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

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

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Parts 19 and 109

Notice of Inflation Adjustments for Civil Money Penalties

Correction

In rule document 2018–27784, appearing on pages 66599 through 66601, in the issue of Thursday, December 27, 2018, make the following corrections:

■ 1. On page 66600, in the table, in the second column, on the tenth line, ''Tier 3²2,013,399'' should read, ''Tier 3''.

■ 2. On the same page, in the same table, in the third column, on the tenth line, the blank space should be replaced with, ''² 2,013,399''.

[FR Doc. C1–2018–27784 Filed 2–26–19; 8:45 am]

BILLING CODE 1301–00–D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. FAA–2018–1017; Special Conditions No. 25–741–SC]

Special Conditions: Boeing Model 777–9 Airplanes; Post-Crash Fire Survivability, Airplane Level of Safety Provided by Composite Fuel-Tank Structure

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued for The Boeing Company (Boeing) Model 777–9 airplane. This airplane will have a novel or unusual design feature when compared to the state of technology envisioned in the airworthiness standards for transport-category airplanes. This design feature is composite fuel-tank structure as it relates to post-crash fire survivability. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: This action is effective on Boeing on February 27, 2019. Send comments on or before April 15, 2019.

ADDRESSES: Send comments identified by Docket No. FAA–2018–1017 using any of the following methods:

- *Federal eRegulations Portal:* Go to *http://www.regulations.gov/* and follow the online instructions for sending your comments electronically.
- *Mail:* Send comments to Docket Operations, M–30, U.S. Department of Transportation (DOT), 1200 New Jersey Avenue SE, Room W12–140, West Building Ground Floor, Washington, DC, 20590–0001.
- *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* Fax comments to Docket Operations at 202–493–2251.

Privacy: The FAA will post all comments it receives, without change, to *http://www.regulations.gov/,* including any personal information the commenter provides. Using the search function of the docket website, anyone can find and read the electronic form of all comments received into any FAA docket, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). DOT's complete Privacy Act Statement can be found in the **Federal Register** published on April 11, 2000 (65 FR 19477–19478).

Docket: Background documents or comments received may be read at *http://www.regulations.gov/* at any time. Follow the online instructions for accessing the docket or go to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Suzanne Lucier, Propulsion and Mechanical Systems Section, AIR–672, Transport Standards Branch, Policy and Innovation Division, Aircraft Certification Service, Federal Aviation Administration, 2200 South 216th Street, Des Moines, Washington 98198; telephone and fax 206–231–3173; email *suzanne.lucier@faa.gov.*

SUPPLEMENTARY INFORMATION: The FAA has determined that notice of, and opportunity for prior public comment on, these special conditions is impracticable because the substance of these special conditions has been published in the **Federal Register** for public comment in several prior instances with no substantive comments received. Therefore, the FAA has determined that prior public notice and comment are unnecessary, and finds that, for the same reason, good cause exists for adopting these special conditions upon publication in the **Federal Register**.

Comments Invited

We invite interested people to take part in this rulemaking by sending written comments, data, or views. The most helpful comments reference a specific portion of the special conditions, explain the reason for any recommended change, and include supporting data.

We will consider all comments we receive by the closing date for comments. We may change these special conditions based on the comments we receive.

Background

On March 12, 2015, Boeing applied for an amendment to Type Certificate No. T00001SE to include the new 777–9 airplane. This airplane, which is a derivative of the Boeing Model 777 airplane currently approved under Type Certificate No. T00001SE, is a twin-engine, transport-category airplane with seating for 495 passengers and a maximum takeoff weight of 775,000 pounds.

Type Certification Basis

Under the provisions of title 14, Code of Federal Regulations (14 CFR) 21.101, Boeing must show that the Model 777–9 airplane meets the applicable

provisions of the regulations listed in Type Certificate No. T00001SE, or the applicable regulations in effect on the date of application for the change, except for earlier amendments as agreed upon by the FAA.

If the Administrator finds that the applicable airworthiness regulations (*i.e.,* 14 CFR part 25) do not contain adequate or appropriate safety standards for the Boeing Model 777–9 airplane because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same novel or unusual design feature, or should any other model already included on the same type certificate be modified to incorporate the same novel or unusual design feature, these special conditions would also apply to the other model under § 21.101.

In addition to the applicable airworthiness regulations and special conditions, the Boeing Model 777–9 airplane must comply with the fuel-vent and exhaust-emission requirements of 14 CFR part 34, and the noise-certification requirements of 14 CFR part 36.

The FAA issues special conditions, as defined in 14 CFR 11.19, in accordance with § 11.38, and they become part of the type certification basis under § 21.101.

Novel or Unusual Design Features

The Boeing Model 777–9 airplane will incorporate the following novel or unusual design feature:

Composite fuel-tank structure as it relates to post-crash fire survivability.

Discussion

As with previous applicant airplane designs with underwing-mounted engines, the wing tanks and center tanks are located in proximity to the passengers and near the engines. Experience indicates post-crash survivability is greatly influenced by the size and intensity of any fire that occurs. Tests conducted at the FAA Technical Center have shown the ability of aluminum wing surfaces to withstand post-crash fire conditions. These tests have verified adequate dissipation of heat across wetted aluminum fuel-tank surfaces so that localized hot spots do not occur, thus minimizing the threat of explosion. This inherent capability of aluminum to dissipate heat also allows the wing lower surface to retain its load-carrying characteristics during a fuel-fed ground fire. These properties significantly delay wing collapse and burn-through for a time interval that usually exceeds evacuation times. In addition, as an aluminum fuel tank is heated with significant quantities of fuel inside, fuel vapor accumulates in the ullage space, exceeding the upper flammability limit relatively quickly, and thus reducing the threat of a fuel-tank explosion prior to fuel-tank burn-through. The service history of conventional aluminum airplanes has shown that fuel-tank explosions caused by ground fires have been rare on airplanes configured with flame arrestors in the fuel-tank vent lines. Fuel tanks constructed with composite materials, a new technology, may or may not have equivalent capability.

Current regulations were developed and have evolved under the assumption that wing construction would be of aluminum materials, which provide inherent properties. Current regulations may not be adequate when applied to airplanes constructed of different materials.

Aluminum has the following properties with respect to fuel tanks and fuel-fed external fires.

Aluminum is highly thermally conductive. It readily transmits the heat of a fuel-fed external fire to fuel in the tank. This has the benefit of rapidly driving the fuel-tank ullage to exceed the upper flammability limit prior to burn-through of the fuel-tank skin, or heating of the wing upper surface above the auto-ignition temperature. This greatly reduces the threat of fuel-tank explosion.

Aluminum panels at thicknesses previously used in wing lower surfaces of large transport-category airplanes have been fire resistant as defined in 14 CFR part 1, and Advisory Circular (AC) 20–135, ''Powerplant Installation and Propulsion System Component Fire Protection Test Methods, Standards and Criteria.''

The heat-absorption capacity of both aluminum and fuel prevent burn-through and wing collapse for a time interval that generally exceeds the passenger evacuation time.

The extensive use of composite materials in the design of the Boeing Model 777–9 airplane wing and fuel-tank structure is considered a major change from conventional and traditional methods of construction. The applicable airworthiness regulations do not contain specific standards for post-crash fire-safety performance of wing and fuel-tank skin or structure.

To provide the same level of safety as exists with conventional airplane construction, the applicant must demonstrate that the airplane has sufficient post-crash survivability to enable occupants to safely evacuate in the event that the wings are exposed to a large fuel-fed fire. Factors in fuel-tank survivability are the structural integrity of the wing and tank, flammability of the tank, burn-through resistance of the wing skin, and the presence of auto-ignition threats during exposure to a fire. The FAA assessed post-crash survival time during the adoption of Amendment 25–111 for fuselage burn-through protection. Studies conducted by and on behalf of the FAA indicated that, following a survivable accident, prevention of fuselage burn-through for approximately 5 minutes can significantly enhance survivability. (See report numbers DOT/FAA/AR–99/57 and DOT/FAA/AR–02/49.) Research reveals little benefit in requiring wing-skin design to prevent wing-skin burn-through beyond five minutes, due to the effects of the fuel fire itself on the rest of the airplane. That assessment was carried out based on accidents involving airplanes with conventional fuel tanks, and considering the ability of ground personnel to rescue occupants. In addition, AC 20–135 indicates that, when aluminum is used for fuel tanks, the tank should withstand the effects of fire for 5 minutes without failure. Therefore, to be consistent with existing capability and related requirements, the applicant airplane fuel tanks must be capable of resisting a post-crash fire for at least 5 minutes. In demonstrating compliance, the applicant must address a range of fuel loads from minimum to maximum, as well as any other critical fuel load.

These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

Applicability

As discussed above, these special conditions are applicable to the Boeing Model 777–9 airplane. Should Boeing apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design feature, these special conditions would apply to that model as well.

Conclusion

This action affects only a certain novel or unusual design feature on one model of airplane. It is not a rule of general applicability.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

Authority Citation

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(f), 106(g), 40113, 44701, 44702, 44704.

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for Boeing Model 777–9 airplanes.

In addition to complying with 14 CFR part 25 regulations governing the fire-safety performance of the fuel tanks, wings, and nacelle, the Boeing Model 777–9 airplane must demonstrate acceptable post-crash survivability in the event the wings are exposed to a large fuel-fed ground fire. Boeing must demonstrate that the wing and fuel-tank design can endure an external fuel-fed pool fire for at least 5 minutes. This must be demonstrated for minimum fuel loads (not less than reserve fuel levels) and maximum fuel loads (maximum-range fuel quantities), and other identified critical fuel loads. Considerations must include fuel-tank flammability, burn-through resistance, wing structural-strength-retention properties, and auto-ignition threats during a ground-fire event for the required duration.

Issued in Des Moines, Washington, on February 19, 2019.

Victor Wicklund,

Manager, Transport Standards Branch, Policy and Innovation Division, Aircraft Certification Service.

[FR Doc. 2019–03343 Filed 2–26–19; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2018–0554; Product Identifier 2018–NM–064–AD; Amendment 39–19569; AD 2019–03–17]

RIN 2120–AA64

Airworthiness Directives; Airbus SAS Airplanes

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

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain Airbus SAS Model A318 series airplanes; Model A319 series airplanes; Model A320 series airplanes; and Model A321 series airplanes. This AD was prompted by a revision of an airworthiness limitation item (ALI) document, which requires more restrictive maintenance requirements and airworthiness limitations. This AD requires revising the operator's maintenance or inspection program, as applicable, to incorporate new maintenance requirements and airworthiness limitations. We are issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective April 3, 2019.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of April 3, 2019.

ADDRESSES: For service information identified in this final rule, contact Airbus SAS, Airworthiness Office—EIAS, Rond-Point Emile Dewoitine No: 2, 31700 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 44 51; email *account.airworth-eas@airbus.com;* internet *http://www.airbus.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–2018–0554.

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–2018–0554; 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: Sanjay Ralhan, Aerospace Engineer, International Section, Transport Standards Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3223.

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 Airbus SAS Model A318 series airplanes; Model A319 series airplanes; Model A320 series airplanes; and Model A321–111, –112, –131, –211, –212, –213, –231, –232, –251N, –253N, and –271N airplanes. The NPRM published in the **Federal Register** on July 17, 2018 (83 FR 33159). The NPRM was prompted by a revision of an ALI document, which requires more restrictive maintenance requirements and airworthiness limitations. The NPRM proposed to require revising the operator's maintenance or inspection program, as applicable, to incorporate new maintenance requirements and airworthiness limitations.

We issued a supplemental NPRM (SNPRM) to amend 14 CFR part 39 by adding an AD that would apply to certain Airbus SAS Model A318 series airplanes; Model A319 series airplanes; Model A320 series airplanes; and Model A321 series airplanes. The SNPRM published in the **Federal Register** on November 8, 2018 (83 FR 55830). We issued the SNPRM to include revised restrictive requirements and add airplanes to the applicability.

We are issuing this AD to address a safety-significant latent failure (that is not annunciated), which, in combination with one or more other specific failures or events, could result in a hazardous or catastrophic failure condition.

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2018–0180, dated August 27, 2018 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for certain Airbus SAS Model A318 series airplanes; Model A319 series airplanes; Model A320 series airplanes; and Model A321 series airplanes. The MCAI states:

> The airworthiness limitations for the Airbus A320 family aeroplanes, which are approved by EASA, are currently defined and published in the A318/A319/A320/A321 ALS [Airworthiness Limitations Section] document(s). The airworthiness limitations applicable to the Certification Maintenance Requirements (CMR), which are approved by EASA, are published in ALS Part 3.
>
> Failure to accomplish these instructions could result in an unsafe condition.
>
> Previously, EASA issued AD 2017–0168 to require accomplishment of all maintenance tasks as described in ALS Part 3 at Revision 05.

Since that [EASA] AD was issued, Airbus published the ALS, including new and/or more restrictive requirements, and new A321 models were certified and added to the Applicability of the ALS.

For the reason described above, this [EASA] AD retains the requirements of EASA AD 2017–0168, which is superseded, expands the Applicability and requires accomplishment of the actions 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–2018–0554.

Comments

We gave the public the opportunity to participate in developing this final rule. We have considered the comment received. United Airlines indicated its support for the SNPRM.

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 SNPRM for addressing the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the SNPRM.

Related Service Information Under 1 CFR Part 51

Airbus has issued Airbus A318/A319/A320/A321 Airworthiness Limitations Section (ALS) Part 3, Certification Maintenance Requirements (CMR), Revision 06, dated June 13, 2018. The service information describes maintenance instructions and airworthiness limitations, including updated inspections and intervals, to be incorporated into the operator's maintenance or inspection program. 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 1,250 airplanes of U.S. registry. We estimate the following costs to comply with this AD:

We have determined that revising the operator's 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 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):

2019–03–17 Airbus SAS: Amendment 39–19569; Docket No. FAA–2018–0554; Product Identifier 2018–NM–064–AD.

(a) Effective Date

This AD is effective April 3, 2019.

(b) Affected ADs

This AD affects AD 2017–25–04, Amendment 39–19118 (82 FR 58098, December 11, 2017) (''AD 2017–25–04'').

(c) Applicability

This AD applies to the Airbus SAS airplanes identified in paragraphs (c)(1), (c)(2), (c)(3), and (c)(4) of this AD, certificated in any category, with an original certificate of airworthiness or original export certificate of airworthiness issued on or before June 13, 2018.

(1) Model A318–111, –112, –121, and –122 airplanes.

(2) Model A319–111, –112, –113, –114, –115, –131, –132, and –133 airplanes.

(3) Model A320–211, –212, –214, –216, –231, –232, –233, –251N, and –271N airplanes.

(4) Model A321–111, –112, –131, –211, –212, –213, –231, –232, –251N, –251NX, –252N, –252NX, –253N, –253NX, –271N, –271NX, –272N, and –272NX airplanes.

(d) Subject

Air Transport Association (ATA) of America Code 05, Time Limits/Maintenance Checks.

(e) Reason

This AD was prompted by a revision of an airworthiness limitation item (ALI) document, which requires more restrictive maintenance requirements and airworthiness limitations. We are issuing this AD to address a safety-significant latent failure (that is not annunciated), which, in combination with one or more other specific failures or events,

could result in a hazardous or catastrophic failure condition.

(f) Compliance

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

(g) Revision of Maintenance or Inspection Program

Within 90 days after the effective date of this AD, revise the operator's maintenance or inspection program, as applicable, to incorporate the information specified in Airbus A318/A319/A320/A321 Airworthiness Limitations Section (ALS) Part 3, Certification Maintenance Requirements (CMR), Revision 06, dated June 13, 2018 (''ALS Part 3, CMR, R6''). The initial compliance time for accomplishing the tasks specified in ALS Part 3, CMR, R6, is at the applicable time specified in ALS Part 3, CMR, R6, or within 90 days after the effective date of this AD, whichever occurs later.

(h) Terminating Actions for AD 2017–25–04

Accomplishing the actions required by paragraph (g) of this AD terminates all of the requirements of AD 2017–25–04.

(i) No Alternative Actions or Intervals

After the operator's maintenance or inspection program, as applicable, 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 and intervals are approved as an alternative method of compliance (AMOC) in accordance with the procedures specified in paragraph (j)(1) of this AD.

(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.*

(i) 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.

(ii) AMOCs approved previously for AD 2017–25–04, or AD 2014–22–08, Amendment 39–18013 (79 FR 67042, November 12, 2014), that allow incorporation of ALS Part 3, CMR, R6, are considered approved as AMOCs for the corresponding provisions of this AD.

(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 European Aviation Safety Agency (EASA); or Airbus SAS's EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

(3) *Required for Compliance (RC):* If any service information contains procedures or tests that are identified as RC, those procedures and tests must be done to comply with this AD; any procedures or tests that are not identified as RC are recommended. Those procedures and tests that are not identified as RC may be deviated from using accepted methods in accordance with the operator's maintenance or inspection program without obtaining approval of an AMOC, provided the procedures and tests identified as RC can be done and the airplane can be put back in an airworthy condition. Any substitutions or changes to procedures or tests identified as RC require approval of an AMOC.

(k) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) EASA AD 2018–0180, dated August 27, 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–2018–0554.

(2) For more information about this AD, contact Sanjay Ralhan, Aerospace Engineer, International Section, Transport Standards Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3223.

(l) Material Incorporated by Reference

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

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

(i) Airbus A318/A319/A320/A321 Airworthiness Limitations Section (ALS) Part 3, Certification Maintenance Requirements (CMR), Revision 06, dated June 13, 2018.

(ii) [Reserved]

(3) For service information identified in this AD, contact Airbus SAS, Airworthiness Office—EIAS, Rond-Point Emile Dewoitine No: 2, 31700 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 44 51; email *account.airworth-eas@airbus.com;* internet *http://www.airbus.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 February 14, 2019.

Michael Kaszycki,

Acting Director, System Oversight Division, Aircraft Certification Service.

[FR Doc. 2019–03268 Filed 2–26–19; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2018–0904; Product Identifier 2018–NM–108–AD; Amendment 39–19575; AD 2019–03–23]

RIN 2120–AA64

Airworthiness Directives; Airbus SAS Airplanes

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

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for all Airbus SAS Model A330–200, –200 Freighter, and –300 series airplanes, and Model A340–200, –300, –500, and –600 series airplanes. This AD was prompted by a report that certain sensor struts, in the case of down drive element disconnection, would be unable to provide failure detection information for flap movements. This AD requires repetitive inspections of certain drive station elements and sensor struts; an inspection of certain other drive station elements if necessary; and corrective actions if necessary. We are issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective April 3, 2019.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of April 3, 2019.

ADDRESSES: For service information identified in this final rule, contact Airbus SAS, Airworthiness Office—EAL, Rond-Point Emile Dewoitine No: 2, 31700 Blagnac Cedex, France; phone: +33 5 61 93 36 96; fax: +33 5 61 93 45 80; email: *airworthiness.A330-A340@airbus.com;* internet: *http://www.airbus.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–2018–0904.

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–2018–0904; 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: Vladimir Ulyanov, Aerospace Engineer, International Section, Transport Standards Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; phone and fax: 206–231–3229.

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 Airbus SAS Model A330–200, –200 Freighter, and –300 series airplanes, and Model A340–200, –300, –500, and –600 series airplanes. The NPRM published in the **Federal Register** on November 5, 2018 (83 FR 55303). The NPRM was prompted by a report that certain sensor struts, in the case of down drive element disconnection, would be unable to provide failure detection information. The NPRM proposed to require repetitive inspections of certain drive station elements and sensor struts; an inspection of certain other drive station elements if necessary; and corrective actions if necessary.

We are issuing this AD to address abnormal flap movement due to mechanical drive station element disconnection at flap track station 4 or station 5 which could lead to undetected down drive shaft disconnection. Such a condition could result in complete flap disconnection in the case of additional failure on the remaining flap drive station, and could ultimately result in loss of control of the airplane.

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2018–0151, dated July 16, 2018 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for all Airbus SAS Model A330–200 Freighter series, Model A330–200 series, Model A330–300 series, Model A340–200 series, Model A340–300 series, Model A340–500 series, and Model A340–600 series airplanes. The MCAI states:

> Design features of the track station 4 sensor struts, respectively installed on the right hand (RH) and left hand (LH) wings of an aeroplane, ensure detection of any abnormal flap movement in case of a mechanical DSE [drive station element] disconnection at the level of the flap track station 4 or flap track station 5. Evidence was collected revealing that the track station 4 sensor strut, in case of a down drive element disconnection, would be unable to provide failure detection information.
>
> This condition, if not detected and corrected, in the case of an additional failure on the remaining flap drive station, could lead to a complete flap disconnection, possibly resulting in loss of control of the aeroplane.
>
> To address this potential unsafe condition, Airbus published the applicable SB [Airbus Service Bulletin A330–27–3226, dated April 5, 2018; Airbus Service Bulletin A340–27–4206, dated April 3, 2018; or Airbus Service Bulletin A340–27–5071, dated April 3, 2018; as applicable] to provide inspection instructions of the track station 4 and track station 5 DSE and sensor struts of the LH and RH wings.
>
> For the reasons described above, this [EASA] AD requires repetitive [detailed] inspections of the LH and RH track station 4 [DSE, repetitive general visual inspections of the LH and RH track station 4 sensor struts,] and [for certain airplanes, a one-time detailed inspection of the LH or RH, as applicable] track station 5 DSE * * * and, depending on findings, accomplishment of applicable corrective action(s).

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–2018–0904.

Comments

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

Conclusion

We reviewed the relevant data 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

Airbus has issued the following service information.

- Airbus Service Bulletin A330–27–3226, dated April 5, 2018.
- Airbus Service Bulletin A340–27–4206, dated April 3, 2018.
- Airbus Service Bulletin A340–27–5071, dated April 3, 2018.

This service information describes procedures for repetitive detailed inspections of the LH and RH track station 4 drive station elements; repetitive general visual inspections of the LH and RH track station 4 sensor struts; a detailed inspection of the track station 5 drive station elements if any discrepancy is found during a general visual inspection; and corrective actions (*i.e.,* replacement of affected parts). These documents are distinct since they apply to different models. 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 105 airplanes of U.S. registry. We estimate the following costs to comply with this AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS *

Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Up to 7 work-hours × $85 per hour = $595	$0	Up to $595	Up to $62,475.

* Table does not include estimated costs for reporting.

We estimate that it would take about 1 work-hour per product to comply with the reporting requirement in this AD. The average labor rate is $85 per hour. Based on these figures, we estimate the cost of reporting the inspection results on U.S. operators to be $8,925, or $85 per product.

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 or all 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 penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a current valid OMB control number. The control number for the collection of information required by this AD is 2120–0056. The paperwork cost associated with this AD has been detailed in the Costs of Compliance section of this document and includes time for reviewing instructions, as well as completing and reviewing the collection of information. Therefore, all reporting associated with this AD is mandatory. Comments concerning the accuracy of this burden and suggestions for reducing the burden should be directed to the FAA at 800 Independence Ave. SW, Washington, DC 20591, ATTN: Information Collection Clearance Officer, AES–200.

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):

2019–03–23 Airbus SAS: Amendment 39–19575; Docket No. FAA–2018–0904; Product Identifier 2018–NM–108–AD.

(a) Effective Date

This AD is effective April 3, 2019.

(b) Affected ADs

None.

(c) Applicability

This AD applies to the Airbus SAS airplanes identified in paragraphs (c)(1) through (c)(7) of this AD, certificated in any category, all manufacturer serial numbers.

(1) Model A330–223F and –243F airplanes.

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

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

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

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

(6) Model A340–541 airplanes.

(7) Model A340–642 airplanes.

(d) Subject

Air Transport Association (ATA) of America Code 27, Flight controls.

(e) Reason

This AD was prompted by a report that the right-hand (RH) and left-hand (LH) track station 4 sensor struts, in the case of down drive element disconnection, would be unable to provide failure detection information for flap movements. We are issuing this AD to address abnormal flap movement due to mechanical drive station element disconnection at flap track station 4 or station 5 which could lead to undetected down drive shaft disconnection. Such a condition could result in complete flap disconnection in the case of additional failure on the remaining flap drive station, and could ultimately result in loss of control of the airplane.

(f) Compliance

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

(g) Definitions

For the purpose of this AD, the drive station elements are defined as the down drive, down drive shaft, geared rotary actuator (gearbox), geared rotary actuator (output lever and fork end), and drive strut.

(h) Detailed and General Visual Inspections

(1) At the applicable times specified in paragraphs (h)(1)(i) and (h)(1)(ii) of this AD, and thereafter not to exceed the applicable intervals specified in table 1 to paragraph (h)(1) of this AD, do a detailed inspection of the LH and RH track station 4 drive station elements for corrosion or ruptured, loose, or missing components (including any attached bolts and nuts that are loose, broken, or missing) and a general visual inspection of the LH and RH track station 4 sensor struts for corrosion or ruptured, loose, or missing components (including any attached bolts that are loose, broken, or missing), in accordance with the Accomplishment Instructions of Airbus Service Bulletin A330–27–3226, dated April 5, 2018; Airbus Service Bulletin A340–27–4206, dated April 3, 2018; or Airbus Service Bulletin A340–27–5071, dated April 3, 2018; as applicable.

Table 1 to paragraph (h)(1) of this AD - *Inspection Intervals*

Airplanes	Compliance Time (whichever occurs first)
A330, A340-200 and A340-300	3,300 flight cycles or 24 months
A340-500 and A340-600	1,600 flight cycles or 24 months

(i) For airplanes that, as of the effective date of this AD, have accumulated less than 1,000 flight cycles since first flight: Before exceeding 24 months since first flight or within 18 months after the effective date of this AD, whichever occurs later, but without exceeding 2,300 flight cycles since first flight.

(ii) For airplanes that, as of the effective date of this AD, have accumulated 1,000 or more flight cycles since first flight: Within 1,000 flight cycles or 12 months, whichever occurs first after the effective date of this AD.

(2) If, during any general visual inspection required by paragraph (h)(1) of this AD, any corrosion is detected or any ruptured, loose, or missing components (including any attached bolts that are loose, broken, or missing) are detected, before further flight, accomplish a detailed inspection of the applicable LH or RH track station 5 drive station elements for corrosion or ruptured, loose, or missing components (including any attached bolts and nuts that are loose, broken, or missing) in accordance with the Accomplishment Instructions of Airbus Service Bulletin A330–27–3226, dated April 5, 2018; Airbus Service Bulletin A340–27–4206, dated April 3, 2018; or Airbus Service Bulletin A340–27–5071, dated April 3, 2018; as applicable.

(i) Corrective Actions

(1) If, during any detailed inspection required by paragraph (h)(1) of this AD, any corrosion is detected or any ruptured, loose, or missing components (including any attached bolts and nuts that are loose, broken, or missing) are detected, before further flight, replace each affected part with a serviceable part in accordance with the Accomplishment Instructions of Airbus Service Bulletin A330–27–3226, dated April 5, 2018; Airbus Service Bulletin A340–27–4206, dated April 3, 2018; or Airbus Service Bulletin A340–27–5071, dated April 3, 2018; as applicable, or using a method approved by the Manager, International Section, Transport Standards Branch, FAA; or the European Aviation Safety Agency (EASA); or Airbus SAS's EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

(2) If, during any general visual inspection required by paragraph (h)(1) of this AD, any corrosion is detected or any ruptured, loose, or missing components (including any attached bolts that are loose, broken, or missing) are detected, before further flight, replace each affected part with a serviceable part in accordance with the Accomplishment Instructions of Airbus Service Bulletin A330–27–3226, dated April 5, 2018; Airbus Service Bulletin A340–27–4206, dated April 3, 2018; or Airbus Service Bulletin A340–27–5071, dated April 3, 2018; as applicable, or using a method approved by the Manager, International Section, Transport Standards Branch, FAA; or EASA; or Airbus SAS's EASA DOA. If approved by the DOA, the approval must include the DOA-authorized signature.

(3) If, during any detailed inspection required by paragraph (h)(2) of this AD, any corrosion is detected or any ruptured, loose, or missing components (including any attached bolts and nuts that are loose, broken, or missing) are detected, before further flight, replace each affected part with a serviceable part in accordance with the Accomplishment Instructions of Airbus Service Bulletin A330–27–3226, dated April 5, 2018; Airbus Service Bulletin A340–27–4206, dated April 3, 2018; or Airbus Service Bulletin A340–27–5071, dated April 3, 2018; as applicable, or using a method approved by the Manager, International Section, Transport Standards Branch, FAA; or EASA; or Airbus SAS's EASA DOA. If approved by the DOA, the approval must include the DOA-authorized signature.

(j) Reporting

At the applicable time specified in paragraph (j)(1) or (j)(2) of this AD: Report the results (positive or negative) of each inspection required by paragraphs (h)(1) and (h)(2) of this AD to Airbus Service Bulletin Reporting Online Application on Airbus World (*https://w3.airbus.com/*), or submit the results to Airbus in accordance with the instructions of Airbus Service Bulletin A330–27–3226, dated April 5, 2018; Airbus Service Bulletin A340–27–4206, dated April 3, 2018; or Airbus Service Bulletin A340–27–5071, dated April 3, 2018.

(1) If the inspection was done on or after the effective date of this AD: Submit the report within 90 days after the inspection.

(2) If the inspection was done before the effective date of this AD: Submit the report within 90 days after the effective date of this AD.

(k) 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 (l)(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 using a method approved by the Manager, International Section, Transport Standards Branch, FAA; or EASA; or Airbus SAS's EASA DOA. If approved by the DOA, the approval must include the DOA-authorized signature.

(3) *Required for Compliance (RC):* If any service information contains procedures or tests that are identified as RC, those procedures and tests must be done to comply with this AD; any procedures or tests that are not identified as RC are recommended. Those procedures and tests that are not identified as RC may be deviated from using accepted methods in accordance with the operator's maintenance or inspection program without obtaining approval of an AMOC, provided the procedures and tests identified as RC can be done and the airplane can be put back in an airworthy condition. Any substitutions or changes to procedures or tests identified as RC require approval of an AMOC.

(4) *Reporting Requirements:* 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) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) EASA AD 2018–0151, dated July 16, 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–2018–0904.

(2) For more information about this AD, contact Vladimir Ulyanov, Aerospace Engineer, International Section, Transport Standards Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; phone and fax: 206–231–3229.

(m) 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) Airbus Service Bulletin A330–27–3226, dated April 5, 2018.

(ii) Airbus Service Bulletin A340–27–4206, dated April 3, 2018.

(iii) Airbus Service Bulletin A340–27–5071, dated April 3, 2018.

(3) For service information identified in this AD, contact Airbus SAS, Airworthiness Office—EAL, Rond-Point Emile Dewoitine No: 2, 31700 Blagnac Cedex, France; phone: +33 5 61 93 36 96; fax: +33 5 61 93 45 80; email: *airworthiness.A330–A340@airbus.com;* internet: *http://www.airbus.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 February 14, 2019.

Michael Kaszycki,

Acting Director, System Oversight Division, Aircraft Certification Service.

[FR Doc. 2019–03256 Filed 2–26–19; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2018–1003; Product Identifier 2018–NM–133–AD; Amendment 39–19567; AD 2019–03–15]

RIN 2120–AA64

Airworthiness Directives; Airbus SAS Airplanes

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

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain Airbus SAS Model A330–201, –202, and –203 airplanes, and Model A330–301, –302, and –303 airplanes. This AD was prompted by reports of damaged drain pipes located above the lower aft pylon fairing (LAPF), caused by a contact between the drain pipe and the two u-shape ribs of the LAPF. This AD requires a special detailed inspection for damage, and corrective actions if necessary. We are issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective April 3, 2019.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of April 3, 2019.

ADDRESSES: For service information identified in this final rule, contact Airbus SAS, Airworthiness Office—EAL, Rond-Point Emile Dewoitine No: 2, 31700 Blagnac Cedex, France; phone: +33 5 61 93 36 96; fax: +33 5 61 93 45 80; email: *airworthiness.A330-A340@airbus.com;* internet: *http://www.airbus.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–2018–1003.

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–2018–1003; 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: Vladimir Ulyanov, Aerospace Engineer, International Section, Transport Standards Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; phone and fax: 206–231–3229.

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 Airbus SAS Model A330–201, –202, and –203 airplanes, and Model A330–301, –302, and –303 airplanes. The NPRM published in the **Federal Register** on December 6, 2018 (83 FR 62738). The NPRM was prompted by reports of damaged drain pipes located above the LAPF, caused by a contact between the drain pipe and the two u-shape ribs of the LAPF. The NPRM proposed to require a special detailed inspection for damage, and corrective actions if necessary.

We are issuing this AD to address damaged drain pipes located above the LAPF, which, combined with an additional independent failure, could lead to hydraulic leakage in the LAPF box, possibly resulting in a temporary uncontrolled fire and consequent reduced control of the airplane.

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2018–0198, dated September 6, 2018 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for certain Airbus SAS Model A330–201, –202, and –203 airplanes, and Model A330–301, –302, and –303 airplanes. The MCAI states:

> Some cases of damaged drain pipes, Part Number F7173000700000, located above the Lower Aft Pylon Fairing (LAPF) and dedicated to drain pylon compartment A in case of hydraulic fluid leakage, were reported. Subsequent examination identified that the cracks were caused by a contact between the drain pipe and the two U-Shape Ribs of the LAPF. This interference condition can be present during the installation of the LAPF assembly to the pylon. The trailing edge assembly of the fairing has an internal frame bracket and shear clip which can cause chafing with the hydraulic drain pipes.
>
> This condition, if not detected and corrected, combined with an additional independent failure as hydraulic leakage in

pylon compartment A, could lead to hydraulic leakage in the LAPF box. In addition, the hydraulic fluid may flow forward of the LAPF and leak above engine hot surfaces, possibly resulting in a temporary uncontrolled fire in the pylon compartment A, and consequent reduced control of the aeroplane.

To address this unsafe condition, Airbus issued the inspection SB [Airbus Service Bulletin A330–54–3042, dated May 17, 2018] to provide instructions for a special detailed inspection (SDI) of the LAPF drain pipes.

For the reasons described above, this [EASA] AD requires a one-time SDI (borescope inspection method) of the LAPF of each pylon [for damage (including but not limited to cracks and leaks of the hydraulic drain pipe, and contact, interference, and chafing of the internal frame bracket and the shear clip of the trailing edge assembly of the LAPF with the aircraft hydraulic drain pipe)] and, depending on findings, replacement of the LAPF drain pipes and clamp block, and rework of the U-shape ribs.

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–2018–1003.

Comments

We gave the public the opportunity to participate in developing this final rule. We have considered the comment received. 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

Airbus has issued the following service information.

- Airbus Service Bulletin A330–54–3041, dated May 17, 2018. This service information describes procedures for replacement of the pylon drain pipe clamp blocks of the LAPFs of the left-hand (LH) and right-hand (RH) pylons and modification of the LAPFs.
- Airbus Service Bulletin A330–54–3042, dated May 17, 2018. This service information describes procedures for a special detailed inspection for damage (including but not limited to cracks and leaks of the pylon drain pipe, and contact, interference, and chafing of the internal frame bracket and the shear clip of the trailing edge assembly of the LAPF with the aircraft pylon drain pipe), and corrective actions. Corrective actions include replacement of the pylon drain pipe at the LH or RH pylon.

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 10 airplanes of U.S. registry. We estimate the following costs to comply with this AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Labor cost	Parts cost	Cost per product	Cost on U.S. operators
2 work-hours × $85 per hour = $170	$0	$170	$1,700

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

ESTIMATED COSTS OF ON-CONDITION ACTIONS

Labor cost	Parts cost	Cost per product
29 work-hours × $85 per hour = $2,465	$1,640	$4,105

According to the manufacturer, some or all of the costs of this AD may be covered under warranty, thereby reducing the cost impact on affected individuals. We do not control warranty coverage for affected individuals. As a result, we have included all known costs in our cost estimate.

Authority for This Rulemaking

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

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):

2019–03–15 Airbus SAS: Amendment 39–19567; Docket No. FAA–2018–1003; Product Identifier 2018–NM–133–AD.

(a) Effective Date

This AD is effective April 3, 2019.

(b) Affected ADs

None.

(c) Applicability

This AD applies to the Airbus SAS airplanes identified in paragraphs (c)(1) and (c)(2) of this AD, certificated in any category, all manufacturer serial numbers, except those on which Airbus modification 207430 has been embodied in production, or Airbus Service Bulletin A330–54–3041 has been embodied in service.

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

(2) Model A330–301, –302, and –303 airplanes.

(d) Subject

Air Transport Association (ATA) of America Code 54, Nacelles/pylons.

(e) Reason

This AD was prompted by reports of damaged drain pipes located above the lower aft pylon fairing (LAPF), caused by a contact between the drain pipe and the two u-shape ribs of the LAPF. We are issuing this AD to address damaged drain pipes located above the LAPF, which, combined with an additional independent failure, could lead to hydraulic leakage in the LAPF box, possibly resulting in a temporary uncontrolled fire and consequent reduced control of the airplane.

(f) Compliance

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

(g) One-Time Inspections

Within 26 months after the effective date of this AD, accomplish a one-time special detailed inspection of the pylon drain pipes (inside and outside) on the left-hand and right-hand pylons, located above both LAPFs, for contact with the U-shaped ribs of the LAPF and damage (including but not limited to cracks and leaks of the pylon drain pipe, and contact, interference, and chafing of the internal frame bracket and the shear clip of the trailing edge assembly of the LAPF with the pylon drain pipe) in accordance with the Accomplishment Instructions of Airbus Service Bulletin A330–54–3042, dated May 17, 2018.

(h) Corrective Actions

If, during any inspection required by paragraph (g) of this AD, any damage is found, at the applicable time specified in Airbus Service Bulletin A330–54–3042, dated May 17, 2018, accomplish the applicable corrective actions on the affected pylon in accordance with the Accomplishment Instructions of Airbus Service Bulletin A330–54–3042, dated May 17, 2018; and Airbus Service Bulletin A330–54–3041, dated May 17, 2018.

(i) 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 (j)(2) of this AD. Information may be emailed to: *9-ANM-116-AMOCREQUESTS@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 European Aviation Safety Agency (EASA); or Airbus SAS's EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA authorized signature.

(3) *Required for Compliance (RC):* If any service information contains procedures or tests that are identified as RC, those procedures and tests must be done to comply with this AD; any procedures or tests that are not identified as RC are recommended. Those procedures and tests that are not identified as RC may be deviated from using accepted methods in accordance with the operator's maintenance or inspection program without obtaining approval of an AMOC, provided the procedures and tests identified as RC can be done and the airplane can be put back in an airworthy condition. Any substitutions or changes to procedures or tests identified as RC require approval of an AMOC.

(j) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) EASA AD 2018–0198, dated September 6, 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–2018–1003.

(2) For more information about this AD, contact Vladimir Ulyanov, Aerospace Engineer, International Section, Transport Standards Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; phone and fax: 206–231–3229.

(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) Airbus Service Bulletin A330–54–3041, dated May 17, 2018.

(ii) Airbus Service Bulletin A330–54–3042, dated May 17, 2018.

(3) For service information identified in this AD, contact Airbus SAS, Airworthiness Office—EAL, Rond-Point Emile Dewoitine No: 2, 31700 Blagnac Cedex, France; phone: +33 5 61 93 36 96; fax: +33 5 61 93 45 80; email: *airworthiness.A330-A340@airbus.com*; internet: *http://www.airbus.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 February 14, 2019.

Michael Kaszycki,

Acting Director, System Oversight Division, Aircraft Certification Service.

[FR Doc. 2019–03257 Filed 2–26–19; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

31 CFR Part 1

RIN 1505–AC35

Freedom of Information Act Regulations

AGENCY: Department of the Treasury.

ACTION: Final rule.

SUMMARY: This rule adopts revisions to the Department's regulations under the Freedom of Information Act (FOIA). The regulations are being revised to update and streamline procedures and incorporate certain changes brought about by the amendments to the FOIA under the OPEN Government Act of 2007 and the FOIA Improvement Act of 2016. Additionally, the regulations are being updated to reflect developments in the case law and to include current cost figures to be used in calculating and charging fees. This final rule follows publication of a proposed rule on October 26, 2018; it adopts the proposal without substantive change, although certain sections have been renumbered and reorganized.

DATES: The final rule is effective March 29, 2019.

FOR FURTHER INFORMATION CONTACT: Ryan Law, Deputy Assistant Secretary for Privacy, Transparency and Records, 202–622–0930, extension 2 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION:

Discussion of the Final Rule

This rule adopts revisions to the Department's regulations under the FOIA to update and streamline the language of several procedural provisions and to incorporate certain of the changes brought about by the amendments to the FOIA under the OPEN Government Act of 2007, Public Law 110–175, 121 Stat. 2524 and the FOIA Improvement Act of 2016, Public Law 114–185, 130 Stat. 538. Additionally, the regulations are being updated to reflect developments in case law and to include current cost figures to be used in calculating and charging fees.

The revisions of the FOIA regulations in 31 CFR subpart A of part 1 incorporate changes to the language and structure of the regulations. Revised provisions include § 1.0 (General Provisions), § 1.1 (Proactive disclosure of Department records), § 1.2 (Requirements for making requests), § 1.3 (Responsibility for responding to requests), § 1.45 (Responses to requests), § 1.5 (Confidential commercial information), § 1.6 (Administrative appeals), and § 1.7 (Fees).

Sections 1.1, 1.2, 1.4, and 1.7 all address the role of the FOIA Public Liaison in assisting requesters with resolving disputes related to their FOIA requests, as required by the OPEN Government Act of 2007.

The 2007 Act also required agencies to assign tracking numbers to requests that will take longer than 10 days to process. This requirement is implemented through § 1.4.

The FOIA Improvement Act of 2016 provides that agencies must allow a minimum of 90 days for requesters to file an administrative appeal. The Act also requires that agencies notify requesters of the availability of dispute resolution services at various times throughout the FOIA process. This final rule updates the Department's regulations to reflect those statutory changes (§§ 1.4 and 1.6).

A number of changes have been made to the section on fees (§ 1.7). The definition of representative of the news media has been updated to reflect amendments to the FOIA under the OPEN Government Act of 2007. Further, § 1.7 has been updated to reflect amendments to the FOIA in 2007 and 2016 that limit the agency's ability to assess fees when certain timelines or conditions are not met. The current regulation also revises § 1.7 to conform to a recent decision of the U.S. Court of Appeals for the District of Columbia Circuit addressing the ''educational institution'' fee category. *See Sack* v. *Dept. of Defense,* 823 F.3d687 (D.C. Cir. 2016). Specifically, the definition of ''educational institution'' is revised to reflect the holding in *Sack* that students who make FOIA requests in furtherance of their coursework or other school-sponsored activities may qualify under this requester category. Therefore, the requirement that such a requester show that the request is made under the auspices of the educational institution is replaced with a requirement that the requester show that the request is made in connection with the requester's role at the educational institution. Section 1.7 also revises the Department's fee schedule. The duplication charge for photocopying will decrease to $.15 per page, while document search and review charges have been established at $21.00, $16.50, and $13.00 per quarter hour for executive, professional, and administrative time, respectively. Treasury components will be given flexibility to publish their own fee schedules that deviate from the Department's fee schedule as circumstances may warrant. Treasury components differ in the grades of employees that process FOIA requests, whether executive, professional, or administrative, and in the nature of records regularly produced for requesters. Therefore, Treasury has determined that as long as a component follows the OMB fee guidelines, it should have the discretion to establish its own fee structure.

Further, the Appendices to the current regulation have been revised to reflect changes in organizational structure. Appendices pertaining to the United States Customs Service, United States Secret Service, Bureau of Alcohol, Tobacco and Firearms, Federal Law Enforcement Training Center, and the Office of Thrift Supervision have been deleted as these components are no longer part of the Department of the Treasury. The Bureau of the Public Debt and the Financial Management Service were merged in 2012 to form the Bureau of the Fiscal Service (Appendix D in these revised regulations). Appendices for two new components have been added: the Alcohol and Tobacco Tax and Trade Bureau (Appendix H) and the Treasury Inspector General for Tax Administration (Appendix I).

This final rule contains no substantive changes to the proposed rule that Treasury published for comments on October 26, 2018. However, the rule was renumbered and slightly reorganized so that the section numbers would not conflict with provisions in Subpart B of Part 1. Specifically, the rule was renumbered to begin with § 1.0, § 1.6 was redesignated as subsections (f) through (k) of § 1.4, and §§ 1.9 and 1.11 were redesignated as subsections (e) and (f) of § 1.0.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.,* requires agencies to prepare an initial regulatory flexibility analysis (IRFA) to determine the economic impact of the rule on small entities. A small entity is defined as either a small business, a small organization, or a small governmental jurisdiction; an individual is not a small entity. Section 605(b) of the RFA allows an agency to prepare a certification in lieu of an IRFA if the rule will not have a significant economic impact on a substantial number of small entities. Pursuant to 5 U.S.C. 605(b), it is hereby certified that this regulation will not have a significant economic impact on a substantial number of small entities. Under the FOIA, agencies may recover only the direct costs of searching for, reviewing, and duplicating the records processed for requesters. Thus, fees assessed by the Department are nominal. Further, the ''small entities'' that make FOIA requests, as compared

with individual requesters and other requesters, are relatively few in number.

Regulatory Planning and Review

Executive Orders 13563 and 12866 direct agencies to assess costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule is not a ''significant regulatory action'' under Executive Order 12866.

List of Subjects in 31 CFR Part 1

Disclosure of records, Freedom of Information Act, Other disclosure provisions, Privacy Act.

For the reasons stated in the preamble, the Department of the Treasury amends 31 CFR part 1 as follows:

PART 1—DISCLOSURE OF RECORDS

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

Authority: 5 U.S.C. 301, 552, 552a, 553; 31 U.S.C. 301, 321; 31 U.S.C. 3717.

■ 2. Subpart A is revised to read as follows:

Subpart A—Freedom of Information Act

Sec.
1.0 General provisions.
1.1 Proactive disclosures of Department records.
1.2 Requirements for making requests.
1.3 Responsibility for responding to requests.
1.4 Responses to requests.
1.5 Confidential commercial information.
1.6 Administrative appeals.
1.7 Fees.
Appendix A to Subpart A of Part 1—Departmental Offices
Appendix B to Subpart A of Part 1—Internal Revenue Service
Appendix C to Subpart A of Part 1—Bureau of Engraving and Printing
Appendix D to Subpart A of Part 1—Bureau of the Fiscal Service
Appendix E to Subpart A of Part 1—United States Mint
Appendix F to Subpart A of Part 1—Office of the Comptroller of the Currency
Appendix G to Subpart A of Part 1—Financial Crimes Enforcement Network
Appendix H to Subpart A of Part 1—Alcohol and Tobacco Tax and Trade Bureau
Appendix I to Subpart A of Part 1—Treasury Inspector General for Tax Administration

Subpart A—Freedom of Information Act

§ 1.0 General provisions.

(a) This subpart contains the rules that the Department of the Treasury follows in processing requests for records under the Freedom of Information Act (FOIA), 5 U.S.C. 552 as amended. These regulations apply to all components of the Department of the Treasury. Requests made by individuals for records about themselves under the Privacy Act of 1974, 5 U.S.C. 552a, are processed under subpart C of part 1 as well as under this subpart.

(b) The components of the Department of the Treasury for the purposes of this subpart are the following offices and bureaus:

(1) The Departmental Offices, which include the offices of:

(i) The Secretary of the Treasury, including immediate staff;

(ii) The Deputy Secretary of the Treasury, including immediate staff;

(iii) The Chief of Staff, including immediate staff;

(iv) The Executive Secretary of the Treasury and all offices reporting to such official, including immediate staff;

(v) The Under Secretary (International Affairs) and all offices reporting to such official, including immediate staff;

(vi) The Under Secretary (Domestic Finance) and all offices reporting to such official, including immediate staff;

(vii) The Director of the Community Development Financial Institution Fund and all offices reporting to such official, including immediate staff;

(viii) The Director of the Office of Financial Research and all offices reporting to such official, including immediate staff;

(ix) The Under Secretary (Terrorism and Financial Intelligence) and all offices reporting to such official, including immediate staff;

(x) The Director of the Office of Foreign Assets Control and all offices reporting to such official, including immediate staff;

(xi) The General Counsel and all offices reporting to such official, including immediate staff, but not including legal counsel to the components listed in paragraphs (b)(2) through (10) of this section;

(xii) The Treasurer of the United States, including immediate staff;

(xiii) The Assistant Secretary (Legislative Affairs) and all offices reporting to such official, including immediate staff;

(xiv) The Assistant Secretary (Public Affairs) and all offices reporting to such official, including immediate staff;

(xv) The Assistant Secretary (Economic Policy) and all offices reporting to such official, including immediate staff;

(xvi) The Assistant Secretary (Tax Policy) and all offices reporting to such official, including immediate staff;

(xvii) The Assistant Secretary (Management) and all offices reporting to such official, including immediate staff; and

(xix) The Inspector General and all offices reporting to such official, including immediate staff;

(2) The Alcohol and Tobacco Tax and Trade Bureau;

(3) The Bureau of Engraving and Printing;

(4) The Bureau of the Fiscal Service;

(5) The Financial Crimes Enforcement Network;

(6) The Internal Revenue Service;

(7) The Office of the Comptroller of the Currency;

(8) The United States Mint;

(9) The Treasury Inspector General for Tax Administration;

(10) The Special Inspector General for the Troubled Asset Relief Program.

(c) Any Treasury office which is now in existence or may hereafter be established, which is not specifically listed above and is not a subsidiary unit of a component of those listed above, shall be deemed a part of the Departmental Offices for the purpose of these regulations.

(d) The head of each component is hereby authorized to substitute the official designated and change the address specified in the appendix to this subpart applicable to that component. Components may issue supplementary regulations applicable only to the component in question, which (except with respect to fee schedules) shall be consistent with these regulations. Persons interested in the records of a particular component should, therefore, also consult the Code of Federal Regulations for any rules or regulations promulgated specifically with respect to that component (see Appendices to this subpart for cross references). In the event of any actual or apparent inconsistency, these Departmental regulations shall govern.

(e) Each component shall preserve all correspondence pertaining to the requests that it receives under this subpart, as well as copies of all requested records, until disposition or destruction is authorized pursuant to title 44 of the United States Code or the General Records Schedule 4.2 of the National Archives and Records Administration. Records that are identified as responsive to a request will not be disposed of or destroyed while they are the subject of a pending

request, administrative appeal, or lawsuit under the FOIA.

(f) Nothing in this subpart shall be construed to entitle any person, as of right, to any service or to the disclosure of any record to which such person is not entitled under the FOIA.

§ 1.1 Proactive disclosure of Department records.

(a) Records that are required by the FOIA to be made available for public inspection in an electronic format may be accessed through the Department's website, *http://www.treasury.gov,* and/or on the website of the component that maintains such records. The FOIA office of each component is responsible for determining which of the component's records are required to be made publicly available, as well as identifying additional records of interest to the public that are appropriate for public disclosure, and for posting such records. Each component has a FOIA Public Liaison who can assist individuals in locating records particular to that component. A list of the Department's FOIA Public Liaisons is available at: *https://home.treasury.gov/footer/freedom-of-information-act.*

(b) When a component receives three or more requests for the same records, it shall make available for public inspection in an electronic format, any records released in response to those requests.

§ 1.2 Requirements for making requests.

(a) *General information.* (1) Requests should be addressed to the FOIA office of the component that maintains the requested records. The appendices to this subpart list the addresses of each FOIA office and the methods for submitting requests to each component. Requesters are encouraged to submit requests online (through *FOIA.gov*, component web pages or by completing the ''Submit an Online Request'' form located at *https://home.treasury.gov/footer/freedom-of-information-act.*

(2) When a requester is unable to determine the appropriate Departmental component to which to direct a request, the requester may send the request to Freedom of Information Act Request, Department of the Treasury, Departmental Offices (DO), Director, FOIA and Transparency, 1500 Pennsylvania Avenue NW, Washington, DC 20220. The FOIA and Transparency team will forward the request to the component(s) that it determines to be most likely to maintain the records that are sought.

(3) A requester who is making a request for records about himself or herself must comply with the verification of identity provision set forth in section 1.26 of subpart C of this part.

(4) Where a request for records pertains to a third party, a requester may receive greater access by submitting either a notarized authorization signed by that individual or a declaration by that individual made in compliance with the requirements set forth in 28 U.S.C. 1746, authorizing disclosure of the records to the requester, or submitting proof that the individual is deceased (*e.g.,* a copy of a death certificate). As an exercise of its administrative discretion, each component can require a requester to supply additional information, if necessary, in order to verify that a particular individual has consented to disclosure.

(b) *Description of records sought.* Requesters must describe the records sought in sufficient detail to enable Department personnel to locate them with a reasonable amount of effort. To the extent possible, requesters should include specific information that may assist a component in identifying the requested records, such as the date, title or name, author, recipient, subject matter of the record, case number, file designation, or reference number. Requesters should refer to the Appendices of this subpart for additional component-specific requirements. In general, requesters should include as much detail as possible about the specific records or the types of records that they are seeking. If the requester fails to reasonably describe the records sought, the component shall inform the requester what additional information is needed or why the request is deficient. Requesters who are attempting to reformulate or modify such a request may discuss their request with the component's designated FOIA contact or the FOIA Public Liaison. When a requester fails to provide sufficient detail after having been asked to clarify a request, the component shall notify the requester that the request has not been properly made and that the request will be administratively closed.

§ 1.3 Responsibility for responding to requests.

(a) *In general.* The component that first receives a request for a record and maintains that record is the component responsible for responding to the request. In determining which records are responsive to a request, a component ordinarily will include only records in its possession as of the date that it begins its search. If any other date is used, the component shall inform the requester of that date. A record that is excluded from the requirements of the FOIA pursuant to 5 U.S.C. 552(c), shall not be considered responsive to a request.

(b) *Authority to grant or deny requests.* The head of a component, or designee, is authorized to grant or to deny any requests for records that are maintained by that component.

(c) *Re-routing of misdirected requests.* When a component's FOIA office determines that a request was misdirected within the agency, the receiving component's FOIA office must route the request to the FOIA office of the proper component(s) within the agency.

(d) *Consultation, referral, and coordination.* When reviewing records located by a component in response to a request, the component will determine whether another agency of the Federal Government is better able to determine whether the record is exempt from disclosure under the FOIA. As to any such record, the agency must proceed in one of the following ways:

(1) *Consultation.* When records originated with the component processing the request, but contain within them information of interest to another agency or other Federal Government office, the agency processing the request should typically consult with that other entity prior to making a release determination.

(2) *Referral.* (i) When the component processing the request believes that a different agency is best able to determine whether to disclose the record, the component typically should refer the responsibility for responding to the request regarding that record to that agency. Ordinarily, the agency that originated the record is presumed to be the best agency to make the disclosure determination. However, if the component processing the request is in the best position to respond regarding the record, then the record may be handled as a consultation.

(ii) Whenever a component refers any part of the responsibility for responding to a request to another agency, it must document the referral, maintain a copy of the record that it refers, and notify the requester of the referral, informing the requester of the name(s) of the agency to which the record was referred, including that agency's FOIA contact information.

(3) *Coordination.* The standard referral procedure is not appropriate where disclosure of the identity of the agency to which the referral would be made could harm an interest protected by an applicable exemption, such as the exemptions that protect personal

privacy or national security interests. For example, if a non-law enforcement agency responding to a request for records on a living third party locates within its files records originating with a law enforcement agency, and if the existence of that law enforcement interest in the third party was not publicly known, then to disclose that law enforcement interest could cause an unwarranted invasion of the personal privacy of the third party. Similarly, if an agency locates within its files material originating with an Intelligence Community agency, and the involvement of that agency in the matter is classified and not publicly acknowledged, then to disclose or give attribution to the involvement of that Intelligence Community agency could cause national security harms. In such instances, in order to avoid harm to an interest protected by an applicable exemption, the agency that received the request should coordinate with the originating agency to seek its views on the disclosability of the record. The release determination for the record that is the subject of the coordination should then be conveyed to the requester by the agency that originally received the request.

(4) *Timing of responses to consultations and referrals.* All consultations and referrals will be handled according to the date that the FOIA request was initially received by the component or other agency of the Federal government.

(5) *Agreements regarding consultations and referrals.* Components may establish agreements with other Treasury components or agencies of the Federal government to eliminate the need for consultations or referrals with respect to particular types of records.

(e) *Classified information.* On receipt of any request involving classified information, the component shall take appropriate action to ensure compliance with part 2 of this title and with all other laws and regulations relating to proper handling of classified information. Whenever a request involves a record containing information that has been classified or may be appropriate for classification by another component or agency under any applicable executive order concerning the classification of records, the receiving component shall refer the responsibility for responding to the request regarding that information to the component or agency that classified the information, or that should consider the information for classification. Whenever a component's record contains information that has been derivatively classified, *i.e.,* it contains information classified by another component or agency of the Federal government, the component shall refer the responsibility for responding to that portion of the request to the component or agency that classified the underlying information.

§ 1.4 Responses to requests.

(a) *In general.* Components ordinarily will respond to requests according to their order of receipt. The Appendices to this subpart contain the list of the Departmental components that are designated to accept requests. In instances involving misdirected requests, *i.e.,* where a request is sent to one of the components designated in the Appendices but is actually seeking records maintained by another component, the response time will commence on the date that the request is received by the appropriate component, but in any event not later than ten working days after the request is first received.

(b) *Multitrack processing.* All components must designate a specific track for requests that are granted expedited processing, in accordance with the standards set forth in paragraph (e) of this section. A component may also designate additional processing tracks that distinguish between simple and more complex requests based on the estimated amount of work or time needed to process the request. A component can consider factors such as the number of pages involved in processing the request or the need for consultations or referrals. Components shall advise requesters of the track into which their request falls and, when appropriate, shall offer the requesters an opportunity to narrow their request so that it can be placed in a different processing track.

(c) *Unusual circumstances.* Whenever the statutory time limits for processing a request cannot be met because of ''unusual circumstances,'' as defined in the FOIA, and the component extends the time limits on that basis, the component shall, before expiration of the twenty-day period to respond, notify the requester in writing of the unusual circumstances involved and of the date by which processing of the request can be expected to be completed. Where the extension exceeds ten working days, the component shall, as described by the FOIA, provide the requester with an opportunity to modify the request or agree to an alternative time period for processing. The component shall make available its designated FOIA contact or its FOIA Public Liaison for this purpose. The component must also alert requesters to the availability of the Office of Government Information Services to provide dispute resolution services.

(d) *Aggregating requests.* For the purposes of identifying unusual circumstances under the FOIA, components may aggregate requests in cases where it reasonably appears that multiple requests, submitted either by a requester or by a group of requesters acting in concert, constitute a single request that would otherwise involve unusual circumstances. Components will not aggregate multiple requests that involve unrelated matters.

(e) *Expedited processing.* (1) Requests and appeals will be processed on an expedited basis only upon request and when it is determined that they involve:

(i) Circumstances in which the lack of expedited processing could reasonably be expected to pose an imminent threat to the life or physical safety of an individual;

(ii) An urgency to inform the public about an actual or alleged Federal government activity, if made by a person who is primarily engaged in disseminating information. The standard of ''urgency to inform'' requires that the records requested pertain to a matter of current exigency to the public and that delaying a response to a request for records would compromise a significant recognized interest to and throughout the general public; or

(iii) The loss of substantial due process rights.

(2) A request for expedited processing may be made at any time. Requests must be submitted to the component that maintains the records requested. The time period for making the determination on the request for expedited processing under this section shall commence on the date that the component receives the request.

(3) A requester who seeks expedited processing must submit a statement, certified to be true and correct, explaining in detail the basis for making the request for expedited processing. As a matter of administrative discretion, a component may waive the formal certification requirement.

(4) A requester seeking expedited processing under paragraph (e)(1)(ii) of this section, who is not a full-time member of the news media must establish that he or she is a person whose primary professional activity or occupation is information dissemination. Such a requester also must establish a particular urgency to inform the public about the government activity involved in the request—one that extends beyond the public's right to

know about government activity generally.

(5) A component shall notify the requester within ten calendar days of the receipt of a request for expedited processing of its decision whether to grant or deny expedited processing. If expedited processing is granted, the request shall be given priority, placed in the processing track for expedited requests, and shall be processed as soon as practicable. If a component denies expedited processing, any appeal of that decision that complies with the procedures set forth in § 1.6 of this subpart shall be acted on expeditiously.

(f) *Acknowledgments of requests.* Upon receipt of a request that will take longer than ten business days to process, a component shall send the requester an acknowledgment letter that assigns the request an individualized tracking number. The component shall also include in the acknowledgment a brief description of the records sought to allow requesters to more easily keep track of their requests.

(g) *Grants of requests.* Once a component makes a determination to grant a request in full or in part, it shall notify the requester in writing. The component also shall inform the requester of any fees charged under § 1.7 of this subpart and shall disclose the requested records to the requester promptly upon payment of any applicable fees. The component must also inform the requester of the availability of the FOIA Public Liaison to offer assistance.

(h) *Adverse determinations of requests.* A component making an adverse determination denying a request in any respect shall notify the requester of that determination in writing. Adverse determinations, or denials of requests, include decisions that: The requested record is exempt, in whole or in part; the request does not reasonably describe the records sought; the information requested is not a record subject to the FOIA; the requested record does not exist, cannot be located, or has been destroyed; or the requested record is not readily reproducible in the form or format sought by the requester. Adverse determinations also include denials involving fees or fee waiver matters, and denials of requests for expedited processing.

(i) *Content of denial letter.* The denial letter shall be signed by the head of the component, or FOIA designee, and shall include, when applicable:

(1) The name and title or position of the person responsible for the denial;

(2) A brief statement of the reasons for the denial, including any FOIA exemption applied by the component in denying the request; and

(3) An estimate of the volume of any records or information withheld, for example, by providing the number of pages or some other reasonable form of estimation. This estimation is not required if the volume is otherwise indicated by deletions marked on records that are disclosed in part, or if the estimate would cause a harm protected by one of the exemptions.

(4) A statement that the denial may be appealed under § 1.6(a) of this subpart, and a description of the requirements set forth therein.

(5) A statement notifying the requester of the assistance available from the component's FOIA Public Liaison and the dispute resolution services offered by the Office of Government Information Services.

(j) *Markings on released documents.* Records disclosed in part must be marked clearly to show the amount of information deleted and the exemption under which the deletion was made unless doing so would harm an interest protected by an applicable exemption. The location of the information deleted shall also be indicated on the record, if technically feasible.

(k) *Use of record exclusions.* (1) In the event a component identifies records that may be subject to exclusion from the requirements of the FOIA pursuant to 5 U.S.C. 552(c), the component shall consult with the Department of Justice, Office of Information Policy (OIP), before applying the exclusion.

(2) A component invoking an exclusion must maintain an administrative record of the process of invocation and of the consultation with OIP.

§ 1.5 Confidential commercial information.

(a) *Definitions*—(1) *Confidential commercial information* means trade secrets and commercial or financial information obtained by the Department from a submitter that may be protected from disclosure under Exemption 4 of the FOIA.

(2) *Submitter* means any person or entity from whom the Department obtains confidential commercial information, directly or indirectly.

(3) *Designation of confidential commercial information.* A submitter of confidential commercial information must use good faith efforts to designate by appropriate markings, either at the time of submission or within a reasonable time thereafter, any portion of its submission that it considers to be protected from disclosure under Exemption 4. These designations will expire ten years after the date of the submission unless the submitter requests and provides justification for a longer designation period.

(b) *When notice to submitters is required.* (1) A component shall promptly provide written notice to a submitter whenever:

(i) The requested confidential commercial information has been designated in good faith by the submitter as information considered protected from disclosure under Exemption 4; or

(ii) The component has a reason to believe that the requested confidential commercial information may be protected from disclosure under Exemption 4 of the FOIA.

(2) The notice shall either describe the confidential commercial information requested or include a copy of the requested records or portions of records containing the information. In cases involving a voluminous number of submitters, notice may be made by posting or publishing the notice in a place or manner reasonably likely to accomplish it.

(c) *Exceptions to submitter notice requirements.* The notice requirements of this section shall not apply if:

(1) The component determines that the confidential commercial information is exempt from disclosure under the FOIA;

(2) The confidential commercial information lawfully has been published or has been officially made available to the public; or

(3) Disclosure of the confidential commercial information is required by a statute other than the FOIA or by a regulation issued in accordance with the requirements of Executive Order 12600 of June 23, 1987;

(d) *Opportunity to object to disclosure.* (1) A component will specify a reasonable time period as determined within its administrative discretion within which the submitter must respond to the notice referenced above. If a submitter has any objections to disclosure, it should provide the component a detailed written statement that specifies all grounds for withholding the particular confidential commercial information under any exemption of the FOIA. In order to rely on Exemption 4 as a basis for nondisclosure, the submitter must explain why the information constitutes a trade secret, or commercial or financial information that is privileged or confidential.

(2) A submitter who fails to respond within the time period specified in the notice shall be considered to have no objection to disclosure of the information. An objection to disclosure

received by the component after the time period specified in the notice will not be considered by the component. Any information provided by a submitter under this subpart may itself be subject to disclosure under the FOIA and/or protected from disclosure by applicable exemptions or by a statute other than the FOIA.

(e) *Analysis of objections.* A component shall consider a submitter's objections and specific grounds for nondisclosure in deciding whether to disclose the requested confidential commercial information.

(f) *Notice of intent to disclose.* Whenever a component decides to disclose confidential commercial information over the objection of a submitter, the component shall provide the submitter written notice, which shall include:

(1) A statement of the reasons why each of the submitter's disclosure objections was not sustained;

(2) Copies of the records that the component intends to disclose or, in the alternative, a description of the confidential commercial information to be disclosed; and

(3) A specified disclosure date, which shall be a reasonable time subsequent to the notice.

(g) *Notice of FOIA lawsuit.* Whenever a requester files a lawsuit seeking to compel the disclosure of confidential commercial information, the component shall promptly notify the submitter.

(h) *Requester notification.* The component shall notify a requester whenever it provides the submitter with notice and an opportunity to object to disclosure; whenever it notifies the submitter of its intent to disclose the requested confidential commercial information; and whenever a submitter files a lawsuit to prevent the disclosure of the confidential commercial information.

§ 1.6 Administrative appeals.

(a) *Requirements for making an appeal.* Before seeking review by a court of a component's adverse determination, a requester generally must first submit a timely administrative appeal. A requester may appeal any adverse determinations denying his or her request to the official specified in the appropriate Appendix to this subpart. Examples of adverse determinations are provided in § 1.4(h) of this subpart. The requester must make the appeal in writing and to be considered timely it must be postmarked, or in the case of electronic submissions, transmitted, within 90 calendar days after the date of the component's final response. The appeal letter should clearly identify the component's determination that is being appealed and the assigned request number. The requester should mark both the appeal letter and envelope, or subject line of the electronic transmission, ''Freedom of Information Act Appeal.''

(b) *Adjudication of appeals.* (1) The FOIA appeal official or designee specified in the appropriate Appendix will act on all appeals under this section.

(2) An appeal ordinarily will not be adjudicated if the request becomes a matter of FOIA litigation.

(3) On receipt of any appeal involving classified information, the FOIA appeal official or designee must take appropriate action to ensure compliance with applicable classification rules.

(c) *Decision on appeals.* A decision on an appeal must be made in writing by the component within 20 business days after receipt of the appeal. A decision that upholds a component's determination must contain a statement that identifies the reasons for the affirmance, including any FOIA exemptions applied. The decision must provide the requester with notification of the statutory right to file a lawsuit and will inform the requester of the mediation services offered by the Office of Government Information Services of the National Archives and Records Administration as a non-exclusive alternative to litigation. If a component's decision is remanded or modified on appeal the requester will be notified of that determination in writing. The component will then further process the request in accordance with that appeal determination and respond directly to the requester. Appeals that have not been postmarked or transmitted within the specified time frame will be considered untimely and will be administratively closed with written notice to the requester.

(d) *Engaging in dispute resolution services provided by Office of Government Information Services (OGIS).* Mediation is a voluntary process. If a component agrees to participate in the mediation services provided by OGIS, it will actively engage as a partner to the process in an attempt to resolve the dispute.

§ 1.7 Fees.

(a) *In general.* Components may charge for processing requests under the FOIA in accordance with the provisions of this section or may issue their own fee schedules as long as they are consistent with the OMB Guidelines. In order to resolve any fee issues that arise under this section, a component may contact a requester for additional information. A component ordinarily will collect all applicable fees before sending copies of records to a requester. Requesters must pay fees by check or money order made payable to the Treasury of the United States, or by other means specified at *https://home.treasury.gov/footer/freedom-of-information-act.*

(b) *Definitions.* For purposes of this section:

(1) *Commercial-use request* is a request for information for a use or a purpose that furthers a commercial, trade, or profit interest, which can include furthering those interests through litigation.

(2) *Direct costs* are those expenses that a component expends in searching for and duplicating (and, in the case of commercial-use requests, reviewing) records in order to respond to a FOIA request. For example, direct costs include the salary of the employee performing the work (*i.e.,* the basic rate of pay for the employee, plus 16 percent of that rate to cover benefits) and the cost of operating computers and other electronic equipment, such as photocopiers and scanners. Direct costs do not include overhead expenses such as the costs of space, and of heating or lighting a facility. Components shall ensure that searches, review, and duplication are conducted in the most efficient and the least expensive manner.

(3) *Duplication* is reproducing a copy of a record or of the information contained in it, necessary to respond to a FOIA request. Copies can take the form of paper, audiovisual materials, or electronic records, among others.

(4) *Educational institution* is any school that operates a program of scholarly research. A requester in this category must show that the request is made in connection with the requester's role at the educational institution. Components may seek assurance from the requester that the request is in furtherance of scholarly research and will advise requesters of their placement in this category.

(5) *Noncommercial scientific institution* is an institution that is not operated on a ''commercial'' basis, as defined in paragraph (b)(1) of this section, and that is operated solely for the purpose of conducting scientific research, the results of which are not intended to promote any particular product or industry. A requester in this category must show that the request is authorized by and is made under the auspices of a qualifying institution and that the records are sought to further scientific research and not for a commercial use.

(6) *Representative of the news media* is any person or entity that actively gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience. The term ''news'' means information that is about current events or that would be of current interest to the public. Examples of news media entities include television or radio stations broadcasting news to the public at large and publishers of periodicals that disseminate ''news'' and make their products available through a variety of means to the general public. A request for records that supports the news-dissemination function of the requester shall not be considered to be for a commercial use. ''Freelance'' journalists who demonstrate a solid basis for expecting publication through a news media entity shall be considered as a representative of the news media. A publishing contract would provide the clearest evidence that publication is expected; however, components shall also consider a requester's past publication record in making this determination.

(7) *Other requester* refers to a requester who does not fall within any of the previously described categories.

(8) *Review* is the examination of a record located in response to a request in order to determine whether any portion of it is exempt from disclosure. Review time includes time spent processing any record for disclosure, such as doing all that is necessary to prepare the record for disclosure, including the process of redacting the record and marking the appropriate exemptions. Review time also includes time spent obtaining and considering any formal objection to disclosure made by a confidential commercial information submitter under § 1.5 of this subpart, but it does not include time spent resolving general legal or policy issues regarding the application of exemptions. Review costs are properly charged even if a record ultimately is not disclosed.

(9) *Search* is the process of looking for and retrieving records or information responsive to a request. Search time includes time devoted to page-by-page or line-by-line identification of information within records; and the reasonable efforts expended to locate and retrieve information from electronic records.

(c) *Charging fees.* Unless a component has issued a separate fee schedule, or a waiver or reduction of fees has been granted under paragraph (k) of this section, components shall charge the following fees. Because the fee amounts provided below already account for the direct costs associated with a given fee type, components should not add any additional costs to those charges.

(1) *Search.* (i) Search fees shall be charged for all requests, subject to the restrictions of paragraph (d) of this section. Components will charge search fees for all other requesters, subject to the restrictions of paragraph (d) of this section. Components may properly charge for time spent searching even if they do not locate any responsive records or if they determine that the records are entirely exempt from disclosure.

(ii) For each quarter hour spent by personnel searching for requested records, including electronic searches that do not require new programming, the fees shall be as follows: executive—$21; professional—$16.50; and administrative—$13.00.

(iii) In addition, requesters will be charged the direct costs associated with the creation of any new computer program required to locate the requested records.

(2) *Duplication.* Duplication fees will be charged to all requesters, subject to the restrictions of paragraph (d) of this section. A component shall honor a requester's preference for receiving a record in a particular form or format where it is readily reproducible by the component in the form or format requested. Where photocopies are supplied, the component will provide one copy per request at a cost of $0.15 per page. For copies of records produced on tapes, disks, other forms of duplication, or other electronic media, components will charge the direct costs of producing the copy, including operator time. Where paper documents must be scanned in order to comply with a requester's preference to receive the records in an electronic format, the requester shall pay the direct costs associated with scanning those materials, including operator's time. For other forms of duplication, components will charge the direct costs.

(3) *Review.* Review fees will only be charged to requesters who make commercial-use requests. Review fees will be assessed in connection with the initial review of the record, *i.e.,* the review conducted by a component to determine whether an exemption applies to a particular record or portion of a record. No charge will be made for review at the administrative appeal stage of exemptions applied at the initial review stage. However, when the appellate authority determines that a particular exemption no longer applies, any costs associated with a component's re-review of the records in order to consider the use of other exemptions may be assessed as review fees. Review costs are properly charged even if a record ultimately is not disclosed. Review fees will be charged at the same rates as those charged for a search under paragraph (c)(1)(ii) of this section.

(d) *Restrictions on charging fees.* (1) No search fees will be charged for requests by educational institutions, noncommercial scientific institutions, or representatives of the news media (unless the records are sought for commercial use).

(2) If a component fails to comply with the FOIA's time limits in which to respond to a request, it may not charge search fees, or, in the instances of requests from requesters described in paragraph (d)(1) of this section, may not charge duplication fees, except as described in paragraphs (d)(2)(i) through (iii) of this section.

(i) If a component has determined that unusual circumstances as defined by the FOIA apply and the agency provided timely written notice to the requester in accordance with the FOIA, a failure to comply with the time limit shall be excused for an additional ten days.

(ii) If a component has determined that unusual circumstances as defined by the FOIA apply, and more than 5,000 pages are necessary to respond to the request, the component may charge search fees, or, in the case of requesters described in paragraph (d)(1) of this section, may charge duplication fees if the following steps are taken. The component must have provided timely written notice of unusual circumstances to the requester in accordance with the FOIA and the component must have discussed with the requester via written mail, email, or telephone (or made not less than three good-faith attempts to do so) how the requester could effectively limit the scope of the request in accordance with 5 U.S.C. 552(a)(6)(B)(ii). If this exception is satisfied, the component may charge all applicable fees incurred in the processing of the request.

(iii) If a court has determined that exceptional circumstances exist as defined in the FOIA, a failure to comply with the time limits shall be excused for the length of time provided by the court order.

(3) No search or review fees will be charged for a quarter-hour period unless more than half of that period is required for search or review.

(4) Except for requesters seeking records for a commercial use, components will provide without charge:

(i) The first 100 pages of duplication (or the cost equivalent for other media); and

(ii) The first two hours of search.

(5) When, after first deducting the 100 free pages (or its cost equivalent) and the first two hours of search, a total fee calculated under paragraph (c) of this section is $25.00 or less for any request, no fee will be charged.

(e) *Notice of anticipated fees in excess of $25.00.* When a component determines or estimates that the fees to be assessed in accordance with this section will exceed $25.00, the component shall notify the requester of the actual or estimated amount of the fees, including a breakdown of the fees for search, review or duplication, unless the requester has indicated a willingness to pay fees as high as those anticipated. If only a portion of the fee can be estimated readily, the component shall advise the requester accordingly. In cases in which a requester has been notified that the actual or estimated fees are in excess of $25.00, the request shall not be considered received and further work will not be completed until the requester commits in writing to pay the actual or estimated total fee. Such a commitment must be made by the requester in writing, must indicate a given dollar amount the requester is willing to pay, and must be received by the component within 30 calendar days from the date of notification of the fee estimate. If a commitment is not received within this period, the requester shall be notified, in writing, that the request shall be closed. Components will inform the requester of their right to seek assistance from the appropriate component FOIA Public Liaison or other FOIA professional to assist the requester in reformulating request in an effort to reduce fees. Components are not required to accept payments in installments. If the requester has indicated a willingness to pay some designated amount of fees, but the component estimates that the total fee will exceed that amount, the component will toll the processing of the request when it notifies the requester of the estimated fees in excess of the amount the requester has indicated a willingness to pay. The Component will inquire whether the requester wishes to revise the amount of fees the requester is willing to pay or modify the request. Once the requester responds, the time to respond will resume from where it was at the date of the notification.

(f) *Charges for other services.* Although not required to provide special services, if a component chooses to do so as a matter of administrative discretion, the direct costs of providing the service will be charged. Examples of such services include certifying that records are true copies, providing multiple copies of the same document, or sending records by means other than first class mail.

(g) *Charging interest.* Components may charge interest on any unpaid bill starting on the 31st day following the date of billing the requester. Interest charges will be assessed at the rate provided in 31 U.S.C. 3717 and will accrue from the billing date until payment is received by the component. Components will follow the provisions of the Debt Collection Act of 1982 (Pub. L. 97–365, 96 Stat. 1749), as amended, and its administrative procedures, including the use of consumer reporting agencies, collection agencies, and offset.

(h) *Aggregating requests.* When a component reasonably believes that a requester or a group of requesters acting in concert is attempting to divide a single request into a series of requests for the purpose of avoiding fees, the component may aggregate those requests and charge accordingly. Components may presume that multiple requests of this type made within a 30-day period have been made in order to avoid fees. For requests separated by a longer period, components will aggregate them only where there is a reasonable basis for determining that aggregation is warranted in view of all the circumstances involved. Multiple requests involving unrelated matters will not be aggregated.

(i) *Advance payments.* (1) For requests other than those described in paragraphs (i)(2) and (i)(3) of this section, a component shall not require the requester to make an advance payment before work is commenced or continued on a request. Payment owed for work already completed (*i.e.,* payment before copies are sent to a requester) is not an advance payment.

(2) When a component determines or estimates that a total fee to be charged under this section will exceed $250.00, it may require that the requester make an advance payment up to the amount of the entire anticipated fee before beginning to process the request. A component may elect to process the request prior to collecting fees when it receives a satisfactory assurance of full payment from a requester with a history of prompt payment.

(3) Where a requester has previously failed to pay a properly charged FOIA fee to any component or agency within 30 calendar days of the billing date, a component may require that the requester pay the full amount due, plus any applicable interest on that prior request and the component may require that the requester make an advance payment of the full amount of any anticipated fee before the component begins to process a new request or continues to process a pending request, or any pending appeal. Where a component has a reasonable basis to believe that a requester has misrepresented his or her identity in order to avoid paying outstanding fees, it may require that the requester provide proof of identity.

(4) In cases in which a component requires advance payment, the request shall not be considered received and further work will not be completed until the required payment is received. If the requester does not pay the advance payment within 30 calendar days after the date of the component's fee determination letter, the request will be closed.

(j) *Other statutes specifically providing for fees.* The fee schedule of this section does not apply to fees charged under any statute that specifically requires an agency to set and collect fees for particular types of records. In instances where records responsive to a request are subject to a statutorily-based fee schedule program, the component will inform the requester of the contact information for that source.

(k) *Requirements for waiver or reduction of fees.* (1) Requesters may seek a waiver of fees by submitting a written application demonstrating how disclosure of the requested information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.

(2) A component must furnish records responsive to a request without charge or at a reduced rate when it determines, based on all available information, that disclosure of the requested information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester. In deciding whether this standard is satisfied the component must consider the factors described in paragraphs (k)(2)(i) through (iii) of this section:

(i) Disclosure of the requested information would shed light on the operations or activities of the government. The subject of the request must concern identifiable operations or activities of the Federal Government with a connection that is direct and clear, not remote or attenuated.

(ii) Disclosure of the requested information would be likely to contribute significantly to public understanding of those operations or activities. This factor is satisfied when the following criteria are met:

(A) Disclosure of the requested records must be meaningfully informative about government operations or activities. The disclosure of information that is already in the public domain, in either the same or a substantially identical form, would not be meaningfully informative if nothing new would be added to the public's understanding.

(B) The disclosure must contribute to the understanding of a reasonably broad audience of persons interested in the subject, as opposed to the individual understanding of the requester. A requester's expertise in the subject area as well as the requester's ability and intention to effectively convey information to the public must be considered. Components will presume that a representative of the news media will satisfy this consideration.

(iii) The disclosure must not be primarily in the commercial interest of the requester. To determine whether disclosure of the requested information is primarily in the commercial interest of the requester, components will consider the following criteria:

(A) Components must identify whether the requester has any commercial interest that would be furthered by the requested disclosure. A commercial interest includes any commercial, trade, or profit interest. Requesters must be given an opportunity to provide explanatory information regarding this consideration.

(B) If there is an identified commercial interest, the component must determine whether that is the primary interest furthered by the request. A waiver or reduction of fees is justified when the requirements of paragraphs (k)(2)(i) and (ii) of this section are satisfied and any commercial interest is not the primary interest furthered by the request. Components ordinarily will presume that when a news media requester has satisfied the requirements of paragraphs (k)(2)(i) and (ii) of this section, the request is not primarily in the commercial interest of the requester. Disclosure to data brokers or others who merely compile and market government information for direct economic return will not be presumed to primarily serve the public interest.

(3) Where only some of the records to be released satisfy the requirements for a waiver of fees, a waiver shall be granted for those records.

(4) Requests for a waiver or reduction of fees should be made when the request is first submitted to the component and should address the criteria referenced above. A requester may submit a fee waiver request at a later time so long as the underlying record request is pending or on administrative appeal. When a requester who has committed to pay fees subsequently asks for a waiver of those fees and that waiver is denied, the requester shall be required to pay any costs incurred up to the date the fee waiver request was received.

(5) The requester shall be notified in writing of the decision to grant or deny the fee waiver.

Appendix A to Subpart A of Part 1—Departmental Offices

1. *In general.* This appendix applies to the Departmental Offices as defined in 31 CFR 1.1(b)(1).

2. *Public Reading Room.* The public reading room for the Departmental Offices is the Treasury Library. The library is located in the Freedman's Bank Building (Treasury Annex), Room 1020, 1500 Pennsylvania Avenue NW, Washington, DC 20220. For building security purposes, visitors are required to make an appointment by calling 202–622–0990. Treasury also maintains an electronic reading room, which may be accessed at *https://home.treasury.gov/footer/freedom-of-information-act.*

3. *Requests for records.*

(a) Initial determinations as to whether to grant requests for records of the Departmental Offices will be made by the Director for FOIA and Transparency, or the designee of such official, with the exception of initial determinations by the Office of the Inspector General and the Special Inspector General for the Troubled Asset Relief Program, which will be made by the designee of the respective Inspector General.

(b) Requests for records should be sent to: Freedom of Information Request, Departmental Offices, Director, FOIA and Transparency, Department of the Treasury, 1500 Pennsylvania Avenue NW, Washington, DC 20220. Requests may also be submitted via email at *FOIA@treasury.gov.*

4. *Administrative appeal of initial determination to deny records.*

(a) Appellate determinations with respect to records of the Departmental Offices or requests for expedited processing will be made by the Deputy Assistant Secretary for Privacy, Transparency, and Records, or the designee of such official, with the exception of appellate determinations by the Office of the Inspector General and the Special Inspector General for the Troubled Asset Relief Program, which will be made by the respective Inspector General or his or her designee.

(b) Appeals should be addressed to: Freedom of Information Appeal, Departmental Offices, FOIA and Transparency, Department of the Treasury, 1500 Pennsylvania Avenue NW, Washington, DC 20220. Appeals may also be submitted via email at *FOIA@treasury.gov.*

Appendix B to Subpart A of Part 1—Internal Revenue Service

1. *In general.* This appendix applies to the Internal Revenue Service (IRS). See also 26 CFR 601.702.

2. *Public reading room.* The IRS no longer maintains physical reading rooms. Documents for the public are found on various websites at *irs.gov* including the electronic FOIA Reading Room located at *https://www.irs.gov/uac/electronic-reading-room.*

3. *Requests for records.* Initial determinations as to whether to grant requests for records of the IRS, grant expedited processing, grant a fee waiver, or determine requester category will be made by those officials specified in 26 CFR 601.702.

Requests for records should be submitted to the IRS using the information below:

IRS accepts FOIA requests by fax or by mail	
If your request is for IRS Headquarters Office records concerning matters of nationwide applicability, such as published guidance (regulations and revenue rulings), program management, operations, or policies, including National or Headquarters Offices of Chief Counsel records that are not available at the Electronic FOIA Reading Room site:.	
If your request is for your own records or other records controlled at IRS field locations including Division Counsel offices that are not available at the Electronic FOIA Reading Room site:.	
Fax: 877–807–9215, Mail: IRS FOIA Request, Stop 211, PO Box 621506, Atlanta, GA 30362–3006.	Fax: 877–891–6035, Mail: IRS FOIA Request, Stop 93A, Post Office Box 621506, Atlanta GA 30362–3006.

4. *Administrative appeal of initial determination to deny records.* Appellate determinations with respect to records of the Internal Revenue Service will be made by the Commissioner of Internal Revenue or the delegate of such officer. Appeals must be in writing and addressed to: IRS Appeals Attention: FOIA Appeals, M/Stop 55202, 5045 E Butler Ave., Fresno, CA 93727–5136.

Appendix C to Subpart A of Part 1—Bureau of Engraving and Printing

1. *In general.* This appendix applies to the Bureau of Engraving and Printing (BEP).

2. *Public reading room.* BEP's public reading room is located at 14th and C Streets SW, Washington, DC 20228. Individuals wishing to visit the public reading room must request an appointment by telephoning (202) 874–2500. The reading room is open on official business days from 10:00 a.m. to 4:00 p.m. eastern standard time. Visitors shall comply with 31 CFR part 605, governing the conduct of persons within the buildings and grounds of the BEP. In addition, BEP also maintains an electronic reading room, which may be accessed at *http://www.bep.gov/bepfoialibrary.html.*

3. *Requests for records.* Initial determinations as to whether to grant or deny requests for records of the BEP or applicable fees will be made by the BEP Director delegate, *i.e.,* Disclosure Officer. Requests may be mailed or faxed to: FOIA/PA Request, Disclosure Officer, Bureau of Engraving and Printing, Office of the Chief Counsel—FOIA and Transparency Services, Washington, DC 20228–0001, Fax Number: (202) 874–2951.

4. *Administrative Appeal of initial determination to deny records.* Appellate determinations with respect to records of the BEP will be made by the Director of the BEP or the delegate of the Director for purposes of this section. Appeals may be mailed or delivered in person to: FOIA/PA APPEAL, Director, Bureau of Engraving and Printing, Office of the Director, 14th and C Streets SW, Washington, DC 20228–0001.

Appendix D to Subpart A of Part 1—Bureau of the Fiscal Service

1. In general. This appendix applies to the Bureau of the Fiscal Service.

2. *Public reading room.* The public reading room for the Bureau of the Fiscal Service is the Treasury Library. The library is located in the Freedman's Bank Building (Treasury Annex), Room 1020, 1500 Pennsylvania Avenue NW, Washington, DC 20220. For building security reasons, visitors are required to make an appointment by calling 202–622–0990. Fiscal Service also maintains an electronic reading room, which may be accessed at *https://www.fiscal.treasury.gov/foia/foia_readingroom.htm.*

3. *Requests for records.* Initial determinations whether to grant requests for records will be made by the Disclosure Officer, Bureau of the Fiscal Service. Requests may be mailed or delivered in person to:

Freedom of Information Request, Disclosure Officer, Bureau of the Fiscal Service, 401 14th Street SW, Washington, DC 20227.

4. *Administrative appeal of initial determination to deny records.* Appellate determinations will be made by the Commissioner, Bureau of the Fiscal Service, or that official's delegate. Appeals may be mailed to: Freedom of Information Appeal (FOIA), Commissioner, Bureau of the Fiscal Service, 401 14th Street SW, Washington, DC 20227.

Appeals may be delivered personally to the Office of the Commissioner, Bureau of the Fiscal Service, 401 14th Street SW, Washington, DC.

Appendix E to Subpart A of Part 1—United States Mint

1. *In general.* This appendix applies to the United States Mint.

2. *Public reading room.* The U.S. Mint will provide a room on an ad hoc basis when necessary. Contact the Freedom of Information/Privacy Act Officer, United States Mint, Judiciary Square Building, 7th Floor, 633 3rd Street NW, Washington, DC 20220.

3. *Requests for records.* Initial determinations as to whether to grant requests for records of the United States Mint will be made by the Freedom of Information/Privacy Act Officer, United States Mint. Requests may be mailed or delivered in person to: Freedom of Information Act Request, Freedom of Information/Privacy Act Officer, United States Mint, Judiciary Square Building, 7th Floor, 633 3rd Street NW, Washington, DC 20220.

4. *Administrative appeal of initial determination to deny records.* Appellate determinations with respect to records of the United States Mint will be made by the Director of the Mint. Appeals made by mail should be addressed to: Freedom of Information Appeal, Director, United States Mint, Judiciary Square Building, 7th Floor, 633 3rd Street NW, Washington, DC 20220.

Appendix F to Subpart A of Part 1—Office of the Comptroller of the Currency

1. *In general.* This appendix applies to the Office of the Comptroller of the Currency.

2. *Public reading room.* The Office of the Comptroller of the Currency will make materials available through its Public Information Room at 250 E Street SW, Washington, DC 20219.

3. *Requests for records.* Initial determinations as to whether to grant requests for records of the Office of the Comptroller of the Currency will be made by the Disclosure Officer or the official so designated. Requests may be mailed or delivered in person to: Freedom of Information Act Request, Disclosure Officer, Communications Division, 3rd Floor, Comptroller of the Currency, 250 E Street SW, Washington, DC 20219.

4. *Administrative appeal of initial determination to deny records.* Appellate determinations with respect to records of the Comptroller of the Currency will be made by the Chief Counsel or delegates of such official. Appeals made by mail shall be addressed to: Communications Division, Comptroller of the Currency, 250 E Street SW, Washington, DC 20219.

Appeals may be delivered personally to the Communications Division, Comptroller of the Currency, 250 E Street SW, Washington, DC.

Appendix G to Subpart A of Part 1—Financial Crimes Enforcement Network

1. *In general.* This appendix applies to the Financial Crimes Enforcement Network (FinCEN).

2. *Public reading room.* FinCEN will provide records on the online reading room located on the FinCEN FOIA page or in the Code of Federal Regulations.

3. *Requests for records.* Initial determinations as to whether to grant requests for records of FinCEN will be made by the Freedom of Information Act/Privacy Act Officer, FinCEN. Requests for records may be mailed to: Freecom of Information Act/Privacy Act Request, Financial Crimes Enforcement Network, Post Office Box 39, Vienna, VA 22183.

4. *Administrative appeal of initial determination to deny records.* Appellate determinations with respect to the records of FinCEN will be made by the Director of FinCEN or the delegate of the Director. Appeals should be mailed to: Freedom of Information Act Appeal, Post Office Box 39, Vienna, VA 22183, or emailed to: *FinCENFOIA@fincen.gov.*

Appendix H to Subpart A of Part 1—Alcohol and Tobacco Tax and Trade Bureau

1. *In general.* This appendix applies to the Alcohol and Tobacco Tax and Trade Bureau (TTB).

2. *Public reading room.* The public reading room for TTB is maintained at 1310 G Street NW, Washington, DC 20005. For building security purposes, visitors are required to make an appointment by calling 202–882–9904.

3. *Requests for records.* Initial determinations as to whether to grant requests for records of TTB will be made by the Director, Regulations and Rulings Division. Requests for records may be mailed to: TTB FOIA Requester Service Center, 1310 G Street NW, Box 12, Washington, DC 20005. Requests may also be faxed to: 202–453–2331.

4. *Administrative appeal of initial determination to deny records.* Appellate determinations with respect to the records of TTB will be made by the Assistant Administrator (Headquarters Operations), Alcohol and Tobacco Tax and Trade Bureau or the delegate of such official. Appeals may be mailed or delivered in person to: FOIA Appeal, Assistant Administrator (Headquarters Operations), Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street NW, Box 12, Washington, DC 20005.

Appendix I to Subpart A of Part 1—Treasury Inspector General for Tax Administration

1. *In general.* This appendix applies to the Treasury Inspector General for Tax Administration (TIGTA).

2. *Public reading room.* TIGTA will provide a room upon request when necessary. Contact the Disclosure Branch,

Office of Chief Counsel, TIGTA, at 202–622–4068.

3. *Requests for records.* Initial determinations as to whether to grant requests for records of TIGTA will be made by the Disclosure Officer, TIGTA. Requests for records may be mailed to: Freedom of Information Act/Privacy Act Request, Treasury Inspector General for Tax Administration, Office of Chief Counsel, Disclosure Branch, 1401 H Street NW, Room 469, Washington, DC 20005. You may also view the How to Make a FOIA Request for TIGTA Records at *https://www.treasury.gov/tigta/important_foia_mafr.shtml.* TIGTA's FOIA email address is *FOIA.Reading.Room@tigta.treas.gov.*

4. *Administrative appeal of initial determination to deny records.* Appellate determinations with respect to the records of TIGTA will be made by the Chief Counsel, TIGTA, or the delegate of the Chief Counsel. Appeals should be mailed to: Freedom of Information Act/Privacy Act Appeal, Treasury Inspector General for Tax Administration, Office of Chief Counsel, 1401 H Street NW, Room 469, Washington, DC 20005.

David F. Eisner,

Assistant Secretary for Management.

[FR Doc. 2019–03320 Filed 2–26–19; 8:45 am]

BILLING CODE 4810–25–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R06–OAR–2015–0850; FRL–9989–09–Region 6]

Air Plan Approval; New Mexico; Approval of Revised Statutes; Error Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: Pursuant to the Federal Clean Air Act (CAA or the Act), the Environmental Protection Agency (EPA) is approving revisions to New Mexico's State Implementation Plan (SIP) that incorporate updates to the New Mexico statutes. EPA is also correcting its previous approval of some statute provisions as approval of these provisions into the SIP was in error.

DATES: This rule is effective on May 28, 2019 without further notice, unless the EPA receives relevant adverse comment by March 29, 2019. If the EPA receives such comment, the EPA will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket No. EPA–R06–OAR–2015–0850, at *https://www.regulations.gov* or via email to *Riley.Jeffrey@epa.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 Jeff Riley, (214) 665–8542, *Riley.Jeffrey@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://www.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 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: Jeff Riley, (214) 665–8542, *Riley.Jeffrey@epa.gov.* To inspect the hard copy materials, please schedule an appointment with Jeff Riley or Mr. Bill Deese at (214) 665–7253.

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

I. Background

A. CAA and SIPs

Section 110 of the CAA requires states to develop and submit to the EPA a SIP to ensure that state air quality meets National Ambient Air Quality Standards. These ambient standards currently address six criteria pollutants: carbon monoxide, nitrogen dioxide, ozone, lead, particulate matter, and sulfur dioxide. Each federally-approved SIP protects air quality primarily by addressing air pollution at its point of origin through air pollution regulations and control strategies. The EPA approved SIP regulations and control strategies are federally enforceable.

B. New Mexico's Submittals

On August 6, 2015, the New Mexico Environment Department (NMED) provided a demonstration of how the existing New Mexico SIP met the applicable section 110(a)(2) requirements for the revised primary annual fine particulate matter ($PM_{2.5}$) National Ambient Air Quality Standard (NAAQS) promulgated on December 14, 2012 (78 FR 3085, January 15,2013). Additionally, NMED provided updates to statutes originally approved into the SIP on November 2, 1984 (49 FR 44099). Sections 110(a)(2)(E)(ii) and 128 of the CAA require SIPs to contain statutory or regulatory provisions that: (1) Any board or body which approves permits or enforcement orders under the CAA have at least a majority of its members represent the public interest and not derive any significant portion of their income from persons subject to permits or enforcement orders under the CAA; and (2) any potential conflict of interest by members of such board or body or the head of an executive agency with similar powers be adequately disclosed. EPA approved updates to statutes under New Mexico Statutes Annotated 1978 (NMSA) Chapter 10, Article 16 and NMSA 1978 Chapter 74, Articles 1 & 2 to satisfy the CAA sections 110(a)(2)(E)(ii) and 128 requirements. However, the August 6, 2015 State submittal included other updated statutes under NMSA 1978 Chapter 9, Article 7A and NMSA 1978 Chapter 74, Articles 1 & 2 that EPA did not act upon. See EPA's proposal (82 FR 60933, December 26, 2017) and final approval (83 FR 12493, March 22, 2018) for further detail.

C. Error Corrections Under CAA Section 110(k)(6)

Section 110(k)(6) of the CAA provides EPA with the authority to make corrections to prior SIP actions that are subsequently found to be in error in the same manner as the prior action, and to do so without requiring any further submission from the State. On March 6, 2013, the Eleventh Circuit Court of Appeals issued a 2–1 decision relevant to EPA authority under Section 110(k)(6). *See Alabama Environmental Council* v. *EPA,* 711 F.3d 1277 (11th Cir. 2013). The majority opinion found that CAA section 110(k)(6) permits EPA to revise a SIP provision approved ''in error'' without any further submission from the State, so long as EPA provides the State and the public with its error determination and the basis thereof. This affirms EPA's authority to use

section 110(k)(6) to revise a prior action related to a state's implementation plan. *See* 711 F3d at 1287.

While CAA section 110(k)(6) provides EPA with the authority to correct its own ''error,'' nowhere does this provision or any other provision in the CAA define what qualifies as ''error.'' Thus, EPA believes that the term should be given its plain language, everyday meaning, which includes all unintentional, incorrect or wrong actions or mistakes.

D. What criteria must be met for the EPA to approve this SIP revision?

Under section 110(a)(2) of the CAA, states are required to develop and maintain an air quality management program that meets various basic structural requirements, including, but not limited to: enforceable emission limitations; an ambient monitoring program; an enforcement program; air quality modeling capabilities; and adequate personnel, resources, and legal authority as per 40 CFR 51.230. This ''infrastructure SIP'' requirement is met through state submittal of SIPs that implement, maintain, and enforce a new or revised NAAQS within 3 years of EPA issuing the standard. An air agency may cite existing EPA-approved provisions and/or adopt new or revised statutory authorities and regulations, as necessary, in order to address each element of the infrastructure SIP.[1] In accordance with 40 CFR 51.231, the infrastructure SIP submission should identify the provisions of law or regulations that the air agency determines provide the necessary authority, and the air agency should submit copies of those laws or regulations with the infrastructure SIP submission.

II. The EPA's Evaluation

As noted above, EPA's March 22, 2018 final action approved updates to statutes under NMSA 1978 Chapter 10, Article 16 and NMSA 1978 Chapter 74, Articles 1 & 2 to satisfy the CAA sections 110(a)(2)(E)(ii) and 128 requirements. However, the August 6, 2015 State submittal also included updated statutes under NMSA 1978 Chapter 9, Article 7A and NMSA 1978 Chapter 74, Articles 1 & 2 that EPA did not act upon. EPA has evaluated these remaining updated statues against the criteria established by section 110(a)(2) of the CAA to determine if these provisions are integral to meeting the basic structural requirements of an air quality management program. Similarly, EPA has evaluated the SIP-approved statutes under NMSA 1978 Chapter 74, Articles 1 and 2 to determine if elements of our November 2, 1984 final approval were in error and should therefore be removed from the New Mexico SIP. Below is a summary of EPA's evaluation; see our Technical Support Document (TSD) prepared in conjunction with this SIP revision for more information concerning our evaluation.

EPA has determined that the State's updates to the NMSA 1978 sections represented in Table 1 grant the Environmental Improvement Board (EIB) and/or NMED with authority for SIP development, enforcement, inspections, construction and operating permits, air monitoring, development of air quality studies and modeling, reporting, consultation, assurance of adequate implementation, and addressing of environmental emergencies.

TABLE 1—AUGUST 6, 2015 UPDATES TO NMSA 1978 CHAPTER 74, ARTICLE 2 SECTIONS FOR APPROVAL TO NEW MEXICO SIP

NMSA 1978 section	Title	Content
74–2–1	Short Title	Identifies NMSA 1978 Chapter 74, Article 2 as Air Quality Control Act (AQCA).
74–2–2	Definitions	Definitions used in AQCA.
74–2–3	Environmental improvement board	Establishes jurisdiction of EIB.
74–2–5	Duties and powers; environmental improvement board; local board.	Grants EIB authority for SIP development, enforcement, air monitoring, reporting, assurance of adequate implementation.
74–2–7	Permits	Provides EIB with authority for construction and operating permits.
74–2–10	Emergency powers of the secretary and the director.	Provides NMED with authority to address environmental emergencies.
74–2–11.1	Limitations on regulations	Specifies limitations to EIB and local board authorities, jurisdictions.
74–2–17	Continuing effect of existing laws, rules and regulations.	Establishes precedence of AQCA over any conflicting legislation.

These sections establish an air quality management program for New Mexico that meets the various basic structural requirements of CAA section 110(a)(2), and therefore their inclusion into the SIP is warranted and appropriate. We find the State's submitted revisions to these sections to be non-substantive and consistent with the CAA. EPA is approving these revisions into the New Mexico SIP.

EPA has determined that our November 2, 1984 final approval of the NMSA 1978 sections represented in Table 2 was done in error, and these sections should therefore be removed from the New Mexico SIP.

TABLE 2—NMSA 1978 CHAPTER 74, ARTICLE 2 SECTIONS FOR REMOVAL FROM NEW MEXICO SIP

NMSA 1978 section	Title	Reason for removal
74–2–6	Adoption of Regulations; Notice and Hearings.	Administrative requirements, hearing board procedures.
74–2–8	Variances	Inconsistent with federally-enforceable requirements.
74–2–9	Variances—Judicial Review	Inconsistent with federally-enforceable requirements.
74–2–11	Confidential Information	Duplicative of SIP-approved regulation (20.2.1.115 NMAC).

[1] ''Guidance on Infrastructure State Implementation Plan (SIP) Elements under Clean Air Act sections 110(a)(1) and 110(a)(2),'' Memorandum from Stephen D. Page, September 13, 2013, *https://www3.epa.gov/airquality/urbanair/sipstatus/docs/Guidance_on_Infrastructure_SIP_Elements_Multipollutant_FINAL_Sept_2013.pdf.*

TABLE 2—NMSA 1978 CHAPTER 74, ARTICLE 2 SECTIONS FOR REMOVAL FROM NEW MEXICO SIP—Continued

NMSA 1978 section	Title	Reason for removal
74–2–12	Enforcement	SIP-approved 74–2–4.D provides EIB & secretary with enforcement authority.
74–2–13	Inspection	SIP-approved 74–2–5.1A provides department/local agency inspection authority.
74–2–14	Penalties	Inconsistent with federally-enforceable requirements.
74–2–15	Additional Means of Enforcement.	Inconsistent with federally-enforceable requirements.
74–2–16	Declaratory Judgement on Regulations.	Inconsistent with federally-enforceable requirements.

These elements are appropriate for state and local agencies to adopt and implement, but it is not necessary or appropriate to make them federally enforceable by incorporating them into the applicable SIP. Moreover, inclusion of sections 74–2–8, 74–2–9, 74–2–14, 74–2–15, and 74–2–16 into the SIP present inconsistencies with the Act, and Federal requirements. EPA is removing these sections from the New Mexico SIP, and will not act upon updates to these sections contained in the State's August 6, 2015 submittal.

Further, the State's submittal identified NMSA 1978, section 74–2–15.1 (*Primary Nonferrous Smelter Orders*) as having been repealed by the State in 1992. EPA will act accordingly to remove this section from the SIP.

III. Final Action

We are approving revisions to the New Mexico SIP that pertain to updated statutes under NMSA 1978 Chapter 74, Article 2 contained in the State's August 6, 2015 submittal. We are also making an error correction to remove from the New Mexico SIP certain statutes under NMSA 1978 Chapter 74, Article 2 originally approved in our November 2, 1984 rulemaking.

The EPA is publishing this rule without prior proposal because we view this as a non-controversial amendment and anticipate no adverse comments. However, in the proposed rules section of this **Federal Register** publication, we are publishing a separate document that will serve as the proposal to approve the SIP revision if relevant adverse comments are received. This rule will be effective on May 28, 2019 without further notice unless we receive relevant adverse comment by March 29, 2019. If we receive relevant adverse comments, we will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. We will address all public comments in a subsequent final rule based on the proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so now. Please note that if we receive relevant adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, we may adopt as final those provisions of the rule that are not the subject of an adverse comment.

IV. 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 the revisions to the New Mexico statutes as described in the Final Action section above. The EPA has made, and will continue to make, these materials generally available through *www.regulations.gov* and at the EPA Region 6 Office (please contact Jeff Riley, (214) 665–8542, *Riley.Jeffrey@epa.gov* for more information). Therefore, these materials have been approved by EPA for inclusion in the SIP, have been incorporated by reference by EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of EPA's approval, and will be incorporated by reference in the next update to the SIP compilation (62 FR 27968, May 22, 1997).

V. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 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 (Public Law 104–4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

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 rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

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**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 29, 2019. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: February 14, 2019.

Anne Idsal,

Regional Administrator, Region 6.

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 GG—New Mexico

■ 2. In § 52.1620(e), the table titled ''EPA-Approved New Mexico Statutes'' is amended under ''Chapter 74—Environmental Improvement'' by:

■ a. Revising the entries for Sections 74–2–1, 74–2–2, 74–2–3, and 74–2–5;

■ b. Removing the entry for Section 74–2–6;

■ c. Revising the entry for Section 74–2–7;

■ d. Removing the entries for Sections 74–2–8 and 74–2–9;

■ e. Revising the entry for 74–2–10;

■ f. Removing the entry for Section 74–2–11;

■ g. Revising the entry for Section 74–2–11.1;

■ h. Removing the entries for Sections 74–2–12, 74–2–13, 74–2–14, 74–2–15, 74–2–15.1, and 74–2–16; and

■ i. Revising the entry for Section 74–2–17.

The revisions read as follows:

§ 52.1620 Identification of plan.

* * * * *

(e) * * *

EPA-APPROVED NEW MEXICO STATUTES

State citation	Title/subject	State approval/ effective date	EPA approval date	Comments
New Mexico Statutes				
*	*	*	*	*
Chapter 74—Environmental Improvement				
*	*	*	*	*
74–2–1	Short Title	8/6/2015	2/27/2019, [Insert ***Federal Register*** citation].	
74–2–2	Definitions	8/6/2015	2/27/2019, [Insert ***Federal Register*** citation].	
74–2–3	Environmental improvement board	8/6/2015	2/27/2019, [Insert ***Federal Register*** citation].	
*	*	*	*	*
74–2–5	Duties and powers; environmental improvement board; local board.	8/6/2015	2/27/2019, [Insert ***Federal Register*** citation].	
74–2–7	Permits; permit appeals to the environmental improvement board or the local board; permit fees.	8/6/2015	2/27/2019, [Insert ***Federal Register*** citation].	
74–2–10	Emergency powers of the secretary and the director.	8/6/2015	2/27/2019, [Insert ***Federal Register*** citation].	
74–2–11.1	Limitations on regulations	8/6/2015	2/27/2019, [Insert ***Federal Register*** citation].	
74–2–17	Continuing effect of existing laws, rules and regulations.	8/6/2015	2/27/2019, [Insert ***Federal Register*** citation].	
*	*	*	*	*

* * * * *

[FR Doc. 2019–02862 Filed 2–26–19; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 70

[EPA–R07–OAR–2018–0828; FRL 9989–43–Region 7]

Approval of Operating Permits Program; Kansas; Reporting Emission Data, Emission Fees and Process Information

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking final action to approve revisions to the Operating Permits Program (OPP) for the State of Kansas. This final action will amend the Kansas rules to reorganize, clarify, and update the Class I emission fee, application fee, and emissions inventory regulations and ensure that Kansas's OPP is adequately funded. Approval of these revisions ensures consistency between the State and federally-approved rules and does not impact air quality.

DATES: This final rule is effective on March 29, 2019.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–R07–OAR–2018–0828. All documents in the docket are listed on the *https://www.regulations.gov* website. Although listed in the index, some information is not publicly available, *i.e.,* 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 through *https://www.regulations.gov* or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional information.

FOR FURTHER INFORMATION CONTACT: Deborah Bredehoft, Environmental Protection Agency, Air Planning and Development Branch, 11201 Renner Boulevard, Lenexa, Kansas 66219 at (913) 551–7164, or by email at *Bredehoft.Deborah@epa.gov.*

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

Table of Contents

I. Background
II. Have the requirements for approval of a part 70 revision been met?
III. What action is EPA taking?
IV. Statutory and Executive Order Reviews

I. Background

On December 19, 2018 (83 FR 65115), EPA published a notice of proposed rulemaking (NPR) for the State of Kansas. In the NPR, EPA proposed approval of revisions to the Kansas OPP. The revisions were submitted by the State of Kansas on January 22, 2018. Revisions to the program include revoking Kansas Administrative Regulation (K.A.R.) 28–19–202; adding new language to K.A.R. 28–19–517 which parallels language in the revoked K.A.R. 28–19–202; increasing the annual emission fee from $37 dollars per ton to $53 dollars per ton; increasing all application fees in K.A.R. 28–19–516; establishing a baseline emission fee; and adding additional clarifications to the Program to address fees, refunds, electronic submittal, and who is required to submit an annual emissions inventory. A detailed discussion of Kansas's OPP submission and EPA's rationale for approving the OPP submission were provided in the NPR and the associated Technical Support Document in the docket for this rulemaking and will not be restated here. No comments were received regarding the NPR.

II. Have the requirements for approval of a part 70 revision been met?

The state provided a public comment period for this OPP revision from September 7, 2017, to November 15, 2017, and received comments. In response to the comments, Kansas revised the rule prior to submitting to the EPA. The revisions are consistent with applicable EPA requirements in title V of the CAA and 40 CFR part 70.

III. What action is EPA taking?

The EPA is taking final action to approve revisions to the Kansas OPP by approving the State's request to revoke K.A.R. 28–19–202, Annual emissions fees; and to amend K.A.R. 28–19–516, Class I operating permits, application fees; and K.A.R. 28–19–517, Class I operating permits, annual emissions inventory and fees. Approval of these revisions will ensure consistency between the state and federally-approved rules. EPA has determined that these changes will not adversely impact air emissions.

IV. Statutory and Executive Order Reviews

This final 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 final 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 Title V 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 the National Technology Transfer and Advancement Act (NTTA) because this rulemaking does not involve technical standards; 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, this approval of the revision to Kansas's Title V Operating Permit Program 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).

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 29, 2019. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 70

Administrative practice and procedure, Air pollution control, Intergovernmental relations, Operating permits, Reporting and recordkeeping requirements.

Dated: February 22, 2019.

James Gulliford,

Regional Administrator, Region 7.

For the reasons stated in the preamble, EPA amends 40 CFR part 70 as set forth below:

PART 70—STATE OPERATING PERMIT PROGRAMS

■ 1. The authority citation for part 70 continues to read as follows:

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

■ 2. Amend appendix A to part 70 by adding paragraph (g) under Kansas to read as follows:

Appendix A to Part 70—Approval Status of State and Local Operating Permits Programs

* * * * *

Kansas

* * * * *

(g) The Kansas Department of Health and Environment submitted revisions to Kansas rules K.A.R. 28–19–202, K.A.R. 28–19–516, and K.A.R. 28–19–517, on January 22, 2018. The state effective date is January 5, 2018. This revision is effective April 29, 2019.

* * * * *

[FR Doc. 2019–03356 Filed 2–26–19; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2018–0037; FRL–9987–32]

Abamectin; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for residues of abamectin in or on bananas and tea. Syngenta Crop Protection, LLC, requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: This regulation is effective February 27, 2019. Objections and requests for hearings must be received on or before April 29, 2019, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2018–0037, is available at *http://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW, Washington, DC 20460–0001. 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 OPP Docket is (703) 305–5805. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Michael Goodis, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; main telephone number: (703) 305–7090; email address: *RDFRNotices@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 an agricultural producer, food manufacturer, or pesticide manufacturer. 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:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

B. How can I get electronic access to other related information?

You may access a frequently updated electronic version of EPA's tolerance regulations at 40 CFR part 180 through the Government Printing Office's e-CFR site at *http://www.ecfr.gov/cgi-bin/text-idx?&c=ecfr&tpl=/ecfrbrowse/Title40/40tab_02.tpl.*

C. How can I file an objection or hearing request?

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2018–0037 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing, and must be received by the Hearing Clerk on or before April 29, 2019. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing (excluding any Confidential Business Information (CBI)) for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit the non-CBI copy of your objection or hearing request, identified by docket ID number EPA–HQ–OPP–2018–0037, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be CBI or other information whose disclosure is restricted by statute.
- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001.
- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please

follow the instructions at *http://www.epa.gov/dockets/contacts.html.*

Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *http://www.epa.gov/dockets.*

II. Summary of Petitioned-For Tolerance

In the **Federal Register** of April 11, 2018 (83 FR 15528) (FRL–9975–57), EPA issued a document pursuant to FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), announcing the filing of pesticide petitions (PP 7E8636 and 7E8637) by Syngenta Crop Protection, LLC, P.O. Box 18300, Greensboro, NC 27419. The petition requested that 40 CFR part 180 be amended by establishing tolerances for residues of the insecticide avermectin B1 (a mixture of avermectins containing greater than or equal to 80% avermectin B1a (5-*O*-demethyl avermectin A1) and less than or equal to 20% avermectin B1b (5-*O*-demethyl -25-de(1-methylpropyl)-25-(1-methylethyl) avermectin A1)) in or on the raw agricultural commodities tea (7E8636) at 1 parts per million (ppm) and banana at 0.002 ppm (7E8637). That document referenced a summary of the petition prepared by Syngenta Crop Protection, the registrant, which is available in the docket, *http://www.regulations.gov.* Two comments were received on the notice of filing; however, neither comment refers to abamectin in particular or pesticides in general, and are therefore not relevant to this action.

Based upon review of the data supporting the petition, EPA has modified the levels at which tolerances are being established for tea and banana as well as the commodity definition for tea. The reason for these changes are explained in Unit IV.C.

III. Aggregate Risk Assessment and Determination of Safety

Section 408(b)(2)(A)(i) of FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) of FFDCA defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . .''

Consistent with FFDCA section 408(b)(2)(D), and the factors specified in FFDCA section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure for abamectin including exposure resulting from the tolerances established by this action. EPA's assessment of exposures and risks associated with abamectin follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children.

A summary of the toxicological effects of abamectin as well as specific information on the studies received and the nature of the adverse effects caused by abamectin and the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies are discussed in the final rule published in the **Federal Register** of May 2, 2016 (81 FR 26147) (FRL–9945–29) and its supporting documents. Because nothing has changed since the publication of that rule, EPA is incorporating that discussion into this preamble.

B. Toxicological Points of Departure/Levels of Concern

Once a pesticide's toxicological profile is determined, EPA identifies toxicological points of departure (POD) and levels of concern to use in evaluating the risk posed by human exposure to the pesticide. For hazards that have a threshold below which there is no appreciable risk, the toxicological POD is used as the basis for derivation of reference values for risk assessment. PODs are developed based on a careful analysis of the doses in each toxicological study to determine the dose at which no adverse effects are observed (the NOAEL) and the lowest dose at which adverse effects of concern are identified (the LOAEL). Uncertainty/safety factors are used in conjunction with the POD to calculate a safe exposure level—generally referred to as a population-adjusted dose (PAD) or a reference dose (RfD)—and a safe margin of exposure (MOE). For non-threshold risks, the Agency assumes that any amount of exposure will lead to some degree of risk. Thus, the Agency estimates risk in terms of the probability of an occurrence of the adverse effect expected in a lifetime. For more information on the general principles EPA uses in risk characterization and a complete description of the risk assessment process, see *http://www2.epa.gov/pesticide-science-and-assessing-pesticide-risks/assessing-human-health-risk-pesticides.*

A summary of the toxicological endpoints for abamectin used for human risk assessment is discussed in Unit III.B. of the final rule published in the **Federal Register** of May 2, 2016 (81 FR 26147) (FRL–9945–29).

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* In evaluating dietary exposure to abamectin, EPA considered exposure under the petitioned-for tolerances as well as all existing abamectin tolerances in 40 CFR 180.449. EPA assessed dietary exposures from abamectin in food as follows:

i. *Acute exposure.* Quantitative acute dietary exposure and risk assessments are performed for a food-use pesticide, if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1-day or single exposure.

Such effects were identified for abamectin. In estimating acute dietary exposure, EPA used food consumption information from the 2003–2008 United States Department of Agriculture (USDA) National Health and Nutrition Examination Survey, What We Eat in America (NHANES/WWEIA). As to residue levels in food, a refined acute dietary (food and drinking water) exposure assessment was conducted for all established food uses of abamectin. Acute anticipated residues derived from field trial data were used. Empirical and 2018 DEEM default processing factors and PCT estimates were used, as available. No monitoring data were used.

ii. *Chronic exposure.* The Agency selected a point of departure for chronic effects that is the same as the point of departure for acute effects and so is relying on the acute assessment to be protective of chronic effects. The Agency assessed chronic exposure for purposes of providing background dietary exposure for use in the residential short-term assessments and to incorporate residues/exposure from

the food handling establishment (FHE) uses. In conducting the chronic dietary exposure assessment EPA used the food consumption data from the 2003–2008 USDA NHANES/WWEIA. As to residue levels in food, a refined chronic dietary (food and drinking water) exposure assessment was conducted for all established food uses of abamectin. Average residues from field trials were used. Residues from use in FHE were included. Empirical and default processing factors and PCT estimates were used, as available.

iii. *Cancer.* Based on the data summarized in Unit III.A., EPA has concluded that abamectin does not pose a cancer risk to humans. Therefore, a dietary exposure assessment for the purpose of assessing cancer risk is unnecessary.

iv. *Anticipated residue and percent crop treated (PCT) information.* Section 408(b)(2)(E) of FFDCA authorizes EPA to use available data and information on the anticipated residue levels of pesticide residues in food and the actual levels of pesticide residues that have been measured in food. If EPA relies on such information, EPA must require pursuant to FFDCA section 408(f)(1) that data be provided 5 years after the tolerance is established, modified, or left in effect, demonstrating that the levels in food are not above the levels anticipated. For the present action, EPA will issue such data call-ins as are required by FFDCA section 408(b)(2)(E) and authorized under FFDCA section 408(f)(1). Data will be required to be submitted no later than 5 years from the date of issuance of these tolerances.

Section 408(b)(2)(F) of FFDCA states that the Agency may use data on the actual percent of food treated for assessing chronic dietary risk only if:

- *Condition a:* The data used are reliable and provide a valid basis to show what percentage of the food derived from such crop is likely to contain the pesticide residue.
- *Condition b:* The exposure estimate does not underestimate exposure for any significant subpopulation group.
- *Condition c:* Data are available on pesticide use and food consumption in a particular area, the exposure estimate does not understate exposure for the population in such area.

In addition, the Agency must provide for periodic evaluation of any estimates used. To provide for the periodic evaluation of the estimate of PCT as required by FFDCA section 408(b)(2)(F), EPA may require registrants to submit data on PCT.

The following maximum PCT estimates for abamectin were used in the acute dietary risk assessment for the following crops: Almond: 80%; apple: 30%; apricot: 30%; avocado: 60%; bean, dry: 2.5%; blackberry: 68%; boysenberry: 68%; cantaloupe: 45%; celery: 70%; cherry: 20%; corn, sweet: 57%; cotton: 30%; cucumber: 10%; grape: 35%; grapefruit: 90%; hazelnut: 2.5%; honeydew: 35%; lemon: 55%; lettuce: 45%; loganberry: 68%; nectarine: 20%; onion, bulb: 10%; orange: 70%; peach: 25%; pear: 85%; pecan: 2.5%; pepper: 30%; pistachio: 2.5%; plum/prune: 35%; potato: 20%; pumpkin: 10%; raspberry: 68%; soybean: 11%; spinach: 45%; squash: 15%; strawberry: 45%; tangerine: 55%; tomato: 25%; walnut: 55%; and watermelon: 15%.

The PCT values that were used to refine the livestock commodities for the acute assessment were based on: Sweet corn (57%) for beef, goat, horse, and sheep commodities; and the FHE uses (5%) for hog and poultry meat and meat byproducts.

The following average PCT estimates for abamectin were used in the chronic dietary risk assessment for the following crops: Almond: 70%; apple: 10%; apricot: 15%; avocado: 35%; bean, dry: 2.5%; blackberry: 56%; boysenberry: 56%; cantaloupe: 25%; celery: 45%; cherry: 5%; corn, sweet: 45%; cotton: 20%; cucumber: 5%; grape: 15%; grapefruit: 70%; hazelnut: 2.5%; honeydew: 20%; lemon: 40%; lettuce: 20%; loganberry: 56%; nectarine: 20%; onion, bulb: 2.5%; orange: 40%; peach: 10%; pear: 70%; pecan: 1%; pepper: 15%; pistachio: 2.5%; plum/prune: 10%; potato: 5%; pumpkin: 5%; raspberry: 56%; soybeans: 8%; spinach: 25%; squash: 5%; strawberry: 30%; tangerine: 35%; tomato: 10%; walnuts: 25%; and watermelons: 5%.

The PCT values that were used to refine the livestock commodities for the chronic assessment were based on: Cotton (20%), soybean (8%), and sweet corn (45%). The PCT for poultry and hog commodities is based on the FHE PCT (5%) since the tolerances for FHE uses result in residues considerably higher than secondary residues from hogs and poultry consuming treated feed.

In most cases, EPA uses available data from United States Department of Agriculture/National Agricultural Statistics Service (USDA/NASS), proprietary market surveys, and California Department of Pesticide Regulation (CalDPR) Pesticide Use Reporting (PUR) for the chemical/crop combination for the most recent 10 years. EPA uses an average PCT for chronic dietary risk analysis and a maximum PCT for acute dietary risk analysis. The average PCT figures for each existing use is derived by combining available public and private market survey data for that use, averaging across all observations, and rounding up to the nearest 5%, except for those situations in which the average PCT is less than 1% or less than 2.5%. In those cases, the Agency would use less than 1% or less than 2.5% as the average PCT value, respectively. The maximum PCT figure is the highest observed maximum value reported within the most recent 10 years of available public and private market survey data for the existing use and rounded up to the nearest multiple of 5%, except where the maximum PCT is less than 2.5%, in which case, the Agency uses less than 2.5% as the maximum PCT.

The Agency believes that the three conditions discussed in Unit III.C.1.iv. have been met. With respect to Condition a, PCT estimates are derived from Federal and private market survey data, which are reliable and have a valid basis. The Agency is reasonably certain that the percentage of the food treated is not likely to be an underestimation. As to Conditions b and c, regional consumption information and consumption information for significant subpopulations is taken into account through EPA's computer-based model for evaluating the exposure of significant subpopulations including several regional groups. Use of this consumption information in EPA's risk assessment process ensures that EPA's exposure estimate does not understate exposure for any significant subpopulation group and allows the Agency to be reasonably certain that no regional population is exposed to residue levels higher than those estimated by the Agency. Other than the data available through national food consumption surveys, EPA does not have available reliable information on the regional consumption of food to which abamectin may be applied in a particular area.

2. *Dietary exposure from drinking water.* The Agency used screening level water exposure models in the dietary exposure analysis and risk assessment for abamectin in drinking water. These simulation models take into account data on the physical, chemical, and fate/transport characteristics of abamectin. Further information regarding EPA drinking water models used in pesticide exposure assessment can be found at *http://www2.epa.gov/pesticide-science-and-assessing-pesticide-risks/about-water-exposure-models-used-pesticide.*

Based on the Tier I Pesticide Root Zone Model—Ground Water (PRZM–

GW) and Tier I Screening Concentration in Ground Water (SCI–GROW) models and the Tier II surface water concentration calculator (SWCC) computer model, the estimated drinking water concentrations (EDWCs) of abamectin for acute exposures are estimated to be 3.76 parts per billion (ppb) for surface water and 0.074 ppb for ground water, and for chronic exposures are estimated to be 1.21 ppb for surface water.

Modeled estimates of drinking water concentrations were directly entered into the dietary exposure model. For the acute dietary risk assessment, the Agency used a residue distribution file for water based upon the maximum single application rate to ornamentals. For the chronic dietary risk assessment, the water concentration of value 1.21 ppb was used to assess the contribution to drinking water.

3. *From non-dietary exposure.* The term ''residential exposure'' is used in this document to refer to non-occupational, non-dietary exposure (*e.g.,* for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets).

Abamectin is currently registered for the following uses that could result in residential exposures: Golf course turf, homeowner bait and bait station products that include an outdoor granular bait formulation for use on fire ant mounds, and several indoor ready-to-use baits of both dust and gel formulations. In addition, there is a pending action for use on professional and collegiate sports fields that has been incorporated into this review.

EPA assessed residential exposure using the following assumptions: For residential handlers, both dermal and inhalation short-term exposure is expected from the currently registered bait and bait station uses. Residential post-application exposure for adults and children (6 to <11 and 11 to <16) is possible for the use of abamectin on golf courses and collegiate and professional sports fields. Adults and children (6 to <11 and 11 to <16) performing physical post-application activities may receive dermal exposure to abamectin residues. For the indoor liquid spray application as a spot or crack and crevice treatment, residential post-application exposures are possible. However, for the outdoor liquid spray application, exposures are expected to be negligible, and therefore, were not quantitatively assessed. Adults and children performing physical post-application activities on carpets and hard surfaces may receive exposure to abamectin residues.

The following residential post application scenarios were used in the aggregate assessment because they result in the lowest MOEs: Adults (dermal) from exposure to collegiate sports field turf; children 11 to less than 16 years old (dermal) from exposure to golf course turf; children 6 to less than 11 years old (dermal) from exposure to golf course turf; and children 1 to less than 2 years old (dermal, inhalation, and incidental oral) from exposure to carpets.

Further information regarding EPA standard assumptions and generic inputs for residential exposures may be found at *http://www2.epa.gov/pesticide-science-and-assessing-pesticide-risks/standard-operating-procedures-residential-pesticide.*

4. *Cumulative effects from substances with a common mechanism of toxicity.* Section 408(b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.''

EPA has determined that abamectin and emamectin share characteristics to support a testable hypothesis for a common mechanism of action. Following this determination, the Agency conducted a screening-level cumulative risk assessment to determine if cumulative exposures to these chemicals would pose a risk of concern. This screening assessment indicates that that cumulative dietary and residential aggregate exposures for abamectin and emamectin are below the Agency's levels of concern. No further cumulative evaluation is necessary for abamectin and emamectin.

The Agency's screening-level cumulative analysis can be found at *http://www.regulations.gov* in the document titled ''*Avermectin Macrocyclic Lactones, Abamectin and Emamectin. Cumulative Screening Risk Assessment*'' in docket ID number EPA–HQ–OPP–2018–0037.

D. Safety Factor for Infants and Children

1. *In general.* Section 408(b)(2)(C) of FFDCA provides that EPA shall apply an additional tenfold (10X) margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database on toxicity and exposure unless EPA determines based on reliable data that a different margin of safety will be safe for infants and children. This additional margin of safety is commonly referred to as the FQPA Safety Factor (SF). In applying this provision, EPA either retains the default value of 10X, or uses a different additional safety factor when reliable data available to EPA support the choice of a different factor.

2. *Prenatal and postnatal sensitivity.* An increase in qualitative susceptibility was seen in the rabbit developmental toxicity study, where decreases in body weight and food consumption were seen in maternal animals at 2.0 mg/kg/day. In contrast, the fetal effects were much more severe, consisting of cleft palate, clubbed foot, and death at 2.0 mg/kg/day. The point of departure (0.25 mg/kg/day) selected from the dog studies is 8x lower than the dose where rabbit fetal effects were seen. Therefore, it is protective of fetal effects seen in the rabbit developmental toxicity study.

The rat reproduction toxicity and developmental neurotoxicity studies demonstrated both qualitative and quantitative susceptibility in the pups to the effects of abamectin (decrease pup weights and increased postnatal pup mortality). This observation is consistent with the finding that P-gp is not fully developed in rat pups until postnatal day 28. Therefore, during the period from birth to postnatal day 28, the rat pups are substantially more susceptible to the effects of abamectin than adult rats. However, in humans, P-gp has been detected in the fetus at 22 weeks of pregnancy, and the human newborns have functioning P-gp. Therefore, human infants and children are not expected to have enhanced sensitivity as seen in rat pups.

3. *Conclusion.* Currently, the toxicity endpoints and points of departure for all exposure scenarios are selected from the subchronic and chronic oral toxicity studies in the dogs. The points of departure selected from the dog studies are based on clear NOAELs and protective of all the adverse effects seen in the studies conducted in human relevant studies with rats, CD–1 mice, and rabbits. Therefore, EPA has determined that the safety of infants and children would be adequately protected if the FQPA SF were reduced to 1x. That decision is based on the following findings:

i. The toxicity database for abamectin is complete.

ii. The proposed mode of action (MOA) is interaction with GABA receptors leading to neurotoxicity. The findings of neurotoxic signs observed in the abamectin database are consistent with the proposed MOA. Signs of neurotoxicity ranging from decreases in foot splay reflex, mydriasis (*i.e.,* excessive dilation of the pupil), curvature of the spine, decreased fore- and hind-limb grip strength, tip-toe gate,

tremors, ataxia, or spastic movements of the limbs are reported in various studies with different durations of abamectin exposure. In dogs, mydriasis was the most common finding at doses as low as 0.5 mg/kg/day at one week of treatment. No neuropathology was observed. Because the PODs used for assessing aggregate exposure to abamectin and the PODs for assessing cumulative exposure for abamectin and emamectin are protective of these neurotoxic effects in the U.S. population, as well as infants and children, no additional data concerning neurotoxicity is needed at this time to be protective of potential neurotoxic effects.

iii. As explained in Unit III.D.2 ''Prenatal and postnatal sensitivity'', the enhanced susceptibility seen in the rabbit developmental toxicity, the rat reproduction, and the rat developmental neurotoxicity studies do not present a risk concern.

iv. There are no residual uncertainties identified in the exposure databases. The chronic and acute dietary food exposure assessment are refined including use of anticipated residues, default processing factors, and percent crop treated; however, these refinements are considered protective because field trials are conducted to represent use conditions leading to the maximum residues in food when the product is used in accordance with the label and do not underestimate exposures. EPA made conservative (protective) assumptions in the ground and surface water modeling used to assess exposure to abamectin in drinking water. EPA used similarly conservative assumptions to assess post-application exposure of children. These assessments will not underestimate the exposure and risks posed by abamectin.

E. Aggregate Risks and Determination of Safety

EPA determines whether acute and chronic dietary pesticide exposures are safe by comparing aggregate exposure estimates to the acute PAD (aPAD) and chronic PAD (cPAD). For linear cancer risks, EPA calculates the lifetime probability of acquiring cancer given the estimated aggregate exposure. Short-, intermediate-, and chronic-term risks are evaluated by comparing the estimated aggregate food, water, and residential exposure to the appropriate PODs to ensure that an adequate MOE exists.

1. *Acute risk.* Using the exposure assumptions discussed in this unit for acute exposure, the acute dietary exposure from food and water to abamectin will occupy 64% of the aPAD for children 1 to 2 years old, the population group receiving the greatest exposure.

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that chronic exposure to abamectin from food and water will utilize 13% of the cPAD for children 1 to 2 years old, the population group receiving the greatest exposure. Based on the explanation in Unit III.C.3., regarding residential use patterns, chronic residential exposure to residues of abamectin is not expected.

3. *Short-term risk.* Short-term aggregate exposure takes into account short-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level).

Abamectin is currently registered for uses that could result in short-term residential exposure, and the Agency has determined that it is appropriate to aggregate chronic exposure through food and water with short-term residential exposures to abamectin.

Using the exposure assumptions described in this unit for short-term exposures, EPA has concluded the combined short-term food, water, and residential exposures result in aggregate MOEs of 790 for adults, 2,900 for children aged 11 to less than 16 years old, 1,800 for children aged 6 to less than 11 years old, and 180 for children 1–2 years old. Because EPA's level of concern for abamectin is a MOE of 100 or below, these MOEs are not of concern.

4. *Intermediate-term risk.* Intermediate-term aggregate exposure takes into account intermediate-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level).

Intermediate-term adverse effects were identified; however, abamectin is not registered for any use patterns that would result in intermediate-term residential exposure. Intermediate-term risk is assessed based on intermediate-term residential exposure plus chronic dietary exposure. Because there is no intermediate-term residential exposure and chronic dietary exposure has already been assessed under the appropriately protective cPAD (which is at least as protective as the POD used to assess intermediate-term risk), no further assessment of intermediate-term risk is necessary, and EPA relies on the chronic dietary risk assessment for evaluating intermediate-term risk for abamectin.

5. *Aggregate cancer risk for U.S. population.* Based on the lack of evidence of carcinogenicity in two adequate rodent carcinogenicity studies, abamectin is not expected to pose a cancer risk to humans.

6. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, or to infants and children from aggregate exposure to abamectin residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methods for abamectin in plant and livestock commodities are available in the Pesticide Analytical Manual, Volume II (PAM II).

B. International Residue Limits

In making its tolerance decisions, EPA seeks to harmonize U.S. tolerances with international standards whenever possible, consistent with U.S. food safety standards and agricultural practices. EPA considers the international maximum residue limits (MRLs) established by the Codex Alimentarius Commission (Codex), as required by FFDCA section 408(b)(4). The Codex Alimentarius is a joint United Nations Food and Agriculture Organization/World Health Organization food standards program, and it is recognized as an international food safety standards-setting organization in trade agreements to which the United States is a party. EPA may establish a tolerance that is different from a Codex MRL; however, FFDCA section 408(b)(4) requires that EPA explain the reasons for departing from the Codex level.

The Codex has not established a MRL for abamectin on either tea or banana.

C. Revisions to Petitioned-For Tolerances

The petitioner proposed a tolerance level of 0.002 ppm for residues in/on banana. The tolerance is being established at the level of the combined limit of quantitation (LOQs) for the residues of concern which is 0.006 ppm. The tolerance level for tea, dried is being established at 1.0 ppm, which alters the proposed tolerance of 1 ppm to adjust for significant figures and commodity definition revision.

V. Conclusion

Therefore, tolerances are established for residues of abamectin, in or on banana at 0.006 ppm and tea, dried at 1.0 ppm.

VI. Statutory and Executive Order Reviews

This action establishes tolerances under FFDCA section 408(d) in

response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993). Because this action has been exempted from review under Executive Order 12866, this action is not subject to Executive Order 13211, entitled ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), nor is it considered a regulatory action under Executive Order 13771, entitled ''Reducing Regulations and Controlling Regulatory Costs'' (82 FR 9339, February 3, 2017). This action does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), nor does it require any special considerations under Executive Order 12898, entitled ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations'' (59 FR 7629, February 16, 1994).

Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), do not apply.

This action directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000) do not apply to this action. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act (UMRA) (2 U.S.C. 1501 *et seq.*).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note).

VII. Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), 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 action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: February 8, 2019.

Michael Goodis,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. In § 180.449, add alphabetically the entries ''Banana'' and ''Tea, dried'' to the table in paragraph (a) to read as follows:

§ 180.449 Avermectin B1 and its delta-8,9-isomer; tolerances for residues.

(a) * * *

Commodity	Parts per million
* * * * *	
Banana [1]	0.006
* * * * *	
Tea, dried [1]	1.0
* * * * *	

[1] There are no U.S. registrations for use of abamectin on banana or tea.

* * * * *

[FR Doc. 2019–03426 Filed 2–26–19; 8:45 am]

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NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts

45 CFR Part 1148

RIN 3135–AA27

Procedures for Disclosure of Records Under the Freedom of Information Act

AGENCY: National Endowment for the Arts, National Foundation on the Arts and the Humanities.

ACTION: Final regulations.

SUMMARY: This rule amends the National Endowment for the Arts' (Arts Endowment) regulations implementing the Freedom of Information Act (FOIA). The new regulations are updated to reflect statutory changes to FOIA, the current organizational structure of the Arts Endowment, and current Arts Endowment policies and practices with respect to FOIA. Finally, the regulations use current cost figures in calculating and charging fees.

DATES: These regulations are effective February 27, 2019.

FOR FURTHER INFORMATION CONTACT: Daniel Fishman, Attorney Advisor, National Endowment for the Arts, 400 7th St. SW, Washington, DC 20506, Telephone: 202–682–5514.

SUPPLEMENTARY INFORMATION:

1. Background

On June 9, 2017 the Arts Endowment published a notice of proposed rulemaking (NPRM) for certain amendments to its FOIA Regulations (82 FR 26763). In the preamble of the NPRM, the Arts Endowment discussed on pages 26763 and 26764 the major changes proposed in that document to the FOIA regulations. These included the following:

- The addition of Arts Endowment-specific FOIA regulations at 45 CFR part 1148.
- The requirements of the FOIA Improvement Act of 2016 (Pub. L. 114–185).

Due to delays in issuing the final regulation, on November 6, 2018 the Arts Endowment reopened comments on its draft for an additional 30 days to ensure public input on the proposed rule (83 FR 55504).

Public Comment: Edits made during the first comment period were considered and commented on by the agency in the NPRM announcing the second comment period. Those changes accepted by the agency were noted in the second NPRM. No comments were received during the second comment period.

Technical and Other Minor Changes: These final regulations include technical and other minor changes, mainly to address incorrect or outdated phone numbers or website addresses that appeared in the second NPRM. In addition, the agency's acronym (NEA) has been removed and replaced with Arts Endowment where applicable.

The Arts Endowment now publishes its final regulations.

2. Compliance

Regulatory Planning and Review (Executive Order 12866)

Executive Order (E.O.) 12866 established a process for review of rules by the Office of Information and Regulatory Affairs, which is within the Office of Management and Budget (OMB). Only ''significant'' proposed and final rules are subject to review under this Executive Order. ''Significant,'' as used in E.O. 12866, means ''economically significant.'' It refers to rules with (1) an impact on the economy of $100 million; or that (2) were inconsistent or interfered with an action taken or planned by another agency; (3) materially altered the budgetary impact of entitlements, grants, user fees, or loan programs; or (4) raised novel legal or policy issues.

This final rule would not be a significant policy change and OMB has not reviewed this rule under E.O. 12866. We have made the assessments required by E.O. 12866 and determined that this final rule: (1) Will not have an effect of $100 million or more on the economy; (2) will not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities; (3) will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (4) does not alter the budgetary effects of entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients; and (5) does not raise novel legal or policy issues.

Federalism (Executive Order 13132)

This final rule does not have federalism implications, as set forth in E.O. 13132. As used in this E.O., federalism implications mean ''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.'' The Arts Endowment has determined that this final rule will not have federalism implications within the meaning of E.O. 13132.

Civil Justice Reform (Executive Order 12988)

This final rule meets the applicable standards set forth in section 3(a) and 3(b)(2) of E.O. 12988. Specifically, this final rule is written in clear language designed to help reduce litigation.

Indian Tribal Governments (Executive Order 13175)

Under the criteria in E.O. 13175, we have evaluated this final rule and determined that it would have no potential effects on federally recognized Indian Tribes.

Takings (Executive Order 12630)

Under the criteria in E.O. 12630, this final rule does not have significant takings implications. Therefore, a takings implication assessment is not required.

Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b))

This final rule will not have a significant adverse impact on a substantial number of small entities, including small businesses, small governmental jurisdictions, or certain small not-for-profit organizations.

Unfunded Mandates Act of 1995 (Section 202, Pub. L. 104–4)

This final rule does not contain a Federal mandate that will 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.

National Environmental Policy Act of 1969 (5 U.S.C. 804)

The final rule will not have significant effect on the human environment.

Small Business Regulatory Enforcement Fairness Act of 1996 (Sec. 804, Pub. L. 104–121)

This final rule would not be a major rule as defined in section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This final rule will not result in an annual effect on the economy of $100,000,000 or more, a major increase in costs or prices, significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign based companies in domestic and export markets.

Executive Order 13771

Executive Order 13771 § 5 requires that agencies, in most circumstances, remove or rescind two regulations for every regulation promulgated unless they request and are specifically exempted from that order's requirements by the Director of the Office of Management and Budget.

This final rule is not subject to the requirements of Executive Order 13771 because this final rule is not significant under Executive Order 12866. Furthermore, the Arts Endowment has requested and has received an exemption from the Director of the Office of Management and Budget from the requirement that the agency rescind two regulations for every regulation it promulgates.

List of Subjects in 45 CFR Part 1148

Administrative practice and procedure, Archives and records, Freedom of information.

■ For the reasons stated in the preamble, the Arts Endowment amends 45 CFR chapter XI, subchapter B, by adding part 1148 to read as follows:

PART 1148—PROCEDURES FOR DISCLOSURE OF RECORDS UNDER THE FREEDOM OF INFORMATION ACT (FOIA)

Sec.
1148.1 What is the purpose and scope of these regulations?
1148.2 How will the Arts Endowment make proactive disclosures?
1148.3 How can I make a FOIA request?
1148.4 How will the Arts Endowment respond to my request?
1148.5 When will the Arts Endowment respond to my request?
1148.6 How will I receive responses to my requests?
1148.7 How does the Arts Endowment handle confidential commercial information?
1148.8 How can I appeal a denial of my request?
1148.9 What are the Arts Endowment policies regarding preservation of records?
1148.10 How will fees be charged?
1148.11 What other rules apply to Arts Endowment FOIA requests?

Authority: 5 U.S.C. 552; 28 U.S.C. 1746; 31 U.S.C. 3717; E.O. 12600, 52 FR 23781, 3 CFR, 1987 Comp.

§ 1148.1 What is the purpose and scope of these regulations?

This part contains the rules that the Arts Endowment follows in processing requests for records under the Freedom of Information Act (FOIA), 5 U.S.C. 552. These rules should be read in conjunction with the text of the FOIA and the Uniform Freedom of

Information Fee Schedule and Guidelines published by the Office of Management and Budget (OMB Guidelines). Requests made by individuals for records about themselves under the Privacy Act of 1974, 5 U.S.C. 552a, are processed in accordance with the Arts Endowment's Privacy Act regulations as well as under this part.

§ 1148.2 How will the Arts Endowment make proactive disclosures?

Records that the Arts Endowment makes available for public inspection in an electronic format may be accessed through the Arts Endowment's open government page, available at *https://www.arts.gov/open.* The Arts Endowment will determine which of its records should be made publicly available, identify additional records of interest to the public that are appropriate for public disclosure, and post and index such records. The Arts Endowment will ensure that its website of posted records and indices is reviewed and updated on an ongoing basis.

§ 1148.3 How can I make a FOIA request?

(a) *General information.* To make a request for records, a requester should write directly to the Arts Endowment at National Endowment for the Arts, Office of General Counsel, 400 7th St. SW, Second Floor, Washington, DC 20506. Requests may also be sent by facsimile to the General Counsel's office at (202) 682–5572, or by email to *foia@arts.gov.*

(b) *Identity requirements.* Depending on the type of document you ask for, the Arts Endowment may require verification of your identity or the identity of a third party.

(1) A requester who is making a request for records about himself or herself must comply with the Arts Endowment's verification requirements as set forth in § 1159.9 of this chapter.

(2) Where a request for records pertains to another individual, a requester may receive greater access by submitting either a notarized authorization signed by that individual or a declaration made in compliance with the requirements set forth in 28 U.S.C. 1746 by that individual authorizing disclosure of the records to the requester, or by submitting proof that the individual is deceased (*e.g.,* a copy of a death certificate or an obituary). As an exercise of administrative discretion, the Arts Endowment may require a requester to supply additional information if necessary in order to verify that a particular individual has consented to disclosure.

(c) *Description of records sought.* Requesters must describe the records sought in sufficient detail to enable Arts Endowment personnel to locate them with a reasonable amount of effort. To the extent possible, requesters should include specific information that may help the Arts Endowment identify the requested records, such as the date, title or name, author, recipient, subject matter of the record, case number, file designation, or reference number. Before submitting their requests, requesters may contact the Arts Endowment's designated FOIA contact or FOIA Public Liaison to discuss the records they seek and to receive assistance in describing the records. Contact information for the Arts Endowment's designated FOIA contact and FOIA Public Liaison is available on the Arts Endowment's FOIA website (*https://www.arts.gov/foia-contacts*), or can be obtained by calling (202) 682–54184. If after receiving a request, the Arts Endowment determines that it does not reasonably describe the records sought, the Arts Endowment will inform the requester what additional information is needed or why the request is otherwise insufficient. Requesters who are attempting to reformulate or modify such a request may discuss their request with the Arts Endowment's designated FOIA contact or FOIA Public Liaison. If a request does not reasonably describe the records sought, the Arts Endowment's response to the request may be delayed.

(d) *Format specifications.* Requests may specify the preferred form or format (including electronic formats) for the records you seek. The Arts Endowment will accommodate your request if the record is readily reproducible in that form or format.

(e) *Contact information requirements.* Requesters must provide contact information, such as their phone number, email address, and/or mailing address, to assist the Arts Endowment in communicating with them and providing released records.

§ 1148.4 How will the Arts Endowment respond to my request?

(a) *In general.* In determining which records are responsive to a request, the Arts Endowment ordinarily will include only records in its possession as of the date that it begins its search. If any other date is used, the Arts Endowment will inform the requester of that date. A record that is excluded from the requirements of the FOIA pursuant to 5 U.S.C. 552(c), is not considered responsive to a request.

(b) *Authority to grant or deny requests.* The Arts Endowment Chairperson or his/her designee is authorized to grant or to deny any requests for records that are maintained by the Arts Endowment.

(c) *Consultation and referral.* When reviewing records located by the Arts Endowment in response to a request, the Arts Endowment will determine whether another agency of the Federal Government is better able to determine whether the record is exempt from disclosure under the FOIA. As to any such record, the Arts Endowment will proceed in one of the following ways:

(1) *Consultation.* When records originated with the Arts Endowment, but contain within them information of interest to another agency or other Federal Government office, the Arts Endowment will typically consult with that other entity prior to making a release determination.

(2) *Referral.* (i) When the Arts Endowment believes that a different agency is best able to determine whether to disclose the record, the Arts Endowment typically should refer the responsibility for responding to the request regarding that record to that agency. Ordinarily, the agency that originated the record is presumed to be the best agency to make the disclosure determination. However, if the Arts Endowment and the originating agency jointly agree that the Arts Endowment is in the best position to respond regarding the record, then the record may be handled as a consultation.

(ii) Whenever the Arts Endowment refers any part of the responsibility for responding to a request to another agency, it will document the referral, maintain a copy of the record that it refers, and notify the requester of the referral, informing the requester of the name(s) of the agency to which the record was referred, including that agency's FOIA contact information.

(d) *Timing of responses to consultations and referrals.* The Arts Endowment will consider a FOIA request to be a perfected FOIA request if it complies with this section. All consultations and referrals received by the Arts Endowment will be handled in the order of the date that the first agency received the perfected FOIA request.

(e) *Agreements regarding consultations and referrals.* The Arts Endowment may establish agreements with other agencies to eliminate the need for consultations or referrals with respect to particular types of records.

§ 1148.5 When will the Arts Endowment respond to my request?

(a) *In general.* The Arts Endowment ordinarily will respond to requests according to their order of receipt.

(b) *Multitrack processing.* The Arts Endowment will designate a specific track for requests that are granted expedited processing, in accordance with the standards set forth in paragraph (e) of this section. The Arts Endowment may also designate additional processing tracks that distinguish between simple and more complex requests based on the estimated amount of work or time needed to process the request. Among the factors the Arts Endowment may consider are the number of records requested, the number of pages involved in processing the request and the need for consultations or referrals. The Arts Endowment will advise requesters of the track into which their request falls and, when appropriate, will offer the requesters an opportunity to narrow or modify their request so that it can be placed in a different processing track.

(c) *Unusual circumstances.* Whenever the Arts Endowment cannot meet the statutory time limit for processing a request because of ''unusual circumstances,'' as defined in the FOIA, and the Arts Endowment extends the time limit on that basis, the Arts Endowment will, before expiration of the 20 business day period to respond, notify the requester in writing of the unusual circumstances involved and of the date by which the Arts Endowment estimates processing of the request will be completed. Where the extension exceeds 10 working days, the Arts Endowment will, as described by the FOIA, provide the requester with an opportunity to modify the request or arrange an alternative time period for processing the original or modified request. The Arts Endowment will make available its designated FOIA contact or FOIA Public Liaison for this purpose. The Arts Endowment will also alert requesters to the availability of the Office of Government Information Services (OGIS) to provide dispute resolution services.

(d) *Aggregating requests.* To satisfy unusual circumstances under the FOIA, the Arts Endowment may aggregate requests in cases where it reasonably appears that multiple requests, submitted either by a requester or by a group of requesters acting in concert, constitute a single request that would otherwise involve unusual circumstances. The Arts Endowment will not aggregate multiple requests that involve unrelated matters.

(e) *Expedited processing.* Consistent with 5 U.S.C. 552(a)(6)(E)(i), the Arts Endowment may grant expedited processing under certain circumstances:

(1) The Arts Endowment will process requests and appeals on an expedited basis whenever it is determined that they involve:

(i) Circumstances in which the lack of expedited processing could reasonably be expected to pose an imminent threat to the life or physical safety of an individual; or

(ii) An urgency to inform the public about an actual or alleged Federal Government activity, if made by a person who is primarily engaged in disseminating information.

(2) A request for expedited processing may be made at any time. Requests based on paragraphs (e)(1)(i) and (ii) of this section must be submitted to the Arts Endowment's Office of General Counsel. When making a request for expedited processing of an administrative appeal, the request should be submitted to the Arts Endowment's FOIA Appeals Office per § 1148.8(a).

(3) A requester who seeks expedited processing must submit a statement, certified to be true and correct, explaining in detail the basis for making the request for expedited processing. For example, under paragraph (e)(1)(ii) of this section, a requester who is not a full-time member of the news media must establish that the requester is a person whose primary professional activity or occupation is information dissemination, though it need not be the requester's sole occupation. Such a requester also must establish a particular urgency to inform the public about the government activity involved in the request—one that extends beyond the public's right to know about government activity generally. The existence of numerous articles published on a given subject can be helpful in establishing the requirement that there be an ''urgency to inform'' the public on the topic. As a matter of administrative discretion, the Arts Endowment may waive the formal certification requirement.

(4) The Arts Endowment will notify the requester within 10 calendar days of the receipt of a request for expedited processing of its decision whether to grant or deny expedited processing. If expedited processing is granted, the request must be given priority, placed in the processing track for expedited requests, and must be processed as soon as practicable. If a request for expedited processing is denied, the Arts Endowment will act on any appeal of that decision expeditiously.

§ 1148.6 How will I receive responses to my requests?

(a) *In general.* The Arts Endowment, to the extent practicable, will communicate with requesters having access to the internet electronically, such as email or web portal.

(b) *Acknowledgments of requests.* The Arts Endowment will acknowledge the request in writing and assign it an individualized tracking number if it will take longer than 10 working days to process. The Arts Endowment will include in the acknowledgment a brief description of the records sought to allow requesters to more easily keep track of their requests.

(c) *Estimated dates of completion and interim responses.* Upon request, the Arts Endowment will provide an estimated date by which the Arts Endowment expects to provide a response to the requester. If a request involves a voluminous amount of material, or searches in multiple locations, the Arts Endowment may provide interim responses, releasing the records on a rolling basis.

(d) *Grants of requests.* Once the Arts Endowment determines it will grant a request in full or in part, it will notify the requester in writing. The Arts Endowment will also inform the requester of any fees charged under § 1148.10 and will disclose the requested records to the requester promptly upon payment of any applicable fees. The Arts Endowment will inform the requester of the availability of its FOIA Public Liaison to offer assistance.

(e) *Adverse determinations of requests.* If the Arts Endowment makes an adverse determination denying a request in any respect, it will notify the requester of that determination in writing. Adverse determinations, or denials of requests, include decisions that: the requested record is exempt, in whole or in part; the request does not reasonably describe the records sought; the information requested is not a record subject to the FOIA; the requested record does not exist, cannot be located, or has been destroyed; or the requested record is not readily reproducible in the form or format sought by the requester. Adverse determinations also include denials involving fees or fee waiver matters or denials of requests for expedited processing.

(f) *Content of denial.* The denial will be signed by the Arts Endowment's General Counsel or designee and will include:

(1) The name and title or position of the person responsible for the denial;

(2) A brief statement of the reasons for the denial, including any FOIA exemption applied by the Arts Endowment in denying the request;

(3) An estimate of the volume of any records or information withheld, such

as the number of pages or some other reasonable form of estimation, although such an estimate is not required if the volume is otherwise indicated by deletions marked on records that are disclosed in part or if providing an estimate would harm an interest protected by an applicable exemption;

(4) A statement that:

(i) The denial may be appealed under § 1148.8(a);

(ii) That the requester has 90 days to file an appeal in order for it to be considered timely, and that the Arts Endowment will not process or consider appeals that were not filed within 90 days of the receipt of an adverse determination; and

(iii) A description of the appeal requirements; and

(5) A statement notifying the requester of the assistance available from the Arts Endowment's FOIA Public Liaison and the dispute resolution services offered by OGIS.

(g) *Use of record exclusions.* In the event that the Arts Endowment identifies records that may be subject to exclusion from the requirements of the FOIA pursuant to 5 U.S.C. 552(c), the Arts Endowment will confer with Department of Justice, Office of Information Policy (OIP), to obtain approval to apply the exclusion. The Arts Endowment, when invoking an exclusion will maintain an administrative record of the process of invocation and approval of the exclusion by OIP.

§ 1148.7 How does the Arts Endowment handle confidential commercial information?

(a) *Definitions.* The following definitions apply to this section.

(1) *Confidential commercial information* means commercial or financial information obtained by the Arts Endowment from a submitter that may be protected from disclosure under Exemption 4 of the FOIA, 5 U.S.C. 552(b)(4).

(2) *Submitter* means any person or entity, including a corporation, State, or foreign government, but not including another Federal Government entity, that provides confidential commercial information, either directly or indirectly to the Federal Government.

(b) *Designation of confidential commercial information.* A submitter of confidential commercial information must use good faith efforts to designate by appropriate markings, at the time of submission, any portion of its submission that it considers to be protected from disclosure under Exemption 4. These designations expire 10 years after the date of the submission unless the submitter requests and provides justification for a longer designation period.

(c) *When notice to submitters is required.* The following rules and procedures determine when the Arts Endowment will provide written notice to submitters of confidential commercial information that their information may be disclosed under FOIA.

(1) The Arts Endowment will promptly provide written notice to the submitter of confidential commercial information whenever records containing such information are requested under the FOIA if the Arts Endowment determines that it may be required to disclose the records, provided:

(i) The requested information has been designated in good faith by the submitter as information considered protected from disclosure under Exemption 4; or

(ii) The Arts Endowment has a reason to believe that the requested information may be protected from disclosure under Exemption 4, but has not yet determined whether the information is protected from disclosure.

(2) The notice will either describe the commercial information requested or include a copy of the requested records or portions of records containing the information. In cases involving a voluminous number of submitters, the Arts Endowment may post or publish a notice in a place or manner reasonably likely to inform the submitters of the proposed disclosure, instead of sending individual notifications.

(d) *Exceptions to submitter notice requirements.* The notice requirements of this section do not apply if:

(1) The Arts Endowment determines that the information is exempt under the FOIA, and therefore will not be disclosed;

(2) The information has been lawfully published or has been officially made available to the public;

(3) Disclosure of the information is required by a statute other than the FOIA or by a regulation issued in accordance with the requirements of Executive Order 12600 of June 23, 1987; or

(4) The designation made by the submitter under paragraph (b) of this section appears obviously frivolous. In such case, the Arts Endowment will give the submitter written notice of any final decision to disclose the information within a reasonable number of days prior to a specified disclosure date.

(e) *Opportunity to object to disclosure.* A submitter will have the opportunity to object to disclosure of information under FOIA.

(1) The Arts Endowment will specify a reasonable time period within which the submitter must respond to the notice referenced in paragraph (c) of this section.

(2) If a submitter has any objections to disclosure, it must provide the Arts Endowment a detailed written statement that specifies all grounds for withholding the particular information under any exemption of the FOIA. In order to rely on Exemption 4 as basis for nondisclosure, the submitter must explain why the information constitutes a trade secret or commercial or financial information that is confidential.

(3) A submitter who fails to respond within the time period specified in paragraph (e)(1) of this section will be considered to have no objection to disclosure of the information. The Arts Endowment is not required to consider any information received after the date of any disclosure decision. Any information provided by a submitter under this part may itself be subject to disclosure under the FOIA.

(f) *Analysis of objections.* The Arts Endowment must consider a submitter's objections and specific grounds for nondisclosure in deciding whether to disclose the requested information.

(g) *Notice of intent to disclose.* Whenever the Arts Endowment decides to disclose information over the objection of a submitter, the Arts Endowment will provide the submitter written notice, which will include:

(1) A statement of the reasons why each of the submitter's disclosure objections was not sustained;

(2) A description of the information to be disclosed or copies of the records as the Arts Endowment intends to release them; and

(3) A specified disclosure date, which will be a reasonable time after the notice.

(h) *Notice of FOIA lawsuit.* Whenever a requester files a lawsuit seeking to compel the disclosure of confidential commercial information, the Arts Endowment will promptly notify the submitter.

(i) *Requester notification.* The Arts Endowment will notify the requester whenever it provides the submitter with notice and an opportunity to object to disclosure; whenever it notifies the submitter of its intent to disclose the requested information; and whenever a submitter files a lawsuit to prevent the disclosure of the information.

§ 1148.8 How can I appeal a denial of my request?

(a) *Requirements for making an appeal.* A requester may appeal any adverse determinations to the Arts Endowment's office designated to receive FOIA appeals (''FOIA Appeals Office''). Examples of adverse determinations are provided in § 1148.6(e). Requesters can submit appeals by mail by writing to Arts Endowment Chairman, c/o Office of General Counsel, National Endowment for the Arts, 400 7th Street SW, Washington, DC 20506, or online in accordance with instructions on the Arts Endowment's website (*https://www.arts.gov/freedom-information-act-guide*). The requester must make the appeal in writing and to be considered timely it must be postmarked, or in the case of electronic submissions, transmitted, within 90 calendar days after the date of the adverse determination. The appeal should clearly identify the Arts Endowment's determination that is being appealed and the assigned request number. To facilitate handling, the requester should mark both the appeal letter and envelope, or subject line of the electronic transmission, ''Freedom of Information Act Appeal.''

(b) *Adjudication of appeals.* (1) The Arts Endowment's Chairperson or his/her designee will act on behalf of the Arts Endowment's Chief FOIA Officer on all appeals under this section.

(2) An appeal ordinarily will not be adjudicated if the request becomes a matter of FOIA litigation.

(c) *Decisions on appeals.* The Arts Endowment will provide its decision on an appeal in writing. A decision that upholds the Arts Endowment's determination in whole or in part will contain a statement that identifies the reasons for its decision, including any FOIA exemptions applied. The decision will provide the requester with notification of the statutory right to file a lawsuit and will inform the requester of the dispute resolution services offered by the Office of Government Information Services (OGIS) of the National Archives and Records Administration as a non-exclusive alternative to litigation. If the Arts Endowment's decision is remanded or modified on appeal, the Arts Endowment will notify the requester of that determination in writing. The Arts Endowment will then further process the request in accordance with that appeal determination and will respond directly to the requester.

(d) *Engaging in dispute resolution services provided by OGIS.* Dispute resolution is a voluntary process. If the Arts Endowment agrees to participate in the dispute resolution services provided by OGIS, it will actively engage as a partner to the process in an attempt to resolve the dispute.

(e) *When appeal is required.* Before seeking review by a court of the Arts Endowment's adverse determination, a requester generally must first submit a timely administrative appeal.

(f) *Timing of appeal.* After receiving the Arts Endowment's adverse determination, a requester has 90 calendar days to file an appeal in order for it to be considered timely. The Arts Endowment will not process or consider appeals that were not filed within 90 calendar days of the date of an adverse determination.

§ 1148.9 What are the Arts Endowment policies regarding preservation of records?

The Arts Endowment will preserve all correspondence pertaining to the requests that it receives under this part, as well as copies of all requested records, until disposition or destruction is authorized pursuant to title 44 of the United States Code or the General Records Schedule 4.2 of the National Archives and Records Administration. The Arts Endowment will not dispose of or destroy records while they are the subject of a pending request, appeal, or lawsuit under the FOIA.

§ 1148.10 How will fees be charged?

(a) *In general.* (1) The Arts Endowment will charge for processing requests under the FOIA in accordance with the provisions of this section and with the OMB Guidelines. For purposes of assessing fees, the FOIA establishes three categories of requesters:

(i) Commercial use requesters;

(ii) Non-commercial scientific or educational institutions or news media requesters; and

(ii) All other requesters.

(2) Different fees are assessed depending on the category. Requesters may seek a fee waiver. The Arts Endowment will consider requests for fee waiver in accordance with the requirements in paragraph (k) of this section. To resolve any fee issues that arise under this section, the Arts Endowment may contact a requester for additional information. The Arts Endowment will ensure that searches, review, and duplication are conducted in the most efficient and the least expensive manner. The Arts Endowment ordinarily will collect all applicable fees before sending copies of records to a requester. Requesters must pay fees by check or money order made payable to the Treasury of the United States, or by another method as determined by the Arts Endowment.

(b) *Definitions.* For purposes of this section:

(1) *Commercial use request* is a request that asks for information for a use or a purpose that furthers a commercial, trade, or profit interest, which can include furthering those interests through litigation. The Arts Endowment's decision to place a requester in the commercial use category will be made on a case-by-case basis based on the requester's intended use of the information. The Arts Endowment will notify requesters of their placement in this category.

(2) *Direct costs* are those expenses that the Arts Endowment incurs in searching for and duplicating (and, in the case of commercial use requests, reviewing) records in order to respond to a FOIA request. For example, direct costs include the salary of the employee performing the work (*i.e.,* the basic rate of pay for the employee, plus 16 percent of that rate to cover benefits) and the cost of operating computers and other electronic equipment, such as photocopiers and scanners. Direct costs do not include overhead expenses such as the costs of space, and of heating or lighting a facility.

