier's date markings besides postmarks exist and therefore the Department believes that it is necessary to recognize them for timeliness purposes. Also, since the program now receives and processes mail through a central mail room, the reference in current § 30.319(b) that FAB receives mail is no longer accurate. Thus, no changes were made to § 30.319(b) in the final rule based on this comment.

Reopening Claims

Proposed § 30.320(b) allowed claimants to request a reopening based on new medical evidence diagnosing a medical condition. Two advocacy groups and a health care provider suggested that the new language proposed in § 30.320(b) be amended to state that the Director for Energy Employees Occupational Illness Compensation will reopen any claim in instances when it failed to take into account all relevant evidence in reaching their determination on eligibility. Another advocacy group asserted that the Department's change in proposed § 30.320(b) was unnecessary because the Director has the discretion to reopen a claim at any time. Both of those comments go beyond the proposed change in § 30.320(b). Because those commenters referred to something that was not changed in the NPRM, no amendment to § 30.320(b) was made in the final rule with respect to their comments. A claimant representative commented that she was unsure whether OWCP will grant a reopening request based on new medical evidence. Proposed § 30.320(b) answered this question in the affirmative by explicitly stating that the Director will reopen a

claim in instances when, in her discretion, she determines that a claimant has submitted new medical evidence that diagnoses a medical condition and is material to the claim. Under these circumstances, no amendment was made to § 30.320(b) in the final rule as a result of those comments.

Subpart E—Medical and Related Benefits

Medical Treatment and Related Issues

In the NPRM, the Department proposed to move language in current § 30.400(a) regarding the payment to reimburse out-of-pocket costs of obtaining covered medical treatment to survivors to a new paragraph. It also proposed to add a new statement to that paragraph clarifying that if there is any doubt about whether a contemplated service, appliance or supply is or will be necessary to treat an accepted illness, the employee should consult OWCP's bill processing agent prior to obtaining it. An advocacy group suggested that the new language in proposed § 30.400(a) be amended to state that employees may contact OWCP directly to ascertain whether a contemplated medical treatment is considered to be necessary. However, such questions are more efficiently answered by contacting OWCP's bill processing agent, as is the current practice. Therefore, no change was made to § 30.400(a) in the final rule as a result of this comment. Also, a claimant representative and the labor organization commented on aspects of proposed § 30.400(a) that did not relate to the proposed changes in that paragraph. Because those comments did not refer to a change that was proposed in the NPRM, no amendment was made to § 30.400(a) in the final rule with respect to them.

The Department also proposed to make a number of changes to § 30.400(c). First, the Department proposed adding new language in that paragraph to explain the current qualifications that must be met before hospitals and providers of medical services or supplies may furnish appropriate services, drugs, supplies and appliances to covered employees. A claimant representative agreed with the Department's change in that paragraph. Two health care providers believed that the proposed language in § 30.400(c) indicating that specified providers must possess ''all applicable licenses required under State law'' would obligate OWCP to monitor providers' licensure. One of those same two health care providers proposed amending that provision to specify that a provider must possess all applicable licenses required under state law ''as determined by the applicable State regulatory body.'' However, the only occasions when OWCP is concerned with a provider's possession of state-required licenses is either at the time of enrollment or exclusion. The Department believes that no further specificity is required in this provision since the proposed language explicitly states that state law governs licensure requirements. Therefore, the above suggestions have not been adopted in the final rule.

In addition, the NPRM proposed adding language in § 30.400(c) authorizing OWCP to offset the cost of prior rental payments against the future purchase of an appliance or supply. A claimant representative objected to this provision, and suggested that OWCP had other means available to it to control its costs in this area. However, this practice has been in effect since EEOICPA Bulletin No. 13–03 was issued in 2013, and has not proved problematic. Accordingly, no changes were made in the final rule as a result of this comment. The Department also proposed adding authority in § 30.400(c) for it to provide refurbished equipment where appropriate. The same claimant representative and a health care provider objected to this provision, and commented that it should be removed because such appliances may not work properly. However, these comments presumed that refurbished appliances would be unreliable without providing any data in support of that position. Therefore, no changes were made in the final rule in response to these comments. Lastly, in proposed § 30.400(c), the NPRM proposed codifying OWCP's inherent authority to contract with specific providers to provide non-physician services and appliances to beneficiaries. Three health care providers, two advocacy groups and a claimant representative objected to this provision. All of these commenters, except one of the two advocacy groups, questioned the Department's statutory authority for this proposed change, while the remaining advocacy group believed that the proposal was too vague. However, section 7384t(b)(2) of EEOICPA states that a physician initially selected by a beneficiary must ''provide medical services, appliances, and supplies under this section in accordance with such regulations and instructions as the President considers necessary.'' Since OWCP has been delegated the President's authority under section 7384t(b)(2), it clearly has the authority to regulate in this manner. Accordingly, no changes were made to § 30.400(c) in the final rule as a result of any of these comments.

As stated above, the Department proposed to move language in current § 30.400(a) regarding payments to reimburse out-of-pocket costs of obtaining covered medical treatment to survivors to a new paragraph, proposed § 30.400(d), in order to bring attention to that longstanding policy. A claimant representative agreed with the Department's new proposed § 30.400(d). Accordingly, no changes were made to this paragraph in the final rule.

In the NPRM, the Department proposed reorganizing existing § 30.403 into three separate paragraphs to better focus the section on OWCP's current methods for pre-authorization of and payment for claims under section 7384t of EEOICPA for home health care, nursing home, and assisted living services, which comprise the vast bulk of services of this type being provided. Proposed § 30.403(a) incorporated the descriptive text in current § 30.403 with minor modifications, and proposed § 30.403(b) described OWCP's general requirements for payment of a claim for nursing home and assisted living services. A claimant representative generally agreed with the Department's changes in proposed § 30.403(a) and (b), but that same claimant representative and a health care provider objected to the new language in those paragraphs stating that authorization and payment for home health care services are ''subject to the pre-authorization requirements described'' in proposed § 30.403(c). For the reasons described below in response to comments in proposed § 30.403(c), the Department is not persuaded that it is necessary to remove that language in § 30.403(a) and (b) in the final rule.

Proposed § 30.403(c) set out the particular pre-authorization process used to file an initial claim for home health care, nursing home, and assisted living services. The Department received 39 comments on this proposed paragraph (24 comments were from physicians, eight comments were from individuals, four comments were from three health care providers, two comments were from an advocacy group and one comment was from a claimant representative). While one of the individuals and the claimant representative agreed with the Department's changes in proposed § 30.403(c), the remainder of the commenters requested that the Department retain the language in current § 30.403 because they believe that the new procedures would be too burdensome for claimants and

providers, and would cause unnecessary delays in the medical treatment of EEOICPA beneficiaries. However, the processes set forth in proposed § 30.403(c) were merely a compilation of the current processes for pre-authorization, and will improve communications between the program and the beneficiary, and between the program and the treating physician. Currently, OWCP does not require beneficiaries to identify the name of their treating physician at the time that home health care is requested, and believes that obtaining this information up front will greatly enhance efficiency because it will be able to communicate with the physician directly, if needed. Furthermore, OWCP currently requires that the beneficiary's physician submit a letter of medical necessity and verify that a timely face-to-face physical examination of the beneficiary took place, and proposed § 30.403(c) merely recognizes this current process. Thus, no changes were made to § 30.403(c) based on these comments.

In the NPRM, proposed § 30.405(b) and (c) clarified OWCP's policy for approving or denying an employee's request to change treating physicians. The language in current § 30.405(b) and (c) states that OWCP may approve or deny a certain type of request to *change* physicians based on the ''sufficiency'' of the request, while the proposed language in those paragraphs stated that OWCP will approve or deny such a request based on the credibility of the request, and whether it is supported by minimally persuasive evidence. The Department received 102 comments that objected to the proposed changes in § 30.405 (from 90 individuals, three advocacy groups, three claimant representatives, two health care providers, two unknown persons or organizations, one labor organization and the Advisory Board). Out of these, 54 comments interpreted proposed § 30.405(b) and (c) to mean that a beneficiary's right to *change* physicians was being eliminated, 26 other comments interpreted those paragraphs to mean that a beneficiary's right to *initially choose* a physician was being eliminated, another 14 comments believed that those paragraphs eliminated *both* of those rights, and the final group of eight comments opposed the proposed language without further explanation.

The Department notes that section 7384t(b)(2) of EEOICPA allows a beneficiary the opportunity to *initially choose* a physician to provide medical services, appliances and supplies, and that statutory provision is reflected in the text of existing § 30.405(a). Nothing in proposed § 30.405(b) and (c) changed existing § 30.405(a), which also recognizes that treating physicians may, and often do, refer their patients to specialists for further medical care. Proposed § 30.405(b) and (c) merely clarified the standards that OWCP may use under its existing authority to approve or deny certain requests to *change* a treating physician. Although most of the 102 comments submitted a general objection to the changes in proposed § 30.405(b) and (c), the following commenters submitted comments with specific suggestions on those proposed provisions. One of the three advocacy groups, one of the three claimant representatives and both of the health care providers suggested that the Department further define the terms and circumstances under which it would deny a beneficiary's request to change a treating physician. However, the Department believes that these are properly matters of administrative discretion and would be too confusing to define and of little utility to beneficiaries. A different claimant representative suggested that the proposed language in these paragraphs be replaced with language stating that a beneficiary may select and utilize any physician, at any time, so long as that physician is an approved provider under the program. Consistent with the above explanation, such a proposal goes well beyond the right of initial choice found in section 7384t(b)(2) of EEOICPA, and was not proposed in the NPRM. The Advisory Board suggested that the Department eliminate the changes in proposed § 30.405(b) and (c), and instead state in those paragraphs that ''The claimant may cite personal preference as a valid reason to change physicians.'' However, this suggestion goes beyond the change proposed, which clarified that OWCP will approve or deny a request to change physicians based on the credibility of the request and whether it is supported by minimally persuasive evidence, instead of the ''sufficiency'' of the request, as is stated in the existing regulation. In light of the above discussion, no changes were made to this section in the final rule as a result of these 102 comments.

Directed Medical Examinations

The Department proposed to amend §§ 30.410(c) and 30.411(d) to memorialize OWCP's existing authority to administratively close an employee's claim when he or she refuses to attend a second opinion examination or a referee medical examination, respectively. A claimant representative agreed with the changes in proposed §§ 30.410(c) and 30.411(d). Another claimant representative suggested that the Department amend proposed §§ 30.410(c) and 30.411(d) to state that a claimant may utilize the adjudicatory process described in subpart D of the regulations if their claim is administratively closed, and include provisions allowing the claimant to cancel and request rescheduling of those examinations upon a showing of good cause. Two health care providers questioned the propriety of proposed §§ 30.410(c) and 30.411(d) and suggested amending these provisions to state that OWCP will pay for reasonable travel accommodations, will hold examinations in facilities which accommodate the medical needs of beneficiaries, allow for adjudication under subpart D and include in the provisions language that OWCP will give 30 days notice of an examination and limit the employee's travel to a 100-mile radius, prior to assessing if the employee ''refused'' an examination. OWCP notes that its procedures and other regulations not part of this rulemaking already provide that OWCP will pay for the cost of these examinations, including travel and accommodations, allow their cancellation for good cause, and direct that these examinations be held in facilities that accommodate the individual's medical needs and are within a reasonable distance from the individual's residence (almost always within a 100-mile radius). It is not always possible to schedule examinations at locations within that radius, such as cases involving individuals who reside in remote areas, but the examination must still be within a reasonable distance and these same protections apply. Nevertheless, in situations when a directed medical examination is necessary, OWCP is unable to make a determination on a claimant's eligibility for benefits until completion of such examination. Accordingly, administratively closing the claim until that essential development step takes place is a reasonable action that can be resolved by employee cooperation. The Department further notes that the decision whether or not to administratively close a claim properly involves a question of administrative discretion, and that as such, the Department has decided not to identify specific factors for such circumstances in the regulations. For those reasons, the suggested changes were not made to §§ 30.410(c) and 30.411(d) in the final rule. Finally, an advocacy group asked the Department to clarify what it means by ''pending matters'' in proposed

§§ 30.410(c) and 30.411(d). The Department believes that the term must be broad enough to retain maximum administrative discretion because the matters that OWCP may need to suspend under these sections will likely be unique to the case at hand. Thus, the Department has not made this last suggested change to §§ 30.410(c) and 30.411(d) in the final rule.

Medical Reports

In the NPRM, proposed § 30.416(a) removed language that a physician's stamp will be accepted in lieu of his or her signature on a medical report, and specified that the physician's handwritten or electronic signature should be on his or her medical report. Two claimant representatives suggested that it was unreasonable for OWCP to require a physician's handwritten or electronic signature on a medical report. However, this change was made to align with the requirements of other programs administered by OWCP, as well as the requirements of the Centers for Medicare and Medicaid Services (CMS) within HHS. Thus, no change was made to § 30.416(a) in this final rule based on those comments. A third claimant representative mistakenly asserted that proposed § 30.416(a) was identical to existing § 30.416(a), and therefore questioned why it appeared in the NPRM. However, because the claimant representative's comment did not pertain to something that was changed in the NPRM, no amendment was made in the final rule with respect to this comment.

Subpart F—Survivors; Payments and Offsets; Overpayments

Survivors

In the NPRM, the Department proposed amending the first sentence in § 30.500(a)(2) to memorialize OWCP's policy determination that a ''child'' under Parts B and E of EEOICPA means only a biological child, a stepchild or an adopted child of a deceased covered Part B or Part E employee. Also, the Department proposed to move the statutory definition of a ''covered child'' found in the second sentence of existing § 30.500(a)(2) to its own new paragraph. A claimant representative asserted that the changes in proposed § 30.500(a)(2) were unnecessary. However, since the Department believes that these changes are substantive in nature and add clarity, no change was made to § 30.500(a)(2) in the final rule as a result of this comment.

As noted above, the Department proposed in the NPRM to move the statutory definition of a ''covered child'' in current § 30.500(a)(2) to a new paragraph, proposed § 30.500(c)(1), in order to increase the understandability of this important definition. The Department also proposed adding a sentence in proposed § 30.500(c)(1) to explain that a child's marital status or dependency on the covered employee for support is irrelevant to his or her eligibility for benefits as a ''covered child'' under Part E. A claimant representative agreed with the changes in proposed § 30.500(c)(1). Therefore, no change was made to § 30.500(c)(1) in the final rule. In addition, proposed § 30.500(c)(2) further defined the statutory term *incapable of self-support* to mean that the child must have been physically and/or mentally incapable of self-support at the time of the covered employee's death. An individual objected to the Department's proposed definition as too vague. The Department does not agree that the proposed definition at issue is vague, however, and believes that the text added to this definition in proposed § 30.500(c)(2) highlights that determinations made on this point will focus on objective factual and/or medical evidence, while still permitting OWCP to retain the maximum amount of discretion needed for it to adjudicate these sorts of claims on their individual facts. Furthermore, the Department notes that this approach has met with judicial approval. *See Watson* v. *Solis,* 693 F.3d 620 (6th Cir. 2012). Accordingly, no change was made to § 30.500(c)(2) in the final rule.

In proposed § 30.501(a) and (b), the Department updated a cross-reference to reflect the changed location of the regulatory provision defining the term *survivor* from § 30.5(gg) to § 30.5(hh). In proposed § 30.502, the Department updated a cross-reference to reflect the changed location of the statutory definition of a ''covered child'' from § 30.500(a)(2) to § 30.500(c)(1). A claimant representative noted both of these updated cross-references. However, because the commenter did not either support or oppose the proposed regulations or offer ideas for changes, no change was made to either section in the final rule based on her comments.

Payment of Claims and Offset for Certain Payments

In the NPRM, the Department proposed amending current § 30.509(c), which references the American Medical Association's *Guides to the Evaluation of Permanent Impairment* (AMA's *Guides*) to specifically reference the 5th Edition of the AMA's *Guides.* Both a claimant representative and the Advisory Board questioned the wisdom of amending current § 30.509(c) to specifically reference the 5th Edition, since this would reduce the ability to change this in the future absent another rulemaking. The Department agrees with these commenters and acknowledges that OWCP may wish to move to another edition in the future. Accordingly, this change in proposed § 30.509(c) was not made in this final rule. An individual commented on other aspects of proposed § 30.509(c) that are no different from the existing § 30.509(c). Because the individual's comment did not refer to a change that was proposed in the NPRM, no amendment was made to § 30.509(c) in the final rule with respect to this comment.

Subpart G—Special Provisions

Representation

In the NPRM, the Department proposed amending § 30.600 to state that a representative does not have the authority to sign either Form EE–1 or Form EE–2, to be consistent with proposed §§ 30.100 and 30.101. Four claimant representatives and one advocacy group suggested that it was unreasonable for the Department to eliminate a representative's authority to sign these initial claim forms in proposed § 30.600(c)(2), citing reasons such as convenience and contractual arrangements. One of those same claimant representatives asserted instead that a properly appointed authorized representative ought to have the authority to sign *all* documents relating to a claim. The Department discussed above, in its response to comments it received on proposed §§ 30.100 and 30.101, the reasons why it believes that a claimant's signature is needed on his or her claim form. Because those same reasons apply here, the Department did not make any change to proposed § 30.600(c)(2) as a result of these comments. The same one of these four claimant representatives and the same advocacy group noted that there was no provision in proposed § 30.600(c)(2) allowing an attorney-in-fact to sign a claim form on a claimant's behalf. As discussed above in relation to proposed §§ 30.100 and 30.101, OWCP has and will continue to accept claim forms signed by a valid attorney-in-fact. Any individual other than a claimant may sign the claim form if they have the legal authority to do so, and have not otherwise been excluded under proposed § 30.600(c)(2) of the regulations. Therefore, no change was made to this section as a result of this second group of comments.

Proposed § 30.601 added language to provide that a representative must comply with OWCP's conflict of interest policy. Three advocacy groups, two health care providers and a claimant representative disagreed with this requirement in proposed § 30.601. One of those advocacy groups asserted that such policy removes a class of potential authorized representatives without proof of any wrongdoing, restricts home health care workers from being appointed as authorized representatives in situations when home health care benefits would not be available (such as for survivors), and that the Department should address its fraud concerns in other ways. That same advocacy group and the second advocacy group believed that some elderly sick workers only have their nurses to represent them, and any limitation on who they may select to represent them would be unreasonable or would negatively affect their health. The third advocacy group stated that the Department's proposal to limit a claimant's ability to designate a representative creates an unnecessary burden on claimants since it is already difficult for claimants to find representatives willing to provide assistance, and that OWCP did not provide any rationale for the change. Both of the health care providers disagreed with the conflict of interest policy because the prohibition against representatives having outside financial interests unreasonably bars health care providers (who have experience navigating complex Federal benefit programs) from advocating for a claimant, and suggested addressing this in the regulations or removing it. Two of the advocacy groups and one of the health care providers believed that other health benefit programs are not as restrictive. Finally, the claimant representative did not offer any reasons for her disagreement with this proposed change, nor did she suggest any changes. The two health care providers, the claimant representative and one of the advocacy groups asked the Department to specifically state in the regulations the standards it has adopted. The Department is not persuaded by any of the reasons given by these commenters to abandon the proposed application of the conflict-of-interest policy in this context, because the aim of the policy is to keep providers from straying outside of their proper roles as providers of medical treatment. Also, the Department believes that its policy will help it safeguard our vulnerable, often aged, claimant population by lessening the chance that an outside financial interest of an authorized representative could interfere with, or be contrary to, the best interests of the claimant. The Department agrees, however, with the commenters' suggestion that a basic statement of such policy should be incorporated in this provision. The Department has therefore added a basic statement of OWCP's conflict of interest policy to § 30.601 in the final rule.

Proposed § 30.603(a) clarified that a representative may charge a claimant for costs and expenses related to a claim in addition to a fee for his or her services within the limitations specified in § 30.603(b). A claimant representative agreed with this change in proposed § 30.603(a). Under these circumstances, no change was made to that provision in the final rule.

Effect of Tort Suits Against Beryllium Vendors and Atomic Weapons Employers

In the NPRM, proposed §§ 30.617(b)(2) and 30.618(c)(2) replaced references to ''HHS'' with ''NIOSH.'' A claimant representative asserted that the changes to these two sections were unnecessary. The Department, however, has replaced the term ''HHS'' with ''NIOSH'' throughout the NPRM to correctly reflect HHS's delegation of its exclusive control of the portion of the claims process for radiogenic cancer to NIOSH in 42 CFR 82.1. Accordingly, no changes were made in the final rule with respect to this comment.

Subpart H—Information for Medical Providers

Medical Records and Bills

In the NPRM, the Department proposed amending § 30.700 to describe, for the first time, OWCP's process for enrolling providers with its bill processing agent, as well as the agent's automated bill processing and authorization systems. Proposed § 30.700(a) required that a provider seeking to enroll certify that it has satisfied all applicable Federal and state licensure and regulatory requirements, that it will maintain documentation showing that it satisfies those requirements, and that it will notify OWCP immediately if any such information changes. A claimant representative questioned whether the Department's changes in proposed § 30.700(a) were necessary and argued that they placed undue hardship on providers. The Department does not agree that the changes in proposed § 30.700(a) cause any hardship, given that providers have been adhering to the described requirements since the inception of the program in 2001. While these requirements have been in existence since that time, the Department continues to prefer describing its current provider processes in a regulatory format. A health care provider suggested amending proposed § 30.700(a) to specify that Federal and state license requirements are to be determined by the applicable Federal or state regulatory body. However, the fact that the requirements are determined by the applicable Federal or state regulatory body is irrelevant to this provision. As explained in the Department's discussion of a similar comment received in connection with proposed § 30.400(c), the only occasions when OWCP is concerned with a provider's possession of required licenses is either at the time of enrollment or exclusion. The Department believes that no further specificity is required in this provision since the proposed language explicitly states that Federal and state law governs any pertinent licensure requirements. Therefore, no changes to § 30.700(a) were made in the final rule based on these comments.

Proposed § 30.700(b) recognized OWCP's current practice of requiring providers to seek pre-authorization for certain services. A health care provider felt that proposed § 30.700(b) should be removed because it conflicted with unspecified provisions in EEOICPA, would result in delayed care, and presented the likelihood that health care providers seeking pre-authorization might violate unspecified state laws. The Department is not persuaded by this vague and unspecific comment, which appears to be based on pure speculation. A second health care provider, an advocacy group and a claimant representative suggested that the Department provide more detail in proposed § 30.700(b) to describe the pre-authorization process, and list the specific procedures that require pre-authorization. However, the requested level of specificity in these comments is not appropriate for regulations, and the processes and procedures at issue are more appropriately addressed through provider manuals, the bill processing agent's web page and other explanatory materials. For the above reasons, no changes were made to § 30.700(b) in the final rule.

Proposed § 30.700(c) required that a provider submit ''all medical bills'' to OWCP through its bill processing portal. A health care provider asked the Department to clarify whether it intended to use electronic billing as the sole billing method in proposed § 30.700(c). The commenter was

concerned that supporting medical evidence can be voluminous, and asserted that it could be more efficiently submitted via U.S. Mail. The Department notes, however, that the regulatory requirement to support all bills for medical treatment with supporting medical reports or office/treatment notes has been in existence since 2001 in existing § 30.701(a). As to whether OWCP and/or its bill processing agent will allow exceptions to this requirement for case-specific circumstances is beyond the scope of proposed § 30.700(c), and thus no change was made to this paragraph in the final rule based on this comment.

In the NPRM, proposed § 30.701(a) recognized that OWCP may withhold payment for services until the required medical evidence described in proposed § 30.700 is provided, and clarified that charges for medicinal drugs dispensed in a physician's office must be reported on Form OWCP–1500 or CMS–1500. An advocacy group and a claimant representative were concerned that the language in proposed § 30.701(a) might force beneficiaries to pay bills that OWCP refuses to pay, and might ultimately leave beneficiaries without necessary care. This scenario appears to be dependent upon the particular contractual relationships between providers and their clients, and does not therefore involve OWCP in a meaningful way. The same claimant representative also suggested that proposed § 30.701(a) include a provision allowing providers to obtain administrative and/or judicial review if OWCP withholds payment, and allow providers to receive interest on a service that was provided, yet not paid for in a timely manner. The Department notes that a provider already has the ability to seek judicial review of OWCP's decision to withhold payment for services, and therefore does not require a regulatory acknowledgment of that ability. As for the payment of interest, the Department notes that any such payment would be governed by the Prompt Payment Act and is thus not within the purview of this rulemaking. Accordingly, no changes were made to § 30.701(a) in the final rule based on these comments.

Proposed § 30.701(b) described OWCP's existing discretion to determine which codes to use in the automated billing process managed by its agent, and to create and supply specific codes to be used by providers when either seeking authorization or submitting a bill for payment. In addition, proposed § 30.701(b) noted that OWCP will return and/or deny payment for a bill if no code is submitted. A claimant representative feared that the language in proposed § 30.701(b) recognizing this discretion might create inconsistencies and delays. This comment is merely conjectural, however, and is not consistent with OWCP's experience. The same claimant representative objected to the proposed language that OWCP will return and/or deny payment for a bill if no code is submitted, and felt that this action would be statutorily impermissible. On the contrary, this reasonable and fiscally prudent practice has been in place since the beginning of the program in 2001, and the Department is not persuaded by the commenter that it should be changed. Accordingly, no changes were made to this paragraph in the final rule.

Proposed § 30.701(c)(1)(ii) alerted providers that in the future, OWCP may adopt certain provisions contained within the Home Health Prospective Payment System, which was devised by CMS. Three health care providers, three advocacy groups and an individual objected to the possible adoption of any aspect of that system, alleging that it would not be a good fit for the EEOICPA beneficiary population, while one claimant representative agreed with that proposed change. The Department notes that this provision merely stated that OWCP *may* adopt the system, or parts of that system, in the future. Since CMS currently uses the system, providers should already be prepared for these changes if they are ultimately implemented by OWCP. Therefore, no change was made to proposed § 30.701(c)(1)(ii) in the final rule as a result of these comments. In proposed § 30.701(c)(3), the Department stated that nursing home charges for appliances, supplies or services ''shall be subject to any applicable OWCP fee schedule.'' A claimant representative agreed with the Department that a fee schedule for nursing home charges would probably be necessary. An advocacy group suggested instead that the Department initiate a new rulemaking at the point in time that it decides to implement such a fee schedule. However, it is within OWCP's discretion to use such a fee schedule, and proposed § 30.701(c)(3) merely announces that OWCP may subject nursing home charges to a fee schedule in the future. Therefore, no amendments were made to § 30.701(c)(3) in the final rule.

Proposed § 30.701(d) clarified that providers must adhere to accepted industry standards when billing, and that billing practices such as upcoding and unbundling are not in accord with those industry standards. A claimant representative agreed with the Department's proposal in § 30.701(d) to use ''industry standards'' for billing of services, and commented that ''industry standards'' should be mandated for all medical benefits. Accordingly, no change was needed for § 30.701(d) in the final rule.

Proposed § 30.701(e) described OWCP's current practice of rejecting a bill that does not conform to the requirements in § 30.701, after which the rejected bill is returned to the provider to be corrected and resubmitted. Proposed § 30.701(e) also clarified OWCP's policy that a bill must contain the provider's handwritten or electronic signature when required by the pertinent billing form, and removed language that a provider's stamp will be accepted in lieu of his or her signature on the bill. An advocacy group was concerned that the proposed language in § 30.701(e) that OWCP may deny a non-conforming bill could force beneficiaries to pay bills that OWCP refuses to pay, and will ultimately leave the beneficiary without necessary care. However, as noted above, this scenario appears to be dependent upon the particular contractual relationships between providers and their clients, and does not therefore involve OWCP in a meaningful way. A claimant representative suggested that the Department state in proposed § 30.701(e) that a provider may seek review of a disputed bill by an administrative law judge. Once again, the Department notes that a provider has the ability to seek judicial review of a disputed bill, and a regulatory acknowledgment of that ability is not necessary. Two other claimant representatives argued that it was unreasonable for the Department to amend § 30.701(e) to require a physician's handwritten or electronic signature, and no longer accept signature stamps. However, as explained in the Department's discussion on similar comments received in connection with proposed § 30.416(a), this change was made to conform with the requirements in other programs within OWCP, and with the requirements of CMS. Thus, no change was made to § 30.701(e) as a result of these comments.

In the NPRM, proposed § 30.702 clarified how an employee can seek reimbursement for out-of-pocket expenses incurred for the medical treatment of an accepted illness. Proposed § 30.702(a) added a reference to Forms OWCP–04 and UB–04 to clarify that those forms must be used to request reimbursement of hospital charges. An advocacy group felt that the current requirement in existing § 30.702(a) that an employee submit Form OWCP–1500 or CMS–1500 to

request reimbursement for professional medical services is too burdensome. However, this comment does not refer to a change in proposed § 30.702(a). Because the advocacy group's comment did not refer to a change that was proposed in the NPRM, no amendment was made in the final rule with respect to this comment. The Department also added language in proposed § 30.702(a)(1) to provide that OWCP will reject a reimbursement request if a provider does not indicate the code or a description of the service on the billing form, after which the beneficiary would have to resubmit a corrected bill. An advocacy group and a claimant representative objected to this provision, but did not suggest a change to the proposed language in the NPRM. This requirement has been in effect since the beginning of the program, and the Department sees no reason to change this established practice based on these comments.

Proposed § 30.702(d) stated that billing forms submitted by beneficiaries with their requests for reimbursement must bear the handwritten or electronic signature of the provider. The Department also proposed to amend language in existing § 30.702(d), which currently provides that OWCP's decision regarding reimbursement to a beneficiary for out-of-pocket expenses is final, to instead provide that OWCP will issue a letter decision in such circumstances. An advocacy group and two claimant representatives objected to the new language in proposed § 30.702(d) concerning a provider's signature. However, this change was made to conform with similar requirements in other programs administered by OWCP, and with the requirements of CMS, as discussed above in connection with the comments received by the Department on proposed § 30.416(a). Another claimant representative agreed with the change in proposed § 30.702(d) regarding OWCP's issuance of a letter decision. Therefore, no changes were made to proposed § 30.702(d) as a result of these four comments.

Medical Fee Schedule

In the NPRM, the Department proposed amending existing § 30.705(a) to provide that ''devices and supplies,'' in addition to ''health services'' as currently stated in that paragraph, are covered by the OWCP fee schedule. A claimant representative agreed with the Department's change in proposed § 30.705(a). Therefore, no changes were made to that paragraph in the final rule. The Department also proposed modifying existing § 30.705(b) to provide that OWCP may require nursing homes to abide by a fee schedule. A claimant representative and two advocacy groups asserted that it was premature for the Department to add that language to proposed § 30.705(b). The same claimant representative and one of those advocacy groups suggested that the Department initiate a separate rulemaking if it decides to adopt this fee schedule. The Department notes, however, that it is within OWCP's discretion to adopt such a fee schedule, and proposed § 30.705(b) merely announces that OWCP may decide that nursing homes will be covered by a fee schedule in the future. Accordingly, no amendment was made to § 30.705(b) in the final rule. In proposed §§ 30.706 and 30.707, the Department proposed updating the indices used to determine maximum fees. A claimant representative agreed with the changes to those provisions. Therefore, no changes were made to those sections in the final rule.

In the introductory text in proposed § 30.709, the Department added language that payment will be made for medicinal drugs ''[u]nless otherwise specified by OWCP.'' Also in the introductory text in proposed § 30.709, the Department added language that OWCP may contract for, or require the use of, specific providers for medicinal drugs. A claimant representative felt that the new language ''[u]nless otherwise specified by OWCP'' is ambiguous and requires further explanation. The Department added that language to clarify its discretionary authority in this unsettled area of medical costs, and is not persuaded that any change to that section is required in the final rule. The same claimant representative also felt that the proposed language in the introductory text noting that OWCP may contract for, or require the use of, specific providers for certain medications was a violation of a claimant's right to obtain his or her own physician. However, the proposed language only stated that OWCP may contract with or require the use of specific providers for certain medications; it did not state that beneficiaries could be required to obtain treatment from specific physicians. Thus, no change was made to the introductory text of § 30.709 in the final rule.

In the NPRM, proposed § 30.709(a) clarified that the fee schedule for medicinal drugs applies whether the drugs are dispensed by a pharmacy or by a doctor in his office. A claimant representative commented that she generally agreed with the proposed language in § 30.709(a), but asked that the dispensing fee be unbiased and unambiguous, and consistent with the CMS fee schedule. The Department is unaware of any objective evidence of bias regarding the dispensing fee for medical drugs and this comment is outside the scope of the proposed change in § 30.709(a). Because the claimant representative's comment goes beyond the change in the NPRM, no amendment was made in the final rule with respect to this comment.

Proposed § 30.709(c) codified OWCP's authority to require the use of generic drugs, where appropriate. A claimant representative generally agreed with the proposed addition, as long as a beneficiary can petition for ''ungeneric'' equivalents if recommended by the provider. An advocacy group disagreed with the Department's proposed change because it believes that a beneficiary's physician, not OWCP, must decide what medications are best for the beneficiary. However, OWCP has required the use of generic equivalents where available since the beginning of the program in 2001, and sees no reason to alter this established requirement. Therefore, no change made to § 30.709(c) in the final rule as a result of this comment.

Proposed § 30.710(a) removed the terminology in existing § 30.710(a) that refers to the obsolete ''Prospective Payment System,'' and instead referred to the ''Inpatient Prospective Payment System'' devised by CMS. A claimant representative noted the change in proposed § 30.710(a). However, since the commenter did not either support or oppose the proposed regulation or offer ideas for changes, no change was made to § 30.710(a) in the final rule based on this comment. The same claimant representative commented on existing § 30.710(b), but the Department did not propose any changes to this paragraph in the NPRM. Because the claimant representative's second comment did not refer to a change that was proposed in the NPRM, no amendment was made in the final rule with respect to this comment.

In the NPRM, the Department added a new section, proposed § 30.711, to explain its current practice of paying hospitals for outpatient medical services according to Ambulatory Payment Classifications based on the Outpatient Prospective Payment System devised by CMS. To accommodate the addition of that new section, existing §§ 30.711, 30.712 and 30.713 appeared in the NPRM as proposed §§ 30.712, 30.713 and 30.714. A claimant representative generally agreed with proposed § 30.711, and suggested adding a provision in proposed § 30.711 to state that an aggrieved party may petition for

judicial review if OWCP denies payment for outpatient medical services. The Department notes that a claimant already has the ability to seek judicial review of such a denial, and does not require a regulatory acknowledgment of that ability. For that reason, no change was made to § 30.711 in the final rule based on that comment.

Proposed § 30.712(a) clearly stated that OWCP will not correct procedure or diagnosis codes on submitted bills. Rather, those bills will be returned to the provider for correction because the responsibility for proper submission of bills lies with the provider. A claimant representative commented that the Department's proposed change in § 30.712(a) may cause unnecessary delay. This requirement, however, is not new to this rulemaking and has been in existence since the beginning of the program. Therefore, since the Department sees no reason to alter this requirement, no change was made to this paragraph in the final rule. The same claimant representative commented on both proposed §§ 30.712(b) and 30.713(a), but the Department did not propose any changes to those provisions in the NPRM. Because the claimant representative's latter comments referred to regulatory text that was not changed in the NPRM, no amendment was made in the final rule with respect to those comments.

Proposed § 30.713(a)(1) clarified that the provider should make a request for reconsideration of a fee determination to the district office with jurisdiction of the employee's claim. A claimant representative agreed with that change. Accordingly, no change was needed for § 30.713(a)(1) in the final rule. In addition, proposed § 30.713(b) provided that a Regional Director's decision on a reduction in a provider's fee is final. A claimant representative objected to the Department's addition in proposed § 30.713(b), and suggested adding language stating that the provider has the right to file an objection with an administrative law judge or in Federal district court. The Department added the provision concerning the finality of the Regional Director's decision to § 30.713(b) to conform with similar regulations in another program administered by OWCP, and is not persuaded to deviate from those similar regulations. For that reason, no change was made to § 30.713(b) in the final rule.

Exclusion of Providers

In the NPRM, the Department proposed adding two new paragraphs, proposed § 30.715(i) and (j), to existing § 30.715 to set out two new reasonable bases for excluding providers. In proposed § 30.715(i), a provider may be excluded for failing to inform OWCP of any change in its provider status, and in proposed § 30.715(j), a provider may be excluded for engaging in conduct related to care found by OWCP to be misleading, deceptive or unfair. A claimant representative suggested that the Department add text, presumably in the introductory paragraph of existing § 30.715, to state that OWCP will exclude providers based on ''substantial relevant evidence,'' and that providers have the right to seek administrative review. These suggestions, however, do not relate to the proposed changes in existing § 30.715. Further, the Department notes that an excluded provider already has the ability to request a hearing before an administrative law judge as outlined in existing §§ 30.720 through 30.723, and to seek judicial review of such a decision excluding them from the program. Thus, the suggested changes to existing § 30.715 suggested by the commenter were not made in the final rule.

With respect to proposed § 30.715(i), two health care providers relayed their fears that the language in that proposed paragraph might cause a provider to be excluded for something as inadvertent as a mere administrative mishap. In addition, both of those health care providers and an advocacy group requested that the Department clearly define the terms used in the text of that paragraph. The Department believes that a provider's failure to inform OWCP that it no longer satisfies all applicable Federal and state licensure and regulatory requirements is significant, rather than a mere administrative mishap, and thus a valid basis for exclusion. Also, the Department firmly believes that the grounds upon which it may exclude a provider involve matters of administrative discretion that need not be further defined. Therefore, the Department is not persuaded that proposed § 30.715(i) should be modified in the final rule as requested by these commenters.

As for proposed § 30.715(j), four individuals, one health care provider and a law firm believed that the wording in proposed § 30.715(j) was overbroad and arbitrary. Two advocacy groups, the same and one other health care provider and the law firm suggested that the Department clearly define the terms used in the text of that paragraph. As it noted above, the Department firmly believes that the grounds upon which it may exclude a provider involve matters of administrative discretion that need not be further defined. Two of the individual commenters asserted that proposed § 30.715(j) will infringe on a state's authority to regulate licensed health care providers. However, OWCP is not now, and will not in the future, monitoring a provider's compliance with state licensing and other regulatory requirements, and therefore no such infringement exists. Accordingly, no change was made to § 30.715(j) in the final rule based on these comments.

In the NPRM, the Department added a new paragraph, proposed § 30.716(c), to clarify that a provider may voluntarily choose to be excluded without undergoing the exclusion process. That clarification was meant to address situations where providers may simply agree to be excluded, and thereby avoid a possibly burdensome administrative exclusion process when, for example, they are facing criminal charges unrelated to the provision of services to any EEOICPA beneficiaries. A claimant representative suggested that the Department should state in proposed § 30.716(c) that a provider may voluntarily exclude themselves from the program. Such clarification is unnecessary since the language in proposed § 30.716(c) states exactly what the commenter suggested. Therefore, no change was made to that paragraph in the final rule.

Proposed § 30.717 reorganized existing § 30.717 into three separate paragraphs to provide that the Department's Office of Inspector General (DOL OIG) will be primarily responsible for investigating all potential exclusions of providers, instead of the Regional Director as provided in existing § 30.717. Proposed § 30.717(a) stated that OWCP will forward exclusion-related information to the DOL OIG. A claimant representative agreed with the changes in proposed § 30.717(a). Another claimant representative commented that exclusion matters should be handled by the Regional Director, not the DOL OIG, since the current regulations state that the Regional Director will handle those matters. The Department acknowledged in the preamble to the proposed rule that this function was previously handled by OWCP; however, OWCP has no investigatory arm and lacks resources to carry out this responsibility. The Department continues to believe that the DOL OIG is in the best position to handle such investigations. A health care provider commented that referral to the DOL OIG will result in significant and expensive adverse impacts on legitimate providers. This commenter did not provide any proof to validate the

fear that such problems will occur, nor has this been OWCP's experience in its administration of another compensation program that already uses this contemplated process. Another health care provider commented that proposed § 30.717(a) lacked necessary details. However, that paragraph merely announced that the DOL OIG will be responsible for investigating all possible exclusions of providers, and therefore any further explanation of the process involved would be superfluous. For the reasons stated above, the Department is not persuaded that any change is needed in § 30.717(a); therefore, no change was made in the final rule.

In proposed § 30.717(c), the Department described the contents of the written report that the DOL OIG would need to prepare for OWCP if it determined that there was reasonable cause to believe that any violations enumerated in proposed § 30.715 had occurred. The law firm and a health care provider suggested wording changes to proposed § 30.717(c), but those changes would inadvisably limit the amount of discretion that the Department feels is necessary in this process. Therefore, the suggested changes to this paragraph were not made in the final rule.

Proposed § 30.718(a) through (f) contained minor wording changes to the existing language in those paragraphs with respect to how OWCP will notify a provider of its intent to exclude them, in order to conform the existing regulatory language with similar regulations in another program administered by OWCP. A health care provider asked the Department to add specific details in proposed § 30.718 about what will happen to the clients of excluded providers, and whether OWCP will alert other home health care providers that a specific provider was excluded from the program. However, the above comment was outside the scope of the changes in proposed § 30.718. Because the comment goes beyond the change in the NPRM, no amendment was made in the final rule with respect to this comment. In proposed § 30.718(e), the Department proposed allowing a provider 60 days, instead of 30 days as stated in current § 30.718(e), to respond to a letter of intent. A claimant representative agreed with that provision. Under these circumstances, no changes were made in § 30.718(e) based on the comment.