(3) *Duplication* is reproducing a copy of a record, or of the information contained in it, necessary to respond to a FOIA request. Copies can take the form of paper, audiovisual materials, or electronic records, among others.

(4) *Educational institution* is any school that operates a program of scholarly research. A requester in this fee category must show that the request is made in connection with his or her role at the educational institution. The Arts Endowment may seek verification from the requester that the request is in furtherance of scholarly research and the Arts Endowment will advise requesters of their placement in this category.

(i) Example 1. A request from a professor of architecture at a university for records relating to Arts Endowment grants related to architecture, written on letterhead of the Department of Geology, would be presumed to be from an educational institution.

(ii) Example 2. A request from the same professor of architecture seeking translation grant information from the Arts Endowment in furtherance of a murder mystery he is writing would not be presumed to be an institutional request, regardless of whether it was written on institutional stationery.

(iii) Example 3. A student who makes a request in furtherance of their coursework or other school-sponsored activities and provides a copy of a course syllabus or other reasonable documentation to indicate the research purpose for the request, would qualify as part of this fee category.

(5) *Noncommercial scientific institution* is an institution that is not operated on a ''commercial'' basis, as defined in paragraph (b)(1) of this section and that is operated solely for the purpose of conducting scientific research the results of which are not intended to promote any particular product or industry. A requester in this category must show that the request is authorized by and is made under the auspices of a qualifying institution and that the records are sought to further scientific research and are not for a commercial use. The Arts Endowment will advise requesters of their placement in this category.

(6) *Representative of the news media* is any person or entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience. The term ''news'' means information that is about current events or that would be of current interest to the public. Examples of news media entities include television or radio stations that broadcast ''news'' to the public at large and publishers of periodicals that disseminate ''news'' and make their products available through a variety of means to the general public, including news organizations that disseminate solely on the internet. A request for records supporting the news-dissemination function of the requester will not be considered to be for a commercial use. ''Freelance'' journalists who demonstrate a solid basis for expecting publication through a news media entity will be considered as a representative of the news media. A publishing contract would provide the clearest evidence that publication is expected; however, the Arts Endowment may also consider a requester's past publication record in making this determination. The Arts Endowment will advise requesters of their placement in this category.

(7) *Review* is the examination of a record located in response to a request in order to determine whether any portion of it is exempt from disclosure. Review time includes processing any record for disclosure, such as doing all that is necessary to prepare the record for disclosure, including the process of redacting the record and marking the appropriate exemptions. Review costs are properly charged even if a record ultimately is not disclosed. Review time also includes time spent both obtaining and considering any formal objection to disclosure made by a confidential commercial information submitter under § 1148.7, but it does not include time spent resolving general legal or policy issues regarding the application of exemptions.

(8) *Search* is the process of looking for and retrieving records or information responsive to a request. Search time includes page-by-page or line-by-line identification of information within records and the reasonable efforts expended to locate and retrieve information from electronic records.

(c) *Charging fees.* In responding to FOIA requests, the Arts Endowment will charge the following fees unless a waiver or reduction of fees has been granted under paragraph (k) of this section. Because the fee amounts provided in paragraphs (c)(1) through (3) of this section already account for the direct costs associated with a given fee type, the Arts Endowment will not add any additional costs to charges calculated under this section.

(1) *Searches.* The following fee policies apply to searches:

(i) Requests made by educational institutions, noncommercial scientific institutions, or representatives of the news media are not subject to search fees. The Arts Endowment will charge search fees for all other requesters, subject to the restrictions of paragraph (d) of this section. The Arts Endowment may properly charge for time spent searching even if the Arts Endowment does not locate any responsive records or if the Arts Endowment determines that the records are entirely exempt from disclosure.

(ii) For manual searches, the fee charged will be the salary rate or rates of the employee or employees conducting the search. For computer searches, the fee charged will be the actual direct cost of providing the service, including the salary rate or rates of the operator(s) or programmer(s) conducting the search. The salary rate is calculated as the particular employee's basic pay plus 16.1 percent. The Arts Endowment may charge fees even if the documents are determined to be exempt from disclosure or cannot be located.

(iii) The Arts Endowment will charge the direct costs associated with conducting any search that requires the creation of a new computer program to locate the requested records. The Arts Endowment will notify the requester of the costs associated with creating such a program, and the requester must agree to pay the associated costs before the costs may be incurred.

(iv) For requests that require the retrieval of records stored by the Arts Endowment at a Federal records center operated by the National Archives and Records Administration (NARA), the Arts Endowment will charge additional costs in accordance with the Transactional Billing Rate Schedule established by NARA.

(2) *Duplication.* The Arts Endowment will charge duplication fees to all requesters, subject to the restrictions of paragraph (d) of this section. The Arts Endowment will honor a requester's preference for receiving a record in a particular form or format where the Arts Endowment can readily reproduce it in the form or format requested. Where photocopies are supplied, the Arts Endowment will provide one copy per request at the cost of $.10 per single sided page, and $.20 per double sided page. For copies of records produced on tapes, disks, or other media, the Arts Endowment will charge the direct costs of producing the copy, including operator time. Where paper documents must be scanned in order to comply with a requester's preference to receive the records in an electronic format, the requester must also pay the direct costs associated with scanning those materials. For other forms of duplication, the Arts Endowment will charge the direct costs.

(3) *Review.* The Arts Endowment will charge review fees to requesters who make commercial use requests. Review fees will be assessed in connection with the initial review of the record, *i.e.,* the review conducted by the Arts Endowment to determine whether an exemption applies to a particular record or portion of a record. No charge will be made for review at the administrative appeal stage of exemptions applied at the initial review stage. However, if a particular exemption is deemed to no longer apply, any costs associated with the Arts Endowment's re-review of the records in order to consider the use of other exemptions may be assessed as review fees. Review fees will be charged at the same rates as those charged for a search under paragraph (c)(1)(ii) of this section.

(d) *Restrictions on charging fees.* The Arts Endowment will adhere to the following restrictions regarding fees it charges:

(1) When the Arts Endowment determines that a requester is an educational institution, non-commercial scientific institution, or representative of the news media, and the records are not sought for commercial use, it will not charge search fees.

(2) If the Arts Endowment fails to comply with the FOIA's time limits in which to respond to a request, it will not charge search fees, or, in the instances of requests from requesters described in paragraph (d)(1) of this section, may not charge duplication fees, except as described in paragraphs (d)(3) through (5) of this section.

(3) If the Arts Endowment has determined that unusual circumstances as defined by the FOIA apply and the Arts Endowment provided timely written notice to the requester in accordance with the FOIA, a failure to comply with the time limit shall be excused for an additional 10 working days.

(4) If the Arts Endowment has determined that unusual circumstances, as defined by the FOIA, apply and more than 5,000 pages are necessary to respond to the request, the Arts Endowment may charge search fees, or, in the case of requesters described in paragraph (d)(1) of this section, may charge duplication fees, if the following steps are taken:

(i) The Arts Endowment provided timely written notice of unusual circumstances to the requester in accordance with the FOIA; and

(ii) The Arts Endowment discussed with the requester via written mail, email, or telephone (or made not less than three good-faith attempts to do so) how the requester could effectively limit the scope of the request in accordance with 5. U.S.C. 552(a)(6)(B)(ii). If this exception is satisfied, the Arts Endowment may charge all applicable fees incurred in the processing of the request.

(5) If a court has determined that exceptional circumstances exist, as defined by the FOIA, a failure to comply with the time limits shall be excused for the length of time provided by the court order.

(6) No search or review fees will be charged for a quarter-hour period unless more than half of that period is required for search or review.

(7) Except for requesters seeking records for a commercial use, the Arts Endowment will provide without charge:

(i) The first 100 pages of duplication (or the cost equivalent for other media); and

(ii) The first two hours of search.

(8) No fee will be charged when the total fee, after deducting the 100 free pages (or its cost equivalent) and the first two hours of search, is equal to or less than $25.

(e) *Notice of anticipated fees in excess of $25.00.* The following procedures apply when the Arts Endowment anticipates fees to be in excess of $25.00.

(1) When the Arts Endowment determines or estimates that the fees to be assessed in accordance with this section will exceed $25.00, the Arts Endowment will notify the requester of the actual or estimated amount of the fees, including a breakdown of the fees for search, review or duplication, unless the requester has indicated a willingness to pay fees as high as those anticipated. If only a portion of the fee can be estimated readily, the Arts Endowment will advise the requester accordingly. If the request is not for noncommercial use, the notice will specify that the requester is entitled to the statutory entitlements of 100 pages of duplication at no charge and, if the requester is charged search fees, two hours of search time at no charge, and will advise the requester whether those entitlements have been provided.

(2) If the Arts Endowment notifies the requester that the actual or estimated fees are in excess of $25.00, the request will not be considered received and further work will not be completed until the requester commits in writing to pay the actual or estimated total fee, or designates some amount of fees the requester is willing to pay, or in the case of a noncommercial use requester who has not yet been provided with the requester's statutory entitlements, designates that the requester seeks only that which can be provided by the statutory entitlements. The requester must provide the commitment or designation in writing, and must, when applicable, designate an exact dollar amount the requester is willing to pay. The Arts Endowment is not required to accept payments in installments.

(3) If the requester has indicated a willingness to pay some designated amount of fees, but the Arts Endowment estimates that the total fee will exceed that amount, the Arts Endowment will toll the processing of the request when it notifies the requester of the estimated fees in excess of the amount the requester has indicated a willingness to pay. The Arts Endowment will inquire whether the requester wishes to revise the amount of fees the requester is willing to pay or modify the request. Once the requester responds, the time to respond will resume from where it was at the date of the notification.

(4) The Arts Endowment will make available its FOIA Public Liaison or other designated FOIA contact to assist any requester in reformulating a request to meet the requester's needs at a lower cost.

(f) *Charges for other services.* Although not required to provide special services, if the Arts Endowment chooses to do so as a matter of administrative discretion, the direct costs of providing the service will be charged. Examples of such services include certifying that records are true copies, providing multiple copies of the same document, or sending records by means other than first class mail.

(g) *Charging interest.* The Arts Endowment may charge interest on any unpaid bill starting on the 31st day following the date of billing the requester. Interest charges will be assessed at the rate provided in 31 U.S.C. 3717 and will accrue from the billing date until payment is received by the Arts Endowment. The Arts Endowment will follow the provisions of the Debt Collection Act of 1982 (Pub. L. 97–365, 96 Stat. 1749), as amended, and its administrative procedures, including the use of consumer reporting agencies, collection agencies, and offset.

(h) *Aggregating requests.* When the Arts Endowment reasonably believes that a requester or a group of requesters acting in concert is attempting to divide a single request into a series of requests for the purpose of avoiding fees, the Arts Endowment may aggregate those requests and charge accordingly. The Arts Endowment may presume that multiple requests of this type made within a 30 calendar day period have been made in order to avoid fees. For requests separated by a longer period, the Arts Endowment will aggregate them only where there is a reasonable basis for determining that aggregation is warranted in view of all the circumstances involved. Multiple requests involving unrelated matters cannot be aggregated.

(i) *Advance payments.* The following policies and procedures apply to advanced payments of fees:

(1) For requests other than those described in paragraph (i)(2) or (3) of this section, the Arts Endowment will not require the requester to make an advance payment before work is commenced or continued on a request. Payment owed for work already completed (*i.e.,* payment before copies are sent to a requester) is not an advance payment.

(2) When the Arts Endowment determines or estimates that a total fee to be charged under this section will exceed $250.00, it may require that the requester make an advance payment up to the amount of the entire anticipated fee before beginning to process the request. The Arts Endowment may elect to process the request prior to collecting fees when it receives a satisfactory assurance of full payment from a requester with a history of prompt payment.

(3) Where a requester has previously failed to pay a properly charged FOIA fee to any agency within 30 calendar days of the billing date, the Arts Endowment may require that the requester pay the full amount due, plus any applicable interest on that prior request, and the Arts Endowment may

require that the requester make an advance payment of the full amount of any anticipated fee before the Arts Endowment begins to process a new request or continues to process a pending request or any pending appeal. Where the Arts Endowment has a reasonable basis to believe that a requester has misrepresented the requester's identity in order to avoid paying outstanding fees, it may require that the requester provide proof of identity.

(4) In cases in which the Arts Endowment requires advance payment, the request will not be considered received and further work will not be completed until the required payment is received. If the requester does not pay the advance payment within 30 calendar days after the date of the Arts Endowment's fee determination, the request will be closed.

(j) *Other statutes specifically providing for fees.* The fee schedule of this section does not apply to fees charged under any statute that specifically requires the Arts Endowment to set and collect fees for particular types of records. In instances where records responsive to a request are subject to a statutorily-based fee schedule program, the Arts Endowment will inform the requester of the contact information for that program.

(k) *Requirements for waiver or reduction of fees.* The following policies and procedures apply to fee waivers or reductions of fees.

(1) Requesters may seek a waiver of fees by submitting a written application demonstrating how disclosure of the requested information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.

(2) The Arts Endowment will furnish records responsive to a request without charge or at a reduced rate when it determines, based on all available information, that the factors described in paragraphs (k)(2)(i) through (iii) of this section are satisfied:

(i) Disclosure of the requested information would shed light on the operations or activities of the government. The subject of the request must concern identifiable operations or activities of the Federal Government with a connection that is direct and clear, not remote or attenuated.

(ii) Disclosure of the requested information is likely to contribute significantly to public understanding of those operations or activities. This factor is satisfied when the following criteria are met:

(A) Disclosure of the requested records must be meaningfully informative about government operations or activities. The disclosure of information that already is in the public domain, in either the same or a substantially identical form, would not be meaningfully informative if nothing new would be added to the public's understanding.

(B) The disclosure must contribute to the understanding of a reasonably broad audience of persons interested in the subject, as opposed to the individual understanding of the requester. A requester's expertise in the subject area as well as the requester's ability and intention to effectively convey information to the public must be considered. The Arts Endowment will presume that a representative of the news media will satisfy this consideration.

(iii) The disclosure must not be primarily in the commercial interest of the requester. To determine whether disclosure of the requested information is primarily in the commercial interest of the requester, the Arts Endowment will consider the following criteria:

(A) The Arts Endowment will identify whether the requester has any commercial interest that would be furthered by the requested disclosure. A commercial interest includes any commercial, trade, or profit interest. Requesters will be given an opportunity to provide explanatory information regarding this consideration.

(B) If there is an identified commercial interest, the Arts Endowment will determine whether that is the primary interest furthered by the request. A waiver or reduction of fees is justified when the requirements of paragraphs (k)(2)(i) and (ii) of this section are satisfied and any commercial interest is not the primary interest furthered by the request. The Arts Endowment ordinarily will presume that when a news media requester has satisfied the factors in paragraphs (k)(2)(i) and (ii) of this section, the request is not primarily in the commercial interest of the requester. Disclosure to data brokers or others who merely compile and market government information for direct economic return will not be presumed to primarily serve the public interest.

(3) Where only some of the records to be released satisfy the requirements for a waiver of fees, a waiver will be granted for those records.

(4) Requests for a waiver or reduction of fees should be made when the request is first submitted to the Arts Endowment and should address the criteria referenced in paragraphs (k)(1) through (3) of this section. A requester may submit a fee waiver request at a later time so long as the underlying record request is pending or on administrative appeal. When a requester who has committed to pay fees subsequently asks for a waiver of those fees and that waiver is denied, the requester must pay any costs incurred up to the date the fee waiver request was received.

§ 1148.11 What other rules apply to Arts Endowment FOIA requests?

Nothing in this part shall be construed to entitle any person, as of right, to any service or to the disclosure of any record to which such person is not entitled under the FOIA.

Dated: February 22, 2019.

Gregory Gendron,

Director of Administrative Services, National Endowment for the Arts.

[FR Doc. 2019–03387 Filed 2–26–19; 8:45 am]

BILLING CODE 7537–01–P

Proposed Rules

Federal Register

Vol. 84, No. 39

Wednesday, February 27, 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.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R06–OAR–2015–0850; FRL–9989–08–Region 6]

Air Plan Approval; New Mexico; Approval of Revised Statutes; Error Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Pursuant to the Federal Clean Air Act (CAA or the Act), the Environmental Protection Agency (EPA) is proposing to approve revisions to New Mexico's State Implementation Plan (SIP) that incorporate updates to the New Mexico statutes. EPA is also correcting its previous approval of some statute provisions as approval of these provisions into the SIP was in error.

DATES: Written comments should be received on or before March 29, 2019.

ADDRESSES: Submit your comments, identified by EPA–R06–OAR–2015–0850, at *https://www.regulations.gov* or via email to *Riley.Jeffrey@epa.gov.* For additional information on how to submit comments see the detailed instructions in the **ADDRESSES** section of the direct final rule located in the rules section of this **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Jeff Riley, (214) 665–8542, *Riley.Jeffrey@epa.gov.*

SUPPLEMENTARY INFORMATION: In the final rules section of this **Federal Register**, the EPA is approving portions of the State's SIP submittal as a direct rule without prior proposal because the Agency views this as noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no relevant adverse comments are received in response to this action no further activity is contemplated. If the EPA receives relevant adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time.

For additional information, see the direct final rule which is located in the rules section of this **Federal Register**.

Dated: February 14, 2019.

Anne Idsal,

Regional Administrator, Region 6.

[FR Doc. 2019–02861 Filed 2–26–19; 8:45 am]

BILLING CODE 6560–50–P

Notices

Federal Register

Vol. 84, No. 39

Wednesday, February 27, 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 22, 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 29, 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: Federal-State Supplemental Nutrition Programs Agreement (Form FNS–339) Reporting and Recordkeeping Burden.

OMB Control Number: 0584–0332.

Summary of Collection: The FNS–339 is an annual contract between the U.S. Department of Agriculture (USDA) and each State, Territory, and Indian Tribal Government agency seeking to operate one or more of the following programs: The Special Supplemental Nutrition Program for Women, Infants and Children (WIC), the WIC Farmers' Market Nutrition Program (FMNP), and the Seniors Farmers' Market Nutrition Program (SFMNP). The Food and Nutrition Service (FNS), of the USDA, is authorized to administer the WIC and the FMNP programs under the following authority: Section 17 of the Child Nutrition Act (CNA) of 1966, as amended, and the SFMNP under 7 U.S.C. 3007. Federal regulations at: 7 Code of Federal Regulations (CFR) 246.3(c), 248.3(c), and 249.3(c) require that each State agency desiring to administer the WIC, FMNP, and/or SFMNP programs must enter into a written agreement with the Department for administration of the program(s) in the jurisdiction of the State agency. Likewise, a signed FNS–339 between the Department and the State agency is a prerequisite to State agencies receiving federal funds in the administration of one or more programs.

Need and Use of the Information: FNS uses the signed, FNS–339 to effectuate the use of federal funds for the administration of the WIC, FMNP, and SFMNP programs. The Department agrees to make funds available to the State Agency for the administration of the WIC, FMNP, and/or SFMNP in accordance with federal regulations (7 CFR parts 246, 248, and 249) and any amendments thereto. The State agency agrees to accept Federal funds for expenditure in accordance with the applicable statutes and federal regulations, and any amendment thereto, and to comply with all the provisions of such statutes and regulations, and amendments thereto. Likewise, by signing the FNS–339, the State agency agrees that it will comply with applicable laws, regulations and policies governing civil rights, discrimination, disability, equal employment, and a drug-free work place.

Description of Respondents: State, Territory, and Indian Tribal Governments.

Number of Respondents: 129.

Frequency of Responses: Reporting: Annually.

Total Burden Hours: 32.25.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2019–03432 Filed 2–26–19; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

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 29, 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), New Executive Office Building, 725 17th Street NW, Washington, DC 20502. Commenters are encouraged to submit their comments to OMB via email to: *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.

Animal and Plant Health Inspection Service

Title: Lacey Act Declaration Requirements; Plants and Plant Products.

OMB Control Number: 0579–0349.

Summary of Collection: The Lacey Act, first enacted in 1900 and significantly amended in 1988, is the United States' oldest Wildlife Protection Statute. The Act combats trafficking in ''illegal'' wildlife, fish, or plants. The Food, Conservation and Energy Act of 2008, which took effect May 22, 2008, amended the Lacey Act by expanding its protection to a broader range of plants and plant products (Section 8204, Prevention of Illegal Logging Practices).

Need and Use of the Information: Under the amended Lacey Act, importers are required to submit a declaration form (PPQ 505) for all plants. The PPQ 505B is the supplemental form which is provided the declarer if additional space is needed to enter the required information. The declaration must contain, among other things, the scientific name of the plant, value of the importation, quantity of the plant, and name of the country from which the plant was harvested. If species varies or is unknown, importers will have to declare the name of each species that may have been used to produce the product. This information will be used to support investigations into illegal logging practices by the Justice Department and also acts as a deterrent to illegal logging practices worldwide.

Description of Respondents: Business or other for-profit.

Number of Respondents: 26,044.

Frequency of Responses: Recordkeeping; Reporting: On occasion.

Total Burden Hours: 338,019.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2019–03389 Filed 2–26–19; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

February 22, 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 29, 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), New Executive Office Building, 725 17th Street NW, Washington, DC 20502. Commenters are encouraged to submit their comments to OMB via email to: *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.

Agricultural Research Service

Title: Your Perspective on Your Grasslands in the Northern Great Plains.

OMB Control Number: 0518–NEW.

Summary of Collection: The Agricultural Research Service within the Department of Agriculture will conduct a mail survey. This survey is a key component of a project that will provide comprehensive evaluation of the ecological and social benefits, cots and risks of different land management practices in northern Great Plains grasslands invaded by Kentucky bluegrass.

Need and Use of the Information: The survey will collect information from a randomly selected subset of landowners in 9 Counties in North Dakota to asses and identify sustainable management practices of northern Great Plains grasslands. The information gathered from the survey will enable researchers to more effectively transfer information to landowners to increase the impact of this research on the agricultural community of the norther Great Plains.

Description of Respondents: Individuals or households; Farms.

Number of Respondents: 718.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 180.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2019–03347 Filed 2–26–19; 8:45 am]

BILLING CODE 3410–03–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2018–0075]

Notice of Availability of an Environmental Assessment for the Release of Biological Control of Brazilian Peppertree

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of availability.

SUMMARY: We are advising the public that the Animal and Plant Health Inspection Service has prepared an environmental assessment relative to permitting the release of *Calophya latiforceps* and *Pseudophilothrips ichini* for the biological control of Brazilian peppertree, a significant invasive weed, within the contiguous United States. Based on the environmental assessment and other relevant data, we have reached a preliminary determination that the release of these control agents will not have a significant impact on the quality of the human environment. We are making the environmental assessment available to the public for review and comment.

DATES: We will consider all comments that we receive on or before March 29, 2019.

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

• *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/#!docket Detail;D=APHIS-2018-0075.*

• *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2018–0075, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road, Unit 118, Riverdale, MD 20737–1238.

Supporting documents and any comments we receive on this docket may be viewed at *http://www.regulations.gov/#!docket Detail;D=APHIS-2018-0075* or in our reading room, which is located in Room 1141 of the USDA South Building, 14th Street and Independence Avenue SW, Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 7997039 before coming.

FOR FURTHER INFORMATION CONTACT: Dr. Colin D. Stewart, Assistant Director, Pests, Pathogens, and Biocontrol Permits, Permitting and Compliance Coordination, PPQ, APHIS, 4700 River Road, Unit 133, Riverdale, MD 20737–1231; (301) 851–2327, email: *Colin.Stewart@aphis.usda.gov.*

SUPPLEMENTARY INFORMATION: Brazilian peppertree (*Schinus terebinthifolia*) is an evergreen perennial shrub or small tree found in various southern States but grows primarily in Florida. This noxious weed poses a serious threat to biodiversity in many ecosystems and invades areas such as canal banks, fallow farmlands, and natural communities. Brazilian peppertree's invasiveness can be attributed to its tolerance to fire, drought, and shade. Since the late 1800s, Brazilian peppertree has been introduced as an ornamental plant into many tropical and subtropical regions around the world. Brazilian peppertree was introduced in Florida and Hawaii as an attractive ornamental and source for honeybee nectar. The dried fruits of Brazilian peppertree have been used as a spice for cooking and are sold in the United States and elsewhere. In the United States, Brazilian peppertree occurs in Florida, Texas, California, Hawaii, the Commonwealth of Puerto Rico, and the U.S. Virgin Islands.

The insects *Calophya latiforceps,* ''jumping plant-lice,'' and *Pseudophilothrips ichini* were chosen as potential biological control agents. Both agents are expected to reduce the severity of infestations of Brazilian peppertree, and both are known to be highly host specific due to their intimate relationships with their host plants.

The Animal and Plant Health Inspection Service's (APHIS') review and analysis of the potential environmental impacts associated with the proposed release are documented in detail in an environmental assessment (EA) entitled ''Field Release of the Insects *Calophya latiforceps* (Hemiptera: Calophyidae) and *Pseudophilothrips ichini* (Thysanoptera: Phlaeothripidae) for Classical Biological Control of Brazilian Peppertree in the Contiguous United States'' (January 2018). We are making the EA available to the public for review and comment. We will consider all comments that we receive on or before the date listed under the heading **DATES** at the beginning of this notice.

The EA may be viewed on the *Regulations.gov* website or in our reading room (see **ADDRESSES** above for a link to *Regulations.gov* and information on the location and hours of the reading room). You may also request paper copies of the EA by calling or writing to the person listed under **FOR FURTHER INFORMATION CONTACT**. Please refer to the title of the EA when requesting copies.

The EA has been prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

Done in Washington, DC, this 21st day of February 2019.

Kevin Shea,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2019–03322 Filed 2–26–19; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Forest Service

Virginia Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Virginia Resource Advisory Committee (RAC) will meet in Roanoke, VA. The committee is authorized under the Secure Rural Schools and Community Self-Determination Act (the Act) and operates in compliance with the Federal Advisory Committee Act. The purpose of the committee is to improve collaborative relationships and to provide advice and recommendations to the Forest Service concerning projects and funding consistent with Title II of the Act. Additional RAC information, including the meeting agenda and the meeting summary/minutes can be found at the following website: *www.fs.fed.us/r8/gwj.*

DATES: The meeting will be held on March 15, 2019 from 10:00 a.m. to 6:00 p.m.

All RAC meetings are subject to cancellation. For status of meeting prior to attendance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

ADDRESSES: The meetings will be held at the George Washington and Jefferson National Forests Supervisor's Office, Conference Room, 5162 Valleypointe Parkway, Roanoke, Virginia.

Written comments may be submitted as described under **SUPPLEMENTARY INFORMATION**. All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at the George Washington and Jefferson National Forests Supervisor's Office. Please call ahead to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: Rebecca Robbins, RAC Coordinator by phone at (540) 265–5173 or via email at *rebecca.robbins@usda.gov*.

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8:00 a.m. and 8:00 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to prioritize and recommend projects for Title II funds. The committee will also use the meeting to nominate and vote on a Chairperson. The meeting is open to the public. The agenda will include time for people to make oral statements of three minutes or less. Individuals wishing to make an oral statement should request in writing by March 6, 2019 to be scheduled on the agenda. Anyone who would like to bring related matters to the attention of the committee may file written statements with the committee staff before or after the meeting. Written comments and requests for time for oral comments must be sent to Rebecca Robbins, RAC Coordinator, George Washington and Jefferson NF Supervisor's Office, 5162 Valleypointe Parkway, Roanoke, Virginia 24019; or by email to *rebecca.robbins@usda.gov.*

Meeting Accommodations: If you are a person requiring reasonable accommodation, please make requests in advance for sign language interpreting, assistive listening devices or other reasonable accommodation for access to the facility or proceedings by contacting the person listed in the section titled **FOR FURTHER INFORMATION CONTACT**. All reasonable accommodation requests are managed on a case by case basis.

Dated: February 8, 2019.

Joby P. Timm,

Forest Supervisor.

[FR Doc. 2019–03379 Filed 2–26–19; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF AGRICULTURE

Forest Service

Klamath National Forest; California; Elk Creek Watershed Project

AGENCY: Forest Service, USDA.

ACTION: Withdrawal of Notice of Intent to Prepare an Environmental Impact Statement.

SUMMARY: The Klamath National Forest is withdrawing the Notice of Intent (NOI) to prepare an Environmental Impact Statement for the Elk Creek Watershed Project. The original NOI was published in the **Federal Register** on October 2, 2017.

The project is being canceled and will be combined with a new project for which an Environmental Assessment will be prepared.

FOR FURTHER INFORMATION CONTACT: Questions concerning this notice and requests to be added to the project mailing list should be directed to Benjamin Daly, Happy Camp/Oak Knoll Ranger District, via mail at 63822 State Highway 96, P.O. Box 377, Happy Camp, CA 96039; via telephone at (530) 493–1734; or via email at *bdaly@fs.fed.us.*

Individuals who have previously submitted comments on this project will remain on the project mailing list and do not need to contact the Forest.

Dated: February 19, 2019.

Allen Rowley,

Acting Associate Deputy Chief, National Forest System.

[FR Doc. 2019–03358 Filed 2–26–19; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF AGRICULTURE

Forest Service

Shasta-Trinity National Forest; California; Lower McCloud Fuels Management Project

AGENCY: Forest Service, USDA.

ACTION: Withdrawal of notice of intent to prepare an Environmental Impact Statement.

SUMMARY: The Shasta-Trinity National Forest is withdrawing the Notice of Intent (NOI) to prepare an Environmental Impact Statement (EIS) for the Lower McCloud Fuels Management Project. The original NOI was published in the **Federal Register** on March 22, 2016. No significant issues were identified during this scoping period or any other opportunity to comment. Upon further evaluation, it also appears that there are no potential significant impacts to the human environment associated with the project. As a result, the Forest is withdrawing its intent to prepare an EIS and is now preparing an Environmental Assessment (EA). All comments previously received regarding this project will be retained and considered in the development of the EA. If it is determined that the project may have significant impacts, the EIS process will be reinitiated and a NOI will be published.

FOR FURTHER INFORMATION CONTACT: Questions concerning withdrawal of the NOI should be addressed to Emelia Barnum at the following address: Shasta McCloud Management Unit, Shasta-Trinity National Forest, 204 W Alma St., Mt. Shasta, CA 96067; via phone at 530–926–9600; or via email at *ebarnumfs.fed.us.* Individuals and organizations that previously submitted comments on this project will remain on the project mailing list and do not need to contact the Forest.

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday.

Dated: February 13, 2019.

Allen Rowley,

Acting Associate Deputy Chief, National Forest System.

[FR Doc. 2019–03360 Filed 2–26–19; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF AGRICULTURE

Forest Service

Idaho Panhandle Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meetings.

SUMMARY: The Idaho Panhandle Resource Advisory Committee (RAC) will meet in Coeur d'Alene, Idaho. The committee is authorized under the Secure Rural Schools and Community Self-Determination Act (the Act) and operates in compliance with the Federal Advisory Committee Act. The purpose of the committee is to improve collaborative relationships and to provide advice and recommendations to the Forest Service concerning projects and funding consistent with Title II of the Act. RAC information can be found at the following website: *http://www.fs.usda.gov/main/ipnf/workingtogether/advisorycommittees.*

DATES: The meetings will be held on the following dates:

- Friday, March 8, 2019, at 9:00 a.m.,
- Friday, March 29, 2019, at 9:00 a.m., and
- Friday, April 5, 2019, at 9:00 a.m.

All RAC meetings are subject to cancellation. For updated status of the meeting prior to attendance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

ADDRESSES: The meetings will be held at the Idaho Panhandle National Forests Supervisor's Office, 3815 Schreiber Way, Coeur d'Alene, Idaho.

Written comments may be submitted as described under **SUPPLEMENTARY INFORMATION**. All comments, including names and addresses, when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at the Idaho Panhandle National Forests Supervisor's Office. Please call ahead to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: Phillip Blundell, RAC Coordinator, by phone at 208–783–2101 or by email at *phillipblundell@usda.gov.*

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8:00 a.m. and 8:00 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The purpose of these meetings are to:

1. Elect a RAC chair and decide upon operating procedures;
2. Review the RAC charter;

3. Complete ethics training; and
4. Discuss calling for project proposals.

The meetings are open to the public. The agendas will include time for people to make oral statements of three minutes or less. Individuals wishing to make an oral statement should request in writing by March 1, 2019, to be scheduled on the agenda for the March 8, 2019 meeting; March 22, 2019, to be scheduled on the agenda for the March 29, 2019 meeting; and March 29, 2019, to be scheduled on the agenda for the April 5, 2019 meeting. Anyone who would like to bring related matters to the attention of the committee may file written statements with the committee staff before or after the meetings. Written comments and requests for time to make oral comments must be sent to Phillip Blundell, RAC Coordinator, Post Office Box 159, Smelterville, Idaho; by email to *phillipblundell@usda.gov,* or by facsimile at 208–783–2154.

Meeting Accommodations: If you are a person requiring reasonable accommodation, please make requests in advance for sign language interpreting, assistive listening devices or other reasonable accommodation. For access to the facility or proceedings, please contact the person listed in the section titled **FOR FURTHER INFORMATION CONTACT**. All reasonable accommodation requests are managed on a case by case basis.

February 13, 2019.

Allen Rowley,

Acting Associate Deputy Chief, National Forest System.

[FR Doc. 2019–03359 Filed 2–26–19; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF AGRICULTURE

National Agricultural Statistics Service

Notice of Invitation for Nominations to the Advisory Committee on Agriculture Statistics

AGENCY: National Agricultural Statistics Service (NASS), USDA.

ACTION: Notice.

SUMMARY: In accordance with the Federal Advisory Committee Act, this notice announces an invitation from the Office of the Secretary of Agriculture for nominations to the Advisory Committee on Agriculture Statistics.

DATES: The nomination period for interested candidates will close 30 days after publication of this notice.

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

- *Email:* Scan the completed form and email to: *HQOA@nass.usda.gov.*
- *eFax:* 855–493–0445.
- *Mail:* Nominations should be mailed to Kevin Barnes, Associate Administrator, National Agricultural Statistics Service, U.S. Department of Agriculture, 1400 Independence Avenue SW, Room 5041, South Building, Washington, DC 20250–2010.
- *Hand Delivery/Courier:* Hand deliver to: Kevin Barnes, Associate Administrator, National Agricultural Statistics Service, U.S. Department of Agriculture, 1400 Independence Avenue SW, Room 5041, South Building, Washington, DC 20250–2010.

FOR FURTHER INFORMATION CONTACT: Kevin Barnes, Associate Administrator, National Agricultural Statistics Service, (202) 720–4333.

SUPPLEMENTARY INFORMATION: On December 18, 2018, the Secretary of Agriculture renewed the Advisory Committee charter for a two-year term to expire on December 17, 2020. The purpose of the Committee is to advise the Secretary of Agriculture on the scope, timing, content, etc., of the periodic censuses and surveys of agriculture, other related surveys, and the types of information to obtain from respondents concerning agriculture. The Committee also prepares recommendations regarding the content of agricultural reports and presents the views and needs for data of major suppliers and users of agricultural statistics.

Each person nominated to serve on the committee is required to submit the following form: AD–755 (Advisory Committee Membership Background Information, OMB Number 0505–0001), available on the internet at *https://www.ocio.usda.gov/document/ad-755.* This form may also be requested by telephone, fax, or email using the information above. Completed forms may be faxed to the number above, mailed, or completed and emailed directly from the internet site. For more information on the Advisory Committee on Agriculture Statistics, see the NASS website at *https://www.nass.usda.gov/About_NASS/Advisory_Committee_on_Agriculture_Statistics/index.php.* The Committee draws on the experience and expertise of its members to form a collective judgment concerning agriculture data collected and the statistics issued by NASS. This input is vital to keep current with shifting data needs in the rapidly changing agricultural environment and keeps NASS informed of emerging issues in the agriculture community that can affect agricultural statistics activities.

The Committee, appointed by the Secretary of Agriculture, consists of 22 members representing a broad range of disciplines and interests, including, but not limited to, producers, representatives of national farm organizations, agricultural economists, rural sociologists, farm policy analysts, educators, State agriculture representatives, and agriculture-related business and marketing experts.

Members serve staggered 2-year terms, with terms for half of the Committee members expiring in any given year. Nominations are being sought for 22 open Committee seats. Members can serve up to 3 terms for a total of 6 consecutive years. The Chairperson of the Committee shall be elected by members to serve a 1-year term.

Equal opportunity practices, in line with USDA policies, will be followed in all membership appointments to the Committee. To ensure that the recommendations of the Committee have taken into account the needs of the diverse groups served by USDA, membership will include to the extent possible, individuals with demonstrated ability to represent the needs of all racial and ethnic groups, women and men, and persons with disabilities.

The duties of the Committee are solely advisory. The Committee will make recommendations to the Secretary of Agriculture with regards to the agricultural statistics programs of NASS, and such other matters as it may deem advisable, or which the Secretary of Agriculture; Under Secretary for Research, Education, and Economics; or the Administrator of NASS may request. The Committee will meet at least annually. All meetings are open to the public. Committee members are reimbursed for official travel expenses only.

Send questions, comments, and requests for additional information to the email address, fax number, or address listed above.

Signed at Washington, DC, February 11, 2019.

Kevin Barnes,

Associate Administrator, National Agricultural Statistics Service.

[FR Doc. 2019–03264 Filed 2–26–19; 8:45 am]

BILLING CODE 3410–20–P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Cardinal-Hickory Creek 345-kv Transmission Line Project

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice of public meetings.

SUMMARY: The Rural Utilities Service (RUS), an agency of the United States Department of Agriculture, published a notice of availability, public meetings, and Section 106 notification on December 7, 2018 (83 FR 63149) **Federal Register** for the Cardinal-Hickory Creek 345-kV Transmission Line Project Draft Environmental Impact Statement (EIS). Meetings were scheduled for January 2019 and the public review period was to conclude on February 5, 2019.

On February 12, 2019 (84 FR 3412), RUS published a notice announcing an extension of the public comment period to April 1, 2019 due to the lapse in federal funding. Previously cancelled Draft EIS public comment meetings in January 2019 are rescheduled for six days in March.

DATES: RUS will conduct six public meetings as follows:

March 13 at 5–7 p.m.—Dodger Bowl Banquet Hall at 318 King St. in Dodgeville, Wisconsin

March 14 at 5–7 p.m.—Deer Valley Lodge at 401 W Industrial Dr. in Barneveld, Wisconsin

March 15 at 5–7 p.m.—Guttenberg Municipal Bldg. at 502 S First St. in Guttenberg, Iowa

March 18 at 5–7 p.m.—Cassville Middle School at 715 E Amelia St. in Cassville, Wisconsin

March 19 at 5–7 p.m.—Peosta Community Center at 7896 Burds Rd. in Peosta, Iowa

March 20 at 5–7 p.m.—Madison Marriott West at 1313 John Q. Hammons Dr. in Middleton, Wisconsin

All meetings will be held from 5:00 to 7:00 p.m. local time. A court reporter will be available.

Written comments on this Draft EIS will be accepted until April 1, 2019.

A copy of the Draft EIS may be viewed online at the following website: *https://www.rd.usda.gov/publications/environmental-studies/impact-statements/cardinal-%E2%80%93-hickory-creek-transmission-line* and Dairyland Power Cooperative, 3521 East Avenue, South, La Crosse, WI 54602 and at local libraries in the project area.

FOR FURTHER INFORMATION CONTACT: To obtain copies of the Draft EIS or for further information, contact: Dennis Rankin or Lauren Cusick, Environmental Protection Specialists, U.S. Department of Agriculture, Rural Utilities Service, 1400 Independence Avenue SW, Room 2244, Stop 1571, Washington, DC 20250–1571, or email *dennis.rankin@wdc.usda.gov* OR *lauren.cusick@wdc.usda.gov.*

SUPPLEMENTARY INFORMATION: RUS has prepared a Draft Environmental Impact Statement (EIS) to meet its responsibilities under the National Environmental Policy Act (NEPA) and 7 CFR 1794 related to providing financial assistance to Dairyland Power Cooperative (DPC) for its share in the construction of a proposed 345-kilovolt (kV) transmission line and associated infrastructure connecting the Hickory Creek Substation in Dubuque County, Iowa, with the Cardinal Substation in the Town of Middle, Wisconsin (near Madison, Wisconsin). The Project also includes a new intermediate 345/138-kV substation near the Village of Montfort in either Grant County or Iowa County, Wisconsin. The total length of the 345-kV transmission lines associated with the proposed project will be approximately 125 miles. DPC and the other project participants have identified proposed and alternate segments and locations for transmission lines and associated facilities and for the intermediate substation. Dairyland Power Cooperative is requesting RUS to provide financing for its portion of the proposed project. DPC is participating in the proposed project with two other utilities, American Transmission Company LLC, and ITC Midwest LLC (Utilities).

The purpose of the proposed project is to: (1) Address reliability issues on the regional bulk transmission system, (2) alleviate congestion that occurs in certain parts of the transmission system and remove constraints that limit the delivery of power, (3) expand the access of the transmission system to additional resources, (4) increase the transfer capability of the electrical system between Iowa and Wisconsin, (5) reduce the losses in transferring power and increase the efficiency of the transmission system, and 6) respond to public policy objectives aimed at enhancing the nation's transmission system and to support the changing generation mix.

RUS is the lead agency for the federal environmental review with U.S. Fish and Wildlife Service (USFWS), U.S. Army Corps of Engineers (USACE), and the U.S. Environmental Protection Agency (USEPA) serving as cooperating agencies, and the National Park Service (NPS) as a participating agency.

Dated: February 21, 2019.

Nicole Schindler,

Acting Director, Engineering and Environmental Staff Rural Utilities Service.

[FR Doc. 2019–03329 Filed 2–26–19; 8:45 am]

BILLING CODE P

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

Meetings

AGENCY: Architectural and Transportation Barriers Compliance Board.

ACTION: Notice of meetings.

SUMMARY: The Architectural and Transportation Barriers Compliance Board (Access Board) plans to hold its regular committee and Board meetings in Washington, DC, Monday through Wednesday, March 11–13, 2019, at the times and location listed below.

DATES: The schedule of events open to the public is as follows:

Monday, March 11, 2019

10:00 a.m.–11:00 a.m.—Technical Programs Committee

Tuesday, March 12, 2019

9:30 a.m.–10:30 a.m.—Planning and Evaluation Committee

Wednesday, March 13, 2019

9:30 a.m.–10:30 a.m.—Ad Hoc Committee on Design Guidance

10:30 a.m.–11:00 a.m.—Budget Committee

11:00 a.m.–Noon—Ad Hoc Committee on Frontier Issues

1:30 p.m.–3:00 p.m.—Board Meeting

ADDRESSES: Meetings will be held at the Access Board Conference Room, 1331 F Street NW, Suite 800, Washington, DC 20004.

FOR FURTHER INFORMATION CONTACT: For further information regarding the meetings, please contact David Capozzi, Executive Director, (202) 272–0010 (voice); (202) 272–0054 (TTY).

SUPPLEMENTARY INFORMATION: At the Board meeting scheduled on the afternoon of Wednesday, March 13, the Access Board will consider the following agenda items:

- Approval of November 7, 2018 draft meeting minutes (vote)
- Ad Hoc Committee Reports: Design Guidance; Frontier Issues
- Planning and Evaluation Committee
- Technical Programs Committee
- Budget Committee
- Election Assistance Commission Report
- Election of Officers
- Executive Director's Report
- Public Comment (final 15 minutes of the meeting)

Members of the public can provide comments either in-person or over the telephone during the final 15 minutes of the Board meeting on Wednesday,

March 13, 2019. Any individual interested in providing comment is asked to pre-register by sending an email to *bunales@access-board.gov* with the subject line ''Access Board meeting—Public Comment'' with your name, organization, state, and topic of comment included in the body of your email. All emails to register for public comment must be received by Wednesday, March 6, 2019. Commenters will be provided with a call-in number and passcode before the meeting. Commenters will be called on in the order by which they are pre-registered. Due to time constraints, each commenter is limited to two minutes. Commenters on the telephone will be in a listen-only capacity until they are called on.

All meetings are accessible to persons with disabilities. An assistive listening system, Communication Access Realtime Translation (CART), and sign language interpreters will be available at the Board meeting and committee meetings.

Persons attending Board meetings are requested to refrain from using perfume, cologne, and other fragrances for the comfort of other participants (see *www.access-board.gov/the-board/policies/fragrance-free-environment* for more information).

You may view the Wednesday, March 13, 2019 meeting through a live webcast from 1:30 p.m. to 3:00 p.m. at: *www.access-board.gov/webcast.*

David M. Capozzi,

Executive Director.

[FR Doc. 2019–03342 Filed 2–26–19; 8:45 am]

BILLING CODE 8150–01–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[S–24–2019]

Foreign-Trade Zone 59—Lincoln, Nebraska; Application for Subzone; Adams Warehousing, LLC; Sidney, Nebraska

An application has been submitted to the Foreign-Trade Zones Board (the Board) by Lincoln Foreign-Trade Zone, Inc., grantee of FTZ 59, requesting subzone status for the facility of Adams Warehousing Company, LLC (Adams Warehousing), located in Sidney, Nebraska. 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 21, 2019.

The proposed subzone (852.84 acres) is located at 1655 Industrial Avenue, Sidney, Nebraska. No authorization for production activity has been requested at this time. The proposed subzone would be subject to the existing activation limit of FTZ 59.

In accordance with the Board's regulations, Christopher Kemp 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 April 8, 2019. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to April 23, 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 Christopher Kemp at *Christopher.Kemp@trade.gov* or (202) 482–0862.

Dated: February 21, 2019.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2019–03424 Filed 2–26–19; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–06–2019]

Proposed Foreign-Trade Zone—Grand Junction, Colorado Under Alternative Site Framework

An application has been submitted to the Foreign-Trade Zones (FTZ) Board by the Grand Junction Area Chamber of Commerce to establish a foreign-trade zone in the Grand Junction, Colorado area, under the alternative site framework (ASF) adopted by the FTZ Board (15 CFR Sec. 400.2(c)). The ASF is an option for grantees for the establishment or reorganization of zones and can permit significantly greater flexibility in the designation of new ''subzones'' or ''usage-driven'' FTZ sites for operators/users located within a grantee's ''service area'' in the context of the FTZ Board's standard 2,000-acre activation limit for a zone project. The proposed zone would be adjacent to the proposed U.S. Customs and Border Protection (CBP) user fee airport at the Grand Junction Regional Airport, which currently has received preliminary approval from CBP. 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 21, 2019. The applicant is authorized to make the proposal under Title 7, Article 49.5 of the Colorado Revised Statutes.

The applicant's proposed service area under the ASF would be Delta, Garfield and Mesa Counties, Colorado in their entirety and portions of Montrose and Rio Blanco Counties, Colorado, as described in the application. If approved, the applicant would be able to serve sites throughout the service area based on companies' needs for FTZ designation. The proposed service area would be within and adjacent to the proposed Grand Junctional Regional Airport CBP user fee airport.

The application indicates a need for zone services in the Grand Junction, Colorado area. Several firms have indicated an interest in using zone procedures for warehousing/distribution activities for a variety of products. The application is not requesting any magnet sites or subzones/usage-driven sites at this time. Specific production approvals are not being sought at this time. Such requests would be made to the FTZ Board on a case-by-case basis.

In accordance with the FTZ Board's regulations, Christopher Kemp of the FTZ Staff is designated examiner to evaluate and analyze the facts and information presented in the application and case record and to report findings and recommendations to the FTZ Board.

Public comment is invited from interested parties. Submissions shall be addressed to the FTZ Board's Executive Secretary at the address below. The closing period for their receipt is April 29, 2019. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to May 13, 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 FTZ Board's website, which is accessible via *www.trade.gov/ftz.*

For further information, contact Christopher Kemp at *Christopher.Kemp@trade.gov* or (202) 482–0862.

Dated: February 21, 2019.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2019–03425 Filed 2–26–19; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–583–854]

Certain Steel Nails From Taiwan: Partial Rescission of Antidumping Duty Administrative Review; 2017–2018

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) is rescinding the administrative review, in part, of the antidumping duty order on certain steel nails from Taiwan for the period July 1, 2017, through June 30, 2018.

DATES: Applicable February 27, 2019.

FOR FURTHER INFORMATION CONTACT: Irene Gorelik, AD/CVD Operations, Office VIII, Enforcement and Compliance, International Trade Administration, Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–6905.

SUPPLEMENTARY INFORMATION:

Background

On September 10, 2018, based on timely requests for review for 86 companies by Mid Continent Steel & Wire, Inc. (Mid Continent), a domestic producer and interested party,[1] and various Taiwanese companies,[2] Commerce published in the **Federal Register** a notice of initiation of an administrative review of the antidumping duty order on certain steel nails from Taiwan covering the period July 1, 2017, through June 30, 2018.[3]

On October 5, 2018, Mid Continent withdrew its request for administrative review for 80 of the 86 companies in its original request for review.[4] No other party requested a review of these 80 companies.

Partial Rescission of Review

Pursuant to 19 CFR 351.213(d)(1), Commerce will rescind an administrative review, in whole or in part, if the party that requested the review withdraws its request within 90 days of the publication of the notice of initiation of the requested review. Because all active requests for administrative review of the 80 companies listed in the Appendix were withdrawn by Mid Continent within 90 days of the date of publication of the *Initiation Notice,* and no other interested party requested a review of these 80 companies, Commerce is rescinding this review with respect to these companies in accordance with 19 CFR 351.213(d)(1). The administrative review remains active with respect to Liang Chyuan Industrial Co., Ltd., PT Enterprise, Inc. and its affiliated producer Pro-Team Coil Nail Enterprise, Inc. (collectively, PT); Unicatch Industrial Co. Ltd., Hor Liang Industrial Corp., and Romp Coil Nail Industries Inc.

Assessment

Commerce will instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties on all appropriate entries at a rate equal to the cash deposit of estimated antidumping duties required at the time of entry, or withdrawal from warehouse, for consumption, during the period July 1, 2017, through June 30, 2018, in accordance with 19 CFR 351.212(c)(1)(i). Commerce intends to issue appropriate assessment instructions to CBP 15 days after the publication of this notice in the **Federal Register**.

Notification to Importers

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of the antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

Notification Regarding Administrative Protective Order

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3), which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return or destruction of APO materials, or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

This notice is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Tariff Act of 1930, as amended, and 19 CFR 351.213(d)(4).

Dated: February 22, 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.

Appendix

Companies Rescinded From Review

1. All Precision Co., Ltd.
2. Aplus Pneumatic Corp.
3. Astrotech Steels Private Ltd.
4. Basso Industry Corporation
5. Bonuts Hardware Logistic Co.
6. Challenge Industrial Co., Ltd.
7. Chen Yu-Lan
8. Cheng Ch International Co. Ltd.
9. Chia Pao Metal Co. Ltd.
10. Chite Enterprises Co., Ltd.
11. Concord Int's Engineer Ing & Trading
12. Crown Run Industrial Corp.
13. Daejin Steel Company Ltd.
14. Dragon Iron Factory Co., Ltd.
15. Easylink Industrial Co., Ltd.
16. ECI Taiwan Co., Ltd.
17. Encore Green Co., Ltd.
18. Faithful Engineering Products Co. Ltd.
19. Fastenal Asia Pacific Ltd.
20. Four Winds Corporation
21. Fujian Xinhong Mech. & Elec. Co., Ltd.
22. Fuzhou Royal Floor Co., Ltd.
23. Fuzhou Top Golden Import & Export Co.
24. General Merchandise Consolidators
25. Ginfa World Co. Ltd.
26. Gloex Company
27. Hi-Sharp Industrial Corp. Ltd.
28. Home Value Co., Ltd.
29. Hyup Sung Indonesia
30. Inmax Industries Sdn. Bhd.
31. Inmax Sdn. Bhd.
32. Interactive Corp.
33. J C Grand Corporation
34. Jade Shuttle Enterprise Co., Ltd.
35. Jet Crown International Co., Ltd.
36. Jia Jue Industry Co. Ltd.
37. Jinhai Hardware Co., Ltd.
38. Jinsco International Corp.
39. Korea Wire Co., Ltd.
40. Linkwell Industry Co., Ltd.

[1] *See* Mid Continent's Letter, ''Request for Administrative Review,'' dated July 31, 2018.

[2] *See* Requests for Administrative Review, dated July 31, 2018, from: Romp Coil Nails Industries Inc. (barcode 3736761–01), Hor Liang Industrial Corp. (barcode 3737089–01); PT Enterprise Inc. and Pro-Team Coil Nail Enterprise, Inc. (barcode 3737101–01); and Unicatch Industrial Co., Ltd. (barcode 3737114–01).

[3] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 83 FR 45596 (September 10, 2018) (*Initiation Notice*).

[4] *See* Mid Continent's Letter, ''Withdrawal of Request for Administrative Reviews,'' dated October 5, 2018 (Mid Continent Withdrawal Letter).

41. Locksure Inc.
42. Lu Kang Hand Tools Industrial Co., Ltd.
43. Master United Corp.
44. Nailermate Enterprise Corporation
45. Newrex Screw Corporation
46. Noble Shipping Pvt. Ltd.
47. NS International Ltd.
48. Pacific Concord Internaional Ltd.
49. Panther T&H Industry Co.
50. Patek Tool Co., Ltd.
51. Point Edge Corp.
52. President Industrial Inc.
53. Pronto Great China Corp.
54. Region Industries Co., Ltd.
55. Region International Co. Ltd.
56. Region System Sdn. Bhd.
57. Shanxi Pioneer Hardware Industrial Co., Ltd.
58. Shinn Chuen Corp.
59. Six-2 Fastener Imports Inc.
60. Star World Product and Trading Co., Ltd.
61. Taiwan Shan Yin Int'l Co. Ltd.
62. Taiwan Wakisangyo Co. Ltd.
63. Techart Mechinal Corporation
64. Test-Rite Int'l Co., Ltd.
65. Trans-Top Enterprise Co., Ltd.
66. Transworld Transporation Co., Ltd.
67. Trim International Inc.
68. Tsi-Translink (Taiwan) Co. Ltd.
69. U-Can-Do Hardware Corp.
70. UJL Industries Co., Ltd.
71. Universal Power Shipping Ltd.
72. Vanguard International Co., Ltd.
73. VIM International Enterprise Co., Ltd.
74. Vision Exporters
75. Wattson Fastner Group Inc.
76. Wictory Co. Ltd.
77. Wumax Industry Co., Ltd.
78. Yeh Fong Hsin
79. Yehdyi Enterprise Co., Ltd.
80. Yu Tai World Co., Ltd.

[FR Doc. 2019–03421 Filed 2–26–19; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–489–833]

Large Diameter Welded Pipe From the Republic of Turkey: Final Determination of Sales at Less Than Fair Value

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) determines that imports of large diameter welded pipe (welded pipe) from the Republic of Turkey (Turkey) are being, or are likely to be, sold in the United States at less than fair value (LTFV) for the period of investigation (POI) January 1, 2017, through December 31, 2017.

DATES: Applicable February 27, 2019.

FOR FURTHER INFORMATION CONTACT: Rebecca M. Janz or William Miller, AD/CVD Operations, Office II, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–2972 or (202) 482–3906, respectively.

SUPPLEMENTARY INFORMATION:

Background

On August 27, 2018, Commerce published in the **Federal Register** the *Preliminary Determination* of sales at LTFV of welded pipe from Turkey, in which we also postponed the final determination until January 9, 2019.[1] We invited interested parties to comment on the *Preliminary Determination.* A summary of the events that occurred since Commerce published the *Preliminary Determination,* as well as a full discussion of the issues raised by parties for this final determination, may be found in the Issues and Decision Memorandum, which is adopted by this notice.[2]

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.[3] If the new deadline falls on a non-business day, in accordance with Commerce's practice, the deadline will become the next business day. The revised deadline for the final determination of this investigation is now February 19, 2019.

Scope of the Investigation

The product covered by this investigation is welded pipe from Turkey. For a full description of the scope of this investigation, *see* the ''Scope of the Investigation'' in Appendix I of this notice.

Scope Comments

During the course of this investigation and the concurrent LTFV investigations of welded pipe from Canada, Greece, the Republic of Korea (Korea), and the People's Republic of China (China), and the concurrent countervailing duty investigations of welded pipe from China, India, Korea, and Turkey, Commerce received scope comments from interested parties. Commerce issued a Preliminary Scope Decision Memorandum[4] to address these comments. In the *Preliminary Determination,* Commerce set aside a period of time for parties to address scope issues in scope case and rebuttal briefs. No interested parties submitted scope comments in scope case or scope rebuttal briefs. Therefore, for this final determination, the scope of this investigation remains unchanged from that published in the *Preliminary Determination.*

Analysis of Comments Received

All issues raised in the case and rebuttal briefs submitted by parties in this investigation are addressed in the Issues and Decision Memorandum accompanying this notice. A list of the issues addressed in the Issues and Decision Memorandum is attached to this notice as Appendix II. The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov,* and it is available to all parties in the Central Records Unit, room B–8024 of the main Department of Commerce building. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at *http://enforcement.trade.gov/frn/index.html.* The signed and electronic versions of the Issues and Decision Memorandum are identical in content.

Verification

As provided in section 782(i) of the Tariff Act of 1930, as amended, (the Act), in September and October 2018, we conducted verifications of the sales and cost information submitted by Borusan Mannesmann Boru Sanayi ve Ticaret A.S. (Borusan) and HDM Celik Boru Sanayi ve Ticaret A.S. (HDM Celik) for use in our final determination. We used standard verification procedures, including an examination of relevant accounting and production records, and original source documents provided by Borusan and HDM Celik.[5]

[1] *See Large Diameter Welded Pipe from the Republic of Turkey: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination,* 83 FR 43646 (August 27, 2018) (*Preliminary Determination*), and accompanying Preliminary Decision Memorandum.

[2] *See* Memorandum, ''Issues and Decision Memorandum for the Final Affirmative Determination in the Less-Than-Fair-Value Investigation of Large Diameter Welded Pipe from the Republic of Turkey,'' dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

[3] *See* Memorandum, ''Deadlines Affected by the Partial Shutdown of the Federal Government,'' dated January 28, 2019. All deadlines in this segment of the proceeding have been extended by 40 days.

[4] *See* Memorandum, ''Scope Comments Decision Memorandum for the Preliminary Determinations,'' dated June 19, 2018 (Preliminary Scope Decision Memorandum).

[5] For discussion of our verification findings, *see* Memorandum, ''Verification of the Sales Response of Borusan Mannesmann Boru Sanayi ve Ticaret A.S. (Borusan) in the Antidumping Investigation of

Changes Since the Preliminary Determination

Based on our analysis of the comments received and our findings at verification, we made certain changes to the margin calculations for the respondents, Borusan and HDM Celik. For a discussion of these changes, *see* the ''Margin Calculations'' section of the Issues and Decision Memorandum.

All-Others Rate

Section 735(c)(5)(A) of the Act provides that the estimated weighted-average dumping margin for all-other producers and exporters not individually investigated shall be equal to the weighted average of the estimated weighted-average dumping margins established for exporters and producers individually investigated excluding rates that are zero, *de minimis,* or determined entirely under section 776 of the Act. In this investigation, Commerce calculated estimated weighted-average dumping margins for Borusan and HDM Celik that are not zero, *de minimis,* or based entirely on facts otherwise available. Commerce calculated the all-others' rate using a weighted average of the estimated weighted-average dumping margins calculated for the examined respondents using each company's publicly-ranged values for the merchandise under consideration.[6]

Final Determination

The final estimated weighted-average dumping margins are as follows:

Exporter or producer	Weighted-average dumping margin (percent)	Cash deposit rate (adjusted for subsidy offset(s)) (percent)
Borusan Mannesmann Boru Sanayi ve Ticaret A.S	4.55	0.00
HDM Celik Boru Sanayi ve Ticaret A.S	5.05	4.05
All Others	4.68	3.68

Disclosure

We intend to disclose the calculations performed in this final determination within five days of the date of publication of this notice to parties in this proceeding in accordance with 19 CFR 351.224(b).

Continuation of Suspension of Liquidation

In accordance with section 735(c)(1)(B) of the Act, for this final determination, we will direct U.S. Customs and Border Protection (CBP) to continue to suspend liquidation of all entries of welded pipe, as described in Appendix I of this notice, which are entered, or withdrawn from warehouse, for consumption on or after August 27, 2018, the date of publication in the **Federal Register** of the affirmative *Preliminary Determination.*

Pursuant to section 735(c)(1)(B)(ii) of the Act and 19 CFR 351.210(d), we will instruct CBP to require a cash deposit for such entries of merchandise equal to the estimated weighted-average dumping margin as follows: (1) The cash deposit rate for the respondents listed above will be equal to the respondent-specific estimated weighted-average dumping margin determined in this final determination; (2) if the exporter is not a respondent identified above but the producer is, then the cash deposit rate will be equal to the respondent-specific estimated weighted-average dumping margin established for that producer of the subject merchandise; and (3) the cash deposit rate for all other producers and exporters will be equal to the all-others estimated weighted-average dumping margin. These suspension of liquidation instructions will remain in effect until further notice.

Further, we will instruct CBP to require a cash deposit equal to the estimated amount by which the normal value exceeds the U.S. price as shown above, adjusted where appropriate for export subsidies found in the final determination of the companion countervailing duty investigation.[7] Consistent with our longstanding practice, where the product under investigation is also subject to a concurrent countervailing duty investigation, we will instruct CBP to require a cash deposit equal to the amount by which the normal value exceeds the U.S. price, less the amount of the countervailing duty determined to constitute any export subsidies.[8]

Therefore, in the event that a countervailing duty order is issued and suspension of liquidation is resumed in the companion countervailing duty investigation on welded pipe from Turkey, Commerce will instruct CBP to require cash deposits adjusted by the amount of export subsidies, as appropriate. These adjustments are reflected in the final column of the rate chart, above. Until such suspension of liquidation is resumed in the companion countervailing duty investigation, and so long as suspension of liquidation continues under this antidumping duty investigation, the cash deposit rates for this antidumping

Large Diameter Welded Pipe from the Republic of Turkey,'' dated October 22, 2018; Memorandum, ''Verification of the Sales Response of HDM Celik Ticaret Sanayi A.S. (HDM Celik) in the Antidumping Investigation of Large Diameter Welded Pipe from the Republic of Turkey,'' dated October 22, 2018; Memorandum, ''Verification of the Cost Response of HDM Celik Boru Sanayi ve Ticaret A.S. in the Antidumping Duty Investigation of Large Diameter Welded Pipe from the Republic of Turkey,'' dated October 22, 2018; and Memorandum, ''Verification of the Cost Response of Borusan Mannesmann Boru Sanayi ve Ticaret A.S. (BMB), in the Antidumping Duty Investigation of Large Diameter Welded Pipe (LDWP) from Turkey,'' dated November 1, 2018.

[6] With two respondents under examination, Commerce normally calculates (A) a weighted average of the estimated weighted-average dumping margins calculated for the examined respondents; (B) a simple average of the estimated weighted-average dumping margins calculated for the examined respondents; and (C) a weighted average of the estimated weighted-average dumping margins calculated for the examined respondents using each company's publicly-ranged U.S. sale values for the merchandise under consideration. Commerce then compares (B) and (C) to (A) and selects the rate closest to (A) as the most appropriate rate for all other producers and exporters. *See Ball Bearings and Parts Thereof from France, Germany, Italy, Japan, and the United Kingdom: Final Results of Antidumping Duty Administrative Reviews, Final Results of Changed-Circumstances Review, and Revocation of an Order in Part,* 75 FR 53661, 53663 (September 1, 2010); *see also* Memorandum, ''Calculation of the All-Others Rate for the Final Determination,'' dated concurrently with this notice.

[7] *See Modification of Regulations Regarding the Practice of Accepting Bonds During the Provisional Measures Period in Antidumping and Countervailing Duty Investigations,* 76 FR 61042 (October 3, 2011).

[8] *See, e.g., Welded Line Pipe from the Republic of Turkey: Final Determination of Sales at Less Than Fair Value,* 80 FR 61362 (October 13, 2015); and *Notice of Final Determination of Sales at Less Than Fair Value and Negative Critical Circumstances Determination: Bottom Mount Combination Refrigerator-Freezers from the Republic of Korea,* 77 FR 17413 (March 26, 2012).

duty investigation will be the rates identified in the estimated weighted-average dumping margin column in the rate chart, above.

International Trade Commission Notification

In accordance with section 735(d) of the Act, we will notify the International Trade Commission (ITC) of the final affirmative determination of sales at LTFV. In addition, we are making available to the ITC all non-privileged and non-proprietary information related to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order (APO), without the written consent of the Assistant Secretary for Enforcement and Compliance. Because Commerce's final determination is affirmative, in accordance with section 735(b)(2) of the Act, the ITC will make its final determination as to whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports, or sales (or the likelihood of sales) for importation of welded pipe from Turkey no later than 45 days after this final determination. If the ITC determines that such injury does not exist, this proceeding will be terminated, and all cash deposits will be refunded. If the ITC determines that such injury does exist, Commerce will issue an antidumping duty order directing CBP to assess, upon further instruction by Commerce, antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation, as discussed above in the ''Continuation of Suspension of Liquidation'' section.

Notification Regarding Administrative Protective Orders

This notice serves as a reminder to parties subject to an administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of return or destruction of APO materials, or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

Notification to Interested Parties

This determination and this notice are issued and published pursuant to sections 735(d) and 777(i)(1) of the Act and 19 CFR 351.210(c).

Dated: February 19, 2019.

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.

Appendix I

Scope of the Investigation

The merchandise covered by this investigation is welded carbon and alloy steel pipe (including stainless steel pipe), more than 406.4 mm (16 inches) in nominal outside diameter (large diameter welded pipe), regardless of wall thickness, length, surface finish, grade, end finish, or stenciling. Large diameter welded pipe may be used to transport oil, gas, slurry, steam, or other fluids, liquids, or gases. It may also be used for structural purposes, including, but not limited to, piling. Specifically, not included is large diameter welded pipe produced only to specifications of the American Water Works Association (AWWA) for water and sewage pipe.

Large diameter welded pipe used to transport oil, gas, or natural gas liquids is normally produced to the American Petroleum Institute (API) specification 5L. Large diameter welded pipe may also be produced to American Society for Testing and Materials (ASTM) standards A500, A252, or A53, or other relevant domestic specifications, grades and/or standards. Large diameter welded pipe can be produced to comparable foreign specifications, grades and/or standards or to proprietary specifications, grades and/or standards, or can be non-graded material. All pipe meeting the physical description set forth above is covered by the scope of this investigation, whether or not produced according to a particular standard.

Subject merchandise also includes large diameter welded pipe that has been further processed in a third country, including but not limited to coating, painting, notching, beveling, cutting, punching, welding, or any other processing that would not otherwise remove the merchandise from the scope of the investigation if performed in the country of manufacture of the in-scope large diameter welded pipe.

Excluded from the scope are any products covered by the existing antidumping duty order on welded line pipe from the Republic of Turkey. *See Welded Line Pipe from the Republic of Korea and the Republic of Turkey: Antidumping Duty Orders,* 80 FR 75056 (December 1, 2015).

The large diameter welded pipe that is subject to this investigation is currently classifiable in the Harmonized Tariff Schedule of the United States (HTSUS) under subheadings 7305.11.1030, 7305.11.1060, 7305.11.5000, 7305.12.1030, 7305.12.1060, 7305.12.5000, 7305.19.1030, 7305.19.1060, 7305.19.5000, 7305.31.4000, 7305.31.6010, 7305.31.6090, 7305.39.1000 and 7305.39.5000. While the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this investigation is dispositive.

Appendix II

List of Topics Discussed in the Issues and Decision Memorandum

I. Summary
II. Background
III. Scope of the Investigation
IV. Margin Calculations
V. Adjustment for Countervailable Export Subsidies
VI. Discussion of the Issues
  1. Allegation of a Particular Market Situation (PMS) in Turkey
  2. Borusan's U.S. Date of Sale
  3. Borusan's Late Delivery Penalty
  4. Borusan's Affiliated Freight Expenses
  5. Borusan's Affiliated Freight Expense Adjustments
  6. Borusan's Domestic Warehousing Revenue
  7. Borusan's Fees for Vehicle Purchases
  8. Errors in Borusan's Margin Calculations
  9. Borusan's Cost Reporting
  10. Borusan's Surrogate COPs
  11. HDM Celik's Extra Revenues
  12. HDM Celik's Depreciation and Unused Vacation Expenses
VII. Recommendation

[FR Doc. 2019–03317 Filed 2–26–19; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–484–803]

Large Diameter Welded Pipe From Greece: Final Determination of Sales at Less Than Fair Value

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) determines that imports of large diameter welded pipe (welded pipe) from Greece are being, or are likely to be, sold in the United States at less than fair value (LTFV) for the period of investigation (POI) January 1, 2017, through December 31, 2017.

DATES: Applicable February 27, 2019.

FOR FURTHER INFORMATION CONTACT: Brittany Bauer, AD/CVD Operations, Office II, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–3860.

SUPPLEMENTARY INFORMATION:

Background

On August 27, 2018, Commerce published in the **Federal Register** the *Preliminary Determination* of sales at LTFV of welded pipe from Greece, in which we also postponed the final

determination until January 9, 2019.[1] We invited interested parties to comment on the *Preliminary Determination.* A summary of the events that occurred since Commerce published the *Preliminary Determination,* as well as a full discussion of the issues raised by parties for this final determination, may be found in the Issues and Decision Memorandum, which is adopted by this notice.[2]

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.[3] If the new deadline falls on a non-business day, in accordance with Commerce's practice, the deadline will become the next business day. The revised deadline for the final determination of this investigation is now February 19, 2019.

Scope of the Investigation

The product covered by this investigation is welded pipe from Greece. For a full description of the scope of this investigation, *see* the ''Scope of the Investigation'' in Appendix I of this notice.

Scope Comments

During the course of this investigation and the concurrent LTFV investigations of welded pipe from Canada, the Republic of Korea (Korea), the People's Republic of China (China), and the Republic of Turkey (Turkey), and the concurrent countervailing duty investigations of welded pipe from China, India, Korea, and Turkey, Commerce received scope comments from interested parties. Commerce issued a Preliminary Scope Decision Memorandum [4] to address these comments. In the *Preliminary Determination,* Commerce set aside a period of time for parties to address scope issues in scope case and rebuttal briefs. No interested parties submitted scope comments in scope case or scope rebuttal briefs. Therefore, for this final determination, the scope of this investigation remains unchanged from that published in the *Preliminary Determination.*

Analysis of Comments Received

All issues raised in the case and rebuttal briefs submitted by parties in this investigation are addressed in the Issues and Decision Memorandum accompanying this notice. A list of the issues addressed in the Issues and Decision Memorandum is attached to this notice as Appendix II. The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov,* and it is available to all parties in the Central Records Unit, room B–8024 of the main Department of Commerce building. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at *http://enforcement.trade.gov/frn/index.html.* The signed and electronic versions of the Issues and Decision Memorandum are identical in content.

Verification

As provided in section 782(i) of the Tariff Act of 1930, as amended, (the Act) from September to October 2018, we conducted verification of the sales and cost information submitted by Corinth Pipeworks Pipe Industry S.A. (Corinth) for use in our final determination. We used standard verification procedures, including an examination of relevant accounting and production records, and original source documents provided by Corinth.[5]

Changes Since the Preliminary Determination

Based on our analysis of the comments received and our findings at verification, we made certain changes to the margin calculations for the respondent. For a discussion of these changes, *see* the ''Margin Calculations'' section of the Issues and Decision Memorandum.

All-Others Rate

Section 735(c)(5)(A) of the Act provides that the estimated weighted-average dumping margin for all-other producers and exporters not individually investigated shall be equal to the weighted average of the estimated weighted-average dumping margins established for exporters and producers individually investigated excluding rates that are zero, *de minimis,* or determined entirely under section 776 of the Act. Corinth is the only respondent for which Commerce calculated an estimated weighted-average dumping margin that is not zero, *de minimis,* or based entirely on facts otherwise available. Therefore, for purposes of determining the ''all-others'' rate, and pursuant to section 735(c)(5)(A) of the Act, we are using the estimated weighted-average dumping margin calculated for Corinth, as referenced in the ''Final Determination'' section below.

Final Determination

The final estimated weighted-average dumping margins are as follows:

Exporter or producer	Weighted-average dumping margin (percent)
Corinth Pipeworks Pipe Industry S.A	9.96
All Others	9.96

Disclosure

We intend to disclose the calculations performed in this final determination within five days of the date of publication of this notice to parties in this proceeding in accordance with 19 CFR 351.224(b).

Continuation of Suspension of Liquidation

In accordance with section 735(c)(1)(B) of the Act, for this final determination, we will direct U.S. Customs and Border Protection (CBP) to continue to suspend liquidation of all entries of welded pipe, as described in Appendix I of this notice, which are entered, or withdrawn from warehouse,

[1] *See Large Diameter Welded Pipe from Greece: Preliminary Affirmative Determination of Sales at Less Than Fair Value and Postponement of Final Determination,* 83 FR 43640 (August 27, 2018) (*Preliminary Determination)* and accompanying Preliminary Decision Memorandum. *See also Large Diameter Welded Pipe from Greece: Amended Preliminary Determination of Sales at Less Than Fair Value,* 83 FR 48795 (September 27, 2018).

[2] *See* Memorandum, ''Issues and Decision Memorandum for the Final Affirmative Determination in the Less-Than-Fair-Value Investigation of Large Diameter Welded Pipe from Greece,'' dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

[3] *See* Memorandum, ''Deadlines Affected by the Partial Shutdown of the Federal Government,'' dated January 28, 2019. All deadlines in this segment of the proceeding have been extended by 40 days.

[4] *See* Memorandum, ''Scope Comments Decision Memorandum for the Preliminary Determinations,'' dated June 19, 2018 (Preliminary Scope Decision Memorandum).

[5] For discussion of our verification findings, *see* the following memoranda: Memorandum, ''Verification of the Sales Response of CPW America Co. in the Antidumping Duty Investigation of Large Diameter Welded Pipe from Greece,'' dated October 24, 2018; Memorandum, ''Verification of the Cost Response of Corinth Pipeworks Pipe Industry S.A. in the Less-than-Fair-Value Investigation of Large Diameter Welded Pipe from Greece,'' dated October 26, 2018; and Memorandum, ''Verification of the Sales Response of Corinth Pipeworks Pipe Industry S.A. in the Antidumping Duty Investigation of Large Diameter Welded Pipe from Greece,'' dated November 5, 2018.

for consumption on or after August 27, 2018, the date of publication in the **Federal Register** of the affirmative *Preliminary Determination.*

Pursuant to section 735(c)(1)(B)(ii) of the Act and 19 CFR 351.210(d), we will instruct CBP to require a cash deposit for such entries of merchandise equal to the estimated weighted-average dumping margin as follows: (1) The cash deposit rate for the respondents listed above will be equal to the respondent-specific estimated weighted-average dumping margin determined in this final determination; (2) if the exporter is not a respondent identified above but the producer is, then the cash deposit rate will be equal to the respondent-specific estimated weighted-average dumping margin established for that producer of the subject merchandise; and (3) the cash deposit rate for all other producers and exporters will be equal to the all-others estimated weighted-average dumping margin. These suspension of liquidation instructions will remain in effect until further notice.

International Trade Commission Notification

In accordance with section 735(d) of the Act, we will notify the International Trade Commission (ITC) of the final affirmative determination of sales at LTFV. In addition, we are making available to the ITC all non-privileged and non-proprietary information related to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order (APO), without the written consent of the Assistant Secretary for Enforcement and Compliance. Because Commerce's final determination is affirmative, in accordance with section 735(b)(2) of the Act, the ITC will make its final determination as to whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports, or sales (or the likelihood of sales) for importation of welded pipe from Greece no later than 45 days after this final determination. If the ITC determines that such injury does not exist, this proceeding will be terminated and all cash deposits will be refunded. If the ITC determines that such injury does exist, Commerce will issue an antidumping duty order directing CBP to assess, upon further instruction by Commerce, antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation, as discussed above in the ''Continuation of Suspension of Liquidation'' section.

Notification Regarding Administrative Protective Orders

This notice serves as a reminder to parties subject to an administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of return or destruction of APO materials, or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

Notification to Interested Parties

This determination and this notice are issued and published pursuant to sections 735(d) and 777(i)(1) of the Act and 19 CFR 351.210(c).

Dated: February 19, 2019.

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.

Appendix I

Scope of the Investigation

The merchandise covered by this investigation is welded carbon and alloy steel pipe (including stainless steel pipe), more than 406.4 mm (16 inches) in nominal outside diameter (large diameter welded pipe), regardless of wall thickness, length, surface finish, grade, end finish, or stenciling. Large diameter welded pipe may be used to transport oil, gas, slurry, steam, or other fluids, liquids, or gases. It may also be used for structural purposes, including, but not limited to, piling. Specifically, not included is large diameter welded pipe produced only to specifications of the American Water Works Association (AWWA) for water and sewage pipe.

Large diameter welded pipe used to transport oil, gas, or natural gas liquids is normally produced to the American Petroleum Institute (API) specification 5L. Large diameter welded pipe may also be produced to American Society for Testing and Materials (ASTM) standards A500, A252, or A53, or other relevant domestic specifications, grades and/or standards. Large diameter welded pipe can be produced to comparable foreign specifications, grades and/or standards or to proprietary specifications, grades and/or standards, or can be non-graded material. All pipe meeting the physical description set forth above is covered by the scope of this investigation, whether or not produced according to a particular standard.

Subject merchandise also includes large diameter welded pipe that has been further processed in a third country, including but not limited to coating, painting, notching, beveling, cutting, punching, welding, or any other processing that would not otherwise remove the merchandise from the scope of the investigation if performed in the country of manufacture of the in-scope large diameter welded pipe.

The large diameter welded pipe that is subject to this investigation is currently classifiable in the Harmonized Tariff Schedule of the United States (HTSUS) under subheadings 7305.11.1030, 7305.11.1060, 7305.11.5000, 7305.12.1030, 7305.12.1060, 7305.12.5000, 7305.19.1030, 7305.19.1060, 7305.19.5000, 7305.31.4000, 7305.31.6010, 7305.31.6090, 7305.39.1000 and 7305.39.5000. While the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this investigation is dispositive.

Appendix II

List of Topics Discussed in the Issues and Decision Memorandum

I. Summary
II. Background
III. Scope of the Investigation
IV. Margin Calculations
V. Discussion of the Issues
  1. Adverse Facts Available
  2. Date of Sale
  3. Constructed Export Price Offset
  4. Freight Revenue Offset
  5. Sales to Noble
  6. Cost Verification Findings
VI. Recommendation

[FR Doc. 2019–03315 Filed 2–26–19; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Fermi Research Alliance, LLC., et al.; Notice of Decision on Application for Duty-Free Entry of Scientific Instruments

This is a decision pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, as amended by Pub. L. 106–36; 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 a.m. and 5:00 p.m. in Room 3720, U.S. Department of Commerce, 14th and Constitution Ave. NW, Washington, DC

Docket Number: 18–006. Applicant: Fermi Research Alliance, LLC., Batavia, IL 60510. Instrument: Short Baseline Near Detector (SBND) Liquid Argon Time Projection Chamber (LArTPC). Manufacturer: The Scientific Facilities Research Council (STFC), United Kingdom. Intended Use: See notice at 83 FR 62838, December 6, 2018. Comments: None received. Decision: Approved. We know of no instruments of equivalent scientific value to the foreign instruments described below, for

such purposes as this is intended to be used, that was being manufactured in the United States at the time of order. Reasons: The instrument will be used for a basic scientific research project that will study neurtrinos, a type of elementary particle. There are three known types of neutrinos in the universe, although there could be more that have not yet been observed. The phenomena to be studied are the number of neutrino types and interaction cross-sections for the currently known neutrino types. Two detectors are required to perform the neutrino oscillation studies: The Short Baseline Near Detector (SBND) is one of these detectors. The primary objective of the SBN program is to look for evidence of neutrino oscillations, over distances of 1 kilometer or less, and if found to measure the oscillation parameters. The SBND TPC is a complex and unique instrument. Justification for Duty-Free Entry: There are no instruments of the same general category manufactured in the United States.

Docket Number: 18–008. Applicant: Lawrence Berkeley National Laboratory, Berkeley, CA 94720. Instrument: In Vacuum Insertion Device (aka Undulator). Manufacturer: Hitachi Metals America, LLC, Japan. Intended Use: See notice at 83 FR 62838, December 6, 2018. Comments: None received. Decision: Approved. We know of no instruments of equivalent scientific value to the foreign instruments described below, for such purposes as this is intended to be used, that was being manufactured in the United States at the time of order. Reasons: The instrument will be installed in Sector 2.0 of the Advanced Light Source (ALS) facility at Lawrence Berkeley Laboratory, for use as a high brightness beamline source for the sector. Sector 2.0 of the ALS is dedicated to the study and analysis of protein crystallography. The objectives pursued are to determine the atomic-resolution, three-dimensional structures of proteins and nucleic acids-the building blocks of life-as well as complexes of these molecules, the interactions of which give rise to biological processes. Justification for Duty-Free Entry: There are no instruments of the same general category manufactured in the United States.

Dated: February 22, 2019.

Gregory W. Campbell,

Director, Subsidies Enforcement, Enforcement and Compliance.

[FR Doc. 2019–03423 Filed 2–26–19; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–489–834]

Large Diameter Welded Pipe From the Republic of Turkey: Final Affirmative Countervailing Duty Determination

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) determines that countervailable subsidies are being provided to producers and exporters of large diameter welded pipe (welded pipe) from the Republic of Turkey (Turkey).

DATES: Applicable February 27, 2019.

FOR FURTHER INFORMATION CONTACT: Ross Belliveau or Ajay Menon, AD/CVD Operations, Office II, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–4952, or (202) 482–1993, respectively.

SUPPLEMENTARY INFORMATION:

Background

The petitioners in this investigation are American Cast Iron Pipe Company, Berg Steel Pipe Corp./Berg Spiral Pipe Corp, Dura-Bond Industries, Skyline Steel, Stupp Corporation, Greens Bayou Pipe Mill, LP, JSW Steel (USA) Inc., and Trinity Products LLC (collectively, the petitioners). In addition to the Government of Turkey, the mandatory respondents in this investigation are Borusan Mannesmann Boru Sanayi ve Ticaret A.S. (Borusan) and HDM Celik Boru Sanayi ve Ticaret A.S. (HDM Celik).

The events that occurred since Commerce published the *Preliminary Determination* [1] on June 29, 2018, are discussed in the Issues and Decision Memorandum, which is hereby adopted by this notice.[2] The Issues and Decision Memorandum also details the changes we made since the *Preliminary Determination* to the subsidy rates calculated for the mandatory respondents and all other producers/exporters. The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *http://access.trade.gov,* and is available to all parties in the Central Records Unit, room B8024 of the main Department of Commerce building. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at *http://enforcement.trade.gov/frn/index.html.* The signed Issues and Decision Memorandum and the electronic version of the Issues and Decision Memorandum are identical in content.

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.[3] If the new deadline falls on a non-business day, in accordance with Commerce's practice, the deadline will become the next business day. The revised deadline for the final determination of this investigation is now February 19, 2019.

Period of Investigation

The period of investigation is January 1, 2017, through December 31, 2017.

Scope of the Investigation

The scope of the investigation is welded pipe from Turkey. For a complete description of the scope of the investigation, *see* Appendix I.

Scope Comments

During the course of this investigation and the concurrent less-than-fair-value investigations of large diameter welded pipe from Canada, Greece, Korea, the People's Republic of China (China), and Turkey, and the concurrent countervailing duty (CVD) investigations of large diameter welded pipe from China, India, Korea, and Turkey, Commerce received scope comments from interested parties. Commerce issued a Preliminary Scope Decision Memorandum to address these comments.[4] In the *Preliminary*

[1] *See Large Diameter Welded Pipe from the Republic of Turkey: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Determination with Final Antidumping Duty Determination,* 83 FR 30697 (June 29, 2018) (*Preliminary Determination*), and accompanying Preliminary Decision Memorandum.

[2] *See* Memorandum, ''Issues and Decision Memorandum for the Final Determination in the Countervailing Duty Investigation of Large Diameter Welded Pipe from the Republic of Turkey,'' dated concurrently with this determination (Issues and Decision Memorandum).

[3] *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. All deadlines in this segment of the proceeding have been extended by 40 days.

[4] *See* Memorandum, ''Scope Comments Decision Memorandum for the Preliminary Determinations,''

Continued

Determination, Commerce set aside a period of time for parties to address scope issues in scope case and rebuttal briefs.[5] No interested parties submitted comments regarding the Preliminary Scope Decision Memorandum. Therefore, for this final determination, the scope of this investigation remains unchanged from that published in the *Preliminary Determination.*

Analysis of Subsidy Programs and Comments Received

The subsidy programs under investigation and the issues raised in the case and rebuttal briefs by parties in this investigation are discussed in the Issues and Decision Memorandum. A list of the issues that parties raised, and to which we responded in the Issues and Decision Memorandum, is attached to this notice as Appendix II.

Methodology

Commerce conducted this investigation in accordance with section 701 of the Tariff Act of 1930, as amended (the Act). For each of the subsidy programs found countervailable, Commerce determines that there is a subsidy, *i.e.,* a financial contribution by an ''authority'' that gives rise to a benefit to the recipient, and that the subsidy is specific.[6] For a full description of the methodology underlying our final determination, *see* the Issues and Decision Memorandum.

Verification

As provided in section 782(i) of the Tariff Act of 1930, as amended (the Act), during July 2018, Commerce verified the subsidy information reported by the Government of Turkey, Borusan, and HDM Celik. We used standard verification procedures, including an examination of relevant accounting records and original source documents provided by the respondents.[7]

Changes Since the Preliminary Determination

Based on our review and analysis of the comments received from parties and corrections presented at verification, we made certain changes to the respondents' subsidy rate calculations. As a result of these changes, Commerce has also revised the ''all-others'' rate. For a discussion of these changes, *see* the Issues and Decision Memorandum and the Final Analysis Memoranda.[8]

Final Determination

In accordance with section 705(c)(1)(B)(i)(I) of the Act, we calculated a rate for Borusan and HDM Celik. Section 705(c)(5)(A)(i) of the Act states that, for companies not individually investigated, we will determine an ''all others'' rate equal to the weighted-average countervailable subsidy rates established for exporters and producers individually investigated, excluding any zero and *de minimis* countervailable subsidy rates, and any rates determined entirely under section 776 of the Act. In the final determination of this investigation, Commerce calculated a *de minimis* rate for Borusan. Therefore, the only rate that is not zero, *de minimis,* or based entirely on facts otherwise available is the rate calculated for HDM Celik. Consequently, the rate calculated for HDM Celik is also assigned as the rate for ''all other'' producers and exporters.

Commerce determines the total estimated net countervailable subsidy rates to be:

Company	Subsidy rate (percent)
HDM Çelik Boru Sanayi ve Ticaret A.S [9]	3.72
Borusan Mannesmann Boru Sanayi ve Ticaret A.S [10]	* 0.92
All-Others	3.72

* (*de minimis*)

Disclosure

Commerce will disclose the calculations performed within five days of the date of publication of this notice to parties in this proceeding in accordance with 19 CFR 351.224(b).

Continuation of Suspension of Liquidation

As a result of our *Preliminary Determination* and pursuant to section 703(d)(1)(B) and (d)(2) of the Act, Commerce instructed U.S. Customs and Border Protection (CBP) to suspend liquidation of entries of subject merchandise as described in the scope of the investigation section entered, or withdrawn from warehouse, for consumption on or after the date of publication of the *Preliminary Determination* in the **Federal Register**. In accordance with section 703(d) of the Act, we issued instructions to CBP to discontinue the suspension of liquidation for CVD purposes for subject merchandise entered, or withdrawn from warehouse, on or after October 26, 2018, but to continue the suspension of liquidation of all entries from June 29, 2018, through October 25, 2018.

If the U.S. International Trade Commission (ITC) issues a final affirmative injury determination, we will issue a CVD order, reinstate the suspension of liquidation under section 706(a) of the Act, and require a cash deposit of estimated countervailing duties for such entries of subject merchandise in the amounts indicated above. If the ITC determines that material injury, or threat of material injury, does not exist, this proceeding will be terminated and all estimated duties deposited or securities posted as a result of the suspension of liquidation will be refunded or canceled.

ITC Notification

In accordance with section 705(d) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all non-privileged and non-proprietary information related to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order (APO), without the written consent of the Assistant Secretary for Enforcement and Compliance.

Because the final determination in this proceeding is affirmative, in accordance with section 705(b) of the Act, the ITC will make its final determination as to whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports of welded pipe from Turkey no later than 45 days after our final determination. If

dated June 19, 2018 (Preliminary Scope Decision Memorandum).

[5] *See Large Diameter Welded Pipe from the Republic of Turkey: Preliminary Determination of Sales at Less than Fair Value and Postponement of Final Determination,* 83 FR 43646 (August 27, 2018).

[6] *See* sections 771(5)(B) and (D) of the Act regarding financial contribution; section 771(5)(E) of the Act regarding benefit; and section 771(5A) of the Act regarding specificity.

[7] *See* Memoranda: ''Verification of the Questionnaire Responses of the Government of Turkey (GOT),'' dated September 17, 2018; ''Verification of the Questionnaire Responses of Verification of the Questionnaire Responses of Borusan Mannesmann Boru Sanayi ve Ticaret A.S. (Borusan),'' dated October 2, 2018; and ''Verification of the Questionnaire Responses of HDM Celik (HDM Celik),'' dated October 5, 2018.

[8] *See* Memoranda: ''Countervailing Duty Investigation of Large Diameter Welded Pipe from Turkey: Final Determination Calculation Memorandum for Borusan,'' dated concurrently with this notice; and ''Countervailing Duty Investigation of Large Diameter Welded Pipe from Turkey: Final Determination Calculation Memorandum for HDM Celik,'' dated concurrently with this notice.

[9] Commerce found the following company to be cross-owned with HDM Celik: HDM Spiral Kaynakli Celik Boru A.S.

[10] Commerce found the following companies to be cross-owned with Borusan: Borusan Mannesmann Boru Yatirim Holding A.S., and Borusan Holding A.S.

the ITC determines that material injury or threat of material injury does not exist, the proceeding will be terminated and all cash deposits will be refunded. If the ITC determines that such injury does exist, Commerce will issue a CVD order directing CBP to assess, upon further instruction by Commerce, countervailing duties on all imports of the subject merchandise, other than those produced and exported by Borusan because its rate is *de minimis,* that are entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation, as discussed above in the ''Continuation of Suspension of Liquidation'' section.

Notification Regarding Administrative Protective Orders

In the event that the ITC issues a final negative injury determination, this notice will serve as the only reminder to parties subject to the APO of their responsibility concerning the destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

This determination is issued and published pursuant to sections 705(d) and 777(i) of the Act.

Dated: February 19, 2019.

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.

Appendix I

Scope of the Investigation

The merchandise covered by this investigation is welded carbon and alloy steel pipe (including stainless steel pipe), more than 406.4 mm (16 inches) in nominal outside diameter (large diameter welded pipe), regardless of wall thickness, length, surface finish, grade, end finish, or stenciling. Large diameter welded pipe may be used to transport oil, gas, slurry, steam, or other fluids, liquids, or gases. It may also be used for structural purposes, including, but not limited to, piling. Specifically, not included is large diameter welded pipe produced only to specifications of the American Water Works Association (AWWA) for water and sewage pipe.

Large diameter welded pipe used to transport oil, gas, or natural gas liquids is normally produced to the American Petroleum Institute (API) specification 5L. Large diameter welded pipe may also be produced to American Society for Testing and Materials (ASTM) standards A500, A252, or A53, or other relevant domestic specifications, grades and/or standards. Large diameter welded pipe can be produced to comparable foreign specifications, grades and/or standards or to proprietary specifications, grades and/or standards, or can be non-graded material. All pipe meeting the physical description set forth above is covered by the scope of this investigation, whether or not produced according to a particular standard.

Subject merchandise also includes large diameter welded pipe that has been further processed in a third country, including but not limited to coating, painting, notching, beveling, cutting, punching, welding, or any other processing that would not otherwise remove the merchandise from the scope of the investigation if performed in the country of manufacture of the in-scope large diameter welded pipe.

Excluded from the scope are any products covered by the existing countervailing duty order on welded line pipe from the Republic of Turkey. *See Welded Line Pipe from the Republic of Turkey: Countervailing Duty Order,* 80 FR 75054 (December 1, 2015).

The large diameter welded pipe that is subject to this investigation is currently classifiable in the Harmonized Tariff Schedule of the United States (HTSUS) under subheadings 7305.11.1030, 7305.11.1060, 7305.11.5000, 7305.12.1030, 7305.12.1060, 7305.12.5000, 7305.19.1030, 7305.19.1060, 7305.19.5000, 7305.31.4000, 7305.31.6010, 7305.31.6090, 7305.39.1000 and 7305.39.5000. While the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this investigation is dispositive.

Appendix II

List of Topics Discussed in the Issues and Decision Memorandum

I. Summary
II. Background
Case History
Period of Investigation
Scope of the Investigation
III. Subsidies Valuation Information
A. Allocation Period
B. Attribution of Subsidies
C. Denominators
D. Loan Interest Rate Benchmarks and Discount Rates
IV. Analysis of Programs
A. Programs Determined to Be Countervailable
B. Programs Determined Not To Provide Countervailable Benefits During the POI
C. Programs Determined Not To Be Used During the POI
D. Programs Determined To Be Not Countervailable in this Investigation
V. Analysis of Comments
Comment 1: Using Production Data Provided by the Government of Turkey in Analysis of Market Distortion
Comment 2: The Appropriate Methodology To Calculate a ''Tier 2'' Benchmark
Comment 3: Application of Adverse Facts Available to the Deduction From Taxable Income for Export Revenue Program
Comment 4: Deducting Guarantee Fees in Calculating the Benefit for the Rediscount Program
Comment 5: Verification Corrections for Borusan and HDM Celik
VI. Recommendation

[FR Doc. 2019–03344 Filed 2–26–19; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–580–898]

Large Diameter Welded Pipe From the Republic of Korea: Final Affirmative Countervailing Duty Determination

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) determines that countervailable subsidies are being provided to producers and exporters of large diameter welded pipe (welded pipe) from the Republic of Korea (Korea). For information on the estimated subsidy rates, see the ''Final Determination'' section of this notice.

DATES: Applicable February 27, 2019.

FOR FURTHER INFORMATION CONTACT: George Ayache or Robert Palmer, AD/CVD Operations, Office VIII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–2623 or (202) 482–9068, respectively.

SUPPLEMENTARY INFORMATION:

Background

The petitioners in this investigation are American Cast Iron Pipe Company, Berg Steel Pipe Corp./Berg Spiral Pipe Corp, Dura-Bond Industries, Skyline Steel, Stupp Corporation, Greens Bayou Pipe Mill, LP, JSW Steel (USA) Inc., and Trinity Products LLC (collectively, the petitioners). In addition to the Government of Korea (GOK), the mandatory respondents in this investigation are Husteel Co., Ltd. (Husteel), Hyundai Steel Company (Hyundai Steel), and SeAH Steel Corporation (SeAH Steel).

The events that occurred since Commerce published the Preliminary Determination [1] on June 29, 2018, are

[1] See Large Diameter Welded Pipe from India: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Determination with Final Antidumping Duty Determination, 83 FR 30690 (June 29, 2018) (Preliminary Determination), and accompanying Preliminary Decision Memorandum.

discussed in the Issues and Decision Memorandum, which is hereby adopted by this notice.[2] The Issues and Decision Memorandum also details the changes we made since the Preliminary Determination to the subsidy rates calculated for the mandatory respondents and all other producers/exporters. The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *http://access.trade.gov,* and is available to all parties in the Central Records Unit, Room B8024 of the main Department of Commerce building. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at *http://enforcement.trade.gov/frn/index.html.* The signed and electronic versions of the Issues and Decision Memorandum are identical in content.

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.[3] If the new deadline falls on a non-business day, in accordance with Commerce's practice, the deadline will become the next business day. The revised deadline for the final determination of this investigation is now February 19, 2019.

Period of Investigation

The period of investigation is January 1, 2017, through December 31, 2017.

Scope of the Investigation

The product covered by this investigation is welded pipe from Korea. For a full description of the scope of this investigation, see the ''Scope of the Investigation'' in Appendix I of this notice.

Scope Comments

During the course of this investigation and the concurrent less-than-fair-value investigations of large diameter welded pipe from Canada, Greece, Korea, the People's Republic of China (China) and Turkey, and the concurrent countervailing duty (CVD) investigations of large diameter welded pipe from China, India, Korea and Turkey, Commerce received scope comments from interested parties. Commerce issued a Preliminary Scope Decision Memorandum[4] to address these comments. In the *Preliminary Determination*, Commerce set aside a period of time for parties to address scope issues in scope case and rebuttal briefs.[5] No interested parties submitted comments regarding the Preliminary Scope Decision Memorandum. Therefore, for this final determination, the scope of this investigation remains unchanged from that published in the Preliminary Determination.

Analysis of Subsidy Programs and Comments Received

The subsidy programs under investigation and the issues raised in the case and rebuttal briefs by parties in this investigation are discussed in the Issues and Decision Memorandum. A list of the issues that parties raised, and to which we responded in the Issues and Decision Memorandum, is attached to this notice at Appendix II.

Methodology

Commerce conducted this investigation in accordance with section 701 of the Tariff Act of 1930, as amended (the Act). For each of the subsidy programs found countervailable, Commerce determines that there is a subsidy, *i.e.* , a financial contribution by an ''authority'' that gives rise to a benefit to the recipient, and that the subsidy is specific.[6] For a full description of the methodology underlying our final determination, see the Issues and Decision Memorandum.

In making these findings, Commerce relied, in part, on facts available. Further, because one or more respondents did not act to the best of their ability to respond to Commerce's requests for information, an adverse inference was drawn, where appropriate, in selecting from among the facts otherwise available.[7] For further information, see ''Use of Facts Otherwise Available and Adverse Inferences'' in the Issues and Decision Memorandum.

Verification

As provided in section 782(i) of the Act, during September 2018, Commerce verified the subsidy information reported by the GOK, Husteel, Hyundai Steel, and SeAH Steel. We used standard verification procedures, including an examination of relevant accounting records and original source documents provided by the respondents.[8]

Changes Since the Preliminary Determination

Based on our review and analysis of the comments received from parties, verification, and the minor corrections presented at verification, we made certain changes to the respondents' subsidy rate calculations. As a result of these changes, Commerce has also revised the ''all-others'' rate. For a discussion of these changes, see the Issues and Decision Memorandum.

Final Determination

In accordance with section 705(c)(l)(B)(i) of the Act, we calculated a rate for Husteel and Hyundai Steel, two producers/exporters of subject merchandise selected for individual examination in this investigation. Commerce assigned a rate based entirely on facts otherwise available with adverse inferences pursuant to section 776 of the Act to SeAH Steel.

Section 705(c)(5)(A) of the Act provides that in the final determination, Commerce shall determine an estimated all-others rate for companies not individually examined. This rate shall be an amount equal to the weighted average of the estimated subsidy rates established for those companies individually examined, excluding any zero and *de minimis* rates and any rates based entirely under section 776 of the Act. Where the rates for the individually investigated companies are all zero or *de minimis* , or determined entirely using facts otherwise available, section 705(c)(5)(A)(ii) of the Act instructs Commerce to establish an all-others rate using ''any reasonable method.'' According to section 705(c)(5)(A)(ii) of

[2] See Memorandum, ''Large Diameter Welded Pipe from Korea: Issues and Decision Memorandum for the Final Affirmative Determination of the Countervailing Duty Investigation,'' dated concurrently with this determination (Issues and Decision Memorandum).

[3] 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. All deadlines in this segment of the proceeding have been extended by 40 days.

[4] See Memorandum, ''Scope Comments Decision Memorandum for the Preliminary Determinations,'' dated June 19, 2018 (Preliminary Scope Decision Memorandum).

[5] *See Large Diameter Welded Pipe from the Republic of Korea:* Preliminary Determination of Sales at Less than Fair Value and Postponement of Final Determination, 83 FR 43651 (August 27, 2018).

[6] See sections 771(5)(B) and (D) of the Act regarding financial contribution; section 771(5)(E) of the Act regarding benefit; and section 771(5A) of the Act regarding specificity.

[7] See sections 776(a),(b), and 782(d) of the Act.

[8] See Memoranda, ''Verification of the Questionnaire Responses of the Government of Korea,'' ''Verification of the Questionnaire Responses of Husteel Co., Ltd.,'' ''Verification of the Questionnaire Responses of Hyundai Corporation,'' ''Verification of the Questionnaire Responses of Hyundai Steel Company,'' and ''Verification of the Questionnaire Responses of SeAH Steel Corporation and ESAB SeAH Corporation,'' all dated October 26, 2018.

the Act, one such ''reasonable method'' includes ''averaging the weighted average countervailable subsidy rates determined for the exporters and producers individually investigated.'' Here, the countervailable subsidy rates for all of the individually investigated respondents are zero or *de minimis* or are based on adverse facts available (AFA). Therefore, consistent with section 705(c)(5)(A)(ii) of the Act, we have averaged the rates of the three individually investigated respondents to establish the estimated all others rate. This approach is also consistent with our practice in other investigations.[9]

Commerce determines the total estimated net countervailable subsidy rates to be:

Company	Subsidy rate (percent)
Husteel Co., Ltd	* 0.01
Hyundai Steel Company	* 0.44
SeAH Steel Corporation	27.42
All-Others Rate	9.29

* (de minimis).

Disclosure

Commerce will disclose the calculations performed within five days of the date of publication of this notice to parties in this proceeding in accordance with 19 CFR 351.224(b).

Continuation of Suspension of Liquidation

As a result of our *Preliminary Determination* and pursuant to section 703(d)(1)(B) and (d)(2) of the Act, Commerce instructed U.S. Customs and Border Protection (CBP) to suspend liquidation of entries of subject merchandise as described in the scope of the investigation section entered, or withdrawn from warehouse, for consumption on or after the date of publication of the *Preliminary Determination* in the **Federal Register** , except for Husteel and Hyundai Steel.[10] In accordance with section 703(d) of the Act, we issued instructions to CBP to discontinue the suspension of liquidation for CVD purposes for subject merchandise entered, or withdrawn from warehouse, on or after October 26, 2018, but to continue the suspension of liquidation of all entries from June 29, 2018, through October 25, 2018.

If the U.S. International Trade Commission (ITC) issues a final affirmative injury determination, we will issue a CVD order, reinstate the suspension of liquidation under section 706(a) of the Act, and require a cash deposit of estimated countervailing duties for such entries of subject merchandise in the amounts indicated above. If the ITC determines that material injury, or threat of material injury, does not exist, this proceeding will be terminated and all estimated duties deposited or securities posted as a result of the suspension of liquidation will be refunded or canceled.

ITC Notification

In accordance with section 705(d) of the Act, Commerce will notify the ITC of its determination. In addition, we are making available to the ITC all non-privileged and non-proprietary information related to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order (APO), without the written consent of the Assistant Secretary for Enforcement and Compliance.

Because the final determination in this proceeding is affirmative, in accordance with section 705(b) of the Act, the ITC will make its final determination as to whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports of welded pipe from Korea no later than 45 days after our final determination. If the ITC determines that material injury or threat of material injury does not exist, the proceeding will be terminated and all cash deposits will be refunded. If the ITC determines that such injury does exist, Commerce will issue a CVD order directing CBP to assess, upon further instruction by Commerce, countervailing duties on all imports of the subject merchandise, other than those produced and exported by Husteel and Hyundai Steel because their rates are *de minimis* , that are entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation, as discussed above in the ''Continuation of Suspension of Liquidation'' section.

Notification Regarding Administrative Protective Orders

In the event that the ITC issues a final negative injury determination, this notice will serve as the only reminder to parties subject to an APO of their responsibility concerning the destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

This determination is issued and published pursuant to sections 705(d) and 777(i) of the Act.

Dated: February 19, 2019

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.

Appendix I

Scope of the Investigation

The merchandise covered by this investigation is welded carbon and alloy steel pipe (including stainless steel pipe), more than 406.4 mm (16 inches) in nominal outside diameter (large diameter welded pipe), regardless of wall thickness, length, surface finish, grade, end finish, or stenciling. Large diameter welded pipe may be used to transport oil, gas, slurry, steam, or other fluids, liquids, or gases. It may also be used for structural purposes, including, but not limited to, piling. Specifically, not included is large diameter welded pipe produced only to specifications of the American Water Works Association (AWWA) for water and sewage pipe.

Large diameter welded pipe used to transport oil, gas, or natural gas liquids is normally produced to the American Petroleum Institute (API) specification 5L. Large diameter welded pipe may also be produced to American Society for Testing and Materials (ASTM) standards A500, A252, or A53, or other relevant domestic specifications, grades and/or standards. Large diameter welded pipe can be produced to comparable foreign specifications, grades and/or standards or to proprietary specifications, grades and/or standards, or can be non-graded material. All pipe meeting the physical description set forth above is covered by the scope of this investigation, whether or not produced according to a particular standard.

Subject merchandise also includes large diameter welded pipe that has been further processed in a third country, including but not limited to coating, painting, notching, beveling, cutting, punching, welding, or any other processing that would not otherwise remove the merchandise from the scope of the investigation if performed in the country of manufacture of the in-scope large diameter welded pipe.

The large diameter welded pipe that is subject to this investigation is currently classifiable in the Harmonized Tariff Schedule of the United States (HTSUS) under

[9] See, *e.g., Countervailing Duty Investigation of Certain Corrosion-Resistant Steel Products from Italy: Final Affirmative Determination and Final Affirmative Critical Circumstances, in Part,* 81 FR 35326, 35327 (June 2, 2016).

[10] *See Preliminary Determination,* 83 FR at 30694. Because the rates for Husteel and Hyundai Steel were zero or *de minimis* in the *Preliminary Determination,* Commerce did not suspend entries of merchandise from these companies.

subheadings 7305.11.1030, 7305.11.1060, 7305.11.5000, 7305.12.1030, 7305.12.1060, 7305.12.5000, 7305.19.1030, 7305.19.1060, 7305.19.5000, 7305.31.4000, 7305.31.6010, 7305.31.6090, 7305.39.1000 and 7305.39.5000. While the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this investigation is dispositive.

Appendix II

List of Topics Discussed in the Issues and Decision Memorandum

I. Summary
II. Background
III. Use of Facts Otherwise Available and Adverse Inferences
IV. Subsidies Valuation
V. Analysis of Programs
VI. Analysis of Comments
Comment 1: Application of Adverse Facts Available (AFA) to SeAH Steel for Unreported Affiliates
Comment 2: Application of AFA to SeAH Steel for SPP Pipe
Comment 3: Whether the Demand Response Resources (DRR) Program is Countervailable
Comment 4: Whether Tax Credits under Restriction of Special Taxation Act (RSTA) Articles 25(2), 25(3), and 26 Are Countervailable
Comment 5: Whether a Benefit Exists in the Modal Shift Program
VII. Recommendation

[FR Doc. 2019–03318 Filed 2–26–19; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–428–844]

Carbon and Alloy Steel Cut-to-Length Plate From the Federal Republic of Germany: Preliminary Results and Partial Rescission of the Antidumping Duty Administrative Review; 2016–2018

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) preliminary determines that sales of certain carbon and alloy steel cut-to-length plate (CTL plate) from the Federal Republic of Germany (Germany) were made at less than normal value during the period of review (POR), November 14, 2016, through April 30, 2018. We invite interested parties to comment on these preliminary results.

DATES: Applicable February 27, 2019.

FOR FURTHER INFORMATION CONTACT: David Goldberger or Ross Belliveau, AD/CVD Operations, Office II, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–4136 or (202) 482–4952, respectively.

SUPPLEMENTARY INFORMATION:

Scope of the Order

The products covered by the order are certain carbon and alloy steel hot-rolled or forged flat plate products not in coils, whether or not painted, varnished, or coated with plastics or other non-metallic substances from Germany. Products subject to the order are currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under item numbers: 7208.40.3030, 7208.40.3060, 7208.51.0030, 7208.51.0045, 7208.51.0060, 7208.52.0000, 7211.13.0000, 7211.14.0030, 7211.14.0045, 7225.40.1110, 7225.40.1180, 7225.40.3005, 7225.40.3050, 7226.20.0000, and 7226.91.5000. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise subject to this scope is dispositive.[1]

Methodology

Commerce is conducting this review in accordance with sections 751(a)(1)(B) and (2) of the Tariff Act of 1930, as amended (the Act). Pursuant to sections 776(a) and (b) of the Act, Commerce preliminarily relied upon the facts otherwise available with adverse inferences (AFA) to determine the margin for Ilsenburger Grobblech GmbH, Salzgitter Mannesmann Grobblech GmbH, Salzgitter Flachstahl GmbH, and Salzgitter Mannesmann International GmbH (collectively, Salzgitter), the sole remaining mandatory respondent selected for review, because Salzgitter did not respond to Commerce's questionnaire in this administrative review. For a complete explanation of the methodology and analysis underlying our preliminary application of AFA to Salzgitter, *see* the Preliminary Decision Memorandum. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov,* and to all parties in the Central Records Unit, room B8024 of the main Department of Commerce building. In addition, a complete version of the Preliminary Decision Memorandum can be found at *http://enforcement.trade.gov/frn/.* The signed Preliminary Decision Memorandum and the electronic version of the Preliminary Decision Memorandum are identical in content. A list of the topics discussed in the Preliminary Decision Memorandum is attached as the Appendix to this notice.

Partial Rescission of Review

On October 22, 2018, the petitioners[2] withdrew their review requests for the following companies: AG der Dillinger Hüttenwerke (Dillinger); Perficon Steel GmbH (Perficon); Reiner Brach GmbH & Co. KG (Reiner Brach); Rudolf Rafflenbeul Stahlwarenfabrik GmbH & Co (Rudolf Rafflenbeul); Tenova (TAKRAF GmbH Lauchhammer) (Tenova); ThyssenKrupp Steel Europe AG (ThyssenKrupp Steel); ThyssenKrupp Schulte GmbH (TyssenKrupp Schulte); UPC Universal Piping GmbH (UPC); and VETTER Umformtechnik GmbH (VETTER).[3] In accordance with 19 CFR 351.213(d)(1), Commerce is rescinding this review, in part, with respect to the following companies: Dillinger, Perficon, Reiner Brach, Rudolf Rafflenbeul, Tenova, ThyssenKrupp Steel, ThyssenKrupp Schulte, UPC, and VETTER.

Preliminary Results of the Review

As a result of this review, Commerce preliminarily determines that a dumping margin of 174.03 percent exists for Salzgitter for the period November 14, 2016, through April 30, 2018.

Disclosure

Normally, Commerce discloses to interested parties the calculations performed in connection with the preliminary results within five days of the date of publication of the notice of preliminary results in the **Federal Register**, in accordance with 19 CFR

[1] For a full description of the scope of the order, *see* Memorandum entitled ''Decision Memorandum for the Preliminary Results and Partial Rescission of the 2016–2018 Administrative Review of the Antidumping Duty Order on Certain Carbon and Alloy Steel Cut-to-Length Plate from the Federal Republic of Germany,'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

[2] Enterprises LLC and Nucor Corporation, domestic producers and certain of the petitioners in the underlying less-than-fair-value investigation (hereafter, the petitioners)

[3] *See* Letter from the petitioners, ''Carbon and Alloy Steel Cut-To-Length Plate from Germany Withdrawal of Request for Administrative Review, dated October 22, 2018. The petitioners also withdrew their review request for Ilsenburger Grobblech GmbH (ILG). However, this company is one of the Salzgitter entities and the petitioners specifically indicated their intent to continue the review with respect to Salzgitter. Accordingly, we are not rescinding the administrative review with respect to ILG.

351.224(b). However, there are no calculations to disclose in connection with these preliminary results because, in accordance with section 776 of the Act, Commerce preliminarily applied AFA to Salzgitter, the sole mandatory respondent, and Commerce has preliminarily determined as the AFA rate the highest dumping margin alleged in the Petition.[4]

Public Comment

Case briefs or other written comments may be submitted to the Assistant Secretary for Enforcement and Compliance no later than 30 days after the date of publication of this notice. Rebuttal briefs, limited to issues raised in case briefs, may be submitted no later than five days after the deadline date for case briefs.[5] Pursuant to 19 CFR 351.309(c)(2) and (d)(2), parties who submit case briefs or rebuttal briefs in this administrative review are encouraged to submit with each argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce within 30 days after the date of publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) whether any participant is a foreign national; and (4) a list of issues parties intend to discuss. Issues raised in the hearing will be limited to those raised in the respective case and rebuttal briefs. If a request for a hearing is made, Commerce intends to hold the hearing at the U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230, at a time and date to be determined.[6] Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

All submissions, with limited exceptions, must be filed electronically using ACCESS. An electronically filed document must be received successfully in its entirety by 5 p.m. Eastern Time (ET) on the respective due date. Documents excepted from the electronic submission requirements must be filed manually (*i.e.,* in paper form) with the APO/Dockets Unit in Room 18022 and stamped with the date and time of receipt by 5 p.m. ET on the due date.

Commerce intends to issue the final results of this administrative review, including the results of its analysis of issues raised in any written briefs, not later than 120 days after the date of publication of this notice, unless the deadline is extended.[7]

Assessment Rates

Upon issuance of the final results, Commerce shall determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries covered by this review.[8] The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the final results of this review and for future deposits of estimated duties, where applicable.[9] For the companies for which we are rescinding this review, antidumping duties shall be assessed at rates equal to the cash deposit of estimated antidumping duties required at the time of entry, or withdrawal from warehouse, for consumption, during the period November 14, 2016, through April 30, 2018, in accordance with 19 CFR 351.212(c)(1)(i). We intend to issue instructions to CBP 15 days after the publication date of the final results of this review.

Cash Deposit Requirements

The following cash deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(2)(C) of the Act: (1) The cash deposit rate for Salzgitter will be the rate established in the final results of this review; (2) for previously reviewed or investigated companies not participating in this review, the cash deposit rate will continue to be the company-specific rate published for the most recently-completed segment of this proceeding in which the company was reviewed; (3) if the exporter is not a firm covered in this review, a prior review, or the less-than-fair-value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recently-completed segment of this proceeding for the producer of subject merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 21.04 percent, the ''all others'' rate established in the investigation.[10] These deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

We are issuing and publishing these results in accordance with sections 751(a)(1) and 777(i)(1) of the Act, and 19 CFR 351.221(b)(4).

Dated: February 21, 2019.

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.

Appendix

List of Topics Discussed in the Preliminary Decision Memorandum

I. Summary
II. Background
III. Partial Rescission of Administrative Review
IV. Scope of the Order
V. Application of Facts Available and Adverse Inferences
  A. Use of Facts Available
  B. Application of Facts Available With an Adverse Inference
  C. Selection and Corroboration of Adverse Facts Available Rate
VI. Conclusion

[FR Doc. 2019–03422 Filed 2–26–19; 8:45 am]

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[4] *See* Memorandum, ''Placement of Initiation Checklist on Review Record'' (Checklist Memorandum), dated concurrently with this Notice. The Checklist Memorandum transmits the Initiation Checklist from the Less-Than-Fair-Value investigation, which includes information regarding the calculation of the margins alleged in the Petition.

[5] *See* 19 CFR 351.309; *see also* 19 CFR 351.303 (for general filing requirements).

[6] *See* 19 CFR 351.310(c).

[7] *See* section 751(a)(3)(A) of the Act and 19 CFR 351.213(h).

[8] *See* 19 CFR 351.212(b).

[9] *See* section 751(a)(2)(C) of the Act.

[10] *See Certain Carbon and Alloy Steel Cut-To-Length Plate from Austria, Belgium, France, the Federal Republic of Germany, Italy, Japan, the Republic of Korea, and Taiwan: Amended Final Affirmative Antidumping Determinations for France, the Federal Republic of Germany, the Republic of Korea and Taiwan, and Antidumping Duty Orders,* 82 FR 24096 (May 25, 2017).

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–897]

Large Diameter Welded Pipe From the Republic of Korea: Final Determination of Sales at Less Than Fair Value

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) determines that large diameter welded pipe (welded pipe) from the Republic of Korea (Korea) is being, or is likely to be, sold in the United States at less than fair value (LTFV) for the period of investigation (POI) January 1, 2017, through December 31, 2017.

DATES: Applicable February 27, 2019.

FOR FURTHER INFORMATION CONTACT: Sergio Balbontin, or Jesus Saenz, AD/CVD Operations, Office VIII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–6478 or (202) 482–8184.

SUPPLEMENTARY INFORMATION:

Background

On August 27, 2018, Commerce published in the **Federal Register** the *Preliminary Determination* of sales at LTFV of welded pipe from Korea, in which we also postponed the final determination until January 9, 2019.[1] We invited interested parties to comment on the *Preliminary Determination.* A summary of the events that occurred since Commerce published the *Preliminary Determination,* as well as a full discussion of the issues raised by parties for this final determination, may be found in the Issues and Decision Memorandum, which is adopted by this notice.[2]

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.[3] If the new deadline falls on a non-business day, in accordance with Commerce's practice, the deadline will become the next business day. The revised deadline for the final determination is now February 19, 2019.

Scope of the Investigation

The product covered by this investigation is welded pipe from Korea. For a full description of the scope of this investigation, *see* the ''Scope of the Investigation'' in Appendix I of this notice.

Scope Comments

During the course of this investigation and the concurrent LTFV investigations of welded pipe from Canada, Greece, India, the People's Republic of China and the Republic of Turkey (Turkey), and the concurrent countervailing duty investigations of welded pipe from China, India, Korea and Turkey, Commerce received scope comments from interested parties. Commerce issued a Preliminary Scope Decision Memorandum[4] to address these comments. In the *Preliminary Determination,* Commerce set aside a period of time for parties to address scope issues in scope case and rebuttal briefs. No interested parties submitted scope comments in scope case or scope rebuttal briefs. Therefore, for this final determination, the scope of this investigation remains unchanged from that published in the *Preliminary Determination.*

Analysis of Comments Received

All issues raised in the case and rebuttal briefs submitted by parties in this investigation are addressed in the Issues and Decision Memorandum accompanying this notice. A list of the issues addressed in the Issues and Decision Memorandum is attached to this notice as Appendix II. The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov,* and it is available to all parties in the Central Records Unit, Room B–8024 of the main Department of Commerce building. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at *http://enforcement.trade.gov/frn/index.html.* The signed and electronic versions of the Issues and Decision Memorandum are identical in content.

Verification

As provided in section 782(i) of the Tariff Act of 1930, as amended, (the Act), from September to October 2018, we conducted verification of the sales and cost information submitted by Hyundai RB Co., Ltd. (Hyundai RB) and SeAH Steel Corporation (SeAH) for use in our final determination. We used standard verification procedures, including an examination of relevant accounting and production records, and original source documents provided by Hyundai RB and SeAH.[5]

Changes Since the Preliminary Determination

Based on our analysis of the comments received and our findings at verification, we made certain changes to the margin calculations for Hyundai RB and SeAH. For a discussion of these changes, *see* the ''Margin Calculations'' section of the Issues and Decision Memorandum.

Use of Adverse Facts Available

The respondent Samkang M&T Co., Ltd (SKMT) failed to cooperate in this investigation. Therefore, in the *Preliminary Determination,* pursuant to sections 776(a)(1), 776(a)(2)(A)–(C), and 776(b) of the Act, Commerce assigned SKMT a rate based on adverse facts available (AFA). No party filed comments on our *Preliminary Determination* with respect to SKMT and there is no new information on the record that would cause us to revisit our determination to apply AFA to SKMT.

[1] *See Large Diameter Welded Pipe from the Republic of Korea: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination,* 83 FR 43651 (August 27, 2018) (*Preliminary Determination*), and accompanying Preliminary Decision Memorandum.

[2] *See* Memorandum, ''Issues and Decision Memorandum for the Final Affirmative Determination in the Less-Than-Fair-Value Investigation of Large Diameter Welded Pipe from the Republic of Korea,'' dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

[3] *See* Memorandum ''Deadlines Affected by the Partial Shutdown of the Federal Government,'' dated January 28, 2019. All deadlines in this segment of the proceeding have been extended by 40 days.

[4] *See* Memorandum, ''Scope Comments Decision Memorandum for the Preliminary Determinations,'' dated June 19, 2018 (Preliminary Scope Decision Memorandum).

[5] For a discussion of our verification findings, *see* the following memoranda: ''Verification of the Cost Response of Hyundai RB Co., Ltd. in the Antidumping Duty Investigation of Large Diameter Welded Pipe from Korea,'' dated October 17, 2018; ''Verification of the Cost of Production and Constructed Value response of SeAH Steel Corporation and its Affiliates in the Antidumping Duty Investigation of Large Diameter Welded Pipe from Korea,'' dated November 1, 2018; ''Verification of the Questionnaire Responses of Hyundai RB Co., Ltd. in the Antidumping Investigation of Large Diameter Welded Pipe from the Republic of Korea,'' dated November 5, 2018; ''Verification of the Sales Response of SeAH Steel Corporation in the Antidumping Investigation of Large Diameter Welded Pipe from Korea,'' dated November 5, 2018; and ''Verification of the CEP Sales Questionnaire Responses of SeAH Steel Corporation in the Antidumping Investigation of Large Diameter Welded Pipe from Korea,'' dated November 6, 2018; ''Verification of the Further Manufacturing Response of SeAH Steel Corporation's Affiliates Pusan Pipe of America and State Pipe in Antidumping Duty Investigation of Large Diameter Welded Pipe from Korea,'' dated November 1, 2018.

Accordingly, we continue to find that the application of AFA pursuant to section 776(a) and (b) of the Act is warranted with respect to SKMT. However, in applying total AFA for the final determination, Commerce has now assigned to SKMT's exports of the subject merchandise the rate of 20.39 percent, which is the highest rate calculated in the petition [6] and which has been corroborated to the extent practicable within the meaning of section 776(c) of the Act.[7]

All-Others Rate

Section 735(c)(5)(A) of the Act provides that the estimated weighted-average dumping margin for all-other producers and exporters not individually investigated shall be equal to the weighted average of the estimated weighted-average dumping margins established for exporters and producers individually investigated excluding rates that are zero, *de minimis,* or determined entirely under section 776 of the Act. Hyundai RB and SeAH are the only respondents for which Commerce calculated an estimated weighted-average dumping margin that is not zero, *de minimis,* or based entirely on facts otherwise available. Commerce calculated the all-others' rate using a weighted average of the estimated weighted-average dumping margins calculated for the examined respondents using each company's publicly-ranged values for the merchandise under consideration.[8]

Final Determination

The final estimated weighted-average dumping margins are as follows:

Exporter or producer	Weighted-average dumping margin (percent)	Cash deposit rate (adjusted for subsidy offset(s)) (percent)
Hyundai RB Co., Ltd	14.97	12.86
SeAH Steel Corporation	7.03	4.92
Samkang M&T Co., Ltd	20.39	18.28
All Others	9.30	7.19

Disclosure

We intend to disclose the calculations performed in this final determination within five days of the date of publication of this notice to parties in this proceeding in accordance with 19 CFR 351.224(b).

Continuation of Suspension of Liquidation

In accordance with section 735(c)(1)(B) of the Act, for this final determination, we will direct U.S. Customs and Border Protection (CBP) to continue to suspend liquidation of all entries of welded pipe, as described in Appendix I of this notice, which are entered, or withdrawn from warehouse, for consumption on or after August 27, 2018, the date of publication in the **Federal Register** of the affirmative *Preliminary Determination.*

Pursuant to section 735(c)(1)(B)(ii) of the Act and 19 CFR 351.210(d), we will instruct CBP to require a cash deposit for such entries of merchandise equal to the estimated weighted-average dumping margin as follows: (1) The cash deposit rate for the respondents listed above will be equal to the respondent-specific estimated weighted-average dumping margin determined in this final determination; (2) if the exporter is not a respondent identified above but the producer is, then the cash deposit rate will be equal to the respondent-specific estimated weighted-average dumping margin established for that producer of the subject merchandise; and (3) the cash deposit rate for all other producers and exporters will be equal to the all-others estimated weighted-average dumping margin. These suspension-of-liquidation instructions will remain in effect until further notice.

Further, we will instruct CBP to require a cash deposit equal to the estimated amount by which the normal value exceeds the U.S. price as shown above, adjusted where appropriate, for export subsidies found in the final determination of the companion countervailing duty investigation.[9] Consistent with our longstanding practice, where the product under investigation is also subject to a concurrent countervailing duty investigation, we instruct CBP to require a cash deposit equal to the amount by which the normal value exceeds the U.S. price, less the amount of the countervailing duty determined to constitute any export subsidies.[10]

Therefore, in the event that a countervailing duty order is issued and suspension of liquidation is resumed in the companion countervailing duty investigation on welded pipe from Korea, Commerce will instruct CBP to require cash deposits adjusted by the amount of export subsidies, as appropriate. These adjustments are reflected in the final column of the rate chart, above. Until such suspension of liquidation is resumed in the companion countervailing duty investigation, and so long as suspension of liquidation continues under this antidumping duty investigation, the cash deposit rates for this antidumping

[6] *See* Petitioners' Letter ''Large Diameter Welded Pipe from Canada, Greece, India, the People's Republic of China, the Republic of Korea and the Republic of Turkey: Response to the Department's January 30, 2018 Additional Questions Regarding Volume VI of the Petition for the Imposition of Antidumping and Countervailing Duties,'' dated February 1, 2018 at Exhibit AD–KR–Supp2–3.

[7] For further discussion *see* Issues and Decision Memorandum and Corroboration Memo.

[8] With two respondents under examination, Commerce normally calculates (A) a weighted average of the estimated weighted-average dumping margins calculated for the examined respondents; (B) a simple average of the estimated weighted-average dumping margins calculated for the examined respondents; and (C) a weighted average of the estimated weighted-average dumping margins calculated for the examined respondents using each company's publicly-ranged U.S. sale values for the merchandise under consideration. Commerce then compares (B) and (C) to (A) and selects the rate closest to (A) as the most appropriate rate for all other producers and exporters. *See Ball Bearings and Parts Thereof from France, Germany, Italy, Japan, and the United Kingdom: Final Results of Antidumping Duty Administrative Reviews, Final Results of Changed-Circumstances Review, and Revocation of an Order in Part,* 75 FR 53661, 53663 (September 1, 2010); *see also* Memorandum, ''Calculation of the All-Others Rate for the Final Determination,'' dated concurrently with this notice.

[9] *See Modification of Regulations Regarding the Practice of Accepting Bonds During the Provisional Measures Period in Antidumping and Countervailing Duty Investigations,* 76 FR 61042 (October 3, 2011).

[10] *See, e.g., Welded Line Pipe from the Republic of Turkey: Final Determination of Sales at Less Than Fair Value,* 80 FR 61362 (October 13, 2015), and *Notice of Final Determination of Sales at Less Than Fair Value and Negative Critical Circumstances Determination: Bottom Mount Combination Refrigerator-Freezers from the Republic of Korea,* 77 FR 17413 (March 26, 2012).

duty investigation will be the rates identified in the estimated weighted-average dumping margin column in the rate chart, above.

International Trade Commission Notification

In accordance with section 735(d) of the Act, we will notify the International Trade Commission (ITC) of the final affirmative determination of sales at LTFV. In addition, we are making available to the ITC all non-privileged and non-proprietary information related to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order (APO), without the written consent of the Assistant Secretary for Enforcement and Compliance. Because Commerce's final determination is affirmative, in accordance with section 735(b)(2) of the Act, the ITC will make its final determination as to whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports, or sales (or the likelihood of sales) for importation of welded pipe from Korea no later than 45 days after this final determination. If the ITC determines that such injury does not exist, this proceeding will be terminated and all cash deposits will be refunded. If the ITC determines that such injury does exist, Commerce will issue an antidumping duty order directing CBP to assess, upon further instruction by Commerce, antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation, as discussed above in the ''Continuation of Suspension of Liquidation'' section.

Notification Regarding Administrative Protective Orders

This notice serves as a reminder to parties subject to an administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of return or destruction of APO materials, or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

Notification to Interested Parties

This determination and this notice are issued and published pursuant to sections 735(d) and 777(i)(1) of the Act and 19 CFR 351.210(c).

Dated: February 19, 2019.

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.

Appendix I

Scope of the Investigation

The merchandise covered by this investigation is welded carbon and alloy steel pipe (including stainless steel pipe), more than 406.4 mm (16 inches) in nominal outside diameter (large diameter welded pipe), regardless of wall thickness, length, surface finish, grade, end finish, or stenciling. Large diameter welded pipe may be used to transport oil, gas, slurry, steam, or other fluids, liquids, or gases. It may also be used for structural purposes, including, but not limited to, piling. Specifically, not included is large diameter welded pipe produced only to specifications of the American Water Works Association (AWWA) for water and sewage pipe.

Large diameter welded pipe used to transport oil, gas, or natural gas liquids is normally produced to the American Petroleum Institute (API) specification 5L. Large diameter welded pipe may also be produced to American Society for Testing and Materials (ASTM) standards A500, A252, or A53, or other relevant domestic specifications, grades and/or standards. Large diameter welded pipe can be produced to comparable foreign specifications, grades and/or standards or to proprietary specifications, grades and/or standards, or can be non-graded material. All pipe meeting the physical description set forth above is covered by the scope of this investigation, whether or not produced according to a particular standard.

Subject merchandise also includes large diameter welded pipe that has been further processed in a third country, including but not limited to coating, painting, notching, beveling, cutting, punching, welding, or any other processing that would not otherwise remove the merchandise from the scope of the investigation if performed in the country of manufacture of the in-scope large diameter welded pipe.

Excluded from the scope are any products covered by the existing antidumping duty order on welded line pipe from the Republic of Korea. *See Welded Line Pipe from the Republic of Korea and the Republic of Turkey: Antidumping Duty Orders,* 80 FR 75056 (December 1, 2015). Also excluded from the scope are any products covered by the existing antidumping order on welded ASTM A–312 stainless steel pipe from Korea. *See Welded ASTM A–312 Stainless Steel Pipe from South Korea: Antidumping Duty Order,* 57 FR 62300 (December 30, 1992).

The large diameter welded pipe that is subject to this investigation is currently classifiable in the Harmonized Tariff Schedule of the United States (HTSUS) under subheadings 7305.11.1030, 7305.11.1060, 7305.11.5000, 7305.12.1030, 7305.12.1060, 7305.12.5000, 7305.19.1030, 7305.19.1060, 7305.19.5000, 7305.31.4000, 7305.31.6010, 7305.31.6090, 7305.39.1000 and 7305.39.5000. While the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this investigation is dispositive.

Appendix II

List of Topics Discussed in the Issues and Decision Memorandum

I. Summary
II. Background
III. Scope of the Investigation
IV. Margin Calculations
V. Application of Adverse Facts Available
VI. Adjustment for Countervailed Export Subsidies
VII. Discussion of the Issues
General Issues
1. Cost-Based Particular Market Situation Allegation
2. Petitioners' Proposed Regression Analysis
3. Whether Subsidy Rates used to Adjust the PMS are Accurate
4. PMS Adjustment for Stainless Steel Plate
5. Differential Pricing
6. Direct Material/Conversion Costs
Hyundai RB
7. Hyundai RB's G&A Expense Ratio
8. Hyundai RB and Hyundai Steel Affiliation
9. Hyundai RB's Indirect Selling Expense Ratio
10. Hyundai RB's Foreign Exchange Losses
11. Treatment of Company A's Bad Debt Expenses
12. Hyundai RB's Scrap Offset
SeAH
13. SeAH's Indirect Selling Expenses for Non-Further Manufactured Sales
14. SeAH's Sale to Puerto Rico
15. Treatment of Refunds from Customs and Border Protection and Refund for Damaged Goods
16. SeAH Holdings Corporation's Unrecovered Costs
17. SeAH's Interest Income Offset
18. Correction of Ministerial Errors in the *Preliminary Determination*
19. Correction of Minor Errors Reported at Verification
20. Freight Revenue Cap
VIII. Recommendation

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DEPARTMENT OF COMMERCE

International Trade Administration

[Application No. 18–00002]

Export Trade Certificate of Review

ACTION: Notice of issuance of an Export Trade Certificate of Review to Alaska Groundfish Commission (''AGC''), Application Number 18–00002.

SUMMARY: The Secretary of Commerce, through the Office of Trade and Economic Analysis (''OTEA''), issued an

Export Trade Certificate of Review to AGC on February 15, 2019.

FOR FURTHER INFORMATION CONTACT: Joseph Flynn, Director, OTEA, International Trade Administration, by telephone at (202) 482–5131 (this is not a toll-free number) or email at *etca@trade.gov.*

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001–21) (''the Act'') authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. An Export Trade Certificate of Review protects the holder and the members identified in the Certificate from State and Federal government antitrust actions and from private treble damage antitrust actions for the export conduct specified in the Certificate and carried out in compliance with its terms and conditions. The regulations implementing Title III are found at 15 CFR part 325 (2018). OTEA is issuing this notice pursuant to 15 CFR 325.6(b), which requires the Secretary of Commerce to publish a summary of the certification in the **Federal Register**. Under Section 305(a) of the Act and 15 CFR 325.11(a), any person aggrieved by the Secretary's determination may, within 30 days of the date of this notice, bring an action in any appropriate district court of the United States to set aside the determination on the ground that the determination is erroneous.

Description of Certified Conduct

A summary of AGC's Export Trade Certificate of Review follows.

Certificate Holder

- AGC

Members

- Ocean Peace, Inc., Seattle, WA; M/V Savage, Inc., Seattle, WA; AK Victory, Inc., Seattle, WA; The Fishing Company of Alaska, Inc., Seattle, WA; Alaska Warrior, Inc., Seattle, WA; O'Hara Corporation, Rockland, ME; O'Hara DISC, Inc., Rockland, ME

Export Product

- AGC and its Members plan to export the following six products, which are frozen-at-sea (*i.e.,* the export product is frozen on the catcher-processor trawl vessel while at-sea), and in headed and gutted (*i.e.,* head and viscera are removed) and round (*i.e.,* whole) forms: Atka mackerel, Pacific Ocean perch, yellowfin sole, Pacific cod, flathead sole, and rock sole (''Export Product,'' or collectively, the ''Export Products'').

Export Conduct

To engage in Export Trade in the Export Markets, AGC and its Members may undertake the following activities:

1. Each Member will from time to time independently determine in its sole discretion (i) the quantity of Export Product that it makes available for sale in Export Markets, and (ii) whether any portion of such quantity will be sold independently by it, be sold in cooperation with some or all of the other Members, or be made available to AGC for sale in Export Markets. AGC may not require any Member to export any minimum quantity of Export Product.

2. AGC and/or its Members may enter into agreements to act in certain countries or markets as the Members' exclusive or non-exclusive export intermediary for the quantity of Export Product dedicated by each Member for sale by AGC or any Member in that country or market. In any such agreement (i) AGC or the Member acting as the exclusive export intermediary may agree not to represent any other supplier of Export Product with respect to one or more Export Market, and (ii) Members may agree that they will export the quantity of Export Product dedicated for sale in such Export Markets only through AGC or the Member acting as exclusive export intermediary, and that they will not export Export Product otherwise, either directly or through any other export intermediary.

3. AGC and/or one or more of its Members may engage in joint bidding or selling arrangements for Export Markets and allocate sales resulting from such arrangements among the Members.

4. The Members may refuse to deal with export intermediaries other than AGC and its Members.

5. AGC may, for itself and on behalf of its Members, by agreement with its or its Members' distributors or agents, or on the basis of its own determination:

a. Establish the prices at which Export Product will be sold in Export Markets;

b. establish standard terms of sale of Export Product;

c. establish standard quality grades for Export Product;

d. establish target prices for sales of Export Product by its Members in Export Markets, with each Member remaining free to deviate from such target prices in its sole discretion;

e. subject to the limitations set forth in paragraph 1, above, establish the quantity of Export Product to be sold in Export Markets

f. allocate among the Members Export Markets or customers in the Export Markets;

g. refuse to quote prices for, or to market or sell, Export Product in Export Markets; and

h. engage in joint promotional activities aimed at developing existing or new Export Markets, such as advertising and trade shows.

6. AGC may, for itself and on behalf of its Members, contact non-member suppliers of Export Product to elicit information relating to price, volume delivery schedules, terms of sale, and other matters relating to such suppliers' sales or prospective sales in Export Markets.

7. Subject to the limitations set forth in paragraph 1, above, AGC and its Members may agree on the quantities of Export Product and the prices at which AGC and its Members may sell Export Product in and for Export Markets, and may also agree on territorial and customer allocations in Export Markets among the Members.

8. AGC and its Members may enter into exclusive and non-exclusive agreements appointing third parties as export intermediaries for the sale of Export Product in Export Markets. Such agreements may contain the price, quantity, territorial, and customer provisions for Export Markets contained in paragraph 5, above.

9. AGC and its Members may solicit individual non-Member suppliers of Export Product to sell such Export Product to AGC or Members for sale in Export Markets.

10. AGC and its Members may prescribe conditions for withdrawal of Members from and admission of Members to AGC.

11. AGC may, for itself or on behalf of its Members, establish and implement a quality assurance program for Export Product, including without limitation establishing, staffing, and operating a laboratory to conduct quality testing, promulgating quality standards or grades, inspecting Export Product samples and publishing guidelines for and reports of the results of laboratory testing.

12. AGC may conduct meetings of its Members to engage in the activities described in paragraphs 1 through 11 above.

13. AGC may compile for, collect from, and disseminate to its Members, and the Members may discuss among themselves, either in meetings conducted by AGC or independently via telephone and other available and appropriate modes of communication, the following types of information with respect to the export of Export Product to Export Markets only:

a. Sales and marketing efforts, and activities and opportunities for sales of

Export Product, including but not limited to selling strategies and pricing, projected demand for Export Product, standard or customary terms of sale in Export Markets, prices and availability of Export Product from competitors, and specifications for Export Product by customers in Export Markets;

b. Price, quality, quantity, source, and delivery dates of Export Product available from the Members for export including but not limited to export inventory levels and geographic availability;

c. Terms and conditions of contracts for sales to be considered and/or bid on by AGC and its Members;

d. Joint bidding or selling arrangements and allocation of sales resulting from such arrangements among the Members, including each Member's share of the previous calendar year's total foreign sales;

e. Expenses specific to exporting to and within Export Markets, including without limitation transportation, trans- or intermodal shipments, cold storage, insurance, inland freight to port, port storage, commissions, transactional costs, documentation, financing, customs duties, and taxes;

f. U.S. and foreign legislation regulations and policies affecting export sales; and

g. AGC's and/or its Members' export operations, including without limitation, sales and distribution networks established by AGC or its Members in Export Markets, and prior export sales by Members (including export price information).

The effective date of the Certificate is October 22, 2018, the date on which AGC's application was deemed submitted.

Dated: February 21, 2019.

Joseph Flynn,

Director, Office of Trade and Economic Analysis, International Trade Administration, U.S. Department of Commerce.

[FR Doc. 2019–03324 Filed 2–26–19; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–122–863]

Large Diameter Welded Pipe From Canada: Final Affirmative Determination of Sales at Less Than Fair Value

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) determines that imports of large diameter welded pipe (welded pipe) from Canada is being, or is likely to be, sold in the United States at less than fair value (LTFV) during the period of investigation (POI) January 1, 2017, through December 31, 2017.

DATES: Applicable February 27, 2019.

FOR FURTHER INFORMATION CONTACT: Susan S. Pulongbarit or Annathea Cook, AD/CVD Operations, Office V, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–4031or (202) 482–0250, respectively.

SUPPLEMENTARY INFORMATION:

Background

On August 27, 2018, Commerce published in the **Federal Register** the *Preliminary Determination* of sales at LTFV of welded pipe from Canada, in which we also postponed the final determination until January 9, 2018.[1] We invited interested parties to comment on the *Preliminary Determination.* A summary of the events that occurred since Commerce published the *Preliminary Determination,* as well as a full discussion of the issues raised by parties for this final determination, may be found in the Issues and Decision Memorandum, which is adopted by this notice.[2]

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.[3] If the tolled deadline falls on a non-business day, in accordance with Commerce's practice, the deadline will become the next business day. The revised deadline for this final determination is now February 19, 2019.

Scope of the Investigation

The product covered by this investigation is welded pipe from Canada. For a full description of the scope of this investigation, *see* the ''Scope of the Investigation'' in Appendix I of this notice.

Scope Comments

During the course of this investigation and the concurrent LTFV investigations of welded pipe from Greece, India, the People's Republic of China (China) and the Republic of Turkey (Turkey), and the concurrent countervailing duty investigations of large diameter welded pipe from China, India, Korea and Turkey, Commerce received scope comments from interested parties. Commerce issued a Preliminary Scope Decision Memorandum to address these comments.[4] In the *Preliminary Determination,* Commerce set aside a period of time for parties to address scope issues in scope case and rebuttal briefs. No interested parties submitted scope comments in scope case or scope rebuttal briefs. Therefore, for this final determination, the scope of this investigation remains unchanged from that published in the *Preliminary Determination.*

Analysis of Comments Received

All issues raised in the case and rebuttal briefs submitted by parties in this investigation are addressed in the Issues and Decision Memorandum accompanying this notice. A list of the issues addressed in the Issues and Decision Memorandum is attached to this notice as Appendix II. The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov,* and it is available to all parties in the Central Records Unit, room B–8024 of the main Department of Commerce building. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at *http://enforcement.trade.gov/frn/index.html.* The signed and electronic versions of the Issues and Decision Memorandum are identical in content.

Verification

As provided in section 782(i) of the Tariff Act of 1930, as amended, (the Act) from September to December 2018, we conducted verification of the sales and cost information submitted by Evraz Inc. NA (Evraz) and Enbridge Inc. (Enbridge) for use in our final determination. We

[1] *See Large Diameter Welded Pipe from Canada: Preliminary Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Extension of Provisional Measures,* 83 FR 43649 (August 27, 2018) (*Preliminary Determination*) and accompanying Preliminary Decision Memorandum.

[2] *See* Memorandum, ''Issues and Decision Memorandum for the Final Affirmative Determination in the Less-Than-Fair-Value Investigation of Large Diameter Welded Pipe from Canada,'' dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

[3] *See* Memorandum ''Deadlines Affected by the Partial Shutdown of the Federal Government,'' dated January 28, 2019. All deadlines in this segment of the proceeding have been extended by 40 days.

[4] *See* Memorandum, ''Scope Comments Decision Memorandum for the Preliminary Determinations,'' dated June 19, 2018 (Preliminary Scope Decision Memorandum).

used standard verification procedures, including an examination of relevant accounting and production records, and original source documents provided by Evraz and Enbridge.[5]

Changes Since the Preliminary Determination

Based on our analysis of the comments received and our findings at verification, we made certain changes to the margin calculations for the respondent. For a discussion of these changes, *see* the ''Margin Calculations'' section of the Issues and Decision Memorandum.

All-Others Rate

Section 735(c)(5)(A) of the Act provides that the estimated weighted-average dumping margin for all-other producers and exporters not individually investigated shall be equal to the weighted average of the estimated weighted-average dumping margins established for exporters and producers individually investigated excluding rates that are zero, *de minimis,* or determined entirely under section 776 of the Act. Evraz is the only respondent for which Commerce calculated an estimated weighted-average dumping margin that is not zero, *de minimis,* or based entirely on facts otherwise available. Therefore, for purposes of determining the ''all-others'' rate, and pursuant to section 735(c)(5)(A) of the Act, we are using the estimated weighted-average dumping margin calculated for Evraz, as referenced in the ''Final Determination'' section below.

Final Determination

The final estimated weighted-average dumping margins are as follows:

Exporter or producer	Weighted-average dumping margin (percent)
Evraz Inc. NA[6]	12.32
All Others	12.32

[5] For discussion of our verification findings, *see* the following memoranda: Memorandum, ''Verification of the Cost Response of Evraz Inc. NA (Evraz) in the Less Than-Fair-Value Investigation of Large Diameter Welded Pipe from Canada,'' dated November 19, 2018; Memorandum, ''Verification of the Sales Response of Evraz in the Antidumping Investigation of Large Diameter Welded Pipe from Canada,'' dated December 3, 2018; Memorandum, ''Verification of the Sales Response of Enbridge Inc. in the Antidumping Investigation of Large Diameter Welded Pipe from Canada,'' dated December 10, 2018.

[6] Commerce preliminarily determined that Evraz Inc. NA, Evraz Inc. NA Canada, and the Canadian National Steel Corporation are a single entity. *See* Preliminary Decision Memorandum at ''Affiliation and Collapsing.'' We have received no comments on this issue and are continuing to treat these as a single entity.

Disclosure

We intend to disclose the calculations performed in this final determination within five days of the date of publication of this notice to parties in this proceeding in accordance with 19 CFR 351.224(b).

Continuation of Suspension of Liquidation

In accordance with section 735(c)(1)(B) of the Act, for this final determination, we will direct U.S. Customs and Border Protection (CBP) to continue to suspend liquidation of all entries of welded pipe from Canada, as described in Appendix I of this notice, which are entered, or withdrawn from warehouse, for consumption on or after August 27, 2018, the date of publication in the **Federal Register** of the affirmative *Preliminary Determination.*

Pursuant to section 735(c)(1)(B)(ii) of the Act and 19 CFR 351.210(d), we will instruct CBP to require a cash deposit for such entries of merchandise equal to the estimated weighted-average dumping margin as follows: (1) The cash deposit rate for a company listed above will be equal to the respondent-specific estimated weighted-average dumping margin determined in this final determination; (2) if the exporter is not a respondent identified above but the producer is, then the cash deposit rate will be equal to the respondent-specific estimated weighted-average dumping margin established for that producer of the subject merchandise; and (3) the cash deposit rate for all other producers and exporters will be equal to the all-others estimated weighted-average dumping margin. These suspension of liquidation instructions will remain in effect until further notice.

International Trade Commission Notification

In accordance with section 735(d) of the Act, we will notify the International Trade Commission (ITC) of the final affirmative determination of sales at LTFV. In addition, we are making available to the ITC all non-privileged and non-proprietary information related to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order (APO), without the written consent of the Assistant Secretary for Enforcement and Compliance. Because Commerce's final determination is affirmative, in accordance with section 735(b)(2) of the Act, the ITC will make its final determination as to whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports, or sales (or the likelihood of sales) for importation of welded pipe from Canada no later than 45 days after this final determination. If the ITC determines that such injury does not exist, this proceeding will be terminated and all cash deposits will be refunded. If the ITC determines that such injury does exist, Commerce will issue an antidumping duty order directing CBP to assess, upon further instruction by Commerce, antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation, as discussed above in the ''Continuation of Suspension of Liquidation'' section.

Notification Regarding Administrative Protective Orders

This notice serves as a reminder to parties subject to an administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of return or destruction of APO materials, or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

Notification to Interested Parties

This determination is issued and published in accordance with sections 733(f) and 777(i)(1) of the Act and 19 CFR 351.205(c).

Dated: February 19, 2019.

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.

Appendix I

Scope of the Investigation

The merchandise covered by this investigation is welded carbon and alloy steel pipe (including stainless steel pipe), more than 406.4 mm (16 inches) in nominal outside diameter (large diameter welded pipe), regardless of wall thickness, length, surface finish, grade, end finish, or stenciling. Large diameter welded pipe may

be used to transport oil, gas, slurry, steam, or other fluids, liquids, or gases. It may also be used for structural purposes, including, but not limited to, piling. Specifically, not included is large diameter welded pipe produced only to specifications of the American Water Works Association (AWWA) for water and sewage pipe.

Large diameter welded pipe used to transport oil, gas, or natural gas liquids is normally produced to the American Petroleum Institute (API) specification 5L. Large diameter welded pipe may also be produced to American Society for Testing and Materials (ASTM) standards A500, A252, or A53, or other relevant domestic specifications, grades and/or standards. Large diameter welded pipe can be produced to comparable foreign specifications, grades and/or standards or to proprietary specifications, grades and/or standards, or can be non-graded material. All pipe meeting the physical description set forth above is covered by the scope of this investigation, whether or not produced according to a particular standard.

Subject merchandise also includes large diameter welded pipe that has been further processed in a third country, including but not limited to coating, painting, notching, beveling, cutting, punching, welding, or any other processing that would not otherwise remove the merchandise from the scope of the investigation if performed in the country of manufacture of the in-scope large diameter welded pipe.

The large diameter welded pipe that is subject to this investigation is currently classifiable in the Harmonized Tariff Schedule of the United States (HTSUS) under subheadings 7305.11.1030, 7305.11.1060, 7305.11.5000, 7305.12.1030, 7305.12.1060, 7305.12.5000, 7305.19.1030, 7305.19.1060, 7305.19.5000, 7305.31.4000, 7305.31.6010, 7305.31.6090, 7305.39.1000 and 7305.39.5000. While the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this investigation is dispositive.

Appendix II

List of Topics Discussed in the Preliminary Decision Memorandum

I. Summary
II. Background
III. Scope of the Investigation
IV. Margin Calculations
V. Discussion of the Issues
  Comment 1: Evraz and Enbridge Affiliation
  Comment 2: Enbridge's U.S. Sales
  Comment 3: Freight Revenue
  Comment 4: Startup Adjustment
  Comment 5: Cost of Downgraded Pipe
  Comment 6: Parent Holding Company G&A Expenses
  Comment 7: Major Input
  Comment 8: Impairment Loss
VI. Recommendation

[FR Doc. 2019–03316 Filed 2–26–19; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XG814

Public Conference Call Regarding Atlantic Bluefin Tuna Management Strategy Evaluation

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

ACTION: Notice of public conference call.

SUMMARY: NMFS is holding a stakeholder meeting by conference call to provide information on recent progress related to the International Commission for the Conservation of Atlantic Tunas (ICCAT) bluefin tuna management strategy evaluation (MSE). NMFS will also receive input on issues to be considered at an upcoming intersessional meeting of ICCAT's Panel 2, which will focus on initial operational management objectives for the bluefin tuna MSE. The conference call is open to the public.

DATES: An operator-assisted conference call that is open to the public will be held on February 28, 2019, from 1 p.m. to 2:30 p.m. EST. (phone number 800–857–9879; verbal password ''ICCAT''). Participants are strongly encouraged to dial in 15 minutes prior to the meeting.

FOR FURTHER INFORMATION CONTACT: Terra Lederhouse at (301) 427–8360.

SUPPLEMENTARY INFORMATION: The International Commission for the Conservation of Atlantic Tunas (ICCAT) is hosting an intersessional meeting of its Panel 2 on March 4–7, 2019, in Madrid, Spain. ICCAT's Panel 2 is responsible for keeping under review the conservation and management of northern temperature tunas, including albacore and Atlantic bluefin. At its March 4–7 intersessional meeting, ICCAT's Panel 2 will seek to advance ongoing development of a management strategy evaluation (MSE) for Atlantic bluefin tuna. An MSE is a simulation that allows stakeholders (*e.g.,* industry, managers, scientists, and non-governmental organizations) to assess how well different management strategies, such as harvest control rules, could meet the objectives of the fishery. Specifically, in accordance with the outcomes from the 21st Special Meeting of ICCAT, the intersessional meeting will focus on developing initial operational management objectives for the MSE.

For the conference call, NMFS will provide stakeholders with updates on the progress related to ICCAT's bluefin tuna MSE work, including recent meetings of ICCAT's Standing Committee on Research and Statistics (SCRS), ICCAT's scientific branch. Additionally, NMFS is interested in learning from stakeholders about preferred management objectives. NMFS will provide reasonable opportunity for public input and will announce the timing and format for such input at the beginning of the conference call.

Dated: February 21, 2019.

Paul Doremus,

Acting Director, Office of International Affairs and Seafood Inspection, National Marine Fisheries Service.

[FR Doc. 2019–03323 Filed 2–26–19; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XG819

Meeting of the Columbia Basin Partnership Task Force of the Marine Fisheries Advisory Committee

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

ACTION: Notice of open public meeting.

SUMMARY: This notice sets forth the proposed schedule and agenda of a forthcoming meeting of the Marine Fisheries Advisory Committee's (MAFAC's) Columbia Basin Partnership Task Force (CBP Task Force). The CBP Task Force will discuss the issues outlined in the **SUPPLEMENTARY INFORMATION** below.

DATES: The meeting will be held March 18, 2019 from 12 to 4:30 p.m. MT and on March 19, 2019 from 9 a.m. to 3 p.m. MT.

ADDRESSES: The meeting will be held at the Residence Inn Boise Downtown/City Center at 400 S Capitol Blvd., Boise, ID 83702; 208–424–9999.

FOR FURTHER INFORMATION CONTACT: Katherine Cheney; NFMS West Coast Region; 503–231–6730; email: *Katherine.Cheney@noaa.gov.*

SUPPLEMENTARY INFORMATION: Notice is hereby given of a meeting of MAFAC's CBP Task Force. The MAFAC was established by the Secretary of Commerce (Secretary) and, since 1971, advises the Secretary on all living marine resource matters that are the responsibility of the Department of Commerce. The MAFAC charter and meeting information are located online

at *https://www.fisheries.noaa.gov/topic/partners#marine-fisheries-advisory-committee-*. The CBP Task Force reports to MAFAC and is being convened to develop recommendations for long-term goals to meet Columbia Basin salmon recovery, conservation needs, and harvest opportunities, in the context of habitat capacity and other factors that affect salmon mortality. More information is available at the CBP Task Force web page: *http://www.westcoast.fisheries.noaa.gov/columbia_river/index.html.*

Matters To Be Considered

The meeting time and agenda are subject to change. Meeting topics include finalizing and approving the phase I recommendations on qualitative and quantitative goals for salmon and steelhead throughout the basin and discussing approaches and initiating the integration and scenario planning work of phase II.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Katherine Cheney, 503–231–6730, by March 8, 2019.

Dated: February 22, 2019.

Samuel D. Rauch III,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 2019–03380 Filed 2–26–19; 8:45 am]

BILLING CODE 3510–22–P

COMMODITY FUTURES TRADING COMMISSION

Agency Information Collection Activities Under OMB Review

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (''PRA''), this notice announces that the Information Collection Request (''ICR'') abstracted below has been forwarded to the Office of Management and Budget (''OMB'') for review and comment. The ICR describes the nature of the information collection and its expected costs and burden.

DATES: Comments must be submitted on or before March 29, 2019.

ADDRESSES: Comments regarding the burden estimated or any other aspect of the information collection, including suggestions for reducing the burden, may be submitted directly to the Office of Information and Regulatory Affairs (''OIRA'') in OMB, within 30 days of the notice's publication Comments regarding the burden estimated or any other aspect of the information collection, including suggestions for reducing the burden, may be submitted directly to the Office of Information and Regulatory Affairs (''OIRA'') in OMB, within 30 days of the notice's publication, by either of the following methods. Please identify the comments by ''OMB Control No. 3038–0043.''

- *By email addressed to: OIRAsubmissions@omb.eop.gov* or
- *By mail addressed to:* The Office of Information and Regulatory Affairs, Office of Management and Budget, Attention Desk Officer for the Commodity Futures Trading Commission, 725 17th Street NW, Washington, DC 20503.

A copy of all comments submitted to OIRA should be sent to the Commodity Futures Trading Commission (Commission) by either of the following methods. The copies should refer to ''OMB Control No. 3038–0085.''

- *By mail addressed to:* Christopher Kirkpatrick, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581;
- By Hand Delivery/Courier to the same address; or
- Through the Commission's website at *http://comments.cftc.gov.* Please follow the instructions for submitting comments through the website.

A copy of the supporting statement for the collection of information discussed herein may be obtained by visiting *http://RegInfo.gov.*

All comments must be submitted in English, or if not, accompanied by an English translation. Comments will be posted as received to *http://www.cftc.gov.* You should submit only information that you wish to make available publicly. If you wish the Commission to consider information that you believe is exempt from disclosure under the Freedom of Information Act, a petition for confidential treatment of the exempt information may be submitted according to the procedures established in § 145.9 of the Commission's regulations.[1] The Commission reserves the right, but shall have no obligation, to review, pre-screen, filter, redact, refuse or remove any or all of your submission from *http://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 ICR 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.

[1] 17 CFR 145.9.

FOR FURTHER INFORMATION CONTACT: Melissa Chiang, Counsel, Office of General Counsel, Commodity Futures Trading Commission, (202) 418–5578; email: *mchiang@cftc.gov.*

SUPPLEMENTARY INFORMATION:

Title: Rules Relating to Review of National Futures Association Decisions in Disciplinary, Membership Denial, Registration, and Member Responsibility Actions (OMB Control No. 3038–0043). This is a request for extension of a currently approved information collection.

Abstract: 17 CFR part 171 rules require a registered futures association to provide fair and orderly procedures for membership and disciplinary actions. The Commission's review of decisions of registered futures associations in disciplinary, membership denial, registration, and member responsibility actions is governed by Section 17(h)(2) of the Commodity Exchange Act, 7 U.S.C. 21(h)(2). The rules establish procedures and standards for Commission review of such actions, and the reporting requirements included in the procedural rules are either directly required by Section 17 of the Act or are necessary to the type of appellate review role Congress intended the Commission to undertake when it adopted that provision.

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 Commission's regulations were published on December 30, 1981. *See* 46 FR 63035 (Dec. 30, 1981). The **Federal Register** notice with a 60-day comment period soliciting comments on this collection of information was published on November 14, 2018 (83 FR 56827). The Commission received no relevant comments.

Burden Statement: The respondent burden for this collection is estimated to average 1 hour per response. This estimate includes the time needed to transmit decisions of disciplinary, membership denial, registration, and member responsibility actions to the Commission for review. The total estimated annual burden of 3 hours is determined by the following:

Respondents/Affected Entities: Individuals or entities filing appeals from disciplinary and membership decisions by National Futures Association.

Estimated number of respondents: 1.

Estimated number of responses: 3.

Estimated total annual burden on respondents: 3 hours.

Frequency of collection: On occasion.

There are no capital costs or operating and maintenance costs associated with this collection.

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

Dated: February 22, 2019.

Robert N. Sidman,

Deputy Secretary of the Commission.

[FR Doc. 2019–03371 Filed 2–26–19; 8:45 am]

BILLING CODE 6351–01–P

BUREAU OF CONSUMER FINANCIAL PROTECTION

Credit Union Advisory Council Meeting

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Notice of public meeting.

SUMMARY: Under the Federal Advisory Committee Act (FACA), this notice sets forth the announcement of a public meeting of the Credit Union Advisory Council (CUAC or Council) of the Bureau of Consumer Financial Protection (Bureau). The notice also describes the functions of the Council.

DATES: The meeting date is Thursday, March 14, 2019, from approximately 9:30 a.m. to 5:15 p.m. eastern daylight time.

ADDRESSES: The meeting location is the Bureau of Consumer Financial Protection, 1700 G Street NW, Washington, DC 20552.

FOR FURTHER INFORMATION CONTACT: Kim George, Outreach and Engagement Associate, Consumer Advisory Board and Councils Office, External Affairs, at 202–435–7884, *CFPB_CABandCouncilsEvents@cfpb.gov.* If you require this document in an alternative electronic format, please contact *CFPB_Accessibility@cfpb.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Section 2 of the CUAC Charter provides that pursuant to the executive and administrative powers conferred on the Bureau of Consumer Financial Protection by section 1012 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act), the Director established the Credit Union Advisory Council under agency authority.

Section 3 of the CUAC Charter states: ''The purpose of the Advisory Council is to advise the Bureau in the exercise of its functions under the federal consumer financial laws as they pertain to community banks with total assets of $10 billion or less.''

II. Agenda

The Consumer Advisory Board will discuss policy issues related to financial technology and other trends and themes in consumer finance. A more detailed meeting agenda will be published on the Bureau's website.

Persons who need a reasonable accommodation to participate should contact *CFPB_504Request@cfpb.gov,* 202–435–9EEO, 1–855–233–0362, or 202–435–9742 (TTY) at least ten business days prior to the meeting or event to request assistance. The request must identify the date, time, location, and title of the meeting or event, the nature of the assistance requested, and contact information for the requester. The Bureau will strive to provide, but cannot guarantee that accommodation will be provided for late requests.

Written comments will be accepted from interested members of the public and should be sent to *CFPB_CABandCouncilsEvents@cfpb.gov,* a minimum of seven (7) days in advance of the meeting. The comments will be provided to the CUAC members for consideration.

Individuals who wish to join the Credit Union Advisory Council must RSVP via this link *https://consumer-financial-protection-bureau.forms.fm/spring-2018-cfpb-advisory-committee-meetings-in-washington-dc* by noon, March 13, 2019. Members of the public must RSVP by the due date.

III. Availability

The Council's agenda will be made available to the public on Wednesday, February 27, 2019, via *consumerfinance.gov.* Individuals should express in their RSVP if they require a paper copy of the agenda.

A recording and summary of this meeting will be available after the meeting on the Bureau's website *consumerfinance.gov.*

Dated: February 21, 2019.

Kirsten Sutton,

Chief of Staff, Bureau of Consumer Financial Protection.

[FR Doc. 2019–03446 Filed 2–26–19; 8:45 am]

BILLING CODE 4810–AM–P

BUREAU OF CONSUMER FINANCIAL PROTECTION

Community Bank Advisory Council Meeting

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Notice of public meeting.

SUMMARY: Under the Federal Advisory Committee Act (FACA), this notice sets forth the announcement of a public meeting of the Community Bank Advisory Council (CBAC or Council) of the Bureau of Consumer Financial Protection (Bureau). The notice also describes the functions of the Council.

DATES: The meeting date is Thursday, March 14, 2018, from approximately 9:30 a.m. to 5:15 p.m. eastern daylight time.

ADDRESSES: The meeting location is the Bureau of Consumer Financial Protection, 1700 G Street NW, Washington, DC 20552.

FOR FURTHER INFORMATION CONTACT: Kim George, Outreach and Engagement Associate, Consumer Advisory Board and Councils Office, External Affairs, at 202–435–7884, *CFPB_CABandCouncilsEvents@cfpb.gov.* If you require this document in an alternative electronic format, please contact *CFPB_Accessibility@cfpb.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Section 2 of the CBAC Charter provides that pursuant to the executive and administrative powers conferred on the Bureau of Consumer Financial Protection by section 1012 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act), the Director established the Community Bank Advisory Council under agency authority.

Section 3 of the CBAC Charter states: ''The purpose of the Advisory Council is to advise the Bureau in the exercise of its functions under the federal consumer financial laws as they pertain to community banks with total assets of $10 billion or less.''

II. Agenda

The Consumer Advisory Board will discuss policy issues related to financial technology and other trends and themes in consumer finance. A more detailed meeting agenda will be published on the Bureau's website.

Persons who need a reasonable accommodation to participate should contact *CFPB_504Request@cfpb.gov,* 202–435–9EEO, 1–855–233–0362, or 202–435–9742 (TTY) at least ten business days prior to the meeting or

event to request assistance. The request must identify the date, time, location, and title of the meeting or event, the nature of the assistance requested, and contact information for the requester. The Bureau will strive to provide, but cannot guarantee that accommodation will be provided for late requests.

Written comments will be accepted from interested members of the public and should be sent to *CFPB_CABandCouncilsEvents@cfpb.gov,* a minimum of seven (7) days in advance of the meeting. The comments will be provided to the CBAC members for consideration.

Individuals who wish to join the Community Bank Advisory Council must RSVP via this link *https://consumer-financial-protection-bureau.forms.fm/spring-2018-cfpb-advisory-committee-meetings-in-washington-dc* by noon, March 13, 2019. Members of the public must RSVP by the due date.

III. Availability

The Council's agenda will be made available to the public on Wednesday, February 27, 2019, via *consumerfinance.gov.* Individuals should express in their RSVP if they require a paper copy of the agenda.

A recording and summary of this meeting will be available after the meeting on the Bureau's website *consumerfinance.gov.*

Dated: February 21, 2019.

Kirsten Sutton,

Chief of Staff, Bureau of Consumer Financial Protection.

[FR Doc. 2019–03447 Filed 2–26–19; 8:45 am]

BILLING CODE 4810–AM–P

BUREAU OF CONSUMER FINANCIAL PROTECTION

Consumer Advisory Board Meetings

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Notice of public meeting.

SUMMARY: Under the Federal Advisory Committee Act (FACA), this notice sets forth the announcement of a public meeting of the Consumer Advisory Board (CAB or Board) of the Bureau of Consumer Financial Protection (Bureau). The notice also describes the functions of the Board.

DATES: The meeting date is Thursday, March 14, 2019, from approximately 9:30 a.m. to 5:15 p.m. eastern daylight time.

FOR FURTHER INFORMATION CONTACT: Kim George, Outreach and Engagement Associate, Advisory Board and Councils Office, External Affairs, at 202–435–7884, *CFPB_CABandCouncilsEvents@cfpb.gov.* If you require this document in an alternative electronic format, please contact *CFPB_Accessibility@cfpb.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Section 3 of the Charter of the Consumer Advisory Board states that:

The purpose of the Board is outlined in section 1014(a) of the Dodd-Frank Act, which states that the Board shall ''advise and consult with the Bureau in the exercise of its functions under the Federal consumer financial laws'' and ''provide information on emerging practices in the consumer financial products or services industry, including regional trends, concerns, and other relevant information.''

To carry out the Board's purpose, the scope of its activities shall include providing information, analysis, and recommendations to the Bureau. The Board will generally serve as a vehicle for market intelligence and expertise for the Bureau. Its objectives will include identifying and assessing the impact on consumers and other market participants of new, emerging, and changing products, practices, or services.

II. Agenda

The Consumer Advisory Board will discuss policy issues related to financial technology and other trends and themes in consumer finance. A more detailed meeting agenda will be published on the Bureau's website.

Persons who need a reasonable accommodation to participate should contact *CFPB_504Request@cfpb.gov,* 202–435–9EEO, 1–855–233–0362, or 202–435–9742 (TTY) at least ten business days prior to the meeting or event to request assistance. The request must identify the date, time, location, and title of the meeting or event, the nature of the assistance requested, and contact information for the requester. The Bureau will strive to provide, but cannot guarantee that accommodation will be provided for late requests.

Written comments will be accepted from interested members of the public and should be sent to *CFPB_CABandCouncilsEvents@cfpb.gov,* a minimum of seven (7) days in advance of the meeting. The comments will be provided to the CAB members for consideration.

Individuals who wish to join the Consumer Advisory Board must RSVP via this link *https://consumer-financial-protection-bureau.forms.fm/spring-2018-cfpb-advisory-committee-meetings-in-washington-dc* by noon, March 13, 2019. Members of the public must RSVP by the due date.

III. Availability

The Board's agenda will be made available to the public on Wednesday February 27, 2019, via *consumerfinance.gov.* Individuals should express in their RSVP if they require a paper copy of the agenda.

A recording and summary of this meeting will be available after the meeting on the Bureau's website *consumerfinance.gov.*

Dated: February 21, 2019.

Kirsten Sutton,

Chief of Staff, Bureau of Consumer Financial Protection.

[FR Doc. 2019–03445 Filed 2–26–19; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DOD–2019–OS–0014]

Privacy Act of 1974; System of Records

AGENCY: Office of Secretary of Defense, DoD.

ACTION: Notice of a modified system of records notice.

SUMMARY: The system contains personnel, employment, and pay data on current and former military and civilian personnel and survivors and dependents of military personnel. System data is used to conduct computer matches with various agencies in accordance with the Computer Matching and Privacy Protection Act of 1988. This proposed routine use will enable the conducting of a match with state public assistance agencies to continue.

DATES: Comments will be accepted on or before March 29, 2019. This proposed action will be effective on the date following the end of the comment period unless comments are received which result in a contrary determination.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

* *Federal Rulemaking Portal: http://www.regulations.gov.*

Follow the instructions for submitting comments.

* *Mail:* Department of Defense, Office of the Chief Management Officer, Directorate of Oversight and

Compliance, 4800 Mark Center Drive, Mailbox #24, Suite 08D09, Alexandria, VA 22350–1700.

Instructions: All submissions received must include the agency name and docket number for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Ms. Luz D. Ortiz, Chief, Records, Privacy and Declassification Division (RPDD), 1155 Defense Pentagon, Washington, DC 20311–1155, or by phone at (571) 372–0478.

SUPPLEMENTARY INFORMATION: An additional routine use needs to be added to the system of records notice due to a change in the process of transferring data in the execution of the Computer Matching Agreement (CMA #86) also known as the PARIS Agreement. CMA #86 helps identify individuals receiving both federal compensation and pension benefits and public assistance benefits under federal programs administered by the states and to verify public assistance clients' income circumstances declarations. This agreement is in accordance with the amended section 1903(r) of the Social Security Act which requires states to maintain eligibility determination systems which provide data matching through the Public Assistance Reporting Information System (PARIS) or a successor system.

The Agreement is between DoD (recipient/matching agency), the state public assistance agencies (SPAAs—source agencies) and the Department of Health Human Services (HHS—facilitating agency). HHS no longer facilitates the transfer of data; the data transfer is made directly from the SPAAs to DoD. For this reason, the routine use of sharing this information with the SPAAs must be added to the system of records notice.

The proposed systems reports, as required by the Privacy Act, as amended, were submitted on December 14, 2018, to the House Committee on Oversight and Government Reform, the Senate Committee on Homeland Security and Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to Section 6 of OMB Circular No. A–108, ''Federal Agency Responsibilities for Review, Reporting, and Publication under the Privacy Act,'' published December 23, 2016 (December 23, 2016, 81 FR 94424).

Dated: February 22, 2019.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

SYSTEM NAME AND NUMBER

Defense Manpower Data Center Data Base, DMDC 01

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Naval Postgraduate School Computer Center, Naval Postgraduate School, Monterey, CA 93943–5000.

SYSTEM MANAGER(S):

Deputy Director, Defense Manpower Data Center, DoD Center Monterey Bay, 400 Gigling Road, Seaside, CA 93955–6771.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. App. 3 (Pub. L. 95–452, as amended (Inspector General Act of 1978)); 10 U.S.C. 136, Under Secretary of Defense for Personnel and Readiness; 10 U.S.C. 1562, Database on Domestic Violence Incidents; 20 U.S.C. 1070(f)(4), Higher Education Opportunity Act; Public Law 106–265, Federal Long-Term Care Insurance; 10 U.S.C. 2358, Research and Development Projects; and E.O. 9397 (SSN), as amended.

PURPOSE(S) OF THE SYSTEM:

The purpose of the system of records is to provide a single central facility within the Department of Defense to assess manpower trends, support personnel and readiness functions, to perform longitudinal statistical analyses, identify current and former DoD civilian and Armed Forces personnel for purposes of detecting fraud and abuse of pay and benefit programs, to register current and former DoD civilian and Armed Forces personnel and their authorized dependents for purposes of obtaining medical examination, treatment or other benefits to which they are qualified. To collect debts owed to the United States Government and state and local governments. Information will be used by agency officials and employees, or authorized contractors, and other DoD Components in the preparation of studies and policy as related to the health and well-being of current and past Armed Forces and DoD-affiliated personnel; to respond to Congressional and Executive branch inquiries; and to provide data or documentation relevant to the testing or exposure of individuals. Armed Forces drug test records will be maintained and used to conduct longitudinal, statistical, and analytical studies and computing demographic reports. No personal identifiers will be included in the demographic data reports. All requests for Service specific drug testing demographic data will be approved by the Service designated drug testing program office. All requests for DoD wide drug testing demographic data will be approved by the DoD Coordinator for Drug Enforcement Policy and Support, 1510 Defense Pentagon, Washington, DC 20301–1510. DMDC web usage data will be used to validate continued need for user access to DMDC computer systems and databases, to address problems associated with web access, and to ensure access is only for official purposes.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All Army, Navy, Air Force, Marine Corps, and Coast Guard officer and enlisted personnel serving on active duty from July 1, 1968 and after or were a member of a reserve component since July 1975 (hereafter the ''Armed Forces''); retired Armed Forces personnel; active and retired members of the commissioned corps of the National Oceanic and Atmospheric Administration (NOAA) and the Public Health Service (PHS) (with Armed Forces above, hereafter referred to as the ''Uniformed Services''). All individuals examined to determine eligibility for military service at an Armed Forces Entrance and Examining Station from July 1, 1970, and later; Current and former DoD civilian employees since January 1, 1972. Veterans using the Veterans Education Assistance Program (VEAP) from January 1977 through June 1985; Participants in the Department of Health and Human Services National Longitudinal Survey; Survivors of retired Armed Forces personnel eligible for or currently receiving disability payments or disability income compensation from the Department of Veterans Affairs; surviving spouses of active or retired deceased Armed Forces personnel; 100% disabled veterans and their survivors; and survivors of retired officers of NOAA and PHS eligible for, or are currently receiving, Federal payments due to the death of the retiree; Individuals receiving disability compensation from the Department of Veterans Affairs or who are covered by a Department of Veterans Affairs' insurance or benefit program; dependents of active and retired members of the Uniformed Services, selective service registrants; All Federal civilian retirees; All non-appropriated

funded individuals employed by the Department of Defense; Individuals who were or may have been the subject of tests involving chemical or biological human subject testing; and individuals inquiring or providing information to the Department of Defense concerning such testing; Individuals with authorized web access to DMDC computer systems and databases.

CATEGORIES OF RECORDS IN THE SYSTEM:

Computerized personnel/employment/pay records consisting of name, Service Number, Selective Service Number, Social Security Number (SSN), DoD Identification Number, citizenship data, compensation data, demographic information such as home town, age, sex, race, and educational level; civilian occupational information; performance ratings of DoD civilian employees and military members; reasons given for leaving military service or DoD civilian service; civilian and military acquisition work force warrant location, training and job specialty information; military personnel information such as rank, assignment/deployment, length of service, military occupation, aptitude scores, post-service education, training, and employment information for veterans; participation in various in-service education and training programs; date of award of certification of military experience and training; military hospitalization and medical treatment, immunization, and pharmaceutical dosage records; home and work addresses; and identities of individuals involved in incidents of child and spouse abuse, and information about the nature of the abuse and services provided; CHAMPUS claim records containing enrollee, patient and health care facility, provided data such as cause of treatment, amount of payment, name and Social Security or tax identification number of providers or potential providers of care; Selective Service System registration data; Primary and secondary fingerprints of Military Entrance Processing Command (MEPCOM) applicants; Department of Veterans Affairs disability payment records. Credit or financial data as required for security background investigations; Criminal history information on individuals who subsequently enter the military; Extracts from Office of Personnel Management (OPM); OPM/CENTRAL–1, Civil Service Retirement and Insurance Records, including postal workers covered by Civil Service Retirement, containing Civil Service Claim number, date of birth, name, provision of law retired under, gross annuity, length of service, annuity commencing date, former employing agency and home address. These records provided by OPM for approved computer matching; Non-appropriated fund employment/personnel records consist of Social Security Number (SSN), name, and work address; Military drug test records containing the Social Security Number (SSN), date of specimen collection, date test results reported, reason for test, test results, base/area code, unit, service, status (active/reserve), and location code of testing laboratory; Names of individuals, as well as DMDC assigned identification numbers, and other user-identifying data, such as organization, Social Security Number (SSN), email address, phone number, of those having web access to DMDC computer systems and databases, to include dates and times of access.

RECORD SOURCE CATEGORIES:

Record sources are individuals via survey questionnaires, the Uniformed Services, the Department of Veteran Affairs, the Office of Personnel Management, Environmental Protection Agency, Department of Health and Human Services, Department of Energy, Executive Office of the President, and the Selective Service System.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act of 1974, these records may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

1. To the Department of Veterans Affairs (DVA):

a. To provide Uniformed Service personnel and pay data for present and former Uniformed Service personnel for the purpose of evaluating use of veterans' benefits, validating benefit eligibility and maintaining the health and well being of veterans and their family members.

b. To provide identifying Armed Service personnel data to the DVA and its insurance program contractor for the purpose of notifying separating eligible Reservists of their right to apply for Veteran's Group Life Insurance coverage under the Veterans Benefits Improvement Act of 1996 (38 U.S.C. 1968).

c. To register eligible veterans and their dependents for DVA programs.

d. Providing identification of former Uniformed Service personnel and survivor's financial benefit data to DVA for the purpose of identifying military retired pay and survivor benefit payments for use in the administration of the DVA's Compensation and Pension program (38 U.S.C. 5106). The information is to be used to process all DVA award actions more efficiently, reduce subsequent overpayment collection actions, and minimize erroneous payments.

e. To conduct computer matching programs regulated by the Privacy Act of 1974, as amended (5 U.S.C. 552a), for the purpose of:

(1) Providing full identification of active duty Uniformed Service personnel, including full time National Guard/Reserve support personnel, for use in the administration of DVA's Compensation and Pension benefit program. The information is used to determine continued eligibility for DVA disability compensation to recipients returning to active duty so benefits can be adjusted or terminated as required and steps taken by DVA to collect any resulting over payment (38 U.S.C. 5304(c)).

(2) Providing identification of reserve duty, including full time support National Guard/Reserve Armed Forces personnel, to the DVA, for the purpose of deducting reserve time served from any DVA disability compensation paid or waiver of VA benefit. The law (10 U.S.C. 12316) prohibits receipt of reserve pay and DVA compensation for the same time period, however, it does permit waiver of DVA compensation to draw reserve pay.

f. To provide identifying Uniformed Service personnel data to the DVA for the purpose of notifying such personnel of information relating to educational assistance as required by the Veterans Programs Enhancement Act of 1998 (38 U.S.C. 3011 and 3034).

2. To the Office of Personnel Management (OPM):

a. Consisting of personnel/employment/financial data for the purpose of carrying out OPM's management functions. Records disclosed concern pay, benefits, retirement deductions and any other information necessary for those management functions required by law (Pub. L. 83–598, 84–356, 86–724, 94–455 and 5 U.S.C. 1302, 2951, 3301, 3372, 4118, 8347).

b. To conduct computer matching programs regulated by the Privacy Act of 1974, as amended (5 U.S.C. 552a) for the purpose of:

(1) Exchanging civil service and Reserve personnel data to identify those individuals of the Reserve forces employed by the Federal government in a civilian position. The purpose of the

match is to identify those particular individuals occupying critical positions as civilians and cannot be released for extended active duty in the event of mobilization. Employing Federal agencies are informed of the reserve status of those affected personnel so the choice of terminating the position or the reserve assignment can be made by the individual concerned. The authority for conducting the computer match is contained in E.O. 11190, Providing for the Screening of the Ready Reserve of the Armed Forces.

c. Matching for administrative purposes to include updated employer addresses of Federal civil service employees who are reservists and demographic data on civil service employees who are reservists.

3. To the Internal Revenue Service (IRS) for the purpose of obtaining home addresses to contact Reserve component members for mobilization purposes and for tax administration. For the purpose of conducting aggregate statistical analyses on the impact of Armed Forces personnel of actual changes in the tax laws and to conduct aggregate statistical analyses to life stream earnings of current and former military personnel to be used in studying the comparability of civilian and military pay benefits. To aid in administration of Federal Income Tax laws and regulations, to identify non-compliance and delinquent filers.

4. To the Department of Health and Human Services (DHHS):

a. To the Office of the Inspector General, DHHS, for the purpose of identification and investigation of DoD civilian employees and Armed Forces members who may be improperly receiving funds under the Temporary Assistance for Needy Families (TANF).

b. To the Office of Child Support Enforcement, Federal Parent Locator Service, DHHS, pursuant to 42 U.S.C. 653 and 653a; to assist in locating individuals for the purpose of establishing parentage; establishing, setting the amount of, modifying, or enforcing child support obligations; or enforcing child custody or visitation orders; and for conducting computer matching as authorized by E.O. 12953 to facilitate the enforcement of child support owed by delinquent obligors within the entire civilian Federal government and the Uniformed Services (active and retired). Identifying delinquent obligors will allow State Child Support Enforcement agencies to commence wage withholding or other enforcement actions against the obligors.

Note 1:

Information requested by DHHS is not disclosed when it would contravene U.S. national policy or security interests (42 U.S.C. 653(e)).

Note 2:

Quarterly wage information is not disclosed for those individuals performing intelligence or counter intelligence functions and a determination is made that disclosure could endanger the safety of the individual or compromise an ongoing investigation or intelligence mission (42 U.S.C. 653(n)).

a. To the Health Care Financing Administration (HCFA), DHHS for the purpose of monitoring HCFA reimbursement to civilian hospitals for Medicare patient treatment. The data will ensure no Department of Defense physicians, interns, or residents are counted for HCFA reimbursement to hospitals.

b. To the Centers for Disease Control and the National Institutes of Mental Health, DHHS, for the purpose of conducting studies concerned with the health and well being of Uniformed Services personnel or veterans, to include family members.

c. To conduct computer matching programs regulated by the Privacy Act of 1974, as amended (5 U.S.C. 552a), for the Public Assistance Reporting Information System (PARIS) for the purpose of determining continued eligibility and help eliminate fraud and abuse in benefit programs by identifying individuals who are receiving Federal compensation or pension payments and also are receiving payments pursuant to Federal benefit programs being administered by the States.

5. To the Social Security Administration (SSA):

a. To the Office of Research and Statistics for the purpose of:

(1) Conducting statistical analyses of impact of military service and use of GI Bill benefits on long term earnings.

(2) Obtaining current earnings data on individuals voluntarily leaving military service or DoD civil employment so analytical personnel studies regarding pay, retention and benefits may be conducted.

Note 3:

Earnings data obtained from the SSA and used by DoD does not contain any information identifying the individual about whom the earnings data pertains.

a. To conduct computer matching programs regulated by the Privacy Act of 1974, as amended (5 U.S.C. 552a) to the Bureau of Supplemental Security Income for the purpose of verifying information provided to the SSA by applicants and recipients/beneficiaries, who are retired members of the Uniformed Services or their survivors, for Supplemental Security Income (SSI) or Special Veterans' Benefits (SVB). By law (42 U.S.C. 1006 and 1383), the SSA is required to verify eligibility factors and other relevant information provided by the SSI or SVB applicant from independent or collateral sources and obtain additional information as necessary before making SSI or SVB determinations of eligibility, payment amounts, or adjustments thereto.

b. To the Client Identification Branch for the purpose of validating the assigned Social Security Number for individuals in DoD personnel and pay files, using the SSA Enumeration Verification System (EVS).

c. To the Office of Disability and Insurance Security Programs, for the purpose of expediting disability processing of wounded military service members and veterans.

6. To the Selective Service System (SSS) for the purpose of facilitating compliance of members and former members of the Armed Forces, both active and reserve, with the provisions of the Selective Service registration regulations (50 U.S.C. App. 451 and E.O. 11623).

7. To the Department of Labor (DOL) to reconcile the accuracy of unemployment compensation payments made to former DoD civilian employees and members of the Uniformed Services by the states. To the Department of Labor to survey Armed Forces separations to determine the effectiveness of programs assisting veterans to obtain employment.

8. To Federal and Quasi Federal agencies, territorial, state, and local governments to support personnel functions requiring data on prior Armed Forces service credit for their employees or for job applicants. Information released includes name, Social Security Number, and military or civilian address of individuals. To detect fraud, waste and abuse pursuant to the authority contained in the Inspector General Act of 1978, as amended (Pub. L. 95–452) for the purpose of determining eligibility for, and/or continued compliance with, any Federal benefit program requirements.

9. To state and local law enforcement investigative agencies to obtain military history information for the purpose of ongoing investigations.

10. To Federal and Quasi Federal agencies, territorial, state and local governments, and contractors and grantees for the purpose of supporting research studies concerned with the health and well being of Uniformed Service and retired personnel or veterans, to include family members. DMDC will disclose information from

this system of records for research purposes when DMDC:

a. Determines the use or disclosure does not violate legal or policy limitations under which the record was provided, collected, or obtained;

b. Determines the research purpose (1) cannot be reasonably accomplished unless the record is provided in individually identifiable form, and (2) warrants the risk to the privacy of the individual that additional exposure of the record might bring;

c. Requires the recipient to (1) establish reasonable administrative, technical, and physical safeguards to prevent unauthorized use or disclosure of the record, and (2) remove or destroy the information that identifies the individual at the earliest time at which removal or destruction can be accomplished consistent with the purpose of the research project, unless the recipient has presented adequate justification of a research or health nature for retaining such information, and (3) makes no further use or disclosure of the record except (A) in emergency circumstances affecting the health or safety of any individual, (B) for use in another research project, under these same conditions, and with written authorization of the Department, (C) for disclosure to a properly identified person for the purpose of an audit related to the research project, if information enabling research subjects to be identified is removed or destroyed at the earliest opportunity consistent with the purpose of the audit, or (D) when required by law;

d. Secures a written statement attesting to the recipient's understanding of, and willingness to abide by these provisions.

11. To Federal and State agencies for purposes of obtaining socioeconomic information on Armed Forces personnel so analytical studies can be conducted with a view to assessing the present needs and future requirements of such personnel.

12. To Federal and state agencies for purposes of validating demographic data (*e.g.,* Social Security Number, citizenship status, date and place of birth, etc.) for individuals in Uniformed Service personnel and pay files so accurate information is available in support of Uniformed Service requirements.

13. To the Bureau of Citizenship and Immigration Services, Department of Homeland Security, for purposes of facilitating the verification of individuals possibly eligible for expedited naturalization (Pub. L. 108–136, Section 1701, and E.O. 13269, Expedited Naturalization).

14. To Federal and State agencies, as well as their contractors and grantees, for purposes of providing military wage, training, and educational information so that Federal-reporting requirements, as mandated by statute, such as the Workforce Investment Act (29 U.S.C. 2801, et seq.) and the Carl D. Perkins Vocational and Applied Technology Act (20 U.S.C. 2301, et seq.) can be satisfied.

15. To Federal Agencies, including the Department of Education, to conduct computer matching programs regulated by the Privacy Act of 1974, as amended (5 U.S.C. 552a), for the purpose of identifying dependent children of those Armed Forces members killed in Operation Iraqi Freedom and Operation Enduring Freedom (OIF/OEF) Afghanistan Only for possible benefits. The DoD 'Blanket Routine Uses' set forth at the beginning of the Office of the Secretary of Defense (OSD) compilation of systems of records notices apply to this system.

Note 5:

Military drug test information involving individuals participating in a drug abuse rehabilitation program shall be confidential and disclosed only for the purposes and under the circumstances expressly authorized in 42 U.S.C. 290dd–2. This statute takes precedence over the Privacy Act of 1974, in regard to accessibility of such records except to the individual to whom the record pertains. The DoD 'Blanket Routine Uses' do not apply to these types of records.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Electronic storage media.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records are retrieved by name, Social Security Number (SSN), DoD ID number, occupation, or any other data element contained in system.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

The records are used to provide a centralized system within the Department of Defense to assess manpower trends, support personnel functions, perform longitudinal statistical analyses, and conduct scientific studies or medical follow-up programs and other related studies/analyses. Records are retained as follows:

(1) Input/source records are deleted or destroyed after data have been entered into the master file or when no longer needed for operational purposes, whichever is later. Exception: Apply NARA-approved disposition instructions to the data files residing in other DMDC data bases.

(2) The Master File is retained permanently. At the end of the fiscal year, a snapshot is taken and transferred to the National Archives in accordance with 36 CFR part 1228.270 and 36 CFR part 1234.

(3) Output records (electronic or paper summary reports) are deleted or destroyed when no longer needed for operational purposes. Note: This disposition instruction applies only to record keeping copies of the reports retained by DMDC. The DoD office requiring creation of the report should maintain its record keeping copy in accordance with NARA approved disposition instructions for such reports.

(4) System documentation (codebooks, record layouts, and other system documentation) are retained permanently and transferred to the National Archives along with the master file in accordance with 36 CFR part 1228.270 and 36 CFR part 1234.

ADMINISTRATIVE, PHYSICAL, AND TECHNICAL SAFEGUARDS:

Access to personal information is restricted to those requiring the records in the performance of their official duties. Access to personal information is further restricted by the use of Common Access Cards (CAC). Physical entry is restricted by the use of locks, guards, and administrative procedures. All individuals granted access to this system of records must complete Information Assurance and Privacy Act training; all have been through the vetting process and have ADP ratings.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Office of the Secretary of Defense/Joint Staff Freedom of Information Act Requester Service Center, 1155 Defense Pentagon, Washington, DC 20301–1155. Written requests should contain the name and number of this system of records notice along with the full name, Social Security Number (SSN), date of birth, current address, and telephone number of the individual and be signed. In addition, the requester must provide a notarized statement or an unsworn declaration made in accordance with 28 U.S.C. 1746, in the following format:

If executed within the United States, its territories, possessions, or commonwealths: ''I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature).''

If executed outside the United States: ''I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature).''

Attorneys or other persons acting on behalf of an individual must provide written authorization from the individual for their representative to act on their behalf.

CONTESTING RECORD PROCEDURES:

The Office of the Secretary of Defense rules for accessing records, contesting contents and appealing initial agency determinations are published in Office of the Secretary of Defense Administrative Instruction 81; 32 CFR part 311; or may be obtained from the system manager.

NOTIFICATION PROCEDURES:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Privacy Act Officer, Office of Freedom of Information, Washington Headquarters Services, 1155 Defense Pentagon, Washington, DC 20301–1155. Written requests should contain the full name, Social Security Number (SSN), date of birth, current address, and telephone number of the individual. In addition, the requester must provide a notarized statement or an unsworn declaration made in accordance with 28 U.S.C. 1746, in the following format:

If executed within the United States, its territories, possessions, or commonwealths: ''I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature).''

If executed outside the United States: ''I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature).''

Attorneys or other persons acting on behalf of an individual must provide written authorization from the individual for their representative to act on their behalf.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

November 23, 2011, 76 FR 72391.

[FR Doc. 2019–03390 Filed 2–26–19; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DOD–2019–OS–0015]

Privacy Act of 1974; Matching Program

AGENCY: Office of the Secretary, Department of Defense (DoD).

ACTION: Notice of a new matching program.

SUMMARY: This Computer Matching Agreement (CMA) identifies individuals receiving both federal compensation or pension benefits and public assistance benefits under federal programs administered by the states and verifies public assistance clients' declarations of income circumstances.

DATES: Comments will be accepted on or before March 29, 2019. This proposed action will be effective the day following the end of the comment period unless comments are received which result in a contrary determination.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

• *Federal Rulemaking Portal: http://www.regulations.gov.*

Follow the instructions for submitting comments.

• *Mail:* Department of Defense, Office of the Chief Management Officer, Directorate of Oversight and Compliance, 4800 Mark Center Drive, Mailbox #24, Suite 08D09, Alexandria, VA 22350–1700.

Instructions: All submissions received must include the agency name and docket number for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Ms. Cheryl D. Jenkins, Management Analyst, Defense Privacy, Civil Liberties, and Transparency Division at (703) 571–0070.

SUPPLEMENTARY INFORMATION: Each participating State Public Assistance Agency (SPAA) will provide the Department of Defense, Defense Manpower Data Center (DMDC) with finder files containing identifying and other data about public assistance applicants or recipients, which DMDC will match against DoD military and civilian pay files, military retired pay files, and survivor pay files (Office of Personnel Management (OPM) civilian retired and survivor pay files will not be used). DMDC will return matched data to the SPAA, which the SPAA will use to verify individuals' continued eligibility to receive public assistance benefits and, if ineligible, to take such action as may be authorized by law and regulation to ensure fair and equitable treatment in the delivery of and benefits attributable to funds provided by the Federal Government. HHS will support each of SPAA's efforts to ensure appropriate participation in the matching program and compliance with this agreement's terms by assisting with drafting the agreements and helping arrange signatures to the agreements. A new routine use is concurrently being added to DoD System of Records Notice, DMDC 01 to specifically address this computer match.

Participating Agencies: The Department of Defense (DoD), Defense Manpower Data Center, DoD; Department of Health and Human Services; and the State Public Assistance Agencies (SPAAs).

Authority for Conducting the Matching Program: Sections 402, 1137, and 1903(r) of the Social Security Act (the Act), 42 U.S.C. §§ 602, a 1320b–7, and 1396b(r).

Purpose(s): This matching program identifies individuals receiving both federal compensation or pension benefits and public assistance benefits under federal programs administered by the states and to verify public assistance clients' declarations of income circumstances.

Categories of Individuals: The categories of individuals whose information is involved in the matching program are:

—Individuals who apply for or receive public assistance benefits under federal programs administered by the states (Medicaid, Temporary Assistance to Needy Families, and Supplemental Nutrition Assistance Program); and

—Individuals who receive compensation from the DoD (military, civilian, survivor, and retired).

Categories of Records: The categories of records involved in the matching program are DoD military and civilian pay records, military retired pay records, and survivor pay records. The matching program will compare the Social Security Numbers (SSNs), using all nine digits, in quarterly SPAA finder files about individuals applying for public assistance benefits with DoD pay records. The SPAA finder files will contain the client's name, SSN, date of

birth, address, sex, marital status, number of dependents, information regarding the specific public assistance benefit being received, and such other data as considered necessary. The data elements that will be provided to a SPAA about a DoD affiliated individual whose nine digit SSN matches a SSN in a quarterly SPAA file include (as applicable): individual's name; SSN; active or retired; if active, military service or employing agency; and current work or home address; salary related information and such other data as considered necessary.

System of Records: Defense Manpower Data Center Data Base (DMDC 01), 76 FR 72391 (Nov. 23, 2011).

Dated: February 22, 2019.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2019–03420 Filed 2–26–19; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Navy

Certificate of Alternate Compliance for USS DELAWARE (SSN 791)

AGENCY: Department of the Navy, DoD.

ACTION: Notice of issuance of Certificate of Alternate Compliance.

SUMMARY: The U.S. Navy hereby announces that a Certificate of Alternate Compliance has been issued for USS DELAWARE (SSN 791). Due to the special construction and purpose of this vessel, the Deputy Assistant Judge Advocate General (DAJAG) (Admiralty and Maritime Law) has determined that it is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with the certain provisions of the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS) without interfering with its special functions as a naval ship. The intended effect of this notice is to warn mariners in waters where 72 COLREGS apply.

DATES: This Certificate of Alternate Compliance is effective February 27, 2019 and is applicable beginning February 14, 2019.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander Matt Rector, JAGC, U.S. Navy, Admiralty Attorney, Office of the Judge Advocate General, Admiralty and Maritime Law Division (Code 11), 1322 Patterson Ave. SE, Suite 3000, Washington Navy Yard, DC 20374–5066, telephone number: 202–685–5040, or *admiralty@navy.mil.*

SUPPLEMENTARY INFORMATION: Background and Purpose. Executive Order 11964 of January 19, 1977 and 33 U.S.C. 1605 provide that the requirements of the 72 COLREGS, as to the number, position, range, or arc of visibility of lights or shapes, as well as to the disposition and characteristics of sound-signaling appliances, shall not apply to a vessel or class of vessels of the Navy where the Secretary of the Navy shall find and certify that, by reason of special construction or purpose, it is not possible for such vessel(s) to comply fully with the provisions without interfering with the special function of the vessel(s). Notice of issuance of a Certificate of Alternate Compliance must be made in the **Federal Register**.

In accordance with 33 U.S.C. 1605, the DAJAG (Admiralty and Maritime Law), under authority delegated by the Secretary of the Navy, hereby finds and certifies that USS DELAWARE (SSN 791) is a vessel of special construction or purpose, and that, with respect to the position of the following navigational lights, it is not possible to comply fully with the requirements of the provisions enumerated in the 72 COLREGS without interfering with the special function of the vessel:

Rule 23(a) and Annex I, paragraph 2(a)(i), pertaining to the vertical placement of the masthead light, and Annex I, paragraph 2(f)(i), pertaining to the masthead light being above and clear of all other lights and obstructions;

Rule 30(a), Rule 21(e), and Annex I, paragraph 2(k), pertaining to the vertical separation of the anchor lights, vertical placement of the forward anchor light above the hull, and the arc of visibility of all-around lights;

Rule 23(a) and Annex I, paragraph 3(b), pertaining to the location of the sidelights; and

Rule 21(c), pertaining to the location and arc of visibility of the sternlight.

The DAJAG (Admiralty and Maritime Law) further finds and certifies that these navigational lights are in closest possible compliance with the applicable provision of the 72 COLREGS.

Authority: 33 U.S.C. 1605(c), E.O. 11964.

Dated: February 21, 2019.

M.S. Werner,

Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 2019–03341 Filed 2–26–19; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

Applications for New Awards; Full-Service Community Schools Program

AGENCY: Office of Elementary and Secondary Education, Department of Education.

ACTION: Notice.

SUMMARY: The Department of Education (Department) is issuing a notice inviting applications for fiscal year (FY) 2019 for the Full-Service Community Schools (FSCS) program, Catalog of Federal Domestic Assistance (CFDA) number 84.215J.

DATES:

Applications Available: February 27, 2019.

Deadline for Notice of Intent to Apply: March 18, 2019.

Date of Pre-Application Webinar: For information about the pre-application webinar, visit the Full-Service Community Schools (FSCS) website at: *https://innovation.ed.gov/what-we-do/parental-options/full-service-community-schools-program-fscs/applicant-info-and-eligibility/.*

Deadline for Transmittal of Applications: April 15, 2019.

Deadline for Intergovernmental Review: June 27, 2019.

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 13, 2019 (84 FR 3768), and available at *www.govinfo.gov/content/pkg/FR-2019-02-13/pdf/2019-02206.pdf.*

FOR FURTHER INFORMATION CONTACT: Michelle Johnson Armstrong, U.S. Department of Education, 400 Maryland Avenue SW, Room 3C118, Washington, DC 20202. Telephone: (202) 205–1729. Email: *FSCS@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 Full-Service Community Schools program is authorized by sections 4621–4623 and 4625 of the Elementary and Secondary Education Act, as amended by the Every Student Succeeds Act (ESEA). This program provides support for the planning, implementation, and operation of full-service community

schools that improve the coordination, integration, accessibility, and effectiveness of services for children and families, particularly for children attending high-poverty schools, including high-poverty rural schools.

Background: Full-service community schools provide comprehensive academic, social, and health services for students, students' family members, and community members that are designed to improve education outcomes for children. The growing interest at the State and local level in community schools,[1] also known as full-service community schools, coupled with this competition, present an opportunity for nationwide school improvement. The ESEA offers flexibilities at the State and local levels to implement strategies supported by community schools, such as coordination of school and community resources (ESEA sections 1114(b)(5) and 1115(b)(2)) and afterschool programming and support for a community school coordinator (ESEA section 4108(a)(5)(H)). If a State educational agency (SEA) or local educational agency (LEA) (as defined in this notice) lacks the resources to implement community schools at scale, it can productively begin in neighborhoods where community schools are most needed and, therefore, students are most likely to benefit. Full-service community schools must be operated in a manner consistent with nondiscrimination requirements contained in the U.S. Constitution and Federal civil rights laws. The Department, through the Full-Service Community Schools program, provides catalytic support for the planning, implementation, operation, and coordination of effective services for children and families, particularly those in high-poverty urban and rural areas, at the local level.

According to a 2017 report, comprehensive community school interventions that incorporate most or all of four features, or pillars (integrated student supports; expanded learning time and opportunities; family and community engagement; collaborative leadership and practice), are associated with a range of positive student outcomes.

''A well-implemented community school leads to improvement in student and school outcomes and contributes to meeting the educational needs of low-achieving students in high-poverty schools. Strong research reinforces the efficacy of integrated student supports, expanded learning time and opportunities, and family and community engagement as intervention strategies.'' [2]

Over the last decade, the field has observed a wide range of practices coordinated and implemented in full-service community schools. Assuming strong social capital, stable leadership, and a strong instructional program, full-service community schools have been associated with improved attendance, student achievement, and student behavior and youth development.[3]

Priorities: This notice contains one absolute priority and four competitive preference priorities. In accordance with 34 CFR 75.105(b)(2)(iv), the absolute priority is from section 4625(b)(1)(A) of the ESEA. The competitive preference priorities are from sections 4625(b)(1)(B), 4625(b)(2), 4625(b)(3), and 8101(21)(A)(i) of the ESEA and 34 CFR 75.226(c).

Absolute Priority: For FY 2019, and any subsequent year in which we make awards from the list of unfunded applications from this competition, this priority is an absolute priority. Under 34 CFR 75.105(c)(3) we consider only applications that meet this priority.

This priority is:

Eligible entities that will serve two or more full-service community schools eligible for a schoolwide program (as defined in this notice) under section 1114(b) of the ESEA as part of a community- or district-wide strategy.

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 two points to an application that meets Competitive Preference Priority 1, and we award an additional point to an application that meets Competitive Preference Priority 2. We award an additional point to an application that meets Competitive Preference Priority 3, and an additional five points to an application that meets Competitive Preference Priority 4. An applicant may receive a maximum of nine competitive preference priority points. Applicants may apply under any, all, or none of the competitive preference priorities. Applicants must identify the priorities they are seeking points for in order to receive those points.

These priorities are:

Competitive Preference Priority 1—Rural Districts-Small and Rural or Rural and Low-Income. (0 or 2 points).

The Secretary gives priority to applicants that include an LEA that is currently eligible under the Small Rural School Achievement (SRSA) program or the Rural and Low-Income School (RLIS) program, authorized under title V, part B (sections 5211 and 5221) of the ESEA. Applicants may determine whether a particular LEA is eligible for these programs by referring to information on the following Department websites: for the SRSA program, *https://www2.ed.gov/programs/reapsrsa/eligible16/index.html* and for the RLIS program, *https://www2.ed.gov/programs/reaprlisp/eligibility.html.*

Note: An LEA includes a public charter school that operates as an LEA.

Competitive Preference Priority 2—Broadly Representative Consortiums. (0 or 1 point).

The Secretary gives priority to an applicant that demonstrates that it is a consortium comprised of a broad representation of stakeholders.

Competitive Preference Priority 3—History of Effectiveness. (0 or 1 point).

The Secretary gives priority to an applicant that demonstrates that it is a consortium with a history of effectiveness.

Competitive Preference Priority 4—Evidence-Based Activities, Strategies, or Interventions. (0 or 5 points).

The Secretary gives priority to an application that is supported by promising evidence (as defined in this notice).

Definitions: The definitions for ''Community-based organization,'' ''Eligible entity,'' ''Full-service community school,'' ''Local educational agency,'' ''Pipeline services,'' and ''State educational agency'' are from sections 4622 and 8101 of the ESEA. The definitions for ''Baseline,'' ''Experimental study,'' ''Nonprofit,'' ''Performance measure,'' ''Performance target,'' ''Project,'' ''Project component,'' ''Promising evidence,'' ''Quasi-experimental design study,'' ''Relevant outcome,'' and ''What Works Clearinghouse Handbook'' are from 34 CFR 77.1. The definition of ''School eligible for a schoolwide program'' is from 34 CFR 200.25(b).

Baseline means the starting point from which performance is measured and targets are set.

[1] Maier, A., Daniel, J., Oakes, J., & Lam, L. (2017). Community Schools as an Equitable School Improvement Strategy: A Review of the Evidence. Learning Policy Institute, December 2017.

[2] Maier, A., Daniel, J., Oakes, J., & Lam, L. (2017). Community Schools as an Equitable School Improvement Strategy: A Review of the Evidence. Learning Policy Institute, p. v.

[3] Sebring, P.B., Allensworth, E., Bryk, A.S., Easton, J.Q., & Luppescu, S. (2006). The Essential Supports for School Improvement. Human Development (September), The Consortium on Chicago School Research.

Community-based organization means a public or private nonprofit (as defined in this notice) organization of demonstrated effectiveness that—

(a) Is representative of a community or significant segments of a community; and

(b) Provides educational or related services to individuals in the community.

Eligible entity means a consortium of one or more LEAs; or the Bureau of Indian Education; and one or more community-based organizations, nonprofit organizations, or other public or private entities.

Experimental study means a study that is designed to compare outcomes between two groups of individuals (such as students) that are otherwise equivalent except for their assignment to either a treatment group receiving a project component or a control group that does not. Randomized controlled trials, regression discontinuity design studies, and single-case design studies are the specific types of experimental studies that, depending on their design and implementation (*e.g.,* sample attrition in randomized controlled trials and regression discontinuity design studies), can meet What Works Clearinghouse (WWC) standards without reservations as described in the WWC Handbook (as defined in this notice):

(a) A randomized controlled trial employs random assignment of, for example, students, teachers, classrooms, or schools to receive the project component being evaluated (the treatment group) or not to receive the project component (the control group).

(b) A regression discontinuity design study assigns the project component being evaluated using a measured variable (*e.g.,* assigning students reading below a cutoff score to tutoring or developmental education classes) and controls for that variable in the analysis of outcomes.

(c) A single-case design study uses observations of a single case (*e.g.,* a student eligible for a behavioral intervention) over time in the absence and presence of a controlled treatment manipulation to determine whether the outcome is systematically related to the treatment.

Full-service community school means a public elementary school or secondary school that-—

(a) Participates in a community-based effort to coordinate and integrate educational, developmental, family, health, and other comprehensive services through community-based organizations and public and private partnerships; and

(b) Provides access to such services in school to students, families, and the community, such as access during the school year (including before- and after-school hours and weekends), as well as during the summer.

Local educational agency (LEA) means:

(a) In General. A public board of education or other public authority legally constituted within a State for either administrative control or direction of, or to perform a service function for, public elementary schools or secondary schools in a city, county, township, school district, or other political subdivision of a State, or of or for a combination of school districts or counties that is recognized in a State as an administrative agency for its public elementary schools or secondary schools.

(b) Administrative Control and Direction. The term includes any other public institution or agency having administrative control and direction of a public elementary school or secondary school.

(c) Bureau of Indian Education Schools. The term includes an elementary school or secondary school funded by the Bureau of Indian Education but only to the extent that including the school makes the school eligible for programs for which specific eligibility is not provided to the school in another provision of law and the school does not have a student population that is smaller than the student population of the LEA receiving assistance under the ESEA with the smallest student population, except that the school shall not be subject to the jurisdiction of any State educational agency (as defined in this notice) other than the Bureau of Indian Education.

(d) Educational Service Agencies. The term includes educational service agencies and consortia of those agencies.

(e) State Educational Agency. The term includes the State educational agency in a State in which the State educational agency is the sole educational agency for all public schools.

Nonprofit, as applied to an agency, organization, or institution, means that it is owned and operated by one or more corporations or associations whose net earnings do not benefit, and cannot lawfully benefit, any private shareholder or entity.

Performance measure means any quantitative indicator, statistic, or metric used to gauge program or project performance.

Performance target means a level of performance that an applicant would seek to meet during the course of a project or as a result of a project.

Pipeline services means a continuum of coordinated supports, services, and opportunities for children from birth through entry into and success in postsecondary education, and career attainment. Such services shall include, at a minimum, strategies to address through services or programs (including integrated student supports) the following:

(a) High-quality early childhood education programs.

(b) High-quality school and out-of-school-time programs and strategies.

(c) Support for a child's transition to elementary school, from elementary school to middle school, from middle school to high school, and from high school into and through postsecondary education and into the workforce, including any comprehensive readiness assessment determined necessary.

(d) Family and community engagement and supports, which may include engaging or supporting families at school or at home.

(e) Activities that support postsecondary and workforce readiness, which may include job training, internship opportunities, and career counseling.

(f) Community-based support for students who have attended the schools in the area served by the pipeline, or students who are members of the community, facilitating their continued connection to the community and success in postsecondary education and the workforce.

(g) Social, health, nutrition, and mental health services and supports.

(h) Juvenile crime prevention and rehabilitation programs.

Project means the activity described in an application.

Project component means an activity, strategy, intervention, process, product, practice, or policy included in a project. Evidence may pertain to an individual project component or to a combination of project components (*e.g.,* training teachers on instructional practices for English learners and follow-on coaching for these teachers).

Promising evidence means that there is evidence of the effectiveness of a key project component in improving a relevant outcome, based on a relevant finding from one of the following:

(a) A practice guide prepared by WWC reporting a ''strong evidence base'' or ''moderate evidence base'' for the corresponding practice guide recommendation;

(b) An intervention report prepared by the WWC reporting a ''positive effect'' or ''potentially positive effect'' on a

relevant outcome with no reporting of a ''negative effect'' or ''potentially negative effect'' on a relevant outcome; or

(c) A single study assessed by the Department, as appropriate, that—

(i) Is an experimental study, a quasi-experimental design study, or a well-designed and well-implemented correlational study with statistical controls for selection bias (*e.g.,* a study using regression methods to account for differences between a treatment group and a comparison group); and

(ii) Includes at least one statistically significant and positive (*i.e.,* favorable) effect on a relevant outcome.

Quasi-experimental design study means a study using a design that attempts to approximate an experimental study by identifying a comparison group that is similar to the treatment group in important respects. This type of study, depending on design and implementation (*e.g.,* establishment of baseline equivalence of the groups being compared), can meet WWC standards with reservations, but cannot meet WWC standards without reservations, as described in the WWC Handbook.

Relevant outcome means the student outcome(s) or other outcome(s) the key project component is designed to improve, consistent with the specific goals of the program.

School eligible for a schoolwide program means any school eligible under 34 CFR 200.25(b) to operate a schoolwide program.

State educational agency (SEA) means the agency primarily responsible for the State supervision of public elementary schools and secondary schools.

What Works Clearinghouse Handbook (WWC Handbook) means the standards and procedures set forth in the WWC Procedures and Standards Handbook, Version 3.0 or Version 2.1 (incorporated by reference, see 34 CFR 77.2). Study findings eligible for review under WWC standards can meet WWC standards without reservations, meet WWC standards with reservations, or not meet WWC standards. WWC practice guides and intervention reports include findings from systematic reviews of evidence as described in the Handbook documentation.

Application Requirements: The following requirements are from section 4625(a) of the ESEA. In order to receive funding, an applicant must include the following in its application:

(1) A description of the eligible entity.

(2) A memorandum of understanding among all partner entities in the eligible entity that will assist the eligible entity to coordinate and provide pipeline services and that describes the roles the partner entities will assume.

(3) A description of the capacity of the eligible entity to coordinate and provide pipeline services at two or more full-service community schools.

(4) A comprehensive plan that includes descriptions of the following:

(a) The student, family, and school community to be served, including demographic information.

(b) A needs assessment that identifies the academic, physical, nonacademic, health, mental health, and other needs of students, families, and community residents.

(c) Annual measurable performance objectives and outcomes, including an increase in the number and percentage of families and students targeted for services each year of the program, in order to ensure that children are—

(i) Prepared for kindergarten;

(ii) Achieving academically; and

(iii) Safe, healthy, and supported by engaged parents.

(d) Pipeline services, including existing and additional pipeline services, to be coordinated and provided by the eligible entity and its partner entities, including an explanation of—

(i) Why such services have been selected;

(ii) How such services will improve student academic achievement; and

(iii) How such services will address the annual measurable performance objectives and outcomes described under (4)(c) of the application requirements.

(e) Plans to ensure that each full-service community school site has a full-time coordinator of pipeline services at such school, including a description of the applicable funding sources, plans for professional development for the personnel managing, coordinating, or delivering pipeline services, and plans for joint utilization and management of school facilities.

(f) Plans for annual evaluation based upon attainment of the performance objectives and outcomes described under (4)(c) of the application requirements.

(g) Plans for sustaining the programs and services described in the application after the grant period.

(5) An assurance that the eligible entity and its partner entities will focus services on schools eligible for a schoolwide program under section 1114(b) of the ESEA.

Applications that do not address the application requirements are not eligible for funding and will not be reviewed.

Program Authority: Section 4625 of the ESEA (20 U.S.C. 7275).

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.

Note: The regulations in 34 CFR part 79 apply to all applicants except federally recognized Indian Tribes.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education only.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: $4,142,281.

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: $275,000–$500,000 for each 12-month budget period; $1,375,000–$2,500,000 for the entire project period.

Estimated Average Size of Awards: $450,000 for each 12-month period.

Maximum Award: We will not make an award exceeding $2,500,000 for the entire project period.

Minimum Award: Under ESEA section 4625(d), the Secretary is prohibited from making a grant under the Full-Service Community Schools program in an amount that is less than $75,000 for each year of the grant. Therefore, we will reject any application that proposes an amount that is less than $75,000 for any budget period.

Estimated Number of Awards: 8.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

III. Eligibility Information

1. *Eligible Applicants:* A consortium of—

(a)(i) One or more LEAs; or

(ii) The Bureau of Indian Education; and

(b) One or more community-based organizations, nonprofit organizations, or other public or private entities.

A consortium must comply with the provisions governing group applications in 34 CFR 75.127 through 75.129.

2.a. *Cost Sharing or Matching:* To be eligible for an award, a portion of the services provided by the applicant must be supported through non-Federal contributions, either in cash or in-kind donations. The applicant must propose the amount of cash or in-kind resources to be contributed for each year of the grant.

The Bureau of Indian Education may meet the matching requirement using funds from other Federal sources.

b. *Supplement not Supplant:* This program is subject to supplement-not-supplant funding requirements. Grantees must use FSCS grant funds to supplement, and not supplant, any other Federal, State, and local funds that would otherwise have been available to carry out activities authorized under section 4625 of the ESEA.

3. *Subgrantees:* A grantee under this competition may not award subgrants to entities to directly carry out project activities described in its application.

4. *Planning:* Interagency collaborative efforts are highly complex undertakings that require extensive planning and communication among partners and key stakeholders. Partnerships should be based on identified needs and organized around a set of mutually defined results and outcomes. Under section 4625(c) of the ESEA, applicants under this program may not use more than 10 percent of the total amount of grant funds for planning purposes during the first year of the grant. Funding received by grantees during the remainder of the project period must be devoted to program implementation.

5. *Use of Funds:* Under section 4625(e) of the ESEA, grantees must use FSCS grant funds to: (1) Coordinate not less than three existing pipeline services, as of the date their grants are awarded, and provide not less than two additional pipeline services, at two or more public elementary schools or secondary schools; (2) to the extent practicable, integrate multiple pipeline services into a comprehensive and coordinated continuum to achieve the annual measurable performance objectives and outcomes under section 4625(a)(4)(C) of the ESEA to meet the holistic needs of children; and (3) if applicable, coordinate and integrate services provided by community-based organizations and government agencies with services provided by specialized instructional support personnel.

6. *Evaluation:* Under section 4625(f) of the ESEA, grantees must conduct an annual evaluation of their project's progress in meeting the purpose of the FSCS program set out in section 4621(2) of the ESEA and use those evaluations to refine and improve activities carried out under the grant and the annual measurable achievement objectives and outcomes set out in section 4625(a)(4)(C) of the ESEA. Grantees must make the results of their annual evaluation publicly available, including by providing public notice of the availability of such results.

Note: Nothing in section 4625 of the ESEA shall be construed to alter or otherwise affect the rights, remedies, and procedures afforded school or LEA employees under Federal, State, or local laws (including applicable regulations or court orders) under the terms of collective bargaining agreements, memoranda of understanding, or other agreements between such employees and their employers.

IV. Application and Submission Information

1. *Application Submission Instructions:* For information on how to submit an application, please refer to our Common Instructions for Applicants to Department of Education Discretionary Grant Programs, published in the **Federal Register** on February 13, 2019 (84 FR 3768), and available at *www.govinfo.gov/content/pkg/FR-2019-02-13/pdf/2019-02206.pdf.*

2. *Submission of Proprietary Information:* Given the types of projects that may be proposed in applications for the FSCS program, 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 program 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 150 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 Part I, the cover sheet; Part II, the budget section, including the narrative budget justification; Part IV, 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.

6. *Notice of Intent to Apply:* The Department will be able to develop a more efficient process for reviewing grant applications if it has a better understanding of the number of entities that intend to apply for funding under this competition. Therefore, the Secretary strongly encourages each potential applicant to notify the Department of the applicant's intent to submit an application for funding by sending a short email message indicating the applicant's intent to submit an application for funding. The email need not include information regarding the content of the proposed application, only the applicant's intent to submit it. This email notification should be sent to *FSCS@ed.gov* with ''INTENT TO APPLY'' in the subject line by March 18, 2019. Applicants that do not notify us of their intent to apply may still apply for funding.

V. Application Review Information

1. *Selection Criteria:* The selection criteria for this competition are from 34 CFR 75.210. The maximum score for all of the selection criteria is 100 points. The maximum score for each criterion is included in parentheses following the

title of the specific selection criterion. Each criterion also includes the factors that reviewers will consider in determining the extent to which an applicant meets the criterion.

Points awarded under these selection criteria are in addition to any points an applicant earns under the competitive preference priorities in this notice. The maximum score that an application may receive under the competitive preference priorities and the selection criteria is 109 points.

The selection criteria are as follows:

(a) *Quality of the Project Design* (up to 15 points).

The Secretary considers the quality of the design of the proposed project. In determining the quality of the design of the proposed project, the Secretary considers—

(1) The extent to which the goals, objectives, and outcomes to be achieved by the proposed project are clearly specified and measurable.

(2) 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.

(b) *Quality of the Project Services* (up to 25 points).

The Secretary considers the quality of the services to be provided by the proposed project. In determining the quality of project services, 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. In addition, the Secretary considers the following—

(1) The likely impact of the services to be provided by the proposed project on the intended recipients of those services.

(2) The extent to which the services to be provided by the proposed project involve the collaboration of appropriate partners for maximizing the effectiveness of project services.

(c) *Adequacy of Resources* (up to 15 points).

The Secretary considers the adequacy of resources for the proposed project. In determining the adequacy of resources for the proposed project, the Secretary considers the following factors—

(1) The relevance and demonstrated commitment of each partner in the proposed project to the implementation and success of the project.

(2) The extent to which the costs are reasonable in relation to the number of persons to be served and to the anticipated results and benefits.

(d) *Quality of the Management Plan* (up to 20 points).

The Secretary considers the quality of the management plan for the proposed project. In determining the quality of the management plan for the proposed project, the Secretary considers the following factors—

(1) The adequacy of the management plan to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, timelines, and milestones for accomplishing project tasks.

(2) The extent to which the time commitments of the project director and principal investigator and other key project personnel are appropriate and adequate to meet the objectives of the proposed project.

(e) *Quality of the Project Evaluation* (up to 25 points).

The Secretary considers the quality of the evaluation to be conducted of the proposed project. In determining the quality of the evaluation, the Secretary considers the following factors—

(1) The extent to which the methods of evaluation are thorough, feasible, and appropriate to the goals, objectives, and outcomes of the proposed project.

(2) The extent to which the methods of evaluation include the use of objective performance measures that are clearly related to the intended outcomes of the project and will produce quantitative and qualitative data to the extent possible.

(3) The extent to which the methods of evaluation will provide valid and reliable performance data on relevant outcomes.

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).

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 $150,000), 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.*

(c) Under 34 CFR 75.250(b), the Secretary may provide a grantee with additional funding for data collection analysis and reporting. In this case the Secretary establishes a data collection period.

5. *Performance Measures:* We have established one performance measure for the FSCS program: The percentage and number of individuals targeted for services and who receive services during each year of the project period.

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 22, 2019.

Frank Brogan,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 2019–03427 Filed 2–26–19; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

National Assessment Governing Board; Meeting

AGENCY: National Assessment Governing Board, Department of Education.

ACTION: Notice; correction.

SUMMARY: The National Assessment Governing Board published a document in the **Federal Register** on February 21, 2019, announcing the schedule and proposed agenda of a forthcoming quarterly meeting of the National Assessment Governing Board to be convened on February 28, March 1, and March 2, 2019. The meeting agenda has been revised to reflect a change to the meeting schedule for Friday, March 1, 2019 by adding a closed session as detailed below.

DATES: Applicable February 27, 2019.

FOR FURTHER INFORMATION CONTACT: Munira Mwalimu, Executive Officer/Designated Federal Official for the Governing Board, 800 North Capitol Street NW, Suite 825, Washington, DC 20002. Phone number: (202) 357–6906. Fax: (202) 357–6945. Email: *Munira.Mwalimu@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:

Correction:

In the **Federal Register** notice number FR Doc. 84 FR,35, Pages 5426–5427 (2 pages) Document Number, 2019–02885 filed on February 20, 2019, the National Assessment Governing Board published a notice of its open and closed meetings scheduled to take place on February 28, March 1, and March 2, 2019. The notice is hereby amended to add a closed session on Friday, March 1, 2019 from 8:00 a.m. to 8:25 a.m. to receive a briefing from the Governing Board's search committee on applications received for the Governing Board's Executive Director vacancy, and to discuss a recommendation from the Executive Committee to appoint the Executive Director. The Governing Board's discussions pertain solely to internal personnel rules and practices of an agency and information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy. As such, the discussions are protected by exemptions 2 and 6 of § 552b(c) of Title 5 of the United States Code.

Following the closed session, the full Board meeting will meet from 8:25 a.m.

to 8:30 a.m. to take a vote on the recommendation for appointment of the Executive Director. The remainder of the meeting agenda as published in the original notice is unchanged.

Access to Records of the Meeting: Pursuant to FACA requirements, the public may also inspect the meeting materials at *www.nagb.gov* beginning on Thursday, February 28, 2019 by 10:00 a.m. Washington, DC Time. The official verbatim transcripts of the public meeting sessions will be available for public inspection no later than 30 calendar days following the meeting.

Reasonable Accommodations: The meeting site is accessible to individuals with disabilities. If you will need an auxiliary aid or service to participate in the meeting (*e.g.,* interpreting service, assistive listening device, or materials in an alternate format), notify the contact person listed in this notice at least two weeks before the scheduled meeting date. Although we will attempt to meet a request received after that date, we may not be able to make available the requested auxiliary aid or service because of insufficient time to arrange it.

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 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.

Authority: Pub. L. 107–279, Title III—National Assessment of Educational Progress § 301.

Dated: February 22, 2019.

Lisa Stooksberry,

Deputy Executive Director, National Assessment Governing Board (NAGB), U.S. Department of Education.

[FR Doc. 2019–03386 Filed 2–26–19; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

[OE Docket No. EA–466]

Application To Export Electric Energy; Dynasty Power, Inc.

AGENCY: Office of Electricity, Department of Energy (DOE).

ACTION: Notice of application.

SUMMARY: Dynasty Power, Inc. (Applicant or Dynasty Power) has applied for authorization to transmit electric energy from the United States to Mexico pursuant to the Federal Power Act.

DATES: Comments, protests, or motions to intervene must be submitted on or before March 29, 2019.

ADDRESSES: Comments, protests, motions to intervene, or requests for more information should be addressed to: Office of Electricity, Mail Code: OE–20, U.S. Department of Energy, 1000 Independence Avenue SW, Washington, DC 20585–0350. Because of delays in handling conventional mail, it is recommended that documents be transmitted by overnight mail, by electronic mail to *Electricity.Exports@hq.doe.gov,* or by facsimile to 202–586–8008.

SUPPLEMENTARY INFORMATION: The Department of Energy (DOE) regulates exports of electricity from the United States to a foreign country, pursuant to sections 301(b) and 402(f) of the Department of Energy Organization Act (42 U.S.C. 7151(b) and 7172(f)). Such exports require authorization under section 202(e) of the Federal Power Act (16 U.S.C. 824a(e)).

On February 15, 2019, DOE received an application from Dynasty Power for authorization to transmit electric energy from the United States to Mexico as a power marketer for a five-year term using existing international transmission facilities.

In its application, the Applicant states that it ''does not own or control any electric power generation or transmission facilities and does not have a franchised electric power service area.'' The electric energy that the Applicant proposes to export to Mexico would be surplus energy purchased from third parties such as electric utilities and Federal power marketing agencies pursuant to voluntary agreements. The existing international transmission facilities to be utilized by the Applicant have previously been authorized by Presidential permits issued pursuant to Executive Order 10485, as amended, and are appropriate for open access transmission by third parties.

Procedural Matters: Any person desiring to be heard in this proceeding should file a comment or protest to the application at the address provided above. Protests should be filed in accordance with Rule 211 of the Federal Energy Regulatory Commission's (FERC) Rules of Practice and Procedure (18 CFR 385.211). Any person desiring to become a party to this proceeding should file a motion to intervene at the above address in accordance with FERC Rule 214 (18 CFR 385.214). Five (5) copies of such comments, protests, or motions to intervene should be sent to the address provided above on or before the date listed above.

Comments and other filings concerning Dynasty Power's application to export electric energy to Mexico should be clearly marked with OE Docket No. EA–466. An additional copy is to be provided directly to both Todd McRae, Dynasty Power Inc., 200, 638 6th Ave. SW, Calgary, AB T2P 0S4, Canada, and Bonnie A. Suchman, Esq., Suchman Law LLC, 8104 Paisley Place, Potomac, Maryland 20854.

A final decision will be made on this application after the environmental impacts have been evaluated pursuant to DOE's National Environmental Policy Act Implementing Procedures (10 CFR part 1021) and after DOE determines that the proposed action will not have an adverse impact on the sufficiency of supply or reliability of the U.S. electric power supply system.

Copies of this application will be made available, upon request, for public inspection and copying at the address provided above, by accessing the program website at *http://energy.gov/node/11845,* or by emailing Angela Troy at *Angela.Troy@hq.doe.gov.*

Signed in Washington, DC, on February 19, 2019.

Christopher Lawrence,

Management and Program Analyst, Transmission Permitting and Technical Assistance, Office of Electricity.

[FR Doc. 2019–03361 Filed 2–26–19; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

[OE Docket No. EA–385–A]

Application To Export Electric Energy; Dynasty Power, Inc.

AGENCY: Office of Electricity, Department of Energy (DOE).

ACTION: Notice of application.

SUMMARY: Dynasty Power, Inc. (Applicant or Dynasty Power) has applied to renew its authorization to transmit electric energy from the United

States to Canada pursuant to the Federal Power Act.

DATES: Comments, protests, or motions to intervene must be submitted on or before March 29, 2019.

ADDRESSES: Comments, protests, motions to intervene, or requests for more information should be addressed to: Office of Electricity, Mail Code: OE–20, U.S. Department of Energy, 1000 Independence Avenue SW, Washington, DC 20585–0350. Because of delays in handling conventional mail, it is recommended that documents be transmitted by overnight mail, by electronic mail to *Electricity.Exports@hq.doe.gov,* or by facsimile to 202–586–8008.

SUPPLEMENTARY INFORMATION: The Department of Energy (DOE) regulates exports of electricity from the United States to a foreign country, pursuant to sections 301(b) and 402(f) of the Department of Energy Organization Act (42 U.S.C. 7151(b) and 7172(f)). Such exports require authorization under section 202(e) of the Federal Power Act (16 U.S.C. 824a(e)).

On December 7, 2012, DOE issued Order No. EA–385, which authorized the Applicant to transmit electric energy from the United States to Canada as a power marketer for a five-year term using existing international transmission facilities. That authorization expired on September 26, 2017. On February 15, 2019, Dynasty Power filed an application with DOE for renewal of the export authorization contained in Order No. EA–385 for an additional five-year term.

In its application, the Applicant states that it ''does not own or control any electric power generation or transmission facilities and does not have a franchised electric power service area.'' The electric energy that the Applicant proposes to export to Canada would be surplus energy purchased from third parties such as electric utilities and Federal power marketing agencies pursuant to voluntary agreements. The existing international transmission facilities to be utilized by the Applicant have previously been authorized by Presidential permits issued pursuant to Executive Order 10485, as amended, and are appropriate for open access transmission by third parties.

Procedural Matters: Any person desiring to be heard in this proceeding should file a comment or protest to the application at the address provided above. Protests should be filed in accordance with Rule 211 of the Federal Energy Regulatory Commission's (FERC) Rules of Practice and Procedure (18 CFR 385.211). Any person desiring to become a party to this proceeding should file a motion to intervene at the above address in accordance with FERC Rule 214 (18 CFR 385.214). Five (5) copies of such comments, protests, or motions to intervene should be sent to the address provided above on or before the date listed above.

Comments and other filings concerning Dynasty Power's application to export electric energy to Canada should be clearly marked with OE Docket No. EA–385–A. An additional copy is to be provided directly to both Todd McRae, Dynasty Power Inc., 200, 638 6th Ave. SW, Calgary, AB T2P 0S4, Canada, and Bonnie A. Suchman, Esq., Suchman Law LLC, 8104 Paisley Place, Potomac, Maryland 20854.

A final decision will be made on this application after the environmental impacts have been evaluated pursuant to DOE's National Environmental Policy Act Implementing Procedures (10 CFR part 1021) and after DOE determines that the proposed action will not have an adverse impact on the sufficiency of supply or reliability of the U.S. electric power supply system.

Copies of this application will be made available, upon request, for public inspection and copying at the address provided above, by accessing the program website at *http://energy.gov/node/11845,* or by emailing Angela Troy at *Angela.Troy@hq.doe.gov.*

Signed in Washington, DC, on February 19, 2019.

Christopher Lawrence,

Management and Program Analyst, Transmission Permitting and Technical Assistance, Office of Electricity.

[FR Doc. 2019–03362 Filed 2–26–19; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

[OE Docket No. EA–348–C]

Application To Export Electric Energy; NextEra Energy Marketing, LLC

AGENCY: Office of Electricity, Department of Energy (DOE).

ACTION: Notice of application.

SUMMARY: NextEra Energy Marketing, LLC, formerly known as FPL Energy Power Marketing, Inc. and NextEra Energy Power Marketing, LLC (Applicant or NEM) has applied to renew its authorization to transmit electric energy from the United States to Canada pursuant to the Federal Power Act.

DATES: Comments, protests, or motions to intervene must be submitted on or before March 29, 2019.

ADDRESSES: Comments, protests, motions to intervene, or requests for more information should be addressed to: Office of Electricity, Mail Code: OE–20, U.S. Department of Energy, 1000 Independence Avenue SW, Washington, DC 20585–0350. Because of delays in handling conventional mail, it is recommended that documents be transmitted by overnight mail, by electronic mail to *Electricity.Exports@hq.doe.gov,* or by facsimile to 202–586–8008.

SUPPLEMENTARY INFORMATION: The Department of Energy (DOE) regulates exports of electricity from the United States to a foreign country, pursuant to sections 301(b) and 402(f) of the Department of Energy Organization Act (42 U.S.C. 7151(b) and 7172(f)). Such exports require authorization under section 202(e) of the Federal Power Act (16 U.S.C. 824a(e)).

On February 11, 2014, DOE issued Order No. EA–348–B, which authorized the entity then known as NextEra Energy Power Marketing, LLC and now known as NextEra Energy Marketing, LLC to transmit electric energy from the United States to Canada as a power marketer for a five-year term using existing international transmission facilities. That authorization expired on February 11, 2019. On February 8, 2019, NEM filed an application with DOE for renewal of the export authorization contained in Order No. EA–348–B for an additional five-year term.

In its application, the Applicant states that it ''does not own any transmission facilities.'' The electric energy that the Applicant proposes to export to Canada would be surplus energy purchased from third parties such as electric utilities and Federal power marketing agencies pursuant to voluntary agreements. The existing international transmission facilities to be utilized by the Applicant have previously been authorized by Presidential permits issued pursuant to Executive Order 10485, as amended, and are appropriate for open access transmission by third parties.

Procedural Matters: Any person desiring to be heard in this proceeding should file a comment or protest to the application at the address provided above. Protests should be filed in accordance with Rule 211 of the Federal Energy Regulatory Commission's (FERC) Rules of Practice and Procedure (18 CFR 385.211). Any person desiring to become a party to this proceeding should file a motion to intervene at the

above address in accordance with FERC Rule 214 (18 CFR 385.214). Five (5) copies of such comments, protests, or motions to intervene should be sent to the address provided above on or before the date listed above.

Comments and other filings concerning NEM's application to export electric energy to Canada should be clearly marked with OE Docket No. EA–348–C. An additional copy is to be provided directly to Gunnar Birgisson, NextEra Energy Marketing, LLC, 801 Pennsylvania Ave. NW, Suite 220, Washington, DC 20004.

A final decision will be made on this application after the environmental impacts have been evaluated pursuant to DOE's National Environmental Policy Act Implementing Procedures (10 CFR part 1021) and after DOE determines that the proposed action will not have an adverse impact on the sufficiency of supply or reliability of the U.S. electric power supply system.

Copies of this application will be made available, upon request, for public inspection and copying at the address provided above, by accessing the program website at *http://energy.gov/node/11845,* or by emailing Angela Troy at *Angela.Troy@hq.doe.gov.*

Signed in Washington, DC, on February 19, 2019.

Christopher Lawrence,

Management and Program Analyst, Transmission Permitting and Technical Assistance, Office of Electricity.

[FR Doc. 2019–03365 Filed 2–26–19; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Number: PR19–38–000.
Applicants: Interstate Power and Light Company.
Description: Tariff filing per 284.123(b),(e)/: SOC 2019 to be effective 2/14/2019.
Filed Date: 2/14/19.
Accession Number: 201902145031.
Comments/Protests Due: 5 p.m. ET 3/7/19.

Docket Number: PR19–39–000.
Applicants: Public Service Company of Colorado.
Description: Tariff filing per 284.123(b),(e)+(g): 2.15.19 SOR Update to be effective 1/1/2019.
Filed Date: 2/12/19.
Accession Number: 20190215–5109.
Comments Due: 5 p.m. ET 3/8/19.

284.123(g) Protests Due: 5 p.m. ET 4/16/19.

Docket Number: PR19–40–000.
Applicants: Cranberry Pipeline Corporation.
Description: Tariff filing per 284.123(b)(2)+(g): Application for Rate Approval to be effective 2/19/2019.
Filed Date: 2/19/19.
Accession Number: 201902195172.
Comments Due: 5 p.m. ET 3/12/19.

284.123(g) Protests Due: 5 p.m. ET 4/22/19.

Docket Numbers: RP19–658–000.
Applicants: Iroquois Gas Transmission System, L.P.
Description: § 4(d) Rate Filing: 021419 Negotiated Rates—Mercuria Energy America, Inc. R–7540–02 to be effective 3/1/2019.
Filed Date: 2/14/19.
Accession Number: 20190214–5016.
Comments Due: 5 p.m. ET 2/26/19.

Docket Numbers: RP19–659–000.
Applicants: Black Marlin Pipeline LLC.
Description: Compliance filing Petition for Temporary Exemption from Tariff Revision Filing—Order 587–Y.
Filed Date: 2/14/19.
Accession Number: 20190214–5034.
Comments Due: 5 p.m. ET 2/26/19.

Docket Numbers: RP19–660–000.
Applicants: Gas Transmission Northwest LLC.
Description: § 4(d) Rate Filing: Forward Haul Definitional Change to be effective 3/18/2019.
Filed Date: 2/14/19.
Accession Number: 20190214–5122.
Comments Due: 5 p.m. ET 2/26/19.

Docket Numbers: RP19–661–000.
Applicants: Northern Natural Gas Company.
Description: Northern Natural Gas submits report of the penalty and daily delivery variance charge (DDVC) revenues that have been credited to shippers.
Filed Date: 2/13/19.
Accession Number: 20190213–5185.
Comments Due: 5 p.m. ET 2/25/19.

Docket Numbers: RP19–662–000.
Applicants: Pine Prairie Energy Center, LLC.
Description: § 4(d) Rate Filing: Pine Prairie Energy Center, LLC—Revisions to FERC Gas Tariff to be effective 3/18/2019.
Filed Date: 2/15/19.
Accession Number: 20190215–5039.
Comments Due: 5 p.m. ET 2/27/19.

Docket Numbers: RP19–663–000.
Applicants: Rockies Express Pipeline LLC.
Description: § 4(d) Rate Filing: Neg Rate 2019–02–15 BHS (4) to be effective 2/16/2019.
Filed Date: 2/15/19.
Accession Number: 20190215–5117.
Comments Due: 5 p.m. ET 2/27/19.

Docket Numbers: RP19–664–000.
Applicants: Gulf South Pipeline Company, LP.
Description: § 4(d) Rate Filing: 2018 Fuel Tracker Filing—Petal to be effective 4/1/2019.
Filed Date: 2/15/19.
Accession Number: 20190215–5119.
Comments Due: 5 p.m. ET 2/27/19.

Docket Numbers: RP19–665–000.
Applicants: Encana Marketing (USA) Inc., Newfield Exploration Mid-Continent, Inc.
Description: Joint Petition for Temporary Waivers of Capacity Release Regulations and Policies, et al. of Encana Marketing (USA) Inc., et al. under RP19–665.
Filed Date: 2/15/19.
Accession Number: 20190215–5178.
Comments Due: 5 p.m. ET 2/25/19.

Docket Numbers: RP19–620–001.
Applicants: Texas Gas Transmission, LLC.
Description: Tariff Amendment: Amendment to Filing in Docket No. RP19–620–000 to be effective 2/1/2019.
Filed Date: 2/19/19.
Accession Number: 20190219–5124.
Comments Due: 5 p.m. ET 3/4/19.

Docket Numbers: RP19–666–000.
Applicants: National Fuel Gas Supply Corporation.
Description: § 4(d) Rate Filing: GT&C 10.6 and Housekeeping Changes to be effective 3/21/2019.
Filed Date: 2/19/19.
Accession Number: 20190219–5014.
Comments Due: 5 p.m. ET 3/4/19.

Docket Numbers: RP19–667–000.
Applicants: Algonquin Gas Transmission, LLC.
Description: § 4(d) Rate Filing: Negotiated Rate—Norwich release to Direct Energy 798673 eff 3/1/19 to be effective 3/1/2019.
Filed Date: 2/19/19.
Accession Number: 20190219–5052.
Comments Due: 5 p.m. ET 3/4/19.

Docket Numbers: RP19–668–000.
Applicants: WestGas InterState, Inc.
Description: § 4(d) Rate Filing: 20190219_CoverLetter to be effective 2/20/2019.
Filed Date: 2/19/19.
Accession Number: 20190219–5092.
Comments Due: 5 p.m. ET 3/4/19.

Docket Numbers: RP19–669–000.
Applicants: National Fuel Gas Supply Corporation.
Description: § 4(d) Rate Filing: Fuel Tracker under GT&C 41 (Supply) to be effective 4/1/2019.

Filed Date: 2/19/19.
Accession Number: 20190219–5103.
Comments Due: 5 p.m. ET 3/4/19.

Docket Numbers: RP19–670–000.
Applicants: Empire Pipeline, Inc.
Description: § 4(d) Rate Filing: Fuel Tracker under GT&C 23.6 (Empire) to be effective 4/1/2019.
Filed Date: 2/19/19.
Accession Number: 20190219–5108.
Comments Due: 5 p.m. ET 3/4/19.

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 date(s). Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: February 21, 2019.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2019–03398 Filed 2–26–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER19–1069–000]

Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization; Northland Power Energy Marketing (US) Inc.

This is a supplemental notice in the above-referenced proceeding of Northland Power Energy Marketing (US) Inc.'s application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is March 13, 2019.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 5 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for electronic review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the website that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: February 21, 2019.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2019–03400 Filed 2–26–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2350–025]

Georgia Power Company; Notice of Comment Period Extension

On January 24, 2019, the Commission issued a notice through the FERC eLibrary system [1] setting February 25, 2019, as the end of the formal period to file comments, motions to intervene, or protests on the application for surrender of license for Georgia Power Company's Riverview Hydroelectric Project No. 2350, located on the Chattahoochee River in Chambers County, Alabama and Harris County, Georgia. Due to the funding lapse at certain federal agencies between December 22, 2018 and January 25, 2019, the Commission is extending the comment period until March 4, 2019.

Dated: February 14, 2019.

Kimberly D. Bose,

Secretary.

[FR Doc. 2019–03330 Filed 2–26–19; 8:45 am]

BILLING CODE 6717–01–P

[1] Go to *https://elibrary.ferc.gov/idmws/search/intermediate.asp?link_file=yes&doclist=14738701* and select the file link to view the document.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL19–41–000]

Cheyenne Light, Fuel and Power Company; Notice of Institution of Section 206 Proceeding and Refund Effective Date

On February 21, 2019, the Commission issued an order in Docket No. EL19–41–000, pursuant to section 206 of the Federal Power Act (FPA), 16 U.S.C. 824e (2012), instituting an investigation into whether the annual transmission revenue requirement reduction proposed by Cheyenne Light, Fuel and Power Company may be unjust and unreasonable. *Cheyenne Light, Fuel and Power Co.,* 166 FERC 61,121 (2019).

The refund effective date in Docket No. EL19–41–000, established pursuant to section 206(b) of the FPA, will be the date of publication of this notice in the **Federal Register**.

Any interested person desiring to be heard in Docket No. EL19–41–000 must file a notice of intervention or motion to intervene, as appropriate, with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rule 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.214 (2018), within 21 days of the date of issuance of the order.

Dated: February 21, 2019.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2019–03403 Filed 2–26–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2101–159]

Sacramento Municipal Utility District's Proposed Whitewater Recreation Management Plan for the Upper American River Hydroelectric Project No. 2101; Comment Period Extension

On January 22, 2019, the Commission issued a notice through the FERC eLibrary system [1] setting February 21, 2019, as the end of the formal period to file comments, motions to intervene, and protests on P–2101–159: Sacramento Municipal Utility District's proposed whitewater recreation management plan for the Upper American River Hydroelectric Project No. 2101, located on the Rubicon River, Silver Creek, and South Fork American River in El Dorado and Sacramento counties, California. Due to the funding lapse at certain federal agencies between December 22, 2018, and January 25, 2019, the Commission is extending the comment period until February 28, 2019.

Dated: February 15, 2019.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2019–03147 Filed 2–26–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2341–033]

Georgia Power Company; Notice of Comment Period Extension

On January 24, 2019, the Commission issued a notice through the FERC eLibrary system [1] setting February 25, 2019, as the end of the formal period to file comments, motions to intervene, or protests on the application for surrender of license for Georgia Power Company's Langdale Hydroelectric Project No. 2341, located on the Chattahoochee River in the City of Valley, Chambers County, Alabama and Harris County, Georgia. Due to the funding lapse at certain federal agencies between December 22, 2018 and January 25, 2019, the Commission is extending the comment period until March 4, 2019.

Dated: February 14, 2019.

Kimberly D. Bose,

Secretary.

[FR Doc. 2019–03328 Filed 2–26–19; 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 corporate filings:

Docket Numbers: EC16–77–001.
Applicants: BlackRock, Inc.
Description: Request for Reauthorization and Extension of Blanket Authorizations Under Section 203 of the Federal Power Act, et al. of BlackRock, Inc.
Filed Date: 2/19/19.
Accession Number: 20190219–5254.
Comments Due: 5 p.m. ET 3/12/19.

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG19–59–000.
Applicants: Broadlands Wind Farm LLC.
Description: Notice of Self-Certification of Exempt Wholesale Generator Status of Broadlands Wind Farm LLC.
Filed Date: 2/21/19.
Accession Number: 20190221–5138.
Comments Due: 5 p.m. ET 3/14/19.

Docket Numbers: EG19–60–000.
Applicants: Hidalgo Wind Farm II LLC.
Description: Notice of Self-Certification of Exempt Wholesale Generator Status of Hidalgo Wind Farm II LLC.
Filed Date: 2/21/19.
Accession Number: 20190221–5139.
Comments Due: 5 p.m. ET 3/14/19.

Docket Numbers: EG19–61–000.
Applicants: Lexington Chenoa Wind Farm LLC.
Description: Notice of Self-Certification of Exempt Wholesale Generator Status of Lexington Chenoa Wind Farm LLC.
Filed Date: 2/21/19.
Accession Number: 20190221–5140.
Comments Due: 5 p.m. ET 3/14/19.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER09–1256–005; ER12–2708–007.
Applicants: Potomac-Appalachian Transmission Highline, LLC, PATH West Virginia Transmission Company, LLC, PATH Allegheny Transmission Company, LLC.
Description: Compliance filing of Potomac-Appalachian Transmission Highline, LLC, et al.
Filed Date: 2/19/19.
Accession Number: 20190219–5245.
Comments Due: 5 p.m. ET 3/21/19.

Docket Numbers: ER17–1743–003.
Applicants: Doswell Limited Partnership.
Description: Compliance filing: Reactive Service Rate Schedule Compliance Filing to be effective 7/1/2017.
Filed Date: 2/21/19.
Accession Number: 20190221–5184.
Comments Due: 5 p.m. ET 3/14/19.

Docket Numbers: ER19–952–001.
Applicants: Alabama Power Company.
Description: Tariff Amendment: Raven Solar Amendment to Amendment Filing to be effective 1/1/2019.
Filed Date: 2/21/19.
Accession Number: 20190221–5002.
Comments Due: 5 p.m. ET 3/14/19.

Docket Numbers: ER19–987–000.
Applicants: Crystal Lake Wind Energy I, LLC.
Description: Supplement to February 5, 2019 Crystal Lake Wind Energy I, LLC tariff filing.
Filed Date: 2/15/19.
Accession Number: 20190215–5182.
Comments Due: 5 p.m. ET 3/8/19.

Docket Numbers: ER19–1080–000.
Applicants: California Independent System Operator Corporation.
Description: § 205(d) Rate Filing: 2019–02–20 EIM Implementation Agreement with NorthWestern to be effective 4/22/2019.
Filed Date: 2/21/19.
Accession Number: 20190221–5003.
Comments Due: 5 p.m. ET 3/14/19.

Docket Numbers: ER19–1081–000.
Applicants: Southern California Edison Company.
Description: § 205(d) Rate Filing: UFA Sunshine Valley Solar, SCE CAISO, SA No. 230 & Cancel Letter Agmt SA No. 191 to be effective 2/21/2019.
Filed Date: 2/21/19.
Accession Number: 20190221–5004.
Comments Due: 5 p.m. ET 3/14/19.

Docket Numbers: ER19–1082–000.
Applicants: NorthWestern Corporation.
Description: § 205(d) Rate Filing: SA 299 7th Rev—NITSA with REC Advanced Silicon Materials, LLC to be effective 4/1/2019.
Filed Date: 2/21/19.
Accession Number: 20190221–5005.
Comments Due: 5 p.m. ET 3/14/19.

[1] Go to *https://elibrary.ferc.gov/idmws/search/intermediate.asp?link_file=yes&doclist=14737973* and select the file link to view the document.

[1] Go to *https://elibrary.ferc.gov/idmws/search/intermediate.asp?link_file=yes&doclist=14738696* and select the file link to view the document.

Docket Numbers: ER19–1083–000.
Applicants: CPV Shore, LLC.
Description: Request for Waiver of CPV Shore, LLC.
Filed Date: 2/21/19.
Accession Number: 20190221–5119.
Comments Due: 5 p.m. ET 3/14/19.

Docket Numbers: ER19–1084–000.
Applicants: Midcontinent Independent System Operator, Inc.
Description: § 205(d) Rate Filing: 2019–02–21_SA 3248 OTP NSP Brooking Substation Relay MPFCA (J493 J510) to be effective 2/7/2019.
Filed Date: 2/21/19.
Accession Number: 20190221–5146.
Comments Due: 5 p.m. ET 3/14/19.

Docket Numbers: ER19–1085–000.
Applicants: Midcontinent Independent System Operator, Inc.
Description: § 205(d) Rate Filing: 2019–02–21_SA 3227 Certificate of Concurrence Duke—AEP IMTC IA to be effective 12/12/2018.
Filed Date: 2/21/19.
Accession Number: 20190221–5149.
Comments Due: 5 p.m. ET 3/14/19.

Docket Numbers: ER19–1086–000.
Applicants: Entergy Mississippi, LLC, Entergy Louisiana, LLC.
Description: § 205(d) Rate Filing: ELL–EML-Southern Transmission Interconnection Agreement to be effective 1/1/2019.
Filed Date: 2/21/19.
Accession Number: 20190221–5169.
Comments Due: 5 p.m. ET 3/14/19.

Docket Numbers: ER19–1087–000.
Applicants: PJM Interconnection, L.L.C.
Description: Tariff Cancellation: Notice of Cancellation of ISA/SA No. 4408, Queue No. Z1–038 to be effective 1/21/2019.
Filed Date: 2/21/19.
Accession Number: 20190221–5189.
Comments Due: 5 p.m. ET 3/14/19.

Docket Numbers: ER19–1088–000.
Applicants: Midcontinent Independent System Operator, Inc.
Description: § 205(d) Rate Filing: 2019–02–21_SA 3249 Poweshiek Reasnor 161 kV MPFCA (J498 J499 J500) to be effective 2/8/2019.
Filed Date: 2/21/19.
Accession Number: 20190221–5194.
Comments Due: 5 p.m. ET 3/14/19.

Docket Numbers: ER19–1089–000.
Applicants: Midcontinent Independent System Operator, Inc.
Description: § 205(d) Rate Filing: 2019–02–21_SA 3250 NSP-Deuel Harvest Wind Energy FCA (J526) to be effective 2/8/2019.
Filed Date: 2/21/19.
Accession Number: 20190221–5222.
Comments Due: 5 p.m. ET 3/14/19.

Docket Numbers: ER19–1090–000.
Applicants: Midcontinent Independent System Operator, Inc.
Description: § 205(d) Rate Filing: 2019–02–21_SA 3251 NSP-Louise Solar Project FCA (J523) to be effective 2/8/2019.
Filed Date: 2/21/19.
Accession Number: 20190221–5230.
Comments Due: 5 p.m. ET 3/14/19.

Docket Numbers: ER19–1091–000.
Applicants: NextEra Energy Transmission MidAtlantic, LLC.
Description: § 205(d) Rate Filing: Notice of Succession to be effective 1/22/2019.
Filed Date: 2/21/19.
Accession Number: 20190221–5238.
Comments Due: 5 p.m. ET 3/14/19.

Docket Numbers: ER19–1092–000.
Applicants: Antelope DSR 3, LLC.
Description: Baseline eTariff Filing: Master Interconnection Services Agreement to be effective 2/22/2019.
Filed Date: 2/21/19.
Accession Number: 20190221–5244.
Comments Due: 5 p.m. ET 3/14/19.

Docket Numbers: ER19–1093–000.
Applicants: San Pablo Raceway, LLC.
Description: Baseline eTariff Filing: Master Interconnection Services Agreement to be effective 2/22/2019.
Filed Date: 2/21/19.
Accession Number: 20190221–5250.
Comments Due: 5 p.m. ET 3/14/19.

Docket Numbers: ER19–1094–000.
Applicants: Alabama Power Company.
Description: § 205(d) Rate Filing: Entergy Interconnection Agreement Filing to be effective 1/1/2019.
Filed Date: 2/21/19.
Accession Number: 20190221–5253.
Comments Due: 5 p.m. ET 3/14/19.

Docket Numbers: ER19–1095–000.
Applicants: Georgia Power Company.
Description: § 205(d) Rate Filing: Entergy Interconnection Agreement Filing to be effective 1/1/2019.
Filed Date: 2/21/19.
Accession Number: 20190221–5255.
Comments Due: 5 p.m. ET 3/14/19.

Docket Numbers: ER19–1096–000.
Applicants: Mississippi Power Company.
Description: § 205(d) Rate Filing: Entergy Interconnection Agreement Filing to be effective 1/1/2019.
Filed Date: 2/21/19.
Accession Number: 20190221–5256.
Comments Due: 5 p.m. ET 3/14/19.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: February 21, 2019.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2019–03401 Filed 2–26–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM98–1–000]

Records Governing Off-the-Record Communications; Public Notice

This constitutes notice, in accordance with 18 CFR 385.2201(b), of the receipt of prohibited and exempt off-the-record communications.

Order No. 607 (64 FR 51222, September 22, 1999) requires Commission decisional employees, who make or receive a prohibited or exempt off-the-record communication relevant to the merits of a contested proceeding, to deliver to the Secretary of the Commission, a copy of the communication, if written, or a summary of the substance of any oral communication.

Prohibited communications are included in a public, non-decisional file associated with, but not a part of, the decisional record of the proceeding. Unless the Commission determines that the prohibited communication and any responses thereto should become a part of the decisional record, the prohibited off-the-record communication will not be considered by the Commission in reaching its decision. Parties to a proceeding may seek the opportunity to respond to any facts or contentions made in a prohibited off-the-record communication, and may request that the Commission place the prohibited communication and responses thereto in the decisional record. The Commission will grant such a request only when it determines that fairness so requires. Any person identified below as

having made a prohibited off-the-record communication shall serve the document on all parties listed on the official service list for the applicable proceeding in accordance with Rule 2010, 18 CFR 385.2010.

Exempt off-the-record communications are included in the decisional record of the proceeding, unless the communication was with a cooperating agency as described by 40 CFR 1501.6, made under 18 CFR 385.2201(e) (1) (v).

The following is a list of off-the-record communications recently received by the Secretary of the Commission. The communications listed are grouped by docket numbers in ascending order. These filings are available for electronic review at the Commission in the Public Reference Room or may be viewed on the Commission's website at *http://www.ferc.gov* using the eLibrary link. Enter the docket number, excluding the last three digits, in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202)502–8659.

Docket No.	File date	Presenter or requester
Prohibited:		
1. CP18–5	2/11/19	Cabot Oil & Gas Corporation.
ER19–570		
2. EL19–9–000	2/8/19	Congress Member Frank Pallone, Jr.
Exempt:		
1. P–2413	2/7/19	Congress Member Jody Hice.

Dated: February 21, 2019.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2019–03399 Filed 2–26–19; 8:45 am]

BILLING CODE 6717–01–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 March 14, 2019.

A. Federal Reserve Bank of Minneapolis (Mark A. Rauzi, Vice President), 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. *Scott Koop, Galesville, Wisconsin, individually and acting in concert with Steve Koop, LaCrosse, Wisconsin, and Mark Kopp, Galesville, Wisconsin;* all to retain shares of Gale Bank Holding Company, Inc., and thereby indirectly retain shares of Bluff View Bank, both of Galesville, Wisconsin.

B. Federal Reserve Bank of San Francisco (Gerald C. Tsai, Director, Applications and Enforcement) 101 Market Street, San Francisco, California 94105–1579:

1. *Ivo A. Tjan, North Tustin, California;* to retain voting shares of CommerceWest Bank, Irvine, California.

Board of Governors of the Federal Reserve System, February 22, 2019.

Yao-Chin Chao,

Assistant Secretary of the Board.

[FR Doc. 2019–03364 Filed 2–26–19; 8:45 am]

BILLING CODE P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Notice of Meeting

AGENCY: Agency for Healthcare Research and Quality, HHS.

ACTION: Notice.

SUMMARY: The Agency for Healthcare Research and Quality (AHRQ) is announcing a Special Emphasis Panel (SEP) meeting on AHRQ–HS–18–002, ''Screening and Management of Unhealthy Alcohol Use in Primary Care: Dissemination and Implementation of PCOR Evidence (R18).''

DATES: April 1, 2019 (Open on April 1st from 8:30 a.m. to 8:45 a.m. and closed for the remainder of the meeting).

ADDRESSES: Bethesda North Marriott Hotel & Conference Center, 5701 Marinelli Rd., Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Anyone wishing to obtain a roster of members, agenda or minutes of the non-confidential portions of this meeting should contact: Mrs. Heather Phelps, Acting Committee Management Officer, Office of Extramural Research, Education and Priority Populations, AHRQ, 5600 Fishers Lane, Rockville, Maryland 20850, Telephone: (301)427–1128.

Agenda items for this meeting are subject to change as priorities dictate.

SUPPLEMENTARY INFORMATION: A SEP is a group of experts in fields related to health care research who are invited by AHRQ, and agree to be available, to conduct on an as needed basis, scientific reviews of applications for AHRQ support. Individual members of the SEP do not attend regularly-scheduled meetings and do not serve for fixed terms or a long period of time. Rather, they are asked to participate in particular review meetings which require their type of expertise.

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App. 2), announcement is made of an AHRQ SEP meeting on AHRQ–HS–18–002, ''Screening and Management of Unhealthy Alcohol Use in Primary Care: Dissemination and Implementation of PCOR Evidence (R18).''

Each SEP meeting will commence in open session before closing to the public for the duration of the meeting. The SEP meeting referenced above will be closed to the public in accordance with the provisions set forth in 5 U.S.C. App. 2, section 10(d), 5 U.S.C. 552b(c)(4), and 5 U.S.C. 552b(c)(6). Grant applications for AHRQ–HS–18–002, ''Screening and Management of Unhealthy Alcohol Use in Primary Care: Dissemination and

Implementation of PCOR Evidence (R18)'' are to be reviewed and discussed at this meeting. 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.

Francis D. Chesley, Jr.,

Acting Deputy Director.

[FR Doc. 2019–03382 Filed 2–26–19; 8:45 am]

BILLING CODE 4160–90–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Notice of Meeting

AGENCY: Agency for Healthcare Research and Quality, HHS.

ACTION: Notice.

SUMMARY: The Agency for Healthcare Research and Quality (AHRQ) is announcing a Special Emphasis Panel (SEP) meeting on Conference Grants (R13).

DATES: April 4, 2019 (Open on April 4th from 10:00 a.m. to 10:15 a.m. and closed for the remainder of the meeting).

ADDRESSES: Agency for Healthcare Research and Quality (AHRQ), 5600 Fishers Lane, Rockville, MD 20850.

FOR FURTHER INFORMATION CONTACT: Anyone wishing to obtain a roster of members, agenda or minutes of the non-confidential portions of this meeting should contact: Heather Phelps, Acting Committee Management Officer, Office of Extramural Research, Education and Priority Populations, AHRQ, 5600 Fishers Lane, Rockville, Maryland 20850, Telephone: (301) 427–1128.

Agenda items for this meeting are subject to change as priorities dictate.

SUPPLEMENTARY INFORMATION: An SEP is a group of experts in fields related to health care research who are invited by the Agency for Healthcare Research and Quality (AHRQ), and agree to be available, to conduct on an as needed basis, scientific reviews of applications for AHRQ support. Individual members of the Panel do not attend regularly-scheduled meetings and do not serve for fixed terms or a long period of time. Rather, they are asked to participate in particular review meetings which require their type of expertise.

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App. 2), announcement is made of an AHRQ SEP meeting on Conference Grants (R13).

Each SEP meeting will commence in open session before closing to the public for the duration of the meeting. The SEP meeting referenced above will be closed to the public in accordance with the provisions set forth in 5 U.S.C. App. 2, section 10(d), 5 U.S.C. 552b(c)(4), and 5 U.S.C. 552b(c)(6). Grant applications for Conference Grants (R13) are to be reviewed and discussed at this meeting. 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.

Francis D. Chesley, Jr.,

Acting Deputy Director.

[FR Doc. 2019–03383 Filed 2–26–19; 8:45 am]

BILLING CODE 4160–90–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2019–D–0298]

Quality Considerations for Continuous Manufacturing; Draft Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of a draft guidance for industry entitled ''Quality Considerations for Continuous Manufacturing.'' This draft guidance provides information regarding FDA's current thinking on the quality considerations for continuous manufacturing of small molecule, solid oral drug products that are regulated by the Center for Drug Evaluation and Research (CDER). The draft guidance describes several key quality considerations and provides recommendations for how applicants should address these considerations in new drug applications (NDAs), abbreviated new drug applications (ANDAs), and supplemental NDAs and ANDAs, for small molecule, solid oral drug products that are produced via a continuous manufacturing process. FDA supports the development and implementation of continuous manufacturing for drug substances and all finished dosage forms where appropriate, including those submitted in NDAs, ANDAs, drug master files, biologics license applications (BLAs), and nonapplication over the counter products. Scientific principles described in this draft guidance may also be applicable to continuous manufacturing technologies used for these drugs. However, this draft guidance is not intended to provide recommendations specific to continuous manufacturing technologies used for biological products under a BLA.

DATES: Submit either electronic or written comments on the draft guidance by May 28, 2019 to ensure that the Agency considers your comment on this draft guidance before it begins work on the final version of the guidance.

ADDRESSES: You may submit comments on any guidance at any time as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and

identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2019–D–0298 for ''Quality Considerations for Continuous Manufacturing.'' 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 any guidance at any time (see 21 CFR 10.115(g)(5)).

Submit written requests for single copies of the draft guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10001 New Hampshire Ave., Hillandale Building, 4th Floor, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

FOR FURTHER INFORMATION CONTACT: Sau L. Lee, Center for Drug Evaluation and Research, Food and Drug Administration (HFD–600), 10903 New Hampshire Ave., Bldg. 22, Rm. 2130, Silver Spring, MD 20993–0002, 301–796–2905.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance for industry entitled ''Quality Considerations for Continuous Manufacturing.'' The draft guidance was prepared by CDER's Office of Pharmaceutical Quality, which is committed to supporting and enabling pharmaceutical innovation and modernization as part of the Agency's mission to protect and promote public health. While the implementation of emerging technology, such as continuous manufacturing, is critical to modernizing pharmaceutical manufacturing and improving quality, FDA also recognizes that innovative approaches to manufacturing may represent challenges to industry and regulators. By the very nature of an approach being innovative, a limited knowledge and experiential base about the technology may exist. Pharmaceutical companies may have concerns that using continuous manufacturing could result in delays while FDA reviewers and investigators familiarize themselves with the new technologies and determine how they fit within existing regulatory approaches.

This draft guidance provides information regarding FDA's current thinking on the quality considerations for continuous manufacturing of small molecule, solid oral drug products that are regulated by CDER. The draft guidance describes several key quality considerations and provides recommendations for how applicants should address these considerations in NDAs, ANDAs, and supplemental NDAs and ANDAs, for small molecule, solid oral drug products that are produced via a continuous manufacturing process.

The draft guidance takes into account the comments that were submitted to Docket No. FDA–2017–N–2697 (''Submission of Proposed Recommendations for Industry on Developing Continuous Manufacturing of Solid Dosage Drug Products in Pharmaceutical Manufacturing; Establishment of Public Docket''). FDA invites general comments on the quality considerations described in the draft guidance, including comments on control strategy, facility, and process validation considerations for continuous manufacturing of small molecule, solid oral drug products.

In addition to this draft guidance, pharmaceutical manufacturers with product-specific continuous manufacturing questions may submit a proposal to the Emerging Technology program. Refer to FDA guidance for industry, ''Advancement of Emerging Technology Applications for Pharmaceutical Innovation and Modernization'' (September 2017) at *https://www.fda.gov/ucm/groups/fdagov-public/@fdagov-drugs-gen/documents/document/ucm478821.pdf.*

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the current thinking of FDA on ''Quality Considerations for Continuous Manufacturing.'' 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.

II. Additional Issues for Consideration

In addition to comments on the draft guidance generally, FDA is requesting comments and related supporting information on the following topics: (1) Data storage and handling from process analytical technology systems, (2) potential approaches for situations where direct attribute measurement is not possible (*e.g.,* low-dose compounds), (3) contract manufacturers employing continuous manufacturing, (4) risk-based reporting of routine model maintenance and updates, and (5) statistical approaches using large samples (*e.g.,* Large N). FDA is seeking public comment on topics for potential inclusion in the final guidance or additional guidance and any other alternative approaches.

III. Paperwork Reduction Act of 1995

This draft guidance contains information collection provisions that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520). The collections of information in 21 CFR parts 210–211 have been approved under OMB control number 0910–0139. The submission of INDs under 21 CFR 312.23 is approved by OMB control

number 0910–0014. The submission of BLAs under 21 CFR 601.2 and 601.12 is approved by OMB control number 0910–0338. The submission of NDAs and ANDAs under 21 CFR 314.50, 314.70, 314.71, 314.94, and 314.97 is approved by OMB control number 0910–0001. The information to be included in a meeting request for a product submitted in an IND, BLA, or NDA is approved by OMB control number 0910–0429 (''Guidance for Industry on Formal Meetings Between the FDA and Sponsors or Applicants'' (December 2017)). Information to be included in a meeting request for a product submitted in an ANDA is approved by OMB control number 0910–0797 (''Guidance on Controlled Correspondence Related to Generic Drug Development'' (December 2015)).

IV. Electronic Access

Persons with access to the internet may obtain the draft guidance at either *https://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/default.htm* or *https://www.regulations.gov.*

Dated: February 22, 2019.

Lowell J. Schiller,

Acting Associate Commissioner for Policy.

[FR Doc. 2019–03413 Filed 2–26–19; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Initial Review Group; Neuroscience of Aging Review Committee, NIA–N.

Date: June 4–5, 2019.

Time: 11:00 a.m. to 11:00 a.m.

Agenda: To review and evaluate grant applications.

Place: Hotel Kabuki, 1625 Post Street, San Francisco, CA 94155.

Contact Person: Greg Bissonette, Ph.D., Scientific Review Officer, Scientific Review Branch, National Institute on Aging, 7201 Wisconsin Avenue, Gateway Building, Suite 2W200, Bethesda, MD 20892, 301–402–1622, *bissonettegb@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: February 21, 2019.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–03346 Filed 2–26–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging: Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Initial Review Group; Behavior and Social Science of Aging Review Committee, NIA–S.

Date: June 5–6, 2019.

Time: 11:00 a.m. to 11:00 a.m.

Agenda: To review and evaluate grant applications.

Place: Hotel Kabuki, 1625 Post Street, San Francisco, CA 94155.

Contact Person: Carmen Moten, Ph.D., MPH, Scientific Review Officer, National Cancer Institute, 6116 Executive Blvd., Suite 602, MSC 8341, Rockville, MD 20852–8341, 301–496–8589, *cmoten@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: February 21, 2019.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–03351 Filed 2–26–19; 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 Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Program Projects: HIV Eradication and Substance Abuse.

Date: March 14, 2019.

Time: 2:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Shiv A. Prasad, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5220, MSC 7852, Bethesda, MD 20892, 301–443–5779, *prasads@csr.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: Center for Scientific Review Special Emphasis Panel; PAR 17–158: Secondary Data Analyses For NIMH Research Domain Criteria (R03).

Date: March 21, 2019.

Time: 2:00 p.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Julius Cinque, MS, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5186, MSC 7846, Bethesda, MD 20892, (301) 435–1252, *cinquej@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 21, 2019.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–03348 Filed 2–26–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Initial Review Group; Clinical Aging Review Committee, NIA–C.

Date: June 5–6, 2019.

Time: 11:00 a.m. to 11:00 a.m.

Agenda: To review and evaluate grant applications.

Place: Hotel Kabuki, 1625 Post Street, San Francisco, CA 94155.

Contact Person: Alicja L. Markowska, Ph.D., DSC, National Institute on Aging, National Institutes of Health, Gateway Building 2C212, 7201 Wisconsin Avenue, Bethesda, MD 20892, 301–496–9666, *markowsa@nia.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: February 21, 2019.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–03349 Filed 2–26–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging: Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Initial Review Group; Biological Aging Review Committee, NIA–B.

Date: June 4–5, 2019.

Time: 11:00 a.m. to 11:00 a.m.

Agenda: To review and evaluate grant applications.

Place: Hotel Kabuki, 1625 Post Street, San Francisco, CA 94155.

Contact Person: Bita Nakhai, Ph.D., Scientific Review Branch, National Institute on Aging, Gateway Bldg., 2C212, 7201 Wisconsin Avenue, Bethesda, MD 20814, 301–402–7701, *nakhaib@nia.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: February 21, 2019.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–03350 Filed 2–26–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Submission for OMB Review; 30-Day Comment Request Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery (NIAID)

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the National Institutes of Health (NIH) has submitted to the Office of Management and Budget (OMB) a request for review and approval of the information collection listed below.

DATES: Comments regarding this information collection are best assured of having their full effect if received within 30-days of the date of this publication.

ADDRESSES: Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the: Office of Management and Budget, Office of Regulatory Affairs, *OIRA_submission@omb.eop.gov* or by fax to 202–395–6974, Attention: Desk Officer for NIH.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact: Ms. Dione Washington, Health Science Policy Analyst, Office of Strategic Planning, Initiative Development and Analysis, 5601 Fishers Lane, Rockville, Maryland 20892 or call non-toll-free number (240) 669–2100 or Email your request, including your address to: *washingtondi@niaid.nih.gov.*

SUPPLEMENTARY INFORMATION: This proposed information collection was previously published in the **Federal Register** on December 14, 2018, page 64347 (83 FR 64347) and allowed 60 days for public comment. No public comments were received. The purpose of this notice is to allow an additional 30 days for public comment.

The National Institute of Allergy and Infectious Diseases (NIAID), National Institutes of Health, may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

In compliance with Section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the National Institutes of Health (NIH) has submitted to the Office of Management and Budget (OMB) a request for review and approval of the information collection listed below.

Proposed Collection: Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery (NIAID), 0925–0668, Expiration Date 2/28/2019, EXTENSION, National Institute of Allergy and Infectious Diseases (NIAID).

Need and Use of Information Collection: There are no changes being requested for this submission. The proposed information collection activity provides a means to garner qualitative customer and stakeholder feedback in an efficient, timely manner, in accordance with the Administration's commitment to improving service delivery. By qualitative feedback we mean information that provides useful insights on perceptions and opinions but are not statistical surveys that yield quantitative results that can be generalized to the population of study. This feedback will provide information about the NIAID's customer or

stakeholder perceptions, experiences and expectations, provide an early warning of issues with service, or focus attention on areas where communication, training or changes in operations might improve delivery of products or services. These collections will allow for ongoing, collaborative and actionable communications between the NIAID and its customers and stakeholders. It will also allow feedback to contribute directly to the improvement of program management.

OMB approval is requested for 3 years. There are no costs to respondents other than their time. The total estimated annualized burden hours are 2,511.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of collection	Number of respondents	Annual frequency per response	Hours per response	Total hours
Customer satisfaction surveys	4,000	1	30/60	2,000
In-Depth Interviews (IDIs) or Small Discussion Groups	50	1	90/60	75
Individual Brief Interviews	50	1	15/60	13
Focus Groups	30	1	2	60
Pilot testing surveys	25	1	30/60	13
Conferences and Training Pre- and Post-surveys	500	1	30/60	250
Website or Software Usability Tests	50	1	2	100
Total	4,725	4,725		2,511

Dated: February 14, 2019.

Brandie K. Taylor Bumgardner,

Project Clearance Liaison, National Institute of Allergy and Infectious Diseases, National Institutes of Health.

[FR Doc. 2019–03357 Filed 2–26–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2019–0041]

National Offshore Safety Advisory Committee

AGENCY: U.S. Coast Guard, Department of Homeland Security.

ACTION: Notice of Federal advisory committee meeting.

SUMMARY: The National Offshore Safety Advisory will meet in New Orleans, Louisiana to discuss Committee matters relating to the safety of operations and other matters affecting the offshore oil and gas industry. All meetings will be open to the public.

DATES:

Meetings: The National Offshore Safety Advisory Committee and its Subcommittee will meet on Tuesday, March 19, 2019 and on Wednesday March 20, 2019. The Use of Offshore Supply Vessels and Other Non-Purpose Built Vessels for Restoration/Recovery Activities Subcommittee will meet on Tuesday, March 19, 2019 from 1 p.m. to 4 p.m. The full Committee will meet on Wednesday, March 20, 2019 from 8 a.m. to 6 p.m. (All times are Central Time). Please note that these meetings may close early if the Committee has completed its business.

Comments and supporting documentation: To ensure your comments are received by Committee members before the meetings, submit your written comments no later than March 11, 2019.

ADDRESSES: All meetings will be held at Omni Riverfront Hotel, 701 Convention Center Boulevard, New Orleans, Louisiana 70130, (504) 524–8200, *https://www.omnihotels.com/hotels/new-orleans-riverfront.*

For information on facilities or services for individuals with disabilities or to request special assistance at the meetings, contact the individuals listed in the **FOR FURTHER INFORMATION CONTACT** section as soon as possible.

Instructions: You are free to submit comments at any time, including orally at the meetings, but if you want Committee members to review your comment before the meetings, please submit your comments no later than March 11, 2019. We are particularly interested in the comments in the ''Agenda'' section below. You must include ''Department of Homeland Security'' and docket number USCG–2019–0041. Written comments may also be submitted using the Federal eRulemaking Portal at *http://www.regulations.gov.* If you encounter technical difficulties with comments submission, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section below. Comments received will be posted without alteration at *http://www.regulations.gov,* including any personal information provided. You may review the Privacy Act and Security Notice for the Federal Docket Management System at *https://www.regulations.gov/privacyNotice.*

Docket Search: For access to the docket to read documents or comments related to this notice, go to *http://www.regulations.gov,* and use ''USCG–2019–0041'' in the ''Search'' box, press Enter, and then click on the item you wish to view.

FOR FURTHER INFORMATION CONTACT: Commander Jose Perez, Designated Federal Officer of the National Offshore Safety Advisory Committee, Commandant (CG–OES–2), U.S. Coast Guard, 2703 Martin Luther King Jr. Avenue SE, Stop 7509, Washington, DC 20593–7509; telephone (202) 372–1410, fax (202) 372–8382 or email *Jose.A.Perez3@uscg.mil,* or Mr. Patrick Clark, telephone (202) 372–1358, fax (202) 372–8382 or email *patrick.w.clark@uscg.mil.*

SUPPLEMENTARY INFORMATION: Notice of this meeting is in compliance with the Federal Advisory Committee Act, (Title 5 U.S.C. Appendix). The National Offshore Safety Advisory Committee provides advice and recommendations to the Department of Homeland Security on matters relating to activities directly involved with or in support of the exploration of offshore mineral and energy resources insofar as they relate to matters within Coast Guard jurisdiction.

Agenda

Day 1

The National Offshore Safety Advisory Committee's The Use of Offshore Supply Vessels and Other Non-Purpose Built Vessels for Restoration/Recovery Activities Subcommittee will meet on March 19, 2019 from 1:00 p.m. to 4:00 p.m. (Central Time) to review,

discuss and formulate recommendations to be presented to the full Committee during the March 20, 2019 public meeting.

Day 2

The National Offshore Safety Advisory Committee will hold a public meeting on March 20, 2019 from 8 a.m. to 6 p.m. (Central Time) to review and discuss the progress of, and any reports and recommendations received from, the above listed Subcommittee from their deliberations. The Committee will then use this information and consider public comments in discussing and formulating recommendations to the United States Coast Guard. Public comments or questions will be taken at the discretion of the Designated Federal Officer during the discussion and recommendation portions of the meeting and during the public comment period, see Agenda item (5). A complete agenda for the March 20, 2019 full Committee meeting is as follows:

(1) Welcoming remarks.

(2) General administration and acceptance of minutes from the September 11, 2018 National Offshore Safety Advisory Committee public meeting.

(3) Presentation on best practices for personnel transfers offshore.

(4) Current business—Presentation and discussion of progress from The Use of Offshore Supply Vessels and Other Non-Purpose Built Vessels for Restoration/Recovery Activities Subcommittee.

(5) New Business—

(a) Status of National Offshore Safety Advisory Committee recommendations to the U.S. Coast Guard.

(b) Presentation and discussion by the Federal Emergency Management Agency on responding to a presidentially declared disaster.

(c) Introduction of a new task statement: Formation of a standing Regulatory Review Subcommittee

(d) Presentation on lifeboat safety.

(e) Bureau of Safety and Environmental Enforcement Update.

(f) Maritime Administration Update.

(g) International Association of Drilling Contractors Presentation.

(5) Public comment period.

A copy of all meeting documentation will be available at *https://homeport.uscg.mil/missions/ports-and-waterways/safety-advisory-committees/nosac/meetings* no later than March 11, 2019. Alternatively, you may contact Commander Jose Perez or Mr. Patrick Clark as noted in the **FOR FURTHER INFORMATION CONTACT** section above.

Public comments or questions will be taken throughout the meeting as the committee discusses the issues and prior to deliberations and voting. There will also be a public comment period at the end of the meeting. Speakers are requested to limit their comments to 3 minutes. Please note that the public comment period may end before the period allotted, following the last call for comments. Contact the individuals listed in the **FOR FURTHER INFORMATION CONTACT** section above to register as a speaker.

Dated: February 19, 2019.

Jeffery G. Lantz,

Director of Commercial Regulations and Standards.

[FR Doc. 2019–03352 Filed 2–26–19; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2019–0002; Internal Agency Docket No. FEMA–B–1906]

Proposed Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: Comments are requested on proposed flood hazard determinations, which may include additions or modifications of any Base Flood Elevation (BFE), base flood depth, Special Flood Hazard Area (SFHA) boundary or zone designation, or regulatory floodway on the Flood Insurance Rate Maps (FIRMs), and where applicable, in the supporting Flood Insurance Study (FIS) reports for the communities listed in the table below. The purpose of this notice is to seek general information and comment regarding the preliminary FIRM, and where applicable, the FIS report that the Federal Emergency Management Agency (FEMA) has provided to the affected communities. The FIRM and FIS report are the basis of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP). In addition, the FIRM and FIS report, once effective, will be used by insurance agents and others to calculate appropriate flood insurance premium rates for new buildings and the contents of those buildings.

DATES: Comments are to be submitted on or before May 28, 2019.

ADDRESSES: The Preliminary FIRM, and where applicable, the FIS report for each community are available for inspection at both the online location *https://www.fema.gov/preliminaryfloodhazarddata* and the respective Community Map Repository address listed in the tables below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *https://msc.fema.gov* for comparison.

You may submit comments, identified by Docket No. FEMA–B–1906, to Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov.*

FOR FURTHER INFORMATION CONTACT: Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov;* or visit the FEMA Map Information eXchange (FMIX) online at *https://www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: FEMA proposes to make flood hazard determinations for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed flood hazard determinations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. These flood hazard determinations are used to meet the floodplain management requirements of the NFIP and are used to calculate the appropriate flood insurance premium rates for new buildings built after the FIRM and FIS report become effective.

The communities affected by the flood hazard determinations are provided in the tables below. Any request for reconsideration of the revised flood hazard information shown on the Preliminary FIRM and FIS report that satisfies the data requirements

outlined in 44 CFR 67.6(b) is considered an appeal. Comments unrelated to the flood hazard determinations also will be considered before the FIRM and FIS report become effective.

Use of a Scientific Resolution Panel (SRP) is available to communities in support of the appeal resolution process. SRPs are independent panels of experts in hydrology, hydraulics, and other pertinent sciences established to review conflicting scientific and technical data and provide recommendations for resolution. Use of the SRP only may be exercised after FEMA and local communities have been engaged in a collaborative consultation process for at least 60 days without a mutually acceptable resolution of an appeal. Additional information regarding the SRP process can be found online at *https://www.floodsrp.org/pdfs/srp_overview.pdf.*

The watersheds and/or communities affected are listed in the tables below. The Preliminary FIRM, and where applicable, FIS report for each community are available for inspection at both the online location *https://www.fema.gov/preliminaryfloodhazard data* and the respective Community Map Repository address listed in the tables. For communities with multiple ongoing Preliminary studies, the studies can be identified by the unique project number and Preliminary FIRM date listed in the tables. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *https://msc.fema.gov* for comparison.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Michael M. Grimm,

Assistant Administrator for Risk Management, Department of Homeland Security, Federal Emergency Management Agency.

Community	Community map repository address
Floyd County, Iowa and Incorporated Areas Project: 16–07–2267S Preliminary Date: June 15, 2018	
City of Charles City	City Hall, 105 Milwaukee Mall, Charles City, IA 50616.
City of Floyd	City Hall, 617 Monroe Street, Floyd, IA 50435.
City of Marble Rock	City Hall, 105 Main Street South, Marble Rock, IA 50653.
City of Nora Springs	City Hall, 45 North Hawkeye Avenue, Nora Springs, IA 50458.
City of Rockford	City Hall, 206 West Main Avenue, Rockford, IA 50468.
City of Rudd	City Hall, 402 Chickasaw Street, Rudd, IA 50471.
Unincorporated Areas of Floyd County	Floyd County Courthouse, 101 South Main Street, Suite 206, Charles City, IA 50616.
Winnebago County, Iowa and Incorporated Areas Project: 16–07–2071S Preliminary Date: June 15, 2018	
City of Buffalo Center	City Hall, 201 2nd Avenue Southwest, Buffalo Center, IA 50424.
City of Lake Mills	City Hall, 105 West Main Street, Lake Mills, IA 50450.
City of Leland	City Hall, 316 Walnut Street, Leland, IA 50453.
City of Rake	Town Hall, 101 East Grace Street, Rake, IA 50465.
City of Scarville	City Hall, 121 Main Street, Scarville, IA 50473.
City of Thompson	City Hall, 167 2nd Avenue West, Thompson, IA 50478.
Unincorporated Areas of Winnebago County	Winnebago County Courthouse, 126 South Clark Street, Forest City, IA 50436.
Randolph County, Missouri and Incorporated Areas Project: 17–07–0185S Preliminary Date: July 13, 2018	
City of Clark	City Hall, 401 Main Street, Clark, MO 65243.
City of Huntsville	City Hall, 205 South Main Street, Huntsville, MO 65259.
City of Moberly	City Hall, 101 West Reed Street, Moberly, MO 65270.
Unincorporated Areas of Randolph County	Randolph County Courthouse, 372 Highway JJ, Suite A, Huntsville, MO 65259.
Village of Cairo	Village Hall, 202 West Martin Street, Cairo, MO 65239.
Village of Renick	Randolph County Courthouse, 372 Highway JJ, Suite A, Huntsville, MO 65259.

[FR Doc. 2019–03376 Filed 2–26–19; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2019–0002]

Final Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: Flood hazard determinations, which may include additions or modifications of Base Flood Elevations (BFEs), base flood depths, Special Flood Hazard Area (SFHA) boundaries or zone designations, or regulatory floodways on the Flood Insurance Rate Maps (FIRMs) and where applicable, in the supporting Flood Insurance Study (FIS) reports have been made final for the communities listed in the table below.

The FIRM and FIS report are the basis of the floodplain management measures that a community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the Federal Emergency Management Agency's (FEMA's) National Flood Insurance Program (NFIP). In addition, the FIRM and FIS report are used by insurance agents and others to calculate appropriate flood insurance premium rates for buildings and the contents of those buildings.

DATES: The date of May 2, 2019 has been established for the FIRM and, where applicable, the supporting FIS report

showing the new or modified flood hazard information for each community.

ADDRESSES: The FIRM, and if applicable, the FIS report containing the final flood hazard information for each community is available for inspection at the respective Community Map Repository address listed in the tables below and will be available online through the FEMA Map Service Center at *https://msc.fema.gov* by the date indicated above.

FOR FURTHER INFORMATION CONTACT: Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov;* or visit the FEMA Map Information eXchange (FMIX) online at *https://www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) makes the final determinations listed below for the new or modified flood hazard information for each community listed. Notification of these changes has been published in newspapers of local circulation and 90 days have elapsed since that publication. The Deputy Associate Administrator for Insurance and Mitigation has resolved any appeals resulting from this notification.

This final notice is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR part 67. FEMA has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR part 60.

Interested lessees and owners of real property are encouraged to review the new or revised FIRM and FIS report available at the address cited below for each community or online through the FEMA Map Service Center at *https://msc.fema.gov.*

The flood hazard determinations are made final in the watersheds and/or communities listed in the table below.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Michael M. Grimm,

Assistant Administrator for Risk Management, Department of Homeland Security, Federal Emergency Management Agency.

Community	Community map repository address
Tulsa County, Oklahoma and Incorporated Areas Docket No.: FEMA–B–1802	
City of Tulsa	Stormwater Design Office, 2317 South Jackson Street, Suite 302, Tulsa, Oklahoma 74103.
Harris County, Texas and Incorporated Areas Docket No.: FEMA–B–1753	
City of Houston	Public Works and Engineering Department, Floodplain Management Office, 1002 Washington Avenue, 3rd Floor, Houston, TX 77002.
City of Missouri City	Development Services Department, 1522 Texas Parkway, Missouri City, TX 77489.
City of South Houston	City Hall, 1018 Dallas Street, South Houston, TX 77587.
Unincorporated Areas of Harris County	Harris County Engineering Department, Permit Division, 10555 Northwest Freeway, Suite 120, Houston, TX 77092.

[FR Doc. 2019–03370 Filed 2–26–19; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2019–0002; Internal Agency Docket No. FEMA–B–1905]

Proposed Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: Comments are requested on proposed flood hazard determinations, which may include additions or modifications of any Base Flood Elevation (BFE), base flood depth, Special Flood Hazard Area (SFHA) boundary or zone designation, or regulatory floodway on the Flood Insurance Rate Maps (FIRMs), and where applicable, in the supporting Flood Insurance Study (FIS) reports for the communities listed in the table below. The purpose of this notice is to seek general information and comment regarding the preliminary FIRM, and where applicable, the FIS report that the Federal Emergency Management Agency (FEMA) has provided to the affected communities. The FIRM and FIS report are the basis of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP). In addition, the FIRM and FIS report, once effective, will be used by insurance agents and others to calculate appropriate flood insurance premium rates for new buildings and the contents of those buildings.

DATES: Comments are to be submitted on or before May 28, 2019.

ADDRESSES: The Preliminary FIRM, and where applicable, the FIS report for each community are available for inspection at both the online location *https://www.fema.gov/preliminary floodhazarddata* and the respective Community Map Repository address listed in the tables below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *https://msc.fema.gov* for comparison.

You may submit comments, identified by Docket No. FEMA–B–1905, to Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov.*

FOR FURTHER INFORMATION CONTACT: Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov;* or visit the FEMA Map Information eXchange (FMIX) online at *https://*

www.floodmaps.fema.gov/fhm/fmx_main.html.

SUPPLEMENTARY INFORMATION: FEMA proposes to make flood hazard determinations for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed flood hazard determinations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. These flood hazard determinations are used to meet the floodplain management requirements of the NFIP and are used to calculate the appropriate flood insurance premium rates for new buildings built after the FIRM and FIS report become effective.

The communities affected by the flood hazard determinations are provided in the tables below. Any request for reconsideration of the revised flood hazard information shown on the Preliminary FIRM and FIS report that satisfies the data requirements outlined in 44 CFR 67.6(b) is considered an appeal. Comments unrelated to the flood hazard determinations also will be considered before the FIRM and FIS report become effective.

Use of a Scientific Resolution Panel (SRP) is available to communities in support of the appeal resolution process. SRPs are independent panels of experts in hydrology, hydraulics, and other pertinent sciences established to review conflicting scientific and technical data and provide recommendations for resolution. Use of the SRP only may be exercised after FEMA and local communities have been engaged in a collaborative consultation process for at least 60 days without a mutually acceptable resolution of an appeal. Additional information regarding the SRP process can be found online at *https://www.floodsrp.org/pdfs/srp_overview.pdf.*

The watersheds and/or communities affected are listed in the tables below. The Preliminary FIRM, and where applicable, FIS report for each community are available for inspection at both the online location *https://www.fema.gov/preliminaryfloodhazarddata* and the respective Community Map Repository address listed in the tables. For communities with multiple ongoing Preliminary studies, the studies can be identified by the unique project number and Preliminary FIRM date listed in the tables. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *https://msc.fema.gov* for comparison.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Michael M. Grimm,

Assistant Administrator for Risk Management, Department of Homeland Security, Federal Emergency Management Agency.

Community	Community map repository address
Hamilton County, Florida and Incorporated Areas Project: 12–04–7914S Preliminary Date: September 28, 2018	
Unincorporated Areas of Hamilton County	Hamilton County Building Department, 204 Northeast 1st Street, Jasper, FL 32052.
Madison County, Florida and Incorporated Areas Project: 12–04–7914S Preliminary Date: September 28, 2018	
City of Madison	City Hall, 321 Southwest Rutledge Street, Madison, FL 32340.
Town of Lee	Town Hall, 286 Northeast County Road 255, Lee, FL 32059.
Unincorporated Areas of Madison County	Madison County Courthouse Annex, 229 Southwest Pinckney Street, Madison, FL 32340.
Pasco County, Florida and Incorporated Areas Project: 13–04–1877S Preliminary Date: April 27, 2018	
City of New Port Richey	City Hall, 5919 Main Street, New Port Richey, FL 34652.
City of Port Richey	City Hall, Planning Department, 6333 Ridge Road, Port Richey, FL 34668.
Unincorporated Areas of Pasco County	Pasco County Building Construction Services, 8731 Citizens Drive, Suite 230, New Port Richey, FL 34654.
Pinellas County, Florida and Incorporated Areas Project: 13–04–3188S Preliminary Date: June 29, 2018	
City of Belleair Beach	City Hall, 444 Causeway Boulevard, Belleair Beach, FL 33786.
City of Belleair Bluffs	City Hall, 2747 Sunset Boulevard, Belleair Bluffs, FL 33770.
City of Clearwater	Municipal Services Building, Engineering Department, 100 South Myrtle Avenue, Suite 220, Clearwater, FL 33756.
City of Dunedin	Technology Services Building, 737 Louden Avenue, Dunedin, FL 34698.
City of Gulfport	City Hall, Building Department, 2401 53rd Street South, Gulfport, FL 33707.
City of Indian Rocks Beach	City Hall, 1507 Bay Palm Boulevard, Indian Rocks Beach, FL 33785.
City of Largo	City Hall, 201 Highland Avenue North, Largo, FL 33770.
City of Madeira Beach	Building Department, 300 Municipal Drive, Madeira Beach, FL 33708.
City of Oldsmar	City Hall, Planning and Redevelopment Department, 100 State Street West, Oldsmar, FL 34677.
City of Pinellas Park	Planning and Development Services, 6051 78th Avenue North, Pinellas Park, FL 33781.

Community	Community map repository address
City of Safety Harbor	Building Official's Department, 750 Main Street, Safety Harbor, FL 34695.
City of Seminole	City Hall, Community Development Department, 9199 113th Street, Seminole, FL 33772.
City of South Pasadena	Building Department, 6940 Hibiscus Avenue South, South Pasadena, FL 33707.
City of St. Pete Beach	City Hall, Building Department, 155 Corey Avenue, St. Pete Beach, FL 33706.
City of St. Petersburg	Municipal Services Center, 1 4th Street North, St. Petersburg, FL 33701.
City of Tarpon Springs	Building Department, 324 East Pine Street, Tarpon Springs, FL 34689.
City of Treasure Island	City Hall, Community Improvement Department, 120 108th Avenue, Treasure Island, FL 33706.
Town of Belleair	Town Hall, 901 Ponce de Leon Boulevard, Belleair, FL 33756.
Town of Belleair Shore	City Clerk's Office, 1200 Gulf Boulevard, Belleair Shore, FL 33786.
Town of Indian Shores	Building Department, 19305 Gulf Boulevard, Indian Shores, FL 33785.
Town of Kenneth City	Town Hall, 6000 54th Avenue North, Kenneth City, FL 33709.
Town of North Redington Beach	Town Hall, 190 173rd Avenue East, North Redington Beach, FL 33708.
Town of Redington Beach	Redington Beach Building Department, 18001 Gulf Boulevard, Redington Shores, FL 33708.
Town of Redington Shores	Town Hall, Building Department, 17425 Gulf Boulevard, Redington Shores, FL 33708.
Unincorporated Areas of Pinellas County	Pinellas County Building Department, 440 Court Street, Clearwater, FL 33756.
Fulton County, Georgia and Incorporated Areas Project: 13–04–8403S Preliminary Date: June 15, 2017	
City of Roswell	City Hall, 38 Hill Street, Suite 235, Roswell, GA 30075.
Allegany County, Maryland and Incorporated Areas Project: 09–03–0015S Preliminary Date: December 11, 2018	
Town of Luke	City Building, 510 Grant Street, Luke, MD 21540.
Unincorporated Areas of Allegany County	Allegany County Office Building, 701 Kelly Road, Cumberland, MD 21502.
Cheatham County, Tennessee and Incorporated Areas Project: 13–04–6204S and 13–04–1482S Preliminary Date: June 29, 2018	
Town of Ashland City	City Hall, 101 Court Street, Ashland City, TN 37015.
Town of Pleasant View	City Hall, 1008 Civic Court, Pleasant View, TN 37146.
Unincorporated Areas of Cheatham County	Cheatham County Building and Codes Department, 111 Frey Street, Ashland City, TN 37015.
Coffee County, Tennessee and Incorporated Areas Project: 18–04–0023S Preliminary Date: June 29, 2018	
City of Manchester	City Hall, Health and Codes Department, 200 West Fort Street, Manchester, TN 37355.
Unincorporated Areas of Coffee County	Coffee County Administration Plaza, Zoning and Codes Department, 1329 McArthur Street, Suite 2, Manchester, TN 37355.
Dickson County, Tennessee and Incorporated Areas Project: 13–04–1482S Preliminary Date: June 29, 2018	
Town of Charlotte	City Hall, 22 Court Square, Charlotte, TN 37036.
Town of Slayden	Mayor's Personal Residence, 701 Schmittou Street, Slayden, TN 37165.
Unincorporated Areas of Dickson County	Dickson County Courthouse, 4 Court Square, Charlotte, TN 37036.
Houston County, Tennessee and Incorporated Areas Project: 13–04–1482S Preliminary Date: June 29, 2018	
City of Erin	City Hall, 15 Hill Street, Erin, TN 37061.
City of Tennessee Ridge	Houston County Property Assessor, 4725 East Main Street, Room 105, Erin, TN 37061.
Unincorporated Areas of Houston County	Houston County Courthouse, 4725 East Main Street, Erin, TN 37061.
Montgomery County, Tennessee and Incorporated Areas Project: 13–04–1482S Preliminary Date: June 29, 2018	
City of Clarksville	Regional Planning Commission, 329 Main Street, Clarksville, TN 37040.

Community	Community map repository address
Unincorporated Areas of Montgomery County	Montgomery County Building and Codes Department, 350 Pageant Lane, Suite 309, Clarksville, TN 37040.
Robertson County, Tennessee and Incorporated Areas Project: 13–04–6204S Preliminary Date: June 29, 2018	
Town of Coopertown	Coopertown City Hall, 2525 Burgess Gower Road, Springfield, TN 37172.
Unincorporated Areas of Robertson County	Robertson County Planning and Zoning Building, 527 South Brown Street, Springfield, TN 37172.
Stewart County, Tennessee and Incorporated Areas Project: 13–04–1482S Preliminary Date: June 29, 2018	
Town of Cumberland City	City Hall, 121 Main Street, Cumberland City, TN 37050.
Town of Dover	City Hall, 625 Donelson Parkway, Dover, TN 37058.
Unincorporated Areas of Stewart County	Stewart County Mayor's Office, 226 Lakeview Drive, Dover, TN 37058.
Sumner County, Tennessee and Incorporated Areas Project: 13–04–6204S Preliminary Date: June 29, 2018	
City of Goodlettsville	Planning and Zoning Department, 117 Memorial Drive, Suite B, Goodlettsville, TN 37072.
City of Hendersonville	City Hall, 101 Maple Drive North, Hendersonville, TN 37075.
City of Millersville	City Hall, 1246 Louisville Highway, Millersville, TN 37072.
Unincorporated Areas of Sumner County	Sumner County Building and Codes Department, 355 North Belvedere Drive, Room 208, Gallatin, TN 37066.
Williamson County, Tennessee and Incorporated Areas Project: 13–04–6204S Preliminary Date: June 29, 2018	
City of Brentwood	City Hall, 5211 Maryland Way, Brentwood, TN 37027.
Town of Nolensville	Town Hall, 7218 Nolensville Road, Nolensville, TN 37135.
Unincorporated Areas of Williamson County	Williamson County Engineering Department, 1320 West Main Street, Suite 400, Franklin, TN 37064.
City of Radford, Virginia (Independent City) Project: 18–03–0015S Preliminary Date: September 28, 2018	
City of Radford	City Office, 10 Robertson Street, Radford, VA 24141.

[FR Doc. 2019–03375 Filed 2–26–19; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2019–0002]

Final Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: Flood hazard determinations, which may include additions or modifications of Base Flood Elevations (BFEs), base flood depths, Special Flood Hazard Area (SFHA) boundaries or zone designations, or regulatory floodways on the Flood Insurance Rate Maps (FIRMs) and where applicable, in the supporting Flood Insurance Study (FIS) reports have been made final for the communities listed in the table below.

The FIRM and FIS report are the basis of the floodplain management measures that a community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the Federal Emergency Management Agency's (FEMA's) National Flood Insurance Program (NFIP). In addition, the FIRM and FIS report are used by insurance agents and others to calculate appropriate flood insurance premium rates for buildings and the contents of those buildings.

DATES: The date of March 21, 2019 has been established for the FIRM and, where applicable, the supporting FIS report showing the new or modified flood hazard information for each community.

ADDRESSES: The FIRM, and if applicable, the FIS report containing the final flood hazard information for each community is available for inspection at the respective Community Map Repository address listed in the tables below and will be available online through the FEMA Map Service Center at *https://msc.fema.gov* by the date indicated above.

FOR FURTHER INFORMATION CONTACT: Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov;* or visit the FEMA Map Information eXchange (FMIX) online at *https://www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) makes the final determinations listed below for the new or modified flood hazard information for each community listed. Notification of these changes has been published in newspapers of local circulation and 90 days have elapsed since that publication. The Deputy Associate Administrator for Insurance and Mitigation has resolved any appeals resulting from this notification.

This final notice is issued in accordance with section 110 of the

Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR part 67. FEMA has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR part 60.

Interested lessees and owners of real property are encouraged to review the new or revised FIRM and FIS report available at the address cited below for each community or online through the FEMA Map Service Center at *https://msc.fema.gov.*

The flood hazard determinations are made final in the watersheds and/or communities listed in the table below.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Michael M. Grimm,

Assistant Administrator for Risk Management, Department of Homeland Security, Federal Emergency Management Agency.

Community	Community map repository address
Blount County, Alabama and Incorporated Areas Docket No.: FEMA–B–1749	
City of Oneonta	City Hall, 202 3rd Avenue East, Oneonta, AL 35121.
Town of Altoona	Town Hall, 2844 Main Street, Altoona, AL 35952.
Town of Cleveland	Town Hall, 62732 U.S. Highway 231, Cleveland, AL 35049.
Town of Highland Lake	Town Hall, 612 Lakeshore Drive, Highland Lake, AL 35121.
Town of Locust Fork	Town Hall, 34 Town Hall Road, Locust Fork, AL 35097.
Town of Nectar	Nectar Town Hall, 14795 State Highway 160, Cleveland, AL 35049.
Town of Rosa	Rosa Town Hall, 35 Waterton Drive, Oneonta, AL 35121.
Town of Snead	Town Hall, 87169 U.S. Highway 278, Snead, AL 35952.
Town of Susan Moore	Susan Moore Town Hall, 39989 State Highway 75, Altoona, AL 35952.
Unincorporated Areas of Blount County	Blount County Engineering Department, 6454 2nd Avenue West, Oneonta, AL 35121.
Etowah County, Alabama and Incorporated Areas Docket No.: FEMA–B–1749	
Town of Altoona	Town Hall, 2844 Main Street, Altoona, AL 35952.
Town of Walnut Grove	Town Hall, 4012 Gadsden Blountsville Road, Walnut Grove, AL 35990.
Unincorporated Areas of Etowah County	Etowah County Engineer's Office, 402 Tuscaloosa Avenue, Gadsden, AL 35901.
Jefferson County, Alabama and Incorporated Areas Docket No.: FEMA–B–1749	
City of Adamsville	City Hall, 4828 Main Street, Adamsville, AL 35005.
City of Birmingham	Department of Planning, Engineering, and Permits, 710 North 20th Street, 5th Floor, Birmingham, AL 35203.
City of Clay	Clay City Hall, 2441 Old Springville Road, Birmingham, AL 35215.
City of Fultondale	Business License, Permit, and Inspections Department, 1015 Old Walker Chapel Road, Fultondale, AL 35068.
City of Gardendale	Inspections Services Department, 925 Main Street, Gardendale, AL 35071.
City of Graysville	City Hall, 246 South Main Street, Graysville, AL 35073.
City of Kimberly	City Hall, 9256 Stouts Road, Kimberly, AL 35091.
City of Pinson	City Hall, 4410 Main Street, Pinson, AL 35126.
City of Sumiton	City Hall, 416 State Street, Sumiton, AL 35148.
City of Tarrant	City Hall, 1604 Pinson Valley Parkway, Tarrant, AL 35217.
City of Warrior	City Hall, 215 Main Street North, Warrior, AL 35180.
Town of Brookside	Town Hall, 2711 Municipal Lane, Brookside, AL 35036.
Town of Cardiff	Jefferson County Land Development Office, 716 Richard Arrington Jr. Boulevard North, Room 260, Birmingham, AL 35203.
Town of Maytown	Maytown Town Hall, 4509 Town Hall Drive, Mulga, AL 35118.
Town of Morris	Town Hall, 8304 Stouts Road, Morris, AL 35116.
Town of Mulga	Town Hall, 505 Mulga Loop Road, Mulga, AL 35118.
Town of Sylvan Springs	Town Hall, 100 Rock Creek Road, Sylvan Springs, AL 35118.
Town of Trafford	Town Hall, 9239 East Commercial Avenue, Trafford, AL 35172.
Town of West Jefferson	West Jefferson Town Hall, 7000 West Jefferson Road, Quinton, AL 35130.
Unincorporated Areas of Jefferson County	Jefferson County Land Development Office, 716 Richard Arrington Jr. Boulevard North, Room 260, Birmingham, AL 35203.
Marshall County, Alabama and Incorporated Areas Docket No.: FEMA–B–1749	
City of Albertville	City Hall, 116 West Main Street, Albertville, AL 35950.
City of Boaz	City Hall, 112 North Broad Street, Boaz, AL 35957.
Town of Douglas	Town Hall, 55 Alabama Highway 168, Douglas, AL 35964.
Unincorporated Areas of Marshall County	Marshall County Engineering Department, 424 Blount Avenue, Suite A337, Guntersville, AL 35976.

Community	Community map repository address
Conway County, Arkansas and Incorporated Areas Docket No.: FEMA–B–1763	
City of Morrilton	City Hall, 119 North Division Street, Morrilton, AR 72110.
City of Oppelo	City Hall, 8 Municipal Drive, Oppelo, AR 72110.
City of Plumerville	City Hall, 303 West Main Street, Plumerville, AR 72127.
Town of Menifee	Town Hall, 68 North Mustang Street, Menifee, AR 72107.
Unincorporated Areas of Conway County	Conway County Courthouse, 117 South Moose Street, Morrilton, AR 72110.
Faulkner County, Arkansas and Incorporated Areas Docket No.: FEMA–B–1763	
City of Conway	Street and Engineering Department, 100 East Robins Street, Conway, AR 72032.
Unincorporated Areas of Faulkner County	Faulkner County Office of Emergency Management, 57 Acklin Gap Road, Conway, AR 72032.
Lonoke County, Arkansas and Incorporated Areas Docket No.: FEMA–B–1741	
City of Cabot	City Hall, 101 North 2nd Street, Cabot, AR 72023.
Unincorporated Areas of Lonoke County	Lonoke County Courthouse Annex, 210 North Center Street, Lonoke, AR 72086.
Pope County, Arkansas and Incorporated Areas Docket No.: FEMA–B–1763	
City of Atkins	Pope County Conservation District, 420 North Hampton Avenue, Suite B, Russellville, AR 72802.
Unincorporated Areas of Pope County	Pope County Conservation District, 420 North Hampton Avenue, Suite B, Russellville, AR 72802.
Orange County, California and Incorporated Areas Docket No.: FEMA–B–1673	
City of Costa Mesa	City Hall, 77 Fair Drive, Costa Mesa, CA 92626.
City of Dana Point	City Hall, 33282 Golden Lantern Street, Dana Point, CA 92629.
City of Fountain Valley	City Hall, 10200 Slater Avenue, Fountain Valley, CA 92708.
City of Huntington Beach	City Hall, 2000 Main Street, Huntington Beach, CA 92648.
City of Irvine	City Hall, 1 Civic Center Plaza, Irvine, CA 92606.
City of Laguna Beach	City Hall, 505 Forest Avenue, Laguna Beach, CA 92651.
City of Laguna Niguel	City Hall, 30111 Crown Valley Parkway, Laguna Niguel, CA 92677.
City of Newport Beach	City Hall, 100 Civic Center Drive, Newport Beach, CA 92660.
City of San Clemente	City Hall, 100 Avenida Presidio, San Clemente, CA 92672.
City of San Juan Capistrano	City Hall, 32400 Paseo Adelanto, San Juan Capistrano, CA 92675.
City of Seal Beach	City Hall, 211 8th Street, Seal Beach, CA 90740.
City of Westminster	City Hall, 8200 Westminster Boulevard, Westminster, CA 92683.
Unincorporated Areas of Orange County	Orange County Flood Control Division, 300 North Flower Street, Santa Ana, CA 92703.
Dallas County, Texas and Incorporated Areas Docket No.: FEMA–B–1701	
City of Dallas	Trinity Watershed Management, Flood Plain and Drainage Management, 320 East Jefferson Boulevard, Room 307 Dallas, TX 75203.
City of Grand Prairie	City Development Center, 206 West Church Street, Grand Prairie, TX 75050.
City of Irving	Capital Improvement Program Department, 825 West Irving Boulevard, Irving, TX 75060.
Unincorporated Areas of Dallas County	Dallas County Public Works Department, 411 Elm Street, 4th Floor, Dallas, TX 75202.
Tarrant County, Texas and Incorporated Areas Docket Nos.: FEMA B–1282 and FEMA–B–1701	
City of Arlington	City Hall, 101 West Abram Street, Arlington, TX 76010.
City of Fort Worth	Department of Transportation and Public Works, 200 Texas Street, Fort Worth, TX 76102.
City of Grand Prairie	Community Development Center, 206 West Church Street, Grand Prairie, TX 75050.
City of Haltom City	City Hall, 5024 Broadway Avenue, Haltom City, TX 76117.
City of Hurst	City Hall, 1505 Precinct Line Road, Hurst, TX 76054.
City of North Richland Hills	City Hall 4301 City Point Drive, North Richland Hills, TX 76180.
City of Richland Hills	City Hall, 3200 Diana Drive, Richland Hills, TX 76118.

Community	Community map repository address
City of Saginaw	City Hall, 333 West McLeroy Boulevard, Saginaw, TX 76179.
Town of Edgecliff Village	Municipal Complex, 1605 Edgecliff Road, Edgecliff Village, TX 76134.
Unincorporated Areas of Tarrant County	Tarrant County Transportation Department, Engineering, 100 East Weatherford Street, Suite 401, Fort Worth, TX 76196.

[FR Doc. 2019–03377 Filed 2–26–19; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2019–0002]

Final Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: Flood hazard determinations, which may include additions or modifications of Base Flood Elevations (BFEs), base flood depths, Special Flood Hazard Area (SFHA) boundaries or zone designations, or regulatory floodways on the Flood Insurance Rate Maps (FIRMs) and where applicable, in the supporting Flood Insurance Study (FIS) reports have been made final for the communities listed in the table below.

The FIRM and FIS report are the basis of the floodplain management measures that a community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the Federal Emergency Management Agency's (FEMA's) National Flood Insurance Program (NFIP). In addition, the FIRM and FIS report are used by insurance agents and others to calculate appropriate flood insurance premium rates for buildings and the contents of those buildings.

DATES: The date of April 19, 2019 has been established for the FIRM and, where applicable, the supporting FIS report showing the new or modified flood hazard information for each community.

ADDRESSES: The FIRM, and if applicable, the FIS report containing the final flood hazard information for each community is available for inspection at the respective Community Map Repository address listed in the tables below and will be available online through the FEMA Map Service Center at *https://msc.fema.gov* by the date indicated above.

FOR FURTHER INFORMATION CONTACT: Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov;* or visit the FEMA Map Information eXchange (FMIX) online at *https://www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) makes the final determinations listed below for the new or modified flood hazard information for each community listed. Notification of these changes has been published in newspapers of local circulation and 90 days have elapsed since that publication. The Deputy Associate Administrator for Insurance and Mitigation has resolved any appeals resulting from this notification.

This final notice is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR part 67. FEMA has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR part 60.

Interested lessees and owners of real property are encouraged to review the new or revised FIRM and FIS report available at the address cited below for each community or online through the FEMA Map Service Center at *https://msc.fema.gov.*

The flood hazard determinations are made final in the watersheds and/or communities listed in the table below.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Michael M. Grimm,

Assistant Administrator for Risk Management, Department of Homeland Security, Federal Emergency Management Agency.

Community	Community map repository address
Baldwin County, Alabama and Incorporated Areas Docket No.: FEMA–B–1771	
City of Bay Minette	City Hall, 301 D'Olive Street, Bay Minette, AL 36507.
City of Daphne	City Hall, 1705 Main Street, Daphne, AL 36526.
City of Fairhope	Building Department, 555 South Section Street, Fairhope, AL 36533.
City of Foley	Community Development Building, 200 North Alston Street, Foley, AL 36535.
City of Gulf Shores	Building Department, 205 Clubhouse Drive, Suite B, Gulf Shores, AL 36542.
City of Orange Beach	Floodplain Administrator's Office, 4101 Orange Beach Boulevard, Orange Beach, AL 36561.
City of Robertsdale	City Hall, 22647 Racine Street, Robertsdale, AL 36567.
City of Spanish Fort	Building Department, 7361 Spanish Fort Boulevard, Spanish Fort, AL 36527.
Town of Elberta	Civic Center, 25070 Pine Street, Elberta, AL 36530.
Town of Loxley	Town Hall, 1089 South Hickory Street, Loxley, AL 36551.
Town of Magnolia Springs	Town Hall, 12191 Magnolia Springs Highway, Magnolia Springs, AL 36555.
Town of Perdido Beach	Town Hall, 9212 County Road 97, Perdido Beach, AL 36530.
Town of Silverhill	Town Hall, 15965 Silverhill Avenue, Silverhill, AL 36576.
Town of Summerdale	Baldwin County Building Inspection Department, 201 East Section Avenue, Foley, AL 36535.

Community	Community map repository address
Unincorporated Areas of Baldwin County	Baldwin County Building Inspection Department, 201 East Section Avenue, Foley, AL 36535.
Sierra County, California and Incorporated Areas Docket No.: FEMA–B–1714	
Unincorporated Areas of Sierra County	Sierra County Department of Planning, 101 Courthouse Square, Downieville, CA 95936.
Caldwell County, Kentucky and Incorporated Areas Docket No.: FEMA–B–1709	
City of Fredonia	City Hall, 312 Cassidy Avenue, Fredonia, KY 42411.
City of Princeton	City Hall, 206 East Market Street, Princeton, KY 42445.
Unincorporated Areas of Caldwell County	Caldwell County Courthouse, 100 East Market Street, Princeton, KY 42445.
Christian County, Kentucky and Incorporated Areas Docket No.: FEMA–B–1709	
City of Hopkinsville	Christian County Community Development Services, 710 South Main Street, Hopkinsville, KY 42240.
Unincorporated Areas of Christian County	Christian County Community Development Services, 710 South Main Street, Hopkinsville, KY 42240.
Trigg County, Kentucky and Incorporated Areas Docket No.: FEMA–B–1709	
City of Cadiz	City Hall, 63 Main Street, Cadiz, KY 42211.
Unincorporated Areas of Trigg County	Trigg County Courthouse Annex, 38 Main Street, Suite 101, Cadiz, KY 42211.

[FR Doc. 2019–03366 Filed 2–26–19; 8:45 am]
BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2019–0002]

Changes in Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: New or modified Base (1-percent annual chance) Flood Elevations (BFEs), base flood depths, Special Flood Hazard Area (SFHA) boundaries or zone designations, and/or regulatory floodways (hereinafter referred to as flood hazard determinations) as shown on the indicated Letter of Map Revision (LOMR) for each of the communities listed in the table below are finalized. Each LOMR revises the Flood Insurance Rate Maps (FIRMs), and in some cases the Flood Insurance Study (FIS) reports, currently in effect for the listed communities. The flood hazard determinations modified by each LOMR will be used to calculate flood insurance premium rates for new buildings and their contents.

DATES: Each LOMR was finalized as in the table below.

ADDRESSES: Each LOMR is available for inspection at both the respective Community Map Repository address listed in the table below and online through the FEMA Map Service Center at *https://msc.fema.gov.*

FOR FURTHER INFORMATION CONTACT: Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov*; or visit the FEMA Map Information eXchange (FMIX) online at *https://www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) makes the final flood hazard determinations as shown in the LOMRs for each community listed in the table below. Notice of these modified flood hazard determinations has been published in newspapers of local circulation and 90 days have elapsed since that publication. The Deputy Associate Administrator for Insurance and Mitigation has resolved any appeals resulting from this notification.

The modified flood hazard determinations are made pursuant to section 206 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.,* and with 44 CFR part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The new or modified flood hazard information is the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to remain qualified for participation in the National Flood Insurance Program (NFIP).

This new or modified flood hazard information, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities.

This new or modified flood hazard determinations are used to meet the floodplain management requirements of the NFIP and are used to calculate the appropriate flood insurance premium rates for new buildings, and for the

contents in those buildings. The changes in flood hazard determinations are in accordance with 44 CFR 65.4.

Interested lessees and owners of real property are encouraged to review the final flood hazard information available at the address cited below for each community or online through the FEMA Map Service Center at *https://msc.fema.gov.*

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Michael M. Grimm,

Assistant Administrator for Risk Management, Department of Homeland Security, Federal Emergency Management Agency.

State and county	Location and case No.	Chief executive officer of community	Community map repository	Date of modification	Community No.
Arizona:					
Maricopa (FEMA Docket No.: B–1850).	City of Chandler (18–09–0796P).	The Honorable Jay Tibshraeny, Mayor, City of Chandler, City Hall, 175 South Arizona Avenue, Chandler, AZ 85225.	Municipal Utilities Department, Administration, 975 East Armstrong Way, Building L, Chandler, AZ 85286.	Nov. 30, 2018	040040
Maricopa (FEMA Docket No.: B–1850).	City of Scottsdale (18–09–0983P).	The Honorable W.J. ''Jim'' Lane, Mayor, City of Scottsdale, City Hall, 3939 North Drinkwater Boulevard, Scottsdale, AZ 85251.	Planning Records, 7447 East Indian School Road, Suite 100, Scottsdale, AZ 85251.	Dec. 7, 2018	045012
Maricopa (FEMA Docket No.: B–1839).	Unincorporated Areas of Maricopa County (17–09–2756P).	The Honorable Steve Chucri, Chairman, Board of Supervisors, Maricopa County, 301 West Jefferson Street, 10th Floor, Phoenix, AZ 85003.	Flood Control District of Maricopa County, 2801 West Durango Street, Phoenix, AZ 85009.	Sep. 28, 2018	040037
Mohave (FEMA Docket No.: B–1844).	Town of Colorado City (18–09–1337X).	The Honorable Joseph Allred, Mayor, Town of Colorado City, P.O. Box 70, Colorado City, AZ 86021.	Town Hall, 25 South Central Street, Colorado City, AZ 86401.	Nov. 2, 2018	040059
Mohave (FEMA Docket No.: B–1844).	Unincorporated Areas of Mohave County (18–09–1337X).	The Honorable Gary Watson, Chairman, Board of Supervisors, Mohave County, 700 West Beale Street, Kingman, AZ 86402.	Mohave County Administration Building, 700 West Beale Street, Kingman, AZ 86402.	Nov. 2, 2018	040058
California:					
Orange (FEMA Docket No.: B–1850).	City of Fullerton (17–09–2449P).	The Honorable Doug Chaffee, Mayor, City of Fullerton, 303 West Commonwealth Avenue, Fullerton, CA 92832.	City Hall, 303 West Commonwealth Avenue, Fullerton, CA 92832.	Nov. 30, 2018	060219
Orange (FEMA Docket No.: B–1850).	City of Fullerton (17–09–2450P).	The Honorable Doug Chaffee, Mayor, City of Fullerton, 303 West Commonwealth Avenue, Fullerton, CA 92832.	City Hall, 303 West Commonwealth Avenue, Fullerton, CA 92832.	Nov. 23, 2018	060219
Orange (FEMA Docket No.: B–1839).	City of Irvine (18–09–0287P).	The Honorable Donald P. Wagner, Mayor, City of Irvine, 1 Civic Center Plaza, Irvine, CA 92606.	City Hall, 1 Civic Center Plaza, Irvine, CA 92606.	Oct. 5, 2018	060222
Riverside (FEMA Docket No.: B–1844).	City of Riverside (18–09–0497P).	The Honorable Rusty Bailey, Mayor, City of Riverside, 3900 Main Street, Riverside, CA 92522.	Public Works Department, 3900 Main Street, 4th Floor, Riverside, CA 92522.	Oct. 22, 2018	060260
Riverside (FEMA Docket No.: B–1844).	Unincorporated Areas of Riverside County (18–09–0497P).	The Honorable Chuck Washington, Chairman, Board of Supervisors, Riverside County, 4080 Lemon Street, 5th Floor, Riverside, CA 92501.	Riverside County Flood Control and Water Conservation District, 1995 Market Street, Riverside, CA 92501.	Oct. 22, 2018	060245
Santa Clara (FEMA Docket No.: B–1839).	Town of Los Altos Hills (17–09–0578P).	The Honorable John Radford, Mayor, Town of Los Altos Hills, 26379 Fremont Road, Los Altos Hills, CA 94022.	Town Hall, 26379 Fremont Road, Los Altos Hills, CA 94022.	Oct. 9, 2018	060342
Solano (FEMA Docket No.: B–1846).	City of Fairfield (18–09–0734P).	The Honorable Harry T. Price, Mayor, City of Fairfield, City Hall, 1000 Webster Street, Fairfield, CA 94533.	Public Works Department, Engineering Division, 1000 Webster Street, Fairfield, CA 94533.	Nov. 20, 2018	060370
Solano (FEMA Docket No.: B–1846).	Unincorporated Areas of Solano County (18–09–0734P).	The Honorable Jim Spering, Chairman, Board of Supervisors, Solano County, 675 Texas Street, Suite 6500, Fairfield, CA 94533.	Solano County Public Works Department, 675 Texas Street, Suite 5500, Fairfield, CA 94533.	Nov. 20, 2018	060631
Ventura (FEMA Docket No.: B–1839).	City of Simi Valley (18–09–0442P).	The Honorable Bob Huber, Mayor, City of Simi Valley, 2929 Tapo Canyon Road, Simi Valley, CA 93063.	City Hall, 2929 Tapo Canyon Road, Simi Valley, CA 93063.	Sep. 27, 2018	060421
Florida:					
Bay (FEMA Docket No.: B–1850).	Unincorporated Areas of Bay County (18–04–2878P).	Mr. Robert Majka, Jr., County Manager, Bay County, 840 West 11th Street, Panama City, FL 32401.	Bay County Planning and Zoning, 707 Jenks Avenue, Suite B, Panama City, FL 32401.	Nov. 28, 2018	120004
Duval (FEMA Docket No.: B–1839).	City of Jacksonville (18–04–0586P).	The Honorable Lenny Curry, Mayor, City of Jacksonville, 117 West Duval Street, Suite 400, Jacksonville, FL 32202.	City Hall, 117 West Duval Street, Jacksonville, FL 32202.	Sep. 21, 2018	120077
St. Johns (FEMA Docket No.: B–1839).	Unincorporated Areas of St. Johns County (18–04–0875P).	The Honorable Henry Dean, Chairman, St. Johns County Board of Commissioners, 500 San Sebastian View, St. Augustine, FL 32084.	St. Johns County Administration Building, 4020 Lewis Speedway, St. Augustine, FL 32084.	Oct. 4, 2018	125147
St. Johns (FEMA Docket No.: B–1839).	Unincorporated Areas of St. Johns County (18–04–2412P).	The Honorable Henry Dean, Chairman, St. Johns County Board of Commissioners, 500 San Sebastian View, St. Augustine, FL 32084.	St. Johns County Administration Building, 4020 Lewis Speedway, St. Augustine, FL 32084.	Oct. 5, 2018	125147
Hawaii: Honolulu (FEMA Docket No.: B–1844).	City and County of Honolulu (18–09–1196P).	The Honorable Kirk Caldwell, Mayor, City and County of Honolulu, 530 South King Street, Room 300, Honolulu, HI 96813.	Department of Planning and Permitting, 650 South King Street, Honolulu, HI 96813.	Oct. 30, 2018	150001

State and county	Location and case No.	Chief executive officer of community	Community map repository	Date of modification	Community No.
Idaho:					
Ada (FEMA Docket No.: B–1846).	City of Meridian (18–10–0001P).	The Honorable Tammy de Weerd, Mayor, City of Meridian City Hall, 33 East Broadway Avenue, Suite 300, Meridian, ID 83642.	Public Works Department, 33 East Broadway Avenue, Suite 200, Meridian, ID 83642.	Nov. 2, 2018	160180
Ada (FEMA Docket No.: B–1846).	Unincorporated Areas of Ada County (18–10–0001P).	The Honorable David L. Case, Chairman, Ada County Board of Commissioners, 200 West Front Street, 3rd Floor, Boise, ID 83702.	Ada County Courthouse, 200 West Front Street, Boise, ID 83702.	Nov. 2, 2018	160001
Illinois:					
Cook (FEMA Docket No.: B–1850).	City of Chicago (17–05–6422P).	The Honorable Rahm Emanuel, Mayor, City of Chicago, 121 North LaSalle Street, Room 406, Chicago, IL 60602.	Department of Buildings, Stormwater Management, 121 North LaSalle Street, Room 906, Chicago, IL 60602.	Dec. 7, 2018	170074
Cook (FEMA Docket No.: B–1844).	Village of Flossmoor (18–05–2185P).	The Honorable Paul Braun, Mayor, Village of Flossmoor, 2800 Flossmoor Road, Flossmoor, IL 60422.	Public Works Service Center, 1700 Central Park Avenue, Flossmoor, IL 60422.	Oct. 26, 2018	170091
Cook (FEMA Docket No.: B–1850).	Village of Franklin Park (17–05–6422P).	The Honorable Barrett F. Pedersen, Village President, Village of Franklin Park, 9500 Belmont Avenue, Franklin Park, IL 60131.	Village Hall, 9500 Belmont Avenue, Franklin Park, IL 60131.	Dec. 7, 2018	170094
Cook (FEMA Docket No.: B–1844).	Village of Homewood (18–05–2185P).	The Honorable Richard Hofeld, Mayor, Village of Homewood, 2020 Chestnut Road, Homewood, IL 60430.	Public Works, 17755 South Ashland Avenue, Homewood, IL 60430.	Oct. 26, 2018	170109
Cook (FEMA Docket No.: B–1850).	Village of Schiller Park (17–05–6422P).	The Honorable Nick Caiafa, Mayor, Village of Schiller Park, 9526 West Irving Park Road, Schiller Park, IL 60176.	Village Hall, 9526 West Irving Park Road, Schiller Park, IL 60176.	Dec. 7, 2018	170159
Peoria (FEMA Docket No.: B–1850).	City of Peoria (18–05–3106P).	The Honorable Jim Ardis, Mayor, City of Peoria, 419 Fulton Street, Suite 401, Peoria, IL 61602.	Public Works Department, 3505 North Dries Lane, Peoria, IL 61604.	Nov. 30, 2018	170536
Indiana:					
Lake (FEMA Docket No.: B–1846).	City of Hammond (18–05–0313P).	The Honorable Thomas M. McDermott, Jr., Mayor, City of Hammond, City Hall, 2nd Floor, 5925 Calumet Avenue, Hammond, IN 46320.	City Hall, 5925 Calumet Avenue, Hammond, IN 46320.	Nov. 14, 2018	180134
Lake (FEMA Docket No.: B–1846).	Town of Munster (18–05–0313P).	President, Lee Ann Mellon, Town of Munster, 1005 Ridge Road, Munster, IN 46321.	Town Hall, 1005 Ridge Road, Munster, IN 46321.	Nov. 14, 2018	180139
Iowa:					
Black Hawk (FEMA Docket No.: B–1850).	City of Waterloo (18–07–0911P).	The Honorable Quentin M. Hart, Mayor, City of Waterloo, City Hall, 715 Mulberry Street, Waterloo, IA 50703.	City Hall, 715 Mulberry Street, Waterloo, IA 50703.	Nov. 28, 2018	190025
Polk (FEMA Docket No.: B–1850).	City of West Des Moines (18–07–0853P).	The Honorable Steven K. Gaer, Mayor, City of West, Des Moines, City Hall, P.O. Box 65320, West Des Moines, IA 50265.	City Hall, 4200 Mills Civic Parkway, West Des Moines, IA 50265.	Dec. 7, 2018	190231
Kansas: Johnson (FEMA Docket No.: B–1846).	City of Olathe (18–07–0607P).	The Honorable Michael Copeland, Mayor, City of Olathe, 100 East Santa Fe Street, Olathe, KS 66061.	City Hall, Planning Office, 100 East Santa Fe Street, 3rd Floor, Olathe, KS 66061.	Oct. 26, 2018	200173
Massachusetts: Middlesex (FEMA Docket No.: B–1850).	City of Melrose (18–01–0626P).	The Honorable Gail Infurna, Mayor, City of Melrose, City Hall, 562 Main Street, Melrose, MA 02176.	City Hall, 562 Main Street, Melrose, MA 02176.	Dec. 3, 2018	250206
Minnesota: Olmsted (FEMA Docket No.: B–1844).	City of Rochester (18–05–0869P).	The Honorable Ardell F. Brede, Mayor, City of Rochester, City Hall, 201 4th Street Southeast, Room 281, Rochester, MN 55904.	City Hall, 201 4th Street Southeast, Rochester, MN 55904.	Oct. 18, 2018	275246
Missouri: Scott (FEMA Docket No.: B–1839).	City of Scott City (18–07–0675P).	The Honorable Ron Cummins, Mayor, City of Scott City, 215 Chester Avenue, Scott City, MO 63780.	City Hall, 215 Chester Avenue, Scott City, MO 63780.	Oct. 3, 2018	290414
Nebraska: Washington (FEMA Docket No.: B–1850).	City of Blair (18–07–0575P).	The Honorable James Realph, Mayor, City of Blair, 2532 College Drive, Blair, NE 68008.	City Hall, 218 South 16th Street, Blair, NE 68008.	Nov. 26, 2018	310228
Nevada:					
Clark (FEMA Docket No.: B–1839).	City of Las Vegas (18–09–1058P).	The Honorable Carolyn G. Goodman, Mayor, City of Las Vegas, City Hall, 495 South Main Street, Las Vegas, NV 89101.	Public Works Department, 400 Stewart Avenue, 4th Floor, Las Vegas, NV 89101.	Oct. 5, 2018	325276
Clark (FEMA Docket No.: B–1844).	Unincorporated Areas of Clark County (18–09–0773P).	The Honorable Steve Sisolak, Chairman, Board of Commissioners, Clark County, 500 South Grand Central Parkway, 6th Floor, Las Vegas, NV 89106.	Clark County, Office of the Director of Public Works, 500 South Grand Central Parkway, Las Vegas, NV 89155.	Oct. 18, 2018	320003
Washoe (FEMA Docket No.: B–1846).	City of Sparks (18–09–0662P).	The Honorable Geno Martini, Mayor, City of Sparks, P.O. Box 857, Sparks, NV 89432.	City Hall, 431 Prater Way, Sparks, NV 89431.	Nov. 13, 2018	320021
Ohio:					

State and county	Location and case No.	Chief executive officer of community	Community map repository	Date of modification	Community No.
Fairfield (FEMA Docket No.: B–1850).	City of Lancaster (18–05–0226P).	The Honorable David S. Smith, Mayor, City of Lancaster, 104 East Main Street, Room 101, Lancaster, OH 43130.	Municipal Building, 121 East Chestnut Street, Suite 100, Lancaster, OH 43130.	Nov. 20, 2018	390161
Fairfield (FEMA Docket No.: B–1850).	Unincorporated Areas of Fairfield County (18–05–0226P).	The Honorable Dave Levacy, Chairman, Fairfield County Board of Commissioners, 210 East Main Street, Room 301, Lancaster, OH 43130.	Fairfield County, Regional Planning Commission, 210 East Main Street, Room 104, Lancaster, OH 43130.	Nov. 20, 2018	390158
Lucas (FEMA Docket No.: B–1850).	City of Toledo (18–05–2876P).	The Honorable Wade Kapszukiewicz, Mayor, City of Toledo, 1 Government Center, 640 Jackson Street, Suite 2200, Toledo, OH 43604.	Department of Inspections, 1 Government Center, Suite 1600, Toledo, OH 43604.	Nov. 30, 2018	395373
Oregon:					
Clatsop (FEMA Docket No.: B–1839).	City of Seaside (18–10–0563P).	The Honorable Jay Barber, Mayor, City of Seaside, City Hall, 989 Broadway, Seaside, OR 97138.	City Hall, 989 Broadway, Seaside, OR 27138.	Sep. 24, 2018	410032
Clatsop (FEMA Docket No.: B–1839).	Unincorporated Areas of Clatsop County (18–10–0563P).	Mr. Scott Lee, Chair, Clatsop County Board of Commissioners, County Government Offices, 800 Exchange Street, Suite 410, Astoria, OR 97103.	Clatsop County, County Government Offices, 800 Exchange Street, Suite 410, Astoria, OR 97103.	Sep. 24, 2018	410027
Multnomah (FEMA Docket No.: B–1844).	City of Portland (18–10–0454P).	The Honorable Ted Wheeler, Mayor, City of Portland, 1221 Southwest 4th Avenue, Room 340, Portland, OR 97204.	Bureau of Environmental Services, 1221 Southwest 4th Avenue, Room 230, Portland, OR 97204.	Nov. 2, 2018	410183
Virginia: Roanoke (FEMA Docket No.: B–1844).	City of Roanoke (18–03–0502P).	The Honorable Sherman P. Lea, Sr., Mayor, City of Roanoke, 215 Church Avenue Southwest, Room 456, Roanoke, VA 24011.	Engineering Department, Municipal Building, 215 Church Avenue, Roanoke, VA 24011.	Oct. 11, 2018	510130
Wisconsin: Dane, FEMA Docket No.: B–1844).	City of Verona (18–05–0637P).	The Honorable Luke Diaz, Mayor, City of Verona, Verona City Center, 111 Lincoln Street, Verona, WI 53593.	City Hall, 111 Lincoln Street, Verona, WI 53593.	Oct. 5, 2018	550092

[FR Doc. 2019–03373 Filed 2–26–19; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2019–0002]

Final Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: Flood hazard determinations, which may include additions or modifications of Base Flood Elevations (BFEs), base flood depths, Special Flood Hazard Area (SFHA) boundaries or zone designations, or regulatory floodways on the Flood Insurance Rate Maps (FIRMs) and where applicable, in the supporting Flood Insurance Study (FIS) reports have been made final for the communities listed in the table below.