Proposed § 30.719(c) stated that ''[t]he provider may inspect or request copies of information in the record at any time prior to the deciding official's decision by making such request to OWCP within 20 days of receipt of the letter of intent,'' while existing § 30.719(c) does not contain any time requirements. Two health care providers commented that this language was confusing, and both of those commenters suggested that no timeframe for requesting information should be imposed. The Department is not persuaded that the proposed regulation is confusing, because both of these commenters have read it properly regarding the 20-day period for requesting access. Regarding the suggestion that no timeframe should be imposed, the Department thinks that it is reasonable for a provider to decide, within 20 days of receiving the letter of intent, whether or not it wants to review any information in the record. Allowing these requests to be made at any time would likely result in an inefficient and slower administrative review process, which would benefit neither the provider nor OWCP. Thus, no amendments were made to those provisions in the final rule. In the NPRM, the Department added a new paragraph, proposed § 30.719(d), to allow OWCP 30 days to answer the provider's response to OWCP's letter of intent, and to allow the provider 15 days to reply to OWCP's answer. A claimant representative suggested that the Department allow OWCP 60 days, instead of 30 days, to answer a provider's response in proposed § 30.719(d). However, the Department made this change to conform with similar regulations in another program administered by OWCP. For that reason, and since the claimant representative gave no reason for her suggestion, no changes were made in § 30.719 in the final rule based on her comment.

In proposed §§ 30.720 through 30.723, the Department made minor wording changes to the existing language in those sections that addresses how an excluded provider can request a hearing, how hearings are assigned and scheduled, how subpoenas or advisory opinions are obtained and how an administrative law judge will conduct a hearing and issue a recommended decision, respectively. A claimant representative suggested that the Department's changes in those proposed sections were unnecessary. However, these sections were amended to conform with similar regulations in another program administered by OWCP. Thus, the proposed changes are necessary, and no changes were made to those sections in the final rule as a result of this comment.

Proposed § 30.724(a) through (h) modified the manner in which the administrative law judge's recommended decision on exclusion becomes final. In particular, proposed § 30.724(h) stated that no recommended decision regarding exclusion will become final until the Director for Energy Employees Occupational Illness Compensation issues the decision in final form, while existing § 30.724(a) provides that an administrative law judge's recommended decision on exclusion becomes final if no objection is filed. A claimant representative and a health care provider commented that they did not understand why the Department modified this section in the NPRM. That same health care provider objected to the language in proposed § 30.724(h) and argued that it gave the Director authority over administrative law judges and the DOL OIG. The Department disagrees that the proposed changes will give the Director any managerial authority over administrative law judges and/or the DOL OIG, and notes again that it added that language in order to conform the provision to similar regulations in another program administered by OWCP. Therefore, no changes were made to that paragraph in the final rule.

In the NPRM, the Department proposed adding paragraph (a)(4) to existing § 30.725 to state that OWCP will notify the state or local authority responsible for licensing or certifying the excluded party of the exclusion. A claimant representative questioned whether OWCP has the authority to do so; the Department is confident that OWCP has such authority, as would any member of the public with knowledge relevant to the professional deficiencies of any licensed provider. A health care provider asked the Department to explain the difference between automatic and non-automatic exclusion, but this comment does not pertain to the change proposed in § 30.725(a)(4). Because the health care provider's comment did not refer to a change that was proposed in the NPRM, no amendment was made to § 30.725(a)(4) in the final rule.

Proposed § 30.726(c) corrected outdated terminology by replacing the word ''argument'' with ''presentation.'' A claimant representative commented that the change was unnecessary. The Department agrees that this change is minor; however, it was made to conform to similar regulations in another program administered by OWCP. For that reason, no changes were made to § 30.726(c) in the final rule in response to this single comment.

Subpart I—Wage-Loss Determinations Under Part E of EEOICPA

General Provisions

In proposed § 30.800(c), the Department updated a cross-reference to

reflect the changed location of the regulatory provision defining the term *covered illness* from § 30.5(r) to § 30.5(s). A claimant representative commented that the cross-reference change in § 30.800(c) was unnecessary. Nonetheless, because this change was needed to reflect the changed location of the regulatory provision, no change was made to § 30.800(c) in the final rule. The Department proposed slight modifications and additions to the definitions related to wage-loss benefits available under Part E contained in proposed § 30.801. A claimant representative generally agreed with those changes, and specifically asserted that the regulatory definition of *wages* in proposed § 30.801(g) should refer explicitly to the ''time of injury.'' However, because the term ''time of injury'' is only relevant to a determination whether an individual has forfeited his or her entitlement under section 7385i(a) of EEOICPA, and because the definition of *wages* needs to be applicable to potentially multiple points of time in a single claim, no change to § 30.801 was made in the final rule.

Evidence of Wage-Loss

Proposed § 30.805(a) set out in detail the criteria, derived from the statute at section 7385s–2(a)(2)(A) of EEOICPA that claimants must establish in order to be eligible for wage-loss benefits under Part E. A claimant representative suggested that proposed § 30.805(a) wrongly placed the burden of proof on claimants to establish their entitlement to wage-loss benefits, because she believed that once OWCP determines that a claimant is a covered employee who contracted a covered illness, ''then the employee claimant is mandated to receive wage-loss'' benefits. However, this comment does not recognize that there are clearly discernable eligibility requirements for wage-loss benefits in section 7385s–2(a)(2)(A) beyond those set out in section 7385s–4 of EEOICPA, and that it is the claimant's burden, as stated by the U.S. Supreme Court, to provide evidence to meet the requirements in *both* of those sections of EEOICPA. Therefore, no change was made to § 30.805(a) in the final rule as a result of this comment.

Proposed § 30.805(b) explained that OWCP may discontinue development of a covered Part E employee's request for wage-loss benefits at any point when the claimant is unable to meet his or her burden of proof to submit factual and/or medical evidence to establish the criteria specified in proposed § 30.805(a). Two claimant representatives and four advocacy groups objected to proposed § 30.805(b), because they were concerned that the decision to discontinue development would not be subject to administrative review if OWCP administratively closed such a claim for wage-loss benefits without issuing recommended and final decisions. However, the text of proposed § 30.805(b) nowhere suggested that this would occur. The Department has added text to § 30.805(b) in the final rule to make clear that a decision would issue.

In the NPRM, proposed § 30.806 was substantially similar to current § 30.805(b), except that it provided an explanation of what OWCP would consider to be ''rationalized'' medical evidence, *i.e.,* medical evidence based on a physician's fully explained and reasoned decision, which a covered Part E employee must submit in order to establish that the claimed wage-loss at issue was causally related to the employee's covered illness. Additionally, proposed § 30.806 memorialized OWCP's established policy and Federal case law that wage-loss sustained due to something other than a covered illness is not compensable under Part E of EEOICPA. *See Trego* v. *U.S. Dep't of Labor,* 681 F.Supp. 2d 894 (E.D. Tenn. 2009). Two advocacy groups, one claimant representative and the Advisory Board suggested that several terms used in the text describing the type of medical evidence a claimant must submit to prove that he or she lost wages in the alleged trigger month needed to be defined further or eliminated, and suggested that the type of medical evidence described in proposed § 30.806 would be difficult for claimants to obtain. It should be noted, however, that proposed § 30.806 does not alter or increase the existing requirement for the submission of this medical evidence in current § 30.805(b). Rather, it gives a fuller and more helpful description of the type of medical evidence necessary, which is useful to claimants seeking to obtain these benefits. Accordingly, no changes were made to § 30.806 in the final rule.

Proposed new § 30.807 was added to accommodate the changes described above in proposed § 30.806. Proposed § 30.807(a) was substantially similar to existing § 30.805(a), except that the provision stated that OWCP may rely upon annual, as well as quarterly, wage information that has been reported to the Social Security Administration. Also, the Department sought to move language defining ''wages'' that appears in current § 30.805(a) to a new § 30.801(g). And finally, proposed § 30.807(b) was substantially similar to existing § 30.806, which describes the submission of factual evidence of wage-loss by claimants. A claimant representative submitted a comment in which she questioned whether the changes in proposed § 30.807 were necessary. These regulatory changes not only reorganize and clarify the existing regulatory description of the process for developing wage-loss claims, but also explain how OWCP has interpreted and applied the complex provisions of the statute. Because of this, and also because the commenter did not suggest a viable alternative, no change to § 30.807 was made in the final rule in response to this comment.

Determinations of Average Annual Wage and Percentages of Loss

In the NPRM, the Department proposed revising existing § 30.810 to state that it will calculate the average annual wage of a covered Part E employee using months instead of quarters, to be consistent with proposed § 30.801(a). Also, proposed § 30.811(a) combined the text from paragraphs (a) and (b) in existing § 30.811, since the current text in those paragraphs is repetitive. A claimant representative questioned the need for the admittedly minor conforming changes in proposed §§ 30.810 and 30.811. However, the proposed minor changes to existing § 30.810 were needed to conform with other proposed changes in subpart I, and repetitive text was removed from proposed § 30.811 to make it clearer. Under these circumstances, the Department did not make any changes to §§ 30.810 and 30.811 in the final rule with respect to this comment.

Subpart J—Impairment Benefits Under Part E of EEOICPA

General Provisions

In the NPRM, proposed § 30.901(a) deleted the word ''minimum'' from the statutory term ''minimum impairment rating'' that appears in the existing paragraph, and proposed § 30.901(b) deleted the same statutory term entirely. In addition, the Department proposed deleting the statement that appears in existing § 30.901(b) that OWCP will determine impairment ratings under EEOICPA in accordance with the AMA's *Guides.* A claimant representative and an advocacy group objected to the deletion of the word ''minimum'' in proposed § 30.901(a), and to the deletion of the term ''minimum impairment rating'' in (b), and pointed out that this language appears in the statutory description of impairment ratings found in 42 U.S.C. 7385s–2(a)(1)(A)(i). However, as the

Department pointed out when it published proposed § 30.901(a) and (b), the word ''minimum'' has no actual meaning in the context of rating permanent impairment, nor does it meaningfully describe or further modify ''impairment rating.'' Put simply, there is no difference between a ''minimum impairment rating'' and an ''impairment rating'' when a claimant has reached maximum medical improvement. The same advocacy group, a second advocacy group, a claimant representative and a health care provider also objected to the deletion of the statement that OWCP will determine impairment ratings under EEOICPA in accordance with the AMA's *Guides,* and asserted that this change was confusing and contrary to section 7385s–2(b). The Department agrees, but notes that the deletion in question was made at the insistence of the Office of the Federal Register, which deemed it to be a prohibited incorporation of material by reference. Accordingly, for the reasons stated above, no changes were made to § 30.901(a) and (b) in the final rule based on the above comments.

Proposed new § 30.902(b) added text to describe OWCP's longstanding policy of proportionately reducing an impairment award in circumstances when such award is payable based on a whole person impairment rating, and at least one of the elements of the award is subject to a reduction under existing §§ 30.505(b) and/or 30.626. A claimant representative objected to the new paragraph, and mistakenly assumed that these reductions would be made without providing a claimant with notice and an opportunity to respond. Appropriate process will be provided, and therefore no changes were made to § 30.902(b) in the final rule.

Medical Evidence of Impairment

Proposed § 30.908(b) and (c) replaced the term ''minimum impairment rating'' with ''impairment rating,'' to be consistent with the changes in proposed §§ 30.102(a), 30.901 and 30.902. A claimant representative objected to that change, for the same reasons she gave in support of her comments regarding proposed § 30.901. However, and as noted above regarding those comments, the word ''minimum'' serves no actual purpose in the determination of a claimant's impairment rating. Accordingly, and as it did above in connection with proposed § 30.901, the Department did not make any changes to § 30.908(b) and (c) in the final rule based on this comment. The same claimant representative, as well as a health care provider and two advocacy groups, commented on other aspects of proposed § 30.908(b) and (c) in the NPRM that were no different from existing § 30.908(b) and (c). Since the only change to the existing paragraphs that were made in proposed § 30.908(b) and (c) was the deletion of the words ''minimum,'' none of the changes suggested by this second group of comments were made to § 30.908(b) and (c) in the final rule.

IV. Miscellaneous Rulemaking Issues

During this rulemaking process, several extraneous issues arose that are not addressed in the above section-by-section analysis. The Department's analysis of the requests it received to extend the comment periods, the comment it received from the Advisory Board on issues that were either outside the Advisory Board's scope of duties under section 7385s–16(b)(1) of EEOICPA or not addressed in any aspect of the proposed changes, and its communications with interested parties about the NPRM outside of the rulemaking process follows:

Requests To Extend the Comment Period

Prior to expiration of the original January 19, 2016 deadline to submit comments concerning the NPRM, the Department received 33 timely comments that requested that the Department extend the comment period, but did not otherwise comment on any aspect of the proposed rule (24 from different individuals, 1 of whom submitted 2 separate comments, 3 from advocacy groups, 2 from claimant representatives, 1 from a health care provider and 1 from a member of Congress), while an additional 3 timely comments requested that the Department extend the comment period and also commented on aspects of the proposed rule (2 from individuals and 1 from a health care provider). Most of the commenters asked that the comment period be extended to allow the Advisory Board to be seated and have the opportunity to comment on the proposed rule. The remainder of these requesters asked for an extension for reasons such as the comment period was disrupted by several holidays, and because the elderly and sick population interested in the program needed more time to review the proposed changes.

On January 19, 2016, the Department extended the comment period another 30 days through February 18, 2016. During the 30-day extended period, the Department received requests that the comment period be extended yet further from 99 commenters. Of those 99 commenters, 95 requested that the Department extend the comment period but did not otherwise comment on any aspect of the proposed rule (92 from individuals, 2 from unknown persons or organizations, and 1 from a health care provider), while an additional 4 timely commenters requested that the Department extend the comment period and also commented on aspects of the proposed rule (1 from the same health care provider and 1 from another health care provider, 1 from an individual and 1 from a labor organization). The Department also received 1 untimely request from an individual requesting an extension. A significant portion of these requests were identical or nearly identical ''form letters'' that generally asked for more time for physicians to review the proposed regulations, and some asked the Department to hold Town Hall meetings. The few remaining requesters asked the Department to wait until the Advisory Board was seated before issuing final regulations.

Comments From the Advisory Board on Toxic Substances and Worker Health

On April 5, 2016, the Department reopened the comment period for the NPRM through May 9, 2016, to afford interested parties the opportunity to further review the NPRM, and to afford the new Advisory Board the opportunity to review the NPRM at its public meeting held April 26, 27 and 28, 2016. Prior to the meeting, the Advisory Board received legal guidance with respect to which of the sections of the NPRM were within the scope of its duties, as specified in § 7385s–16(b)(1) of EEOICPA, and which other sections fell outside its scope of duties. During the reopened comment period, the Department received 180 comments, including 1 from the Advisory Board.

The Department thanks the Advisory Board for its work. The Advisory Board addressed a number of aspects of the proposed regulations in its comment. Section 7385s–16(b)(1) of EEOICPA sets out the scope of the Board's advisory duties and, consequently, the Department's bounds on formal consideration of that advice. Some of the issues raised by the Board addressed sections of the regulation that fell within its duties: §§ 30.206(a), 30.231(b), 30.232(a)(1) and (2), 30.405(b) and (c), 30.509(c) and 30.806. The Department discussed these comments in the section-by-section analysis set forth above. The Advisory Board also went outside its statutory mandate to submit comments on proposed §§ 30.5(j), 30.5(x)(2)(iii), 30.5(ee), 30.112(b)(3), 30.231(a) and 30.805(a)(3). Although the Department did not discuss this second set of Advisory Board comments in the section-by-

section analysis, the issues raised in those comments were also raised in other timely comments and thus were fully addressed. Lastly, the Advisory Board commented on existing § 30.230(d)(2)(iii) and aspects of proposed § 30.231(b) that were not included in the NPRM, and therefore no discussion of that comment was included in the Department's section-by-section analysis.

Communications Outside of the Rulemaking Process

Meetings or discussions with one or more parties about NPRMs can take place outside of the comment process, provided that the agency properly documents the particulars of those communications. However, such discussions are not a substitute for submission of public comments, and the content of those communications cannot be considered in preparation of the final rule.

During the comment periods for this NPRM, DOL personnel had a total of 16 instances wherein they discussed aspects of the NPRM with interested individuals and groups outside of the formal comment process. Specifically, DOL personnel attended four face-to-face meetings with congressional staff at the request of the staffers and spoke with a member of the press on two separate occasions. In addition, three advocacy groups, two claimant representatives, two NIOSH employees and one health care provider contacted DOL personnel on matters relating to the NPRM. Also, on April 4, 2016, DOL personnel provided a briefing on the NPRM to all members of the Advisory Board, and the Advisory Board discussed the NPRM at its public meeting held April 26, 27 and 28, 2016. Although those specific discussions were not considered in preparation of this final rule, the subjects and sections of the NPRM that were discussed in those communications were addressed by the timely comments that are discussed above.

V. Publication in Final

The Department has determined, pursuant to 5 U.S.C. 553(b)(B), that good cause exists for waiving public comment on this final rule with respect to the following changes: (1) Corrections of typographical errors; and (2) minor wording changes and clarifications that do not affect the substance of the regulations. For these changes, publication of a proposed rule and solicitation of comments would be neither necessary nor fruitful.

VI. Statutory Authority

Section 7384d of EEOICPA provides general statutory authority, which E.O. 13179 allocates to the Secretary, to prescribe rules and regulations necessary for administration of Part B of the Act. Section 7385s–10 provides the Secretary with the general statutory authority to administer Part E of the Act. Sections 7384t, 7384u and 7385s8 provide the specific authority regarding medical treatment and care, including authority to determine the appropriateness of charges. The Federal Claims Collection Act of 1966, as amended (31 U.S.C. 3701 *et seq.*), authorizes imposition of interest charges and collection of debts by withholding funds due the debtor.

VII. Executive Orders 12866 and 13563

E.O. 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including distributive impacts, equity, and potential economic, environmental, public health and safety effects). E.O. 13563 is supplemental to and reaffirms the principles, structures, and definitions governing regulatory review as established in E.O. 12866.

This rule has been designated a ''significant regulatory action'' although not economically significant under section 3(f) of E.O. 12866. The rule is not economically significant because it will not have an annual effect on the economy of $100 million or more. The Department believes that this rule is merely an update to the existing regulations to reflect the program's current processes, and to incorporate the policy and procedural changes that have been implemented since the existing regulations were issued in 2006.

Thus, the Department does not believe that any of the above significant policies in the final rule will result in increased or decreased administrative costs to either the program or the public, or any increase in benefits paid. This rule has been reviewed by the Office of Management and Budget.

VIII. Regulatory Flexibility Act

This rule has been reviewed in accordance with the Regulatory Flexibility Act of 1980, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 601–612. The Department has concluded that the rule does not involve regulatory and informational requirements regarding businesses, organizations and governmental jurisdictions subject to the regulation.

IX. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501 *et seq.,* and its implementing regulations, 5 CFR part 1320, require that the Department consider the impact of paperwork and other information collection burdens imposed on the public. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the Office of Management and Budget (OMB) under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person may generally be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. *See* 5 CFR 1320.5(a) and 1320.6.

This final rule contains information collection requirements subject to the PRA. The information collection requirements in §§ 30.700, 30.701 and 30.702 of this final rule, which relate to information required to be submitted by claimants and medical providers in connection with the processing of bills, were both submitted to and approved by OMB under the PRA, and the currently approved collections in OMB Control Nos. 1240–0007, 1240–0019, 1240–0021, 1240–0044 and 1240–0050 will not be affected by any of the changes made in this final rule. No comments were received concerning the information collection burdens in this first group of sections, and therefore no changes relating to those burdens were made in this final rule. The information collection requirements in §§ 30.100, 30.101, 30.102, 30.103, 30.112, 30.113, 30.206, 30.207, 30.213, 30.222, 30.231, 30.232 and 30.416 of this final rule were also previously submitted to and approved by OMB under the PRA, and were assigned OMB Control No. 1240–0002. The information collection requirements in this second group of sections will not be affected by any of the substantive changes made in this final rule; no comments concerning the information collection burdens in this second group were received, and therefore no changes relating to those burdens were made in this final rule.

However, in the NPRM, the Department noted that proposed sections 30.114(b)(3) and 30.403, which, as discussed above, require parties to submit information OWCP needs before it can accept and then provide medical benefits for a claim, constituted collections of information within the meaning of the PRA that were being added to OMB Control. No. 1240–0002.

80 FR 72302–72304. The NPRM specifically invited comments regarding the information collections and notified the public of their opportunity to file such comments with both OMB and the Department. *Id.* On the same date the NPRM was published, the Department submitted a series of Information Collection Requests (ICRs) to OMB for approval in order to update the information collections to be consistent with the proposed rule. On January 19, 2016, OMB concluded its reviews by asking the Department to submit a summary of all comments received on the proposed information collections and identify any changes made in response to these comments. *Id.*

The Department received comments on the substance of proposed sections 30.114(b)(3) and 30.403; those comments are fully addressed in the above section-by-section analysis entitled ''Comments on the Proposed Regulations.'' The Department also received 18 comments about the information collections in proposed section 30.403, but no comments on the information collections in proposed § 30.114(b)(3) were received. The comments regarding proposed § 30.403 were submitted by 17 different commenters (one of whom submitted two separate comments). Ten physicians, two individuals, three health care providers and one claimant representative submitted comments in which they stated that the information collection burdens of the proposed Form EE–17A (which asks the claimant to provide OWCP with the name and contact information for their treating physician) and Form EE–17B (which asks the treating physician to verify that a timely a face-to-face examination took place and to submit a Letter of Medical Necessity supporting the requested services) were excessive. However, the Department notes that these comments are based on the erroneous supposition that these two new forms will add *additional* burdens on the public and delay the provision of necessary services, when in fact they are intended to standardize and thus *replace* the current individualized method (currently not accounted for under the PRA) for OWCP's required pre-authorization process which can, and often does, take longer than all parties would wish. One individual commenter praised the idea behind the creation of proposed Forms EE–17A and EE–17B, noting that standardizing the process would likely bring a measure of order to an otherwise often chaotic process. The Department is in agreement with this last commenter, and made no changes to the information collection instruments at issue. The Department is submitting ICRs to OMB for the information collections to revise and update them for this final rule.

The information collections in this rule may be summarized as follows. The number of responses and burden estimates listed are not specific to the Energy program; instead, the estimates are cumulative for all OWCP-administered compensation programs that collect this information.

1. *Title of Collection:* Energy Employees Occupational Illness Compensation Program Act Forms.
OMB Control Number: 1240–0002.
Total Estimated Number of Responses: 60,294.
Total Estimated Annual Time Burden: 20,359 hours.
Total Estimated Annual Other Costs Burden: $28,989.48.

2. *Title of Collection:* Claim for Medical Reimbursement Form.
OMB Control Number: 1240–0007.
Total Estimated Number of Responses: 34,564.
Total Estimated Annual Time Burden: 5,738 hours.
Total Estimated Annual Other Costs Burden: $59,450.

3. *Title of Collection:* Uniform Billing Form (OWCP–04).
OMB Control Number: 1240–0019.
Total Estimated Number of Responses: 259,865.
Total Estimated Annual Time Burden: 29,466.
Total Estimated Annual Other Costs Burden: $0.

4. *Title of Collection:* Provider Enrollment Form.
OMB Control Number: 1240–0021.
Total Estimated Number of Responses: 64,325.
Total Estimated Annual Time Burden: 8,555 hours.
Total Estimated Annual Other Costs Burden: $33,449.

5. *Title of Collection:* Health Insurance Claim Form.
OMB Control Number: 1240–0044.
Total Estimated Number of Responses: 3,381,232.
Total Estimated Annual Time Burden: 321,455 hours.
Total Estimated Annual Other Costs Burden: $0.

6. *Title of Collection:* Pharmacy Billing Requirements.
OMB Control Number: 1240–0050.
Total Estimated Number of Responses: 1,381,903.
Total Estimated Annual Time Burden: 24,203 hours.
Total Estimated Annual Other Costs Burden: $0.

X. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531 *et seq.*) directs agencies to assess the effects of Federal regulatory actions on state, local, and tribal governments, and the private sector, ''other than to the extent that such regulations incorporate requirements specifically set forth in law.'' For purposes of the Unfunded Mandates Reform Act, this final rule does not include any Federal mandate that may result in increased annual expenditures in excess of $100 million by state, local or tribal governments in the aggregate, or by the private sector.

XI. Executive Order 13132 (Federalism)

The Department has reviewed this final rule in accordance with E.O. 13132 regarding federalism, and has determined that it does not have ''federalism implications.'' The final rule does not ''have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

XII. Executive Order 13175 (Consultation and Coordination With Indian Tribal Governments)

The Department has reviewed this final rule in accordance with E.O. 13175 and has determined that it does not have ''tribal implications.'' The final rule does not ''have substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.''

XIII. Executive Order 12988 (Civil Justice Reform)

This final rule has been drafted and reviewed in accordance with E.O. 12988 and will not unduly burden the Federal court system. The regulation has been written so as to minimize litigation and provide a clear legal standard for affected conduct, and has been reviewed carefully to eliminate drafting errors and ambiguities.

XIV. Executive Order 13045 (Protection of Children From Environmental, Health Risks and Safety Risks)

In accordance with E.O. 13045, the Department has evaluated the environmental health and safety effects of this rule on children, and has determined that the final rule will have no effect on children.

XV. Executive Order 13211 (Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use)

In accordance with E.O. 13211, the Department has evaluated the effects of this final rule on energy supply, distribution or use, and has determined that it is not likely to have a significant adverse effect on them.

XVI. Executive Order 13771 (Reducing Regulation and Controlling Regulatory Costs)

This rule is not subject to the requirements of E.O. 13771 because this rule results in no more than de minimis costs. This final rule simply updates some of the provisions governing EEOICPA transfers to ensure the program operates properly and efficiently.

List of Subjects in 20 CFR Part 30

Administrative practice and procedure, Cancer, Claims, Kidney diseases, Leukemia, Lung diseases, Miners, Radioactive materials, Tort claims, Underground mining, Uranium, Workers' compensation.

Text of the Rule

For the reasons stated in the preamble, the Department of Labor amends 20 CFR part 30 as follows:

PART 30—CLAIMS FOR COMPENSATION UNDER THE ENERGY EMPLOYEES OCCUPATIONAL ILLNESS COMPENSATION PROGRAM ACT OF 2000, AS AMENDED

■ 1. The authority citation for part 30 is revised to read as follows:

Authority: 5 U.S.C. 301; 31 U.S.C. 3716 and 3717; 42 U.S.C. 7384d, 7384t, 7384u and 7385s–10; Executive Order 13179, 65 FR 77487, 3 CFR, 2000 Comp., p. 321; Secretary of Labor's Order No. 10–2009, 74 FR 58834.

■ 2. Revise § 30.1 to read as follows:

§ 30.1 What rules govern the administration of EEOICPA and this chapter?

In accordance with EEOICPA, Executive Order 13179 and Secretary's Order No. 10–2009, the primary responsibility for administering the Act, except for those activities assigned to the Secretary of Health and Human Services (HHS), the Secretary of Energy and the Attorney General, has been delegated to the Director of the Office of Workers' Compensation Programs (OWCP). Except as otherwise provided by law, the Director of OWCP and his or her designees have the exclusive authority to administer, interpret and enforce the provisions of the Act.

■ 3. Amend § 30.2 by revising paragraph (b) to read as follows:

§ 30.2 In general, how have the tasks associated with the administration of EEOICPA claims process been assigned?

* * * * *

(b) However, HHS has exclusive control of the portion of the claims process under which it provides reconstructed doses for certain radiogenic cancer claims (see § 30.115), which it delegated to the National Institute for Occupational Safety and Health (NIOSH) in 42 CFR part 82. HHS also has exclusive control of the process for designating classes of employees to be added to the Special Exposure Cohort under Part B of the Act, and has promulgated regulations governing that process at 42 CFR part 83. Finally, HHS has promulgated regulations at 42 CFR part 81 that set out guidelines that OWCP follows when it assesses the compensability of an employee's radiogenic cancer (see § 30.213). DOE and DOJ must, among other things, notify potential claimants and submit evidence that OWCP deems necessary for its adjudication of claims under EEOICPA (see §§ 30.105, 30.112, 30.206, 30.212 and 30.221).

■ 4. Amend § 30.5 as follows:

■ a. Revise paragraphs (c)(2)(i) and (i);

■ b. Redesignate paragraphs (ii) and (jj) as paragraphs (kk) and (ll) and paragraphs (j) through (hh) as paragraphs (k) through (ii) and, respectively;

■ c. Add new paragraphs (j) and (jj);

■ d. Revise newly redesignated paragraphs (k)(2) introductory text, (w), (x)(2), (ee), (gg) introductory text; and (ii).

The revisions and additions read as follows:

§ 30.5 What are the definitions used in this part?

* * * * *

(c) * * *

(2)(i) An individual employed at a facility that NIOSH reported had a potential for significant residual contamination outside of the period described in paragraph (c)(1) of this section;

* * * * *

(i) *Beryllium vendor* means the specific corporations and named predecessor corporations listed in section 7384l(6) of the Act and any other entities designated as such by DOE on December 27, 2002.

(j) *Beryllium vendor facility* means a facility owned and operated by a beryllium vendor.

(k) * * *

(2) A written diagnosis of silicosis is made by a licensed physician and is accompanied by:

* * * * *

(w) *Department of Energy* or *DOE* includes the predecessor agencies of DOE back to the establishment of the Manhattan Engineer District on August 13, 1942.

(x) * * *

(2) An individual who is or was employed at a DOE facility by:

(i) An entity that contracted with the DOE to provide management and operating, management and integration, or environmental remediation at the facility;

(ii) A contractor or subcontractor that provided services, including construction and maintenance, at the facility; or

(iii) A civilian employee of a state or Federal government agency if the agency employing that individual is found to have entered into a contract with DOE for the provision of one or more services it was not statutorily obligated to perform, and DOE compensated the agency for those services. The delivery or removal of goods from the premises of a DOE facility does not constitute a service for the purposes of determining a worker's coverage under this paragraph (x).

* * * * *

(ee) *Physician* includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors and osteopathic practitioners, within the scope of their practice as defined by state law. Physician assistants and nurse practitioners are excluded from this definition. The services of chiropractors that may be reimbursed are limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist.

* * * * *

(gg) *Specified cancer* means:

* * * * *

(ii) *Time of injury* is defined as follows:

(1) For an employee's claim, this term means:

(i) In regard to a claim arising out of exposure to beryllium or silica, the last date on which a covered Part B employee was exposed to such substance in the performance of duty in accordance with sections 7384n(a) or 7384r(c) of the Act;

(ii) In regard to a claim arising out of exposure to radiation under Part B, the last date on which a covered Part B employee was exposed to radiation in the performance of duty in accordance

with section 7384n(b) of the Act or, in the case of a member of the Special Exposure Cohort, the last date on which the member of the Special Exposure Cohort was employed at the Department of Energy facility or the atomic weapons employer facility at which the member was exposed to radiation; or

(iii) In regard to a claim arising out of exposure to a toxic substance, the last date on which a covered Part E employee was employed at the Department of Energy facility or RECA section 5 facility, as appropriate, at which the exposure took place.

(2) For a survivor's claim, the date of the employee's death is the time of injury.

(jj) *Time of payment* or *payment* means the date that a paper check issued by the Department of the Treasury was received by the payee or by someone who was legally able to act for the payee, or the date the Department of the Treasury made an Electronic Funds Transfer to the payee's financial institution.

* * * * *

■ 5. Amend § 30.100 by revising paragraphs (a), (c) introductory text, (c)(1) and (d) to read as follows:

§ 30.100 In general, how does an employee file an initial claim for benefits?

(a) To claim benefits under EEOICPA, an employee must file a claim in writing with OWCP. Form EE–1 should be used for this purpose, but any written communication that requests benefits under EEOICPA will be considered a claim. It will, however, be necessary for an employee to submit a Form EE–1 for OWCP to fully develop the claim. Copies of Form EE–1 may be obtained from OWCP or on the internet at *http://www.dol.gov/owcp/energy/index.htm.* The employee must sign the written claim that is filed with OWCP, but another person may present the claim to OWCP on the employee's behalf.

* * * * *

(c) Except as provided in paragraph (d) of this section, a claim is considered to be ''filed'' on the date that the employee mails his or her claim to OWCP, as determined by postmark or other carrier's date marking, or on the date that the claim is received by OWCP, whichever is the earliest determinable date. However, in no event will a claim under Part B of EEOICPA be considered to be ''filed'' earlier than July 31, 2001, nor will a claim under Part E of EEOICPA be considered to be ''filed'' earlier than October 30, 2000.

(1) The employee shall affirm that the information provided on the Form EE–1 is true, and must inform OWCP of any subsequent changes to that information.

* * * * *

(d) For those claims under Part E of EEOICPA that were originally filed with DOE as claims for assistance under former section 7385o of EEOICPA (which was repealed on October 28, 2004), a claim is considered to be ''filed'' on the date that the employee mailed his or her claim to DOE, as determined by postmark or other carrier's date marking, or on the date that the claim was received by DOE, whichever is the earliest determinable date. However, in no event will a claim referred to in this paragraph be considered to be ''filed'' earlier than October 30, 2000.

■ 6. Amend § 30.101 by revising paragraphs (a), (d) introductory text, (d)(1) and (e) to read as follows:

§ 30.101 In general, how is a survivor's claim filed?

(a) A survivor of an employee must file a claim for compensation in writing with OWCP. Form EE–2 should be used for this purpose, but any written communication that requests survivor benefits under the Act will be considered a claim. It will, however, be necessary for a survivor to submit a Form EE–2 for OWCP to fully develop the claim. Copies of Form EE–2 may be obtained from OWCP or on the internet at *http://www.dol.gov/owcp/energy/index.htm.* The survivor must sign the written claim that is filed with OWCP, but another person may present the claim to OWCP on the survivor's behalf. Although only one survivor needs to file a claim under this section to initiate the development process, OWCP will distribute any monetary benefits payable on the claim among all eligible surviving beneficiaries who have filed claims with OWCP.

* * * * *

(d) Except as provided in paragraph (e) of this section, a survivor's claim is considered to be ''filed'' on the date that the survivor mails his or her claim to OWCP, as determined by postmark or other carrier's date marking, or the date that the claim is received by OWCP, whichever is the earliest determinable date. However, in no event will a survivor's claim under Part B of the Act be considered to be ''filed'' earlier than July 31, 2001, nor will a survivor's claim under Part E of the Act be considered to be ''filed'' earlier than October 30, 2000.

(1) The survivor shall affirm that the information provided on the Form EE–2 is true, and must inform OWCP of any subsequent changes to that information.

* * * * *

(e) For those claims under Part E of EEOICPA that were originally filed with DOE as claims for assistance under former section 7385o of EEOICPA (which was repealed on October 28, 2004), a claim is considered to be ''filed'' on the date that the survivor mailed his or her claim to DOE, as determined by postmark or other carrier's date marking, or on the date that the claim was received by DOE, whichever is the earliest determinable date. However, in no event will a claim referred to in this paragraph be considered to be ''filed'' earlier than October 30, 2000.

* * * * *

■ 7. Amend § 30.102 by revising paragraph (a) to read as follows:

§ 30.102 In general, how does an employee file a claim for additional impairment or wage-loss under Part E of EEOICPA?

(a) An employee previously awarded impairment benefits by OWCP may file a claim for additional impairment benefits. Such claim must be based on an increase in the employee's impairment rating attributable to the covered illness or illnesses from the impairment rating that formed the basis for the last award of such benefits by OWCP. OWCP will only adjudicate claims for such an increased rating that are filed at least two years from the date of the last award of impairment benefits. However, OWCP will not wait two years before it will adjudicate a claim for additional impairment that is based on an allegation that the employee sustained a new covered illness.

* * * * *

■ 8. Amend § 30.103 by revising paragraph (b) to read as follows:

§ 30.103 How does a claimant make sure that OWCP has the evidence necessary to process the claim?

* * * * *

(b) Copies of the forms listed in this section are available for public inspection at the U.S. Department of Labor, Office of Workers' Compensation Programs, Washington, DC 20210. They may also be obtained from OWCP district offices and on the internet at *http://www.dol.gov/owcp/energy/index.htm.*

■ 9. Amend § 30.110 by revising paragraphs (a)(1) and (4) and (b) to read as follows:

§ 30.110 Who is entitled to compensation under the Act?

(a) * * *

(1) A ''covered beryllium employee'' (as described in § 30.205(a)) with a covered beryllium illness (as defined in § 30.5(p)) who was exposed to beryllium

in the performance of duty (in accordance with § 30.206).

* * * * *

(4) A ''covered uranium employee'' (as defined in § 30.5(t)).

(b) Under Part E of EEOICPA, compensation is payable to a ''covered Part E employee'' (as defined in § 30.5(q)), or his or her survivors.

* * * * *

■ 10. Amend § 30.112 by revising paragraph (b)(3) to read as follows:

§ 30.112 What kind of evidence is needed to establish covered employment and how will that evidence be evaluated?

* * * * *

(b) * * *

(3) If the only evidence of covered employment submitted by the claimant is a written affidavit or declaration subject to penalty of perjury by the employee, survivor or any other person, and DOE or another entity either disagrees with the assertion of covered employment or cannot concur or disagree with the assertion of covered employment, then OWCP will evaluate the probative value of the affidavit in conjunction with the other evidence of employment, and may determine that the claimant has not met his or her burden of proof under § 30.111.

■ 11. Amend § 30.113 by revising paragraph (c) to read as follows:

§ 30.113 What are the requirements for written medical documentation, contemporaneous records, and other records or documents?

* * * * *

(c) If a claimant submits a certified statement, by a person with knowledge of the facts, that the medical records containing a diagnosis and date of diagnosis of a covered medical condition no longer exist, then OWCP may consider other evidence to establish a diagnosis and date of diagnosis of a covered medical condition. However, OWCP will evaluate the probative value of such other evidence to determine whether it is sufficient proof of a covered medical condition.

■ 12. Amend § 30.114 as follows:

■ a. Revise paragraphs (b)(1) and (2);

■ b. Redesignate paragraph (b)(3) as paragraph (b)(4); and

■ c. Add new paragraph (b)(3).

The revisions and addition read as follows:

§ 30.114 What kind of evidence is needed to establish a compensable medical condition and how will that evidence be evaluated?

* * * * *

(b) * * *

(1) For covered beryllium illnesses under Part B of EEOICPA, additional medical evidence, as set forth in § 30.207, is required to establish a beryllium illness.

(2) For chronic silicosis under Part B of EEOICPA, additional medical evidence, as set forth in § 30.222, is required to establish chronic silicosis.

(3) For covered illnesses under Part E of EEOICPA, additional medical evidence, as set forth in § 30.232, is required to establish a covered illness.

(i) For impairment benefits under Part E of EEOICPA, additional medical evidence, as set forth in § 30.901, is required to establish an impairment that is the result of a covered illness referred to in § 30.900.

(ii) For wage-loss benefits under Part E of EEOICPA, additional medical evidence, as set forth in § 30.806, is required to establish wage-loss that is the result of a covered illness referred to in § 30.800.

* * * * *

■ 13. Amend § 30.115 by revising paragraphs (a) introductory text, (a)(2), and (b) to read as follows:

§ 30.115 For those radiogenic cancer claims that do not seek benefits under Part B of the Act pursuant to the Special Exposure Cohort provisions, what will OWCP do once it determines that an employee contracted cancer?

(a) Other than claims seeking benefits under Part E of the Act that have previously been accepted under section 7384u of the Act or claims previously accepted under Part B pursuant to the Special Exposure Cohort provisions, OWCP will forward the claim package (including, but not limited to, Forms EE–1, EE–2, EE–3, EE–4 and EE–5, as appropriate) to NIOSH for dose reconstruction. At that point in time, development of the claim by OWCP may be suspended.

* * * * *

(2) NIOSH will then reconstruct the radiation dose of the employee and provide the claimant and OWCP with the final dose reconstruction report. The final dose reconstruction record will be delivered to OWCP with the final dose reconstruction report and to the claimant upon request.

(b) Following its receipt of the final dose reconstruction report from NIOSH, OWCP will resume its adjudication of the cancer claim and consider whether the claimant has met the eligibility criteria set forth in subpart C of this part. However, during the period before it receives a reconstructed dose from NIOSH, OWCP may continue to develop other aspects of a claim, to the extent that it deems such development to be appropriate.

■ 14. Amend § 30.205 by revising paragraphs (a)(1) and (a)(3)(i) to read as follows:

§ 30.205 What are the criteria for eligibility for benefits relating to beryllium illnesses covered under Part B of EEOICPA?

* * * * *

(a) * * *

(1) The employee is a ''current or former employee as defined in 5 U.S.C. 8101(1)'' (see § 30.5(u)) who may have been exposed to beryllium at a DOE facility or at a facility owned, operated or occupied by a beryllium vendor; or

* * * * *

(3) * * *

(i) Employed at a DOE facility (as defined in § 30.5(y)); or

* * * * *

■ 15. Amend § 30.206 by revising paragraph (a) to read as follows:

§ 30.206 How does a claimant prove that the employee was a ''covered beryllium employee'' exposed to beryllium dust, particles or vapor in the performance of duty?

(a) Proof of employment or physical presence at a DOE facility, or a beryllium vendor facility as defined in § 30.5(j), because of employment by the United States, a beryllium vendor, or a contractor or subcontractor of a beryllium vendor during a period when beryllium dust, particles or vapor may have been present at such facility, may be made by the submission of any trustworthy records that, on their face or in conjunction with other such records, establish that the employee was employed or present at a covered facility and the time period of such employment or presence.