The FIRM and FIS report are the basis of the floodplain management measures that a community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the Federal Emergency Management Agency's (FEMA's) National Flood Insurance Program (NFIP). In addition, the FIRM and FIS report are used by insurance agents and others to calculate appropriate flood insurance premium rates for buildings and the contents of those buildings.

DATES: The date of May 16, 2019 has been established for the FIRM and, where applicable, the supporting FIS report showing the new or modified flood hazard information for each community.

ADDRESSES: The FIRM, and if applicable, the FIS report containing the final flood hazard information for each community is available for inspection at the respective Community Map Repository address listed in the tables below and will be available online through the FEMA Map Service Center at *https://msc.fema.gov* by the date indicated above.

FOR FURTHER INFORMATION CONTACT: Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov;* or visit the FEMA Map Information eXchange (FMIX) online at *https://www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) makes the final determinations listed below for the new or modified flood hazard information for each community listed. Notification of these changes has been published in newspapers of local circulation and 90 days have elapsed since that publication. The Deputy Associate Administrator for Insurance and Mitigation has resolved any appeals resulting from this notification.

This final notice is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR part 67. FEMA has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR part 60.

Interested lessees and owners of real property are encouraged to review the new or revised FIRM and FIS report available at the address cited below for each community or online through the FEMA Map Service Center at *https://msc.fema.gov.*

The flood hazard determinations are made final in the watersheds and/or communities listed in the table below.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Michael M. Grimm,

Assistant Administrator for Risk Management, Department of Homeland Security, Federal Emergency Management Agency.

Community	Community map repository address
Pinal County, Arizona and Incorporated Areas Docket No.: FEMA–B–1766	
City of Casa Grande	510 East Florence Boulevard, Casa Grande, AZ 85122.
City of Eloy	626 North Main Street, Eloy, AZ 85131.
Unincorporated Areas of Pinal County	Pinal County Engineering Department, 31 North Pinal Street, Building F, Florence, AZ 85132.
Cass County, Illinois and Incorporated Areas Docket No.: FEMA–B–1764	
City of Beardstown	City Hall, 105 West Third Street, Beardstown, Illinois 62618.
Unincorporated Areas of Cass County	Cass County Courthouse, 100 East Springfield Street, Virginia, Illinois 62691.
Calcasieu Parish, Louisiana and Incorporated Areas Docket No.: FEMA–B–1642	
Unincorporated Areas of Calcasieu Parish	Planning and Development Department, 901 Lakeshore Drive, Lake Charles, LA 70601.
Charlevoix County, Michigan (All Jurisdictions) Docket Nos.: FEMA–B–1266 & FEMA–B–1773	
City of Boyne City	City Hall, 319 North Lake Street, Boyne City, MI 49712.
City of Charlevoix	City Hall, 210 State Street, Charlevoix, MI 49720.
City of East Jordan	City Hall, 201 Main Street, East Jordan, MI 49727.
Little Traverse Bay Bands of Odawa Indians	Little Traverse Bay Bands of Odawa Indians, Government Center, 7500 Odawa Circle, Harbor Springs, MI 49740.
Township of Bay	Bay Township Hall, 05045 Boyne City Road, Boyne City, MI 49712.
Township of Boyne Valley	Boyne Valley Township Hall, 2489 Railroad Street, Boyne Falls, MI 49713.
Township of Charlevoix	Charlevoix Township Hall, 12491 Waller Road, Charlevoix, MI 49720.
Township of Evangeline	Evangeline Township Hall, 02746 Wildwood Harbor Road, Boyne City, MI 49712.
Township of Eveline	Eveline Township Hall, 08525 Ferry Road, East Jordan, MI 49727.
Township of Hayes	Hayes Township Hall, 09195 Old U.S. Highway 31 North, Charlevoix, MI 49720.
Township of Marion	Township of Marion, Charlevoix Public Library, 220 West Clinton Street, Charlevoix, MI 49720.
Township of Melrose	Melrose Township Hall, 4289 Michigan 75 Highway North, Walloon Lake, MI 49796.
Township of Norwood	Norwood Township Hall, 19759 Lake Street, Charlevoix, MI 49720.
Township of Peaine	Peaine Township Hall, 36825 Kings Highway, Beaver Island, MI 49782.
Township of South Arm	South Arm Township Hall, 2811 South Michigan 66, East Jordan, MI 49727.
Township of St. James	Township of St. James Government Center, 37830 Kings Highway, Beaver Island, MI 49782.
Hughes County, Oklahoma and Incorporated Areas Docket No.: FEMA–B–1769	
City of Holdenville	City Hall, 100 North Creek Street, Holdenville, OK 74848.
City of Wetumka	City Hall, 202 North Main Street, Wetumka, OK 74883.
Town of Allen	Town Hall, 216 East Broadway Street, Allen, OK 74825.
Town of Atwood	Hughes County Emergency Management Director's Office, 200 North Broadway Street, Holdenville, OK 74848.
Town of Calvin	Hughes County Emergency Management Director's Office, 200 North Broadway Street, Holdenville, OK 74848.
Town of Dustin	Town Hall, 117 North Broadway Avenue, Dustin, OK 74839.
Town of Horntown	Horntown Fire Department, 3319 Highway 75, Holdenville, OK 74848.
Town of Lamar	Hughes County Emergency Management Director's Office, 200 North Broadway Street, Holdenville, OK 74848.
Town of Spaulding	Hughes County Emergency Management Director's Office, 200 North Broadway Street, Holdenville, OK 74848.
Town of Stuart	Town Hall, 834 Roosevelt Avenue, Stuart, OK 74570.
Unincorporated Areas of Hughes County	Hughes County Emergency Management Director's Office, 200 North Broadway Street, Holdenville, OK 74848.
Lincoln County, Oklahoma and Incorporated Areas Docket No.: FEMA–B–1638	
Kickapoo Tribe of Oklahoma	Kickapoo Tribe of Oklahoma, Secondary Administration Building, 400 North Highway 102, McLoud, OK 74851.

Community	Community map repository address
Unincorporated Areas of Lincoln County	Lincoln County Courthouse, 811 Manvel Avenue, Suite 4, Chandler, OK 74834.
McIntosh County, Oklahoma and Incorporated Areas Docket No.: FEMA–B–1769	
City of Checotah	City Hall, 414 West Gentry Avenue, Checotah, OK 74426.
City of Eufaula	City Hall, 64 Memorial Drive, Eufaula, OK 74432.
Unincorporated Areas of McIntosh County	McIntosh County Clerk's Office, 110 North 1st Street, Eufaula, OK 74432.
Pottawatomie County, Oklahoma and Incorporated Areas Docket No.: FEMA–B–1769	
City of McLoud	City Hall, 402 East Broadway, McLoud, OK 74851.
City of Shawnee	City Hall Annex Building, 222 North Broadway Avenue, Shawnee, OK 74801.
City of Tecumseh	City Hall, 114 North Broadway Street, Tecumseh, OK 74873.
Town of Bethel Acres	Bethel Acres Town Hall, 18101 Bethel Road, Shawnee, OK 74801.
Town of Earlsboro	Town Hall, 110 South Lamar Avenue, Earlsboro, OK 74840.
Town of Johnson	Pottawatomie County Courthouse, 325 North Broadway Street, Shawnee, OK 74801.
Absentee-Shawnee Tribe of Indians of Oklahoma	Absentee-Shawnee Tribal Complex, 2025 South Gordon Cooper Drive, Shawnee, OK 74801.
Citizen Potawatomi Nation	Citizen Potawatomi Nation Transportation Building, 405 Transportation Drive, Shawnee, OK 74801.
Kickapoo Tribe of Oklahoma	Kickapoo Tribe of Oklahoma Secondary Administration Building, 400 North Highway 102, McLoud, OK 74851.
Sac and Fox Nation	Sac and Fox Nation Administration Building, 920883 South Highway 99, Building A, Stroud, OK 74079.
Unincorporated Areas of Pottawatomie County	Pottawatomie County Courthouse, 325 North Broadway Street, Shawnee, OK 74801.
Waller County, Texas and Incorporated Areas Docket No.: FEMA–B–1753	
City of Hempstead	City Hall, 1125 Austin Street, Hempstead, TX 77445.
City of Prairie View	City Hall, 44500 Business Highway 290, Prairie View, TX 77446.
Unincorporated Areas of Waller County	Waller County Road and Bridge Department, 775 Business Highway 290 East, Hempstead, TX 77445.
Washington County, Texas and Incorporated Areas Docket No.: FEMA–B–1753	
Unincorporated Areas of Washington County	Washington County Courthouse Annex, 105 West Main Street, Suite 100, Brenham, TX 77833.

[FR Doc. 2019–03367 Filed 2–26–19; 8:45 am]
BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2019–0002; Internal Agency Docket No. FEMA–B–1907]

Changes in Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice lists communities where the addition or modification of Base Flood Elevations (BFEs), base flood depths, Special Flood Hazard Area (SFHA) boundaries or zone designations, or the regulatory floodway (hereinafter referred to as flood hazard determinations), as shown on the Flood Insurance Rate Maps (FIRMs), and where applicable, in the supporting Flood Insurance Study (FIS) reports, prepared by the Federal Emergency Management Agency (FEMA) for each community, is appropriate because of new scientific or technical data. The FIRM, and where applicable, portions of the FIS report, have been revised to reflect these flood hazard determinations through issuance of a Letter of Map Revision (LOMR), in accordance with Federal Regulations. The LOMR will be used by insurance agents and others to calculate appropriate flood insurance premium rates for new buildings and the contents of those buildings. For rating purposes, the currently effective community number is shown in the table below and must be used for all new policies and renewals.

DATES: These flood hazard determinations will be finalized on the dates listed in the table below and revise the FIRM panels and FIS report in effect prior to this determination for the listed communities.

From the date of the second publication of notification of these changes in a newspaper of local circulation, any person has 90 days in which to request through the community that the Deputy Associate Administrator for Insurance and Mitigation reconsider the changes. The flood hazard determination information may be changed during the 90-day period.

ADDRESSES: The affected communities are listed in the table below. Revised

flood hazard information for each community is available for inspection at both the online location and the respective community map repository address listed in the table below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *https://msc.fema.gov* for comparison.

Submit comments and/or appeals to the Chief Executive Officer of the community as listed in the table below.

FOR FURTHER INFORMATION CONTACT: Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov;* or visit the FEMA Map Information eXchange (FMIX) online at *https://www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: The specific flood hazard determinations are not described for each community in this notice. However, the online location and local community map repository address where the flood hazard determination information is available for inspection is provided.

Any request for reconsideration of flood hazard determinations must be submitted to the Chief Executive Officer of the community as listed in the table below.

The modifications are made pursuant to section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.,* and with 44 CFR part 65.

The FIRM and FIS report are the basis of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

These flood hazard determinations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. The flood hazard determinations are in accordance with 44 CFR 65.4.

The affected communities are listed in the following table. Flood hazard determination information for each community is available for inspection at both the online location and the respective community map repository address listed in the table below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *https://msc.fema.gov* for comparison.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Michael M. Grimm,

Assistant Administrator for Risk Management, Department of Homeland Security, Federal Emergency Management Agency.

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of letter of map revision	Date of modification	Community No.
Arizona:						
Maricopa	City of Avondale (18–09–0518P).	The Honorable Kenneth N. Weise, Mayor, City of Avondale, 11465 West Civic Center Drive, Avondale, AZ 85323.	Development & Engineering Services Department, 11465 West Civic Center Drive, Avondale, AZ 85323.	*https://msc.fema.gov/portal/advanceSearch.*	Apr. 19, 2019	040038
Maricopa	Unincorporated Areas of Maricopa County (18–09–0518P).	The Honorable Steve Chucri, Chairman, Board of Supervisors, Maricopa County, 301 West Jefferson Street, 10th Floor, Phoenix, AZ 85003.	Flood Control District of Maricopa County, 2801 West Durango Street, Phoenix, AZ 85009.	*https://msc.fema.gov/portal/advanceSearch.*	Apr. 19, 2019	040037
Florida:						
St. Johns	Unincorporated Areas of St. Johns County (18–04–6798P).	Mr. Henry Dean, Chairman, St. Johns County Board of Commissioners, 500 San Sebastian View, St. Augustine, FL 32084.	St. Johns County Administration Building, 4020 Lewis Speedway, St. Augustine, FL 32084.	*https://msc.fema.gov/portal/advanceSearch.*	Apr. 25, 2019	125147
Walton	Unincorporated Areas of Walton County (18–04–4592P).	Mr. Trey Nick, Commissioner, Walton County, 263 Chaffin Avenue, DeFuniak Springs, FL 32433.	Walton County Courthouse Annex, 47 North 6th Street, DeFuniak Springs, FL 32435.	*https://msc.fema.gov/portal/advanceSearch.*	May 2, 2019	120317
Kansas:						
Douglas	City of Lawrence (18–07–0976P).	The Honorable Stuart Boley, Mayor, City of Lawrence, P.O. Box 708, Lawrence, KS 66044.	City Hall, 6 East 6th Street, Lawrence, KS 66044.	*https://msc.fema.gov/portal/advanceSearch.*	Apr. 29, 2019	200090
Douglas	Unincorporated Areas of Douglas County (18–07–0976P).	Mr. Mike Gaughan, Douglas County Commissioner, 1st District, County Courthouse, 1100 Massachusetts Street, Lawrence, KS 66044.	Douglas County Zoning & Codes Department, 2108 West 27th Street, Suite I, Lawrence, KS 66047.	*https://msc.fema.gov/portal/advanceSearch.*	Apr. 29, 2019	200087
Johnson	City of Shawnee (18–07–1702P).	The Honorable Michelle Distler, Mayor, City of Shawnee, City Hall, 11110 Johnson Drive, Shawnee, KS 66203.	City Hall, 11110 Johnson Drive, Shawnee, KS 66203.	*https://msc.fema.gov/portal/advanceSearch.*	Apr. 17, 2019	200177

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of letter of map revision	Date of modification	Community No.
Johnson	City of Shawnee (18–07–2005P).	The Honorable Michelle Distler, Mayor, City of Shawnee, City Hall, 11110 Johnson Drive, Shawnee, KS 66203.	City Hall, 11110 Johnson Drive, Shawnee, KS 66203.	*https://msc.fema.gov/portal/advanceSearch.*	Apr. 17, 2019	200177
Johnson	City of Shawnee (18–07–2117P).	The Honorable Michelle Distler, Mayor, City of Shawnee, City Hall, 11110 Johnson Drive, Shawnee, KS 66203.	City Hall, 11110 Johnson Drive, Shawnee, KS 66203.	*https://msc.fema.gov/portal/advanceSearch.*	Apr. 17, 2019	200177
Massachusetts:						
Middlesex	City of Lowell (18–01–1941P).	The Honorable William Samaras, Mayor, City of Lowell, City Hall, 375 Merrimack Street, Lowell, MA 01852.	City Hall, 375 Merrimack Street, Lowell, MA 01852.	*https://msc.fema.gov/portal/advanceSearch.*	May 9, 2019	250201
Middlesex	Town of Dracut (18–01–1941P).	The Honorable Jesse Forcier, Chairman, Town of Dracut Board of Selectmen, Town Hall, 62 Arlington Street, Dracut, MA 01826.	Town Hall, 62 Arlington Street, Dracut, MA 01826.	*https://msc.fema.gov/portal/advanceSearch.*	May 9, 2019	250190
Middlesex	Town of Tewksbury (18–01–1941P).	The Honorable Jay J. Kelly, Chairman, Town of Tewksbury Board of Selectmen, Town Hall, 1009 Main Street, 2nd Floor, Tewksbury, MA 01876.	Town Hall, 1009 Main Street, Tewksbury, MA 01876.	*https://msc.fema.gov/portal/advanceSearch.*	May 9, 2019	250218
Nebraska: Cass	City of Louisville (18–07–0041P).	The Honorable Roger Behrns, Mayor, City of Louisville, P.O. Box 370, Louisville, NE 68037.	City Hall, 210 Main Street, Louisville, NE 68037.	*https://msc.fema.gov/portal/advanceSearch.*	May 3, 2019	310031
Nevada: Douglas	Unincorporated Areas of Douglas County (18–09–1883P).	The Honorable Steve Thaler, Chairman, Board of Commissioners, Douglas County, P.O. Box 218, Minden, NV 89423.	Douglas County, Community Development, 1594 Esmeralda Avenue, Minden, NV 89423.	*https://msc.fema.gov/portal/advanceSearch.*	May 3, 2019	320008
Ohio: Montgomery	City of Englewood (18–06–6276P).	Mr. William J. Singer, Development Director City of Englewood, 333 West National Road, Englewood, OH 45322.	Government Center, 333 West National Road, Englewood, OH 45322.	*https://msc.fema.gov/portal/advanceSearch.*	May 6, 2019	390828
Oregon:						
Marion	City of Salem (18–10–1215P).	The Honorable Chuck Bennett, Mayor, City of Salem, City Hall, 555 Liberty Street Southeast, Room 220, Salem, OR 97301.	Public Works Department, 555 Liberty Street Southeast, Room 325, Salem, OR 97301.	*https://msc.fema.gov/portal/advanceSearch.*	May 9, 2019	410167
Marion	Unincorporated Areas of Marion County (18–10–1215P).	Ms. Janet Carlson, Chair, Marion County Board of Commissioners, P.O. Box 14500, Salem, OR 97309.	Marion County Department of Planning, 3150 Lancaster Drive Northeast, Salem, OR 97305.	*https://msc.fema.gov/portal/advanceSearch.*	May 9, 2019	410154
Washington	City of Hillsboro (18–10–0728P).	The Honorable Steve Callaway, Mayor, City of Hillsboro, Civic Center Building, 150 East Main Street, Hillsboro, OR 97123.	City Hall, 150 East Main Street, Hillsboro, OR 97123.	*https://msc.fema.gov/portal/advanceSearch.*	Apr. 25, 2019	410243
Washington	Unincorporated Areas of Washington County (18–10–0728P).	The Honorable Roy Rogers, Mayor, Washington County, 155 North 1st Avenue, Hillsboro, OR 97124.	Washington County Department of Land Use and Transportation, 155 North 1st Avenue, Suite 350, Hillsboro, OR 97124.	*https://msc.fema.gov/portal/advanceSearch.*	Apr. 25, 2019	410238
Virginia: Fairfax	Unincorporated Areas of Fairfax County (18–03–1475P).	The Honorable Sharon Bulova, Chairman, Fairfax County Board of Supervisors, 12000 Government Center Parkway, Suite 552, Fairfax, VA 22035.	Fairfax County Community Map Repository/Stormwater Planning, 12000 Government Center Parkway, Suite 449, Fairfax, VA 22035.	*https://msc.fema.gov/portal/advanceSearch.*	Apr. 11, 2019	515525
Washington:						

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of letter of map revision	Date of modification	Community No.
Grays Harbor	City of Aberdeen (18–10–0100P).	The Honorable Erik Larson, Mayor, City of Aberdeen, City Hall, 200 East Market Street, Aberdeen, WA 98520.	City Hall, 200 East Market Street, Aberdeen, WA 98520.	*https://msc.fema.gov/portal/advanceSearch.*	Apr. 19, 2019	530058
Grays Harbor	Unincorporated Areas of Grays Harbor County (18–10–0100P).	Ms. Vickie Raines, Commissioner, Grays Harbor County, Administration Building, 100 West Broadway, Suite 1, Montesano, WA 98563.	Grays Harbor Administration Building, 100 West Broadway, Suite 31, Montesano, WA 98563.	*https://msc.fema.gov/portal/advanceSearch.*	Apr. 19, 2019	530057
Pierce	City of Tacoma (18–10–1374P).	The Honorable Victoria Woodards, Mayor, City of Tacoma, 747 Market Street, 12th Floor, Tacoma, WA 98402.	Municipal Building, 747 Market Street, Tacoma, WA 98402.	*https://msc.fema.gov/portal/advanceSearch.*	Apr. 25, 2019	530148
Yakima	Unincorporated Areas of Yakima County (18–10–0191P).	The Honorable Ron Anderson, Chairman, Board of Yakima County Commissioners, Yakima County Courthouse, 128 North 2nd Street, Room 232, Yakima, WA 98901.	Yakima County Public Services, 128 North 2nd Street, Yakima, WA 98901.	*https://msc.fema.gov/portal/advanceSearch.*	Apr. 5, 2019	530217

[FR Doc. 2019–03369 Filed 2–26–19; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2019–0002; Internal Agency Docket No. FEMA–B–1904]

Changes in Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice lists communities where the addition or modification of Base Flood Elevations (BFEs), base flood depths, Special Flood Hazard Area (SFHA) boundaries or zone designations, or the regulatory floodway (hereinafter referred to as flood hazard determinations), as shown on the Flood Insurance Rate Maps (FIRMs), and where applicable, in the supporting Flood Insurance Study (FIS) reports, prepared by the Federal Emergency Management Agency (FEMA) for each community, is appropriate because of new scientific or technical data. The FIRM, and where applicable, portions of the FIS report, have been revised to reflect these flood hazard determinations through issuance of a Letter of Map Revision (LOMR), in accordance with Federal Regulations. The LOMR will be used by insurance agents and others to calculate appropriate flood insurance premium rates for new buildings and the contents of those buildings. For rating purposes, the currently effective community number is shown in the table below and must be used for all new policies and renewals.

DATES: These flood hazard determinations will be finalized on the dates listed in the table below and revise the FIRM panels and FIS report in effect prior to this determination for the listed communities.

From the date of the second publication of notification of these changes in a newspaper of local circulation, any person has 90 days in which to request through the community that the Deputy Associate Administrator for Insurance and Mitigation reconsider the changes. The flood hazard determination information may be changed during the 90-day period.

ADDRESSES: The affected communities are listed in the table below. Revised flood hazard information for each community is available for inspection at both the online location and the respective community map repository address listed in the table below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *https://msc.fema.gov* for comparison.

Submit comments and/or appeals to the Chief Executive Officer of the community as listed in the table below.

FOR FURTHER INFORMATION CONTACT: Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov;* or visit the FEMA Map Information eXchange (FMIX) online at *https://www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: The specific flood hazard determinations are not described for each community in this notice. However, the online location and local community map repository address where the flood hazard determination information is available for inspection is provided.

Any request for reconsideration of flood hazard determinations must be submitted to the Chief Executive Officer of the community as listed in the table below.

The modifications are made pursuant to section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.,* and with 44 CFR part 65.

The FIRM and FIS report are the basis of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

These flood hazard determinations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. The

flood hazard determinations are in accordance with 44 CFR 65.4.

The affected communities are listed in the following table. Flood hazard determination information for each community is available for inspection at both the online location and the respective community map repository address listed in the table below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *https://msc.fema.gov* for comparison.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Michael M. Grimm,

Assistant Administrator for Risk Management, Department of Homeland Security, Federal Emergency Management Agency.

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of letter of map revision	Date of modification	Community No.
Alabama:						
Madison	City of Madison (19–04–0103P).	The Honorable Paul Finley, Mayor, City of Madison, 100 Hughes Road, Madison, AL 35758.	Engineering Department, 100 Hughes Road, Madison, AL 35758.	*https://msc.fema.gov/portal/advanceSearch.*	Apr. 11, 2019	010308
Montgomery	City of Montgomery (17–04–6774P).	The Honorable Todd Strange, Mayor, City of Montgomery, 103 North Perry Street, Montgomery, AL 36104.	Engineering Department, 25 Washington Avenue, Montgomery, AL 36104.	*https://msc.fema.gov/portal/advanceSearch.*	Apr. 25, 2019	010174
Shelby	City of Helena (18–04–5164P).	The Honorable Mark R. Hall, Mayor, City of Helena, 816 Highway 52 East, Helena, AL 35080.	City Hall, 816 Highway 52 East, Helena, AL 35080.	*https://msc.fema.gov/portal/advanceSearch.*	Apr. 18, 2019	010193
Shelby	City of Pelham (18–04–5164P).	The Honorable Gary W. Waters, Mayor, City of Pelham, 3162 Pelham Parkway, Pelham, AL 35124.	City Hall, 3162 Pelham Parkway, Pelham, AL 35124.	*https://msc.fema.gov/portal/advanceSearch.*	Apr. 18, 2019	010294
Colorado:						
Arapahoe	City of Aurora (18–08–0814P).	The Honorable Bob LeGare, Mayor, City of Aurora, 15151 East Alameda Parkway, Aurora, CO 80012.	Public Works Department, 15151 East Alameda Parkway, Aurora, CO 80012.	*https://msc.fema.gov/portal/advanceSearch.*	Apr. 19, 2019	080002
Broomfield	City and County of Broomfield (18–08–0957P).	The Honorable Randy Ahrens, Mayor, City and County of Broomfield, 1 Descombes Drive, Broomfield, CO 80020.	Engineering Department, 1 Descombes Drive, Broomfield, CO 80020.	*https://msc.fema.gov/portal/advanceSearch.*	May 10, 2019	085073
El Paso	Unincorporated areas El Paso County (18–08–0914P).	The Honorable Darryl Glenn, President, El Paso County Board of Commissioners, 200 South Cascade Avenue, Suite 100, Colorado Springs, CO 80903.	El Paso County Building Department, 2880 International Circle, Colorado Springs, CO 80910.	*https://msc.fema.gov/portal/advanceSearch.*	Apr. 18, 2019	080059
El Paso	Unincorporated areas El Paso County (18–08–1059P).	The Honorable Darryl Glenn, President, El Paso County Board of Commissioners, 200 South Cascade Avenue, Suite 100, Colorado Springs, CO 80903.	El Paso County Building Department, 2880 International Circle, Colorado Springs, CO 80910.	*https://msc.fema.gov/portal/advanceSearch.*	Apr. 17, 2019	080059
Jefferson	City of Westminster (18–08–0957P).	The Honorable Herb Atchison, Mayor, City of Westminster, 4800 West 92nd Avenue, Westminster, CO 80031.	City Hall, 4800 West 92nd Avenue, Westminster, CO 80031.	*https://msc.fema.gov/portal/advanceSearch.*	May 10, 2019	080008
Jefferson	Unincorporated areas Jefferson County (18–08–0875P).	The Honorable Casey Tighe, Chairman, Jefferson County Board of Commissioners, 100 Jefferson County Parkway, Suite 5550, Golden, CO 80419.	Jefferson County Department of Planning and Zoning, 100 Jefferson County Parkway, Suite 3550, Golden, CO 80419.	*https://msc.fema.gov/portal/advanceSearch.*	Apr. 26, 2019	080087
Florida:						
Charlotte	Unincorporated areas Charlotte County (18–04–6671P).	The Honorable Ken Doherty, Chairman, Charlotte County Board of Commissioners, 18500 Murdock Circle, Suite 536, Port Charlotte, FL 33948.	Charlotte County Department of Community Development, 18500 Murdock Circle, Port Charlotte, FL 33948.	*https://msc.fema.gov/portal/advanceSearch.*	Apr. 22, 2019	120061

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of letter of map revision	Date of modification	Community No.
Lee	Unincorporated areas Lee County (18–04–7249P).	Mr. Roger Desjarlais, Manager, Lee County, 2120 Main Street, Fort Myers, FL 33901.	Lee County Building Department, 1500 Monroe Street, Fort Myers, FL 33901.	*https://msc.fema.gov/portal/advanceSearch.*	Apr. 25, 2019	125124
Monroe	Village of Islamorada (18–04–7178P).	The Honorable Chris Sante, Mayor, Village of Islamorada, 86800 Overseas Highway, Islamorada, FL 33036.	Building Department, 86800 Overseas Highway, Islamorada, FL 33036.	*https://msc.fema.gov/portal/advanceSearch.*	Apr 19, 2019	120424
Sarasota	Unincorporated areas Sarasota County (18–04–4837P).	The Honorable Nancy Detert, Chair, Sarasota County Board of Commissioners, 1660 Ringling Boulevard, Sarasota, FL 34236.	Sarasota County Planning and Development Services Department, 1001 Sarasota Center Boulevard, Sarasota, FL 34240.	*https://msc.fema.gov/portal/advanceSearch.*	May 3, 2019	125144
Louisiana: Ascension.	Unincorporated areas Ascension Parish (18–06–3150P).	The Honorable Kenny Matassa, Ascension Parish President, 615 East Worthey Road, Gonzales, LA 70737.	Ascension Parish Public Works Department, 615 East Worthey Road, Gonzales, LA 70737.	*https://msc.fema.gov/portal/advanceSearch.*	May 10, 2019	220013
Mississippi:						
DeSoto	City of Hernando (18–04–4824P).	The Honorable N.C. Tom Ferguson, Mayor, City of Hernando, 475 West Commerce Street, Hernando, MS 38632.	Planning Department, 475 West Commerce Street, Hernando, MS 38632.	*https://msc.fema.gov/portal/advanceSearch.*	Apr. 26, 2019	280292
DeSoto	Unincorporated areas DeSoto County (18–04–4824P).	The Honorable Michael Lee, Chairman, DeSoto County Board of Supervisors, 365 Losher Street, Suite 300, Hernando, MS 38632.	DeSoto County Planning Commission, 365 Losher Street, Hernando, MS 38632.	*https://msc.fema.gov/portal/advanceSearch.*	Apr. 26, 2019	280050
Pennsylvania:						
Allegheny	Township of South Fayette (19–03–0150P).	Mr. Miles Truitt, Interim Manager, Township of South Fayette, 515 Millers Run Road, Morgan, PA 15064.	Planning, Engineering and Building Department, 515 Millers Run Road, Morgan, PA 15064.	*https://msc.fema.gov/portal/advanceSearch.*	Apr. 12, 2019	421106
Allegheny	Township of Upper St. Clair (19–03–0150P).	The Honorable Mark D. Christie, President, Township of Upper St. Clair Board of Commissioners, 1820 McLaughlin Run Road, Upper St. Clair, PA 15241.	Department of Planning and Community Development, 1820 McLaughlin Run Road, Upper St. Clair, PA 15241.	*https://msc.fema.gov/portal/advanceSearch.*	Apr. 12, 2019	421119
South Carolina: Charleston.	City of Charleston (18–04–7585P).	The Honorable John J. Tecklenburg, Mayor, City of Charleston, 80 Broad Street, Charleston, SC 29401.	Public Services Department, 2 George Street, Suite 2100, Charleston, SC 29401.	*https://msc.fema.gov/portal/advanceSearch.*	May 13, 2019	455412
Texas:						
Bexar	Unincorporated areas Bexar County (18–06–3287P).	The Honorable Nelson W. Wolff, Bexar County Judge, 101 West Nueva Street, 10th Floor, San Antonio, TX 78205.	Bexar County Public Works Department, 233 North Pecos-La Trinidad Street, Suite 420, San Antonio, TX 78207.	*https://msc.fema.gov/portal/advanceSearch.*	Apr. 22, 2019	480035
Denton	City of Aubrey (18–06–2849P).	The Honorable Janet Meyers, Mayor, City of Aubrey, 107 South Main Street, Aubrey, TX 76227.	City Hall, 107 South Main Street, Aubrey, TX 76227.	*https://msc.fema.gov/portal/advanceSearch.*	Apr. 29, 2019	480776
Harris	Unincorporated areas of Harris County (18–06–2511P).	The Honorable Edward Emmett, Harris County Judge, 1001 Preston Street, Suite 911, Houston, TX 77002.	Harris County Permit Department, 10555 Northwest Freeway, Suite 120, Houston, TX 77092.	*https://msc.fema.gov/portal/advanceSearch.*	May 13, 2019	480287
Rockwall	City of Rockwall (18–06–1450P).	The Honorable Jim Pruitt, Mayor, City of Rockwall, 385 South Goliad Street, Rockwall, TX 75087.	City Hall, 385 South Goliad Street, Rockwall, TX 75087.	*https://msc.fema.gov/portal/advanceSearch.*	Apr. 15, 2019	480547
Tarrant	City of Arlington (18–06–0363P).	The Honorable Jeff Williams, Mayor, City of Arlington, P.O. Box 90231, Arlington, TX 76004.	City Hall, 101 West Abram Street, Arlington, TX 76010.	*https://msc.fema.gov/portal/advanceSearch.*	Apr. 19, 2019	485454

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of letter of map revision	Date of modification	Community No.
Tarrant	City of North Richland Hills (18–06–2611P).	The Honorable Oscar Trevino, Jr., Mayor, City of North Richland Hills, 4301 City Point Drive, North Richland Hills, TX 76180.	Public Works Administration and Engineering Department, 4301 City Point Drive, North Richland Hills, TX 76180.	*https://msc.fema.gov/portal/advanceSearch.*	Apr. 15, 2019	480607
Travis	City of Austin (18–06–3308P).	Mr. Spencer Cronk, Manager, City of Austin, P.O. Box 1088, Austin, TX 78767.	Watershed Protection Department, 505 Barton Springs Road, Austin, TX 78704.	*https://msc.fema.gov/portal/advanceSearch.*	Apr. 29, 2019	480624
Travis	City of Pflugerville (18–06–2107P).	The Honorable Victor Gonzales, Mayor, City of Pflugerville, P.O. Box 589. Pflugerville, TX 78691.	Development Services Department, 201–B East Pecan Street, P.O. Box 589, Pflugerville, TX 78691.	*https://msc.fema.gov/portal/advanceSearch.*	May 6, 2019	481028
Travis	Unincorporated areas Travis County (18–06–2107P).	The Honorable Sarah Eckhardt, Travis County Judge, 700 Lavaca Street, Suite 2300, Austin, TX 78701.	Travis County TNR, 700 Lavaca Street, 5th Floor, Austin, TX 78701.	*https://msc.fema.gov/portal/advanceSearch.*	May 6, 2019	481026
Wilson	Unincorporated areas Wilson County (18–06–3960P).	The Honorable Richard L. Jackson, Wilson County Judge, 1420 3rd Street, Suite 101, Floresville, TX 78114.	Wilson County Courthouse Annex II, 800 10th Street, Building B, Floresville, TX 78114.	*https://msc.fema.gov/portal/advanceSearch.*	May 2, 2019	480230
Utah:						
Iron	City of Cedar City (18–08–0328P).	The Honorable Maile Wilson, Mayor, City of Cedar City, 10 North Main Street, Cedar City, UT 84720.	City Hall, 10 North Main Street, Cedar City, UT 84720.	https://msc.fema.gov/portal/advanceSearch.	May 20, 2019	490074
Iron	Unincorporated areas Iron County (18–08–0328P).	The Honorable Michael Bleak, Chairman, Iron County Board of Commissioners, 68 South 100 East, Parowan, UT 84761.	Iron County Engineering and Surveying Department, 68 South 100 East, Parowan, UT 84761.	*https://msc.fema.gov/portal/advanceSearch.*	May 20, 2019	490073
Virginia: Prince William.	City of Manassas (18–03–1933P).	Mr. William Patrick Pate, Manager, City of Manassas, 9027 Center Street, Manassas, VA 20110.	Engineering Department, 8500 Public Works Drive, Manassas, VA 20110.	*https://msc.fema.gov/portal/advanceSearch.*	Apr. 25, 2019	510122
Washington, DC: District of Columbia	District of Columbia (18–03–1305P).	The Honorable Muriel Bowser, Mayor, District of Columbia, 1350 Pennsylvania Avenue Northwest, Washington, DC 20004.	Department of Energy and Environment, 1200 1st Street Northeast, 5th Floor, Washington, DC 20002.	*https://msc.fema.gov/portal/advanceSearch.*	Apr. 29, 2019	110001

[FR Doc. 2019–03374 Filed 2–26–19; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2019–0002]

Final Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: Flood hazard determinations, which may include additions or modifications of Base Flood Elevations (BFEs), base flood depths, Special Flood Hazard Area (SFHA) boundaries or zone designations, or regulatory floodways on the Flood Insurance Rate Maps (FIRMs) and where applicable, in the supporting Flood Insurance Study (FIS) reports have been made final for the communities listed in the table below.

The FIRM and FIS report are the basis of the floodplain management measures that a community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the Federal Emergency Management Agency's (FEMA's) National Flood Insurance Program (NFIP). In addition, the FIRM and FIS report are used by insurance agents and others to calculate appropriate flood insurance premium rates for buildings and the contents of those buildings.

DATES: The date of April 5, 2019 has been established for the FIRM and, where applicable, the supporting FIS report showing the new or modified flood hazard information for each community.

ADDRESSES: The FIRM, and if applicable, the FIS report containing the final flood hazard information for each community is available for inspection at the respective Community Map Repository address listed in the tables below and will be available online through the FEMA Map Service Center at *https://msc.fema.gov* by the date indicated above.

FOR FURTHER INFORMATION CONTACT: Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov;* or visit the FEMA Map Information eXchange (FMIX) online at *https://www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) makes the final determinations listed below for the new or modified flood hazard information for each

community listed. Notification of these changes has been published in newspapers of local circulation and 90 days have elapsed since that publication. The Deputy Associate Administrator for Insurance and Mitigation has resolved any appeals resulting from this notification.

This final notice is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR part 67. FEMA has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR part 60.

Interested lessees and owners of real property are encouraged to review the new or revised FIRM and FIS report available at the address cited below for each community or online through the FEMA Map Service Center at *https://msc.fema.gov.*

The flood hazard determinations are made final in the watersheds and/or communities listed in the table below.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Michael M. Grimm,

Assistant Administrator for Risk Management, Department of Homeland Security, Federal Emergency Management Agency.

Community	Community map repository address
San Mateo County, California and Incorporated Areas Docket No.: FEMA–B–1604	
City of Belmont	Public Works Department, One Twin Pines Lane, Belmont, CA 94002.
City of Brisbane	Public Works, 50 Park Place, Brisbane, CA 94005.
City of Burlingame	City Hall, 501 Primrose Road, Burlingame, CA 94010.
City of East Palo Alto	Community and Economic Development Department, 1960 Tate Street, East Palo Alto, CA 94303.
City of Foster City	Public Works, 610 Foster City Boulevard, Foster City, CA 94404.
City of Menlo Park	City Hall, 701 Laurel Street, Menlo Park, CA 94025.
City of Millbrae	City Hall, 621 Magnolia Avenue, Millbrae, CA 94030.
City of Redwood City	City Hall, 1017 Middlefield Road, Redwood City, CA 94063.
City of San Bruno	City Hall, 567 El Camino Real, San Bruno, CA 94066.
City of San Carlos	Building Division, 600 Elm Street, San Carlos, CA 94070.
City of San Mateo	Public Works Department, 330 West 20th Avenue, San Mateo, CA 94403.
City of South San Francisco	City Hall, 400 Grand Avenue, South San Francisco, CA 94080.
Unincorporated Areas of San Mateo County.	San Mateo County Planning and Building Department, 455 County Center, Redwood City, CA 94063.
Eastland County, Texas and Incorporated Areas Docket No.: FEMA–B–1745	
City of Ranger	City Hall, 400 West Main Street, Ranger, TX 76470.
Unincorporated Areas of Eastland County.	Eastland County Judge's Office, 100 West Main Street, Suite 203, Eastland, TX 76448.
Erath County, Texas and Incorporated Areas Docket No.: FEMA–B–1745	
Unincorporated Areas of Erath County.	Erath County Courthouse, 100 West Washington Street, Stephenville, TX 76401.
Hood County, Texas and Incorporated Areas Docket No.: FEMA–B–1745	
City of DeCordova	DeCordova Bend Estates Country Club, 5301 Country Club Drive, Granbury, TX 76049.
City of Granbury	Municipal Service Center, 401 North Park Street, Granbury, TX 76048.
Unincorporated Areas of Hood County.	Hood County Environmental Health Department, 201 West Bridge Street, Granbury, TX 76048.
Johnson County, Texas and Incorporated Areas Docket No.: FEMA–B–1745	
Unincorporated Areas of Johnson County.	Johnson County Public Works Department, Johnson County Annex, 2 North Mill Street, Suite 305, Cleburne, TX 76033.
Palo Pinto County, Texas and Incorporated Areas Docket No.: FEMA–B–1745	
City of Gordon	City Hall, 105 South Main Street, Gordon, TX 76453.
City of Graford	City Hall, 424 East Lee Avenue, Graford, TX 76449.
City of Mineral Wells	City Clerk's Office, 115 Southwest 1st Street, Mineral Wells, TX 76067.
City of Mingus	City Hall, 229 South Mingus Boulevard, Mingus, TX 76463.
City of Strawn	City Hall, 118 East Housley Street, Strawn, TX 76475.
Unincorporated Areas of Palo Pinto County.	Emergency Management Department, 109 North Oak Avenue, Mineral Wells, TX 76067.
Parker County, Texas and Incorporated Areas Docket No.: FEMA–B–1745	
City of Millsap	City Hall, 208 Fannin Street, Millsap, TX 76066.
City of Mineral Wells	City Clerk's Office, 115 Southwest 1st Street, Mineral Wells, TX 76067.

Community	Community map repository address
City of Weatherford	Utilities Service Center, 917 Eureka Street, Weatherford, TX 76086.
Town of Cool	Cool Community Center, 150 South Farm to Market Road 113, Millsap, TX 76066.
Unincorporated Areas of Parker County.	Parker County Permitting Department, 1114 Santa Fe Drive, Weatherford, TX 76086.
Stephens County, Texas and Incorporated Areas Docket No.: FEMA–B–1745	
Unincorporated Areas of Stephens County.	Stephens County Judge's Office, 200 West Walker Street, Breckenridge, TX 76424.
Young County, Texas and Incorporated Areas Docket No.: FEMA–B–1745	
Unincorporated Areas of Young County.	Young County 911 Director's Office, 516 4th Street, Room B5, Graham, TX 76450.
Marion County, West Virginia and Incorporated Areas Docket No.: FEMA–B–1763	
City of Fairmont	J. Harper Meredith Building, 200 Jackson Street, 3rd Floor—Planning, Fairmont, WV 26554.
Unincorporated Areas of Marion County.	Marion County J. Harper Meredith Building, 200 Jackson Street, Room 403 Fairmont, WV 26554.
Monongalia County, West Virginia and Incorporated Areas Docket No.: FEMA–B–1763	
City of Morgantown	City Hall, 389 Spruce Street, Morgantown, WV 26505.
City of Westover	City Hall, 500 Dupont Road, Westover, WV 26501.
Town of Granville	Town Hall, 1245 Main Street, Granville, WV 26534.
Town of Star City	Municipal Building, 370 Broadway Avenue, Star City, WV 26505.
Unincorporated Areas of Monongalia County.	Monongalia County Floodplain Permit Office, 243 High Street, Courthouse Room 110, Morganton, WV 26505.

[FR Doc. 2019–03378 Filed 2–26–19; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2019–0002]

Changes in Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: New or modified Base (1-percent annual chance) Flood Elevations (BFEs), base flood depths, Special Flood Hazard Area (SFHA) boundaries or zone designations, and/or regulatory floodways (hereinafter referred to as flood hazard determinations) as shown on the indicated Letter of Map Revision (LOMR) for each of the communities listed in the table below are finalized. Each LOMR revises the Flood Insurance Rate Maps (FIRMs), and in some cases the Flood Insurance Study (FIS) reports, currently in effect for the listed communities. The flood hazard determinations modified by each LOMR will be used to calculate flood insurance premium rates for new buildings and their contents.

DATES: Each LOMR was finalized as in the table below.

ADDRESSES: Each LOMR is available for inspection at both the respective Community Map Repository address listed in the table below and online through the FEMA Map Service Center at *https://msc.fema.gov.*

FOR FURTHER INFORMATION CONTACT: Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov;* or visit the FEMA Map Information eXchange (FMIX) online at *https://www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) makes the final flood hazard determinations as shown in the LOMRs for each community listed in the table below. Notice of these modified flood hazard determinations has been published in newspapers of local circulation and 90 days have elapsed since that publication. The Deputy Associate Administrator for Insurance and Mitigation has resolved any appeals resulting from this notification.

The modified flood hazard determinations are made pursuant to section 206 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.,* and with 44 CFR part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The new or modified flood hazard information is the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to remain qualified for participation in the National Flood Insurance Program (NFIP).

This new or modified flood hazard information, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities.

This new or modified flood hazard determinations are used to meet the floodplain management requirements of the NFIP and are used to calculate the appropriate flood insurance premium rates for new buildings, and for the contents in those buildings. The changes in flood hazard determinations are in accordance with 44 CFR 65.4.

Interested lessees and owners of real property are encouraged to review the final flood hazard information available at the address cited below for each community or online through the FEMA Map Service Center at *https://msc.fema.gov.*

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Michael M. Grimm,

Assistant Administrator for Risk Management, Department of Homeland Security, Federal Emergency Management Agency.

State and county	Location and case No.	Chief executive officer of community	Community map repository	Date of modification	Community No.
Colorado:					
Denver (FEMA Docket No.: B–1863).	City and County of Denver (18–08–1060P).	The Honorable Michael Hancock, Mayor, City and County of Denver, 1437 Bannock Street, Room 350, Denver, CO 80202.	Department of Public Works, 201 West Colfax Avenue, Denver, CO 80202.	Jan. 11, 2019	080046
Denver (FEMA Docket No.: B–1863).	City of Fountain (17–08–0467P).	The Honorable Gabriel Ortega, Mayor, City of Fountain, 116 South Main Street, Fountain, CO 80817.	Pikes Peak Regional Development Center, 2880 International Circle, Colorado Springs, CO 80910.	Jan. 15, 2019	080061
El Paso (FEMA Docket No.: B–1855).	City of Manitou Springs (18–08–0141P).	The Honorable Ken A. Jaray, Mayor, City of Manitou Springs, 606 Manitou Avenue, Manitou Springs, CO 80829.	City Hall, 606 Manitou Avenue, Manitou Springs, CO 80829.	Dec. 20, 2018	080063
El Paso (FEMA Docket No.: B–1863).	Unincorporated areas of El Paso County (17–08–0467P).	The Honorable Darryl Glenn, President, El Paso County, Board of Commissioners, 200 South Cascade Avenue, Suite 100, Colorado Springs, CO 80903.	Pikes Peak Regional Development Center, 2880 International Circle, Colorado Springs, CO 80910.	Jan. 15, 2019	080059
Connecticut:					
New Haven (FEMA Docket No.: B–1863).	City of New Haven (18–01–1588P).	The Honorable Toni N. Harp, Mayor, City of New Haven, 165 Church Street, New Haven, CT 06510.	Planning Department, 165 Church Street, 5th Floor, New Haven, CT 06510.	Jan. 18, 2019	090084
Tolland (FEMA Docket No.: B–1863).	Town of Mansfield (18–01–0807P).	Mr. Derrik M. Kennedy, Manager, Town of Mansfield, 4 South Eagleville Road, Mansfield, CT 06268.	Town Hall, 4 South Eagleville Road, Mansfield, CT 06268.	Jan. 11, 2019	090128
Delaware:					
Kent (FEMA Docket No.: B–1863).	Town of Camden (18–03–0719P).	The Honorable Justin T. King, Mayor, Town of Camden, 1783 Friends Way, Camden, DE 19934.	Land Use Department, 1783 Friends Way, Camden, DE 19934.	Jan. 9, 2019	100003
Kent (FEMA Docket No.: B–1863).	Unincorporated areas of Kent County (18–03–0719P).	The Honorable P. Brooks Banta, President and First District Commissioner, Kent County Levy Court, 555 Bay Road, Dover, DE 19901.	Kent County Inspections and Enforcement Department, 555 Bay Road, Dover, DE 19901.	Jan. 9, 2019	100001
Florida:					
Collier (FEMA Docket No.: B–1855).	City of Marco Island (18–04–5420P).	The Honorable Jared Grifoni, Chairman, City of Marco Island Council, 50 Bald Eagle Drive, Marco Island, FL 34145.	Building Services Department, 50 Bald Eagle Drive, Marco Island, FL 34145.	Dec. 19, 2018	120426
Lee (FEMA Docket No.: B–1855).	City of Sanibel (18–04–4629P).	The Honorable Kevin Ruane, Mayor, City of Sanibel, 800 Dunlop Road, Sanibel, FL 33957.	Planning Department, 800 Dunlop Road, Sanibel, FL 33957.	Dec. 19, 2018	120402
Lee (FEMA Docket No.: B–1863).	Unincorporated areas of Lee County (18–04–5442P).	Mr. Roger Desjarlais, Manager, Lee County, 2120 Main Street, Fort Myers, FL 33901.	Lee County Building Department, 1500 Main Street, Fort Myers, FL 33901.	Jan. 17, 2019	125124
Monroe (FEMA Docket No.: B–1863).	City of Marathon (18–04–5518P).	The Honorable Michelle Coldiron, Mayor, City of Marathon, 9805 Overseas Highway, Marathon, FL 33050.	Planning Department, 9805 Overseas Highway, Marathon, FL 33050.	Jan. 23, 2019	120681
Monroe (FEMA Docket No.: B–1855).	Unincorporated areas of Monroe County (18–04–4989P).	The Honorable David Rice, Mayor, Monroe County Board of Commissioners, 9400 Overseas Highway, Suite 210, Marathon, FL 33050.	Monroe County Building Department, 2798 Overseas Highway, Suite 300, Marathon, FL 33050.	Dec. 26, 2018	125129
Monroe (FEMA Docket No.: B–1855).	Unincorporated areas of Monroe County (18–04–4990P).	The Honorable David Rice, Mayor, Monroe County Board of Commissioners, 9400 Overseas Highway, Suite 210, Marathon, FL 33050.	Monroe County Building Department, 2798 Overseas Highway, Suite 300, Marathon, FL 33050.	Dec. 27, 2018	125129
Monroe (FEMA Docket No.: B–1855).	Unincorporated areas of Monroe County (18–04–4991P).	The Honorable David Rice, Mayor, Monroe County Board of Commissioners, 9400 Overseas Highway, Suite 210, Marathon, FL 33050.	Monroe County Building Department, 2798 Overseas Highway, Suite 300, Marathon, FL 33050.	Dec. 26, 2018	125129
Monroe (FEMA Docket No.: B–1863).	Unincorporated areas of Monroe County (18–04–5414P).	The Honorable David Rice, Mayor, Monroe County Board of Commissioners, 9400 Overseas Highway, Suite 210, Marathon, FL 33050.	Monroe County Building Department, 2798 Overseas Highway, Suite 300, Marathon, FL 33050.	Jan. 16, 2019	125129
Monroe (FEMA Docket No.: B–1863).	Unincorporated areas of Monroe County (18–04–5417P).	The Honorable David Rice, Mayor, Monroe County Board of Commissioners, 9400 Overseas Highway, Suite 210, Marathon, FL 33050.	Monroe County Building Department, 2798 Overseas Highway, Suite 300, Marathon, FL 33050.	Jan. 16, 2019	125129

State and county	Location and case No.	Chief executive officer of community	Community map repository	Date of modification	Community No.
Monroe (FEMA Docket No.: B–1863).	Village of Islamorada (18–04–5481P).	The Honorable Chris Sante, Mayor, Village of Islamorada, 86800 Overseas Highway, Islamorada, FL 33036.	Planning and Development Department, 86800 Overseas Highway, Islamorada, FL 33036.	Jan. 2, 2019	120424
Pinellas (FEMA Docket No.: B–1855).	Unincorporated areas of Pinellas County (18–04–2032P).	The Honorable Kenneth T. Welch, Chairman, Pinellas County Board of Commissioners, 315 Court Street, Clearwater, FL 33756.	Pinellas County Building Services Department, 440 Court Street, Clearwater, FL 33756.	Dec. 20, 2018	125139
Polk (FEMA Docket No.: B–1863).	Unincorporated areas of Polk County (18–04–1818P).	The Honorable R. Todd Dantzler, Chairman, Polk County Board of Commissioners, 330 West Church Street, Bartow, FL 33831.	Polk County Floodplain Department, 330 West Church Street, Bartow, FL 33831.	Jan. 24, 2019	120261
Georgia: Walton (FEMA Docket No.: B–1855).	Unincorporated areas of Walton County (18–04–3815P).	The Honorable Kevin Little, Chairman, Walton County Board of Commissioners, 111 South Broad Street, Monroe, GA 30655.	Walton County Planning and Development Department, 303 South Hammond Drive, Suite 98, Monroe, GA 30655.	Dec. 20, 2018	130185
Louisiana:					
Iberia (FEMA Docket No.: B–1855).	City of New Iberia (18–06–0845P).	The Honorable Freddie DeCourt, Mayor, City of New Iberia, 457 East Main Street, Suite 300, New Iberia, LA 70560.	Permits and Inspections Department, 457 East Main Street, Suite 412, New Iberia, LA 70560.	Dec. 19, 2018	220082
Iberia (FEMA Docket No.: B–1855).	Unincorporated areas of Iberia Parish (18–06–0845P).	The Honorable Scott Saunier, Chief Administrative Officer, Iberia Parish, 300 Iberia Street, Suite 400, New Iberia, LA 70560.	Iberia Parish Permits, Planning, Zoning and Building Department, 715–A Weldon Street, New Iberia, LA 70560.	Dec. 19, 2018	220078
Maine: Knox (FEMA Docket No.: B–1863).	Town of Owls Head (18–01–1542P).	The Honorable Thomas Von Malder, Chairman, Town of Owls Head Board of Selectmen, 224 Ash Point Drive, Owls Head, ME 04854.	Building Department, 224 Ash Point Drive, Owls Head, ME 04854.	Jan. 11, 2019	230075
Massachusetts: Essex (FEMA Docket No.: B–1863).	Town of Rockport (18–01–1042P).	The Honorable Sarah J. Wilkinson, Chair, Town of Rockport Board of Selectmen, 34 Broadway, Rockport, MA 01966.	Department of Inspection Services, 34 Broadway, Rockport, MA 01966.	Jan. 9, 2019	250100
Mississippi: Warren (FEMA Docket No.: B–1863).	City of Vicksburg (18–04–5020P).	The Honorable George E. Flaggs, Jr., Mayor, City of Vicksburg, 1401 Walnut Street, Vicksburg, MS 39180.	Inspections Department, 819 South Street, Vicksburg, MS 39180.	Jan. 2, 2019	280176
Nevada: Clark (FEMA Docket No.: B–1863).	Unincorporated areas of Clark County (18–09–0813P).	The Honorable Steve Sisolak, Chairman, Clark County Board of Commissioners, 500 South Grand Central Parkway, Las Vegas, NV 89155.	Clark County Public Works Department, 500 South Grand Central Parkway, Las Vegas, NV 89155.	Jan. 25, 2019	320003
New Mexico: Bernalillo (FEMA Docket No.: B–1863).	Unincorporated areas of Bernalillo County (18–06–2313P).	The Honorable Steven Michael Quezada, Chairman, Bernalillo County Board of Commissioners, 1 Civic Plaza Northwest, Albuquerque, NM 87102.	Bernalillo County Public Works Division, 2400 Broadway Boulevard Southeast, Albuquerque, NM 87102.	Jan. 14, 2019	350001
Pennsylvania:					
Columbia (FEMA Docket No.: B–1855).	Town of Bloomsburg (18–03–0068P).	The Honorable William Kreisher, Mayor, Town of Bloomsburg, 301 East 2nd Street, Bloomsburg, PA 17815.	Town Hall, 301 East 2nd Street, Bloomsburg, PA 17815.	Dec. 28, 2018	420339
Columbia (FEMA Docket No.: B–1855).	Township of Catawissa (18–03–0068P).	The Honorable Roger W. Nuss, Chairman, Township of Catawissa Board of Supervisors, 153 Old Reading Road, Catawissa, PA 17820.	Township Hall, 153 Old Reading Road, Catawissa, PA 17820.	Dec. 28, 2018	420342
South Carolina:					
Charleston (FEMA Docket No.: B–1855).	Town of Sullivan's Island (18–04–5145P).	The Honorable Patrick O'Neil, Mayor, Town of Sullivan's Island, P.O. Box 427, Sullivan's Island, SC 29482.	Town Hall, 2056 Middle Street, Sullivan's Island, SC 29482.	Jan. 2, 2019	455418
Charleston (FEMA Docket No.: B–1855).	Town of Sullivan's Island (18–04–5277P).	The Honorable Patrick O'Neil, Mayor, Town of Sullivan's Island, P.O. Box 427, Sullivan's Island, SC 29482.	Town Hall, 2056 Middle Street, Sullivan's Island, SC 29482.	Jan. 2, 2019	455418
South Dakota:					
Minnehaha (FEMA Docket No.: B–1855).	City of Sioux Falls (18–08–0836P).	The Honorable Paul Ten Haken, Mayor, City of Sioux Falls, 224 West 9th Street, Sioux Falls, SD 57104.	Planning and Development Services Department, 231 North Dakota Avenue, Sioux Falls, SD 57104.	Dec. 20, 2018	460060
Stanley (FEMA Docket No.: B–1863).	City of Fort Pierre (18–08–0148P).	The Honorable Gloria Hanson, Mayor, City of Fort Pierre, P.O. Box 700, Fort Pierre, SD 57532.	Department of Public Works, 08 East 2nd Avenue, Fort Pierre, SD 57532.	Jan. 25, 2019	465419
Stanley (FEMA Docket No.: B–1863).	Unincorporated areas of Stanley County (18–08–0148P).	The Honorable Dana Iversen, Chair, Stanley County Commission, P.O. Box 595, Fort Pierre, SD 57532.	Stanley County Department of Public Works, 08 East 2nd Avenue, Fort Pierre, SD 57532.	Jan. 25, 2019	460287
Tennessee: Washington (FEMA Docket No.: B–1855).	City of Johnson City (18–04–4923P).	The Honorable David Tomita, Mayor, City of Johnson City, P.O. Box 2150, Johnson City, TN 37605.	Public Works Department, 601 East Main Street, Johnson City, TN 37605.	Jan. 2, 2019	475432
Texas:					

State and county	Location and case No.	Chief executive officer of community	Community map repository	Date of modification	Community No.
Bell (FEMA Docket No.: B–1863).	City of Temple (18–06–1765P).	The Honorable Tim Davis, Mayor, City of Temple, 2 North Main Street, Suite 103, Temple, TX 76501.	Department of Public Works, Engineering Division, 3210 East Avenue H, Building A, Suite 107, Temple, TX 76501.	Jan. 9, 2019	480034
Bell (FEMA Docket No.: B–1863).	Unincorporated areas of Bell County (18–06–1765P).	The Honorable Jon H. Burrows, Bell County Judge, P.O. Box 768, Belton, TX 76513.	Bell County Engineering Department, 206 North Main Street, Belton, TX 76513.	Jan. 9, 2019	480706
Bexar (FEMA Docket No.: B–1863).	City of Universal City (18–06–1420P).	The Honorable John Williams, Mayor, City of Universal City, 2150 Universal City Boulevard, Universal City, TX 78148.	Stormwater Department, 2150 Universal City Boulevard, Universal City, TX 78148.	Jan. 14, 2019	480049
Bexar (FEMA Docket No.: B–1863).	Unincorporated areas of Bexar County (18–06–1812P).	The Honorable Nelson W. Wolff, Bexar County Judge, 101 West Nueva Street, 10th Floor, San Antonio, TX 78205.	Bexar County Public Works Department, 233 North Pecos-La Trinidad Street, Suite 420, San Antonio, TX 78207.	Dec. 24, 2018	480035
Collin (FEMA Docket No.: B–1863).	City of Allen (18–06–1943P).	Mr. Peter H. Vargas, Manager, City of Allen, 305 Century Parkway, Allen, TX 75013.	Engineering and Traffic Department, 305 Century Parkway, Allen, TX 75013.	Jan. 7, 2019	480131
Collin (FEMA Docket No.: B–1863).	City of Plano (18–06–1563P).	The Honorable Harry LaRosiliere, Mayor, City of Plano, 1520 K Avenue, Plano, TX 75074.	Engineering Department, 1520 K Avenue, Plano, TX 75074.	Jan. 18, 2019	480140
Collin (FEMA Docket No.: B–1863).	City of Plano (18–06–1943P).	The Honorable Harry LaRosiliere, Mayor, City of Plano, 1520 K Avenue, Plano, TX 75074.	Engineering Department, 1520 K Avenue, Plano, TX 75074.	Jan. 7, 2019	480140
Tarrant (FEMA Docket No.: B–1863).	City of Fort Worth (18–06–1064P).	The Honorable Betsy Price, Mayor, City of Fort Worth, 200 Texas Street, Fort Worth, TX 76102.	Transportation and Public Works Department, 200 Texas Street, Fort Worth, TX 76102.	Dec. 28, 2018	480596
Tarrant (FEMA Docket No.: B–1863).	City of Kennedale (18–06–3137X).	The Honorable Brian Johnson, Mayor, City of Kennedale, 405 Municipal Drive, Kennedale, TX 76060.	Planning and Development Department, 405 Municipal Drive, Kennedale, TX 76060.	Jan. 3, 2019	480603
Webb (FEMA Docket No.: B–1863).	City of Laredo (17–06–3048P).	The Honorable Pete Saenz, Mayor, City of Laredo, 1110 Houston Street, 3rd Floor, Laredo, TX 78040.	Planning and Zoning Department, 1120 San Bernardo Avenue, Laredo, TX 78040.	Jan. 14, 2019	480651
Utah: Salt Lake (FEMA Docket No.: B–1855).	City of Draper (18–08–0572P).	The Honorable Troy K. Walker, Mayor, City of Draper, 1020 East Pioneer Road, Draper, UT 84020.	Community Development Department, 1020 East Pioneer Road, Draper, UT 84020.	Dec. 26, 2018	490244
Virginia: Independent City (FEMA Docket No.: B–1855).	City of Roanoke (18–03–1202P).	Mr. Robert S. Cowell, Jr., Manager, City of Roanoke, 215 Church Avenue Southwest, Room 364, Roanoke, VA 24011.	Engineering Division, 215 Church Avenue Southwest, Room 350, Roanoke, VA 24011.	Jan. 4, 2019	510130
Wyoming:					
Sheridan (FEMA Docket No.: B–1855).	Town of Ranchester (18–08–0451P).	The Honorable Peter Clark, Mayor, Town of Ranchester, P.O. Box 695, Ranchester, WY 82839.	Town Hall, 145 Coffeen Street, Ranchester, WY 82839.	Dec. 20, 2018	560046
Sheridan (FEMA Docket No.: B–1855).	Unincorporated areas of Sheridan County (18–08–0451P).	The Honorable Mike Nickel, Chairman, Sheridan County Board of Commissioners, 224 South Main Street, Suite B1, Sheridan, WY 82801.	Sheridan County Public Works, Planning and Engineering Department, 224 South Main Street, Suite B8, Sheridan, WY 82801.	Dec. 20, 2018	560047

[FR Doc. 2019–03368 Filed 2–26–19; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7014–N–01]

60-Day Notice of Proposed Information Collection: Service Coordinators in Multifamily Housing

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for 60 days of public comment.

DATES: *Comments Due Date:* April 29, 2019.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW, Room 4176, Washington, DC 20410–5000; telephone 202–402–3400 (this is not a toll-free number) or email at *Colette.Pollard@hud.gov* for a copy of the proposed forms or other available information. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

FOR FURTHER INFORMATION CONTACT: For copies of the proposed forms and other available information contact Jessica Grantling, Office of Asset Management and Portfolio Oversight, Department of Housing and Urban Development, 451 7th Street SW, Washington, DC 20410 by email *Jessica.v.Grantling@hud.gov* telephone at 202–402–2521. This is not a toll-free number. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

A. Overview of Information Collection

Title of Information Collection: Service Coordinators in Multifamily Housing.

OMB Approval Number: 2502–0447.

OMB Expiration Date: 11/30/18.

Type of Request: Reinstatement of with change, of previously approved collection for which approval has expired.

Form Numbers: HUD–91186, HUD–91186–A, HUD–50080–SCMF, HUD–2530, HUD–2880, SF–424, SF–424-Supp and SF–LLL.

Description of the need for the information and proposed use: The collection of information is necessary to ensure efficient and proper use of funds for eligible activities. This information collection will assist HUD in better determining the need and eligibility when reviewing a new request for funding. Further, without this information, HUD staff cannot effectively assess the continued need for renewals. The information will also enable HUD and the grantees to more effectively evaluate their program performance, account for funds and maintain appropriate program records.

Grant funds are taken to pay costs previously incurred and are obtained through use of the electronic Line of Credit Control System (eLOCCS). Grantees are required to draw down from eLOCCS monthly or quarterly. Grantees will submit the revised form HUD–50080–SCMF on a semi-annual basis. Grantees will complete one worksheet per draw down. Each worksheet will list every expense incurred during that month or quarter. Grantees will be required to maintain detailed expense documentation in their files. HUD may request copies of such documentation if additional program review is warranted. The data reported will allow HUD staff to track expenses and drawdown of funds for eligible costs at intervals within the grant term.

Respondents: Multifamily Housing assisted housing owners.

Estimated Number of Respondents: 4,230.

Estimated Number of Responses: 9,420.

Frequency of Response: Quarterly to annually.

Average Hours per Response: 1.5 hour.

Total Estimated Burden hours: 8,560.

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency'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 those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

HUD encourages interested parties to submit comment in response to these questions.

C. Authority

Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

Dated: February 14, 2019.

Vance T. Morris,

Special Assistant to the Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 2019–03416 Filed 2–26–19; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7018–N–01]

60 Day Notice of Proposed Information Collection Comment Request: HUD Standardized Grant Application Forms

AGENCY: Office of Strategic Planning and Management, HUD.

ACTION: Notice.

SUMMARY: HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for 60 days of public comment.

DATES: *Comments Due Date:* April 29, 2019.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW, Room 4176, Washington, DC 20410–5000; telephone 202–402–3400 (this is not a toll-free number) or email at *Colette.Pollard@hud.gov* for a copy of the proposed form. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

Electronic Submission of Comments. Interested persons may also submit comments electronically through the Federal eRulemaking Portal at *www.regulations.gov.* HUD strongly encourages commenters to submit comments electronically. Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt by HUD, and enables HUD to make them immediately available to the public. Comments submitted electronically through the *www.regulations.gov* website can be viewed by other commenters and interested members of the public. Commenters should follow the instructions provided on that site to submit comments electronically.

Note: To receive consideration as public comments, comments must be submitted through one of the methods specified above. Again, all submissions must refer to the docket number and title of the notice.

FOR FURTHER INFORMATION CONTACT: Christopher Walsh, Grants Management and Oversight Division, Office of Strategic Planning and Management, Department of Housing and Urban Development, 451 Seventh St. SW, Room 3156, Washington, DC 20410 or by email *Christopher.K.Walsh@hud.gov* telephone 202–402–4353. This is not a toll-free number. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

Copies of the proposed data collection form may be requested from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that the Department is soliciting comments prior to submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended). HUD is seeking approval from OMB for the information collection described in Section A.

A. Overview of Information Collection

Title of Proposal: HUD Standardized Grant Application Forms.

Type of Request: Extension of a currently approved collection.

OMB Control Number, if applicable: 2501–0017.

Additional OMB control numbers applicable to government wide standardized forms:
4040–0004 SF 424
4040–0007 SF 424–B
4040–0009 SF 424–D
SLLL—*Grants.gov* form
SFLLa *Grants.gov* form
2501–0032 Applicant/Recipient Disclosure/Update Report (HUD Form 2880)

Description of the need for the information and proposed use: Approval is sought for extension of HUD standardized forms which are used by various HUD competitive grant programs in the grant application process. The HUD Common Budget Form—(HUD–CB), the Common Budget Form Worksheet (HUD–CBW), and the HUD Matrix (HUD–M) are used to offer standardized grant application processes for several HUD programs. The policy of standardization is in accordance with the provisions of the Federal Financial Assistance Improvement Act of 1999 (Pub. L. 106–107, signed November 20, 1999). The HUD 424 Supplement, Survey on Ensuring Equal Opportunity for Applicants is completed by nonprofit organizations to provide HUD with an understanding of the population of applicants for Federal funds.

In addition, the collection references a number of standard forms from the government wide SF Family of Forms. These forms are used for all HUD applications. However, the burden associated with those forms is not reflected in this collection because that burden is reflected in Office of Management and Budget sponsored government-wide information collections.

In addition, HUD may combine into this collection OMB collection 2501–0032, HUD Form 2880 Applicant/Recipient Disclosure/Update Report which is being separately processed in advance of this publicaiton into this collection in order to consolidate public input on these forms.

Public notification of the renewal of these forms was made in December 20, 2017 as part of the Consolidated Competive Grant Paperwork Reduction Act Notice (FR–6005–N–01, 82 FR 60410, published December 20, 2017).

Members of affected public: Applicants for HUD competitively funded assistance.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: The forms are used by entities when they apply for grants. As HUD receives roughly 14,000 applications on an annual basis, we expect that there will be 14,000 respondents who may be completing these forms. HUD estimates that the hourly rate of individuals completing the form, at $60.74 per hour.[1] The total estimated burden on respondents would thus reach $2,648,264.00 on an annual basis. This is shown in the following table.

Form	Number of respondents	Frequency	Hours per respondent	Total hours	Cost per hour	Total cost
SF424	14,000					
SF424B	14,000					
SF424D	2000					
SFLLL	14,000					
SFLLLa	12,000					
HUD424CB	1,100	1	3	3,300	60.74	$200,442.00
HUD424CBW	1,100	1	3	3,300	60.74	200,442.00
HUD424M	200	1	5	1,000	60.74	60,740.00
HUD424SUP	4,000	1	2	8,000	60.74	485,920.00
HUD2880	14,000	1	2	28,000	60.74	1,700,720.00
Total	14,000					2,648,264.00

Estimation of the Cost to the Federal Government: The following table shows the estimated burden of Federal financial assistance review. HUD estimates the cost of the maximum burden on HUD staff would total at most $5,011,267. This estimate assumes that each form would be reviewed for one hour by a GS 13 step 5 performing a review, and then by a GS 14 and a GS 15 who will look at summary results on an annual basis.[2]

Estimated respondents	Frequency	Estimated number of responses	Estimated burden hours per review	Estimated burden hours per year	Cost per hour	Total estimated burden[2]
14,000	1	76,400	1	76,400	$61.08	$21,191,100
14,000	1	76,400	.15	19,100	72.20	344,755
						5,011,267

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including

[1] Estimated cost for respondents is calculated from the June 2018 Department of Labor Bureau of Labor Statistics report on Employer Costs for Employee Compensation determined that the hourly rate of management, professional and related wages and salaries averaged $41.71 per hour plus $19.03 per hour for fringe benefits for a total $60.74 per hour.

[2] Federal staff time is estimated for a GS–13 step 5 hourly rate at $52.66 per hour (from the Office of Personnel Management and the table with Washington-Baltimore-Arlington locality pay), plus 16% fringe benefit for a total of $61.08 per hour, as well as 15 minutes each for a GS 14 and a GS 15 based on similar calculations bringing the blended total to $100.91/hr.

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; (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 collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

C. Authority

The Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: February 11, 2019.

Angie R. Scott,

Acting Director, Office of Strategic Planning and Management.

[FR Doc. 2019–03417 Filed 2–26–19; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7014–N–02]

60-Day Notice of Proposed Information Collection: Previous Participation Certification

AGENCY: Office of the Assistant Secretary for Housing- Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for 60 days of public comment.

DATES: *Comments Due Date:* April 29, 2019.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW, Room 4176, Washington, DC 20410–5000; telephone 202–402–3400 (this is not a toll-free number) or email at *Colette.Pollard@hud.gov* for a copy of the proposed forms or other available information. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

FOR FURTHER INFORMATION CONTACT: Devasia Karimpanal, Program Specialist, Business Relations and Support Contracts Division, Email: *Devasia.V.Karimpanal@Hud.gov;* Telephone: 202–402–7682; Department of Housing and Urban Development, 451 7th Street SW, Washington, DC 20410. This is not a toll-free number. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

A. Overview of Information Collection

Title of Information Collection: Previous Participation Certification.

OMB Approval Number: 2502–0118.

OMB Expiration Date: 5–31–2019.

Type of Request: Revision of a currently approved collection.

Form Number: HUD Form 2530.

Description of the need for the information and proposed use: The HUD–2530 process provides review and clearance for participants in HUD's multifamily insured and non-insured projects. The information collected (participants' previous participation record) is reviewed to determine if they have carried out their past financial, legal, and administrative obligations in a satisfactory and timely manner. The HUD–2530 process requires a principal to certify to their prior participation in multifamily projects, and to disclose other information which could affect the approval for the proposed participation.

Respondents (*i.e.* affected public): Multifamily project participants such as owners, managers, developers, consultants, general contractors, and nursing home owners and operators.

Estimated Number of Respondents: 9,000.

Estimated Number of Responses: 9,000.

Frequency of Response: 1.

Average Hours per Response: Three hours for paper 2530 and 1 hour for electronic 2530.

Total Estimated Burden: 12,000.

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency'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 those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

HUD encourages interested parties to submit comment in response to these questions.

C. Authority

Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

Dated: February 14, 2019.

Vance T. Morris,

Special Assistant to the Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 2019–03418 Filed 2–26–19; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–HQ–R–2019–N005; FXGO1664091HCC0–FF09D00000–189]

International Wildlife Conservation Council; Public Meeting

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, the U.S. Fish and Wildlife Service announces a public meeting of the International Wildlife Conservation Council, which provides advice and recommendations to the Secretary of the Interior regarding the benefits that result from U.S. citizens traveling to foreign nations to engage in hunting.

DATES: The meeting will be March 14, 2019, from 9 a.m. to 5 p.m. (Central Standard Time) and March 15, 2019, from 1:00 p.m. to 3:00 p.m. (Central Standard Time). For deadlines and directions on registering to attend, submitting written material, and giving an oral presentation, please see Public Input under **SUPPLEMENTARY INFORMATION**.

ADDRESSES: The meeting will be held at the DFW Airport Marriott South, 4151 Centreport Drive, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: Cade London, Policy Advisor, by email (preferred) at *iwcc@fws.gov;* by telephone at (703) 358–2584; by U.S. mail at USFWS—International Affairs, 5275 Leesburg Pike, Falls Church, VA 22041; or via the Federal Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: In accordance with the Federal Advisory Committee Act (5 U.S.C. Appendix 2), we, the U.S. Fish and Wildlife Service, announce a public meeting of the International Wildlife Conservation Council (council). The council provides advice and recommendations to the Secretary of the Interior regarding the benefits that result from U.S. citizens traveling to foreign nations to engage in hunting.

Background

Formed in December 2017, the council is an advisory body whose duties include but are not limited to:

(a) Developing a plan for public engagement and education on the benefits of international hunting.

(b) Reviewing and making recommendations for changes, when needed, on all Federal programs and/or regulations, to ensure support of hunting as:

1. An enhancement to foreign wildlife conservation and survival, and

2. An effective tool to combat illegal trafficking and poaching.

(c) Recommending strategies to benefit the U.S. Fish and Wildlife Service's permit office in receiving timely country data and information so as to remove barriers that impact consulting with range states.

(d) Recommending removal of barriers to the importation into the United States of legally hunted wildlife.

(e) Ongoing review of import suspension/bans and providing recommendations that seek to resume the legal trade of those items, where appropriate.

(f) Reviewing seizure and forfeiture actions/practices, and providing recommendations for regulations that will lead to a reduction of unwarranted actions.

(g) Reviewing the Endangered Species Act's foreign listed species and interaction with the Convention on International Trade in Endangered Species of Wild Flora and Fauna, with the goal of eliminating regulatory duplications.

(h) Recommending methods for streamlining/expediting processing of import permits.

Meeting Agenda

The council will convene to hear and discuss the following:

1. Presentations made by conservation experts and officials,

2. Administrative topics, and

3. Public comment, response, and recommendations (if appropriate).

The final agenda will be posted on the internet at *https://www.fws.gov/iwcc.*

Attendance

If you plan to attend this meeting, you must register by close of business on the date listed in Public Input. Please submit your name, time of arrival, email address, and phone number to the Policy Advisor for International Affairs (see **FOR FURTHER INFORMATION CONTACT**). Space is limited and requests to attend will be accommodated in the order they are received.

Public Input

If you wish to . . .	You must contact the Policy Advisor for International Affairs (see **FOR FURTHER INFORMATION CONTACT**) no later than . . .
Attend the meeting	March 6, 2019.
Submit written information before the meeting for the council to consider during the meeting.	March 6, 2019.
Give an oral presentation during the public comment period	March 6, 2019.
Attend the meeting and request reasonable accommodations	March 4, 2019.

Members of the public requesting reasonable accommodations, such as hearing interpreters, may contact Mr. London in writing (preferably by email) or via the Federal Relay Service at 1–800–877–8339 no later than March 4, 2019.

Submitting Written Information

Interested members of the public may submit relevant information for the council to consider during the public meeting. Written statements must be received by the date in the table above so that the information may be made available to the council for consideration prior to the meeting. Submit written statements in the following formats: One hard copy with original signature, and/or one electronic copy via email (acceptable file formats are Adobe Acrobat PDF, MS Word, MS PowerPoint, or rich text file).

Giving an Oral Presentation

Requests to address the council during the public comment period will be accommodated in the order the requests are received. Interested parties must contact the Policy Advisor for International Affairs in writing (preferably via email; see **FOR FURTHER INFORMATION CONTACT**). Depending on the number of people who want to comment and the time available, the amount of time for individual oral comments may be limited. Registered speakers who wish to expand upon their oral statements, or those who had wished to speak but could not be accommodated on the agenda, may submit written statements up to 30 days after the meeting.

Public Disclosure of Comments

Written comments we receive become part of the administrative 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 can request in your comment that we withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public disclosure in their entirety.

Meeting Minutes

Detailed minutes of the meeting will be available for public inspection within 90 days after the meeting. They will be posted on the internet at *http://www.fws.gov/iwcc.*

Authority: 5 U.S.C. Appendix 2.

Ariel Alvarez,

Assistant Director, International Affairs.

[FR Doc. 2019–03372 Filed 2–26–19; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLUT934000–16XL5413AR–L12320000–FU0000–LVRDUT210000]

Notice of Intent To Collect New Standard and Expanded Amenity Recreation Fees at Sites in the Cedar City, Moab, Monticello and Vernal Field Offices, Utah

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent.

SUMMARY: Pursuant to applicable provisions of the Federal Lands Recreation Enhancement Act (FLREA), the Moab, Monticello, Cedar City, and Vernal Field Offices of the Bureau of Land Management (BLM) are posting a Notice of Intent to begin collecting fees for 20 campgrounds, 22 day use sites, and two rental cabins.

DATES: All new fees will become effective August 27, 2019.

SUPPLEMENTARY INFORMATION: The BLM Utah new fee sites are listed below:

The Cedar City Field Office will establish new recreation fees at campgrounds and day use sites. Campgrounds include: Rocky Peak, Coal Creek, Mineral Mountains, South Creek, Shurtz Canyon, Center Cabin, and Hanging Rock. Fees at campgrounds without water will be $5 per night and with water will be $10 per night. Group sites and pavilions will have a day use or camping fee between $20-$210, depending on water and the size of the group. Fees at the Three Peaks Model Port and Radio Control Car Track will be $2 per day, with a $25 yearly pass, and $220 for an exclusive use reservation. There will be 13 day use sites with a no minimum use fee.* These day use sites include: Three Peaks (Mountain Bike site, Equestrian site, Disc Golf Course, and OHV site), Rock Corral site, Parowan Gap site, Southview site, Thunderbird Gardens site, Shurtz Canyon site, Fiddlers Canyon site, Enoch Bench site, Ironside Disc Golf Course, and Parowan Canyon Disc Golf Course.

The Moab Field Office will establish new campground fees at North Klondike, Mineral, Utah Rims, Black Ridge, and Cameo Cliffs/Hook and Ladder. Fees for overnight use of individual campsites will be $25 per night, and group campsites will be $5 per person per night at these campgrounds.

The Monticello Field Office will establish new campground fees at Grand Flat, Moki Dugway, Shay Vista, and Comb Wash Campgrounds. Fees for overnight use of individual campsites will be $15 per night, and group campsites will become a flat rate of $65 per night at these campgrounds.

The Vernal Field Office will establish new recreation fees at campgrounds, day use sites, and rental cabins. New campground fees will be established at Pelican Lake, McCoy Flats, Cliff Ridge, and Docs Beach. Fees for overnight use of individual campsites will be $10 per night, and group campsites will be $35 group site per night at these campgrounds. Fees for the Split Mountain Yurt Rentals will be $50 per night and the John Jarvie Historic Bunkhouse will be $60 per night. The following day use sites will be a no minimum use fee:* McCoy Flats Day Use Site, Pelican Lake Day Use Site, Dinosaur Trackway Day Use Site, Red Fleet Downhill Flow Day Use Site, LaPoint Day Use Site, Dino-Daily Boat Ramp (Put-In), and Dino-Daily Boat Ramp (Take-Out).

Under Public Law 108–447, Sec. 803 (g) (2) (A/C) of the FLREA, developed campgrounds and rental cabins qualify as sites wherein visitors can be charged an ''Expanded Amenity Recreation Fee.'' Pursuant to FLREA and implementing regulations at 43 CFR Subpart 2933, fees may be charged for overnight camping, rental of cabins, and group use reservations where specific amenities and services are provided. Specific visitor fees will be identified and posted at each campground, day use site, or rental cabin.

Under Public Law 108–447, Sec. 803 (f)(4) of the FLREA, all day use sites in this Notice qualify as areas wherein visitors can be charged a ''Standard Amenity Recreation Fee.'' Pursuant to FLREA and implementing regulations at 43 CFR Subpart 2933, fees may be charged for an area where there are significant opportunities for outdoor recreation, has substantial Federal investments, where fees can be efficiently collected, and contains specific amenities and services. Specific visitor fees will be identified and posted at each day use site.

People holding the America The Beautiful—The National Parks and Federal Recreational Lands—Senior Pass (*i.e.,* Interagency Senior Pass), a Golden Age Passport, the America the Beautiful—The National Parks and Federal Recreational Lands—Access Pass (*i.e.,* Interagency Access Pass), or a Golden Access Passport will be entitled to a 50 percent fee reduction on all expanded amenity fees and free standard amenity fees, except those associated with group reservations.

In December 2004, FLREA was signed into law. FLREA provides authority for the Secretaries of the Interior and Agriculture to establish, modify, charge, and collect recreation fees for use of some Federal recreation lands and waters, and contains specific provisions addressing public involvement in the establishment of recreation fees, including a requirement that a Recreation RAC have the opportunity to make recommendations regarding establishment of such fees. FLREA also directed the Secretaries of the Interior and Agriculture to publish six months' advance notice in the **Federal Register** whenever new recreation fee areas are established under their respective jurisdictions.

In an effort to meet increasing demands for services and increased maintenance costs, the BLM Utah has developed recreation fee business plans. The plans cover campgrounds, rental cabins, and day use areas within the Moab, Monticello, Cedar City, and Vernal Field Offices. The plans will implement new Standard and Expanded Amenity Recreation Fees for developed campgrounds, group use, rental cabins, and day use fees at the sites as indicated above.

In response to increasing visitation on BLM-administered lands in Utah, the new recreation fees will be used to replace aging infrastructure at campgrounds and day use sites, to increase visitor services, and to improve access to recreational opportunities across the state.

As analyzed in the Field Offices business plans, the campsite, group use, rental cabins, and day use fees are consistent with other established fee sites in the regions including other BLM administered sites and those managed by the United States Department of Agriculture—Forest Service, United Stated Department of the Interior—National Park Service, and Utah State Parks and Recreation.

In accordance with the BLM recreation fee program policy, the business plans explain agency management direction, the need for fee collection, and how the fees will be used at the sites. The BLM notified and involved the public at each stage of the planning process. A 30-day public comment period on the draft

* Users pay what they feel their recreation experience is worth to them specifically for the use of these developed recreation areas.

campground and day use business plans was announced on April 12, 2018 through a BLM public news release, letters mailed to local governments and major stakeholders, by providing information on the BLM website, and posting written notices at each fee site. The draft business plans were publicly available for review and comment on the BLM Utah business plan website from April 11, 2018 until May 12, 2018.

Following FLREA guidelines, the Utah Recreation RAC reviewed and recommended the new fee proposals at their meeting on May 22, 2018. Fee amounts will be posted on-site, and copies of the business plan will be available at the Field Offices and the BLM Utah State Office, and posted online.

Authority: 16 U.S.C. 6803 and 43 CFR 2933.

Edwin L. Roberson,

State Director.

[FR Doc. 2019–03385 Filed 2–26–19; 8:45 am]

BILLING CODE 4310–DQ–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1114]

Certain Modular LED Display Panels and Components Thereof; Notice of Commission Determination Not To Review an Initial Determination Terminating the Investigation in Its Entirety; Termination of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission (''Commission'') has determined not to review an initial determination (''ID'') (Order No. 29) terminating the investigation in its entirety based on withdrawal of the operative complaint by Complainant Ultravision Technologies, LLC of Dallas, Texas (''Ultravision'').

FOR FURTHER INFORMATION CONTACT: Carl P. Bretscher, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone 202–205–2382. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*https://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's Electronic Docket Information System (''EDIS'') (*https://edis.usitc.gov*). Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal, telephone 202–205–1810.

SUPPLEMENTARY INFORMATION: On May 31, 2018, the Commission instituted this investigation based on a complaint (and amendment and supplement thereto) filed by Ultravision. 83 FR 25044 (May 31, 2018). The amended and supplemented complaint alleged a violation of 19 U.S.C. 1337, as amended (''Section 337''), in the importation into the United States, sale for importation, or sale within the United States after importation of certain modular LED display panels and components thereof that infringe the asserted claims of U.S. Patent Nos. 9,349,306 (''the '306 patent'') and 9,916,782 (''the '782 patent''). The Commission's notice of investigation named forty (40) parties as respondents, including but not limited to Shanghai Sansi Electronic Engineering Co., Ltd. and Sansi North America, LLC (collectively ''Sansi''), the subjects of the present ID. *Id.*; Order No. 29 at 2. The Office of Unfair Import Investigations (''OUII'') was also named as a party to the investigation.

The Commission determined not to review previous IDs that partially terminated the investigation with respect to certain patent claims or certain parties. *See, e.g.,* Comm'n Notice (Nov. 19, 2018); Comm'n Notice (Oct. 2, 2018); Comm'n Notice (Sept. 28, 2018); Comm'n Notice (July 24, 2018). The Commission also determined not to review previous IDs that found certain respondents in default. *See, e.g.,* Comm'n Notice (Sept. 26, 2018); Comm'n Notice (Sept. 18, 2018); Comm'n Notice (Sept. 17, 2018).

On November 27, 2018, Ultravision moved to terminate the investigation in its entirety based on its withdrawal of the amended complaint, the operative complaint in this investigation. Order No. 29 at 1. Consistent with Commission Rule 210.21(a)(1), Ultravision stated in its motion that it had entered into a confidential term sheet agreement with Sansi. *Id.* at 2.

On November 30, 2018, OUII filed a response supporting the motion. *See id.* at 1. No other party filed a response to the motion.

On January 31, 2019, the ALJ issued the subject ID granting the motion and finding no ''extraordinary circumstances that warrant denying the motion'' under Commission Rule 210.21(a)(1), 19 CFR 210.21(a).

No party filed a petition seeking review of the subject ID.

Upon review of the entire record, including the ALJ's ID, the Commission has determined not to review the subject ID. The investigation is hereby terminated in its entirety.

The authority for the Commission's determination is contained in Section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in part 210 of the Commission's Rules of Practice and Procedure (19 CFR part 210).

By order of the Commission.

Issued: February 21, 2019.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2019–03340 Filed 2–26–19; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

[OMB Number 1117–0047]

Agency Information Collection Activities; Proposed eCollection, eComments Requested; Extension Without Change of a Previously Approved Collection; Application for Import Quota for Ephedrine, Pseudoephedrine, and Phenylpropanolamine; DEA Form 488

AGENCY: Drug Enforcement Administration, Department of Justice.

ACTION: 30-Day notice.

SUMMARY: The Department of Justice, Drug Enforcement Administration (DEA), is submitting the following information collection request to the Office of Management and Budget for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection was previously published in the **Federal Register**, on December 14, 2018, allowing for a 60 day comment period.

DATES: Comments are encouraged and will be accepted for 30 days until March 29, 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 Kathy L. Federico, Diversion Control Division, Drug Enforcement Administration; Mailing Address: 8701

Morrissette Drive, Springfield, Virginia 22152; Telephone: (202) 598–6812. Written comments and/or suggestions may also be sent to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503, or sent to *OIRA_submission@omb.eop.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:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
—Evaluate whether and if so how the quality, utility, and clarity of the information proposed 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:* Extension of a currently approved collection.

2. *Title of the Form/Collection:* Application for Import Quota for Ephedrine, Pseudoephedrine, and Phenylpropanolamine.

3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* DEA Form 488. The applicable component within the Department of Justice is the Drug Enforcement Administration, Diversion Control Division.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:*

Affected public (Primary): Business or other for-profit.

Affected public (Other): Not-for-profit institutions; Federal, State, local, and tribal governments.

Abstract: Pursuant to 21 U.S.C. 952 and 21 CFR 1315.34, any person who desires to import the List I chemicals Ephedrine, Pseudoephedrine, or Phenylpropanolamine during the next calendar year must apply on DEA Form 488 for an import quota for each such List I chemical.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The DEA estimates 49 respondents complete 126 DEA Form 488 applications annually, and that each form takes 0.5 hours to complete. Respondents complete a separate DEA Form 488 for each List I chemical for which quota is sought.

6. *An estimate of the total public burden (in hours) associated with the proposed collection:* The DEA estimates this collection takes a total of 63 annual burden hours.

If additional information is required, please 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 22, 2019.

Melody Braswell,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2019–03354 Filed 2–26–19; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

[OMB Number 1121–0339]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Extension of a Currently Approved Collection; Comments Requested: Generic Clearance for Cognitive, Pilot and Field Studies for Bureau of Justice Statistics Data Collection Activities

AGENCY: Bureau of Justice Statistics, Department of Justice.

ACTION: 30-Day notice.

SUMMARY: The Department of Justice (DOJ), Office of Justice Programs (OJP), Bureau of Justice Statistics (BJS), intends to request approval from the Office of Management and Budget (OMB) for a generic information collection clearance that will allow BJS to conduct a variety of cognitive, pilot, and field test studies. BJS will submit the request for review and approval in accordance with the Paperwork Reduction Act of 1995.

Over the next three years, BJS anticipates undertaking a variety of new surveys and data collections, as well as reassessing ongoing statistical projects, across a number of areas of criminal justice, including law enforcement, courts, corrections, and victimization. This work will entail developing new survey instruments, redesigning and/or modifying existing surveys, procuring administrative data from state and local government entities, and creating or modifying establishment surveys. BJS will engage in cognitive, pilot, and field test activities to refine instrumentation and data collection methodologies, inform BJS data collection protocols, develop accurate estimates of respondent burden, and minimize respondent burden associated with each new or modified data collection. BJS envisions using a variety of techniques, including (but not limited to): Tests of different types of survey and data collection operations; focus groups; cognitive testing; pilot testing; exploratory interviews; experiments with questionnaire design; and usability testing of electronic data collection instruments.

Following standard Office of Management and Budget (OMB) requirements, BJS will submit a change request to OMB individually for every group of data collection activities undertaken under this generic clearance. BJS will provide OMB with a copy of the individual instruments or questionnaires (if one is used), as well as other materials describing the project.

DATES: Comments are encouraged and will be accepted for 30 days until March 29, 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 Devon Adams, Bureau of Justice Statistics, 810 Seventh Street NW, Washington, DC 20531 (email: *Devon.Adams@usdoj.gov*; telephone: 202–307–0765).

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 Statistics, 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:* Extension of a currently approved collection.

(2) *The Title of the Form/Collection:* Generic Clearance for cognitive, pilot and field studies for Bureau of Justice Statistics data collection activities.

(3) *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* Form numbers not available for generic clearance. The applicable component within the Department of Justice is the Bureau of Justice Statistics, in the Office of Justice Programs.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Administrators or staff of state and local agencies or programs in the relevant fields; administrators or staff of non-government agencies or programs in the relevant fields; individuals; policymakers at various levels of government.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* We estimate that approximately 50,000 respondents will be involved in exploratory, field test, pilot, cognitive, and focus group work conducted under this clearance over the requested 3-year clearance period. The average response time per respondent will be specific to each project covered under the clearance. Specific estimates of the number of respondents and the average response time are not known for each pilot study or development project covered under a generic clearance at this time. Project specific estimates will be submitted to OMB separately for each project conducted under this clearance. BJS originally estimated that 30,000 respondents would be involved in the statistical activities covered under this clearance. Upon reviewing additional projects that were identified after the 60-day notice was posted, BJS increased the estimate to 52,000 to account for the additional efforts.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total respondent burden for identified and future projects covered under this generic clearance over the 3-year clearance period is approximately 25,000 hours. BJS originally estimated that 20,000 burden hours would be needed, but upon reviewing additional projects that were identified after the 60-day notice was posted, BJS increased the estimate to 25,000 to account for the additional efforts.

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 22, 2019.

Melody Braswell,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2019–03355 Filed 2–26–19; 8:45 am]

BILLING CODE 4410–18–P

NATIONAL CREDIT UNION ADMINISTRATION

Community Development Revolving Loan Fund Access for Credit Unions

Funding Opportunity Title: Community Development Revolving Loan Fund (CDRLF) Loan Program.

Catalog of Federal Domestic Assistance (CFDA) Number: 44.002.

Summary: The National Credit Union Administration (NCUA) is issuing this Notice of Funding Opportunity (NOFO) to announce the availability of loan awards for low-income designated credit unions (LICUs) through the CDRLF program. The CDRLF program serves as a source of financial support in the form of loans that better enables LICUs to support the communities in which they operate. CDRLF loan awards typically range from $250,000 to $500,000. All awards made under this NOFO are subject to funds availability and are at the NCUA's discretion.

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A. Program Description

The purpose of the CDRLF program is to assist LICUs in providing basic financial services to their members to stimulate economic activities in their communities. Through the CDRLF program, the NCUA provides financial support in the form of loans to LICUs serving predominantly low-income members. These funds help improve and expand the availability of financial services to these members. The NCUA accepts loan applications on a continuous basis subject to funding availability.

The CDRLF program consists of Congressional appropriations that are administered by the NCUA. Since its inception, Congress has appropriated approximately $13.4 million for revolving loans through the CDRLF program. The CDRLF's revolving loan component received its last appropriation in fiscal year 2005 for $200,000. Approximately $3.6 million will be available for loans under this NOFO as of January 1, 2019.

1. Permissible Uses of Loan Funds

The NCUA may consider requests for loan funds for various uses. A non-exhaustive list of examples of permissible uses or projects is defined in 12 CFR 705.4. The NCUA may consider other proposed uses of loan funds that are not listed if it determines the proposal to be consistent with the purpose of the CDRLF program. The list includes the following:

i. Development of new products or services for members, including new or expanded share draft or credit card programs;

ii. Partnership arrangements with community-based service organizations or government agencies;

iii. Loan programs, including, but not limited to, microbusiness loans, payday loan alternatives, education loans, and real estate loans;

iv. Acquisition, expansion, or improvement of office space or equipment, including branch facilities, ATMs, and electronic banking facilities; and

v. Operational programs such as security and disaster recovery.

2. Authority and Regulations

i. *Authority:* 12 U.S.C. 1756, 1757(5)(D), and (7)(I), 1766, 1782, 1784, 1785 and 1786; 12 CFR part 705.

ii. *Regulations:* The regulation governing the CDRLF program is found at 12 CFR part 705. In general, this regulation is used by the NCUA to govern the CDRLF program and set forth the program requirements. Additional

regulations related to the CDRLF program are found at 12 CFR parts 701 and 741. For the purposes of this NOFO, an Applicant is a Qualifying Credit Union that submits a complete Application to the NCUA under the CDRLF program. The NCUA encourages Applicants to review the regulations, this NOFO, and other program materials for a complete understanding of the program. Capitalized terms in this NOFO are defined in the authorizing statutes, regulations, and program materials.

B. Federal Award Information

The NCUA expects to award as many qualified credit unions as possible through this NOFO, subject to funding availability. CDRLF loans are typically made at lower than market interest rates.

Approximately $3.6 million, derived from prior-year appropriated and earned funds, will be available for qualified credit unions beginning January 1, 2019. The amount of funding available for CDRLF loans fluctuate whenever previously scheduled loans are fully amortized and/or if Congress makes an appropriation to the CDRLF revolving loan component. The NCUA reserves the right to: (i) Award more or less than the amounts cited above; (ii) fund, in whole or in part, any, all, or none of the applications submitted in response to this NOFO; and (iii) reallocate funds from the amount that is anticipated to be available under this NOFO to other programs, particularly if the NCUA determines that the number of awards made under this NOFO is fewer than projected.

The specific terms and conditions governing a CDRLF award will be established in the loan documents that each Participating Credit Union must sign prior to disbursement of funds. The rest of this section contains general award information regarding loans made through the CDRLF program.

1. Loan Amount

The NCUA makes loans based on the financial condition of the credit union. The applicable regulation does not provide a maximum limit on loan applications for consideration, but in practice the NCUA discourages loan applications of higher than $500,000 to mitigate risk. There is no minimum loan amount. CDRLF loan awards typically range from $250,000 to $500,000. The amount of the loan will be based on the following factors:

i. Funds availability;

ii. Credit worthiness of the credit union;

iii. Financial need;

iv. Demonstrated capability of the credit union to provide financial and related services to its members; and

v. Concurrence from the credit union's NCUA regional office and/or the applicable the State Supervisory Authority (SSA) for qualifying state-chartered credit unions.

2. Maturity

CDRLF loans will generally mature in five years. A credit union may request a shorter loan period, but in no case will the term exceed five years.

3. Interest Rate

The interest rate on CDRLF loans is governed by the CDRLF Loan Interest Rate Policy. The policy can be found on the NCUA's website at *https://www.ncua.gov/support-services/credit-union-resources-expansion/grants-loans/loans.* CDRLF loans are generally offered at a fixed rate for the full term.

4. Repayment

All loans must be repaid to the NCUA regardless of how they are accounted for by the Participating Credit Union.

i. *Principal:* The entire principal is due at maturity.

ii. *Interest:* Interest is due in semi-annual payments beginning six months after the initial distribution of the loan.

iii. *Principal Prepayment:* There is no penalty for principal prepayment. Principal prepayments may be made as often as monthly.

C. Eligibility Information

1. Eligible Applicants

This NOFO is open to credit unions that meet the eligibility requirements defined in 12 CFR part 705. A credit union must have a low-income designation, or equivalent in the case of a Qualifying State-chartered Credit Union, in order to participate in the CDRLF program. Requirements for obtaining the designation is defined in 12 CFR 701.34.

2. Matching Funds (if Applicable)

At its discretion, the NCUA may require the Applicant to submit a functional plan to meet the matching funds requirement depending on the financial condition of the Applicant. The NCUA anticipates that most Applicants will not be required to obtain matching funds. 12 CFR 705.5(g) of the NCUA's regulations describe the overall requirements for matching funds.

i. *Matching Funds Requirements:* The specific terms and covenants pertaining to any matching funds requirement will be provided in the loan agreement of the Participating Credit Union. Following, are general matching fund requirements. The NCUA, in its sole discretion, may amend these requirements depending upon its evaluation of the Applicant, but in no case will the amended requirements be greater than the conditions listed below.

a. The amount of matching funds required must generally be in an amount equal to the loan amount.

b. Matching funds must be from non-governmental member or nonmember share deposits.

c. Any loan monies matched by nonmember share deposits are not subject to the 20% limitation on nonmember deposits defined in 12 CFR 701.32.

d. Participating Credit Unions must maintain the outstanding loan amount in the total amount of share deposits for the duration of the loan. Once the loan is repaid, nonmember share deposits accepted to meet the matching requirement are subject to requirements defined in defined in 12 CFR 701.32.

ii. *Criteria for Requiring Matching Funds:* The NCUA will use the following criteria to determine whether to require an Applicant to have matching funds as a condition of its loan.

a. CAMEL Composite Rating
b. CAMEL Management Rating
c. CAMEL Asset Quality Rating
d. Regional Director Concurrence
e. Net Worth Ratio

iii. *Documentation of Matching Funds:* The NCUA may contact the matching funds source to discuss the matching funds and the documentation that the Applicant has provided. If the NCUA determines that any portion of the Applicant's matching funds is ineligible under this NOFO, the NCUA, in its sole discretion, may permit the Applicant to offer alternative matching funds as a substitute for the ineligible matching funds. In this case, the Applicant must provide acceptable alternative matching funds documentation within 10 business days of the NCUA's request.

3. Other Eligibility Requirements

i. *Financial Viability:* Applicants must meet the underwriting standards established by the NCUA, including those pertaining to financial viability, as set forth in the application and defined in 12 CFR 705.7(c).

ii. *Compliance with Past Agreements:* In evaluating funding requests under this NOFO, the NCUA will consider an Applicant's record of compliance with past agreements. The NCUA, in its sole discretion, will determine whether to consider an Application from an

Applicant with a past record of noncompliance, including any deobligation (*i.e.* removal of unused awards) of funds.

a. *Default Status:* If an Applicant is in default of a previously executed agreement with the NCUA, the NCUA will not consider an Application for funding under this NOFO.

b. *Undisbursed Funds:* If an Applicant is a prior awardee under the CDRLF program and has unused awards as of the date of Application, the NCUA will request a narrative from the Applicant that addresses the reason for its record of noncompliance. The NCUA, in its sole discretion, will determine whether the reason is sufficient to proceed with the review of the Application.

D. Application and Submission Information

1. Application Form

The application and related documents can be found on the NCUA's website at *https://www.ncua.gov/services/Pages/resources-expansion/grants-loans.aspx*. Under this NOFO, Applications must be submitted online at *https://www.cybergrants.com/ncua/applications*.

2. Application Content

i. *Data Universal Numbering System:* The Data Universal Numbering System (DUNS) number is a unique nine-character number used to identify your organization. The federal government uses the DUNS number to track how federal money is allocated. Applicants can obtain a DUNS number by visiting the Dun & Bradstreet (D&B) website or calling 1–866–705–5711 to register or search for a DUNS number. Registering for a DUNS number is *FREE*. The NCUA will not consider an Application that does not include a valid DUNS number issued by Dun and Bradstreet (D&B). Such an Application will be deemed incomplete and will be declined.

ii. *System for Award Management:* All Applicants are required by federal law to have an active registration with the federal government's System for Award Management (SAM) prior to applying for funding. SAM is a web-based, government-wide application that collects, validates, stores, and disseminates business information about the federal government's trading partners in support of the contract awards, grants, and electronic payment processes. Applicants can register by visiting *www.sam.gov*. An active SAM account status and CAGE number is required to apply for the NCUA's CDRLF programs. The SAM registration process is *FREE*. Applicants that have an existing registration with SAM must recertify and maintain an active status annually. The NCUA will not consider an Applicant that does not have an active SAM status. Such an Application will be deemed incomplete and will be declined.

iii. *Employer Identification Number:* Each Application must include a valid and current Employer Identification Number (EIN) issued by the U.S. Internal Revenue Service (IRS). The NCUA will not consider an Application that does not include a valid and current EIN. Such an Application will be deemed incomplete and will be declined. Information on how to obtain an EIN may be found on the IRS's website at *www.irs.gov*.

iv. *Large Loans:* An Applicant requesting a loan in excess of $300,000 is required to provide additional narrative comments to support the request. In addition, the NCUA may also require a business plan. The business plan should: Describe the community's need for financial products and services and the Applicant's need for funding; summarize the services, financial products, and services provided by the Applicant; describe the Applicant's involvement with other entities; describe the credit union's marketing strategy to reach members and the community; and include financial projections.

v. *Non-Federally Insured Applicants:* Each Applicant that is a non-federally insured, state-chartered credit union must submit additional application materials. These additional materials are more fully described in 12 CFR 705.7(b)(3) and in the Application.

a. Examination by the NCUA: Non-federally insured, state-chartered credit unions must agree to be examined by the NCUA. The specific terms and covenants pertaining to this condition will be provided in the loan agreement of the Participating Credit Union.

3. Submission Dates and Times

The NCUA accepts applications on a continuous basis subject to funding availability.

E. Application Review Information

1. Eligibility and Completeness Review

The NCUA will review each Application to determine whether it is complete and that the Applicant meets the eligibility requirements described in the Regulations and in this NOFO. An incomplete Application or one that does not meet the eligibility requirements will be declined without further consideration.

2. Evaluation Criteria

The evaluation criteria is fully described in 12 CFR 705.7(c). The NCUA will evaluate each Application that receives a substantive review on the four criteria described in the regulation, this NOFO and the applicable guideline: financial performance, compatibility, feasibility, and examination information and applicable concurrence. Each initiative, due to its structure and impact, have varying degrees of evaluation criteria assigned which are reflected in the guidelines for credit union's information.

3. Substantive Review

The purpose of the substantive review is to determine whether the NCUA should support and fund the loan request. During this phase of the review, the NCUA reviews the credit union's prior financial and operational performance, the collateral offered to securitize the loan (if applicable), and its longevity in operation. The NCUA reserves the right to contact the Applicant during its review for the purpose of clarifying or confirming information contained in the Application. If so contacted, the Applicant must respond within the time specified by the NCUA or the NCUA, in its sole discretion, may decline the application without further consideration.

4. Examination Information and Applicable Concurrence

The NCUA will not approve an award to a credit union for which it's NCUA regional examining office or SSA, if applicable, indicates it has safety and soundness concerns. If the NCUA regional office or SSA identifies a safety and soundness concern, the NCUA, in conjunction with the regional office or SSA, will assess whether the condition of the Applicant is adequate to undertake the activities for which funding is requested, and the obligations of the loan and its conditions. The NCUA, in its sole discretion, may defer decision on funding an Application until the credit union's safety and soundness conditions improve.

5. Funding Selection

The NCUA will make its funding selections based on a consistent scoring tier for each Applicant. The NCUA will consider the impact of the funding. In addition, the NCUA may consider the geographic diversity of the Applicants in its funding decisions. When loan demand is high, Applications will be ranked based on the aforementioned.

F. Federal Award Adminsitration

1. Federal Award Notice

The NCUA will notify each Applicant of its funding decision by email. Applicants that are approved for funding will also receive instructions on how to proceed with disbursement of the award.

2. Administrative and National Policy Requirements

i. *Loan Agreement:* Each Participating Credit Union under this NOFO must enter into an Agreement with the NCUA before the NCUA will disburse the award funds. The Agreement documents include, for example, a promissory note, loan agreement, repayment schedule, and security agreement (if applicable). The Agreement will include the terms and conditions of funding, including but not limited to the: (i) award amount; (ii) interest rate; (iii) repayment requirements; (iv) accounting treatment; (v) impact measures; and (vi) reporting requirements.

ii. *Failure to Sign Agreement:* The NCUA, in its sole discretion, may rescind an award if the Applicant fails to sign and return the agreement or any other requested documentation, within the time specified by the NCUA.

iii. *Multiple Disbursements:* The NCUA may determine, in its sole discretion, to fund a loan in multiple disbursements. In such cases, the process for disbursement will be specified by the NCUA in the Loan Agreement.

3. Reporting

The reporting requirements are more fully described in 12 CFR 705.9. Annually, each Participating Credit Union will submit a report to the NCUA. The report will address the Participating Credit Union's use of the loan funds; the impact of funding; and explanation of any failure to meet objectives for use of proceeds, outcome, or impact. The NCUA, in its sole discretion, may modify these requirements. However, such reporting requirements will be modified only after notice to affected credit unions.

i. *Report Form:* Applicable credit unions will be notified regarding the submission of the report form. A Participating Credit Union is responsible for timely and complete submission of the report. The NCUA will use such information to monitor each Participating Credit Union's compliance with the requirements of its loan agreement and to assess the impact of the CDRLF loan.

G. Federal Award Agency Contacts

1. Methods of Contact

Further information can be found at *https://www.ncua.gov/services/Pages/resources-expansion/grants-loans.aspx*. For questions email: National Credit Union Administration, Office of Credit Union Resources and Expansion at *CUREAPPS@ncua.gov*.

2. Information Technology Support

People who have visual or mobility impairments that prevent them from using the NCUA's website should call (703) 518–6610 for guidance (this is not a toll free number).

By the National Credit Union Administration Board on February 21, 2019.

Gerard Poliquin,

Secretary of the Board.

[FR Doc. 2019–03321 Filed 2–26–19; 8:45 am]

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NUCLEAR REGULATORY COMMISSION

[NRC–2019–0061]

Seismic Qualification of Electrical and Active Mechanical Equipment and Functional Qualification of Active Mechanical Equipment for Nuclear Power Plants

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–1328, ''Seismic Qualification of Electrical and Active Mechanical Equipment and Functional Qualification of Active Mechanical Equipment for Nuclear Power Plants.'' This proposed guide, revision 4 to Regulatory Guide (RG) 1.100 of the same name, was revised to endorse industry consensus standards with certain exceptions and clarifications. The guide describes methods that the staff of the NRC considers acceptable for use in the seismic qualification of electrical and active mechanical equipment and the functional qualification of active mechanical equipment for nuclear power plants.

DATES: Submit comments by April 29, 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 (unless this document describes a different method for submitting comments on a specific subject):

- *Federal Rulemaking Website:* Go to *http://www.regulations.gov* and search for Docket ID: NRC–2019–0061. 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(s) 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.
- 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: Ian Tseng, Office of Nuclear Reactor Regulation, telephone: 301–415–7964, email: *ian.tseng@nrc.gov,* and Edward O'Donnell, Office of Nuclear Regulatory Research, telephone: 301–415–3317, email: *Edward.odonnell@nrc.gov*. Both are staff members of the 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–2019–0061 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–2019–0061.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html*. To begin the search, select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@*

nrc.gov. The DG–1328 is available in ADAMS under Accession No. ML18093A675.

• *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–2019–0061 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, ''Seismic Qualification of Electrical and Active Mechanical Equipment and Functional Qualification of Active Mechanical Equipment for Nuclear Power Plants,'' is proposed revision 4 of RG 1.100 of the same name. It is temporarily identified by its task number, DG–1328. The guide describes methods that the NRC staff considers acceptable for use in the seismic qualification of electrical and active mechanical equipment and the functional qualification of active mechanical equipment for nuclear power plants.

This proposed guide was revised to endorse, with exceptions and clarifications the following industry consensus standards: (1) Institute of Electrical and Electronics Engineers (IEEE) Standard (Std) 344–2013, ''IEEE Standard for Seismic Qualification of Equipment for Nuclear Power Generating Stations,'' (2) IEEE Std C37.98–2013, ''Standard Qualification Testing of Protective Relays and Auxiliaries for Nuclear Facilities,'' and (3) American Society of Mechanical Engineers (ASME) QME–1–2017, ''Qualification of Active Mechanical Equipment Used in Nuclear Facilities.''

III. Backfitting and Issue Finality

As discussed in the ''Implementation'' section of DG–1328, the NRC has no current intention to impose this draft regulatory guide on holders of current operating licenses or combined licenses. Accordingly, the issuance of this draft regulatory guide, if finalized, would not constitute ''backfitting'' as defined in Title 10 of the *Code of Federal Regulations* (10 CFR) 50.109(a)(1) of the Backfit Rule or be otherwise inconsistent with the applicable issue finality provisions in 10 CFR part 52.

This draft regulatory guide may be applied to applications for operating licenses and combined licenses docketed by the NRC as of the date of issuance of the final regulatory guide, as well as future applications for operating licenses and combined licenses submitted after the issuance of the regulatory guide. Such action would not constitute backfitting as defined in 10 CFR 50.109(a)(1) or be otherwise inconsistent with the applicable issue finality provision in 10 CFR part 52, inasmuch as such applicants or potential applicants are not within the scope of entities protected by the Backfit Rule or the relevant issue finality provisions in Part 52.

Dated at Rockville, Maryland, this 21st 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. 2019–03338 Filed 2–26–19; 8:45 am]

BILLING CODE 7590–01–P

RAILROAD RETIREMENT BOARD

Sunshine Act: Notice of Public Meeting

Notice is hereby given that the Railroad Retirement Board will hold a meeting on March 5, 2019, 1:00 p.m. at the Board's meeting room on the 8th floor of its headquarters building, 844 North Rush Street, Chicago, Illinois, 60611.

The meeting will be open to the public and the agenda is as follows:

I. Call to Order
II. Roll Call
III. New Business
  a. Board Communication with NRRIT
  b. OEO Reporting Structure
IV. Adjournment

The person to contact for more information is Sylvia Zaragoza, Acting Secretary to the Board, Phone No. 312–751–4939.

Dated: February 22, 2019.

For The Board.

Sylvia Zaragoza,

Acting Secretary to the Board.

[FR Doc. 2019–03470 Filed 2–25–19; 11:15 am]

BILLING CODE 7905–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–85169; File No. SR–CBOE–2019–012]

Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating To Amend its Fees Schedule

February 21, 2019.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 11, 2019, Cboe Exchange, Inc. (the ''Exchange'' or ''Cboe Options'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe Exchange, Inc. (the ''Exchange'' or ''Cboe Options'') proposes to amend its fees schedule. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website (*http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to make a number of changes to its Fees Schedule, effective February 1, 2019.[3]

Volume Incentive Program

The Exchange first proposes to amend the Volume Incentive Program (''VIP''). By way of background, under VIP, the Exchange credits each Trading Permit Holder (''TPH'') the per contract amount set forth in the VIP table for Public Customer orders (''C'' origin code) transmitted by that TPH (with certain exceptions) which is executed electronically on the Exchange, provided the TPH meets certain volume thresholds in a month.[4] The Exchange proposes to amend the volume thresholds for Tiers 4 and 5. The proposed change is as follows:

Tier	Percentage Thresholds of National Customer Volume in All Underlying Symbols Excluding Underlying Symbol List A, Sector Indexes, DJX, MXEA, MXEF, MNX, NDX, XSP and XSPAM (Monthly)	
	Current	Proposed
1	0.00%–0.75%	No change.
2	Above 0.75% to 2.00%	No change.
3	Above 2.00% to 3.00%	No change.
4	Above 3.00% to 4.00%	Above 3.00% to 3.75%.
5	Above 4.00%	Above 3.75%.

The purpose of these changes is to adjust for current volume trends while maintaining an incremental incentive for TPHs to strive for the highest tier level.

RUT Transaction Fee

The Exchange next proposes to increase the transaction fee for Market-Maker orders in RUT options. Currently, the Exchange charges $0.20 per contract for Market-Makers' RUT orders. The Exchange proposes to increase the transaction rate to $0.30 per contract. The Exchange notes the proposed rate change is less than the amount assessed for similar transactions on another Exchange and is also similar to Market-Maker fees assessed for other proprietary products.[5]

ETF and ETN Options Transaction Fee

The Exchange proposes to amend the fees for electronic Customer orders (origin code ''C'') for ETF and ETN options. Currently the Exchange waives transaction fees for (1) all customer orders executed in open outcry or AIM, and (2) customer electronic executions of 249 contracts or less in ETF and ETN options in Penny and Non-Penny classes. The Exchange proposes to amend the transaction fee for Customer electronic executions in ETF and ETN options such that it will waive the transaction fees for all Customer electronic executions that add liquidity (*i.e.,* ''Maker'' transactions). The Exchange will charge $0.18 per contract on all Customer electronic executions if the original order size is 100 contracts or greater and if it removes liquidity (*i.e.,* ''Taker'' transactions) in ETF and ETN options.

The Exchange also proposes to amend Footnote 9 to make corresponding changes to the footnote text regarding the proposed change described above and also explicitly make clear what transactions the Exchange would consider to be Maker (and therefore have no fees assessed) and Taker (and therefore be assessed $0.18 per contract, if equal to or greater than 100 contracts). Particularly, the Exchange proposes to provide that the Taker fee applies to electronic volume only, but is not applied to the following: (i) Trades on the open and (ii) QCC orders. The Taker fees would apply to the following volume: (i) Volume resulting from a Customer's orders and/or quotes removing other market participants' resting orders and/or quotes and (ii) volume resulting from a Customer's primary orders in (i) unpaired auctions (*i.e.,* Hybrid Agency Liaison (''HAL'') and HAL on the Open (''HALO'')) and (ii) Complex Order Auction (COA)). The Maker fee waiver would apply to the following volume: (i) Volume resulting from executions against a Customer's resting orders and/or quotes and (ii) volume resulting from a Customer's responses to auctions (*i.e.,* HAL, HALO and COA responses). The Exchange notes it similarly has clarified what volume is considered Taker versus Maker in Footnote 44 of the Fees Schedule which relates to the Liquidity Provider Sliding Scale Adjustment Table.[6]

SPXW Priority Surcharge

The Exchange proposes to amend the Customer Priority Surcharge for SPXW (''SPXW Surcharge''). Currently, the Exchange assesses a SPXW Surcharge of $0.10 per contract for Customer orders in SPXW that are executed electronically (with some exceptions).[7] The Exchange proposes to extend the SPXW Surcharge to all market participants other than Market-Makers, which aligns its applicability to the same market participants as the SPX Hybrid Execution Surcharge.

In connection with the proposed change, and in order to make the Fees Schedule easier to read, the Exchange proposes to relocate the SPXW Surcharge to its own line item grouped together with the SPX Hybrid Execution Surcharge and rename the SPX Hybrid Execution Surcharge, such that both

[3] The Exchange initially filed the proposed fee changes on February 1, 2019 (SR–CBOE–2019–009). On business date February 4, 2019, the Exchange withdrew that filing and submitted SR–CBOE–2019–010. On business date February 11, 2019, the Exchange withdrew that filing and submitted this filing.

[4] *See* Cboe Options Fees Schedule, Volume Incentive Program.

[5] *See* Cboe BZX Fees Schedule. *See also* Cboe Options Fees Schedule, SPX Liquidity Provider Sliding Scale.

[6] *See* Cboe Options Fees Schedule, Footnote 44.

[7] *See* Cboe Options Fees Schedule, Footnote 31.

surcharges will be grouped together as the ''Execution Surcharge'' (one for SPX and one for SPXW). The Exchange also proposes to (i) update Footnote 31 of the Fees Schedule, which is currently appended to the SPXW Surcharge, to eliminate references to the SPXW Customer Priority Surcharge and (ii) in its place, append Footnote 21 to the SPXW surcharge (and add references to ''SPXW Execution Surcharge'' in Footnote 21). The Exchange also proposes to amend Footnote 21 to eliminate the second and third surcharge exemptions listed relating to Market-Maker transactions. Particularly, Footnote 21 provides, among other things, that the SPX Execution Surcharge will not apply to (i) executions by Market-Makers against orders in the complex order auction (COA) and Simple Auction Liaison (SAL) systems in their appointed classes and (ii) executions by Market-Makers against orders in the electronic book, Hybrid Agency Liaison (HAL) and the complex order book in their appointed classes. The Exchange notes that since neither the SPX Execution Surcharge nor SPXW Execution Surcharge, even as amended, apply to Market-Maker orders, this language is moot and obsolete. The Exchange therefore proposes to eliminate it from the Fees Schedule to avoid confusion. The Exchange notes that the remaining two exemptions set forth under Footnote 21 of the Fees Schedule currently apply to both the SPX and SPXW Execution Surcharges.

Supplemental VIX Total Firm Discount

The Exchange next proposes to eliminate its Supplemental VIX Total Firm Volume Discount (''Supplemental VIX Discount''). The Supplemental VIX Discount allows VIX options transaction fees for Clearing TPHs' (including its Non-TPH Affiliates) proprietary orders to be discounted provided a Clearing TPH reaches certain VIX firm volume percentage thresholds during a calendar month. The Exchange no longer wishes to offer the Supplement VIX Discount program and therefore proposes to eliminate it from its Fees Schedule.

Trading Permits Sliding Scale Program

The Exchange proposes to amend its Market Maker and Floor Broker Trading Permit Sliding Scale Programs (''TP Sliding Scales''). The TP Sliding Scales allow Market Makers and Floor Brokers to pay reduced rates for their Trading Permits if they commit in advance to a specific tier that includes a minimum number of eligible Market Maker and Floor Broker Trading Permits, respectively, for each calendar year. The Exchange notes that in October 2019, it is migrating the current Cboe Options trading platform onto new technology and in connection with such migration, is anticipating a new Trading Permit structure. As such, the Exchange proposes to provide that any commitment to Trading Permits under the TP Sliding Scales shall be in place through September 2019, instead of the calendar year, and proposes to update Footnotes 24 and 25 accordingly.

Facility Fees

The Exchange next proposes to amend certain facility fees. First, the Exchange proposes to increase fees for access badges. Currently, the Exchange charges $120 per Floor Manager Badge and $60 per Clerk Badge. The Exchange proposes to increase the Floor Manager Badge to $130 per badge and the Clerk Badge to $70 per badge. The Exchange notes these fees have not been raised in several years. The Exchange also proposes to eliminate the following Badge-related fees which are assessed per occurrence: Badge Issuance, Replacement Badge, Unreturned Security Access Badge, Temporary Badge—Non Trading Permit Holder, Temporary Badge—Trading Permit Holder, and Unreturned Temporary Badge.

The Exchange is also proposing to eliminate the fees relating to coat room services, as such service will be eliminated as of February 1, 2019. Particularly, the $25 per month for Coat Room Checking and $15 per Occurrence for Lost or Damaged Trading Jackets fees will be eliminated.

VIX and Sector License Index Surcharge

The Exchange proposes to extend the current waiver of the VIX and Sector Index License Surcharge of $0.10 per contract for Clearing Trading Permit Holder Proprietary (''Firm'') (origin codes ''F'' or ''L'') VIX and Sector Index orders that have a premium of $0.10 or lower and have series with an expiration of seven (7) calendar days or less. The Exchange adopted the current waiver to reduce transaction costs on expiring, low-priced VIX options as well as Sector Index options, which the Exchange believed would encourage Firms to seek to close and/or roll over such positions, including facilitating customers to do so, in order to free up capital and encourage additional trading. The Exchange had proposed to waive the surcharge through December 31, 2018, at which time the Exchange had stated that it would evaluate whether the waiver has in fact prompted Firms to close and roll over these positions as intended. The Exchange believes the waiver encourages Firms to do so and as such, proposes to renew the waiver of the surcharge through June 30, 2019, at which time the Exchange will again reevaluate whether the waiver has continued to prompt Firms to close and roll over these positions. Accordingly, the Exchange proposes to delete the reference to the current waiver period of December 31, 2018 from the Fees Schedule and replace it with June 30, 2019.

Global Trading Hour Fees

In order to promote and encourage trading during the Global Trading Hours (''GTH'') session, the Exchange previously waived GTH Trading Permit and Bandwidth Packet fees for one (1) of each initial Trading Permits and one (1) of each initial Bandwidth Packet, per affiliated TPH. The Exchange notes that waiver expired December 31, 2018. The Exchange also waived fees through December 31, 2018 for a CMI and FIX login ID if the CMI and/or FIX login ID is related to a waived GTH Trading Permit and/or waived Bandwidth packet. In order to continue to promote trading during GTH, the Exchange wishes to renew these waivers through June 30, 2019.

RLG, RLV, RUI, AWDE, FTEM, FXTM and UKXM Transaction Fees

In order to promote and encourage trading of seven FTSE Russell Index products (*i.e.,* Russell 1000 Growth Index (''RLG''), Russell 1000 Value Index (''RLV''), Russell 1000 Index (''RUI''), FTSE Developed Europe Index (''AWDE''), FTSE Emerging Markets Index (''FTEM''), China 50 Index ''(FXTM'') and FTSE 100 Index (''UKXM'')), the Exchange had waived all transaction fees (including the Floor Brokerage Fee, Index License Surcharge and CFLEX Surcharge Fee) for each of these products. This waiver expired December 31, 2018. To continue promoting the trading of these options classes, the Exchange proposes to renew the fee waiver through June 30, 2019.

UKXM DPM Payment

The Exchange previously offered a compensation plan to the Designated Primary Market-Maker(s) (''DPM(s)'') appointed in UKXM to offset its DPM costs. Specifically, the Fees Schedule provides that DPM(s) appointed for an entire month in UKXM will receive a payment of $5,000 per month, through December 31, 2018. The Exchange proposes to renew the compensation plan through June 30, 2019 to continue to incentivize the DPM(s) to continue to serve as a DPM in this product.

Footnote 42 References

The Exchange lastly proposes to delete all appended references to Footnote 42. The Exchange notes that effective, July 2, 2018, the Exchange eliminated the FLEX Asian & Cliquet FLEX Trader Incentive Program, which program was described in Footnote 42 of the Fees Schedule.[8] Although, the program was eliminated (along with the contents of Footnote 42), the Exchange inadvertently omitted to delete appended references to Footnote 42 in the Fees Schedule. The Exchange proposes to correct that oversight and delete such references, which will avoid potential confusion.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the ''Act'') and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[9] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) [10] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with Section 6(b)(4) of the Act,[11] which requires that Exchange rules provide for the equitable allocation of reasonable dues, fees, and other charges among its Trading Permit Holders and other persons using its facilities.

First, the Exchange believes adjusting the VIP volume thresholds for Tiers 4 and 5 is reasonable because it adjusts for the current volume trends and makes it slightly easier for TPHs to meet the qualifying criteria to achieve the highest tier, Tier 5. The Exchange also notes that the credits offered under VIP are not changing. Rather, the rebalance of tiers still allows the Exchange to maintain an incremental incentive for TPHs to strive for the highest tier level, which provides increasingly higher credits. The Exchange believes it is equitable and not unfairly discriminatory because the proposed changes to the qualifying volume thresholds apply to all TPHs uniformly.

The Exchange believes increasing the fee for Market-Maker executions in RUT is reasonable because the proposed rate change is less than the amount assessed for similar transactions on another Exchange and is also similar to Market-Maker fees assessed for other proprietary products.[12] The Exchange believes that this proposed change is also equitable and not unfairly discriminatory because the proposed changes will apply equally to all Market-Makers uniformly.

The Exchange believes the proposed rule change to waive fees for Customer electronic executions in ETF and ETN options that add liquidity, but assess $0.18 per contract for such executions that remove liquidity and are of an order size of 100 contracts or greater, is reasonable because Customers will pay nothing for these executions where they add liquidity and will be paying the same rate as is currently provided for under the fees schedule (*i.e.,* $0.18 per contract) when they remove liquidity. The Exchange believes the proposed rule change is equitable and not unfairly discriminatory because the proposed rule change applies to all Customers equally. Additionally, the proposed rule change is designed to encourage posted liquidity to the Exchange. Particularly, the Exchange believes it's equitable and not unfairly discriminatory to assess this fee for orders that remove liquidity and not orders that add liquidity because the Exchange wants to encourage market participation and price improvement. The Exchange believes the proposed updates to Footnote 9 provide clarity in the Fees Schedule and alleviates potential confusion as to what volume would be considered ''Taker'' vs ''Maker'' for purposes of this fee. The alleviation of confusion removes impediments to and perfects the mechanism of a free and open market and a national market system, and, in general, protects investors and the public interest.

The Exchange believes extending the applicability of the SPXW Execution Surcharge to all market participants other than Market-Makers is reasonable as it aligns the applicability of the surcharge to the same market participants subject to the SPX Hybrid Execution Surcharge and because the surcharge amount is not changing. The Exchange believes it's equitable and not unfairly discriminatory to apply the SPXW Execution Surcharge to all market participants other than Market-Makers because Market-Makers, unlike other market participants, take on a number of obligations, including quoting obligations, that other market participants do not have. The Exchange believes the proposed updates to Footnotes 21 and 31 in connection with the proposed SPXW Execution Surcharge change provides clarity in the Fees Schedule and alleviates potential confusion, thereby removing impediments to and perfecting the mechanism of a free and open market and a national market system, and, in general, protecting investors and the public interest.

The Exchange believes it's reasonable to eliminate the Supplemental VIX Discount because it is not required to provide such a discount. Additionally, the Exchange notes that Clearing TPHs have other opportunities to obtain a discount on VIX executions, such as via the Cboe Proprietary Product Sliding Scale programs. The Exchange believes it's equitable and not unfairly discriminatory because it applies uniformly to all Clearing TPHs.

The Exchange believes amending the TP Sliding Scales to provide that any commitment to Trading Permits under the TP Sliding Scales shall be in place through September 2019, instead of the calendar year, is reasonable because the discounted Trading Permit rates and tier levels are not changing. The Exchange believes this proposed rule change is reasonable, equitable and not unfairly discriminatory because, as discussed above, the Exchange anticipates modifying the current Trading Permit structure upon the migration of its trading system in October 2019. The Exchange notes that through September 2019, Floor Brokers and Market-Makers are still eligible to take advantage of these sliding scale programs, which offer discounts on Trading Permits. Additionally, the proposed rule change applies to all Markets-Makers and Floor Brokers uniformly.

The Exchange believes the proposed rule change to eliminate per occurrence badge issuance fees and coat room services fees are reasonable as TPHs will no longer be subject to these fees. Additionally, with respect to the coat room service fees, the Exchange notes such services will be eliminated as of February 1, 2019. Additionally, the proposed elimination applies to all TPHs. The Exchange believes the proposed increases to the Floor Manager and Clerk Badge fees are reasonable

[8] *See* Securities Exchange Act Release No. 83587 (July 3, 2018), 83 FR 31810 (July 9, 2018) (SR–CBOE–2018–051).

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

[11] 15 U.S.C. 78f(b)(4).

[12] *See* Cboe BZX Fees Schedule. *See also* Cboe Options Fees Schedule, SPX Liquidity Provider Sliding Scale.

because they are a moderate increase, these fees have not been increased in several years, and other badge-related fees are being eliminated. Additionally the proposed fee increases applies to all TPHs who need to avail themselves of these badges.

The Exchange believes it's appropriate to continue to waive the VIX and Sector Index License Surcharge for Clearing Trading Permit Holder Proprietary Sector Index and VIX orders that have a premium of $0.10 or lower and have series with an expiration of 7 calendar days or less because the Exchange wants to continue encouraging Firms to roll and close over these positions. Particularly, the Exchange believes it's reasonable to waive the entire $0.10 per contract surcharge because without the waiver of the surcharge, firms are less likely to engage in these transactions, as opposed to other VIX and Sector Index transactions, due to the associated transaction costs. The Exchange believes it's equitable and not unfairly discriminatory to limit the waiver to Clearing Trading Permit Holder Proprietary orders because they contribute capital to facilitate the execution of Sector Index customer orders and VIX customer orders with a premium of $0.10 or lower and series with an expiration of 7 calendar days or less. Finally, the Exchange believes it's reasonable, equitable and not unfairly discriminatory to provide that the surcharge will be waived through June 30, 2019, as it gives the Exchange additional time to evaluate if the waiver is continuing to have the desired effect of encouraging these transactions.

The Exchange believes renewing the waiver of GTH Trading Permit and Bandwidth Packet fees for one of each type of Trading Permit and Bandwidth Packet, per affiliated TPH through June 30, 2019 is reasonable, equitable and not unfairly discriminatory, because those respective fees would be waived in their entirety, which promotes and encourages trading during the GTH session and applies to all GTH TPHs. The Exchange believes it's also reasonable, equitable and not unfairly discriminatory to waive fees for Login IDs related to waived Trading Permits and/or Bandwidth Packets in order to promote and encourage ongoing participation in GTH and also applies to all GTH TPHs.

The Exchange believes it is reasonable, equitable and not unfairly discriminatory to renew the waiver of all transaction fees for RLG, RLV, RUI, AWDE, FTEM, FXTM and UKXM transactions, including the Floor Brokerage fee, the License Index Surcharge and CFLEX Surcharge Fee, because the respective fees are being waived in their entirety, which promotes and encourages trading of these products which are still relatively new and applies to all TPHs.

The Exchange believes that it is reasonable, equitable and not unfairly discriminatory to renew the compensation plan to the DPM appointed in UKXM to continue to offset its ongoing DPM costs and continue to incentivize the DPM to continue to serve as a DPM in this product.

Lastly, the Exchange believes eliminating references to Footnote 42 (which footnote does not currently contain any language and is obsolete) alleviates potential confusion. The alleviation of confusion removes impediments to and perfects the mechanism of a free and open market and a national market system, and, in general, protects investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule changes will impose any burden on competition that are not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe that the proposed rule change will impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because, while different fees and rebates are assessed to different market participants in some circumstances, these different market participants have different obligations and different circumstances. For example, Clearing TPHs have clearing obligations that other market participants do not have. Market-Makers have quoting obligations that other market participants do not have. There is also a history in the options markets of providing preferential treatment to customers, as they often do not have as sophisticated trading operations and systems as other market participants, which often makes other market participants prefer to trade with customers. Further, the Exchange fees and rebates, both current and those proposed to be changed, are intended to encourage market participants to bring increased volume to the Exchange (which benefits all market participants), while still covering Exchange costs (including those associated with the upgrading and maintenance of Exchange systems).

The Exchange does not believe that the proposed rule changes will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because the proposed changes are intended to promote competition and better improve the Exchange's competitive position and make Cboe Options a more attractive marketplace in order to encourage market participants to bring increased volume to the Exchange (while still covering costs as necessary). Further, the proposed changes only affect trading on the Exchange. To the extent that the proposed changes make Cboe Options a more attractive marketplace for market participants at other exchanges, such market participants are welcome to become Cboe Options market participants.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [13] and paragraph (f) of Rule 19b–4 [14] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–CBOE–2019–012 on the subject line.

[13] 15 U.S.C. 78s(b)(3)(A).

[14] 17 CFR 240.19b–4(f).

Paper Comments

• Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2019–012. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2019–012 and should be submitted on or before March 20, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2019–03332 Filed 2–26–19; 8:45 am]

BILLING CODE 8011–01–P

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–658 OMB Control No. 3235–0716]

Proposed Collection; Comment Request

Upon Written Request Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736.

Extension:
Form C

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Form C (17 CFR 239.900) is used by issuers offering securities in reliance on the crowdfunding exemption in Section 4(a)(6) (15 U.S.C. 77d(a)(6)) of the Securities Act of 1933 (''Securities Act'') (15 U.S.C. 77a *et seq.*) Form C will also be used by issuers that have completed transactions in reliance on Section 4(a)(6) to file annual reports or to provide notice of the termination of reporting obligations.. The information collected is intended to create a framework for the filing and disclosure requirements of Title III Section 4A of the Jumpstart Our Business Startups Act (Pub. L. 112–106, 126 Stat. 306) to implement the exemption from Securities Act registration for offerings made in reliance on Section 4(a)(6). Form C takes approximately 48.96969 hours per response and is filed by approximately 5,852 respondents. We estimate that 75% of the 48.96969 hours per response (36.72727 hours) is prepared by the issuer for a total annual reporting burden of 214,928 hours (36.72727 hours per response × 5,852 responses).

Written comments are invited on: (a) Whether this 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 imposed by the collection of information; (c) ways to enhance the quality, utility, and clarity of the information 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 in writing within 60 days of this publication.

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 control number.

Please direct your written comment to Charles Riddle, Acting Director/Chief Information Officer, Securities and Exchange Commission, c/o Candace Kenner, 100 F Street NE, Washington, DC 20549 or send an email to: *PRA_Mailbox@sec.gov.*

Dated: February 22, 2019.

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2019–03394 Filed 2–26–19; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–440, OMB Control No. 3235–0496]

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736.

Extension:
Appendix F to Rule 15c3–1

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (''PRA''), the Securities and Exchange Commission (''Commission'') is soliciting comments on the existing collection of information provided for in appendix F to Rule 15c3–1 (''Appendix F'' or ''Rule 15c3–1f'') (17 CFR 240.15c3–1f) under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*). The Commission plans to submit this existing collection of information to the Office of Management and Budget (''OMB'') for extension and approval.

Under appendix F, a class of broker-dealers known as over-the counter (''OTC'') derivatives dealers may apply to the Commission for authorization to compute net capital charges for market and credit risk in accordance with appendix F in lieu of computing securities haircuts under paragraph (c)(2)(vi) of Exchange Act Rule 15c3–1.

At present, three OTC derivatives dealers have been approved to use appendix F. Two OTC derivatives dealers have applied to use appendix F, and the staff expects that one additional OTC derivatives dealer will apply to use appendix F during the next three years. The Commission estimates that the three approved OTC derivatives dealers and two OTC derivatives dealers with pending applications (if approved) will spend an average of approximately 1,000 hours each per year reporting information concerning their VAR models and internal risk management

systems, for an annual burden of 5,000 hours. The Commission estimates that, on average, a firm initially will take approximately 1,000 hours to prepare an application to use appendix F. For the one firm expected to apply, this would result in an annual burden of 333 hours per year amortized over three years. For the two years after it registers, the new registrant would spend an average of approximately 1,000 hours each year reporting information concerning its VAR model and internal risk management system, for an annual burden of 667 hours per year amortized over 3 years.

Written comments are invited on: (a) 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; (b) the accuracy of the Commission's estimates of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information 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 in writing within 60 days of this publication.

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

Please direct your written comments to: Charles Riddle, Acting Director/Chief Information Officer, Securities and Exchange Commission, c/o Candace Kenner, 100 F Street NE, Washington, DC 20549, or send an email to: *PRA_Mailbox@sec.gov.*

Dated: February 22, 2019.

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2019–03393 Filed 2–26–19; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–85170; File No. SR–NYSEArca-2019–04]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change Amending NYSE Arca Rule 5.2–E(j)(3) To Adopt Generic Listing Standards for Investment Company Units Based on an Index of Municipal Bond Securities

February 21, 2019.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the ''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on February 8, 2019, NYSE Arca, Inc. (the ''Exchange'' or ''NYSE Arca'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend NYSE Arca Rule 5.2–E(j)(3) (''Rule 5.2–E(j)(3)'') to adopt generic listing standards for Investment Company Units (''Units'') based on an index of municipal bond securities. The proposed change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

NYSE Arca Rule 5.2–E(j)(3) permits the Exchange to list a series of Units based on an index or portfolio of underlying securities. Currently, Rule 5.2–E(j)(3) includes generic listing standards for Units based on an index or portfolio of equity or fixed income securities or a combination thereof. The Exchange proposes to amend Rule 5.2–E(j)(3) to add a new Commentary .02A to provide generic listing standards for Units based on an index or portfolio of Municipal Securities.[4]

An index of Municipal Securities typically does not meet the generic listing requirements for Units based on an index of fixed-income securities.[5] Nonetheless, the Commission has previously approved proposed rule changes relating to listing and trading on the Exchange of Units based on an index of Municipal Securities.[6] Given

[4] The term ''Municipal Securities'' has the definition given to it in Section 3(a)(29) of the Securities Exchange Act of 1934.

[5] *See* Commentary .02(a)(2) to NYSE Arca Rule 5.2–E(j)(3). Municipal Securities are typically issued in with individual maturities of relatively small size, although they generally are constituents of a much larger municipal bond offering. Therefore, an index of Municipal Securities will typically be unable to satisfy the requirement that component fixed income securities that, in the aggregate, account for at least 75% of the weight of the index each shall have a minimum principal amount outstanding of $100 million or more.

[6] *See* Securities Exchange Act Release Nos. 67985 (October 4, 2012), 77 FR 61804 (October 11, 2012) (SR–NYSEArca–2012–92) (order approving proposed rule change relating to the listing and trading of iShares 2018 S&P AMT-Free Municipal Series and iShares 2019 S&P AMT-Free Municipal Series under NYSE Arca Equities Rule 5.2(j)(3), Commentary .02); 67729 (August 24, 2012), 77 FR 52776 (August 30, 2012) (SR–NYSEArca–2012–92) (notice of proposed rule change relating to the listing and trading of iShares 2018 S&P AMT-Free Municipal Series and iShares 2019 S&P AMT-Free Municipal Series under NYSE Arca Equities Rule 5.2(j)(3), Commentary .02); 72523, (July 2, 2014), 79 FR 39016 (July 9, 2014) (SR–NYSEArca–2014–37) (order approving proposed rule change relating to the listing and trading of iShares 2020 S&P AMT-Free Municipal Series under NYSE Arca Equities Rule 5.2(j)(3), Commentary .02); 72172 (May 15, 2014), 79 FR 29241 (May 21, 2014) (SR–NYSEArca–2014–37) (notice of proposed rule change relating to the listing and trading of iShares 2020 S&P AMT-Free Municipal Series under NYSE Arca Equities Rule 5.2(j)(3), Commentary .02); 72464 (June 25, 2014), 79 FR 37373 (July 1, 2014) (File No. SR–NYSEArca–2014–45) (order approving proposed rule change governing the continued listing and trading of shares of the PowerShares Insured California Municipal Bond Portfolio, PowerShares Insured National Municipal Bond Portfolio, and PowerShares Insured New York Municipal Bond Portfolio); 75468 (July 16, 2015), 80 FR 43500 (July 22, 2015) (SR–NYSEArca–2015–25) (order approving proposed rule change relating to the

Continued

the large number of prior approvals by the Commission, the Exchange now proposes to adopt generic listing standards for Units based on an index of Municipal Securities that do not meet the generic listing standards for Units based on an index of fixed-income securities.

In the Exchange's experience, indices of Municipal Securities are able to satisfy all of the generic listing requirements applicable to fixed-income indices contained in Commentary .02 to Rule 5.2–E(j)(3) except the requirement that component securities in an index have a minimum original principal amount outstanding. Specifically, Municipal Securities are generally issued with individual maturities of relatively small size, although they generally are constituents of a much larger municipal bond offering. Therefore, Municipal Securities are unable to satisfy the rule's requirement that ''at least 75% of the Fixed Income Securities portion of the weight of the index or portfolio each shall have a minimum original principal amount outstanding of $100 million or more.'' Notwithstanding the inability of a Municipal Securities index to meet this aspect of the generic listing standards, the Commission has previously approved for listing and trading a series of Units based on such indices where the Exchange has demonstrated an index is not susceptible to manipulation.[7]

The Exchange would apply existing Commentary .02 to Rule 5.2–E(j)(3) and proposed Commentary .02A to Rule 5.2–E(j)(3) in a ''waterfall'' manner. Specifically, every series of Units based on an index of fixed-income securities and cash (including an index that contains Municipal Securities) would initially be evaluated against the generic listing standards of existing Commentary .02 to Rule 5.2–E(j)(3). If the index underlying a series of Units satisfied the existing criteria of Commentary .02 to Rule 5.2–E(j)(3), the Exchange would proceed with listing the Units. The Exchange would apply proposed Commentary .02A to Rule 5.2–E(j)(3) only if (i) an index did not meet the requirements of Commentary .02 to Rule 5.2–E(j)(3) and (ii) such index contained only Municipal Securities and cash.

The Exchange believes that if an index of fixed-income securities and cash (including one that contains Municipal Securities) satisfies the existing requirements of Commentary .02 to Rule 5.2–E(j)(3) its constituent securities are sufficiently liquid to deter manipulation of the index. Further, the proposed alternative listing standard, which would only be applicable to an index consisting entirely of Municipal Securities and cash, includes many requirements that are more stringent than those applicable to an index of fixed-income securities and cash. The Exchange believes these heightened requirements would deter potential manipulation of such Municipal Securities indices even though the index may include securities that have smaller original principal amounts outstanding.

Comparison of Existing Quantitative Requirements for Fixed-Income Indices vs. Proposed Quantitative Requirements for Municipal Securities Indices

Below is a comparison of the existing quantitative requirements for Units based on an index of fixed-income securities versus the Exchange's proposed alternative quantitative requirements for Units based on an index of Municipal Securities:

Original Principal Amount Outstanding:

Existing Requirement for Fixed-Income Securities:	Fixed Income Security components that in aggregate account for at least 75% of the Fixed Income Securities portion of the weight of the index or portfolio each shall have a minimum original principal amount outstanding of $100 million or more.
Proposed Requirement for Municipal Securities:	Municipal Security components that in aggregate account for at least 90% of the Municipal Securities portion of the weight of the index or portfolio each shall have a minimum original principal amount outstanding of at least $5 million and have been issued as part of a transaction of at least $20 million.

As discussed above, Municipal Securities are typically issued with individual maturities of relatively small size, although they generally are constituents of a much larger municipal bond offering. In recognition of these smaller offering sizes, the Exchange proposes to reduce the minimum original principal amount outstanding requirement for component securities to at least $5 million. Further, the Exchange proposes that qualifying securities must have been issued as part of a transaction of at least $20 million. Lastly, the Exchange proposes to increase the percentage weight of an index that must satisfy the original principal amount outstanding requirement from 75% to 90%.

The Exchange does not believe that reducing the minimum original principal amount outstanding requirement for component securities will make an index more susceptible to manipulation. The Exchange believes that the requirement that component securities in a fixed-income index have a minimum principal amount outstanding, in concert with the other requirements of Commentary .02 to Rule 5.2–E(j)(3), is to ensure that such index is sufficiently broad-based in scope as to minimize potential manipulation of the index.[8] However, based on empirical analysis, the Exchange does not believe that an index of Municipal Securities with lower original principal amounts outstanding is necessarily more susceptible to manipulation.[9] In 2016, Blackrock, Inc. analyzed the potential manipulation of Municipal Securities and found that such manipulation ''may be uneconomical and is unsupported in

listing and trading of iShares iBonds Dec 2021 AMT-Free Muni Bond ETF and iShares iBonds Dec 2022 AMT-Free Muni Bond ETF under NYSE Arca Equities Rule 5.2(j)(3)); 74730 (April 15, 2015), 76 FR 22234 (April 21, 2015) (notice of proposed rule change relating to the listing and trading of iShares iBonds Dec 2021 AMT-Free Muni Bond ETF and iShares iBonds Dec 2022 AMT-Free Muni Bond ETF under NYSE Arca Equities Rule 5.2(j)(3), Commentary .02); 74730 75376 (July 7, 2015), 80 FR 40113 (July 13, 2015) (SR–NYSEArca–2015–18) (order approving proposed rule change relating to the listing and trading of Vanguard Tax-Exempt Bond Index Fund under NYSE Arca Equities Rule 5.2(j)(3)).

[7] *See* Footnote 5 [sic], *supra.*

[8] *See* Securities Exchange Act Release No. 55783 (May 17, 2007), 72 FR 29194 (May 24, 2007) (SR–NYSEArca–2007–36) (order approving the adoption of generic listing standards for Units based on an index of fixed-income securities) at pg. 19–20.

[9] *See* Letter from Samara Cohen, Managing Director, U.S. Head of iShares Capital Markets, Joanne Medero, Managing Director, Government Relations & Public Policy, and Deepa Damre, Managing Director, Legal & Compliance, BlackRock, Inc., to Brent J. Fields, Secretary, Commission, dated October 18, 2017 in support of the Exchange's proposal to facilitate the listing and trading of certain series of Units listed pursuant to NYSE Arca Rule 5.2–E(j)(3) (SR–NYSEArca–2017–56).

practice.'' [10] In addition, the Exchange believes that its proposal to require that 90% of the weight of a Municipal Securities Index meet the original principal amount outstanding requirement (as opposed to 75% for fixed-income indices) will further deter potential manipulation by ensuring that a greater portion of the index meet this minimum size requirement.

The Exchange notes that the Commission has previously approved the listing and trading of several series of Units where the underlying Municipal Securities index required that component securities representing at least 90% of the weight of the index have a minimum original principal amount outstanding of at least $5 million and have been issued as part of a transaction of at least $20 million.[11]

Maximum Weight of Component Securities:

Existing Requirement for Fixed-Income Securities:	No component fixed-income security (excluding Treasury Securities and GSE Securities) shall represent more than 30% of the Fixed Income Securities portion of the weight of the index or portfolio, and the five most heavily weighted component fixed-income securities in the index or portfolio shall not in the aggregate account for more than 65% of the Fixed Income Securities portion of the weight of the index or portfolio.
Proposed Requirement for Municipal Securities:	No component Municipal Security shall represent more than 10% of the Municipal Securities portion of the weight of the index or portfolio, and the five most heavily weighted component Municipal Securities in the index or portfolio shall not in the aggregate account for more than 30% of the Municipal Securities portion of the weight of the index or portfolio.

The Exchange proposes to substantially reduce the maximum weight that any individual Municipal Security, or group of five Municipal Securities, can have in a Municipal Securities index. The current generic listing rules for Units based on a fixed-income index permit individual component securities to account for up to 30% of the weight of such index and the top-five weighted component securities to account for up to 65% of the weight of such index. The Exchange proposes to reduce these metrics to 10% for individual Municipal Securities and 30% for the top-weighted Municipal Securities in an index.

The Exchange believes that its proposal will reduce the likelihood that a Municipal Securities index underlying a series of Units could be subject to manipulation by ensuring that no individual Municipal Security, or group of five Municipal Securities, represents an outsized weight of a Municipal Securities index.

Diversification of Issuers:

Existing Requirement for Fixed-Income Securities:	An underlying index or portfolio (excluding one consisting entirely of exempted securities) must include a minimum of 13 non-affiliated issuers.
Proposed Requirement for Municipal Securities:	An underlying index or portfolio must include a minimum of 13 non-affiliated issuers.

The current generic listing rules for Units based on an index of fixed-income securities require that such index must include securities from at least thirteen non-affiliated [12] issuers. Notably, the current rules exempt indices consisting entirely of exempted securities from complying with this diversification requirement. Municipal Securities are included in the definition of exempted securities.[13] Therefore, an index of Municipal Securities that otherwise met the requirements of Commentary .02 to Rule 5.2–E(j)(3) would not be required to satisfy any minimum issuer diversification requirement. Nonetheless, the Exchange proposes that a Municipal Securities Index be required to include securities from at least 13 non-affiliated issuers. The Exchange believes that requiring such diversification will reduce the likelihood that an index can be manipulated by ensuring that securities from a variety of issuers are represented in an index of Municipal Securities.

Number of Components:

Existing Requirement for Fixed-Income Securities:	Thirteen.
Proposed Requirement for Municipal Securities:	Five Hundred.

The current generic listing rules for Units based on an index of fixed-income securities do not have an explicit requirement that an index contain a minimum number of securities. However, given that such rules require an index to contain securities from at least thirteen non-affiliated issuers, there is a de facto requirement that an index of fixed-income securities contain at least thirteen component securities. As described above, a fixed-income index comprised entirely of exempted securities (including Municipal Securities) is not required to satisfy the issuer diversification test, thereby allowing it to have no minimum number of component securities.

The Exchange proposes to require that a Municipal Securities Index contain at least 500 component securities. The Exchange believes that such requirement will ensure that a Municipal Securities index is sufficiently broad-based and diversified to make it less susceptible to manipulation.

The Exchange proposes that the quantitative requirements described above would apply to a Municipal

[10] *See Id.* at 3 and accompanying Footnote 11. Blackrock stated ''Our empirical analysis indicated that: (1) Given the over-the-counter dealer-centric market for municipal bonds, the bid-ask spread decreases with trade size; therefore, trading many small lots to move matrix prices is likely to be costly; (2) large trades move prices significantly and this effect is incorporated into prices quickly; for manipulation to work by affecting bond prices, the trades must be large, implying greater dollar cost and more likelihood of detection even if markets were segmented; (3) while pricing agents apply matrix pricing techniques to value non-traded bonds, the effect is likely too small to permit price manipulation of the corresponding index or ETF; and (4) market participants will use all intraday data to come up with their own valuations independently of pricing providers; ultimately, the price of an ETF at a point in time reflects these estimates in a manner that balances supply and demand.''

[11] *See* Securities Exchange Act Release No. 84049 (September 6, 2018), 83 FR 46228 (September 12, 2012) (SR–NYSEArca–2018–38) (order approving, among other things, revisions to the continued listing criteria applicable to the iShares New York AMT-Free Muni Bond ETF).

[12] Rule 405 under the Securities Act of 1933 defines an affiliate as a person that directly, or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with such person. Control, for this purpose, is the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract, or otherwise.

[13] *See* Section 3(a)(12) of the Securities Exchange Act of 1934.

Securities index underlying a series of Units on both an initial and continued basis.

The Exchange proposes to amend Commentary .03 to NYSE Arca Rule 5.2–E(j)(3) to specify that the Exchange may approve a series of Units for listing based on a combination of indexes, including an index of Municipal Securities. To the extent that an index of Municipal Securities is included in a combination, proposed Commentary .03 will specify that the Municipal Securities index must meet all requirements of Commentary .02A. In addition, Commentary .03 will be amended to specify that requirements related to index dissemination and related continued listing standards will apply to indexes of Municipal Securities. The Exchange notes that a combination index that includes an index of Municipal Securities will not be permitted to seek to provide investment results in a multiple of the direct or inverse performance of such combination index.

Additional Requirements

In addition to the quantitative requirements described above, the Exchange proposes to adopt additional rules related to (i) index methodology and calculation, (ii) dissemination of information, (iii) initial shares outstanding, (iv) hours of trading, (v) surveillance procedures, and (vi) disclosures. Such additional requirements are consistent with the requirements applicable to Units based on an index of U.S. equity securities, global equity securities and fixed-income securities.

The Exchange proposes to adopt Commentary .02A(b) to Rule 5.2–E(j)(3) which will require that (i) if a Municipal Securities index is maintained by a broker-dealer or fund advisor, the broker-dealer or fund advisor shall erect and maintain a ''firewall'' around the personnel who have access to information concerning changes and adjustments to the index; (ii) the current index value for Units listed pursuant to proposed Commentary .02A(a) will be widely disseminated by one or more major market data vendors at least once per day and if the index value does not change during some or all of the period when trading is occurring on the NYSE Arca Marketplace, the last official calculated index value must remain available throughout NYSE Arca Marketplace trading hours; and (iii) any advisory committee, supervisory board, or similar entity that advises a Reporting Authority [14] or that makes decisions on the index composition, methodology and related matters, must implement and maintain, or be subject to, procedures designed to prevent the use and dissemination of material non-public information regarding the applicable Municipal Securities index.

The Exchange proposes to adopt Commentary .02A(c) which will require that one or more major market data vendors shall disseminate for each series of Units based on an index or portfolio of Municipal Securities an estimate, updated at least every 15 seconds during the Core Trading Session, of the value of a share of each series (the ''Intraday Indicative Value''). The Intraday Indicative Value may be based, for example, upon current information regarding the required deposit of securities and cash amount to permit creation of new shares of the series or upon the index value. The Intraday Indicative Value may be calculated by the Exchange or by an independent third party throughout the day using prices obtained from independent market data providers or other independent pricing sources such as a broker-dealer or price evaluation services. If the Intraday Indicative Value does not change during some or all of the period when trading is occurring on the Exchange, then the last official calculated Intraday Indicative Value must remain available throughout Exchange trading hours.

The Exchange proposes to adopt Commentary .02A(d) stating that a minimum of 100,000 shares of a series of Units will be required to be outstanding at commencement of trading.

The Exchange proposes to adopt Commentary .02A(e) stating that the hours of trading for the Units will be as specified in NYSE Arca Rule 7.34–E(a).

The Exchange proposes to adopt Commentary .02A(f) specifying that Units that are listed or traded pursuant to unlisted trading privileges will be subject to the Exchange's written surveillance procedures.

Pursuant to NYSE Arca Rule 5.2–E(j)(3)(A)(v), the Exchange will obtain a representation from an issuer of Units based on an index of Municipal Securities that the net asset value per share of the series will be calculated daily and will be made available to all market participants at the same time.

2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5) [15] that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

The Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices in that Units listed pursuant to proposed NYSE Arca Rule 5.2–E(j)(3), Commentary .02A will be subject to the existing trading surveillances, administered by FINRA on behalf of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws. The Exchange represents that these procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws. FINRA, on behalf of the Exchange, will communicate as needed regarding trading in the Shares with other markets that are members of the ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement. FINRA also can access data obtained from the MSRB relating to municipal bond trading activity for surveillance purposes in connection with trading in the Shares. FINRA, on behalf of the Exchange, is able to access, as needed, trade information for certain fixed income securities held by a Fund reported to FINRA's TRACE.

Pursuant to proposed Commentary .02A(b), if the index is maintained by a broker-dealer or fund advisor, the broker-dealer or fund advisor shall erect and maintain a ''firewall'' around the personnel who have access to information concerning changes and adjustments to the index. Further, any advisory committee, supervisory board, or similar entity that advises a Reporting Authority or that makes decisions on the index composition, methodology and related matters, must implement and maintain, or be subject to, procedures designed to prevent the use and dissemination of material non-public information regarding the applicable index.

The index value of a series of Units listed pursuant to proposed Commentary .02A will be widely disseminated by one or more major market data vendors at least once per day and if the index value does not change during some or all of the period

[14] The term ''Reporting Authority'' has the meaning given to it in NYSE Arca Rule 5.1–E(b)(16).

[15] 15 U.S.C. 78f(b)(5).

when trading is occurring on the Exchange, the last official calculated index value must remain available throughout Exchange trading hours. In addition, the IIV for the Units will be disseminated by one or more major market data vendors, updated at least every 15 seconds during the Exchange's Core Trading Session.

The Exchange believes that the proposed listing standard will ensure that indices underlying a series of Units are sufficiently well-diversified to protect against index manipulation. On an initial and continuous basis, each index will contain at least 500 component securities. In addition, on an initial and continued basis, at least 90% of the Municipal Securities portion of the weight of the index or portfolio each shall have a minimum original principal amount outstanding of at least $5 million and have been issued as part of a transaction of at least $20 million. Further, on an initial and continued basis, no component Municipal Security shall represent more than 10% of the Municipal Securities portion of the weight of the index or portfolio, and the five most heavily weighted component Municipal Securities in an index or portfolio shall not in the aggregate account for more than 30% of the Municipal Securities portion of the weight of such index or portfolio. Lastly, on an initial and continued basis, an underlying index or portfolio must include a minimum of 13 non-affiliated issuers. The Exchange believes that this significant diversification and the lack of concentration among constituent securities provides a strong degree of protection against index manipulation.

In addition, the Exchange represents that Units listed to the proposed generic listing rule will comply with all other requirements applicable to Units including, but not limited to, the applicable rules governing the trading of equity securities, trading hours, trading halts, surveillance, information barriers and the Information Bulletin to ETP Holders, as set forth in Exchange rules applicable to Units.

The Exchange believes that its proposed amendments to Commentary .03 are consistent with the Act because any index of Municipal Securities included in a combination index will be required to meet the requirements of proposed Commentary .02A. In addition, such index will be required to meet the index dissemination and continued listing requirements of Commentary .03. Lastly, a combination index that includes an index of Municipal Securities will not be permitted to seek to provide investment results in a multiple of the direct or inverse performance of such combination index.

In support of its proposed rule change, the Exchange notes that the Commission has previously approved the listing and trading of several series of Units where the underlying Municipal Securities index required that component securities representing at least 90% of the weight of the index have a minimum original principal amount outstanding of at least $5 million and have been issued as part of a transaction of at least $20 million.[16] Further, the Exchange notes that the other elements of the proposed rule are each the same or more restrictive than the generic listing rules applicable to Units based on an index of fixed-income securities. The Exchange, therefore, believes that indices underlying a series of Units listed pursuant to the proposed generic rules will be sufficiently broad-based to deter potential manipulation.

The proposed rule change is designed to promote just and equitable principles of trade and to protect investors and the public interest. The Exchange believes that a large amount of information will be publicly available regarding Units listed pursuant to the proposed rule, thereby promoting market transparency. As described above, the IIV will be widely disseminated by one or more major market data vendors at least every 15 seconds during the Exchange's Core Trading Session. The current value of an index underlying a series of Units will be disseminated by one or more major market data vendors at least once per day. Information regarding market price and trading volume of the Units will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services, and quotation and last sale information will be available via the CTA high-speed line. Prior to the commencement of trading, the Exchange will inform its ETP Holders in an Information Bulletin of the special characteristics and risks associated with trading the Units. If the Exchange becomes aware that the NAV is not being disseminated to all market participants at the same time, it will halt trading in the Units until such time as the NAV is available to all market participants. With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Units. Trading also may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Units inadvisable. If the IIV or the index values are not being disseminated as required, the Exchange may halt trading during the day in which the interruption to the dissemination of the applicable IIV or an index value occurs. If the interruption to the dissemination of the applicable IIV or an index value persists past the trading day in which it occurred, the Exchange will halt trading. Trading in Shares of the Funds will be halted if the circuit breaker parameters in NYSE Arca Rule 7.12–E have been reached or because of market conditions or for reasons that, in the view of the Exchange, make trading in the Units inadvisable. In addition, investors will have ready access to information regarding the IIV, and quotation and last sale information for the Units.

The proposed rule change is designed to perfect the mechanism of a free and open market and, in general, to protect investors and the public interest in that it will facilitate the listing and trading of additional types of exchange-traded products based on municipal bond indexes that will enhance competition among market participants, to the benefit of investors and the marketplace. The Exchange has in place surveillance procedures relating to trading in the Units and may obtain information via ISG from other exchanges that are members of ISG or with which the Exchange has entered into a comprehensive surveillance sharing agreement. In addition, investors will have ready access to information regarding the IIV and quotation and last sale information for the Units. Trade price and other information relating to municipal bonds is available through the MSRB's EMMA system.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that its proposal would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange notes that the proposed rule change will facilitate the listing and trading of Units based on an index of Municipal Securities which will enhance competition among market participants, to the benefit of investors and the marketplace.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

[16] *See* note 10[sic], *infra* [sic].

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or *up to 90 days* (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEArca–2019–04 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2019–04. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2019–04 and should be submitted on or before March 20, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2019–03331 Filed 2–26–19; 8:45 am]

BILLING CODE 8011–01–P

[17] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–363, OMB Control No. 3235–0413]

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736.

Extension:
Rule 17Ad–16

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (''PRA''), the Securities and Exchange Commission (''Commission'') is soliciting comments on the existing collection of information provided for in Rule 17Ad–16 (17 CFR 240.17Ad–16) under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*). The Commission plans to submit this existing collection of information to the Office of Management and Budget (''OMB'') for extension and approval.

Rule 17Ad–16 requires a registered transfer agent to provide written notice to the appropriate qualified registered securities depository when assuming or terminating transfer agent services on behalf of an issuer or when changing its name or address. In addition, transfer agents that provide such notice shall maintain such notice for a period of at least two years in an easily accessible place. This rule addresses the problem of certificate transfer delays caused by transfer requests that are directed to the wrong transfer agent or the wrong address.

We estimate that the transfer agent industry submits 11,006 Rule 17Ad–16 notices per year to appropriate qualified registered securities depositories. The staff estimates that the average amount of time necessary to create and submit each notice is approximately 15 minutes per notice. Accordingly, the estimated total industry burden is 2,752 hours per year (15 minutes multiplied by 11,006 notices filed annually rounded up from 2,751.5 to 2,752).

Because the information needed by transfer agents to properly notify the appropriate registered securities depository is readily available to them and the report is simple and straightforward, the cost is relatively minimal. The average internal compliance cost to prepare and send a notice is approximately $70.75 (15 minutes at $283 per hour).[1] This yields an industry-wide internal compliance cost estimate of $778,675 (11,006 notices multiplied by $70.75 per notice rounded up from $778,674.5 to $778,675).

Written comments are invited on: (a) 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; (b) the accuracy of the Commission's estimates of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information 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 in writing within 60 days of this publication.

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

Please direct your written comments to: Charles Riddle, Director/Chief Information Officer, Securities and Exchange Commission, c/o Candace Kenner, 100 F Street NE, Washington, DC 20549, or send an email to: *PRA_Mailbox@sec.gov.*

[1] The estimated hourly wages used in this analysis were derived from reports prepared by the Securities Industry and Financial Markets Association. *See* Securities Industry and Financial Markets Association, Office Salaries in the Securities Industry—2013 (2013), modified to account for an 1800-hour work year and multiplied by 5.35 to account for bonuses, firm size, employee benefits and overhead.

Dated: February 22, 2019.

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2019–03392 Filed 2–26–19; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 33381; 812–14887]

OBP Capital LLC, et al.; Notice of Application

February 21, 2019.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice.

Notice of an application for an order under section 6(c) of the Investment Company Act of 1940 (the ''Act'') for an exemption from sections 2(a)(32), 5(a)(1), 22(d), and 22(e) of the Act and rule 22c–1 under the Act, under sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and 17(a)(2) of the Act, and under section 12(d)(1)(J) for an exemption from sections 12(d)(1)(A) and 12(d)(1)(B) of the Act. The requested order would permit (a) index-based series of certain open-end management investment companies (''Funds'') to issue shares redeemable in large aggregations only (''Creation Units''); (b) secondary market transactions in Fund shares to occur at negotiated market prices rather than at net asset value (''NAV''); (c) certain Funds to pay redemption proceeds, under certain circumstances, more than seven days after the tender of shares for redemption; (d) certain affiliated persons of a Fund to deposit securities into, and receive securities from, the Fund in connection with the purchase and redemption of Creation Units; and (e) certain registered management investment companies and unit investment trusts outside of the same group of investment companies as the Funds (''Funds of Funds'') to acquire shares of the Funds.

Applicants: Spinnaker ETF Series (the ''Trust''), a Delaware statutory trust registered under the Act as an open-end management investment company and OBP Capital LLC (the ''Initial Adviser''), a Delaware limited liability company registered as an investment adviser under the Investment Advisers Act of 1940.

Filing Dates: The application was filed on March 14, 2018, and amended on July 23, 2018 and November 5, 2018.

Hearing or Notification of Hearing: An order granting the requested relief 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 18, 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: Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090; Applicants: OBP Capital LLC, 116 South Franklin Street, Rocky Mount, North Carolina 27804; Spinnaker ETF Series, 116 South Franklin Street, Rocky Mount, North Carolina 27804.

FOR FURTHER INFORMATION CONTACT: Thankam A. Varghese, Attorney-Adviser at (202) 551–6446 or Parisa Haghshenas, Branch Chief, at (202) 551–6723 (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. Applicants request an order that would allow Funds to operate as index exchange traded funds (''ETFs'').[1] Fund shares will be purchased and redeemed at their NAV in Creation Units only. All orders to purchase Creation Units and all redemption requests will be placed by or through an ''Authorized Participant'', which will have signed a participant agreement with the Distributor. Shares will be listed and traded individually on a national securities exchange, where share prices will be based on the current bid/offer market. Any order granting the requested relief would be subject to the terms and conditions stated in the application.

2. Each Fund will hold investment positions selected to correspond generally to the performance of an Underlying Index. In the case of Self-Indexing Funds, an affiliated person, as defined in section 2(a)(3) of the Act (''Affiliated Person''), or an affiliated person of an Affiliated Person (''Second-Tier Affiliate''), of the Trust or a Fund, of the Adviser, of any sub-adviser to or promoter of a Fund, or of the Distributor will compile, create, sponsor or maintain the Underlying Index.[2]

3. Shares will be purchased and redeemed in Creation Units and generally on an in-kind basis. Except where the purchase or redemption will include cash under the limited circumstances specified in the application, purchasers will be required to purchase Creation Units by depositing specified instruments (''Deposit Instruments''), and shareholders redeeming their shares will receive specified instruments (''Redemption Instruments''). The Deposit Instruments and the Redemption Instruments will each correspond pro rata to the positions in the Fund's portfolio (including cash positions) except as specified in the application.

4. Because shares will not be individually redeemable, applicants request an exemption from Section 5(a)(1) and Section 2(a)(32) of the Act that would permit the Funds to register as open-end management investment companies and issue shares that are redeemable in Creation Units only.

5. Applicants also request an exemption from section 22(d) of the Act and rule 22c–1 under the Act as secondary market trading in shares will take place at negotiated prices, not at a current offering price described in a Fund's prospectus, and not at a price based on NAV. Applicants state that (a) secondary market trading in shares does not involve a Fund as a party and will not result in dilution of an investment

[1] Applicants request that the order apply to the initial fund and any additional series of the Trust, and any other existing or future open-end management investment company or existing or future series thereof (each, included in the term ''Fund''), each of which will operate as an ETF and will track a specified index comprised of domestic and/or foreign equity securities and/or domestic and/or foreign fixed income securities (each, an ''Underlying Index''). Any Fund will (a) be advised by the Initial Adviser or an entity controlling, controlled by, or under common control with the Initial Adviser (each such entity and any successor thereto, an ''Adviser'') and (b) comply with the terms and conditions of the application. For purposes of the requested order, a ''successor'' is limited to an entity or entities that result from a reorganization into another jurisdiction or a change in the type of business organization.

[2] Each Self-Indexing Fund will post on its website the identities and quantities of the investment positions that will form the basis for the Fund's calculation of its NAV at the end of the day. Applicants believe that requiring Self-Indexing Funds to maintain full portfolio transparency will help address, together with other protections, conflicts of interest with respect to such Funds.

in shares, and (b) to the extent different prices exist during a given trading day, or from day to day, such variances occur as a result of third-party market forces, such as supply and demand. Therefore, applicants assert that secondary market transactions in shares will not lead to discrimination or preferential treatment among purchasers. Finally, applicants represent that share market prices will be disciplined by arbitrage opportunities, which should prevent shares from trading at a material discount or premium from NAV.

6. With respect to Funds that effect creations and redemptions of Creation Units in kind and that are based on certain Underlying Indexes that include foreign securities, applicants request relief from the requirement imposed by section 22(e) in order to allow such Funds to pay redemption proceeds within fifteen calendar days following the tender of Creation Units for redemption. Applicants assert that the requested relief would not be inconsistent with the spirit and intent of section 22(e) to prevent unreasonable, undisclosed or unforeseen delays in the actual payment of redemption proceeds.

7. Applicants request an exemption to permit Funds of Funds to acquire Fund shares beyond the limits of section 12(d)(1)(A) of the Act; and the Funds, and any principal underwriter for the Funds, and/or any broker or dealer registered under the Exchange Act, to sell shares to Funds of Funds beyond the limits of section 12(d)(1)(B) of the Act. The application's terms and conditions are designed to, among other things, help prevent any potential (i) undue influence over a Fund through control or voting power, or in connection with certain services, transactions, and underwritings, (ii) excessive layering of fees, and (iii) overly complex fund structures, which are the concerns underlying the limits in sections 12(d)(1)(A) and (B) of the Act.

8. Applicants request an exemption from sections 17(a)(1) and 17(a)(2) of the Act to permit persons that are Affiliated Persons, or Second Tier Affiliates, of the Funds, solely by virtue of certain ownership interests, to effectuate purchases and redemptions in-kind. The deposit procedures for in-kind purchases of Creation Units and the redemption procedures for in-kind redemptions of Creation Units will be the same for all purchases and redemptions and Deposit Instrument and Redemption Instruments will be valued in the same manner as those investment positions currently held by the Funds. Applicants also seek relief from the prohibitions on affiliated transactions in section 17(a) to permit a Fund to sell its shares to and redeem its shares from a Fund of Funds, and to engage in the accompanying in-kind transactions with the Fund of Funds.[3] The purchase of Creation Units by a Fund of Funds directly from a Fund will be accomplished in accordance with the policies of the Fund of Funds and will be based on the NAVs of the Funds.

9. Section 6(c) of the Act permits the Commission to exempt any persons or transactions from any provision of the Act if 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. Section 12(d)(1)(J) of the Act provides that the Commission may exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions, from any provision of section 12(d)(1) if the exemption is consistent with the public interest and the protection of investors. Section 17(b) of the Act authorizes the Commission to grant an order permitting a transaction otherwise prohibited by section 17(a) if it finds that (a) the terms of the proposed transaction are fair and reasonable and do not involve overreaching on the part of any person concerned; (b) the proposed transaction is consistent with the policies of each registered investment company involved; and (c) the proposed transaction is consistent with the general purposes of the Act.

For the Commission, by the Division of Investment Management, under delegated authority.

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2019–03325 Filed 2–26–19; 8:45 am]

BILLING CODE 8011–01–P

[3] The requested relief would apply to direct sales of shares in Creation Units by a Fund to a Fund of Funds and redemptions of those shares. Applicants, moreover, are not seeking relief from section 17(a) for, and the requested relief will not apply to, transactions where a Fund could be deemed an Affiliated Person, or a Second-Tier Affiliate, of a Fund of Funds because an Adviser or an entity controlling, controlled by or under common control with an Adviser provides investment advisory services to that Fund of Funds.

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 33383]

Notice of Applications for Deregistration Under Section 8(f) of the Investment Company Act of 1940

February 22, 2019.

The following is a notice of applications for deregistration under section 8(f) of the Investment Company Act of 1940 for the month of February 2019. A copy of each 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. An order granting each application will be issued unless the SEC orders a hearing. Interested persons may request a hearing on any application by writing to the SEC's Secretary at the address below and serving the relevant applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on March 19, 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.

FOR FURTHER INFORMATION CONTACT: Shawn Davis, Branch Chief, at (202) 551–6413 or Chief Counsel's Office at (202) 551–6821; SEC, Division of Investment Management, Chief Counsel's Office, 100 F Street NE, Washington, DC 20549–8010.

BlackRock Master LLC [File No. 811–09049]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. The applicant has transferred its assets to BlackRock Advantage Small Cap Growth Fund, a series of BlackRock Funds, and on March 2, 2018 made a final distribution to its shareholders based on net asset value. Expenses of $587,364 incurred in connection with the reorganization were

paid by the applicant's investment adviser or its affiliates.

Filing Date: The application was filed on October 11, 2018.

Applicant's Address: 100 Bellevue Parkway, Wilmington, Delaware 19809.

Deutsche Funds Trust [File No. 811–05896]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On November 18, 2014, applicant made a liquidating distribution to its shareholders, based on net asset value. Expenses of $2,265 incurred in connection with the liquidation were paid by the applicant.

Filing Dates: The application was filed on August 8, 2018, and amended on August 28, 2018 and December 20, 2018.

Applicant's Address: 345 Park Avenue, New York, New York 10154.

Dreyfus U.S. Treasury Intermediate Term Fund [File No. 811–04428]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On September 26, 2017, applicant made a liquidating distribution to its shareholders, based on net asset value. Expenses of $4,613.46 incurred in connection with the liquidation were paid by the applicant's investment adviser.

Filing Dates: The application was filed on November 21, 2018, and amended on December 20, 2018 and December 21, 2018.

Applicant's Address: c/o The Dreyfus Corporation, 200 Park Avenue, New York, New York 10166.

Dreyfus U.S. Treasury Long Term Fund [File No. 811–04429]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On September 26, 2017, applicant made a liquidating distribution to its shareholders, based on net asset value. Expenses of $4,105.80 incurred in connection with the liquidation were paid by the applicant's investment adviser.

Filing Dates: The application was filed on November 21, 2018, and amended on December 20, 2018.

Applicant's Address: c/o The Dreyfus Corporation, 200 Park Avenue, New York, New York 10166.

Duff & Phelps Diversified Income Fund Inc. [File No. 811–22740]

Summary: Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. Applicant has never made a public offering of its securities and does not propose to make a public offering or engage in business of any kind.

Filing Dates: The application was filed on September 14, 2018, and amended on December 4, 2018.

Applicant's Address: 200 South Wacker Drive, Suite 500, Chicago, Illinois 60606.

Eagle Point Income Company LLC [File No. 811–23361]

Summary: Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. Applicant has never made a public offering of its securities and does not propose to make a public offering or engage in business of any kind.

Filing Dates: The application was filed on November 19, 2018, and amended on December 17, 2018.

Applicant's Address: 600 Steamboat Road, Suite 202, Greenwich, Connecticut 06830.

GAMCO Mathers Fund [File No. 811–01311]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On August 31, 2018, applicant made a liquidating distribution to its shareholders, based on net asset value. Expenses of $10,000 incurred in connection with the liquidation were paid by the applicant. Applicant also has retained $40,959 for the purpose of paying outstanding liabilities in connection with the liquidation and winding up its operations.

Filing Dates: The application was filed on October 4, 2018, and amended on December 13, 2018.

Applicant's Address: One Corporate Center, Rye, New York 10580–1434.

HIMCO Variable Insurance Trust [File No. 811–22954]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. The applicant has transferred its assets to Blackrock S&P 500 Index V.I. Fund and Blackrock Managed Volatility V.I. Fund, each a series of BlackRock Variable Series Funds, Inc., and, on April 23, 2018, made a liquidating distribution to its shareholders based on net asset value. Expenses of $530,576 incurred in connection with the liquidation were paid by the applicant's investment adviser.

Filing Dates: The application was filed on September 14, 2018, and amended on December 6, 2018.

Applicant's Address: One Hartford Plaza, Hartford, Connecticut 06155.

JNL Strategic Income Fund LLC [File No. 811–22730]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. The applicant has transferred its assets to PPM Strategic Income Fund, a series of PPM Funds, and, on July 2, 2018, made a liquidating distribution to its shareholders based on net asset value. Expenses of $8,722.72 incurred in connection with the reorganization were paid by the applicant's investment adviser.

Filing Dates: The application was filed on October 24, 2018, and amended on November 19, 2018 and December 4, 2018.

Applicant's Address: 225 West Wacker Drive, Suite 1200, Chicago, Illinois 60606.

Madison Strategic Sector Premium Fund [File No. 811–21713]

Summary: Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. The applicant has transferred its assets to Madison Covered Call & Equity Strategy Fund and, on October 8, 2018, made a final distribution to its shareholders based on net asset value. Expenses of $78,259 incurred in connection with the reorganization were paid by the applicant's investment adviser.

Filing Date: The application was filed on October 15, 2018.

Applicant's Address: 500 Science Drive, Madison, Wisconsin 53711.

Market Vectors Double Tax-Free Municipal Income Fund [File No. 811–22731]

Summary: Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. Applicant has never made a public offering of its securities and does not propose to make a public offering or engage in business of any kind.

Filing Date: The application was filed on December 19, 2018.

Applicant's Address: 666 Third Avenue, 9th Floor, New York, New York 10017.

Morgan Stanley Income Securities Inc. [File No. 811–02349]

Summary: Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. The applicant has transferred its assets to Morgan Stanley Institutional Fund Trust—Corporate Bond Portfolio and, on June 4, 2018, made a final distribution to its shareholders based on net asset value. Expenses of $158,400 incurred in

connection with the reorganization were paid by the applicant.

Filing Date: The application was filed on December 18, 2018.

Applicant's Address: Morgan Stanley Income Securities Inc., c/o Morgan Stanley Investment Management Inc., 522 Fifth Avenue, New York, New York 10036.

NorthStar/Townsend Institutional Real Estate Fund Inc. [File No. 811–23200]

Summary: Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. Applicant has never made a public offering of its securities and does not propose to make a public offering or engage in business of any kind.

Filing Date: The application was filed on February 5, 2019.

Applicant's Address: 590 Madison Avenue, 34th Floor, New York, New York 10022.

Nuveen High Income December 2018 Target Term Fund [File No. 811–23074]

Summary: Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. On November 30, 2018, applicant made liquidating distributions to its shareholders based on net asset value. Expenses of 25,557.76 incurred in connection with the liquidation were paid by the applicant.

Filing Date: The application was filed on February 7, 2019.

Applicant's Address: 333 West Wacker Drive, Chicago, Illinois 60606.

Oppenheimer Equity Fund [File No. 811–00490]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. The applicant has transferred its assets to Oppenheimer Main Street Fund, a series of Oppenheimer Main Street Funds, and, on March 16, 2017, made a final distribution to its shareholders based on net asset value. Expenses of $26,500 incurred in connection with the reorganization were paid by the applicant.

Filing Dates: The application was filed on October 2, 2018, and amended on December 7, 2018.

Applicant's Address: 6803 South Tucson Way, Centennial, Colorado 80112.

Reaves Global Utility & Energy Income Fund [File No. 811–22633]

Summary: Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. Applicant has never made a public offering of its securities and does not propose to make a public offering or engage in business of any kind.

Filing Dates: The application was filed on September 18, 2018, and amended on December 18, 2018.

Applicant's Address: 1290 Broadway, Suite 1100, Denver, Colorado 80203.

State Farm Mutual Fund Trust [File No. 811–10027]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. The applicant has transferred its assets to BlackRock Large Cap Series Funds, Inc., BlackRock Funds, BlackRock Funds III, BlackRock Index Funds, Inc., BlackRock Funds II, BlackRock Funds VI, and BlackRock Financial Institutions Series Trust, and on November 20, 2018, made a final distribution to its shareholders based on net asset value. Expenses of $4,260,911.34 incurred in connection with the reorganization were paid by the applicant's investment adviser.

Filing Date: The application was filed on December 21, 2018.

Applicant's Address: State Farm Mutual Fund Trust, One State Farm Plaza, Bloomington, Illinois 61710–0001.

Virtus Total Return Fund [File No. 811–21680]

Summary: Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. The applicant has transferred its assets to Virtus Total Return Fund, Inc. (formerly, The Zweig Fund, Inc.) and, on April 3, 2017, made a final distribution to its shareholders based on net asset value. Expenses of $409,000 incurred in connection with the reorganization were paid by the applicant and the acquiring fund.

Filing Dates: The application was filed on October 9, 2018, and amended on December 10, 2018.

Applicant's Address: 101 Munson Street, Greenfield, Massachusetts 01301–9668.

Wright Managed Equity Trust [File No. 811–03489]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On May 1, 2018, applicant made liquidating distributions to its shareholders based on net asset value. Expenses of $21,393 incurred in connection with the liquidation were paid by the applicant's investment adviser. Applicant also has retained $13,176 for the purpose of paying certain debts or liabilities of the applicant.

Filing Dates: The application was filed on November 14, 2018, and amended on December 14, 2018.

Applicant's Address: 177 West Putnam Avenue, Greenwich, Connecticut 06830–5203.

Wright Managed Income Trust [File No. 811–03668]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On May 1, 2018, applicant made liquidating distributions to its shareholders based on net asset value. Expenses of $7,218 incurred in connection with the liquidation were paid by the applicant's investment adviser. Applicant also has retained $4,392 for the purpose of paying certain debts or liabilities of the applicant.

Filing Dates: The application was filed on November 14, 2018, and amended on December 14, 2018.

Applicant's Address: 177 West Putnam Avenue, Greenwich, Connecticut 06830–5203.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2019–03391 Filed 2–26–19; 8:45 am]

BILLING CODE 8011–01–P

DEPARTMENT OF STATE

[Public Notice 10670]

60-Day Notice of Proposed Information Collection: Smart Traveler Enrollment Program

ACTION: Notice of request for public comment.

SUMMARY: The Department of State is seeking Office of Management and Budget (OMB) approval for the information collection described below. In accordance with the Paperwork Reduction Act of 1995, we are requesting comments on this collection from all interested individuals and organizations. The purpose of this notice is to allow 60 days for public comment preceding submission of the collection to OMB.

DATES: The Department will accept comments from the public up to April 29, 2019.

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

- *Web:* Persons with access to the internet may comment on this notice by going to *www.Regulations.gov*. You can search for the document by entering

''Docket Number: DOS–2019–0002'' in the Search field. Then click the ''Comment Now'' button and complete the comment form.

• *Email: RiversDA@state.gov.*

• *Regular Mail:* Send written comments to: U.S. Department of State, CA/OCS/PMO, SA–17, 10th Floor, Washington, DC 20522–1710

You must include the DS form number (if applicable), information collection title, and the OMB control number in any correspondence.

FOR FURTHER INFORMATION CONTACT: Direct requests for additional information regarding the collection listed in this notice, including requests for copies of the proposed collection instrument and supporting documents, to Derek Rivers at SA–17, 10th Floor, Washington, DC 20522–1710, who may be reached on 202–485–6332 or at *RiversDA@state.gov.*

SUPPLEMENTARY INFORMATION:

• *Title of Information Collection:* Smart Traveler Enrollment Program.

• *OMB Control Number:* 1405–0152.

• *Type of Request:* Extension of a Currently Approved Collection.

• *Originating Office:* Bureau of Consular Affairs, Overseas Citizens Services (CA/OCS).

• *Form Number:* DS–4024, 4024e.

• *Respondents:* United States Citizens and Nationals.

• *Estimated Number of Respondents:* 1,010,389.

• *Estimated Number of Responses:* 1,010,389.

• *Average Time per Response:* 20 minutes.

• *Total Estimated Burden Time:* 336,796 hours.

• *Frequency:* On occasion.

• *Obligation to Respond:* Voluntary.

We are soliciting public comments to permit the Department to:

• Evaluate whether the proposed information collection is necessary for the proper functions of the Department.

• Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used.

• Enhance the quality, utility, and clarity of the information to be collected.

• Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Please note that comments submitted in response to this Notice are public record. Before including any detailed personal information, you should be aware that your comments as submitted, including your personal information, will be available for public review.

Abstract of Proposed Collection

The Smart Traveler Enrollment Program (STEP) makes it possible for U.S. nationals to register on-line from anywhere in the world. In the event of a family emergency, natural disaster or international crisis, U.S. embassies and consulates rely on this registration information to provide registrants with critical information and assistance. One of the main legal authorities for use of this form is 22 U.S.C. 2715.

Methodology

Ninety-nine percent of responses are received via electronic submission on the internet. The service is available on the Department of State, Bureau of Consular Affairs website *http://travel.state.gov* at *https://step.state.gov/step/.* The paper version of the collection permits respondents who do not have internet access to provide the information to the U.S. embassy or consulate by fax, mail or in person.

Michelle Bernier-Toth,

Managing Director, Bureau of Consular Affairs, Department of State.

[FR Doc. 2019–03409 Filed 2–26–19; 8:45 am]

BILLING CODE 4710–06–P

DEPARTMENT OF STATE

[Public Notice: 10681]

Town Hall Meeting on Modernizing the Columbia River Treaty Regime

AGENCY: Department of State.

ACTION: Notice of meeting.

SUMMARY: The Department of State (Department) will hold a Town Hall meeting, co-hosted by the Northwest Power and Conservation Council, in Kalispell, Montana, to discuss the modernization of the Columbia River Treaty (CRT) regime.

DATES: The meeting will be held on March 20, 2019, from 5:30 p.m. to approximately 7:00 p.m., Mountain Time.

ADDRESSES: The meeting will be held at the Red Lion Hotel Grand Ballroom, 20 S Main St., Suite 150, Kalispell, MT 59901.

FOR FURTHER INFORMATION CONTACT: Julien Katchinoff, Deputy Negotiator, Office of Canadian Affairs, *ColumbiaRiverTreaty@state.gov,* 202–647–2228.

SUPPLEMENTARY INFORMATION: This Town Hall is part of the Department's public engagement on the modernization of the CRT regime. The meeting is open to the public, up to the capacity of the room. Requests for reasonable accommodation should be made to the email listed above, on or before March 13, 2019. The Department will consider requests made after that date, but might not be able to accommodate them. Information about the meeting, can be found at *https://www.state.gov/p/wha/ci/ca/topics/c78892.htm* or by emailing the email address listed above. If you are unable to attend in person, you can listen to the Town Hall via phone by calling 1–800–356–8278 and entering the passcode 326034#.

Mark W. Cullinane,

Director, Office of Canadian Affairs, Department of State.

[FR Doc. 2019–03353 Filed 2–26–19; 8:45 am]

BILLING CODE 4710–29–P

SURFACE TRANSPORTATION BOARD

[Docket No. FD 36186]

Texas Railway Exchange LLC—Construction and Operation Exemption—in Galveston County, Texas

AGENCY: Surface Transportation Board.

ACTION: Issuance of Draft Environmental Assessment; Request for comments.

SUMMARY: The Surface Transportation Board's (Board's) Office of Environmental Analysis (OEA) has prepared a Draft Environmental Assessment (Draft EA) in response to a petition for exemption filed on November 21, 2018 by Texas Railway Exchange LLC (TREX) to construct and operate an approximately 2,800-foot line of railroad in the City of Galveston, Galveston County, Texas. The proposed rail line would connect the Texas International Terminals facility (the Terminal) on Galveston Bay with an existing line of railroad operated by BNSF Railway Company by crossing an existing Union Pacific Railroad rail line. The proposed rail line would offer a new alternative rail transportation option for rail traffic entering and leaving the Terminal.

The Draft EA evaluates the potential environmental impacts of two alternative rail alignments, as well as the No-Action Alternative and preliminarily concludes that construction of the proposed rail line connection would have no significant environmental impacts if the Board imposes and TREX implements the recommended mitigation measures set forth in the Draft EA. The entire Draft

EA is available on the Board's website (*www.stb.dot.gov*) by clicking on the ''Decisions & Notices'' button that appears in the drop down menu for ''ELIBRARY,'' and searching by Service Date (February 22, 2019) or Docket Number (FD 36186).

DATES: The EA is available for public review and comment. Comments must be postmarked by March 14, 2019. OEA will consider and respond to comments received on the Draft EA in the Final EA. The Board will issue a final decision on the proposed transaction after issuance of the Final EA.

Filing Environmental Comments: Comments submitted by mail should be addressed to: Josh Wayland, Surface Transportation Board, 395 E Street SW, Washington, DC 20423. Comments on the Draft EA may also be filed electronically on the Board's website, *www.stb.dot.gov,* by clicking on the ''E FILING'' link. Please refer Docket No. FD 36186 in all comments, including electronic filings.

FOR FURTHER INFORMATION CONTACT: Josh Wayland by mail at the address above, by telephone at 202–245–0330, or by email at *joshua.wayland@stb.gov.*

By the Board, Victoria Rutson, Director, Office of Environmental Analysis.

Regena Smith-Bernard,

Clearance Clerk.

[FR Doc. 2019–03363 Filed 2–26–19; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Public Notice for Intent To Release Airport Property

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on request to release airport property for non-aeronautical use; Deadhorse Airport (SCC), Deadhorse, Alaska.

SUMMARY: The FAA proposes to rule and invites public comment on the release of land at the Deadhorse Airport, Deadhorse, Alaska.

DATES: Comments must be received on or before March 29, 2019.

ADDRESSES: Documents are available for review by appointment at the FAA Anchorage Airports Regional Office, Molly Lamrouex, Compliance Manager, 222 W 7th Avenue, Anchorage, AK. Telephone: (907) 271–5439/Fax: (907) 271–2851 and the Alaska Dept. of Transportation and Public Facilities, 2301 Peger Rd., Fairbanks, AK 99709. Telephone: (907) 451–2216.

Written comments on the Sponsor's request must be delivered or mailed to: Molly Lamrouex, Compliance Manager, Federal Aviation Administration, Airports Anchorage Regional Office, 222 W 7th Avenue, Anchorage AK 99513, Telephone Number: (907) 271–5439/ FAX Number: (907) 271–2851.

FOR FURTHER INFORMATION CONTACT: Molly Lamrouex, Compliance Manager, Federal Aviation Administration, Alaskan Region Airports District Office, 222 W 7th Avenue, Anchorage, AK 99513. Telephone Number: (907) 271–5439/FAX Number: (907) 271–2851.

SUPPLEMENTARY INFORMATION: The FAA invites public comment on the request to release the aeronautical use only grant provision for a portion of lease Lot 1A, Block 700 at the Deadhorse Airport (SCC) under the provisions of 49 U.S.C. 47107(h)(2). The Alaska Department of Transportation and Public Facilities has requested from the FAA that a portion of airport property currently leased to Deadhorse Aviation Center be released for an interim non-aeronautical use. The FAA has determined that the release of the property will not impact future aviation needs at the airport. The FAA may approve the request, in whole or in part, no sooner than 30 days after the publication of this notice.

The disposition of proceeds from the non-aeronautical lease of the airport property will be in accordance with FAA's Policy and Procedures Concerning the Use of Airport Revenue, published in the **Federal Register** on February 16, 1999 (64 FR 7696).

Issued in Anchorage, Alaska, on February 19, 2019.

Kristi Warden,

Acting Director, Alaskan Airports Regional Office, FAA, Alaskan Region.

[FR Doc. 2019–03334 Filed 2–26–19; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Cancellation of Environmental Impact Statement for Proposed Capacity Enhancements and Other Improvements at Charlotte Douglas International Airport, Charlotte, Mecklenburg County, NC

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

ACTION: Notice of Cancellation of Preparation of Environmental Impact Statement (EIS) by the Federal Aviation Administration (FAA) for proposed capacity enhancements and other improvements (Proposed Action) at Charlotte Douglas International Airport, Charlotte, NC.

SUMMARY: The Federal Aviation Administration (FAA) announces that it has discontinued preparation of an Environmental Impact Statement (EIS) for proposed capacity enhancements and other improvements (Proposed Action) at Charlotte Douglas International Airport (CLT), Charlotte, NC. The Proposed Action initially presented to the FAA entailed: (1) A Fourth 12,000-foot Parallel Runway 1–19 and End-Around Taxiways; (2) Concourse B and Ramp Expansion; (3) Concourse C and Ramp Expansion; and (4) Daily North Parking Deck. Based on developments during the National Environmental Policy Act, 42 U.S.C. 4321 *et seq.* (NEPA), review process, the project now subject to environmental review includes a fourth parallel runway of only 10,000 feet. The FAA determined that this was a sufficient change to one of the proposed capacity enhancements, as described in greater detail below in the Supplementary Information section of this Notice, to warrant cancellation of the EIS and conversion to an Environmental Assessment (EA).

DATES: Cancellation of this EIS is immediate.

ADDRESSES: Mail all comments, statements, or questions concerning this notice to: Mr. Tommy L. Dupree, Assistant Manager, Memphis Airports District Office, 2600 Thousand Oaks Blvd., Suite 2250, Memphis, TN 38118. You may also send comments to *CLTEIS@faa.gov.*

In addition, one copy of any comment submitted to the FAA should be mailed or delivered to Mr. Jack Christine, Chief Operating Officer, City of Charlotte Aviation Department, 5601 Wilkinson Boulevard, Charlotte, NC 28208.

SUPPLEMENTARY INFORMATION: On March 22, 2018, the FAA published in the **Federal Register** a Notice of Intent (NOI) to prepare an EIS and to conduct public and agency scoping meetings (Volume 83, Number 05583, FR 12369–12640). The FAA held two governmental agency scoping meetings for Federal, state, and local regulatory agencies in Raleigh, NC, on April 24, 2018 and Charlotte, NC, on April 25, 2018, in addition to two public scoping meetings for the general public in Charlotte, NC, on April 24 and 26, 2018. FAA issued a Notice to Proceed for the EIS April 24, 2017.

In October 2018, FAA conducted an EIS runway length analysis for the proposed 12,000-foot runway, and the

analysis determined that only a 10,000-foot runway was required to meet the purpose and need. The analysis was coordinated with the City of Charlotte and its airline tenants. Given this change to a major element of the sponsor's Proposed Action, the FAA began a process of reevaluating the appropriate level of environmental documentation for compliance with NEPA, the Council on Environmental Quality Regulations for Implementing the Procedural Provisions of NEPA (40 Code of Federal Regulations parts 1500–1508), FAA Order 1050.1F, *Environmental Impacts: Policies and Procedures,* and FAA Order 5050.4B, *National Environmental Policy Act (NEPA) Implementing Instructions for Airport Actions.* This evaluation focused on likely changes to environmental impacts anticipated to occur as a result of the runway length change.

In determining the appropriate level of environmental review going forward, the sponsor, at the request of the FAA, has performed a preliminary noise analysis of the revised Proposed Action. In addition, the FAA has evaluated potential changes in other anticipated environmental impact categories. The FAA has also considered potential mitigation for such impacts. In light of this review, the FAA anticipates that compliance with NEPA can adequately be achieved by preparation of an EA. The City of Charlotte will be responsible for the development of the EA in accordance with NEPA, all applicable federal regulations, and FAA guidance. In addition, the FAA will work with the City of Charlotte to ensure an appropriate level of public involvement is provided as part of the EA process. Once completed, the City will forward the environmental document to the FAA. The FAA remains the responsible Federal agency for compliance with the requirements of NEPA. In this capacity, FAA will make its own independent evaluation of the environmental issues and take responsibility for the scope and content of the EA. The FAA also will make a final decision on whether it can issue a satisfactory environmental finding based upon the EA. The FAA will thereafter determine whether it may take the federal actions necessary to allow implementation of the project. All questions concerning the development, commencement, and public notices related to the EA, should be directed to The City of Charlotte Aviation Department, Mr. Jack Christine, Chief Operating Officer, 5601 Wilkinson Boulevard, Charlotte, NC 28208.

More information on the Proposed Action and the NEPA process is available on the project website at: *www.clteis.com.*

Issued in Memphis, Tennessee on February 21, 2019.

Phillip J. Braden,

Manager, Memphis Airports District Office, Southern Region.

[FR Doc. 2019–03434 Filed 2–26–19; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2018–0403]

Qualification of Drivers; Exemption Applications; Implantable Cardioverter Defibrillators

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of applications for exemption; request for comments.

SUMMARY: FMCSA announces receipt of applications from seven individuals for an exemption from the prohibition in the Federal Motor Carrier Safety Regulations (FMCSRs) against operation of a commercial motor vehicle (CMV) by persons with a current clinical diagnosis of myocardial infarction, angina pectoris, coronary insufficiency, thrombosis, or any other cardiovascular disease of a variety known to be accompanied by syncope, dyspnea, collapse, or congestive heart failure. If granted, the exemptions would enable these individuals with implantable cardioverter defibrillators (ICDs) to operate CMVs in interstate commerce.

DATES: Comments must be received on or before March 29, 2019.

ADDRESSES: You may submit comments identified by the Federal Docket Management System (FDMS) Docket ID FMCSA–2018–0403 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal Holidays.
- *Fax:* 1–202–493–2251.

To avoid duplication, please use only one of these four methods. See the ''Public Participation'' portion of the **SUPPLEMENTARY INFORMATION** section for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: Ms. Christine A. Hydock, Chief, Medical Programs Division, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue SE, Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., ET, Monday through Friday, except Federal holidays. If you have questions regarding viewing or submitting material to the docket, contact Docket Services, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation

A. Submitting Comments

If you submit a comment, please include the docket number for this notice (Docket No. FMCSA–2018–0403), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so that FMCSA can contact you if there are questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov,* put the docket number, FMCSA–2018–0403, in the keyword box, and click ''Search.'' When the new screen appears, click on the ''Comment Now!'' button and type your comment into the text box on the following screen. Choose whether you are submitting your comment as an individual or on behalf of a third party and then submit.

If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope.

FMCSA will consider all comments and material received during the comment period.

B. Viewing Documents and Comments

To view comments, as well as any documents mentioned in this notice as being available in the docket, go to *http://www.regulations.gov.* Insert the docket number, FMCSA–2018–0319, in the keyword box, and click ''Search.''

Next, click the ''Open Docket Folder'' button and choose the document to review. If you do not have access to the internet, you may view the docket online by visiting the Docket Management Facility in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays.

C. Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy.*

II. Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption from the FMCSRs for a five-year period if it finds such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption. The statute also allows the Agency to renew exemptions at the end of the five-year period. FMCSA grants exemptions from the FMCSRs for a two-year period to align with the maximum duration of a driver's medical certification.

The seven individuals listed in this notice have requested an exemption from 49 CFR 391.41(b)(4). Accordingly, the Agency will evaluate the qualifications of each applicant to determine whether granting the exemption will achieve the required level of safety mandated by statute.

The physical qualification standard found in 49 CFR 391.41(b)(4) states that a person is physically qualified to drive a CMV if that person has no current clinical diagnosis of myocardial infarction, angina pectoris, coronary insufficiency, thrombosis, or any other cardiovascular disease of a variety known to be accompanied by syncope, dyspnea, collapse, or congestive cardiac failure.

In addition to the regulations, FMCSA has published advisory criteria [1] to assist Medical Examiners in determining whether drivers with certain medical conditions are qualified to operate a CMV in interstate commerce. [49 CFR part 391, APPENDIX A TO PART 391—MEDICAL ADVISORY CRITERIA, section *D. Cardiovascular: § 391.41(b)(4),* paragraph 4.] The advisory criteria states that ICDs are disqualifying due to risk of syncope.

III. Qualifications of Applicants

Mark Caviola

Mr. Caviola is commercial motor vehicle driver who resides in New York and operates in Connecticut. A June 2018, Physician's Statement from his cardiologist to the New York State Department of Motor Vehicles states that his ICD was implanted in 2005 and during his ICD treatment has had no therapies, history of syncope, or loss of consciousness, with symptoms only limited to palpitations.

John J. Groff

Mr. Groff is a Class A CDL holder in Pennsylvania. A November 2018, report from his cardiologist states that his CRT–D device was implanted in August of 2018, and following placement he showed likely improvement of his ejection fraction to the 40–45 percent range. His cardiologist reports that he has never had required device therapies.

Kevin L. Krueger

Mr. Krueger is a commercial motor vehicle driver in Nebraska. August and December 2018 medical documentation from his cardiologist reports that a dual chamber ICD was implanted in 2009 and changed to a biventricular ICD in January of 2018. His report indicated ongoing monitoring of his device and that he is tolerating medical therapy.

Michael R. Miller

Mr. Miller is a Class A CDL holder in California. A January 2019 letter from his cardiologist reports that his ICD was implanted in September of 2018, and that he has not received any type of defibrillation since implantation, has not had cardiovascular complaints and is compliant with his current medical regime.

Anthony Saitta

Mr. Saitta is a commercial motor vehicle driver in New York. An undated letter from his cardiologist reports that his ICD was implanted in 2007 and that since implantation the device deployed once in 2016 inappropriately for atrial tachycardia with rapid ventricular rate. The letter states that Mr. Saitta reported no symptoms other than feeling the shock from the device, and that he did not lose consciousness. Prior to and since that event, the device has not deployed and he has maintained a stable cardiac status.

William Allan Spivey

Mr. Spivey is a Class A CDL holder in North Carolina. A January 2019, letter from his cardiologist reports that his ICD was implanted in March of 2018. His cardiologist reports that he has never received shocks from his device, at times has symptoms of shortness of breath and occasional fatigue after extended walking, and his current cardiac condition is stable.

Aaron J. Thomas

Mr. Thomas is a commercial motor vehicle driver in Georgia. A December 2018, letter from his cardiologist reports that Mr. Thomas was implanted with an ICD in November of 2018, and is recovering well. He requires follow-up every six months for proper monitoring of his ICD and denies shortness of breath or chest pain.

Request for Comments

In accordance with 49 U.S.C. 31136(e) and 31315, FMCSA requests public comment from all interested persons on the exemption petitions described in this notice. We will consider all comments received before the close of business on the closing date indicated in the dates section of the notice.

Issued on: February 14, 2019.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2019–03384 Filed 2–26–19; 8:45 am]

BILLING CODE 4910–EX–P

[1] See *http://www.ecfr.gov/cgi-bin/text-idx?SID=e47b48a9ea42dd67d999246e23d97970&mc=true&node=pt49.5.391&rgn=div5#ap49.5.391_171.a* and *https://www.gpo.gov/fdsys/pkg/CFR-2015-title49-vol5/pdf/CFR-2015-title49-vol5-part391-appA.pdf.*

DEPARTMENT OF THE TREASURY

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Form 5495—Request for Discharge From Personal Liability Under Internal Revenue Code Section 2204 or 6905

AGENCY: Departmental Offices, U.S. Department of the Treasury.

ACTION: Notice.

SUMMARY: The Department of the Treasury will submit the following information collection requests to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, on or after the date of publication of this notice. The public is invited to submit comments on these requests.

DATES: Comments should be received on or before March 29, 2019 to be assured of consideration.

ADDRESSES: Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestions for reducing the burden, to (1) Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Treasury, New Executive Office Building, Room 10235, Washington, DC 20503, or email at *OIRA_Submission@OMB.EOP.gov* and (2) Treasury PRA Clearance Officer, 1750 Pennsylvania Ave. NW, Suite 8100, Washington, DC 20220, or email at *PRA@treasury.gov.*

FOR FURTHER INFORMATION CONTACT: Copies of the submissions may be obtained from Jennifer Quintana by emailing *PRA@treasury.gov,* calling (202) 622–0489, or viewing the entire information collection request at *www.reginfo.gov.*

SUPPLEMENTARY INFORMATION:

Internal Revenue Service (IRS)

Title: Form 5495—Request for Discharge from Personal Liability under Internal Revenue Code Section 2204 or 6905.

OMB Control Number: 1545–0432.

Type of Review: Extension without change of a currently approved collection.

Description: Form 5495 provides guidance under sections 2204 and 6905 for executors of estates and fiduciaries of decedent's trusts. The form, filed after regular filing of an Estate, Gift, or Income tax return for a decedent, is used by the executor or fiduciary to request discharge from personal liability for any deficiency for the tax and periods shown on the form.

Form: 5495.

Affected Public: Individuals and households.

Estimated Number of Respondents: 1,800.

Frequency of Response: On Occasion.

Estimated Total Number of Annual Responses: 25,000.

Estimated Time per Response: 12.26 hours.

Estimated Total Annual Burden Hours: 306,500.

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

Dated: February 21, 2019.

Spencer W. Clark,

Treasury PRA Clearance Officer.

[FR Doc. 2019–03335 Filed 2–26–19; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Iranian Financial Sanctions Regulations Report on Closure by U.S. Financial Institutions of Correspondent Accounts and Payable-Through Accounts

AGENCY: Departmental Offices, U.S. Department of the Treasury.

ACTION: Notice.

SUMMARY: The Department of the Treasury will submit the following information collection requests to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, on or after the date of publication of this notice. The public is invited to submit comments on these requests.

DATES: Comments should be received on or before March 29, 2019 to be assured of consideration.

ADDRESSES: Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestions for reducing the burden, to (1) Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Treasury, New Executive Office Building, Room 10235, Washington, DC 20503, or email at *OIRA_Submission@OMB.EOP.gov* and (2) Treasury PRA Clearance Officer, 1750 Pennsylvania Ave. NW, Suite 8100, Washington, DC 20220, or email at *PRA@treasury.gov.*

FOR FURTHER INFORMATION CONTACT: Copies of the submissions may be obtained from Jennifer Quintana by emailing *PRA@treasury.gov,* calling (202) 622–0489, or viewing the entire information collection request at *www.reginfo.gov.*

SUPPLEMENTARY INFORMATION:

Departmental Offices (DO)

Title: Iranian Financial Sanctions Regulations Report on Closure by U.S. Financial Institutions of Correspondent Accounts and Payable-Through Accounts.

OMB Control Number: 1505–0243.

Type of Review: Extension without change of a currently approved collection.

Description: This application is submitted to extend the information collection authority pertaining to the Iranian Financial Sanctions Regulations set forth in 31 CFR part 561 (the ''Regulations''). Section 561.504(b) of the Iranian Financial Sanctions Regulations, 31 CFR part 561 (the ''IFSR''), specifies that a U.S. financial institution that maintained a correspondent account or payable-through account for a foreign financial institution whose name is added to the Part 561 List on OFAC's website (*www.treasury.gov/ofac*) as subject to a prohibition on the maintaining of such accounts must file a report with OFAC that provides full details on the closing of each such account within 30 days of the closure of the account. This collection of information assists in verifying that U.S. financial institutions are complying with prohibitions on maintaining correspondent accounts or payable through accounts for foreign financial institutions listed on the Part 561 List.

Form: None.

Affected Public: Businesses or other for-profits.

Estimated Number of Respondents: 1.

Frequency of Response: On Occasion.

Estimated Total Number of Annual Responses: 1.

Estimated Time per Response: 2 hours.

Estimated Total Annual Burden Hours: 2.

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

Dated: February 21, 2019.

Spencer W. Clark,

Treasury PRA Clearance Officer.

[FR Doc. 2019–03336 Filed 2–26–19; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF VETERANS AFFAIRS

Veterans' Family, Caregiver, and Survivor Advisory Committee, Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under the Federal Advisory Committee Act that the Veterans' Family, Caregiver, and Survivor Advisory Committee will meet on March 26–27, 2019. The meeting will be held at the Department of Veterans Affairs, 810 Vermont Avenue NW, Room 230, Washington, DC 20420. Both sessions will begin at 9:00 a.m. (EST) each day. The session on March 26 will adjourn at approximately 5:00 p.m. The session on the March 27 (in the Suite 140 Conference Room) will adjourn at approximately 3:00 p.m. The meetings are open to the public.

The purpose of the Committee is to advise the Secretary of Veterans Affairs on matters related to: Veterans' families, caregivers, and survivors across all generations, relationships, and Veterans status; the use of VA care and benefits

services by Veterans' families, caregivers, and survivors, and possible expansion of such care and benefits services; Veterans' family, caregiver, and survivor experiences; VA policies, regulations, and administrative requirements related to the transition of Servicemembers from the Department of Defense (DoD) to enrollment in VA that impact Veterans' families, caregivers, and survivors; and factors that influence access to, quality of, and accountability for services and benefits for Veterans' families, caregivers, and survivors.

On March 26 and 27, the agenda will include information on the pilot research from the Center for Excellence, updates from the Veterans Experience Office (VEO) White House Hotline (regarding comments from Veterans' families, caregivers, and survivors), an update on the Mission Act Implementation and Expansion of the Stipend Program to Pre-9/11/Inclusive Care; update on Tragedy Assistance Program (TAPS) and their collaboration with VA's Research Advisory Committee on Gulf War Veterans' Illnesses; and updates from the Office of Suicide Prevention and Office of Survivors. There will be opening remarks from VA senior leaders including the Chief Veterans Experience Officer and the Committee Chair and a presentation on the Recommendations this Committee submitted in November 2018. Committee members will also discuss the committee work plan and future activities. Public comments will be received at 4:00 p.m. to 5:00 p.m. on March 26, 2019.

Individuals wishing to speak should contact Dr. Betty Moseley Brown at *Betty.MoseleyBrown@va.gov* and are requested to submit a 1–2 page summary of their comments for inclusion in the official meeting record. In the interest of time, each speaker will be held to a 5-minute time limit.

Because the meeting is being held in a government building, a photo I.D. must be presented at the Guard's Desk as a part of the clearance process. To prevent delays, you should allow an additional 30 minutes before the meeting begins to clear security. If you are interested in attending, please submit your name to Betty Moseley Brown by March 22, 2019 to help expedite the security clearance process. Any member of the public seeking additional information should contact Betty Moseley Brown at (202) 465–6199 or at *Betty.MoseleyBrown@va.gov.*

Dated: February 22, 2019.

Jelessa M. Burney,

Federal Advisory Committee Management Officer.

[FR Doc. 2019–03415 Filed 2–26–19; 8:45 am]

BILLING CODE P

FEDERAL REGISTER

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Part II

Department of the Treasury

Internal Revenue Service

26 CFR Part 301

Centralized Partnership Audit Regime; Final Rule

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[TD 9844]

RIN 1545–BO03; 1545–BO04

Centralized Partnership Audit Regime

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulation.

SUMMARY: This document contains final regulations implementing the centralized partnership audit regime. These final regulations affect partnerships for taxable years beginning after December 31, 2017 and ending after August 12, 2018, as well as partnerships that make the election to apply the centralized partnership audit regime to partnership taxable years beginning on or after November 2, 2015, and before January 1, 2018.

DATES:

Effective date: These regulations are effective on February 27, 2019.

Applicability Date: For dates of applicability, see §§ 301.6221(a)–1(c); 301.6222–1(e); 301.6225–1(i); 301.6225–2(g); 301.6225–3(e); 301.6226–1(g); 301.6226–2(h); 301.6226–3(i); 301.6227–1(h); 301.6227–2(e); 301.6227–3(d); 301.6231–1(h); 301.6232–1(f); 301.6233(a)–1(d); 301.6233(b)–1(e); 301.6234–1(f); 301.6235–1(f); 301.6241–1(b); 301.6241–2(b); 301.6241–3(g); 301.6241–4(b); 301.6241–5(d); 301.6241–6(c).

FOR FURTHER INFORMATION CONTACT: Concerning the regulations under sections 6221, 6226, 6235, and 6241, Jennifer M. Black of the Office of Associate Chief Counsel (Procedure and Administration), (202) 317–6834; concerning the regulations under sections 6225, 6231, and 6234, Joy E. Gerdy-Zogby of the Office of Associate Chief Counsel (Procedure and Administration), (202) 317–6834; concerning the regulations under sections 6222, 6227, 6232, and 6233, Steven L. Karon of the Office of Associate Chief Counsel (Procedure and Administration), (202) 217–6834; concerning the regulations under section 6225 relating to creditable foreign tax expenditures, Larry R. Pounders, Jr. of the Office of Associate Chief Counsel (International), (202) 317–5465; concerning the regulations relating to chapters 3 and 4 of the Internal Revenue Code (other than section 1446), Subin Seth of the Office of Associate Chief Counsel (International), (202) 317–5003; and concerning the regulations relating to section 1446, Ronald M. Gootzeit of the Office of Associate Chief Counsel (International), (202) 317–4953 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

This document contains final regulations under sections 6221 through 6241 of the Internal Revenue Code (Code) to amend the Procedure and Administration Regulations (26 CFR part 301) to implement the centralized partnership audit regime enacted by section 1101 of the Bipartisan Budget Act of 2015, Public Law 114–74 (BBA), as amended by the Protecting Americans from Tax Hikes Act of 2015, Public Law 114–113, div Q (PATH Act), and sections 201 through 207 of the Tax Technical Corrections Act of 2018, contained in Title II of Division U of the Consolidated Appropriations Act of 2018, Public Law 115–141 (TTCA).

Section 1101(a) of the BBA removed former subchapter C of chapter 63 of the Code effective for partnership taxable years beginning after December 31, 2017. Former subchapter C of chapter 63 of the Code contained the unified partnership audit and litigation rules enacted by the Tax Equity and Fiscal Responsibility Act of 1982, Public Law 97–248 (TEFRA) that were commonly referred to as the TEFRA partnership procedures or simply TEFRA. Section 1101(b) of the BBA also removed subchapter D of chapter 63 of the Code and part IV of subchapter K of chapter 1 of the Code, rules applicable to electing large partnerships, effective for partnership taxable years beginning after December 31, 2017. Section 1101(c) of the BBA replaced the TEFRA partnership procedures and the rules applicable to electing large partnerships with a centralized partnership audit regime that determines adjustments and, in general, determines, assesses, and collects tax at the partnership level. Section 1101(g) of the BBA set forth the effective dates for these statutory amendments, which are effective generally for returns filed for partnership taxable years beginning after December 31, 2017.

On December 18, 2015, section 1101 of the BBA was amended by the PATH Act. The amendments under the PATH Act are effective as if included in section 1101 of the BBA, and therefore, subject to the effective dates in section 1101(g) of the BBA.

On June 14, 2017, the Department of the Treasury (Treasury Department) and the IRS published in the **Federal Register** (82 FR 27334) a notice of proposed rulemaking (REG–136118–15) (June 2017 NPRM) proposing rules under section 6221 regarding the scope and election out of the centralized partnership audit regime, section 6222 regarding consistent treatment by partners, section 6223 regarding the partnership representative, section 6225 regarding partnership adjustments made by the IRS and determination of the amount of the partnership's liability (referred to as the imputed underpayment), section 6226 regarding the alternative to payment of the imputed underpayment by the partnership, section 6227 regarding administrative adjustment requests (AARs), and section 6241 regarding definitions and special rules. The Treasury Department and the IRS received written public comments in response to the regulations proposed in the June 2017 NPRM, and a public hearing regarding the proposed regulations was held on September 18, 2017.

On November 30, 2017, the Treasury Department and the IRS published in the **Federal Register** (82 FR 56765) a notice of proposed rulemaking (REG–119337–17) (November 2017 NPRM) proposing rules regarding international provisions under the centralized partnership audit regime, including rules relating to the withholding of tax on foreign persons, the withholding of tax to enforce reporting on certain foreign accounts, and the treatment of creditable foreign tax expenditures of a partnership. No written comments were submitted in response to this NPRM, and no hearing was requested or held.

On December 19, 2017, the Treasury Department and the IRS published in the **Federal Register** (82 FR 60144) a notice of proposed rulemaking (REG–120232–17 and REG–120233–17) (December 2017 NPRM) proposing administrative and procedural rules under the centralized partnership audit regime, including rules addressing assessment and collection, penalties and interest, periods of limitations on making partnership adjustments, and judicial review of partnership adjustments. The regulations proposed in the December 2017 NPRM also provided rules addressing how pass-through partners take into account adjustments under the alternative to payment of the imputed underpayment described in section 6226 and under rules similar to section 6226 when a partnership files an AAR under section 6227. Written comments were received in response to the December 2017 NPRM. However, no hearing was requested or held.

On January 2, 2018, the Treasury Department and the IRS published in

the **Federal Register** (82 FR 28398) final regulations under section 6221(b) providing rules for electing out of the centralized partnership audit regime.

On February 2, 2018, the Treasury Department and the IRS published in the **Federal Register** (83 FR 4868) a notice of proposed rulemaking (REG–118067–17) (February 2018 NPRM) proposing rules for adjusting tax attributes under the centralized partnership audit regime. Written comments were received in response to the February 2018 NPRM. However, no hearing was requested or held.

On March 23, 2018, Congress enacted the TTCA, which made a number of technical corrections to the rules under the centralized partnership audit regime. The amendments under the TTCA are effective as if included in section 1101 of the BBA, and therefore, subject to the effective dates in section 1101(g) of the BBA.

On August 9, 2018, the Treasury Department and the IRS published in the **Federal Register** (83 FR 39331) final regulations under section 6223 providing rules relating to partnership representatives and final regulations under § 301.9100–22 providing rules for electing into the centralized partnership audit regime for taxable years beginning on or after November 2, 2015, and before January 1, 2018. Corresponding temporary regulations under § 301.9100–22T were also withdrawn.

On August 17, 2018, the Treasury Department and the IRS published in the **Federal Register** (83 FR 41954) a notice of proposed rulemaking, notice of public hearing, and withdrawal and partial withdrawal of notices of proposed rulemaking (REG–136118–15) (August 2018 NPRM) that withdrew the regulations proposed in the June 2017 NPRM, the November 2017 NPRM, the December 2017 NPRM, and the February 2018 NPRM, and proposed regulations reflecting the technical corrections enacted in the TTCA as well as other changes as discussed in the preamble to the August 2018 NPRM. Written public comments were received in response to the August 2018 NPRM, and a public hearing regarding the proposed regulations was held on October 9, 2018.

In the preambles to the June 2017 NPRM and November 2017 NPRM, comments were requested regarding certain international and tax-exempt aspects of the centralized partnership audit regime. No comments were received in response to these requests, other than a comment regarding fiduciary issues under title I of the Employee Retirement Income Security Act of 1974 (ERISA), which is discussed later in section 3.B.i of the Summary of Comments and Explanation of Revisions. The Treasury Department and IRS will still consider comments on whether any issues related to international rules and tax-exempt partners warrant guidance either under the centralized partnership audit regime provisions or under the relevant provisions of the Code directly related to those areas.

After careful consideration of all written public comments received in response to the June 2017 NPRM, the December 2017 NPRM, and the August 2018 NPRM, as well as statements made during the public hearings for the June 2017 NPRM and the August 2018 NPRM, the portions of the August 2018 NPRM described in this preamble are adopted as amended by this Treasury Decision. Comments received in response to the February 2018 NPRM or that otherwise concern basis and tax attribute rules under § 301.6225–4 or § 301.6226–4 will be addressed in future guidance. For purposes of this preamble, the regulations proposed in the June 2017 NPRM, the November 2017 NPRM, and the December 2017 NPRM are collectively referred to as the ''former proposed regulations.'' The regulations proposed in the August 2018 NPRM are referred to as the ''proposed regulations.''

Summary of Comments and Explanation of Revisions

Thirty written comments were received in response to the June 2017 NPRM. Five statements were provided at the public hearing held on September 18, 2017. Four written comments were received in response to the December 2017 NPRM. No public hearing was held. Eight written comments were received in response to the August 2018 NPRM, and one statement was provided at the public hearing held on October 9, 2018. All of these comments (both written and provided orally at the public hearings) have been considered, and revisions to the regulations were made in response to the comments. The written comments received are available for public inspection at *www.regulations.gov* or upon request.

In addition to changes in response to the comments, editorial revisions were also made to correct typographical errors, grammatical mistakes, and erroneous cross-references. Revisions were also made to clarify language in the proposed regulations that was potentially unclear. Unless specifically described in this Summary of Comments and Explanation of Revisions, such revisions were not intended to change the meaning of the language that was revised. All applicability dates were revised to provide that the final regulations will not apply to taxable years that ended before the date the August 2018 NPRM was filed with the **Federal Register**. To the extent comments recommended as a general matter that the regulations take into account the TTCA amendments, those comments were adopted as described in this Summary of Comments and Explanation of Revisions.

1. Scope of the Centralized Partnership Audit Regime

Three comments were received regarding the scope of the centralized partnership audit regime. All of the comments concerned former proposed § 301.6221(a)–1, which was issued before the TTCA was enacted. No comments were received on proposed § 301.6221(a)–1 as revised subsequent to the TTCA in the August 2018 NPRM.

Prior to amendment by the TTCA, section 6221(a) provided that any adjustment to items of income, gain, loss, deduction, or credit of a partnership shall be determined at the partnership level. Former proposed § 301.6221(a)–1(b)(1)(i) had defined the phrase ''items of income, gain, loss, deduction, or credit'' to mean all items and information required to be shown, or reflected, on a return of the partnership and any information contained in the partnership's books and records for the taxable year. One comment stated the definition under former proposed § 301.6221(a)–1(b)(1)(i) included items on the partnership return or in the partnership's books and records regardless of whether (i) such items or information would affect the income that the partnership reports or (ii) the particular tax characteristics of the separate partners would affect the ultimate tax liability. The comment expressed concern that, by broadly defining the scope of the centralized partnership audit regime, the proposed regulations would expand the number of partnerships and partners that encounter differences between the correct tax they would have paid if they had properly reported, and the amount of the imputed underpayment. No changes to the regulations were made in response to this comment.

The TTCA amended section 6221(a) by replacing the phrase ''items of income, gain, deduction, loss or credit of a partnership for a partnership taxable year (and any partner's distributive share thereof)'' with the term ''partnership-related item.'' The TTCA added a definition of ''partnership-related item'' to section

6241(2). The August 2018 NPRM adopted the TTCA amendments to section 6221(a) and 6241 by moving the majority of the regulation text under former proposed § 301.6221(a)–1 to the definition of ''partnership-related item'' under proposed § 301.6241–6. Because of these changes, the comment is generally no longer applicable to this section of the regulations.

In addition, the TTCA amendments address the comment's first concern that the scope of former proposed § 301.6221(a)–1(b)(1)(i) was overly broad in that it was delineated without regard to whether items or information adjusted at the partnership level affect the income of the partnership. Section 6241(2)(B) broadly defines a partnership-related item as any item or amount with respect to the partnership which is relevant in determining the tax liability of any person under chapter 1 of the Code and any partner's distributive share thereof. Section 6241(2)(B). Nothing within that definition limits the term partnership-related item to income reported by the partnership. To the contrary, partnership-related items are any items with respect to the partnership that are relevant to determining any person's chapter 1 tax, which could include partnership expenses, credits generated by partnership activity, assets and liabilities of the partnership, and any other items concerning the partnership that are relevant to someone's chapter 1 tax, irrespective of the impact such items have on the partnership's income.

Furthermore, the core feature of the centralized partnership audit regime is to provide a centralized method of examining items of a partnership. Adjusting items on a partnership's return or in the partnership's books and records, regardless of their effect on partnership income, in a centralized partnership proceeding at the partnership level is not only consistent with this centralized approach, but it also results in efficiencies because one proceeding can be conducted that will bind all partners and the partnership. See section 6223(b). Nothing in the statute requires only items that affect the partnership's income, as reported on the partnership's return, to be adjusted at the partnership level.

Regarding the comment's second concern that an imputed underpayment is determined without regard to partners' tax characteristics and that the imputed underpayment amount differs from the amount of tax the partners would have paid had the items been reported correctly, those concerns are addressed in section 3.A. of this Summary of Comments and Explanation of Revisions.

Former proposed § 301.6221(a)–1(b)(1)(i) provided as an example of an ''item of income, gain, loss, deduction, or credit'' any items related to transactions between a partnership and any person including disguised sales, guaranteed payments, section 704(c) allocations, and transactions to which section 707 applies. Former proposed § 301.6221(a)–1(b)(1)(i)(H). One comment suggested that this provision inappropriately included partner items such as a disguised fee under section 707(a)(2)(A) and the gain or loss a partner may realize from a disguised sale under section 707(a)(2)(B). The comment recommended revising the regulations to refer to ''items *of a partnership* related to . . . transactions to which section 707 applies.'' Similarly, another comment expressed concern about situations where a partner was not acting in the partner's capacity as a partner, but rather as a counterparty to a transaction with the partnership. The comment suggested that the regulations clarify that a final determination of a transaction between a partnership and a partner following an examination of the partnership is not binding on any third person, including a partner not acting in its capacity as a partner and who was not a party to the examination.

These comments are addressed by the final regulations under § 301.6241–1(a)(6) regarding the definition of partnership-related item. Proposed § 301.6241–6(b)(4) and (5) defined the phrase ''item or amount with respect to the partnership'' to include an item or amount that relates to a transaction with the partnership by a partner acting in its capacity as a partner or by an indirect partner acting in its capacity as an indirect partner as well as an item or amount relating to a transaction that is described in section 707(a)(2), 707(b), or 707(c). Accordingly, under the proposed regulations if an item or amount related to a transaction that is described in section 707(a)(2), 707(b), or 707(c) and was relevant in determining chapter 1 tax, that item was a partnership-related item and must be determined at the partnership level.

As described more fully in section 1.B., the final regulations clarify that items or amounts relating to transactions of the partnership are items or amounts with respect to the partnership only if those items or amounts are shown, or required to be shown, on the partnership return or are required to be maintained in the partnership's books and records. The final regulations further clarify that items or amounts shown, or required to be shown, on a return of a person other than the partnership (or in that person's books and records) that result after application of the Code to a partnership-related item and that take into account the facts and circumstances specific to that person are not partnership-related items and, therefore, are not determined at the partnership level under the centralized partnership audit regime.

The changes in the final regulations to the definition of partnership-related item address the concerns raised by the comment. First, § 301.6241–1(a)(6) provides that only items or amounts reflected, or required to be reflected on the partnership's return or in its books and records are with respect to the partnership. If such items are relevant to determining chapter 1 tax such items are partnership-related items. This rule applies equally to items or amounts relating to any transaction with, liability of, or basis in the partnership. Second, § 301.6241–1(a)(6) further provides that items reflected, or required to be reflected on the return of a person other than the partnership or in that person's books and records that result after application of the Code to a partnership-related item are not with respect to a partnership and, thus, not partnership-related items. Accordingly, only items of the partnership, as suggested by the comment, are partnership-related items under § 301.6241–1(a)(6).

Proposed § 301.6221(a)–1(a) provided that any consideration necessary to make a determination at the partnership level under the centralized partnership audit regime, including the period of limitations on making partnership adjustments under section 6235 or facts necessary to calculate an imputed underpayment under section 6225 were determined at the partnership level. The final regulations under § 301.6221(a)–1(b) retain this concept, but with revised language. The final regulations provide that any legal or factual determinations underlying any adjustment or determination made under the centralized partnership audit regime are also determined at the partnership level under the centralized partnership audit regime. For instance, such determinations include the period of limitations on making adjustments under the centralized partnership audit regime and any determinations necessary to calculate the imputed underpayment or any modification of the imputed underpayment under section 6225.

After consideration, the Treasury Department and the IRS have concluded that the phrase ''legal and factual determinations underlying an

adjustment or determination'' instead of the phrase ''any consideration necessary to make a determination at the partnership level'' more clearly and accurately reflects the rule that facts and legal conclusions that underlie adjustments to partnership-related items, tax, and penalties made at the partnership level are also determined at the partnership level. The revised language more clearly describes the rule and provides taxpayers with more definitive guidance regarding the items determined at the partnership level. Additionally, this language is consistent with language used in proposed § 301.6241–6(b)(8), which was removed as described in section 2 of this Summary of Comments and Explanation of Revisions.

Lastly, the final regulations remove the list of cross-references from the end of proposed § 301.6221(a)–1(a). The TTCA amended section 6221(a) to provide that adjustments to partnership-related items are determined at the partnership level ''except to the extent otherwise provided in'' subchapter C of chapter 63. Because the statutory language is clear that there are exceptions within subchapter C of chapter 63 to the general rule under section 6221(a) and § 301.6221(a)–1, the list of cross-references from proposed § 301.6221(a)–1(a) was no longer necessary.

A. Penalty Defenses

Five comments were received with respect to former proposed § 301.6221(a)–1(c), which provided that any defense to any penalty, addition to tax, or additional amount must be raised by the partnership in a partnership-level proceeding under the centralized partnership audit regime, regardless of whether the defense relates to facts and circumstances relating to a person other than the partnership. Once the adjustments determined in the partnership-level proceeding became final, no defense to any penalty determined could be raised or taken into account. Former proposed § 301.6221(a)–1(c).

Several comments stated that the rule under former proposed § 301.6221(a)–1(c) was inequitable to partners because, among other reasons, partners had no control over whether the partnership representative would raise a partner-specific defense, especially in the case of indirect partners who are less directly connected to the partnership representative. Some comments recommended the regulations clarify how partner-level defenses would be raised in the partnership-level proceeding and how decisions regarding those penalty defenses would be communicated to partners. Other comments suggested that partners should be able to raise their own partner-level defenses. In response to these comments, former proposed § 301.6221(a)–1(c) was removed from the proposed regulations in the December 2017 NPRM. See section 3 of the preamble to the December 2017 NPRM. The December 2017 NRPM also proposed regulations under sections 6225 and 6226 (former proposed §§ 301.6225–2(d)(2)(viii) and 301.6226–3(i)) which allowed partners to raise their own partner-level defenses at the time partners took into account the partnership adjustments determined at the partnership level (either through the modification process or as part of the election under section 6226). For further discussion of the rules regarding partner-level defenses under sections 6225 and 6226, see sections 3.D. and 4.C.ii.I. of this preamble. See also section 8.A. of this preamble regarding section 6233(a).

B. Partnership-Related Item

Proposed § 301.6241–6(a) defined the term ''partnership-related item'' as any item or amount with respect to the partnership which is relevant to determining the tax liability of any person under chapter 1 and any partner's distributive share of any such item or amount. Proposed § 301.6241–6(b) provided that an item or amount is with respect to the partnership without regard to whether the item or amount appeared on the partnership return if the item or amount was described in one of eight categories. Two categories described items or amounts that are shown or reflected, or required to be shown or reflected, on a return of the partnership under section 6031 or are in the partnership's books and records. The other categories described items or amounts relating to certain transactions with the partnership, items or amounts relating to liabilities of the partnership provided the item or amount was reported by a partner, and items or amounts relating to basis in the partnership. Imputed underpayments and any legal or factual determinations necessary to make an adjustment to items or amounts described in the other categories were also defined as items or amounts with respect to the partnership. Proposed § 301.6241–6(b)(1) through (8).

After careful consideration, the Treasury Department and the IRS have revised the definition of ''item or amount with respect to the partnership.'' First, the final regulations remove the language ''without regard to whether or not such item or amount appears on the partnership's return'' from proposed § 301.6241–6(b). That phrase derived from the parenthetical in section 6241(2)(B)(i) that follows ''item or amount with respect to the partnership.'' The Treasury Department and the IRS have determined that the parenthetical language describes items or amounts that appear on the partnership return, items or amounts that were required to appear on the return but actually did not, and items or amounts that factor into the determination of items or amounts that do appear on the partnership return. The Treasury Department and the IRS have concluded that this parenthetical does not extend the concept of ''with respect to the partnership'' to items or amounts that are reported by third parties and that are otherwise not defined as partnership-related items in these final regulations. See § 301.6241–1(a)(6)(vi)(A) and (B).

Second, the final regulations replace the list of eight categories of items or amounts that were with respect to the partnership with a single, streamlined paragraph, § 301.6241–1(a)(6)(iii) that includes all the items and amounts from the prior list, except as described in this section of this preamble. Third, the definition of partnership-related item was moved from proposed § 301.6241–6 and placed under the definition of ''partnership adjustment'' in § 301.6241–1(a)(6) to more closely track the statutory structure of section 6241(2).

The final regulations under § 301.6241–1(a)(6)(iii) maintain the rule from the proposed regulations that items or amounts shown or reflected, or required to be shown or reflected, on the return of the partnership are items or amounts with respect to the partnership. The final regulations also clarify that items or amounts in the partnership's book or records are items or amounts with respect to the partnership if those items or amounts are ''required to be maintained'' in the partnership's books and records. The phrase ''required to be maintained'' is added to account for items that may be maintained in the partnership's books and records on a voluntary basis. For example, a partnership may choose to maintain the outside basis of each of its partners in its books and records, even though the Code does not require this information be maintained by the partnership. The rule make clears that the voluntary recording of an item in the partnership's books is not determinative of the meaning of the phrase ''item or amount with respect to the partnership.'' A partnership cannot convert an item or amount that is not with respect to the

partnership into an item or amount that is with respect to the partnership merely by including that item or amount in the partnership's books and records. This rule provides consistency among partnerships and more certainty regarding what items in the books and records of a partnership constitute items or amounts with respect to the partnership.

The final regulations do not retain the separate categories of items relating to transactions with, liabilities of, and basis in the partnership. Instead, the final regulations adopt a streamlined approach and provide that those items are only with respect to the partnership if those items are reflected, or required to be reflected, on the partnership's return or required to be maintained in its books and records. The separate treatment under the proposed regulations for these types of items and amounts was duplicative. Items or amounts relating to transactions with, liabilities of, and basis in the partnership are items or amounts shown or reflected, or would be required to be shown or reflected, on the partnership return or required to be maintained in the partnership's books and records. Accordingly, describing separate categories for such items was unnecessary and potentially confusing.

Under § 301.6241–1(a)(6)(iii), an item or amount is with respect to the partnership only if the item or amount is shown or reflected, or required to be shown or reflected, on the partnership return or required to be maintained in the partnership's books and records. Consistent with that interpretation, the final regulations provide an item or amount relating to transactions with, liabilities of, and basis in the partnership is with respect to the partnership only if the item or amount is reported, or required to be reported, on the partnership return or is required to be maintained in the partnership's books and records.

The term partnership-related item includes a partner's distributive share of items or amounts that are with respect to the partnership which are relevant in determining the chapter 1 tax of any person. Section 6241(2)(B)(ii). In taking into account the partner's distributive share of partnership-related items, a partner must apply the provisions of the Code to each partnership-related item to compute the partner's ultimate tax liability. The application of the Code to the partner's share of partnership-related items requires taking into account facts and circumstances that are unique to a particular partner. Generally speaking, those facts and circumstances are known only by the partner, are not known by the partnership, and are based on information only within the partner's control and outside of the partnership's control.

In an examination of items on a partner's return, the IRS generally needs information pertaining to the partner's specific facts and circumstances to determine the correctness of the items. The partner whose items are at issue is normally the best source for that type of information. While a partnership may possess some information about a particular partner's facts and circumstances, obtaining information from the partnership is generally not as efficient as obtaining information from the partner. Obtaining such information from the partner also preserves the privacy interests of the partner. Therefore, from both a taxpayer and tax administration standpoint, an examination of items for which application of the Code depends on a partner's particular facts and circumstances is, in general, best performed at the partner level, rather than the partnership level.

Under the TEFRA procedures, these types of items were considered affected items and adjustments to those items were computational adjustments. The centralized partnership audit regime is intended to have a scope sufficient to address those items that would have been considered partnership items, affected items, and computational adjustments under TEFRA, including the regulations. Joint Comm. on Taxation, JCX–6–18, Technical Explanation of the Revenue Provisions of the House Amendment to the Senate Amendment to H.R. 1625 (Rules Committee Print 115–66), 37 (2018) (JCX–6–18). One way to achieve a sufficiently broad scope is to attempt to define the term ''partnership-related item'' to include those items that would have been partnership items, affected items, and computational adjustments under TEFRA. For the following reasons, however, this approach was not adopted.

The centralized partnership audit regime is a fundamentally distinct system from TEFRA. While under both sets of rules adjustments are made at the partnership level and those adjustments are binding on partners, the framework for assessing and collecting tax resulting from those adjustments is significantly different. Under TEFRA, tax attributable to partnership items determined at the partnership level and tax attributable to affected items was assessed against the partners of the partnership through computational adjustments made by the IRS with respect to the partner. Computational adjustments were made either by mailing a notice of deficiency to the partner if factual determinations were necessary at the partner level or by directly assessing tax against the partner. The tax was assessed with respect to the year that was audited by the IRS, and assessments were required to be made within one year of the completion of the partnership-level proceeding.

Under the centralized partnership audit regime, adjustments to partnership-related items are similarly determined at the partnership level. In stark contrast to the TEFRA procedures, however, the tax attributable to those adjustments is also assessed and collected at the partnership level in the form of an imputed underpayment determined pursuant to section 6225. An imputed underpayment is assessed as if it were a tax imposed for the adjustment year, generally the year in which the adjustments are finally determined, instead of the year that was subject to examination. Section 6225(d). The partnership, not the partners, is liable for the imputed underpayment. A partnership may elect the alternative to payment of the imputed underpayment under section 6226 and ''push out'' the adjustments determined at the partnership level, in which case the tax attributable to the adjustments is assessed and collected from the partnership's partners. Unlike the TEFRA procedures, however, under the push out process, assessment and collection is initiated by the partner, rather than by the IRS, by the partner taking into account the partnership adjustments and self-reporting any tax due on the partner's next filed return, alleviating both the administrative and timing issues that arose in TEFRA. See section 2.A of the preamble to the June 2017 NPRM.

When calculating an imputed underpayment based on adjustments determined at the partnership level, taxpayer favorable adjustments are generally disregarded and the highest rate of tax is applied. This formula may produce an amount that is larger than the cumulative amount of tax the partners would have paid had the partners taken the adjustments into account separately, but it also relieves the IRS of the obligation to account for specific partner facts and circumstances when initially determining the imputed underpayment amount. During the modification phase, a partnership may, at its option, request that the imputed underpayment be modified to take into account partner tax attributes and facts and circumstances. See section 3.B. for further discussion.

When taking into account adjustments under section 6226, a partner determines the increase or decrease in tax that would have occurred if the adjustments were taken into account for the partner's tax year correlating to the year that was audited. For intervening years, any year between the audited year and the current year, the partner must determine the effect on tax attributes of the adjustments and the resulting increase or decrease that would have occurred for those years as well. The partner then adjusts her tax for the current year by the aggregate tax that would have resulted had the adjustments been properly taken into account. Under TEFRA, it was the IRS's burden to determine tax at the partner level. The centralized partnership audit regime, under section 6226, shifts that burden from the IRS to the partner. As a result, it is neither necessary nor efficient for the IRS to determine at the partnership level the facts and circumstances specific to a partner in order for that partner to determine the proper amount of tax in the case of a push out.

The rules for calculating an imputed underpayment under section 6225 and the computation rules under section 6226 are sufficiently broad to ensure that the tax attributable to items that would have been partnership items, affected items, and computational adjustments under the TEFRA is collected under the centralized partnership audit regime. When the partnership pays an imputed underpayment, the application of limitations and restrictions is assumed and favorable adjustments are disregarded unless a partnership demonstrates that partner tax attributes should override those assumptions. In this way, the imputed underpayment determination, including any modifications, sufficiently accounts for those types of items that would have been affected items or computational adjustments under TEFRA. Similarly, in the case of an election under section 6226, the re-computation process necessarily involves the application of items that would have been affected items or computational adjustments.

Because both the imputed underpayment rules and the section 6226 rules sufficiently address items that would have been partnership items, affected items, and computational adjustments, it is both unnecessary and over-inclusive to define partnership-related item to encompass all of those items. Accordingly, the final regulations clarify that the term partnership-related item does not include items or amounts that would have been TEFRA affected items or computational adjustments. The final regulations do this by defining ''with respect to the partnership'' to exclude items or amounts shown, or required to be shown, on a return of a person other than the partnership (or in that person's books and records) that result after application of the Code to a partnership-related item and that take into account the facts and circumstances specific to that person. Because these items and amounts are not with respect to the partnership, they are not partnership-related items the IRS must adjust at the partnership level. Two examples were added to the final regulations under § 301.6241–1(a)(6)(vi) to illustrate this rule.

The definition of ''with respect to the partnership,'' and by extension partnership-related item, under the final regulations preserves the centralized nature of the proceeding with respect to the partnership. During the partnership level proceeding under the centralized partnership audit regime, the IRS adjusts items that are germane to the partnership as an entity—that is, items reported by the partnership on its return or items in its books and records generally used for purposes of completing the return. The partnership has access to this information, and it is therefore, in general, most efficient to obtain this information from the partnership in the partnership level proceeding.

This rule also protects the tax and privacy interest of partners. Under section 6223, partners are bound by actions taken by the partnership in the partnership proceeding and by any final decision in the partnership proceeding. Unlike under TEFRA, individual partners do not have a right to participate in the partnership level administrative or judicial proceeding. If items based on the application of the Code to a particular partner based on that partner's facts and circumstances were items required to be determined at the partnership level, the partner may be unable to dispute adjustments to those items. And even if the partner were able to dispute adjustments to those items, the partner would need to divulge private information in a proceeding in which the partnership was the party, not the partner itself.

In addition, a rule that would require that such items and amounts be determined at the partnership level raises significant administrative concerns for the IRS. In general, the partnership would in most cases lack the facts necessary to determine items or amounts that depend on the facts and circumstances of the partners. By necessity, the IRS would be required to involve the partners in the examination to the extent the partner's items and amounts were at issue. Requiring the IRS to involve potentially the many partners in the entity level examination of the partnership would undermine the efficiencies of the centralized partnership audit regime's concept of the partnership representative and the binding nature of the partnership representative on the outcome of the entity level examination. Further, if the IRS did not examine all of the various items or amounts on the partners' returns during the partnership level proceeding, the IRS would, for each of the partners' items and amount that were also partnership-related items, be precluded from adjusting those items at the partner level outside of the centralized partnership audit regime. This would lead to an unnecessary expansion of partnership-level proceedings to encompass what could more simply and efficiently be resolved at the partner level for one or a small group of partners.

i. Comments Concerning Partnership-Related Item

One comment recommended that all partners should be audited as a group, but only about their financial involvement within the scope of the partnership. According to the comment, outside interests and income should not be determined at the partnership level. Although it is not entirely clear what the comment includes in the phrases ''financial involvement within the scope of the partnership'' and ''outside interests and income'', the Treasury Department and the IRS understand this comment to be a request to limit the scope of the items that are ''with respect to the partnership'' for purposes of this section. Another comment suggested that the scope of the term ''partnership-related item'' should not be unreasonably broad, particularly with respect to partner-level items where the underlying issue is primarily of interest to the partner and not the partnership. The comment expressed concern that the partnership could have little interest in disputing a proposed adjustment that would have little impact to the partnership but could have a dramatic effect on a particular partner.

These comments were adopted as reflected in the changes to the definition of ''with respect to the partnership'' described in this section of this preamble. Under the final regulations, outside interests and income and partner-level items are not ''with respect to the partnership'' to the extent those are not items or amounts reflected, or required to be reflected, on the

partnership return or required to be maintained in the partnership's books and records. In addition, the items or amounts that are ''with respect to the partnership'' as defined in § 301.6241–1(a)(6)(iii) are generally items concerning the partners' financial involvement within the scope of the partnership. Accordingly, adjustments to items concerning the partners' financial involvement within the scope of the partnership would generally be determined at the partnership level, and adjustments to items involving outside interests and income or partner-level items that result after application of the Code to a partnership-related item and that take into account facts and circumstances specific to the partner, to the extent provided for in this section, are not determined at the partnership level under the centralized partnership audit regime.

In addition to the revisions described earlier in this section of this preamble, the term imputed underpayment was moved from the definition of ''item or amount is with respect to the partnership'' to the definition of partnership-related item under § 301.6241–1(a)(6)(ii). This change clarifies that an imputed underpayment is always a partnership-related item. First, an imputed underpayment is a creation of the centralized partnership audit regime and can only arise under the centralized partnership audit regime. See sections 6225, 6226, and 6227. Second, the statute expressly defines an imputed underpayment as an item or amount that is with respect to the partnership. Section 6241(2)(B)(i). Third, an imputed underpayment is relevant in determining the liability of any person under chapter 1, as defined in § 301.6241–1(a)(6)(iv), because payment of the imputed underpayment by the partnership relieves the partners of any chapter 1 liability attributable to the reviewed year partnership adjustments.

2. Partner's Return Must Be Consistent With Partnership Return

Five comments were received concerning section 6222, regarding the requirement that a partner's return be consistent with the partnership return. The comments covered the following topics: Inconsistent treatment in the case of an amended return, an administrative adjustment request, or where no partnership return is filed; the form and method for identifying inconsistent treatment; proceedings to adjust identified, inconsistently reported items; and the election regarding consistent treatment with a schedule furnished to the partner by the partnership. In addition to responding to these comments, this section of the preamble describes changes to the language of § 301.6222–1(a)(2) regarding partners that are partnerships with an election in effect under section 6221(b).

A. Inconsistent Treatment on an Amended Return and Definition of Partner's Return for Purposes of § 301.6222–1

One comment recommended that the regulations clarify that a partner may file an amended return in order to take a position inconsistent with the filed partnership return as long as such amended return includes a statement identifying the inconsistent treatment. Under section 6222(a), a partner shall, on the partner's return, treat each partnership-related item in a manner that is consistent with the treatment of such item on the partnership return. Proposed § 301.6222–1(a) provided that the treatment of partnership-related items on a partner's return must be consistent with the treatment of such items on the partnership return in all respects, including the amount, timing, and characterization of such items. The term ''partner's return'' is not defined in either section 6222(a) or proposed § 301.6222–1(a).

Section 6222(a) and § 301.6222–1(a) are designed to ensure consistent treatment of partnership-related items on partners' returns and the partnership return filed with the IRS, except for cases where the partner notifies the IRS of the inconsistency. The requirement to be consistent with the partnership return extends to each return filed by the partner that reflects, or is required to reflect, partnership-related items. This includes both original and amended returns. Any other application of this requirement would render the requirement of consistency meaningless. For example, a partner could file a return on April 15 taking a consistent position, only to turn around on April 16 and file an amended return taking an inconsistent position.

To clarify that the consistency requirement under section 6222(a) and proposed § 301.6222–1(a) applies to each return of the partner, the final regulations provide that the term ''partner's return'' for purposes of § 301.6222–1 includes any return, statement, schedule, or list, and any amendment or supplement thereto, filed by the partner with respect to any tax imposed by the Internal Revenue Code. Accordingly, pursuant to § 301.6222–1(a), a partner on either an original or an amended return must treat partnership-related items consistently with how those items were treated on the partnership return filed with the IRS.

The clarification of the term ''partner's return'' also addresses the comment's suggestion that the regulations permit inconsistent treatment on an amended return provided the IRS is notified of that inconsistent treatment. Under § 301.6222–1(c)(1), the requirement that a partner treat a partnership-related item consistently with the partnership's treatment of that item, and the effect of inconsistent treatment, do not apply to partnership-related items identified as inconsistent (or that may be inconsistent) in a statement attached to the partner's return on which the partnership-related item is treated inconsistently. As clarified in these final regulations, the term partner's return for purposes of § 301.6222–1 includes any amendment to the partner's original return. Accordingly, so long as a partner notifies the IRS of an inconsistent treatment, in the form and manner prescribed by the IRS, by attaching a statement to the partner's return—including an amended return—on which the partnership-related item is treated inconsistently, the consistency requirement under § 301.6222–1(a), and the effect of inconsistent treatment under § 301.6222–1(b), do not apply to that partnership-related item.

i. Limitations on Filing Amended Returns Reporting Inconsistent Positions

When a partner on an amended return treats a partnership-related item inconsistently with how the item was treated on the partnership return, the partner is making a request for an administrative adjustment of that partnership-related item. Accordingly, the rule under proposed § 301.6227–1(a) that provided a partner may not request an administrative adjustment of a partnership-related item was revised to account for situations in which on an amended return a partner treats a partnership-related item inconsistently with the partnership return pursuant to § 301.6222–1(c)(1).

Section 6227(c) provides that in no event may a partnership file an AAR after a notice of an administrative proceeding with respect to the taxable year is mailed under section 6231. Consistent with section 6227(c), proposed § 301.6227–1(b) provided that no AAR may be filed after a NAP has been mailed by the IRS, except as provided in § 301.6231–1(f) (regarding withdrawal of a NAP). To give effect to this rule in the context of inconsistent treatment, the final regulations under § 301.6222–1(c)(5) provide that a partner

may not notify the IRS that the partner is treating an item inconsistently with the partnership return for a taxable year after a NAP with respect to such partnership taxable year has been mailed by the IRS under section 6231. This rule clarifies that once the IRS initiates an administrative proceeding with respect to a partnership taxable year, any adjustment to a partnership-related item for that year must be determined exclusively within that partnership-level proceeding in accordance with section 6221(a). Neither the partnership, through filing an AAR, nor a partner, by taking an inconsistent position, may adjust a partnership-related item outside of that proceeding. Any actions taken by the partnership and any final decision in the proceeding are binding on the partnership and all its partners. Section 6223(b).

B. Inconsistent Treatment in the Case of an Administrative Adjustment Request

Proposed § 301.6222–1(c)(2) provided that the notification procedures under § 301.6222–1(c) do not apply to a partnership-related item the treatment of which is binding on the partner because of actions taken by the partnership, or because of any final decision in a proceeding with respect to the partnership, under the centralized partnership audit regime. Accordingly, under proposed § 301.6222–1(c)(2), the provisions of § 301.6222–1(c) did not apply with respect to the partner's treatment of a partnership-related item reflected on an AAR. This meant that a partner could not treat an item inconsistently with how such item was treated on an AAR. One comment recommended that the regulations under § 301.6222–1(c)(2) be revised to permit a partner to notify the IRS of an inconsistent position taken with respect to an item reported on an AAR. This comment was adopted.

Under section 6223(b), all partners are bound by actions taken by the partnership and by any final decision with respect to the partnership under the centralized partnership audit regime. In the case of an AAR, section 6223(b) binds each partner to the partnership's making of the request itself and the mechanism by which the adjustments requested are taken into account, including any election by the partnership to have the partners take into account the adjustments. Accordingly, if the partnership takes into account the adjustments by paying an imputed underpayment, the partners must follow the rules under section 6225. If there is no imputed underpayment or if the partnership elects to have the partners take into account the adjustments, the partners must follow the procedures under § 301.6227–3.

When taking into account AAR adjustments under § 301.6227–3, partners must adhere to the consistency requirements under section 6222(a). See § 301.6222–1(a)(4) (providing consistency requirement applies to the treatment of a partnership-related item on an AAR). Nothing in sections 6222, 6223(b), or 6227, however, precludes a partner from notifying the IRS the partner is taking an adjustment into account inconsistently with how the adjusted item was treated in an AAR. While section 6227 imposes certain requirements with respect to AARs, none of those requirements contradict section 6222(c)'s exception to the consistency requirement. Accordingly, the final regulations under § 301.6222–1(c)(2) remove the language stating that the provisions of § 301.6222–1(c)(1) do not apply with respect to a partner's treatment of a partnership-related item reflected on an AAR. In addition, the final regulations under § 301.6227–1 remove the rule under proposed § 301.6227–1(f) regarding the binding nature of an AAR. As a result of these changes, a partner may notify the IRS it is treating an AAR-adjusted item inconsistently in accordance with the provisions of § 301.6222–1(c).

The final regulations under § 301.6222–1(c)(2) maintain the language stating that the provisions of § 301.6222–1(c)(1) do not apply to a partner's treatment of an item reflected on a statement under section 6226 filed by the partnership with the IRS. A cross-reference to § 301.6226–1(e) was also added. In addition, the final regulations clarify that the provisions of § 301.6222–1(c)(1) do not apply to any item the treatment of which is binding on the partner because of an action taken by the partnership or because of a final decision in a proceeding under the centralized partnership audit regime with respect to the partnership. Section 6223(b). Items reflected on a statement under section 6226 filed with the IRS are an example of such items.

C. Inconsistent Treatment When No Partnership Return is Filed

Proposed § 301.6222–1(a)(3) provided that a partner's treatment of a partnership-related item attributable to a partnership that does not file a return is per se inconsistent, unless the partner files a notice of inconsistent treatment in accordance with proposed § 301.6222–1(c). One comment recommended that the regulations include an example to illustrate the outcome of the application of the rule under proposed § 301.6222–1(a)(3). The comment observed that without a return filed by the partnership, there would not be a return with which to make the partner's return consistent. To illustrate the application of § 301.6222–1(a)(3), Example 7 was added under § 301.6222–1(a)(5).

In light of the comment, the final regulations under § 301.6222–1(b)(1) include the clarification that where a partnership has failed to file a return, any treatment of a partnership-related item on a partner's return may be removed, and the IRS may determine any underpayment of tax resulting from such adjustment.

Lastly, the final regulations eliminate the phrase ''unless the partner files a notice of inconsistent treatment in accordance with proposed § 301.6222–1(c)'' from proposed § 301.6222–1(a)(3). This change clarifies that a partner's treatment of an item attributable to a partnership that has not filed a return is per se inconsistent, even if the partner notifies the IRS of the inconsistent treatment. The notification under § 301.6222–1(c) turns off the consistency requirement, but it does not change, as a factual matter, that the partner reported inconsistently.

D. Form and Method for Identifying Inconsistent Treatment of a Partnership-Related Item

Under proposed § 301.6222–1(c)(1), in addition to the requirement that a statement identifying an inconsistent treatment must be attached to the partner's return on which the item is treated inconsistently, the statement must be provided to the IRS according to the forms, instructions, and other guidance prescribed by the IRS. One comment asked about the form and method for providing the IRS with the statement described in proposed § 301.6222–1(c)(1) and suggested specific format guidance in the regulations would assist the public in reporting an inconsistent treatment. This comment was not adopted.

The final regulations maintain the rule that a partner must provide the statement described in § 301.6222–1(c)(1) in accordance with forms, instructions, and other guidance prescribed by the IRS. Prescribing the form and method for notifying the IRS of inconsistent treatment through forms, instructions, and other sub-regulatory guidance allows the IRS the flexibility to update its procedures for identifying an inconsistency as appropriate and necessary without the IRS having to amend the regulations. This flexibility preserves government resources and

also expedites the guidance process for taxpayers to be aware of changes in IRS procedures. Accordingly, the final regulations do not provide a specific form or method for identifying inconsistent treatment.

The same comment asked whether a statement identifying inconsistent treatment can only be filed contemporaneously with the partner's tax return. Proposed § 301.6222–1(c) provided that a statement does not identify an inconsistency unless it is attached to the partner's return on which the partnership-related item is treated inconsistently. Because the plain language of proposed § 301.6222–1(c) made clear that the statement identifying inconsistent treatment must be attached to a return, no change was made in response to this comment.

E. Proceeding To Adjust an Identified, Inconsistently Reported Item

If a partner fails to satisfy the requirements of § 301.6222–1(a), the IRS may adjust the inconsistently reported partnership-related item on the partner's return to make it consistent with the treatment of such item on the partnership return, unless the partner provides notice of the inconsistent treatment in accordance with § 301.6222–1(c). See § 301.6222–1(b). Under proposed § 301.6222–1(c)(4)(i), if a partner notifies the IRS of an inconsistent treatment of a partnership-related item in accordance with proposed § 301.6222–1(c)(1) and the IRS disagrees with that inconsistent treatment, the IRS may adjust the identified, inconsistently reported item in a proceeding with respect to the partner. Nothing in proposed § 301.6222–1(c)(4)(i) precluded the IRS, however, from also conducting a proceeding with respect to the partnership.

One comment recommended that § 301.6222–1(c)(4)(i) provide that if the IRS does conduct a proceeding with respect to the partnership to adjust an identified, inconsistently reported item, the IRS may include within that proceeding the partner who provided notice of inconsistent treatment. The comment was concerned that the regulations provided partners who identified inconsistent treatment an automatic right to contest the IRS's adjustment through deficiency proceedings, which would result in more partner-level proceedings and which would be contrary to the intent of the centralized system. According to the comment, the recommended rule would allow the IRS to avoid conducting separate partnership and partner proceedings by allowing the IRS to include notifying partners in the partnership-level proceeding, rather than engaging such partners through deficiency procedures.

Proposed § 301.6222–1(c)(4)(i) provided that the IRS may adjust an identified, inconsistently reported item in a proceeding with respect to the partner. The IRS is not required to make that adjustment. The IRS may instead choose to make the adjustment in a proceeding with respect to the partnership. To the extent the comment was suggesting the IRS must adjust an identified, inconsistently reported item in a proceeding with respect to the partner, the comment was not correct.

If the IRS conducts a proceeding with respect to the partnership, that proceeding will include only the IRS, the partnership, and the partnership representative who is acting on behalf of the partnership. No partner, except a partner that is the partnership representative, or any other person may participate in the partnership proceeding without permission of the IRS. See § 301.6223–2(d)(1). Accordingly, while a partner is not generally included in a proceeding with respect to the partnership under the centralized partnership audit regime, the IRS has the authority under § 301.6223–2(d)(1) to allow any other person, including a partner who notified the IRS of inconsistent treatment, to participate in a partnership-level proceeding. Because that authority exists under § 301.6223–2, a separate rule within § 301.6222–1 to allow notifying partners to be included in a partnership-level proceeding is unnecessary. Therefore, the revision to proposed § 301.6222–1(c)(4) as recommended by the comment was not adopted.

All partners, including partners that have filed a notice of inconsistent treatment, are bound by the actions of the partnership and any final decision in a proceeding with respect to the partnership under the centralized partnership audit regime. See section 6223(b). To clarify the application of this rule in the case of a partnership-level proceeding to adjust an identified, inconsistently reported item, proposed § 301.6222–1(c)(4) was revised to provide that where the IRS conducts a proceeding with respect to the partnership, and there is no proceeding with respect to the partner regarding an identified, inconsistently reported partnership-related item, the partner is bound to actions by the partnership and any final decision in the partnership proceeding.

Another comment suggested that the regulations clarify what happens when the IRS conducts a proceeding with respect to the partnership under § 301.6222–1(c)(4)(i) and at the conclusion of that proceeding, the IRS accepts the partnership return as filed. The comment suggested the regulations address what procedures apply for collection of an imputed underpayment in that scenario or for collection of tax from the partner that filed inconsistently. This comment was not adopted.

First, because there is no partnership adjustment in the scenario described, there is also no imputed underpayment to collect from the partnership. Additionally, because there is no imputed underpayment, the partnership cannot make a push out election. See section 4.A.iii of this preamble. With respect to collection of tax from the partner, nothing in the regulations prevents the IRS, when it conducts a proceeding with respect to the partnership under § 301.6222–1(c)(4)(i), from also conducting a proceeding with respect to the partner to adjust an identified, inconsistently reported item. Accordingly, no changes were made in response to this comment.

F. Consistent Treatment With Schedule Furnished to the Partner by the Partnership

Under proposed § 301.6222–1(d)(1), a partner is treated as having notified the IRS of treating a partnership-related item inconsistently if the partner demonstrates that the treatment of such item on the partner's return is consistent with the treatment of that item on the statement, schedule, or other form prescribed by the IRS and furnished to the partner by the partnership, and the partner makes a valid election under proposed § 301.6222–1(d)(2). This election must be filed no later than 60 days after the date of such notice. Proposed § 301.6222–1(d)(2). One comment recommended that the regulations provide that this 60-day period may be extended with approval by the IRS. This comment was not adopted.

The IRS may assess and collect any underpayment of tax resulting from an adjustment to conform an inconsistent position in the same manner as if the underpayment were on account of a mathematical or clerical error appearing on the partner's return, except that the procedures under section 6213(b)(2) for requesting abatement of an assessment do not apply. The 60-day period under § 301.6222–1(d)(2) is designed to allow a partner to demonstrate consistency with the information furnished to the partner by the partnership and corresponds to the 60-day period the

partner would have had to request abatement if section 6213(b)(2) were applicable. Notably, section 6213(b)(2) does not provide for any extensions of time. Accordingly, the 60-day period under § 301.6222–1(d)(2) affords the partner an opportunity to contest the IRS's conforming adjustment the partner would not have otherwise had.

Additionally, the 60-day period is a reasonable amount of time for the partner to demonstrate consistency with the information it has received from the partnership. At the time the partner is notified by the IRS of the inconsistent treatment, the partner should be in possession of any statements, schedules, or forms furnished to the partner by the partnership. If the partner were permitted to request abatement, the partner would likewise only have 60 days. Furthermore, if the partnership is made aware by the partner that an item was treated incorrectly on the partnership return or the schedules furnished by the partnership, the partnership has the ability to file an AAR with respect to the partnership-related item.

Another comment suggested guidance is needed as to how the election under proposed § 301.6222–1(d)(2) is made. Proposed § 301.6222–1(d)(2)(i) provided that the election must be filed in writing with the IRS office set forth in the notice that notified the partner of the inconsistency. Proposed § 301.6222–1(d)(2)(ii) provided the election must be clearly identified as an election under section 6222(c)(2)(B); signed by the partner making the election; accompanied by a copy of the incorrect statement and IRS notice that notified the partner of the inconsistency; and include any other information required in forms, instructions, or other guidance prescribed by the IRS.

The comment did not suggest what further guidance should be provided in the regulations. Deferring further guidance to forms, instructions, and other sub-regulatory guidance allows the IRS the flexibility to update its procedures as appropriate and necessary without the IRS having to amend the regulations. As discussed earlier in this section of this preamble, this flexibility preserves government resources and also expedites the guidance process for taxpayers to be aware of changes in IRS procedures. Accordingly, proposed § 301.6222–1(d)(2) was not revised in response to this comment.

G. Effect of Inconsistent Treatment When Partner is a Partnership

Proposed § 301.6222–1(a)(2) provided that the rules of § 301.6222–1 apply to a partnership-partner regardless of whether the partnership-partner has made an election under section 6221(b) to elect out of the provisions of the centralized partnership audit regime. The final regulations clarify that the rules of § 301.6222–1 apply to all partners including partnership-partners that have elected out of the centralized partnership audit regime and revise the language referring to such partners to better conform to similar references in other regulation sections.

Proposed § 301.6222–1(b)(3) provided a rule regarding the effect of inconsistent treatment where the partner is itself a partnership and also provided a cross-reference to the rules under section 6232(d)(1)(B) and § 301.6232–1(d). To better conform the two sets of rules and to reduce any potential confusion between the provisions, the final regulations eliminate the rule under § 301.6222–1(b)(3) in favor of providing only a cross-reference to the rules under section 6232(d)(1)(B) and § 301.6232–1(d).

3. Determination of an Imputed Underpayment, Modification of an Imputed Underpayment, and Adjustments That Do Not Result in an Imputed Underpayment

Twenty comments were received concerning section 6225 and the rules regarding imputed underpayments. This section 3 addresses the comments concerning the determination of an imputed underpayment under proposed § 301.6225–1; modification of an imputed underpayment under proposed § 301.6225–2; and the rules regarding how adjustments that do not result in an imputed underpayment are taken into account in accordance with proposed § 301.6225–3. As discussed in the Background, comments concerning the rules regarding basis and tax attributes under proposed § 301.6225–4 will be addressed in future guidance.

A. Determination of an Imputed Underpayment

Section 6225(b)(1)(B) provides that the determination of any imputed underpayment is made by ''applying the highest rate of tax in effect for the reviewed year under section 1 or 11.'' Consistent with section 6225(b)(1)(B), proposed § 301.6225–1 provided that an imputed underpayment is determined by multiplying the total netted partnership adjustment by the highest rate of federal income tax in effect for the reviewed year under section 1 or 11 and increasing or decreasing that product by certain adjustments to credits and creditable expenditures.

One comment stated that the statute's use of the highest marginal tax rate to calculate the imputed underpayment is unfair to taxpayers who may not be taxed at the highest marginal rate, particularly with respect to adjustments for qualified dividends or capital gains, where a partner is subject to the alternative minimum tax, or where a partner is a tax-exempt entity. To the extent the comment was suggesting that the regulations use a rate different than the rate prescribed in the statute to compute an imputed underpayment, the comment was not adopted. Section 6225(b)(1)(B)'s mandate to ''apply the highest rate of tax in effect for the reviewed year under section 1 or 11'' is unambiguous, and there is no exception from application of the highest rate for any particular partnership or for any specific type of partner, such as an exception that takes into account unique circumstances of specific partners. Because application of the highest rate is established by statute, the regulations also apply the highest rate of tax to determine an imputed underpayment under section 6225(b).

A partnership and its partners may be able to reduce the rate used in computing an imputed underpayment by requesting modification under section 6225(c). For example, the partnership may request modification under § 301.6225–2(d)(3) with respect to partnership adjustments that are allocable to a tax-exempt entity or modification under § 301.6225–2(d)(4) with respect to adjustments to capital gains or qualified dividends that are attributable to an individual. The partnership may also make a push out election under section 6226, allowing partners to take into account the adjustments and pay tax using their respective marginal tax rates, including taking into account the effect of the alternative minimum tax.

Proposed § 301.6225–1(a)(1) provided that each imputed underpayment determined under § 301.6225–1 is based solely on partnership adjustments with respect to a single taxable year. One comment recommended that the regulations allow adjustments that move income or expense from one year to another to be netted for purposes of computing the imputed underpayment amount. This comment was not adopted.

The comment described an example in which the IRS determines that the partnership should have reported income in year 1 that was originally reported in year 2. The increase in income for year 1 results in an imputed underpayment. The decrease in income in year 2 is an adjustment that does not

result in an imputed underpayment pursuant to § 301.6225–1(f)(1)(i), and the partnership and its partners take into account the decrease in income in the adjustment year pursuant to § 301.6225–3. One partner in the comment's example reports income from other sources in the adjustment year; the other partner does not report income from other sources.

Section 6225(b) sets forth the rules for determining an imputed underpayment. The statutory structure of section 6225(b) is premised on the concept that an imputed underpayment is determined with respect to a reviewed year and that adjustments with respect to the reviewed year result in such imputed underpayment or are adjustments that do not result in an imputed underpayment. Section 6225(a). Section 6225(b)(1)(A) expressly provides that ''any imputed underpayment *with respect to any reviewed year* shall be determined by the Secretary by appropriately netting all adjustments *with respect to such reviewed year* . . . .'' (emphasis added). The statute does not reference adjustments with respect to any year other than the reviewed year. Accordingly, a rule that allows for the netting of adjustments across tax years is not consistent with the statutory language of section 6225(b)(1)(A).

In addition, netting across multiple tax years would not constitute ''appropriately netting'' within the meaning of section 6225(b)(1)(A). A fundamental federal income tax principle is that each taxable year stands alone. *Commissioner* v. *Sunnen,* 333 U.S. 591 (1948) (''Income taxes are levied on an annual basis. Each year is the origin of a new liability and of a separate cause of action.''). A rule that provides for netting across tax years ignores this fundamental principle. For netting to be appropriate, it must take into account general principles of federal income tax laws as well as the provisions of the Code. Allowing an adjustment from one taxable year to offset or net with an adjustment from another taxable year when determining an imputed underpayment contravenes both the general tax principle that each year stands alone and is not supported by the plain language of section 6225. These principles are particularly significant in the context of partnerships given that partners' interests and the identity of partners can vary from year to year. Because adjustments relating to multiple years may affect items that are allocable to different partners or in different amounts, it would be particularly inappropriate to offset those types of adjustments against each other when determining the imputed underpayment.

Furthermore, a timing adjustment, such as the one described in the comment's example, often has effects that must be reflected in each taxable year's return. Allowing such adjustments to net against each other could inappropriately negate those effects. For instance, an adjustment that shifts a depreciation deduction from one year to another year might have the effect of changing a taxpayer's status from being in a loss posture to being in a gain posture for the year from which the loss is being shifted. Although in some cases a gain in one year might effectively offset a loss in another year, such a result cannot be known without an analysis of each of the partners' specific circumstances. As discussed later in section 3.A.i. of this preamble, requiring the IRS to review each partner's specific circumstance in order to determine the imputed underpayment is the type of inquiry that the centralized partnership audit regime was designed to avoid.

A rule that allows for automatic netting of adjustments across tax years also ignores the limitation in section 6225(b)(4) and would create significant administrative burdens for the IRS. Section 6225(b)(4) provides that if any adjustment would result in a decrease in the amount of the imputed underpayment and could be subject to any additional limitation under the Code if taken into account by any person, such adjustment should not be taken into account in the netting process described in section 6225(b)(1)(A). This provision codifies the presumption that, except as otherwise provided, taxpayer favorable adjustments subject to any possible limitation under the Code if taken into account by any person are disregarded when determining an imputed underpayment. The statute does not require the IRS to determine whether taxpayer favorable adjustments are in fact subject to such limitations. A rule allowing for netting across tax years would, however, require the IRS to make such determinations. This would have the effect of inappropriately expanding the number of tax years and partnership adjustments potentially at issue in the partnership-level proceeding. Not only would that result undermine the limitation under section 6225(b)(4), it would also unnecessarily complicate the partnership examination, creating potential burdens for both the IRS and the partnership.

A rule allowing adjustments to offset across years would also create administrative burdens for both the IRS and for taxpayers because it would require determining the identity of the partners affected by the adjustment. While in some cases a lack of partner turnover may make that determination less burdensome, in other cases where there is a high turnover of partners or where special allocations are involved, the determination becomes more difficult. Establishing a rule that allows netting of adjustments across tax years as a general matter fails to take into account the differing make-up of partnerships and their partners. For instance, assume a case where there is a high turnover of partners, adjustments are determined across multiple reviewed years, and the rules allow netting of those adjustments to form a single imputed underpayment. If the partnership requested to modify that imputed underpayment, it would be unclear which partners would be required to participate in modification and if the partnership made a push out election with respect to the imputed underpayment, it would be unclear which partners would be furnished statements under § 301.6226–2.

Lastly, as a practical matter, the IRS may not examine each relevant partnership taxable year. If an adjustment results in moving a partnership-related item from one taxable year to another, the IRS may examine the other taxable year, but the IRS is not required to. Providing a rule requiring the IRS to take into account other taxable years when netting adjustments would effectively require the IRS to examine all of the partnership's open taxable years, which would result in a significant administrative burden to the IRS and the partnership subject to the administrative proceeding. If netting across tax years was allowed, but the IRS did not examine all relevant years, different partnerships would receive different, and potentially distorted, netting results. For instance, a partnership under examination for multiple taxable years could potentially benefit from netting across those taxable years, but a partnership under examination for only one taxable year would not receive the same benefit. The determination of an imputed underpayment amount for any one year should not be dependent on the number of partnership taxable years the IRS examines.

Accordingly, a rule that allows adjustments to net across taxable years is inconsistent with the statutory language of section 6225(b)(1)(A), contravenes general tax principles, creates administrative burdens for the IRS, and inappropriately affects the timing and netting of certain

partnership-related items. Therefore, the final regulations under § 301.6225–1(a)(1) maintain the requirement that an imputed underpayment be based solely on partnership adjustments with respect to a single taxable year.

i. Grouping, Subgrouping, and Netting of Partnership Adjustments

Several comments provided recommendations regarding the grouping, subgrouping, and netting rules under proposed § 301.6225–1(c), (d), and (e). In order to determine an imputed underpayment, each partnership adjustment determined by the IRS is first placed into one of four groupings pursuant to § 301.6225–1(c) according to the type of partnership-related item being adjusted: The reallocation grouping, the credit grouping, the creditable expenditure grouping, or the residual grouping. Adjustments are then subgrouped, if appropriate, and netted to produce the total netted partnership adjustment. Proposed § 301.6225–1(b)(2), (d) and (e).

One comment stated that the grouping and netting procedures are broad, vague, and generally err on the side of maximizing tax revenue resulting from an audit without regard to generally applicable provisions of the Code. The design of section 6225(a) and (b) and the grouping and netting rules under § 301.6225–1 is to create an imputed underpayment amount that is based on the highest rate of tax and that disregards any taxpayer favorable adjustments which would otherwise reduce the imputed underpayment. Given this formula, an imputed underpayment determined under § 301.6225–1 will likely reflect an amount that is larger than the cumulative amount of tax the partners would have paid if the partners took the partnership adjustments into account separately.

This formula is a feature of section 6225(a) and (b). The statute expressly disregards certain adjustments that may be subject to limitations and that would otherwise reduce the imputed underpayment and mandates the application of the highest applicable tax rate. Section 6225(b)(1)(B), (2) and (4). The proposed regulations followed these statutory mandates. By removing the obligation on the IRS to consider partners' facts and circumstances, such as whether adjustments that would otherwise reduce the imputed underpayment might be allowed at the partner level or whether adjustments might be taken into account by partners at a rate lower than the highest rate, section 6225(b) shifts the burden from the IRS during this phase of a partnership examination. Because the imputed underpayment determined at this phase in the examination is not required to reflect the facts and circumstances of the ultimate partners, modifications may be necessary to more closely reflect the proper tax treatment.

After the preliminary determination of the imputed underpayment amount under § 301.6225–1, the burden is shifted to the partnership to utilize the modification procedures under § 301.6225–2 if the partnership so chooses. Modification is designed to allow the partnership and its partners to arrive at an imputed underpayment amount that is closer to the correct amount of tax while maintaining the assessment and collection efficiencies of a centralized audit process. See Joint Comm. on Taxation, JCS–1–16, General Explanations of Tax Legislation Enacted in 2015, 65–66 (2016) (JCS–1–16). As an alternative to modification and paying an imputed underpayment, the partnership can elect under section 6226 to push out the adjustments to its partners. Both modification and the push out election provide the opportunity to establish that the correct amount of tax is collected from the partnership and its partners. Accordingly, the final regulations under § 301.6225–1 were not revised in response to the comment's concern about maximizing revenue.

With respect to the comment's concerns that the grouping and netting procedures are broad and vague and disregard generally applicable tax laws, to the extent those concerns related to the scope of the centralized partnership audit regime and what determinations and adjustments are made at the partnership level, see section 1 of this preamble. To the extent the comment's concerns related to the fact that the regulations do not address every possible grouping and netting scenario, the regulations do so intentionally. The Treasury Department and the IRS have determined it is not reasonable to identify within the regulations all possible permutations of adjustments and partnership facts and circumstances that might affect how an imputed underpayment is calculated. Accordingly, the regulations provide general rules that apply to various scenarios that could arise in the examination process. The general nature of the grouping, subgrouping, and netting rules also allow for the regulations to adapt to future changes to the Code.

Notwithstanding the rules' flexible nature, they are rooted in provisions of the Code and regulations that are generally applicable to partnerships and partners. The regulations require that adjustments be placed into groupings and subgroupings based on how the adjusted items are treated pursuant to the Code, the regulations, forms, instructions, and other guidance and do not generally permit the netting of adjustments that might otherwise be subject to limitations or restrictions under the tax laws. Accordingly, the grouping and netting rules are designed with regard to generally applicable provisions of the Code. For further discussion of the comment's concerns regarding the grouping and netting rules and the interaction with generally applicable tax laws, see section 3.A.ii. of this preamble.

One comment suggested that the regulations should allow partners to supply information to the partnership and require that the partnership and the IRS apply this information in calculating the imputed underpayment. The comment also suggested there be a procedure for partners who are passive investors with respect to the partnership to have an opportunity to claim passive losses for net partnership adjustments on audits that increase income and cause the partnership to pay tax on their behalf.

As discussed earlier in this section of this preamble, the tax attributes of the partnership's partners generally do not factor into the preliminary determination of the imputed underpayment. Rather, the imputed underpayment determined under § 301.6225–1 is computed without regard to the partners' tax circumstances, for example whether a partner would be able to offset additional partnership income with additional deductions or whether a partner's tax attributes would reduce the amount of tax due as a result of the adjustments. See section 6225(b)(1)(B), (2) and (4). Modification as described under section 6225(c) and § 301.6225–2 is the more appropriate stage of the examination for the IRS to take into account specific partner tax attributes. Requiring the IRS to review the tax attributes of each partner within the context of the first phase of the partnership examination would undermine the centralized nature of the examination process. The comment's' recommendation to allow partners to present information during the partnership audit and require the IRS to incorporate that information into the imputed underpayment calculation would require the IRS to review and evaluate partner tax attributes in a way that would significantly impede upon the exam and create numerous

administrative burdens for the government.

Notwithstanding these challenges, proposed § 301.6225–1(c)(1) and (d)(1) provided that the IRS may, in its discretion, place adjustments in groupings and subgroupings in a manner different from that described in the proposed regulations to appropriately reflect the facts and circumstances of each examination. This rule is intended to allow the partnership to provide information to the IRS to demonstrate that certain partner tax attributes should be taken into account when grouping and subgrouping to achieve a more appropriate netting of the adjustments.

The regulations give the IRS the discretion to decide whether or not to use this information in the initial examination phase, that is, prior to modification. This discretion is necessary because the partnership and the IRS may not agree as to whether the groupings and subgroupings requested by the partnership are appropriate. Requiring the IRS and the partnership to resolve such disagreements within the context of the first phase of the partnership proceeding would take time and resources away from the audit and thereby recreate the same problems associated with introducing partner tax attributes into the partnership level exam. If the partnership and the IRS do not agree on the groupings and subgroupings recommended by the partnership during the exam, the partnership is not without recourse. The partnership may request during modification that the IRS include one or more partnership adjustments in a particular grouping or subgrouping or request that certain partnership adjustments be treated as if no limitations or restrictions apply with the result those adjustments may be subgrouped with other adjustments. See § 301.6225–2(d)(6).

Accordingly, modification is generally the appropriate point in the administrative phase at which partner tax attributes may be raised by the partnership and considered by the IRS. For example, the partnership and its partners can utilize the amended return procedure or the alternative procedure to filing amended returns, which require partners to take the adjustments into account in light of their individual tax attributes. Those procedures would potentially allow partners to offset passive income with any passive losses, consistent with the procedure recommended by the comment. In the alternative, the partnership may elect to push out the adjustments under section 6226, and the partners would be required to take into account the adjustments and any effects on the partners' tax attributes. At that stage, the partners could use passive losses to the extent permitted by the rules under § 301.6226–3 (regarding how partners take into account pushed out adjustments).

Although the IRS is permitted to consider partner tax attributes during the first phase of the partnership exam, the statute and the regulations provide clear guidance on the modification process and specifically how a partnership may request that partners' tax attributes be taken into account to reduce the imputed underpayment. Limiting the requirement that the IRS consider such information to the modification stage is efficient for both the IRS and the partnership because it ensures that the first phase of the exam is focused on the substance of what adjustments must be made at the partnership level, rather than on specific partner attributes.

For these reasons, the comment suggesting a rule that permits partners, as a matter of right, to present information regarding their tax attributes during the partnership audit is not adopted. However, a partnership may request that the IRS take into account facts and circumstances relating to its partners pursuant to the rules under § 301.6225–1(d)(1) and (e)(1), which may allow for more appropriate grouping and subgroupings of adjustments. The comment's recommendation that the IRS be required to apply such information during the netting process was not adopted. The partnership may, however, request during modification to reduce the amount of the imputed underpayment based on the partners' specific tax attributes.

Another comment stated the proposed regulations create a divergence between the imputed underpayment amount and the cumulative amount that the reviewed year partners would have to pay if the adjustments were allocated to them. The comment described two situations to illustrate this concern. In the first situation, one adjustment increases ordinary income, and another adjustment decreases capital gain. The comment concludes that because the proposed regulations do not allow the decrease in capital gain to be netted against the increase in ordinary income, the partners may have overpaid tax with respect to the capital gain. In the second situation, one adjustment increases capital gain, and another adjustment decreases ordinary income. The comment concludes that because the proposed regulations do not allow the decrease in ordinary income to be netted against the increase in capital gain, the partners may have overpaid tax with respect to the ordinary income. The comment suggested that the Treasury Department and the IRS should ensure that the government does not seek an increase in tax collections solely because the partnership bears the burden for the tax. This comment was not adopted because its conclusions are based on assumptions that may not apply in all situations and section 6225(b)(1)(A) requires that adjustments are ''appropriately netted'' taking into consideration the further limitation of section 6225(b)(4) which does not permit the netting of adjustments that would reduce the imputed underpayment with other adjustments. The comment's suggestion presents the same issues described earlier in this section of the preamble regarding the introduction of partner tax information in the partnership level proceeding.

The comment's conclusions that the partners may have overpaid tax with respect to the decreased capital gain or the decreased ordinary income may be true in some cases. Without a review of the partners' accounts or some affirmation from the partners that they did pay tax, the IRS cannot be certain this is true in all cases or any one particular case. For example, a partner may have been in an overall loss position for the taxable year, may not have originally reported the decreased item, or may not have filed a return. As discussed earlier in this section of this preamble, the initial phase of the examination is not designed for the IRS to consider the specific circumstances of any partners. A rule requiring the IRS to consider specific partner circumstances would require the IRS to review each partner's account and prior returns to ensure that the partner previously took an item into account and paid tax on that item. Such a rule would create significant burden on the IRS during the initial exam phase and undermine a core aspect of the centralized partnership audit regime's shifting of the burden from the IRS to the partnership and its partners. As discussed earlier in this section of this preamble, a partnership may request that tax attributes are accounted for by using the modification procedures or the partnership may make the election under section 6226.

The comment also appears to conclude that if all partnership adjustments were netted, the imputed underpayment would result in some number closer to the amount the reviewed year partners would have to pay if the adjustments were allocated to

them. While this may be true in some cases, it would not occur in all situations. For instance, assume the partner in the first situation described by the comment had not reported and paid tax with respect to the capital gain that was then decreased on examination. If the regulations permitted the decreased capital gain to be fully netted against the increased ordinary income, the result may lead to little or no imputed underpayment, even though the partner had not paid tax on the capital gain that was reduced. In that case, no tax was paid by the partner on the capital gain (as originally allocated to the partner) and no tax was paid by the partnership with respect to the increased ordinary income, even though the partnership had additional ordinary income that should have been allocation to the partner. While the comment stated that the netting process under proposed § 301.6225–1 eliminated situations that would benefit the taxpayer, the comment did not acknowledge that the statutory structure of section 6225 mandates this result. The comment also does not acknowledge that the netting process as enacted in the statute and implemented in the regulations also protects the IRS, for instance in cases where the partner did not pay tax on an adjusted item. During the initial phase of determining the imputed underpayment, the rules should not require the IRS to take steps to ameliorate a potential discrepancy in payment amounts based on facts applicable in one situation if the rule would result in distortions for taxpayers with different facts.

As discussed earlier in this section of this preamble, ''appropriately netting'' within the meaning of section 6225(b)(1)(A) means, as a general matter, that when netting partnership adjustments for purposes of determining an imputed underpayment, all limitations under the Code should be considered, including limitations that would otherwise prevent the partnership from netting certain items. Section 6225(b)(4)'s rule regarding taxpayer favorable adjustments subject to additional limitations under the Code if taken into account by any person supports this interpretation. Because certain items could be subject to limitations in the hands of certain partners, the statute requires that limitations be accounted for by assuming they exist for purposes of determining the imputed underpayment during the initial stage of the examination. The partnership may ameliorate any discrepancies caused by that assumption by demonstrating that no such limitations exist either under § 301.6225–1(d)(1) or (e)(1) or in the modification phase. The partnership can also make the election under section 6226, and the partners will account for such limitations when taking into account the adjustments.

The comment suggested specific approaches to ameliorate the concerns it raised. First, it suggested a rule that would allow an ordinary income grouping to be reduced by a capital loss grouping to the extent of $3,000 per direct or indirect individual partner. Second, it suggested a rule that would apply the applicable rate for net negative adjustments to the relevant subgrouping and allow this amount to reduce the imputed underpayment amount. Neither of these specific recommendations was adopted.

The Code permits corporate taxpayers to deduct capital losses to the extent of capital gains. Section 1211(a). In the case of taxpayers other than corporations, the Code allows a deduction for any capital loss exceeding capital gain up to $3,000 ($1,500 in the case of a married individual filing separately). Section 1211(b). A rule allowing an offset of $3,000 against an increase in ordinary income in the situations described by the comment would require the IRS to first determine that the partners in the partnership are taxpayers other than corporations such that the rules under section 1211(b) apply. While this may be a relatively simple determination in some cases, requiring the IRS to engage in making the determination contravenes the principle that partners' tax attributes, including partner identity, are generally not accounted for in the initial imputed underpayment calculation.

To the extent the rule recommended by the comment is based on the premise that each partner would be entitled to a $3,000 capital loss, that premise is faulty. One, such a rule would require the IRS to know whether there are no other capital gains (related or unrelated to the partnership) against which the non-corporate partners would first be required to offset the additional capital loss. Two, the rule would require the IRS to consider whether the partner was not an individual subject to the lower deduction amount of $1,500 allowed by section 1211(b). This process would become more burdensome as the number of partners and tiers increased. Accordingly, this comment was not adopted. To extent that this comment recommended a rule that allowed more flexibility for the IRS to group adjustments according to the facts and circumstances of the partners, that rule is reflected in proposed § 301.6225–1(d)(1) and (e)(1) as revised in the August 2018 NPRM. A partnership that wishes to request that the IRS take into account its partner's tax circumstances, including that certain partners are otherwise entitled to a capital loss deduction under section 1211(b), may utilize the discretionary grouping and subgrouping rules under § 301.6225–1(d)(1) and (e)(1) or make a modification request under § 301.6225–2(d)(6).

With respect to the recommendation that the regulations apply the applicable rate for net negative adjustments to the relevant negative subgrouping and allow this amount to reduce the imputed underpayment amount, this recommendation was also not adopted; however, the final regulations allow for the result requested by the comment depending on the facts and circumstances. The comment suggests that the rate used in determining an imputed underpayment should be applied to negative adjustments that would otherwise be adjustments that do not result in an imputed underpayment and allow those negative adjustments to net with other positive adjustments in an effort to calculate an amount that would more closely reflect what the partners would have paid if they had properly reported the adjusted items. Section 6225(b)(1) provides that the imputed underpayment is determined by appropriately netting all partnership adjustments and applying the highest rate of tax under section 1 or 11. Section 6225(b)(3) requires that the partnership adjustments are first separately determined and netted as appropriate within each category of items that are required to be taken into account separately under section 702(a) or other provision of the Code. When ''appropriately netting'' under section 6225(b)(1)(A), section 6225(b)(4) requires that negative adjustments that could be subject to any limitation or restriction if taken into account by any person be disregarded unless provided otherwise by regulation. The regulations incorporate this rule in § 301.6225–1(d)(3). The regulations also provide the ability, however, to take facts and circumstances into account to allow negative or downward adjustments, where appropriate, to be subgrouped and thus netted with other adjustments. See § 301.6225–1(d)(1). For these reasons, the final regulations maintain the process for subgrouping and netting as provided for in the proposed regulations.

ii. Subgrouping Principles

Before being revised in the August 2018 NPRM, former proposed § 301.6225–1(d) had provided that after

grouping the adjustments, partnership adjustments are further subgrouped based on preferences, limitations, restrictions, and conventions, such as source, character, holding period, or restrictions under the Code applicable to such items. One comment stated that the proposed grouping and subgrouping rules under former proposed § 301.6225–1(d) unfairly removed many relevant distinctions between different types of items and adjustments and netted items that do not properly net against each other at the entity level, including intangible drilling costs, section 1231 gains and losses, and whether a particular partner is considered active or passive in his or her relationship to the partnership. Another comment recommended that the final regulations should also include a clear statement that the netting process will be applied in accordance with generally applicable tax law. Both comments are addressed by the amendments made by the TTCA to section 6225(b).

Section 202(a) of the TTCA added section 6225(b)(3) to provide that partnership adjustments shall first be separately determined (and netted as appropriate) within each category of items that are required to be taken into account separately under section 702(a) or other provision of the Code. Section 6225(b)(4) provides if any adjustment would (but for section 6225(b)(4)) result in a decrease in the amount of the imputed underpayment, and could be subject to any additional limitation under the provisions of the Code (or not allowed, in whole or in part, against ordinary income) if such adjustment were taken into account by any person, such adjustment shall not be taken into account when appropriately netting partnership adjustments under section 6225(b)(1)(A) except to the extent otherwise provided by the Secretary.

Former proposed § 301.6225–1(d) was revised in the August 2018 NPRM to account for the additions of sections 6225(b)(3) and (4). Proposed § 301.6225–1(d)(3)(i) provided that adjustments are subgrouped, when appropriate, according to how the adjustment would be required to be taken into account separately under section 702(a) or any other provision of the Code or regulations applicable to the adjusted partnership-related item. By separating adjustments into subgroupings according to how and whether the adjustments would be separately stated pursuant to section 702(a), the rules under § 301.6225–1(d)(3)(i) ensure that items that do not properly net against each other at the partnership level under section 702(a) do not net against each other for purposes of determining an imputed underpayment.

For example, under § 301.6225–1(c) a positive adjustment to intangible drilling costs and a negative adjustment to gain or loss from a sale of property described in section 1231 are both placed in the residual grouping. Pursuant to § 301.6225–1(d)(3)(i), each adjustment is then placed in a separate subgrouping to reflect that one adjustment is a negative adjustment and that the items being adjusted are required to be separately stated pursuant to section 702(a). See section 702(a)(3), § 1.702–1(a)(8)(i). Under § 301.6225–1(e)(1), adjustments from separate subgroupings cannot be offset against one another. Accordingly, just as a positive amount of intangible drilling costs would not be netted with a section 1231 loss under section 702(a), a positive adjustment to intangible drilling costs would not net against a negative adjustment to 1231 gain or loss for purposes of determining an imputed underpayment.

Some items that are not separately stated pursuant to section 702(a) may nevertheless be subject to other limitations under the Code or may not otherwise be allowed to net against ordinary income. To account for those types of limitations, proposed § 301.6225–1(d)(3)(i) further provided that if any adjustment could be subject to any preference, limitation, or restriction under the Code (or not allowed, in whole or in part, against ordinary income) if taken into account by any person, the adjustment is placed in its own separate subgrouping. For example, an increase in loss attributable to a trade or business activity of the partnership may not be deductible in the hands of a particular partner because that partner did not materially participate in the partnership activity. See section 469. Because the loss may be limited in the hands of a particular partner, the increase in loss is placed in its own separate subgrouping to prevent any inappropriate netting against an adjustment increasing income of the partnership.

Accordingly, both the comment expressing concerns about the netting of items that do not properly net against each other at the entity level and the comment suggesting the regulations apply general principles of tax law were addressed by the changes to section 6225 in the TTCA and the subgrouping rules under § 301.6225–1(d)(3)(i) as revised in the August 2018 NPRM. As a result, the final regulations were not revised in response to these comments.

Generally, under § 301.6225–1(d), reallocation adjustments must be placed into their own subgroupings, but there is an exception for when multiple reallocation adjustments apply to a single partner or group of partners. Proposed § 301.6225–1(d)(3)(ii) provided that if a particular partner or group of partners has two or more reallocation adjustments allocable to such partner or group, such adjustments may be subgrouped in accordance with § 301.6225–1(d)(3)(i) and netted in accordance with § 301.6225–1(e). Proposed § 301.6225–1(d)(3)(iv) provided a similar rule with respect to recharacterization adjustments.

In January 2017, a prior version of the June 2017 NPRM was made publicly available but was not published in the **Federal Register**. The unpublished version of the June 2017 NPRM contained an example under former proposed § 301.6225–1(f) (former Example 3) which was not contained in the June 2017 NPRM that was published in the **Federal Register**. One comment recommended that former Example 3 be added back to the regulations. This comment was not adopted. The Treasury Department and the IRS considered reviving former Example 3, but because of the changes to section 6225 in the TTCA, former Example 3 did not comport with the statute or the proposed regulations. Instead of reviving former Example 3, a new example was added, Example 12, to clarify subgrouping principles in the case of facts similar to, but slightly different from, the facts in former Example 3.

One comment recommended that the regulations clarify whether and under what conditions positive and negative adjustments resulting from different reallocation or recharacterization adjustments are permissibly placed in the same subgrouping. The comment stated that the language of both proposed § 301.6225–1(d)(3)(ii) and (iv) seemed to allow the inclusion in the same subgrouping of unrelated positive and negative adjustments provided that all of the adjustments apply to a particular partner or group of partners. The comment suggested that the final regulations include examples clarifying the proper grouping and netting of adjustments pursuant to § 301.6225–1(d)(3). The addition of Example 12 under § 301.6225–1(h) provides the example suggested by the comment. As discussed earlier in this section of this preamble, Example 12 clarifies operation of the rule under § 301.6225–1(d)(3)(ii) allowing for adjustments to be subgrouped together when the adjustments are allocable to a particular

partner or group of partners. Although Example 12 illustrates these concepts in the context of reallocation adjustments, the example's analysis is equally applicable to recharacterization adjustments. The result demonstrated by Example 12 under § 301.6225–1(h) of the rule under § 301.6225–1(d)(3)(ii) for reallocation adjustment subgroupings would not be the result if the negative adjustments in that example were subject to limitations described in section 6225(b)(4) and § 301.6225–1(d)(3)(i).

iii. Negative Adjustments

Under § 301.6225–1(e), adjustments from each subgrouping (or grouping if there is no subgrouping within that grouping) are netted to produce either a net positive adjustment or a net negative adjustment with respect to each grouping or subgrouping. When determining an imputed underpayment, generally only net positive adjustments are taken into account, and net negative adjustments are generally treated as adjustments that do not result in an imputed underpayment. Adjustments to credits and creditable expenditures are treated separately. See section 3.A.vi. of this preamble.

One comment suggested that the requirement that only net positive adjustments are taken into account in determining an imputed underpayment will frequently result in double taxation of the same income items. The comment cited to Example 4 under proposed § 301.6225–1(h) (Example 3 in former proposed § 301.6225–1(f)) to demonstrate this point. In Example 4, the IRS determines that $125 of long-term capital gain should have been reported as $125 of ordinary income, resulting in a $125 increase in ordinary income and a corresponding $125 decrease in long-term capital gain (a $125 increase in long-term capital loss). The increase in ordinary income results in an imputed underpayment, and the increase in long-term capital loss is an adjustment that does not result in an imputed underpayment.

To the extent the comment was suggesting that the example does not specify what happens with respect to the $125 increase in long-term capital loss, the example was revised in the August 2018 NPRM to clarify that this loss is taken into account in accordance with § 301.6225–3. Under § 301.6225–3(b), the partnership takes into account the adjustment increasing long-term capital loss in the adjustment year. Alternatively, the partnership may request modification under section 6225(c) or make a push out election under section 6226 to ensure that the negative adjustment is taken into account by the partnership's reviewed year partners, rather than in the adjustment year by its adjustment year partners.

To the extent the comment was expressing more general concerns about double taxation, proposed § 301.6225–1(b)(4) was added in the August 2018 NPRM to provide that if the effect of a partnership adjustment under chapter 1 of the Code is reflected in another adjustment taken into account in the imputed underpayment determination, the IRS may treat an adjustment as zero for the purposes of calculating the imputed underpayment. This rule is designed to ensure that when calculating an imputed underpayment, an adjustment is not counted twice if the tax effect of that adjustment is reflected by another adjustment made by the IRS. A partnership may request that the IRS utilize this rule to treat an adjustment as zero if there is the partnership is concerned about double taxation. Accordingly, to the extent the comment was raising concerns about double taxation, no changes were made to the regulations in response to the comment.

The final regulations under § 301.6225–1(b)(4) do, however, clarify that the IRS has the discretion to treat adjustments as zero for purposes of determining the imputed underpayment if the effect of the adjustment under the Code is reflected in another adjustment. The language requiring that the adjustment must have previously been taken into account under § 301.6225–1 was removed. This change provides the IRS the discretion to treat a partnership adjustment as zero in more situations. For instance, the effect of an adjustment may be reflected in an adjustment to an item treated inconsistently under section 6222(c). The final regulations under § 301.6225–1(b)(4) also remove the language limiting the rule's application to chapter 1. Under the final regulations, the rule applies to the effect of an adjustment under the Code in general. This change also gives more flexibility to the IRS to treat partnership adjustments as zero for purposes of determining the imputed underpayment amount.

iv. Other Suggestions Regarding Grouping and Netting Adjustments

One comment suggested that its concerns with the grouping and netting rules might be alleviated by allowing the partnership to treat the partnership adjustment as if it arose during the adjustment year rather than the reviewed year, which would synchronize the imposition of the tax in the adjustment year with the adjustment year partners bearing the liability for the imputed underpayment. This comment was not adopted because it is contrary to the plain language of the statute.

Section 6225(a)(1) refers to adjustments to partnership-related items ''with respect to any reviewed year.'' Section 6225(b)(1) provides that any imputed underpayment ''with respect to any reviewed year'' shall be determined by appropriately netting all partnership adjustments ''with respect to such reviewed year.'' In addition, section 6225(d)(2) defines adjustment year to mean, in the case of an examination, the year in which an FPA is mailed under section 6231 or in the case of adjustment pursuant to a decision in a proceeding under section 6234, the year in which the decision is final. Accordingly, at the time of the modification phase of the examination, the adjustment year will not yet be determined.

If the comment's suggestion were adopted and adjustments were treated as having arisen in the adjustment year, it is unclear whether the reviewed year partners' or the adjustment year partners' tax attributes would be relevant in the modification determination. The modification period will in every case come before the issuance of the FPA. As a result, the adjustment year will not yet have been determined, and therefore the adjustment year partners will not yet be known. In addition, section 6225(c)(2) provides the ability for partners to file amended returns in modification. The statute's use of the phrase ''amended return'' implies that a prior return must have been filed. A prior return could not have been filed for the adjustment year at this point in the examination because the adjustment year would not yet be determined. The partners from the reviewed year, therefore, must be the partners that utilize the modification procedures under section 6225(c)(2) through the filing of amended returns for the reviewed year. The reviewed year partners' amended returns could not take into account adjustment year adjustments and apply them against reviewed year returns. Accordingly, the plain language of the statute indicates that adjustments for purposes of determining an imputed underpayment are the adjustments with respect to a reviewed year, not the adjustment year.

Furthermore, section 6225(a)(1) provides the partnership shall pay an amount equal to such imputed underpayment in the adjustment year as provided in section 6232. In the case of adjustments that do not result in an imputed underpayment, section

6225(a)(2) provides that such adjustments shall be taken into account in the adjustment year. Section 6225(a)(2)'s explicit statement that adjustments not resulting in an imputed underpayment are taken into account in the adjustment year, and the absence of similar language in section 6225(a)(1) makes clear that only those partnership adjustments that do not result in an imputed underpayment are taken into account in the adjustment year.

Accordingly, a reasonable reading of the statutory language of section 6225(a) supports an interpretation that adjustments with respect to the reviewed year should be treated as such for purposes of determining an imputed underpayment and not treated as adjustments arising in the adjustment year. However, § 301.6225–3 does provide that adjustments that do not result in an imputed underpayment are taken into account in the adjustment year, that is, when the imputed underpayment is also required to be paid. To that extent, any adjustments that do not result in an imputed underpayment may mitigate the burden of the imputed underpayment on adjustment year partners.

Another comment stated that the time shifting of the tax on partnership examination adjustments from the reviewed year to the adjustment year is inappropriate and that tax on partnership examination adjustments should arise in the reviewed year and not in the adjustment year. The comment further states that the burden of the payment in all cases should fall directly on the reviewed year partners and that the rules should require the reviewed year partners to amend their reviewed year tax returns to include their shares of the partnership examination adjustments. The comment was not adopted because all of the changes recommended by the comment would require amendments to the statute.

Section 6225 provides that if the adjustments result in an imputed underpayment, the partnership shall pay an amount equal to such imputed underpayment in the adjustment year as provided in section 6232. Accordingly, the year partnerships must pay is, by statute, the adjustment year, and if the partnership pays the imputed underpayment without modification or does not make an election under section 6226, the statute is designed so that the adjustment year partners bear the burden of that payment. See section 6241(4) and § 301.6241–4 (denying any deduction to the partnership for any payment made by the partnership, including the imputed underpayment). Additionally, there is no authority within subchapter C of chapter 63 to allow the Treasury Department or the IRS to require that reviewed year partners file amended returns, though partners have the option to do so in modification. The partnership may also make the election under section 6226 which would result in adjustments relating to the imputed underpayment for which the election was made being taken into account by the reviewed year partners.

Another comment suggested treating an audited partnership as an ''entity'' rather than an ''aggregate'' solely for the purposes of calculating the imputed underpayment based on majority ownership of the partnership (measured by the partners' interest in profits). Specifically, the comment suggested that if more than 50% of the interest in a partnership's profit is held by one or more individuals, S corporations, or closely-held corporations, the provisions of the Code that apply to individuals should apply for purposes of determining the amount of any imputed underpayment. This comment was not adopted.

As discussed earlier in this section of this preamble, section 6225 is prescriptive as to how an imputed underpayment is determined. The determination process expressly does not determine the imputed underpayment as if the partnership were an individual or an entity. Instead, the process for determining the imputed underpayment, including ''appropriately netting all partnership adjustments'' under section 6225(b)(1)(A) in accordance with § 301.6225–1 generally does not take into account partner tax attributes, including whether a partner is an individual or a person subject to the Code provisions that apply to individuals. The IRS has the discretion to take into account an attribute of a particular partner when grouping or subgrouping the adjustments, but the IRS is not required to do so. § 301.6225–1(d)(1), (e)(1). For instance, the IRS may consider whether a certain ownership percentage of the partnership was held by individuals, S corporations, or closely-held corporations and group adjustments based on information submitted by the partnership. However, a rule *requiring* the IRS to treat all partnership adjustments as if they were being taken into account by an individual as the comment suggests is inconsistent with the statutory requirement to net items appropriately. A rule that required the IRS to do so would also potentially disadvantage certain partnerships depending on the nature of adjustments and the types of the partners.

Moreover, it is not clear that the comment's suggestion of accounting for the individual tax attributes of specific partners and applying the Code's rules regarding those partners would yield an appropriate netting of the adjustments for purposes of determining the imputed underpayment at the partnership level. For example, the Code's rules may apply differently to one individual partner versus another individual partner. Treating all individual partners in the same manner would negate operation of those rules. Accordingly, there is no reason to conclude that treating adjustments according to how some but not all partners' tax attributes would affect an adjustment is any more reasonable than not taking into account any partners' tax attributes. The statute provides a baseline assumption that partners' tax attributes are not taken into account. The imputed underpayment that best reflects the facts and circumstances of the partners should be determined through application of the permissive grouping and subgrouping rules under § 301.6225–1(d)(1), (e)(1) or through modification. Accordingly, the final regulations do not adopt the comment's suggestion to base the imputed underpayment determination on the identity of the majority of the partnership.

Section 6225(b) only provides specific rules with respect to one type of adjustment, that is, the rule that adjustments to distributive shares of partners not be netted under section 6225(b)(2). While it is true a determination regarding an adjustment described in section 6225(b)(2) is usually made with some knowledge of the partners' distributive shares, such a determination does not account for the particular tax attributes of any specific partner. The IRS is not required to know any other information about the specific partners at the initial examination phase to reallocate adjustments between partners. Therefore, in order to effectuate the rule under section 6225(b)(2), there is no need to know whether a partner is an individual, a corporation, a pass-thru partner, or some other entity. Section 6225(b)'s lack of reference to any particular tax attributes of specific partners indicates that the determination of an imputed underpayment is not dependent on knowing any partner's specific tax attributes.

The same comment suggested another alternative in which the grouping and netting rules would account for current year partner attributes for purposes of determining an imputed underpayment.

The comment cited the amendment to section 6225(a) by TTCA that provides if the partnership adjustments do not result in an imputed underpayment, such adjustments shall be taken into account by the partnership in the adjustment year. This comment was not adopted.

Section 6225 does not reference either partner tax attributes or current year partners as a consideration in determining the imputed underpayment. As discussed earlier in this section of this preamble, the Treasury Department and the IRS have determined a reasonable interpretation of section 6225(b) supports a process in which the determination of the imputed underpayment does not depend on specific partners' tax attributes. Moreover, the comment's reference to ''current year'' is ambiguous; it could refer to any number of different time periods: the adjustment year, the actual calendar year in which the imputed underpayment is being determined, the year the imputed underpayment is proposed in a notice of proposed partnership adjustment, the time during the modification period prior to issuance of the FPA, or, if the partnership contests the partnership adjustments in court, the year the court decision is final. It is not administrable for the IRS to determine an imputed underpayment based on the potential tax attributes from time periods that are not fixed relative to the reviewed year and that may result in different partners being the relevant partners. The final regulations reflect the amendments to section 6225 by the TTCA, and therefore the final regulations were not revised in response to this comment.

v. Recharacterization Adjustments

One comment recommended that the grouping and subgrouping rules be reconsidered due to the concern that under the proposed regulations, the inability to net certain overpayments and underpayments could lead to taxpayers not receiving an appropriate adjustment for taxes previously paid. The comment cited to Example 4 under proposed § 301.6225–1(h) to highlight this concern. In Example 4, the IRS determines that $125 of long-term capital gain should have been reported as $125 of ordinary income, resulting in a $125 increase in ordinary income and a corresponding $125 decrease in long-term capital gain (effectively, a $125 increase in long-term capital loss). The increase in ordinary income results in an imputed underpayment, and the increase in long-term capital loss is an adjustment that does not result in an imputed underpayment.

The comment noted that the example does not specify what happens with respect to the $125 increase in long-term capital loss. As discussed earlier in section 3.A.iii. of this preamble, the example has been revised to clarify that $125 increase in long-term capital loss is taken into account in the adjustment year in accordance with § 301.6225–3. The comment also noted that it is unknown whether the partnership will be able to use the increased capital loss in the future. To avoid this potential adverse consequence, the comment recommended that the regulations permit a partnership to net adjustments across different categories of gain or loss to reflect taxes that were previously paid. This comment was not adopted for several reasons.

As an initial matter, implicit in the comment's suggestion is that either the IRS or the partnership have knowledge of taxes previously paid by the partners. As discussed earlier in section 3.A.i. of the preamble, facts and circumstances unique to specific partners are generally not taken into account in determining whether the adjustments result in an imputed underpayment. The regulations give the IRS wide latitude to consider such facts and circumstances, but the rules do not narrowly define the circumstances when that occurs. See § 301.6225–1(d)(1) and (e)(1). The regulations are designed to maintain flexibility for both the IRS and the partnership to allow for the particular examination to accommodate the unique circumstances of each examination. Based on these reasons alone, the comment's suggestion was not adopted.

The comment's suggestion was also not adopted because it is inconsistent with the overall approach applied to how recharacterization adjustments are taken into account in determining an imputed underpayment. Proposed § 301.6225–1(c)(6)(iii) provided that a recharacterization adjustment results in at least two separate adjustments: One adjustment reversing the improper characterization of the partnership-related item, and the other adjustment effectuating the proper characterization of the partnership-related item. Generally, one of those adjustments is a positive adjustment and the other is a negative adjustment, but each adjustment is normally the same numerical amount ($125 in the case of Example 4 under proposed § 301.6225–1(h)). Under proposed § 301.6225–1(d)(3)(iv), the positive adjustment and the negative adjustment are each placed into its own separate subgrouping. Because an adjustment in one subgrouping may not be netted against an adjustment from another subgrouping, the positive adjustment is not offset by the negative adjustment, and the result is a net positive adjustment that forms the base for an imputed underpayment amount. Proposed § 301.6225–1(e)(2) and (3)(i).

These rules are adopted largely without change in the final regulations in order to ensure that recharacterization adjustments are not inappropriately netted when determining an imputed underpayment, as required by section 6225(b)(1)(A). Allowing for the netting of the negative adjustment against the positive adjustment in the case of a recharacterization adjustment, as suggested by the comment, could cause the positive adjustment to be negated in its entirety, which would defeat the purpose of making the adjustment in the first place. It would also result in the recharacterization adjustment not properly being reflected in the imputed underpayment calculation. For instance, allowing the capital loss to fully offset the ordinary income in Example 3 under § 301.6225–1(h) would not adequately reflect the fact that there was an underreporting of ordinary income by the partnership for that taxable year. Furthermore, if there were no imputed underpayment because recharacterization adjustments were allowed to net, there would be no statutory basis for imposing an interest charge on the partnership as suggested by the comment.

Accordingly, the comment's suggestion to net adjustments across different categories of gain or loss to reflect taxes that were previously paid was not adopted, though the effect of such adjustments may be mitigated, in whole or in part, under certain circumstances through the modification procedures or by making a push out election under section 6226. The final regulations under § 301.6225–1(e)(2) do clarify, however, that positive adjustments and negative adjustments within the same subgrouping may only net within that same subgrouping. No netting is permitted across subgroupings.

vi. Credits and Creditable Expenditures

In determining whether partnership adjustments result in an imputed underpayment, adjustments to credits are placed in the credit grouping described under § 301.6225–1(c)(3). One comment suggested that for administrative efficiency, it would make sense to group and order credits in accordance with Form 3800 and recommended that the regulations provide for grouping and ordering

credits in such a manner. This comment was not adopted.

As discussed earlier in section 3.A.ii. of this preamble, the subgrouping rules under § 301.6225–1(d)(3)(i), including the application of those rules to the credit grouping, take into account any limitations or restrictions under the Code. Therefore, to the degree the Code would require certain credits to be subgrouped within the credit grouping to reflect any limitations or restrictions, the rules under § 301.6225–1(d)(3)(i) allow for that result. In addition, when determining subgroupings the IRS may take into account the facts and circumstances of a partnership and its partners. It may be the case that the subgroupings with respect to a particular set of adjustments ultimately reflects the manner in which credits are grouped and ordered on Form 3800, but that may not always be the case. The regulations provide the necessary flexibility to achieve the result suggested by the comment without binding the IRS and partnerships to a particular manner in which credits must be subgrouped.

Additionally, because the Form 3800 and the underlying statutory rules it reflects may change over time, it is unwise to link the regulatory rules for subgrouping with the form's methodology for grouping credits. Relying on the general subgrouping rules under § 301.6225–1(d)(3)(i) gives the IRS and partnerships the flexibility to adapt to changes in the Code and any form changes without needing to amend the regulations.

Adjustments to creditable expenditures are placed in the creditable expenditure grouping described under § 301.6225–1(c)(4). Proposed § 301.6225–1(c)(4)(B), (d)(3)(iii), and (e)(3)(iii) provided specific rules relating to foreign creditable tax expenditures. Aside from the general rule regarding what constitutes a creditable expenditure, no additional rules relating to creditable expenditures were proposed.

The Treasury Department and the IRS requested comments on the appropriate treatment of creditable expenditures. One comment suggested any items that may be treated as a credit when taken into account by a partner and not otherwise limited (for instance, by their non-creditable status against the alternative minimum tax) be credited against the imputed underpayment amount. For other items which may be subject to limitations at the individual level, the comment suggested that the regulations provide rules similar to those rules proposed under proposed § 301.6225–3, regarding adjustments that do not result in an imputed underpayment, because any adjustment to a credit would not result in an imputed underpayment.

With the exception of the rules under § 301.6225–1 regarding foreign tax creditable expenditures, the Treasury Department and the IRS have determined not to issue regulations regarding the treatment of creditable expenditures at this time. However, the final regulations do clarify that the general subgrouping principles under § 301.6225–1(d)(3)(i) apply when subgrouping adjustments to creditable expenditures. The comments received with respect to creditable expenditures remain under consideration, and future guidance will be issued when appropriate. The final regulations also clarify that a net positive adjustment to creditable foreign tax expenditures is excluded from the calculation of the total netted partnership adjustment under § 301.6225–1(b)(2).

Comments were also requested regarding how credit recapture situations should work under the centralized partnership audit regime. One comment offered suggestions with respect to two credit recapture situations. The first situation involved a credit recapture that results from a partnership adjustment. The comment recommended in that situation that the regulations should incorporate any credit recapture into the calculation of any imputed underpayment to the extent that the originating credits were generated from partnership activities, but that this incorporation should be limited to partnerships with partners that actually would have benefited from the original credits. This recommendation was partially adopted.

A recapture of a credit generated by partnership activities constitutes a partnership adjustment as defined under § 301.6241–1(a)(6), and the credit recapture would constitute a positive adjustment under § 301.6225–1(d)(2)(iii)(A) and be placed in the credit grouping under § 301.6225–1(c)(3). The full amount of the credit recapture would be taken into account in the determination of the imputed underpayment, unless the partnership requests, subject to IRS approval, that the credit recapture should be taken into account differently during the partnership-level proceeding or pursuant to a modification request. See § 301.6225–1(d)(1), (e)(1), § 301.6225–2. This rule is necessary because, as discussed earlier in this section of this preamble, in general, the initial determination of an imputed underpayment does not account for the attributes of the partnership's partners, including whether and to what extent any partners actually benefited from the original credits. Accordingly, the final regulations include a credit recapture amount in the amount of the imputed underpayment, and this amount is not limited to the amount partners actually benefited from the recaptured credits unless the partnership can affirmatively demonstrate to the satisfaction of the IRS during exam either before issuance of the NOPPA or on modification the appropriate partner-level tax treatment.

The second situation described by the comment involves a partnership adjustment that results in a credit that is incorporated into the imputed underpayment calculation, presumably as a reduction to the imputed underpayment and that may later be subject to recapture. The comment recommended that the regulations require the partnership to notify partners that they received the benefit of such credits and that the partners may be obligated to recapture those credits at a later date. The comment suggested this notice could be provided as notes to the adjustment year Schedule K–1. This comment was not adopted. The final regulations do not require that the partnership notify the partners of any risk of future credit recapture, though the partnership is not prohibited from doing so if the partnership determines that such notification would be beneficial to the partners and the partnership. Except where required for the operation of the provisions of the centralized partnership audit regime, the Treasury Department and the IRS do not generally regulate communications between the partnership and the partners, and therefore the final regulations do not impose a requirement for notification by the partnership concerning possible credit recaptures.

Because a net negative adjustment to a credit, that is, an increase in an item of credit, would generally be subject to limitations under the Code, the final regulations under § 301.6225–1(e)(3)(ii) clarify that a net negative adjustment to a credit is treated as an adjustment that does not result in an imputed underpayment as described in § 301.6225–1(f)(1), unless the IRS determines otherwise. This rule ensures that the total netted partnership adjustment is not inappropriately reduced by an increase in credit that would subject to limitations in the hands of the partners of the partnership.

B. Modification of an Imputed Underpayment

Proposed § 301.6225–2 provided the rules and procedures regarding modification of an imputed

underpayment by the partnership. The Treasury Department and the IRS received multiple comments regarding proposed § 301.6225–2 focusing on the following areas: (1) Modification in general; (2) timing of modification requests and determinations; (3) amended return modification; (4) the alternative procedure to filing amended returns; (5) rate modification; (6) modification pertaining to certain passive losses of publicly traded partnerships; (7) modification pertaining to qualified investment entities; (8) closing agreement modification; and (9) recommendations to add additional types of modifications.

i. Comments Pertaining to Modification in General

The modification provisions under § 301.6225–2 are designed to determine an imputed underpayment amount that reflects, as closely as possible, the tax the partners would have paid had they correctly reported the adjusted items, while at the same time maintaining the efficiencies of a streamlined examination and collection process. See JCS–1–16 at 65–66. One comment suggested, that the modification provisions do not operate as intended because those provisions do not expressly permit a modification to reflect how the partners actually took an item into account, to account for reductions that would be permitted to offset an increase under generally applicable law, or to otherwise expressly challenge the IRS's method of calculating a proposed adjustment amount. Except as described later in this section, no changes to the regulations were made in response to this comment.

The Treasury Department and the IRS do not agree with the comment's characterization of how the modification provisions operate because the modifications available under § 301.6225–2 permit a partnership to achieve the results sought by the comment. For instance, both the amended return procedure and the alternative procedure to filing amended returns provide an opportunity for the partnership to request modification to reflect how an item was actually taken into account by its partners and to account for offsetting reductions permitted under generally applicable law. When a partner files an amended return including his share of the partnership adjustments, the amended return reflects a tax amount based on how the partner originally reported the partnership-related item prior to adjustment compared to how the partnership adjustment affects the partner's original return. This tax amount is the correct amount of tax for that partner after taking into account the partnership adjustment and includes any allowable reductions that may offset any additional income determined at the partnership level.

Regarding the comment's concern that a partnership does not have an opportunity to challenge the IRS's method of calculating a proposed adjustment amount, proposed § 301.6225–2(d)(6) provided a procedure for modifying the composition of an imputed underpayment. Under § 301.6225–2(d)(6), a partnership may request that the IRS include one or more partnership adjustments in a particular grouping or subgrouping. If certain negative partnership adjustments should be treated as if no limitations or restrictions in fact apply to the partners to whom the adjustments are allocated and the partnership can establish this result, if approved, on modification, such negative adjustments may be properly grouped or subgrouped with other adjustments and therefore allowed to net against those adjustments in accordance with § 301.6225–1(e) to reduce the amount of the imputed underpayment.

To the extent the comment was suggesting that the modification procedures do not provide the partnership an opportunity to challenge the substance of partnership adjustments, the comment is correct but no change is made in response to the comment. The statutory modification procedures are designed to allow the partnership to modify the amount of the imputed underpayment, not adjust the substance of the partnership adjustments that underlie the imputed underpayment. The substance of partnership adjustments are determined by the IRS on examination, and may be further revised in the IRS Appeals Office (IRS Appeals) or by a court in a proceeding for readjustment brought under section 6234. Although the comment did not explicitly state it as such, to the extent the comment was recommending a rule under § 301.6225–2 that allows a modification to reflect a circumstance where a partner actually took an item into account in a manner consistent with how that item was adjusted by the IRS during the partnership proceeding, this suggestion was adopted. As discussed later in section 3.B.ix. of this preamble, the final regulations under § 301.6225–2(d)(2)(ii) allow a partnership to request modification based on how adjusted items were taken into account by a partner prior to the item being adjusted by the IRS.

The same comment also suggested that the modification procedures permit a partnership to demonstrate how an adjustment would impact its partners and reduce an imputed underpayment without a need for the partners to file an amended return. The other proposed modification procedures provided multiple opportunities for partnerships to demonstrate the impact of adjustments on specific partners. The alternative procedure to filing amended returns is one way in which this type of modification may be achieved. Under § 301.6225–2(d)(2)(x), a partnership may submit on behalf of a partner, in accordance with forms, instructions, and other guidance prescribed by the IRS, all information and payment of any tax, penalties, additions to tax, additional amounts, and interest that would be required to be provided if the partner were filing an amended return. If the partnership avails itself of this procedure with respect to a partner, the partner does not need to also file an amended return in order for modification to be approved. The amended return procedures and the alternative procedure to filing amended returns are discussed further in sections 3.B.iii. and 3.B.iv. of this preamble.

Other modification procedures also provide the partnership with an opportunity to demonstrate the effect of adjustments on specific partners. For instance, tax-exempt modification provides an opportunity for the partnership to demonstrate that partnership adjustments are allocable to a partner that would not owe tax by reason of its status as a tax-exempt entity. Rate modification allows partnerships to demonstrate that partners would be subject to a lower rate than the highest rate of tax applied to calculate the imputed underpayment. Because the partnership has many avenues within modification to demonstrate the effect a partnership adjustment would have on specific partners, no new modification procedures were adopted in response to this comment.

Former proposed § 301.6225–2 permitted a partnership to request modification with respect to an indirect partner (as defined in § 301.6241–1(a)(4)). See, for example, former proposed § 301.6225–2(d)(2). One comment suggested that permitting partnerships to modify their imputed underpayment to account for direct and indirect partners is consistent with the objective of determining an imputed underpayment amount that is as close as possible to the tax due if the partnership and partners had correctly reported and paid. The comment further suggested

that permitting modifications for direct and indirect partners would also reduce the disincentives for partnerships to pay the imputed underpayment and recommended the final regulations adopt rules permitting modification with respect to indirect partners, consistent with the proposed regulations.