* * * * *

■ 16. Amend § 30.207 as follows:

■ a. Revise paragraph (a);

■ b. Redesignate paragraph (d) as paragraph (e); and

■ c. Add new paragraph (d).

The revision and addition read as follows:

§ 30.207 How does a claimant prove a diagnosis of a beryllium disease covered under Part B?

(a) Written medical documentation is required in all cases to prove that the employee developed a covered beryllium illness. Proof that the employee developed a covered beryllium illness must be made by using the procedures outlined in paragraph (b), (c), (d) or (e) of this section.

* * * * *

(d) OWCP will use the criteria in either paragraph (c)(1) or (2) of this

section to establish that the employee developed chronic beryllium disease as follows:

(1) If the earliest dated medical evidence shows that the employee was either treated for, tested positive for, or diagnosed with a chronic respiratory disorder before January 1, 1993, the criteria set forth in paragraph (c)(2) of this section may be used;

(2) If the earliest dated medical evidence shows that the employee was either treated for, tested positive for, or diagnosed with a chronic respiratory disorder on or after January 1, 1993, the criteria set forth in paragraph (c)(1) of this section must be used; and

(3) If the employee was treated for a chronic respiratory disorder before January 1, 1993 and medical evidence verifies that such treatment was performed before January 1, 1993, but the medical evidence is dated on or after January 1, 1993, the criteria set forth in paragraph (c)(2) of this section may be used.

* * * * *

■ 17. Amend § 30.210 by revising paragraph (a)(1) to read as follows:

§ 30.210 What are the criteria for eligibility for benefits relating to radiogenic cancer?

(a) * * *

(1) The employee has been diagnosed with one of the forms of cancer specified in § 30.5(gg); and

* * * * *

■ 18. Revise § 30.211 to read as follows:

§ 30.211 How does a claimant establish that the employee has or had contracted cancer?

A claimant establishes that the employee has or had contracted a specified cancer (as defined in § 30.5(gg)) or other cancer with medical evidence that sets forth an explicit diagnosis of cancer and the date on which that diagnosis was first made.

■ 19. Amend § 30.213 by revising paragraph (a) to read as follows:

§ 30.213 How does a claimant establish that the radiogenic cancer was at least as likely as not related to employment at the DOE facility, the atomic weapons employer facility, or the RECA section 5 facility?

(a) HHS, with the advice of the Advisory Board on Radiation and Worker Health, has issued regulatory guidelines at 42 CFR part 81 that OWCP uses to determine whether radiogenic cancers claimed under Parts B and E were at least as likely as not related to employment at a DOE facility, an atomic weapons employer facility, or a RECA section 5 facility. Persons should consult HHS's regulations for information regarding the factual evidence that will be considered by OWCP, in addition to the employee's final dose reconstruction report that will be provided to OWCP by NIOSH, in making this particular factual determination.

* * * * *

■ 20. Amend § 30.220 by revising paragraph (a) to read as follows:

§ 30.220 What are the criteria for eligibility for benefits relating to chronic silicosis?

* * * * *

(a) The employee is a civilian DOE employee, or a civilian DOE contractor employee, who was present for a number of workdays aggregating at least 250 workdays during the mining of tunnels at a DOE facility (as defined in § 30.5(y)) located in Nevada or Alaska for tests or experiments related to an atomic weapon, and has been diagnosed with chronic silicosis (as defined in § 30.5(k)); or

* * * * *

■ 21. Amend § 30.222 by revising paragraph (a) introductory text to read as follows:

§ 30.222 How does a claimant establish that the employee has been diagnosed with chronic silicosis or has sustained a consequential injury, illness, impairment or disease?

(a) A written diagnosis of the employee's chronic silicosis (as defined in § 30.5(k)) shall be made by a licensed physician and accompanied by one of the following:

* * * * *

■ 22. Amend § 30.230 by revising paragraphs (a) and (d)(1) introductory text to read as follows:

§ 30.230 What are the criteria necessary to establish that an employee contracted a covered illness under Part E of EEOICPA?

* * * * *

(a) That OWCP has determined under Part B of EEOICPA that the employee is a DOE contractor employee as defined in § 30.5(x), and that he or she has been awarded compensation under that Part of the Act for an occupational illness;

* * * * *

(d)(1) That the employee is a civilian DOE contractor employee as defined in § 30.5(x), or a civilian who was employed in a uranium mine or mill located in Colorado, New Mexico, Arizona, Wyoming, South Dakota, Washington, Utah, Idaho, North Dakota, Oregon or Texas at any time during the period from January 1, 1942 through December 31, 1971, or was employed in the transport of uranium ore or vanadium-uranium ore from such a mine or mill during that same period, and that he or she:

* * * * *

■ 23. Amend § 30.231 by revising paragraphs (a) and (b) to read as follows:

§ 30.231 How does a claimant prove employment-related exposure to a toxic substance at a DOE facility or a RECA section 5 facility?

* * * * *

(a) Proof of employment may be established by any trustworthy records that, on their face or in conjunction with other such records, establish that the employee was so employed and the time period(s) of such employment. If the only evidence of covered employment submitted by the claimant is a written affidavit or declaration subject to penalty of perjury by the employee, survivor or any other person, and DOE or another entity either disagrees with the assertion of covered employment or cannot concur or disagree with the assertion of covered employment, then OWCP will evaluate the probative value of the affidavit in conjunction with the other evidence of employment, and may determine that the claimant has not met his or her burden of proof under § 30.111.

(b) For claimants who have established proof of employment, proof of exposure to a toxic substance may be established by the submission of any appropriate document or information that is evidence that such substance was present at the facility where the employee was employed and that the employee came into contact with such substance. Information from the following sources may be considered as probative factual evidence for purposes of establishing an employee's exposure to a toxic substance at a DOE facility or a RECA section 5 facility:

(1) To the extent practicable and appropriate, from DOE, a DOE-sponsored Former Worker Program, or an entity that acted as a contractor or subcontractor to DOE;

(2) OWCP's Site Exposure Matrices; or

(3) Any other entity deemed by OWCP to be a reliable source of information necessary to establish that the employee was exposed to a toxic substance at a DOE facility or RECA section 5 facility.

■ 24. Amend § 30.232 as follows:

■ a. Revise paragraphs (a)(1) and (2);

■ b. Remove paragraphs (a)(3) and (4) and (b); and

■ c. Redesignate paragraph (c) as paragraph (b) and revise newly designated paragraph (b).

The revisions read as follows:

§ 30.232 How does a claimant establish that the employee has been diagnosed with a covered illness, or sustained an injury, illness, impairment or disease as a consequence of a covered illness?

(a) * * *

(1) Written medical evidence containing a physician's diagnosis of the employee's covered illness (as that term is defined in § 30.5(s)), and the physician's reasoning for his or her opinion regarding causation; and

(2) Any other evidence OWCP may deem necessary to show that the employee has or had an illness that resulted from an exposure to a toxic substance while working at either a DOE facility or a RECA section 5 facility.

(b) An injury, illness, impairment or disease sustained as a consequence of a covered illness (as defined in § 30.5(s)) must be established with a fully rationalized medical report by a physician that shows the relationship between the injury, illness, impairment or disease and the covered illness. Neither the fact that the injury, illness, impairment or disease manifests itself after a diagnosis of a covered illness, nor the belief of the claimant that the injury, illness, impairment or disease was caused by the covered illness, is sufficient in itself to prove a causal relationship.

■ 25. Add an undesignated center heading immediately preceding § 30.300 and revise § 30.300 to read as follows:

General Provisions

§ 30.300 What administrative process will OWCP use to decide claims for entitlement, and how can claimants obtain judicial review of final decisions on their claims?

OWCP district offices will issue recommended decisions with respect to most claims for entitlement under Part B and/or Part E of EEOICPA that are filed pursuant to the regulations set forth in subpart B of this part. In circumstances where a claim is made for more than one benefit available under Part B and/or Part E of the Act, OWCP may issue a recommended decision on only part of that particular claim in order to adjudicate that portion of the claim as quickly as possible. Should this occur, OWCP will issue one or more recommended decisions on the deferred portions of the claim when the adjudication of those portions is completed. All recommended decisions granting and/or denying claims for entitlement under Part B and/or Part E of the Act will be forwarded to the Final Adjudication Branch (FAB). Claimants will be given an opportunity to object to all or part of the recommended decision before the FAB. The FAB will consider objections filed by a claimant and conduct a hearing, if requested to do so by the claimant, before issuing a final decision on the claim for entitlement. Claimants may request judicial review of a final decision of FAB by filing an action in Federal district court.

■ 26. Amend § 30.301 by revising paragraph (b)(1) to read as follows:

§ 30.301 May subpoenas be issued for witnesses and documents in connection with a claim under Part B of EEOICPA?

* * * * *

(b) * * *

(1) Submit the request in writing and send it to the FAB reviewer as early as possible, but no later than 30 days (as evidenced by postmark or other carrier's date marking) after the date of the original hearing request;

* * * * *

■ 27. Amend § 30.305 by revising paragraph (a) to read as follows:

§ 30.305 How does OWCP determine entitlement to EEOICPA compensation?

(a) In reaching a recommended decision with respect to EEOICPA compensation, OWCP considers the claim presented by the claimant, the factual and medical evidence of record, the dose reconstruction report prepared by NIOSH (if any), any report submitted by DOE and the results of such investigation as OWCP may deem necessary.

* * * * *

■ 28. Revise § 30.306 to read as follows:

§ 30.306 What does the recommended decision include?

The recommended decision shall include a discussion of the district office's findings of fact and conclusions of law in support of the recommendation. The recommended decision may recommend acceptance or rejection of the claim in its entirety, or of a portion of the claim presented. It is accompanied by a notice of the claimant's right to file objections with, and request a hearing before, the FAB.

§ 30.307 [Redesignated as § 30.308]

■ 29a. Redesignate § 30.307 as § 30.308.

■ 29b. Add new § 30.307 to read as follows:

§ 30.307 Can one recommended decision address the entitlement of multiple claimants?

(a) When multiple individuals have filed survivor claims under Part B and/or Part E of EEOICPA relating to the same deceased employee, the entitlement of all of those individuals shall be determined in the same recommended decision, except as described in paragraph (b) of this section.

(b) If another individual subsequently files a survivor claim for the same award, the recommended decision on that claim will not address the entitlement of the earlier claimants if the district office recommended that the later survivor claim be denied.

■ 30. Revise § 30.310 to read as follows:

§ 30.310 What must the claimant do if he or she objects to the recommended decision or wants to request a hearing?

(a) Within 60 days from the date the recommended decision is issued, the claimant must state, in writing, whether he or she objects to any of the findings of fact and/or conclusions of law discussed in such decision, including NIOSH's reconstruction of the radiation dose to which the employee was exposed (if any), and whether a hearing is desired. This written statement should be filed with the FAB at the address indicated in the notice accompanying the recommended decision.

(b) For purposes of determining whether the written statement referred to in paragraph (a) of this section has been timely filed with the FAB, the statement will be considered to be ''filed'' on the date that the claimant mails it to the FAB, as determined by postmark or other carrier's date marking, or on the date that such written statement is actually received, whichever is the earliest determinable date.

■ 31. Amend § 30.313 by revising paragraph (c) to read as follows:

§ 30.313 How is a review of the written record conducted?

* * * * *

(c) Any objection that is not presented to the FAB reviewer, including any objection to NIOSH's reconstruction of the radiation dose to which the employee was exposed (if any), whether or not the pertinent issue was previously presented to the district office, is deemed waived for all purposes.

■ 32. Amend § 30.314 by revising paragraphs (a) introductory text and (b) to read as follows:

§ 30.314 How is a hearing conducted?

(a) The FAB reviewer retains complete discretion to set the time and place of the hearing, including the amount of time allotted for the hearing, considering the issues to be resolved. At the discretion of the reviewer, the hearing may be conducted by telephone, teleconference, videoconference or other electronic means. As part of the hearing

process, the FAB reviewer will consider the written record forwarded by the district office and any additional evidence and/or argument submitted by the claimant. The reviewer may also conduct whatever investigation is deemed necessary.

* * * * *

(b) The FAB reviewer will mail a notice of the time and place of the hearing to the claimant and any representative at least 30 days before the scheduled hearing date. The FAB reviewer may mail a hearing notice less than 30 days prior to the hearing if the claimant and/or representative waives the above 30-day notice period in writing. If the claimant only objects to part of the recommended decision, the FAB reviewer may issue a final decision accepting the remaining part of the recommendation of the district office without first holding a hearing (see § 30.316). Any objection that is not presented to the FAB reviewer, including any objection to NIOSH's reconstruction of the radiation dose to which the employee was exposed (if any), whether or not the pertinent issue was previously presented to the district office, is deemed waived for all purposes.

* * * * *

■ 33. Amend § 30.315 by revising paragraph (a) to read as follows:

§ 30.315 May a claimant postpone a hearing?

(a) The FAB will entertain any reasonable request for scheduling the time and place of the hearing, but such requests should be made at the time that the hearing is requested. Scheduling is at the discretion of the FAB, and is not reviewable. In most instances, once the hearing has been scheduled and appropriate written notice has been mailed, it cannot be postponed at the claimant's request for any reason except those stated in paragraph (b) of this section, unless the FAB reviewer can reschedule the hearing on the same docket (that is, during the same hearing trip). If a request to postpone a scheduled hearing does not meet one of the tests of paragraph (b) of this section and cannot be accommodated on the same docket, or if the claimant and/or representative cancels or fails to attend a scheduled hearing, no further opportunity for a hearing will be provided. Instead, the FAB will consider the claimant's objections by means of a review of the written record. In the alternative, a teleconference may be substituted for the hearing at the discretion of the reviewer.

* * * * *

■ 34. Revise § 30.318 to read as follows:

§ 30.318 How will FAB consider objections to NIOSH's reconstruction of a radiation dose, or to OWCP's calculation of the recommended probability of causation, in a Part B claim for radiogenic cancer?

(a) If the claimant objects to NIOSH's reconstruction of the radiation dose to which the employee was exposed, either in writing or at the oral hearing, the FAB reviewer has the discretion to consult with NIOSH as part of his or her consideration of any objection. However, the HHS dose reconstruction regulation, which provides guidance for the technical methods developed and used by NIOSH to provide a reasonable estimate of the radiation dose received by an employee, is binding on FAB. Should this consultation take place, the FAB reviewer will properly document it in the case. Whether or not NIOSH is consulted, and as provided for in § 30.317, the FAB reviewer may decide to return the case to the district office for referral to NIOSH for such further action as may be appropriate.

(b) If the claimant objects to OWCP's calculation of the recommended probability of causation in a Part B radiogenic cancer claim, the FAB reviewer has the discretion to consider if OWCP used incorrect factual information when it performed this calculation. However, the statute requires that OWCP use a particular methodology, established by regulations issued by HHS at 42 CFR part 81, when it calculates the recommended probability of causation.

■ 35. Amend § 30.319 by revising paragraph (b) to read as follows:

§ 30.319 May a claimant request reconsideration of a final decision of the FAB?

* * * * *

(b) For purposes of determining whether the written request referred to in paragraph (a) of this section has been timely filed with the FAB, the request will be considered to be ''filed'' on the date that the claimant mails it to the FAB, as determined by postmark or other carrier's date marking, or on the date that such written request is actually received, whichever is the earliest determinable date.

* * * * *

■ 36. Amend § 30.320 by revising paragraph (b) to read as follows:

§ 30.320 Can a claim be reopened after the FAB has issued a final decision?

* * * * *

(b) At any time after the FAB has issued a final decision pursuant to § 30.316, a claimant may file a written request that the Director for Energy Employees Occupational Illness Compensation reopen his or her claim, provided that the claimant also submits new evidence of a diagnosed medical condition, covered employment, or exposure to a toxic substance. A written request to reopen a claim may also be supported by identifying either a change in the PoC guidelines, a change in the dose reconstruction methods or an addition of a class of employees to the Special Exposure Cohort. If the Director concludes that the evidence submitted or matter identified in support of the claimant's request is material to the claim, the Director will reopen the claim and return it to the district office for such further development as may be necessary, to be followed by a new recommended decision.

* * * * *

■ 37. Amend § 30.400 by revising paragraphs (a) and (c) and adding paragraph (d) to read as follows:

§ 30.400 What are the basic rules for obtaining medical treatment?

(a) A covered Part B employee or a covered Part E employee who fits into at least one of the compensable claim categories described in subpart C of this part is entitled to receive all medical services, appliances or supplies that a qualified physician prescribes or recommends and that OWCP considers necessary to treat his or her occupational illness or covered illness, retroactive to the date the claim for benefits for that occupational illness or covered illness under Part B or Part E of EEOICPA was filed. The employee need not be disabled to receive such treatment. If there is any doubt as to whether a specific service, appliance or supply is necessary to treat the occupational illness or covered illness, the employee should consult OWCP prior to obtaining it through the automated authorization process described in § 30.700. In situations where the occupational illness or covered illness is a secondary cancer, such treatment may include treatment of the underlying primary cancer when it is medically necessary or related to treatment of the secondary cancer; however, payment for medical treatment of the underlying primary cancer under these circumstances does not constitute a determination by OWCP that the primary cancer is a covered illness under Part E of EEOICPA.

* * * * *

(c) Any qualified physician may provide medical services, appliances and supplies to the covered Part B employee or the covered Part E

employee. A hospital or a provider of medical services or supplies may furnish appropriate services, drugs, supplies and appliances, so long as such provider possesses all applicable licenses required under State law and has not been excluded from participation in the program under subpart H of this part. OWCP may apply a test of cost-effectiveness when it decides if appliances and supplies are necessary to treat an occupational illness or covered illness, may offset the cost of prior rental payments against a future purchase price, and may provide refurbished appliances where appropriate. Also, OWCP may authorize payment for durable medical equipment and modifications to a home or vehicle, to the extent that OWCP deems it necessary and reasonable. With respect to prescribed medications, OWCP may require the use of generic equivalents where they are available. OWCP may contract with a specific provider or providers to supply non-physician medical services or supplies.

(d) In circumstances when a covered employee dies after filing a claim but before such claim is accepted, OWCP will pay for medical treatment for all accepted illnesses, retroactive to the date that the employee filed the claim, if the deceased employee's survivor(s) files a claim that is accepted under Part B and/or Part E of EEOICPA. If this occurs, OWCP shall only pay either the provider(s) or the employee's estate for medical treatment that the employee obtained after filing his or her claim.

■ 38. Revise § 30.403 to read as follows:

§ 30.403 Will OWCP pay for home health care, nursing home, and assisted living services?

(a) OWCP will authorize and pay for home health care claimed under section 7384t of the Act, whether or not such care constitutes skilled nursing care, so long as the care has been determined to be medically necessary. OWCP will pay for approved periods of care by a registered nurse, licensed practical nurse, home health aide or similarly trained individual, subject to the pre-authorization requirements described in paragraph (c) of this section.

(b) OWCP will also authorize and pay for periods of nursing home and assisted living services claimed under section 7384t of the Act, so long as such services have been determined to be medically necessary, subject to the pre-authorization requirements described in paragraph (c) of this section.

(c) To file an initial claim for home health care, nursing home, or assisted living services, the beneficiary must submit Form EE–17A to OWCP and identify his or her treating physician. OWCP then provides the treating physician with Form EE–17B, which asks the physician to submit a letter of medical necessity and verify that a timely face-to-face physical examination of the beneficiary took place. This particular pre-authorization process must be followed only for the initial claim for home health care, nursing home, and assisted living services; any subsequent request for pre-authorization must satisfy OWCP's usual medical necessity requirements. If a claimant disagrees with the decision of OWCP that the claimed services are not medically necessary, he or she may utilize the adjudicatory process described in subpart D of this part.

■ 39. Amend § 30.405 by revising paragraphs (b) and (c) to read as follows:

§ 30.405 After selecting a treating physician, may an employee choose to be treated by another physician instead?

* * * * *

(b) OWCP will approve the request if it determines that the reasons submitted are credible and supported by probative factual and/or medical evidence, as appropriate. Requests that are often approved include those for transfer of care from a general practitioner to a physician who specializes in treating the occupational illnesses or covered illnesses covered by EEOICPA, or the need for a new physician when an employee has moved.

(c) OWCP may deny a requested change of physician if it determines that the reasons submitted are not both credible and supported by probative evidence. If a claimant disagrees with such an informal denial, he or she may utilize the adjudicatory process described in subpart D of this part.

■ 40. Amend § 30.410 by adding paragraph (c) to read as follows:

§ 30.410 Can OWCP require an employee to be examined by another physician?

* * * * *

(c) OWCP may administratively close the claim and suspend adjudication of any pending matters if the employee refuses to attend a second opinion examination.

■ 41. Amend § 30.411 by adding paragraph (d) to read as follows:

§ 30.411 What happens if the opinion of the physician selected by OWCP differs from the opinion of the physician selected by the employee?

* * * * *

(d) OWCP may administratively close the claim and suspend adjudication of any pending matters if the employee refuses to attend a referee medical examination.

■ 42. Amend § 30.416 by revising paragraph (a) to read as follows:

§ 30.416 How and when should medical reports be submitted?

(a) The initial medical report (and any subsequent reports) should be made in narrative form on the physician's letterhead stationery. The physician should use the Form EE–7 as a guide for the preparation of his or her initial medical report in support of a claim under Part B and/or Part E of EEOICPA. The report should bear the physician's handwritten or electronic signature. OWCP may require an original signature on the report.

* * * * *

■ 43. Amend § 30.500 by revising paragraph (a)(2) and adding paragraph (c) to read as follows:

§ 30.500 What special statutory definitions apply to survivors under EEOICPA?

(a) * * *

(2) *Child* of a deceased covered Part B employee or deceased covered Part E employee means only a biological child, a stepchild or an adopted child of that individual.

* * * * *

(c) For the purposes of paying compensation to survivors under Part E of EEOICPA, OWCP will use the following additional definitions:

(1) *Covered child* means a child that is, as of the date of the deceased covered Part E employee's death, either under the age of 18 years, or under the age of 23 years and a full-time student who was continuously enrolled in one or more educational institutions since attaining the age of 18 years, or any age and incapable of self-support. A child's marital status or dependency on the covered employee for support is irrelevant to his or her eligibility for benefits as a covered child under Part E.

(2) *Incapable of self-support* means that the child must have been physically and/or mentally incapable of self-support at the time of the covered employee's death.

■ 44. Amend § 30.501 by revising paragraphs (a) introductory text and (b) introductory text to read as follows:

§ 30.501 What order of precedence will OWCP use to determine which survivors are entitled to receive compensation under EEOICPA?

(a) Under Part B of the Act, if OWCP determines that a survivor or survivors are entitled to receive compensation under EEOICPA because a covered Part B employee who would otherwise have been entitled to benefits is deceased, that compensation will be disbursed as

follows, subject to the qualifications set forth in § 30.5(hh)(3):

* * * * *

(b) Under Part E of the Act, if OWCP determines that a survivor or survivors are entitled to receive compensation under EEOICPA because a covered Part E employee who would otherwise have been entitled to benefits is deceased, that compensation will be disbursed as follows, subject to the qualifications set forth in § 30.5(hh)(3):

* * * * *

■ 45. Revise § 30.502 to read as follows:

§ 30.502 When is entitlement for survivors determined for purposes of EEOICPA?

Entitlement to any lump-sum payment for survivors under the EEOICPA, other than for ''covered'' children under Part E, will be determined as of the time OWCP makes such a payment. As noted in § 30.500(c)(1), a child of a deceased Part E employee will only qualify as a ''covered'' child of that individual if he or she satisfied one of the additional statutory criteria for a ''covered'' child as of the date of the deceased Part E employee's death.

■ 46. Amend § 30.509 by revising paragraph (c) to read as follows:

§ 30.509 Under what circumstances may a survivor claiming under Part E of the Act choose to receive the benefits that would otherwise be payable to a covered Part E employee who is deceased?

* * * * *

(c) OWCP only makes impairment determinations based on rationalized medical evidence in the case file that is sufficiently detailed and meets the various requirements for the many different types of impairment determinations possible under the American Medical Association's *Guides to the Evaluation of Permanent Impairment* (AMA's *Guides*). Therefore, OWCP will only make an impairment determination for a deceased covered Part E employee pursuant to this section if the medical evidence of record is sufficient to satisfy the pertinent requirements in the AMA's *Guides* and subpart J of this part.

■ 47. Amend § 30.600 by revising paragraph (c)(2) to read as follows:

§ 30.600 May a claimant designate a representative?

* * * * *

(c) * * *

(2) A representative does not have authority to sign the Form EE–1 (described in § 30.100(a)) or the Form EE–2 (described in § 30.101(a)) for his or her client. A representative also does not have authority to sign the Form EN–20 (described in § 30.505(c)) for his or her client

■ 48. Amend § 30.601 by revising the introductory text to read as follows:

§ 30.601 Who may serve as a representative?

A claimant may authorize any individual to represent him or her in regard to a claim under EEOICPA, unless that individual's service as a representative would violate any applicable provision of law (such as 18 U.S.C. 205 and 208) or the standards regarding conflicts of interest adopted by OWCP. Under those standards, authorized representatives are prohibited from having private, non-representational financial interests with respect to their client's EEOICPA claims. This does not include their fee for serving as a representative. A Federal employee may act as a representative only:

* * * * *

■ 49. Amend § 30.603 by revising paragraph (a) to read as follows:

§ 30.603 Are there any limitations on what the representative may charge the claimant for his or her services?

(a) Notwithstanding any contract, the representative may not receive, for services rendered in connection with a claim pending before OWCP, more than the percentages of the lump-sum payment made to the claimant set out in paragraph (b) of this section, exclusive of costs and expenses.

* * * * *

■ 50. Amend § 30.617 by revising paragraph (b)(2) to read as follows:

§ 30.617 What happens if this type of tort suit was filed during the period from October 30, 2000 through December 28, 2001?

* * * * *

(b) * * *

(2) The date that is 30 months after the date the claimant or claimants first became aware that an illness of the covered Part B employee may be connected to his or her exposure to beryllium or radiation covered by EEOICPA. For purposes of determining when this 30-month period begins, ''the date the claimant or claimants first became aware'' will be deemed to be the date they received either a reconstructed dose from NIOSH, or a diagnosis of a covered beryllium illness, as applicable.

■ 51. Amend § 30.618 by revising paragraph (c)(2) to read as follows:

§ 30.618 What happens if this type of tort suit was filed after December 28, 2001?

* * * * *

(c) * * *

(2) The date that is 30 months after the date the claimant or claimants first became aware that an illness of the covered Part B employee may be connected to his or her exposure to beryllium or radiation covered by EEOICPA. For purposes of determining when this 30-month period begins, ''the date the claimant or claimants first became aware'' will be deemed to be the date they received either a reconstructed dose from NIOSH, or a diagnosis of a covered beryllium illness, as applicable.

■ 52. Revise §§ 30.700 through 30.702 to read as follows:

§ 30.700 In general, what responsibilities do providers have with respect to enrolling with OWCP, seeking authorization to provide services, billing, and retaining medical records?

(a) All providers must enroll with OWCP or its designated bill processing agent (hereinafter OWCP in this subpart) to have access to the automated authorization system and to submit medical bills to OWCP. To enroll, the provider must complete and submit a Form OWCP–1168 to the appropriate location noted on that form. By completing and submitting this form, providers certify that they satisfy all applicable Federal and state licensure and regulatory requirements that apply to their specific provider or supplier type. The provider must maintain documentary evidence indicating that it satisfies those requirements. The provider is also required to notify OWCP immediately if any information provided to OWCP in the enrollment process changes. Federal government medical officers, private physicians and hospitals are also required to keep records of all cases treated by them under EEOICPA so they can supply OWCP with a history of the claimed occupational illness or covered illness, a description of the nature and extent of the claimed occupational illness or covered illness, the results of any diagnostic studies performed and the nature of the treatment rendered. This requirement terminates after a provider has supplied OWCP with the above-noted information, and otherwise terminates ten years after the record was created.

(b) Where a medical provider intends to bill for a procedure where prior authorization is required, authorization must be requested from OWCP.

(c) After enrollment, a provider must submit all medical bills to OWCP through its bill processing portal and include the Provider Number/ID obtained through enrollment or other identifying number required by OWCP.

§ 30.701 How are medical bills to be submitted?

(a) All charges for medical and surgical treatment, appliances or supplies furnished to employees, except for treatment and supplies provided by nursing homes, shall be supported by medical evidence as provided in § 30.700. OWCP may withhold payment for services until such report or evidence is provided. The physician or provider shall itemize the charges on Form OWCP–1500 or CMS–1500 (for professional charges or medicinal drugs dispensed in the office), Form OWCP–04 or UB–04 (for hospitals), an electronic or paper-based bill that includes required data elements (for pharmacies) or other form as warranted, and submit the form or bill promptly to OWCP.

(b) The provider shall identify each service performed using the Physician's Current Procedural Terminology (CPT) code, the Healthcare Common Procedure Coding System (HCPCS) code, the National Drug Code (NDC) number, or the Revenue Center Code (RCC), with a brief narrative description. OWCP has discretion to determine which of these codes may be utilized in the billing process. OWCP also has the authority to create and supply specific procedure codes that will be used by OWCP to better describe and allow specific payments for special services. These OWCP-created codes will be issued to providers by OWCP as appropriate and may only be used as authorized by OWCP. For example, a physician conducting a referee or second opinion examination as described in §§ 30.410 through 30.412 will be furnished an OWCP-created code. A provider may not use an OWCP-created code for other types of medical examinations or services. When no code is submitted to identify the services performed, the bill will be returned to the provider and/or denied.

(c) For professional charges billed on Form OWCP–1500 or CMS–1500, the provider shall also state each diagnosed condition and furnish the corresponding diagnostic code using the ''International Classification of Disease, 9th Edition, Clinical Modification'' (ICD–9–CM), or as revised. A separate bill shall be submitted when the employee is discharged from treatment or monthly, if treatment for the occupational illness or covered illness is necessary for more than 30 days.

(1)(i) Hospitals shall submit charges for both inpatient and outpatient medical and surgical treatment or supplies promptly to OWCP on Form OWCP–04 or UB–04.

(ii) OWCP may adopt a Home Health Prospective Payment System (HHPPS), as developed and implemented by the Centers for Medicare and Medicaid Services (CMS) within HHS for Medicare, while modifying the allowable costs under Medicare to account for deductibles and other additional costs that are covered by EEOICPA. If adopted, home health care providers will be required to submit bills on Form OWCP–04 or UB–04 and to use Health Insurance Prospective Payment System codes and other coding schemes.

(2) Pharmacies shall itemize charges for prescription medications, appliances or supplies on electronic or paper-based bills and submit them promptly to OWCP. Bills for prescription medications must include all required data elements, including the NDC number assigned to the product, the generic or trade name of the drug provided, the prescription number, the quantity provided, and the date the prescription was filled.

(3) Nursing homes shall itemize charges for appliances, supplies or services on the provider's billhead stationery and submit them promptly to OWCP. Such charges shall be subject to any applicable OWCP fee schedule.

(d) By submitting a bill and/or accepting payment, the provider signifies that the service for which payment is sought was performed as described and was necessary, appropriate and properly billed in accordance with accepted industry standards. For example, accepted industry standards preclude upcoding billed services for extended medical appointments when the employee actually had a brief routine appointment, or charging for the services of a professional when a paraprofessional or aide performed the service. Also, industry standards prohibit unbundling services to charge separately for services that should be billed as a single charge. In addition, the provider thereby agrees to comply with all regulations set forth in this subpart concerning the rendering of treatment and/or the process for seeking payment for medical services, including the limitation imposed on the amount to be paid for such services.

(e) In summary, bills submitted by providers must: Be itemized on Form OWCP–1500 or CMS–1500 (for physicians), Form OWCP–04 or UB–04 (for hospitals), or an electronic or paper-based bill that includes required data elements (for pharmacies); contain the handwritten or electronic signature of the provider when required; and identify the procedures using HCPCS/CPT codes, RCCs or NDC numbers. Otherwise, OWCP may deny the bill, and the provider must correct and resubmit the bill. The decision of OWCP whether to pay a provider's bill is final when issued and is not subject to the adjudicatory process described in subpart D of this part.

§ 30.702 How should an employee prepare and submit requests for reimbursement for medical expenses, transportation costs, loss of wages, and incidental expenses?

(a) If an employee has paid bills for medical, surgical or other services, supplies or appliances provided by a professional due to an occupational illness or a covered illness, he or she must submit a request for reimbursement on Form OWCP–915, together with an itemized bill on Form OWCP–1500 or CMS–1500 prepared by the provider, or Form OWCP–04 or UB–04 prepared by the provider, and a medical report as provided in § 30.700, to OWCP for consideration.

(1) The provider of such service shall state each diagnosed condition and furnish the applicable ICD–9–CM code, or as revised, and identify each service performed using the applicable HCPCS/CPT code, with a brief narrative description of the service performed, or, where no code is applicable, a detailed description of that service. If no code or description is received, OWCP will deny the reimbursement request, and correction and resubmission will be required.

(2) The reimbursement request must be accompanied by evidence that the provider received payment for the service from the employee and a statement of the amount paid. Acceptable evidence that payment was received includes, but is not limited to, a signed statement by the provider, a mechanical stamp or other device showing receipt of payment, a copy of the employee's canceled check (both front and back), a copy of the employee's credit card receipt or a provider billing form indicating a zero balance due.

(b) If a pharmacy or nursing home provided services for which the employee paid, the employee must also use Form OWCP–915 to request reimbursement and should submit the request in accordance with the provisions of § 30.701(a). Any such request for reimbursement must be accompanied by evidence, as described in paragraph (a)(2) of this section, that the provider received payment for the service from the employee and a statement of the amount paid.

(c) OWCP may waive the requirements of paragraphs (a) and (b) of

this section if extensive delays in the filing or the adjudication of a claim make it unusually difficult for the employee to obtain the required information.

(d) Copies of bills submitted for reimbursement must bear the handwritten or electronic signature of the provider when required, with evidence of payment. Payment for medical and surgical treatment, appliances or supplies shall in general be no greater than the maximum allowable charge for such service determined by OWCP, as set forth in § 30.705. OWCP will issue a letter decision on whether to reimburse an employee for out-of-pocket medical expenses, and the amount of any reimbursement. A claimant who disagrees with OWCP's letter decision may request a formal recommended decision and utilize the adjudicatory process described in subpart D of this part.

(e) An employee will be only partially reimbursed for a medical expense if the amount he or she paid to a provider for the service exceeds the maximum allowable charge set by OWCP's schedule. If this happens, OWCP shall advise the employee of the maximum allowable charge for the service in question and of his or her responsibility to ask the provider to refund to the employee, or credit to the employee's account, the amount he or she paid which exceeds the maximum allowable charge. The provider that the employee paid, but not the employee, may request reconsideration of the fee determination as set forth in § 30.712.

(f) If the provider fails to make appropriate refund to the employee, or to credit the employee's account, within 60 days after the employee requests a refund of any excess amount, or the date of a subsequent reconsideration decision which continues to disallow all or a portion of the disputed amount, OWCP will initiate exclusion procedures as provided by § 30.715.

(g) If the provider does not refund to the employee or credit to his or her account the amount of money paid in excess of the charge which OWCP allows, the employee should submit documentation of the attempt to obtain such refund or credit to OWCP. OWCP may authorize reasonable reimbursement to the employee after reviewing the facts and circumstances of the case.

■ 53. Revise §§ 30.705 through 30.707 to read as follows:

§ 30.705 What services are covered by the OWCP fee schedule?

(a) Payment for medical and other health services, devices and supplies furnished by physicians, hospitals and other providers for occupational illnesses or covered illnesses shall not exceed a maximum allowable charge for such service as determined by OWCP, except as provided in this section.

(b) The schedule of maximum allowable charges does not apply to charges for services provided in nursing homes, but it does apply to charges for treatment furnished in a nursing home by a physician or other medical professional. In the future, OWCP may also decide to implement a fee schedule for services provided in nursing homes.

(c) The schedule of maximum allowable charges also does not apply to charges for appliances, supplies, services or treatment furnished by medical facilities of the U.S. Public Health Service or the Departments of the Army, Navy, Air Force and Veterans Affairs.

§ 30.706 How are the maximum fees for professional medical services defined?

For professional medical services, OWCP shall maintain a schedule of maximum allowable fees for procedures performed in a given locality. The schedule shall consist of: An assignment of a Relative Value Unit (RVU) to procedures identified by HCPCS/CPT code which represents the relative skill, effort, risk and time required to perform the procedure, as compared to other procedures of the same general class; an assignment of Geographic Practice Cost Index (GPCI) values which represent the relative work, practice expenses and malpractice expenses relative to other localities throughout the country; and a monetary value assignment (conversion factor) for one unit of value for each coded service.

§ 30.707 How are payments to providers calculated?

Payment for a procedure, service or device identified by a HCPCS/CPT code shall not exceed the amount derived by multiplying the RVU values for that procedure by the GPCI values for services in that area and by the conversion factor to arrive at a dollar amount assigned to one unit in that category of service.

(a) The ''locality'' which serves as a basis for the determination of cost is defined by the Bureau of Census Metropolitan Statistical Areas. OWCP shall base the determination of the relative per capita cost of medical care in a locality using information about enrollment and medical cost per county, provided by CMS.

(b) OWCP shall assign the RVUs published by CMS to all services for which CMS has made assignments, using the most recent revision. Where there are no RVUs assigned to a procedure, OWCP may develop and assign any RVUs it considers appropriate. The geographic adjustment factor shall be that designated by GPCI values for Metropolitan Statistical Areas as devised for CMS and as updated or revised by CMS from time to time. OWCP will devise conversion factors for each category of service as appropriate using OWCP's processing experience and internal data.

(c) For example, if the RVUs for a particular surgical procedure are 2.48 for physician's work (W), 3.63 for practice expense (PE), and 0.48 for malpractice insurance (M), and the conversion factor assigned to one unit in that category of service (surgery) is $61.20, then the maximum allowable charge for one performance of that procedure is the product of the three RVUs times the corresponding GPCI values for the locality times the conversion factor. If the GPCI values for the locality are 0.988(W), 0.948 (PE), and 1.174 (M), then the maximum payment calculation is:

$$[(2.48)(0.988) + (3.63)(0.948) + (0.48)(1.174)] \times \$61.20$$

$$[2.45 + 3.44 + .56] \times \$61.20$$

$$6.45 \times \$61.20 = \$394.74$$

■ 54. Revise §§ 30.709 and 30.710 to read as follows:

§ 30.709 How are payments for medicinal drugs determined?

Unless otherwise specified by OWCP, payment for medicinal drugs prescribed by physicians shall not exceed the amount derived by multiplying the average wholesale price of the medication by the quantity or amount provided, plus a dispensing fee. OWCP may, in its discretion, contract for or require the use of specific providers for certain medications.

(a) All prescription medications identified by NDC number will be assigned an average wholesale price representing the product's nationally recognized wholesale price as determined by surveys of manufacturers and wholesalers. OWCP will establish the dispensing fee, which will not be affected by the location or type of provider dispensing the medication.

(b) The NDC numbers, the average wholesale prices, and the dispensing fee shall be reviewed from time to time and updated as necessary.

(c) With respect to prescribed medications, OWCP may require the use

of generic equivalents where they are available.

§ 30.710 How are payments for inpatient medical services determined?

(a) OWCP will pay for inpatient medical services according to pre-determined, condition-specific rates based on the Inpatient Prospective Payment System (IPPS) devised by CMS. Using this system, payment is derived by multiplying the diagnosis-related group (DRG) weight assigned to the hospital discharge by the provider-specific factors.

(1) All inpatient hospital discharges will be classified according to the DRGs prescribed by CMS in the form of the DRG Grouper software program. On this list, each DRG represents the average resources necessary to provide care in a case in that DRG relative to the national average of resources consumed per case.

(2) The provider-specific factors will be provided by CMS in the form of their IPPS Pricer software program. The software takes into consideration the type of facility, census division, actual geographic location of the hospital, case mix cost per discharge, number of hospital beds, intern/beds ratio, operating cost to charge ratio, and other factors used by CMS to determine the specific rate for a hospital discharge under their IPPS. OWCP may devise price adjustment factors as appropriate using OWCP's processing experience and internal data.

(3) OWCP will base payments to facilities excluded from CMS's IPPS on consideration of detailed medical reports and other evidence.

(4) OWCP shall review the pre-determined hospital rates at least once a year, and may adjust any or all components when OWCP deems it necessary or appropriate.

(b) OWCP shall review the schedule of fees at least once a year, and may adjust the schedule or any of its components when OWCP deems it necessary or appropriate.

§ § 30.711 through 30.713 [Redesignated as §§ 30.712 through 30.714]

■ 55a. Redesignate §§ 30.711 through 30.713 as §§ 30.712 through 30.714.

■ 55b. Add new § 30.711 to read as follows:

§ 30.711 How are payments for outpatient medical services determined?

(a) OWCP will pay for outpatient medical services according to Ambulatory Payment Classifications (APC) based on the Outpatient Prospective Payment System devised by CMS.

(b) All outpatient medical services will be classified according to the APC prescribed by CMS for that service in the form of the Outpatient Prospective Payment System Grouper software program. Each payment is derived by multiplying the prospectively established scaled relative weight for the service's clinical APC by a conversion factor to arrive at a national unadjusted payment rate for the APC. The labor portion of the national unadjusted payment rate is further adjusted by the hospital wage index for the area where payment is being made.

(c) If a payable service has no assigned APC, the payment will be derived from the OWCP Medical Fee Schedule.

(d) OWCP shall review the pre-determined outpatient hospital rates at least once a year, and may adjust any or all components when OWCP deems it necessary or appropriate.

■ 55c. Revise newly redesignated §§ 30.712 and 30.713 to read as follows:

§ 30.712 When and how are fees reduced?

(a) OWCP shall accept a provider's designation of the code to identify a billed procedure or service if the code is consistent with medical reports and other evidence, and will pay no more than the maximum allowable fee for that procedure. If the code is not consistent with the medical and other evidence or where no code is supplied, the bill will be returned to the provider for correction and resubmission.

(b) If the charge submitted for a service supplied to an employee exceeds the maximum amount determined to be reasonable according to the schedule, OWCP shall pay the amount allowed by the schedule for that service and shall notify the provider in writing that payment was reduced for that service in accordance with the schedule. OWCP shall also notify the provider of the method for requesting reconsideration of the balance of the charge. The decision of OWCP to pay less than the charged amount is final when issued and is not subject to the adjudicatory process described in subpart D of this part.

§ 30.713 If OWCP reduces a fee, may a provider request reconsideration of the reduction?

(a) A physician or other provider whose charge for service is only partially paid because it exceeds a maximum allowable amount set by OWCP may, within 30 days, request reconsideration of the fee determination.

(1) The provider should make such a request to the district office with jurisdiction over the employee's claim. The request must be accompanied by documentary evidence that the procedure performed was either incorrectly identified by the original code, that the presence of a severe or concomitant medical condition made treatment especially difficult, or that the provider possessed unusual qualifications. In itself, board certification in a specialty is not sufficient evidence of unusual qualifications to justify a charge in excess of the maximum allowable amount set by OWCP. These are the only three circumstances that will justify reevaluation of the paid amount.

(2) A list of district offices and their respective areas of jurisdiction is available upon request from the U.S. Department of Labor, Office of Workers' Compensation Programs, Washington, DC 20210, or at *http://www.dol.gov/owcp/energy/index.htm.* Within 30 days of receiving the request for reconsideration, the district office shall respond in writing stating whether or not an additional amount will be allowed as reasonable, considering the evidence submitted.

(b) If the district office issues a decision that continues to disallow a contested amount, the provider may apply to the Regional Director of the region with jurisdiction over the district office. The application must be filed within 30 days of the date of such decision, and it may be accompanied by additional evidence. Within 60 days of receipt of such application, the Regional Director shall issue a decision in writing stating whether or not an additional amount will be allowed as reasonable, considering the evidence submitted. This decision is final, and shall not be subject to further review.

■ 56. Revise § 30.715 to read as follows:

§ 30.715 What are the grounds for excluding a provider from payment under this part?

A physician, hospital, or provider of medical services or supplies shall be excluded from payment under this part if such physician, hospital or provider has:

(a) Been convicted under any criminal statute of fraudulent activities in connection with any Federal or state program for which payments are made to providers for similar medical, surgical or hospital services, appliances or supplies;

(b) Been excluded or suspended, or has resigned in lieu of exclusion or suspension, from participation in any Federal or state program referred to in paragraph (a) of this section;

(c) Knowingly made, or caused to be made, any false statement or misrepresentation of a material fact in

connection with a determination of the right to reimbursement under this part, or in connection with a request for payment;

(d) Submitted, or caused to be submitted, three or more bills or requests for payment within a 12-month period under this subpart containing charges which OWCP finds to be substantially in excess of such provider's customary charges, unless OWCP finds there is good cause for the bills or requests containing such charges;

(e) Knowingly failed to timely reimburse employees for treatment, services or supplies furnished under this subpart and paid for by OWCP;

(f) Failed, neglected or refused on three or more occasions during a 12-month period to submit full and accurate medical reports, or to respond to requests by OWCP for additional reports or information, as required by § 30.700;

(g) Knowingly furnished treatment, services or supplies which are substantially in excess of the employee's needs, or of a quality which fails to meet professionally recognized standards;

(h) Collected or attempted to collect from the employee, either directly or through a collection agent, an amount in excess of the charge allowed by OWCP for the procedure performed, and has failed or refused to make appropriate refund to the employee, or to cease such collection attempts, within 60 days of the date of the decision of OWCP;

(i) Failed to inform OWCP of any change in their provider status as required in § 30.700; or

(j) Engaged in conduct related to care of an employee's occupational illness or covered illness that OWCP finds to be misleading, deceptive or unfair.

■ 57. Amend § 30.716 by adding paragraph (c) to read as follows:

§ 30.716 What will cause OWCP to automatically exclude a physician or other provider of medical services and supplies?

* * * * *

(c) A provider may be excluded on a voluntary basis at any time.

■ 58. Revise §§ 30.717 through 30.721 to read as follows:

§ 30.717 When are OWCP's exclusion procedures initiated?

(a) Upon receipt of information indicating that a physician, hospital or provider of medical services or supplies (hereinafter the provider) has or may have engaged in activities enumerated in paragraphs (c) through (j) of § 30.715, OWCP will forward that information to the Department of Labor's Office of Inspector General (DOL OIG) for its consideration. If the information was provided directly to DOL OIG, DOL OIG will notify OWCP of its receipt and implement the appropriate action within its authority, unless such notification will or may compromise the identity of confidential sources, or compromise or prejudice an ongoing or potential criminal investigation.

(b) DOL OIG will conduct such action as it deems necessary, and, when appropriate, provide a written report as described in paragraph (c) of this section to OWCP. OWCP will then determine whether to initiate procedures to exclude the provider from participation in the EEOICPA program. If DOL OIG determines not to take any further action, it will promptly notify OWCP of such determination.

(c) If DOL OIG discovers reasonable cause to believe that violations of § 30.715 have occurred, it shall, when appropriate, prepare a written report, *i.e.,* investigative memorandum, and forward the report along with supporting evidence to OWCP. The report shall be in the form of a single memorandum in narrative form with attachments.

(1) The report should contain all of the following elements:

(i) A brief description and explanation of the subject provider or providers;

(ii) A concise statement of the DOL OIG's findings upon which exclusion may be based;

(iii) A summary of the events that make up the DOL OIG's findings;

(iv) A discussion of the documentation supporting DOL OIG's findings;

(v) A discussion of any other information that may have bearing upon the exclusion process; and

(vi) The supporting documentary evidence including any expert opinion rendered in the case.

(2) The attachments to the report should be provided in a manner that they may be easily referenced from the report.

§ 30.718 How is a provider notified of OWCP's intent to exclude him or her?

Following receipt of the investigative report, OWCP will determine if there exists a reasonable basis to exclude the provider or providers. If OWCP determines that such a basis exists, OWCP shall initiate the exclusion process by sending the provider a letter, by certified mail and with return receipt requested (or equivalent services from a commercial carrier), which shall contain the following:

(a) A concise statement of the grounds upon which exclusion shall be based;

(b) A summary of the information, with supporting documentation, upon which OWCP has relied in reaching an initial decision that exclusion proceedings should begin;

(c) An invitation to the provider to:

(1) Resign voluntarily from participation in the EEOICPA program without admitting or denying the allegations presented in the letter; or

(2) Request a decision on exclusion based upon the existing record and any additional documentary information the provider may wish to furnish;

(d) A notice of the provider's right, in the event of an adverse ruling by the deciding official, to request a formal hearing before an administrative law judge;

(e) A notice that should the provider fail to respond (as described in § 30.719) the letter of intent within 60 days of receipt, the deciding official may deem the allegations made therein to be true and may order exclusion of the provider without conducting any further proceedings; and

(f) The address to where the response from the provider should be sent.

§ 30.719 What requirements must the provider's response and OWCP's decision meet?

(a) The provider's response shall be in writing and shall include an answer to OWCP's invitation to resign voluntarily. If the provider does not offer to resign, he or she shall request that a determination be made upon the existing record and any additional information provided.

(b) Should the provider fail to respond to the letter of intent within 60 days of receipt, the deciding official may deem the allegations made therein to be true and may order exclusion of the provider.

(c) The provider may inspect or request copies of information in the record at any time prior to the deciding official's decision by making such request to OWCP within 20 days of receipt of the letter of intent.

(d) OWCP shall have 30 days to answer the provider's response. That answer will be forwarded to the provider, who shall then have 15 days to reply. Any response from the provider may be forwarded to DOL OIG, should OWCP deem it appropriate, to obtain additional information which may be relevant to the provider's response.

(e) The deciding official shall be the Regional Director in the region in which the provider is located unless otherwise specified by the Director for Energy Employees Occupational Illness Compensation.

(f) The deciding official shall issue his or her decision in writing, and shall send a copy of the decision to the provider by certified mail, return receipt requested (or equivalent service from a commercial carrier). The decision shall advise the provider of his or her right to request, within 30 days of the date of the adverse decision, a formal hearing before an administrative law judge under the procedures set forth in § 30.720. The filing of a request for a hearing within the time specified shall stay the effectiveness of the decision to exclude.

§ 30.720 How can an excluded provider request a hearing?

A request for a hearing shall be sent to the deciding official and shall contain:

(a) A concise notice of the issues on which the provider desires to give evidence at the hearing;

(b) Any request for the presentation of oral argument or evidence; and

(c) Any request for a certification of questions concerning professional medical standards, medical ethics or medical regulation for an advisory opinion from a competent recognized professional organization or Federal, state or local regulatory body.

§ 30.721 How are hearings assigned and scheduled?

(a) If the deciding official receives a timely request for hearing, he or she shall refer the matter to the Chief Administrative Law Judge of the Department of Labor, who shall assign it for an expedited hearing. The administrative law judge assigned to the matter shall consider the request for hearing, act on all requests therein, and issue a Notice of Hearing and schedule for the conduct of the hearing. A copy of the hearing notice shall be served on the provider by certified mail, return receipt requested. The Notice of Hearing and schedule shall include:

(1) A ruling on each item raised in the request for hearing;

(2) A schedule for the prompt disposition of all preliminary matters, including requests for the certification of questions to advisory bodies; and

(3) A scheduled hearing date not less than 30 days after the date the schedule is issued, and not less than 15 days after the scheduled conclusion of preliminary matters, provided that the specific time and place of the hearing may be set on 10 days' notice.

(b) The provider is entitled to be heard on any matter placed in issue by his or her response to the notice of intent to exclude, and may designate ''all issues'' for purposes of hearing. However, a specific designation of issues is required if the provider wishes to interpose affirmative defenses, or request the certification of questions for an advisory opinion.

■ 59. Amend § 30.723 by revising paragraph (b) to read as follows:

§ 30.723 How will the administrative law judge conduct the hearing and issue the recommended decision?

* * * * *

(b) The administrative law judge shall receive such relevant evidence as may be adduced at the hearing. Parties to the hearing are the provider and OWCP. Evidence shall be presented under oath, orally or in the form of written statements. The administrative law judge shall consider the notice and response, including all pertinent documents accompanying them, and may also consider any evidence which refers to the provider or to any claim with respect to which the provider has provided medical services, hospital services, or medical services and supplies, and such other evidence as the administrative law judge may determine to be necessary or useful in evaluating the matter.

* * * * *

■ 60. Revise § 30.724 to read as follows:

§ 30.724 How does a recommended decision become final?

(a) Within 30 days from the date the recommended decision is issued, the provider may state, in writing, any objections to the recommended decision. This written statement should be filed with the Director for Energy Employees Occupational Illness Compensation.

(b) For the purposes of determining whether the written statement referred to in paragraph (a) of this section has been timely filed with the Director for Energy Employees Occupational Illness Compensation, the statement will be considered to be ''filed'' on the date that the provider mails it to the Director, as determined by postmark or other carrier's date marking, or the date that such written statement is actually received by the Director, whichever is earlier.

(c) Written statements objecting to the recommended decision may be filed upon one or more of the following grounds:

(1) A finding or conclusion of material fact is not supported by substantial evidence;

(2) A necessary legal conclusion is erroneous;

(3) The decision is contrary to law or to the duly promulgated rules or decisions of the Director;

(4) A substantial question of law, policy, or discretion is involved; or

(5) A prejudicial error of procedure was committed.

(d) Each issue shall be separately numbered and plainly and concisely stated, and shall be supported by detailed citations to the record when assignments of error are based on the record, and by statutes, regulations or principal authorities relied upon. Except for good cause shown, no assignment of error by the provider shall rely on any question of fact or law upon which the administrative law judge had not been afforded an opportunity to pass.

(e) If a written statement of objection is filed within the allotted period of time, the Director for Energy Employees Occupational Illness Compensation will review the objection. The Director will forward the written objection to DOL OIG, which will have 14 calendar days from that date to respond. Any response from DOL OIG will be forwarded to the provider, which will have 14 calendar days from that date to reply.

(f) The Director for Energy Employees Occupational Illness Compensation will consider the recommended decision, the written record and any response or reply received and will then issue a written, final decision either upholding or reversing the exclusion.

(g) If no written statement of objection is filed within the allotted period of time, the Director for Energy Employees Occupational Illness Compensation will issue a written, final decision accepting the recommendation of the administrative law judge.

(h) The decision of the Director for Energy Employees Occupational Illness Compensation shall be final with respect to the provider's participation in the program, and shall not be subject to further review.

■ 61. Amend § 30.725 by revising paragraph (a) to read as follows:

§ 30.725 What are the effects of non-automatic exclusion?

(a) OWCP shall give notice of the exclusion of a physician, hospital or provider of medical services or supplies to:

(1) All OWCP district offices;

(2) CMS;

(3) All employees who are known to have had treatment, services or supplies from the excluded provider within the six-month period immediately preceding the order of exclusion; and

(4) The state or local authority responsible for licensing or certifying the excluded provider.

* * * * *

■ 62. Amend § 30.726 by revising paragraph (c) to read as follows:

§ 30.726 How can an excluded provider be reinstated?

* * * * *

(c) A request for reinstatement may be accompanied by a request for oral presentation. Oral presentations will be allowed only in unusual circumstances where it will materially aid the decision process.

* * * * *

■ 63. Amend § 30.800 by revising paragraph (c) to read as follows:

§ 30.800 What types of wage-loss are compensable under Part E of EEOICPA?

* * * * *

(c) Whether the employee's inability to earn at least as much as his or her average annual wage was due to a covered illness as defined in § 30.5(s).

■ 64. Amend § 30.801 as follows:

■ a. Revise paragraph (a);

■ b. Redesignate paragraphs (c), (d), and (e) as paragraphs (d), (e), and (h), respectively;

■ c. Add new paragraph (c);

■ d. Revise newly redesignated paragraph (e); and

■ e. Add paragraphs (f) and (g).

The revisions and additions read as follows:

§ 30.801 What special definitions does OWCP use in connection with Part E wage-loss determinations?

* * * * *

(a) *Average annual wage* means 12 times the average monthly wage of a covered Part E employee for the 36 months preceding the month during which he or she first experienced wage-loss due to exposure to a toxic substance at a DOE facility or RECA section 5 facility (referred to as the ''trigger month''), excluding any months during which the employee was unemployed. Because being ''retired'' is not equivalent to being ''unemployed,'' months during which an employee had no wages because he or she was retired will not be excluded from this calculation.

* * * * *

(c) *Month during which the employee was unemployed* means any month during which the covered Part E employee had $250 (in constant 2013 dollars) or less in wages unless the month is one during which the employee was retired.

* * * * *

(e) *Quarter during which the employee was unemployed* means any quarter during which the covered Part E employee had $750 (in constant 2013 dollars) or less in wages unless the quarter is one during which the employee was retired.

(f) *Trigger month* means the calendar month during which the employee first experienced a loss in wages due to exposure to a toxic substance at a DOE facility or RECA section 5 facility.

(g) *Wages* mean all monetary payments that the covered Part E employee earns from his or her regular employment or services that are taxed as income by the Internal Revenue Service. Salaries, overtime compensation, sick leave, vacation leave, tips, and bonuses received for employment services are considered wages under this subpart. However, capital gains, IRA distributions, pensions, annuities, unemployment compensation, state workers' compensation benefits, medical retirement benefits, and Social Security benefits are not considered wages.

* * * * *

■ 65. Revise § 30.805 to read as follows:

§ 30.805 What are the criteria for eligibility for wage-loss benefits under Part E?

(a) In addition to satisfying the general eligibility requirements applicable to all Part E claims, a claimant seeking benefits for calendar years of qualifying wage-loss has the burden of proof to establish each of the following criteria:

(1) He or she held a job at which he or she earned wages;

(2) He or she experienced a loss in those wages in a particular month (referred to as the ''trigger month'' in this section);

(3) The wage-loss in the trigger month was caused by the covered Part E employee's covered illness, *i.e.,* that he or she would have continued to earn wages in the trigger month from that employment *but for the covered illness;*

(4) His or her average annual wage;

(5) His or her normal retirement age and the calendar year in which he or she would reach that age;

(6) Beginning with the calendar year of the trigger month, the percentage of the average annual wage that was earned in each calendar year up to and including the retirement year;

(7) The number of those calendar years in which the covered illness caused the covered Part E employee to earn 50% or less of his or her average annual wage; and

(8) The number of those calendar years in which the covered illness caused him or her to earn more than 50% but not more than 75% of his or her average annual wage.

(b) OWCP will discontinue development of a request for wage-loss benefits, during which the claimant must meet his or her burden of proof to establish each of the criteria listed in paragraph (a) of this section, at any point when the claimant is unable to meet such burden and proceed to issue a recommended decision to deny the request.

■ 66. Revise § 30.806 to read as follows:

§ 30.806 What kind of medical evidence must the claimant submit to prove that he or she lost wages due to a covered illness?

OWCP requires the submission of rationalized medical evidence of sufficient probative value to convince the fact-finder that the covered Part E employee experienced a loss in wages in his or her trigger month due to a covered illness, *i.e.,* medical evidence based on a physician's fully explained and reasoned decision (see § 30.805(a)(3)). A loss in wages in the trigger month due solely to non-covered illness matters, such as a reduction in force or voluntary retirement, is not proof of compensable wage-loss under Part E.

■ 67. Add § 30.807 immediately preceding the undesignated center heading ''Determinations of Average Annual Wage and Percentages of Loss'' to read as follows:

§ 30.807 What factual evidence does OWCP use to determine a covered Part E employee's average annual wage?

(a) OWCP may rely on annual or quarterly wage information reported to the Social Security Administration to establish a covered Part E employee's presumed average annual wage (see § 30.810) and the duration and extent of any years of wage-loss that are compensable under Part E of the Act (see § 30.811). OWCP may also rely on other probative evidence of a covered Part E employee's wages, and may ask the claimant for additional evidence needed to make this determination, if necessary. For the purposes of making these two types of determinations, OWCP will consider all monetary payments that the covered Part E employee received as wages (see § 30.801(g)).

(b) A claimant who disagrees with the evidence OWCP has obtained under paragraph (a) of this section and alleges a different average annual wage for the covered Part E employee, or that there was a greater duration or extent of wage-loss, may submit records that were produced in the ordinary course of business due to the employee's employment to rebut that evidence, to the extent that such records are determined to be authentic by OWCP. The average annual wage and/or wage-loss of the covered Part E employee will

then be determined by OWCP in the exercise of its discretion.

■ 68. Amend § 30.810 by revising paragraphs (a) through (d) to read as follows:

§ 30.810 How will OWCP calculate the average annual wage of a covered Part E employee?

* * * * *

(a) Aggregate the wages for the 36 months that preceded the trigger month, excluding any month during which the employee was unemployed;

(b) Add any additional wages earned by the employee during those same months as evidenced by records described in § 30.807;

(c) Divide the sum of paragraphs (a) and (b) of this section by 36, less the number of months during which the employee was unemployed; and

(d) Multiply this figure by 12 to calculate the covered Part E employee's average annual wage.

■ 69. Amend § 30.811 as follows:

■ a. Revise paragraph (a);

■ b. Remove paragraph (b); and

■ c. Redesignate paragraphs (c) and (d) as paragraphs (b) and (c), respectively.

The revision reads as follows:

§ 30.811 How will OWCP calculate the duration and extent of a covered Part E employee's initial period of compensable wage-loss?

(a) To determine the initial calendar years of wage-loss, OWCP will use the evidence it receives under §§ 30.805 through 30.807 to compare the calendar-year wages for the covered Part E employee, as adjusted, with the average annual wage determined under § 30.810 for each calendar year beginning with the calendar year that includes the trigger month, and concluding with the last calendar year of wage-loss prior to the submission of the claim or the calendar year in which the employee reached normal retirement age (as defined in § 30.801(b)), whichever occurred first.

* * * * *

■ 70. Amend § 30.901 by revising paragraphs (a) and (b) to read as follows:

§ 30.901 How does OWCP determine the extent of an employee's impairment that is due to a covered illness contracted through exposure to a toxic substance at a DOE facility or a RECA section 5 facility, as appropriate?

(a) OWCP will determine the amount of impairment benefits to which an employee is entitled based on one or more impairment evaluations submitted by physicians. An impairment evaluation shall contain the physician's opinion on the extent of whole person impairment of all organs and body functions of the employee that are compromised or otherwise affected by the employee's covered illness or illnesses, which shall be referred to as an ''impairment rating.''

(b) In making impairment benefit determinations, OWCP will only consider medical reports from physicians who are certified by the relevant medical board and who satisfy any additional criteria determined by OWCP to be necessary to qualify to perform impairment evaluations under Part E, including any specific training and experience related to particular conditions and other objective factors.

* * * * *

■ 71. Revise § 30.902 to read as follows:

§ 30.902 How will OWCP calculate the amount of the award of impairment benefits that is payable under Part E?

(a) OWCP will multiply the percentage points of the impairment rating by $2,500 to calculate the amount of the award.

(b) An employee's impairment rating may be comprised of multiple impairments of organs and body functions due to multiple covered illnesses. If an impairment award is payable based on a whole person impairment rating in which at least one of the impairments is subject to a reduction under §§ 30.505(b) and/or 30.626, OWCP will reduce the impairment award proportionately.

■ 72. Amend § 30.908 by revising paragraphs (b) and (c) to read as follows:

§ 30.908 How will the FAB evaluate new medical evidence submitted to challenge the impairment determination in the recommended decision?

* * * * *

(b) The employee shall bear the burden of proving that the additional impairment evaluation submitted is more probative than the evaluation relied upon by the district office to determine the employee's recommended impairment rating.

(c) If an employee submits an additional impairment evaluation that differs from the impairment evaluation relied upon by the district office, the FAB will review all relevant evidence of impairment in the record, and will base its determinations regarding impairment upon the evidence it considers to be most probative. The FAB will determine the impairment rating after it has evaluated all relevant evidence and argument in the record.

Signed at Washington, DC, this 28th day of January, 2019.

Julia K. Hearthway,

Director, Office of Workers' Compensation Programs.

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Part IV

Department of the Treasury

Office of the Comptroller of the Currency
12 CFR Parts 1, 3, 5, *et al.*

Federal Reserve System

12 CFR Parts 206, 208, 211, *et al.*

Federal Deposit Insurance Corporation

12 CFR parts 303, 324, 337, *et al.*

Regulatory Capital Rule: Capital Simplification for Qualifying Community Banking Organizations; Proposed Rule

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Parts 1, 3, 5, 6, 23, 24, 32, 34, 160, and 192

[Docket ID OCC–2018–0040]

RIN 1557–AE59

FEDERAL RESERVE SYSTEM

12 CFR Parts 206, 208, 211, 215, 217, 223, 225, 238, and 251

[Regulation Q; Docket No. R–1638]

RIN 7100–AF29

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Parts 303, 324, 337, 347, 362, 365, and 390

RIN 3064–AE91

Regulatory Capital Rule: Capital Simplification for Qualifying Community Banking Organizations

AGENCY: Office of the Comptroller of the Currency, Treasury; the Board of Governors of the Federal Reserve System; and the Federal Deposit Insurance Corporation.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Office of the Comptroller of the Currency (OCC), the Board of Governors of the Federal Reserve System (Board), and the Federal Deposit Insurance Corporation (FDIC) are inviting public comment on a notice of proposed rulemaking (proposal) that would provide for a simple measure of capital adequacy for certain community banking organizations, consistent with section 201 of the Economic Growth, Regulatory Relief, and Consumer Protection Act. Under the proposal, most depository institutions and depository institution holding companies that have less than $10 billion in total consolidated assets, that meet risk-based qualifying criteria, and that have a community bank leverage ratio (as defined in the proposal) of greater than 9 percent would be eligible to opt into a community bank leverage ratio framework. Such banking organizations that elect to use the community bank leverage ratio and that maintain a community bank leverage ratio of greater than 9 percent would not be subject to other risk-based and leverage capital requirements and would be considered to have met the well capitalized ratio requirements for purposes of section 38 of the Federal Deposit Insurance Act and regulations implementing that section, as applicable, and the generally applicable capital requirements under the agencies' capital rule.

DATES: Comments must be received by April 9, 2019.

ADDRESSES: Comments should be directed to:

OCC: You may submit comments to the OCC by any of the methods set forth below. Commenters are encouraged to submit comments through the Federal eRulemaking Portal or email, if possible. Please use the title ''Regulatory Capital Rule: Capital Simplification for Qualifying Community Banking Organizations'' to facilitate the organization and distribution of the comments. You may submit comments by any of the following methods:

- *Federal eRulemaking Portal—''Regulations.gov'':* Go to *www.regulations.gov.* Enter ''Docket ID OCC–2018–0040'' in the Search Box and click ''Search.'' Click on ''Comment Now'' to submit public comments.
- Click on the ''Help'' tab on the *Regulations.gov* home page to get information on using *Regulations.gov*, including instructions for submitting public comments.
- *Email: regs.comments@occ.treas.gov.*
- *Mail:* Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 400 7th Street SW, Suite 3E–218, Washington, DC 20219.
- *Hand Delivery/Courier:* 400 7th Street SW, Suite 3E–218, Washington, DC 20219.
- *Fax:* (571) 465–4326.

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Board: You may submit comments, identified by Docket No. R–1638, by any of the following methods:

- *Agency website: http://www.federalreserve.gov.* Follow the instructions for submitting comments at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm.*
- *Email: regs.comments@federalreserve.gov.* Include docket number in the subject line of the message.
- *Fax:* (202) 452–3819 or (202) 452–3102.
- *Mail:* Ann E. Misback, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW, Washington, DC 20551. All public comments are available from the Board's website at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm* as submitted, unless modified for technical reasons. Accordingly, comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper form in Room 3515, 1801 K Street NW (between 18th and 19th Street NW), Washington, DC 20006 between 9:00 a.m. and 5:00 p.m. on weekdays.

FDIC: You may submit comments, identified by RIN 3064–AE91 by any of the following methods:

- *Agency website: https://www.FDIC.gov/regulations/laws/federal.* Follow instructions for submitting comments on the Agency website.
- *Mail:* Robert E. Feldman, Executive Secretary, Attention: Comments/Legal

ESS, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.

• *Hand Delivered/Courier:* Comments may be hand-delivered to the guard station at the rear of the 550 17th Street NW, building (located on F Street) on business days between 7:00 a.m. and 5:00 p.m.

• *Email: comments@FDIC.gov.* Include the RIN 3064–AE91 on the subject line of the message.

• *Public Inspection:* All comments received must include the agency name and RIN 3064–AE91 for this rulemaking. All comments received will be posted without change to *https://www.fdic.gov/regulations/laws/federal/,* including any personal information provided. Paper copies of public comments may be ordered from the FDIC Public Information Center, 3501 North Fairfax Drive, Room E–1002, Arlington, VA 22226 by telephone at (877) 275–3342 or (703) 562–2200.

FOR FURTHER INFORMATION CONTACT:

OCC: Christine A. Smith, Risk Analyst; or David Elkes, Risk Expert; or JungSup Kim, Risk Specialist, Capital Policy (202–649–6370); or Carl Kaminski, Special Counsel; or Daniel Perez, Attorney; or Rima Kundnani, Attorney, Chief Counsel's Office, (202) 649–5490, for persons who are deaf or hearing impaired, TTY, (202) 649–5597, Office of the Comptroller of the Currency, 400 7th Street SW, Washington, DC 20219.

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I. Background

In 2013, the Office of the Comptroller of the Currency (OCC), the Board of Governors of the Federal Reserve System (Board), and the Federal Deposit Insurance Corporation (FDIC) (collectively, the agencies) revised the regulatory capital rule (capital rule) to address weaknesses in the capital framework that became apparent in the financial crisis of 2007–09.[1] The capital rule strengthened the capital requirements applicable to banking organizations[2] supervised by the agencies by improving both the quality and quantity of regulatory capital and increasing risk-sensitivity. For example, the capital rule introduced a minimum common equity tier 1 capital requirement of 4.5 percent and strengthened the qualifying criteria for regulatory capital instruments, which had the effect of making the existing capital requirements more stringent.[3] The capital rule also raised the minimum tier 1 risk-based capital requirement from 4 percent to 6 percent and, for advanced approaches banking organizations only,[4] established a supplementary leverage ratio of 3 percent.[5]

Since the issuance of the capital rule in 2013, community banking organizations have raised concerns regarding the regulatory burden, complexity, and costs associated with certain aspects of the capital rule. In March 2017, the agencies published the Economic Growth and Regulatory Paperwork Reduction Act of 1996 (EGRPRA) Joint Report to Congress.[6] In

[1] The Board and OCC issued a joint final rule on October 11, 2013 (78 FR 62018), and the FDIC issued a substantially identical interim final rule on September 10, 2013 (78 FR 55340). On April 14, 2014 (79 FR 20754), the FDIC adopted the interim final rule as a final rule with no substantive changes.

[2] Banking organizations subject to the agencies' capital rule include national banks, state member banks, insured state nonmember banks, savings associations, and top-tier bank holding companies and savings and loan holding companies domiciled in the United States not subject to the Board's Small Bank Holding Company and Savings and Loan Holding Company Policy Statement (12 CFR part 225, appendix C), excluding certain savings and loan holding companies that are substantially engaged in insurance underwriting or commercial activities or that are estate trusts, and bank holding companies and savings and loan holding companies that are employee stock ownership plans.

[3] 12 CFR 3.20 (OCC); 12 CFR 217.20 (Board); 12 CFR 324.20 (FDIC).

[4] A banking organization is an advanced approaches banking organization if it has consolidated assets of at least $250 billion or if it has consolidated on-balance sheet foreign exposures of at least $10 billion, or if it is a subsidiary of a depository institution, bank holding company, savings and loan holding company, or intermediate holding company that is an advanced approaches banking organization. *See* 12 CFR 3.100 (OCC); 12 CFR 217.100 (Board); 12 CFR 324.100 (FDIC). The agencies are seeking comment on the definition of an advanced approaches banking organization. *See https://www.federalreserve.gov/newsevents/pressreleases/bcreg20181031a.htm*

[5] 12 CFR 3.10(a) (OCC); 12 CFR 217.10(a) (Board); 12 CFR 324.10(a) (FDIC).

[6] *See* Joint Report to Congress; Economic Growth and Regulatory Paperwork Reduction Act (March 2017), *https://www.ffiec.gov/pdf/2017_FFIEC_EGRPRA_Joint-Report_to_Congress.pdf.* EGRPRA, Public Law 104–208, 110 Stat. 3009.

the EGRPRA report, the agencies stated they are considering simplifications to the capital rule with the goal of meaningfully reducing regulatory burden on community banking organizations while maintaining safety and soundness and the quality and quantity of regulatory capital in the banking system. In September 2017, the agencies proposed simplifying certain capital requirements for all banking organizations, except advanced approaches banking organizations (simplifications proposal).[7] In an effort to provide immediate relief, the agencies also extended transition provisions for certain regulatory capital requirements that would be affected by the simplifications proposal.[8]

On May 24, 2018, the Economic Growth, Regulatory Relief, and Consumer Protection Act (the Act) amended provisions in the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act)[9] as well as certain other statutes administered by the agencies.[10] Section 201 of the Act, titled ''Capital Simplification for Qualifying Community Banks,'' directs the agencies to develop a community bank leverage ratio (CBLR) of not less than 8 percent and not more than 10 percent for qualifying community banks (qualifying community banking organizations). The Act defines a qualifying community banking organization as a depository institution or depository institution holding company with total consolidated assets of less than $10 billion. A qualifying community banking organization that exceeds the CBLR level established by the agencies is considered to have met: (i) The generally applicable leverage and risk-based capital requirements under the agencies' capital rule; (ii) the capital ratio requirements in order to be considered well capitalized under the agencies' prompt corrective action (PCA) framework (in the case of insured depository institutions); and (iii) any other applicable capital or leverage requirements. In addition, the Act directs the agencies to establish procedures for the treatment of qualifying community banking organizations that fall below the CBLR level established by the agencies.[11]

Section 201 of the Act defines the CBLR as the ratio of a qualifying community banking organization's CBLR tangible equity to its average total consolidated assets, both as reported on the qualifying community banking organization's applicable regulatory filing. In addition, the Act states that the agencies may determine that a banking organization is not a qualifying community banking organization based on the banking organization's risk profile. The Act states that such a determination shall be based on consideration of off-balance sheet exposures, trading assets and liabilities, total notional derivatives exposures, and such other factors as the agencies determine appropriate. The Act also specifies that the CBLR framework developed by the agencies does not limit the authority of the Federal banking agencies in effect as of the date of enactment of the Act.

Finally, the Act directs the agencies to consult with applicable state bank supervisors in carrying out section 201 of the Act and to notify the applicable state bank supervisor of any qualifying community banking organization that exceeds, or does not exceed after previously exceeding, the CBLR.

II. Summary of the Proposal

A. Overview of the Community Bank Leverage Ratio Framework

The proposed CBLR framework, based on the requirements of section 201 of the Act, is a simple alternative methodology to measure capital adequacy for qualifying community banking organizations. The proposal together with associated reporting requirement changes that the agencies anticipate proposing would simplify regulatory requirements and provide material regulatory relief to qualifying community banking organizations that opt into the CBLR framework.

The agencies designed the CBLR framework taking into account multiple considerations, seeking to balance the simplicity of the framework with safety and soundness goals. First, the CBLR framework is intended to be available to a meaningful number of well capitalized banking organizations with less than $10 billion in total consolidated assets. Second, the CBLR should be calibrated to not reduce the amount of capital currently held by qualifying community banking organizations. Third, the agencies intend for banking organizations with higher risk profiles to remain subject to the generally applicable capital requirements[12] to ensure that such banking organizations hold capital commensurate with the risk of their exposures and activities. Fourth, consistent with the Act, the agencies would maintain the supervisory actions applicable under the PCA framework and other statutes and regulations based on the capital ratios and risk profile of a banking organization. Finally, the CBLR framework is intended to provide meaningful regulatory compliance burden relief and be relatively simple for banking organizations to implement.

Under the proposal, a qualifying community banking organization would be defined as a depository institution or depository institution holding company with less than $10 billion in total consolidated assets with limited amounts of off-balance sheet exposures, trading assets and liabilities, mortgage servicing assets (MSAs), and deferred tax assets (DTAs) arising from temporary differences that a banking organization could not realize through net operating loss carrybacks (temporary difference DTAs). In addition, an advanced approaches banking organization would not be a qualifying community banking organization.

The CBLR would be calculated as the ratio of tangible equity capital (CBLR tangible equity) divided by average total consolidated assets. Under the proposal, CBLR tangible equity would be defined as total bank equity capital or total holding company equity capital, as applicable, prior to including minority interests, and excluding accumulated other comprehensive income (AOCI), DTAs arising from net operating loss and tax credit carryforwards, goodwill, and other intangible assets (other than MSAs), each as of the most recent calendar quarter and calculated in accordance with a qualifying community banking organization's regulatory reports. Average total consolidated assets would be calculated in a manner similar to the current tier 1 leverage ratio denominator in that amounts deducted from the CBLR numerator would also be excluded from the CBLR denominator.

Under the proposal, a qualifying community banking organization may elect to use the CBLR framework if its CBLR is greater than 9 percent. A CBLR greater than 9 percent, in conjunction with the proposed definitions of a qualifying community banking organization and CBLR tangible equity,

[7] 82 FR 49984 (October 27, 2017).

[8] 83 FR 55309 (November 21, 2017). The agencies continue to evaluate comments on the simplifications proposal.

[9] Public Law 111–203, 124 Stat. 1376.

[10] *See* Public Law 115–174, 132 Stat. 1296.

[11] The agencies note that under existing legal requirements applicable to holding companies and insured depository institutions, to be considered well capitalized a banking organization must demonstrate that it is not subject to any written agreement, order, capital directive, or as applicable, prompt corrective action directive, to meet and maintain a specific capital level for any capital measure. *See, e.g.,* 12 CFR 225.2. The same legal requirements would continue to apply under the CBLR framework.

[12] 12 CFR 3.10(a)–(b) (OCC); 12 CFR 217.10(a)–(b) (Board); 12 CFR 324.10(a)–(b) (FDIC).

should generally maintain the current level of capital held by these banking organizations, while supporting the agencies' goals of reducing regulatory burden for community banking organizations and retaining safety and soundness in the banking system.

The proposal provides a regulatory capital treatment for a qualifying community banking organization that elects to use the CBLR framework (CBLR banking organization), but whose CBLR subsequently falls to 9 percent or less, and continues to provide for the agencies' supervisory actions under PCA and other applicable statutes and regulations. Specifically, for insured depository institutions, the proposal incorporates CBLR levels as proxies for the following PCA categories: Adequately capitalized, undercapitalized and significantly undercapitalized. If a CBLR banking organization's CBLR meets the corresponding CBLR levels, it would be considered to have met the capital ratio requirements within the applicable PCA category and be subject to the same restrictions that currently apply to any other insured depository institution in the same PCA category. Further, the proposal would not limit the agencies' authority to take any supervisory actions consistent with their supervisory authority under the PCA framework or other statutes or regulations.

The agencies are not proposing changes to the definition of the critically undercapitalized category under their PCA rules. Therefore, under the proposal, if an insured depository institution is considered significantly undercapitalized, based on its CBLR, the insured depository institution would be required to provide promptly to its appropriate regulators such information as is necessary to calculate the tangible equity ratio as defined under the PCA framework for insured depository institutions.

The CBLR calculation would require significantly less data than are used to calculate the generally applicable capital requirements. The agencies therefore expect that a CBLR banking organization would report its CBLR and other relevant information on a simpler regulatory capital schedule, relative to Schedules RC–R of the Consolidated Reports of Condition and Income (Call Report) and HC–R of Form FR Y–9C. The agencies are including in this Supplementary Information an illustrative CBLR reporting schedule. The illustrative schedule reflects potential reduced reporting requirements and is intended to aid commenters in understanding the proposal. The agencies intend to publish a separate information collection proposal in the **Federal Register** to seek comment on revising the reporting schedules and instructions for purposes of the CBLR framework.

The agencies are monitoring the impact of the upcoming implementation of the current expected credit losses methodology (CECL) on community banking organizations. In May 2018, the agencies issued a notice of proposed rulemaking to amend the capital rule in response to CECL (CECL transitions NPR).[13] The CECL transitions NPR proposed an optional three-year transition arrangement that would allow a banking organization to phase in any adverse day-one regulatory capital effects of CECL adoption on retained earnings, DTAs, allowance for credit losses, and average total consolidated assets. These day-one regulatory capital effects would be phased in over the transition period on a straight line basis.

Question 1: The agencies invite comment on the impact to the CBLR framework due to the upcoming implementation of CECL. What changes should the agencies consider? For example, what are the advantages and disadvantages of providing CBLR banking organizations an optional transition arrangement to phase in any adverse day-one effects on the CBLR due to the implementation of CECL? How could any phase-in be included in the CBLR framework without creating undue burden?

B. Qualifying Community Banking Organization

Under the proposal, a qualifying community banking organization would be defined as a depository institution or depository institution holding company that is not an advanced approaches banking organization and that meets the following criteria (qualifying criteria), each as described further below:

- Total consolidated assets of less than $10 billion;
- Total off-balance sheet exposures (excluding derivatives other than credit derivatives and unconditionally cancelable commitments) of 25 percent or less of total consolidated assets;
- Total trading assets and trading liabilities of 5 percent or less of total consolidated assets;
- MSAs of 25 percent or less of CBLR tangible equity; and
- Temporary difference DTAs of 25 percent or less of CBLR tangible equity.[14]

The agencies believe that banking organizations that do not meet these qualifying criteria should remain subject to the generally applicable capital requirements to ensure that such banking organizations hold capital commensurate with the risk profile of their activities. The agencies would monitor the appropriateness of the proposed qualifying criteria over time to ensure that they remain effective in excluding banking organizations with complex or potentially risky off-balance sheet activities from the CBLR framework. As mentioned previously, the agencies developed these qualifying criteria in conjunction with the proposed CBLR of greater than 9 percent and the CBLR tangible equity definition to create a simple alternative framework to the generally applicable capital requirements.

Question 2: The agencies invite comment on the definition of a qualifying community banking organization. What are the advantages and disadvantages of the qualifying criteria? What is the burden associated with determining whether a banking organization meets the proposed qualifying criteria? What other criteria, if any, should the agencies consider in the proposed definition of a qualifying community banking organization? What are commenters' views on the tradeoffs between simplicity and having additional risk profile criteria? In specifying any alternative qualifying criteria regarding a banking organization's risk profile, please provide information on how alternative qualifying criteria should be considered in conjunction with the calibration of the CBLR level and why the agencies should consider such alternative criteria.

1. Total Consolidated Assets

Under the proposal, a qualifying community banking organization would be required to have less than $10 billion in total consolidated assets as of the end of the most recent calendar quarter, in accordance with the Act. Total consolidated assets would be calculated in accordance with the reporting

[13] 83 FR 22312 (May 14, 2018).