The final regulations are consistent with the comment's request and adopt the proposed rules allowing modification with respect to indirect partners, provided the indirect partner is a relevant partner as defined in § 301.6225–2(a). The August 2018 NPRM introduced, the term ''relevant partner'' to describe any person for whom modification is requested by the partnership that is a reviewed year partner, including a pass-through partner, or an indirect partner. The term relevant partner does not include, however, any person that is a wholly-owned entity disregarded as separate from its owner for Federal income tax purposes. No comments were received regarding the definition of relevant partner. The final regulations maintain the definition of relevant partner from proposed § 301.6225–2(a).

Accordingly, under the final regulations a partnership may request modification with respect to reviewed year partners (direct partners), including pass-through partners, and indirect partners. A partnership may not request modification, however, with respect to a direct or indirect partner that is a wholly-owned entity disregarded as separate from its owner for Federal income tax purposes.

One comment noted some concerns regarding the interaction between the centralized partnership audit regime and ERISA. The comment expressed concerns about situations in which the partnership representative must decide whether to request a modification that benefits non-ERISA partners over ERISA partners and how that affects the discharge of any fiduciary duties under ERISA. To address these concerns, the comment made three recommendations. First, the comment recommended that the regulations provide that the partnership representative may solicit a vote of the partners in the partnership in determining whether to request a modification. This recommendation was not adopted.

The decision whether to solicit a vote of the partners in the partnership as part of determining whether to request modification or a particular type of modification is fully within the authority of the partnership representative. Nothing in the final regulations prevents or requires the solicitation of a vote by the partnership representative. Additionally, if the partnership and its partners impose such a condition on the partnership representative through an agreement with the partnership representative, any failure to adhere to that agreement does not affect actions taken by the partnership representative. See § 301.6223–2(d).

Second, the comment recommended that the IRS agree to automatically grant a request for an extension of the 270-day period for requesting modification if a vote of the partners whether to request modification has been solicited. This comment was not adopted for the reasons discussed in section 3.B.ii. of this preamble.

Lastly, the comment recommended that the Treasury Department and the IRS share a suggestion with the Department of Labor that the Department of Labor clarify that a partnership representative will not be treated as a fiduciary with respect to any ERISA plan partner if the partnership representative requests or fails to request a modification based on the results of a vote of the partners. The rules regarding who is treated as a fiduciary with respect to any ERISA plan are beyond the scope of these regulations. However, as requested, the comment has been forwarded to the Department of Labor.

Another comment recommended that the IRS revise proposed § 301.6225–2(c)(2)(ii) to limit the required information submitted with any modification request to that specific information relevant to the type of modification requested. The comment noted that requiring extensive and detailed documentation for each modification request will limit the ability of some partnerships to take advantage of the modification procedure. The comment also urged the IRS to establish realistic minimal documentation requirements for any modification request and create additional specific relevant requirements for the various types of modification requests permitted under the proposed regulations. The comment further noted that the ability of the IRS to request supplemental information prior to approval (as provided in proposed § 301.6225–2(c)(4)) will ensure that the IRS obtains documentation they deem necessary for a particular set of facts and circumstances. This comment was adopted.

The final regulations under § 301.6225–2(c)(2)(ii) clarify that the partnership representative must furnish to the IRS information as required by forms, instructions, or other guidance prescribed by the IRS or as is otherwise requested by the IRS. The final regulations provide examples of such information, including the information that was described previously in proposed § 301.6225–2(c)(ii). The information listed in the proposed regulations pertained to items that are necessary to process the majority of modification requests. It is possible, however, that certain items may not be necessary in every case, and if such items are not necessary, or if different items are more appropriate, the IRS will describe the information required in forms, instructions, or other guidance. In this way, the regulations provide the flexibility for the IRS to request what is needed for efficient and effective processing of modification requests, while maintaining the flexibility to adapt information requests in the future.

The final regulations under § 301.6225–2(c)(2)(i) also clarify that, pursuant to section 6241(10), the partnership may be required to submit or file items required to be provided to the IRS under § 301.6225–2 in an electronic format. The form and manner for submission of anything required to be submitted under § 301.6225–2 will be described in forms, instructions, and other guidance prescribed by the IRS. Lastly, the final regulations under § 301.6225–2(c)(2)(i) clarify that the IRS will deny modification not only for the failure to substantiate a modification request but also for the failure to pay anything required under § 301.6225–2.

ii. Timing of Modification

Proposed § 301.6225–2(c)(3) provided rules regarding the time for submitting modification information to the IRS. One comment made three recommendations regarding these rules. First, the comment suggested that the final regulations provide a specified time frame in which the IRS must respond to a request for modification. This suggestion was not adopted because the regulations under section 6235 provide a time frame within which the IRS will respond to a partnership's modification request.

Pursuant to § 301.6235–1(a)(2) and (b), in the case of any modification of an imputed underpayment, no partnership adjustment may be made later than the date that is 270 days after the date on which everything required to be submitted under § 301.6225–2 for modification is so submitted. The date on which everything required to be submitted is so submitted is the date the modification period ends or expires. § 301.6235–1(b)(2). Accordingly, in the case of a modification request, the IRS

must generally mail an FPA to make a partnership adjustment within 270 days of the date the modification period ends.

To the extent the comment was requesting a deadline by which the IRS must respond to a request for modification prior to the time limit for making adjustments under section 6235, the comment was not adopted. It is not administrable for the IRS to impose a deadline that would apply in every case that is earlier than the statutory deadline imposed by section 6235. The facts and circumstances of each administrative proceeding, the partnership adjustments made during that proceeding, and the modifications that are requested may differ greatly. Similarly, the complexity of the modification process may range from simple and straight forward to highly complex. Finally, for those modification requests that are more complex or that require additional documentation, the partnership may extend the time period for submitting modifications under § 301.6225–2(c)(3) to allow for additional time and any additional documentation. For the reasons discussed in section 3.B.iii. of this preamble, the IRS plans to adopt procedures under which the IRS will respond to a request for modification in the FPA, including the planned time frame for responses. It is important to tax administration that these procedures are developed in separate guidance to allow for additional flexibility as the IRS gains more experience with the centralized partnership audit regime and the modification process. The 270-day period for mailing an FPA therefore acts as the outside time frame within which the IRS must respond to a request for modification. Because this time frame exists elsewhere in the regulations, the final regulations under § 301.6225–2 do not provide a separate time frame for providing a response to a modification request.

The comment also recommended that the final regulations provide that if there is a pending request for modification at the expiration of the 270-day period, the IRS will automatically agree to an extension of that period until at least 30 days after they provide their response. It is not clear from the face of the comment which 270-day period the comment was referring to—the 270-day period under § 301.6225–2(c)(3)(i) in which everything required for modification must be submitted or the 270-day period under § 301.6235–1(b) in which the IRS must mail an FPA to make a partnership adjustment. Both periods may be extended at the request of the partnership or the IRS. See §§ 301.6225–2(c)(3)(ii); 301.6235–1(d).

Regardless of which 270-day period the comment was referring to, the comment was not adopted. The final regulations do not provide that the IRS will automatically agree to an extension of either period under any circumstance. Whether an extension of the time to submit modification information, or an extension of the time to consider such information, is warranted is based on the facts and circumstances. In some cases an extension may be appropriate, for example, where there is a pending request and additional information would help clarify the issues. In other cases an extension may not be appropriate, for example, where it is clear that more information is likely to be of little to no value. Accordingly, while the regulations allow for an extension of both the period to submit modification information and the period in which the IRS has to consider such information, neither extension is automatic but rather must be based on the facts and circumstances of the particular case.

Lastly, the comment suggested the regulations provide a time frame for a partnership to respond to an IRS request for additional information during the IRS's review of a modification request. The comment recommended the time frame for responding be a minimum of 60 days and suggested that this issue is particularly significant if the request occurs near the expiration of the 270-day period. This comment was not adopted, but the IRS plans to adopt procedures that will allow a partnership time to provide additional information, when necessary, with respect to a particular request for modification. Because not all modification requests will require additional information from the partnership, this time frame is not provided for in the regulations. In addition, the response time may depend on the facts and circumstances. For example, as the comment notes, if a request for additional information occurs near the end of the 270-day period to submit information, there might not enough time to allow for a 60-day response period. While it is true the partnership and the IRS may agree to extend the 270-day period, this will not always be the case. Accordingly, a rule establishing a 60-day time frame for responding to requests for additional information in every case is not appropriate and would, in the example noted in the comment, serve as an automatic extension of the 270-day period to submit information that might not be requested by the partnership or consented to by the IRS. Nevertheless, if more information is required from the partnership, the IRS appreciates the need for partnerships to know when that information is due. The IRS plans to establish appropriate procedures through forms, instructions, or other guidance. As a result, the regulations were not revised in response to this comment.

iii. Amended Returns

Proposed § 301.6225–2(d)(2) provided rules regarding modification with respect to amended returns filed by partners. Proposed § 301.6225–2(d)(2)(i) provided that a partnership may request modification of an imputed underpayment based on an amended return filed by a relevant partner provided all of the partnership adjustments properly allocable to such relevant partner are taken into account. One comment recommended that the regulations clarify whether modification will be allowed if a partner files an amended return taking into account adjustments that make up one imputed underpayment, while not taking into account adjustments that make up a separate imputed underpayment which also affects that partner. This comment was not adopted because its recommendation contradicts the statute.

The requirement in proposed § 301.6225–2(d)(2)(i) that partners take into account all partnership adjustments derives from section 6225(c)(2)(A)(ii). Section 6225(c)(2)(A)(ii) states that when partners file amended returns in modification, that return must ''take into account all adjustments'' under section 6225(a) that are ''properly allocable to such partners (and the effect of such adjustments on any tax attributes).'' Section 6225(a) refers to ''any adjustment by the Secretary to any partnership-related items with respect to any reviewed year of a partnership . . .'' Section 6225(c)(2)(A)(ii)'s reference to ''all adjustments'' under section 6225(a) does not distinguish between partnership adjustments that result in an imputed underpayment and partnership adjustments that do not result in an imputed underpayment. By not distinguishing between the types of partnership adjustments, the language of section 6225(c)(2)(A)(ii) indicates that all partnership adjustments must be taken into account by partners filing modification amended returns, as opposed to only those adjustments that are associated with the imputed underpayment for which modification is requested. Consistent with section 6225(c)(2)(A)(ii), the final regulations under § 301.6225–2(d)(2)(i) require that even in the case of multiple imputed

underpayments, partners filing modification amended returns must take into account all partnership adjustments, not just the adjustments associated the imputed underpayment for which modification is requested.

The comment also asked whether there are any specific requirements or limitations that apply in the case of an amended return modification request made with respect to one imputed underpayment, but not with respect to a separate imputed underpayment. Nothing in the regulations imposes specific requirements or limitations on the partnership or its partners when utilizing amended return modification with respect to only one imputed underpayment. The partnership and its partners must comply with all the requirements under § 301.6225–2(d)(2) with respect to any request for amended return modification, including a request made for only one imputed underpayment in the case of multiple imputed underpayments.

Proposed § 301.6225–2(d)(2)(ii)(A) provided that an amended return modification request will not be approved unless the partner filing the amended return has paid all tax, penalties, additions to tax, additional amounts, and interest due as a result of taking into account the adjustments at the time such return is filed with the IRS. One comment suggested that the full payment requirement under § 301.6225–2(d)(2)(ii)(A) should be satisfied if the partner is in compliance with available IRS administrative processes to make full payment, for example, an installment payment agreement. Another comment recommended that the regulations permit partners to submit requests for installment agreements or offers in compromise within the 270-day modification period. These comments were not adopted.

Section 6225(c)(2)(A)(iii) provides that if one or more partners file amended returns during modification, such returns take into account the adjustments properly allocable to such partners, and ''payment of any tax due is included with such returns,'' the imputed underpayment is determined without regard to the adjustments so taken into account. Payment of any tax due is a statutory requirement under section 6225(c)(2)(A)(iii). Consistent with section 6225(c)(2)(A)(iii), proposed § 301.6225–2(d)(2)(ii)(A) required full payment of any tax, penalties, and interest due at the time the amended return is filed with the IRS. If payment is not included with the amended return, the IRS will not approve modification with respect to the amended return.

This rule is necessary to ensure that the IRS collects the entire amount of tax that results from the partner's share of partnership adjustments before approving the partnership's request that the imputed underpayment be calculated without regard to those adjustments. Allowing a partner to enter into an installment agreement undermines the ability of the IRS to collect tax on those adjustments both from the partnership, because the adjustments would no longer be reflected in the imputed underpayment, and from the partner that may ultimately default on the installment agreement. If a partner ultimately does not pay, the IRS may not be able to collect against that partner and likely would be outside the time period within which it must make partnership adjustments, preventing the IRS from collecting any additional imputed underpayment from the partnership. Similar concerns are presented by allowing a partner to enter into an offer in compromise. Moreover, a rule permitting partners to request installment agreements and offers in compromise as alternatives to full payment would increase the administrative burden on the IRS by requiring the IRS to evaluate whether such requests were appropriate, slowing down the modification process in general, and complicating the amended return process specifically. Accordingly, the final regulations retain the rule that full payment of any tax, penalties, and interest due as a result of taking into account the partner's allocable share of adjustments is required in order for modification to be approved with respect to a partner's amended return. In addition, the final regulations under § 301.6225–2(c)(2)(i) clarify that a failure by any person to make any payments required with respect to a modification request within the time restrictions described in § 301.6225–2(c) will result in a denial of a modification request.

Proposed § 301.6225–2(c)(3) provided that all information required under § 301.6225–2 with respect to a request for modification must be submitted on or before 270 days after the date the NOPPA is mailed, unless that period is extended with the permission of the IRS. Several comments recommended partners only be required to file amended returns or make payments on those returns after the issuance of the FPA to allow the court to review the partnership adjustments before modification is requested. One comment recommended that, to provide an adequate amount of time, partners should be allowed at least 270 days from the time of the receipt of an FPA to file amended returns. The comment further recommended that the 270-day period be tolled at any time during which a court proceeding pursuant to section 6234 is ongoing. Another comment recommended that the final regulations commit the IRS to freely grant extensions of the 270-day period and other relevant periods and allow taxpayers to seek modification of the underpayment by filing an amended return, or use the alternative procedure to filing amended returns, within 60 days after there has been a final determination in the partnership case. These comments were not adopted.

First, allowing modification requests, including amended returns, after the FPA is mailed or after there is a court decision with respect to the partnership adjustments is contrary to the statutory scheme under section 6225(c). The statutory scheme under section 6225, section 6231, and section 6235 envision a process where the IRS first mails a NOPPA to the partnership that includes the proposed partnership adjustments and proposed imputed underpayment, followed by a modification period, which is followed by the FPA. The mailing of the NOPPA starts the 270 day period within which anything required to be filed or submitted in the modification process must be filed or submitted to the IRS. After the close of this 270-day period, which may be extended with the consent of the IRS, if modification is requested, the IRS has an additional 270 days to modify the imputed underpayment as necessary to reflect approved modifications and mail the FPA, which will describe the final partnership adjustments and imputed underpayment. After the FPA is issued, there is no basis for the IRS to consider further modifications. The examination is complete and the partnership may then pay the imputed underpayment or elect the push out. The partnership may also challenge the partnership adjustments in court.

Section 6225(c)(2), which provides the procedures for filing amended returns and the alternative procedure to filing amended returns was enacted at the same time as section 6225(c)(7). The amended return modification and the alternative procedure to filing amended returns are just two of many statutory modifications. Had Congress intended for there to be an exception to the 270-day period under section 6225(c)(7) for amended return modification, as suggested by the comments, Congress could have included such an exception

when enacting both statutory provisions.

Second, extending the 270-day period beyond the date of the issuance of the FPA could result in several tax administration issues for the IRS. Section 6225(c)(8) provides that any modification of the imputed underpayment amount ''shall be made only upon approval of such modification by the Secretary.'' A request for amended return modification must therefore be approved by the IRS. If the partnership fails to comply with the requirements under the rules under § 301.6225–2, the IRS may decline to approve the request for modification. In order to adopt the comment's suggestion that amended returns and associated payments not be provided until after the FPA is issued, the IRS would need to wait to approve the modification request with respect to that amended return until after the partnership and its partners submitted what was required to be provided under the modification rules. This would prevent the IRS from including its approval or disapproval of the modification request in the FPA, delaying a determination with respect to the modification until some later date. The FPA—the notice of *final* partnership adjustment—is designed to be the final notice to the partnership from IRS, not an interim notice subject to further modifications or changes.

A partnership adjustment is defined under section 6241(2) as an adjustment to a partnership-related item, and a partnership-related item is defined as including an imputed underpayment. An adjustment to an imputed underpayment is, therefore, a partnership adjustment as defined in section 6241(2). The approval of a modification affects the amount of an adjustment that is taken into account in the imputed underpayment under the rules described in § 301.6225–2(b). Therefore, the IRS must approve or disapprove of a modification before the expiration of the time period for making adjustments under section 6235 or the IRS will have lost its opportunity to do so. Relatedly, and in addition to the concern about the statute of limitations, if the IRS waits until after the issuance of the FPA to make further adjustments to the imputed underpayment, modification could extend for an indefinite period of time, which would lead to uncertainty and administrative challenges for the partnership, the partners, and the IRS. This is particularly true with respect any adjustments after the mailing of the FPA because the mailing of the FPA imbues the partnership with certain rights, such as the right to petition a court for a readjustment of the partnership adjustments in the FPA and to elect the push out under section 6226 with respect to the imputed underpayment. The comment does not explain how a rule that would allow the IRS to further alter the imputed underpayment after the partnership has elected push out or petitioned a court for a readjustment would work. Such a rule would raise numerous tax administration concerns and potentially cause confusion for the partnership and its partners as to what the IRS finally determined and when.

In addition, the IRS is limited as to when it may make a partnership adjustment. According to section 6235(a)(2), ''no adjustment under this subchapter for any partnership taxable year may be made after . . . in the case of any modification of an imputed underpayment under section 6225(c), the date that is 270 days [including extensions] . . . after the date on which everything required to be submitted to the Secretary pursuant to such section is so submitted.'' In order to adopt the comment allowing an extension of the 270-day modification submission period beyond the issuance of the FPA, the IRS would be required to issue two FPAs. The first FPA would address the partnership adjustments and the imputed underpayment prior to consideration of modifications. The second FPA would be issued at some later date before the expiration of the period for making adjustments under section 6235. Nothing in section 6235(a)(2) prevents the IRS from mailing a second FPA; however, under section 6231(c), if the partnership petitions the original FPA under section 6234, the Secretary may not mail another notice with respect to the same taxable year in the absence of fraud, malfeasance, or misrepresentation of a material fact. In other words, in the situation contemplated by the comment, in which a partnership petitioned the FPA, in general, the IRS could not issue a second FPA to approve or deny modification issues because the IRS would be prevented from doing so under section 6231(c).

Adopting the comment's suggestion would prevent the IRS from exercising the discretion to approve modification for which Congress provided it authority in section 6225(c)(8). The IRS needs this discretion to ensure that requests for modification are appropriate for the partnership and that the administrative proceeding process is uniform between partnerships. Partners also have other options, such as subsequent amended returns, to address some concerns regarding making payments during the modification process. Accordingly, the regulations have not adopted this comments suggestion.

Proposed § 301.6225–2(d)(2)(vii)(B) provided that if a relevant partner files an amended return for purposes of modification, such partner may not file a subsequent amended return without the permission of the IRS. One comment recommended that the regulations clarify that the restriction in proposed § 301.6225–2(d)(2)(vii)(B) relates to only those items related to a partnership adjustment. Similarly, another comment recommended that the IRS ease the restriction on the ability of a taxpayer using the amended return modification procedure to file subsequent amended returns when the subsequent amended return does not affect the items included in the partnership's audit adjustments. The comment stated that requiring a taxpayer to request permission from the IRS before filing an amended return is an administrative burden in terms of time and resources for both the taxpayer and the IRS.

Another comment recommended that the regulations not prohibit a partner who has amended her return as part of the modification process from amending her return again without the permission of the Service. This comment suggested revising the forms for filing amended returns to (1) include a check-box asking whether the taxpayer filed a prior amended return for that same tax year that was the basis for a modification under section 6225(c) and (2) require any taxpayer who answers in the affirmative to attach to the subsequent amended return an explanatory statement and certain related documents, such as the prior amended return. Another comment recommended the regulations clarify that if a partner filed an amended return and paid tax on its share of adjustments, and modification was approved with respect to the amended return, the partner may later claim a refund of the tax paid if the partnership successfully appeals or contests the adjustment.

The final regulations clarify that the restriction under § 301.6225–2(d)(2)(vii)(B) only applies to subsequent amended returns that change the treatment of partnership adjustments previously taken into account on a prior amended return that was filed during modification or are filed with respect to an imputed underpayment that was taken into account on a prior modification amended return. The final regulations also removed the requirement that limited further amended returns filed with respect to an imputed underpayment. The final regulations

provide exceptions to this rule if the modification amended return or all modifications become inapplicable to the reviewed year. For instance, a court could determine after the issuance of the FPA that the IRS's determination was erroneous in whole or in part, and there was no longer an imputed underpayment or the imputed underpayment should be reduced. In that case, the amended returns submitted during modification would have been with respect to an imputed underpayment that either no longer existed or was altered. The modifications in that case would either be wholly or partially inapplicable. Alternatively, during the modification process, after a partner files an amended return for purposes of modification, the IRS could deny modification under § 301.6225–2(c)(2)(i). In those cases, the partner may file a subsequent amended return to reverse the treatment of partnership adjustments taken into account as part of the request for modification that is no longer applicable, subject to the period of limitations under section 6511. In response to the comment, the final regulations also remove the requirement that the partners request permission before filing subsequent amended returns. The final regulations also clarify that the restrictions on amended returns also apply to other claims for refund.

One comment recommended clarification about whether and how the partner can file a request for refund if the IRS denies a modification based on a partner's filing of an amended return and payment of tax (or the use of the alternative procedure to filing amended returns) or if the partnership files a petition in court of the FPA which results in an adjustment in the partnership's favor. The same comment requested clarification on how a taxpayer who has filed an amended return or executed a closing agreement under section 6225 would receive the benefit of the reduced tax liability of the revised adjustment amount. Pursuant to section 7121, a closing agreement approved by the IRS is final and conclusive. Accordingly, as a general rule, a partner may not request a refund of amounts agreed to in, and paid with, a closing agreement, though the determination of whether a partner could file further amended returns or claims for refund with respect to a year in which a closing agreement was executed would depend on the facts and circumstances and the agreed upon terms of the closing agreement. As discussed earlier in this Summary of Comments and Explanation of Revisions, the final regulations under § 301.6225–2(d)(2)(vii) now clarify that partners may file additional amended returns with respect to partnership adjustments or imputed underpayments, including in the case of denied modification or court readjustment. To file a subsequent amended return, the partners must do so in accordance with forms, instructions, and other guidance prescribed by the IRS. A partner that modifies using the alternative procedure to filing amended returns as described in section 6225(c)(2)(B) that seeks a refund for an amount paid as part of those procedures must follow the rules of § 301.6225–2(d)(2)(vii)(B) and (C). There is no separate process for partners that modify using the alternative procedure to amended returns.

Former proposed § 301.6225–2(d)(2)(vii) provided that a pass-through partner may elect, solely for the purposes of modification, to take into account its share of the partnership adjustments and make a payment on behalf of its partners. If modification was approved with respect to the pass-through partner, the partnership was not permitted to request modification based on amended returns filed by upper-tier direct and indirect partners of the pass-through partner. Former proposed § 301.6225–2(d)(2)(vii). One comment suggested that the regulations should permit a modification of a pass-through partner's payment amount based on amended returns filed by its upper-tier owners.

This suggestion was adopted in the August 2018 NPRM revisions to § 301.6225–2(d)(2). Proposed § 301.6225–2(d)(2)(vi)(B), as revised in the August 2018 NPRM, provided that in accordance with forms, instructions, and other guidance, a pass-through partner making a payment under § 301.6225–2(d)(2)(vi)(A) may take into account modifications with respect to its direct and indirect partners to the extent that such modifications are requested by the partnership and approved by the IRS. Therefore, to the extent an upper-tier partner of the pass-through partner has filed an amended return, the partnership has requested modification with respect to that amended return, and the modification is provided, the pass-through partner may take into account that amended return in accordance with forms, instructions, or other guidance when making a payment in modification. The final regulations under § 301.6225–2(d)(2)(vi)(B) retain this rule.

Another comment recommended that the regulations provide more guidance regarding the form required for an amended return filed by a pass-through partner and the information that form will need to contain. This comment was not adopted. The form required for any amended return, including an amended return filed by a pass-through partner, and the information required on that form will be set forth in forms, instructions, and other guidance prescribed by the IRS. Setting forth this information in forms, instructions, and other guidance gives the IRS the flexibility to adapt the form and its contents without having to amend the regulations. This flexibility preserves government resources and expedites the time in which taxpayers will know of changes to the statement requirements. At the same time, the IRS recognizes the need of taxpayers to know of the information required in order to comply with the regulations. The IRS plans to develop and release drafts of forms and instructions for public inspection as they are completed.

Another comment recommended that the regulations address the situation in which a partner files an amended return but incorrectly calculates the interest amount due and subsequently receives an additional assessment from the IRS. The comment expressed concern that the incorrect calculation of interest and resulting shortfall in payment may result in an inadvertent denial of the modification request. Another comment recommended a rule that a de minimis shortfall of interest or penalties resulting from a good faith effort by a taxpayer to calculate the correct amount shall not result in a denial of a modification request.

The comment recommending a good faith de minimis rule to address situations in which a partner has a shortfall of interest or penalties was not adopted. First, allowing a good faith de minimis rule for interest or penalties is inconsistent with the centralized partnership audit regime's approach of allowing modification of the imputed underpayment if partners fully account for adjustments by taking them into account, paying any resulting amounts due as if the partnership and partners had reported correctly the first time. Because amended return modification is occurring years after any tax would have been due as a result of the partnership adjustment, partners with an underpayment must pay interest to compensate the government for the time value of money on the underpayments. Similarly, partners that owe a penalty must pay that penalty to fully take into account the adjustments and allow the partnership the benefit of modification for those adjustments. A de minimis rule that affirmatively blessed some

dollar amount or percentage shortfall for either interest or penalties would encourage taxpayers to calculate their interest and penalties to fall within the allowed de minimis range to avoid disallowance but pay less than is required. It is inconsistent with the collection of amounts determined due on examination to systematically allow a collection of less than all that is due.

Second, administering a rule that allowed partners to underpay what is owed under § 301.6225–2(d)(2)(ii)(A) as long as they made a good faith effort and had only a de minimis short fall would result in untenable administrative complexities for the IRS. The IRS must review all modification requests within 270 days after the modification request has been submitted. The IRS will need to quickly ensure that all relevant partners have provided all information and payments necessary to approve modification. A rule that includes a good faith element would require the IRS to engage in a partner-specific inquiry with respect to any shortfall that might be within the de minimis range to determine whether partner made a good faith effort to comply. A rule that looks to the intent of the partner in determining the amount of interest and penalties is factually intense and would require an inquiry into the state of mind of the partner or that partner's tax advisor. In a fraction of the time it would take to make such an inquiry, the IRS could instead request and receive full payment from the partner. Therefore, it is not administrable to inject this additional, burdensome good faith de minimis shortfall rule in the final regulations, when the current requirement of full pay is both more administrable and less burdensome on the IRS and partners.

If the partnership representative becomes aware of the shortfall before expiration of the 270-day period, the partnership representative may request an extension of the 270-day period in order to allow for full payment to be made before the modification period ends. In this way, the partnership representative can take steps to ensure that all requirements under § 301.6225–2(d)(2) were satisfied.

Proposed § 301.6225–2(d)(2)(ii)(C) provided that in the case of a reallocation adjustment, all partners affected by such adjustment must file amended returns in order for the IRS to approve modification with respect to those amended returns. One comment suggested that the partners affected by the reallocation adjustment should be required to file amended returns only if there is evidence of a net underpayment of tax by the partners as a whole. The comment suggested as an alternative that the partners be allowed to attach an explanation or information statement to their adjustment year return rather than filing an amended return for the reviewed year. These suggestions were not adopted.

Section 6225(c)(2)(C) provides that in the case of a reallocation adjustment, amended return modification applies only if all the requirements of either amended return modification or the alternative procedure to filing amended returns ''are satisfied with respect to all partners affected by such adjustment.'' The statute does not provide any exception to this rule, including an exception for situations in which there is evidence of a net underpayment of tax. Accordingly, the final regulations retain the rule that all partners affected by a reallocation adjustment must file amended returns or utilize the alternative to filing amended returns in order for modification to be approved. This rule ensures that all relevant partners affected by the reallocation adjustment take into account their appropriate shares of that adjustment and thereby ensures such partners receive the appropriate tax benefits for the taxable year subject to the adjustment.

Furthermore, payment and collection of an underpayment is not the only issue required to be resolved by the filing of modification amended returns. In some cases, the purpose of the amended returns is to take into account the tax attributes that may have effects on other modification years. Certainly, in some cases, the tax effect of adjustments taken into account in one year may be offset by tax effect of adjustments in another year or by another partner, but as described in section 3.A. of this preamble, the unmodified imputed underpayment is designed by statute to take into account only the reviewed year and it does not take into account the specific tax attributes of any partner or the effects of the partnership adjustments in modification years or intervening years. An unmodified imputed underpayment will often result in an amount that is higher than what the partners collectively would have paid had they taken the adjustments into account properly in the reviewed year. The unmodified imputed underpayment protects the IRS's interests in collecting at least the amount of tax that should have been paid by the partners without having to separately examine and track all the partners. In other words, the unmodified imputed underpayment represents a simple way to allow the partnership to pay, and the IRS to collect, as amount related to the partnership adjustments without having to delve into the specific tax attributes of each partner.

Modification, however, provides an opportunity for the partners and the partnership to demonstrate that specific tax attributes of partners should have an effect on the imputed underpayment. With respect to reallocation adjustments, if partners seek to receive the benefit of modification, each partners subject to a reallocation adjustment must follow the statutory requirement to file amended returns for all adjustments in a reallocation adjustment. It may be the case that one partner pays on modification and another partner is entitled to a refund. However, such a result is unknown until the partners demonstrate that fact through modification. More importantly, section 6225(c)(2)(C) expressly requires that all partners have taken into account all partnership adjustments and related tax attributes for the modification years and future years. This statutory mandate makes clear that the purpose of this modification is not to ensure that there is a net tax payment with respect to the partnership adjustments, but instead to ensure that the proper partners have taken the adjustments into account correctly, including in all modification years. The requirement that all partners affected by a reallocation file amended returns is a necessary condition for modification to be approved.

Similarly, the comment's suggestion that partners attach a statement to their adjustment year returns attesting to the fact that they had a net underpayment as a result of the adjustments is not workable. In an administrative proceeding, the adjustment year is the year in which the FPA is mailed under section 6231 or, if the partnership challenges the adjustments in court, the year such decision becomes final. Section 6225(d)(2). If a partner was one of the partners subject to a reallocation adjustment and failed to file an amended return, none of the other amended returns from other partners subject to the reallocation adjustments could be approved as a modification. As a result, the imputed underpayment would be determined in the FPA without reduction with respect to those adjustments. Attaching a statement on the next filed return of the partner that failed to file an amended return would have no effect on the imputed underpayment already finally determined.

Recognizing the costs and burdens this rule may create for partnerships, partners, and the IRS in cases where it

is clear one partner will not owe tax on its share of a reallocation adjustment, the Treasury Department and the IRS included a rule within proposed § 301.6225–2(d)(2)(ii)(C) to mitigate the potential impact of the requirement that all partners file amended returns. Proposed § 301.6225–2(d)(2)(ii)(C) provided that modification may be approved in the case of a reallocation adjustment even if a relevant partner affected by the adjustment does not file an amended return or utilize the alternative procedure provided the partner takes into account its share of the adjustment through other modifications approved by the IRS or if a pass-through partner takes into account the relevant adjustments. For instance, in the case of an adjustment that reallocates a loss from one partner to another, the IRS may determine that the requirements of § 301.6225–2(d)(2)(ii)(C) have been satisfied if one affected relevant partner files an amended return taking into account the adjustment and the other affected relevant partner signs a closing agreement with the IRS taking into account the adjustments. Proposed § 301.6225–2(d)(2)(ii)(C).

One comment recommended that the regulations clarify whether a tax-exempt partner eligible for tax-exempt modification under § 301.6225–2(d)(3) and allocated a share of a reallocation adjustment must file an amended return to satisfy the requirements under § 301.6225–2(d)(2) in order for the IRS to approve a modification request with respect to such partner. The comment recommended adding to the regulations either an explicit statement or an example indicating that such a filing is not necessary provided the IRS is satisfied that the relevant partner qualifies as a tax-exempt entity. This comment was partially adopted by adding a sentence to § 301.6225–2(d)(2)(ii)(C) indicating the IRS may determine the amended return requirement in the context of reallocation adjustment is satisfied to the extent an affected relevant partner meets the requirements of § 301.6225–2(d)(3) regarding tax-exempt partners. The satisfaction of the requirements of § 301.6225–2(d)(2) (amended return modification and the alternative procedure) is only satisfied to the extent of the tax-exempt portion as defined in § 301.6225–2(d)(3)(iii). Therefore, if certain partnership adjustments allocable to tax-exempt partners are subject to tax, and the partner wishes to take advantage of amended return modification, the tax-exempt partner may have to file an amended return to pay tax on the portion of adjustments allocable to that partner which are subject to tax. The final regulations do not add an example to this effect because the plain language of § 301.6225–2(d)(2)(ii)(C) addresses the point raised by the comment.

One comment recommended that the regulations provide an additional modification method in the case of reallocation adjustments that would allow a partner to whom a net negative adjustment is allocated to file an amended return (or use the alternative procedure to filing amended returns) to claim a refund of tax arising from such adjustment, on the condition that the partner to whom the net positive adjustment is allocated, or the partnership, has paid the tax attributable to the net positive adjustment. Similarly, another comment recommended that the regulations permit a modification of an imputed underpayment where only the partner experiencing additional income (or less deduction, loss, or credit) as a result of a reallocation adjustment files an amended return. These comments were not adopted.

As discussed earlier in this section of this preamble, section 6225(c)(2)(C) provides that in the case of a reallocation adjustment, amended return modification applies only if all the requirements of either amended return modification or the alternative procedure to filing amended returns ''are satisfied with respect to all partners affected by such adjustment.'' This rule demonstrates that reallocation adjustments made by the IRS under the centralized partnership audit regime are included in the calculation of the imputed underpayment unless all partners affected by such adjustments take them into account. Section 6225(c)(2)(C) does not contain an exception to the rule that all partners take the adjustments into account. Consistent with section 6225(c)(2)(C)'s requirement that all affected partners take the reallocation adjustments into account, the IRS has exercised its discretionary authority under section 6225(c)(6) to permit modification in the case of a reallocation adjustment where a relevant partner affected by such adjustment has met the requirements of another modification method and that modification has been approved by the IRS. This regulatory exception fits squarely within the statutory framework of ensuring that all partners affected by a partnership adjustment take into account their share of that adjustment and recognize the tax effects of such adjustments. Adopting the approach suggested by the comments, one where either only the loss partner or only the income partner take the adjustments into account, would undercut the statutory framework and directly contradict the plain language of the statute. A rule that does not account for all aspects of a reallocation adjustment would run contrary to the collection mechanism of the centralized partnership audit regime with respect to reallocation adjustments. The statutory framework requires either that the partnership pay an imputed underpayment representing the additional tax effects of the reallocation adjustment in the adjustment year and take the negative adjustment aspects into account in that same year or all affected partners from the reviewed year must fully account for their share of the reallocation adjustment.

One comment recommended that the regulations clarify whether a taxpayer filing an amended return or requesting a closing agreement under section 6225 for purposes of modification is required to take into account and pay any additional taxes due under chapters 2 and 2A of the Code. This comment was adopted. The final regulations clarify that a partner filing an amended return or using the alternative procedure to filing amended returns only is required to pay tax due under chapter 1 of the Code with respect to the amended return and the alternative procedure to filing amended returns. The exception to the limitation of tax to chapter 1 tax is for a pass-through partner filing an amended return under § 301.6225–2(d)(2)(vi) because the pass-through partner, but for § 301.6225–2(d)(2)(vi), might otherwise not owe tax under chapter 1. Nothing in the final regulations limits the IRS's authority under section 6241(9). The type of tax paid in a closing agreement, however, will depend on the terms of the closing agreement. The final regulations clarify the type of tax paid in these situations in §§ 301.6225–2(d)(2)(ii)(A) and (d)(8).

Another comment asked about the effect on the IRS's approval of modification in the case that a partnership or partner fails to pay taxes under chapters 2 and 2A in modification. Because the final regulations clarify that a partner is only required to pay chapter 1 tax in amended return modification or in the alternative procedure to filing amended returns, the failure to pay taxes under chapters 2 and 2A is irrelevant to the approval or denial of modification. The questions asked by the comment are therefore moot, and no changes were made in response to the comment.

Section 6225(c)(2)(D) provides that section 6501 and 6511 shall not apply

with respect to returns filed in modification. A comment was concerned that amended returns filed after the expiration of the time period in section 6511 would be automatically rejected by IRS Service Centers, causing confusion and uncertainty about whether the amended return has, in fact been filed, and if so, whether it was timely. The comment recommended that the IRS develop a procedure for the filing of amended returns with the IRS personnel handling the partnership's examination so that this person can make sure that the return is filed and properly processed or alternatively that the regulations directed taxpayers to include a banner on the top of the amended return stating, in red ink, ''Filed Pursuant to Section 6225(c),'' to alert the Service Center that this amended return should not be automatically rejected if it is otherwise untimely under section 6511. Another comment recommended that the final regulations also require that the reviewed-year partner include in the affidavit filed with the amended return modification request the partner's TIN and contact information to enable the IRS to locate easily the amended return and payment in its databases. The IRS intends to develop a process through which the partners would file their amended returns, but the regulations do not specify the details of that process. The IRS will develop forms and instructions directing the partnership and the partners as to how and where to file their amended returns submitted in modification, and the IRS intends to request the relevant partner's TIN as part of that process.

Prior to the enactment of the TTCA, section 6225(c)(2) stated that section 6511 did not apply with respect to amended return modification, but it was silent on whether section 6501 limitations on assessment applied. If a partner's period under section 6501 was closed at the time of modification, the partner might not be able to participate in amended return modification. One comment recommended that the IRS resolve this issue by allowing partners to extend the relevant section 6501 periods. This comment was received in response to the June 2017 NPRM, prior to the enactment of the TTCA. The TTCA explicitly provided that section 6501 does not apply with respect to returns filed in modification, so the need for such extensions no longer exists.

iv. The Alternative Procedure To Filing Amended Returns

The TTCA created an additional statutory modification under section 6225(c)(2)(B), titled the alternative procedure to filing amended returns (the alternative procedure), which has been referred to as the ''pull in'' or ''push in.'' Several comments recommended that the Treasury Department and the IRS adopt these procedures in response to the June 2017 NPRM, prior to the enactment of the TTCA. The August 2018 NPRM proposed rules related to the alternative procedure, adopting those comments in response to the enactment of the TTCA, which included the alternative procedure.

One comment suggested that the final regulations should include a modification procedure whereby an imputed underpayment is reduced when the partnership provides sufficient evidence that the adjustments underlying the imputed underpayment would have resulted in a smaller imputed underpayment if they had been taken into account according to how the partners and the partnership actually treated the partnership-related item. The comment described this concept as similar to the ''pull-in'' procedure included in the TTCA. The comment has not been adopted in its entirety because no one modification provision specifically allows the partnership to demonstrate that the imputed underpayment would be reduced if the partnership and partners had taken the adjustment into account. The purpose of the modification process is not only to reduce the amount of the imputed underpayment, but for those partners that take the adjustments into account as part of the modification requested, they are required to pay any additional tax, interest and penalties due and agree to adjust their tax attributes in exchange for the IRS approving the modification. As such, the regulations contain rules related to the alternative procedure as defined in section 6225(c)(2)(B) and § 301.6225–2(d)(2)(x) and under that procedure the partnership may satisfy the requirements of amended return modification by submitting on behalf of relevant partners, in accordance with forms, instructions, and other guidance prescribed by the IRS, all information and payment of any tax, penalties, additions to tax, additional amounts, and interest that would be required to be provided if the relevant partner were filing a modification amended return. The partnership must also demonstrate that relevant partners have agreed to take into account tax attributes consistent with taking into account the partnership adjustments allocable to that partner. The regulations provide another modification under § 301.6225–2(d)(10), where the IRS will consider any other request for modification and determine whether it is appropriate in the circumstances.

Another comment recommended that the modifying partner using the ''push in'' procedure deal directly with the IRS exam team during the partnership audit because many partners will not want to provide the details of their financial affairs to the partnership representative or the partnership. The regulations do not provide specific details as to what information will need to be provided to the IRS under the alternative procedure, but the IRS intends to develop such processes. The partnership, not the partners, however, requests amended return modification, and the partnership may satisfy those requirements through the alternative procedure. Because the partnership is responsible for making the modification request, the comment was not adopted at this time. The processes the IRS develops may ultimately provide that the partners submit some information directly to the IRS, but the partners will likely be required to provide some information to the partnership representative to request modification. Nothing in the regulations prevents the partnership from working with third parties or selecting a partnership representative that will not share the details of the partners' financial affairs directly with the partnership. The partnership, the partnership representative, and the partners will ultimately be required to meet filing requirements established in forms, instructions, and other guidance.

The same comment also recommended that partners who establish that they are owed a refund receive such refund through the alternative procedure rather than by filing an amended return or relying on § 301.6225–3, which allows an adjustment that does not result in an imputed underpayment to be taken into account in the adjustment year. The comment recommended that refunds in the alternative procedure context only be allowed after all relevant partners have paid their tax and after the partnership has paid any remaining imputed underpayment. This comment was not adopted. Requests for the alternative procedure under § 301.6225–2(d)(2)(x) are not claims for refunds for the reasons described later in this section of this preamble. To the extent the comment was suggesting that refunds could be claimed after the issuance of the FPA, which is the point after which the partnership would have been able to pay the imputed underpayment, the partners may only do so pursuant to § 301.6225–2(d)(2)(vii).

One comment recommended that if partnerships and their partners will be permitted some simplified method of modification (without the need to file amended returns), the regulations should fully explain that concept. This comment was made prior to the passage of the TTCA and the issuance of the August 2018 NPRM. The preamble to the August 2018 NPRM explains the alternative procedure as enacted by the TTCA. This section of the preamble to these regulations provides additional explanation of the alternative procedure. In addition to the regulations, the alternative procedure will be further described in forms, instructions and other guidance as the IRS processes surrounding the alternative procedure are developed further.

Another comment requested clarification on the interaction of the alternative procedure with other provisions described in the proposed regulations. For instance, the comment stated the language under proposed § 301.6225–2(d)(2)(x) was unclear whether a taxpayer reporting a negative reallocation or recharacterization adjustment is eligible to use the alternative procedure. No changes were made to the regulations in response to this comment.

There is nothing in the regulations that precludes the partnership from requesting modification with respect to a relevant partner under the alternative procedure where the relevant partner would otherwise be entitled to a refund had the partner instead filed amended returns. However, the regulations state that a request for modification under the alternative procedure is not a claim for refund with respect to any person. As a result, a relevant partner may not make a claim for refund via the alternative procedure. This rule is based on the statutory requirement under section 6225(c)(2)(B)(i) that requires a partner to pay any amount due under section 6225(c)(2)(A)(iii) if the partnership requests the alternative procedure. If a partner, after taking into account all partnership adjustments allocable to the partner, would not owe any amount as required in amended return modification under section 6225(c)(2)(A)(iii), the partner is not required to make a payment as part of the alternative procedure. The fact that a partner may utilize the alternative procedure without making a payment does not, however, allow the partner access to a refund through the alternative procedure.

The alternative procedure as described in section 6225(c)(2)(B) does not provide that the partners may obtain refunds. The alternative procedure provides a streamlined process for partners and the partnership generally to those partners paying additional amounts of tax, in lieu of filing amended returns. This streamlined nature of the alternative procedure process also benefits the IRS. By limiting the alternative procedure to just those relevant partners that are making payments required under section 6225(c)(2)(B)(i) (or that owe no additional tax), the IRS should be able to more quickly and efficiently process requests under the alternative procedure. Partners that have been allocated negative adjustments, including reallocation or recharacterization adjustments, may take those adjustments into account using the alternative procedure but by doing so will forego any claim for refund of any amounts related to taking those adjustments into account. In other words, if, for instance, the partner had offsetting income against which the negative adjustment might be netted, the partner could utilize the alternative procedure to make whatever payment resulted from the remaining offsetting income. If the partner would be entitled to a refund as a result of its allocated adjustments, the partner must use the amended return procedures to obtain that refund. Using the amended return procedures allows the IRS to track the refund appropriately and ensure it is processed efficiently.

The same comment also stated that it was unclear if the alternative procedure would trigger the restrictions on further amended returns described in § 301.6225–2(d)(2)(vii)(B). The final regulations under § 301.6225–2(d)(2)(vii)(B) clarify that the restrictions on subsequent amended returns or claims for refund apply equally to the amended return process and the alternative procedure. A subsequent amended return or claim for refund is most likely to occur outside the centralized partnership audit regime process. Because the alternative procedure does not exist outside the centralized partnership audit regime, there is no method by which a partnership could use the alternative procedure to obtain a refund of amounts paid during modification. The partner may file a subsequent amended return, however, if the circumstances described in § 301.6225–2(d)(2)(vii)(C) are met.

v. Rate Modification

Under § 301.6225–2(d)(4), a partnership may request modification based on a lower rate of tax for the reviewed year with respect to adjustments that are allocable to a relevant partner that is a C corporation and adjustments with respect to capital gains or qualified dividends that are allocable to a relevant partner who is an individual. One comment suggested that the rate modification procedures accommodate situations in which the sole adjustment is a recharacterization of capital gain as ordinary income. In that situation, the adjustment increasing ordinary income is a net positive adjustment that results in an imputed underpayment, and the adjustment decreasing capital gain is a net negative adjustment that does not result in an imputed underpayment. See § 301.6225–1.

The comment recommended revising the rate modification procedures to provide that an individual partner may file an amended return, or use the alternative procedure, to establish that the partner previously paid tax on the recharacterized gain at the lower rate with the result that the portion of the net positive adjustment allocable to such partner would be subject to tax only at the difference between the highest tax rate and such lower rate. In addition, the comment recommended that the rate modification procedures allow a corporate partner to demonstrate that it paid tax on capital gain with the result that the portion of the net positive adjustment allocable to the corporate partner would be subject to tax at a zero percent rate, as corporate tax rates on capital gains equal rates on ordinary income.

Rate modification is designed to address situations in which there is an adjustment to a particular type of income that is allocable to an individual or an adjustment that is allocated to a corporate taxpayer. A partnership may demonstrate that a lower rate of tax applies with respect to that income type or based on the type of taxpayer. Section 6225(c)(4)(A) (flush language) limits the rates that may apply by providing that ''[i]n no event shall the lower rate determined . . . be less than the highest rate in effect with respect to the income and taxpayer . . . .'' Proposed § 301.6225–2(d)(4) provided a rule consistent with this statutory mandate. For instance, with respect to an adjustment attributable to a C corporation, the highest rate in effect for the reviewed year with respect to all C corporations would apply to that adjustment, regardless of the rate that would apply to the C corporation based on the amount of that C corporation's taxable income. The comment suggested a rule where the rate applied to the recharacterized income allocable to the C corporation would be 0 percent because there is no reduced capital

gains rate for C corporations. Zero is lower than the highest rate applicable to a C corporation and as a result is not permitted by statute. Similarly, for the individual in the comment's suggestion, for taxable year 2018 the highest rate is 37 percent and the highest rate for capital gains is 20 percent. The difference between these two rates is 17 percent, which is lower than the highest rate for capital gains for an individual and as a result not permitted by statute. Accordingly, the comment was not adopted.

In contrast, the amended return (or the alternative procedure to filing amended returns) allows a partner to take into account the partner's share of adjusted items and apply the specific tax rate that applies to the partner's amount of taxable income. When taking into account her share of the adjustments, which includes both the adjustment increasing ordinary income and the adjustment decreasing capital gain, the partner is able to offset additional partnership income with any permissible deductions. For example, a partner may utilize the increase in capital loss to offset the capital gain that was originally reported and subsequently recharacterized, thereby reducing the partner's tax on capital gains to potentially zero and paying tax on her share of ordinary income at the partner's specific effective tax rate.

To the extent the comment was suggesting that the Treasury Department and IRS exercise its discretionary authority under section 6225(c)(6), the Treasury Department and IRS decline to do so because adopting such a rule would present administrability concerns for the IRS. For example, the corporate partner described by the comment may or may not have paid tax on capital gain on the corporate partner's original return; there may have been offsetting capital losses. The most efficient way from a tax administration perspective for the partnership and the corporate partner to demonstrate that the corporate partner previously paid tax on the capital gain is the amended return process (or the alternative procedure). By filing an amended return, the corporate partner can take into account the adjusted amount of both ordinary income and capital loss, and assuming those adjustments could offset on the corporate return, the corporate partner would owe no additional tax and the adjustments taken into account by the corporate partner would be disregarded from the total netted partnership adjustment. See § 301.6225–2(b)(2). An amended return, or an alternative procedure submission, allows the IRS to understand better what the corporation took into account on its original return.

Proposed § 301.6225–2(b)(3) provided rules for calculating an imputed underpayment in the case of a rate modification. The first step in determining an imputed underpayment in the case of a rate modification is to determine each relevant partner's distributive share of the partnership adjustments based on how each adjustment subject to rate modification would be properly allocated under section 702 to such relevant partner in the reviewed year. Proposed § 301.6225–2(b)(3)(iii)(A). In the case of an adjusted item that was specially allocated to a partner or group of partners, however, each relevant partner's distributive share is determined based on the amount of net gain or loss to the partner that would have resulted if the partnership had sold all of its assets at their fair market value as of the close of the reviewed year. Proposed § 301.6225–2(b)(3)(iv).

One comment suggested that the requirement to determine the partner's distributive share based on a hypothetical sale of all partnership assets at fair market value as of the close of the reviewed year is administratively burdensome and difficult for partnerships to apply many years after the calculation date. The comment also suggested that the lack of a definition for fair market value in the statute and in the regulations will generate significant disputes between the IRS and partnerships. In order to simplify the administration of this rule, the comment recommended that the regulations should define fair market value solely for purposes of this rule as a more easily determined amount, such as using section 704(b) basis. This comment was not adopted, although the final regulations do provide an alternative method for determining a partner's distributive share in the case of special allocations as described later in this section of this preamble.

Section 6225(c)(4)(B)(ii) provides if an imputed underpayment is attributable to the adjustment of more than one item, and any partner's distributive share of such items is not the same with respect to all such items, then the portion of the imputed underpayment to which the lower rate applies with respect to such partner shall be determined by reference to the amount which would have been the partner's distributive share of net gain or loss if the partnership had sold all of its assets at their fair market value as of the close of the reviewed year of the partnership. As discussed later in this section of this Summary of Comments and Explanation of Revisions, the IRS recognizes that there may be concerns about the burden a fair market value analysis might create on both the partnership and the IRS. The Treasury Department and the IRS considered using the authority under section 6225(c)(6) to expand modification to use section 704(b) basis, but the recommendation to use section 704(b) basis is also flawed. Not all partnerships have section 704(b) basis numbers to which the partnership and the IRS could refer for modification purposes. Accordingly, the section 704(b) basis alternative would only be available to certain partnerships, and the IRS would prefer to provide an alternative option to the fair market value analysis that would be available to all partnerships. In addition, there is concern that some partners may not have accurate records for section 704(b) basis. As discussed later in this section of the preamble, the Treasury Department and the IRS did exercise the authority under section 6225(c)(6) to provide an option for special allocation rate modification that would apply to all partnerships.

The comment suggested, as an alternative to defining fair market value, that the regulations permit the partnership to request that adjustments subject to the special allocation rule under § 301.6225–2(b)(3)(iv) be placed in a specific imputed underpayment separate from other adjustments. The comment suggested this process would allow for the adjustments to be allocated solely to the affected relevant partners in the appropriate manner, and also recommended that the request to designate a specific imputed underpayment in this context be considered separately from other modification requests.

The process suggested by the comment was arguably permissible under former proposed § 301.6225–2(d)(6). Under former proposed § 301.6225–2(d)(6), a partnership was permitted to request during modification that one or more partnership adjustments taken into account to calculate one general or specific imputed underpayment be taken into account to calculate a different specific imputed underpayment. Former proposed § 301.6225–1(e)(2)(iii) had defined a specific imputed underpayment as an imputed underpayment with respect to adjustments to an item or items that were allocated to one partner or a group of partners that had the same or similar characteristics or that participated in the same or similar transaction. In the case of a special allocation to a group of partners, however, the partners may not

necessarily share the same characteristics or have participated in the same transaction. Accordingly under former proposed § 301.6225–1(e)(2)(iii), certain specially allocated items may have been eligible for placement in a specific imputed underpayment while others may not.

This discrepancy was addressed by the revisions to proposed § 301.6225–1(g)(2)(iii) in the August 2018 NPRM. Proposed § 301.6225–1(g)(2)(iii) provided that the IRS may designate a specific imputed underpayment with respect to adjustments to items that were allocated to a partner or group of partners that had the same or similar characteristics, that participated in the same or similar transaction, ''or on such other basis as the IRS determines properly reflects the facts and circumstances.'' A partnership may request designation of a specific imputed underpayment during the examination or during modification. See § 301.6225–2(d)(6). Accordingly, because the process suggested by the comment is contemplated by the proposed regulations, no change was made in the final regulations to response to this comment.

With respect to the comment's request for an alternative to fair market value, the Treasury Department and the IRS recognize that a determination of fair market value may present challenges for taxpayers and the IRS. For instance, obtaining a fair market value analysis may require the hiring of experts by the taxpayer, thereby increasing the costs of modification. Depending on the type of assets or the amount at issue, the IRS may need to employ its own experts to ensure that the taxpayer's analysis is correct. Recognizing these costs and administrative burdens, the Treasury Department and the IRS have exercised the authority under section 6225(c)(6) to ''provide for additional procedures to modify imputed underpayment amounts on the basis of such other factors as the Secretary determines are necessary or appropriate'' to carry out the purposes of section 6225(c). Pursuant to that authority, the final regulations under § 301.6225–2(b)(3)(iv) allow a partnership requesting rate modifications in the case of special allocations to determine the distributive share for all adjustments to which the lower rate applies with respect to all partners based on the test under either section 6225(c)(4)(B)(i) or section 6225(c)(4)(B)(ii).

The rule under the final regulations allows partnerships and partners to request modification based on what they determine is the most appropriate method to measure partners' distributive shares. This rule provides an alternative to the fair market value analysis for partnerships and partners which comments suggested, and the Treasury Department and the IRS agree, may be too difficult or costly. The rule, however, does not remove the ability of a partnership to request modification based on section 6225(c)(4)(B)(ii). The final regulations also clarify that the distributive share referenced in section 6225(c)(4)(B)(i) is the distributive share as determined in the NOPPA, and if no determination regarding that distributive share was made in the NOPPA, the rules of subchapter K of chapter 1 of the Code (subchapter K).

The same comment also recommended that the regulations clarify that if the IRS requires a partnership to make the deemed sale calculation envisioned in proposed § 301.6225–2(b)(3)(iv), the regulations provide that such action is not considered a revaluation for purposes of section 704. This comment was adopted. A sentence has been added to the final regulations under § 301.6225–2(b)(3)(iv) to make clear that any calculation by the partnership that is necessary for purposes of complying with the rule under § 301.6225–2(b)(3)(iv) is not a revaluation for purposes of section 704.

vi. Certain Passive Losses of Publicly Traded Partnerships

Proposed § 301.6225–2(d)(5) provided rules for modification regarding certain passive activity losses of publicly traded partnerships. Pursuant to proposed § 301.6225–2(d)(5), in the case of a publicly traded partnership that is a relevant partner, an imputed underpayment is determined without regard to the portion of any adjustment the partnership demonstrates would be reduced by a specified passive activity loss which is allocable to a ''specified partner.'' Proposed § 301.6225–2(d)(5)(iii) defined specified partner as a person that is a partner of a publicly traded partnership; that is an individual, estate, trust, closely held C corporation, or personal service corporation; and that has a specific passive activity loss with respect to the publicly traded partnership. One comment recommended that the definition of specified partner include partnerships to accommodate persons that hold an indirect interest in a lower-tier partnership that is under examination through one or more upper-tier partnerships. The final regulations do not adopt this definition of specified partner, but the final regulations do accommodate persons that hold an indirect interest in the partnership under examination.

In the August 2018 NPRM, the Treasury Department and the IRS used the authority under section 6225(c)(6) to create a second type of partner, a qualified relevant partner, that was eligible for modification under § 301.6225–2(d)(5). A qualified relevant partner is a relevant partner that meets the requirements of a specified partner for each year starting with the first affected year through the last year for which a return was filed by the partnership. To address the recommendation made by the comment to accommodate indirect partners, the final regulations provide that an indirect partner may also be a qualified relevant partner, and therefore be eligible for modification under § 301.6225–2(d)(5), if the indirect partner is an individual, estate, trust, closely held C corporation, or personal service corporation and has a specified passive activity loss with respect to the publicly traded partnership.

Former proposed § 301.6225–2(d)(5) had provided that modification for certain passive losses of publicly traded partnerships applied equally with respect to a publicly traded partnership subject to a proceeding under the centralized partnership audit regime and where a portion of the imputed underpayment was attributable to a publicly traded partnership that is a partnership-partner. Proposed § 301.6225–2(d)(5) was revised in the August 2018 NPRM to provide that § 301.6225–2(d)(5) applies in the case of a publicly traded partnership that is a relevant partner. The final regulations provide that modification under § 301.6225–2(d)(5) applies only to the publicly traded partnership requesting modification under § 301.6225–2 (that is, the partnership under examination). This change makes the modification procedures under § 301.6225–2(d)(5) more administrable for the IRS because only the partnership under examination may request modification under § 301.6225–2(d)(5). In this way, the change also makes modification § 301.6225–2(d)(5) consistent with other types of modification. Because the final regulations accommodate certain indirect partners of the publicly traded partnership requesting modification, this change should not substantially affect the number of publicly traded partnerships and partners eligible for modification under § 301.6225–2(d)(5).

Another comment observed that section 6225(c)(5) required certain actions and calculations based on information that would not be known until the adjustment year. Pursuant to

section 6225(d), the adjustment year in the case of an administrative proceeding is the year in which a case is fully adjudicated under section 6234, or if no petition is filed under section 6234, when the FPA is mailed. A modification request must be submitted within 270 days of the issuance of the NOPPA, which must be mailed before the FPA. See section 6231(b)(2)(A). As a result of these rules, section 6225(c)(5) does not operate properly in the case of an administrative proceeding. When the partnership submits modification under section 6225(c)(5), the partnership cannot know what the adjustment year is, much less what tax effects there might be in that year. The only circumstance in which section 6225(c)(5) operates properly with respect to the adjustment year is if an AAR has been issued. This is because under section 6225(d) the adjustment year in the case of an AAR is the year in which the AAR is filed.

To address these incongruences, the comment recommended that the regulations allow a publicly traded partnership to reduce an imputed underpayment based on a net decrease in the passive activity loss allocable to a specified partner in the reviewed year to the extent the partnership takes such loss into account in the taxable year immediately preceding the year in which the NOPPA is issued. This comment was not adopted, but the concerns it raises were addressed in the August 2018 NPRM. In the August 2018 NPRM, the Treasury Department and the IRS used the authority under section 6225(c)(6) to provide that the partnership may request modification under § 301.6225–2(d)(5) with respect to the adjustment year or the most recent year for which the publicly traded partnership has filed a return under section 6031.

The Treasury Department and the IRS acknowledge that the most recent year for which a return was filed may not always be the year immediately before the issuance of the NOPPA, as in the rule suggested by the comment. However, using the taxable year for the most recently filed return allows the publicly traded partnership to refer to whatever return is the most recently filed, even if that return was filed shortly after the issuance of the NOPPA. This flexibility allows the partnership to take into account the information known as of the most recent tax year. If the rule were to require the publicly traded partnership to take into account information from a return filed before the issuance of the NOPPA, as suggested by the comment, the return filed before the issuance of the NOPPA might not be the most recent return. For example, the return filed prior to the issuance of the NOPPA could have preceded the NOPPA by several months. After the NOPPA was issued and at the time the partnership is considering submitting a modification request, the partnership could have filed the next year's return reflecting the next year's passive activity losses, which might differ from the losses reported on the return filed prior to the issuance of the NOPPA. The Treasury Department and the IRS have an interest in ensuring that the most current tax amounts are used in determining whether a modification request under § 301.6225–2(d)(5) should be approved. Given this interest, the rule in the final regulations uses the most recently filed return, rather than the comment's suggestion to use the return filed before the issuance of the NOPPA.

In addition, the rule suggested by the comment would require the partnership to know what adjustments would be included in the NOPPA and make adjustments on its return to take such adjustments into account, prior to the issuance of the NOPPA. If the adjustments in the NOPPA somehow differed from the adjustments the partnership took into account on its return, the modification might be denied because the partnership failed to take those adjustments into account. The comment's suggestion, therefore, has its own timing issues. The final regulations provide more flexibility for the partnership to reflect the information known as of the last return filed without requiring the partnership to predict what may or may not be in the NOPPA and on which day the NOPPA will be issued. Accordingly, although the final regulations did not adopt the comment per se, the final regulations adopted an alternative solution to the problem identified by the comment.

The same comment recommended that the final regulations allow a publicly traded partnership to request modification of the imputed underpayment after the end of the adjustment year. Specifically, the comment recommended that the final regulations require the modification request to be submitted within 74 days of the end of the adjustment year, which roughly aligns with the original due date of the partnership tax return. The procedure recommended by the comment is not administrable for the IRS for the same reasons discussed earlier in section 3.B.iii. regarding accepting amended return payments after the issuance of the FPA. Because the FPA is the mechanism through which modification is approved or denied, the modification determination must be made prior to the issuance of the FPA.

The comment stated that any post-FPA modification request would cause the FPA and a denial of the modification request to be subject to judicial review separately. This statement is inaccurate. If the partnership seeks judicial review under section 6234 with respect to an FPA, in the absence of a showing of fraud, malfeasance, or misrepresentation of a material fact, the IRS is precluded from mailing another FPA to such partnership with respect to such taxable year. Section 6231(c). Accordingly, if the IRS issued an FPA within the time frames discussed earlier in section 3.B.iii. regarding amended return payments, and the partnership seeks judicial review of that FPA, the IRS would be prevented from issuing a later FPA dealing with the modification request. If the partnership submitted its modification request after the partnership had already received judicial review with respect to the adjustments in the FPA, the IRS generally could not mail an additional FPA approving or denying the modification request, and the partnership would have no determination concerning its modification request which it could challenge in court under section 6234. Accordingly, this comment was not adopted.

The same comment requested that the IRS include the denial of any modification request in the FPA to ensure that any Tax Court proceeding will also address the dispute regarding the requested modification. This comment was not adopted. Whether and how disputes regarding modification requests are subject to judicial review by a court is not within the purview of the Treasury Department's or the IRS's regulatory authority. However, to assist with any potential judicial review of modification, the IRS plans to use the FPA as the method for approving or denying modification. The final regulations do not specify, however, what is required to be included in the FPA for purposes of approving or denying modification. The absence of a regulatory rule in this regard provides the IRS flexibility to allow for the differing circumstances of each administrative proceeding and varying types of modification requests.

The final regulations in § 301.6225–2(d)(5) describe the requirements for modification by publicly traded partnerships under section 6225(c)(5). This section does not require the

partnership requesting modification to provide any particular information about partners to the IRS, but the partnership must meet the general requirement to provide all information necessary to approve the modification as described in § 301.6225–2(c)(2). Specifically, § 301.6225–2(c)(2)(i) provides that the IRS may set forth in forms, instructions, and other guidance the information necessary to request modification. One comment requested that the partnership be able to provide summary information with respect to modification under § 301.6225–2(d)(5). The comment specifically suggested that the regulations provide that a partnership can substantiate the availability of specified passive activity losses by providing summary schedules reflecting the specific allocations to each specified partner of the partnership from the year such partner purchased units through the year the partnership receives the FPA.

This comment was received in response to the June 2017 NPRM, prior to the addition of the definition of qualified relevant partner. The definition of qualified relevant partner allows partners to be eligible for modification under § 301.6225–2(d)(5) provided they are partners through the year for which the most recent partnership was filed. For purposes of the comment, however, the Treasury Department and the IRS view this comment as suggesting that the partnership would provide such information for whatever years are relevant for the modification.

The final regulations do not specify what specific information is required for modification under § 301.6225–2(d)(5). Therefore, the regulations do not address whether summary schedules would be appropriate. The IRS intends to issue forms and instructions for modification procedures which will provide additional information on what will be required for modification procedures under § 301.6225–2(d)(5).

Section 301.6225–2(d)(5)(v) requires that the partnership report, in accordance with forms, instructions, and other guidance prescribed by the IRS, to each specified partner or qualified relevant partner the amount of the reduction in suspended passive loss carryovers. One comment suggested that the easiest way to do so is to incorporate such reporting into the Schedules K–1 distributed to such partner at the end of the adjustment year. This comment was received in response to the June 2017 NPRM. Therefore, it could not have taken into account the rule from the August 2018 NPRM that allowed for use of the year of the most recently filed return. The final regulations do not specify the manner in which information must be reported under § 301.6225–2(d)(5)(v). Rather, the regulations defer the manner of reporting to forms and instructions. This provides flexibility to the IRS to gain experience with the forms it intends to develop for purposes of assisting partnerships in complying with the reporting requirements of § 301.6225–2(d)(5)(v) and to change those forms in response to taxpayer feedback, if necessary, without needing to amend the regulations.

In light of the change to allow certain indirect partners to utilize modification under § 301.6225–2(d)(5), the final regulations under § 301.6225–2(d)(5)(v) provide that the IRS may require reporting to an indirect partner that is a qualified relevant partner through forms, instructions, or other guidance. This rule allows the IRS flexibility to evaluate and adapt reporting requirements concerning indirect partners as the IRS and partnerships gain more experience with the centralized partnership audit regime.

vii. Modification Relating to Qualified Investment Entities

Proposed § 301.6225–2(d)(7) provided that a partnership may request a modification of an imputed underpayment based on deficiency dividends distributed as described in section 860(f) by a relevant partner that is a qualified investment entity (QIE) under section 860(b). Under § 301.6225–2(c)(3)(i), the partnership must provide all information required to request modification (including modification for deficiency dividends paid by a QIE partner) on or before 270 days after the issuance of the NOPPA. A partnership may request an extension of this 270-day period, subject to the consent of the IRS. Section 301.6225–2(c)(3)(ii).

Several comments suggested that it is not ideal for a QIE partner to pay a deficiency dividend with respect to an amount or an adjustment that may not be final. The comments were specifically concerned that issues may be unresolved during the 270-day period after the issuance of the NOPPA because of possible review by IRS Appeals. The comments recommended that the IRS grant extensions of the 270-day period under § 301.6225–2(c)(3)(i) as a matter of course until all relevant issues concerning the adjustments have become final.

The IRS plans to adopt procedures under which the partnership will have an opportunity to resolve with IRS Appeals any issues with respect to the adjustments made during the examination prior to the mailing of the NOPPA. Therefore, all issues with respect to the adjustments will generally be resolved at the administrative level prior to the mailing of the NOPPA and the start of the 270-day modification period. Because a request for modification under § 301.6225–2(d)(7) will not be submitted until after the NOPPA has been mailed, the partnership and its QIE partners should know with certainty what adjustments are agreed and which are unagreed at the time of the modification request. This timing will allow the partnership and its QIE partners to evaluate the best method for modification and to determine whether modification under § 301.6225–2(d)(7) is appropriate. Accordingly, a rule requiring the granting of extensions of the 270-day period as a matter of course is not necessary.

Moreover, whether an extension of the modification period is appropriate is a determination best made on the facts and circumstances of a particular case. A rule requiring automatic granting of extensions would deprive the IRS of the ability to evaluation an extension request based on the facts and circumstances. Therefore, the final regulations do not require granting extensions of the 270-day period as a matter of course. Lastly, the regulations provide the IRS with the authority to grant an extension of the 270-day period when warranted, which also protects the partnership in cases that it may be initially unclear whether modification under § 301.6225–2(d)(7) is appropriate.

Another comment suggested that the regulations require payment of a deficiency dividend no later than 60 days after the date the partnership adjustments are finally determined, rather than after the NOPPA is mailed during the 270-day modification period. Another comment recommended that the regulations provide that the allowance of a deficiency dividend be agreed to in advance of a NOPPA, but in the event of a challenge to the underlying substantive adjustment in IRS Appeals or in court, the allowance does not become effective until final resolution of the underlying challenge. The final regulations do not adopt these suggestions.

First, as discussed earlier in this section of this preamble, the IRS Appeals process that the IRS intends to implement will already have determined which substantive adjustments are agreed to prior to the issuance of the NOPPA. As a result, the most likely avenue for a substantive challenge after modification will be in court and not with IRS Appeals.

Second, pursuant to section 6225(c)(7) and § 301.6225–2(c)(3)(i), everything required to submitted with respect to a modification request must be provided to the IRS within 270 days after the mailing of the NOPPA. The 270-day period is designed to ensure a timely resolution of the audit while also providing the partnership enough of an opportunity to modify an imputed underpayment reflected in a NOPPA. A rule allowing modifications after that 270-day period expires would undermine those goals.

Third, allowing modifications after the adjustments are finally determined precludes the IRS from approving modifications in the FPA. As discussed in section 3.B.ii of this preamble, the IRS plans to adopt procedures under which it will approve or deny each modification request in the FPA. Accordingly, the regulations do not permit modifications to be submitted beyond the 270-day period described in § 301.6225–2(c)(3)(i).

One comment recommended that the regulations clarify that a partnership's receipt of a NOPPA is not a ''determination'' that begins the 90- or 120-day period for a QIE partner's issuance and claiming of a deficiency dividend deduction under section 860. Section 860(e)(1)–(4) provides that a ''determination'' means (1) a court decision; (2) a closing agreement; (3) an agreement signed by the Secretary and by the QIE relating to the QIE liability for tax; or (4) a statement by the QIE attached to its amendment or supplement to a tax return. A NOPPA does not fall into any of these four categories. Accordingly, a NOPPA is not a ''determination'' for purposes of section 860(e). Moreover, § 301.6225–2(d)(7)(ii) requires that the partnership provide documentation of the QIE partner's ''determination'' described in section 860(e) as part of the partnership's request for modification. This rule makes clear that the determination in this context is the determination with respect to the QIE partner, which does not, by definition, include the NOPPA mailed to the partnership. Accordingly, because section 860(e), when read together with proposed § 301.6225–2(c)(7)(ii), addresses the comment's recommendation, the comment was not adopted.

viii. Closing Agreement Modification

Proposed § 301.6225–2(d)(8) provided that a partnership may request modification based on a closing agreement between the IRS and the partnership or between the IRS and a relevant partner, or both. One comment expressed concern that some partners might not want to negotiate the details of their tax return through the partnership representative and recommended that the regulations outline procedures for partners to work directly with the IRS to enter into closing agreements as part of the partnership audit. Although the IRS may, pursuant to § 301.6223–2(d)(1), allow a person that is not the partnership representative to participate in the examination of the partnership, the IRS is not required to do so. The centralized partnership audit regime is designed to provide for a single, unified proceeding in which the IRS works solely with the partnership representative who has the sole authority to bind the partnership and all its partners. Developing a regulatory procedure that would allow a single partner to work directly with the IRS, without working in conjunction with the partnership representative, during the partnership examination would contravene the regime's central design. The partnership representative may request that the IRS work directly with a partner on a closing agreement or other issues, but it is solely within the IRS's discretion to allow that. See § 301.6223–2(d)(1). Accordingly, this comment was not adopted.

ix. Requests for Additional Modifications

Section 6225(c)(6) provides that the ''Secretary may by regulations or guidance provide for additional procedures to modify imputed underpayment amounts on the basis of such other factors as the Secretary determines are necessary or appropriate'' for the purposes of section 6225(c). Proposed § 301.6225–2(d)(10) provided that a partnership may request a modification not otherwise described in § 301.6225–2(d), and the IRS will determine whether such modification is accurate and appropriate. Additional types of modifications and the documentation necessary to substantiate such modifications may be set forth in forms, instructions, or other guidance prescribed by the IRS.

Several comments recommended that the Treasury Department and the IRS exercise the authority under section 6225(c)(6) to expand the available types of modifications under proposed § 301.6225–2(d). One comment recommended additional modifications related to foreign partners, including a tax exemption based on section 892 and a reduction in taxes based on eligibility for reduced rates of withholding under a tax treaty. The comment further recommended that these types of modifications and modification for a tax exemption based on foreign status be verified using an expanded version of the existing Forms W–8 and W–9.

Former proposed § 301.6225–2(d)(3) provided rules regarding modifications with respect to adjustments allocable to partners that would not owe tax as a result of their status as a tax-exempt entity. Proposed § 301.6225–2(d)(3)(ii) defined tax-exempt entity to mean a person or entity defined in section 168(h)(2)(A), (C), or (D). A foreign person or entity as defined in section 168(h)(2)(C) includes a foreign government or foreign organization. Accordingly, to the extent an adjustment is allocable to a foreign government or foreign organization, the partnership may request modification with respect to such adjustment provided the requirements of § 301.6225–2(c) and (d)(3) are met.

Proposed § 301.6225–2(d)(9), added in the August 2018 NPRM, provided rules for tax treaty modifications. Under proposed § 301.6225–2(d)(9), a partnership may request modification with respect to a relevant partner's distributive share of an adjustment to a partnership-related item if the relevant partner was a foreign person who would have qualified, under an income tax treaty with the United States, for a reduction or exemption from tax with respect to such partnership-related item in the reviewed year, would have derived the item (within the meaning of § 1.894–1(d)) had it been taken into account properly in the partnership's reviewed year return, and is not otherwise prevented under the income tax treaty with the United States from claiming such reduction or exemption with respect to the reviewed year at the time of the modification request.

No comments were received on the tax treaty modification rules proposed in the August 2018 NPRM. Proposed § 301.6225–2(d)(9) is retained and simplified in the final regulations, with no change in substance. Accordingly, a treaty modification is only available to the extent the relevant partner would have qualified for the treaty benefit at issue, whether a rate reduction or exemption from tax, had the item been taken into account by the partner in the reviewed year. In general, that means a foreign partner may submit a treaty modification only if the partner was, for the reviewed year, a treaty resident; would have derived the item of income through the partnership, or tiers of partnerships, if applicable, under the tax laws of its country of residence; would have been the beneficial owner of the item of income (not a nominee or conduit); would have satisfied the

limitation on benefits article under the treaty, if any; and met any other specific requirement for claiming the benefit under the treaty, such as a stock ownership threshold in the case of a claim for a reduced rate of tax on U.S. source dividends.

The final regulations do not address, however, which form will be used for tax treaty modification, or for any type of modification. Prescribing the specific form used for a specific type of modification in the regulations is generally not ideal for either taxpayers or the IRS. The IRS may determine in the future a different form is more appropriate or the form number or name may require revision. Having the flexibility to prescribe the form without needing to change the regulations saves government resources and allows for expedited guidance to taxpayers.

Another comment expressed concern that the determination of the imputed underpayment with respect to adjustments to CFTEs could result in an overpayment of taxes by partners under the centralized partnership audit regime to the extent that one or more partners would be eligible to take an additional foreign tax credit (FTC) as a result of any adjustments made following the conclusion of an audit. The comment recommended that taxpayers should be permitted to claim FTCs for which they are eligible, provided that the taxpayer can provide sufficient evidence to the IRS when claiming the credit. This comment was not adopted.

The modification procedures provide adequate opportunity for a partner to take advantage of any new FTCs. For example, the partners may use amended return modification or the alternative procedure to take into account all adjustments that might affect specific partners, including any new FTCs. Accordingly, no changes were made to the regulations in response to this comment.

Two comments requested that the Treasury Department and the IRS use the authority under section 6225(c)(6) to expand modification and to authorize an ''Early Decision'' procedure for pushing out audit adjustments in tiered structures in order to address the administrative concerns of the IRS related to a tiered push out. This comment, which was submitted prior to the amendments by the TTCA to section 6226(b) and the August 2018 NPRM, was not adopted. Under the rule proposed in the August 2018 NPRM, adjustments may be pushed out beyond the first tier of partners. See proposed § 301.6226–3(e) and section 4.C.iii. of this preamble for further discussion of the tiered push out rules.

One comment suggested that, to the extent an adjustment amount and the imputed underpayment with respect to that adjustment amount have already been reported and tax paid, modifications should be permitted with respect to the tax amount paid and not be limited only to taxes paid in connection with an amended return. The comment offered two examples which might result in an imputed underpayment being determined on tax that had already been paid. The first example would occur if partners file tax returns with inconsistent positions under section 6222 that reflect the income being adjusted in the examination. The second example presented by the comment is the situation in which two or more people may be deemed by the IRS to have formed a partnership when they have individually reported the income being ascribed to the deemed partnership. This comment was adopted. The final regulations under § 301.6225–2(d)(2)(ii) allow a partnership to satisfy the requirements of amended return modification by demonstrating that a partner previously took into account such partnership adjustments and their effect on tax attributes for all relevant years and made any necessary payments.

Similarly, one comment recommended that modification provide for an alternative to closing agreements that would allow the partnership to demonstrate that a partner's share of an adjustment was partially or fully reversed and so the imputed underpayment should therefore be reduced to give credit for taxes paid in a later year. For instance, the partnership could demonstrate that a former partner would have paid tax on capital gain on its partnership interest and that amount of gain would have, economically included the amount of an adjustment. The partnership would then, pursuant to this recommendation, be permitted to demonstrate that the imputed underpayment should be reduced by a refund in an intervening year.

The same comment also recommended that the final regulations adopt an additional modification type that would allow the partnership to demonstrate the impact of adjustments on one or more of its partners, specifically with respect to interest expense and foreign taxes paid. The comment recommended that the partnership be able to demonstrate that the partner's reporting of these items was not as beneficial as assumed in the calculation of the imputed underpayment.

These comments were received in response to the June 2017 NPRM. The August 2018 NPRM provided rules relating to the alternative procedure and also allowed for amended return modification without regard to sections 6501 and 6511. These additions in the August 2018 NPRM allow for the types of modifications the comment was recommending. For example, under amended return modification as revised in the August 2018 NRPM, a partner files amended returns for the first affected year and other years to the extent tax attributes in those years are affected by taking the adjustments into account. Whether the partner pays additional amounts, demonstrates that on net there is no tax due, or is entitled to a net refund, provided the partner has otherwise complied with the modification requirements, the imputed underpayment will be adjusted to remove that partner's share of the adjustments if the IRS approves the modification. Accordingly, the final regulations do not adopt these comments because the final regulations provide other methods for accomplishing the rules recommended by the comments.

One comment recommended that the final regulations expand modification procedures to allow modification based on closing agreements by and amongst the partnership and the relevant partners entered into in the course of a proceeding with the Competent Authority office, in particular to facilitate the implementation of any mutual agreement by the IRS in a manner that is consistent with the purpose of tax treaties to avoid double taxation. This modification might include mutual agreement procedures but may also include requests for assistance in the context of partner-level foreign tax credits and protective claims. The comment also recommended that the final regulations permit multiple closing agreements and provide procedures for cooperation between the Competent Authority and partnership examination teams. This comment was received in response to the June 2017 NPRM. The August 2018 NPRM provided for treaty modifications that were not in the former proposed regulations, and the final regulations maintain the added treaty modification procedure. The final regulations do not adopt any new modifications that were not previously proposed in the August 2018 NPRM, but maintain the modifications based on closing agreements and treaties. Nothing in the regulations limits the closing agreements in a way that would prevent

a closing agreement, or multiple closing agreements, entered into during the Competent Authority process from being considered in the modification process.

C. Defenses to Penalties

Proposed § 301.6225–2(d)(2)(viii) provided that a relevant partner may raise a partner-level defense (as described in § 301.6226–3(d)(3)) by first paying the penalty, addition to tax, or additional amount with the amended return filed under § 301.6225–2(d)(2) and then filing a claim for refund in accordance with forms, instructions and other guidance. One comment recommended allowing the audited partnership to submit partner-level defenses for both direct and indirect partners as part of the modification process. According to the comment, a review by the IRS prior to requiring payment of the proposed penalties would permit an early determination regarding the validity of any partner-level defense and reduce economic and administrative burdens on taxpayers. The comment suggested that because penalties can represent a large dollar amount, the requirement that taxpayers must provide advance payment of penalties, even in cases where they have a valid penalty defense, can create a significant economic burden on partners. This comment was not adopted.

Due to the limited time the IRS has to review modification requests, the Treasury Department and IRS have determined that reviewing penalty defenses for specific partners in addition to reviewing the amounts taken into account on amended returns or in the alternative procedure submissions is unadministrable in the time frame allowed. The core aspect of the modification procedures is to exclude partnership adjustments from the imputed underpayment calculation. Whether a specific partner is then entitled to a refund of penalties paid after taking the adjustments into account is best determined outside the modification procedures and not subject to the time constraints of section 6225(c)(7) and § 301.6225–2(c). The final regulations, therefore, maintain the requirement that a partner must first pay any penalty due with the amended return filed during modification and then afterward file a claim for refund of the penalty in order to raise a partner-level defense. However, to address the concerns raised by the comment, the final regulations under § 301.6225–2(d)(2)(viii) give the IRS flexibility to develop through future guidance alternative procedures for raising partner-level defenses as the IRS gains more familiarity with the centralized partnership audit regime.

D. Adjustments That Do Not Result in an Imputed Underpayment

Proposed § 301.6225–3 addressed the treatment of adjustments that do not result in an imputed underpayment. Proposed § 301.6225–3 provided that a net negative adjustment resulting from a reallocation adjustment, which does not result in an imputed underpayment pursuant to § 301.6225–1(f), is taken into account by the partnership in the adjustment year as a separately stated item or a non-separately stated item, as required by section 702 and is allocated to adjustment year partners who are also reviewed year partners with respect to whom the amount was reallocated.

One comment expressed concerns with the application of proposed § 301.6225–3(b)(4) to publicly traded partnerships. According to this comment, the public trading of units of publicly traded partnerships depends on their fungibility, which requires that all items affecting the partners' section 704(b) capital accounts be allocated pro rata. The comment suggested that an allocation under proposed § 301.6225–3(b)(4) could force an adjustment year allocation to less than all of the public unit holders, potentially causing the units to be non-fungible. This comment was not adopted at this time, but the final regulations provide that the IRS may provide exceptions to the rule under § 301.6225–3(b)(4) pursuant to forms, instructions, and other guidance prescribed by the IRS. As the IRS gains more experience with the centralized partnership audit regime, the IRS may determine to create an exception through forms, instructions, or other guidance if doing so would benefit taxpayers while fulfilling the requirements of the statute and remaining administrable for the IRS. Having the flexibility to create such an exception through forms, instructions, and other guidance preserves government resources and expedites the process for the IRS to address taxpayer needs and for taxpayers to be aware of changes in IRS procedures.

One comment recommended that the regulations provide examples demonstrating the proper application of proposed § 301.6225–3(b)(4). The final regulations add two such examples under § 301.6225–3(d). One example demonstrates the application of the rule under § 301.6225–3(b)(4) in the context of a recharacterization adjustment the other example demonstrates application of the rule in the context of a reallocation adjustment.

One comment recommended that the rules be clarified regarding whether netting would be allowed with respect to adjustments that do not result in an imputed underpayment in multi-year audits. The comment asks about a particular example: If an audit of 2018 results in an imputed underpayment in 2018 and an overpayment in 2019 in regard to adjustment items, the proposed regulations would not permit those amounts to be netted. As discussed in section 3.A. of this preamble, partnership adjustments with respect to different reviewed years are not netted. If a multi-reviewed-year audit that resulted in an imputed underpayment with respect to one reviewed year and adjustments that do not result in an imputed underpayment with respect to a different reviewed year both had the same adjustment year, then the expense associated with the imputed underpayment paid in the adjustment year is taken into account by the partnership in the adjustment year and the adjustments that do not result in an imputed underpayment would also be taken into account on the adjustment year tax return. Expenses related to payment of an imputed underpayment are nondeductible under section 6241(4). As a result, such items would be taken into account according to subchapter K principles in the adjustment year and the extent to which any items net on the partnership or partners' returns would depend on the particular adjustments and the facts and circumstances of the partnership and partners. Instead, the partnership may also take advantage of modification procedures and the election under section 6226 to allow partnership adjustments to be taken into account directly by the partners that may, depending on the facts and circumstances, allow for different netting results at the partner level.

Lastly, § 301.6225–3(b)(7) was added to provide that partners that previously took into account an adjustment that does not result in an imputed underpayment before a notice of administrative proceeding was mailed by the IRS or before an administrative adjustment request was filed by the partnership do not take into account a second time the same adjustment that does not result in an imputed underpayment. This rule addresses situations where a partner took a position inconsistent with the partnership return as filed and as a result of that inconsistent position previously took into account items that were later determined by the IRS (or by the partnership in an AAR) to be

adjustments that do not result in an imputed underpayment, such as additional losses or deductions. The rule is designed to ensure that such partners do not take the same items into account again in the adjustment year.

4. Election for Alternative to Payment of the Imputed Underpayment

Twenty-two comments were received concerning section 6226, the election for an alternative to payment of the imputed underpayment. This section of this Summary of Comments and Explanation of Revisions addresses comments concerning the mechanics and effect of making an election under proposed § 301.6226–1; the statements furnished to partners and filed with the IRS pursuant to proposed § 301.6226–2; and the rules regarding how adjustments are taken into account by partners in accordance with proposed § 301.6226–3. Comments concerning basis and tax attribute rules under proposed § 301.6226–4 will be addressed in future guidance.

A. Mechanics and Effect of Making an Election Under Section 6226

The comments received regarding the mechanics and effect of making an election under section 6226 cover six general topics: (1) The time for making the election; (2) revocations of the election; (3) making the election when there are multiple imputed underpayments or there is no imputed underpayment; (4) notification by the IRS that an election is invalid; (5) making the election and filing a petition for readjustment under section 6234; and (6) whether the election should be mandatory.

i. Time for Making the Election Under Section 6226

Under section 6226(a) and proposed § 301.6226–1(c)(3), a partnership may make an election under section 6226 (push out election) within 45 days of the date on which the FPA is mailed by the IRS. This 45-day period cannot be extended, and once made, the election may only be revoked with the consent of the IRS. See proposed § 301.6226–1(c)(1), (3).

Several comments recommended changes to the 45-day period under proposed § 301.6226–1(c)(3). Some comments suggested that the partnership should not be required to make the push out election until after there is a final determination of the partnership adjustments, either as a result of a defaulted FPA or, if a petition is filed, a final court decision. Other comments recommended that the regulations permit, either automatically or upon request, an extension of the 45-day period. These comments were not adopted.

The 45-day period for making an election under section 6226 is established by statute. Pursuant to section 6226(a)(1), section 6225 shall not apply to an imputed underpayment if the partnership ''not later than 45 days after the date of the notice of final partnership adjustment'' elects the application of section 6226 with respect to such imputed underpayment and furnishes statements to its partners for the reviewed year under section 6226(a)(2). The partners must then take into account the adjustments that resulted in that imputed underpayment. Consistent with section 6226(a)(1), proposed § 301.6226–1(c)(3) provided that an election under § 301.6226–1 must be filed within 45 days of the date the FPA is mailed by the IRS and that the time for filing such an election may not be extended.

Nothing in section 6226 provides for an exception to the 45-day period described in section 6226(a)(1), nor does section 6226 provide that the 45-day period may be extended by the IRS. Accordingly, comments suggesting that the regulations provide that a push out election may be made later than 45 days after the date of the FPA, whether as a general rule or as a result of an extension, were not adopted.

ii. Revocations of Elections Under Section 6226

One comment suggested that, as an alternative to delaying or extending the 45-day period for making the push out election, the regulations should provide that the IRS will liberally grant revocations of a push out election in certain circumstances, such as in the case of a settlement of an imputed underpayment. Another comment suggested that the regulations should provide that the IRS will approve any request to revoke an election upon completion of the administrative or judicial proceeding. These comments were not adopted.

Section 6226(a) provides that an election under section 6226, once made, ''shall be revocable only with the consent of the Secretary.'' Consistent with section 6226(a), § 301.6226–1(c)(1) provides that an election under § 301.6226–1 may only be revoked with the consent of the IRS. The requirement that a revocation only be made with the consent of the IRS is mandated by the statute and is critical to the administration of the collection aspect of the push out regime. A push out election relieves the partnership that made the election under section 6226 (audited partnership) from the requirement to pay the imputed underpayment to which the election relates and shifts the collection of any chapter 1 tax resulting from the partnership adjustment to the partners of the partnership. In light of the collection nature of the push out regime, whether a revocation of a push out election should be granted largely depends on the facts and circumstances. For example, a revocation may benefit the IRS, the partnership, and its partners in the case of an agreement by the partnership to pay at the partnership level in lieu of pushing out the adjustments to its partners. On the other hand, a revocation may prejudice the IRS and the partners if, for example, the revocation is granted after statements have already been furnished to the partners. In that case, some partners may have already paid any resulting tax. If the revocation is significantly delayed, some partners may be time-barred from filing refund claims. In turn, any refund claim filed by a partner would require additional processing by the IRS, which could become administratively burdensome particularly in the case of tiered structures. Also, the period to assess the imputed underpayment against the partnership may have expired at the time of the revocation request. Additionally, the audited partnership may no longer be collectible and, if the IRS granted a revocation, the IRS would be required to engage in unnecessary and costly additional collection procedures. Requiring consent of the IRS before a revocation takes effect ensures flexibility to appropriately address each circumstance and protects partners that may have already received pushed out statements. Accordingly, comments recommending liberal or automatic approvals of requests to revoke push out elections were not adopted.

iii. Making the Election When There Are Multiple Imputed Underpayments or When There Is No Imputed Underpayment

Under proposed § 301.6226–1(a), if an FPA includes more than one imputed underpayment (as described in proposed § 301.6225–1(g)), a partnership may make an election under § 301.6226–1 with respect to one or more of the imputed underpayments identified in the FPA. One comment suggested that the regulations clarify whether there are any requirements for, or limitations on, a partnership's ability to make a push out election for different imputed underpayments. Neither the proposed regulations nor the final

regulations under § 301.6226–1(a) contain any restrictions or limitations on a partnership's ability to make an election under section 6226 for a particular imputed underpayment identified in an FPA. For each imputed underpayment for which the partnership plans to make a push out election, the partnership must satisfy the provisions of §§ 301.6226–1 and 301.6226–2, including the requirement under § 301.6226–1(c)(3)(ii)(D) that the election identify the imputed underpayment to which the election relates. Because the regulatory text does not suggest there are any restrictions on making a push out election with respect to different imputed underpayments, the comment seeking further clarification on this point was not adopted.

One comment suggested that a partnership should be allowed to make an election under section 6226 for a taxable year for which there is no imputed underpayment, but for which there is a tax effect favorable to the partnership. The comment described an example in which the IRS determines in an examination of year 1 that the partnership should have reported income originally reported in year 3 ratably over years 1, 2, and 3. In the example, the IRS determines an imputed underpayment with respect to year 1, and the partnership makes a push out election with respect to that imputed underpayment. The comment suggested that a push out election should be permitted for year 3 as well to correct the perceived anomalous result that could occur if the reviewed year partners did not get the benefit of the decrease in income with respect to year 3.

Pursuant to section 6226(a)(1), the partnership may make a push out election ''with respect to an imputed underpayment.'' Section 301.6226–1(a) echoes the statutory language by providing that a partnership may elect under § 301.6226–1 an alternative to the payment by the partnership of ''an imputed underpayment.'' Accordingly, to make a push out election under section 6226(a)(1) and § 301.6226–1, there must be at least one imputed underpayment for the taxable year. To the extent the comment was suggesting an election should be permitted for a year in which there is no imputed underpayment, the comment was not adopted.

As the comment observed, the partnership has other options to make adjustments for year 3. The partnership in the example could file an AAR for year 3, provided the period described in section 6227(c) permitted the filing of an AAR for year 3. See 6227(c) and § 301.6227–1(b). The modification procedures may also provide a mechanism for the partnership and its partners to benefit from the change to year 3. For example, the partners may file amended returns (or utilize the alternative procedure to filing amending returns) to take into account the adjustments to years 1, 2, and 3. See § 301.6225–2(d)(2). See also section 6225(c)(9) (allowing modification of adjustments that do not result in an imputed underpayment). Additionally, nothing in the final regulations prevents the partnership from seeking a closing agreement with the IRS with respect to year 3 subject to rules generally applicable to closing agreements.

iv. Notification That an Election Under Section 6226 Is Invalid

Under proposed § 301.6226–1(c)(1), an election under § 301.6226–1 is valid until the IRS determines that the election is invalid. If an election is determined by the IRS to be invalid, the IRS will notify the partnership and the partnership representative within 30 days of such determination and provide the reasons for the determination. See § 301.6226–1(d). Former proposed § 301.6226–1(c)(2) had provided that if the IRS makes a final determination that an election under § 301.6226–1 is invalid, section 6225 applies with respect to the imputed underpayment as if the election were never made and the partnership must pay the imputed underpayment. The word ''final'' was removed from former proposed § 301.6226–1(c)(2) in the August 2018 NPRM to clarify that the IRS may determine that an election is invalid, and assess and collect the imputed underpayment to which the purported election related, without first being required to make a proposed or initial determination of invalidity. This clarification was adopted in the final regulations under § 301.6226–1(d) (formerly proposed § 301.6226–1(c)(2)). Under § 301.6226–1(d), the IRS may determine an election is invalid without first notifying the partnership or providing the partnership an opportunity to correct any failures to satisfy all of the provisions of § 301.6226–1 and § 301.6226–2, including an opportunity to correct errors in pursuant to § 301.6226–2(d).

One comment suggested that the regulations require the IRS to notify the partnership of its intent to determine that a push out election is invalid and provide the partnership with an opportunity to respond prior to making a final determination that the election is invalid. This comment was not adopted.

An election under section 6226 may be invalid for a number of reasons and not every case will present a need to first communicate with the partnership. For example, the partnership may make an election, but never furnish statements to its partners. Providing the partnership with a preliminary determination that the election is invalid in that case and an additional opportunity to furnish statements would undermine the 60-day period for furnishing statements (see proposed § 301.6226–2(b)), which is designed to support the IRS's timely collection of any additional reporting year tax and provide timely information to reviewed year partners regarding any additional reporting year tax. In such a case, the IRS should have the ability to determine the election is invalid and to immediately assess an imputed underpayment without first notifying the partnership. Accordingly, the comment's suggestion was not adopted. However, while nothing in the regulations requires the IRS to first contact a partnership prior to making a determination that an election under section 6226 is invalid, the IRS intends to develop procedures under which the IRS will first contact partnerships prior to determining a push out election is invalid in certain cases. Those procedures, if adopted, will be set forth in future sub-regulatory guidance.

The same comment also suggested that the partnership should be able to seek review of a decision by the IRS that a push out election is invalid in the United States Tax Court. The United States Tax Court is a court of limited jurisdiction. *See* section 7442. The Treasury Department and the IRS do not have authority to confer jurisdiction on the United States Tax Court. Therefore, this comment was not adopted.

v. Effect of Filing a Petition for Readjustment Under Section 6226

Under proposed § 301.6226–1(e) (§ 301.6226–1(f) in the final regulations), a partnership that has made an election under § 301.6226–1 is not precluded from filing a petition under section 6234(a). Section 6234(a) provides that a partnership may file a petition in the Tax Court, a United States district court, or the Court of Federal Claims, within 90 days of the date on which an FPA is mailed under section 6231. A petition under section 6234 may be filed in a district court or the Court of Federal Claims only if the partnership filing the petition makes a jurisdictional deposit in accordance with section 6234(b). Proposed § 301.6234–1(b) provide that the jurisdictional deposit is the amount of (as of the date of the filing of the

petition) any imputed underpayment (as shown on the FPA) and any penalties, additions to tax, and additional amounts with respect to such imputed underpayment.

One comment stated that the proposed regulations provide no explanation as to how or whether the deposit amount under section 6234(b) may or should be adjusted to reflect a push out election under section 6226. The comment recommended the regulations should provide a mechanism that would enable a partnership to file a petition in a district court or Court of Federal Claims and still make an election under section 6226, without creating the risk of having tax on the partnership adjustments paid twice. The comment suggested that one possible approach might be to reduce the deposit amount by the amount that would be reported by partners that receive push out statements. The comment suggested that another possible approach might be to ensure that there is a clear mechanism for the partnership to obtain a refund of the jurisdictional deposit before any amounts are paid under the push out by partners.

Nothing in the proposed regulations limits a partnership's ability to file a petition in a district court or the Court of Federal Claims if the partnership has made an election under section 6226 (provided the partnership has made the jurisdictional deposit required by section 6234(b)). Proposed § 301.6226–1(e) expressly provided that a partnership making the election under § 301.6226–1 is not precluded from filing a petition under section 6234(a) (which includes petitions in the Tax Court as well as petitions in district courts and the Court of Federal Claims). Accordingly, to the extent the comment was seeking clarification that a partnership can both make an election under section 6226 and file a petition under section 6234, the comment was not adopted because the plain language of § 301.6226–1(f) (proposed at § 301.6226–1(e) and renumbered to § 301.6226–1(f)) makes clear that a partnership can take both actions. Accordingly, no changes were made to proposed § 301.6226–1 in response to the comment. To the extent the comment was seeking to make clear that a partnership that makes a valid election under section 6226 with respect to an imputed underpayment is no longer liable for that imputed underpayment, the plain language of section 6226(a) and § 301.6226–1(b)(2) makes clear that is the case. The comment's suggestion regarding the amount of the jurisdictional deposit under section 6234(b) and proposed § 301.6234–1(b) is addressed in section 9 of this Summary of Comments and Explanation of Revisions.

vi. Elective Nature of Section 6226

One comment suggested that the regulations should make the election under section 6226 mandatory, unless provided for otherwise in the partnership agreement, in two circumstances in order to mitigate a partnership representative's potential conflict of interest and to provide protection to partners that are partners in the adjustment year but not partners in the reviewed year. The first circumstance is when the partnership representative is both a partner in the reviewed year and the adjustment year, and the partnership representative's interest during the adjustment year is less than it was in the reviewed year. The second circumstance is when the aggregate partnership interest of any adjustment year partner or group of partners holding a 20 percent or greater interest in the partnership is 20 percent or greater than the interest held by the same partner or group of partners in the reviewed year. Because the approach recommended by the comment is prohibited by statute, the comment's recommendation was not adopted.

Sections 6225 and 6226 provide that the default rule, absent an affirmative election by the partnership, is that the partnership shall pay any imputed underpayment resulting from the partnership adjustments. The regulations cannot switch the default rule from one that imposes partnership liability under section 6225 to one that requires a push out election under section 6226. Additionally, a partnership ''elects the application of'' section 6226 with respect to an imputed underpayment. Section 6226(a)(1). That election is statutory and, like under any other election under the Code, is a choice by the partnership. It would not be consistent with the elective nature of section 6226 to require the partnership to make a push out election under any circumstance.

vii. Election Must Include Address for Each Reviewed Year Partner

Proposed § 301.6226–1(c) required that an election under § 301.6226–1 must include each reviewed year partner's name, address, and TIN. Under § 301.6226–2(e), each statement furnished by the partnership to a reviewed year partner must include ''the current or last address of the reviewed year partner that is known to the partnership.'' A partnership should use the same standard for determining the address included for each reviewed year partner in the election under § 301.6226–1 as the address included in each statement under § 301.6226–2. Accordingly, the final regulations under § 301.6226–1(c) clarify that an election under § 301.6226–1 must include the ''the current or last address of each reviewed year partner that is known to the partnership.''

B. Statements Furnished to Partners and Filed With the IRS

The comments received regarding furnishing statements to partners and filing the statements with the IRS cover five general areas: (1) The partners to whom the statements are furnished; (2) the timing of when the statements are furnished; (3) reasonable diligence in identifying correct addresses; (4) the effect of failing to properly furnish statements; and (5) the content of the statements.

i. Partners to Whom the Statements Are Furnished

Section 6226(a)(2) requires a partnership to furnish statements to ''each partner of the partnership for the reviewed year.'' Consistent with the statute, proposed § 301.6226–2(a) provided that a partnership that makes an election under § 301.6226–1 must furnish to each reviewed year partner a statement reflecting the partner's share of partnership adjustments associated with the imputed underpayment for which the election under § 301.6226–1 was made. A ''reviewed year partner'' is any person who held an interest in the partnership at any time during the reviewed year. See proposed § 301.6241–1(a)(9). One comment suggested that the partnership should only be required to furnish (or have the option to furnish) statements to partners that would owe additional tax as a result of the partnership adjustments. This comment was not adopted.

The statute does not impose any qualifications or limitations on which partners from the reviewed year must be furnished push out statements. The statute mandates that the partnership furnish a statement ''to each partner of the partnership for the reviewed year.'' Section 6226(a)(2). This statutory requirement is unambiguous and as a result is not being altered in the final regulations.

In addition, the collection mechanism of section 6226 is similar to tax reporting with respect to Schedules K–1, in that the partnership furnishes statements to the partners, and the partners are solely responsible for determining and self-reporting any tax due. Additionally, in most cases, the

partnership will not know whether a reviewed year partner will owe additional tax for a particular year as a result of a push out election. Therefore, the partnership could not properly furnish statements without obtaining additional information about each partner's tax situation and determining to a high degree of certainty whether the information provided was accurate. Such an exercise would be burdensome for the partnership, potentially invasive to partners, and pose significant tax administration concerns. Furthermore, such a rule would require the IRS to know which partners would ultimately owe tax as a result of the election to evaluate whether the partnership properly furnished statements. While a partnership may know it is likely that a particular partner will owe additional tax under certain circumstances, crafting a general rule with those partnerships and circumstances in mind would be unfair to partnerships that lack such knowledge or have a means of obtaining it. In contrast, a rule requiring the partnership to furnish a statement to *each* reviewed year partner, regardless of whether that partner might owe tax as a result of the pushed out adjustments, is more administrable for the IRS, less burdensome to partnerships, and required by the statute.

The same comment also recommended that the regulations clarify how adjustments are communicated to reviewed year partners who dispose of their interest in the partnership, including persons who were partners in the reviewed year but not the adjustment year and persons who were only partners in the intervening years (the years after the reviewed year but before the adjustment year). Persons who were only partners in the intervening years are by definition not reviewed year partners, and therefore the partnership is not required to furnish statements to such partners under § 301.6226–2. As a result, partners that were only partners during intervening years are not required to take into account partnership adjustments under § 301.6226–3. Therefore, to the extent the comment was suggesting statements should be furnished to partners from intervening years only, this suggestion was not adopted.

Persons who were reviewed year partners, but who are not partners during the adjustment year or some or all of the intervening years, retain their status as reviewed year partners regardless of when they disposed of their interest. The partnership is required to furnish statements to its reviewed year partners in accordance with § 301.6226–2. Because the proposed regulations clearly required that statements be furnished to all reviewed year partners, no changes were made in response to this comment.

ii. Timing of When the Statements Are Furnished

Two comments were received regarding the timing of the statements furnished by a partnership to its reviewed year partners. The first comment suggested that the regulations should provide that a partnership will not be required to furnish statements under proposed § 301.6226–2 until after the partnership has exhausted its rights to challenge the audit adjustments through an administrative or judicial proceeding.

Under proposed § 301.6226–2(b)(1), a partnership that makes an election under § 301.6226–1 must furnish statements to its reviewed year partners (and file those statements with the IRS) no later than 60 days after the date all of the partnership adjustments to which the statement relates are finally determined. Partnership adjustments become finally determined upon the later of the expiration of the time to file a petition under section 6234 or, if a petition under section 6234 is filed, the date when the court's decision becomes final. Proposed § 301.6226–2(b)(1)(i), (ii). Once the time to file a petition has expired, or if a petition is filed, the court's decision has become final, the partnership has exhausted its ability to challenge the partnership adjustments through administrative and judicial avenues. Accordingly, because the plain language of proposed § 301.6226–2(b)(1) reflected the rule suggested by this comment, no changes were made in response to this comment.

The second comment suggested that the due date for the statements under proposed § 301.6226–2 should align with the due date for the partnership's Schedule K–1s and that extensions of the statement due date should be permitted to accommodate the complexity of the calculations necessary for the accurate distribution of the adjustments among the partners. The comment stated that not having the statement due date coincide with the Schedule K–1 due date would create confusion among the partners and likely result in less timely compliance. This comment was not adopted.

Under section 6226(a) and (b), each reviewed year partner that is furnished a statement takes into account the partnership adjustments reflected on that statement by adjusting the partner's chapter 1 tax for the taxable year which includes the date the statement was furnished by the partnership (the reporting year). Therefore, the date the statement is furnished by the audited partnership determines which taxable year a partner (either direct or indirect) will pay tax as a result of taking into account the partnership adjustments (the additional reporting year tax). For example, if a reviewed year partner is furnished a push out statement on March 15, 2022 with respect to reviewed year 2020, the partner must report and pay its additional reporting year tax on the partner's return for the 2022 taxable year, which, for individuals, would be considered timely filed on April 17, 2023 (April 15, 2023 is a Saturday). In contrast, when a partner receives a Schedule K–1, the partner is required to report the items on that Schedule K–1 on the tax return for the taxable year that has just ended. For example, if a partner receives a Schedule K–1 on March 15, 2022 for the 2021 taxable year, the partner must report the items on that Schedule K–1 on the partner's return for the 2021 taxable year, which, for individuals, would be due on April 15, 2022.

These examples illustrate the impediments to aligning the push out statement due date with the Schedule K–1 due date or with providing extensions of the statement due date. First, reviewed year partners who simultaneously receive both a push out statement and a Schedule K–1 may be required to report the items on those statements in different taxable years. While the receipt of tax documents at the same time of year might have some superficial appeal, there is a risk of causing confusion about when and how to take into account the information on those documents. For instance, receiving the push out statement at the same time as the Schedule K–1 could result in a belief by the partner that the partner is supposed to report the amounts on the push out statement in the same year as the items on the Schedule K–1, which would likely be incorrect. In addition, the reviewed year partners, to whom the push out statements must be furnished, may not be the same as the partners for whom Schedule K–1s are required. Therefore, requiring the statements to be furnished at or around the same time may also create confusion for the partnership.

Second, aligning the push out statement due date with the Schedule K–1 due date or allowing extensions would significantly delay the reporting and payment of the additional reporting year tax by reviewed year partners, which is contrary to the interests of sound tax administration. A delay in the

reporting and payment of the additional reporting year tax would also increase the amount of interest partners would be liable for under section 6226(c). For example, if a reviewed year partner is furnished a push out statement on March 15, 2022 with respect to reviewed year 2020 under proposed § 301.6226–2 that statement reflects adjustments that were finally determined on or after January 15, 2022 (within the past 60 days). However, if instead the regulations provided that a statement may be furnished by the Schedule K–1 due date for the year in which the adjustments become finally determined (2022), the push out statement would not need to be furnished until March 15, *2023* (assuming no extensions). Under such a rule, the reviewed year partner would not be required to pay the additional reporting year tax until April 15, 2024, a full year after the partner would pay under the proposed regulations. See § 301.6226–3(b).

Accordingly, it is in the interests of sound tax administration to require the push out statements to be furnished expeditiously for all adjustments that are finally determined more than 60 days from the end of the calendar year because the additional reporting year tax is required to be paid with the return for the year in which the statement is furnished. This reporting and payment system also benefits partners by ensuring that reviewed year partners are furnished the push out statement close in time to the final determination of the partnership adjustments, allowing the reviewed year partners to determine any additional reporting year tax, effects on tax attributes, and make payments to stop interest from continuing to run.

For these reasons, the comment recommending alignment of the push out statement due date with the Schedule K–1 due date was not adopted. The recommendation that the push out statement due date be subject to extension also was not adopted for the reasons described in this section of this preamble.

In the case of a tiered structure, however, the comments' recommendation to align the push out statement due date with the Schedule K–1 due date is reflected in § 301.6226–3(e). Under § 301.6226–3(e)(3)(ii), pass-through partners must furnish statements to their affected partners no later than the extended due date for the return for the adjustment year of the audited partnership. This due date aligns the push out statements furnished by pass-through partners with the extended Schedule K–1 due date for the audited partnership, accommodating, in part, the comment's recommendation.

iii. Reasonable Diligence in Identifying Correct Address of Reviewed Year Partner

Under proposed § 301.6226–2(b)(2), a partnership must furnish statements to each reviewed year partner in accordance with the forms, instructions, and other guidance prescribed by the IRS. If the partnership mails the statement, the partnership must mail the statement to the current or last address of the reviewed year partner that is known to the partnership. If a statement is returned as undeliverable, the partnership must undertake reasonable diligence to identify a correct address for the reviewed year partner to which the statement relates. Proposed § 301.6226–2(b)(2).

One comment suggested the final regulations clarify that a master limited partnership (a publicly traded partnership as defined in section 7704) satisfies the reasonable diligence requirement under proposed § 301.6226–2(b) if the partnership utilizes the same procedures it uses for undeliverable Schedule K–1s. According to the comment, a master limited partnership (MLP) normally sends the Schedule K–1 to the address provided to the MLP by the partner's broker; MLPs provide call centers and web-based support that allow partners to directly provide updated contact information to the partnership; and MLPs typically do not attempt to update partners' addresses by using public name and address databases, but will update an address if mail is returned with a forwarding address.

The regulations under the centralized partnership regime are rules of general applicability for all partnerships. The procedure suggested by the comment would be cost-prohibitive for many partnerships. The Treasury Department and the IRS decline to provide a safe harbor in the final regulations solely for partnerships with the means to operate a call center. Additionally, it is not administrable to create special rules for different categories of partnerships as this would result in a multitude of special rules that in some cases may be contradictory and under inclusive. It may also create additional burdens for partnerships that cannot comply with a general rule designed with only a specific type of partnership in mind.

As the IRS gains experience with the centralized partnership audit regime and the push out election in particular, the Treasury Department and the IRS may consider whether further guidance regarding reasonable diligence would be beneficial for partnerships. For purposes of the final regulations, however, the comment's suggestion was not adopted, and the final regulations maintain the rule that the partnership undertake reasonable diligence when a statement is returned undeliverable.

In addition, the final regulations under § 301.6226–2(b)(2) clarify that if after undertaking reasonable diligence the partnership identifies a correct address for the reviewed year partner, the partnership must mail the statement to the reviewed year partner at that correct address.

iv. Effect of Failing To Properly Furnish Statements

Several comments suggested that the regulations clarify the effect of a partnership's failure to properly furnish statements under § 301.6226–2 has on the validity of an election under section 6226. One comment recommended clarification of whether a failure to undertake reasonable diligence under proposed § 301.6226–2(b)(2) with respect to a single partner would make the entire election under section 6226 invalid or only the portion allocable to that specific partner. Similarly, another comment recommended that the regulations clarify that a failure to furnish the statement to one partner would mean the push out election was still effective with respect to the other reviewed year partners, but that the partnership would be liable for the tax attributable to the partner who was not properly furnished a statement.

Pursuant to section 6226(a)(1), an election under section 6226 is made ''with respect to an imputed underpayment.'' Section 6226(a)(2) requires a partnership to furnish statements to ''each partner'' of the partnership for the reviewed year. Accordingly, the IRS may invalidate an election under section 6226(a) for any failure to meet the requirements of § 301.6226–1, regarding how an election must be made, or § 301.6226–2, regarding the manner in which statements must be furnished. Because an election under section 6226(a) is ''with respect to an imputed underpayment'' and not with respect to each specific partnership adjustment that resulted in that imputed underpayment, an election under section 6226 is either valid or invalid with respect to the entire imputed underpayment for which the election was purportedly made.

Nothing in the regulations, however, requires the IRS to determine that a purported election under section 6226 is invalid in situations where the partnership fails to fully comply with

§ 301.6226–1 or § 301.6226–2. To the contrary, pursuant to § 301.6226–1(c)(1), a push out election is valid unless and until the IRS determines that the election is invalid. Accordingly, if a partnership makes an election under § 301.6226–1 and furnishes statements to 99 out of 100 reviewed year partners, the partnership's push out election is valid unless and until the IRS determines the election is invalid.

Several comments suggested that the regulations provide a safe harbor that would satisfy the requirement to furnish statements to all reviewed year partners. Two comments suggested that the regulations adopt a de minimis rule providing that a failure to deliver a certain number of push out statements, or statements representing a de minimis amount of the pushed out adjustments, would not invalidate a partnership's election under section 6226. One comment recommended that the regulations provide that a partnership's push out election will not be invalidated if the partnership has substantially complied with the regulatory requirements. Another comment suggested that the regulations provide that a partnership will be deemed to have made a valid election under section 6226 if the partnership makes a good faith effort to furnish push out statements to all of its partners. Another comment recommended that the regulations clarify that the obligation to furnish a statement to each reviewed year partner is deemed satisfied if the partnership in good faith furnishes a statement to each partner to whom it was required to send a Schedule K–1 for the reviewed year. These comments were not adopted.

As an initial matter, proposed § 301.6226–2 did not require that the statements be *delivered* in order for the partnership's election under section 6226 to be valid. Rather, proposed § 301.6226–2(b)(2) required the partnership to furnish statements to partners in accordance with forms, instructions, and other guidance; mail the statements to the current or last address of the partner that is known to the partnership, and undertake reasonable diligence to identify a correct address for any returned statement. Compliance with the regulations does not require actual delivery, which is illustrated by proposed § 301.6226–2(b)(3), Example 1.

With respect to the suggestion that the regulations adopt a de minimis, substantial compliance, or good faith rule for failure to properly furnish statements to partners, these suggestions were not adopted. The push out regime is a collection mechanism in lieu of collecting the imputed underpayment from the audited partnership. The benefit to the audited partnership by making a push out election is that the partnership is no longer liable for the imputed underpayment to which the election relates. One of the requirements to obtain this benefit is that the partnership must furnish correct statements to all of the partnership's reviewed year partners. Until the statements have been furnished and the partners determine their additional reporting year tax, the tax implications for each partner as a result of taking into account the pushed out adjustments is uncertain. The additional reporting year tax for each partner may differ greatly, ranging from an increase in tax, a decrease in tax, or no liability at all.

None of the rules suggested by the comments—de minimis safe harbor, substantial compliance, good faith standard—takes into account the asymmetric tax consequences of the pushed out adjustments in the hands of the partners. For instance, a large percentage of adjustments may be allocated to one or a few partners and a failure to furnish statements to this de minimis number of partners would impede the proper collection of a large percentage of additional reporting year tax. Similarly, relatively small numerical adjustments may have significant tax effects on partners. A de minimis rule, whether based on the number of statements or amount of adjustments, would frustrate the collection aspect of section 6226. Additionally, a de minimis rule would present tax administration challenges because a partnership can pick and choose which statements to furnish to which partners, so long as the number of statements furnished or the amount of the pushed out adjustments fell within the de minimis amount. Good faith and substantial compliance rules present the same concerns.

Other provisions in the regulations mitigate against the concerns expressed by the comments. As previously discussed in this section of this preamble, under § 301.6226–2(b)(2) a partnership must send a push out statement to the current or last address of the partner that is known to the partnership. Doing so is generally sufficient for purposes of satisfying the address requirements of § 301.6226–2. Additionally, the general versus specific imputed underpayment rules also mitigate concerns about being unable to properly furnish a statement to a particular partner or group of partners. The partnership may request that the IRS designate a specific imputed underpayment with respect to the adjustments allocable to a partner or group of partners if the partnership has concerns about furnishing a statement to that partner or group of partners. See proposed § 301.6225–2(d)(6). For example, if the partnership lacks current address information for a specific partner, the partnership may request a specific imputed underpayment for that partner's share of the adjustments, pay the specific imputed underpayment, and make a push out election for the general imputed underpayment.

Two comments expressed concerns about situations when the partner no longer exists or is deceased or when the partnership does not have current contact information for a former partner. One of these comments suggested that once a partnership has furnished statements to its partners and to the IRS, the partnership has fulfilled its obligations under section 6226. The other comment specifically stated that neither the partnership nor the remaining partners should have any liability for the imputed underpayment or associated interest and penalties with respect to adjustments allocable to partners that are no longer in existence or who are deceased.

Nothing in the statute or the proposed regulations provides that the partnership or any remaining partners are liable for any amounts that are allocable to reviewed year partners who are no longer in existence or are deceased. Under section 6226(a) and proposed § 301.6226–1, there are only two requirements for a partnership to make an election under section 6226. One, the partnership must make an election under section 6226(a)(1) and § 301.6226–1 within 45 days of the date the FPA is mailed by the IRS. Two, the partnership must furnish statements to each partner from the reviewed year in the time and manner prescribed by § 301.6226–2. The plain language of proposed § 301.6226–1(c)(1) made clear that if a valid election is made under § 301.6226–1, the partnership is not liable for the imputed underpayment to which the election applies. Additionally, under proposed § 301.6226–2(f), only a partner's allocable share of the partnership adjustments are included on the statement furnished to that reviewed year partner. Pursuant to § 301.6226–3, only the adjustments reflected on the statement furnished to the reviewed year partner must be taken into account by that partner. To the extent the comment expressed concern about the partnership lacking a current address for a partner that no longer exists, is deceased or is otherwise a former partner, the proposed regulations

provide that the partnership may furnish statements to the last address known to the partnership. Only if the statements are returned as undeliverable is the partnership required to undertake reasonable diligence to ascertain a current address. Accordingly, no revisions to the final regulations were made in response to this comment.

v. Corrections of Errors in Statements

As discussed in section 4.B.iv. of this preamble, several comments expressed concerns about the requirement to furnish statements to all of the partnership's reviewed year partners. Although those comments were not adopted, the ability to correct errors in statements mitigates the potential effects of this rule. Proposed § 301.6226–2(e) provided that the partnership must provide correct information in the statements it furnishes to its partners and files with the IRS. Proposed § 301.6226–2(d)(2)(i) provided that if a partnership discovers an error in a statement within 60 days of the statement due date, the partnership must correct that error, and may do so without IRS consent. If a partnership discovers an error more than 60 days after the statement due date, the partnership may only correct the error after receiving IRS consent. Proposed § 301.6226–2(d)(2)(ii). Additionally, when the IRS discovers an error in a statement, the IRS may require the partnership to correct that error or to provide additional information. Proposed § 301.6226–2(d)(3).

The correction rules under proposed § 301.6226–2(d) were designed to require a partnership that identifies an error in a statement to correct that error expeditiously. Similarly, nothing in the regulations prevents a partner that receives a statement containing an error from alerting the partnership of the error within the 60-day period so that the audited partnership can correct the error. Even if the partnership corrects errors within the 60-day period, however, proposed § 301.6226–1(c)(2) provided the IRS could invalidate the election.

In light of the comments in section 4.B.iv of this preamble regarding the effect on the push out election of failures to furnish correct statements, the Treasury Department and the IRS have revised the rule under proposed § 301.6226–1(c)(2). The 60-day correction period should serve as a period of time after the statements are furnished to verify that the information on the statements was correct and to rectify any errors without adverse consequences regarding the push out election to the partnership or its partners. The ability to correct statements gives the partnership an opportunity to ensure statements were furnished properly and, to the extent a correction can cure the identified defects, to take steps to ensure that an election under section 6226 will not be invalidated. The ability to correct errors also ensures that partners have the correct information when the partners take into account the adjustments reflected on the statements.

Accordingly, the final regulations under § 301.6226–1(d) clarify that the IRS may not invalidate an election based on errors that are timely corrected by the partnership in accordance with § 301.6226–2(d). However, any errors in any statements furnished by the partnership are subject to penalty under section 6722 and the regulations thereunder. See § 301.6226–2(a). In the case of errors discovered by the IRS, the IRS is under no obligation to require the partnership to provide additional information or to correct any errors discovered or brought to the IRS's attention at any time. The IRS may, instead, invalidate the election.

One comment recommended changes to the correction process under § 301.6226–2(d) and the timing of the correction period. Specifically, the comment suggested with respect to errors discovered by a partnership, the partnership should have an automatic obligation and right to issue corrected statements for errors discovered no later than 60 days after the extended due date of the audited partnership's adjustment year return. The comment also suggested that for errors discovered by the partnership after this date, the partnership must notify the IRS, and unless the IRS objects within 90 days of such notification, the partnership must issue the corrected statements. The comment suggested that if the IRS issues a denial within the 90-day period, such denial shall include an explanation for the denial, and the partnership shall have the ability to challenge the decision with IRS Appeals. These suggestions were not adopted.

It is not in the interest of sound tax administration to place a limit on the time the IRS has to consider whether to allow corrected statements after 60 days from the due date of the statements. For example, a partnership may request to make a correction at a time when the period of limitations on assessing additional tax for the affected partners was closed, but the period of limitations for requesting a refund as to other affected partners was still open. If the IRS was unable to process the request to issue corrected statements within 90 days, the corrected statements would be furnished to the partners and those partners would take into account the adjustments. If the IRS determines that the correction of the errors was insufficient, the IRS could determine the partnership's election under section 6226 was invalid, but the period of limitations on assessing the imputed underpayment may have expired by that time. By requiring IRS permission before any corrected statements are furnished, the IRS can evaluate each request based on the facts and circumstances and ensure that any proposed corrections are consistent with the determinations made during the partnership proceeding and would not frustrate the collection of any amounts owed as a result of the partnership proceeding. Requiring IRS permission also incentivizes partnerships to submit correct statements by the due date, which ensures that partners are provided timely and accurate information with which to take into account the adjustments. Because partners may have already taken into account the adjustments, any corrections received by the partners after they have taken into account the adjustments could detrimentally affect those partners.

The same comment also suggested that with respect to errors discovered by the IRS, the IRS may not unreasonably refuse to permit a partnership to issue corrected statements if correction of the error results in a reduced tax liability by the affected partners or to correct the allocation of an adjustment between partners. This comment was not adopted. To extent this comment was suggesting that the regulations require the IRS to require the partnership to correct errors the IRS discovers in these circumstances, the comment was not adopted. The IRS needs discretion to evaluate whether requiring the correction of errors is in the interest of sound tax administration. For example, the errors may be de minimis or the correction of the errors may result in barred assessments or require partners to file amended returns if they have already taken into account the adjustments. To the extent the comment was suggesting that the IRS should not unreasonably withhold consent in situations where the partnership has discovered errors, the comment was also not adopted. As stated earlier in this section of this preamble, the IRS needs the flexibility to evaluate requested changes based on the facts and circumstance of each request.

vi. Contents of the Statements

Under proposed § 301.6226–2(e), each statement described in proposed

§ 301.6226–2 must include an enumerated list of items, including the partner's name and taxpayer identification number (TIN) and any other information required by forms, instructions, and other guidance prescribed by the IRS. Several comments suggested that the IRS assign a unique control number or other numerical code to a notice of final partnership adjustment and require that all push out statements with respect to an imputed underpayment reflected on that FPA include that control number. The IRS intends to adopt this suggestion by assigning a unique control number to each examination under the centralized partnership audit regime and by using that number for each form, letter, or other document used in the examination as well as any forms or statements utilized for a push out election. The final regulations, however, do not include the audit control number as an enumerated item under § 301.6226–2(e). Requiring the control number through the forms and instructions provides the IRS with the flexibility to gain experience with the use of a unique control number and to make changes, as necessary, without needing to amend the regulations. This flexibility preserves government resources and also expedites the process for taxpayers to be aware of changes in IRS procedures.

C. Adjustments Taken Into Account by Partners

The comments regarding how adjustments are taken into account by partners covered five general areas: (1) The calculation of the additional reporting year tax; (2) penalties, additions to tax, and additional amounts; (3) pass-through partners; (4) qualified investment entities and master limited partnerships (MLPs); and (5) the examples under proposed § 301.6226–3(h).

i. Calculation of the Additional Reporting Year Tax

Former proposed § 301.6226–3(a) provided that the chapter 1 tax for each reviewed year partner for the reporting year was *increased* by the additional reporting year tax, which was generally defined as the aggregate of the correction amounts determined under former proposed § 301.6226–3(b). Under former proposed § 301.6226–3(b), the aggregate of the correction amounts was determined by adding the amount by which a reviewed year partner's chapter 1 tax would have increased for the first affected year with the amount by which the partner's chapter 1 tax for any intervening year would have increased if the adjustments were taken into account in the first affected year. Because the rule did not account for any decrease in a reviewed year partner's tax for a taxable year, former proposed § 301.6226–3(b)(1) provided that a correction amount for any taxable year could not be less than zero and that any amount less than zero could not reduce any other correction amount.

Section 206(e) of the TTCA amended section 6226(b) to provide that, when a reviewed year partner takes into account the adjustments under section 6226(b), the partner's chapter 1 tax for the reporting year is adjusted by the amounts the partner's chapter 1 tax for the first affected year or any intervening year would increase or decrease if the partner's share of the adjustments were taken into account in the first affected year. The TTCA amendments to section 6226(b) were adopted in the August 2018 NPRM. Proposed § 301.6226–3(b), as revised in the August 2018 NPRM, provided that each reviewed year partner's chapter 1 tax for the reporting year is increased or decreased by the additional reporting year tax, as appropriate. Under proposed § 301.6226–3(b)(2) and (3), the correction amounts are the amounts by which the partner's chapter 1 tax would increase or decrease if the partner's taxable income for that year were recomputed by taking into account the partner's share of the partnership adjustments. Under proposed § 301.6226–3(b)(1), as revised, a correction amount for the first affected year or any intervening year may be less than zero, and any correction amount less than zero may reduce any other correction amount.

The final regulations under § 301.6226–3(b)(1) were further revised to provide that nothing in § 301.6226–3 entitles any partner to a refund of tax imposed by chapter 1 to which such partner is not entitled. This language clarifies that the rules under section 6226 and 6227 are consistent insofar as those rules concern the ability of a partner to claim a refund of an overpayment when taking into account partnership adjustments. See § 301.6227–3(b)(1). Whether an overpayment exists is determined by the Code and existing law outside the scope of these regulations. See section 5.D. of this preamble for further discussion.

Proposed § 301.6226–3(b)(2) and (3) provided that when computing a correction amount for the first affected year or any intervening year, partners should account for the amount of tax shown on an amended return for such year, ''including an amended return filed, or alternative to an amended return submitted, under section 6225(c)(2) by a reviewed year partner.'' The final regulations under § 301.6226–3(b)(2) and (3) remove the language referring to the alternative procedure for filing amended returns under section 6225(c)(2). Amounts assessed based on submissions under the alternative procedure more appropriately fall within the amounts described in § 301.6226–3(b)(2)(ii)(B) and (b)(3)(ii)(B). Accordingly, treating such amounts as akin to amounts shown on amended returns could have led to inaccurate correction amounts. As such, the final regulations under § 301.6226–3(b)(2)(ii)(B) and (b)(3)(ii)(B) have been revised to clarify that the amounts under those provisions include not only the amounts described in § 1.6664–2(d), but also any amounts not included on the return of a partner which are assessed against and collected from the partners. Such amounts include amounts paid as part of modification under § 301.6225–2, including under the alternative procedure or in accordance with a closing agreement. Such amounts do not include, however, any amounts paid with an amended return filed as part of modification because those amounts are included with the amounts shown on a return or amended return under § 301.6226–3(b)(2)(ii)(A) and (b)(3)(ii)(A).

Several comments received prior to the TTCA amendments recommended that the calculation of the additional reporting year tax under former proposed § 301.6226–3(b) be revised to account for potential decreases to a reviewed year partner's chapter 1 tax had the adjustments been taken into account. Certain comments stressed that it was critical for taxpayers to receive symmetrical treatment under section 6226 with respect to adjustments for overpayments or other adjustments that would serve to reduce the additional reporting year tax. One comment suggested that a decrease in tax in one year as a result of the adjustments should be able to reduce the additional tax payable with respect to any other taxable year. One comment specifically recommended that former proposed § 301.6226–3(b) be revised to provide that the correction amount for a partner is the amount by which the reviewed year partner's chapter 1 tax would increase or decrease for the first affected year and all intervening years.

The plain language of section 6226(b), as amended by the TTCA, and proposed § 301.6226–3(a) and (b), as revised in the August 2018 NPRM, make clear that any decreases in tax that result from taking into account the adjustments can produce a correction amount, and in

turn an additional reporting year tax, that is less than zero. Accordingly, because the recommendations made by the comments were reflected in the proposed regulations, no changes were necessary in response to those comments.

Another comment recommended that the regulations clarify how information would be communicated to reviewed year partners to calculate a correction amount under section 6226(b)(2)(B) for an intervening year and suggested that partners calculate only the *net* increase in tax in each intervening year. The comment described an example of an adjustment that results from timing differences and recommended that the push out statement include the beneficial effect of deductions, if any, in subsequent years.

Consistent with section 6226(b)(2)(B), proposed § 301.6226–3(b)(3) provided that a correction amount for an intervening year is the amount the partner's chapter 1 tax for such year would increase or decrease after taking into account any adjustments to tax attributes that resulted from taking into account the partnership adjustments in the first affected year. Accordingly, in order to determine an intervening year correction amount, the partner needs to know the partnership adjustments for the reviewed year, which is information provided on the push out statement furnished to the partner. See § 301.6226–2(e). No changes were made to the regulation to respond to the comment's request for clarification on this point. Regarding the comment's suggestion that the correction amount for any intervening year be calculated by reference to the partner's net increase in tax, the rule under § 301.6226–3(b)(3) accommodates this suggestion because it accounts for both increases and decreases that would have occurred in an intervening year. Therefore, no changes were made to the regulations in response to this suggestion.

The comment also recommended that the regulations provide that each partner calculates the correction amounts as though drafting an amended return and that such calculation should be based on generally applicable rules under the Code. The plain language of proposed § 301.6226–3(b)(2) and (3) provided precise rules for calculating the correction amounts. Those rules are consistent with how underpayments and overpayments are generally calculated elsewhere in the Code and regulations and thus provide for the method the comment recommended. See, for example, § 1.6664–2. Forms and instructions will provide additional guidance for partners in computing correction amounts and the additional reporting year tax. Providing this additional guidance through forms and instructions allows for both the IRS and taxpayers to gain experience with those documents and to recommend and to make changes, as necessary and appropriate, without needing to amend the regulations. This informal guidance process preserves government resources and expedites the process by which the IRS can respond to taxpayer needs and by which taxpayers are made aware of changes in IRS procedures. Accordingly, no changes were made to the regulations in response to this comment.

Two comments observed that an audit under the centralized partnership audit regime may be concluded after the statute of limitations for amending partner returns has expired. The comments recommended that the statute of limitations should be automatically extended to allow partners time to file an amended return and claim a refund.

To the extent these comments were concerned about the inability to benefit from any decreases in tax that would have resulted from taking into account the adjustments under section 6226(b), those concerns are addressed by proposed § 301.6226–3(b) as revised in the August 2018 NPRM. As discussed earlier in this section of this preamble, the plain language of § 301.6226–3(b) allows partners to account for increases and decreases that would have resulted in the first affected year or any intervening year were the adjustments taken into account in those years.

To the extent the comment was addressing seeking refunds via amended returns outside the push out process, § 301.6225–2(d)(2) allows for modification of the imputed underpayment via partner amended returns for taxable years for which the period of limitations would otherwise be expired. See section 6225(c)(2)(D). To the extent the comment was seeking a mandatory extension of all partner (direct and indirect) statutes of limitation to file amended returns and claim a refund, it is not in the interests of sound tax administration to provide for automatic extensions where other mechanisms provide adequate remedies for taxpayers. Under both the push out process and the amended return modification procedures, partners may benefit from decreases in tax that result from partnership adjustments. Creating an additional automatic extension process to achieve the same results potentially leads to more administrative burden for the IRS without any tangible benefit for partners. Accordingly, the comments' recommendation for automatic extensions in order to file refund claims was not adopted.

Two comments suggested that the final regulations clarify whether a partner must calculate and pay any additional taxes due under chapters 2 and 2A of the Code when taking into account adjustments under section 6226(b). One comment specifically asked about the application of chapters 2 and 2A in the context of an election by the taxpayer to pay the safe harbor amount. Another comment asked about the consequences of failing to pay chapter 2 or 2A tax if the regulations imposed such a requirement.

First, regarding the comment specific to the safe harbor amount, the safe harbor amount was removed from the regulations in the December 2017 NPRM, no comments were received regarding its removal, and the final regulations do not include a safe harbor amount. Accordingly, inasmuch as this comment was concerned about the safe harbor amount, this comment was not adopted.

Regarding the other comments, section 6226(b)(1) provides that each partner's ''tax imposed by chapter 1'' shall be adjusted by the aggregate of the correction amounts determined under section 6226(b)(2). Both section 6226(b)(2)(A) and (B) describe the correction amounts as amounts by which the partner's ''tax imposed under chapter 1'' would increase if the partner's share of the adjustments were taken into account. Consistent with section 6226(b), proposed § 301.6226–3(b) provided that each partner's chapter 1 tax for the reporting year is increased or decreased by the amounts by which the partner's chapter 1 tax would increase or decrease were the adjustments taken into account. The plain language of the statute and the proposed regulations makes clear that a reviewed year partner only increases its chapter 1 reporting year tax by the aggregate of the correction amounts, which are calculated by reference to the amounts by which the partner's chapter 1 tax would increase or decrease for the first affected year or any intervening year. Therefore, no changes were made to § 301.6226–3(b) in response to this comment. Furthermore, because the regulations do not require payment of chapter 2 or 2A taxes when a partner takes into account adjustments under section 6226(b), the consequences of failing to pay those taxes is beyond the scope of the regulations.

ii. Penalties, Additions to Tax, and Additional Amounts

Former proposed § 301.6226–3(a) provided that a reviewed year partner

must pay the partner's share of any penalties, additions to tax, or additional amounts determined at the partnership level reflected on the statement furnished to the partner under § 301.6226–2. See former proposed § 301.6226–2(e)(7) and (f)(3). Example 1 in former proposed § 301.6226–3(g) illustrated the application of this rule. In the example, the IRS determines an imputed underpayment and a related accuracy-related penalty in the amount of $32. The partnership elects the application of section 6226 with respect to the imputed underpayment and furnishes a statement to partner A, a 25 percent partner, reflecting A's share of the adjustments and A's share of the $32 penalty amount ($8). The example concludes that A must pay its $8 share of the penalty with its reporting year return.

One comment expressed concern with Example 1 under former proposed § 301.6226–3(g), particularly the result that a partner pays a penalty amount based on the amount of the partnership's imputed underpayment, rather than the amount of the partner's increased tax liability. The comment recommended the regulations clarify that penalties are not measured by reference to the imputed underpayment amount determined at the partnership level.

This comment was addressed by proposed § 301.6226–3(d), as revised in the December 2017 NPRM. As revised, proposed § 301.6226–3(d)(2) provided that a reviewed year partner calculates the amount of any penalty, addition to tax, or additional amount at the partner level by treating a correction amount determined under § 301.6226–3(b) as if it were an underpayment or understatement for the first affected year or intervening year, as applicable. If, after taking into account the partnership adjustments, the reviewed year partner did not have an underpayment, or had an underpayment that fell below the applicable threshold for the imposition of a penalty, no penalty would be due from the reviewed year partner. Proposed § 301.6226–3(d)(2). Accordingly, the proposed regulations make clear that a partner's penalty is not based on the imputed underpayment amount determined at the partnership level, as recommended by the comment. Example 1 under § 301.6226–3(h) was also revised to account for this rule change.

I. Penalty Defenses

Former proposed § 301.6221(a)–1(c) had provided that any defense to any penalty, addition to tax, or additional amount must be raised by the partnership in the partnership-level proceeding, regardless of whether the defense was based on facts and circumstances relating to a person other than the partnership. As discussed in section 1.A of this preamble, former proposed § 301.6221(a)–1(c) was removed from the regulations in the December 2017 NPRM. As part of the revisions in the December 2017 NPRM, the regulations under section 6226 (former proposed § 301.6226–3(i)) were also revised to provide that the calculation of the partner's penalty amount in the case of a push out election is based on the characteristics of, and facts and circumstances applicable to, the reviewed year partner. In addition, a reviewed year partner claiming that a penalty, addition to tax, or additional amount is not due because of a partner-level defense may raise that defense, but must first pay the penalty and file a claim for refund for the reporting year. See proposed § 301.6226–3(d)(3), as revised in the August 2018 NPRM.

One comment recommended that the regulations clarify that a partnership that makes a push-out election will be able to avail itself of partner-level defenses at the partnership level. For the reasons discussed in section 8.A. of this preamble, this comment was not adopted. Under § 301.6233(a)–1(c)(1), a partner-level defense may not be raised in a proceeding of the partnership, including a partnership that makes an election under section 6226, except as otherwise provided in guidance prescribed by the IRS.

Two other comments recommended that the regulations should provide a mechanism for partners to raise partner-level defenses prior to assessment, rather than requiring the partner to first pay the penalty and then file a claim for refund to raise the partner-level defense. One comment specifically suggested that a partner could raise a partner-level defense in the push out context by submitting a statement supporting that defense with the partner's reporting year return. This comment further suggested that the requirement to pre-pay penalties is contrary to the procedures in place for similar scenarios involving amended returns and audit adjustments. These comments were not adopted.

First, to the extent the comment addresses procedures for amended returns and audit adjustments other than partnership adjustments, those procedures are beyond the scope of these regulations. The centralized partnership audit regime is a new set of procedures that does not have an existing parallel in other areas of procedural tax law, and, as such, other scenarios involving amended returns and audit adjustments are not sufficiently similar to provide a relevant baseline against which to determine how the centralized partnership audit procedures should be developed.

Second, under the centralized partnership audit regime, the applicability of penalties, additions to tax, and additional amounts that relate to partnership adjustments is determined at the partnership level. Section 6221(a). A push out statement furnished to a partner under § 301.6226–2 will include any penalties, additions to tax, or additional amounts determined at the partnership level that are applicable to the adjustments pushed out to that partner. The applicability of such penalties, additions to tax, and additional amounts as set forth in the push out statement furnished to the partner are binding on the partner pursuant to section 6223. See § 301.6226–1(e). Therefore, when taking into account the pushed out adjustments, the applicability of any penalties related to those adjustments has already been determined. The imposition and amount of the penalty is determined only upon the partner calculating the additional reporting year tax (or imputed underpayment in the case of pass-through partners) and applying any relevant threshold amounts.

Because the IRS has already determined that a penalty applies, it is contrary to the interests of sound tax administration to allow partners to argue they are not liable for the penalty based on partner-specific reasons without first requiring payment of the penalty. Allowing a partner to raise a partner-level defense without prepaying the penalty would require the IRS to check each reviewed year partner's return to see if a penalty defense was properly raised and open up an examination of the partner to determine the validity of the defense. Such a process would frustrate the collection of the penalties, the applicability of which was already determined at the partnership level in an examination. Requiring pre-payment of penalties before defenses are raised ensures that partners raise only colorable penalty defense claims. For those that do not have such claims, it will ensure immediate collection of the appropriate amount of penalties.

One comment observed that, as a practical matter, it is unclear how a limited partner would dispute penalties determined at the partnership level, particularly because the partner may have no or limited information of actions at the partnership level or

control over such actions even if known. The comment recommended clarifying what constitutes reasonable cause or good faith under circumstances that will be common among partnerships with limited partners.

Proposed § 301.6226–3(d)(3) defined partner-level defenses as those defenses that are personal to the reviewed year partner and based on the facts and circumstances applicable to that partner (for example, a reasonable cause and good faith defense under section 6664(c) based on facts specific to a particular partner). Limited partners will have an opportunity to raise defenses specific to their facts and circumstances. The partners (limited partner or otherwise) should have all of the information needed to adequately raise a partner-level defense because that defense is based on the facts and circumstances applicable to the specific partner raising the defense. The partner does not need new information regarding partnership-level actions or control over partnership-level information that the partner did not have access to at the time it took a position on its return reflecting the items from the partnership subject to penalty. The centralized partnership audit regime does not alter the existing law under the Code, regulations, or applicable case law relating to reasonable cause and good faith determinations. Furthermore, as discussed in section 8.A of the preamble, any defense that is based on the conduct or actions of the partnership is a partnership-level defense that must be raised by the partnership during the partnership proceeding. See proposed § 301.6233(a)–1(c)(2)(v).

II. Partnership Payment of Penalties on Behalf of Partners

One comment recommended that the partnership have the option of paying penalties at the partnership level while pushing out the partnership adjustments to its partners. The comment noted that pushing out penalties may require long and complex explanations regarding why the penalties apply, which could be burdensome to the partnership, partners, and the IRS, and may cause friction among the partners.

Section 6226(c)(1) provides that any penalties, additions to tax, or additional amounts shall be determined as provided under section 6221, and the partners of the partnership for the reviewed year shall be liable for any such penalty, addition to tax, or additional amount. If the partnership were to pay any penalties, additions to tax, or additional amounts in lieu of pushing out those amounts to its partners, the payment would be a payment towards the liability of the partners, not the partnership. The ability of a person to make a payment towards another's tax liability currently exists outside of the centralized partnership audit regime, and the regime does not alter or affect this ability. The partnership and its partners may enter into a business arrangement whereby the partnership makes a payment towards the partner's penalty liabilities, or whereby the partnership remits an amount to each partner to compensate for any potential penalties, additions to tax, or additional amounts. Nothing in the regulations under § 301.6226–3 would disturb those types of arrangements.

At the same time, the regulations do not provide a specific method for making such payments. Creating and monitoring a separate system to allow for partnerships to pay penalties on behalf of its partners would be burdensome for the IRS, partnerships, and partners. As discussed earlier in this section of the preamble, under proposed § 301.6226–3(d)(2) a partner's penalty amount is calculated based on the facts and circumstances unique to each partner. For the partnership to fully pay the amount of penalties owed by its partners, the partnership would need to obtain detailed information about each partner's personal tax situation, which is burdensome for the partnership and potentially invasive to the partners. This information would also have to be transmitted to the IRS to verify the correct penalty amount was paid and reflected in each partner's account. For these reasons, this comment was not adopted.

Another comment similarly suggested that the IRS create a process by which the partnership could pay both interest and penalties on behalf of its foreign partners so that those foreign partners would not need to obtain a TIN to file a U.S. tax return to report and pay interest and penalties. The comment suggested that the IRS could require, as part of that process, the partnership to obtain documentation from the foreign partner authorizing the partnership to make the payment on the foreign partner's behalf. The comment also recommended that the regulations make clear such a payment would not preclude the partnership from making a push out election with respect to the adjustments. This comment was not adopted.

As discussed earlier in this section of this preamble, there are administrative difficulties involved with adopting a specific method for a partnership to determine and pay over to the IRS its partners' amounts of penalties and interest. Further, because penalties and interest are determined at the partner level, a partnership will generally not be able to pay the exact amount of penalties and interest due with respect to each foreign partner. Therefore, there would be no basis for waiving the filing requirement for a foreign partner under these circumstances, even in cases in which the partnership is able to satisfy the tax due at source. For these reasons, the comment's suggestion was not adopted and no changes were made to the regulations in response to the comment.

III. Interest on Penalties, Additions to Tax, and Additional Amounts

Section 6226(c)(2) provides that in the case of a push out election, interest shall be determined at the partner level from the due date of the return for the taxable year to which the increase in chapter 1 tax is attributable. Proposed § 301.6226–3(c)(1) provided that interest on each correction amount greater than zero is calculated from the due date (without extension) of the reviewed year partner's return for the applicable taxable year until the amount is paid. For purposes of calculating interest on any penalties, additions to tax, or additional amounts, proposed § 301.6226–3(c)(2) similarly provided that such interest is calculated from the due date (without extension) of the reviewed year partner's return for the applicable taxable year until the amount is paid.

One comment observed that section 6226(c)(2) is silent as to whether the due date of the return for the purpose of calculating interest is determined with or without regard to any extension of time for filing, and noted that the statute does not differentiate between interest on tax and interest on penalties and additions to tax. The comment recommended the regulations adopt a bifurcated approach under which interest would run on the correction amounts from the due date of the return without regard to extensions while interest on penalties would run from the due date of the return including any extensions. The comment observed a similar bifurcated approach exists for calculating interest on tax and certain penalties outside the partnership context.

After consideration, the Treasury Department and the IRS have adopted this comment to be consistent with the method of calculating interest on penalties outside of the centralized partnership audit regime pursuant to section 6601(e)(2)(B). Accordingly, § 301.6226–3(c)(2) now provides that

interest on any penalties, additions to tax, or additional amounts is calculated from the due date (including any extension) of the reviewed year partner's return for the applicable tax year until the amount is paid.

IV. Interest on the Additional Reporting Year Tax

Section 6226(c)(2) provides that interest in the case of a section 6226 election is determined at the partner level, from the due date of the return for the taxable year to which the increase in chapter 1 tax is attributable, and at the underpayment rate under section 6621(a)(2) (substituting 5 percent for 3 percent). As explained in section 4.A of the preamble to the August 2018 NPRM, while the TTCA amended section 6226(b) to provide that both increases and decreases in chapter 1 tax are used in computing a partner's additional reporting year tax, the TTCA did not similarly amend the reference to ''increases'' in section 6226(c)(2). The result of the changes to section 6226 is that interest only applies to the increases in the chapter 1 tax that would have resulted from taking into account the partnership adjustments under section 6226. No provision under the centralized partnership audit regime provides for interest on a *decrease* in chapter 1 tax that would have resulted in the first affected year or any intervening year if the adjustments were taken into account in those years. Accordingly, proposed § 301.6226–3(c)(1) provided that interest on the correction amounts determined under proposed § 301.6226–3(b) is only calculated for taxable years for which there is a correction amount greater than zero, that is, taxable years for which there would have been an increase in chapter 1 tax if the adjustments were taken into account.

One comment suggested that the final regulations clarify that the IRS will pay interest on any refunds issued on prior overpayments resulting from a taxpayer's statements filed under section 6226 with their reporting year return. The comment expressed the belief that the rule under section 6226(c)(2) is only intended to increase the normal statutory rate of interest imposed, not to exclude interest on overpayments.

The additional reporting year tax is calculated under section 6226(b)(2) by reference to the amount that a partner's chapter 1 tax ''would'' increase or decrease if the partner's share of adjustments ''were taken into account'' in the first affected year or in the case of an intervening year, the amount by which such tax would increase or decrease by reason of the adjustment to tax attributes. An adjustment to a tax attribute is any tax attribute which ''would have been affected'' if the adjustments ''were taken into account'' in the first affected year. Under the language of section 6226(b)(2) and (3), adjustments are not actually taken into account like they would be if an amended return was filed under § 301.6225–2(d)(2). Similarly, the increases or decreases do not actually occur as they would in the amended return context and tax attributes are not actually adjusted as part of this calculation. Accordingly, in the case of an increase in tax that would result in the first affected year or any intervening year if the adjustments were taken into account, no overpayment results for any year because there is an increase in tax, not a decrease. In the case of a decrease in tax that would result in the first affected year or any intervening year if the adjustments were taken into account, there is no overpayment because the determination of a decrease in tax is merely by reference to the relevant year to be taken into account as part of the total additional reporting year tax. Therefore, no overpayment interest is due and owing to the partner.

iii. Pass-Through Partners

The June 2017 NPRM reserved on the issue of how a pass-through partner takes into account its share of adjustments reflected on a statement furnished to the pass-through partner under § 301.6226–2. In response to the June 2017 NPRM, multiple comments recommended that pass-through partners take into account adjustments by pushing out those adjustments to the next tier of partners and suggested approaches to achieve this result.

After careful consideration of those comments, the December 2017 NPRM adopted an approach that required a pass-through partner to take into account adjustments reflected on a push out statement by either furnishing statements to its own partners or by paying an amount calculated like an imputed underpayment with respect to the adjustments, plus any applicable penalties and interest. See former proposed § 301.6226–3(e)(1). The regulations created an iterative process under which any pass-through partner receiving a statement from another pass-through partner must also take into account the adjustments on the statement by furnishing statements to its own partners or paying an amount calculated like an imputed underpayment. Any ultimate, non-pass-through partner was required to take into account its share of the adjustments as if such partner was a reviewed year non-pass-through partner. If a pass-through partner failed to take into account the adjustments in accordance with former proposed § 301.6226–3(e)(1), the pass-through partner was required to pay an amount calculated like an imputed underpayment plus any applicable penalties and interest.

Section 204(a) of the TTCA added to the Code section 6226(b)(4), which provides that a partnership or S corporation that receives a statement under section 6226(a)(2) must file a partnership adjustment tracking report with the IRS and furnish statements under rules similar to the rules of section 6226(a)(2). If the partnership or S corporation fails to furnish such statements, the partnership or S corporation must compute and pay an imputed underpayment under rules similar to the rules of section 6225. The rules under former proposed § 301.6226–3(e) were revised in the August 2018 NPRM to reflect the amendment to section 6226(b)(4). See section 4.A. of the preamble to the August 2018 NPRM.

Three comments were received regarding proposed § 301.6226–3(e). The comments focused on three topics: (1) The statements furnished under proposed § 301.6226–3(e)(3); (2) the computation of an imputed underpayment under proposed § 301.6226–3(e)(4); and (3) the payment of the additional reporting year tax by affected partners in accordance with proposed § 301.6226–3(e)(4)(iv).

I. Statements Furnished Under § 301.6226–3(e)(3)

Proposed § 301.6226–3(e)(1) provided that each pass-through partner that is furnished a statement described in § 301.6226–2 with respect to adjustments of an audited partnership must file and furnish statements to its affected partners. Affected partners are persons that held an interest in the pass-through partner at any time during the taxable year of the pass-through partner to which the adjustments in the statement relate. Consistent with section 6226(b)(4)(B), proposed § 301.6226–3(e)(3)(ii) provided that a pass-through partner must furnish such statements no later than the extended due date for the return for the adjustment year of the audited partnership. One comment recommended that the regulations provide a process by which a pass-through partner could apply to the IRS for a discretionary short-term extension of the time period set out in proposed § 301.6226–3(e)(3)(ii). This extension would address exceptional or unusual circumstances in which a pass-through

partner is unable to furnish the statements to all its affected partners within the specified time frame. This comment was not adopted.

Section 6226(b)(4)(B) expressly provides that statements under section 6226(b)(4)(A) ''shall be furnished by not later than the due date for the return for the adjustment year of the audited partnership.'' The statute does not provide for an extension beyond the extended due date of the adjustment year return. Under proposed § 301.6226–3(e)(3)(ii), the adjustment year return due date is the extended due date under section 6081 regardless of whether the audited partnership is required to file a return for the adjustment year or timely files a request for an extension under section 6081 and the regulations thereunder. As a threshold matter, the language of section 6226(b)(4)(B), providing that statements ''shall be furnished not later than'' the due date suggests that discretionary extensions are not permissible. Furthermore, the due date for furnishing statements to affected partners must be fixed for all pass-through partners for the IRS to ensure statements are furnished timely and payments are timely made. In addition, the ultimate affected partners are obligated to file and pay additional reporting year tax by the extended due date of the audited partnership. Extending the due date for furnishing statements to affected partners for any pass-through partner would cause delays for upper tier affected partners and potentially subject ultimate affected partners to penalties for filing or paying additional reporting year tax more than 30 days after the extended due date. Therefore, the regulations do not provide for discretionary extensions of the time period that was set forth in proposed § 301.6226–3(e)(3)(ii).

Another comment observed that the proposed regulations did not specify who at the IRS must receive the statements furnished by a pass-through partner and recommended that the final regulations clearly state to whom at the IRS pass-through partner statements should be directed. This comment was not adopted, but the regulations were revised to provide that a pass-through partner must file and furnish statements to its affected partners in accordance with forms, instructions, or other guidance prescribed by the IRS. Providing the method for filing and furnishing statements in forms, instructions, and other guidance provides the IRS with the flexibility to change the filing and furnishing procedures as appropriate and necessary without needing to amend the regulations. This flexibility is particularly important as the IRS gains experience with the centralized partnership audit regime. Flexibility also preserves government resources and will expedite the process for the IRS to respond to taxpayer needs and for taxpayers to be aware of changes in IRS procedures.

Under § 301.6226–3(e)(3)(iii), each statement furnished by a pass-through partner must include correct information concerning certain enumerated items. These items include the name and TIN of the affected partner to whom the statement is being furnished as well as any other information required by forms, instructions, and other guidance prescribed by the IRS. One comment suggested that the regulations should clarify whether a statement provided under proposed § 301.6226–3(e) would be effective without the TIN of the affected partner if the affected partner is a foreign person not otherwise required to obtain a TIN. The comment observed that foreign persons generally are not required to obtain a U.S. TIN, particularly if they will not claim the benefits of a U.S. tax treaty.

Proposed § 301.6226–3(e)(3)(iii) required each statement furnished by a pass-through partner to include the correct TIN of the affected partner. This information is critical to the administration of the push out regime because it allows the IRS to identify the person to whom the statement is furnished, and it provides the IRS with the ability to match the adjustments on that statement with the return filed by the affected partner. In response to this comment, however, the final regulations require that a push out statement furnished under § 301.6226–3(e) include the partner's TIN ''or alternative form of identification as prescribed by forms, instructions, or other guidance.'' See also § 301.6226–2(e) (imposing the same requirement for push out statements furnished to reviewed year partners). In addition, the election under § 301.6226–1 by the audited partnership must include the TIN ''or alternative form of identification as prescribed by forms, instructions, or other guidance'' for each reviewed year partner of the partnership. See § 301.6226–1(c)(3)(ii). The addition of the quoted language in each section contemplates that there may be situations in which an alternative form of identification for certain partners is warranted.

Accordingly, as the IRS gains experience with the centralized partnership audit regime, the IRS may allow for the use of an alternative form of identification through forms, instructions, or other guidance if the IRS determines such identification is appropriate for foreign persons. This flexibility gives the IRS and partnerships time to evaluate whether an alternative form of identification is administrable and beneficial without needing to amend the regulations to allow for alternative identification, which preserves government resources and expedites the process by which the IRS responds to taxpayer needs and taxpayers become aware of changes in IRS procedures.

The same comment also recommended that to the extent practicable, the IRS identify as soon as possible any additional information that may be required in additional forms, instructions, or other guidance for statements under § 301.6226–3(e)(3). The comment suggested regulations or drafts of forms or instructions could identify such additional information, which would allow partnerships to timely, completely, and accurately collect necessary data from partners to comply with requirements and avoid the risk that the IRS would deny a push out election due to incomplete or inaccurate or untimely data.

As discussed earlier in this section of the preamble, maintaining the ability to require additional information on forms, instructions, or other guidance gives the IRS the flexibility to adapt statements without having to amend the regulations. At the same time, the IRS recognizes the need of taxpayers to know of the information required to not jeopardize compliance with the regulations. The IRS plans to develop and release drafts of forms and instructions for public inspection as soon as possible.

In addition to the changes described earlier in this Summary of Comments and Explanation of Revisions, two other clarifying changes were made to § 301.6226–3. First, § 301.6226–3(e)(3)(iii)(M) was clarified to provide that the information required to be included in statements furnished to affected partners regarding the applicability of penalties, additions to tax, or additional amounts are the determinations made at the audited partnership level pertaining to the applicability of penalties, additions to tax, or additional amounts. This change reinforces the notion that the applicability of penalties is determined at the audited partnership level and that penalties attach to adjustments as they are pushed out through the tiers. An affected partner that pays an imputed underpayment or additional reporting year tax independently determines the amount of any penalty applicable to

adjustments that are taken into account by the affected partner.

In addition, § 301.6226–3(e)(4)(iv)(B) was clarified to provide that when determining interest on an imputed underpayment paid by a pass-through partner, the imputed underpayment is treated as if it were a correction amount for the first affected year. This change conforms the language in § 301.6226–3(e)(4)(iv)(B) with the language in § 301.6226–3(c) regarding interest on correction amounts.

II. Modifications Available to Pass-Through Partner Paying an Imputed Underpayment

If a pass-through partner does not furnish statements, the pass-through partner must compute and pay an imputed underpayment in accordance with proposed § 301.6226–3(e)(4). Section 6226(b)(4)(A)(ii)(II); proposed § 301.6226–3(e)(2). Pursuant to proposed § 301.6226–3(e)(4)(iii), this imputed underpayment is computed in the same manner as an imputed underpayment under section 6225 and § 301.6225–1. In calculating an imputed underpayment under proposed § 301.6226–3(e)(4)(iii), a modification is taken into account if it was approved by the IRS under § 301.6225–2 with respect to the pass-through partner (or any relevant partner holding its interest in the audited partnership through the pass-through partner) and it is reflected on the statement furnished to the pass-through partner. Any modification that was not approved by the IRS under § 301.6225–2 may not be taken into account. Proposed § 301.6226–3(e)(4)(iii).

One comment suggested that it was unclear under proposed § 301.6226–3(e)(4) whether a pass-through partner that elects to pay an imputed underpayment is only permitted to make modifications that are included on the information statement furnished to the pass-through partner or whether the pass-through partner also may make modifications based on the pass-through partner's own partners (to the extent such modification is not already reflected on the information statement). The comment recommended that the pass-through partner be permitted to make modifications based on its own partners to the extent the pass-through partner would be permitted to make modifications under section 6225 if it were the partnership directly under audit. This comment was not adopted.

Section 6226(b)(4)(A)(ii)(II) provides that a partnership may compute and pay an imputed underpayment under rules similar to the rules of section 6225 (other than section 6225(c)(2), (7), and (9)). Section 6226(b)(4)(A)(ii)(II) does not explicitly carve out section 6225(c)(8), which provides that any modification of the imputed underpayment amount under section 6225(c) shall be made only upon approval of such modification by the Secretary. Consistent with section 6225(c)(8), proposed § 301.6226–3(e)(4)(iii) only allows modifications approved by the IRS under proposed § 301.6225–2 to be taken into account in calculating an imputed underpayment with respect to a pass-through partner. Modifications approved by the IRS under § 301.6225–2 are only those modifications requested by the audited partnership and approved during the administrative proceeding with respect to the audited partnership. See § 301.6225–2(b). A pass-through partner may not use modifications that were not requested or approved in the administrative proceeding with respect to the audited partnership in calculating its imputed underpayment under proposed § 301.6226–3(e)(4).

Allowing a pass-through partner to apply modifications that were not previously requested or approved in calculating its imputed underpayment is contrary to the centralized nature of an administrative proceeding under the centralized partnership audit regime. Partnership adjustments are determined at the partnership level. Section 6221(a). The imputed underpayment is a partnership-related item and therefore modifications to the imputed underpayment are determined at the partnership level. The modification provisions under § 301.6225–2 are the appropriate method for determining whether and to what extent a modification should be allowed. Allowing pass-through partners to raise, for the first time, modifications during the push out is inconsistent with making such determinations at the partnership level. Allowing such modifications would create significant administrative burdens for the IRS. For one, the IRS would have to expend increased time and resources to review any modifications applied during push out that were not previously evaluated and approved during the modification process at the audited partnership level. This concern would be exacerbated in situations where there are multiple tiers of entities applying multiple types of additional modifications. For instance, a pass-through partner might raise again a modification that was rejected by the IRS at the audited partnership level during the modification process, causing further administrative delay and burden. Furthermore, if a modification applied by a pass-through partner was incorrectly applied, the IRS would have to expend time and resources to correct the incorrectly claimed modification, resulting in additional delays in the collection of amounts due as a result of the examination and the push out election.

III. Payment of Additional Reporting Year Tax by Affected Partners

Proposed § 301.6226–3(e)(3)(iv) provided that affected partners that are not pass-through partners must take into account their share of adjustments reflected on a statement furnished under proposed § 301.6226–3(e)(3) in accordance with proposed § 301.6226–3(e). When taking into account the adjustments, an affected partner that is not a pass-through partner bases its reporting year on the date the audited partnership furnished its statements to its reviewed year partners. As a result, the reporting year of an affected partner that is not a pass-through partner will be the same taxable year as the reporting year of a reviewed year partner that is also not a pass-through partner.

As discussed in section 1 of the Explanation of Provisions in the preamble to the December 2017 NPRM, there may be circumstances in which a statement is not furnished to an affected partner that is not a pass-through partner in time for the partner to report and pay the additional reporting year tax by the unextended due date of the partner's return for the reporting year. To account for this situation, proposed § 301.6226–3(e)(3)(iv) provided that the IRS will not impose any additions to tax under section 6651 related to any additional reporting year tax if an affected partner that is not a pass-through partner reports and pays any additional reporting year tax within 30 days of the extended due date for the return for the adjustment year of the audited partnership.

One comment recommended that the 30-day period under proposed § 301.6226–3(e)(3)(iv) should be extended to at least 60 days and that there be a mechanism for requesting and obtaining an extension of this deadline when needed. This comment was not adopted.

While it may be difficult to accurately compute and pay the additional reporting year tax in situations where the affected partner receives the statement close in time to the extended due date of the reporting year return, the affected partner has options available to mitigate any additions to tax under section 6651. First, the regulations under § 301.6226–3(e)(3)(iv) provide a 30-day period in which the IRS will not

impose a section 6651 penalty. Second, the affected partner may make an estimated tax payment prior to the due date for the reporting year and use that payment as a credit against any potential liability for the additional reporting year tax to avoid failure to pay penalties.

Third, the affected partner may also request that any additions to tax under section 6651 be abated due to reasonable cause. Nothing in the regulations under the centralized partnership audit regime alters the mechanisms by which a taxpayer may raise a reasonable cause defense in response to a proposed penalty. Existing regulations under § 301.6651–1(c)(1) and the Internal Revenue Manual provide procedures for raising a reasonable cause defense to avoid an addition to tax under section 6651. If an addition to tax under section 6651 is asserted because a taxpayer did not pay the entire additional reporting year tax within 30 days of the extended due date of the audited partnership's adjustment year return, the taxpayer may follow those existing procedures to raise any reasonable cause and good faith defense that may be applicable to the taxpayer's delay in payment.

iv. Qualified Investment Entities and MLPs

Proposed § 301.6226–3(b)(4) provided rules for qualified investment entities (QIEs), such as real estate investment trusts and regulated investment companies, to utilize the deficiency dividend procedures under section 860 when taking into account the adjustments under section 6226(b). One comment recommended that the Treasury Department and the IRS adopt the rules as proposed in § 301.6226–3(b)(4) without change in the final regulations. This comment was adopted.