[14] In addition, the agencies would reserve the authority to disallow the use of the CBLR framework by a depository institution or depository institution holding company, based on the risk profile of the banking organization. This authority would be reserved under the general reservation of authority included in the capital rule, in which the CBLR framework would be codified. *See* 12 CFR 3.1(d) (OCC); 12 CFR 217.1(d) (Board); 12 CFR 324.1(d) (FDIC). In addition, for purposes of the capital rule and section 201 of the Act, the agencies would reserve the authority to take action under other provisions of law, including action to address unsafe or unsound practices or conditions, deficient capital levels, or violations of law or regulation. *See* 12 CFR 3.1(b) (OCC); 12 CFR 217.1(b) (Board); 12 CFR 324.1(b) (FDIC).

instructions to Schedule RC of the Call Report or Schedule HC of Form FR Y–9C, as applicable.

2. Total Off-Balance Sheet Exposures

Under the proposal, a qualifying community banking organization would be required to have total off-balance sheet exposures of 25 percent or less of its total consolidated assets, as of the end of the most recent calendar quarter. The agencies are including this qualifying criterion in the CBLR framework because the CBLR includes only on-balance sheet assets in its denominator and thus would not require a qualifying banking organization to hold capital against its off-balance sheet exposures. This qualifying criterion is intended to reduce the likelihood that a qualifying community banking organization with significant off-balance sheet exposures would hold less capital under the CBLR framework than under the generally applicable capital requirements.

Under the proposal, total off-balance sheet exposures would be calculated as the sum of the notional amounts of certain off-balance sheet items as of the end of the most recent calendar quarter. Total off-balance sheet exposures would include the unused portions of commitments (except for unconditionally cancellable commitments); self-liquidating, trade-related contingent items that arise from the movement of goods; transaction-related contingent items (*i.e.,* performance bonds, bid bonds and warranties); sold credit protection in the form of guarantees and credit derivatives; credit-enhancing representations and warranties; off-balance sheet securitization exposures; letters of credit; forward agreements that are not derivative contracts; and securities lending and borrowing transactions (total off-balance sheet exposures). Total off-balance sheet exposures would exclude derivatives that are not credit derivatives, such as foreign exchange swaps and interest rate swaps. The agencies believe the notional amount for such derivatives is not an appropriate indicator of credit risk and could inadvertently disqualify a banking organization from using the CBLR framework if the banking organization is appropriately hedging its credit risks.

The proposed components of total off-balance sheet exposures would be generally consistent with off-balance sheet items in the generally applicable capital requirements, except for securities lending and borrowing transactions. Securities lending and borrowing transactions would include the sum of off-balance sheet securities lent and borrowed measured in accordance with the reporting instructions for these items in Schedules RC–L of the Call Report or HC–L of Form FR Y–9C, as applicable. The proposed calculation of total off-balance sheet exposures is significantly simpler than under the generally applicable capital requirements, which require that off-balance sheet exposures be converted to on-balance sheet equivalents and assigned the appropriate risk weight.

As mentioned previously, the agencies also intend to ensure that the regulatory relief included in the CBLR framework is available to a meaningful number of community banking organizations. As a result, the agencies do not believe that traditional banking activities, such as extending loan commitments to customers, should necessarily preclude a banking organization from qualifying to use the CBLR framework. The agencies analyzed average off-balance sheet exposures, relative to total consolidated assets, for banking organizations with less than $10 billion in total consolidated assets and observed that the vast majority of such banking organizations report off-balance sheet exposures totaling less than 25 percent of total consolidated assets. Accordingly, the agencies have determined that the proposed 25 percent qualifying criterion of total off-balance sheet exposures to total consolidated assets would allow a meaningful number of banking organizations to use the CBLR framework without unduly restricting lending practices. The proposed criterion would help to prevent banking organizations from engaging in excessive off-balance sheet exposures without a commensurate capital requirement under the CBLR framework.

Question 3: The agencies invite comment on the proposed off-balance sheet qualifying criterion. What aspects of the off-balance sheet qualifying criterion, including definitions, require further clarity? For example, what aspects, if any, of the generally applicable capital requirement's definition of credit enhancing representations and warranties or the reporting instructions to Schedules RC–L of the Call Report or HC–L of Form FR Y–9C for securities lent and borrowed require further clarity? What other alternatives should the agencies consider for purposes of defining the proposed qualifying criterion? For example, what are the advantages and disadvantages of using off-balance sheet items reported on Schedules RC–L of the Call Report or HC–L of Form FR Y–9C in place of the off-balance sheet items as currently reported on Schedules RC–R of the Call Report or HC–R of Form FR Y–9C? What impact would the proposed qualifying criterion have on a banking organization's business strategies and lending decisions?

3. Total Trading Assets and Trading Liabilities

Under the proposal, a qualifying banking organization would be required to have total trading assets and liabilities of 5 percent or less of its total consolidated assets, each measured as of the end of the most recent calendar quarter. Total trading assets and liabilities would be calculated as the sum of those exposures, in accordance with the reporting instructions for these items on Schedules RC of the Call Report or HC of Form FR Y–9C, as applicable. A banking organization would divide the sum of its total trading assets and trading liabilities by its total consolidated assets to determine its percentage of total trading assets and liabilities.

The agencies recognize the potential elevated levels of risk and complexity that can be associated with certain trading activities. For this reason, banking organizations with significant trading assets and liabilities are subject to a market risk capital requirement under the generally applicable risk-based capital requirements.[15] In contrast, CBLR banking organizations would not be required to calculate additional market risk capital requirements and, as a result, the CBLR framework may not appropriately capitalize for material amounts of trading assets and trading liabilities. In addition, elevated levels of trading activity can produce a heightened level of earnings volatility, which has implications for capital adequacy. Therefore, the agencies have concerns about making the CBLR framework available to banking organizations with material market risk exposure. At the same time, the agencies do not believe that low levels of trading activity should preclude a banking organization from using the CBLR framework.

Based on the agencies' analysis, the vast majority of banking organizations with less than $10 billion in total consolidated assets have total trading assets and liabilities well below 5 percent of their total consolidated assets. The agencies believe that the

[15] 12 CFR part 3, subpart F (OCC); 12 CFR part 217, subpart F (Board); 12 CFR part 324, subpart F (FDIC).

proposed 5 percent threshold would help to ensure that banking organizations under the CBLR framework would not engage in significant trading activity. Further, this criterion is generally consistent with section 203 of the Act, which excludes a community banking organization from proprietary trading restrictions if its trading assets and liabilities are 5 percent or less of its total consolidated assets.

The agencies considered adopting an additional qualifying criterion in the CBLR framework based on a banking organization's total notional derivatives exposures. However, as described above, the agencies are concerned that such additional criterion may inadvertently disqualify a banking organization from using the CBLR framework if the banking organization engages in prudent risk management by appropriately hedging its risks associated with traditional banking activities. The agencies reviewed the notional derivative exposures reported by banking organizations with less than $10 billion in total consolidated assets and determined that a significant majority of such banking organizations currently either do not report any derivative exposure or report notional derivative amounts of less than $500 million, which would require relatively low amounts of regulatory capital under the generally applicable capital requirements. Therefore, except for the notional amount of sold credit protection in the form of a credit derivative, the agencies have not incorporated total notional derivatives exposure as a qualifying criterion under the proposed CBLR framework.

Question 4: The agencies invite comment on the proposed trading activity criterion. What other alternatives to limiting trading activity should the agencies consider for purposes of defining a qualifying community banking organization and why?

Question 5: What are the advantages and disadvantages of using total notional derivatives exposures or another measure as the basis for the qualifying criterion? If such a criterion were included in the CBLR framework, how should it be measured and why? At what level should any such qualifying criterion be set?

4. Mortgage Servicing Assets

Under the proposal, a qualifying community banking organization would be required to have MSAs of 25 percent or less of its CBLR tangible equity. This qualifying criterion would be calculated as MSAs, calculated in accordance with the reporting instructions to Schedules RC–M of the Call Report or HC–M of Form FR Y–9C, as applicable, divided by CBLR tangible equity, each measured as of the end of the most recent calendar quarter.

High concentrations in MSAs are subject to stringent capital requirements through a deduction approach under the generally applicable capital requirements.[16] The stringent capital requirements are designed to protect banking organizations from sudden fluctuations in the value of MSAs and from the potential inability of banking organizations to divest themselves of MSAs quickly at their full estimated value during periods of financial stress. The 25 percent threshold for holdings of MSAs in the CBLR framework would help to ensure that banking organizations with high concentrations of MSAs would remain subject to the generally applicable capital requirements. The proposed MSA qualifying criterion is aligned with the proposed threshold for MSAs in the simplifications proposal discussed above.[17]

As an alternative to the proposed qualifying criterion for MSAs, the agencies considered an approach that would instead require a qualifying community banking organization to deduct from its CBLR tangible equity MSAs in excess of 25 percent of CBLR tangible equity. However, the agencies are concerned that such an approach would unduly complicate the CBLR framework.

Question 6: The agencies invite comment on the proposed qualifying criterion for MSAs. What are commenters' views on the inclusion of such a qualifying criterion as opposed to an alternative deduction approach from CBLR tangible equity for purposes of the CBLR?

5. Temporary Difference Deferred Tax Assets

Under the proposal, a qualifying community banking organization would have temporary difference DTAs, net of any related valuation allowances, of 25 percent or less of CBLR tangible equity. This criterion would be calculated as temporary difference DTAs, as described in the capital rule,[18] divided by CBLR tangible equity, each measured as of the end of the most recent calendar quarter. Temporary difference DTAs, net of any related valuation allowances, are assets that banking organizations may not be able to fully realize, especially under adverse financial conditions, because a banking organization's ability to realize its temporary difference DTAs is dependent on future taxable income.[19] This concern is particularly acute when banking organizations are experiencing financial difficulty.

Question 7: The agencies invite comment on the treatment of temporary difference DTAs for purposes of the definition of a qualifying community banking organization. What are the advantages and disadvantages of the proposed qualifying criterion for temporary difference DTAs? What alternatives should the agencies consider in limiting exposures to DTAs and how would such alternatives affect the proposed calibration of the CBLR framework?

6. Advanced Approaches Banking Organizations

Under the proposal, only non–advanced approaches banking organizations would be eligible to use the CBLR framework. Advanced approaches banking organizations are generally banking organizations with $250 billion or more in total consolidated assets or $10 billion or more in on-balance sheet foreign exposure, or subsidiaries of such banking organizations.[20] As such, a depository institution with less than $10 billion in total consolidated assets may be an advanced approaches banking organization.

The agencies believe that, in general, the Act is designed to provide regulatory relief for banking organizations with less than $10 billion in total consolidated assets and that have a limited risk profile. While an advanced approaches banking organization with less than $10 billion in total consolidated assets is a relatively small banking organization, it is nonetheless part of a more complex banking organization. Consequently, such a banking organization would not be eligible to use the CBLR framework under this proposal.

Question 8: The agencies invite comment on the exclusion of advanced approaches banking organizations from the CBLR framework. What other alternatives should the agencies consider with respect to a banking

[16] 12 CFR 3.22(d) (OCC); 12 CFR 217.22(d) (Board); 12 CFR 324.22(d) (FDIC).

[17] 82 FR 49984 (October 27, 2017).

[18] 12 CFR 3.22(d)(1)(i) (OCC); 12 CFR 217.22(d)(1)(i) (Board); 12 CFR 324.22(d)(1)(i) (FDIC). As described further below, this proposal would not include the option for netting deferred tax liabilities to maintain a simple calculation of CBLR tangible equity.

[19] Temporary differences arise when financial events or transactions are recognized in one period for financial reporting purposes and in another period, or periods, for tax purposes.

[20] *See* footnote 4.

organization's affiliation with larger, more complex banking organizations?

C. CBLR Tangible Equity

Under the proposal, the numerator of the CBLR would be CBLR tangible equity. CBLR tangible equity would be calculated as a banking organization's total bank equity capital or total holding company equity capital, as applicable, determined in accordance with the reporting instructions to Schedule RC of the Call Report or Schedule HC of Form FR Y–9C, prior to including minority interests, less: (i) Accumulated other comprehensive income (AOCI), (ii) all intangible assets (other than MSAs), and (iii) DTAs, net of any related valuation allowances, that arise from net operating loss and tax credit carryforwards, each as of the end of the most recent calendar quarter.[21] CBLR tangible equity would not include minority interests (equity of a consolidated subsidiary that is not owned by the qualifying community banking organization) because minority interests do not have the same loss absorption capacity as other components of CBLR tangible equity at the consolidated banking organization level. The proposed definition is intended as a prudent, simple measure of CBLR tangible equity, which CBLR banking organizations can calculate using amounts reported on regulatory reports. The agencies believe that this simpler measure of capital is consistent with the goal of providing meaningful burden relief for qualifying community banking organizations.

The agencies' generally applicable capital requirements have long included restrictions on the types of capital instruments that can be included in tier 1 capital. Prior to 2013, the agencies' capital rule required that voting common stock holders' equity be the dominant form of tier 1 capital and that banking organizations should avoid undue reliance on nonvoting equity and preferred stock. Furthermore, cumulative perpetual preferred securities are generally not included in tier 1 capital. The definition of tier 1 capital under the generally applicable capital requirements excludes cumulative perpetual preferred securities as such instruments allow for the accumulation of interest payable and are not likely to absorb losses to the degree appropriate for inclusion in tier 1 capital. However, consistent with the intention to maintain a simple definition of CBLR tangible equity, the proposal does not include such restrictions and thus provides more flexibility with respect to the types of capital instruments that could qualify for CBLR tangible equity. The agencies believe providing such flexibility is consistent with safety and soundness when considering the overall proposed calibration of the CBLR framework for qualifying community banking organizations.

Question 9: The agencies invite comment on the proposed definition of CBLR tangible equity. What changes, if any, would commenters suggest to the proposed definition of CBLR tangible equity? What are the advantages and disadvantages of a CBLR that closely aligns with the applicable reporting instructions to Schedules RC of the Call Report and HC of Form FR Y–9C measure of equity? What are the advantages and disadvantages of introducing additional adjustments and deductions from equity capital when defining CBLR tangible equity?

Question 10: What are the advantages and disadvantages of not imposing specific eligibility criteria for capital instruments under the CBLR framework? If the agencies exclude certain types of capital instruments from CBLR tangible equity, how should the agencies incorporate such criteria in a simple manner? For example, what are the advantages and disadvantages of the agencies requiring that voting common equity be the dominant form of CBLR tangible equity?

Question 11: What other alternative definitions of CBLR tangible equity should the agencies consider with respect to the CBLR, and how should such alternatives be considered in conjunction with the proposed 9 percent CBLR calibration? Would defining CBLR tangible equity to equal a measure of capital under the generally applicable capital requirements (e.g., tier 1 capital) be more appropriate, and if so, why?

1. Minority Interests

Under the proposal, the definition of CBLR tangible equity would not include minority interests in consolidated subsidiaries because, while such minority interests are available to absorb losses at the subsidiary, they are not always available to absorb losses at the banking organization's consolidated level. To address this concern, the generally applicable capital requirements limit the amount of minority interests that a banking organization may include in its regulatory capital through a relatively complex calculation.

To balance the agencies' concern regarding the capacity of minority interests to absorb losses at the consolidated banking organization and to preserve the simplicity of the CBLR framework, the proposed definition of CBLR tangible equity would not include minority interests in consolidated subsidiaries. The agencies reviewed data regarding minority interests that banking organizations with less than $10 billion in total consolidated assets report in regulatory capital and found that only a small number of such banking organizations currently report any minority interests. Therefore, the exclusion of minority interests is not expected to have a material impact on the amount of CBLR tangible equity for the vast majority of banking organizations.

Question 12: The agencies invite comment on the proposed exclusion of minority interests from the definition of CBLR tangible equity. What are the advantages and disadvantages of this approach? If minority interests were to be included, how should the agencies limit the amount of minority interests that could count toward a banking organization's CBLR tangible equity without creating undue complexity?

2. Accumulated Other Comprehensive Income

Under the proposal, the definition of CBLR tangible equity would exclude all components of AOCI, measured in accordance with the reporting instructions to Schedule RC of the Call Report or Schedule HC of Form FR Y–9C, as applicable. Under the generally applicable capital requirements, banking organizations, other than advanced approaches banking organizations, may exclude most components of AOCI from common equity tier 1 capital. AOCI generally includes accumulated unrealized gains and losses on certain assets and liabilities that are not included in net income, yet are included in equity under U.S. GAAP (for example, unrealized gains and losses on securities designated as available-for-sale). When the agencies revised the capital rule in 2013, they noted that smaller or relatively less complex banking organizations may not have sophisticated risk management techniques to hedge interest rate risk and that including AOCI in regulatory capital could introduce significant volatility in the capital ratios due to fluctuations in benchmark interest rates. The agencies therefore included an option for non-advanced approaches

[21] Solely for purposes of the FDIC's proposed definition of CBLR tangible equity, FDIC-supervised institutions that are CBLR banking organizations must deduct identified losses (to the extent that CBLR tangible equity would have been reduced if the appropriate accounting entries to reflect the identified losses had been recorded on the banking organization's books).

banking organizations to neutralize the impact of AOCI on their regulatory capital calculations and the vast majority of banking organizations have made that election.

Consistent with the generally applicable capital requirements' treatment of AOCI for banking organizations other than advanced approaches banking organizations, the proposal would exclude all components of AOCI from CBLR tangible equity. The proposed adjustment for AOCI would be simpler than under the generally applicable capital requirements which allow certain banking organizations to neutralize some but not all AOCI, and thus should alleviate regulatory burden for banking organizations that qualify for and elect to use the CBLR, without meaningfully affecting the amount of the AOCI adjustment.

Question 13: The agencies invite comment on the proposed treatment of AOCI for purposes of the CBLR. What are the advantages and disadvantages of making adjustments to CBLR tangible equity for all components of AOCI? What alternatives, if any, to the proposed treatment of AOCI should the agencies consider for purposes of the CBLR and why?

3. Intangible Assets

Under the proposal, the definition of CBLR tangible equity would require deduction of goodwill and all other intangible assets (other than MSAs), which is consistent with long-standing requirements in the generally applicable capital requirements. This deduction would be calculated as goodwill and all other intangible assets (other than MSAs), measured in accordance with the reporting instructions to Schedules RC–M of the Call Report or HC–M of Form FR Y–9C, as applicable. All other intangible assets generally include, for example, core deposit intangibles, favorable leasehold rights, purchased credit card relationships, and non-mortgage servicing assets. During times of stress, it may be difficult to sell, or to calculate reliable values for, intangible assets. Fully deducting goodwill and all other intangible assets would help to retain the quality of CBLR tangible equity and would be consistent with safety and soundness and with the generally applicable capital requirements. Deducting these items is also consistent with section 201 of the Act, which requires the agencies to develop a CBLR using tangible equity capital.

The proposed deduction for intangible assets is gross of associated deferred tax liabilities. The generally applicable capital requirements contain an option for netting of deferred tax liabilities from the items subject to deduction, which may result in a complex calculation for banking organizations with limited deferred tax liabilities. The agencies propose to not include the same option for netting deferred tax liabilities to maintain a simple calculation of CBLR tangible equity. The agencies also analyzed the effect of netting deferred tax liabilities from intangible assets subject to deduction and observed that permitting netting of deferred tax liabilities would not meaningfully change the CBLR for qualifying banking organizations.

Question 14: The agencies invite comment on the treatment of intangible assets in the proposed definition of CBLR tangible equity for purposes of the CBLR. What are the advantages and disadvantages of the proposed approach? What are commenters' views on retaining the option to net deferred tax liabilities from items subject to deduction, as permitted under the generally applicable capital requirements? What alternatives, if any, to the proposed treatment of intangible assets should the agencies consider and why?

4. Deferred Tax Assets

Under the proposal, DTAs that arise from net operating loss and tax credit carryforwards, net of any related valuation allowances, would be deducted from CBLR tangible equity. This deduction would supplement the qualifying criterion that requires a qualifying community banking organization to have temporary difference DTAs of 25 percent or less of its CBLR tangible equity.

Under the proposal, DTAs that arise from net operating loss and tax credit carryforwards would be measured consistently with the generally applicable capital requirements,[22] except that a banking organization would not have the option to reduce the amount of the deduction by deferred tax liabilities. The proposed approach for DTAs is similar to, but simpler than, the treatment of DTAs in the generally applicable capital requirements, which requires deduction from common equity tier 1 capital of the entire amount of DTAs that arise from net operating loss and tax credit carryforwards and requires the deduction of temporary difference DTAs above certain thresholds. The proposed approach for DTAs is intended to address the concern that DTAs that are generally dependent upon future taxable income may not be realizable. This concern is particularly acute when banking organizations are experiencing financial difficulty or when broad economic conditions change.

In developing the proposal, the agencies considered alternative treatments of DTAs that arise from net operating loss and tax credit carryforwards and temporary difference DTAs that would have varying degrees of conservatism and complexity. One alternative for calculating CBLR tangible equity would be to deduct DTAs that arise from net operating loss and tax credit carryforwards from a banking organization's total equity capital, and then to deduct temporary difference DTAs that exceed 25 percent of a threshold amount equal to a banking organization's total equity capital less all other adjustments and deductions for CBLR tangible equity. The agencies decided against this alternative because such a threshold deduction would result in an unduly complex CBLR tangible equity calculation. Another alternative would be to deduct all net DTAs (*i.e.,* DTAs that arise from net operating loss and tax credit carryforwards and temporary difference DTAs), net of any valuation allowances, measured in accordance with the reporting instructions to Schedule RC–F of the Call Report or Schedule HC–F of Form FR Y–9C, as applicable, from a banking organization's total equity capital, which would be a more conservative treatment than under the generally applicable capital requirements. The agencies have not proposed this approach based on a concern that a deduction for all temporary difference DTAs could be unduly punitive.

Question 15: The agencies invite comment on the treatment of DTAs that arise from net operating loss and tax credit carryforwards in the proposed definition of CBLR tangible equity. What are the advantages and disadvantages of not permitting the netting of deferred tax liabilities? What are commenters' views on the complexity of netting deferred tax liabilities as compared to the simplicity of a gross deduction? What alternatives, if any, should the agencies consider and why?

Question 16: The agencies invite comment on whether it would be more appropriate to deduct all net DTAs from CBLR tangible equity. What are the advantages and disadvantages of deducting all net DTAs from CBLR tangible equity? What are commenters' views on the tradeoffs of simply deducting all net DTAs as compared to separate treatments for DTAs that arise from net operating loss and tax credit carryforwards and temporary difference

[22] 12 CFR 3.22(a)(3) (OCC); 12 CFR 217.22(a)(3) (Board); 12 CFR 324.22(a)(3) (FDIC).

DTAs? What alternatives, if any, should the agencies consider and why?

D. Average Total Consolidated Assets (CBLR Denominator)

Consistent with the Act, the proposed CBLR denominator would be based on a banking organization's average total consolidated assets. Specifically, average total consolidated assets for purposes of the CBLR denominator would be calculated in accordance with the reporting instructions to Schedules RC–K on the Call Report or HC–K on Form FR Y–9C, as applicable, less the items deducted from the CBLR numerator, except AOCI. The proposed calculation is similar to that used in determining the denominator of the tier 1 leverage ratio.

Question 17: The agencies invite comment on the proposed definition of average total consolidated assets. What, if any, alternative definitions of average total consolidated assets should the agencies consider for purposes of the CBLR and why?

E. Calibration of the Community Bank Leverage Ratio

The agencies propose that a qualifying community banking organization may elect to use the CBLR framework if the CBLR of the banking organization is greater than 9 percent at the time of election. A qualifying community banking organization with a CBLR greater than 9 percent would be considered to have met: (i) The generally applicable capital requirements; (ii) the well capitalized capital ratio requirements under the agencies' PCA framework for insured depository institutions or the well capitalized standards under the Board's regulations for holding companies, as applicable; and (iii) any other capital or leverage requirements to which the banking organization is subject. Such banking organizations would not be required to calculate capital ratios under the generally applicable capital requirements. Additionally, to be considered well capitalized under the CBLR framework, and consistent with the agencies' PCA framework, a qualifying community banking organization must not be subject to any written agreement, order, capital directive, or PCA directive to meet and maintain a specific capital level for any capital measure.

The proposed calibration of the CBLR, in conjunction with the qualifying community banking organization and CBLR tangible equity definitions, seek to strike a balance among the following objectives: Maintaining strong capital levels in the banking system, ensuring safety and soundness, and providing appropriate regulatory burden relief to as many banking organizations as possible. For example, an 8 percent CBLR would allow more banking organizations to opt into the CBLR framework but could incentivize a large number of CBLR banking organizations to hold less regulatory capital than they do today. Conversely, a significant number of banking organizations would not meet a 10 percent CBLR, which could preclude the use of the CBLR framework by banking organizations that are operating in a safe and sound manner with prudent levels of capital.

The agencies estimate that as of the second quarter of 2018, the vast majority of banking organizations under $10 billion in total consolidated assets would meet the definition of a qualifying community banking organization and have a CBLR above 9 percent. Based on reported data as of June 30, 2018, there are 5,408 insured depository institutions with less than $10 billion in total consolidated assets and 151 depository institution holding companies with more than $3 billion and less than $10 billion in total consolidated assets.[23] Approximately 83 percent of such insured depository institutions and 56 percent of such depository institution holding companies would qualify to use the CBLR framework under the proposed 9 percent calibration and qualifying criteria. The agencies believe the CBLR framework, including its proposed calibration, meets the objectives described above.

Question 18: The agencies invite comment on the proposed CBLR calibration. What other factors should the agencies consider in calibrating the CBLR and why? The agencies request that commenters include discussion of how the proposed CBLR level should be affected by potential changes to other aspects of the proposed CBLR framework, such as the definition of CBLR tangible equity and the definition of a qualifying community banking organization.

F. Election To Use the Community Bank Leverage Ratio Framework

Under the proposal, a qualifying community banking organization with a CBLR greater than 9 percent may elect to use the CBLR framework at any time. Such a banking organization would indicate its election by completing a CBLR reporting schedule in its Call Report or Form FR Y–9C, as applicable, which will be proposed at a later date, as discussed below in this Supplementary Information.

Under the proposal, a CBLR banking organization may opt out of the CBLR framework and use the generally applicable capital requirements by completing the associated reporting requirements on Schedules RC–R of the Call Report or HC–R of Form FR Y–9C, as applicable. While the agencies would not place restrictions on the ability of qualifying community banking organizations to switch in and out of the CBLR framework, the agencies anticipate such changes to be rare and typically driven by significant changes in the banking organization's business activities. The agencies believe that some flexibility to reverse the election to use the CBLR framework is warranted to ensure that banking organizations can adjust their business strategies and activities over time. The agencies would expect a CBLR banking organization to be able to provide a rationale for opting out of the CBLR framework to its appropriate regulators, if requested.

Additionally, the agencies note that a CBLR banking organization may opt out of the CBLR framework between reporting periods by producing the capital ratios under the generally applicable capital requirements to its appropriate regulators at the time of opting out. This requirement is intended to remove any ambiguity relating to capital adequacy for either the banking organization or the appropriate regulators.

A banking organization that has opted out of the CBLR framework would need to meet the qualifying criteria included in the definition of a qualifying community banking organization and have a CBLR of greater than 9 percent to be able to opt back into the CBLR framework. This proposed approach is intended to balance the need for flexibility in applying capital requirements tailored to banking organizations' different and potentially shifting business models with the goal of discouraging arbitrage between capital frameworks.

Question 19: The agencies invite comment on the proposed procedure a banking organization would use to opt into and out of the CBLR framework. What are commenters' views on the frequency with which a qualifying community banking organizations may opt in and out of the CBLR framework? What other alternatives should the

[23] As of June 30, 2018, there are 4,261 depository institution holding companies with less than $10 billion in total consolidated assets. More than 95 percent of such holding companies are not subject to the capital rule because they have less than $3 billion in total consolidated assets and meet certain additional criteria to qualify for the Board's small bank holding company policy statement. *See* 12 CFR 217.1(c)(1)(ii) and (iii); 12 CFR part 225, appendix C; 12 CFR 238.9.

agencies consider for purposes of qualifying community banking organizations' election to use and report the CBLR and why? Do qualifying community banking organizations anticipate frequent switching between the CBLR framework and the generally applicable capital requirements, and if so, why? What are the operational or other challenges associated with frequent switching between frameworks? What are commenters' views on the loss of comparability in capital ratios over time that may result from frequent switching between frameworks? How would the changes proposed in the simplifications proposal influence whether a banking organization elects to use the CBLR framework?

G. Compliance With the Proposed CBLR Framework

1. Definition of a Qualifying Community Banking Organization

Under the proposal, a CBLR banking organization that no longer meets the proposed qualifying criteria would be required, within a limited grace period of two consecutive calendar quarters, either to once again meet the qualifying criteria or demonstrate compliance with the generally applicable capital requirements. The grace period would begin as of the end of the calendar quarter in which the CBLR banking organization ceases to satisfy the criteria to be a qualifying community banking organization and end after two consecutive calendar quarters. During the grace period, the banking organization could continue to be treated as a qualifying community banking organization and could, therefore, continue calculating and reporting a CBLR to determine its PCA category, in the case of an insured depository institution, and compliance with other statutes and regulations.

A banking organization that grows to $10 billion or larger in total consolidated assets or no longer meets one or more of the other qualifying criteria (*e.g.,* increased concentrations in MSAs) could use the grace period to again meet the qualifying criteria or revert to the generally applicable capital requirements. For example, if the CBLR banking organization exceeded one of the qualifying criteria as of February 15, the grace period for such a banking organization would begin as of the end of the quarter ending March 31. The banking organization could continue to use the CBLR framework as of June 30, but would need to fully comply with the generally applicable capital requirements (including the associated reporting requirements) as of September 30, unless at that time the banking organization once again met the qualifying criteria of the CBLR framework. The agencies believe that this limited grace period is appropriate to mitigate potential volatility in capital and associated regulatory reporting requirements based on temporary changes in a banking organization's risk profile from quarter to quarter, while capturing more permanent changes in risk profile.

A CBLR banking organization that ceases to meet the criteria to be a qualifying community banking organization as a result of a business combination would receive no grace period, however, and immediately would no longer be a qualifying community banking organization. The agencies believe this approach is appropriate as banking organizations would need to consider the regulatory capital implications of a planned business combination and be prepared to comply with the applicable requirements. A CBLR banking organization that expects that it would not meet the qualifying criteria as a result of a planned business combination would need to provide its pro-forma capital ratios under the generally applicable capital requirements to its appropriate regulator as part of its merger application, if applicable, and fully comply with the generally applicable capital requirements as of the completion of the transaction.

Question 20: The agencies invite comment on the proposed treatment for a banking organization that no longer meets the definition of a qualifying community banking organization after making an election to use the CBLR framework. Specifically, what are the advantages and disadvantages of the proposed period of time a banking organization that no longer meets the qualifying criteria would be provided to transition to the generally applicable capital requirements? What other alternatives should the agencies consider with respect to a banking organization that no longer meets the definition of a qualifying community banking organization and why?

2. Treatment of a Community Banking Organization That Falls Below the CBLR Requirement

Under the proposal, a CBLR banking organization that has a CBLR greater than 9 percent would be considered well capitalized. In addition, a CBLR banking organization would be considered to have met the minimum capital requirements under the agencies' capital rule if its CBLR is 7.5 percent or greater.[24]

The Act requires that the agencies establish procedures for the treatment of a CBLR banking organization that experiences a decline in its CBLR below the percentage set by the agencies after exceeding such percentage. A CBLR banking organization's CBLR may deteriorate due to a decline in its level of CBLR tangible equity, growth in its average total consolidated assets, or a combination of both. As described above, a CBLR banking organization may choose to stop using the CBLR framework and instead become subject to the generally applicable capital requirements. However, the agencies recognize that some banking organizations may find it unduly burdensome to begin complying with the more complex risk-based capital reporting requirements at the same time that the organization is experiencing a decline in its CBLR. Accordingly, in the case of CBLR banking organizations that are insured depository institutions and that no longer exceed the 9 percent CBLR, the agencies are proposing to establish the following CBLR levels to serve as proxies for the adequately capitalized, undercapitalized, and significantly undercapitalized PCA capital categories and be deemed to satisfy statutory capital requirements:[25]

- Adequately capitalized—CBLR of 7.5 percent or greater;
- Undercapitalized—CBLR of less than 7.5 percent; and
- Significantly undercapitalized—CBLR of less than 6 percent.

The definition of critically undercapitalized would remain the same as under the PCA framework and the generally applicable capital requirements. The agencies are not proposing a proxy CBLR level for the critically undercapitalized category, which would continue to be calculated as the ratio of tangible equity to total assets (as defined under the PCA framework) of 2 percent or below. As discussed above, the agencies are proposing a CBLR level of greater than 9 percent for the well capitalized capital category pursuant to section 201 of the Act.

[24] A CBLR banking organization that is a depository institution holding company would no longer be considered well capitalized if the holding company had a CBLR of 9 percent or less.

[25] *See,* for example, 12 U.S.C. 5371 (establishing a capital floor for insured depository institutions and depository institution holding companies); section 201 of the Act (requiring development of a community bank leverage ratio for which a depository institution exceeding that ratio would be considered to meet the requirements to be treated as well capitalized under PCA); and 12 U.S.C. 1831o (PCA).

a. CBLR Levels for Certain PCA Categories

Under the proposal, the CBLR levels for the adequately capitalized, undercapitalized, and significantly undercapitalized PCA capital categories would serve as proxies for the existing risk-based and leverage capital ratios that currently define these PCA capital categories. In setting the proposed proxy levels, the agencies sought to provide sufficient separation across categories such that a banking organization would not face frequent changes to its PCA category without a corresponding significant change in its CBLR. For reference, the agencies note that under the current PCA rules, there is a 2 percentage point difference between the risk-based capital ratios for the corresponding PCA capital categories and a 1 percentage point difference between the tier 1 leverage ratios for the corresponding PCA capital categories.

The agencies performed data analysis on 5,408 insured depository institutions under $10 billion in total consolidated assets as of June 30, 2018, to calibrate the CBLR levels for the adequately capitalized, undercapitalized, and significantly undercapitalized PCA capital categories, of which 4,469 insured depository institutions meet all the proposed qualifying criteria (eligible IDIs).

The agencies' data analysis has demonstrated that at the proposed PCA adequately capitalized requirement of 7.5 percent, about 0.5 percent of eligible IDIs would require less capital—in order to be deemed adequately capitalized—under the CBLR framework than under the generally applicable capital requirements. Thus, the data analysis by the agencies supports a conclusion that 7.5 percent results in an appropriate balance between the two considerations of (1) serving as an appropriate proxy for the adequately capitalized PCA ratio in the risk-based and leverage capital rules, and (2) providing sufficient separation between the adequately capitalized PCA ratio and the well capitalized and the undercapitalized PCA ratios.

Similarly, at the proposed PCA significantly undercapitalized requirement of 6 percent, about 0.4 percent of eligible IDIs would require less capital—in order to be considered undercapitalized—under the CBLR framework than under the generally applicable capital requirements. Therefore, the agencies believe that the proposed 6 percent level would represent an appropriate balance between (1) serving as an appropriate proxy for the significantly undercapitalized PCA ratio in the risk-based and leverage capital rules, and (2) providing sufficient separation between the significantly undercapitalized and the undercapitalized and critically undercapitalized PCA ratios.

Under the proposal, a CBLR banking organization that maintains a CBLR of 7.5 percent or greater but less than or equal to 9 percent would be deemed to have met the minimum capital requirements and all of the capital ratio requirements for the adequately capitalized capital category under the PCA framework and therefore, treated as adequately capitalized. A CBLR banking organization whose CBLR falls below 7.5 percent but is greater than or equal to 6 percent would be deemed to have met all of the capital ratio requirements for the undercapitalized capital category under the PCA framework and therefore, treated as undercapitalized. A CBLR banking organization whose CBLR falls below 6 percent and tangible equity ratio is above 2 percent would be deemed to have met all of the capital ratio requirements for the significantly undercapitalized capital category under the PCA framework and therefore, considered and treated as significantly undercapitalized. The definition of critically undercapitalized would remain the same as under the PCA framework and the generally applicable capital requirements. Specifically, the critically undercapitalized category would continue to include banking organizations with a ratio of tangible equity to total assets (as defined under the PCA framework) of 2 percent or below.

b. Critically Undercapitalized Capital Category

Section 38 of the Federal Deposit Insurance Act [26] specifies that the critically undercapitalized capital category must be set at no less than 2 percent of the tangible equity ratio. Therefore, a CBLR depository institution with a ratio of tangible equity to total assets (as provided for under the agencies PCA framework) of 2 percent or below would be classified as critically undercapitalized. Because the information necessary to calculate the PCA tangible equity ratio under the current capital rule may not be readily available to a CBLR banking organization, a CBLR banking organization with a CBLR of less than 6 percent would be required to provide promptly to its appropriate regulators such information as is necessary to calculate the PCA tangible equity ratio so that the regulators may calculate and monitor the banking organization's tangible equity ratio in the event that its condition deteriorates. Such deterioration can occur quickly depending on the particular circumstances and economic environment. Under the proposal and consistent with the current authorities, the appropriate regulators also may request the information necessary to determine the tangible equity ratio at any time, and the CBLR banking organization must provide it.

The agencies considered proposing a CBLR level for the critically undercapitalized capital category. However, allowing two definitions for the critically undercapitalized capital category would create potential arbitrage between the generally applicable capital requirements and CBLR framework and legal uncertainty as to when a bank is critically undercapitalized for purposes of the FDIC being appointed as a conservator or receiver for a failing banking organization.

c. Effect of CBLR Levels on Other Regulations

The agencies would use the proxies described in the previous section to apply the regulatory, supervisory, and enforcement authorities under PCA and other statutes to CBLR banking organizations.[27] A CBLR banking organization would be subject to all of the requirements and restrictions, including any capital restoration plan requirement and mandatory and discretionary supervisory actions, applicable to a banking organization in its PCA category. Similarly, agencies expect to continue applying the current supervisory standards for examining banking organizations for capital adequacy.

For example, if a CBLR banking organization becomes less than well capitalized, it would become subject to applicable regulatory restrictions. For a CBLR banking organization that is a depository institution, these restrictions would include the brokered deposit and interest rate restrictions.[28] For a CBLR banking organization that is a depository institution holding company, these restrictions would include limitations on financial activities under the Bank Holding Company Act and Regulation Y. A CBLR banking organization's capital category can also affect various applications' standards, procedures, and processing in the same way as a banking organization's current PCA category based on the generally

[26] 12 U.S.C. 1831*o*.

[27] *See* section 201(c)(2) of the Act.

[28] 12 U.S.C 1831f; 12 CFR 337.6.

applicable capital requirements. These include the ability to conduct interstate mergers and to establish interstate branches, as well as eligibility for expedited applications processing.

d. Alternative Approach

Consistent with the treatment of a CBLR banking organization that no longer meets the definition of a qualifying community banking organization, the agencies considered proposing to require CBLR banking organizations to report capital ratios under the generally applicable capital requirements if their CBLR fell to 9 percent or below, subject to a transition period. On the one hand, this approach is straightforward, avoids any potential ambiguity with respect to a banking organization's capital category when it is less than well capitalized, and is consistent with the CBLR framework being available for highly capitalized community banking organizations. On the other hand, this approach is relatively inflexible compared to the proposal. The agencies believe that some additional flexibility in the implementation of the CBLR framework is not inconsistent with the Act's purpose of relieving qualifying community banking organizations.

Question 21: The agencies invite comment on the proposed treatment for a CBLR banking organization that no longer exceeds the 9 percent CBLR level. Specifically, what are commenters' views on the proposed CBLR levels for all other PCA capital categories except for the critically undercapitalized capital category? What are the advantages and disadvantages of establishing proxies for the identified PCA capital categories?

Question 22: The agencies invite comment on the proposal to require a CBLR banking organization to provide the information necessary for its regulators to calculate the banking organization's tangible equity once the banking organization's CBLR falls below 6 percent. What, if any, would be the burden of gathering and providing such information and how long would it take to generate such information?

Question 23: What alternative procedures should the agencies consider with respect to the treatment of a CBLR banking organization whose CBLR has fallen to 9 percent or less and why?

Question 24: The agencies invite comment on the proposed implementation of section 201 of the Act. How does the proposed definition of CBLR tangible equity interact with the risk profile criteria and the proposed CBLR ratio requirement?

H. Other Affected Federal Regulations

Under the proposal, a CBLR banking organization would no longer be required to calculate or report the components of capital used in the calculation of risk-based capital ratios or the tier 1 leverage ratio, such as tier 1 capital, total capital, or risk-weighted assets. Various Federal banking regulations outside of the regulatory capital rule (non-capital rules) contain references to these regulatory capital terms and therefore would need to be updated to reflect the components of capital and related capital measures under the CBLR framework. To ensure that these non-capital rules continue to operate as intended, the agencies propose that standards using tier 1 capital or total capital be amended so that a CBLR banking organization would use CBLR tangible equity instead of tier 1 capital or total capital. The agencies propose that where applicable, standards referencing risk-weighted assets be amended so that a CBLR banking organization would use average total consolidated assets (*i.e.,* the CBLR denominator) instead of risk-weighted assets.

In addition, certain of the agencies' non-capital rules refer to ''capital stock and surplus'' (or similar items), which is generally defined as tier 1 and tier 2 capital plus the amount of allowances for loan and lease losses not included in tier 2 capital.[29] The agencies propose that a CBLR banking organization would calculate capital stock and surplus as CBLR tangible equity plus allowances for loan and lease losses. Thus, for example, for purposes of compliance with section 23A of the Federal Reserve Act, the proposal would amend the Board's Regulation W to provide that, for a CBLR banking organization, ''capital stock and surplus'' would mean CBLR tangible equity plus allowances for loan and lease losses.[30]

At this time, the agencies are not proposing changes to their supervisory guidance which uses these capital terms. The agencies will consider how best to address affected supervisory guidance in conjunction with comments received on this proposal.