Another comment recommended that in the case of an MLP, the safe harbor calculation for a partner should take into account the partner's share of specified passive activity losses within the meaning of section 6225(c)(5)(B). As discussed earlier in this section of the preamble, the safe harbor amount was removed from the regulations in the December 2017 NPRM, no comments were received regarding its removal, and the final regulations do not include a safe harbor amount. Accordingly, this comment was not adopted.

v. Examples Under Proposed § 301.6226–3(h)

Proposed § 301.6226–3(h) provided examples that illustrated the rules of proposed § 301.6226–3. One comment recommended that additional examples be added to § 301.6226–3(h) to show the proper treatment of two situations. The first situation involved the IRS approving a modification based on a partner filing an amended return, the partnership challenging the IRS's adjustment in Tax Court, and the amount of the adjustment being subsequently reduced. The second situation involved the IRS determining at the partnership level a 20 percent accuracy-related penalty with respect to the partnership adjustments and the IRS approving a modification based on a partner's status as a tax-exempt entity. The comment suggested that the example illustrate how the amount of the penalty is calculated in this situation after allowance for the modification with respect to the tax-exempt entity and how the penalty is allocated among all partners, including the tax-exempt entity.

These hypotheticals were described within the portion of the comment addressing section 6226. Therefore, notwithstanding that the comment did not explicitly state that the partnership in the hypothetical made a push out election, for purposes of addressing these comments it is assumed that the partnership did make the push out election. After careful consideration, the Treasury Department and the IRS have declined to add these examples because, as described in this section of the preamble, both situations describe fact patterns that are addressed by a straight forward application of the proposed regulations, as revised in the December 2017 and August 2018 NPRMs, and thus the examples would not help clarify any aspect of the rules.

The first situation is addressed by proposed § 301.6226–3(b)(2) and (3), which provided that in calculating a correction amount, decreases in tax should be taken into account and that amounts shown on amended return filed during modification should be accounted for in the calculation. As described earlier in section C.i. of this preamble, proposed § 301.6226–3(b)(2) and (3) was revised in the August 2018 NPRM to reflect the amendments to section 6226(b) by the TTCA. As amended, section 6226(b) provides that when a reviewed year partner takes into account pushed out adjustments, the partner's chapter 1 tax for the reporting year is adjusted by the amounts the partner's chapter 1 tax for the first affected year or any intervening year would increase or decrease if the partner's share of the adjustments were taken into account in the first affected year. As a result, under proposed § 301.6226–3(b)(2) and (3) as revised in the August 2018 NPRM, a correction amount and the additional reporting year tax can be less than zero.

When the partner in the first hypothetical calculates the correction amount for the year that was amended, the partner recomputes its tax for the year by starting with the amount of tax shown on the amended return, which had been based on the full amount of the adjustment (prior to its reduction by the court decision). The partner then determines the amount the partner's chapter 1 tax would have increased *or decreased* were the reduced adjustment taken into account for that year. If the partner's tax for the amended year decreases as a result of the reduced adjustment, that decrease in tax produces a negative correction amount, which in turn produces a negative additional reporting year tax. The negative additional reporting year tax would then reduce the partner's tax for the reporting year.

The second situation is addressed by proposed § 301.6226–3(d) as previously revised in the December 2017 NPRM. As discussed earlier in this section of the preamble, proposed § 301.6226–3(d)(2) provided that each reviewed year partner calculates its penalty amount by treating the correction amounts determined under § 301.6226–3(b) as if they were underpayments or understatements for the first affected year or any intervening year. This rule is different from the rule initially set forth in former proposed § 301.6226–2(f)(3). Under the former rule, to which the comment's recommendation related, each partner was allocated their share of the penalty that was calculated at the partnership level. Under the rule in proposed § 301.6226–3(d), however, a partner's penalty calculation is based on the characteristics of, and facts and circumstances applicable to, the reviewed year partner. Accordingly, while the applicability of the accuracy-related penalty in the second hypothetical described by the comment was determined at the partnership level, if as a result of taking into account the adjustments under § 301.6226–3(b), the tax-exempt entity would not have an underpayment or understatement for which a penalty was applicable, the penalty amount calculated by the tax-exempt entity pursuant to § 301.6226–3(d)(2) would be zero. Whether modification was requested or approved with the tax-exempt entity would not affect this determination.

The same comment also recommended adding an example to show the proper application of partner and partnership-level tax attributes to the calculation of a correction amount

for an intervening year. This recommendation was also not adopted.

Former proposed § 301.6241–1(a)(10) had defined the term tax attribute to include both the tax attributes of the partnership and the tax attributes of its partners. This definition was changed in the August 2018 NPRM to remove references to the partnership or the partner. This change allows ''tax attribute'' to apply to the partnership or to a partner depending on the particular context within which it is used. See section 11.A. of the preamble to the August 2018 NPRM. As a result, the definition of tax attribute in proposed § 301.6241–1(a)(10), as revised, did not refer to either the partnership or its partners.

Former proposed § 301.6226–3(b)(3) had provided that an intervening year correction amount was derived by recomputing a partner's taxable income by taking into account any adjustments to tax attributes. After the change to the definition to tax attribute, proposed § 301.6226–3(b)(3) was revised to make clear that in the context of calculating an intervening year correction amount, it is the ''tax attributes of the partner'' that are relevant, not the tax attributes of the partnership. As a result, under proposed § 301.6226–3(b)(3) as revised in the August 2018 NPRM, partnership-level tax attributes no longer factor into the calculation of an intervening year correction amount. See proposed § 301.6226–3(h), Example 7; section 4.A. of the preamble to the August 2018 NPRM. Given these revisions, an example showing the application of partnership-level tax attributes would no longer be accurate for computing an intervening correction amount under § 301.6226–3(b)(3).

The Treasury Department and the IRS have also declined to add an example illustrating the application of a partner's tax attributes to the calculation of its correction amount for an intervening year. Creating an example involving the tax attributes of a specific partner would necessitate a description of that particular partner's tax profile and would require a number of assumptions that would strip the example of its utility.

Example 5 of proposed § 301.6226–3(h) described a situation in which the IRS determines a $200 partnership adjustment with respect to taxable year 2020 and a resulting $40 imputed underpayment. During the modification process, Partner F files amended returns for 2020, 2021, and 2022 taking into account F's share of the $200 partnership adjustment, and the IRS approves that modification. See § 301.6225–2(d)(2). The partnership elects to make a push out election with respect to the $40 imputed underpayment and furnishes a statement to F reflecting F's share of the $200 partnership adjustment and reflecting the approval of F's amended return modification.

Former proposed § 301.6226–3(g) had provided that F computes its correction amounts for the first affected year and the intervening years and that F ''computes any additional chapter 1 tax for those years using the returns for 2020, 2021, and 2022 taxable years as amended during the modification process.'' One comment found the quoted language ambiguous and recommended the language be revised to provide that ''F's computation will take into account the additional chapter 1 tax that F reported and paid pursuant to the modification process on amended returns for the 2020, 2021, and 2022 taxable years.'' This comment has been adopted.

Although F takes into account the chapter 1 tax F reported and paid with its amended returns, F still must compute the correction amounts for each year under § 301.6226–3(b). F cannot assume F's additional reporting year tax is zero because of the fact F filed an amended return and took into account the adjustments during the modification process. For example, F may have inadvertently taken the adjustments into account incorrectly when filing its amended returns or filed a subsequent amended return, and as a result F may compute an additional reporting year tax that is greater than (or possibly less than) zero when F performs the calculation under § 301.6226–3(b) for the reporting year.

The comment also recommended changing the language ''[t]he time to file a petition expires on'' in Examples 2–4 and 6–9 under proposed § 301.6226–3(h) to ''[t]he last day to file a petition is.'' Under § 301.6226–2(b)(1)(i), if a petition is not filed under section 6234, the adjustments become finally determined upon the expiration of the time to file a petition under section 6234. Although this is determined in relation to the last day to file a petition under section 6234, the language in the examples mirrors the regulatory language under § 301.6226–2(b)(1)(i). Changing the language in the examples to differ from the language in the rule could create confusion and ambiguity. Accordingly, this comment was not adopted.

Lastly, several comments noted typographical errors and incorrect cross-references in the examples under former proposed § 301.6226–3. These errors were fixed in proposed § 301.6226–3(h). See section 4.B. of the preamble to the August 2018 NPRM.

5. Administrative Adjustment Requests

Four comments were received concerning administrative adjustment requests under section 6227. The comments addressed the following topics: (1) The requirement that the partnership representative must sign an AAR; (2) the ability to report multiple imputed underpayments in a single AAR; (3) the modifications available in the case of an AAR; (4) how partners take into account adjustments requested in an AAR; (5) the availability of the safe harbor amount; (6) the application of section 905(c); and (7) how partnerships that have elected out of the centralized partnership audit regime file amended returns. In addition to addressing the comments, this section of the preamble explains a change to the rules regarding whether an AAR is valid if it fails to include required statements and interest with respect to imputed underpayments reported on an AAR.

A. Requirement That the Partnership Representative Signs an AAR

Proposed § 301.6227–1(c) provided the form and manner for making an AAR under the centralized partnership audit regime, including the rule that an AAR must be signed under penalties of perjury by the partnership representative. One comment recommended that the regulations remove the requirement that the partnership representative sign an AAR and instead allow any person authorized to sign the original partnership return to sign the AAR. This comment was not adopted.

Under section 6223(b), the partnership and all partners of such partnership are bound by actions taken under the centralized partnership audit regime by the partnership. See § 301.6223–2(a). The filing of an AAR under section 6227 is an action under the centralized partnership audit regime. Under section 6223(a), the partnership representative has the sole authority to act on behalf of the partnership under the centralized partnership audit regime. Consequently, only the partnership representative has the authority to file an AAR under section 6227, and the final regulations maintain the requirement that the partnership representative sign an AAR.

The comment expressed concern that, in some circumstances, obtaining the signature of the partnership representative could be difficult or impossible. For example, if the partnership representative is deceased or where a partnership representative

whose designation is being revoked refuses to sign the AAR. The regulations under section 6223 and 6227 accommodate the concern illustrated in these examples. Under § 301.6223–1(e)(2)(ii), a partnership may revoke a designation of a partnership representative by filing a valid AAR in accordance with section 6227. The revocation must include a designation of a successor partnership representative. § 301.6223–1(e)(1). Both the revocation and the designation are effective on the date the partnership files the AAR. § 301.6223–1(e)(3).

Proposed § 301.6227–1(a) provided that when the partnership changes the designation of the partnership representative in conjunction with the filing of an AAR in accordance with § 301.6223–1(e), the change in designation is treated as occurring prior to the filing of the AAR. Under this rule, the prior partnership representative is revoked and a new partnership representative is designated prior to the time the AAR is filed, with the result that the newly designated partnership representative is the partnership representative of record at the time the AAR is filed. This rule was designed to address the circumstances described by the comment when it may be difficult to obtain the signature of the prior partnership representative and to make clear that it is the newly designated partnership representative that signs an AAR. Because § 301.6227–1(a), in connection with the regulations under section 6223, adequately address the concerns raised by the comment, the comment was not adopted.

B. Multiple Imputed Underpayments

Proposed § 301.6227–1(a) provided that when filing an AAR, the partnership must determine whether the adjustments requested in the AAR result in an imputed underpayment. Under proposed § 301.6227–2(a)(1), the determination of whether adjustments requested in an AAR result in an imputed underpayment and the determination of the amount of the imputed underpayment is made in accordance with the rules under § 301.6225–1. Generally, a partnership must pay any imputed underpayment determined under § 301.6227–2(a) resulting from the adjustments requested in an AAR on the date the partnership files the AAR. Proposed § 301.6227–2(b). In lieu of paying the imputed underpayment under § 301.6227–2(b), the partnership may elect to have each reviewed year partner take into account the adjustments requested in the AAR in accordance with § 301.6227–3. Proposed § 301.6227–2(c).

One comment observed that it was unclear whether the references to ''*an* imputed underpayment'' in proposed § 301.6227–2(a)(1) and to ''*the* imputed underpayment'' in proposed § 301.6227–2(c) imply that there can be only one imputed underpayment in an AAR, or whether more than one imputed underpayment can be calculated in an AAR. The comment recommended the regulations should clarify that a single AAR can result in multiple imputed underpayments, some of which can be paid while others are pushed out, and that adjustments that do not result in an imputed underpayment can be pushed out.

Neither section 6227 nor the regulations thereunder prohibit a partnership from filing multiple AARs for the same taxable year to request multiple adjustments to partnership-related items. To allow the IRS to respond to issues that arise in implementing the new partnership audit regime, proposed § 301.6227–1(c) required that an AAR must be filed with the IRS in accordance with the forms, instructions, and other guidance prescribed by the IRS. The current version of the form prescribed by the IRS for filing an AAR is not designed to accommodate the reporting of multiple imputed underpayments. A partnership may file multiple AARs to allocate adjustments into separate imputed underpayments. For example, the partnership may file one AAR reporting an imputed underpayment that the partnership pays, while filing another AAR reporting an imputed underpayment for which the partnership elects to push out the adjustments associated with that imputed underpayment. Accordingly, a partnership, by filing multiple AARs, can achieve the result requested by the comment—that is, the ability to pay an imputed underpayment with respect to certain adjustments and push out other adjustments associated with a different imputed underpayment.

In response to the comment, the regulations have been revised to refer to ''an'' or ''any'' imputed underpayment, as appropriate, to accommodate future cases in which an AAR may result in more than one imputed underpayment. In addition, §§ 301.6227–2(c) and 301.6227–3(a) have been revised to clarify that in the case of an election to have the reviewed year partners take into account the adjustments in an AAR, such partners take into account only those adjustments that are associated with the imputed underpayment to which the election relates. Notwithstanding these revisions, the regulations continue to refer to the form for filing an AAR and its instructions for purposes of instructing how a partnership requests adjustments in an AAR that result in an imputed underpayment.

C. Modifications Available in the Case of an AAR

Proposed § 301.6227–2(a)(2) provided that a partnership may apply modifications to the amount of the imputed underpayment determined under proposed § 301.6227–2(a)(1) using only certain, enumerated modifications as described in proposed § 301.6225–2 or as provided in forms, instructions, or other guidance prescribed by the IRS with respect to AARs. A partnership may not modify an imputed underpayment resulting from adjustments requested in an AAR except as described in proposed § 301.6227–2(a)(2).

Proposed § 301.6225–2(d)(10) provided a catch-all provision for other modifications under which a partnership may request a modification not described in proposed § 301.6225–2(d), and the IRS will determine whether such modification is accurate and appropriate. Similarly, proposed § 301.6225–2(d)(10) provided that additional types of modifications, and the documentation necessary to substantiate such modifications, may be set forth in forms, instructions, or other guidance.

One comment suggested that the regulations should be more flexible regarding the types of modifications that are allowed in the case of an AAR. Specifically, the comment recommended that proposed § 301.6227–2(a)(2) be revised to allow for the catch-all provision under proposed § 301.6225–2(d)(10) on the condition that the IRS approves of the relevant modification upon review of the AAR. This comment was not adopted.

Both proposed § 301.6225–2(d)(10), in the context of an audit, and proposed § 301.6227–2(a)(2), in the context of an AAR, provide that the IRS may set forth additional modifications in forms, instructions, or other guidance. To the extent the comment was recommending that adoption of the § 301.6225–2(d)(10) catch-all provision in § 301.6227–2(a)(2) would allow the IRS to set forth other modifications not specifically described in proposed § 301.6227–2(a)(2), that ability is already provided for by the plain language of § 301.6227–2(a)(2).

To the extent the comment was recommending a rule in which a partnership could request a

modification in an AAR on the condition that modification is only allowed upon approval by the IRS, the comment was not adopted. The final regulations adopt the rule that a partnership may not modify an imputed underpayment resulting from adjustments requested in an AAR except for the modifications described in proposed § 301.6227–2(a)(2). Under proposed § 301.6227–2(a)(2)(i), the partnership is not required to seek approval from the IRS prior to applying modifications to the amount of any AAR imputed underpayment. This rule permits a partnership to determine an imputed underpayment that results from the adjustments requested in an AAR and apply modifications when calculating the amount of the imputed underpayment the partnership needs to pay when filing the AAR. The Treasury Department and the IRS have determined that this procedure is more administrable for the IRS and allows partnerships to more effectively file AARs and take any adjustments into account. The partnership does not have to wait for an IRS determination regarding specific modifications before determining the amount of the imputed underpayment as modified, which would significantly hamper the AAR process.

Because the partnership applies modifications prior to the IRS reviewing and approving such modifications, the specifically enumerated modifications in the regulations are limited to the types of modifications for which the IRS already has procedures and systems in place. This permits the IRS, when it reviews an AAR, to utilize those procedures and systems to determine the accuracy and appropriateness of the modification that was applied in the AAR. The limitation on the types of modifications, in addition to the detailed information required under § 301.6227–2(a)(2)(ii), is designed to provide partnerships the ability to reasonably modify an imputed underpayment resulting from adjustments requested in an AAR while not creating undue delay for the partnership and its partners to take the adjustments into account. Also, by providing certainty regarding the permissible types of modifications, a partnership will be able to efficiently use its time and resources in determining whether it will pay an imputed underpayment or elect to have its partners take into account the adjustments. Finally, as the IRS gains more experience with modifications in connection with an AAR under the centralized partnership audit regime, § 301.6227–2(a)(2) provides the ability for the IRS to expand the set of allowed modifications through the use of forms, instructions, or other guidance.

D. Partners Taking Into Account Adjustments Requested in an AAR

Former proposed § 301.6227–3 included a reserved paragraph regarding how a reviewed year partner that is a pass-through partner takes into account its share of adjustments requested in an AAR. In response to the June 2017 NRPM, one comment recommended that the regulations should allow a pass-through partner to push out its share of adjustments to the next tier of partners. The December 2017 NPRM contained proposed rules under § 301.6227–3 allowing for pass-through partners to take into account adjustments requested in an AAR by either making a payment or pushing out the adjustments to the next tier of partners, similar to the rules under proposed § 301.6226–3(e). The rules under proposed § 301.6227–3 were further revised in the August 2018 NPRM to reflect the amendments by section 204 of the TTCA and the corresponding changes to proposed § 301.6226–3(e). See section 5 of the preamble to the August 2018 NPRM. As a result, the comment was adopted in the August 2018 NPRM and is also included in the final regulations.

Example 2 under proposed § 301.6227–3(b)(2), regarding how partners other than pass-through partners take into account AAR adjustments, was revised to remove the language indicating that the partner may make a claim for refund with respect to the overpayment of $25. Instead, the final regulations provide that the partner may make a claim for refund with respect to ''any overpayment.'' Section 301.6227–3(b)(1) provides that nothing in the rules under § 301.6227–3 entitles any partner to a refund of chapter 1 tax to which such partner is not entitled. Whether an overpayment exists is determined under provisions of the Code and relevant case law outside the scope of these regulations. Generally, an overpayment and the amount of a refund of an overpayment cannot exceed the amount of tax paid. See section 6511(b)(2), *Jones* v. *Liberty Glass,* 332 U.S. 524, 531 (1947). No refund or credit can be made unless it has first been determined that the taxpayer has made an overpayment of tax for the period at issue. *Lewis* v. *Reynolds,* 284 U.S. 281, 283 (1932).

Example 2 was also revised to clarify that the partner's chapter 1 tax for 2022 is −$25, that is, negative $25. This change conforms Example 2 to the rules under § 301.6226–3(b) which allow for the additional reporting year tax to reduce a partner's chapter 1 tax for the reporting year.

Finally, minor revisions were made to clarify that any adjustment that does not result in an imputed underpayment is taken into account by reviewed year partners.

E. Availability of Safe Harbor for Partners Taking Into Account Adjustments

The June 2017 NPRM requested comments on whether the election to pay a safe harbor amount under former proposed § 301.6226–3 should be available in the case of a partner that must take into account adjustments requested in an AAR under proposed § 301.6227–3. One comment recommended that the regulations require a partnership filing an AAR to calculate a safe harbor amount for each partner required to take into account the adjustments requested in the AAR and include such safe harbor amount in the statement furnished to the partner.

For the reasons discussed in section 4 of the preamble to the December 2017 NPRM, the safe harbor amount was removed from the regulations. No comments were received regarding its removal, and the final regulations do not include a safe harbor amount. Accordingly, this comment was not adopted.

F. Application of Section 905(c)

One comment recommended rules for how a partnership subject to the centralized partnership audit regime can fulfill the requirements of section 905(c), including the rules relating to the assessment and collection of interest on certain refunds of creditable foreign taxes. The final regulations under section 6227 do not provide rules regarding the application of section 905(c), but do include a reserved paragraph regarding notice of change to amounts of creditable foreign tax expenditures. See § 301.6227–1(g). The recommendations put forth by the comment remain under consideration.

G. Partnerships That Have Elected Out of the Centralized Partnership Audit Regime

One comment suggested that the regulations address how a partnership that has a valid election under section 6221(b) in effect for a particular taxable year should report changes to its original partnership return from that year. Section 6227 is the mechanism for partnerships that are subject to the centralized partnership audit regime to file an AAR to correct errors on a partnership for a prior year. A

partnership that has made a valid election under section 6221(b) in accordance with § 301.6221(b)–1 is not subject to such regime. Accordingly, a partnership that has elected out of the centralized partnership audit regime is not subject to section 6227 and therefore does not file an AAR to correct errors on its original return. The manner in which a partnership that has elected out should report changes to its original return is outside the scope of these regulations.

H. Whether an AAR Is Valid Without Statements

Proposed § 301.6227–1(c)(2) provided that a valid AAR must include the adjustments requested, the statements described in § 301.6227–1(e) if a reviewed year partner is required to take into account the adjustments requested, and other information prescribed by the IRS in forms, instructions, or other guidance. The final regulations clarify that in the case of a failure to provide the information required under § 301.6227–1(c)(2), the IRS may, but is not required to, invalidate an AAR or readjust items that were adjusted in the AAR.

Conversely, the word ''valid'' was added to § 301.6227–2(b)(1) to clarify that only a valid election under § 301.6227–2(c) turns off the partnership's obligation to pay an imputed underpayment resulting from adjustments requested in an AAR.

I. Adjustments That Do Not Result in an Imputed Underpayment

Under § 301.6225–1(f)(1), two situations occur where there may be adjustments that do not result in an imputed underpayment. Under § 301.6225–1(f)(1)(i), a partnership adjustment does not result in an imputed underpayment if the result of netting with respect to any grouping or subgrouping that includes the particular partnership adjustment is a net negative adjustment. Under § 301.6225–1(f)(1)(ii), a partnership adjustment does not result in an imputed underpayment if the calculation under § 301.6225–1(b)(1) resulted in an amount that is zero or less than zero. Proposed § 301.6227–3(c)(2) provided rules regarding how a pass-through partner takes into account adjustments that do not result in an imputed underpayment. The proposed rule was unclear as to whether the rule applied to both types of situations. The final regulations under § 301.6227–3(c)(2) clarify that a pass-through partner must take into account AAR adjustments that, with respect to that pass-through partner, do not result in an imputed underpayment by furnishing statements to its affected partners. This rule applies to both adjustments that do not result in an imputed underpayment pursuant to § 301.6225–1(f)(1)(i) and adjustments that do not result in an imputed underpayment pursuant to § 301.6225–1(f)(1)(ii). This rule also applies in situations where the pass-through partner pays an imputed underpayment. The final regulations under § 301.6227–1(e)(2) additionally clarify that when a partnership pays an imputed underpayment and there are adjustments that did not result in that imputed underpayment pursuant to § 301.6225–1(f)(1)(i), only the adjustments that did not result in an imputed underpayment are to be included in the statements to its affected partners.

J. Interest With Respect to an Imputed Underpayment Resulting From AAR Adjustments

Proposed § 301.6227–2(b)(2) provided that interest on an imputed underpayment resulting from adjustments requested in an AAR is determined under chapter 67 of the Code for the period beginning on the date after the due date of the partnership return for the reviewed year (determined without regard to extension) and ending on the earlier of the date payment of the imputed underpayment is made, or the due date of the partnership return for the adjustment year. In the case of any failure to pay an imputed underpayment by the due date of the partnership return for the adjustment year, interest is determined in accordance with section 6233(b)(2). Proposed § 301.6227–2(b)(2).

To conform the rules under proposed § 301.6227–2(b)(2) with the rules under proposed §§ 301.6232–1(b), 301.6233(a)–1(b), and 301.6233(b)–1(c), the final regulations provide that interest on an imputed underpayment resulting from adjustments requested in an AAR ends on the date the AAR is filed. In the case of any failure to pay an imputed underpayment on the date the AAR is filed, interest is determined in accordance with section 6233(b)(2) and § 301.6233(b)–1(c).

6. Notices of Proceedings and Adjustments

Former proposed § 301.6231–1(b)(1) provided that a notice of proposed partnership adjustment (NOPPA) is timely if it is mailed before the expiration of the period for making adjustments under section 6235(a)(1), including any extensions of that period under section 6235(b) and after applying any of the special rules in section 6235(c). After former proposed § 301.6231–1(b)(1) was issued, section 206(h) of the TTCA amended section 6231(b) to provide that a NOPPA shall not be mailed later than the date determined under section 6235(a)(1). Prior to this amendment, the statute did not limit the period for the IRS to propose adjustments under the centralized partnership audit regime. Because former proposed § 301.6231–1 comported with the TTCA amendments to section 6231, former proposed § 301.6231–1 was not revised when the regulations were re-proposed in the August 2018 NPRM.

One comment received prior to the issuance of former proposed § 301.6231–1 and before the TTCA amendments to section 6231(b) recommended that the regulations clarify that a NOPPA must be issued within the three-year period specified in section 6235(a)(1). Because the statute and the plain language of proposed § 301.6231–1 reflect the rule suggested by this comment, the final regulations adopt the language of the proposed regulations without change.

Section 6227(c) provides that a partnership has three years from the later of the filing of the partnership return or the due date of the partnership return (excluding extensions) to file an AAR for a taxable year. However, a partnership may not file an AAR for a partnership taxable year after the IRS has mailed a NAP under section 6231 with respect to that taxable year. Section 6227(c); § 301.6227–1(b). Proposed § 301.6231–1(f) provided that the IRS may, without consent of the partnership, withdraw any NAP or NOPPA, and any NAP or NOPPA that has been withdrawn by the IRS has no effect for purposes of subchapter C of chapter 63. If the IRS withdraws a NAP with respect to a partnership taxable year under proposed § 301.6231–1(f), the prohibition under section 6227(c) on filing an AAR after the mailing of a NAP no longer applies with respect to such taxable year.

One comment stated that the rule under proposed § 301.6231–1(f) lifting the prohibition on filing an AAR after a NAP is meaningless if the three-year period of limitations under section 6227(c) to file an AAR has already expired. The comment suggested that the language in proposed § 301.6231–1(f) be revised to provide that a NAP that has been withdrawn by the IRS has no effect for purposes of subchapter C or chapter 63 ''except for suspension of the period of limitations under section 6227 as provided in § 301.6227–1(b).'' The comment suggested a corresponding change to proposed § 301.6227–1(b) to provide that the

period of limitations for filing an AAR is suspended while a NAP is outstanding. These suggestions have not been adopted.

First, section 6227 does not authorize the Treasury Department or the IRS to suspend the period of limitations within which a partnership may file an AAR. By way of contrast, other statutory provisions within subchapter C of chapter 63, such as section 6235(b) and section 6225(c)(7), do provide authority for the IRS to extend certain time periods. The absence of similar authority in section 6227 indicates the IRS does not have the authority to suspend the period of limitations under section 6227(c).

Moreover, because of the required timing of an examination under the centralized partnership audit regime, it is likely that in many cases when a NAP is withdrawn, there will still be time left on the period of limitations to file a timely AAR. In order for a NOPPA to be timely mailed, it generally must be issued within three years of the date on which the partnership return for such taxable year was filed or the return due date for the taxable year. Section 6235(a)(1). To allow for sufficient time to examine the partnership taxable year and to mail a timely NOPPA, the IRS will normally mail the NAP early on in that three-year period.

The period for filing a timely AAR under section 6227(c) runs concurrently with the three-year period for mailing a NOPPA. If after the issuance of the NAP a partnership finds that it agrees with the adjustments the IRS has raised with the partnership during the examination, the partnership may also find that it is more efficient for both the partnership and the IRS to file an AAR, rather than have those adjustments be made in the context of the partnership-level exam. In such a case, the partnership may inform the IRS of its desire to file an AAR, and the IRS can determine whether it is appropriate, in the view of the IRS, to withdraw the NAP in light of all of the facts and circumstances. It is incumbent upon the partnership to inform the IRS of its desire to file an AAR at the earliest possible point in the exam to ensure the NAP can be withdrawn with sufficient time in the section 6227(c) period to file an AAR.

Proposed § 301.6231–1(f) provided that a NAP that has been withdrawn by the IRS has no effect for purposes of subchapter C of chapter 63. Under § 301.6223–1(d)(2) and (e)(2), however, if the IRS withdraws a NAP pursuant to § 301.6231–1(f), any valid resignation or revocation of a partnership representative designation or designated individual appointment prior to the withdrawal of the NAP remains in effect. To conform these two sets of rules, the final regulations under § 301.6231–1(f) clarify that a withdrawn NAP has no effect for purposes of subchapter C of chapter 63 except as described in § 301.6223–1(d)(2) and (e)(2).

In addition, proposed § 301.6231–1(f) was revised to clarify that if the IRS withdraws a NAP or NOPPA, the NAP or NOPPA is treated as if it were never issued, in addition to the NAP or NOPPA not having any effect for purposes of subchapter C of chapter 63. This change conforms the language of the final regulations under § 301.6231–1(f) more closely with the language of section 6227(c).

Lastly, the final regulations under § 301.6231–1(f) clarify that the withdrawal of a NAP or NOPPA obviates the limitation under § 301.6222–1(c)(5) providing that a partner may not treat an item inconsistently after a NAP has been mailed with respect to a partnership taxable year. This change clarifies that if the IRS withdraws a NAP, a partner may treat an item inconsistently from how the item was treated on the partnership return after the withdrawal of the NAP.

7. Assessment, Collection, and Payment of Imputed Underpayments

Proposed § 301.6232–1(d)(1)(i) provided that a notice to a partnership that, on account of a mathematical or clerical error appearing on the partnership return or as a result of a failure by a partnership-partner to comply with section 6222(a), the IRS has adjusted or will adjust partnership-related items to correct the error or to make the items consistent under section 6222(a) and has assessed or will assess any imputed underpayment resulting from the adjustment is not considered an FPA under section 6231(a)(3). A petition for readjustment under section 6234 may not be filed with respect to such notice, and the limitations under proposed § 301.6232–1(c) (providing that generally no assessment can be made before the mailing of an FPA or, if applicable, a final court decision) do not apply to an assessment under § 301.6232–1(d)(1)(i). A partnership generally may request abatement of such assessments, but abatement is not available where an adjustment that is the subject of a notice described in proposed § 301.6232–1(d)(1)(i) is due to the failure of a partnership-partner to comply with section 6222(a). Proposed § 301.6232–1(d)(1)(ii).

One comment recommended that the regulations include a statement that the assessment procedures under § 301.6232–1(d)(1)(i) will be narrowly construed and applied. The comment suggested as an example that the regulations make clear that an assessment against a partner of a partnership-partner will not be treated as a mathematical or clerical error where the partner has reported the items at issue consistently with the partnership-partner, even though the partnership-partner may not have been consistent with the partnership in which it is a partner. These suggestions were not adopted.

Nothing in the statute indicates that section 6232(d) should be construed or applied to a particular degree. More specifically, a rule providing that section 6232(d) will be applied and construed narrowly would be vague and not give helpful guidance to taxpayers or the IRS. For these reasons, the comment's suggestion regarding construing and applying section 6232(d) narrowly was not adopted, and the regulations do not include a statement to that effect.

Regarding the comment's example of a rule that might reflect a narrow construction of the regulations, this suggestion was also not adopted. Proposed § 301.6232–1(d)(1)(iii) provided that in the case of a partnership-partner that has an election under section 6221(b) in effect, any tax resulting from an adjustment due to the partnership-partner's failure to comply with section 6222(a) may be assessed with respect to the reviewed year partners of the partnership-partner (or indirect partners of the partnership-partner). Such tax may be assessed in the same manner as if the tax were on account of a mathematical or clerical error appearing on the reviewed year partner's or indirect partner's return, except that the procedures under section 6213(b)(2) for requesting an abatement of such assessment do not apply. Proposed § 301.6232–1(d)(1)(iii). For all other partnership-partners, the IRS may assess an imputed underpayment against such partnership-partner on account of a failure to meet the consistency requirements under section 6222(a). See § 301.6232–1(d)(1)(i). The rule suggested by the comment thus would apply in the case of partnership-partners that have an election under section 6221(b) in effect and that fail to meet the requirements of section 6222(a).

Section 6232(d) provides that any adjustment on account of a failure of a partnership that is a partner in another partnership to meet the requirements of section 6222(a) shall be treated as an adjustment based on mathematical or

clerical error, and rules similar to those under section 6213(b)(1) shall apply. In the case of partnership-partners that have an election in effect under section 6221(b), sections 6213 and 6232 allow the IRS to assess tax against the partners of such partnership-partner, without providing for a method to seek abatement of that assessment. Section 6232(d)(1)(B) provides that any adjustment on account of a failure by a partnership-partner to meet the consistency requirements under section 6222(a) is treated as an adjustment due to a mathematical or clerical error. Accordingly, an assessment that follows any adjustment to the partnership-partner's return pursuant to section 6232(d) is not subject to the prohibition under section 6213(a), which would otherwise require a notice of deficiency to be mailed to the taxpayer. Additionally, section 6232(d)(1)(B) explicitly provides that the provisions under section 6213(b)(2), permitting abatement of such assessment, do not apply. Therefore, the IRS may assess tax against the partners of a partnership-partner where the partnership-partner reported inconsistently and has an election in effect under section 6221(b) without first having to issue a notice of deficiency to the partner, and abatement of the assessment under section 6213(b)(2) is not available. Accordingly, no changes were made in response to this comment.

The same comment also suggested that the regulations explain how a taxpayer may properly challenge a mathematical or clerical error assessment made by the IRS under proposed § 301.6232–(d)(1)(ii)(B) where the normal abatement procedures are unavailable. This comment was not adopted.

In the case where an imputed underpayment has been assessed pursuant to § 301.6232–(d)(1)(ii)(B) against a partnership-partner that has not complied with section 6222(a), the partnership-partner may be able to file an AAR subsequent to that assessment in accordance with the provisions of sections 6222 and 6227. While the AAR may readjust the partnership-related items at issue which resulted in the imputed underpayment, in effect providing an opportunity to the partnership to contest the adjustments, such readjustments would be required to be taken into account by the partnership's partners pursuant to the rules under section 6227 because the readjustments would necessarily be adjustments that would not result in an imputed underpayment. See §§ 301.6227–1(a), 301.6227–3(a). Those readjustments may reduce the partner's tax in the reporting year, but nothing would give the partnership-partner the ability to claim a refund of any imputed underpayment paid. Accordingly, it is the burden of a partnership-partner to ensure it has complied with the provisions of section 6222(a), either by treating items consistently with the manner in which they are treated on the partnership return or by notifying the IRS of any inconsistency, in order to preclude an assessment of an imputed underpayment under section 6232(d)(1)(B).

Under § 301.6232–(d)(1)(ii)(B), a partnership-partner that has failed to comply with section 6222(a) may, prior to assessment, correct an inconsistency by filing an AAR under section 6227 or filing an amended partnership return and furnishing amended statements, as appropriate. To clarify that an AAR in such a situation is only permitted to the extent allowed under section 6227, including the timing restrictions under section 6227(c), the final regulations under § 301.6232–(d)(1)(ii)(B) provide that the partnership may file an AAR ''in accordance with'' section 6227.

In the situation where an imputed underpayment has been assessed pursuant to § 301.6232–(d)(1)(ii)(B) against a partnership-partner but such partnership-partner had in fact complied with the provisions of section 6222(a), the partnership may be able to seek a refund of the any imputed underpayment paid on the ground that the adjustment should not have been treated as being on account of mathematical or clerical error. Any ability to seek a refund in this situation, however, is outside the scope of these regulations. For these reasons, no changes were made to the regulations under § 301.6232–1(d) in response to this comment.

8. Interest and Penalties Related to Imputed Underpayments

Proposed § 301.6233(a)–1(a) provided that except to the extent provided in section 6226(c) and the regulations thereunder, in the case of a partnership adjustment for a reviewed year, a partnership is liable for interest and for any penalty, addition to tax, or additional amount as provided in proposed § 301.6233(a)–1(c). Proposed § 301.6233(a)–1(c)(1) provided that in accordance with section 6221(a), the applicability of any penalties, additions to tax, and additional amounts that relate to a partnership adjustment is determined at the partnership level as if the partnership had been an individual subject to tax imposed by chapter 1 of the Code for the reviewed year, and the imputed underpayment were an actual underpayment of tax or understatement for such year. Proposed § 301.6233(a)–1(c)(2) provided rules that apply in the case of penalties imposed under sections 6662, 6662A, and 6663 with respect to partnership adjustments.

A. Defenses to Penalties

Proposed § 301.6233(a)–1(c)(1) provided that a partner-level defense (as described in § 301.6226–3(d)(3)) may not be raised in a proceeding of the partnership. As discussed in section 4.C.ii.I of this preamble, one comment recommended that the regulations clarify that a partnership that makes a push-out election will be able to avail itself of partner-level defenses at the partnership level. Another comment recommended that the regulations should provide a mechanism for partners to raise partner-level defenses prior to assessment, rather than requiring the partner to first pay the penalty and then file a claim for refund to raise the partner-level defense. The comment stated the post-payment process would be unduly burdensome on partners and that a pre-payment process would not impair the audit process for the IRS. These comments were not adopted.

Section 6233 provides that penalties are determined as if the partnership had been an individual subject to chapter 1 tax for the reviewed year. In determining whether a penalty applies during the partnership proceeding, therefore, it is only the conduct of the partnership that is relevant. Allowing the partnership or partners to raise partner-level defenses and requiring the IRS to evaluate a partner's facts and circumstances during the partnership proceeding contravenes that purpose of the centralized partnership audit regime. Such a rule would also significantly impair the IRS's audit process. As discussed in section 3 of this preamble regarding the determination of imputed underpayments, an examination under the centralized partnership audit regime is a centralized proceeding wherein partner tax attributes are generally unaccounted for. Requiring the IRS to evaluate the specific facts and circumstances of each partner undermines the centralized nature of the proceeding and could significantly delay the examination.

Moreover, section 6233 treats an imputed underpayment as if it were an actual underpayment or understatement for the reviewed year. A partner-level defense by itself cannot reduce the amount of an imputed underpayment. Even if the partner-level defense were sufficient to provide penalty relief, that

relief does not affect the amount of the imputed underpayment. A partner-level defense can only be relevant in situations where the imputed underpayment is reduced because a partner takes into account the adjustments that resulted in the imputed underpayment, for example as part of modification, or where there is no partnership-level liability for the imputed underpayment because of an election by the partnership under section 6226 to have its partners take into account the adjustments. Only upon taking into account the adjustments will a partner know the amount of the penalty the partner is liable for and therefore whether a defense to the penalty is needed. Accordingly, comments suggesting that the partnership be permitted to raise partner-level defenses to reduce a penalty imposed against the partnership were not adopted. For discussion of partner-level defenses in the context of modification and the push out election, see sections 3.C and 4.C.ii.I of this preamble.

B. Determining the Portion of the Imputed Underpayment to Which the Penalty Applies

Proposed § 301.6233(a)–1(c)(2)(ii) provided rules for determining the portion of the imputed underpayment to which a penalty applies where there exists (1) at least one adjustment with respect to which no penalty has been imposed and at least one adjustment with respect to which a penalty has been imposed or (2) at least two adjustments with respect to which penalties have been imposed and the penalties have different rates. In general, to determine the portion of the imputed underpayment to which the penalty applies, all partnership adjustments that resulted in the imputed underpayment were grouped together according to whether they were adjustments with respect to which a penalty has been imposed and according to rate of penalty. The adjustments were then multiplied by the rate that applied in calculating the imputed underpayment and added together to produce the portion of the imputed underpayment to which the penalty applies.

One comment observed that under proposed § 301.6233(a)–1(c)(2)(ii)(D) and (E) negative or decreasing adjustments were applied first to adjustments to which no penalties have been imposed and then to adjustments subject to the lowest penalty and suggested that this rule applies such adjustments in a manner that maximizes penalties. The comment recommended that the proposed regulations be revised to group adjustments by character for purposes of calculating the portion of the imputed underpayment subject to the penalty. This comment was partially adopted.

Section 6233(a)(3) provides that any penalty, addition to tax, or additional amount shall be determined at the partnership level as if such partnership had been an individual subject to tax under chapter 1 for the reviewed year and the imputed underpayment were an actual underpayment (or understatement) for such year. Section 6662, which imposes accuracy-related penalties on underpayments, applies to the portion of an underpayment attributable to certain circumstances such as negligence or disregard of rules or regulations or a substantial understatement of income tax. To determine the portion of an imputed underpayment to which a penalty applied, proposed § 301.6233(a)–1(c) applied rules similar to the ordering rules under § 1.6664–3 by disregarding the grouping and subgrouping rules under § 301.6225–1 and by applying decreasing adjustments to offset any positive adjustments to which no penalty was imposed, followed by adjustments to which 20 a percent penalty was imposed, and so forth. While the rules under proposed § 301.6233(a)–1(c) were consistent with the rules § 1.6664–3, this consistency did not allow for important distinctions between the calculation of an underpayment and the calculation of the imputed underpayment. For example, in computing an imputed underpayment, negative adjustments are generally not taken into consideration in determining the imputed underpayment unless the negative adjustment is in a grouping or subgrouping under § 301.6225–1 that results in a net positive adjustments because only net positive adjustments are totaled to determine the total netted partnership adjustment, which forms the base for an imputed underpayment prior to application of any adjustments to credits.

Section 301.6233(a)–1(c) has been revised to account for these distinctions and to apply the ordering rules under § 1.6664–3 within each grouping or subgrouping determined in accordance with § 301.6225–1. Because the revised rule uses the groupings and subgroupings determined under section 6225, in general the character of the adjustments within each grouping will be the same, as suggested by the comment. See § 301.6225–1(d). The revised rule maintains the treatment of an imputed underpayment as if it were an actual underpayment or understatement, but also respects the framework for calculating the imputed underpayment established under section 6225 and the regulations thereunder. The revised rule is also more streamlined, removes references to specific penalty rates to allow for any future statutory changes, and eliminates unnecessary steps and terminology. For example, the revised rule eliminates the term decreasing adjustment and instead uses the term ''negative adjustment'' as defined in § 301.6225–1(d)(2).

Section 301.6233(a)–1(c)(2) provides the rules for calculating penalties under section 6662, 6662A or 6663. Section 301.6233(a)–1(c)(2)(iii) provides the rules for applying negative adjustments. As a threshold matter, the rule provides that adjustments that do not result in an imputed underpayment and adjustments that are disregarded in determining the imputed underpayment are not taken into account when determining the amount of penalties. The rule generally provides that if any grouping or subgrouping as determined under § 301.6225–1 or § 301.6225–2 contains a negative adjustment and at least one positive adjustment subject to penalty, the negative adjustment is first used to offset any positive adjustment to which no penalties have been imposed within that grouping or subgrouping. If any amount of negative adjustments remains after offsetting positive adjustments to which no penalties have been imposed, the remaining amount of negative adjustment is applied within the grouping or subgrouping against positive adjustments to which a penalty has been imposed at the lowest rate. If after this step, any amount of negative adjustment remains, the process is repeated iteratively with respect to higher rates in ascending order of rate. Additionally, the regulations provide special rules for the application of negative credits. All adjustments to credits and adjustments treated as adjustments to credits are treated as grouped in the credit grouping without regard to whether the adjustments were subgrouped for purposes of § 301.6225–1 (or § 301.6225–2 in the case of modification). If negative credit adjustments remain after the application of negative adjustments in accordance with § 301.6233(a)–1(c)(2)(iii)(A), negative credit amounts are first applied to reduce the portion of the imputed understatement not subject to penalty then to reduce the portion of the imputed understatement subject to penalty iteratively in ascending order of rate.

Section 301.6233(a)–1(c)(2)(ii) provides the mechanical steps for calculating any penalty after any

negative adjustments have been applied in accordance with 301.6233(a)–1(c)(2)(iii). The steps are applied separately for each particular penalty imposed with respect to the adjustments.

First, all adjustments that are not adjustments to credits or treated as adjustments to credits that are subject to a particular penalty and to which the highest rate of tax in effect for the reviewed year under section 1 or 11 was applied are totaled. Second, the total from step one is multiplied by the highest rate of tax in effect for the reviewed year under section 1 or 11. Third, the first and second steps are repeated for any other tax rates used to calculate the imputed underpayment, for example, rates applied as part of the modification process. Fourth, all of the results from completing the first three steps are totaled. Fifth, all adjustments in the credit grouping are netted. The total from step four is increased by any remaining positive adjustments to credits or decreased by negative adjustments to credits in accordance with the rules in § 301.6233(a)–1(c)(2)(iii). This result is the portion of the imputed underpayment subject to penalty. Sixth, the total from step five is multiplied by the penalty rate for the penalty to provide the total penalty amount.

C. Interest on Penalties, Additions to Tax, and Additional Amounts

As discussed earlier in section 4.C.ii.III. of this preamble, one comment recommended that the regulations adopt a bifurcated approach under which interest would run on tax from the due date of the return without regard to extensions while interest on penalties would run from the due date of the return including any extensions. The comment recommended that proposed § 301.6233(a)–1(b) be revised to provide that the interest imposed on penalties and additions to tax (other than assessable penalties) on an imputed underpayment begins on the day after the due date of the partnership return (including any extensions). This comment was partially adopted.

Proposed § 301.6233(a)–1(b) provided rules regarding interest on an imputed underpayment, but did not provide rules regarding interest on penalties, additions to tax, or additional amounts with respect to the imputed underpayment. In light of the comment, the final regulations under § 301.6233(a)–1(b) clarify that interest with respect to penalties, additions to tax, or additional amounts with respect to an imputed underpayment determined under the rules of § 301.6233(a)–1(c) is the interest that would be imposed under chapter 67 of the Code treating the partnership return for the reviewed year as the return of tax to with respect to which such penalty is imposed. To the extent the comment was suggesting a rule that is not consistent with chapter 67 of the Code, the comment was not adopted.

9. Judicial Review of Partnership Adjustments

Section 6234(a) provides that a partnership may file a petition in the Tax Court, a United States district court, or the Court of Federal Claims, within 90 days of the date on which an FPA is mailed under section 6231. A petition under section 6234 may be filed in a district court or the Court of Federal Claims only if the partnership filing the petition makes a jurisdictional deposit in accordance with section 6234(b). The jurisdictional deposit is the amount of (as of the date of the filing of the petition) any imputed underpayment (as shown on the FPA) and any penalties, additions to tax, and additional amounts with respect to such imputed underpayment. See proposed § 301.6234–1(b).

Under proposed § 301.6226–1(e), a partnership that has made an election under § 301.6226–1 is not precluded from filing a petition under section 6234(a). One comment stated that the proposed regulations provided no explanation as to how or whether the deposit amount under section 6234(b) may or should be adjusted to reflect a push out election under section 6226. The comment recommended the regulations should provide a mechanism that would enable a partnership to file a petition in a district court or Court of Federal Claims and still make an election under section 6226, without creating the risk of having tax on the partnership adjustments paid twice. The comment suggested that one possible approach might be to reduce the deposit amount by the amount that would be reported by partners that receive statements based on an election under section 6226. The comment suggested that another approach might be to provide a clear mechanism for having the partnership obtain a refund of the imputed tax deposit before any amounts are paid by the push out partners under section 6226.

The comment's suggestion regarding whether a partnership can make an election under section 6226 and also file a petition under section 6234 is addressed in section 4.A.v of this preamble. With respect to the comment's suggestion that the partnership deposit be reduced by the amount of the imputed underpayment that would be reported by partners that receive 6226 statements, this suggestion was not adopted. The plain language of section 6234(b)(1) makes clear that a petition for readjustment may be filed in district court or the Court of Federal Claims only if the partnership makes a jurisdictional deposit. The statute does not provide authority to alter this jurisdictional requirement by regulation for any partnerships, including partnerships that make the election under section 6226. The election under section 6226 is made with respect to an imputed underpayment, and therefore the deposit required under section 6234(b)(1) must equal the entire imputed underpayment to which the election relates (in addition to penalties and interest). An election under section 6226 is not with respect to a portion of an imputed underpayment; likewise, a deposit under section 6234(b)(1) cannot be for a portion of the imputed underpayment.

Moreover, a rule allowing for a reduction in the deposit amount for those partners that are furnished statements under section 6226 would not work as a practical matter. First, to the extent the comment was suggesting a rule that allows a reduction of the deposit equal to each partner's share of the adjustments, this rule would reduce the deposit amount to zero, provided all partners properly were furnished statements. This would effectively eliminate the deposit requirement for partnerships making an election under section 6226. There is nothing in the statute that allows any partnership, including a partnership making the election under section 6226, to be exempt from the jurisdictional requirements of section 6234(b).

Second, to the extent the comment was suggesting a rule that would reduce the deposit by the tax paid by partners furnished statements, this rule would also not work given the timing of when statements must be furnished. Pursuant to § 301.6226–2(b)(1), all statements must be furnished no later than 60 days after the date all of the partnership adjustments to which the statement relates are finally determined. Partnership adjustments are finally determined upon the later of the expiration of the time to file a petition under section 6234, or if a petition under section 6234 is filed, the date when the court's decision becomes final. The deposit under section 6234(b)(1) must be made when a petition is filed. The deposit cannot be reduced at the time by the amount the tax partners will pay because statements are not furnished until later in the

process and even then the tax is not known until the partner files its return for the reporting year, which depending on timing of the FPA could be more than a year after the deadline for petitioning a court under section 6234(a). For these reasons, the comment's suggestion regarding a reduction in the amount of the deposit were not adopted, and the regulations were not changed in response to those suggestions.

With respect to the comment's recommendation that there be a clear mechanism for having the partnership obtain a refund of the tax deposit, the comment's concern that the deposit made in conjunction with a section 6226 election would result in double taxation is misplaced; however, the regulations were revised to clarify operation of the deposit rules. Under § 301.6234–1(c), the amount deposited under section 6234(b)(1) is not treated as a payment of tax (except with respect to chapter 67 of the Code). If the partnership makes a valid election under section 6226, no amount may be assessed against the partnership, and instead the partners must take the adjustments into account. To conform these two sets of rules, the final regulations under § 301.6234–1(e) clarify that a partnership is entitled to a return of any deposit that is in an amount in excess of the amount assessed against the partnership. To obtain a return of this excess deposit, the partnership must notify the IRS in writing in accordance with forms, instructions, and other guidance prescribed by the IRS.

10. Definitions and Special Rules

Five comments were received regarding the definition of pass-through partner under proposed § 301.6241–1, the rules regarding cease to exist determinations in accordance with proposed § 301.6241–3, and the rules regarding the nondeductibility of payments made under the centralized partnership audit regime as provided in proposed § 301.6241–4.

A. Definitions

Proposed § 301.6241–1 defined certain terms for purposes of the centralized partnership audit regime. Proposed § 301.6241(a)(5) defined a ''pass-through partner'' as ''a pass-through entity that holds an interest in a partnership'' and a ''pass-through entity'' to include a partnership described in § 301.7701–2(c)(1), among other types of entities. A partnership as described in § 301.7701–2(c)(1) means a business entity that is not a corporation under § 301.7701–2(b) and that has at least two members.

Section 6241(1) defines the term partnership to mean any partnership required to file a return under section 6031(a), which applies to every partnership as defined in section 761(a). Certain unincorporated organizations may elect under section 761(a) to not be subject to subchapter K. Proposed § 301.6241–5(a) provided that an entity that files a partnership return for any taxable year is subject to the centralized partnership audit regime with respect to such taxable year even if it is determined that the person filing the partnership return was not a partnership for such taxable year. Proposed § 301.6241–5(c)(2) provided an exception from this rule for entities for which a partnership return was filed for the sole purpose of making the election described in section 761(a).

One comment suggested there was an inconsistency between the definition of ''pass-through partner'' under proposed § 301.6241–1(a)(5), which defines partnership by reference to § 301.7701–2(c)(1), and the exception under proposed § 301.6241–5(c)(2) for entities that have elected out of subchapter K. The comment observed that the definition of partnership under § 301.7701–2(c)(1) arguably includes business organizations that have elected out of subchapter K under section 761(a). As a result, the term ''pass-through partner'' would include entities that may not be partnerships within the meaning of section 6031(a) because those entities are required to file partnership returns. To remedy this inconsistency, the comment recommended that the definition of ''pass-through partner'' in proposed § 301.6241–1(a)(5) be revised to eliminate the reference to § 301.7701–2(c)(1) and instead refer to the definition of ''partnership'' under section 6241(1), that is, ''a partnership required to file a return under section 6031(a).''

The Treasury Department and the IRS agree with the comment that there was an inconsistency in the definition of ''pass-through partner.'' The approach recommended in the comment was adopted and remedied this inconsistency. The revision clarifies that business organizations that have elected out of subchapter K are not ''pass-through partners.'' This change is consistent with the definition of ''partnership'' under section 6241(1). Accordingly, the definition of ''pass-through partner'' under § 301.6241–1(a)(5) refers to a partnership that is required to file a return under section 6031(a), consistent with the definition of partnership under section 6241(1).

One comment was received regarding the application of the centralized partnership audit regime to pass-through partners as a result of the proposed regulations. Proposed § 301.6226–3 provided that a pass-through partner that is furnished a statement described in § 301.6226–2 must comply with proposed § 301.6226–3(e). The term ''pass-through partner'' includes partnerships that made an election under section 6221(b) for the taxable year. One comment suggested that there may be uncertainty with respect to how a partnership that has elected out of the centralized partnership audit regime complies with the requirements of the regime. For example, the elected out partnership may not have designated a partnership representative prior to receiving a statement described in § 301.6226–2. The comment recommended that the Treasury Department and the IRS should issue further guidance on elected out partnerships, including providing guidance that confirms an elected out partnership receiving a statement described in § 301.6226–2 and complying with § 301.6226–3(e) will not be deemed subject to the centralized partnership audit regime for other purposes.

A partnership that has made an election under section 6221(b) is not subject to the requirements of the centralized partnership audit regime as a partnership. For example, the partnership is not required to select a partnership representative. A partnership that has made an election under section 6221(b) may still be subject to the requirements of the centralized partnership audit regime in its capacity as a partner in a partnership that is subject to the centralized partnership audit regime. For example, sections 6222, 6223, 6226(b)(4)(C), 6241(7), and the regulations thereunder apply to all partners in a partnership subject to the centralized partnership audit regime, including any pass-through partner. Pass-through partners that must comply with these provisions include partnerships subject to the centralized partnership audit regime as partnerships as well as those that made an election under 6221(b) and other entities such as S corporations and trusts.

For example, under § 301.6226–3(e) a pass-through partner that receives a push out statement from an audited partnership must furnish statements to its owners or, if it fails to furnish statements to its owners, pay an imputed underpayment. This rule applies regardless of whether or not the pass-through partner is subject to the

centralized partnership audit regime in its capacity as a partnership. Nothing in proposed § 301.6226–3(e) indicated that a pass-through partner not otherwise subject to the centralized partnership audit regime becomes subject to other provisions of the regime simply because it must comply with § 301.6226–3(e) in its capacity as a partner. Therefore, the Treasury Department and the IRS have declined to provide further guidance regarding the application of the centralized partnership audit regime to partnerships that have made an election out of the centralized partnership audit regime under section 6221(b).

B. Treatment Where a Partnership Ceases To Exist

Several comments were received regarding the treatment of partnership adjustments where a partnership ceases to exist under section 6241(7). The comments pertained to two general areas: (1) The determination that a partnership has ceased to exist; and (2) the definition of ''former partners'' under proposed § 301.6241–3(d).

i. Determination That Partnership Has Ceased To Exist

Proposed § 301.6241–3 provided that, if the IRS determined a partnership ceased to exist (as described in proposed § 301.6241–3(b)(2)) before the partnership adjustments take effect (as described in proposed § 301.6241–3(c)), the partnership adjustments are taken into account by the former partners (as described in proposed § 301.6241–3(d)) in accordance with proposed § 301.6241–3(e). Proposed § 301.6241–3(b)(1) provided that a determination that a partnership had ceased to exist was within the sole discretion of the IRS, and the IRS was not required to determine that a partnership has ceased to exist, even if the partnership meets the definition of cease to exist in proposed § 301.6241–3(b)(2).

One comment stated that the language in proposed § 301.6241–3(b)(1) and (2) was ambiguous and allowed for excessive latitude and a potential for abuse of discretion in making such a cease-to-exist determination. The comment suggested that the IRS, upon formal request, should be compelled to consider the facts and circumstances of a cease-to-exist determination.

If the IRS receives a letter requesting that the IRS determine that a specific partnership has ceased to exist and providing detailed facts to support such a determination, the IRS will consider the circumstances in the letter and whether it is in the interest of sound tax administration to determine that the partnership has ceased to exist. The IRS, however, will retain its discretion as to whether to determine that a partnership has ceased to exist, even if the facts would indicate that the partnership meets the criteria in § 301.6241–3(b)(1)(i) and (ii). The cease-to-exist rules are inherently related to collection issues with respect to amounts not paid as a result of an administrative proceeding under the centralized partnership audit regime. Where a taxpayer or partnership properly owes amounts to the U.S. government, the IRS should be provided broad latitude, within the statutory limits, to ensure that such amounts are ultimately collected. To that end, it is administratively necessary for the IRS to retain its discretion to make a determination about whether a partnership ceases to exist. Cease to exist is not the only collection tool available to the IRS. The Treasury Department and the IRS therefore decline to create an additional unnecessary administrative rule that would compel the IRS to make a determination if requested by a taxpayer. Accordingly, no changes were made to the final regulations as a result of this comment.

Although the regulations do not require the IRS to make a cease-to-exist determination upon a formal request, the regulations have been revised to provide that a partnership does not cease to exist for purposes of section 6241(7) without the IRS determining the partnership has ceased to exist. Under proposed § 301.6241–3(b), cease to exist was defined as a situation where the partnership terminates under section 708(b)(1) or is unable to pay, in full, any amount due under subchapter C of chapter 63. It was not clear from the proposed regulations whether a partnership meeting those criteria could cease to exist without an accompanying determination to that effect by the IRS. The final regulations under § 301.6241–3(b) make clear that a partnership ceases to exist if the partnership terminates within the meaning of section 708(b)(1) or the partnership does not have the ability to pay, in full, any amount due under subchapter C of chapter 63, but only if the IRS makes a determination that the partnership has ceased to exist under one of those two situations. The final regulations provide certainty to both taxpayers and the IRS about when a partnership ceases to exist and make the cease-to-exist rules more administrable for the IRS by eliminating any confusion about whether a partnership has ceased to exist.

Proposed § 301.6241–3(b)(1) provided that if the IRS determines that a partnership ceased to exist, the IRS will notify the partnership and its former partners within 30 days of such determination. The final regulations clarify that a failure by the IRS to send a notification required under § 301.6241–3(b)(1) to the former partners of the partnership does not invalidate a determination that the partnership has ceased to exist. In addition, one comment suggested that the IRS should also notify the partnership representative (and designated individual, if applicable). To the extent the comment is referring to the partnership representative of the audited partnership, the comment has been adopted. In the case of a determination that the partnership has ceased to exist, the IRS will notify the partnership, the former partners of the partnership, and when an audited partnership has ceased to exit, the partnership representative (and designated individual, if applicable) for the reviewed year. This rule is consistent with the other notification provisions throughout the centralized partnership audit regime, which provide notification to the partnership representative and designated individual, if applicable. To the extent the comment was referring to a partnership that received a push out statement, the comment was not adopted. The partnership representative from the reviewed year or any other year of a partnership that received a push out statement has no connection to the unpaid, current liability and notification would not be appropriate or necessarily beneficial to the partnership. In addition, there would be administrative complexity for the IRS in determining the appropriate partnership representative for a partnership partner to notify because the IRS will only have been in contact with the partnership representative of the audited partnership, not partnership representatives of other partnerships not subject to an administrative proceeding.

The same comment also suggested that the partnership should be allowed to appeal a determination that the partnership has ceased to exist to the IRS Office of Appeals within 60 days of the receipt of the IRS's determination that the partnership has ceased to exist. This comment was not adopted. As discussed in section 11 of this Summary of Comments and Explanation of Revisions, any guidance regarding the availability of review by the IRS Office of Appeals will be provided outside of these regulations to preserve flexibility and allow the IRS to revise its procedures as it gains experience with

the centralized partnership audit regime.

Former proposed § 301.6241–3(b)(2)(iii) had provided that the IRS could not determine that a partnership ceased to exist with respect to a partnership adjustment after the expiration of the period of limitations on collection applicable to the amount due resulting from such adjustment. One comment observed that the reference to the ''period of limitations on collection applicable to the amount due'' did not specify whether the period of limitations related to the partnership or the partner. In the August 2018 NPRM, former proposed § 301.6241–3(b)(2)(iii) was revised to provide that the relevant period of limitations is the period of limitations on collection applicable to the assessment made against the partnership for the amount due resulting from such adjustment. Because the plain language of proposed § 301.6241–3(b)(2)(iii) resolves the ambiguity identified by the comment, no further changes were made in the final regulations in response to this comment.

ii. Definition of Former Partners

Proposed § 301.6241–3(d) defined the term ''former partners'' as the adjustment year partners of the partnership that ceased to exist, unless there are no adjustment year partners in which case the former partners are the partners of the partnership during the last taxable year for which a partnership return under section 6031 was filed with respect to such partnership. If the IRS determined that the partnership ceased to exist prior to the partnership adjustments taking effect, the former partners of the partnership take into account the partnership adjustments as if the partnership had made an election under section 6226 to push out the adjustments to the former partners. See proposed § 301.6241–3(e).

One comment expressed concern that, once a partnership was placed under examination, the partners could transfer their partnership interests to defunct corporations or otherwise uncollectible entities such that the IRS would be unable to collect from the ''former partners'' under the provisions of proposed § 301.6241–3. Similarly, the comment expressed concern that if the partnership was able to pay some but not all of the amounts due under the centralized partnership audit regime and the IRS did not determine that the partnership had ceased to exist, the partners would benefit from the improper treatment of the items and the partnership will not have paid the amounts owed as a result of the adjustments. The comment suggested that the final regulations add the ability for the IRS to assess the transferees of the former partners and the owners of the partnership.

Under section 6232(f), as added by the TTCA after the comment was received, if the partnership does not pay any amount of the imputed underpayment or specified similar amount (as defined in section 6232(f)(2)) within 10 days after the date on which the IRS provides notice and demand for such payment, the IRS may assess upon each partner of the partnership (as of the close of the adjustment year) or, if the partnership has ceased to exist, the former partners of the partnership, a tax equal to such partner's proportionate share of such amount (including any penalties and interest). Section 6232(f) provides the IRS with the ability to directly make assessments against the partners of a partnership that fails to pay an imputed underpayment or specified similar amount much like the assessment authority suggested by the comment. In addition, nothing in proposed § 301.6241–3 limits or otherwise modifies the IRS's existing tools under the Code, related case law, or any other law with respect to transferee liability. Accordingly, no changes were made to the final regulations in response to this comment. For these reasons, the clarification recommended by the comment was not adopted.

Another comment suggested that the definition of ''former partners'' under proposed § 301.6241–3(d) should include the reviewed year partners of the partnership that has ceased to exist in situations where the partnership has made an election under section 6226. Proposed § 301.6241–3(b)(2)(i)(A) provided that the IRS may not determine that a partnership has ceased to exist solely because the partnership has a valid election under section 6226 in effect with respect to any imputed underpayment. If the partnership makes a valid election under section 6226, the partnership is not liable for the imputed underpayment to which the election relates. See section 6226(a) and § 301.6226–1(b)(2). As a result, the IRS cannot determine the partnership ceases to exist with respect to that imputed underpayment (see § 301.6241–3(b)(2)), and the cease to exist provisions under proposed § 301.6241–3 will not apply to such partnership with respect to that imputed underpayment. Therefore, this comment was not adopted.

Although this comment was not adopted, a clarification was made to the definition of ''former partners'' under proposed § 301.6241–3(d)(1)(i). As stated earlier in this section of the preamble, the term ''former partners'' was defined under proposed § 301.6241–3(d)(1)(i) as the partners for the adjustment year that corresponds to the partnership taxable year to which the partnership adjustment relates. The final regulations under § 301.6241–3(d)(1)(i) clarify that the term ''former partners'' means, for a partnership that has ceased to exist, the partners of the partnership during the adjustment year (as defined in § 301.6241–1(a)(2)) that corresponds to the reviewed year for which the adjustments were made.

C. Payments Nondeductible

Proposed § 301.6241–4 provided that no deduction is allowed under subtitle A of the Code for any payment required to be made by a partnership under the centralized partnership audit regime, which includes any imputed underpayment or any interest, penalties, additions to tax, or additional amounts with respect to an imputed underpayment. Former proposed § 301.6225–1(a) provided that a partnership's expenditure for the imputed underpayment ''and the adjustments that result in the imputed underpayment'' are taken into account by the partnership in accordance with § 301.6241–4.'' One comment suggested that, because of the cross reference to § 301.6241–4 in former proposed § 301.6225–1(a), that the regulations under § 301.6241–4 be revised to address the treatment of the adjustments that result in the imputed underpayment. This comment was not adopted.

Proposed § 301.6241–4 addressed the deductibility of payments required under the centralized partnership audit regime and did not address the treatment of adjustments that were taken into account in determining the amount of such payments. In the August 2018 NPRM, former proposed § 301.6225–1(a) was revised to remove the erroneous cross-reference to the adjustments being taken into account under § 301.6241–4. To the extent the comment was recommending that revision, the comment was addressed by the revisions in the August 2018 NPRM. To the extent the comment was recommending guidance on the treatment of partnership adjustments in the context of adjusting tax attributes, those rules were provided in proposed §§ 301.6225–4 and 301.6226–4.

D. Extension to Entities Filing Partnership Returns

Proposed § 301.6241–5(c)(2) provided that the centralized partnership audit regime would not apply to a taxable year for which a partnership return was

filed for the sole purpose of making an election described in section 761(a) (regarding election out of subchapter K for certain unincorporated organizations). The final regulations under § 301.6241–5(c)(2) retain this rule but clarify that the centralized partnership audit regime will not apply to a taxable year in which a valid section 761(a) election is made. This change was made to clarify that the election under section 761(a) must be valid in order for the rules under § 301.6241–5 not to apply to a partnership return that is filed with respect to a taxable year.

11. Comments Concerning IRS Appeals Office

Several comments were received regarding the interaction between the centralized partnership audit regime and the IRS Appeals. For example, certain comments suggested the regulations clarify the rules regarding a partnership's ability to raise various issues and determinations with IRS Appeals, including the timing of any involvement by IRS Appeals.

Procedures governing IRS Appeals are beyond the scope of these regulations. Accordingly, except as described in sections 3.B.i., 3.B.vii., 4.B.v., and 10.B.i. of this preamble, neither this preamble nor the regulations address IRS Appeals procedures in the context of the centralized partnership audit regime. These procedures are expected to be addressed in future guidance.

12. Effect of Provisions Enacted Under the Tax Cuts and Jobs Act

One comment suggested that the final regulations include guidance on the effect of the new partnership-related provisions of the Tax Cuts and Jobs Act, formally known as ''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), including examples of how adjustments to partnership-related items and tax attributes specific to the new TCJA provisions are treated under sections 6225 and 6226 by partnerships and their partners.

The Treasury Department and the IRS have determined not to provide guidance on how the provisions of the TCJA, including any partnership-related provisions, interact with the centralized partnership audit regime. The TCJA provisions are substantive tax rules that work independently of the procedural rules of the centralized partnership audit regime. Therefore, no change would necessarily be required as a result of these substantive provisions. However, as the Treasury Department and the IRS continue to gain experience with the centralized partnership audit regime and implement rules under the new TCJA provisions, guidance will be issued if it is later determined that doing so would be appropriate. For these reasons, this comment was not adopted.

13. Effective Date of Centralized Partnership Audit Regime

Several comments recommended that the effective date of the centralized partnership audit regime be delayed. These comments were not adopted because the effective date for the statutory provisions governing the centralized partnership audit regime is established by statute. See BBA section 1101(g).

Special Analyses

This regulation is not subject to review under section 6(b) of Executive Order 12866 pursuant to the Memorandum of Agreement (April 11, 2018) between the Treasury Department and the Office of Management and Budget regarding review of tax regulations. Therefore, a regulatory impact assessment is not required.

Because the final regulations would not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply.

Pursuant to section 7805(f) of the Code, the notice of proposed rulemaking preceding these regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business, and no comments were received.

Statement of Availability of IRS Documents

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

Drafting Information

The principal authors of these final regulations are Jennifer M. Black of the Office of the Associate Chief Counsel (Procedure and Administration), Steven L. Karon of the Office of the Associate Chief Counsel (Procedure and Administration), and Joy E. Gerdy Zogby of the Office of the Associate Chief Counsel (Procedure and Administration). However, other personnel from the Treasury Department and the IRS participated in their development.

List of Subjects in 26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

Amendments to the Regulations

Accordingly, 26 CFR part 301 is amended as follows:

PART 301—PROCEDURE AND ADMINISTRATION

■ **Paragraph 1.** The authority citation for part 301 is amended by adding entries for §§ 301.6221(a)–1, 301.6222–1, 301.6225–1, 301.6225–2, 301.6225–3, 301.6226–1, 301.6226–2, 301.6226–3, 301.6227–1, 301.6227–2, 301.6227–3, 301.6231–1, 301.6232–1, 301.6233(a)–1, 301.6233(b)–1, 301.6234–1, 301.6235–1, 301.6241–1, 301.6241–2, 301.6241–3, 301.6241–4, 301.6241–5, and 301.6241–6 in numerical order to read in part as follows:

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

Section 301.6221(a)–1 also issued under 26 U.S.C. 6221.

Section 301.6222–1 also issued under 26 U.S.C. 6222 and 6223.

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Section 301.6225–1 also issued under 26 U.S.C. 6225.

Section 301.6225–2 also issued under 26 U.S.C. 6223 and 6225.

Section 301.6225–3 also issued under 26 U.S.C. 6225.

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Section 301.6226–1 also issued under 26 U.S.C. 6223 and 6226.

Section 301.6226–2 also issued under 26 U.S.C. 6226.

Section 301.6226–3 also issued under 26 U.S.C. 6226.

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Section 301.6227–1 also issued under 26 U.S.C. 6223 and 6227.

Section 301.6227–2 also issued under 26 U.S.C. 6227.

Section 301.6227–3 also issued under 26 U.S.C. 6227.

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Section 301.6231–1 also issued under 26 U.S.C. 6231.

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Section 301.6232–1 also issued under 26 U.S.C. 6232.

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Section 301.6233(a)–1 also issued under 26 U.S.C. 6233.

Section 301.6233(b)–1 also issued under 26 U.S.C. 6233.

Section 301.6234–1 also issued under 26 U.S.C. 6234.

Section 301.6235–1 also issued under 26 U.S.C. 6235.

Section 301.6241–1 also issued under 26 U.S.C. 6241.

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Section 301.6241–2 also issued under 26 U.S.C. 6241.

Section 301.6241–3 also issued under 26 U.S.C. 6241.

Section 301.6241–4 also issued under 26 U.S.C. 6241.

Section 301.6241–5 also issued under 26 U.S.C. 6241.

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Section 301.6241–6 also issued under 26 U.S.C. 6241.

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■ **Par. 2.** Section 301.6221(a)–1 is added to read as follows:

§ 301.6221(a)–1 Determination at partnership level.

(a) *In general.* Except as otherwise provided under subchapter C of chapter 63 of the Internal Revenue Code (subchapter C of chapter 63) and the regulations in this part, any adjustment to a partnership-related item (as defined in § 301.6241–1(a)(6)(ii)) is determined, any tax imposed by chapter 1 of the Internal Revenue Code (Code) attributable thereto is assessed and collected, and the applicability of any penalty, addition to tax, or additional amount that relates to an adjustment to any partnership-related item is determined at the partnership level under subchapter C of chapter 63.

(b) *Legal and factual determinations at the partnership level.* Except as otherwise provided under subchapter C of chapter 63, any legal or factual determinations underlying any adjustment or determination made in accordance with paragraph (a) of this section are also determined at the partnership level under subchapter C of chapter 63. For instance, determinations under this paragraph (b) include any determinations necessary to calculate the imputed underpayment or any modification of the imputed underpayment under section 6225 and the period of limitations on making adjustments under subchapter C of chapter 63.

(c) *Applicability date*—(1) *In general.* Except as provided in paragraph (c)(2) of this section, this section applies to partnership taxable years beginning after December 31, 2017, and ending after August 12, 2018.

(2) *Election under § 301.9100–22 in effect.* This section applies to any partnership taxable year beginning after November 2, 2015, and before January 1, 2018, for which a valid election under § 301.9100–22 is in effect.

■ **Par. 3.** Section 301.6222–1 is added to read as follows:

§ 301.6222–1 Partner's return must be consistent with partnership return.

(a) *Consistent treatment of partnership-related items*—(1) *In general.* The treatment of partnership-related items (as defined in § 301.6241–1(a)(6)(ii)) on a partner's return must be consistent with the treatment of such items on the partnership return in all respects, including the amount, timing, and characterization of such items. A partner has not satisfied the requirement of this paragraph (a) if the treatment of the partnership-related item on the partner's return is consistent with how such item was treated on a schedule or other information furnished to the partner by the partnership but inconsistent with the treatment of the item on the partnership return actually filed. For rules relating to the election to be treated as having reported the inconsistency where the partner treats a partnership-related item consistently with an incorrect schedule or other information furnished by the partnership, see paragraph (d) of this section. For purposes of this section, the term *partner's return* includes any return, statement, schedule, or list, and any amendment or supplement thereto, filed by the partner with respect to any tax imposed by the Internal Revenue Code (Code).

(2) *Partner that is a partnership with an election in effect under section 6221(b).* The rules of this section apply to all partners, including a partnership-partner (as defined in § 301.6241–1(a)(7)) that has an election in effect under section 6221(b) for any taxable year. Accordingly, unless the requirements of paragraph (c) of this section are satisfied, a partnership-partner must treat partnership-related items of a partnership in which it is a partner consistent with the treatment of such items on the partnership return filed by the partnership in which it is a partner.

(3) *Partnership does not file a return.* A partner's treatment of a partnership-related item attributable to a partnership that does not file a return is per se inconsistent.

(4) *Treatment of items on a partnership return.* For purposes of this section, the treatment of a partnership-related item on a partnership return includes—

(i) The treatment of such item on the partnership's return of partnership income filed with the Internal Revenue Service (IRS) under section 6031, and any amendment or supplement thereto, including an administrative adjustment request (AAR) filed pursuant to section 6227; and

(ii) The treatment of such item on any statement, schedule or list, and any amendment or supplement thereto, filed by the partnership with the IRS, including any statements filed pursuant to section 6226.

(5) *Examples.* The following examples illustrate the rules of this paragraph (a). For purposes of these examples, each partnership is subject to the provisions of subchapter C of chapter 63 of the Code (subchapter C of chapter 63), and each partnership and its partners are calendar year taxpayers, unless otherwise stated.

(i) *Example 1.* A is a partner in Partnership during 2018 and 2019. In December 2018, Partnership receives an advance payment for services to be performed in 2019 and reports this amount as income on its partnership return for 2018. A includes its distributive share of income from the advance payment on A's income tax return for 2019 and not on A's income tax return for 2018. A has not satisfied the requirements of paragraph (a) of this section because A's treatment of the income attributable to Partnership is inconsistent with the treatment of that item by Partnership on its partnership return.

(ii) *Example 2.* B is a partner in Partnership during 2018. Partnership incurred start-up costs before it was actively engaged in its business. Partnership capitalized these costs on its 2018 partnership return. B deducted his distributive share of the start-up costs on B's 2018 income tax return. B has not satisfied the requirements of paragraph (a) of this section because B's treatment of the start-up costs is inconsistent with the treatment of that item by Partnership on its partnership return.

(iii) *Example 3.* C is a partner in Partnership during 2018. Partnership reports a loss of $100,000 on its partnership return for 2018. On the 2018 Schedule K–1 attached to the partnership return, Partnership reports $5,000 as C's distributive share of that loss. On the 2018 Schedule K–1 furnished to C, however, Partnership reports $15,000 as C's distributive share of the loss. C reports the $15,000 loss on C's 2018 income tax return. C has not satisfied the requirements of paragraph (a) of this section because C reported C's distributive share of the loss in a manner that is inconsistent with how C's distributive share of the loss was reported on the 2018 partnership return actually filed. See, however, paragraph (d) of this section for the election to be treated as having reported the inconsistency where the partner treats an item consistently with an incorrect schedule.

(iv) *Example 4.* D was a partner in Partnership during 2018. Partnership reports a loss of $100,000 on its partnership return for 2018. In 2020, Partnership files an AAR under section 6227 reporting that the amount of the loss on its 2018 partnership return is $90,000, rather than $100,000 as originally reported. Pursuant to section 6227, Partnership elects to have its partners take the adjustment into account, and furnishes D a statement showing D's share of the reduced loss for 2018. D fails to take his share of the reduced loss for 2018 into account in accordance with section 6227. D has not satisfied the requirements of paragraph (a) of this section because D has not taken into

account his share of the loss in a manner consistent with how Partnership treated such items on the partnership return actually filed.

(v) *Example 5.* E was a partner in Partnership during 2018. In 2021, Partnership receives a notice of final partnership adjustment (FPA) in an administrative proceeding under subchapter C of chapter 63 with respect to Partnership's 2018 taxable year. The FPA reflects an imputed underpayment. Partnership properly elects the application of section 6226 with respect to the imputed underpayment and files with the IRS and furnishes to E a statement of E's share of adjustments with respect to Partnership's 2018 taxable year. E fails to take his share of the adjustments into account in accordance with section 6226. E has not satisfied the requirements of paragraph (a) of this section because E has not taken into account his share of adjustments with respect to Partnership's 2018 taxable year in a manner consistent with how Partnership treated such items on the section 6226 statement filed with the IRS.

(vi) *Example 6.* F was a partner in Partnership during 2018. F has a valid election under section 6221(b) in effect with respect to F's 2018 partnership taxable year. Notwithstanding F's election under section 6221(b) for its 2018 taxable year, F is subject to section 6222 for taxable year 2018. F must treat, on its 2018 partnership return, any items attributable to F's interest in Partnership in a manner that is consistent with the treatment of those items on the 2018 partnership return actually filed by Partnership.

(vii) *Example 7.* G was a partner in Partnership during 2018. G's taxable year ends on the same day as Partnership's 2018 taxable year. Partnership did not file a partnership return for its 2018 taxable year. G files an income tax return for its 2018 taxable year and reports G's share of a loss attributable to G's interest in Partnership. Because Partnership failed to file a partnership return, G's treatment of such loss is per se inconsistent pursuant to paragraph (a)(3) of this section.

(b) *Effect of inconsistent treatment*—(1) *Determination of underpayment of tax resulting from inconsistent treatment.* If a partner fails to satisfy the requirements of paragraph (a) of this section, unless the partner provides notice in accordance with paragraph (c) of this section, the IRS may adjust the inconsistently reported partnership-related item on the partner's return to make it consistent with the treatment of such item on the partnership return (or where no partnership return was filed, remove any treatment of such items from the partner's return) and determine any underpayment of tax that results from that adjustment. For purposes of this section, except as provided in paragraph (b)(3) of this section, the underpayment of tax is the amount by which the correct tax, as determined by making the partner's return consistent with the partnership return, exceeds the tax shown on the partner's return.

(2) *Assessment and collection of tax.* The IRS may assess and collect any underpayment of tax resulting from an adjustment described in paragraph (b)(1) of this section in the same manner as if the underpayment of tax were on account of a mathematical or clerical error appearing on the partner's return, except that the procedures under section 6213(b)(2) for requesting abatement of an assessment do not apply.

(3) *Effect when partner is a partnership.* For the effect of a failure to satisfy the requirements of paragraph (a) of this section where the partner is itself a partnership (a partnership-partner), see section 6232(d)(1)(B) and § 301.6232–1(d).

(4) *Examples.* The following examples illustrate the rules of this paragraph (b). For purposes of these examples, each partnership is subject to the provisions of subchapter C of chapter 63, and each partnership and its partners are calendar year taxpayers, unless otherwise stated.

(i) *Example 1.* H, an individual, is a partner in Partnership. On its partnership return for taxable year 2018, Partnership reports $100,000 in ordinary income. On the Schedule K–1 attached to the partnership return, as well as on the Schedule K–1 furnished to H, Partnership reports $15,000 as H's distributive share of the $100,000 in ordinary income. H reports only $5,000 of the $15,000 of ordinary income on his 2018 income tax return. The IRS may determine the amount of tax that results from adjusting the ordinary income attributable to H's interest in Partnership reported on H's 2018 income tax return from $5,000 to $15,000 and assess that resulting underpayment in tax as if it were on account of a mathematical or clerical error appearing on H's return. H may not request an abatement of that assessment under section 6213(b).

(ii) *Example 2.* J was a partner in Partnership during 2018. In 2021, Partnership receives an FPA in an administrative proceeding under subchapter C of chapter 63 with respect to Partnership's 2018 taxable year. The FPA reflects an imputed underpayment. Partnership properly elects the application of section 6226 with respect to the imputed underpayment and files with the IRS and furnishes to J a statement of J's share of adjustments with respect to Partnership's 2018 taxable year. J fails to report one adjustment reflected on the statement, J's share of a decrease in the amount of losses for 2018, on J's return as required by section 6226. The IRS may determine the amount of tax that results from adjusting the decrease in the amount of losses on J's return to be consistent with the amount included on the section 6226 statement filed with the IRS and may assess the resulting underpayment in tax as if it were on account of a mathematical or clerical error appearing on J's return. J may not request an abatement of that assessment under section 6213(b).

(c) *Notification to the IRS when items attributable to a partnership are treated inconsistently*—(1) *In general.* Paragraphs (a) and (b) of this section (regarding the consistent treatment of partnership-related items and the effect of inconsistent treatment) do not apply to partnership-related items identified as inconsistent (or that may be inconsistent) in a statement that the partner provides to the IRS according to the forms, instructions, and other guidance prescribed by the IRS. Instead, the procedures in paragraph (c)(3) of this section apply. A statement does not identify an inconsistency for purposes of this paragraph (c) unless it is attached to the partner's return on which the partnership-related item is treated inconsistently.

(2) *Coordination with section 6223.* Paragraph (c)(1) of this section is not applicable to a partnership-related item the treatment of which is binding on the partner because of actions taken by the partnership under subchapter C of chapter 63 or because of a final decision in a proceeding with respect to the partnership under subchapter C of chapter 63. For instance, the provisions of paragraph (c)(1) of this section do not apply with respect to the partner's treatment of a partnership-related item reflected on a statement described in § 301.6226–2 filed by the partnership with the IRS. See § 301.6226–1(e) (regarding the binding nature of statements described in § 301.6226–2). Any underpayment resulting from the inconsistent treatment of an item described in this paragraph (c)(2) may be assessed and collected in accordance with paragraph (b)(2) of this section.

(3) *Partner protected only to extent of notification.* A partner who reports the inconsistent treatment of a partnership-related item is not subject to paragraphs (a) and (b) of this section only with respect to those items identified in the statement described in paragraph (c)(1) of this section. Thus, if a partner notifying the IRS with respect to one partnership-related item does not report the inconsistent treatment of another partnership-related item, the IRS may determine the amount of tax that results from adjusting the unidentified, inconsistently reported item on the partner's return to make it consistent with the treatment of such item on the partnership return and assess the resulting underpayment of tax in accordance with paragraph (b)(2) of this section.

(4) *Adjustment after notification*—(i) *In general.* If a partner notifies the IRS of the inconsistent treatment of a partnership-related item in accordance with paragraph (c)(1) of this section and

the IRS disagrees with the inconsistent treatment, the IRS may adjust the identified, inconsistently reported item in a proceeding with respect to the partner. Nothing in this paragraph (c)(4)(i) precludes the IRS from also conducting a proceeding with respect to the partnership. If the IRS conducts a proceeding with respect to the partnership regarding the identified, inconsistently reported item, each partner of the partnership, including any partner that notified the IRS of inconsistent treatment in accordance with paragraph (c)(1) of this section, is bound by actions taken by the partnership and by any final decision in the proceeding with respect to the partnership. See paragraph (c)(2) of this section.

(ii) *Adjustments in partner proceeding.* In a proceeding with respect to a partner described in paragraph (c)(4)(i) of this section, the IRS may adjust any identified, inconsistently reported partnership-related item to make the item consistent with the treatment of that item on the partnership return or determine that the correct treatment of such item differs from the treatment on the partnership return and instead adjust the item to reflect the correct treatment, notwithstanding the treatment of that item on the partnership return. The IRS may also adjust any item on the partner's return, including items that are not partnership-related items. Any final decision with respect to an inconsistent position in a proceeding to which the partnership is not a party is not binding on the partnership.

(5) *Limitation on treating partnership-related items inconsistently after notice of administrative proceeding.* After a notice of administrative proceeding with respect to a partnership taxable year has been mailed by the IRS under section 6231, a partner may not notify the IRS the partner is treating a partnership-related item on the partner's return inconsistently with how such item was treated on the partnership return for such taxable year, except as provided in § 301.6225–2.

(6) *Examples.* The following examples illustrate the rules of this paragraph (c). For purposes of these examples, each partnership is subject to the provisions of subchapter C of chapter 63, and each partnership and partner is a calendar year taxpayer, unless otherwise stated.

(i) *Example 1.* K is a partner in Partnership during 2018. K treats a deduction and a capital gain attributable to Partnership on K's 2018 income tax return in a manner that is inconsistent with the treatment of those items by Partnership on its 2018 partnership return. K reports the inconsistent treatment of the deduction in accordance with paragraph (c)(1) of this section, but not the inconsistent treatment of the gain. Because K did not notify the IRS of the inconsistent treatment of the gain in accordance with paragraph (c)(1) of this section, the IRS may determine the amount of tax that results from adjusting the gain reported on K's 2018 income tax return in order to make the treatment of that gain consistent with how the gain was treated on Partnership's partnership return. Pursuant to paragraph (c)(3) of this section, the IRS may assess and collect the underpayment of tax resulting from the adjustment to the gain as if it were on account of a mathematical or clerical error appearing on K's return.

(ii) *Example 2.* L is a partner in Partnership during 2018. On its 2018 partnership return, Partnership treats partner L's distributive share of ordinary loss attributable to Partnership as $8,000. L, however, claims an ordinary loss of $9,000 as attributable to Partnership on its 2018 income tax return and notifies the IRS of the inconsistent treatment in accordance with paragraph (c)(1) of this section. As a result of the notice of inconsistent treatment, the IRS conducts a separate proceeding under subchapter B of chapter 63 of the Internal Revenue Code with respect to L's 2018 income tax return, a proceeding to which Partnership is not a party. During the proceeding, the IRS determines that the proper amount of L's distributive share of the ordinary loss from Partnership is $3,000. During the same proceeding, the IRS also determines that L overstated a charitable contribution deduction in the amount of $2,500 on its 2018 income tax return. The determination of the adjustment of L's share of ordinary loss is not binding on Partnership. The charitable contribution deduction is not attributable to Partnership or to another partnership subject to the provisions of subchapter C of chapter 63. The IRS may determine the amount of tax that results from adjusting the $9,000 ordinary loss deduction to $3,000 and from adjusting the charitable contribution deduction. Pursuant to paragraph (c)(4)(ii) of this section, the IRS is not limited to only adjusting the ordinary loss of $9,000, as originally reported on L's partner return, to $8,000, as originally reported by Partnership on its partnership return, nor is the IRS prohibited from adjusting the charitable contribution deduction in the proceeding with respect to L.

(d) *Partner receiving incorrect information*—(1) *In general.* A partner is treated as having complied with section 6222(c)(1)(B) and paragraph (c)(1) of this section with respect to a partnership-related item if the partner—

(i) Demonstrates that the treatment of such item on the partner's return is consistent with the treatment of that item on the statement, schedule, or other form prescribed by the IRS and furnished to the partner by the partnership; and

(ii) The partner makes an election in accordance with paragraph (d)(2) of this section.

(2) *Time and manner of making election*—(i) *In general.* An election under paragraph (d) of this section must be filed in writing with the IRS office set forth in the notice that notified the partner of the inconsistency no later than 60 days after the date of such notice.

(ii) *Contents of election.* The election described in paragraph (d)(2)(i) of this section must be—

(A) Clearly identified as an election under section 6222(c)(2)(B);

(B) Signed by the partner making the election;

(C) Accompanied by a copy of the statement, schedule, or other form furnished to the partner by the partnership and a copy of the IRS notice that notified the partner of the inconsistency; and

(D) Include any other information required in forms, instructions, or other guidance prescribed by the IRS.

(iii) *Treatment of partnership-related item is unclear.* Generally, the requirement described in paragraph (d)(2)(ii)(C) of this section will be satisfied by attaching a copy of the statement, schedule, or other form furnished to the partner by the partnership to the election (in addition to a copy of the IRS notice that notified the partner of the inconsistency). However, if it is not clear from the statement, schedule, or other form furnished by the partnership that the partner's treatment of the partnership-related item on the partner's return is consistent, the election must also include an explanation of how the treatment of such item on the statement, schedule, or other form furnished by the partnership is consistent with the treatment of the item on the partner's return, including with respect to the characterization, timing, and amount of such item.

(3) *Example.* M is a partner in Partnership for 2018. Partnership is subject to subchapter C of chapter 63, and both Partnership and M are calendar year taxpayers. On its 2018 partnership return, Partnership reports that M's distributive share of ordinary income attributable to Partnership is $1,000. Partnership furnishes to M a Schedule K–1 for 2018 showing $500 as M's distributive share of ordinary income. M reports $500 of ordinary income attributable to Partnership on its 2018 income tax return consistent with the Schedule K–1 furnished to M. The IRS notifies M that M's treatment of the ordinary income attributable to Partnership on its 2018 income tax return is inconsistent with how Partnership treated the ordinary income allocated to M on its 2018 partnership

return. Within 60 days of receiving the notice from the IRS of the inconsistency, M files an election with the IRS in accordance with paragraph (d)(2) of this section. Because M made a valid election under section 6222(c)(2)(B) and paragraph (d)(1) of this section, M is treated as having notified the IRS of the inconsistency with respect to the ordinary income attributable to Partnership under paragraph (c)(1) of this section.

(e) *Applicability date*—(1) *In general.* Except as provided in paragraph (e)(2) of this section, this section applies to partnership taxable years beginning after December 31, 2017, and ending after August 12, 2018.

(2) *Election under § 301.9100–22 in effect.* This section applies to any partnership taxable year beginning after November 2, 2015, and before January 1, 2018, for which a valid election under § 301.9100–22 is in effect.

■ **Par. 4.** Section 301.6225–1 is added to read as follows:

§ 301.6225–1 Partnership adjustment by the Internal Revenue Service.

(a) *Imputed underpayment based on partnership adjustments*—(1) *In general.* In the case of any partnership adjustments (as defined in § 301.6241–1(a)(6)) by the Internal Revenue Service (IRS), if the adjustments result in an imputed underpayment (as determined in accordance with paragraph (b) of this section), the partnership must pay an amount equal to such imputed underpayment in accordance with paragraph (a)(2) of this section. If the adjustments do not result in an imputed underpayment (as described in paragraph (f) of this section), such adjustments must be taken into account by the partnership in the adjustment year (as defined in § 301.6241–1(a)(1)) in accordance with § 301.6225–3. Partnership adjustments may result in more than one imputed underpayment pursuant to paragraph (g) of this section. Each imputed underpayment determined under this section is based solely on partnership adjustments with respect to a single taxable year.

(2) *Partnership pays the imputed underpayment.* An imputed underpayment (determined in accordance with paragraph (b) of this section and included in a notice of final partnership adjustment (FPA) under section 6231(a)(3)) must be paid by the partnership in the same manner as if the imputed underpayment were a tax imposed for the adjustment year in accordance with § 301.6232–1. The FPA will include the amount of any imputed underpayment, as modified under § 301.6225–2 if applicable, unless the partnership waives its right to such FPA under section 6232(d)(2). See § 301.6232–1(d)(2). For the alternative to payment of the imputed underpayment by the partnership, see § 301.6226–1. If a partnership pays an imputed underpayment, the partnership's expenditure for the imputed underpayment is taken into account by the partnership in accordance with § 301.6241–4. For interest and penalties with respect to an imputed underpayment, see section 6233.

(3) *Imputed underpayment set forth in notice of proposed partnership adjustment.* An imputed underpayment set forth in a notice of proposed partnership adjustment (NOPPA) under section 6231(a)(2) is determined in accordance with paragraph (b) of this section without regard to any modification under § 301.6225–2. Modifications under § 301.6225–2, if allowed by the IRS, may change the amount of an imputed underpayment set forth in the NOPPA and determined in accordance with paragraph (b) of this section. Only the partnership adjustments set forth in a NOPPA are taken into account for purposes of determining an imputed underpayment under this section and for any modification under § 301.6225–2.

(b) *Determination of an imputed underpayment*—(1) *In general.* In the case of any partnership adjustment by the IRS, an imputed underpayment is determined by–

(i) Grouping the partnership adjustments in accordance with paragraph (c) of this section and, if appropriate, subgrouping such adjustments in accordance with paragraph (d) of this section;

(ii) Netting the adjustments in accordance with paragraph (e) of this section;

(iii) Calculating the total netted partnership adjustment in accordance with paragraph (b)(2) of this section;

(iv) Multiplying the total netted partnership adjustment by the highest rate of Federal income tax in effect for the reviewed year under section 1 or 11; and

(v) Increasing or decreasing the product that results under paragraph (b)(1)(iv) of this section by—

(A) Any amounts treated as net positive adjustments (as defined in paragraph (e)(4)(i) of this section) under paragraph (e)(3)(ii) of this section; and

(B) Except as provided in paragraph (e)(3)(ii) of this section, any amounts treated as net negative adjustments (as defined in paragraph (e)(4)(ii) of this section) under paragraph (e)(3)(ii) of this section.

(2) *Calculation of the total netted partnership adjustment.* For purposes of determining an imputed underpayment under paragraph (b)(1) of this section, the *total netted partnership adjustment* is the sum of all net positive adjustments in the reallocation grouping described in paragraph (c)(2) of this section and the residual grouping described in paragraph (c)(5) of this section.

(3) *Adjustments to items for which tax has been collected under chapters 3 and 4 of the Internal Revenue Code.* A partnership adjustment is disregarded for purposes of calculating the imputed underpayment under paragraph (b) of this section to the extent that the IRS has collected the tax required to be withheld under chapter 3 or chapter 4 (as defined in § 301.6241–6(b)(2)(ii) and (iii)) that is attributable to the partnership adjustment. See § 301.6241–6(b)(3) for rules that apply when a partnership pays an imputed underpayment that includes a partnership adjustment to an amount subject to withholding (as defined in § 301.6241–6(b)(2)(i)) under chapter 3 or chapter 4 for which such tax has not yet been collected.

(4) *Treatment of adjustment as zero for purposes of calculating the imputed underpayment.* If the effect of one partnership adjustment is reflected in one or more other partnership adjustments, the IRS may treat the one adjustment as zero solely for purposes of calculating the imputed underpayment.

(c) *Grouping of partnership adjustments*—(1) *In general.* To determine an imputed underpayment under paragraph (b) of this section, partnership adjustments are placed into one of four groupings. These groupings are the reallocation grouping described in paragraph (c)(2) of this section, the credit grouping described in paragraph (c)(3) of this section, the creditable expenditure grouping described in paragraph (c)(4) of this section, and the residual grouping described in paragraph (c)(5) of this section. Adjustments in groupings may be placed in subgroupings, as appropriate, in accordance with paragraph (d) of this section. The IRS may, in its discretion, group adjustments in a manner other than the manner described in this paragraph (c) when such grouping would appropriately reflect the facts and circumstances. For requests to modify the groupings, see § 301.6225–2(d)(6).

(2) *Reallocation grouping*—(i) *In general.* Any adjustment that allocates or reallocates a partnership-related item to and from a particular partner or

partners is a *reallocation adjustment.* Except in the case of an adjustment to a credit (as described in paragraph (c)(3) of this section) or to a creditable expenditure (as described in paragraph (c)(4) of this section), reallocation adjustments are placed in the reallocation grouping. Adjustments that reallocate a credit to and from a particular partner or partners are placed in the credit grouping (see paragraph (c)(3) of this section), and adjustments that reallocate a creditable expenditure to and from a particular partner or partners are placed in the creditable expenditure grouping (see paragraph (c)(4) of this section).

(ii) *Each reallocation adjustment results in at least two separate adjustments.* Each reallocation adjustment generally results in at least two separate adjustments. One adjustment reverses the effect of the improper allocation of a partnership-related item, and the other adjustment effectuates the proper allocation of the partnership-related item. Generally, a reallocation adjustment results in one positive adjustment (as defined in paragraph (d)(2)(iii) of this section) and one negative adjustment (as defined in paragraph (d)(2)(ii) of this section).

(3) *Credit grouping.* Each adjustment to a partnership-related item that is reported or could be reported by a partnership as a credit on the partnership's return, including a reallocation adjustment, is placed in the credit grouping.

(4) *Creditable expenditure grouping*—(i) *In general.* Each adjustment to a creditable expenditure, including a reallocation adjustment to a creditable expenditure, is placed in the creditable expenditure grouping.

(ii) *Adjustment to a creditable expenditure*—(A) *In general.* For purposes of this section, an adjustment to a partnership-related item is treated as an adjustment to a creditable expenditure if any person could take the item that is adjusted (or item as adjusted if the item was not originally reported by the partnership) as a credit. See § 1.704–1(b)(4)(ii) of this chapter. For instance, if the adjustment is a reduction of qualified research expenses, the adjustment is to a creditable expenditure for purposes of this section because any person allocated the qualified research expenses by the partnership could claim a credit with respect to their allocable portion of such expenses under section 41, rather than a deduction under section 174.

(B) *Creditable foreign tax expenditures.* The creditable expenditure grouping includes each adjustment to a creditable foreign tax expenditure (CFTE) as defined in § 1.704–1(b)(4)(viii)(*b*) of this chapter, including any reallocation adjustment to a CFTE.

(5) *Residual grouping*—(i) *In general.* Any adjustment to a partnership-related item not described in paragraph (c)(2), (3), or (4) of this section is placed in the residual grouping.

(ii) *Adjustments to partnership-related items that are not allocated under section 704(b).* The residual grouping includes any adjustment to a partnership-related item that derives from an item that would not have been required to be allocated by the partnership to a reviewed year partner under section 704(b).

(6) *Recharacterization adjustments*—(i) *Recharacterization adjustment defined.* An adjustment that changes the character of a partnership-related item is a recharacterization adjustment. For instance, an adjustment that changes a loss from ordinary to capital or from active to passive is a recharacterization adjustment.

(ii) *Grouping recharacterization adjustments.* A recharacterization adjustment is placed in the appropriate grouping as described in paragraphs (c)(2) through (5) of this section.

(iii) *Recharacterization adjustments result in two partnership adjustments.* In general, a recharacterization adjustment results in at least two separate adjustments in the appropriate grouping under paragraph (c)(6)(ii) of this section. One adjustment reverses the improper characterization of the partnership-related item, and the other adjustment effectuates the proper characterization of the partnership-related item. A recharacterization adjustment results in two adjustments regardless of whether the amount of the partnership-related item is being adjusted. Generally, recharacterization adjustments result in one positive adjustment and one negative adjustment.

(d) *Subgroupings*—(1) *In general.* If all partnership adjustments are positive adjustments, this paragraph (d) does not apply. If any partnership adjustment within any grouping described in paragraph (c) of this section is a negative adjustment, the adjustments within that grouping are subgrouped in accordance with this paragraph (d). The IRS may, in its discretion, subgroup adjustments in a manner other than the manner described in this paragraph (d) when such subgrouping would appropriately reflect the facts and circumstances. For requests to modify the subgroupings, see § 301.6225–2(d)(6).

(2) *Definition of negative adjustments and positive adjustments*—(i) *In general.* For purposes of this section, partnership adjustments made by the IRS are treated as follows:

(A) An increase in an item of gain is treated as an increase in an item of income;

(B) A decrease in an item of gain is treated as a decrease in an item of income;

(C) An increase in an item of loss or deduction is treated as a decrease in an item of income; and

(D) A decrease in an item of loss or deduction is treated as an increase in an item of income.

(ii) *Negative adjustment.* A *negative adjustment* is any adjustment that is a decrease in an item of income, a partnership adjustment treated under paragraph (d)(2)(i) of this section as a decrease in an item of income, or an increase in an item of credit.

(iii) *Positive adjustment*—(A) *In general.* A *positive adjustment* is any adjustment that is not a negative adjustment as defined in paragraph (d)(2)(ii) of this section.

(B) *Treatment of adjustments that cannot be allocated under section 704(b).* For purposes of determining an imputed underpayment under this section, an adjustment described in paragraph (c)(5)(ii) of this section that could result in an increase in income or decrease in a loss, deduction, or credit for any person without regard to any particular person's specific circumstances is treated, to the extent appropriate, either as a positive adjustment to income or to a credit.

(3) *Subgrouping rules*—(i) *In general.* Except as otherwise provided in this paragraph (d)(3), an adjustment is subgrouped according to how the adjustment would be required to be taken into account separately under section 702(a) or any other provision of the Code, regulations, forms, instructions, or other guidance prescribed by the IRS applicable to the adjusted partnership-related item. A negative adjustment must be placed in the same subgrouping as another adjustment if the negative adjustment and the other adjustment would have been properly netted at the partnership level and such netted amount would have been required to be allocated to the partners of the partnership as a single partnership-related item for purposes of section 702(a), other provision of the Code, regulations, forms, instructions, or other guidance prescribed by the IRS. For purposes of creating subgroupings under this section, if any adjustment could be subject to any preference, limitation, or restriction under the Code

(or not allowed, in whole or in part, against ordinary income) if taken into account by any person, the adjustment is placed in a separate subgrouping from all other adjustments within the grouping.

(ii) *Subgrouping reallocation adjustments*—(A) *Reallocation adjustments in the reallocation grouping.* Each positive adjustment and each negative adjustment resulting from a reallocation adjustment as described in paragraph (c)(2)(ii) of this section is placed in its own separate subgrouping within the reallocation grouping. For instance, if the reallocation adjustment reallocates a deduction from one partner to another partner, the decrease in the deduction (positive adjustment) allocated to the first partner is placed in a subgrouping within the reallocation grouping separate from the increase in the deduction (negative adjustment) allocated to the second partner. Notwithstanding the requirement that reallocation adjustments be placed into separate subgroupings, if a particular partner or group of partners has two or more reallocation adjustments allocable to such partner or group, such adjustments may be subgrouped in accordance with paragraph (d)(3)(i) of this section and netted in accordance with paragraph (e) of this section.

(B) *Reallocation adjustments in the credit grouping.* In the case of a reallocation adjustment to a credit, which is placed in the credit grouping pursuant to paragraph (c)(3) of this section, the decrease in credits allocable to one partner or group of partners is treated as a positive adjustment, and the increase in credits allocable to another partner or group of partners is treated as a negative adjustment. Each positive adjustment and each negative adjustment resulting from a reallocation adjustment to credits is placed in its own separate subgrouping within the credit grouping.

(iii) *Subgroupings within the creditable expenditure grouping*—(A) *In general.* Each adjustment in the creditable expenditure grouping described in paragraph (c)(4) of this section is subgrouped in accordance with paragraphs (d)(3)(i) and (iii) of this section. For rules related to creditable expenditures other than CFTEs, see paragraph (d)(3)(iii)(C) of this section.

(B) *Subgroupings for adjustments to CFTEs.* Each adjustment to a CFTE is subgrouped based on the separate category of income to which the CFTE relates in accordance with section 904(d) and the regulations in part 1 of this chapter, and to account for any different allocation of the CFTE between partners. Two or more adjustments to CFTEs are included within the same subgrouping only if each adjustment relates to CFTEs in the same separate category, and each adjusted partnership-related item would be allocated to the partners in the same ratio had those items been properly reflected on the partnership return for the reviewed year.

(C) [Reserved]

(iv) *Subgrouping recharacterization adjustments.* Each positive adjustment and each negative adjustment resulting from a recharacterization adjustment as described in paragraph (c)(6) of this section is placed in its own separate subgrouping within the residual grouping. If a particular partner or group of partners has two or more recharacterization adjustments allocable to such partner or group, such adjustments may be subgrouped in accordance with paragraph (d)(3)(i) of this section and netted in accordance with paragraph (e) of this section.

(e) *Netting adjustments within each grouping or subgrouping*—(1) *In general.* All adjustments within a subgrouping determined in accordance with paragraph (d) of this section are netted in accordance with this paragraph (e) to determine whether there is a net positive adjustment (as defined in paragraph (e)(4)(i) of this section) or net negative adjustment (as defined in paragraph (e)(4)(ii) of this section) for that subgrouping. If paragraph (d) of this section does not apply because a grouping only includes positive adjustments, all adjustments in that grouping are netted in accordance with this paragraph (e). For purposes of this paragraph (e), netting means summing all adjustments together within each grouping or subgrouping, as appropriate.

(2) *Limitations on netting adjustments.* Positive adjustments and negative adjustments may only be netted against each other if they are in the same grouping in accordance with paragraph (c) of this section. If a negative adjustment is in a subgrouping in accordance with paragraph (d) of this section, the negative adjustment may only net with a positive adjustment also in that same subgrouping in accordance with paragraph (d) of this section. An adjustment in one grouping or subgrouping may not be netted against an adjustment in any other grouping or subgrouping. Adjustments from one taxable year may not be netted against adjustments from another taxable year.

(3) *Results of netting adjustments within groupings or subgroupings*—(i) *Groupings other than the credit and creditable expenditure groupings.* Except as described in paragraphs (e)(3)(ii) and (iii) of this section, each net positive adjustment (as defined in paragraph (e)(4)(i) of this section) with respect to a particular grouping or subgrouping that results after netting the adjustments in accordance with this paragraph (e) is included in the calculation of the total netted partnership adjustment under paragraph (b)(2) of this section. Each net negative adjustment (as defined in paragraph (e)(4)(ii) of this section) with respect to a grouping or subgrouping that results after netting the adjustments in accordance with this paragraph (e) is excluded from the calculation of the total netted partnership adjustment under paragraph (b)(2) of this section. Adjustments underlying a net negative adjustment described in the preceding sentence are adjustments that do not result in an imputed underpayment (as described in paragraph (f) of this section).

(ii) *Credit grouping.* Any net positive adjustment or net negative adjustment in the credit grouping (including any such adjustment with respect to a subgrouping within the credit grouping) is excluded from the calculation of the total netted partnership adjustment. A net positive adjustment described in this paragraph (e)(3)(ii) is taken into account under paragraph (b)(1)(v) of this section. A net negative adjustment described in this paragraph (e)(3)(ii), including a negative adjustment to a credit resulting from a reallocation adjustment that was placed in a separate subgrouping pursuant to paragraph (d)(3)(ii)(B) of this section, is treated as an adjustment that does not result in an imputed underpayment in accordance with paragraph (f)(1)(i) of this section, unless the IRS determines that such net negative adjustment should be taken into account under paragraph (b)(1)(v) of this section.

(iii) *Treatment of creditable expenditures*—(A) *Creditable foreign tax expenditures.* A net decrease to a CFTE in any CFTE subgrouping (as described in paragraph (d)(3)(iii) of this section) is treated as a net positive adjustment described in paragraph (e)(3)(ii) of this section and is excluded from the calculation of the total netted partnership adjustment under paragraph (b)(2) of this section. A net increase to a CFTE in any CFTE subgrouping is treated as a net negative adjustment described in paragraph (e)(3)(i) of this section. For rules related to creditable expenditures other than CFTEs, see paragraph (e)(3)(iii)(B) of this section.

(B) [Reserved]

(4) *Net positive adjustment and net negative adjustment defined*—(i) *Net positive adjustment.* A *net positive*

adjustment means an amount that is greater than zero which results from netting adjustments within a grouping or subgrouping in accordance with this paragraph (e). A net positive adjustment includes a positive adjustment that was not netted with any other adjustment. A net positive adjustment includes a net decrease in an item of credit.

(ii) *Net negative adjustment.* A *net negative adjustment* means any amount which results from netting adjustments within a grouping or subgrouping in accordance with this paragraph (e) that is not a net positive adjustment (as defined in paragraph (e)(4)(i) of this section). A net negative adjustment includes a negative adjustment that was not netted with any other adjustment.

(f) *Partnership adjustments that do not result in an imputed underpayment*—(1) *In general.* Except as otherwise provided in paragraph (e) of this section, a partnership adjustment does not result in an imputed underpayment if—

(i) After grouping, subgrouping, and netting the adjustments as described in paragraphs (c), (d), and (e) of this section, the result of netting with respect to any grouping or subgrouping that includes a particular partnership adjustment is a net negative adjustment (as described in paragraph (e)(4)(ii) of this section); or

(ii) The calculation under paragraph (b)(1) of this section results in an amount that is zero or less than zero.

(2) *Treatment of an adjustment that does not result in an imputed underpayment.* Any adjustment that does not result in an imputed underpayment (as described in paragraph (f)(1) of this section) is taken into account by the partnership in the adjustment year in accordance with § 301.6225–3. If the partnership makes an election pursuant to section 6226 with respect to an imputed underpayment, the adjustments that do not result in that imputed underpayment that are associated with that imputed underpayment (as described in paragraph (g)(2)(iii)(B) of this section) are taken into account by the reviewed year partners in accordance with § 301.6226–3.

(g) *Multiple imputed underpayments in a single administrative proceeding*—(1) *In general.* The IRS, in its discretion, may determine that partnership adjustments for the same partnership taxable year result in more than one imputed underpayment. The determination of whether there is more than one imputed underpayment for any partnership taxable year, and if so, which partnership adjustments are taken into account to calculate any particular imputed underpayment is based on the facts and circumstances and nature of the partnership adjustments. See § 301.6225–2(d)(6) for modification of the number and composition of imputed underpayments.

(2) *Types of imputed underpayments*—(i) *In general.* There are two types of imputed underpayments: A general imputed underpayment (described in paragraph (g)(2)(ii) of this section) and a specific imputed underpayment (described in paragraph (g)(2)(iii) of this section). Each type of imputed underpayment is separately calculated in accordance with this section.

(ii) *General imputed underpayment.* The general imputed underpayment is calculated based on all adjustments (other than adjustments that do not result in an imputed underpayment under paragraph (f) of this section) that are not taken into account to determine a specific imputed underpayment under paragraph (g)(2)(iii) of this section. There is only one general imputed underpayment in any administrative proceeding. If there is one imputed underpayment in an administrative proceeding, it is a general imputed underpayment and may take into account adjustments described in paragraph (g)(2)(iii) of this section, if any, and all adjustments that do not result in that general imputed underpayment (as described in paragraph (f) of this section) are associated with that general imputed underpayment.

(iii) *Specific imputed underpayment*—(A) *In general.* The IRS may, in its discretion, designate a specific imputed underpayment with respect to adjustments to a partnership-related item or items that were allocated to one partner or a group of partners that had the same or similar characteristics or that participated in the same or similar transaction or on such other basis as the IRS determines properly reflects the facts and circumstances. The IRS may designate more than one specific imputed underpayment with respect to any partnership taxable year. For instance, in a single partnership taxable year there may be a specific imputed underpayment with respect to adjustments related to a transaction affecting some, but not all, partners of the partnership (such as adjustments that are specially allocated to certain partners) and a second specific imputed underpayment with respect to adjustments resulting from a reallocation of a distributive share of income from one partner to another partner. The IRS may, in its discretion, determine that partnership adjustments that could be taken into account to calculate one or more specific imputed underpayments under this paragraph (g)(2)(iii)(A) for a partnership taxable year are more appropriately taken into account in determining the general imputed underpayment for such taxable year. For instance, the IRS may determine that it is more appropriate to calculate only the general imputed underpayment if, when calculating the specific imputed underpayment requested by the partnership, there is an increase in the number of the partnership adjustments that after grouping and netting result in net negative adjustments and are disregarded in calculating the specific imputed underpayment.

(B) *Adjustments that do not result in an imputed underpayment associated with a specific imputed underpayment.* If the IRS designates a specific imputed underpayment, the IRS will designate which adjustments that do not result in an imputed underpayment, if any, are appropriate to associate with that specific imputed underpayment. If the adjustments underlying that specific imputed underpayment are reallocation adjustments or recharacterization adjustments, the net negative adjustment that resulted from the reallocation or recharacterization is associated with the specific imputed underpayment. Any adjustments that do not result in an imputed underpayment that are not associated with a specific imputed underpayment under this paragraph (g)(2)(iii)(B) are associated with the general imputed underpayment.

(h) *Examples.* The following examples illustrate the rules of this section. For purposes of these examples, unless otherwise stated, each partnership is subject to the provisions of subchapter C of chapter 63 of the Code, each partnership and its partners are calendar year taxpayers, all partners are U.S. persons, the highest rate of income tax in effect for all taxpayers is 40 percent for all relevant periods, and no partnership requests modification under § 301.6225–2.

(1) *Example 1.* Partnership reports on its 2019 partnership return $100 of ordinary income and an ordinary deduction of −$70. The IRS initiates an administrative proceeding with respect to Partnership's 2019 taxable year and determines that ordinary income was $105 instead of $100 ($5 adjustment) and that the ordinary deduction was −$80 instead of −$70 (−$10 adjustment). Pursuant to paragraph (c) of this section, the adjustments are both in the residual grouping. The −$10 adjustment to the ordinary deduction would not have been netted at the partnership level with the $5

adjustment to ordinary income and would not have been required to be allocated to the partners of the partnership as a single partnership-related item for purposes of section 702(a), other provision of the Code, regulations, forms, instructions, or other guidance prescribed by the IRS. Because the −$10 adjustment to the ordinary deduction would result in a decrease in the imputed underpayment if netted with the $5 adjustment to ordinary income and because it might be limited if taken into account by any person, the −$10 adjustment must be placed in a separate subgrouping from the $5 adjustment to ordinary income. See paragraph (d)(3)(i) of this section. The total netted partnership adjustment is $5, which results in an imputed underpayment of $2. The −$10 adjustment to the ordinary deduction is a net negative amount and is an adjustment that does not result in an imputed underpayment which is taken into account by Partnership in the adjustment year in accordance with § 301.6225–3.

(2) *Example 2.* The facts are the same as *Example 1* in paragraph (h)(1) of this section, except that the −$10 adjustment to the ordinary deduction would have been netted at the partnership level with the $5 adjustment to ordinary income and would have been required to be allocated to the partners of the partnership as a single partnership-related item for purposes of section 702(a), other provision of the Code, regulations, forms, instructions, or other guidance prescribed by the IRS. Therefore, the $5 adjustment and the −$10 adjustment must be placed in the same subgrouping within the residual grouping. The $5 adjustment and the −$10 adjustments are then netted in accordance with paragraph (e) of this section. Such netting results in a net negative adjustment (as defined under paragraph (e)(4)(ii) of this section) of −$5. Pursuant to paragraph (f) of this section, the −$5 net negative adjustment is an adjustment that does not result in an imputed underpayment. Because the only net adjustment is an adjustment that does not result in an imputed underpayment, there is no imputed underpayment.

(3) *Example 3.* Partnership reports on its 2019 partnership return ordinary income of $300, long-term capital gain of $125, long-term capital loss of −$75, a depreciation deduction of −$100, and a tax credit that can be claimed by the partnership of $5. In an administrative proceeding with respect to Partnership's 2019 taxable year, the IRS determines that ordinary income is $500 ($200 adjustment), long-term capital gain is $200 ($75 adjustment), long-term capital loss is −$25 ($50 adjustment), the depreciation deduction is −$70 ($30 adjustment), and the tax credit is $3 ($2 adjustment). Pursuant to paragraph (c) of this section, the adjustment to the tax credit is in the credit grouping under paragraph (c)(3) of this section. The remaining adjustments are part of the residual grouping under paragraph (c)(5) of this section. Pursuant to paragraph (d)(2) of this section, all of the adjustments in the residual grouping are positive adjustments. Because there are no negative adjustments, there are no subgroupings within the residual grouping. Under paragraph (b)(2) of this section, the adjustments in the residual grouping are summed for a total netted partnership adjustment of $355. Under paragraph (b)(1)(iv) of this section, the total netted partnership adjustment is multiplied by 40 percent (highest tax rate in effect), which results in $142. Under paragraph (b)(1)(v) of this section, the $142 is increased by the $2 credit adjustment, resulting in an imputed underpayment of $144.

(4) *Example 4.* Partnership reported on its 2019 partnership return long-term capital gain of $125. In an administrative proceeding with respect to Partnership's 2019 taxable year, the IRS determines the long-term capital gain should have been reported as ordinary income of $125. There are no other adjustments for the 2019 taxable year. This recharacterization adjustment results in two adjustments in the residual grouping pursuant to paragraph (c)(6) of this section: an increase in ordinary income of $125 ($125 adjustment) as well as a decrease of long-term capital gain of $125 (−$125 adjustment). The decrease in long-term capital gain is a negative adjustment under paragraph (d)(2)(ii) of this section and the increase in ordinary income is a positive adjustment under paragraph (d)(2)(iii) of this section. Under paragraph (d)(3)(i) of this section, the adjustment to long-term capital gain is placed in a subgrouping separate from the adjustment to ordinary income because the reduction of long-term capital gain is required to be taken into account separately pursuant to section 702(a). The $125 decrease in long-term capital gain is a net negative adjustment in the long-term capital subgrouping and, as a result, is an adjustment that does not result in an imputed underpayment under paragraph (f) of this section and is taken into account in accordance with § 301.6225–3. The $125 increase in ordinary income results in a net positive adjustment under paragraph (e)(4)(i) of this section. Because the ordinary subgrouping is the only subgrouping resulting in a net positive adjustment, $125 is the total netted partnership adjustment under paragraph (b)(2) of this section. Under paragraph (b)(1)(iv) of this section, $125 is multiplied by 40 percent resulting in an imputed underpayment of $50.

(5) *Example 5.* Partnership reported a $100 deduction for certain expenses on its 2019 partnership return and an additional $100 deduction with respect to the same type of expenses on its 2020 partnership return. The IRS initiates an administrative proceeding with respect to Partnership's 2019 and 2020 taxable years and determines that Partnership reported a portion of the expenses as a deduction in 2019 that should have been taken into account in 2020. Therefore, for taxable year 2019, the IRS determines that Partnership should have reported a deduction of $75 with respect to the expenses ($25 adjustment in the 2019 residual grouping). For 2020, the IRS determines that Partnership should have reported a deduction of $125 with respect to these expenses (−$25 adjustment in the 2020 residual grouping). There are no other adjustments for the 2019 and 2020 partnership taxable years. Pursuant to paragraph (e)(2) of this section, the adjustments for 2019 and 2020 are not netted with each other. The 2019 adjustment of $25 is the only adjustment for that year and a net positive adjustment under paragraph (e)(4)(i) of this section, and therefore the total netted partnership adjustment for 2019 is $25 pursuant to paragraph (b)(2) of this section. The $25 total netted partnership adjustment is multiplied by 40 percent resulting in an imputed underpayment of $10 for Partnership's 2019 taxable year. The $25 increase in the deduction for 2020, a net negative adjustment under paragraph (e)(4)(ii) of this section, is an adjustment that does not result in an imputed underpayment for that year. Therefore, there is no imputed underpayment for 2020.

(6) *Example 6.* On its partnership return for the 2020 taxable year, Partnership reported ordinary income of $100 and a capital gain of $50. Partnership had four equal partners during the 2020 tax year, all of whom were individuals. On its partnership return for the 2020 tax year, the capital gain was allocated to partner E and the ordinary income was allocated to all partners based on their interests in Partnership. In an administrative proceeding with respect to Partnership's 2020 taxable year, the IRS determines that for 2020 the capital gain allocated to E should have been $75 instead of $50 and that Partnership should have recognized an additional $10 in ordinary income. In the NOPPA mailed by the IRS, the IRS may determine pursuant to paragraph (g) of this section that there is a general imputed underpayment with respect to the increase in ordinary income and a specific imputed underpayment with respect to the increase in capital gain specially allocated to E.

(7) *Example 7.* On its partnership return for the 2020 taxable year, Partnership reported a recourse liability of $100. During an administrative proceeding with respect to Partnership's 2020 taxable year, the IRS determines that the $100 recourse liability should have been reported as a $100 nonrecourse liability. Under paragraph (d)(2)(iii)(B) of this section, the adjustment to the character of the liability is an adjustment to an item that cannot be allocated under section 704(b). The adjustment therefore is treated as a $100 increase in income because such recharacterization of a liability could result in up to $100 in taxable income if taken into account by any person. The $100 increase in income is a positive adjustment in the residual grouping under paragraph (c)(5)(ii) of this section. There are no other adjustments for the 2020 partnership taxable year. The $100 positive adjustment is treated as a net positive adjustment under paragraph (e)(4)(i) of this section, and the total netted partnership adjustment under paragraph (b)(2) of this section is $100. Pursuant to paragraph (b)(1) of this section, the total netted partnership adjustment is multiplied by 40 percent for an imputed underpayment of $40.

(8) *Example 8.* Partnership reports on its 2019 partnership return $400 of CFTEs in the general category under section 904(d). The IRS initiates an administrative proceeding with respect to Partnership's 2019 taxable year and determines that the amount of

CFTEs was $300 instead of $400 (−$100 adjustment to CFTEs). No other adjustments are made for the 2019 taxable year. The −$100 adjustment to CFTEs is placed in the creditable expenditure grouping described in paragraph (c)(4) of this section. Pursuant to paragraph (e)(3)(iii) of this section, the decrease to CFTEs in the creditable expenditure grouping is treated as a positive adjustment to (decrease in) credits in the credit grouping under paragraph (c)(3) of this section. Because no other adjustments have been made, the $100 decrease in credits produces an imputed underpayment of $100 under paragraph (b)(1) of this section.

(9) *Example 9.* Partnership reports on its 2019 partnership return $400 of CFTEs in the passive category under section 904(d). The IRS initiates an administrative proceeding with respect to Partnership's 2019 taxable year and determines that the CFTEs reported by Partnership were general category instead of passive category CFTEs. No other adjustments are made. Under the rules in paragraph (c)(6) of this section, an adjustment to the category of a CFTE is treated as two separate adjustments: An increase to general category CFTEs of $400 and a decrease to passive category CFTEs of $400. Both adjustments are included in the creditable expenditure grouping under paragraph (c)(4) of this section, but they are included in separate subgroupings. Therefore, the two amounts do not net. Instead, the $400 increase to CFTEs in the general category subgrouping is treated as a net negative adjustment under paragraph (e)(3)(iii)(A) of this section and is an adjustment that does not result in an imputed underpayment under paragraph (f) of this section. The decrease to CFTEs in the passive category subgrouping of the creditable expenditure grouping results in a decrease in CFTEs. Therefore, pursuant to paragraph (e)(3)(iii)(A) of this section, it is treated as a positive adjustment to (decrease in) credits in the credit grouping under paragraph (c)(3) of this section, which results in an imputed underpayment of $400 under paragraph (b)(1) of this section.

(10) *Example 10.* Partnership has two partners, A and B. Under the partnership agreement, $100 of the CFTE is specially allocated to A for the 2019 taxable year. The IRS initiates an administrative proceeding with respect to Partnership's 2019 taxable year and determines that $100 of CFTE should be reallocated from A to B. Because the adjustment reallocates a creditable expenditure, paragraph (c)(4) of this section provides that it is included in the creditable expenditure grouping rather than the reallocation grouping. The partnership adjustment is a −$100 adjustment to general category CFTE allocable to A and an increase of $100 to general category CFTE allocable to B. Pursuant to paragraph (d)(3)(iii) of this section, the −$100 adjustment to general category CFTE and the increase of $100 to general category CFTE are included in separate subgroupings in the creditable expenditure grouping. The $100 increase in general category CFTEs, B-allocation subgrouping, is a net negative adjustment, which does not result in an imputed underpayment and is therefore taken into account by the partnership in the adjustment year in accordance with § 301.6225–3. The net decrease to CFTEs in the general-category, A-allocation subgrouping, is treated as a positive adjustment to (decrease in) credits in the credit grouping under paragraph (c)(3) of this section, resulting in an imputed underpayment of $100 under paragraph (b)(1) of this section.

(11) *Example 11.* Partnership has two partners, A and B. Partnership owns two entities, DE1 and DE2, that are disregarded as separate from their owner for Federal income tax purposes and are operating in and paying taxes to foreign jurisdictions. The partnership agreement provides that all items from DE1 and DE2 are allocable to A and B in the following manner. Items related to DE1: To A 75 percent and to B 25 percent. Items related to DE2: To A 25 percent and to B 75 percent. On Partnership's 2018 return, Partnership reports CFTEs in the general category of $300, $100 with respect to DE1 and $200 with respect to DE2. Partnership allocates the $300 of CFTEs $125 and $175 to A and B respectively. During an administrative proceeding with respect to Partnership's 2018 taxable year, the IRS determines that Partnership understated the amount of creditable foreign tax paid by DE2 by $40 and overstated the amount of creditable foreign tax paid by DE1 by $80. No other adjustments are made. Because the two adjustments each relate to CFTEs that are subject to different allocations, the two adjustments are in different subgroupings under paragraph (d)(3)(iii)(B) of this section. The adjustment reducing the CFTEs related to DE1 results in a decrease in CFTEs within that subgrouping and under paragraph (e)(3)(iii)(A) of this section is treated as a decrease in credits in the credit grouping under paragraph (c)(3) of this section and results in an imputed underpayment of $80 under paragraph (b)(1) of this section. The increase of $40 of general category CFTE related to the DE2 subgrouping results in an increase in CFTEs within that subgrouping and is treated as a net negative adjustment, which does not result in an imputed underpayment and is taken into account in the adjustment year in accordance with § 301.6225–3.

(12) *Example 12.* Partnership has two partners, A and B. For the 2019 taxable year, Partnership allocated $70 of long term capital loss to B as well as $30 of ordinary income. In an administrative proceeding with respect to Partnership's 2019 taxable year, the IRS determines that the $30 of ordinary income and the $70 of long term capital loss should be reallocated from B to A. The partnership adjustments are a decrease of $30 of ordinary income (−$30 adjustment) allocated to B and a corresponding increase of $30 of ordinary income ($30 adjustment) allocated to A, as well as a decrease of $70 of long term capital loss ($70 adjustment) allocated to B and a corresponding increase of $70 of long term capital loss (−$70 adjustment) allocated to A. See paragraph (c)(2)(ii) of this section. Pursuant to paragraph (d)(3)(ii)(A) of this section, for purposes of determining the imputed underpayment, each positive adjustment and each negative adjustment allocated to A and B is placed in its own separate subgrouping. However, notwithstanding the general requirement that reallocation adjustments be subgrouped separately, the reallocation adjustments allocated to A and B may be subgrouped in accordance with paragraph (d)(3)(i) of this section because there are two reallocation adjustments allocated to each of A and B, respectively. Pursuant to paragraph (d)(3)(i) of this section, because the partnership adjustment allocated to A would not have been netted at the partnership level and would not have been allocated to A as a single partnership-related item for purposes of section 702(a), other provisions of the Code, regulations, forms, instructions, or other guidance prescribed by the IRS, the positive adjustment and the negative adjustment allocated to A remain in separate subgroupings. For the same reasons with respect to the adjustments allocated to B, the positive adjustment and the negative adjustment allocated to B also remain in separate subgroupings. As a result, the reallocation grouping would have four subgroupings, one for each adjustment: The decrease in ordinary income allocated to B (−$30 adjustment), the increase in ordinary income allocated to A ($30 adjustment), the decrease in long term capital loss allocated to B ($70 adjustment), and the increase long term capital loss allocated to A (−$70 adjustment). Pursuant to paragraph (e) of this section, no netting may occur between subgroupings. Accordingly, the ordinary income allocated to A ($30 adjustment) and the long term capital loss allocated to B ($70 adjustment) are both net positive adjustments. These net positive adjustments are added together to determine the total netted partnership adjustment of $100. The total netted partnership adjustment is multiplied by 40 percent, which results in an imputed underpayment of $40. The ordinary income allocated to B (−$30 adjustment) and the long term capital loss allocated to A (−$70 adjustment) are net negative adjustments treated as adjustments that do not result in an imputed underpayment taken into account by the partnership pursuant to § 301.6225–3.

(i) *Applicability date*—(1) *In general.* Except as provided in paragraph (i)(2) of this section, this section applies to partnership taxable years beginning after December 31, 2017, and ending after August 12, 2018.

(2) *Election under § 301.9100–22 in effect.* This section applies to any partnership taxable year beginning after November 2, 2015 and before January 1, 2018, for which a valid election under § 301.9100–22T is in effect.

■ **Par. 5.** Section 301.6225–2 is added to read as follows:

§ 301.6225–2 Modification of imputed underpayment.

(a) *Partnership may request modification of an imputed underpayment.* A partnership that has received a notice of proposed partnership adjustment (NOPPA) under

section 6231(a)(2) from the Internal Revenue Service (IRS) may request modification of a proposed imputed underpayment set forth in the NOPPA in accordance with this section and any forms, instructions, and other guidance prescribed by the IRS. The effect of modification on a proposed imputed underpayment is described in paragraph (b) of this section. Unless otherwise described in paragraph (d) of this section, a partnership may request any type of modification of an imputed underpayment described in paragraph (d) of this section in the time and manner described in paragraph (c) of this section. A partnership may request modification with respect to a partnership adjustment (as defined in § 301.6241–1(a)(6)) that does not result in an imputed underpayment (as described in § 301.6225–1(f)(1)(ii)) as described in paragraph (e) of this section. Only the partnership representative may request modification under this section. See section 6223 and § 301.6223–2 for rules regarding the binding authority of the partnership representative. For purposes of this section, the term *relevant partner* means any person for whom modification is requested by the partnership that is—

(1) A reviewed year partner (as defined in § 301.6241–1(a)(9)), including any pass-through partner (as defined in § 301.6241–1(a)(5)), except for any reviewed year partner that is a wholly-owned entity disregarded as separate from its owner for Federal income tax purposes; or

(2) An indirect partner (as defined in § 301.6241–1(a)(4)) except for any indirect partner that is a wholly-owned entity disregarded as separate from its owner for Federal income tax purposes.

(b) *Effect of modification*–(1) *In general.* A modification of an imputed underpayment under this section that is approved by the IRS may result in an increase or decrease in the amount of an imputed underpayment set forth in the NOPPA. A modification under this section has no effect on the amount of any partnership adjustment determined under subchapter C of chapter 63 of the Internal Revenue Code (subchapter C of chapter 63). See paragraph (e) of this section for the effect of modification on adjustments that do not result in an imputed underpayment. A modification may increase or decrease an imputed underpayment by affecting the extent to which adjustments factor into the determination of the imputed underpayment (as described in paragraph (b)(2) of this section), the tax rate that is applied in calculating the imputed underpayment (as described in paragraph (b)(3) of this section), and the number and composition of imputed underpayments, including the placement of adjustments in groupings and subgroupings (if applicable) (as described in paragraph (b)(4) of this section), as well as to the extent of other modifications allowed under rules provided in forms, instructions, or other guidance prescribed by the IRS (as described in paragraph (b)(5) of this section). If a partnership requests more than one modification under this section, modifications are taken into account in the following order:

(i) Modifications that affect the extent to which an adjustment factors into the determination of the imputed underpayment under paragraph (b)(2) of this section;

(ii) Modification of the number and composition of imputed underpayments under paragraph (b)(4) of this section; and

(iii) Modifications that affect the tax rate under paragraph (b)(3) of this section.

(2) *Modifications that affect partnership adjustments for purposes of determining the imputed underpayment.* If the IRS approves modification with respect to a partnership adjustment, such partnership adjustment is excluded from the determination of the imputed underpayment as determined under § 301.6225–1(b). This paragraph (b)(2) applies to modifications under—

(i) Paragraph (d)(2) of this section (amended returns and the alternative procedure to filing amended returns);

(ii) Paragraph (d)(3) of this section (tax-exempt status);

(iii) Paragraph (d)(5) of this section (specified passive activity losses);

(iv) Paragraph (d)(7) of this section (qualified investment entities);

(v) Paragraph (d)(8) of this section (closing agreements), if applicable;

(vi) Paragraph (d)(9) of this section (tax treaty modifications), if applicable; and

(vii) Paragraph (d)(10) of this section (other modifications), if applicable.

(3) *Modifications that affect the tax rate*—(i) *In general.* If the IRS approves a modification with respect to the tax rate applied to a partnership adjustment, such modification results in a reduction in tax rate applied to the total netted partnership adjustment with respect to the partnership adjustments in accordance with this paragraph (b)(3). A modification of the tax rate does not affect how the partnership adjustment factors into the calculation of the total netted partnership adjustment. This paragraph (b)(3) applies to modifications under—

(A) Paragraph (d)(4) of this section (rate modification);

(B) Paragraph (d)(8) of this section (closing agreements), if applicable;

(C) Paragraph (d)(9) of this section (tax treaty modifications), if applicable; and

(D) Paragraph (d)(10) of this section (other modifications), if applicable.

(ii) *Determination of the imputed underpayment in the case of rate modification.* Except as described in paragraph (b)(3)(iv) of this section, in the case of an approved modification described under paragraph (b)(3)(i) of this section, the imputed underpayment is the sum of the total netted partnership adjustment consisting of the net positive adjustments not subject to rate reduction under paragraph (b)(3)(i) of this section (taking into account any approved modifications under paragraph (b)(2) of the section), plus the *rate-modified netted partnership adjustment* determined under paragraph (b)(3)(iii) of this section, reduced or increased by any adjustments to credits (taking into account any modifications under paragraph (b)(4) of this section). The total netted partnership adjustment not subject to rate reduction under paragraph (b)(3)(i) of this section (taking into account any approved modifications under paragraph (b)(2) of the section) is determined by multiplying the partnership adjustments included in the total netted partnership adjustment that are not subject to rate modification under paragraph (b)(3)(i) of this section (including any partnership adjustment that remains after applying paragraph (b)(3)(iii) of this section) by the highest tax rate (as described in § 301.6225–1(b)(1)(iv)).

(iii) *Calculation of rate-modified netted partnership adjustment in the case of a rate modification.* The *rate-modified netted partnership adjustment* is determined as follows—

(A) Determine each relevant partner's distributive share of the partnership adjustments subject to an approved modification under paragraph (b)(3)(i) of this section based on how each adjustment subject to rate modification was allocated in the NOPPA, or if the appropriate allocation was not addressed in the NOPPA, how the adjustment would be properly allocated under subchapter K of chapter 1 of the Internal Revenue Code (subchapter K) to such relevant partner in the reviewed year (as defined in § 301.6241–1(a)(8)).

(B) Multiply each partnership adjustment determined under paragraph (b)(3)(iii)(A) of this section by the tax rate applicable to such adjustment based on the approved modification described under paragraph (b)(3)(i) of this section.

(C) Add all of the amounts calculated under paragraph (b)(3)(iii)(B) of this section with respect to each partnership adjustment subject to an approved modification described under paragraph (b)(3)(i) of this section.

(iv) *Rate modification in the case of special allocations.* If an imputed underpayment results from adjustments to more than one partnership-related item and any relevant partner for whom modification described under paragraph (b)(3)(i) of this section is approved has a distributive share of such items that is not the same with respect to all such items, the imputed underpayment as modified based on the modification types described under paragraph (b)(3)(i) of this section is determined as described in paragraphs (b)(3)(ii) and (iii) of this section except that each relevant partner's distributive share is determined based on the amount of net gain or loss to the partner that would have resulted if the partnership had sold all of its assets at their fair market value as of the close of the reviewed year appropriately adjusted to reflect any approved modification under paragraphs (d)(2), (3), and (5) through (10) of this section with respect to any relevant partner. Notwithstanding the preceding sentence, the partnership may request that the IRS apply the rule in paragraph (b)(3)(iii)(A) of this section when determining each relevant partner's distributive share for purposes of this paragraph (b)(3)(iv). Upon request by the IRS, the partnership may be required to provide the relevant partners' capital account calculation through the end of the reviewed year, a calculation of asset liquidation gain or loss, and any other information necessary to determine whether rate modification is appropriate, consistent with the rules of paragraph (c)(2) of this section. Any calculation by the partnership that is necessary to comply with the rules in this paragraph (b)(3)(iv) is not considered a revaluation for purposes of section 704.

(4) *Modification of the number and composition of imputed underpayments.* Once approved by the IRS, a modification under paragraph (d)(6) of this section affects the manner in which adjustments are placed into groupings and subgroupings (as described in § 301.6225–1(c) and (d)) or whether the IRS designates one or more specific imputed underpayments (as described in § 301.6225–1(g)). If the IRS approves a request for modification under this paragraph (b)(4), the imputed underpayment and any specific imputed underpayment affected by or resulting from the modification is determined according to the rules of § 301.6225–1 subject to any other modifications approved by the IRS under this section.

(5) *Other modifications.* The effect of other modifications described in paragraph (d)(10) of this section, including the order that such modification will be taken into account for purposes of paragraph (b)(1) of this section, may be set forth in forms, instructions, or other guidance prescribed by the IRS.

(c) *Time, form, and manner for requesting modification*—(1) *In general.* In addition to the requirements described in paragraph (d) of this section, a request for modification under this section must be submitted in accordance with, and include the information required by, the forms, instructions, and other guidance prescribed by the IRS. The partnership representative must submit any request for modification and all relevant information (including information required under paragraphs (c)(2) and (d) of this section) to the IRS within the time described in paragraph (c)(3) of this section. The IRS will notify the partnership representative in writing of the approval or denial, in whole or in part, of any request for modification. A request for modification, including a request by the IRS for information related to a request for modification, and the determination by the IRS to approve or not approve all or a portion of a request for modification, is part of the administrative proceeding with respect to the partnership under subchapter C of chapter 63 and does not constitute an examination, inspection, or other administrative proceeding with respect to any other person for purposes of section 7605(b).

(2) *Partnership must substantiate facts supporting a request for modification*—(i) *In general.* A partnership requesting modification under this section must substantiate the facts supporting such a request to the satisfaction of the IRS. The documents and other information necessary to substantiate a particular request for modification are based on the facts and circumstances of each request, as well as the type of modification requested under paragraph (d) of this section, and may include tax returns, partnership operating documents, certifications in the form and manner required with respect to the particular modification, and any other information necessary to support the requested modification. The IRS may, in forms, instructions, or other guidance, set forth procedures with respect to information and documents supporting the modification, including procedures to require particular documents or other information to substantiate a particular type of modification, the manner for submitting documents and other information to the IRS, and recordkeeping requirements. Pursuant to section 6241(10), the IRS may require the partnership to file or submit anything required to be filed or submitted under this section to be filed or submitted electronically. The IRS will deny a request for modification if a partnership fails to provide information the IRS determines is necessary to substantiate a request for modification, or if the IRS determines there is a failure by any person to make any required payment, within the time restrictions described in paragraph (c) of this section.

(ii) *Information to be furnished for any modification request.* In the case of any modification request, the partnership representative must furnish to the IRS such information as is required by forms, instructions, and other guidance prescribed by the IRS or that is otherwise requested by the IRS related to the requested modification. Such information may include a detailed description of the partnership's structure, allocations, ownership, and ownership changes, its relevant partners for each taxable year relevant to the request for modification, as well as the partnership agreement as defined in § 1.704–1(b)(2)(ii)(*h*) of this chapter for each taxable year relevant to the modification request. In the case of any modification request with respect to a relevant partner that is an indirect partner, the partnership representative must provide to the IRS any information that the IRS may require relevant to any pass-through partner or wholly-owned entity disregarded as separate from its owner for Federal income tax purposes through which the relevant partner holds its interest in the partnership. For instance, if the partnership requests modification with respect to an amended return filed by a relevant partner pursuant to paragraph (d)(2) of this section, the partnership representative may be required to provide to the IRS information that would have been required to have been filed by pass-through partners through which the relevant partner holds its interest in the partnership as if those pass-through partners had also filed their own amended returns.

(3) *Time for submitting modification request and information*—(i) *Modification request.* Unless the IRS grants an extension of time, all information required under this section with respect to a request for modification must be submitted to the IRS in the form and manner prescribed

by the IRS on or before 270 days after the date the NOPPA is mailed.

(ii) *Extension of the 270-day period.* The IRS may, in its discretion, grant a request for extension of the 270-day period described in paragraph (c)(3)(i) of this section provided the partnership submits such request to the IRS, in the form and manner prescribed by forms, instructions, or other guidance prescribed by the IRS before expiration of such period, as extended by any prior extension granted under this paragraph (c)(3)(ii).

(iii) *Expiration of the 270-day period by agreement.* The 270-day period described in paragraph (c)(3)(i) of this section (including any extensions under paragraph (c)(3)(ii) of this section) expires as of the date the partnership and the IRS agree, in the form and manner prescribed by form, instructions, or other guidance prescribed by the IRS to waive the 270-day period after the mailing of the NOPPA and before the IRS may issue a notice of final partnership adjustment. See section 6231(b)(2)(A); § 301.6231–1(b)(2).

(4) *Approval of modification by the IRS.* Notification of approval will be provided to the partnership only after receipt of all relevant information (including any supplemental information required by the IRS) and all necessary payments with respect to the particular modification requested before expiration of the 270-day period in paragraph (c)(3)(i) of this section plus any extension granted by the IRS under paragraph (c)(3)(ii) of this section.

(d) *Types of modification*—(1) *In general.* Except as otherwise described in this section, a partnership may request one type of modification or more than one type of modification described in paragraph (d) of this section.

(2) *Amended returns by partners*—(i) *In general.* A partnership may request a modification of an imputed underpayment based on an amended return filed by a relevant partner provided all of the partnership adjustments properly allocable to such relevant partner are taken into account and any amount due is paid in accordance with paragraph (d)(2) of this section. Only adjustments to partnership-related items or adjustments to a relevant partner's tax attributes affected by adjustments to partnership-related items may be taken into account on an amended return under paragraph (d)(2) of this section. A partnership may request a modification for purposes of paragraph (d)(2) of this section by submitting a modification request based on the alternative procedure to filing amended returns as described in paragraph (d)(2)(x) of this section. The partnership may not request an additional modification of any imputed underpayment for a partnership taxable year under this section with respect to any relevant partner that files an amended return (or utilizes the alternative procedure to filing amended returns) under paragraph (d)(2) of this section or with respect to any partnership adjustment allocated to such relevant partner.

(ii) *Requirements for approval of a modification request based on amended return.* Except as otherwise provided under the alternative procedure described in paragraph (d)(2)(x) of this section, an amended return modification request under paragraph (d)(2) of this section will not be approved unless the provisions of this paragraph (d)(2)(ii) are satisfied. The partnership may satisfy the requirements of paragraph (d)(2) of this section by demonstrating in accordance with forms, instructions, and other guidance provided by the IRS that a relevant partner has previously taken into account the partnership adjustments described in paragraph (d)(2)(i) of this section, made any required adjustments to tax attributes resulting from the partnership adjustments for the years described in paragraph (d)(2)(ii)(B) of this section, and made all required payments under paragraph (d)(2)(ii)(A) of this section.

(A) *Full payment required.* An amended return modification request under paragraph (d)(2) of this section will not be approved unless the relevant partner filing the amended return has paid all tax, penalties, additions to tax, additional amounts, and interest due as a result of taking into account all partnership adjustments in the first affected year (as defined in § 301.6226–3(b)(2)) and all modification years (as described in paragraph (d)(2)(ii)(B) of this section) at the time such return is filed with the IRS. Except for a pass-through partner calculating its payment amount pursuant to paragraph (d)(2)(vi) of this section, for purposes of this paragraph (d)(2)(ii)(A), the term *tax* means tax imposed by chapter 1 of the Internal Revenue Code (chapter 1).

(B) *Amended returns for all relevant taxable years must be filed.* Modification under paragraph (d)(2) of this section will not be approved by the IRS unless a relevant partner files an amended return for the first affected year and any modification year. A *modification year* is any taxable year with respect to which any tax attribute (as defined in § 301.6241–1(a)(10)) of the relevant partner is affected by reason of taking into account the relevant partner's distributive share of all partnership adjustments in the first affected year. A modification year may be a taxable year before or after the first affected year, depending on the effect on the relevant partner's tax attributes of taking into account the relevant partner's distributive share of the partnership adjustments in the first affected year.

(C) *Amended returns for partnership adjustments that reallocate distributive shares.* Except as described in this paragraph (d)(2)(ii)(C), in the case of partnership adjustments that reallocate the distributive shares of any partnership-related item from one partner to another, a modification under paragraph (d)(2) of this section will be approved only if all partners affected by such adjustments file amended returns in accordance with paragraph (d)(2) of this section. The IRS may determine that the requirements of this paragraph (d)(2)(ii)(C) are satisfied even if not all relevant partners affected by such adjustments file amended returns provided any relevant partners affected by the reallocation not filing amended returns take into account their distributive share of the adjustments through other modifications approved by the IRS (including the alternative procedure to filing amended returns under paragraph (d)(2)(x) of this section) or if a pass-through partner takes into account the relevant adjustments in accordance with paragraph (d)(2)(vi) of this section. For instance, in the case of adjustments that reallocate a loss from one partner to another, the IRS may determine that the requirements of this paragraph (d)(2)(ii)(C) have been satisfied if one affected relevant partner files an amended return taking into account the adjustments and the other affected relevant partner signs a closing agreement with the IRS taking into account the adjustments. Similarly, in the case of adjustment that reallocate income from one partner to another, the IRS may determine that the requirements of this paragraph (d)(2)(ii)(C) have been satisfied to the extent an affected relevant partner meets the requirements of paragraph (d)(3) of this section (regarding tax-exempt partners) and through such modification fully takes into account all adjustments reallocated to the affected relevant partner.

(iii) *Form and manner for filing amended returns.* A relevant partner must file all amended returns required for modification under paragraph (d)(2) of this section with the IRS in accordance with forms, instructions, and other guidance prescribed by the

IRS. Except as otherwise provided under the alternative procedure described in paragraph (d)(2)(x) of this section, the IRS will not approve modification under paragraph (d)(2) of this section unless prior to the expiration of the 270-day period described in paragraph (c)(3) of this section, the partnership representative provides to the IRS, in the form and manner prescribed by the IRS, an affidavit from each relevant partner signed under penalties of perjury by such partner stating that all of the amended returns required to be filed under paragraph (d)(2) of this section has been filed (including the date on which such amended returns were filed) and that the full amount of tax, penalties, additions to tax, additional amounts, and interest was paid (including the date on which such amounts were paid).

(iv) *Period of limitations.* Generally, the period of limitations under sections 6501 and 6511 do not apply to an amended return filed under paragraph (d)(2) of this section provided the amended return otherwise meets the requirements of paragraph (d)(2) of this section.

(v) *Amended returns in the case of adjustments allocated through certain pass-through partners.* A request for modification related to an amended return of a relevant partner that is an indirect partner holding its interest in the partnership (directly or indirectly) through a pass-through partner that could be subject to tax imposed by chapter 1 (chapter 1 tax) on the partnership adjustments that are properly allocated to such pass-through partner will not be approved unless the partnership—

(A) Establishes that the pass-through partner is not subject to chapter 1 tax on the adjustments that are properly allocated to such pass-through partner; or

(B) Requests modification with respect to the adjustments resulting in chapter 1 tax for the pass-through partner, including full payment of such chapter 1 tax for the first affected year and all modification years under paragraph (d)(2) of this section or in accordance with forms, instructions, or other guidance prescribed by the IRS.

(vi) *Amended returns in the case of pass-through partners*—(A) *Pass-through partners may file amended returns.* A relevant partner that is a pass-through partner, including a partnership-partner (as defined in § 301.6241–1(a)(7)) that has a valid election under section 6221(b) in effect for a partnership taxable year, may, in accordance with forms, instructions, and other guidance provided by the IRS and solely for purposes of modification under paragraph (d)(2) of this section, take into account its share of the partnership adjustments and determine and pay an amount calculated in the same manner as the amount computed under § 301.6226–3(e)(4)(iii) subject to paragraph (d)(2)(vi)(B) of this section.

(B) *Modifications with respect to upper-tier partners of the pass-through partner.* In accordance with forms, instructions, and other guidance provided by the IRS, for purposes of determining and calculating the amount a pass-through partner must pay under paragraph (d)(2)(vi)(A) of this section, the pass-through partner may take into account modifications with respect to its direct and indirect partners to the extent that such modifications are requested by the partnership requesting modification and approved by the IRS under this section.

(vii) *Limitations on amended returns*—(A) *In general.* A relevant partner may not file an amended return or claim for refund that takes into account partnership adjustments except as described in paragraph (d)(2) of this section.

(B) *Further amended returns restricted.* Except as described in paragraph (d)(2)(vii)(C) of this section, if a relevant partner files an amended return under paragraph (d)(2) of this section, or satisfies paragraph (d)(2) of this section by following the alternative procedure under paragraph (d)(2)(x) of this section (the alternative procedure), such partner may not file a subsequent amended return or claim for refund to change the treatment of partnership adjustments taken into account through amended return or the alternative procedure.

(C) *Subsequent returns in the case of changes to partnership adjustments or denial of modification.* Notwithstanding paragraph (d)(2)(vii)(B) of this section, a relevant partner that has previously filed an amended return under paragraph (d)(2) of this section, or satisfied the requirements of paragraph (d)(2) of this section through the alternative procedure, to take partnership adjustments into account may, in accordance with forms, instructions, and other guidance prescribed by the IRS, file a subsequent return or claim for refund if a determination is made by a court or by the IRS that results in a change to the partnership adjustments taken into account in modification under paragraph (d)(2) of this section or a denial of modification by the IRS under paragraph (c)(2)(i) of this section with respect to a modification request under paragraph (d)(2) of this section. Such determinations include a court decision that changes the partnership adjustments for which modification was requested or a settlement between the IRS and the partnership pursuant to which the partnership is not liable for all or a portion of the imputed underpayment for which modification was requested. Any amended return or claim for refund filed under this paragraph (d)(2)(vii) is subject to the period of limitations under section 6511.

(viii) *Penalties.* The applicability of any penalties, additions to tax, or additional amounts that relate to an adjustment to a partnership-related item is determined at the partnership level in accordance with section 6221(a). However, the amount of penalties, additions to tax, and additional amounts a relevant partner must pay under paragraph (d)(2)(ii)(A) of this section for the first affected year and for any modification year is based on the underpayment or understatement of tax, if any, reflected on the amended return filed by the relevant partner under paragraph (d)(2) of this section. For instance, if after taking into account the adjustments, the return of the relevant partner for the first affected year or any modification year reflects an underpayment or an understatement that falls below the applicable threshold for the imposition of a penalty under section 6662(d), no penalty would be due from that relevant partner for such year. Unless forms, instructions or other guidance provided by the IRS allow for an alternative procedure for raising a partner-level defense (as described in § 301.6226–3(d)(3)), a relevant partner may raise a partner-level defense by first paying the penalty, addition to tax, or additional amount with the amended return filed under paragraph (d)(2) of this section and then filing a claim for refund in accordance with forms, instructions, and other guidance.

(ix) *Effect on tax attributes binding.* Any adjustments to the tax attributes of any relevant partner which are affected by modification under paragraph (d)(2) of this section are binding on the relevant partner with respect to the first affected year and all modification years (as defined in paragraph (d)(2)(ii)(B) of this section). A failure to adjust any tax attribute in accordance with this paragraph (d)(2)(ix) is a failure to treat a partnership-related item in a manner which is consistent with the treatment of such item on the partnership return within the meaning of section 6222. The provisions of section 6222(c) and § 301.6222–1(c) (regarding notification of inconsistent treatment) do not apply

with respect to tax attributes under this paragraph (d)(2)(ix).

(x) *Alternative procedure to filing amended returns*—(A) *In general.* A partnership may satisfy the requirements of paragraph (d)(2) of this section by submitting on behalf of a relevant partner, in accordance with forms, instructions, and other guidance provided by the IRS, all information and payment of any tax, penalties, additions to tax, additional amounts, and interest that would be required to be provided if the relevant partner were filing an amended return under paragraph (d)(2) of this section, except as otherwise provided in relevant forms, instructions, and other guidance provided by the IRS. A relevant partner for which the partnership seeks modification under paragraph (d)(2)(x) of this section must agree to take into account, in accordance with forms, instructions, and other guidance provided by the IRS, adjustments to any tax attributes of such relevant partner. A modification request submitted in accordance with the alternative procedure under paragraph (d)(2)(x) of this section is not a claim for refund with respect to any person.

(B) *Modifications with respect to reallocation adjustments.* A submission made in accordance with paragraph (d)(2)(x) of this section with respect to any relevant partner is treated as if such relevant partner filed an amended return for purposes of paragraph (d)(2)(ii)(C) of this section (regarding the requirement that all relevant partners affected by a reallocation must file an amended return to be eligible to for the modification under paragraph (d)(2) of this section) provided the submission is with respect to the first affected year and all modification years of such relevant partner as required under paragraph (d)(2) of this section.

(3) *Tax-exempt partners*—(i) *In general.* A partnership may request modification of an imputed underpayment with respect to partnership adjustments that the partnership demonstrates to the satisfaction of the IRS are allocable to a relevant partner that would not owe tax by reason of its status as a tax-exempt entity (as defined in paragraph (d)(3)(ii) of this section) in the reviewed year (tax-exempt partner).

(ii) *Definition of tax-exempt entity.* For purposes of paragraph (d)(3) of this section, the term *tax-exempt entity* means a person or entity defined in section 168(h)(2)(A), (C), or (D).

(iii) *Modification limited to portion of partnership adjustments for which tax-exempt partner not subject to tax.* Only the portion of the partnership adjustments properly allocated to a tax-exempt partner with respect to which the partner would not be subject to tax for the reviewed year (tax-exempt portion) may form the basis of a modification of the imputed underpayment under paragraph (d)(3) of this section. A modification under paragraph (d)(3) of this section will not be approved by the IRS unless the partnership provides documentation in accordance with paragraph (c)(2) of this section to support the tax-exempt partner's status and the tax-exempt portion of the partnership adjustment allocable to the tax-exempt partner.

(4) *Modification based on a rate of tax lower than the highest applicable tax rate.* A partnership may request modification based on a lower rate of tax for the reviewed year with respect to adjustments that are attributable to a relevant partner that is a C corporation and adjustments with respect to capital gains or qualified dividends that are attributable to a relevant partner who is an individual. In no event may the lower rate determined under the preceding sentence be less than the highest rate in effect for the reviewed year with respect to the type of income and taxpayer. For instance, with respect to adjustments that are attributable to a C corporation, the highest rate in effect for the reviewed year with respect to all C corporations would apply to that adjustment, regardless of the rate that would apply to the C corporation based on the amount of that C corporation's taxable income. For purposes of this paragraph (d)(4), an S corporation is treated as an individual.

(5) *Certain passive losses of publicly traded partnerships*—(i) *In general.* In the case of a publicly traded partnership (as defined in section 469(k)(2)) requesting modification under this section, an imputed underpayment is determined without regard to any adjustment that the partnership demonstrates would be reduced by a specified passive activity loss (as defined in paragraph (d)(5)(ii) of this section) which is allocable to a specified partner (as defined in paragraph (d)(5)(iii) of this section) or qualified relevant partner (as defined in paragraph (d)(5)(iv) of this section).

(ii) *Specified passive activity loss.* A specified passive activity loss carryover amount for any specified partner or qualified relevant partner of a publicly traded partnership is the lesser of the section 469(k) passive activity loss of that partner which is separately determined with respect to such partnership—

(A) At the end of the first affected year (affected year loss); or

(B) At the end of—

(*1*) The specified partner's taxable year in which or with which the adjustment year (as defined in § 301.6241–1(a)(1)) of the partnership ends, reduced to the extent any such partner has utilized any portion of its affected year loss to offset income or gain relating to the ownership or disposition of its interest in such publicly traded partnership during either the adjustment year or any other year; or

(*2*) If the adjustment year has not yet been determined, the most recent year for which the publicly traded partnership has filed a return under section 6031, reduced to the extent any such partner has utilized any portion of its affected year loss to offset income or gain relating to the ownership or disposition of its interest in such publicly traded partnership during any year.

(iii) *Specified partner.* A specified partner is a person that for each taxable year beginning with the first affected year through the person's taxable year in which or with which the partnership adjustment year ends satisfies the following three requirements–

(A) The person is a partner of the publicly traded partnership requesting modification under this section;

(B) The person is an individual, estate, trust, closely held C corporation, or personal service corporation; and

(C) The person has a specified passive activity loss with respect to the publicly traded partnership.

(iv) *Qualified relevant partner.* A *qualified relevant partner* is a relevant partner that meets the three requirements to be a specified partner (as described in paragraphs (d)(5)(iii)(A), (B), and (C) of this section) for each year beginning with the first affected year through the year described in paragraph (d)(5)(ii)(B)(*2*) of this section. Notwithstanding the preceding sentence, an indirect partner of the publicly traded partnership requesting modification under this section may also be a qualified relevant partner under this paragraph (d)(5)(iv) if that indirect partner meets the requirements of paragraph (d)(5)(iii)(B) and (C) of this section for each year beginning with the first affected year through the year described in paragraph (d)(5)(ii)(B)(*2*) of this section.

(v) *Partner notification requirement to reduce passive losses.* If the IRS approves a modification request under paragraph (d)(5) of this section, the partnership must report, in accordance with forms, instructions, or other guidance prescribed by the IRS, to each specified partner the amount of that specified partner's reduction of its

suspended passive activity loss carryovers at the end of the adjustment year to take into account the amount of any passive activity losses applied in connection with such modification request. In the case of a qualified relevant partner, the partnership must report, in accordance with forms, instructions, or other guidance prescribed by the IRS, to each qualified relevant partner the amount of that qualified relevant partner's reduction of its suspended passive activity loss carryovers at the end of the taxable year for which the partnership's next return is due to be filed under section 6031 to be taken into account by the qualified relevant partner on the partner's return for the year that includes the end of the partnership's taxable year for which the partnership's next return is due to be filed under section 6031. In the case of an indirect partner that is a qualified relevant partner, the IRS may prescribe additional guidance through forms, instructions, or other guidance to require reporting under this paragraph (d)(5)(v). The reduction in suspended passive activity loss carryovers as reported to a specified partner or qualified relevant partner under this paragraph (d)(5)(v) is a determination of the partnership under subchapter C of chapter 63 and is binding on the specified partners and qualified relevant partners under section 6223.

(6) *Modification of the number and composition of imputed underpayments*—(i) *In general.* A partnership may request modification of the number or composition of any imputed underpayment included in the NOPPA by requesting that the IRS include one or more partnership adjustments in a particular grouping or subgrouping (as described in § 301.6225–1(c) and (d)) or specific imputed underpayments (as described in § 301.6225–1(g)) different from the grouping, subgrouping, or imputed underpayment set forth in the NOPPA. For example, a partnership may request under paragraph (d)(6) of this section that one or more partnership adjustments taken into account to determine a general imputed underpayment set forth in the NOPPA be taken into account to determine a specific imputed underpayment.

(ii) *Request for particular treatment regarding limitations or restrictions.* A modification request under paragraph (d)(6) of this section includes a request that one or more partnership adjustments be treated as if no limitations or restrictions under § 301.6225–1(d) apply and as a result such adjustments may be subgrouped with other adjustments.

(7) *Partnerships with partners that are ''qualified investment entities'' described in section 860*—(i) *In general.* A partnership may request a modification of an imputed underpayment based on the partnership adjustments allocated to a relevant partner where the modification is based on deficiency dividends distributed as described in section 860(f) by a relevant partner that is a qualified investment entity (QIE) under section 860(b) (which includes both a regulated investment company (RIC) and a real estate investment trust (REIT)). Modification under paragraph (d)(7) of this section is available only to the extent that the deficiency dividends take into account adjustments described in § 301.6225–1 that are also adjustments within the meaning of section 860(d)(1) or (d)(2) (whichever applies).

(ii) *Documentation of deficiency dividend.* The partnership must provide documentation in accordance with paragraph (c) of this section of the ''determination'' described in section 860(e). Under section 860(e)(2), § 1.860–2(b)(1)(i) of this chapter, and paragraph (d)(8) of this section, a closing agreement entered into by the QIE partner pursuant to section 7121 and paragraph (d)(8) of this section is a determination described in section 860(e), and the date of the determination is the date in which the closing agreement is approved by the IRS. In addition, under section 860(e)(4), a determination also includes a Form 8927, *Determination Under Section 860(e)(4) by a Qualified Investment Entity,* properly completed and filed by the RIC or REIT pursuant to section 860(e)(4). To establish the date of the determination under section 860(e)(4) and the amount of deficiency dividends actually paid, the partnership must provide a copy of Form 976, *Claim for Deficiency Dividends Deductions by a Personal Holding Company, Regulated Investment Company, or Real Estate Investment Trust,* properly completed by or on behalf of the QIE pursuant to section 860(g), together with a copy of each of the required attachments for Form 976.

(8) *Closing agreements.* A partnership may request modification based on a closing agreement entered into by the IRS and the partnership or any relevant partner, or both if appropriate, pursuant to section 7121. If modification under this paragraph (d)(8) is approved by the IRS, any partnership adjustment that is taken into account under such closing agreement and for which any required payment under the closing agreement is made will not be taken into account in determining the imputed underpayment under § 301.6225–1. Any required payment under the closing agreement may include amounts of tax, including tax under chapters other than chapter 1, interest, penalties, additions to tax and additional amounts. Generally, the IRS will not approve any additional modification under this section with respect to a relevant partner to which a modification under this paragraph (d)(8) has been approved.