Question 25: The agencies invite comment on the proposed amendments to their affected non-capital rules that would apply to CBLR banking organizations under the CBLR framework. What are commenters' views or concerns with the proposed amendments, including with regard to any unintended consequences? What are the advantages and disadvantages of retaining the current tier 1 capital measure for purposes of the other regulations that would be revised under this proposal or within the CBLR framework itself? What other approaches should the agencies consider in amending the affected regulations? Which other additional non-capital rules should the agencies consider and amend as a result of the CBLR framework and why?

I. Deposit Insurance Assessments Regulations

FDIC assessments regulations also would be affected by the proposed CBLR framework. For example, CBLR banking organizations would no longer be required to report tier 1 capital or the tier 1 leverage ratio. The FDIC, however, uses these measures as part of its deposit insurance assessment system. For established small institutions, the tier 1 leverage ratio is one of eight measures used to determine an institution's assessment rate.[31] For all institutions, tier 1 capital is used to determine an institution's assessment base.[32]

The FDIC plans to publish a separate notice of proposed rulemaking to address the application of the CBLR framework as it relates to the deposit insurance assessment system. The rulemaking would address, among other things, how the CBLR framework can be applied in lieu of the tier 1 leverage ratio and in lieu of tier 1 capital when calculating a bank's assessment. The FDIC plans to consider and discuss in the rulemaking reasonable and possible options that address the application of the CBLR framework in the assessment system. The FDIC does not expect that any changes to its deposit insurance assessment system would have a material impact on aggregate assessment

[29] *See e.g.,* 12 CFR 223.3(d).

[30] The agencies issued a proposal in May 2018 to address pending changes to U.S. GAAP related to accounting for allowances under the agencies' rules. *See* 83 FR 22312 (May 14, 2018). For purposes of any final rule, the agencies expect to match the treatment and terminology related to allowances under the agencies' rules under this proposal and the May 2018 proposal.

[31] For assessments purposes, an established small bank is generally defined as one that has been federally insured for at least five years and has less than $10 billion in assets. 12 CFR 327.8(v). A bank no longer qualifies as a small bank once it reports assets of $10 billion of more in its quarterly reports of condition for four consecutive quarters.

[32] The Dodd-Frank Act required the FDIC to amend its regulations to generally define an institution's assessment base as average consolidated total assets of the institution minus average tangible equity during the assessment period. The FDIC chose to use tier 1 capital in lieu of tangible equity when implementing this requirement in part because it required no additional reporting. *See* 12 CFR 327.5(a)(2); 76 FR 10673, 10678 (Feb. 25, 2011).

revenue or on rates paid by individual institutions.

J. Illustrative Reporting Form

The agencies intend to separately seek comment on the proposed changes to regulatory reports for qualifying community banking organizations that elect to use the CBLR framework. To provide an indication of the potential reporting format and potential reporting burden relief relative to the regulatory reporting requirements under the generally applicable capital requirements for those banking organizations that elect to use the proposed CBLR framework, the agencies include an illustrative reporting form below, using the Call Report as an example.

BILLING CODE 4810–33–P, 6210–01–P, 6714–01–P

	CBLR Tangible Equity (CBLR numerator)	**Percent**	**Amount**
1	Total bank equity capital (Schedule RC, item 27.a)		
2	LESS: Accumulated other comprehensive income (Schedule RC, item 26.b)		
3	LESS: Goodwill (Schedule RC-M, item 2.b)		
4	LESS: All other intangible assets (Schedule RC-M, item 2.c)		
5	LESS: Deferred tax assets (DTAs) that arise from net operating loss and tax credit carryforwards, net of any related valuation allowances		
6	Total adjustments and deductions for CBLR tangible equity (sum of items 2 through 5)		
7	CBLR tangible equity (item 1 minus item 6)		
	Average Total Consolidated Assets for the Community Bank Leverage Ratio (CBLR denominator)		
8	Total assets (Schedule RC-K, item 9)		
9	Deductions from CBLR tangible equity (sum of items 3, 4, and 5, above)		
10	Average total consolidated assets (item 8 minus item 9)		
	Community Bank Leverage Ratio		
11	Community bank leverage ratio (item 7 divided by item 10)		
	Qualifying Criteria for Using the CBLR framework		
12	Total assets (from Schedule RC, item 12); (must be less than $10 billion)		
13	MSAs (from Schedule RC-M, item 2.a.) as a percentage of CBLR tangible equity (25% limit)		
14	DTAs arising from temporary differences that could not be realized through net operating loss carrybacks, net of any related valuation allowances as a percentage of CBLR tangible equity (25% limit)		
15	Trading assets and trading liabilities (Schedule RC , sum of items 5 and 15) as a percentage of total consolidated assets (5% limit)		
16	Off-balance sheet exposures		
a	Unused portion of conditionally cancellable commitments		
b	Off-balance sheet securitizations		
c	Securities lent and borrowed (Schedule RC-L, sum of items 6.a and 6.b)		
d	Other off-balance sheet exposures		
e	Total off-balance sheet exposures (sum of items 16a through 16d) as a percentage of total consolidated assets (25% limit)		
17	Memo item: Unconditionally cancellable commitments		

BILLING CODE 4810–33–C, 6210–01–C, 6714–01–C

K. Consultation With State Bank Supervisors

The agencies have had discussions with state bank supervisors and staff of the Conference of State Bank Supervisors, during which the agencies received helpful input in connection with this proposal. The agencies expect to continue engaging with the state bank supervisors during the rulemaking process, in accordance with section 201 of the Act.

Section 201 also requires that the agencies notify the applicable state bank supervisor if a qualifying community banking organization exceeds the CBLR established by the agencies or ceases to exceed the CBLR after having previously exceeded it. The agencies plan to incorporate the CBLR into the Call Report and Form FR Y–9C so that qualifying community banking organizations report their CBLR levels on a quarterly basis. These reports are, and would continue to be, released to the public. The agencies believe that this public release of the CBLR would provide an operable means of notifying the applicable state bank supervisor of the relevant information about a CBLR banking organization's CBLR.

Question 26: What other considerations should the agencies contemplate to help ensure that the

applicable state bank supervisor is notified when supervised qualifying community banking organizations exceed or cease to exceed the CBLR and why?

III. Regulatory Analyses

A. Paperwork Reduction Act

Certain provisions of the proposed rule contain ''collection of information'' requirements within the meaning of the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521). In accordance with the requirements of the PRA, the agencies may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently-valid Office of Management and Budget (OMB) control number. The OMB control number for the OCC is 1557–0318, Board is 7100–0313, and FDIC is 3064–0153. The OCC and the FDIC may need to request new control numbers if submissions are pending under their current respective control numbers at the time of this submission. These information collections will be extended for three years, with revision. The information collection requirements contained in this proposed rulemaking have been submitted by the OCC and FDIC to OMB for review and approval under section 3507(d) of the PRA (44 U.S.C. 3507(d)) and section 1320.11 of the OMB's implementing regulations (5 CFR 1320). The Board reviewed the proposed rule under the authority delegated to the Board by OMB.

Comments are invited on:

a. Whether the collections of information are necessary for the proper performance of the agencies' functions, including whether the information has practical utility;

b. The accuracy or the estimate of the burden of the information collections, including the validity of the methodology and assumptions used;

c. Ways to enhance the quality, utility, and clarity of the information to be collected;

d. Ways to minimize the burden of the information collections on respondents, including through the use of automated collection techniques or other forms of information technology; and

e. Estimates of capital or startup costs and costs of operation, maintenance, and purchase of services to provide information.

All comments will become a matter of public record. Comments on aspects of this notice that may affect reporting, recordkeeping, or disclosure requirements and burden estimates should be sent to the addresses listed in the **ADDRESSES** section of this document. A copy of the comments may also be submitted to the OMB desk officer by mail to U.S. Office of Management and Budget, 725 17th Street NW, #10235, Washington, DC 20503; facsimile to (202) 395–6974; or email to *oira_submission@omb.eop.gov,* Attention, Federal Banking Agency Desk Officer.

Proposed Information Collection

Title of Information Collection: Recordkeeping and Disclosure Requirements Associated with Capital Adequacy.

Frequency: Quarterly, annual.

Affected Public: Businesses or other for-profit.

Respondents

OCC: National banks, state member banks, state nonmember banks, and state and federal savings associations.

Board: State member banks (SMBs), bank holding companies (BHCs), U.S. intermediate holding companies (IHCs), savings and loan holding companies (SLHCs), and global systemically important bank holding companies (GSIBs).

FDIC: State nonmember banks, state savings associations, and certain subsidiaries of those entities.

Current Actions: The proposal would revise sections _.2 and _.10 of the capital rule, add a new section _.12 to the capital rule, and revise the agencies' PCA rules, to implement the community bank leverage ratio in accordance with the Act. These changes will not, however, result in changes to the burden. Nevertheless, in order to be consistent across the agencies, the agencies are applying a conforming methodology for calculating the burden estimates. The agencies are also updating the number of respondents based on the current number of supervised entities even though this proposal only affects a limited number of entities. The agencies believe that any changes to the information collections associated with the proposed rule are the result of the conforming methodology and updates to the respondent count and not the result of the proposed rule changes.

PRA Burden Estimates

OCC

OMB control number: 1557–0318.

Estimated number of respondents: 1,365 (of which 18 are advanced approaches institutions).

Estimated average hours per response:

Minimum Capital Ratios (1,365 Institutions Affected)

Recordkeeping (Ongoing)—16.

Standardized Approach (1,365 Institutions Affected)

Recordkeeping (Initial setup)—122.
Recordkeeping (Ongoing)—20.
Disclosure (Initial setup)—226.25.
Disclosure (Ongoing quarterly)—131.25.

Advanced Approach (18 Institutions Affected)

Recordkeeping (Initial setup)—460.
Recordkeeping (Ongoing)—540.77.
Recordkeeping (Ongoing quarterly)—20.
Disclosure (Initial setup)—280.
Disclosure (Ongoing)—5.78.
Disclosure (Ongoing quarterly)—35.

Estimated annual burden hours: 1,088 hours initial setup, 64,929 hours for ongoing.

Board

Agency form number: FR Q.

OMB control number: 7100–0313.

Estimated number of respondents: 1,431 (of which 17 are advanced approaches institutions).

Estimated average hours per response:

Minimum Capital Ratios (1,431 Institutions Affected)

Recordkeeping (Ongoing)—16.

Standardized Approach (1,431 Institutions Affected)

Recordkeeping (Initial setup)—122.
Recordkeeping (Ongoing)—20.
Disclosure (Initial setup)—226.25.
Disclosure (Ongoing quarterly)—131.25.

Advanced Approach (17 Institutions Affected)

Recordkeeping (Initial setup)—460.
Recordkeeping (Ongoing)—540.77.
Recordkeeping (Ongoing quarterly)—20.
Disclosure (Initial setup)—280.
Disclosure (Ongoing)—5.78.
Disclosure (Ongoing quarterly)—35.
Disclosure (Table 13 quarterly)—5.

Risk-Based Capital Surcharge for GSIBs (21 Institutions Affected)

Recordkeeping (Ongoing)—0.5.

Estimated annual burden hours: 1,088 hours initial setup, 78,183 hours for ongoing.

FDIC

OMB control number: 3064–0153.

Estimated number of respondents: 3,575 (of which 2 are advanced approaches institutions).

Estimated average hours per response:

Minimum Capital Ratios (3,575 Institutions Affected)

Recordkeeping (Ongoing)—16.

Standardized Approach (3,575 Institutions Affected)

Recordkeeping (Initial setup)—122.
Recordkeeping (Ongoing)—20.
Disclosure (Initial setup)—226.25.
Disclosure (Ongoing quarterly)—131.25.

Advanced Approach (2 Institutions Affected)

Recordkeeping (Initial setup)—460.
Recordkeeping (Ongoing)—540.77.
Recordkeeping (Ongoing quarterly)—20.
Disclosure (Initial setup)—280.
Disclosure (Ongoing)—5.78.
Disclosure (Ongoing quarterly)—35.

Estimated annual burden hours: 1,088 hours initial setup, 130,758 hours for ongoing.

The proposed rule will also require changes to the Consolidated Reports of Condition and Income (Call Reports) (FFIEC 031, FFIEC 041, and FFIEC 051; OMB No. 1557–0081 (OCC), 7100–0036 (Board), and 3064–0052 (FDIC)) and Consolidated Financial Statements for Holding Companies (FR Y–9C; OMB No. 7100–0128 (Board)), which will be addressed in one or more separate **Federal Register** notices.

B. Regulatory Flexibility Act

OCC: The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.,* (RFA), requires an agency, in connection with a proposed rule, to prepare an Initial Regulatory Flexibility Analysis describing the impact of the rule on small entities (defined by the SBA for purposes of the RFA to include commercial banks and savings institutions with total assets of $550 million or less and trust companies with total assets of $38.5 million of less) or to certify that the proposed rule would not have a significant economic impact on a substantial number of small entities.

As of June 30, 2018, the OCC supervises 886 small entities,[33] of which 860 could be impacted by the proposed rule. Thus, a substantial number of small entities could be impacted by the proposed rule.

OCC staff also consider whether the proposed rule would result in a significant economic impact on affected small entities. OCC staff believe the primary cost to small institutions that elect to adopt the CBLR framework would be administrative costs that arise from modifying policies and procedures and reporting the new CBLR schedule, rather than the existing RC–R schedule. OCC staff estimates that each national bank or Federal savings association would spend no more than 320 hours to modify their policies and procedures and switch to reporting the CBLR schedule. To estimate this cost, OCC staff used a compensation rate of $117 per hour.[34] Therefore, OCC staff estimate the cost per institution would not exceed $37,440 (320 hours × $117 per hour). In general, OCC staff classifies the economic impact of expected cost (to comply with a rule) on an individual national bank or Federal savings association as significant if the total estimated monetized costs in one year are greater than (1) 5 percent of the national bank's or Federal savings association's total annual salaries and benefits or (2) 2.5 percent of the national bank's or Federal savings association's total annual non-interest expense. Based on this criteria, the estimated cost of the rule would impose a significant economic impact at only one of the 860 affected small institutions, which is not a substantial number.

Additionally, a critical element of the proposed rule is its inherent optionality. OCC staff believe CBLR eligible national banks and Federal savings associations would only choose to use the CBLR framework if the benefits outweighed the costs.

Therefore, the OCC certifies that the proposed rule would not have a significant economic impact on a substantial number of OCC-supervised small entities.

Board: The Board is providing an initial regulatory flexibility analysis with respect to this proposed rule. The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* (RFA), requires an agency to consider whether the rules it proposes will have a significant economic impact on a substantial number of small entities.[35] In connection with a proposed rule, the RFA requires an agency to prepare an Initial Regulatory Flexibility Analysis describing the impact of the rule on small entities or to certify that the proposed rule would not have a significant economic impact on a substantial number of small entities. An initial regulatory flexibility analysis must contain (1) a description of the reasons why action by the agency is being considered; (2) a succinct statement of the objectives of, and legal basis for, the proposed rule; (3) a description of, and, where feasible, an estimate of the number of small entities to which the proposed rule will apply; (4) a description of the projected reporting, recordkeeping, and other compliance requirements of the proposed rule, including an estimate of the classes of small entities that will be subject to the requirement and the type of professional skills necessary for preparation of the report or record; (5) an identification, to the extent practicable, of all relevant Federal rules which may duplicate, overlap with, or conflict with the proposed rule; and (6) a description of any significant alternatives to the proposed rule which accomplish its stated objectives.

The Board has considered the potential impact of the proposed rule on small entities in accordance with the RFA. Based on its analysis and for the reasons stated below, the Board believes that this proposed rule will not have a significant economic impact on a substantial number of small entities. Nevertheless, the Board is publishing and inviting comment on this initial regulatory flexibility analysis. A final regulatory flexibility analysis will be conducted after comments received during the public comment period have been considered.

As discussed in detail above, the proposed rule would establish a community bank leverage ratio for qualifying community banking organizations. Qualifying community banking organizations would consist of insured depository institutions, bank holding companies, and savings and loan holding companies with total consolidated assets of less than $10 billion that also satisfy certain qualifying criteria. The qualifying criteria are designed to ensure that

[33] The OCC calculated the number of small entities using the SBA's size thresholds for commercial banks and savings institutions, and trust companies, which are $550 million and $38.5 million, respectively. Consistent with the General Principles of Affiliation, 13 CFR 121.103(a), the OCC counted the assets of affiliated financial institutions when determining whether to classify a national bank or Federal savings association as a small entity.

[34] The OCC's cost estimate includes an estimate of the time required to implement the mandates and the estimated average hourly wage of the bank employees who might be responsible for tasks associated with achieving compliance with the proposal and other rules that would be affected by implementation of the proposal. To estimate average hourly wages, OCC staff reviewed data from May 2017 for wages (by industry and occupation) from the U.S. Bureau of Labor Statistics (BLS) for depository credit intermediation (NAICS 522100). To estimate compensation costs associated with the rule, OCC staff used $117 per hour, which is based on the average of the 90th percentile for seven occupations adjusted for inflation, plus an additional 34.2 percent to cover private sector benefits.

[35] Under regulations issued by the Small Business Administration, a small entity includes a depository institution, bank holding company, or savings and loan holding company with total assets of $550 million or less and trust companies with total assets of $38.5 million or less. As of June 30, 2018, there were approximately 3,053 small bank holding companies, 184 small savings and loan holding companies, and 541 small state member banks.

qualifying community banking organizations do not have significant levels of assets that would make the community bank leverage ratio a less appropriate capital standard for the risks presented by the firms' portfolios. Qualifying community banking organizations that elect to be under the community bank leverage ratio generally would be exempt from the Board's current capital framework, including risk-based capital requirements and capital conservation buffer requirements.[36] The CBLR would be calibrated such that qualifying community banking organizations would not be required to raise significant additional capital and would not face materially less stringent capital requirements. The primary benefit of the CBLR for qualifying community banking organizations is therefore expected to be reduced calculation and reporting burdens.

The Board has broad authority under the International Lending Supervision Act of 1983 (ILSA)[37] and the Prompt Corrective Action (PCA) provisions of the Federal Deposit Insurance Act[38] to establish regulatory capital requirements for the institutions it regulates. For example, ILSA directs each Federal banking agency to cause banking institutions to achieve and maintain adequate capital by establishing minimum capital requirements as well as by other means that the agency deems appropriate.[39] The PCA provisions of the Federal Deposit Insurance Act direct each Federal banking agency to specify, for each relevant capital measure, the level at which an IDI subsidiary is well capitalized, adequately capitalized, undercapitalized, and significantly undercapitalized.[40] In addition, the Board has broad authority to establish regulatory capital standards for bank holding companies, savings and loan holding companies, and U.S. intermediate holding companies of foreign banking organizations under the Bank Holding Company Act of 1956, the Home Owners' Loan Act, and the Dodd-Frank Act.[41]

The proposed rule would be an optional framework that qualifying community banking organizations could choose to apply instead of the Board's current capital rule. A qualifying community banking organization would be able to remain subject to the current capital rule if it chose to do so. The proposed rule therefore would not impose mandatory requirements on any small entities. However, the proposal would allow Board-regulated institutions that are qualifying community banking organizations to elect to be under the community bank leverage ratio framework. Small entities that are subject to the Board's capital rule could make such an election, which would require immediate changes to reporting, recordkeeping, and compliance systems.

Further, as discussed previously in the Paperwork Reduction Act section, the proposal would make changes to the projected reporting, recordkeeping, and other compliance requirements of the rule by impacting the information that qualifying community banking organizations that elect to use the community bank leverage ratio would be required to collect.

The agencies anticipate making changes through a separate notice to regulatory reporting forms that currently collect regulatory capital information (the Call Report (FFIEC 031, 041, and 051) and the Consolidated Financial Statements for Holding Companies (Form FR Y–9C)). Firms would be required to update their systems to implement these changes to reporting forms. Systems changes would be predominantly due to changes to the applicable reporting forms that are expected to be released in the near future, rather than the proposal described in this notice. The Board does not expect that the compliance, recordkeeping, and reporting updates from this proposal would impose a significant cost on small Board-regulated institutions. These changes would only impact small entities that elect to use the community bank leverage ratio and, while there would be limited upfront costs to update systems, an overall reduction in burden is expected. However, the reduction in burden will be predominantly due to changes in regulatory reporting forms, and these burden changes therefore are expected to be discussed in a regulatory reporting notice in the near future. In addition, the Board is aware of no other Federal rules that duplicate, overlap, or conflict with the proposed changes to the capital rule. Therefore, the Board believes that the proposed rule will not have a significant economic impact on small banking organizations supervised by the Board and therefore believes that there are no significant alternatives to the proposed rule that would reduce the economic impact on small banking organizations supervised by the Board.

The Board welcomes comment on all aspects of its analysis. In particular, the Board requests that commenters describe the nature of any impact on small entities and provide empirical data to illustrate and support the extent of the impact.

FDIC: The Regulatory Flexibility Act (RFA) generally requires that, in connection with a proposed rulemaking, an agency prepare and make available for public comment an initial regulatory flexibility analysis describing the impact of the rulemaking on small entities.[42] A regulatory flexibility analysis is not required, however, if the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. The Small Business Administration (SBA) has defined ''small entities'' to include banking organizations with total assets less than or equal to $550 million.[43] The FDIC supervises 3,575 depository institutions,[44] of which 2,763 are defined as small banking entities by the terms of the RFA.[45] Based on its analysis and for the reasons stated below, the FDIC believes that this proposal would not have a significant economic impact on a substantial number of small entities.

Description of Need and Policy Objectives

The policy objective of the proposed rule is to conform the FDIC's regulations to the statutory language established by the Act. On May 24, 2018, the Economic Growth, Regulatory Relief, and Consumer Protection Act (the Act) amended provisions in the Dodd-Frank

[36] Nearly all small bank holding companies and small savings and loan holding companies are currently exempt from the Board's capital rule and are instead covered by the Board's Small Bank Holding Company and Savings and Loan Holding Company Policy Statement. The policy statement applies to bank holding companies and savings and loan holding companies with less than $3 billion in total consolidated assets that also satisfy specified eligibility criteria. *See* 12 CFR 217.1(c)(1)(ii) through (iii); 12 CFR part 225 app. C. The proposal is not expected to impact small bank holding companies and small savings and loan holding companies that are subject to the policy statement.

[37] 12 U.S.C. 3901–3911.

[38] 12 U.S.C. 1831o.

[39] 12 U.S.C. 3907(a)(1).

[40] 12 U.S.C. 1831o(c)(2).

[41] *See* 12 U.S.C. 1467a, 1844, 5365, 5371.

[42] 5 U.S.C. 601 *et seq.*

[43] The SBA defines a small banking organization as having $550 million or less in assets, where ''a financial institution's assets are determined by averaging the assets reported on its four quarterly financial statements for the preceding year.'' 13 CFR 121.201 n.8 (2018). ''SBA counts the receipts, employees, or other measure of size of the concern whose size is at issue and all of its domestic and foreign affiliates. . . .'' 13 CFR 121.103(a)(6) (2018). Following these regulations, the FDIC uses a covered entity's affiliated and acquired assets, averaged over the preceding four quarters, to determine whether the covered entity is ''small'' for the purposes of RFA.

[44] FDIC-supervised institutions are set forth in 12 U.S.C. 1813(q)(2).

[45] Call Report: June 30, 2018.

Wall Street Reform and Consumer Protection Act (Dodd-Frank Act)[46] as well as certain other statutes administered by the agencies.[47] Section 201 of the Act, titled ''Capital Simplification for Qualifying Community Banks,'' directs the agencies to develop a community bank leverage ratio (CBLR) of not less than 8 percent and not more than 10 percent for ''qualifying community banks'' (qualifying community banking organizations). The Act defines a qualifying community banking organization as a depository institution or depository institution holding company with total consolidated assets of less than $10 billion.

Other Federal Rules

The FDIC has not identified any likely duplication, overlap, and/or potential conflict between the proposal and any Federal rule.

Economic Impacts on Small Entities

As discussed previously in section II: Summary of the Proposal, a depository institution that is not an advanced approaches banking organization could be eligible to opt into the CBLR framework, if they meet the following criteria:

- Have total consolidated assets of less than $10 billion;
- Have total off-balance sheet exposures (excluding derivatives that are not credit derivatives and unconditionally cancelable commitments) of 25 percent or less of total consolidated assets;
- Have total trading assets and trading liabilities of 5 percent or less of total consolidated assets;
- Have MSAs of 25 percent or less of CBLR tangible equity; and
- Have temporary difference DTAs of 25 percent or less of CBLR tangible equity.

As of June 30, 2018, there were 2,713 small, FDIC-supervised depository institutions who would be qualifying community banking organizations under the proposed rule. They comprise approximately 98 percent of small, FDIC-supervised depository institutions. Therefore, the proposed rule could affect an estimated 98 percent of small, FDIC-supervised institutions.

Utilizing the CBLR framework is expected to reduce reporting costs for small, FDIC-supervised institutions. Opting into the CBLR framework would enable institutions to no longer report Schedule RC–R of the Call Report, resulting in a reduction in reporting costs for institutions. As described in section II.J. of this preamble, Illustrative Reporting Form, the agencies intend to separately seek comment on the proposed changes to regulatory reports for qualifying community banking organizations that opt into the CBLR framework. To provide an indication of the potential reporting format and potential reporting burden relief for qualifying community banking organizations that opt into the proposed CBLR framework, the agencies included an illustrative report with this rulemaking, using the Call Report as an example. Depository institutions that may benefit from reduced reporting costs because of the proposed rule could employ those resources in ways the institution believes is more beneficial. It is difficult to accurately estimate the size of this potential effect because it depends on the characteristics of the individual institution and the future decisions of senior management.

As noted previously, by opting into the CBLR framework, the capital levels of some small, FDIC-supervised institutions could be marginally affected, but it is unlikely to significantly affect the quantity of regulatory capital in the banking system. The FDIC estimates that 2,296 small, FDIC-supervised institutions are qualifying community banking organizations. Of those entities, 2,027 report holding a volume of CBLR tangible equity to total consolidated assets in excess of nine percent, plus an additional buffer of 50 basis points. Some eligible small, FDIC-supervised institutions that opt into the CBLR framework could employ any CBLR tangible equity in excess of the level required to achieve nine percent of total consolidated assets in other ways the institution decides is more beneficial. It is difficult to accurately estimate what these institutions will do with the tangible equity that exceeds nine percent because it depends on the characteristics of each individual institution, the decisions of senior management, current and future economic conditions, as well as current and future financial conditions. Additionally, some institutions who are not qualifying community banking organizations because their CBLR tangible equity is less than nine percent of total consolidated assets may elect to raise additional tangible equity in order to become eligible. In such cases, each entity will have determined that the value of attaining a level of CBLR tangible equity necessary to meet or exceed nine percent of total consolidated assets outweighs the cost incurred in doing so. However, the statutory changes established by the Act will enable certain institutions to utilize the CBLR framework. The proposed rule amends the FDIC's regulations to conform with the CBLR framework authorized under the Act. Therefore, this component of the proposal would not have a direct effect on small, FDIC-supervised institutions.

As noted previously, the proposed rule could affect the deposit insurance assessments of qualifying small, FDIC-supervised institutions that elect to use the CBLR framework. The extent of this effect is difficult to quantify with available information. The proposed rule removes the requirement for small, FDIC-supervised institutions that opt into the CBLR framework from reporting tier 1 capital or the tier 1 leverage ratio. The FDIC, however, uses these measures as part of its deposit insurance assessment system. The FDIC plans to publish a separate notice of proposed rulemaking to address the application of the CBLR framework as it relates to the deposit insurance assessment system. The rulemaking would address, among other things, how the CBLR framework can be applied in lieu of the leverage ratio and in lieu of tier 1 capital when calculating a bank's assessment. However, since the final form of that rule is unknown, the potential effects on small, FDIC-supervised institutions are unknown. As one option, the FDIC may consider using the definitions in this proposal in the deposit insurance assessment system. For most qualifying community banking organizations, pursuing this option would result in no change, or would result in a reduction, in an institution's assessment. In particular, based on June 30, 2018 Call Report data, replacing the leverage ratio with the CBLR, and replacing tier 1 capital with CBLR tangible equity in the calculation of the assessment base, would result in the same or lower assessments for more than 90 percent of institutions that could be qualifying community banking organizations under this proposal. For other institutions, application of the CBLR framework to deposit insurance assessments would result in higher assessments; however, for over three-quarters of those institutions, that increase would represent less than one percent of their deposit insurance assessment for the second quarter of 2018.

Alternatives Considered

As previously discussed in section II.E. Calibration of the Community Bank Leverage Ratio, other alternatives including calibrating the CBLR to eight

[46] Public Law 111–203, 124 Stat. 1391, 12 U.S.C. 5301 *et seq.*

[47] Public Law 115–174 (May 24, 2018).

percent were considered by the FDIC. This alternative would allow more banking organizations to opt into the CBLR framework but would potentially allow a large number of CBLR banking organizations to hold less capital than under the generally applicable capital requirements. The proposed calibration of the CBLR, in conjunction with the qualifying community banking organization and CBLR tangible equity definitions, seeks to strike a balance among the following objectives: Maintaining strong capital levels in the banking system, ensuring safety and soundness, and providing appropriate regulatory burden relief to as many banking organizations as possible.

The FDIC invites comments on all aspects of the supporting information provided in this RFA section. In particular, would this proposal have any significant effects on small entities that the FDIC has not identified?

C. Plain Language

Section 722 of the Gramm-Leach Bliley Act[48] requires the Federal banking agencies to use plain language in all proposed and final rules published after January 1, 2000. The agencies invite comments on how to make these notices of proposed rulemaking easier to understand. For example:

- Have the agencies presented the material in an organized manner that meets your needs? If not, how could this material be better organized?
- Are the requirements in the notice of proposed rulemaking clearly stated? If not, how could the proposal be more clearly stated?
- Does the proposal contain language that is not clear? If so, which language requires clarification?
- Would a different format (grouping and order of sections, use of headings, paragraphing) make the proposal easier to understand? If so, what changes to the format would make the proposal easier to understand?
- What else could the agencies do to make the proposal easier to understand?

D. OCC Unfunded Mandates Reform Act of 1995

The OCC analyzed the proposed rule under the factors set forth in the Unfunded Mandates Reform Act of 1995 (UMRA) (2 U.S.C. 1532). Under this analysis, the OCC considered whether the proposed rule includes a Federal mandate that may result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year (adjusted for inflation).

The OCC has determined that this proposed rule would not result in expenditures by State, local, and Tribal governments, or the private sector, of $100 million or more in any one year. Accordingly, the OCC has not prepared a written statement to accompany this proposal.

E. Riegle Community Development and Regulatory Improvement Act of 1994

Pursuant to section 302(a) of the Riegle Community Development and Regulatory Improvement Act (RCDRIA),[49] in determining the effective date and administrative compliance requirements for new regulations that impose additional reporting, disclosure, or other requirements on insured depository institutions, each Federal banking agency must consider, consistent with principles of safety and soundness and the public interest, any administrative burdens that such regulations would place on depository institutions, including small depository institutions, and customers of depository institutions, as well as the benefits of such regulations. In addition, section 302(b) of RCDRIA requires new regulations and amendments to regulations that impose additional reporting, disclosures, or other new requirements on insured depository institutions generally to take effect on the first day of a calendar quarter that begins on or after the date on which the regulations are published in final form.[50]

The agencies note that comment on these matters has been solicited in other sections of this Supplementary Information section, and that the requirements of RCDRIA will be considered as part of the overall rulemaking process. In addition, the agencies also invite any other comments that further will inform the agencies' consideration of RCDRIA.

List of Subjects

12 CFR Part 1

Banks, banking, National banks, Reporting and recordkeeping requirements, Securities.

12 CFR Part 3

Administrative practice and procedure, Federal Reserve System, National banks, Reporting and recordkeeping requirements.

12 CFR Part 5

Administrative practice and procedure, National banks, Reporting and recordkeeping requirements, Securities.

12 CFR Part 6

Federal Reserve System, National banks.

12 CFR Part 23

National banks.

12 CFR Part 24

Community development, Credit, Investments, Low and moderate income housing, National banks, Reporting and recordkeeping requirements, Rural areas, Small businesses.

12 CFR Part 32

National banks, Reporting and recordkeeping requirements.

12 CFR Part 34

Mortgages, National banks, Reporting and recordkeeping requirements.

12 CFR Part 160

Consumer protection, Investments, Manufactured homes, Mortgages, Reporting and recordkeeping requirements, Savings associations, Securities.

12 CFR Part 192

Reporting and recordkeeping requirements, Savings associations, Securities.

12 CFR Part 206

Banks, Banking, Interbank liability, Lending limits, Savings associations.

12 CFR Part 208

Confidential business information, Crime, Currency, Federal Reserve System, Mortgages, reporting and recordkeeping requirements, Securities.

12 CFR Part 211

Exports, Federal Reserve System, Foreign banking, Holding companies, Investments, Reporting and recordkeeping requirements.

12 CFR Part 215

Credit, Penalties, Reporting and recordkeeping requirements.

12 CFR Part 217

Administrative practice and procedure, Banks, banking, Holding companies, Reporting and recordkeeping requirements, Securities.

12 CFR Part 223

Banks, Banking, Federal Reserve System.

[48] Public Law 106–102, section 722, 113 Stat. 1338, 1471 (1999).

[49] 12 U.S.C. 4802(a).

[50] *Id.*

12 CFR Part 225

Administrative practice and procedure, Banks, banking, Federal Reserve System, Holding companies, Reporting and recordkeeping requirements, Securities.

12 CFR Part 238

Savings and loan holding companies (Regulation LL).

12 CFR Part 251

Administrative practice and procedure, Banks, banking, Concentration Limit, Federal Reserve System, Holding companies, Reporting and recordkeeping requirements, Securities.

12 CFR Part 303

Administrative practice and procedure, Bank deposit insurance, Banks, banking, Reporting and recordkeeping requirements, State non-member banks, Savings associations.

12 CFR Part 324

Administrative practice and procedure, Banks, banking, Capital adequacy, Reporting and recordkeeping requirements, State non-member banks, Savings associations.

12 CFR Part 337

Banks, banking, Reporting and recordkeeping requirements, Securities.

12 CFR Part 347

Authority delegations (Government agencies), Bank deposit insurance, Banks, banking, Credit, Foreign banking, Investments, Reporting and recordkeeping requirements, U.S. Investments abroad.

12 CFR Part 362

Administrative practice and procedure, Authority delegations (Government agencies), Bank deposit insurance, Banks, banking, Investments, Reporting and recordkeeping requirements.

12 CFR Part 365

Banks, banking, Mortgages.

12 CFR Part 390

Administrative practice and procedure, Advertising, Aged, Civil rights, Conflict of interests, Credit, Crime, Equal employment opportunity, Fair housing, Government employees, Individuals with disabilities, Reporting and recordkeeping requirements, Savings associations.

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Chapter I

Authority and Issuance

For the reasons stated in the Supplementary Information, Chapter I of title 12 of the Code of Federal Regulations is proposed to be amended as follows:

PART 1—INVESTMENT SECURITIES

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

Authority: 12 U.S.C. 1 *et seq.,* 24 (Seventh), and 93a.

■ 2. Section 1.2 is amended by revising paragraph (a) to read as follows:

§ 1.2 Definitions.

(a) *Capital and surplus* means:

(1) For qualifying community banking organizations that have elected to use the community bank leverage ratio framework, as set forth under the OCC's Capital Adequacy Standards set forth at 12 CFR part 3:

(i) A qualifying community banking organization's tangible equity capital, as calculated under 12 CFR 3.12(b)(2); plus

(ii) A qualifying community banking organization's allowances for loan and lease losses as reported in the bank's Consolidated Report of Condition and Income (Call Report); or

(2) For all other banks:

(i) A bank's tier 1 and tier 2 capital calculated under the OCC's risk-based capital standards set forth in 12 CFR part 3, as applicable (or comparable capital guidelines of the appropriate Federal banking agency), as reported in the bank's Call Report; plus

(ii) The balance of a bank's allowances for loan and lease losses not included in the bank's Tier 2 capital, for purposes of the calculation of risk-based capital described in paragraph (a)(2)(i) of this section, as reported in the bank's Call Report.

* * * * *

PART 3—CAPITAL ADEQUACY STANDARDS

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

Authority: 12 U.S.C. 93a, 161, 1462, 1462a, 1463, 1464, 1818, 1828(n), 1828 note, 1831n note, 1835, 3907, 3909, and 5412(b)(2)(B).

■ 4. Section 3.10 is amended by revising paragraph (a) to read as follows:

§ 3.10 Minimum capital requirements.

(a) *Minimum capital requirements.* (1) A national bank or Federal savings association must maintain the following minimum capital ratios:

(i) A common equity tier 1 capital ratio of 4.5 percent.

(ii) A tier 1 capital ratio of 6 percent.

(iii) A total capital ratio of 8 percent.

(iv) A leverage ratio of 4 percent.

(v) For advanced approaches FDIC-supervised institutions, a supplementary leverage ratio of 3 percent.

(vi) For state savings associations, a tangible capital ratio of 1.5 percent.

(2) A qualifying community banking organization (as defined in § 3.12), that is subject to the community bank leverage ratio (as defined in § 3.12), is considered to have met the minimum capital requirements in this paragraph (a) only if the qualifying community banking organization maintains a community bank leverage ratio of at least 7.5 percent.

* * * * *

■ 5. Add section 3.12 to read as follows:

§ 3.12 Community bank leverage ratio.

(a) *Community bank leverage ratio framework.* (1) Notwithstanding any other provision in this part, a qualifying community banking organization that has made an election to use the community bank leverage ratio framework under paragraph (a)(3) of this section shall be considered to have met the minimum capital requirements under § 3.10, the capital ratio requirements for the well capitalized capital category under 12 CFR part 6, and any other capital or leverage requirements to which the qualifying community banking organization is subject, if it has a community bank leverage ratio greater than 9.0 percent.

(2) For purposes of this section, a qualifying community banking organization means a national bank or Federal savings association that is not an advanced approaches national bank or Federal savings association and that satisfies all of the following criteria:

(i) Has total consolidated assets of less than $10 billion, calculated in accordance with the reporting instructions to Schedule RC of the Call Report as of the end of the most recent calendar quarter;

(ii) Has off-balance sheet exposures of 25 percent or less of its total consolidated assets as of the end of the most recent calendar quarter, calculated as the sum of the notional amounts of the exposures listed in paragraphs (a)(2)(ii)(A) through (I) of this section-, divided by total consolidated assets, each as of the end of the most recent calendar quarter:

(A) The unused portion of commitments (except for

unconditionally cancellable commitments);

(B) Self-liquidating, trade-related contingent items that arise from the movement of goods;

(C) Transaction-related contingent items, including performance bonds, bid bonds, warranties, and performance standby letters of credit;

(D) Sold credit protection through

(*1*) Guarantees; and

(*2*) Credit derivatives;

(E) Credit-enhancing representations and warranties;

(F) Securities lent and borrowed, calculated in accordance with the reporting instructions to Schedule RC–L of the Call Report;

(G) Financial standby letters of credit;

(H) Forward agreements that are not derivative contracts; and

(I) Off-balance sheet securitization exposures;

(iii) Has total trading assets and trading liabilities, calculated in accordance with the reporting instructions to Schedule RC of the Call Report of 5 percent or less of the national bank's or Federal savings association's total consolidated assets, each as of the end of the most recent calendar quarter;

(iv) Has mortgage servicing assets, calculated in accordance with the reporting instructions to Schedule RC–M of the Call Report, of 25 percent or less of the national bank's or Federal savings association's CBLR tangible equity, each as of the end of the most recent calendar quarter; and

(v) Has DTAs arising from temporary differences that the national bank or Federal savings association could not realize through net operating loss carrybacks, net of any related valuation allowances, of 25 percent or less of the national bank's or Federal savings association's CBLR tangible equity, each as of the end of the most recent calendar quarter.

(3)(i) A qualifying community banking organization may elect to use the community bank leverage ratio framework if it makes an opt-in election under this paragraph (a)(3).

(ii) A qualifying community banking organization may elect to use the community bank leverage ratio framework only if it has a community bank leverage ratio that exceeds 9 percent at the time of the election.

(iii) For purposes of paragraph (a)(3) of this section, a qualifying community banking organization makes an election to use the community bank leverage ratio framework by completing the community bank leverage ratio reporting schedule in its Call Report.

(iv)(A) A qualifying community banking organization that has elected to use the community bank leverage ratio may opt-out of using the community bank leverage ratio by completing Schedule RC–R in its Call Report or by otherwise providing the information required in Schedule RC–R to the OCC.

(B) A qualifying community banking organization that opts out of using the community bank leverage ratio pursuant to paragraph (a)(3)(iv)(A) of this section must comply with § 3.10 immediately.

(b) *Calculation of the community bank leverage ratio.* (1) A qualifying community banking organization's community bank leverage ratio is the ratio of the banking organization's CBLR tangible equity as defined in paragraph (b)(2) of this section, to its average total consolidated assets, as defined in paragraph (b)(3) of this section.

(2) CBLR tangible equity means total bank equity capital, calculated in accordance with the reporting instructions to Schedule RC of the Call Report, before the inclusion of non-controlling (minority) interests in consolidated subsidiaries, as of the end of the most recent calendar quarter less the following (each as of the end of the most recent calendar quarter):

(i) Accumulated other comprehensive income calculated in accordance with the reporting instructions to Schedule RC of the Call Report;

(ii) Intangible Assets, calculated in accordance with the reporting instructions to Schedule RC of the Call Report, other than mortgage servicing assets; and

(iii) Deferred tax assets (DTAs) that arise from net operating loss and tax credit carryforwards net of any related valuation allowances.

(3) Average total consolidated assets means total assets calculated in accordance with the reporting instructions to Schedule RC–K of the Call Report as of the end of the most recent calendar quarter less the amounts deducted from CBLR tangible equity under paragraphs (b)(2)(ii) and (iii) of this section.

(c) *Treatment when ceasing to be a qualifying community banking organization requirements.* (1) Except as provided in paragraph (c)(4) of this section, if a national bank or Federal savings association ceases to meet the definition of a qualifying community banking organization, the national bank or Federal savings association has two reporting periods (grace period) to either satisfy the requirements to be a qualifying community banking organization or to comply with § 3.10 and report the required capital measures under section 10 on its Call Report.

(2) The grace period begins as of the end of the calendar quarter in which the national bank or Federal savings association ceases to satisfy the criteria to be a qualifying community banking organization provided in paragraph (a)(2) of this section. The grace period ends on the last day of the second consecutive calendar quarter following the beginning of the grace period.

(3) During the grace period, the national bank or Federal savings association continues to be a qualifying community banking organization for the purposes of this part and must continue calculating and reporting its community bank leverage ratio unless the national bank or Federal savings association has opted out of using the community bank leverage ratio under paragraph (a)(3) of this section.

(4) Notwithstanding paragraphs (c)(1) through (3) of this section, a national bank or Federal savings association that no longer meets the definition of a qualifying community banking organization as a result of a merger or acquisition has no grace period and immediately ceases to be a qualifying community banking organization. Such a national bank or Federal savings association must comply with § 3.10 and must report the required capital measures under § 3.10 on its next Call Report.

(d) *Tangible equity information.* (1) A qualifying community banking organization, that has elected to use the community bank leverage ratio under this section and has a community bank leverage ratio that falls below 6.0 percent, must promptly provide to the OCC the information necessary for the calculation of its tangible equity, as defined under 12 CFR 6.2, for purposes of determining the capital category of the national bank or Federal savings association under 12 CFR part 6.

(2) Notwithstanding paragraph (d)(1), upon request by the OCC, a qualifying community banking organization must provide the information necessary for the calculation of its tangible equity, as defined under 12 CFR part 6, to the OCC.

PART 5—RULES, POLICIES, AND PROCEDURES FOR CORPORATE ACTIVITIES

■ 6. The authority citation for part 5 continues to read as follows:

Authority: 12 U.S.C. 1 *et seq.,* 24a, 93a, 215a–2, 215a–3, 481, 1462a, 1463, 1464, 2901 *et seq.,* 3907, and 5412(b)(2)(B).

■ 7. Section 5.3 is amended by revising paragraph (e) to read as follows:

§ 5.3 Definitions.

* * * * *

(e) *Capital and surplus* means:

(1) For qualifying community banking organizations that have elected to use the community bank leverage ratio framework, as set forth under the OCC's Capital Adequacy Standards set forth at 12 CFR part 3:

(i) A qualifying community banking organization's tangible equity capital, as calculated under 12 CFR 3.12(b)(2); plus

(ii) A qualifying community banking organization's allowances for loan and lease losses or allowance for credit losses, as applicable, as reported in the national bank's or Federal savings association's Consolidated Report of Condition and Income (Call Report); or

(2) For all other national banks and Federal savings associations:

(i) A national bank's or Federal savings association's tier 1 and tier 2 capital calculated under the OCC's risk-based capital standards set forth in 12 CFR part 3, as applicable, as reported in the bank's or savings association's Consolidated Reports of Condition and Income (Call Reports) filed under 12 U.S.C. 161 or 12 U.S.C. 1464(v), respectively; plus

(ii) The balance of the national bank's or Federal savings association's allowances for loan and lease losses not included in the institution's tier 2 capital, for purposes of the calculation of risk-based capital reported in the institution's Call Reports, described in paragraph (e)(2)(i) of this section.

* * * * *

■ 8. Section 5.37 is amended by revising paragraph (c)(3) to read as follows:

§ 5.37 Investment in national bank or Federal savings association premises.

* * * * *

(c) * * *

(3) *Capital and surplus* means:

(i) For qualifying community banking organizations that have elected to use the community bank leverage ratio framework, as set forth under the OCC's Capital Adequacy Standards set forth at 12 CFR part 3:

(A) A qualifying community banking organization's tangible equity capital, as calculated under 12 CFR 3.12(b)(2); plus

(B) A qualifying community banking organization's allowances for loan and lease losses or allowance for credit losses, as applicable, as reported in the national bank's or Federal savings association's Call Report; or

(ii) For all other national banks and Federal savings associations:

(A) A national bank's or Federal savings association's tier 1 and tier 2 capital calculated under 12 CFR part 3, as applicable, as reported in the national bank's or Federal savings association's Consolidated Reports of Condition and Income (Call Reports) filed under 12 U.S.C. 161 or 12 U.S.C. 1464(v), respectively; plus

(B) The balance of a national bank's or Federal savings association's allowances for loan and lease losses not included in the bank's or savings association's tier 2 capital, for purposes of the calculation of risk-based capital described in paragraph (c)(3)(ii)(A) of this section, as reported in the national bank's or Federal savings association's Call Reports filed under 12 U.S.C. 161 or 1464(v), respectively.

* * * * *

■ 9. Section 5.58 is amended by revising paragraph (h)(2) to read as follows:

§ 5.58 Pass-through investments by a Federal savings association.

* * * * *

(h) * * *

(2) The Federal savings association is not investing more than 10 percent of its total capital (in the case of a Federal savings association that is a qualifying community banking organization that has elected to use the community bank leverage ratio framework, 10 percent of its tangible equity capital, calculated under 12 CFR 3.12) in one company;

* * * * *

PART 6—PROMPT CORRECTIVE ACTION

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

Authority: 12 U.S.C. 93a, 1831o, 5412(b)(2)(B).

■ 11. Section 6.4 is amended by:

■ a. Revising the heading to read as set forth below,

■ b. Removing paragraph (c),

■ c. Redesignating paragraphs (d) and (e) as paragraphs (c) and (d), respectively, and

■ d. Revising paragraphs (a) and (b).

The revisions read as follows.

§ 6.4 Capital measures and capital categories.

(a) *Capital measures.* (1) For purposes of section 38 of the FDI Act and this part, the relevant capital measures shall be:

(i) Total Risk-Based Capital Measure: The total risk-based capital ratio;

(ii) Tier 1 Risk-Based Capital Measure: The tier 1 risk-based capital ratio;

(iii) Common Equity Tier 1 Capital Measure: The common equity tier 1 risk-based capital ratio;

(iv) The Leverage Measure:

(A) The leverage ratio; and

(B) With respect to an advanced approaches national bank or advanced approaches Federal savings association, on January 1, 2018, and thereafter, the supplementary leverage ratio; and

(2) For a qualifying community banking organization (as defined in 12 CFR 3.12), that is subject to the community bank leverage ratio (as defined in 12 CFR 3.12), the community bank leverage ratio, as defined under 12 CFR 3.12 is used to determine the applicable capital category under paragraphs (b)(1) through (4) of this section.

(b) Capital categories. For purposes of section 38 of the FDI Act and this part, a national bank or Federal savings association shall be deemed to be:

(1)(i) ''Well capitalized'' if:

(A) Total Risk-Based Capital Measure: the national bank or Federal savings association has a total risk-based capital ratio of 10.0 percent or greater;

(B) Tier 1 Risk-Based Capital Measure: The national bank or Federal savings association has a tier 1 risk-based capital ratio of 8.0 percent or greater;

(C) Common Equity Tier 1 Capital Measure: The national bank or Federal savings association has a common equity tier 1 risk-based capital ratio of 6.5 percent or greater;

(D) Leverage Measure:

(*1*) The national bank or Federal savings association has a leverage ratio of 5.0 percent or greater; and

(*2*) With respect to a national bank or Federal savings association that is a subsidiary of a U.S. top-tier bank holding company that has more than $700 billion in total assets as reported on the company's most recent Consolidated Financial Statement for Bank Holding Companies (Form FR Y–9C) or more than $10 trillion in assets under custody as reported on the company's most recent Banking Organization Systemic Risk Report (Form FR Y–15), on Jan. 1, 2018 and thereafter, the national bank or Federal savings association has a supplementary leverage ratio of 6.0 percent or greater; and

(E) The national bank or Federal savings association is not subject to any written agreement, order or capital directive, or prompt corrective action directive issued by the OCC pursuant to section 8 of the FDI Act, the International Lending Supervision Act of 1983 (12 U.S.C. 3907), the Home Owners' Loan Act (12 U.S.C. 1464(t)(6)(A)(ii)), or section 38 of the FDI Act, or any regulation thereunder, to meet and maintain a specific capital level for any capital measure.

(ii) A qualifying community banking organization, as defined under 12 CFR 3.12, that has elected to use the community bank leverage ratio framework under section 12 CFR 3.12 and that has a community bank leverage ratio, as defined under 12 CFR 3.12,

greater than 9.0 percent, shall be considered to have met the capital ratio requirements for the well capitalized capital category in paragraphs (b)(1)(i)(A) through (D) of this section.

(2)(i) ''Adequately capitalized'' if:

(A) Total Risk-Based Capital Measure: The national bank or Federal savings association has a total risk-based capital ratio of 8.0 percent or greater;

(B) Tier 1 Risk-Based Capital Measure: The national bank or Federal savings association has a tier 1 risk-based capital ratio of 6.0 percent or greater;

(C) Common Equity Tier 1 Capital Measure: The national bank or Federal savings association has a common equity tier 1 risk-based capital ratio of 4.5 percent or greater;

(D) Leverage Measure:

(*1*) The national bank or Federal savings association has a leverage ratio of 4.0 percent or greater; and

(*2*) With respect to an advanced approaches national bank or advanced approaches Federal savings association, on January 1, 2018 and thereafter, the national bank or Federal savings association has an supplementary leverage ratio of 3.0 percent or greater; and

(E) The national bank or Federal savings association does not meet the definition of a ''well capitalized'' national bank or Federal savings association.

(ii) A qualifying community banking organization, as defined under 12 CFR 3.12, that has elected to use the community bank leverage ratio framework under 12 CFR 3.12 and that has a community bank leverage ratio, as defined under 12 CFR 3.12, of 7.5 percent or greater, shall be considered to have met the requirements for the adequately capitalized capital category in paragraphs (b)(2)(i)(A) through (D) of this section.

(3)(i) ''Undercapitalized'' if:

(A) Total Risk-Based Capital Measure: The national bank or Federal savings association has a total risk-based capital ratio of less than 8.0 percent;

(B) Tier 1 Risk-Based Capital Measure: The national bank or Federal savings association has a tier 1 risk-based capital ratio of less than 6.0 percent;

(C) Common Equity Tier 1 Capital Measure: The national bank or Federal savings association has a common equity tier 1 risk-based capital ratio of less than 4.5 percent; or

(D) Leverage Measure:

(*1*) The national bank or Federal savings association has a leverage ratio of less than 4.0 percent; or

(*2*) With respect to an advanced approaches national bank or advanced approaches Federal savings association, on January 1, 2018, and thereafter, the national bank or Federal savings association has a supplementary leverage ratio of less than 3.0 percent.

(ii) A qualifying community banking organization, as defined under 12 CFR 3.12, that has elected to use the community bank leverage ratio framework under section 12 CFR 3.12 and that has a community bank leverage ratio, as defined under 12 CFR 3.12, of less than 7.5 percent, shall be considered to have met the requirements for the undercapitalized capital category in paragraph (b)(3)(1)(A) through (D) of this section.

(4)(i) ''Significantly undercapitalized'' if:

(A) Total Risk-Based Capital Measure: The national bank or Federal savings association has a total risk-based capital ratio of less than 6.0 percent;

(B) Tier 1 Risk-Based Capital Measure: The national bank or Federal savings association has a tier 1 risk-based capital ratio of less than 4.0 percent;

(C) Common Equity Tier 1 Capital Measure: The national bank or Federal savings association has a common equity tier 1 risk-based capital ratio of less than 3.0 percent; or

(D) Leverage Ratio: The national bank or Federal savings association has a leverage ratio of less than 3.0 percent.

(ii) A qualifying community banking organization, as defined under 12 CFR 3.12, that has elected to use the community bank leverage ratio framework under section 12 CFR 3.12 and that has a community bank leverage ratio, as defined under 12 CFR 3.12, of less than 6.0 percent, shall be considered to have met the requirements for the significantly undercapitalized capital category in paragraphs (b)(4)(i)(A) through (D) of this section.

(5) ''Critically undercapitalized'' if the insured depository institution has a ratio of tangible equity to total assets that is equal to or less than 2.0 percent.

* * * * *

PART 23—LEASING

■ 12. The authority citation for part 23 continues to read as follows:

Authority: 12 U.S.C. 1 *et seq.,* 24(Seventh), 24(Tenth), and 93a.

■ 13. Section 23.2 is amended by revising paragraph (b) to read as follows:

§ 23.2 Definitions.

* * * * *

(b) *Capital and surplus* means:

(1) For qualifying community banking organizations that have elected to use the community bank leverage ratio framework, as set forth under the OCC's Capital Adequacy Standards set forth at 12 CFR part 3:

(i) A qualifying community banking organization's tangible equity capital, as calculated under 12 CFR 3.12(b)(2); plus

(ii) A qualifying community banking organization's allowances for loan and lease losses or allowance for credit losses, as applicable, as reported in the national bank's Call Report; or

(2) For all other national banks:

(i) A bank's tier 1 and tier 2 capital calculated under the OCC's risk-based capital standards set forth in 12 CFR part 3, as applicable, as reported in the bank's Consolidated Reports of Condition and Income (Call Report) filed under 12 U.S.C. 161; plus

(ii) The balance of a bank's allowances for loan and lease losses not included in the bank's Tier 2 capital, for purposes of the calculation of risk-based capital described in paragraph (b)(2)(i) of this section, as reported in the bank's Consolidated Report of Condition and Income filed under 12 U.S.C. 161.

* * * * *

PART 24—COMMUNITY AND ECONOMIC DEVELOPMENT ENTITIES, COMMUNITY DEVELOPMENT PROJECTS, AND OTHER PUBLIC WELFARE INVESTMENTS

■ 14. The authority citation for part 24 continues to read as follows:

Authority: 12 U.S.C. 24(Eleventh), 93a, 481 and 1818.

■ 15. Section 24.2 is amended by revising paragraph (b) to read as follows:

§ 24.2 Definitions.

* * * * *

(b) *Capital and surplus* means:

(1) For qualifying community banking organizations that have elected to use the community bank leverage ratio framework, as set forth under the OCC's Capital Adequacy Standards set forth at 12 CFR part 3:

(i) A qualifying community banking organization's tangible equity capital, as calculated under 12 CFR 3.12(b)(2); plus

(ii) A qualifying community banking organization's allowances for loan and lease losses or allowance for credit losses, as applicable, as reported in the national bank's Call Report; or

(2) For all other national banks:

(i) A bank's tier 1 and tier 2 capital calculated under the OCC's risk-based capital standards set forth in 12 CFR part 3, as applicable, as reported in the bank's Consolidated Reports of Condition and Income (Call Report) as filed under 12 U.S.C. 161; plus

(ii) The balance of a bank's allowances for loan and lease losses not included in the bank's tier 2 capital, for

purposes of the calculation of risk-based capital described in paragraph (b)(2)(i) of this section, as reported in the bank's Call Report as filed under 12 U.S.C. 161.

* * * * *

PART 32—LENDING LIMITS

■ 16. The authority citation for part 32 continues to read as follows:

Authority: 12 U.S.C. 1 *et seq.,* 12 U.S.C. 84, 93a, 1462a, 1463, 1464(u), 5412(b)(2)(B), and 15 U.S.C. 1639h.

■ 17. Section 32.2 is amended by revising paragraph (c) to read as follows:

§ 32.2 Definitions.

* * * * *

(c) *Capital and surplus* means—

(1) For qualifying community banking organizations that have elected to use the community bank leverage ratio framework, as set forth under the OCC's Capital Adequacy Standards set forth at 12 CFR part 3:

(i) A qualifying community banking organization's tangible equity capital, as calculated under 12 CFR 3.12(b)(2); plus

(ii) A qualifying community banking organization's allowances for loan and lease losses or allowance for credit losses, as applicable, as reported in the national bank's or Federal savings association's Call Report; or

(2) For all other national banks and Federal savings associations:

(i) A national bank's or savings association's Tier 1 and Tier 2 capital calculated under the risk-based capital standards applicable to the institution as reported in the bank's or savings association's Consolidated Reports of Condition and Income (Call Report); plus

(ii) The balance of a national bank's or Federal savings association's allowances for loan and lease losses not included in the bank's or savings association's Tier 2 capital, for purposes of the calculation of risk-based capital described in paragraph (c)(2)(i) of this section, as reported in the national bank's or savings association's Call Report.

* * * * *

PART 34—REAL ESTATE LENDING AND APPRAISALS

■ 18. The authority citation for part 34 continues to read as follows:

Authority: 12 U.S.C. 1 *et seq.,* 25b, 29, 93a, 371, 1462a, 1463, 1464, 1465, 1701j–3, 1828(o), 3331 *et seq.,* 5101 *et seq.,* and 5412(b)(2)(B) and 15 U.S.C. 1639h.

■ 19. Section 34.81 is amended by revising paragraph (a) to read as follows:

§ 34.81 Definitions.

(a) *Capital and surplus* means:

(1) For qualifying community banking organizations that have elected to use the community bank leverage ratio framework, as set forth under the OCC's Capital Adequacy Standards set forth at 12 CFR part 3:

(i) A qualifying community banking organization's tangible equity capital, as calculated under 12 CFR 3.12(b)(2); plus

(ii) A qualifying community banking organization's allowances for loan and lease losses, or allowance for credit losses, as applicable, as reported in the national bank's Call Report; or

(2) For all other national banks:

(i) A bank's tier 1 and tier 2 capital calculated under the OCC's risk-based capital standards set forth in 12 CFR part 3, as applicable, as reported in the bank's Call Report; plus

(ii) The balance of a bank's allowances for loan and lease losses, or allowance for credit losses, as applicable, not included in the bank's tier 2 capital, for purposes of the calculation of risk-based capital described in paragraph (a)(2)(i) of this section, as reported in the bank's Call Report.

* * * * *

PART 160—LENDING AND INVESTMENT

■ 20. The authority citation for part 160 continues to read as follows:

Authority: 12 U.S.C. 1462a, 1463, 1464, 1467a, 1701j-3, 1828, 3803, 3806, 5412(b)(2)(B); 42 U.S.C. 4106.

■ 21. Section 160.3 is amended by adding the definition of *total capital* in alphabetical order to read as follows:

* * * * *

Total capital means:

(1) For a qualifying community banking organization that has elected to use the community bank leverage ratio framework, as set forth under the OCC's Capital Adequacy Standards set forth at 12 CFR part 3, *total capital* refers to the qualifying community banking organization's tangible equity capital, as calculated under 12 CFR 3.12(b)(2);

(2) For all other Federal savings associations, *total capital* means the sum of tier 1 capital and tier 2 capital, as calculated under 12 CFR part 3.

PART 192—CONVERSIONS FROM MUTUAL TO STOCK FORM

■ 22. The authority citation for part 192 continues to read as follows:

Authority: 12 U.S.C. 1462a, 1463, 1464, 1467a, 2901, 5412(b)(2)(B); 15 U.S.C. 78c, 78l, 78m, 78n, 78w.

■ 23. Section 192.500 is amended by adding paragraph (a)(3)(iii) to read as follows:

§ 192.500 What management stock benefit plans may I implement?

(a) * * *

(3) * * *

(iii) For a qualifying community banking organization that has elected to use the community bank leverage ratio framework, as set forth under the OCC's Capital Adequacy Standards set forth at 12 CFR part 3, the term tangible capital, as it is used in this paragraph (a)(3), refers to the qualifying community banking organization's tangible equity capital, as calculated under 12 CFR 3.12(b)(2).

* * * * *

FEDERAL RESERVE SYSTEM

12 CFR Chapter II

Authority and Issuance

For the reasons set forth in the preamble, chapter II of title 12 of the Code of Federal Regulations is proposed to be amended as set forth below:

PART 206—LIMITATIONS ON INTERBANK LIABILITIES (REGULATION F)

■ 24. The authority citation for part 206 continues to read as follows:

Authority: 12 U.S.C. 371b–2.

■ 25. Section 206.2 is amended by revising paragraph (g) to read as follows:

§ 206.2 Definitions.

* * * * *

(g) *Total capital* means the total of a bank's Tier 1 and Tier 2 capital under the risk-based capital guidelines provided by the bank's primary federal supervisor. For a qualifying community banking organization (as defined in 12 CFR 217.12) that is subject to the community bank leverage ratio (as defined in 12 CFR 217.12), total capital means the bank's CBLR tangible equity (as defined in 12 CFR 217.12). For an insured branch of a foreign bank organized under the laws of a country that subscribes to the principles of the Basel Capital Accord, ''total capital'' means total Tier 1 and Tier 2 capital as calculated under the standards of that country. For an insured branch of a foreign bank organized under the laws of a country that does not subscribe to the principles of the Basel Capital Accord, ''total capital'' means total Tier 1 and Tier 2 capital as calculated under the provisions of the Accord.

* * * * *

■ 26. Section 206.5 is amended by adding paragraph (a)(4) to read as follows:

§ 206.5 Capital levels of correspondents.

(a) * * *

(4) Notwithstanding paragraphs (a)(1) through (3) of this section, a qualifying community banking organization (as defined in 12 CFR 217.12) that is subject to the community bank leverage ratio (as defined in 12 CFR 217.12), is adequately capitalized if it has a community bank leverage ratio of 7.5 percent or greater.

* * * * *

PART 208—MEMBERSHIP OF STATE BANKING INSTITUTIONS IN THE FEDERAL RESERVE SYSTEM (REGULATION H)

■ 27. The authority citation for part 208 is revised to read as follows:

Authority: 12 U.S.C. 24, 36, 92a, 93a, 248(a), 248(c), 321–338a, 371d, 461, 481–486, 601, 611, 1814, 1816, 1818, 1820(d)(9), 1833(j), 1828(o), 1831, 1831o, 1831p–1, 1831r–1, 1831w, 1831x, 1835a, 1882, 2901–2907, 3105, 3310, 3331–3351, 3905–3909, 5371, and 5371 note; 15 U.S.C. 78b, 78I(b), 78l(i), 780–4(c)(5), 78q, 78q–1, and 78w, 1681s, 1681w, 6801, and 6805; 31 U.S.C. 5318; 42 U.S.C. 4012a, 4104a, 4104b, 4106 and 4128.

■ 28. Section 208.2 is amended by revising paragraph (d) to read as follows:

§ 208.2 Definitions.

* * * * *

(d) *Capital stock and surplus* means, unless otherwise provided in this part, or by statute, tier 1 and tier 2 capital included in a member bank's risk-based capital (as defined in 12 CFR 217.2 of Regulation Q) and the balance of a member bank's allowances for loan and lease losses not included in its tier 2 capital for calculation of risk-based capital, based on the bank's most recent Report of Condition and Income filed under 12 U.S.C. 324. For a qualifying community banking organization (as defined in 12 CFR 217.12) that is subject to the community bank leverage ratio (as defined in 12 CFR 217.12), capital stock and surplus means the bank's CBLR tangible equity (as defined in 12 CFR 217.12) plus allowances for loan and lease losses (as defined in 12 CFR 217.2).

* * * * *

■ 29. Section 208.43 is amended by revising paragraphs (a) and (b) to read as follows:

§ 208.43 Capital measures and capital category definitions.

(a) *Capital measures.* (1) For purposes of section 38 of the FDI Act and this subpart, the relevant capital measures are:

(i) Total Risk-Based Capital Measure: The total risk-based capital ratio;

(ii) Tier 1 Risk-Based Capital Measure: The tier 1 risk-based capital ratio;

(iii) Common Equity Tier 1 Capital Measure: The common equity tier 1 risk-based capital ratio; and

(iv) Leverage Measure:

(A) The leverage ratio; and

(B) With respect to an advanced approaches bank, on January 1, 2018, and thereafter, the supplementary leverage ratio.

(C) With respect to any bank that is a subsidiary (as defined in § 217.2 of Regulation Q (12 CFR 217.2)) of a global systemically important BHC, on Jan. 1, 2018, and thereafter, the supplementary leverage ratio.

(2) For a qualifying community banking organization (as defined in 12 CFR 217.12), that is subject to the community bank leverage ratio (as defined in 12 CFR 217.12), the community bank leverage ratio is used to determine the applicable capital category under paragraphs (b)(1) through (4) of this section.

(b) Capital categories. For purposes of section 38 of the FDI Act and this subpart, a member bank is deemed to be:

(1)(i) ''Well capitalized'' if:

(A) Total Risk-Based Capital Measure: The bank has a total risk-based capital ratio of 10.0 percent or greater; and

(B) Tier 1 Risk-Based Capital Measure: The bank has a tier 1 risk-based capital ratio of 8.0 percent or greater; and

(C) Common Equity Tier 1 Capital Measure: the bank has a common equity tier 1 risk-based capital ratio of 6.5 percent or greater; and

(D) Leverage Measure:

(*1*) The bank has a leverage ratio of 5.0 percent or greater; and

(*2*) Beginning on Jan. 1, 2018, with respect to any bank that is a subsidiary of a global systemically important BHC under the definition of ''subsidiary'' in § 217.2 of Regulation Q (12 CFR 217.2), the bank has a supplementary leverage ratio of 6.0 percent or greater; and

(E) The bank is not subject to any written agreement, order, capital directive, or prompt corrective action directive issued by the Board pursuant to section 8 of the FDI Act, the International Lending Supervision Act of 1983 (12 U.S.C. 3907), or section 38 of the FDI Act, or any regulation thereunder, to meet and maintain a specific capital level for any capital measure.

(ii) A bank that is a qualifying community banking organization (as defined in 12 CFR 217.12) that has elected to use the community bank leverage ratio (as defined in 12 CFR 217.12) and that has a community bank leverage ratio greater than 9 percent, is considered to have met the capital ratio requirements for the well capitalized capital category in paragraphs (b)(1)(i)(A) through (D) of this section.

(2)(i) ''Adequately capitalized'' if:

(A) Total Risk-Based Capital Measure: The bank has a total risk-based capital ratio of 8.0 percent or greater; and

(B) Tier 1 Risk-Based Capital Measure: The bank has a tier 1 risk-based capital ratio of 6.0 percent or greater; and

(C) Common Equity Tier 1 Capital Measure: The bank has a common equity tier 1 risk-based capital ratio of 4.5 percent or greater; and

(D) Leverage Measure:

(*1*) The bank has a leverage ratio of 4.0 percent or greater; and

(*2*) With respect to an advanced approaches bank, on January 1, 2018, and thereafter, the bank has a supplementary leverage ratio of 3.0 percent or greater; and

(E) The bank does not meet the definition of a ''well capitalized'' bank.

(ii) A bank that is a qualifying community banking organization (as defined in 12 CFR 217.12) that has elected to use the community bank leverage ratio (as defined in 12 CFR 217.12) and that has a community bank leverage ratio of 7.5 percent or greater, is considered to have met the requirements for the adequately capitalized capital category in paragraphs (b)(2)(i)(A) through (D) of this section.

(3)(i) ''Undercapitalized'' if:

(A) Total Risk-Based Capital Measure: The bank has a total risk-based capital ratio of less than 8.0 percent; or

(B) Tier 1 Risk-Based Capital Measure: The bank has a tier 1 risk-based capital ratio of less than 6.0 percent; or

(C) Common Equity Tier 1 Capital Measure: The bank has a common equity tier 1 risk-based capital ratio of less than 4.5 percent; or

(D) Leverage Measure:

(*1*) The bank has a leverage ratio of less than 4.0 percent; or

(*2*) With respect to an advanced approaches bank, on January 1, 2018, and thereafter, the bank has a supplementary leverage ratio of less than 3.0 percent.

(ii) A bank that is a qualifying community banking organization (as defined in 12 CFR 217.12) that has elected to use the community bank leverage ratio (as defined in 12 CFR 217.12) and that has a community bank leverage ratio of less than 7.5 percent, is considered to have met the requirements for the undercapitalized capital category in paragraphs (b)(3)(i)(A) through (D) of this section.

(4)(i) ''Significantly undercapitalized'' if:

(A) Total Risk-Based Capital Measure: The bank has a total risk-based capital ratio of less than 6.0 percent; or

(B) Tier 1 Risk-Based Capital Measure: The bank has a tier 1 risk-based capital ratio of less than 4.0 percent; or

(C) Common Equity Tier 1 Capital Measure: The bank has a common equity tier 1 risk-based capital ratio of less than 3.0 percent; or

(D) Leverage Measure: The bank has a leverage ratio of less than 3.0 percent.

(ii) A bank that is a qualifying community banking organization (as defined in 12 CFR 217.12) that has elected to use the community bank leverage ratio (as defined in 12 CFR 217.12) and that has a community bank leverage ratio of less than 6 percent, is considered to have met the requirements for the significantly undercapitalized capital category in paragraphs (b)(4)(i)(A) through (D) of this section.

(5) ''Critically undercapitalized'' if the bank has a ratio of tangible equity, as defined in § 208.41, to total assets that is equal to or less than 2.0 percent.

* * * * *

■ 30. Section 208.73 is amended by removing paragraph (a), redesignating paragraphs (b) through (f) as paragraphs (a) through (e), respectively, and revising newly redesignated paragraph (a) to read as follows:

§ 208.73 What additional provisions are applicable to state member banks with financial subsidiaries?

(a) *Capital requirements for state member banks.* A state member bank other than a qualifying community banking organization (as defined in 12 CFR 217.12) that is subject to the community bank leverage ratio (as defined in 12 CFR 217.12) that controls or holds an interest in a financial subsidiary must comply with the rules set forth in § 217.22(a)(7) of Regulation Q (12 CFR 217.22(a)(7)) in determining its compliance with applicable regulatory capital standards (including the well capitalized standard of § 208.71(a)(1)).

* * * * *

PART 211—INTERNATIONAL BANKING OPERATIONS (REGULATION K)

■ 31. The authority citation for part 211 continues to read as follows:

Authority: 12 U.S.C. 221 *et seq.*, 1818, 1835a, 1841 *et seq.*, 3101 *et seq.*, 3901 *et seq.*, and 5101 *et seq.*; 15 U.S.C. 1681s, 1681w, 6801 and 6805.

■ 32. In part 211, remove the words ''Capital Adequacy Guidelines'' wherever they appear and add in their place the words ''capital rule''.

■ 33. Section 211.2 is amended by revising paragraphs (b), (c), and (x) to read as follows:

§ 211.2 Definitions.

* * * * *

(b) *Capital rule* means 12 CFR part 217.

(c) Capital and surplus means, unless otherwise provided in this part: (1) For organizations subject to the capital rule (other than qualifying community banking organizations (as defined in 12 CFR 217.12) that are subject to the community bank leverage ratio (as defined in 12 CFR 217.12)):

(i) Tier 1 and tier 2 capital included in an organization's risk-based capital ratios (under the capital rule); and

(ii) The balance of allowances for loan and lease losses not included in an organization's tier 2 capital for calculation of risk-based capital ratios, based on the organization's most recent consolidated Report of Condition and Income.

(2) For qualifying community banking organizations (as defined in 12 CFR 217.12) that are subject to the community bank leverage ratio (as defined in 12 CFR 217.12), CBLR tangible equity (as defined in 12 CFR 217.12) plus allowances for loan and lease losses (as defined in 12 CFR 217.2).

(3) For all other organizations, paid-in and unimpaired capital and surplus, and includes undivided profits but does not include the proceeds of capital notes or debentures.

* * * * *

(x) *Tier 1 capital* has the same meaning as provided under 12 CFR part 217, except that for a qualifying community banking organization (as defined in 12 CFR 217.12) that is subject to the community bank leverage ratio (as defined in 12 CFR 217.12), tier 1 capital means CBLR tangible equity (as defined in 12 CFR 217.12).

* * * * *

■ 34. Section 211.9 is amended by redesignating footnote 5 to paragraph (a) as footnote 1 to paragraph (a) andrevising paragraph (a)(1) to read as follows:

§ 211.9 Investment procedures.

(a) * * *

(1) *Minimum capital adequacy standards.* Except as the Board may otherwise determine, in order for an investor to make investments pursuant to the procedures set out in this section, the investor, the bank holding company, and the member bank shall be in compliance with applicable minimum standards for capital adequacy set out in the capital rule; provided that, if the investor is an Edge or agreement corporation, the minimum capital required is total and tier 1 capital ratios of 8 percent and 4 percent, respectively.

* * * * *

PART 215—LOANS TO EXECUTIVE OFFICERS, DIRECTORS, AND PRINCIPAL SHAREHOLDERS OF MEMBER BANKS (REGULATION O)

■ 35. The authority citation for part 215 continues to read as follows:

Authority: 12 U.S.C. 248(a), 375a(10), 375b(9) and (10), 1468, 1817(k), 5412; and Pub. L. 102–242, 105 Stat. 2236 (1991).

■ 36. Section 215.2 is amended by revising paragraphs (i)(1) and (i)(2) and adding paragraph (i)(3) to read as follows:

§ 215.2 Definitions.

* * * * *

(i) * * *

(1) The bank's Tier 1 and Tier 2 capital included in the bank's risk-based capital under the capital guidelines of the appropriate Federal banking agency, based on the bank's most recent consolidated report of condition filed under 12 U.S.C. 1817(a)(3); and

(2) The balance of the bank's allowances for loan and lease losses not included in the bank's Tier 2 capital for purposes of the calculation of risk-based capital by the appropriate Federal banking agency, based on the bank's most recent consolidated report of condition filed under 12 U.S.C. 1817(a)(3).

(3) Notwithstanding paragraphs (i)(1) through (2) of this section, for a member bank that is a qualifying community banking organization (as defined in 12 CFR 217.12) that is subject to the community bank leverage ratio (as defined in 12 CFR 217.12), unimpaired capital and unimpaired surplus equals CBLR tangible equity (as defined in 12 CFR 217.12) plus allowances for loan and lease losses (as defined in 12 CFR 217.2).

* * * * *

PART 217—CAPITAL ADEQUACY OF BANKING HOLDING COMPANIES, SAVINGS AND LOAN HOLDING COMPANIES, AND STATE MEMBER BANKS (REGULATION Q)

■ 37. The authority citation for part 217 is revised to read as follows:

Authority: 12 U.S.C. 248(a), 321–338a, 481–486, 1462a, 1467a, 1818, 1828, 1831n, 1831o, 1831p–l, 1831w, 1835, 1844(b), 1851, 3904, 3906–3909, 4808, 5365, 5368, 5371, and 5371 note.

■ 38. Section 217.10 is amended by revising paragraph (a) to read as follows:

§ 217.10 Minimum capital requirements.

(a) *Minimum capital requirements.* (1) A Board-regulated institution must maintain the following minimum capital ratios:

(i) A common equity tier 1 capital ratio of 4.5 percent.

(ii) A tier 1 capital ratio of 6 percent.

(iii) A total capital ratio of 8 percent.

(iv) A leverage ratio of 4 percent.

(v) For advanced approaches Board-regulated institutions, a supplementary leverage ratio of 3 percent.

(2) A qualifying community banking organization (as defined in 12 CFR 217.12), that is subject to the community bank leverage ratio (as defined in 12 CFR 217.12), is considered to have met the minimum capital requirements in this paragraph (a) only if the qualifying community banking organization has a community bank leverage ratio of at least 7.5 percent or more.

* * * * *

■ 39. Section 217.12 is added as to read as follows:

§ 217.12 Community bank leverage ratio.

(a) *Community bank leverage ratio framework.* (1) Notwithstanding any other provision in this part, a qualifying community banking organization that has made an election to use the community bank leverage ratio framework under paragraph (a)(3) of this section shall be considered to have met the minimum capital requirements under § 217.10, the capital ratio requirements for the well capitalized capital category under 12 CFR 208.43(b)(1), and any other capital or leverage requirements to which the qualifying community banking organization is subject, if it has a community bank leverage ratio greater than 9 percent.

(2) For purposes of this section, a qualifying community banking organization means a Board-regulated institution that is not an advanced approaches Board-regulated institution and that satisfies all of the following criteria:

(i) Has total consolidated assets of less than $10 billion, calculated in accordance with the reporting instructions to Schedule RC of the Call Report or Schedule HC of Form FR Y–9C, as applicable, as of the end of the most recent calendar quarter;

(ii) Has off-balance sheet exposures of 25 percent or less of its total consolidated assets as of the end of the most recent calendar quarter, calculated as the sum of the notional amounts of the exposures listed in paragraphs (a)(2)(ii)(A) through (I) of this section, divided by total consolidated assets, each as of the end of the most recent calendar quarter:

(A) The unused portion of commitments (except for unconditionally cancellable commitments);

(B) Self-liquidating, trade-related contingent items that arise from the movement of goods;

(C) Transaction-related contingent items, including performance bonds, bid bonds, warranties, and performance standby letters of credit;

(D) Sold credit protection through guarantees and credit derivatives;

(E) Credit-enhancing representations and warranties;

(F) Securities lent and borrowed, calculated in accordance with the reporting instructions to Schedule RC–L of the Call Report or Schedule HC–L of Form FR Y–9C, as applicable;

(G) Financial standby letters of credit;

(H) Forward agreements that are not derivative contracts; and

(I) Off-balance sheet securitization exposures;

(iii) Has total trading assets and trading liabilities, calculated in accordance with the reporting instructions to Schedule RC of the Call Report or Schedule HC of Form FR Y–9C, as applicable, of 5 percent or less of the Board-regulated institution's total consolidated assets, each as of the end of the most recent calendar quarter;

(iv) Has mortgage servicing assets, calculated in accordance with the reporting instructions to Schedule RC–M of the Call Report or Schedule HC–M of Form FR Y–9C, as applicable, of 25 percent or less of the Board-regulated institution's CBLR tangible equity, each as of the end of the most recent calendar quarter; and

(v) Has DTAs arising from temporary differences that the Board-regulated institution could not realize through net operating loss carrybacks, net of any related valuation allowances, of 25 percent or less of the Board-regulated institution's CBLR tangible equity, each as of the end of the most recent calendar quarter.

(3)(i) A qualifying community banking organization may elect to use the community bank leverage ratio framework if it makes an opt-in election under this paragraph (a)(3).

(ii) A qualifying community banking organization may elect to use the community bank leverage ratio framework only if it has a community bank leverage ratio that exceeds 9 percent at the time of the election.

(iii) For purposes of this paragraph (a)(3), a qualifying community banking organization makes an election to use the community bank leverage ratio framework by completing the community bank leverage ratio reporting schedule in its Call Report or Form FR Y–9C, as applicable.

(iv)(A) A qualifying community banking organization that has elected to use the community bank leverage ratio may opt out of using the community bank leverage ratio by completing Schedule RC–R in its Call Report or Schedule HC–R of Form FR Y–9C, as applicable, or by otherwise providing the information required in Schedule RC–R or Schedule HC–R, as applicable, to the Board.

(B) A qualifying community banking organization that opts out of using the community bank leverage ratio pursuant to paragraph (a)(3)(iv)(A) of this section must comply with § 217.10 immediately.

(b) *Calculation of the community bank leverage ratio.* (1) A qualifying community banking organization's community bank leverage ratio is the ratio of the banking organization's CBLR tangible equity, as defined in paragraph (b)(2) of this section, to its average total consolidated assets, as defined in paragraph (b)(3) of this section.

(2) CBLR tangible equity means total bank equity capital, calculated in accordance with the reporting instructions to Schedule RC of the Call Report or Schedule HC of Form FR Y–9C, as applicable, before the inclusion of noncontrolling (minority) interests in consolidated subsidiaries, as of the end of the most recent calendar quarter less the following (each as of the end of the most recent calendar quarter):

(i) Accumulated other comprehensive income calculated in accordance with the reporting instructions to Schedule RC of the Call Report or Schedule HC of Form FR Y–9C, as applicable;

(ii) Intangible Assets, calculated in accordance with the reporting instructions to Schedule RC of the Call Report or Schedule HC of Form FR Y–9C, as applicable, other than mortgage servicing assets; and

(iii) Deferred tax assets (DTAs) that arise from net operating loss and tax credit carryforwards net of any related valuation allowances.

(3) Average total consolidated assets means total assets calculated in accordance with the reporting instructions to Schedule RC–K of the Call Report or Schedule HC–K of Form FR Y–9C, as applicable, as of the end of the most recent calendar quarter less the amounts deducted from CBLR tangible equity under paragraphs (b)(2)(ii) and (iii) of this section.

(c) *Treatment when ceasing to be a qualifying community banking organization requirements.* (1) Except as

provided in paragraph (c)(4) of this section, if an Board-regulated institution ceases to meet the definition of a qualifying community banking organization, the Board-regulated institution has two reporting periods (grace period) to either satisfy the requirements to be a qualifying community banking organization or to comply with§ 217.10and report the required capital measures under § 217.10 on its Call Report or Form FR Y–9C, as applicable.

(2) The grace period begins as of the end of the calendar quarter in which the Board-regulated institution ceases to satisfy the criteria to be a qualifying community banking organization provided in paragraph (a)(2) of this section. The grace period ends on the last day of the second consecutive calendar quarter following the beginning of the grace period.

(3) During the grace period, the Board-regulated institution continues to be a qualifying community banking organization for purposes of this part and must continue calculating and reporting its community bank leverage ratio unless the Board-regulated institution has opted out of using the community bank leverage ratio under paragraph (a)(3).

(4) Notwithstanding paragraphs (c)(1) through (3), an Board-regulated institution that no longer meets the definition of a qualifying community banking organization as a result of a merger or acquisition has no grace period and immediately ceases to be a qualifying community banking organization. Such an Board-regulated institution comply with § 217.10 and must report the required capital measures under § 217.10 on its next Call Report or Form FR Y–9C.

(d) *Tangible equity information.* (1) A qualifying community banking organization that has elected to use the community bank leverage ratio under this section and has a community bank leverage ratio that falls below 6 percent, must promptly provide to the Board the information necessary for the calculation of its tangible equity, as defined under section 12 CFR 208.41, for purposes of determining the capital category of the banking organization under 12 CFR 208.43.

(2) Notwithstanding paragraph (d)(1) of this section, upon request by the Board, a qualifying community banking organization must provide the information necessary for the calculation of its tangible equity, as defined under 12 CFR 208.41, to the Board.

* * * * *

PART 223—TRANSACTIONS BETWEEN MEMBER BANKS AND THEIR AFFILIATES (REGULATION W)

■ 40. The authority citation for part 223 continues to read as follows:

Authority: 12 U.S.C. 371c(b)(1)(E), (b)(2)(A), and (f), 371c–1(e), 1828(j), 1468(a), and section 312(b)(2)(A) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (12 U.S.C. 5412).

■ 41. Section 223.3 is amended by adding paragraph (d)(4) to read as follows:

§ 223.3 What are the meanings of the other terms used in sections 23A and 23B and this part?

* * * * *

(d) * * *

(4) Notwithstanding paragraphs (d)(1) through (3) of this section, for a qualifying community banking organization (as defined in 12 CFR 217.12) that is subject to the community bank leverage ratio (as defined in 12 CFR 217.12), capital stock and surplus equals CBLR tangible equity (as defined in 12 CFR 217.12) plus allowances for loan and lease losses (as defined in 12 CFR 217.2).

* * * * *

PART 225—BANK HOLDING COMPANIES AND CHANGE IN BANK CONTROL (REGULATION Y)

■ 42. The authority citation for part 225 continues to read as follows:

Authority: 12 U.S.C. 1817(j)(13), 1818, 1828(o), 1831i, 1831p–1, 1843(c)(8), 1844(b), 1972(1), 3106, 3108, 3310, 3331–3351, 3906, 3907, and 3909; 15 U.S.C. 1681s, 1681w, 6801 and 6805.

■ 43. Section 225.2 is amended by by revising paragraph (h), redesignating footnote 2 to paragraph (r)(1) as footnote 1 to paragraph (r)(1), and adding paragraph (r)(4) to read as follows:

§ 225.2 Definitions.

* * * * *

(h) *Lead insured depository institution* means the largest insured depository institution controlled by the bank holding company as of the quarter ending immediately prior to the proposed filing, based on a comparison of the average total risk-weighted assets controlled during the previous 12-month period be each insured depository institution subsidiary of the holding company. For purposes of this paragraph, for a qualifying community banking organization (as defined in 12 CFR 217.12) that is subject to the community bank leverage ratio (as defined in 12 CFR 217.12), average total risk-weighted assets equal the qualifying community banking organization's average total consolidated assets (as defined in 12 CFR 217.12).

* * * * *

(r) * * *

(4) Notwithstanding paragraphs (r)(1) through (3) of this section:

(i) A bank holding company that is a qualifying community banking organization (as defined in 12 CFR 217.12) that is subject to the community bank leverage ratio (as defined in 12 CFR 217.12), is well capitalized if:

(A) It has a community bank leverage ratio greater than 9.0 percent; and

(B) It satisfies the requirements of paragraph (r)(1)(iii) of this section.

(ii) A depository institution that is a qualifying community banking organization (as defined in 12 CFR 217.12) that is subject to the community bank leverage ratio (as defined in 12 CFR 217.12) is well capitalized if it has a community bank leverage ratio greater than 9.0 percent.

* * * * *

■ 44. Section 225.14 is amended by:

■ a. Redesignating footnote 3 to paragraph (a)(1)(ii) as footnote 1 to paragraph (a)(1)(ii);

■ b. Revising paragraphs (a)(1)(v)(A) and (vii), and . (c)(6)(i); and

■ c. Adding paragraphs (c)(6)(iii; and (f).

The revisions and additions read as follows:

§ 225.14 Expedited action for certain bank acquisitions by well-run bank holding companies.

(a) * * *

(1) * * *

(v) (A) If the bank holding company is not a qualifying community banking organization (as defined in 12 CFR 217.12) that is subject to the community bank leverage ratio (as defined in 12 CFR 217.12), and:

(*1*) If the bank holding company has consolidated assets of $3 billion or more, an abbreviated consolidated *pro forma* balance sheet as of the most recent quarter showing credit and debit adjustments that reflect the proposed transaction, consolidated *pro forma* risk-based capital ratios for the acquiring bank holding company as of the most recent quarter, and a description of the purchase price and the terms and sources of funding for the transaction; or

(*2*) If the bank holding company has consolidated assets of less than $3 billion, a *pro forma* parent-only balance sheet as of the most recent quarter showing credit and debit adjustments that reflect the proposed transaction, and a description of the purchase price, the terms and sources of funding for the transaction, and the sources and schedule for retiring any debt incurred in the transaction;

(B) If the bank holding company is a qualifying community banking organization (as defined in 12 CFR 217.12) that is subject to the community bank leverage ratio (as defined in 12 CFR 217.12), an abbreviated consolidated *pro forma* balance sheet as of the most recent quarter showing credit and debit adjustments that reflect the proposed transaction, consolidated *pro forma* community bank leverage ratio for the acquiring bank holding company as of the most recent quarter, and a description of the purchase price and the terms and sources of funding for the transaction;

* * * * *

(vii)(A) For each insured depository institution (that is not a qualifying community banking organization (as defined in 12 CFR 217.12) that is subject to the community bank leverage ratio (as defined in 12 CFR 217.12)) whose Tier 1 capital, total capital, total assets or risk-weighted assets change as a result of the transaction, the total risk-weighted assets, total assets, Tier 1 capital and total capital of the institution on a *pro forma* basis; and

(B) For each insured depository institution that is a qualifying community banking organization (as defined in 12 CFR 217.12) that is subject to the community bank leverage ratio (as defined in 12 CFR 217.12), whose CBLR tangible equity (as defined in 12 CFR 217.12) or total assets change as a result of the transaction, the total assets, and CBLR tangible equity of the institution on a *pro forma* basis; and

* * * * *

(c) * * *

(6) * * *

(i) * * *

(A) *Limited Growth.* Except as provided in paragraphs (c)(6)(ii) and (iii) of this section, the sum of the aggregate risk-weighted assets to be acquired in the proposal and the aggregate risk-weighted assets acquired by the acquiring bank holding company in all other qualifying transactions does not exceed 35 percent of the consolidated risk-weighted assets of the acquiring bank holding company. For purposes of this paragraph *other qualifying transactions* means any transaction approved under this section or § 225.23 during the 12 months prior to filing the notice under this section; and

(B) *Individual size limitation.* Except as provided in paragraph (c)(6)(iii) of this section, the total risk-weighted assets to be acquired do not exceed $7.5 billion;

* * * * *

(iii) *Qualifying community banking organizations.* Paragraphs (c)(6)(i)(A) and (B) of this section shall not apply if:

(A) The acquiring bank holding company is a qualifying community banking organization (as defined in 12 CFR 217.12) that is subject to the community bank leverage ratio (as defined in 12 CFR 217.12);

(B) The sum of the total assets to be acquired in the proposal and the total assets acquired by the acquiring bank holding company in all other qualifying transactions does not exceed 35 percent of the average total consolidated assets (as defined in 12 CFR 217.12) of the acquiring bank holding company as last reported to the Board. For purposes of this paragraph *other qualifying transactions* means any transaction approved under this section or § 225.23 during the 12 months prior to filing the notice under this section; and

(C) The total assets to be acquired do not exceed $7.5 billion;

* * * * *

(f) *Qualifying community banking organizations.* For purposes of this section, a qualifying community banking organization (as defined in 12 CFR 217.12) that is subject to the community bank leverage ratio (as defined in 12 CFR 217.12) controls total risk-weighted assets equal to the qualifying community banking organization's average total consolidated assets (as defined in 12 CFR 217.12) as last reported to its primary banking supervisor.

■ 45. Section 225.22 is amended by adding paragraph (d)(8)(vi) to read as follows:

§ 225.22 Exempt nonbanking activities and acquisitions.

* * * * *

(d) * * *

(8) * * *

(vi) *Qualifying community banking organizations.* For purposes of paragraph (d)(8)(ii) of this section, a lending company or industrial bank that is a qualifying community banking organization (as defined in 12 CFR 217.12) that is subject to the community bank leverage ratio (as defined in 12 CFR 217.12), or is a subsidiary of such a qualifying community banking organization, has risk-weighted assets equal to:

(A) Its average total consolidated assets (as defined in 12 CFR 217.12) as most recently reported to its primary banking supervisor (as defined in § 225.14(d)(5)); or

(B) Its total assets, if the company or industrial bank does not report such average total consolidated assets.

* * * * *

■ 46. Section 225.23 is amended by:

■ a .Redesignating footnote 2 to paragraph (a)(1) as footnote 1 to paragraph (a)(1);

■ b. Revising paragraphs (a)(1)(iii) and (c)(5)(i); and

■ c. Adding paragraphs (c)(5)(iii) and (e).

The revisions and additions read as follows:

§ 225.23 Expedited action for certain nonbanking proposals by well-run bank holding companies.

(a) * * *

(1) * * *

(iii) If the proposal involves an acquisition of a going concern:

(A) If the acquiring bank holding company is not a qualifying community banking organization (as defined in 12 CFR 217.12) that is subject to the community bank leverage ratio (as defined in 12 CFR 217.12):

(*1*) If the bank holding company has consolidated assets of $3 billion or more, an abbreviated consolidated pro forma balance sheet for the acquiring bank holding company as of the most recent quarter showing credit and debit adjustments that reflect the proposed transaction, consolidated pro forma risk-based capital ratios for the acquiring bank holding company as of the most recent quarter, a description of the purchase price and the terms and sources of funding for the transaction, and the total revenue and net income of the company to be acquired; or

(*2*) If the bank holding company has consolidated assets of less than $3 billion, a pro forma parent-only balance sheet as of the most recent quarter showing credit and debit adjustments that reflect the proposed transaction, a description of the purchase price and the terms and sources of funding for the transaction and the sources and schedule for retiring any debt incurred in the transaction, and the total assets, off-balance sheet items, revenue and net income of the company to be acquired;

(B) If the acquiring bank holding company is a qualifying community banking organization (as defined in 12 CFR 217.12) that is subject to the community bank leverage ratio (as defined in 12 CFR 217.12), an abbreviated consolidated pro forma balance sheet for the acquiring bank holding company as of the most recent quarter showing credit and debit adjustments that reflect the proposed transaction, consolidated pro forma community bank leverage ratio for the acquiring bank holding company as of the most recent quarter, a description of the purchase price and the terms and sources of funding for the transaction,

and the total revenue and net income of the company to be acquired;

(C) For each insured depository institution (that is not a qualifying community banking organization (as defined in 12 CFR 217.12) that is subject to the community bank leverage ratio (as defined in 12 CFR 217.12)) whose Tier 1 capital, total capital, total assets or risk-weighted assets change as a result of the transaction, the total risk-weighted assets, total assets, Tier 1 capital and total capital of the institution on a *pro forma* basis; and

(D) For each insured depository institution that is a qualifying community banking organization (as defined in 12 CFR 217.12) that is subject to the community bank leverage ratio (as defined in 12 CFR 217.12), whose CBLR tangible equity (as defined in 12 CFR 217.12) or total assets change as a result of the transaction, the total assets and CBLR tangible equity of the institution on a *pro forma* basis;

* * * * *

(c) * * *

(5) * * *

(i) *In general—*

(A) *Limited growth.* Except as provided in paragraphs (c)(5)(ii) and (iii) of this section, the sum of aggregate risk-weighted assets to be acquired in the proposal and the aggregate risk-weighted assets acquired by the acquiring bank holding company in all other qualifying transactions does not exceed 35 percent of the consolidated risk-weighted assets of the acquiring bank holding company. For purposes of this paragraph, ''other qualifying transactions'' means any transaction approved under this section or § 225.14 during the 12 months prior to filing the notice under this section;

(B) *Consideration paid.* Except as provided in paragraph (c)(5)(iii) of this section, the gross consideration to be paid by the acquiring bank holding company in the proposal does not exceed 15 percent of the consolidated Tier 1 capital of the acquiring bank holding company; and

(C) *Individual size limitation.* Except as provided in paragraph (c)(5)(iii) of this section, the total risk-weighted assets to be acquired do not exceed $7.5 billion;

* * * * *

(iii) *Qualifying community banking organizations.* Paragraphs (c)(5)(i)(A), (B), and (C) of this section shall not apply if:

(A) The acquiring bank holding company is a qualifying community banking organization (as defined in 12 CFR 217.12) that is subject to the community bank leverage ratio (as defined in 12 CFR 217.12); and

(B) The sum of the total assets to be acquired in the proposal and the total assets acquired by the acquiring bank holding company in all other qualifying transactions does not exceed 35 percent of the average total consolidated assets (as defined in 12 CFR 217.12) of the acquiring bank holding company as last reported to the Board. For purposes of this paragraph ''other qualifying transactions'' means any transaction approved under this section or § 225.14 during the 12 months prior to filing the notice under this section;

(C) The gross consideration to be paid by the acquiring bank holding company in the proposal does not exceed 15 percent of the CBLR tangible equity (as defined in 12 CFR 217.12) of the acquiring bank holding company; and

(D) The total assets to be acquired do not exceed $7.5 billion;

* * * * *

(e) *Qualifying community banking organizations.* For purposes of this section, a qualifying community banking organization (as defined in 12 CFR 217.12) that is subject to the community bank leverage ratio (as defined in 12 CFR 217.12) controls total risk-weighted assets equal to the qualifying community banking organization's average total consolidated assets (as defined in 12 CFR 217.12) as last reported to its primary banking supervisor.

■ 47. Section 225.24 is amended byrevising paragraphs (a)(2)(iv)(B) and (a)(2)(vi) to read as follows:

§ 225.24 Procedures for other nonbanking proposals.

(a) * * *

(2) * * *

(iv) * * *

(B) Consolidated *pro forma* risk-based capital and leverage ratio calculations for the acquiring bank holding company as of the most recent quarter (or, in the case of a qualifying community banking organization (as defined in 12 CFR 217.12) that is subject to the community bank leverage ratio (as defined in 12 CFR 217.12), consolidated *pro forma* community bank leverage ratio calculations for the acquiring bank holding company as of the most recent quarter); and

* * * * *

(vi) (A) For each insured depository institution (that is not a qualifying community banking organization (as defined in 12 CFR 217.12) that is subject to the community bank leverage ratio (as defined in 12 CFR 217.12)) whose Tier 1 capital, total capital, total assets or risk-weighted assets change as a result of the transaction, the total risk-weighted assets, total assets, Tier 1 capital and total capital of the institution on a *pro forma* basis; and

(B) For each insured depository institution that is a qualifying community banking organization (as defined in 12 CFR 217.12) that is subject to the community bank leverage ratio (as defined in 12 CFR 217.12), whose CBLR tangible equity (as defined in 12 CFR 217.12) or total assets change as a result of the transaction, the total assets and CBLR tangible equity of the institution on a *pro forma* basis;

* * * * *

■ 48. Section 225.87 is amended by adding paragraph (b)(4)(iv) to read as follows:

§ 225.87 Is notice to the Board required after engaging in a financial activity?

* * * * *

(b) * * *

(4) * * *

(iv) For purposes of paragraph (b)(4) of this section, a financial holding company that is a qualifying community banking organization (as defined in 12 CFR 217.12) that is subject to the community bank leverage ratio (as defined in 12 CFR 217.12) has Tier 1 capital equal to its CBLR tangible equity (as defined in 12 CFR 217.12).

■ 49. Section 225.174 is amended by adding paragraph (d) to read as follows:

§ 225.174 What aggregate thresholds apply to merchant banking investments?

* * * * *

(d) *Qualifying community banking organizations.* For purposes of this section, a financial holding company that is a qualifying community banking organization (as defined in 12 CFR 217.12) that is subject to the community bank leverage ratio (as defined in 12 CFR 217.12) has Tier 1 capital equal to its CBLR tangible equity (as defined in 12 CFR 217.12).

■ 50. Section 225.175 is amended by adding paragraph (c)(3) to read as follows:

§ 225.175 What risk management, record keeping and reporting policies are required to make merchant banking investments?

* * * * *

(c) * * *

(3) *Qualifying community banking organizations.* For purposes of this paragraph (c), a financial holding company that is a qualifying community banking organization (as defined in 12 CFR 217.12) that is subject to the community bank leverage ratio (as defined in 12 CFR 217.12) has Tier 1 capital equal to its CBLR tangible equity (as defined in 12 CFR 217.12).

PART 238—SAVINGS AND LOAN HOLDING COMPANIES (REGULATION LL)

■ 51. The authority citation for part 238 continues to read as follows:

Authority: 5 U.S.C. 552, 559; 12 U.S.C. 1462, 1462a, 1463, 1464, 1467, 1467a, 1468, 1813, 1817, 1829e, 1831i, 1972; 15 U.S.C. 78*l*.

■ 52. Section 238.53 is amended by revising paragraphs (c)(2)(iii)(B) and (v) to read as follows:

§ 238.53 Prescribed services and activities of savings and loan holding companies.

* * * * *

(c) * * *

(2) * * *

(iii) * * *

(B) Consolidated pro forma risk-based capital and leverage ratio calculations for the acquiring savings and loan holding company as of the most recent quarter (or, in the case of a qualifying community banking organization (as defined in 12 CFR 217.12) that is subject to the community bank leverage ratio (as defined in 12 CFR 217.12), consolidated pro forma community bank leverage ratio calculations for the acquiring savings and loan holding company as of the most recent quarter); and

* * * * *

(v) (A) For each insured depository institution (that is not a qualifying community banking organization (as defined in 12 CFR 217.12) that is subject to the community bank leverage ratio (as defined in 12 CFR 217.12)) whose Tier 1 capital, total capital, total assets or risk-weighted assets change as a result of the transaction, the total risk-weighted assets, total assets, Tier 1 capital and total capital of the institution on a pro forma basis; and

(B) For each insured depository institution that is a qualifying community banking organization (as defined in 12 CFR 217.12) that is subject to the community bank leverage ratio (as defined in 12 CFR 217.12), whose CBLR tangible equity (as defined in 12 CFR 217.12) or total assets change as a result of the transaction, the total assets and CBLR tangible equity of the institution on a pro forma basis;

* * * * *

PART 251—CONCENTRATION LIMIT (REGULATION XX)

■ 53. The authority citation for part 251 continues to read as follows:

Authority: 12 U.S.C. 1818, 1844(b), 1852, 3101 *et seq.*

■ 54. Section 251.3 is amended by revising paragraph (c)(2) and adding paragraph (c)(3) to read as follows:

§ 251.3 Concentration limit.

* * * * *

(c) * * *

(2) *U.S. company not subject to applicable risk-based capital rules.* For a U.S. company that is not subject to applicable risk-based capital rules (other than a qualifying community banking organization (as defined in 12 CFR 217.12) that is subject to the community bank leverage ratio (as defined in 12 CFR 217.12)), consolidated liabilities are equal to the total liabilities of such company on a consolidated basis, as determined under applicable accounting standards.

(3) *Qualifying community banking organizations.* For a U.S. company that is a qualifying community banking organization (as defined in 12 CFR 217.12) that is subject to the community bank leverage ratio (as defined in 12 CFR 217.12), consolidated liabilities are equal to:

(i) Average total consolidated assets (as defined in 12 CFR 217.12) of the company as last reported on the qualifying community banking organization's applicable regulatory filing with the qualifying community banking organization's appropriate Federal banking agency; minus

(ii) The company's CBLR tangible equity (as defined in 12 CFR 217.12).

* * * * *

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Chapter III

Authority and Issuance

For the reasons stated in the preamble, the Federal Deposit Insurance Corporation proposes to amend chapter III of Title 12, Code of Federal Regulations as follows:

PART 303—Filing Procedures

■ 55. The authority citation for part 303 continues to read as follows:

Authority: 12 U.S.C. 378, 1464, 1813, 1815, 1817, 1818, 1819(a) (Seventh and Tenth), 1820, 1823, 1828, 1831a, 1831e, 1831o, 1831p–1, 1831w, 1835a, 1843(l), 3104, 3105, 3108, 3207, 5414; 15 U.S.C. 1601–1607.

■ 56. Section 303.2 is amended by revising paragraph (ee) to read as follows:

§ 303.2 Definitions.

* * * * *

(ee) Tier 1 capital shall have the same meaning as provided in § 324.2 of this chapter. For a qualifying community banking organization (as defined in 12 CFR 324.12) that is subject to the community bank leverage ratio (as defined in 12 CFR 324.12), Tier 1 capital means the FDIC-supervised institution's CBLR tangible equity (as defined in 12 CFR 324.12).

* * * * *

PART 324—Capital Adequacy of FDIC-Supervised Institutions

■ 57. The authority citation for part 324 continues to read as follows:

Authority: 12 U.S.C. 1815(a), 1815(b), 1816, 1818(a), 1818(b), 1818(c), 1818(t), 1819(Tenth), 1828(c), 1828(d), 1828(i), 1828(n), 1828(o), 1831o, 1835, 3907, 3909, 4808; 5371; 5412; Pub.L. 102–233, 105 Stat. 1761, 1789, 1790 (12 U.S.C. 1831n note); Pub.L. 102–242, 105 Stat. 2236, 2355, as amended by Pub.L. 103–325, 108 Stat. 2160, 2233 (12 U.S.C. 1828 note); Pub.L. 102–242, 105 Stat. 2236, 2386, as amended by Pub.L. 102–550, 106 Stat. 3672, 4089 (12 U.S.C. 1828 note); Pub.L. 111–203, 124 Stat. 1376, 1887 (15 U.S.C. 78o–7 note); Pub. L. 115–174 § 201.

■ 58. Section 324.10 is amended by revising paragraph (a) to read as follows:

§ 324.10 Minimum capital requirements.

(a) *Minimum capital requirements.* (1) An FDIC-supervised institution must maintain the following minimum capital ratios:

(i) A common equity tier 1 capital ratio of 4.5 percent.

(ii) A tier 1 capital ratio of 6 percent.

(iii) A total capital ratio of 8 percent.

(iv) A leverage ratio of 4 percent.

(v) For advanced approaches FDIC-supervised institutions, a supplementary leverage ratio of 3 percent.

(vi) For state savings associations, a tangible capital ratio of 1.5 percent.

(2) A qualifying community banking organization (as defined in 12 CFR 324.12), that is subject to the community bank leverage ratio (as defined in 12 CFR 324.12), is considered to have met the minimum capital requirements in this paragraph (a) only if the qualifying community banking organization has a community bank leverage ratio of at least 7.5 percent or more.

* * * * *

■ 59. Section 324.12 is added to read as follows:

§ 324.12 Community bank leverage ratio.

(a) *Community bank leverage ratio framework.* (1) Notwithstanding any other provision in this part, a qualifying community banking organization that has made an election to use the community bank leverage ratio framework under paragraph (a)(3) of this section shall be considered to have met the minimum capital requirements under § 324.10, the capital ratio requirements for the well capitalized

capital category under § 324.403(b)(1)(i)(A) through (D) of this part, and any other capital or leverage requirements to which the qualifying community banking organization is subject, if it has a community bank leverage ratio greater than 9 percent.

(2) For purposes of this section, a qualifying community banking organization means an FDIC-supervised institution that is not an advanced approaches FDIC-supervised institution and that satisfies all of the following criteria:

(i) Has total consolidated assets of less than $10 billion, calculated in accordance with the reporting instructions to Schedule RC of the Call Report as of the end of the most recent calendar quarter;

(ii) Has off-balance sheet exposures of 25 percent or less of its total consolidated assets as of the end of the most recent calendar quarter, calculated as the sum of the notional amounts of the exposures listed in paragraphs (a)(2)(ii)(A) through (I), divided by total consolidated assets, each as of the end of the most recent calendar quarter:

(A) The unused portion of commitments (except for unconditionally cancellable commitments);

(B) Self-liquidating, trade-related contingent items that arise from the movement of goods;

(C) Transaction-related contingent items, including performance bonds, bid bonds, warranties, and performance standby letters of credit;

(D) Sold credit protection through guarantees and credit derivatives;

(E) Credit-enhancing representations and warranties;

(F) Securities lent and borrowed, calculated in accordance with the reporting instructions to Schedule RC–L of the Call Report;

(G) Financial standby letters of credit;

(H) Forward agreements that are not derivative contracts; and

(I) Off-balance sheet securitization exposures;

(iii) Has total trading assets and trading liabilities, calculated in accordance with the reporting instructions to Schedule RC of the Call Report of 5 percent or less of the FDIC-supervised institution's total consolidated assets, each as of the end of the most recent calendar quarter;

(iv) Has mortgage servicing assets, calculated in accordance with the reporting instructions to Schedule RC–M of the Call Report, of 25 percent or less of the FDIC-supervised institution's CBLR tangible equity, each as of the end of the most recent calendar quarter; and

(v) Has DTAs arising from temporary differences that the FDIC-supervised institution could not realize through net operating loss carrybacks, net of any related valuation allowances, of 25 percent or less of the FDIC-supervised institution's CBLR tangible equity, each as of the end of the most recent calendar quarter.

(3)(i) A qualifying community banking organization may elect to use the community bank leverage ratio framework if it makes an opt-in election under this paragraph (a)(3).

(ii) A qualifying community banking organization may elect to use the community bank leverage ratio framework only if it has a community bank leverage ratio that exceeds 9 percent at the time of the election.

(iii) For purposes of this paragraph (a)(3), a qualifying community banking organization makes an election to use the community bank leverage ratio framework by completing the community bank leverage ratio reporting schedule in its Call Report.

(iv)(A) A qualifying community banking organization that has elected to use the community bank leverage ratio may opt out of using the community bank leverage ratio by completing Schedule RC–R in its Call Report or by otherwise providing the information required in Schedule RC–R to the FDIC.

(B) A qualifying community banking organization that opts out of using the community bank leverage ratio pursuant to paragraph (a)(3)(iv)(A) of this section must comply with § 324.10 immediately.

(b) *Calculation of the community bank leverage ratio.* (1) A qualifying community banking organization's community bank leverage ratio is the ratio of the banking organization's CBLR tangible equity, as defined in paragraph (b)(2) of this section, to its average total consolidated assets, as defined in paragraph (b)(3) of this section.

(2) CBLR tangible equity means total bank equity capital, calculated in accordance with the reporting instructions to Schedule RC of the Call Report, before the inclusion of noncontrolling (minority) interests in consolidated subsidiaries, as of the end of the most recent calendar quarter less the following (each as of the end of the most recent calendar quarter):

(i) Accumulated other comprehensive income calculated in accordance with the reporting instructions to Schedule RC of the Call Report;

(ii) Intangible Assets, calculated in accordance with the reporting instructions to Schedule RC of the Call Report, other than mortgage servicing assets;

(iii) Deferred tax assets (DTAs) that arise from net operating loss and tax credit carryforwards net of any related valuation allowances; and

(iv) Identified losses. A qualifying community banking organization must deduct identified losses (to the extent that CBLR tangible equity would have been reduced if the appropriate accounting entries to reflect the identified losses had been recorded on the banking organization's books).

(3) Average total consolidated assets means total assets calculated in accordance with the reporting instructions to Schedule RC–K of the Call Report as of the end of the most recent calendar quarter less the amounts deducted from CBLR tangible equity under paragraphs (b)(2)(ii) through (iv) of this section.

(c) *Treatment when ceasing to be a qualifying community banking organization requirements.* (1) Except as provided in paragraph (c)(4) of this section, if an FDIC-supervised institution ceases to meet the definition of a qualifying community banking organization, the FDIC-supervised institution has two reporting periods (grace period) to either satisfy the requirements to be a qualifying community banking organization or to comply with § 324.10 and report the required capital measures under § 324.10 on its Call Report.

(2) The grace period begins as of the end of the calendar quarter in which the FDIC-supervised institution ceases to satisfy the criteria to be a qualifying community banking organization provided in paragraph (a)(2) of this section. The grace period ends on the last day of the second consecutive calendar quarter following the beginning of the grace period.

(3) During the grace period, the FDIC-supervised institution continues to be a qualifying community banking organization for purposes of this part and must continue calculating and reporting its community bank leverage ratio unless the FDIC-supervised institution has opted out of using the community bank leverage ratio under paragraph (a)(3).

(4) Notwithstanding paragraphs (c)(1) through (3), an FDIC-supervised institution that no longer meets the definition of a qualifying community banking organization as a result of a merger or acquisition has no grace period and immediately ceases to be a qualifying community banking organization. Such an FDIC-supervised institution comply with § 324.10 and must report the required capital measures under § 324.10 on its next Call Report.

(d) *Tangible equity information.* (1) A qualifying community banking organization that has elected to use the community bank leverage ratio under this section and has a community bank leverage ratio that falls below 6 percent, must promptly provide to the FDIC the information necessary for the calculation of its tangible equity, as defined under § 324.2, for purposes of determining the capital category of the banking organization under subpart H of this part.

(2) Notwithstanding paragraph (d)(1), upon request by the FDIC, a qualifying community banking organization must provide the information necessary for the calculation of its tangible equity, as defined under § 324.2, to the FDIC.

■ 60. Section 324.403is amended by revising paragraphs (a) and (b) to read as follows:

§ 324.403 Capital measures and capital category definitions.

(a) *Capital measures.* (1) For purposes of section 38 of the FDI Act and this subpart H, the relevant capital measures shall be:

(i) The total risk-based capital ratio;

(ii) The Tier 1 risk-based capital ratio;

(iii) The common equity tier 1 ratio;

(iv) The leverage ratio;

(v) The tangible equity to total assets ratio; and

(vi) Beginning January 1, 2018, the supplementary leverage ratio calculated in accordance with § 324.11 for advanced approaches FDIC–supervised institutions that are subject to subpart E of this part.

(2) For a qualifying community banking organization (as defined under § 324.12), that is subject to the community bank leverage ratio (as defined under § 324.12), the community bank leverage ratio (as defined under § 324.12), is used to determine the applicable capital category under paragraphs (b)(1) through (4) of this section.

(b) *Capital categories.* For purposes of section 38 of the FDI Act and this subpart, an FDIC–supervised institution shall be deemed to be:

(1) (i) ''Well capitalized'' if it:

(A) Has a total risk-based capital ratio of 10.0 percent or greater; and

(B) Has a Tier 1 risk-based capital ratio of 8.0 percent or greater; and

(C) Has a common equity tier 1 capital ratio of 6.5 percent or greater; and

(D) Has a leverage ratio of 5.0 percent or greater; and

(E) Is not subject to any written agreement, order, capital directive, or prompt corrective action directive issued by the FDIC pursuant to section 8 of the FDI Act (12 U.S.C. 1818), the International Lending Supervision Act of 1983 (12 U.S.C. 3907), or the Home Owners' Loan Act (12 U.S.C. 1464(t)(6)(A)(ii)), or section 38 of the FDI Act (12 U.S.C. 1831o), or any regulation thereunder, to meet and maintain a specific capital level for any capital measure.

(ii) Beginning on January 1, 2018 and thereafter, an FDIC–supervised institution that is a subsidiary of a covered BHC will be deemed to be well capitalized if the FDIC–supervised institution satisfies paragraphs (b)(1)(i)(A) through (E) of this section and has a supplementary leverage ratio of 6.0 percent or greater. For purposes of this paragraph, a covered BHC means a U.S. top-tier bank holding company with more than $700 billion in total assets as reported on the company's most recent Consolidated Financial Statement for Bank Holding Companies (Form FR Y–9C) or more than $10 trillion in assets under custody as reported on the company's most recent Banking Organization Systemic Risk Report (Form FR Y–15).

(iii) A qualifying community banking organization, as defined under § 324.12, that has elected to use the community bank leverage ratio framework under § 324.12 and that has a community bank leverage ratio, as defined under § 324.12, greater than 9 percent, shall be considered to have met the capital ratio requirements for the well capitalized capital category in paragraphs (b)(1)(i)(A) through (D) of this section.

(2)(i) ''Adequately capitalized'' if it:

(A) Has a total risk-based capital ratio of 8.0 percent or greater; and

(B) Has a Tier 1 risk-based capital ratio of 6.0 percent or greater; and

(C) Has a common equity tier 1 capital ratio of 4.5 percent or greater; and

(D) Has a leverage ratio of 4.0 percent or greater; and

(E) Does not meet the definition of a well capitalized bank.

(ii) Beginning January 1, 2018, an advanced approaches FDIC–supervised institution will be deemed to be ''adequately capitalized'' if it satisfies paragraphs (b)(2)(i)(A) through (E) of this section and has a supplementary leverage ratio of 3.0 percent or greater, as calculated in accordance with § 324.11 of subpart B of this part.

(iii) A qualifying community banking organization, as defined under § 324.12, that has elected to use the community bank leverage ratio framework under section § 324.12 and that has a community bank leverage ratio, as defined under § 324.12, of 7.5 percent or greater, shall be considered to have met the requirements for the adequately capitalized capital category in paragraphs (b)(2)(i)(A) through (D) of this section.

(3)(i) ''Undercapitalized'' if it:

(A) Has a total risk-based capital ratio that is less than 8.0 percent; or

(B) Has a Tier 1 risk-based capital ratio that is less than 6.0 percent; or

(C) Has a common equity tier 1 capital ratio that is less than 4.5 percent; or

(D) Has a leverage ratio that is less than 4.0 percent.

(ii) Beginning January 1, 2018, an advanced approaches FDIC–supervised institution will be deemed to be ''undercapitalized'' if it has a supplementary leverage ratio of less than 3.0 percent, as calculated in accordance with § 324.11.

(iii) A qualifying community banking organization, as defined under § 324.12, that has elected to use the community bank leverage ratio framework under section § 324.12 and that has a community bank leverage ratio, as defined under § 324.12, of less than 7.5 percent, shall be considered to have met the requirements for the undercapitalized capital category in paragraphs (b)(3)(i)(A) through (D) of this section.

(4)(i) ''Significantly undercapitalized'' if it has:

(A) A total risk-based capital ratio that is less than 6.0 percent; or

(B) A Tier 1 risk-based capital ratio that is less than 4.0 percent; or

(C) A common equity tier 1 capital ratio that is less than 3.0 percent; or

(D) A leverage ratio that is less than 3.0 percent.

(ii) A qualifying community banking organization, as defined under § 324.12, that has elected to use the community bank leverage ratio framework under section § 324.12 and that has a community bank leverage ratio, as defined under § 324.12, of less than 6 percent, shall be considered to have met the requirements for the significantly undercapitalized capital category in paragraphs (b)(4)(i)(A) through (D) of this section.

(5) ''Critically undercapitalized'' if the insured depository institution has a ratio of tangible equity, as defined in § 324.2, to total assets that is equal to or less than 2.0 percent.

PART 337—UNSAFE AND UNSOUND BANKING PRACTICES

■ 61. The authority citation for part 337 continues to read as follows:

Authority: 12 U.S.C. 375a(4), 375b, 1463(a)(1), 1816, 1818(a), 1818(b), 1819, 1820(d), 1828(j)(2), 1831, 1831f, 5412.

■ 62. Section 337.3 is amended by redesignating footnote 3 to paragraph (b) as footnote 1 and revising newly to read as follows:

§ 337.3 Limits on extensions of credit to executive officers, directors, and principal shareholders of insured nonmember banks.

* * * * *

(b) * * *

1 For the purposes of § 337.3, an insured nonmember bank's capital and unimpaired surplus shall have the same meaning as found in § 215.2(f) of Federal Reserve Board Regulation O (12 CFR 215.2(f)). For a qualifying community banking organization (as defined in 12 CFR 324.12) that is subject to the community bank leverage ratio (as defined in 12 CFR 324.12), capital and unimpaired surplus shall mean the FDIC-supervised institution's CBLR tangible equity (as defined in 12 CFR 324.12) plus allowances for loan and lease losses (as defined in 12 CFR 324. 2).

* * * * *

PART 347—INTERNATIONAL BANKING

■ 63. The authority citation for part 347 continues to read as follows:

Authority: 12 U.S.C. 1813, 1815, 1817, 1819, 1820, 1828, 3103, 3104, 3105, 3108, 3109; Pub L. No. 111–203, section 939A, 124 Stat. 1376, 1887 (July 21, 2010) (codified 15 U.S.C. 78*o*–7 note).

■ 64. Section 347.102 is amended by revising paragraph (u) to read as follows:

§ 347.102 Definitions.

* * * * *

(u) Tier 1 capital means Tier 1 capital as defined in § 324.2 of this chapter. For a qualifying community banking organization (as defined in 12 CFR 324.12) that is subject to the community bank leverage ratio (as defined in 12 CFR 324.12), Tier 1 capital means the FDIC-supervised institution's CBLR tangible equity (as defined in 12 CFR 324.12).

* * * * *

PART 362—ACTIVITIES OF INSURED STATE BANKS AND INSURED SAVINGS ASSOCIATIONS

■ 65. The authority citation for part 362 continues to read as follows:

Authority: 12 U.S.C. 1816, 1818, 1819(a) (Tenth), 1828(j), 1828(m), 1828a, 1831a, 1831e, 1831w, 1843(l).

■ 66. Section 362.2 is amended by revision paragraph (s) to read as follows:

§ 362.2 Definitions.

* * * * *

(s) Tier one capital has the same meaning as set forth in part 324 of this chapter for an insured State nonmember bank or insured state savings association. For other state-chartered depository institutions, the term ''tier one capital'' has the same meaning as set forth in the capital regulations adopted by the appropriate Federal banking agency. For a qualifying community banking organization (as defined in 12 CFR 324.12) that is subject to the community bank leverage ratio (as defined in 12 CFR 324.12), Tier one capital means the FDIC-supervised institution's CBLR tangible equity (as defined in 12 CFR 324.12).

* * * * *

PART 365—REAL ESTATE LENDING STANDARDS

■ 67. The authority citation for part 365 continues to read as follows:

Authority: 12 U.S.C. 1828(o) and 5101 *et seq.*

■ 68. Appendix A to subpart A of part 365 is amended by:

■ a. Following the heading ''Supervisory Loan-to-Value-Limits'', in the table, redesignating footnotes 1 and 2 as footnotes 2 and 3;

■ b. In the first paragraph of the appendix, redesignating footnote 5 as footnote 1; and

■ c. Following the heading ''Loans in Excess of the Supervisory Loan-to-Value-Limits'', redesignating the second footnote 2 as footnote 4 and revising newly redesignated footnote 4.

The revision reads as follows:

Appendix A to Subpart A of Part 365—Interagency Guidelines for Real Estate Lending Policies

* * * * *

4 For state non-member banks and state savings associations, ''total capital'' refers to that term described in 12 CFR 324.2. For a qualifying community banking organization (as defined in 12 CFR 324.12) that is subject to the community bank leverage ratio (as defined in 12 CFR 324.12), ''total capital'' refers to the FDIC-supervised institution's CBLR tangible equity (as defined in 12 CFR 324.12).

* * * * *

PART 390—REGULATIONS TRANSFERRED FROM THE OFFICE OF THRIFT SUPERVISION

■ 69. The authority citation for part 390 continues to read as follows:

Authority: 12 U.S.C. 1819.

■ 70. Section 390.265 is amended by revising footnote 4 to read as follows:

* * * * *

4 For the state member banks, the term ''total capital'' is defined at 12 CFR 217.2. For insured state non-member banks, the term ''total capital'' is defined at 12 CFR 324.2. For national banks, the term ''total capital'' is defined at 12 CFR 3.2. For state savings associations, the term ''total capital'' is defined at 12 CFR 324.2. For a qualifying community banking organization (as defined in 12 CFR 324.12) that is subject to the community bank leverage ratio (as defined in 12 CFR 324.12), ''total capital'' means the FDIC-supervised institution's CBLR tangible equity (as defined in 12 CFR 324.12).

* * * * *

■ 71. Section 390.344 is amended by revising the definition of ''Capital'' to read as follows:

* * * * *

§ 390.344 Definitions applicable to capital distributions.

* * * * *

Capital means total capital, as computed under part 324 of this chapter. For a qualifying community banking organization (as defined in 12 CFR 324.12) that is subject to the community bank leverage ratio (as defined in 12 CFR 324.12), total capital means the FDIC-supervised institution's CBLR tangible equity (as defined in 12 CFR 324.12).

* * * * *

Dated: November 15, 2018.

Joseph M. Otting,

Comptroller of the Currency.

By order of the Board of Governors of the Federal Reserve System, November 21, 2018.

Margaret McCloskey Shanks,

Deputy Secretary of the Board.

Dated at Washington, DC, on November 20, 2018.

By order of the Board of Directors.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2018–27002 Filed 2–7–19; 8:45 am]

BILLING CODE 4810–33–P; 6210–01–P; 6714–01–P

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