(9) *Tax treaty modifications.* A partnership may request a modification under this paragraph (d)(9) with respect to a relevant partner's distributive share of an adjustment to a partnership-related item if, in the reviewed year, the relevant partner was a foreign person who qualified under an income tax treaty with the United States for a reduction or exemption from tax with respect to such partnership-related item. A partnership requesting modification under this section may also request a treaty modification under this paragraph (d)(9) regardless of the treaty status of its partners if, in the reviewed year, the partnership itself was an entity eligible for such treaty benefits.

(10) *Other modifications.* A partnership may request a modification not otherwise described in paragraph (d) of this section, and the IRS will determine whether such modification is accurate and appropriate in accordance with paragraph (c)(4) of this section. Additional types of modifications and the documentation necessary to substantiate such modifications may be set forth in forms, instructions, or other guidance prescribed by the IRS.

(e) *Modification of adjustments that do not result in an imputed underpayment.* A partnership may request modification of adjustments that do not result in an imputed underpayment (as described in § 301.6225–1(f)(1)(ii)) using modifications described in paragraph (d)(2) of this section (amended returns and the alternative procedure to filing amended returns), paragraph (d)(6) of this section (number and composition of the imputed underpayment), paragraph (d)(8) of this section (closing agreements), or, if applicable, paragraph (d)(10) of this section (other modifications).

(f) *Examples.* The following examples illustrate the rules of this section. For purposes of these examples, each partnership is subject to the provisions of subchapter C of chapter 63, each partnership and its relevant partners are calendar year taxpayers, all relevant partners are U.S. persons (unless otherwise stated), the highest rate of income tax in effect for all taxpayers is 40 percent for all relevant periods, and

no partnership requests modification under this section except as provided in the example.

(1) *Example 1.* Partnership has two partners during its 2019 partnership taxable year: P and S. P is a partnership, and S is an S corporation. P has four partners during its 2019 partnership taxable year: A, C, T and DE. A is an individual, C is a C corporation, T is a trust, and DE is a wholly-owned entity disregarded as separate from its owner for Federal income tax purposes. The owner of DE is B, an individual. T has two beneficiaries during its 2019 taxable year: F and G, both individuals. S has 3 shareholders during its 2019 taxable year: H, J, and K, all individuals. For purposes of this section, if Partnership requests modification with respect to A, B, C, F, G, H, J, and K, those persons are all relevant partners (as defined in paragraph (a) of this section). P, S, and DE are not relevant partners (as defined in paragraph (a) of this section) because DE is a wholly-owned entity disregarded as separate from its owner for Federal income tax purposes and modification was not requested with respect to P and S.

(2) *Example 2.* The IRS initiates an administrative proceeding with respect to Partnership's 2019 taxable year. The IRS mails a NOPPA to Partnership for the 2019 partnership taxable year proposing a single partnership adjustment increasing ordinary income by $100, resulting in a $40 imputed underpayment ($100 multiplied by the 40 percent tax rate). Partner A, an individual, held a 20 percent interest in Partnership during 2019. Partnership timely requests modification under paragraph (d)(2) of this section based on A's filing an amended return for the 2019 taxable year taking into account $20 of the partnership adjustment and paying the tax and interest due attributable to A's share of the increased income and the tax rate applicable to A for the 2019 tax year. No tax attribute in any other taxable year of A is affected by A's taking into account A's share of the partnership adjustment for 2019. In accordance with paragraph (d)(2)(iii) of this section, Partnership's partnership representative provides the IRS with documentation demonstrating that A filed the 2019 return and paid all tax and interest due. The IRS approves the modification and, in accordance with paragraph (b)(2) of this section, the $20 increase in ordinary income allocable to A is not included in the calculation of the total netted partnership adjustment (determined in accordance with § 301.6225–1). Partnership's total netted partnership adjustment is reduced to $80 ($100 adjustment less $20 taken into account by A), and the imputed underpayment is reduced to $32 (total netted partnership adjustment of $80 after modification multiplied by 40 percent).

(3) *Example 3.* The IRS initiates an administrative proceeding with respect to Partnership's 2019 taxable year. Partnership has two equal partners during its entire 2019 taxable year: an individual, A, and a partnership-partner, B. During all of 2019, B has two equal partners: a tax-exempt entity, C, and an individual, D. The IRS mails a NOPPA to Partnership for its 2019 taxable year proposing a single partnership adjustment increasing Partnership's ordinary income by $100, resulting in a $40 imputed underpayment ($100 total netted partnership adjustment multiplied by 40 percent). Partnership timely requests modification under paragraph (d)(3) of this section with respect to B's partner, C, a tax-exempt entity. In accordance with paragraph (d)(3)(iii) of this section, Partnership's partnership representative provides the IRS with documentation substantiating to the IRS's satisfaction that C held a 25 percent indirect interest in Partnership through its interest in B during the 2019 taxable year, that C was a tax-exempt entity defined in paragraph (d)(3)(ii) of this section during the 2019 taxable year, and that C was not subject to tax with respect to its entire allocable share of the partnership adjustment allocated to B (which is $25 (50 percent × 50 percent × $100)). The IRS approves the modification and, in accordance with paragraph (b)(2) of this section, the $25 increase in ordinary income allocated to C, through B, is not included in the calculation of the total netted partnership adjustment (determined in accordance with § 301.6225–1). Partnership's total netted partnership adjustment is reduced to $75 ($100 adjustment less C's share of the adjustment, $25), and the imputed underpayment is reduced to $30 (total netted partnership adjustment of $75, after modification, multiplied by 40 percent).

(4) *Example 4.* The facts are the same as in *Example 3* in paragraph (f)(3) of this section, except $10 of the $25 of the adjustment allocated to C is unrelated business taxable income (UBTI) as defined in section 512 because it is debt-financed income within the meaning of section 514 (no section 512 UBTI modifications apply) with respect to which C would be subject to tax if taken into account by C. As a result, the modification under paragraph (d)(3) of this section with respect to C relates only to $15 of the $25 of ordinary income allocated to C that is not UBTI. Therefore, only a modification of $15 ($25 less $10) of the total $100 partnership adjustment may be approved by the IRS under paragraph (d)(3) of this section and, in accordance with paragraph (b)(2) of this section, excluded when determining the imputed underpayment for Partnership's 2019 taxable year. The total netted partnership adjustment (determined in accordance with § 301.6225–1) is reduced to $85 ($100 less $15), and the imputed underpayment is reduced to $34 (total netted partnership adjustment of $85, after modification, multiplied by 40 percent).

(5) *Example 5.* The facts are the same as in *Example 3* in paragraph (f)(3) of this section, except that Partnership also timely requests modification under paragraph (d)(2) of this section with respect to an amended return filed by B, and, in accordance with (d)(2)(iii) of this section, Partnership's partnership representative provides the IRS with documentation demonstrating that B filed the 2019 return and paid all tax and interest due. B reports 50 percent of the partnership adjustments ($50) on its amended return, and B calculates an amount under paragraph (d)(2)(vi)(A) of this section and § 301.6226–3(e)(4)(iii) that, pursuant to paragraph (d)(2)(vi)(B) of this section, takes into account the modification under paragraph (d)(3) of this section approved by the IRS with respect to B's partner C, a tax-exempt entity. B makes a payment pursuant to paragraph (d)(2)(ii)(A) of this section, and the IRS approves the requested modification. Partnership's total netted partnership adjustment is reduced by $50 (the amount taken into account by B). Partnership's total netted partnership adjustment (determined in accordance with § 301.6225–1) is $50, and the imputed underpayment, after modification, is $20.

(6) *Example 6.* The facts are the same as in *Example 3* in paragraph (f)(3) of this section, except that in addition to the modification with respect to tax-exempt entity C, which reduced the imputed underpayment by excluding from the determination of the imputed underpayment $25 of the $100 partnership adjustment reflected in the NOPPA, Partnership timely requests modification under paragraph (d)(2) of this section with respect to an amended return filed by individual D, and, in accordance with paragraph (d)(2)(iii) of this section, Partnership's partnership representative provides the IRS with documentation demonstrating that D filed the 2019 return and paid all tax and interest due. D's amended return for D's 2019 taxable year takes into account D's share of the partnership adjustment (50 percent of B's 50 percent interest in Partnership, or $25) and D paid the tax and interest due as a result of taking into account D's share of the partnership adjustment in accordance with paragraph (d)(2) of this section. No tax attribute in any other taxable year of D is affected by D taking into account D's share of the partnership adjustment for 2019. The IRS approves the modification and the $25 increase in ordinary income allocable to D is not included in the calculation of the total netted partnership adjustment (determined in accordance with § 301.6225–1). As a result, Partnership's total netted partnership adjustment is $50 ($100, less $25 allocable to C, less $25 taken into account by D), and the imputed underpayment, after modification, is $20.

(7) *Example 7.* The IRS initiates an administrative proceeding with respect to Partnership's 2019 taxable year. All of Partnership's partners during its 2019 taxable year are individuals. The IRS mails a NOPPA to Partnership for the 2019 taxable year proposing three partnership adjustments. The first partnership adjustment is an increase to ordinary income of $75 for 2019. The second partnership adjustment is an increase in the depreciation deduction allowed for 2019 of $25, which under § 301.6225–1(d)(2)(i) is treated as a $25 decrease in income. The third adjustment is an increase in long-term capital gain of $10 for 2019. Under the partnership agreement in effect for Partnership's 2019 taxable year, the long-term capital gain and the increase in depreciation would be specially allocated to B and the increase in ordinary income would be specially allocated to A. In accordance with § 301.6225–1(c) and (d), the three adjustments are placed into three separate

subgroupings within the residual grouping because the partnership adjustments would not have been netted at the partnership level and would not have been required to be allocated to the partners of the partnership as a single, net partnership-related item for purposes of section 702(a), other provisions of the Code, regulations, forms, instructions, or other guidance prescribed by the IRS. Accordingly, the total netted partnership adjustment is $85 ($75 net positive adjustment to ordinary income plus $10 net positive adjustment to long term capital gain), and the imputed under payment is $34 ($85 multiplied by 40 percent). The net negative adjustment to depreciation is an adjustment that does not result in an imputed underpayment subject to treatment under § 301.6225–3. Partnership requests a modification under paragraph (d)(6) of this section to determine a specific imputed underpayment with respect to the $75 adjustment to ordinary income allocated to A. The specific imputed underpayment is with respect to $75 of the increase in income specially allocated to A and the general imputed underpayment is with respect to $10 of the increase in capital gain and the $25 increase in depreciation deduction specially allocated to B. If the modification is approved by the IRS, the specific imputed underpayment would consist of the $75 increase in ordinary income, and thus the total netted partnership adjustment for the specific imputed underpayment would be $75. The specific imputed underpayment is thus $30 ($75 multiplied by 40 percent). The general imputed underpayment would consist of two adjustments: The long term capital gain adjustment and the depreciation adjustment. The long term capital gain adjustment and the depreciation adjustment would be placed in different subgroupings under § 301.6225–1(d) because they are treated separately under section 702. Accordingly, the long term capital gain adjustment and the depreciation adjustment are not netted, and the long term capital gain adjustment would be a net positive adjustment while the depreciation adjustment would be a net negative adjustment. The long term capital gain net positive adjustment would be the only net positive adjustment, resulting in a total netted partnership adjustment of $10. The general imputed underpayment is $4 ($10 multiplied by 40 percent), and the net negative adjustment to depreciation of $25 would be an adjustment that does not result in an imputed underpayment under § 301.6225–1(f) associated with the general imputed underpayment.

(8) *Example 8.* Partnership has two reviewed year partners, C1 and C2, both of which are C corporations. The IRS mails to Partnership a NOPPA with two adjustments, both based on rental real estate activity. The first adjustment is an increase of rental real estate income of $100 attributable to Property A. The second adjustment is an increase of rental real estate loss of $30 attributable to Property B. The Partnership did not treat the leasing arrangement with respect to Property A and Property B as an appropriate economic unit for purposes of section 469. If the $100 increase in income attributable to Property A and the $30 increase in loss attributable to Property B were included in the same subgrouping and netted, then taking the $30 increase in loss into account would result in a decrease in the amount of the imputed underpayment. Also, the $30 increased loss might be limited or restricted if taken into account by any person under the passive activity rules under section 469. For instance, under section 469, rental activities of the two properties could be treated as two activities, which could limit a partner's ability to claim the loss. In addition to the potential limitations under section 469, there are other potential limitations that might apply if the $30 loss were taken into account by any person. Therefore, in accordance with § 301.6225–1(d), the two adjustments are placed in separate subgroupings within the residual grouping, the total netted partnership adjustment is $100, the imputed underpayment is $40 ($100 × 40 percent), and the $30 increase in loss is an adjustment that does not result in an imputed underpayment under § 301.6225–1(f). Partnership requests modification under paragraph (d)(6) of this section, substantiating to the satisfaction of the IRS that C1 and C2 are publicly traded C corporations, and therefore, the passive activity loss limitations under section 469 of the Code do not apply. Partnership also substantiates to the satisfaction of the IRS that no other limitation or restriction applies that would prevent the grouping of the $100 with the $30 loss. The IRS approves Partnership's modification request and places the $100 of income and the $30 loss into the subgrouping in the residual grouping under the rules described in § 301.6225–1(c)(5). Under § 301.6225–1(e), because the two adjustments are in one subgrouping, they are netted together, resulting in a total netted partnership adjustment of $70 ($100 plus −$30) and an imputed underpayment of $28 ($70 × 40 percent). After modification, none of the adjustments is an adjustment that does not result in an imputed underpayment under § 301.6225–1(f) because the $30 loss is now netted with the $100 of income in a net positive adjustment for the residual grouping.

(g) *Applicability date*—(1) *In general.* Except as provided in paragraph (g)(2) of this section, this section applies to partnership taxable years beginning after December 31, 2017, and ending after August 12, 2018.

(2) *Election under § 301.9100–22 in effect.* This section applies to any partnership taxable year beginning after November 2, 2015, and before January 1, 2018, for which a valid election under § 301.9100–22 is in effect.

■ **Par. 6.** Section 301.6225–3 is added to read as follows:

§ 301.6225–3 Treatment of partnership adjustments that do not result in an imputed underpayment.

(a) *In general.* Partnership adjustments (as defined in § 301.6241–1(a)(6)) that do not result in an imputed underpayment (as described in § 301.6225–1(f)) are taken into account by a partnership in the adjustment year (as defined in § 301.6241–1(a)(1)) in accordance with paragraph (b) of this section.

(b) *Treatment of adjustments by the partnership*—(1) *In general.* Except as described in paragraphs (b)(2) through (7) of this section, a partnership adjustment that does not result in an imputed underpayment is taken into account as a reduction in non-separately stated income or as an increase in non-separately stated loss for the adjustment year depending on whether the adjustment is to a partnership-related item that is an item of income or loss.

(2) *Separately stated items.* In the case of a partnership adjustment to partnership-related item that is required to be separately stated under section 702, the adjustment is taken into account by the partnership in the adjustment year as a reduction in such separately stated item or as an increase in such separately stated item depending on whether the adjustment is a reduction or an increase to the separately stated item.

(3) *Credits.* In the case of an adjustment to a partnership-related item that is reported or could be reported by a partnership as a credit on the partnership's return for the reviewed year (as defined in § 301.6241–1(a)(8)), the adjustment is taken into account by the partnership in the adjustment year as a separately stated item.

(4) *Reallocation adjustments.* A partnership adjustment that reallocates a partnership-related item to or from a particular partner or partners that also does not result in an imputed underpayment pursuant to § 301.6225–1(f) is taken into account by the partnership in the adjustment year as a separately stated item or a non-separately stated item, as required by section 702. Except as provided in forms, instructions, and other guidance prescribed by the Internal Revenue Service (IRS), the portion of an adjustment allocated under this paragraph (b)(4) is allocated to adjustment year partners (as defined in § 301.6241–1(a)(2)) who are also reviewed year partners (as defined in § 301.6241–1(a)(9)) with respect to whom the amount was reallocated.

(5) *Adjustments taken into account by partners as part of the modification process.* If, as part of modification under § 301.6225–2, a relevant partner (as defined in § 301.6225–2(a)) takes into account a partnership adjustment that does not result in an imputed underpayment, and the IRS approves the modification, such partnership adjustment is not taken into account by

the partnership in the adjustment year in accordance with § 301.6225–1(a).

(6) *Effect of election under section 6226.* If a partnership makes a valid election under § 301.6226–1 with respect to an imputed underpayment, a partnership adjustment that does not result in an imputed underpayment and that is associated with such imputed underpayment as described in § 301.6225–1(g) is taken into account by the reviewed year partners in accordance with § 301.6226–3 and is not taken into account under this section.

(7) *Adjustments taken into account previously by partners.* If, prior to the mailing of a notice of administrative proceeding by the IRS or the filing of an administrative adjustment request by the partnership, a partner has previously taken into account an adjustment that does not result in an imputed underpayment that would have been taken into account under this section, such partnership adjustment is not taken into account by such partner.

(c) *Treatment of adjustment year partners.* The rules under subchapter K of chapter 1 of the Internal Revenue Code with respect to the treatment of partners apply in the case of adjustments taken into account by the partnership under this section.

(d) *Examples.* The following examples illustrate the rules of this section. For purposes of these examples, unless otherwise provided, each partnership is subject to the provisions of subchapter C of chapter 63 of the Internal Revenue Code, each partnership and its relevant partners are calendar year taxpayers, all relevant partners are U.S. persons (unless otherwise stated), the highest rate of income tax in effect for all taxpayers is 40 percent for all relevant periods, and no partnership requests modification.

(1) *Example 1.* For all of Partnership's 2019, 2020, and 2021 partnership taxable years, Partnership has two equal partners, A and B. The IRS initiates an administrative proceeding with respect to Partnership's 2019 partnership taxable year. The IRS mails a notice of proposed partnership adjustment (NOPPA) to Partnership for the 2019 partnership taxable year proposing a recharacterization adjustment, changing a $100 ordinary loss to a $100 long term capital loss. Under § 301.6225–1, this recharacterization adjustment results in two adjustments: A $100 increase to ordinary income (positive adjustment) and a −$100 decrease in long term capital gain (negative adjustment). Under § 301.6225–1(b), the $100 positive adjustment is the total netted partnership adjustment, which is multiplied by the highest rate of 40 percent, resulting in a $40 imputed underpayment. Under § 301.6225–1(f), the −$100 negative adjustment is an adjustment that does not result in an imputed underpayment and is taken into account in accordance with this section. On March 1, 2021, the IRS mails a notice of final partnership adjustment (FPA), and because Partnership does not file a petition for readjustment with respect to the FPA, the adjustments are finally determined in 2021, and the adjustment year is determined to be 2021 pursuant to § 301.6241–1(a)(1). Pursuant to paragraph (a) of this section, Partnership takes into account the −$100 adjustment that does not result in an imputed underpayment on its 2021 partnership return. In addition to the −$100 adjustment to partnership's 2019 taxable year taken into account under this section, Partnership has an additional $300 in long term capital gain reportable in its 2021 taxable year. The −$100 negative adjustment and the $300 long term capital gain are Partnership's only long term capital gains and losses for its 2021 taxable year. Because the −$100 net negative adjustment is an adjustment to long term capital gain, which is a separately stated item under section 702(a)(2), the −$100 negative adjustment must be taken into account in accordance with paragraph (b)(2) of this section. Partnership includes both the −$100 negative adjustment and the $300 in long term capital gain as separately stated items on its 2021 tax return.

(2) *Example 2.* The facts are the same as in *Example 1* in paragraph (d)(1) of this section, except that the IRS proposes a reallocation adjustment instead of a recharacterization adjustment. The IRS determines that the −$100 ordinary loss that the Partnership allocated equally to A and B should instead all be allocated all to A. The IRS mails a NOPPA for the 2019 partnership taxable year proposing a reallocation adjustment resulting in a $50 increase in ordinary loss allocated to A (negative adjustment) and a $50 decrease in ordinary loss allocated to B (positive adjustment). Because the adjustments are the result of a reallocation, they are placed in separate subgroupings pursuant to § 301.6225–1(d). Because the adjustments are in different subgroupings, the adjustments are not netted under § 301.6225–1(e), resulting in a net negative adjustment of −$50 allocated to A and a net positive adjustment of $50 to B. Pursuant to § 301.6225–1(b), the total netted partnership adjustment includes the $50 net positive adjustment, and the imputed underpayment is $20 ($50 total netted partnership adjustment × 40 percent). Pursuant to § 301.6225–1(f), the −$50 net negative adjustment is an adjustment that does not result in an imputed underpayment and is taken into account in accordance with this section. On March 1, 2021, the IRS mails an FPA, and because Partnership does not file a petition for readjustment with respect to the FPA, the adjustments are finally determined in 2021, and the adjustment year is determined to be 2021 pursuant to § 301.6241–1(a)(1). Pursuant to paragraph (a) of this section, Partnership takes into account the −$50 adjustment that does not result in an imputed underpayment on its 2021 partnership return. In addition to the −$50 net negative adjustment to partnership's 2019 taxable year taken into account under this section, Partnership also has an additional $300 in ordinary income reportable in its 2021 taxable year unrelated to the administrative proceeding with respect to Partnership's 2019 partnership taxable year. Because the −$50 net negative adjustment is due to a reallocation, the adjustment must be taken into account under paragraph (b)(4) of this section. Because the net negative adjustment was determined to have been entirely allocable to A, and because A was a reviewed year partner and is also an adjustment year partner, the net negative adjustment is taken into account by Partnership by allocating the entire adjustment to A on its 2021 tax return. The −$50 negative adjustment does not reduce the $300 in ordinary income.

(e) *Applicability date*—(1) *In general.* Except as provided in paragraph (e)(2) of this section, this section applies to partnership taxable years beginning after December 31, 2017, and ending after August 12, 2018.

(2) *Election under § 301.9100–22 in effect.* This section applies to any partnership taxable year beginning after November 2, 2015, and before January 1, 2018, for which a valid election under § 301.9100–22 is in effect.

■ **Par. 7.** Section 301.6226–1 is added to read as follows:

§ 301.6226–1 Election for an alternative to the payment of the imputed underpayment.

(a) *In general.* A partnership may elect under this section an alternative to the payment by the partnership of an imputed underpayment determined under section 6225. In addition, a partnership making a valid election under paragraph (c) of this section is no longer liable for the imputed underpayment (as defined in § 301.6241–1(a)(3)) to which the election applies. If a notice of final partnership adjustment (FPA) mailed under section 6231 includes more than one imputed underpayment (as described in § 301.6225–1(g)), a partnership may make an election under this section with respect to one or more imputed underpayments included in the FPA.

(b) *Effect of election*—(1) *Reviewed year partners.* If a partnership makes a valid election under this section with respect to any imputed underpayment, the reviewed year partners (as defined in § 301.6241–1(a)(9)) must take into account their share of the partnership adjustments (as defined in § 301.6241–1(a)(6)) that are associated with that imputed underpayment and are liable for any tax, penalties, additions to tax, additional amounts, and interest as described in § 301.6226–3. See § 301.6226–2(f) regarding the determination of each reviewed year partner's share of the partnership adjustments, including the effect of any

modification approved by the Internal Revenue Service (IRS) under § 301.6225–2.

(2) *Partnership.* A partnership making a valid election under this section is not liable for the imputed underpayment to which the election applies (and no assessment of tax, levy, or proceeding in any court for the collection of such imputed underpayment may be made against such partnership). Any adjustments that do not result in an imputed underpayment described in § 301.6225–1(f) that are associated with an imputed underpayment (as described in § 301.6225–1(g)) for which an election under this section is made are not taken into account by the partnership in the adjustment year (as defined in § 301.6241–1(a)(1)) and instead each reviewed year partners' share of the adjustments determined in accordance with § 301.6226–2(f) must be included on the statement described in § 301.6226–2.

(c) *Time, form, and manner for making the election*—(1) *In general.* An election under this section is valid only if all of the provisions of this section and § 301.6226–2 (regarding statements filed with the IRS and furnished to reviewed year partners) are satisfied. An election under this section is valid until the IRS determines that the election is invalid. An election under this section may only be revoked with the consent of the IRS.

(2) *Time for making the election.* An election under this section must be filed within 45 days of the date the FPA is mailed by the IRS. The time for filing such an election may not be extended.

(3) *Form and manner of the election*—(i) *In general.* An election under this section must be signed by the partnership representative and filed in accordance with forms, instructions, and other guidance prescribed by the IRS and include the information specified in paragraph (c)(3)(ii) of this section.

(ii) *Contents of the election.* An election under this section must include the following correct information—

(A) The name, address, and taxpayer identification number (TIN) of the partnership;

(B) The taxable year to which the election relates;

(C) A copy of the FPA to which the election relates;

(D) In the case of an FPA that includes more than one imputed underpayment, identification of the imputed underpayment to which the election applies;

(E) The name and TIN (or alternative form of identification as prescribed by forms, instructions, or other guidance) of each reviewed year partner of the partnership;

(F) The current or last address of each reviewed year partner that is known to the partnership; and

(G) Any other information prescribed by the IRS in forms, instructions, and other guidance.

(d) *Determining an election is invalid.* The IRS may determine an election to be invalid without first notifying the partnership or providing the partnership an opportunity to correct any failure to satisfy all of the provisions of this section and § 301.6226–2. If an election under this section is determined by the IRS to be invalid, the IRS will notify the partnership and the partnership representative within 30 days of the determination that the election is invalid and the reason for the determination that the election is invalid. If the IRS makes a determination that an election under this section is invalid, section 6225 applies with respect to the imputed underpayment as if the election was never made, the IRS may assess the imputed underpayment against the partnership (without regard to the limitations under section 6232(b)), and the partnership must pay the imputed underpayment under section 6225 and any penalties and interest under section 6233. The IRS may not determine that an election is invalid based on errors timely corrected by the partnership in accordance with § 301.6226–2(d).

(e) *Binding nature of statements.* The election under this section, which includes filing and furnishing statements described in § 301.6226–2, are actions of the partnership under section 6223 and, unless determined otherwise by the IRS, the partner's share of the adjustments and the applicability of any penalties, additions to tax, and additional amounts as set forth in the statement are binding on the partner pursuant to section 6223. Accordingly, a partner may not treat any partnership-related items (as defined in § 301.6241–1(a)(6)(ii)) reflected on a statement described in § 301.6226–2 on the partner's return inconsistently with how those items are treated on the statement that is filed with the IRS. See § 301.6222–1(c)(2) (regarding partnership-related items the treatment of which a partner is bound to under section 6223).

(f) *Coordination with section 6234 regarding judicial review.* Nothing in this section affects the rules regarding judicial review of a partnership adjustment. Accordingly, a partnership that makes an election under this section is not precluded from filing a petition under section 6234(a). See § 301.6226–2(b)(3)(iii).

(g) *Applicability date*—(1) *In general.* Except as provided in paragraph (g)(2) of this section, this section applies to partnership taxable years beginning after December 31, 2017, and ending after August 12, 2018.

(2) *Election under § 301.9100–22 in effect.* This section applies to any partnership taxable year beginning after November 2, 2015, and before January 1, 2018, for which a valid election under § 301.9100–22 is in effect.

■ **Par. 8.** Section 301.6226–2 is added to read as follows:

§ 301.6226–2 Statements furnished to partners and filed with the IRS.

(a) *In general.* A partnership that makes an election under § 301.6226–1 must furnish to each reviewed year partner (as defined in § 301.6241–1(a)(9)) and file with the Internal Revenue Service (IRS) a statement that includes the items required by paragraphs (e) and (f) of this section with respect to each reviewed year partner's share of partnership adjustments (as defined in § 301.6241–1(a)(6)) associated with the imputed underpayment for which an election under § 301.6226–1 is made. The statements furnished to the reviewed year partners under this section are in addition to, and must be filed and furnished separate from, any other statements required to be filed with the IRS and furnished to partners, including any statements under section 6031(b). A separate statement under this section must be furnished to each reviewed year partner with respect to each reviewed year (as defined in § 301.6241–1(a)(8)) subject to an election under § 301.6226–1. A failure to furnish a correct statement in accordance with this section is subject to penalty under section 6722. See section 6724(d)(2).

(b) *Time and manner for furnishing the statements to partners*—(1) *In general.* The statements described in paragraph (a) of this section must be furnished to the reviewed year partners no later than 60 days after the date all of the partnership adjustments to which the statement relates are finally determined. The partnership adjustments are finally determined upon the later of:

(i) The expiration of the time to file a petition under section 6234; or

(ii) If a petition under section 6234 is filed, the date when the court's decision becomes final.

(2) *Address used for reviewed year partners.* The partnership must furnish the statements described in paragraph (a) of this section to each reviewed year

partner in accordance with the forms, instructions, and other guidance prescribed by the IRS. If the partnership mails the statement, it must mail the statement to the current or last address of the reviewed year partner that is known to the partnership. If a statement is returned to the partnership as undeliverable, the partnership must undertake reasonable diligence to identify a correct address for the reviewed year partner to which the statement relates and, if a correct address is identified, mail the statement to the reviewed year partner at the correct address.

(3) *Examples.* The following examples illustrate the rules of this paragraph (b).

(i) *Example 1.* During Partnership's 2020 taxable year, A, an individual, was a partner in Partnership and had an address at 123 Main St. On February 1, 2021, A sells his interest in Partnership and informs Partnership that A moved to 456 Broad St. On March 15, 2021, Partnership mails A's statement under section 6031(b) for the 2020 taxable year to 456 Broad St. On June 1, 2023, A moves again but does not inform Partnership of A's new address. In 2023, the IRS initiates an administrative proceeding with respect to Partnership's 2020 taxable year and mails a notice of final partnership adjustment (FPA) to Partnership for that year that includes a single imputed underpayment. Partnership makes a timely election under section 6226 in accordance with § 301.6226–1 with respect to the imputed underpayment and on May 31, 2024, timely mails a statement described in paragraph (a) of this section to A at 456 Broad St. Although the statement was mailed to the last address for A that was known to Partnership, it is returned to Partnership as undeliverable because unknown to Partnership, A had moved. After undertaking reasonable diligence to obtain the correct address of A, Partnership is unable to ascertain the correct address. Therefore, pursuant to paragraph (b)(2) of this section, Partnership properly furnished the statement to A when it mailed the statement to 456 Broad St.

(ii) *Example 2.* The facts are the same as in *Example 1* in paragraph (b)(3)(i) of this section, except that A lives at 789 Forest Ave during all of 2024 and reasonable diligence would have revealed that 789 Forest Ave is the correct address for A, but Partnership did not undertake such diligence. Because the statement was returned as undeliverable and Partnership did not undertake reasonable diligence to obtain the correct address for A, Partnership failed to properly furnish the statement with respect to A pursuant to paragraph (b)(2) of this section.

(iii) *Example 3.* Partnership is a calendar year taxpayer. The IRS initiates an administrative proceeding with respect to Partnership's 2020 taxable year. On January 1, 2024, the IRS mails an FPA with respect to the 2020 taxable year to Partnership that includes a single imputed underpayment. Partnership makes a timely election under section 6226 in accordance with § 301.6226–1 with respect to the imputed underpayment. Partnership timely files a petition for readjustment under section 6234 with the Tax Court. The IRS prevails, and the Tax Court sustains all of the adjustments in the FPA with respect to the 2020 taxable year. The time to appeal the Tax Court decision expires, and the Tax Court decision becomes final on April 10, 2025. Under paragraph (b)(1)(ii) of this section, the adjustments in the FPA are finally determined on April 10, 2025, and Partnership must furnish the statements described in paragraph (a) of this section to its reviewed year partners and electronically file the statements with the IRS no later than June 9, 2025. See paragraph (c) of this section for the rules regarding filing the statements with the IRS.

(c) *Time and manner for filing the statements with the IRS.* No later than 60 days after the date the partnership adjustments are finally determined (as described in paragraph (b)(1) of this section), the partnership must electronically file with the IRS the statements that the partnership furnishes to each reviewed year partner under this section, along with a transmittal that includes a summary of the statements filed and such other information required in forms, instructions, and other guidance prescribed by the IRS.

(d) *Correction of statements*—(1) *In general.* A partnership corrects an error in a statement furnished under paragraph (b) of this section or filed under paragraph (c) of this section by filing the corrected statement with the IRS in the manner prescribed in paragraph (c) of this section and furnishing a copy of the corrected statement to the reviewed year partner to whom the statement relates in accordance with the forms, instructions, and other guidance prescribed by the IRS.

(2) *Error discovered by partnership*—(i) *Discovery within 60 days of statement due date.* If a partnership discovers an error in a statement within 60 days of the due date for furnishing the statements to partners and filing the statements with the IRS (as described in paragraphs (b) and (c) of this section and § 301.6226–3(e)(3)(ii)), the partnership must correct the error in accordance with paragraph (d)(1) of this section and does not have to seek consent of the IRS prior to doing so.

(ii) *Error discovered more than 60 days after statement due date.* If a partnership discovers an error more than 60 days after the due date for furnishing the statements to partners and filing the statements with the IRS (as described in paragraphs (b) and (c) of this section and § 301.6226–3(e)(3)(ii)), the partnership may only correct the error after receiving consent of the IRS in accordance with the forms, instructions, and other guidance prescribed by the IRS. The partnership may not furnish corrected statements unless it receives consent of the IRS to make the correction.

(3) *Error discovered by the IRS.* If the IRS discovers an error in the statements furnished or filed under paragraphs (b) and (c) of this section and § 301.6226–3(e)(3) or the IRS cannot determine whether the statements furnished or filed by the partnership are correct because of a failure by the partnership to comply with any requirement under this section or § 301.6226–3(e), the IRS may require the partnership to correct such errors in accordance with paragraph (d)(1) of this section or to provide additional information as necessary. Failure by the partnership to correct an error or to provide information when required by the IRS may be treated by the IRS as a failure to properly furnish correct statements to partners and file the correct statements with the IRS as described in paragraphs (b) and (c) of this section or in § 301.6226–3(e)(3). Whether the IRS requires the partnership to correct any errors discovered by the IRS or provide additional information is discretionary on the part of the IRS and the IRS is under no obligation to require the partnership to provide additional information or to correct any errors discovered or brought to the IRS's attention at any time.

(4) *Adjustments in the corrected statements taken into account by the reviewed year partners.* The adjustments included on a corrected statement are taken into account by a reviewed year partner in accordance with § 301.6226–3 for the reporting year (as defined in § 301.6226–3(a)).

(e) *Content of the statements.* Each statement described in paragraph (a) of this section must include the following correct information:

(1) The name and TIN (or alternative form of identification as prescribed by forms, instructions, or other guidance) of the reviewed year partner to whom the statement is being furnished;

(2) The current or last address of the reviewed year partner that is known to the partnership;

(3) The reviewed year partner's share of items as originally reported for the reviewed year to the partner on statements furnished to the partner under section 6031(b) and, if applicable, section 6227;

(4) The reviewed year partner's share of partnership adjustments determined under paragraph (f)(1) of this section;

(5) Modifications approved by the IRS with respect to the reviewed year

partner (or with respect to any indirect partner (as defined in § 301.6241–1(a)(4)) that holds its interest in the partnership through its interest in the reviewed year partner);

(6) The applicability of any penalty, addition to tax, or additional amount determined at the partnership level that relates to any adjustments allocable to the reviewed year partner and the adjustments to which the penalty, addition to tax, or additional amount relates, the section of the Internal Revenue Code (Code) under which each penalty, addition to tax, or additional amount is imposed, and the applicable rate of each penalty, addition to tax, or additional amount determined at the partnership level;

(7) The date the statement is furnished to the reviewed year partner;

(8) The partnership taxable year to which the adjustments relate; and

(9) Any other information required by forms, instructions, and other guidance prescribed by the IRS.

(f) *Determination of each partner's share of adjustments*—(1) *Adjustments and other amounts*—(i) *In general.* Except as described in paragraph (f)(1)(ii) or (iii) or (f)(2) of this section, the adjustments set forth in the statement described in paragraph (a) of this section are reported to the reviewed year partner in the same manner as each adjusted partnership-related item was originally allocated to the reviewed year partner on the partnership return for the reviewed year.

(ii) *Adjusted partnership-related item not reported on the partnership's return for the reviewed year.* Except as described in paragraph (f)(1)(iii) of this section, if the adjusted partnership-related item was not reported on the partnership return for the reviewed year, each reviewed year partner's share of the adjustments must be determined in accordance with how such partnership-related items would have been allocated under rules that apply with respect to partnership allocations, including under the partnership agreement.

(iii) *Adjustments that specifically allocate items.* If an adjustment involves an allocation of a partnership-related item to a specific partner or in a specific manner, including a reallocation of such an item, the reviewed year partner's share of the adjustment set forth in the statement is determined in accordance with the adjustment as finally determined (as described in paragraph (b)(1) of this section).

(2) *Treatment of modifications disregarded.* Any modifications approved by the IRS with respect to the reviewed year partner (or with respect to any indirect partner that holds its interest in the partnership through its interest in the reviewed year partner) under § 301.6225–2 are disregarded for purposes of determining each partner's share of the adjustments under paragraph (f)(1) of this section.

(g) *Coordination with other provisions under subtitle A of the Code*—(1) *Statements furnished to qualified investment entities described in section 860.* If a reviewed year partner is a qualified investment entity within the meaning of section 860(b) and the partner receives a statement described in paragraph (a) of this section, the partner may be able to avail itself of the deficiency dividend procedure described in § 301.6226–3(b)(4).

(2) *Liability for tax under section 7704(g)(3).* An election under this section has no effect on a partnership's liability for any tax under section 7704(g)(3) (regarding the exception for electing 1987 partnerships from the general rule that certain publicly traded partnerships are treated as corporations).

(3) *Adjustments subject to chapters 3 and 4 of the Internal Revenue Code.* A partnership that makes an election under § 301.6226–1 with respect to an imputed underpayment must pay the amount of tax required to be withheld under chapter 3 or chapter 4, if any, in accordance with § 301.6241–6(b)(4).

(h) *Applicability date*—(1) *In general.* Except as provided in paragraph (h)(2) of this section, this section applies to partnership taxable years beginning after December 31, 2017, and ending after August 12, 2018.

(2) *Election under § 301.9100–22 in effect.* This section applies to any partnership taxable year beginning after November 2, 2015, and before January 1, 2018, for which a valid election under § 301.9100–22 is in effect.

■ **Par. 9.** Section 301.6226–3 is added to read as follows:

§ 301.6226–3 Adjustments taken into account by partners.

(a) *Effect of taking adjustments into account on tax imposed by chapter 1.* Except as otherwise provided in this section, the tax imposed by chapter 1 of the Internal Revenue Code (chapter 1 tax) for each reviewed year partner (as defined in § 301.6241–1(a)(9)) for the taxable year that includes the date a statement was furnished in accordance with § 301.6226–2 (the reporting year) is increased by the additional reporting year tax, or if the additional reporting year tax is less than zero, decreased by such amount. The additional reporting year tax is the aggregate of the correction amounts (determined in accordance with paragraph (b) of this section). In addition to being liable for the additional reporting year tax, a reviewed year partner must also calculate and pay for the reporting year any penalties, additions to tax, and additional amounts (as determined under paragraph (d) of this section). Finally, a reviewed year partner must also calculate and pay for the reporting year any interest (as determined under paragraph (c) of this section).

(b) *Determining the aggregate of the correction amounts*—(1) *In general.* For purposes of paragraph (a) of this section, the aggregate of the correction amounts is the sum of the correction amounts described in paragraphs (b)(2) and (3) of this section. A correction amount under paragraph (b)(2) or (3) of this section may be less than zero, and any correction amount that is less than zero may reduce any other correction amount with the result that the aggregate of the correction amounts under this paragraph (b)(1) may also be less than zero. However, nothing in this section entitles any partner to a refund of chapter 1 tax to which such partner is not entitled. See paragraphs (c) and (d) of this section requiring a separate determination of interest and penalties, additions to tax, and additional amounts on the correction amount for each applicable taxable year (as defined in paragraph (c)(1) of this section) without regard to the correction amount for any other applicable taxable year.

(2) *Correction amount for the first affected year*—(i) *In general.* The correction amount for the taxable year of the partner that includes the end of the reviewed year (the first affected year) is the amount by which the reviewed year partner's chapter 1 tax would increase or decrease for the first affected year if the partner's taxable income for such year was recomputed by taking into account the reviewed year partner's share of the partnership adjustments (as defined in § 301.6241–1(a)(6)) reflected on the statement described in § 301.6226–2 with respect to the partner.

(ii) *Calculation of the correction amount for the first affected year.* The correction amount is the amount of chapter 1 tax that would have been imposed for the first affected year if the items as adjusted in the statement described in § 301.6226–2 had been reported as such on the return for the first affected year less the sum of:

(A) The amount of chapter 1 tax shown by the partner on the return for the first affected year (which includes amounts shown on an amended return for such year, including an amended

return filed under section 6225(c)(2) by the reviewed year partner); plus

(B) Amounts not included in paragraph (b)(2)(ii)(A) of this section but previously assessed or collected (including the amounts defined in § 1.6664–2(d) of this chapter and any amounts paid by the partner in accordance with § 301.6225–2); less

(C) The amount of rebates made (as defined in § 1.6664–2(e) of this chapter).

(iii) *Formulaic expression of the correction amount for the first affected year.* The correction amount also may be expressed as—

Correction amount = A − (B + C − D)

Where:

A = the amount of chapter 1 tax that would have been imposed had the items as adjusted been properly reported on the return for the first affected year;

B = the amount shown as chapter 1 tax on the return for the first affected year (taking into account amended returns);

C = amounts previously assessed or collected; and

D = the amount of rebates made.

(3) *Correction amount for the intervening years*—(i) *In general.* The correction amount for all taxable years after the first affected year and before the reporting year (the intervening years) is the aggregate of the correction amounts determined for each intervening year. Determining the correction amount for each intervening year is a year-by-year determination. The correction amount for each intervening year is the amount by which the reviewed year partner's chapter 1 tax for such year would increase or decrease if the partner's taxable income for such year was recomputed by taking into account any adjustments to tax attributes (as defined in § 301.6241–1(a)(10)) of the partner under paragraph (b)(3) of this section.

(ii) *Calculation of the correction amount for the intervening years.* The correction amount for each intervening year is the amount of chapter 1 tax that would have been imposed for the intervening year if any tax attribute of the partner for the intervening year had been adjusted after taking into account the reviewed year partner's share of the adjustments for the first affected year as described in paragraph (b)(2) of this section (and if any tax attribute of the partner for the intervening year had been adjusted, after taking into account any adjustments to tax attributes of the partner in any prior intervening year(s)) exceeds less the sum of—

(A) The amount of chapter 1 tax shown by the partner on the return for the intervening year (which includes amounts shown on an amended return for such year, including an amended return filed under section 6225(c)(2) by a reviewed year partner); plus

(B) Amounts not included in paragraph (b)(3)(ii)(A) of this section but previously or collected (including the amounts defined in § 1.6664–2(d) of this chapter and any amounts paid by the partner in accordance with § 301.6225–2); less

(C) The amount of rebates made (as defined in § 1.6664–2(e) of this chapter).

(iii) *Formulaic expression of the correction amount for the intervening years.* The correction amount also may be expressed as—

Correction amount = A − (B + C − D)

Where:

A = the amount of chapter 1 tax that would have been imposed for the intervening year;

B = the amount shown as chapter 1 tax on the return for the intervening year (taking into account amended returns);

C = amounts previously assessed or collected; and

D = the amount of rebates made.

(4) *Coordination of sections 860 and 6226.* If a qualified investment entity (QIE) within the meaning of section 860(b) receives a statement described in § 301.6226–2(a) and correctly makes a determination within the meaning of section 860(e)(4) that one or more of the adjustments reflected in the statement is an adjustment within the meaning of section 860(d) with respect to that QIE for a taxable year, the QIE may distribute deficiency dividends within the meaning of section 860(f) for that taxable year and avail itself of the deficiency dividend procedures set forth in section 860. If the QIE utilizes the deficiency dividend procedures with respect to adjustments in a statement described in § 301.6226–2(a), the QIE may claim a deduction for deficiency dividends against the adjustments furnished to the QIE in the statement in calculating any correction amounts under paragraphs (b)(2) and (3) of this section, and interest on such correction amounts under paragraph (c) of this section, to the extent that the QIE makes deficiency dividend distributions under section 860(f) and complies with all requirements of section 860 and the regulations under part 1 of this chapter.

(c) *Interest*—(1) *Interest on the correction amounts.* Interest on the correction amounts determined under paragraph (b) of this section is the aggregate of all interest calculated for each applicable taxable year in which there was a correction amount greater than zero at the rate set forth in paragraph (c)(3) of this section. For each applicable taxable year, interest on the correction amount is calculated from the due date (without extension) of the reviewed year partner's return for such applicable taxable year until the amount is paid. For purposes of this paragraph (c)(1), the term *applicable taxable year* means the reviewed year partner's taxable year affected by taking into account adjustments as described in paragraph (b) of this section (for instance, the first affected year and any intervening year in which there is a correction amount greater than zero). For purposes of calculating interest under this paragraph (c), a correction amount under paragraph (b)(2) or (3) of this section for an applicable taxable year that is less than zero does not reduce the correction amount for any other applicable taxable year.

(2) *Interest on penalties.* Interest on any penalties, additions to tax, or additional amounts determined under paragraph (d) of this section is calculated at the rate set forth in paragraph (c)(3) of this section from the due date (including any extension) of the reviewed year partner's return for the applicable taxable year until the amount is paid.

(3) *Rate of interest.* For purposes of paragraph (c) of this section, interest is calculated using the underpayment rate under section 6621(a)(2) by substituting ''5 percentage points'' for ''3 percentage points'' in section 6621(a)(2)(B).

(d) *Penalties*—(1) *Applicability determined at the partnership level.* In the case of a partnership that makes an election under section 6226, the applicability of any penalty, addition to tax, and additional amount that relates to an adjustment to any partnership-related item is determined at the partnership level in accordance with section 6221(a). The partnership's reviewed year partners are liable for such penalties, additions to tax, and additional amounts as determined under paragraph (d)(2) of this section.

(2) *Amount calculated at partner level.* A reviewed year partner calculates the amount of any penalty, addition to tax, or additional amount relating to the partnership adjustments taken into account under paragraph (b)(1) of this section as if the correction amount were an underpayment or understatement of the reviewed year partner for the first affected year or intervening year, as applicable. The calculation of any penalty, addition to tax, or additional amount is based on the characteristics of, and facts and circumstances applicable to, the reviewed year partner for the first affected year or intervening year, as applicable after taking into account the partnership adjustments reflected on the statement. If after taking into account the partnership

adjustments in accordance with this section, the reviewed year partner does not have an underpayment, or has an understatement that falls below the applicable threshold for the imposition of a penalty, no penalty is due from that reviewed year partner under this paragraph (d)(2). For penalties in the case of a pass-through partner that makes a payment under paragraph (e)(4) of this section, see paragraph (e)(4)(iv) of this section.

(3) *Partner-level defenses to penalties.* A reviewed year partner (including a pass-through partner (as defined in § 301.6241–1(a)(5))) claiming that a penalty, addition to tax, or additional amount that relates to a partnership adjustment reflected on a statement described in § 301.6226–2 (or paragraph (e)(3) of this section) is not due because of a partner-level defense must first pay the penalty and file a claim for refund for the reporting year. Partner-level defenses are limited to those that are personal to the reviewed year partner (for example, a reasonable cause and good faith defense under section 6664(c) that is based on the facts and circumstances applicable to the partner).

(e) *Pass-through partners*—(1) *In general.* Except as provided in paragraph (e)(6) of this section, if a pass-through partner is furnished a statement described in § 301.6226–2 (including a statement described in paragraph (e)(3) of this section) with respect to adjustments of a partnership that made an election under § 301.6226–1 (audited partnership), the pass-through partner must file with the IRS a partnership adjustment tracking report in accordance with forms, instructions, or other guidance prescribed by the IRS on or before the due date described in paragraph (e)(3)(ii) of this section, and file and furnish statements in accordance with paragraph (e)(3) of this section. The pass-through partner must comply with paragraph (e) of this section with respect to each statement furnished to the pass-through partner.

(2) *Failure to file and furnish required documents*—(i) *Failure to timely file and furnish statements.* If any pass-through partner fails to timely file and furnish correct statements in accordance with paragraph (e)(3) of this section, the pass-through partner must compute and pay an imputed underpayment, as well as any penalties, additions to tax, additional amounts, and interest with respect to the adjustments reflected on the statement furnished to the pass-through partner in accordance with paragraph (e)(4) of this section. The IRS may assess such imputed underpayment against such pass-through partner without regard to the limitations under section 6232(b). See § 301.6232–1(c)(2). A failure to furnish statements in accordance with paragraph (e)(3) of this section is treated as a failure to timely pay an imputed underpayment required under paragraph (e)(4)(i) of this section, unless the pass-through partner computes and pays an imputed underpayment in accordance with paragraph (e)(4) of this section. See section 6651(i).

(ii) *Failures relating to partnership adjustment tracking report.* Failure to timely file the partnership adjustment tracking report as required in paragraph (e)(1) of this section, or filing such report without showing the information required under paragraph (e)(1) of this section, is subject to the penalty imposed by section 6698.

(3) *Furnishing statements to partners*—(i) *In general.* A pass-through partner described in paragraph (e)(1) of this section must furnish a statement that includes the items required by paragraph (e)(3)(iii) of this section to each partner that held an interest in the pass-through partner at any time during the taxable year of the pass-through partner to which the adjustments in the statement furnished to the pass-through partner relate (affected partner). The statements described in this paragraph (e)(3) must be filed with the IRS by the due date prescribed in paragraph (e)(3)(ii) of this section. Except as otherwise provided in paragraphs (e)(3)(ii), (iii), and (v) of this section, the rules applicable to statements described in § 301.6226–2 are applicable to statements described in this paragraph (e)(3).

(ii) *Time for filing and furnishing the statements.* In accordance with forms, instructions, and other guidance prescribed by the IRS, the pass-through partner must file with the IRS and furnish to its affected partners the statements described in paragraph (e)(3) of this section no later than the extended due date for the return for the adjustment year (as defined in § 301.6241–1(a)(1)) of the audited partnership. For purposes of this section, the extended due date is the extended due date under section 6081 regardless of whether the audited partnership is required to file a return for the adjustment year or timely files a request for an extension under section 6081.

(iii) *Contents of statements.* Each statement described in paragraph (e)(3) of this section must include the following correct information—

(A) The name and taxpayer identification number (TIN) of the audited partnership;

(B) The adjustment year of the audited partnership;

(C) The extended due date for the return for the adjustment year of the audited partnership (as described in paragraph (e)(3)(ii) of this section);

(D) The date on which the audited partnership furnished its statements required under § 301.6226–2(b);

(E) The name and TIN of the partnership that furnished the statement to the pass-through partner if different from the audited partnership;

(F) The name and TIN of the pass-through partner;

(G) The pass-through partner's taxable year to which the adjustments reflected on the statements described in paragraph (e)(3) of this section relates;

(H) The name and TIN (or alternative form of identification as prescribed by forms, instructions, or other guidance) of the affected partner to whom the statement is being furnished;

(I) The current or last address of the affected partner that is known to the pass-through partner;

(J) The affected partner's share of items as originally reported to such partner under section 6031(b) and, if applicable, section 6227, for the taxable year to which the adjustments reflected on the statement furnished to the pass-through partner relate;

(K) The affected partner's share of partnership adjustments determined under § 301.6226–2(f)(1) as if the affected partner were the reviewed year partner and the pass-through partner were the partnership;

(L) Modifications approved by the IRS with respect to the affected partner that holds its interest in the audited partnership through the pass-through partner;

(M) The applicability of any penalties, additions to tax, or additional amounts determined at the audited partnership level that relate to any adjustments allocable to the affected partner and the adjustments allocated to the affected partner to which such penalties, additions to tax, or additional amounts relate, the section of the Internal Revenue Code under which each penalty, addition to tax, or additional amount is imposed, and the applicable rate of each penalty, addition to tax, or additional amount; and

(N) Any other information required by forms, instructions, and other guidance prescribed by the IRS.

(iv) *Affected partner must take into account the adjustments.* A statement furnished to an affected partner in accordance with paragraph (e)(3) of this section is treated as if it were a statement described in § 301.6226–2. An affected partner that is a pass-through

partner must take into account the adjustments reflected on such a statement in accordance with this paragraph (e). An affected partner that is not a pass-through partner must take into account the adjustments reflected on such a statement in accordance with this section by treating references to ''reviewed year partner'' as ''affected partner''. For purposes of this paragraph (e)(3)(iv), an affected partner that is not a pass-through partner takes into account the adjustments in accordance with this section by determining its reporting year based on the date upon which the audited partnership furnished its statements to its reviewed year partners (as described in paragraph (a) of this section). No addition to tax under section 6651 related to any additional reporting year tax will be imposed if an affected partner that is not a pass-through partner reports and pays the additional reporting year tax within 30 days of the extended due date for the return for the adjustment year of the audited partnership (as described in paragraph (e)(3)(ii) of this section).

(v) *Adjustments subject to chapters 3 and 4 of the Internal Revenue Code.* If a pass-through partner furnishes statements to its affected partners in accordance with paragraph (e)(3) of this section, the pass-through partner must comply with the requirements of § 301.6241–6(b)(4), and an affected partner must comply with the requirements of paragraph (f) of this section. For purposes of applying both § 301.6241–6(b)(4) and paragraph (f) of this section, as appropriate, references to the ''partnership'' should be replaced with references to the ''pass-through partner''; references to the ''reviewed year partner'' should be replaced with references to the ''affected partner''; references to the statement required under paragraph (a) of this section and its due date should be replaced with references to the statement required under paragraph (e)(3) of this section and its due date described in paragraph (e)(3)(ii) of this section; references to the ''reporting year'' should be read in accordance with paragraph (e)(3)(iv) of this section; and references to the partnership return should be read as references to the return for the adjustment year of the audited partnership as described in paragraph (e)(3)(ii) of this section.

(4) *Pass-through partner pays an imputed underpayment*—(i) *In general.* If a pass-through partner described in paragraph (e)(1) of this section does not furnish statements in accordance with paragraph (e)(3) of this section, the pass-through partner must compute and pay an imputed underpayment determined under paragraph (e)(4)(iii) of this section. The pass-through partner must also pay any penalties, additions to tax, additional amounts, and interest as determined under paragraph (e)(4)(iv) of this section. A failure to timely pay an imputed underpayment required under this paragraph (e)(4) is subject to penalty under section 6651(i).

(ii) *Time of payment.* A pass-through partner must file a partnership adjustment tracking report and compute and pay the imputed underpayment and any penalties, additions to tax, additional amounts, and interest, as described in paragraph (e)(4)(i) of this section, in accordance with forms, instructions, and other guidance no later than the extended due date for the return for the adjustment year of the audited partnership.

(iii) *Computation of the imputed underpayment.* The imputed underpayment under paragraph (e)(4)(i) of this section is computed in the same manner as an imputed underpayment under section 6225 and § 301.6225–1, except that adjustments reflected on the statement furnished to the pass-through partner under § 301.6226–2 are treated as partnership adjustments (as defined in § 301.6241–1(a)(6)) for the first affected year. Any modification approved by the IRS under § 301.6225–2 with respect to the pass-through partner (including any modifications with respect to a relevant partner (as defined in § 301.6225–2(a)) that holds its interest in the audited partnership through its interest in the pass-through partner) reflected on the statement furnished to the pass-through partner under § 301.6226–2 (or paragraph (e)(3) of this section) is taken into account in calculating the imputed underpayment under this paragraph (e)(4)(iii). Any modification that was not approved by the IRS under § 301.6225–2 may not be taken into account in calculating the imputed underpayment under this paragraph (e)(4)(iii).

(iv) *Penalties and interest*—(A) *Penalties.* A pass-through partner must compute and pay any applicable penalties, additions to tax, and additional amounts on the imputed underpayment calculated under paragraph (e)(4)(iii) of this section as if such amount were an imputed underpayment for the pass-through partner's first affected year. See § 301.6233(a)–1(c).

(B) *Interest.* A pass-through partner must pay interest on the imputed underpayment calculated under paragraph (e)(4)(iii) of this section in accordance with paragraph (c) of this section as if such imputed underpayment were a correction amount for the first affected year.

(v) *Adjustments that do not result in an imputed underpayment.* Adjustments taken into account under paragraph (e)(4) of this section that do not result in an imputed underpayment (as defined in § 301.6225–1(f)) are taken into account by the pass-through partner in accordance with § 301.6225–3 in the taxable year of the pass-through partner that includes the date the imputed underpayment required under paragraph (e)(4)(i) of this section is paid. If, after making the computation described in paragraph (e)(4)(iii) of this section, no imputed underpayment exists and therefore no payment is required under paragraph (e)(4)(i) of this section, the adjustments that did not result in an imputed underpayment are taken into account by the pass-through partner in accordance with § 301.6225–3 in the taxable year of the pass-through partner that includes the date the statement described in § 301.6226–2 (or paragraph (e)(3) of this section) is furnished to the pass-through partner.

(vi) *Coordination with chapters 3 and 4.* If a pass-through partner pays an imputed underpayment described in paragraph (e)(4)(i) of this section, § 301.6241–6(b)(3) applies to the pass-through partner by substituting ''pass-through partner'' for ''partnership'' where § 301.6241–6(b)(3) refers to the partnership that pays the imputed underpayment.

(5) *Treatment of pass-through partners that are not partnerships*—(i) *S corporations.* For purposes of this paragraph (e), an S corporation is treated as a partnership and its shareholders are treated as partners.

(ii) *Trusts and estates.* Except as provided in paragraph (g) of this section, for purposes of paragraph (e) of this section, a trust and its beneficiaries, and an estate and its beneficiaries are treated in the same manner as a partnership and its partners.

(6) *Pass-through partners subject to chapter 1 tax.* A pass-through partner that is subject to tax under chapter 1 of the Code on the adjustments (or a portion of the adjustments) reflected on the statement furnished to such partner under § 301.6226–2 (or paragraph (e)(3) of this section) takes the adjustments into account under this paragraph (e)(6) when the pass-through partner calculates and pays the additional reporting year tax as determined under paragraph (b) of this section and furnishes statements to its partners in accordance with paragraph (e)(3) of this section. Notwithstanding the prior sentence, a pass-through partner is only required to include on a statement

under paragraph (e)(3) of this section the adjustments that would be required to be included on statements furnished to owners or beneficiaries under sections 6037 and 6034A, as applicable, if the pass-through partner had correctly reported the items for the year to which the adjustments relate. If the pass-through partner fails to comply with the requirements of this paragraph (e)(6), the pass-through partner must compute and pay an imputed underpayment, as well as any penalties, additions to tax, additional amounts, and interest with respect to the adjustments reflected on the statement furnished to such partner in accordance with paragraph (e)(4) of this section.

(f) *Partners subject to withholding under chapters 3 and 4.* A reviewed year partner that is subject to withholding under § 301.6241–6(b)(4) must file an income tax return for the reporting year to report its additional reporting year tax and its share of any penalties, additions to tax, additional amounts, and interest (notwithstanding any filing exception in § 1.6012–1(b)(2)(i) or § 1.6012–2(g)(2)(i) of this chapter). The amount of tax paid by a partnership under § 301.6241–6(b)(4) is allowed as a credit under section 33 to the reviewed year partner to the extent that the tax is allocable to the reviewed year partner (within the meaning of § 1.1446–3(d)(2) of this chapter) or is actually withheld from the reviewed year partner (within the meaning of § 1.1464–1(a) or § 1.1474–3 of this chapter). The credit is allowed against the reviewed year partner's income tax liability for its reporting year. The reviewed year partner must substantiate the credit by attaching the applicable Form 1042–S, *Foreign Person's U.S. Source Income Subject to Withholding,* or Form 8805, *Foreign Partner's Information Statement of Section 1446 Withholding Tax,* to its income tax return for the reporting year, as well as satisfying any other requirements prescribed by the IRS in forms and instructions.

(g) *Treatment of disregarded entities and wholly-owned grantor trusts.* In the case of a reviewed year partner that is a wholly-owned entity disregarded as separate from its owner for Federal income tax purposes in the reviewed year or a trust that is wholly owned by only one person in the reviewed year, whether the grantor or another person, and where the trust reports the owner's information to payors under § 1.671–4(b)(2)(i)(A) of this chapter and that is furnished a statement described in § 301.6226–2 (or paragraph (e)(3) of this section), the owner of the disregarded entity or wholly-owned grantor trust must take into account the adjustments reflected on that statement in accordance with this section as if the owner were the reviewed year partner.

(h) *Examples.* The following examples illustrate the rules of this section. For purposes of these examples, unless otherwise stated, each partnership is subject to subchapter C of chapter 63 of the Code, each partnership and partner has a calendar year taxable year, no modifications are requested by any partnership under § 301.6225–2, no penalties, additions to tax, or additional amounts are determined at the partnership level, all persons are U.S. persons, the highest rate of income tax in effect for is 40 percent for all relevant periods, the highest rate of income tax in effect for corporations is 20 percent for all relevant periods, and the highest rate of tax for individuals for capital gains is 15 percent for all relevant periods.

(1) *Example 1.* On its partnership return for the 2020 tax year, Partnership reported ordinary income of $1,000 and charitable contributions of $400. On June 1, 2023, the IRS mails a notice of final partnership adjustment (FPA) to Partnership for Partnership's 2020 year disallowing the charitable contribution in its entirety and determining that a 20 percent accuracy-related penalty under section 6662(b) applies to the disallowance of the charitable contribution, and setting forth a single imputed underpayment with respect to such adjustments. Partnership makes a timely election under section 6226 in accordance with § 301.6226–1 with respect to the imputed underpayment in the FPA for Partnership's 2020 year and files a timely petition in the Tax Court challenging the partnership adjustments. The Tax Court determines that Partnership is not entitled to any of the claimed $400 in charitable contributions and upholds the applicability of the penalty. The decision regarding Partnership's 2020 tax year becomes final on December 15, 2025. Pursuant to § 301.6226–2(b), the partnership adjustments are finally determined on December 15, 2025. On February 2, 2026, Partnership files the statements described under § 301.6226–2 with the IRS and furnishes to partner A, an individual who was a partner in Partnership during 2020, a statement described in § 301.6226–2. A had a 25 percent interest in Partnership during all of 2020 and was allocated 25 percent of all items from Partnership for that year. The statement shows A's share of ordinary income reported on Partnership's return for the reviewed year of $250 and A's share of the charitable contribution reported on Partnership's return for the reviewed year of $100. The statement also shows an adjustment to A's share of the charitable contribution, a reduction of $100 resulting in $0 charitable contribution allocated to A from Partnership for 2020. In addition, the statement reports that a 20 percent accuracy-related penalty under section 6662(b) applies. A must pay the additional reporting year tax as determined in accordance with paragraph (b) of this section, in addition to A's penalties and interest. A computes his additional reporting year tax as follows. First, A determines the correction amount for the first affected year (the 2020 taxable year) by taking into account A's share of the partnership adjustment (−$100 reduction in charitable contribution) for the 2020 taxable year. A determines the amount by which his chapter 1 tax for 2020 would have increased or decreased if the $100 adjustment to the charitable contribution from Partnership were taken into account for that year. There is no adjustment to tax attributes in A's intervening years as a result of the adjustment to the charitable contribution for 2020. Therefore, A's aggregate of the correction amounts is the correction amount for 2020, A's first affected year. In addition to the aggregate of the correction amounts being added to the chapter 1 tax that A owes for 2026, the reporting year, A must calculate a 20 percent accuracy-related penalty on A's underpayment attributable to the $100 adjustment to the charitable contribution, as well as interest on the correction amount for the first affected year and the penalty determined in accordance with paragraph (c) of this section. Interest on the correction amount for the first affected tax year runs from April 15, 2021, the due date of A's 2020 return (the first affected tax year) until A pays this amount. In addition, interest runs on the penalty from April 15, 2021, the due date of A's 2020 return for the first affected year until A pays this amount. On his 2026 income tax return, A must report the additional reporting year tax determined in accordance with paragraph (b) of this section, which is the correction amount for 2020, plus the accuracy-related penalty determined in accordance with paragraph (d) of this section, and interest determined in accordance with paragraph (c) of this section on the correction amount for 2020 and the penalty.

(2) *Example 2.* On its partnership return for the 2020 tax year, Partnership reported an ordinary loss of $500. On June 1, 2023, the IRS mails an FPA to Partnership for the 2020 taxable year determining that $300 of the $500 in ordinary loss should be recharacterized as a long-term capital loss. Partnership has no long-term capital gain for its 2020 tax year. The FPA for Partnership's 2020 tax year reflects an adjustment of an increase in ordinary income of $300 (as a result of the disallowance of the recharacterization of $300 from ordinary loss to long-term capital loss) and an imputed underpayment related to that adjustment, as well as an adjustment of an additional $300 in long-term capital loss for 2020 which does not result in an imputed underpayment under § 301.6225–1(f). Partnership makes a timely election under section 6226 in accordance with § 301.6226–1 with respect to the imputed underpayment in the FPA and does not file a petition for readjustment under section 6234. Accordingly, under § 301.6226–1(b)(2) and § 301.6225–3(b)(6), the adjustment year partners (as defined in § 301.6241–1(a)(2)) do not take into account the $300 long-term capital loss that does not result in an imputed underpayment. Rather,

the $300 long-term capital loss is taken into account by the reviewed year partners. The time to file a petition expires on August 30, 2023. Pursuant to § 301.6226–2(b), the partnership adjustments become finally determined on August 31, 2023. On September 30, 2023, Partnership files with the IRS statements described in § 301.6226–2 and furnishes statements to all of its reviewed year partners in accordance with § 301.6226–2. One partner of Partnership in 2020, B (an individual), had a 25 percent interest in Partnership during all of 2020 and was allocated 25 percent of all items from Partnership for that year. The statement filed with the IRS and furnished to B shows B's allocable share of the ordinary loss reported on Partnership's return for the 2020 taxable year as $125. The statement also shows an adjustment to B's allocable share of the ordinary loss in the amount of −$75, resulting in a corrected ordinary loss allocated to B of $50 for taxable year 2020 ($125 originally allocated to B less $75 which is B's share of the adjustment to the ordinary loss). In addition, the statement shows an increase to B's share of long-term capital loss in the amount of $75 (B's share of the adjustment that did not result in the imputed underpayment with respect to Partnership). B must pay the additional reporting year tax as determined in accordance with paragraph (b) of this section. B computes his additional reporting year tax as follows. First, B determines the correction amount for the first affected year (the 2020 taxable year) by taking into account B's share of the partnership adjustments (a $75 reduction in ordinary loss and an increase of $75 in long-term capital loss) for the 2020 taxable year. B determines the amount by which his chapter 1 tax for 2020 would have increased or decreased if the $75 adjustment to ordinary loss and the $75 adjustment to long-term capital loss from Partnership were taken into account for that year. Second, B determines if there is any increase or decrease in chapter 1 tax for any intervening year as a result of the adjustment to the ordinary and capital losses for 2020. B's aggregate of the correction amounts is the correction amount for 2020, B's first affected year plus any correction amounts for any intervening years. B is also liable for any interest on the correction amount for the first affected year and for any intervening year as determined in accordance with paragraph (c) of this section.

(3) *Example 3.* On its partnership return for the 2020 tax year, Partnership, a domestic partnership, reported U.S. source dividend income of $2,000. On June 1, 2023, the IRS mails an FPA to Partnership for Partnership's 2020 year increasing the amount of U.S. source dividend income to $4,000 and determining that a 20 percent accuracy-related penalty under section 6662(b) applies to the increase in U.S. source dividend income. Partnership makes a timely election under section 6226 in accordance with § 301.6226–1 with respect to the imputed underpayment in the FPA for Partnership's 2020 year and does not file a petition for readjustment under section 6234. The time to file a petition expires on August 30, 2023. Pursuant to § 301.6226–2(b), the partnership adjustments become finally determined on August 31, 2023. On September 30, 2023, Partnership files the statements described under § 301.6226–2 with the IRS and furnishes to partner C, a nonresident alien individual who was a partner in Partnership during 2020 (and remains a partner in Partnership in 2023), a statement described in § 301.6226–2. C had a 50 percent interest in Partnership during all of 2020 and was allocated 50 percent of all items from Partnership for that year. The statement shows C's share of U.S. source dividend income reported on Partnership's return for the reviewed year of $1,000 and an adjustment to U.S. source dividend income of $1,000. In addition, the statement reports that a 20 percent accuracy-related penalty under section 6662(b) applies. Under § 301.6241–6(b)(4)(i), because the additional $1,000 in U.S. source dividend income allocated to C is an amount subject to withholding (as defined in § 301.6241–6(b)(2)), Partnership must pay the amount of tax required to be withheld on the adjustment. See §§ 1.1441–1(b)(1) and 1.1441–5(b)(2)(i)(A) of this chapter. Under § 301.6241–6(b)(4)(ii), Partnership may reduce the amount of withholding tax it must pay because it has valid documentation from 2020 that establishes that C was entitled to a reduced rate of withholding in 2020 on U.S. source dividend income of 10 percent pursuant to a treaty. Partnership withholds $100 of tax from C's distributive share, remits the tax to the IRS, and files the necessary return and information returns required by § 1.1461–1 of this chapter. On his 2023 return, C must report the additional reporting year tax determined in accordance with paragraph (b) of this section, the accuracy-related penalty determined in accordance with paragraph (d) of this section, and interest determined in accordance with paragraph (c) of this section on the correction amount for the first affected year, the correction amount for any intervening year, and the penalty. Under paragraph (f) of this section, C may claim the $100 withholding tax paid by Partnership pursuant to § 301.6241–6(b)(4)(i) as a credit under section 33 against C's income tax liability on his 2023 return.

(4) *Example 4.* On its partnership return for the 2020 tax year, Partnership reported ordinary income of $100 and a long-term capital gain of $40. Partnership had four equal partners during the 2020 tax year: E, F, G, and H, all of whom were individuals. On its partnership return for the 2020 tax year, the entire long-term capital gain was allocated to partner E and the ordinary income was allocated to all partners based on their equal (25 percent) interest in Partnership. The IRS initiates an administrative proceeding with respect to Partnership's 2020 taxable year and determines that the long-term capital gain should have been allocated equally to all four partners and that Partnership should have recognized an additional $10 in ordinary income. On June 1, 2023, the IRS mails an FPA to Partnership reflecting the reallocation of the $40 long-term capital gain so that F, G, and H each have $10 increase in long-term capital gain and E has a $30 reduction in long-term capital gain for 2020. In addition, the FPA reflects the partnership adjustment increasing ordinary income by $10. The FPA reflects a general imputed underpayment with respect to the increase in ordinary income and a specific imputed underpayment with respect to the increase in long-term capital gain allocated to F, G, and H. In addition, the FPA reflects a $30 partnership adjustment that does not result in an imputed underpayment, that is, the reduction of $30 in long-term capital gain with respect to E that is associated with the specific imputed underpayment in accordance with § 301.6225–1(g)(2)(iii)(B). Partnership makes a timely election under section 6226 in accordance with § 301.6226–1 with respect to the specific imputed underpayment relating to the reallocation of long-term capital gain. Partnership does not file a petition for readjustment under section 6234. The time to file a petition expires on August 30, 2023. Pursuant to § 301.6226–2(b), the partnership adjustments become finally determined on August 31, 2023. Partnership timely pays the general imputed underpayment that resulted from the partnership adjustment to ordinary income. On September 30, 2023, Partnership files with the IRS statements described in § 301.6226–2 and furnishes statements to its partners reflecting their share of the partnership adjustments as finally determined in the FPA that relate to the specific imputed underpayment, that is, the reallocation of long-term capital gain. The statements for F, G, and H each reflect a partnership adjustment of an additional $10 of long-term capital gain for 2020. The statement for E reflects a partnership adjustment of a reduction of $30 of long-term capital gain for 2020. Because E, F, G, and H are all individuals, all partners must report the additional reporting year tax as determined in accordance with paragraph (b) of this section in the partners' reporting year, which is 2023. They compute their additional reporting year tax as follows. First, they determine the correction amount for the first affected year (the 2020 taxable year) by taking into account their share of the partnership adjustments for the 2020 taxable year. They each determine the amount by which their chapter 1 tax for 2020 would have increased or decreased if the adjustment to long-term capital gain from Partnership were taken into account for that year. Second, they determine if there is any increase or decrease in chapter 1 tax for any intervening year as a result of the adjustment to the long-term capital gain for 2020. Their aggregate of the correction amounts is the sum of the correction amount for 2020, their first affected year and any correction amounts for any intervening years. They are also liable for any interest on the correction amount for the first affected year and for any intervening year as determined in accordance with paragraph (c) of this section.

(5) *Example 5.* On its partnership return for the 2020 taxable year, Partnership reported a long-term capital loss of $500. During an administrative proceeding with respect to Partnership's 2020 taxable year, the IRS mails a notice of proposed partnership adjustment (NOPPA) in which it proposes to disallow $200 of the reported

$500 long-term capital loss, the only adjustment. Accordingly, the imputed underpayment reflected in the NOPPA is $80 ($200 × 40 percent). F, a C corporation partner with a 50 percent interest in Partnership, received 50 percent of all long-term capital losses for 2020. As part of the modification process described in § 301.6225–2(d)(2), F files an amended return for 2020 taking into account F's share of the partnership adjustment ($100 reduction in long-term capital loss) and pays the tax owed for 2020, including interest. Also as part of the modification process, F also files amended returns for 2021 and 2022 and pays additional tax (and interest) for these years because the reduction in long-term capital loss for 2020 affected the tax due from F for 2021 and 2022. See § 301.6225–2(d)(2). The reduction of the long-term capital loss in 2020 did not affect any other taxable year of F. This is the only modification requested. The IRS approves the modification with respect to F and on June 1, 2023, mails an FPA to Partnership for Partnership's 2020 year reflecting the partnership adjustment reducing the long-term capital loss in the amount of $200. The FPA also reflects the modification to the imputed underpayment based on the amended returns filed by F taking into account F's share of the reduction in the long-term capital loss. Therefore, the imputed underpayment in the FPA is $40 ($100 × 40 percent). Partnership makes a timely election under section 6226 in accordance with § 301.6226–1 with respect to the imputed underpayment in the FPA for Partnership's 2020 year and files a timely petition in the Tax Court challenging the partnership adjustments. The Tax Court upholds the determinations in the FPA and the decision regarding Partnership's 2020 tax year becomes final on December 15, 2025. Pursuant to § 301.6226–2(b), the partnership adjustments are finally determined on December 15, 2025. On February 1, 2026, Partnership files the statements described under § 301.6226–2 with the IRS and furnishes to its partners statements reflecting their shares of the partnership adjustment. The statement issued to F reflects F's share of the partnership adjustment for Partnership's 2020 taxable year as finally determined by the Tax Court. The statement shows F's share of the long-term capital loss adjustment for the reviewed year of $100, as well as the $100 long-term capital loss taken into account by F as part of the amended return modification. Accordingly, in accordance with paragraph (b) of this section, when F computes its correction amounts for the first affected year (the 2020 taxable year) and the intervening years (the 2021 through 2026 taxable years), F computes any increase or decrease in chapter 1 tax for those years using the returns for the 2020, 2021, and 2022 taxable years as amended during the modification process and taking into account any chapter 1 tax paid with those amended returns. F also takes into account the interest paid with F's amended returns when determining the interest under paragraph (c) of this section that must be paid in the reporting year.

(6) *Example 6.* Partnership has two equal partners for the 2020 tax year: M (an individual) and J (a partnership). For the 2020 tax year, J has two equal partners—K and L—both individuals. On June 1, 2023, the IRS mails an FPA to Partnership for Partnership's 2020 year increasing Partnership's ordinary income by $500,000 and asserting an imputed underpayment of $200,000. Partnership makes a timely election under section 6226 in accordance with § 301.6226–1 with respect to the imputed underpayment in the FPA for Partnership's 2020 year and does not file a petition for readjustment under section 6234. The time to file a petition expires on August 30, 2023. Pursuant to § 301.6226–2(b), the partnership adjustments become finally determined on August 31, 2023. Therefore, Partnership's adjustment year is 2023, the due date of the adjustment year return is March 15, 2024 and the extended due date for the adjustment year return is September 16, 2024. On October 12, 2023, Partnership timely files with the IRS statements described in § 301.6226–2 and timely furnishes statements to its partners reflecting their share of the partnership adjustments as finally determined in the FPA. The statements to M and J each reflect a partnership adjustment of $250,000 of ordinary income. M takes her share of the adjustments reflected on the statements furnished by Partnership into account on M's return for the 2023 tax year in accordance with paragraph (b) of this section. On April 1, 2024, J files the adjustment tracking report and files and furnishes statements to K and L reflecting each partner's share of the adjustments reflected on the statements Partnership furnished to J. K and L must take their share of adjustments reflected on the statements furnished by J into account on their returns for the 2023 tax year in accordance with paragraph (b) of this section by treating themselves as reviewed year partners for purposes of paragraph (b).

(7) *Example 7.* On its partnership return for the 2020 tax year, Partnership reported that it placed Asset, which had a depreciable basis of $210,000, into service in 2020 and depreciated Asset over 5 years, using the straight-line method. Accordingly, Partnership claimed depreciation of $42,000 in each year related to Asset. Partnership has two equal partners for the 2020 tax year: M (a partnership) and N (an S corporation). For the 2020 tax year, N has one shareholder, O, who is an individual. On June 1, 2023, the IRS mails an FPA to Partnership for Partnership's 2020 year. In the FPA, the IRS determines that Asset should have been depreciated over 7 years instead of 5 years and adjusts the depreciation for the 2020 tax year to $30,000 instead of $42,000 resulting in a $12,000 adjustment. This adjustment results in an imputed underpayment of $4,800 ($12,000 × 40 percent). Partnership makes a timely election under section 6226 in accordance with § 301.6226–1 with respect to the imputed underpayment in the FPA for Partnership's 2020 year and does not file a petition for readjustment under section 6234. The time to file a petition expires on August 30, 2023. Pursuant to § 301.6226–2(b), the partnership adjustments become finally determined on August 31, 2023. On October 12, 2023, Partnership timely files with the IRS statements described in § 301.6226–2 and furnishes statements to its partners reflecting their share of the partnership adjustments as finally determined in the FPA. The statements to M and N reflect a partnership adjustment of $6,000 of ordinary income for the 2020 tax year. On February 1, 2024, N takes the adjustments into account under paragraph (e)(3) of this section by filing a partnership adjustment tracking report and furnishing a statement to O reflecting her share of the adjustments reported to N on the statement it received from Partnership. M does not furnish statements and instead chooses to calculate and pay an imputed underpayment under paragraph (e)(4) of this section equal to $1,200 ($6,000 × 40 percent) on the adjustments reflected on the statement it received from Partnership plus interest on the amount calculated in accordance with paragraph (e)(4)(iv)(B) of this section. On her 2023 return, O properly takes the adjustments into account under this section. Therefore, O reports and pays the additional reporting year tax determined in accordance with paragraph (b) of this section, which is the correction amount for 2020 plus any correction amounts for 2021 and 2022 (if the adjustments in 2020 resulted in any changes to the tax attributes of O in those years), and pays interest determined in accordance with paragraph (c) of this section on the correction amounts for each of those years.

(8) *Example 8.* On its partnership return for the 2020 tax year, Partnership reported $1,000 of ordinary loss. Partnership has two equal partners for the 2020 tax year: P and Q, both S corporations. For the 2020 tax year, P had one shareholder, R, an individual. For the 2020 tax year, Q had two shareholders, S and T, both individuals. On June 1, 2023, the IRS mails an FPA to Partnership for Partnership's 2020 year determining $500 of the $1,000 of ordinary loss should be recharacterized as $500 of long-term capital loss and $500 of the ordinary loss should be disallowed. The FPA asserts an imputed underpayment of $400 ($1,000 × 40 percent) with respect to the $1,000 reduction to ordinary loss and reflecting an adjustment that does not result in an imputed underpayment of a $500 capital loss. Partnership makes a timely election under section 6226 in accordance with § 301.6226–1 with respect to the imputed underpayment in the FPA for Partnership's 2020 year and does not file a petition for readjustment under section 6234. The time to file a petition expires on August 30, 2023. Pursuant to § 301.6226–2(b), the partnership adjustments become finally determined on August 31, 2023. On October 12, 2023, Partnership timely files with the IRS statements described in § 301.6226–2 and furnishes statements to its partners reflecting their share of the partnership adjustments as finally determined in the FPA. The statements to P and Q each reflect a partnership adjustment of $500 increase in ordinary income and a $250 increase in capital loss in accordance with § 301.6225–3(b)(6). P takes the adjustments into account under paragraph (e)(3) of this section by timely filing a partnership adjustment tracking report and furnishing a statement to R. Q timely filed a partnership adjustment

tracking report, but chooses not to furnish statements and instead must calculate and pay an imputed underpayment under paragraph (e)(4) of this section as well as interest on the imputed underpayment determined under paragraph (e)(4)(iv)(B) of this section. After applying the rules set forth in § 301.6225–1, Q calculates the imputed underpayment that it is required to pay of $200 ($500 adjustment to ordinary income × 40 percent). Q also has one adjustment that does not result in an imputed underpayment—the $250 increase to capital loss. Pursuant to paragraph (e)(1) of this section, Q files the partnership adjustment tracking report and pay the amounts due under paragraph (e)(4) of this section by September 15, 2024, the extended due date of Partnership's return for the adjustment year, 2023. Pursuant to paragraph (e)(4)(v) of this section, on its 2024 return, the year in which Q made its payment of the imputed underpayment, Q reports and allocates the $250 capital loss to its shareholders for its 2024 taxable year as a capital loss as provided in § 301.6225–3.

(9) *Example 9.* On its partnership return for the 2020 tax year, Partnership reported a $1,000 long-term capital gain on the sale of Stock. Partnership has two equal partners for the 2020 tax year: U (an individual) and V (a partnership). For the 2020 tax year, V has two equal partners: W (an individual) and X (a partnership). For the 2020 tax year, X has two equal partners: Y and Z, both of which are C corporations. On June 1, 2023, the IRS mails a NOPPA to Partnership for Partnership's 2020 year proposing a $500 increase in the long-term capital gain from the sale of Stock and an imputed underpayment of $200 ($500 × 40 percent). On July 17, 2023, Partnership timely submits a request to modify the rate used in calculating the imputed underpayment under § 301.6225–2(d)(4). Partnership submits sufficient information demonstrating that $375 of the $500 adjustment is allocable to individuals (50 percent of the $500 adjustment allocable to U and 25 percent of the $500 adjustment allocable to W) and the remaining $125 is allocable to C corporations (the indirect partners Y and Z). The IRS approves the modification and the imputed underpayment is reduced to $81.25 (($375 × 15 percent) + ($125 × 20 percent)). See § 301.6225–2(b)(3). No other modifications are requested. On February 28, 2024, the IRS mails an FPA to Partnership for Partnership's 2020 year determining a $500 increase in the long-term capital gain on the sale of Stock and asserting an imputed underpayment of $81.25 after taking into account the approved modifications. Partnership makes a timely election under section 6226 in accordance with § 301.6226–1 with respect to the imputed underpayment in the FPA for Partnership's 2020 year and does not file a petition for readjustment under section 6234. The time to file a petition expires on May 28, 2024. Pursuant to § 301.6226–2(b), the partnership adjustments become finally determined on May 29, 2024. On July 26, 2024, Partnership timely files with the IRS statements described in § 301.6226–2 and furnishes statements to its partners reflecting their share of the partnership adjustments as finally determined in the FPA. The statements to U and V each reflect a partnership adjustment of a $250 increase in long-term capital gain. V timely files the adjustment tracking report but fails to furnish statements and therefore must calculate and pay an imputed underpayment under paragraph (e)(4) of this section as well as interest on the imputed underpayment determined under paragraph (e)(4)(iv)(B) of this section. On February 3, 2025, V pays an imputed underpayment of $43.75 (($125 × 20 percent for the adjustments allocable to X) + ($125 × 15 percent for the adjustments allocable to W)) which takes into account the rate modifications approved by the IRS with respect to Y and Z. V must also pay any interest on the amount as determined in accordance with paragraph (e)(4)(iv)(B) of this section. V must file the adjustment tracking report and pay the amounts due under paragraph (e)(4) of this section no later than September 15, 2025, the extended due date of Partnership's return for the 2024 year, which is the adjustment year.

(i) *Applicability date*—(1) *In general.* Except as provided in paragraph (i)(2) of this section, this section applies to partnership taxable years beginning after December 31, 2017, and ending after August 12, 2018.

(2) *Election under § 301.9100–22 in effect.* This section applies to any partnership taxable year beginning after November 2, 2015, and before January 1, 2018, for which a valid election under § 301.9100–22 is in effect.

■ **Par. 10.** Section 301.6227–1 is added to read as follows:

§ 301.6227–1 Administrative adjustment request by partnership.

(a) *In general.* A partnership may file a request for an administrative adjustment with respect to any partnership-related item (as defined in § 301.6241–1(a)(6)(ii)) for any partnership taxable year. When filing an administrative adjustment request (AAR), the partnership must determine whether the adjustments requested in the AAR result in an imputed underpayment in accordance with § 301.6227–2(a) for the reviewed year (as defined in § 301.6241–1(a)(8)). If the adjustments requested in the AAR result in an imputed underpayment, the partnership must take the adjustments into account under the rules described in § 301.6227–2(b) unless the partnership makes an election under § 301.6227–2(c), in which case each reviewed year partner (as defined in § 301.6241–1(a)(9)) must take the adjustments into account in accordance with § 301.6227–3. If the adjustments requested in the AAR are adjustments described in § 301.6225–1(f)(1) that do not result in an imputed underpayment (as determined under § 301.6227–2(a)), such adjustments must be taken into account by the reviewed year partners in accordance with § 301.6227–3. A partner may not make a request for an administrative adjustment of a partnership-related item except in accordance with § 301.6222–1 or if the partner is doing so on behalf of the partnership in the partner's capacity as the partnership representative designated under section 6223. In addition, a partnership may not file an AAR solely for the purpose of changing the designation of a partnership representative or changing the appointment of a designated individual. See § 301.6223–1 (regarding designation of the partnership representative). When the partnership changes the designation of the partnership representative (or appointment of the designated individual) in conjunction with the filing of an AAR in accordance with § 301.6223–1(e), the change in designation (or appointment) is treated as occurring prior to the filing of the AAR. For rules regarding a notice of change to the amount of creditable foreign tax expenditures see paragraph (g) of this section.

(b) *Time for filing an AAR.* An AAR may only be filed by a partnership with respect to a partnership taxable year after a partnership return for that taxable year has been filed with the Internal Revenue Service (IRS). A partnership may not file an AAR with respect to a partnership taxable year more than three years after the later of the date the partnership return for such partnership taxable year was filed or the last day for filing such partnership return (determined without regard to extensions). Except as provided in § 301.6231–1(f), an AAR (including a request filed by a partner in accordance with § 301.6222–1) may not be filed for a partnership taxable year after a notice of administrative proceeding with respect to such taxable year has been mailed by the IRS under section 6231.

(c) *Form and manner for filing an AAR*—(1) *In general.* An AAR by a partnership, including any required statements, forms, and schedules as described in this section, must be filed with the IRS in accordance with the forms, instructions, and other guidance prescribed by the IRS, and must be signed under penalties of perjury by the partnership representative (as described in §§ 301.6223–1 and 301.6223–2).

(2) *Contents of AAR filed with the IRS.* A partnership must include the information described in this paragraph (c)(2) when filing an AAR with the IRS. In the case of a failure by the partnership to provide the information described in this paragraph (c)(2), the IRS may, but is not required to,

invalidate an AAR or readjust any items that were adjusted on the AAR. An AAR filed with the IRS must include—

(i) The adjustments requested;

(ii) If a reviewed year partner is required to take into account the adjustments requested under § 301.6227–3, statements described in paragraph (e) of this section, including any transmittal with respect to such statements required by forms, instructions, and other guidance prescribed by the IRS; and

(iii) Other information prescribed by the IRS in forms, instructions, or other guidance.

(d) *Copy of statement furnished to reviewed year partners in certain cases.* If a reviewed year partner is required to take into account adjustments requested in an AAR under § 301.6227–3, the partnership must furnish a copy of the statement described in paragraph (e) of this section to the reviewed year partner to whom the statement relates in accordance with the forms, instructions and other guidance prescribed by the IRS. If the partnership mails the statement, it must mail the statement to the current or last address of the reviewed year partner that is known to the partnership. The statement must be furnished to the reviewed year partner on the date the AAR is filed with the IRS.

(e) *Statements*—(1) *Contents.* Each statement described in this paragraph (e) must include the following correct information:

(i) The name and TIN of the reviewed year partner to whom the statement is being furnished;

(ii) The current or last address of the partner that is known to the partnership;

(iii) The reviewed year partner's share of items as originally reported on statements furnished to the partner under section 6031(b) and, if applicable, section 6227;

(iv) The reviewed year partner's share of the adjustments as described under paragraph (e)(2) of this section;

(v) The date the statement is furnished to the partner;

(vi) The partnership taxable year to which the adjustments relate; and

(vii) Any other information required by forms, instructions, and other guidance prescribed by the IRS.

(2) *Determination of each partner's share of adjustments*—(i) *In general.* Except as provided in paragraphs (e)(2)(ii) and (iii) of this section, each reviewed year partner's share of the adjustments requested in the AAR is determined in the same manner as each adjusted partnership-related item was originally allocated to the reviewed year partner on the partnership return for the reviewed year. If the partnership pays an imputed underpayment under § 301.6227–2(b) with respect to the adjustments requested in the AAR, the reviewed year partner's share of the adjustments requested in the AAR only includes any adjustments that did not result in the imputed underpayment, as determined under § 301.6227–2(a).

(ii) *Adjusted partnership-related item not reported on the partnership's return for the reviewed year.* Except as provided in paragraph (e)(2)(iii) of this section, if the adjusted partnership-related item was not reported on the partnership return for the reviewed year, each reviewed year partner's share of the adjustments must be determined in accordance with how such items would have been allocated under rules that apply with respect to partnership allocations, including under the partnership agreement.

(iii) *Allocation adjustments.* If an adjustment involves allocation of a partnership-related item to a specific partner or in a specific manner, including a reallocation of an item, the reviewed year partner's share of the adjustment requested in the AAR is determined in accordance with the AAR.

(f) *Administrative proceeding for a taxable year for which an AAR is filed.* Within the period described in section 6235, the IRS may initiate an administrative proceeding with respect to the partnership for any partnership taxable year regardless of whether the partnership filed an AAR with respect to such taxable year and may adjust any partnership-related item, including any partnership-related item adjusted in an AAR filed by the partnership. The amount of an imputed underpayment determined by the partnership under § 301.6227–2(a)(1), including any modifications determined by the partnership under § 301.6227–2(a)(2), may be re-determined by the IRS.

(g) [Reserved]

(h) *Applicability date*—(1) *In general.* Except as provided in paragraph (h)(2) of this section, this section applies to partnership taxable years beginning after December 31, 2017, and ending after August 12, 2018.

(2) *Election under § 301.9100–22 in effect.* This section applies to any partnership taxable year beginning after November 2, 2015, and before January 1, 2018, for which a valid election under § 301.9100–22 is in effect.

■ **Par. 11.** Section 301.6227–2 is added to read as follows:

§ 301.6227–2 Determining and accounting for adjustments requested in an administrative adjustment request by the partnership.

(a) *Determining whether adjustments result in an imputed underpayment*—(1) *Determination of an imputed underpayment.* The determination of whether adjustments requested in an administrative adjustment request (AAR) result in an imputed underpayment in the reviewed year (as defined in § 301.6241–1(a)(8)) and the determination of the amount of any imputed underpayment is made in accordance with the rules under § 301.6225–1.

(2) *Modification of imputed underpayment for purposes of this section.* A partnership may apply modifications to the amount of an imputed underpayment determined under paragraph (a)(1) of this section using only the provisions under § 301.6225–2(d)(3) (regarding tax-exempt partners), § 301.6225–2(d)(4) (regarding modification of applicable tax rate), § 301.6225–2(d)(5) (regarding specified passive activity losses), § 301.6225–2(d)(6)(ii) (regarding limitations or restrictions in the grouping of adjustments), § 301.6225–2(d)(7) (regarding certain qualified investment entities), § 301.6225–2(d)(9) (regarding tax treaty modifications), or as provided in forms, instructions, or other guidance prescribed by the IRS with respect to AARs. The partnership may not modify an imputed underpayment resulting from adjustments requested in an AAR except as described in this paragraph (a)(2). When applying modifications to the amount of an imputed underpayment under this paragraph (a)(2):

(i) The partnership is not required to seek the approval from the Internal Revenue Service (IRS) prior to applying modifications to the amount of any imputed underpayment under paragraph (a)(1) of this section reported on the AAR; and

(ii) As part of the AAR filed with the IRS in accordance with forms, instructions, and other guidance prescribed by the IRS, the partnership must—

(A) Notify the IRS of any modification;

(B) Describe the effect of the modification on the imputed underpayment;

(C) Provide an explanation of the basis for such modification; and

(D) Provide documentation to support the partnership's eligibility for the modification.

(b) *Adjustments resulting in an imputed underpayment taken into*

account by the partnership—(1) *In general.* Except in the case of a valid election under paragraph (c) of this section, a partnership must pay any imputed underpayment (as determined under paragraph (a) of this section) resulting from the adjustments requested in an AAR on the date the partnership files the AAR. For the rules applicable to the partnership's expenditure for an imputed underpayment, as well as any penalties and interest paid by the partnership with respect to an imputed underpayment, see § 301.6241–4.

(2) *Penalties and interest.* The IRS may impose a penalty, addition to tax, and additional amount with respect to any imputed underpayment determined under this section in accordance with section 6233(a)(3) (penalties determined from the reviewed year). In addition, the IRS may impose a penalty, addition to tax, and additional amount with respect to a failure to pay any imputed underpayment on the date an AAR is filed in accordance with section 6233(b)(3) (penalties with respect to the adjustment year return). Interest on an imputed underpayment is determined under chapter 67 of the Internal Revenue Code for the period beginning on the date after the due date of the partnership return for the reviewed year (as defined in § 301.6241–1(a)(8)) (determined without regard to extension) and ending on the date the AAR is filed. See § 301.6233(a)–1(b). In the case of any failure to pay an imputed underpayment on the date the AAR is filed, interest is determined in accordance with section 6233(b)(2) and § 301.6233(b)–1(c).

(3) *Coordination with chapters 3 and 4 of the Internal Revenue Code*—(i) *Coordination when partnership pays an imputed underpayment.* If a partnership pays an imputed underpayment resulting from adjustments requested in an AAR under paragraph (b)(1) of this section, the rules in § 301.6241–6(b)(3) apply to treat the partnership as having paid the amount required to be withheld under chapter 3 or chapter 4 (as defined in § 301.6241–6(b)(2)).

(ii) *Coordination when partnership elects to have adjustments taken into account by reviewed year partners.* If a partnership elects under paragraph (c) of this section to have its reviewed year partners take into account adjustments requested in an AAR, the rules in § 301.6226–2(g)(3) apply to the partnership, and the rules in § 301.6226–3(f) apply to the reviewed year partners that take into account the adjustments pursuant to § 301.6227–3.

(c) *Election to have adjustments resulting in an imputed underpayment taken into account by reviewed year partners.* In lieu of paying an imputed underpayment under paragraph (b) of this section, the partnership may elect to have each reviewed year partner (as defined in § 301.6241–1(a)(9)) take into account the adjustments requested in the AAR that are associated with such imputed underpayment in accordance with § 301.6227–3. A partnership makes an election under this paragraph (c) at the time the AAR is filed in accordance with the forms, instructions, and other guidance prescribed by the IRS. If the partnership makes a valid election in accordance with this paragraph (c), the partnership is not liable for, nor required to pay, the imputed underpayment to which the election relates. Rather, each reviewed year partner must take into account their share of the adjustments requested in the AAR that are associated with such imputed underpayment in accordance with § 301.6227–3. If an election is made under this paragraph (c) with respect to an imputed underpayment, modifications applied under paragraph (a)(2) of this section to such imputed underpayment are disregarded and all adjustments requested in the AAR that are associated with such imputed underpayment must be taken into account by each reviewed year partner in accordance with § 301.6227–3.

(d) *Adjustments not resulting in an imputed underpayment.* If any adjustments requested in an AAR are adjustments that do not result in an imputed underpayment (as determined under paragraph (a) of this section), the partnership must furnish statements to each reviewed year partner and file such statements with the IRS in accordance with § 301.6227–1. Each reviewed year partner must take into account its share of the adjustments that do not result in an imputed underpayment requested in the AAR in accordance with § 301.6227–3.

(e) *Applicability date*—(1) *In general.* Except as provided in paragraph (e)(2) of this section, this section applies to partnership taxable years beginning after December 31, 2017, and ending after August 12, 2018.

(2) *Election under § 301.9100–22 in effect.* This section applies to any partnership taxable year beginning after November 2, 2015, and before January 1, 2018, for which a valid election under § 301.9100–22 is in effect.

■ **Par. 12.** Section 301.6227–3 is added to read as follows:

§ 301.6227–3 Adjustments requested in an administrative adjustment request taken into account by reviewed year partners.

(a) *In general.* Each reviewed year partner (as defined in § 301.6241–1(a)(9)) is required to take into account its share of adjustments requested in an administrative adjustment request (AAR) that either do not result in an imputed underpayment (as described in § 301.6225–1(f)(1)) or are associated with an imputed underpayment for which the partnership makes an election under § 301.6227–2(c). Each reviewed year partner receiving a statement furnished in accordance with § 301.6227–1(d) must take into account adjustments reflected in the statement in the reviewed year partner's taxable year that includes the date the statement is furnished (reporting year) in accordance with paragraph (b) of this section.

(b) *Adjustments taken into account by the reviewed year partner in the reporting year*—(1) *In general.* Except as provided in paragraph (c) of this section, a reviewed year partner that is furnished a statement described in paragraph (a) of this section must treat the statement as if it were issued under section 6226(a)(2) and, on or before the due date for the reporting year must report and pay the additional reporting year tax (as defined in § 301.6226–3(a)), if any, determined after taking into account that partner's share of the adjustments requested in the AAR in accordance with § 301.6226–3. A reviewed year partner may, in accordance with § 301.6226–3(a), reduce chapter 1 tax for the reporting year where the additional reporting year tax is less than zero. For purposes of paragraph (b) of this section, the rule under § 301.6226–3(c)(3) (regarding the increased rate of interest) does not apply. Nothing in this section entitles any partner to a refund of tax imposed by chapter 1 of the Internal Revenue Code (chapter 1 tax) to which such partner is not entitled. For instance, a partnership-partner (as defined in § 301.6241–1(a)(7)) may not claim a refund with respect to its share of any adjustment.

(2) *Examples.* The following examples illustrate the rules of paragraph (b) of this section.

(i) *Example 1.* In 2022, partner A, an individual, received a statement described in paragraph (a) of this section from Partnership with respect to Partnership's 2020 taxable year. Both A and Partnership are calendar year taxpayers and A is not claiming any refundable tax credit in 2020. The only adjustment shown on the statement is an increase in ordinary loss. Taking into account the adjustment, A determines that his

additional reporting year tax for 2022 (the reporting year) is -$100 (that is, a reduction of $100.) A's chapter 1 tax for 2022 (without regard to any additional reporting year tax) is $150. Applying the rules in paragraph (b)(1) of this section, A's chapter 1 tax for 2022 is reduced to $50 ($150 chapter 1 tax without regard to the additional reporting year tax plus -$100 additional reporting year tax).

(ii) *Example 2.* The facts are the same as in *Example 1* in paragraph (b)(2)(i) of this section, except A's chapter 1 tax for 2022 (without regard to any additional reporting year tax) is $75. Applying the rules in paragraph (b)(1) of this section, A's chapter 1 tax for 2022 is reduced by the -$100 of additional reporting year tax. Accordingly, A's chapter 1 tax for 2022 is -$25 ($75 chapter 1 tax without regard to any additional reporting year tax plus -$100 of additional reporting year tax), A owes no chapter 1 tax for 2022, and A may make a claim for refund with respect to any overpayment.

(c) *Reviewed year partners that are pass-through partners*—(1) *In general.* Except as provided in paragraph (c) of this section, if a statement described in paragraph (a) of this section (including a statement described in this paragraph (c)(1)) is furnished to a reviewed year partner that is a pass-through partner (as defined in § 301.6241–1(a)(5)), the pass-through partner must take into account the adjustments reflected on that statement in accordance with § 301.6226–3(e) by treating the partnership that filed the AAR as the partnership that made an election under § 301.6226–1. A pass-through partner that furnishes statements in accordance with § 301.6226–3(e)(3) must provide the information described in paragraph (c)(3) of this section in lieu of the information described in § 301.6226–3(e)(3)(iii) on the statements the pass-through partner furnishes to its partners. A pass-through partner that computes and pays an imputed underpayment in accordance with § 301.6226–3(e)(4)(iii) may not apply any modifications to the amount of imputed underpayment. For purposes of this paragraph (c)(1), the statement furnished to the pass-through partner by the partnership filing the AAR is treated as if it were a statement issued under section 6226(a)(2) and described in § 301.6226–2.

(2) *Adjustments that do not result in an imputed underpayment.* If adjustments on a statement received by the pass-through partner under paragraph (a) or (c)(1) of this section do not result in an imputed underpayment for the pass-through partner (as described in § 301.6225–1(f)(1)), the pass-through partner must take the adjustments that do not result in an imputed underpayment into account in accordance with § 301.6226–3(e)(3). The pass-through partner must take such adjustments into account under this paragraph (c)(2) even in situations where the pass-through partner pays an imputed underpayment in accordance with § 301.6226–3(e)(4)(iii). The pass-through partner must provide the information described in paragraph (c)(3) of this section in lieu of the information described in § 301.6226–3(e)(3)(iii) on the statements the pass-through partner furnishes to its affected partners (as defined in § 301.6226–3(e)(3)(i)).

(3) *Contents of statements.* Each statement described in paragraph (c)(1) or (2) of this section must include the following correct information—

(i) The name and taxpayer identification number (TIN) of the partnership that filed the AAR with respect to the adjustments reflected on the statements described in paragraph (c)(1) of this section;

(ii) The adjustment year (as defined in § 301.6241–1(a)(1)) of the partnership described in paragraph (c)(3)(i) of this section;

(iii) The extended due date for the return for the adjustment year of the partnership described in paragraph (c)(3)(i) of this section (as described in § 301.6226–3(e)(3)(ii));

(iv) The date on which the partnership described in paragraph (c)(3)(i) of this section furnished its statements required under § 301.6227–1(d);

(v) The name and TIN of the partnership that furnished the statement to the pass-through partner if different from the partnership described in paragraph (c)(3)(i) of this section;

(vi) The name and TIN of the pass-through partner;

(vii) The pass-through partner's taxable year to which the adjustments set forth in the statement described in paragraph (c)(1) of this section relate;

(viii) The name and TIN of the affected partner to whom the statement is being furnished;

(ix) The current or last address of the affected partner that is known to the pass-through partner;

(x) The affected partner's share of items as originally reported to such partner under section 6031(b) and, if applicable, section 6227, for the taxable year to which the adjustments reflected on the statement furnished to the pass-through partner relate;

(xi) The affected partner's share of partnership adjustments determined under § 301.6227–1(e)(2) as if the affected partner were the reviewed year partner and the partnership were the pass-through partner;

(xii) Any other information required by forms, instructions, and other guidance prescribed by the IRS.

(4) *Affected partners must take into account the adjustments.* A statement furnished to an affected partner in accordance with paragraph (c)(1) or (2) of this section is to be treated by the affected partner as if it were a statement described in paragraph (a) of this section. The affected partner must take into account its share of the adjustments reflected on such a statement in accordance with this section by treating references to ''reviewed year partner'' as ''affected partner.'' When taking into account the adjustments as described in § 301.6226–3(e)(3)(iv), the rules under § 301.6226–3(c)(3) (regarding the increased rate of interest) do not apply.

(d) *Applicability date*—(1) *In general.* Except as provided in paragraph (d)(2) of this section, this section applies to partnership taxable years beginning after December 31, 2017, and ending after August 12, 2018.

(2) *Election under § 301.9100–22 in effect.* This section applies to any partnership taxable year beginning after November 2, 2015, and before January 1, 2018, for which a valid election under § 301.9100–22 is in effect.

■ **Par. 13.** Section 301.6231–1 is added to read as follows:

§ 301.6231–1 Notice of proceedings and adjustments.

(a) *Notices to which this section applies.* In the case of any administrative proceeding under subchapter C of chapter 63 of the Internal Revenue Code (subchapter C of chapter 63), including an administrative proceeding with respect to an administrative adjustment request (AAR) filed by a partnership under section 6227, the following notices must be mailed to the partnership and the partnership representative (as described in section 6223 and § 301.6223–1)—

(1) Notice of any administrative proceeding initiated at the partnership level with respect to an adjustment of any partnership-related item (as defined in § 301.6241–1(a)(6)(ii)) for any partnership taxable year under subchapter C of chapter 63 (notice of administrative proceeding (NAP));

(2) Notice of any proposed partnership adjustment resulting from an administrative proceeding under subchapter C of chapter 63 (notice of proposed partnership adjustment (NOPPA)); and

(3) Notice of any final partnership adjustment resulting from an administrative proceeding under subchapter C of chapter 63 (notice of final partnership adjustment (FPA)).

(b) *Time for mailing notices*—(1) *Notice of proposed partnership adjustment.* A NOPPA is timely if it is mailed before the expiration of the period for making adjustments under section 6235(a)(1) (including any extensions under section 6235(b) and any special rules under section 6235(c)).

(2) *Notice of final partnership adjustment.* An FPA may not be mailed earlier than 270 days after the date on which the NOPPA is mailed unless the partnership agrees, in writing, with the Internal Revenue Service (IRS) to waive the 270-day period. See § 301.6225–2(c)(3)(iii) for the effect of a waiver under this paragraph (b)(2) on the 270-period for requesting a modification under section 6225(c). See § 301.6232–1(d)(2) for the rules regarding a waiver of the limitations on assessment under § 301.6232–1(c).

(c) *Last known address.* A notice described in paragraph (a) of this section is sufficient if mailed to the last known address of the partnership representative and the partnership (even if the partnership or partnership representative has terminated its existence).

(d) *Notice mailed to partnership representative*—(1) *In general.* A notice described in paragraph (a) of this section will be treated as mailed to the partnership representative if the notice is mailed to the partnership representative that is reflected in the IRS records as of the date the letter is mailed.

(2) *No partnership representative in effect.* In any case in which no partnership representative designation is in effect in accordance with § 301.6223–1(f), a notice described in paragraph (a) of this section mailed to ''PARTNERSHIP REPRESENTATIVE'' at the last known address of the partnership satisfies the requirements of this section.

(e) *Restrictions on additional FPAs after petition filed.* The IRS may mail more than one FPA to any partnership for any partnership taxable year. However, except in the case of fraud, malfeasance, or misrepresentation of a material fact, the IRS may not mail an FPA to a partnership with respect to a partnership taxable year after the partnership has filed a timely petition for readjustment under section 6234 with respect to an FPA issued with respect to such partnership taxable year.

(f) *Withdrawal of NAP or NOPPA.* The IRS may, without consent of the partnership, withdraw any NAP or NOPPA. Except as described in § 301.6223–1(d)(2) and (e)(2), if the IRS withdraws a NAP or NOPPA under this paragraph (f), the NAP or NOPPA is treated as if it were never issued, and the withdrawn NAP or NOPPA has no effect for purposes of subchapter C of chapter 63. For instance, if the IRS withdraws a NAP with respect to a partnership taxable year, the limitation under § 301.6222–1(c)(5) regarding inconsistent treatment, and the prohibition under section 6227(c) on filing an AAR, after the mailing of a NAP no longer applies with respect to such taxable year.

(g) *Rescission of FPA.* The IRS may, with the consent of the partnership, rescind any FPA. An FPA that is rescinded is not an FPA for purposes of subchapter C of chapter 63, and the partnership cannot bring a proceeding under section 6234 with respect to such FPA.

(h) *Applicability date*—(1) *In general.* Except as provided in paragraph (h)(2) of this section, this section applies to partnership taxable years beginning after December 31, 2017, and ending after August 12, 2018.

(2) *Election under § 301.9100–22 in effect.* This section applies to any partnership taxable year beginning after November 2, 2015, and before January 1, 2018, for which a valid election under § 301.9100–22 is in effect.

■ **Par. 14.** Section 301.6232–1 is added to read as follows:

§ 301.6232–1 Assessment, collection, and payment of imputed underpayment.

(a) *In general.* An imputed underpayment determined under subchapter C of chapter 63 of the Internal Revenue Code (Code) is assessed and collected in the same manner as if the imputed underpayment were a tax imposed by subtitle A of the Code for the adjustment year (as defined in § 301.6241–1(a)(1)) except that the deficiency procedures under subchapter B of chapter 63 of the Code do not apply to an assessment of an imputed underpayment. Accordingly, no notice under section 6212 is required for, and the restrictions under section 6213 do not apply to, the assessment of any imputed underpayment. See paragraph (c) of this section for limitations on assessment and paragraph (d) of this section for exceptions to restrictions on adjustments.

(b) *Payment of the imputed underpayment.* Upon receipt of notice and demand from the Internal Revenue Service (IRS), an imputed underpayment must be paid by the partnership at the place and time stated in the notice. In the case of an adjustment requested in an administrative adjustment request (AAR) under section 6227(b)(1) that is taken into account by the partnership under § 301.6227–2(b), payment of the imputed underpayment is due on the date the AAR is filed. The IRS may assess the amount of the imputed underpayment reflected on the AAR on the date the AAR is filed. For interest with respect to an imputed underpayment, see § 301.6233(a)–1(b).

(c) *Limitation on assessment*—(1) *In general.* Except as otherwise provided by this section or subtitle F of the Code (except for subchapter B of chapter 63), no assessment of an imputed underpayment may be made (and no levy or proceeding in any court for the collection of an imputed underpayment may be made, begun, or prosecuted) before—

(i) The close of the 90th day after the day on which a notice of a final partnership adjustment (FPA) under section 6231(a)(3) was mailed; and

(ii) If a petition for readjustment is filed under section 6234 with respect to such FPA, the decision of the court has become final.

(2) *Specified similar amount.* The limitations under paragraph (c)(1) of this section do not apply in the case of a specified similar amount as defined in section 6232(f)(2).

(d) *Exceptions to restrictions on adjustments and assessments*—(1) *Adjustments treated as mathematical or clerical errors*—(i) *In general.* A notice to a partnership that, on account of a mathematical or clerical error appearing on the partnership return or as a result of a failure by a partnership-partner (as defined in § 301.6241–1(a)(7)) to comply with section 6222(a), the IRS has adjusted or will adjust partnership-related items (as defined in § 301.6241–1(a)(6)(ii)) to correct the error or to make the items consistent under section 6222(a) and has assessed or will assess any imputed underpayment (determined in accordance with § 301.6225–1) resulting from the adjustment is not considered an FPA under section 6231(a)(3). A petition for readjustment under section 6234 may not be filed with respect to such notice. The limitations under section 6232(b) and paragraph (c) of this section do not apply to an assessment under this paragraph (d)(1)(i). For the definition of mathematical or clerical error generally, see section 6213(g)(2). For application of mathematical or clerical error in the case of inconsistent treatment by a partner that fails to give notice, see § 301.6222–1(b).

(ii) *Request for abatement*—(A) *In general.* Except as provided in paragraph (d)(1)(ii)(B) of this section, a partnership that is mailed a notice described in paragraph (d)(1)(i) of this section may file with the IRS, within 60

days after the date of such notice, a request for abatement of any assessment of an imputed underpayment specified in such notice. Upon receipt of the request, the IRS must abate the assessment. Any subsequent assessment of an imputed underpayment with respect to which abatement was made is subject to the provisions of subchapter C of chapter 63 of the Code, including the limitations under paragraph (c) of this section.

(B) *Adjustments with respect to inconsistent treatment by a partnership-partner.* If an adjustment that is the subject of a notice described in paragraph (d)(1)(i) of this section is due to the failure of a partnership-partner to comply with section 6222(a), paragraph (d)(1)(ii)(A) of this section does not apply, and abatement of any assessment specified in such notice is not available. However, prior to assessment, a partnership-partner that has failed to comply with section 6222(a) may correct the inconsistency by filing an administrative adjustment request in accordance with section 6227 or filing an amended partnership return and furnishing amended statements, as appropriate.

(iii) *Partnerships that have an election under section 6221(b) in effect.* In the case of a partnership-partner that has an election under section 6221(b) in effect for the reviewed year (as defined in § 301.6241–1(a)(8)), any tax resulting from an adjustment due to the partnership-partner's failure to comply with section 6222(a) may be assessed with respect to the reviewed year partners (as defined in § 301.6241–1(a)(9)) of the partnership-partner (or indirect partners of the partnership-partner, as defined in § 301.6241–1(a)(4)). Such tax may be assessed in the same manner as if the tax were on account of a mathematical or clerical error appearing on the reviewed year partner's or indirect partner's return, except that the procedures under section 6213(b)(2) for requesting an abatement of such assessment do not apply.

(2) *Partnership may waive limitations.* A partnership may at any time by a signed notice in writing filed with the IRS waive the limitations under paragraph (c) of this section (whether or not an FPA under section 6231(a)(3) has been mailed by the IRS at the time of the waiver).

(e) *Limit on amount of imputed underpayment where no proceeding is begun.* If no proceeding under section 6234 is begun with respect to an FPA under section 6231(a)(3) before the close of the 90th day after the day on which such FPA was mailed, the amount for which the partnership is liable under section 6225 with respect to such FPA cannot exceed the amount determined in such FPA.

(f) *Applicability date*—(1) *In general.* Except as provided in paragraph (f)(2) of this section, this section applies to partnership taxable years beginning after December 31, 2017, and ending after August 12, 2018.

(2) *Election under § 301.9100–22 in effect.* This section applies to any partnership taxable year beginning after November 2, 2015, and before January 1, 2018, for which a valid election under § 301.9100–22 is in effect.

■ **Par. 15.** Section 301.6233(a)–1 is added to read as follows:

§ 301.6233(a)–1 Interest and penalties determined from reviewed year.

(a) *Interest and penalties with respect to the reviewed year.* Except to the extent provided in section 6226(c), in the case of a partnership adjustment (as defined in § 301.6241–1(a)(6)) for a reviewed year (as defined in § 301.6241–1(a)(8)), a partnership is liable for—

(1) Interest computed in accordance with paragraph (b) of this section; and

(2) Any penalty, addition to tax, or additional amount as provided under paragraph (c) of this section.

(b) *Computation of interest with respect to partnership adjustments for the reviewed year*—(1) *Interest on an imputed underpayment.* The interest imposed on an imputed underpayment resulting from partnership adjustments for the reviewed year is the interest that would be imposed under chapter 67 of the Internal Revenue Code (Code) if the imputed underpayment were treated as an underpayment of tax for the reviewed year. The interest imposed on an imputed underpayment under paragraph (b) of this section begins on the day after the due date of the partnership return (without regard to extension) for the reviewed year and ends on the earlier of—

(i) The date prescribed for payment (as described in § 301.6232–1(b));

(ii) The due date of the partnership return (without regard to extension) for the adjustment year (as defined in § 301.6241–1(a)(1)); or

(iii) The date the imputed underpayment is fully paid.

(2) *Interest on penalties with respect to the reviewed year.* The interest imposed on any penalties, additions to tax, and additional amounts determined under paragraph (c) of this section is the interest that would be imposed under chapter 67 of the Code treating the partnership return for the reviewed year as the return of tax with respect to which such penalty, addition to tax, or additional amount is imposed.

(c) *Penalties with respect to partnership adjustments for the reviewed year*—(1) *In general.* In accordance with section 6221(a), the applicability of any penalties, additions to tax, and additional amounts that relate to an adjustment to any partnership-related item for the reviewed year is determined at the partnership level as if the partnership had been an individual subject to tax imposed by chapter 1 of the Code for the reviewed year, and the imputed underpayment were an actual underpayment of tax or understatement for such year. Nothing in this paragraph (c)(1) affects the application of any penalty, addition to tax, or additional amount that may apply to the partnership or to any reviewed year partner (as defined in § 301.6241–1(a)(9)) or to any indirect partner (as defined in § 301.6241–1(a)(4)) that is unrelated to an adjustment to a partnership-related item under subchapter C of chapter 63 of the Code. Except as provided in § 301.6225–2(d), a partner-level defense (as described in § 301.6226–3(d)(3)) may not be raised in a proceeding of the partnership.

(2) *Determination of the amount of accuracy-related penalty and fraud penalty*—(i) *In general.* The amount of any penalty under part II of subchapter A of chapter 68 of the Code (accuracy-related or fraud penalties) that relates to any partnership adjustment for the reviewed year is determined in accordance with this paragraph (c)(2). If in determining the imputed underpayment under § 301.6225–1 (or § 301.6225–2 in the case of modification), any grouping or subgrouping contains a negative adjustment (as defined in § 301.6225–1(d)(2)(ii)) and at least one positive adjustment (as defined in § 301.6225–1(d)(2)(iii)) that is subject to penalty, first apply the rules for allocating negative adjustments in paragraph (c)(2)(iii) of this section. Then, apply the rules in paragraph (c)(2)(ii) of this section to calculate penalty amounts. If there are no negative adjustments, do not apply the rules in paragraph (c)(2)(iii) of this section and instead apply only the rules in paragraph (c)(2)(ii) of this section. For all purposes under paragraph (c)(2) of this section, adjustments that do not result in the imputed underpayment (as described in § 301.6225–1(f)) and adjustments excluded from the determination of the imputed underpayment under § 301.6225–2(b)(2) are disregarded.

(ii) *Calculating the portion of an imputed underpayment subject to*

penalty and penalty amounts. To determine the portion of an imputed underpayment subject to a penalty and the amount of a particular penalty, apply the following steps to all adjustments subject to penalty remaining after application of negative adjustments (as described in paragraph (c)(2)(iii) of this section) and to all adjustments subject to penalty contained in groupings or subgroupings that do not contain a negative adjustment.

(A) For purposes of applying this paragraph (c)(2)(ii)(A), disregard adjustments to credits or adjustments treated as adjustments to credits. Total all adjustments to which a particular penalty was imposed and to which the highest rate of tax in effect for the reviewed year under section 1 or 11 was applied when calculating the imputed underpayment. See § 301.6225–1(b)(1)(iv).

(B) Multiply the total in paragraph (c)(2)(ii)(A) of this section by the highest rate of tax in effect for the reviewed year under section 1 or 11.

(C) If the imputed underpayment was modified in accordance with § 301.6225–2(b)(3), repeat the steps in paragraphs (c)(2)(ii)(A) and (B) of this section for every tax rate applied in calculating the imputed underpayment by substituting the applicable tax rate determined under § 301.6225–2(b)(3) for the highest rate of tax in effect for the reviewed year under section 1 or 11.

(D) Total all amounts determined after completing the steps in paragraphs (c)(2)(ii)(A) through (C) of this section.

(E) Adjust the amount calculated in paragraph (c)(2)(ii)(D) of this section by:

(*1*) Increasing by the net adjustments subject to the penalty in the credit grouping (as described in paragraph (c)(2)(iii)(C)(*1*) of this section) after application of paragraph (c)(2)(iii)(A) of this section; or

(*2*) Decreasing in accordance with the rules in paragraph (c)(2)(iii)(C)(*2*) of this section by the amount of negative adjustments in the credit grouping if, after application of paragraph (c)(2)(iii)(A) of this section, only negative adjustments in the credit grouping remain.

(*3*) The result after completing the calculation in paragraphs (c)(2)(ii)(E)(*1*) and (*2*) of this section is the portion of the imputed underpayment to which the particular penalty was imposed.

(F) Multiply the total calculated in paragraph (c)(2)(ii)(E) of this section by the penalty rate applicable to the particular penalty. This is the total penalty amount for adjustments to which the particular penalty was imposed.

(iii) *Allocating negative adjustments*—(A) *In general.* Negative adjustments offset positive adjustments within the same grouping or, if the negative adjustment is in a subgrouping, within that same subgrouping. For purposes of applying this paragraph (c)(2)(iii), all adjustments to credits and adjustments treated as adjustments to credits are treated as grouped in the credit grouping without regard to whether the adjustments were subgrouped for purposes of § 301.6225–1 (or § 301.6225–2 in the case of modification). Adjustments that do not result in the imputed underpayment are disregarded as provided in paragraph (c)(2) of this section. Negative adjustments are allocated in accordance with the following rules:

(*1*) Negative adjustments are first applied to offset positive adjustments to which no penalties have been imposed.

(*2*) Any amount of negative adjustments remaining after application of paragraph (c)(2)(iii)(A)(*1*) of this section are applied to offset adjustments to which a penalty has been imposed at the lowest penalty rate.

(*3*) Any amount of negative adjustments remaining after application of paragraph (c)(2)(iii)(A)(*2*) of this section are applied to offset adjustments to which a penalty has been imposed at the next highest rate in ascending order of rate until no amount of negative adjustments remain or no positive adjustments to which a penalty has been imposed remain.

(B) *Allocation of negative adjustment within a penalty rate.* The Internal Revenue Service (IRS) may provide additional guidance regarding the ordering or allocation of negative adjustments for purposes of paragraph (c)(2)(iii)(A) of this section where more than one penalty is imposed at the same penalty rate.

(C) *Adjustments remaining after allocation of negative adjustments*—(*1*) *In general.* For purposes of paragraph (c)(2)(ii) of this section, any positive adjustment to which a penalty has been imposed that has not been fully offset by a negative adjustment after application of paragraph (c)(2)(iii)(A) of this section is a *net adjustment subject to penalty* remaining after allocation of negative adjustments.

(*2*) *Additional rules regarding allocation of negative credit amounts.* If, after application of paragraph (c)(2)(iii)(A) of this section, an amount of negative adjustments remain in the credit grouping, the amount of remaining negative adjustments may reduce the portion of the imputed underpayment that is subject to a penalty, but not below zero, in accordance with the following rules:

(*i*) The amount of remaining negative adjustments in the credit grouping are first applied to the portion of the imputed underpayment to which no penalty has been imposed, as calculated in accordance with paragraph (c)(2)(iii)(C)(*3*) of this section.

(*ii*) Any amount of negative adjustment in the credit grouping remaining after application of paragraph (c)(2)(iii)(C)(*2*)(*i*) of this section is applied to the portion of the imputed underpayment to which a penalty has been imposed at the lowest penalty rate as calculated in accordance with paragraph (c)(2)(ii) of this section.

(*iii*) Any amount of negative adjustments in the credit grouping remaining after application of paragraph (c)(2)(iii)(C)(*1*)(*ii*) of this section is applied to the portion of the imputed underpayment to which a penalty has been imposed at the next highest rate in ascending order of rate in accordance with paragraph (c)(2)(iii) of this section until no negative amount remains.

(*3*) *Calculating the portion of the imputed underpayment to which no penalty was imposed before the application of negative adjustments to credits.* To determine the portion of the imputed underpayment that is not subject to penalty for purposes of paragraph (c)(2)(iii)(C)(*2*)(*i*) of this section, apply the rules in paragraphs (c)(2)(ii)(A) through (E) of this section of this section but substitute adjustment to which no penalty was imposed for adjustments to which a particular penalty was imposed.

(iv) *Special rules*—(A) *Fraud penalties under section 6663.* If any portion of an imputed underpayment is determined by the IRS to be attributable to fraud, the entire imputed underpayment is treated as attributable to fraud. This paragraph (c)(2)(iv)(A) does not apply to any portion of the imputed underpayment the partnership establishes by a preponderance of the evidence is not attributable to fraud.

(B) *Substantial understatement penalty under section 6662(d)*—(*1*) *In general.* For purposes of application of the penalty under section 6662(d) (substantial understatement of income tax), the imputed underpayment is treated as an understatement under section 6662(d)(2). To determine whether an imputed underpayment treated as an understatement under this paragraph (c)(2)(iv)(B)(*1*) is a substantial understatement under section 6662(d)(1), the rules of section 6662(d)(1)(A) apply by treating the amount described in paragraph (c)(2)(iv)(B)(*2*) of this section as the tax

required to be shown on the return for the taxable year under section 6662(d)(1)(A)(i).

(*2*) *Amount of tax required to be shown on the return.* The amount described in this paragraph (c)(2)(iv)(B)(*2*) is the tax that would result by treating the net income or loss of the partnership for the reviewed year, reflecting any partnership adjustments as finally determined, as taxable income described in section 1(c) (determined without regard to section 1(h)).

(C) *Reportable transaction understatement under section 6662A.* For purposes of application of the penalty under section 6662A (reportable transaction understatement penalty), the portion of an imputed underpayment attributable to an item described under section 6662A(b)(2) is treated as a reportable transaction understatement under section 6662A(b).

(D) *Reasonable cause and good faith.* For purposes of determining whether a partnership satisfies the reasonable cause and good faith exception under section 6664(c) or (d) with respect to a penalty under section 6662, section 6662A, or section 6663, the partnership is treated as the taxpayer. See § 1.6664–4 of this chapter. Accordingly, the facts and circumstances taken into account to determine whether the partnership has established reasonable cause and good faith are the facts and circumstances applicable to the partnership.

(v) *Examples.* The following examples illustrate the rules of paragraph (c) of this section. For purposes of these examples, each partnership has a calendar taxable year, and the highest tax rate in effect for all taxpayers is 40 percent for all relevant periods.

(A) *Example 1.* In an administrative proceeding with respect to Partnership's 2018 partnership return, the IRS makes a positive adjustment to ordinary income of $100. The $100 adjustment is due to negligence or disregard of rules or regulations under section 6662(c), and a 20-percent accuracy-related penalty applies under section 6662(a). The IRS also makes a positive adjustment to long-term capital gain of $300, but no penalty applies with respect to that adjustment. These are the only adjustments. The portion of the imputed underpayment to which the 20-percent penalty applies is $40 ($100 × 40 percent), and the penalty is $8 ($40 × 20 percent).

(B) *Example 2.* The facts are the same as in *Example 1* in paragraph (c)(2)(v)(A) of this section, except that the IRS makes a positive adjustment to credits of $10. The adjustment to credits is due to negligence or disregard of rules or regulations under section 6662(c), and a 20-percent accuracy-related penalty applies under section 6662(a). The portion of the imputed underpayment to which the 20-percent accuracy-related penalty applies is $50 (($100 × 40 percent) + $10), and the penalty is $10 ($50 × 20 percent).

(C) *Example 3.* The facts are the same as in *Example 2* in paragraph (c)(2)(v)(B) of this section, except that there is also a negative adjustment to ordinary income of $50 that was subgrouped under § 301.6225–1 with the $100 positive adjustment to ordinary. Because the $50 negative adjustment to ordinary income was subgrouped under § 301.6225–1 with the $100 positive adjustment to ordinary income, in determining the portion of the imputed underpayment subject to penalty, the $50 negative adjustment is applied to offset part of the $100 positive adjustment to ordinary income ($100 − $50 = $50). Accordingly, the portion of the imputed underpayment to which the 20-percent accuracy-related penalty applies is $30 (($50 × 40 percent) + $10), and the penalty is $6 ($30 × 20 percent).

(D) *Example 4.* The facts are the same as in *Example 3* in paragraph (c)(2)(v)(C) of this section, except that the $300 adjustment to long-term capital gain is due to a gross valuation misstatement. A 40-percent accuracy-related penalty under section 6662(a) and (h) applies to the portion of the imputed underpayment attributable to the gross valuation misstatement. The portion of the imputed underpayment to which the 20 percent accuracy-related penalty applies remains $30, and the 20-percent accuracy-related penalty remains $6. The portion of the imputed underpayment to which the 40-percent gross valuation misstatement penalty applies is $120 ($300 × 40 percent), and the gross valuation misstatement penalty is $48 ($120 × 40 percent). The total accuracy-related penalty under section 6662(a) is $54.

(E) *Example 5.* Partnership has four equal partners during its 2019 taxable year: Two partners are partnerships, A and B; one partner is a tax-exempt entity, C; and the fourth partner is an individual, D. In an administrative proceeding with respect to Partnership's 2019 taxable year, the IRS timely mails a notice of proposed partnership adjustment (NOPPA) to Partnership for its 2019 taxable year proposing a single partnership positive adjustment to Partnership's ordinary income by $400,000. The $400,000 positive adjustment is due to negligence or disregard of rules or regulations under section 6662(c). A 20-percent accuracy-related penalty under section 6662(a) and (c) applies to the portion of the imputed underpayment attributable to the negligence or disregard of the rules or regulations. In the NOPPA, the IRS determines an imputed underpayment of $160,000 ($400,000 × 40 percent) and that the 20-percent penalty applies to the entire imputed underpayment. The penalty is $32,000 ($160,000 × 20 percent). Partnership requests modification under § 301.6225–2(d)(3) (regarding tax-exempt partners) with respect to the amount of additional income allocated to C, and the IRS approves the modification request. As a result, Partnership's total netted partnership adjustment under § 301.6225–1(b)(2) is $300,000 ($400,000 less $100,000 allocable to C). The imputed underpayment is $120,000 (($300,000) × 40 percent), and the penalty is $24,000 ($120,000 × 20 percent).

(F) *Example 6.* The facts are the same as in *Example 5* in paragraph (c)(2)(v)(E) of this section, except in addition to the modification with respect to C's tax-exempt status, Partnership requests a modification under § 301.6225–2(d)(2) (regarding amended returns) with respect to the $100,000 of additional income allocated to D. In accordance with the rules under § 301.6225–2(d)(2), D files an amended return for D's 2019 taxable year taking into account $100,000 of additional ordinary income. In addition, in accordance with § 301.6225–2(d)(2)(viii), D takes into account on D's return the 20-percent accuracy-related penalty for negligence or disregard of rules or regulations that relates to the ordinary income adjustment. D's tax attributes for other taxable years are not affected. The IRS approves the modification request. As a result, Partnership's total netted partnership adjustment under § 301.6225–1(b)(2) is $200,000 ($400,000 less $100,000 allocable to C and $100,000 taken into account by D). The imputed underpayment, after modification, is $80,000 ($200,000 × 40 percent), and the penalty is $16,000 ($80,000 × 20 percent).

(d) *Applicability date*—(1) *In general.* Except as provided in paragraph (d)(2) of this section, this section applies to partnership taxable years beginning after December 31, 2017, and ending after August 12, 2018.

(2) *Election under § 301.9100–22 in effect.* This section applies to any partnership taxable year beginning after November 2, 2015, and before January 1, 2018, for which a valid election under § 301.9100–22 is in effect.

■ **Par. 16.** Section 301.6233(b)–1 is added to read as follows:

§ 301.6233(b)–1 Interest and penalties with respect to the adjustment year return.

(a) *Interest and penalties with respect to failure to pay imputed underpayment on the date prescribed.* In the case of any failure to pay an imputed underpayment on the date prescribed for such payment (as described in § 301.6232–1(b)), a partnership is liable for—

(1) Interest as determined under paragraph (c) of this section; and

(2) Any penalty, addition to tax, or additional amount as determined under paragraph (d) of this section.

(b) *Imputed underpayments to which this section applies.* This section applies to the portion of an imputed underpayment determined by the Internal Revenue Service (IRS) under section 6225(a)(1), or an imputed underpayment resulting from adjustments requested by a partnership in an administrative adjustment request under section 6227, that is not paid by the date prescribed for payment under § 301.6232–1(b).

(c) *Interest.* Interest determined under this paragraph (c) is the interest that

would be imposed under chapter 67 of the Internal Revenue Code (Code) by treating any unpaid amount of the imputed underpayment as an underpayment of tax imposed for the adjustment year (as defined in § 301.6241–1(a)(1)). The interest under this paragraph (c) begins on the date prescribed for payment (as described in § 301.6232–1(b)) and ends on the date payment of the imputed underpayment is made.

(d) *Penalties.* If a partnership fails to pay an imputed underpayment by the date prescribed for payment (as described in § 301.6232–1(b)), section 6651(a)(2) applies to such failure, and any unpaid amount of the imputed underpayment is treated as if it were an underpayment of tax for purposes of part II of subchapter A of chapter 68 of the Code. For purposes of this section, the penalty under 6651(a)(2) is applied by treating the unpaid amount of the imputed underpayment as the unpaid amount shown as tax on a return required under subchapter A of chapter 61 of the Code.

(e) *Applicability date*—(1) *In general.* Except as provided in paragraph (e)(2) of this section, this section applies to partnership taxable years beginning after December 31, 2017, and ending after August 12, 2018.

(2) *Election under § 301.9100–22 in effect.* This section applies to any partnership taxable year beginning after November 2, 2015, and before January 1, 2018, for which a valid election under § 301.9100–22 is in effect.

■ **Par. 17.** Section 301.6234–1 is added to read as follows:

§ 301.6234–1 Judicial review of partnership adjustment.

(a) *In general.* Within 90 days after the date on which a notice of a final partnership adjustment (FPA) under section 6231(a)(3) with respect to any partnership taxable year is mailed, a partnership may file a petition for a readjustment of any partnership adjustment (as defined in § 301.6241–1(a)(6)) reflected in the FPA for such taxable year (without regard to whether an election under section 6226 has been made with respect to any imputed underpayment (as defined in § 301.6241–1(a)(3)) reflected in such FPA) with—

(1) The Tax Court;

(2) The district court of the United States for the district in which the partnership's principal place of business is located; or

(3) The Court of Federal Claims.

(b) *Jurisdictional requirement for bringing action in district court or Court of Federal Claims.* A petition for readjustment under this section with respect to any partnership adjustment may be filed in a district court of the United States or the Court of Federal Claims only if the partnership filing the petition deposits with the Internal Revenue Service (IRS), on or before the date the petition is filed, the amount of (as of the date of the filing of the petition) any imputed underpayment (as shown on the FPA) and any penalties, additions to tax, and additional amounts with respect to such imputed underpayment. If there is more than one imputed underpayment reflected in the FPA, the partnership must deposit the amount of each imputed underpayment to which the petition for readjustment relates and the amount of any penalties, additions to tax, and additional amounts with respect to each such imputed underpayment.

(c) *Treatment of deposit as payment of tax.* Any amount deposited in accordance with paragraph (b) of this section, while deposited, will not be treated as a payment of tax for purposes of the Internal Revenue Code (Code). Notwithstanding the preceding sentence, an amount deposited in accordance with paragraph (b) of this section will be treated as a payment of tax for purposes of chapter 67 of the Code (relating to interest). Interest will be allowed and paid in accordance with section 6611.

(d) *Effect of decision dismissing action.* If an action brought under this section is dismissed other than by reason of a rescission of the FPA under section 6231(d) and § 301.6231–1(g), the decision of the court dismissing the action is considered as its decision that the FPA is correct.

(e) *Amount deposited may be applied against assessment.* If the limitations on assessment under section 6232(b) and § 301.6232–1(c) no longer apply with respect to an imputed underpayment for which a deposit under paragraph (b) of this section was made, the IRS may apply the amount deposited against any such imputed underpayment that is assessed. In the case of a deposit made under this section that is in an amount in excess of the amount assessed against the partnership (excess deposit), a partnership may obtain a return of the excess deposit by making a request in writing in accordance with forms, instructions, or other guidance prescribed by the IRS.

(f) *Applicability date*—(1) *In general.* Except as provided in paragraph (f)(2) of this section, this section applies to partnership taxable years beginning after December 31, 2017, and ending after August 12, 2018.

(2) *Election under § 301.9100–22 in effect.* This section applies to any partnership taxable year beginning after November 2, 2015, and before January 1, 2018, for which a valid election under § 301.9100–22 is in effect.

■ **Par. 18.** Section 301.6235–1 is added to read as follows:

§ 301.6235–1 Period of limitations on making adjustments.

(a) *In general.* Except as provided in section 6235(c), section 905(c), or paragraph (d) of this section (regarding extensions), no partnership adjustment (as defined in § 301.6241–1(a)(6)) for any partnership taxable year may be made after the later of the date that is—

(1) 3 years after the latest of—

(i) The date on which the partnership return for such taxable year was filed;

(ii) The return due date (as defined in section 6241(3)) for the taxable year; or

(iii) The date on which the partnership filed an administrative adjustment request with respect to such taxable year under section 6227;

(2) The date described in paragraph (b) of this section with respect to a request for modification; or

(3) The date described in paragraph (c) of this section with respect to a notice of proposed partnership adjustment.

(b) *Modification requested under section 6225(c)*—(1) *In general.* For purposes of paragraph (a)(2) of this section, in the case of any request for modification of any imputed underpayment under section 6225(c), the date by which the Internal Revenue Service (IRS) may make a partnership adjustment is the date that is 270 days (plus the number of days of an extension of the period for requesting modification (as described in § 301.6225–2(c)(3)(i)) agreed to by the IRS under section 6225(c)(7) and § 301.6225–2(c)(3)(ii)) after the date on which everything required to be submitted to the IRS pursuant to section 6225(c) is so submitted.

(2) *Date on which everything is required to be submitted*—(i) *In general.* For purposes of paragraph (b)(1) of this section, the date on which everything required to be submitted to the IRS pursuant to section 6225(c) is so submitted is the earlier of—

(A) The date the period for requesting modification ends (including extensions) as described in § 301.6225–2(c)(3)(i) and (ii); or

(B) The date the period for requesting modification expires as a result of a waiver of the prohibition on mailing a notice of final partnership adjustment (FPA) under § 301.6231–1(b)(2). See § 301.6225–2(c)(3)(iii).

(ii) *Incomplete submission has no effect.* A determination by the IRS that the information submitted as part of a request for modification is incomplete has no effect on the applicability of paragraph (b)(2) of this section.

(c) *Notice of proposed partnership adjustment.* For purposes of paragraph (a)(3) of this section, the date by which the IRS may make a partnership adjustment is the date that is 330 days (plus the number of days of an extension of the modification period (as described in § 301.6225–2(c)(3)(i)) agreed to by the IRS under section 6225(c)(7) and § 301.6225–2(c)(3)(ii)) after the date the last notice of proposed partnership adjustment (NOPPA) under section 6231(a)(2) is mailed, regardless of whether modification is requested by the partnership under section 6225(c).

(d) *Extension by agreement.* The periods described in paragraphs (a), (b), and (c) of this section (including any extension of those periods pursuant to this paragraph (d)) may be extended by an agreement, in writing, entered into by the partnership and the IRS before the expiration of such period.

(e) *Examples.* The following examples illustrate the rules of this section. For purposes of these examples, each partnership has a calendar taxable year.

(1) *Example 1.* Partnership timely files its partnership return for the 2020 taxable year on March 1, 2021. On September 1, 2023, Partnership files an administrative adjustment request (AAR) under section 6227 with respect to its 2020 taxable year. As of September 1, 2023, the IRS has not initiated an administrative proceeding under subchapter C of chapter 63 of the Internal Revenue Code with respect to Partnership's 2020 taxable year. Therefore, as of September 1, 2023, under paragraph (a)(1) of this section, the period for making partnership adjustments with respect to Partnership's 2020 taxable year expires on September 1, 2026.

(2) *Example 2.* Partnership timely files its partnership return for the 2020 taxable year on the due date, March 15, 2021. On February 1, 2023, the IRS mails to Partnership and the partnership representative of Partnership (PR) a notice of administrative proceeding under section 6231(a)(1) with respect to Partnership's 2020 taxable year. Assuming no AAR has been filed with respect to Partnership's 2020 taxable year and the IRS has not yet mailed a NOPPA under section 6231(a)(2) with respect to Partnership's 2020 taxable year, the period for making partnership adjustments for Partnership's 2020 taxable year expires on the date determined under paragraph (a)(1) of this section, March 15, 2024.

(3) *Example 3.* The facts are the same as in *Example 2* in paragraph (e)(2) of this section, except that on June 1, 2023, pursuant to paragraph (d) of this section, PR signs an agreement extending the period for making partnership adjustments under section 6235(a) for Partnership's 2020 taxable year to December 31, 2025. In addition, on June 2, 2025, the IRS mails to Partnership and PR a timely NOPPA under section 6231(a)(2). Pursuant to § 301.6225–2(c)(3)(i), the period for requesting modification expires on February 27, 2026 (270 days after June 2, 2025, the date the NOPPA is mailed), but PR does not submit a request for modification on or before this date. Under paragraph (c) of this section, the date for purposes of paragraph (a)(3) of this section is April 28, 2026, the date that is 330 days from the mailing of the NOPPA. Because April 28, 2026 is later than the date under paragraph (a)(1) of this section (December 31, 2025, as extended under paragraph (d) of this section), and because no modification was requested, paragraph (a)(2) of this section is not applicable, April 28, 2026 is the date on which the period for making partnership adjustments expires under section 6235.

(4) *Example 4.* The facts are the same as in *Example 3* in paragraph (e)(3) of this section, except that PR notifies the IRS that Partnership will be requesting modification. On January 5, 2026, PR and the IRS agree to extend the period for requesting modification pursuant to section 6225(c)(7) and § 301.6225–2(c)(3)(ii) for 45 days—from February 27, 2026 to April 13, 2026. PR submits the request for modification to the IRS on April 13, 2026. Therefore, the date determined under paragraph (b) of this section is February 22, 2027, which is 270 days after the date everything required to be submitted was so submitted pursuant to paragraph (b)(2) of this section plus the additional 45-day extension of the period for requesting modification agreed to by PR and the IRS. Because February 22, 2027 is later than the date under paragraph (a)(1) of this section (December 31, 2025, as extended under paragraph (d) of this section) and the date under paragraph (a)(3) of this section (June 12, 2026, which is 330 days from the date the NOPPA was mailed plus the 45-day extension under section 6225(c)(7)), February 22, 2027 is the date on which the period for making partnership adjustments expires under section 6235.

(5) *Example 5.* The facts are the same as in *Example 4* in paragraph (e)(4) of this section, except that PR does not request an extension of the period for requesting modification. On February 1, 2026, PR submits a request for modification and PR, and the IRS agree in writing to waive the prohibition on mailing an FPA pursuant to § 301.6231–1(b)(2). Pursuant to § 301.6225–2(c)(3)(iii), the period for requesting modification expires as of February 1, 2026, rather than February 27, 2026. Accordingly, under paragraph (b)(2) of this section, the date on which everything required to be submitted pursuant to section 6225(c) is so submitted is February 1, 2026, and the 270-day period described in paragraph (b)(1) of this section begins to run on that date. Therefore, the date for purposes of paragraph (a)(2) of this section is October 29, 2026, which is 270 days after February 1, 2026, the date on which everything required to be submitted under section 6225(c) is so submitted. Because October 29, 2026 is later than the date under paragraph (a)(1) of this section (December 31, 2025, as extended under paragraph (d) of this section) and the date under paragraph (a)(3) of this section (April 28, 2026), October 29, 2026 is the date on which the period for making partnership adjustments expires under section 6235.

(6) *Example 6.* The facts are the same as in *Example 5* in paragraph (e)(5) of this section, except PR completes its submission of information to support a request for modification on July 1, 2025, but does not execute a waiver pursuant to § 301.6231–1(b)(2). Therefore, pursuant to paragraph (b)(2) of this section, February 27, 2026, the date the period requesting modification expires, is the date on which everything required to be submitted pursuant to section 6225(c) is so submitted. As a result, the 270-day period described in paragraph (b)(1) of this section expires on November 24, 2026. Because November 24, 2026 is later than the date under paragraph (a)(1) of this section (December 31, 2025, as extended under paragraph (d) of this section) and the date under paragraph (a)(3) of this section (April 28, 2026), November 24, 2026 is the date on which the period for making partnership adjustments expires under section 6235.

(f) *Applicability date*—(1) *In general.* Except as provided in paragraph (f)(2) of this section, this section applies to partnership taxable years beginning after December 31, 2017, and ending after August 12, 2018.

(2) *Election under § 301.9100–22 in effect.* This section applies to any partnership taxable year beginning after November 2, 2015, and before January 1, 2018, for which a valid election under § 301.9100–22 is in effect.

■ **Par. 19.** Section 301.6241–1 is added to read as follows:

§ 301.6241–1 Definitions.

(a) *Definitions.* For purposes of subchapter C of chapter 63 of the Internal Revenue Code (Code) and the regulations in this part under sections 6221 through 6241 of the Code—

(1) *Adjustment year.* The term *adjustment year* means the partnership taxable year in which—

(i) In the case of an adjustment pursuant to the decision of a court in a proceeding brought under section 6234, such decision becomes final;

(ii) In the case of an administrative adjustment request (AAR) under section 6227, such AAR is filed; or

(iii) In any other case, a notice of final partnership adjustment is mailed under section 6231 or, if the partnership waives the restrictions under section 6232(b) (regarding limitations on assessment), the waiver is executed by the IRS.

(2) *Adjustment year partner.* The term *adjustment year partner* means any person who held an interest in a partnership at any time during the adjustment year.

(3) *Imputed underpayment.* Except as otherwise provided in this paragraph (a)(3), the term *imputed underpayment* means the amount determined in accordance with section 6225 of the Code, § 301.6225–1, and, if applicable, § 301.6225–2. In the case of an election under section 6226, the term *imputed underpayment* means the amount determined in accordance with § 301.6226–3(e)(4). In the case of an administrative adjustment request, the term *imputed underpayment* means the amount determined in accordance with § 301.6227–2 or § 301.6227–3(c).

(4) *Indirect partner.* The term *indirect partner* means any person who has an interest in a partnership through their interest in one or more pass-through partners (as defined in paragraph (a)(5) of this section) or through a wholly-owned entity disregarded as separate from its owner for Federal income tax purposes.

(5) *Pass-through partner.* The term *pass-through partner* means a pass-through entity that holds an interest in a partnership. A pass-through entity is a partnership required to file a return under section 6031(a), an S corporation, a trust (other than a wholly-owned trust disregarded as separate from its owner for Federal income tax purposes), and a decedent's estate. For purposes of this paragraph (a)(5), a pass-through entity is not a wholly-owned entity disregarded as separate from its owner for Federal income tax purposes.

(6) *Partnership adjustment*—(i) *In general.* The term *partnership adjustment* means any adjustment to a partnership-related item and includes any portion of an adjustment to a partnership-related item.

(ii) *Partnership-related item.* The term *partnership-related item* means—

(A) Any item or amount with respect to the partnership (as defined in paragraph (a)(6)(iii) of this section) which is relevant in determining the tax liability of any person under chapter 1 of the Code (chapter 1) (as defined in paragraph (a)(6)(iv) of this section);

(B) Any partner's distributive share of any such item or amount; and

(C) Any imputed underpayment determined under subchapter C of chapter 63 of the Code (subchapter C of chapter 63).

(iii) *Item or amount with respect to the partnership.* For purposes of paragraph (a)(6)(ii) of this section, an item or amount is with respect to the partnership if the item or amount is shown or reflected, or required to be shown or reflected, on a return of the partnership under section 6031 or the forms and instructions prescribed by the Internal Revenue Service (IRS) for the partnership's taxable year or is required to be maintained in the partnership's books or records. Items or amounts relating to any transaction with, liability of, or basis in the partnership are with respect to the partnership only if those items or amounts are described in the preceding sentence. An item or amount shown or required to be shown on a return of a person other than the partnership (or in that person's books and records) that results after application of the Code to a partnership-related item based upon the person's specific facts and circumstances, including an incorrect application of the Code or taking into account erroneous facts and circumstances of the partner, is not an item or amount with respect to the partnership. For instance, a deduction shown on the return of a partner that results after applying a limitation under the Code (such as section 170(b)) at the partner level to a partnership-related item based on the partner's facts and circumstances is not an item or amount with respect to the partnership, even though the corresponding expense on the return of the partnership is an item or amount with respect to the partnership. Likewise, an amount on the return of a partner that is after either an incorrect application of a limitation under the Code or based on facts and circumstances of the partner that are erroneous, or both (such as an incorrect application of section 170(b)) at the partner level to a partnership-related item is not an item or amount with respect to the partnership. Similarly, a partner's adjusted basis is not with respect to the partnership because it is an item or amount shown in the partner's books or records that results after application of the Code to partnership-related items taking into account the facts and circumstances specific to that partner.

(iv) *Relevant in determining the tax liability of any person under chapter 1.* For purposes of this section, an item or amount with respect to the partnership is relevant in determining the tax liability of any person under chapter 1 without regard to the application of subchapter C of chapter 63 and without regard to whether such item or amount, or an adjustment to such item or amount, has an effect on the tax liability of any particular person under chapter 1.

(v) *Examples of partnership-related items.* The term partnership-related item includes—

(A) The character, timing, source, and amount of the partnership's income, gain, loss, deductions, and credits;

(B) The character, timing, and source of the partnership's activities;

(C) The character, timing, source, value, and amount of any contributions to, and distributions from, the partnership;

(D) The partnership's basis in its assets, the character and type of the assets, and the value (or revaluation such as under § 1.704–1(b)(2)(iv)(*f*) or (*s*) of this chapter) of the assets;

(E) The amount and character of partnership liabilities and any changes to those liabilities from the preceding tax year;

(F) The category, timing, and amount of the partnership's creditable expenditures;

(G) Any item or amount resulting from a partnership termination;

(H) Any item or amount of the partnership resulting from an election under section 754;

(I) Partnership allocations and any special allocations; and

(J) The identity of a person as a partner in the partnership.

(vi) *Examples.* The following examples illustrate the provisions of this section. For purposes of these examples, Partnership is subject to the provisions of subchapter C of chapter 63 and all taxpayers are calendar year taxpayers.

(A) *Example 1.* Partnership enters into a transaction with A to purchase widgets for $100 in taxable year 2020. Partnership pays A $100 for the widgets. Any deduction or expense of the Partnership for the purchase of the widgets is an item or amount with respect to Partnership because it is shown on Partnership's return and is relevant to determining the liability of any person under chapter 1 pursuant to paragraphs (a)(6)(iii) and (iv) of this section. Therefore, the deduction or expense is a partnership-related item. However, the income to A resulting from the transaction with Partnership is not an item or amount with respect to Partnership under paragraph (a)(6)(iii) of this section because although the amount of income relates to a transaction with Partnership and Partnership is required to show a deduction or expense related to the payment to A, the amount of income to A is not shown or required to be shown on Partnership's return. It is only required to be shown of the return of A, a person other than Partnership and requires determinations about A's reporting of the item. Accordingly, the amount of income shown, or required to be shown, by A on his return is not a partnership-related item.

(B) *Example 2.* B loans Partnership $100 in Partnership's 2020 taxable year. Partnership makes an interest payment to B in 2020 of $5. Partnership's liability relating to the loan by B to Partnership and the $5 of interest expense paid by the Partnership are items or amounts that are with respect to Partnership because they were shown on Partnership's return and are relevant in determining the

liability of any person under chapter 1 pursuant to paragraphs (a)(6)(iii) and (iv) of this section. However, the treatment of the loan by B and the amount of interest income received by B are not items or amounts with respect to Partnership under paragraph (a)(6)(iii) of this section because although they relate to a transaction with or liability of Partnership and Partnership's treatment of the loan is shown on Partnership's return, B's treatment of the loan and the amount of interest income to B are shown, or required to be shown, on the return of B, a person other than Partnership and require determinations about B's reporting of the items. Accordingly, the loan as treated by B and the amount of interest income to B is not a partnership-related item.

(C) *Example 3.* On its partnership return for the 2020 tax year, Partnership reported $200 of non-cash charitable contributions related to its contribution of merchandise. Partnership has two equal partners for the 2020 tax year: C and D, both individuals. Partnership correctly reports $100 in non-cash charitable contributions to both C and D for the 2020 taxable year. On her return for the 2020 taxable year, C erroneously deducts the entire $100 of non-cash charitable contributions, even though C's deduction for charitable contributions would be limited by section 170(b)(1)(A) to $50 because of C's income. The $100 of non-cash charitable contribution reported by Partnership to C is a partnership-related item. However, the amount of the deduction taken by C on her return for 2020 and the amount of that deduction allowed after application of the limitation contained in section 170(b)(1)(A) to the $100 in non-cash charitable contributions reported by Partnership to C is not a partnership-related item under paragraph (a)(6)(ii) of this section because it is not with respect to the partnership.

(D) *Example 4.* The facts are the same as in *Example 3* in paragraph (a)(6)(vi)(C) of this section. On his return for the 2020 taxable year, D also deducts the entire $100 in charitable contributions but treats the charitable contributions as if they were cash contributions, instead of non-cash contributions. D does not file a notice of inconsistent treatment under section 6222. If D had treated the $100 in charitable contributions as non-cash contributions, D's deduction for the charitable contributions from Partnership would have be limited by section 170(b)(1)(A) due to D's income. D's deduction of the $100 in charitable contributions is an item or amount shown on D's return, derives from the charitable contributions reported by the partnership, and is subject to the application of the limitation under section 170(b)(1)(A). Therefore, D's deduction is not an item or amount with respect to the partnership. The charitable contribution reported by the partnership and its character are items or amounts with respect to the partnership pursuant to paragraph (a)(6)(iii) of this section. An adjustment to the character of the contributions is a partnership adjustment. Because D's treatment of the charitable contributions is inconsistent with the treatment of that item by Partnership on its partnership return, the IRS may make that partnership adjustment in a proceeding with respect to D and determine and assess any underpayment that results from conforming D's treatment to the treatment of the contributions by Partnership and applying the limit in section 170(b)(1)(A). See § 301.6222–1(b).

(7) *Partnership-partner.* The term *partnership-partner* means a partnership that holds an interest in another partnership.

(8) *Reviewed year.* The term *reviewed year* means the partnership taxable year to which a partnership adjustment relates.

(9) *Reviewed year partner.* The term *reviewed year partner* means any person who held an interest in a partnership at any time during the reviewed year.

(10) *Tax attribute.* A tax attribute is anything that can affect the amount or timing of a partnership-related item (as defined in paragraph (a)(6)(ii) of this section) or that can affect the amount of tax due in any taxable year. Examples of tax attributes include, but are not limited to, basis and holding period, as well as the character of items of income, gain, loss, deduction, or credit and carryovers and carrybacks of such items.

(b) *Applicability date*—(1) *In general.* Except as provided in paragraph (b)(2) of this section, this section applies to partnership taxable years beginning after December 31, 2017, and ending after August 12, 2018.

(2) *Election under § 301.9100–22 in effect.* This section applies to any partnership taxable year beginning after November 2, 2015, and before January 1, 2018, for which a valid election under § 301.9100–22 is in effect.

■ **Par. 20.** Section 301.6241–2 is added to read as follows:

§ 301.6241–2 Bankruptcy of the partnership.

(a) *Coordination between Title 11 and proceedings under subchapter C of chapter 63*—(1) *In general.* If a partnership is a debtor in a case under Title 11 of the United States Code (Title 11 case), the running of any period of limitations under section 6235 with respect to the time for making a partnership adjustment (as defined in § 301.6241–1(a)(6)) and under sections 6501 and 6502 with respect to the assessment or collection of any imputed underpayment (as defined in § 301.6241–1(a)(3)) determined under subchapter C of chapter 63 of the Internal Revenue Code (subchapter C of chapter 63) is suspended during the period the Internal Revenue Service (IRS) is prohibited by reason of the Title 11 case from making the adjustment, assessment, or collection until—

(i) 60 days after the suspension ends, for adjustments or assessments; and

(ii) 6 months after the suspension ends, for collection.

(2) *Interaction with section 6232(b).* The filing of a proof of claim or request for payment (or the taking of any other action) in a Title 11 case is not be treated as an action prohibited by section 6232(b) (regarding limitations on assessment).

(3) *Suspension of the time for judicial review.* In a Title 11 case, the running of the period specified in section 6234 (regarding judicial review of partnership adjustments) is suspended during the period during which the partnership is prohibited by reason of the Title 11 case from filing a petition under section 6234, and for 60 days thereafter.

(4) *Actions not prohibited.* The filing of a petition under Title 11 does not prohibit the following actions:

(i) An administrative proceeding with respect to a partnership under subchapter C of chapter 63;

(ii) The mailing of any notice with respect to a proceeding with respect to a partnership under subchapter C of chapter 63, including:

(A) A notice of administrative proceeding;

(B) A notice of proposed partnership adjustment; and

(C) A notice of final partnership adjustment;

(iii) A demand for tax returns;

(iv) The assessment of any tax, including the assessment of any imputed underpayment with respect to a partnership; and

(v) The issuance of notice and demand for payment of an assessment under subchapter C of chapter 63 (but see section 362(b)(9)(D) of Title 11 of the United States Code regarding the timing of when a tax lien takes effect by reason of such assessment).

(b) *Applicability date*—(1) *In general.* Except as provided in paragraph (b)(2) of this section, this section applies to partnership taxable years beginning after December 31, 2017, and ending after August 12, 2018.

(2) *Election under § 301.9100–22 in effect.* This section applies to any partnership taxable year beginning after November 2, 2015, and before January 1, 2018, for which a valid election under § 301.9100–22 is in effect.

■ **Par. 21.** Section 301.6241–3 is added to read as follows:

§ 301.6241–3 Treatment where a partnership ceases to exist.

(a) *Former partners take adjustments into account*—(1) *In general.* If the Internal Revenue Service (IRS) determines that any partnership

(including a partnership-partner as defined in § 301.6241–1(a)(7)) ceases to exist (as defined in paragraph (b) of this section) before any partnership adjustment (as defined in § 301.6241–1(a)(6)) under subchapter C of chapter 63 of the Internal Revenue Code (subchapter C of chapter 63) takes effect (as described in paragraph (c) of this section), the partnership adjustment is taken into account by the former partners (as described in paragraph (d) of this section) of the partnership in accordance with paragraph (e) of this section.

(2) *Partnership no longer liable for any unpaid amounts resulting from a partnership adjustment.* A partnership that ceases to exist is no longer liable for any unpaid amounts resulting from a partnership adjustment required to be taken into account by a former partner under this section.

(3) *Application of this section to partnership-partners.* This section applies to a partnership-partner and its former partners, regardless of whether the partnership-partner has an election under section 6221(b) in effect for any relevant partnership taxable year.

(b) *Cease to exist defined*—(1) *In general.* If a partnership ceases to exist, the IRS will notify the partnership and the former partners (as defined in paragraph (d) of this section), in writing, within 30 days of such determination using the last known address of the partnership and the former partners. A failure by the IRS to send a notification under this paragraph (b)(1) to a former partner of the partnership does not invalidate the determination by the IRS that the partnership ceases to exist. If an audited partnership (as defined in § 301.6226–3(e)(1)) ceases to exist, the IRS will also notify the partnership representative for the reviewed year. For purposes of this section, a partnership ceases to exist if the IRS makes a determination that a partnership ceases to exist because:

(i) The partnership terminates within the meaning of section 708(b)(1); or

(ii) The partnership does not have the ability to pay, in full, any amount due under the provisions of subchapter C of chapter 63 for which the partnership is or becomes liable. For purposes of this section, a partnership does not have the ability to pay if the IRS determines that the amount due with respect to the partnership is not collectible based on the information the IRS has at the time of such determination.

(2) *Exceptions.* For purposes of this section, the IRS will not determine that a partnership ceases to exist solely because the partnership has—

(i) A valid election under section 6226 in effect with respect to any imputed underpayment (as defined in § 301.6241–1(a)(3));

(ii) Received a statement under section 6226(a)(2) (or § 301.6226–3(e)) and has furnished statements to its partners in accordance with § 301.6226–3(e)(3); or

(iii) Not paid any amount required to be paid under subchapter C of chapter 63.

(3) *Year in which a partnership ceases to exist.* If a partnership terminates under section 708(b)(1), the partnership ceases to exist on the last day of the partnership's final taxable year. If a partnership does not have the ability to pay, the partnership ceases to exist on the date that the IRS makes a determination under paragraph (b)(1) of this section that the partnership ceases to exist.

(4) *Limitation on IRS determination that partnership ceases to exist.* In no event may the IRS determine that a partnership ceases to exist with respect to a partnership adjustment after the expiration of the period of limitations on collection applicable to the assessment made against the partnership for the amount due resulting from such adjustment.

(c) *Partnership adjustment takes effect*—(1) *Full payment of amounts resulting from a partnership adjustment.* For purposes of this section, a partnership adjustment under subchapter C of chapter 63 takes effect when there is full payment of amounts resulting from a partnership adjustment. For purposes of this section, *full payment of amounts resulting from a partnership adjustment* means all amounts due under subchapter C of chapter 63 resulting from the partnership adjustment are fully paid by the partnership.

(2) *Partial payment of amount due by the partnership.* If a partnership pays part, but not all, of any amount due resulting from a partnership adjustment before the partnership ceases to exist, the former partners (as defined in paragraph (d) of this section) of the partnership that has ceased to exist are not required to take into account any partnership adjustment to the extent amounts have been paid by the partnership with respect to such adjustment. The notification that the IRS has determined that the partnership has ceased to exist will include information regarding the portion of the partnership adjustments with respect to which appropriate amounts have not already been paid by the partnership and therefore must be taken into account by the former partners (described in paragraph (d) of this section) in accordance with paragraph (e) of this section.

(d) *Former partners*—(1) *Adjustment year partners*—(i) *In general.* Except as described in paragraphs (d)(1)(ii) and (d)(2) of this section, the term *former partners* means, for a partnership that has ceased to exist, the partners of the partnership during the adjustment year (as defined in § 301.6241–1(a)(1)) that corresponds to the reviewed year for which the adjustments were made.

(ii) *Partnership-partner ceases to exist.* If the adjustment year partner is a partnership-partner that the IRS has determined ceased to exist, the partners of such partnership-partner during the partnership-partner's taxable year that includes the end of the adjustment year of the partnership that is subject to a proceeding under subchapter C of chapter 63 are the former partners for purposes of this section. If the partnership-partner ceased to exist before the partnership-partner's taxable year that includes the end of the adjustment year of the partnership that is subject to a proceeding under subchapter C of chapter 63, the former partners for purposes of this section are the partners of such partnership-partner during the last partnership taxable year for which the a partnership return of the partnership-partner under section 6031 is filed.

(2) *No adjustment year partners.* If there are no adjustment year partners of a partnership that ceases to exist, the term *former partners* means the partners of the partnership during the last taxable year for which a partnership return under section 6031 was filed with respect to such partnership. For instance, if a partnership terminates under section 708(b)(1) before the adjustment year and files a final partnership return for the partnership taxable year of such partnership, the former partners for purposes of this section are the partners of the partnership during the partnership taxable year for which a final partnership return is filed.

(e) *Taking adjustments into account*—(1) *In general.* For purposes of paragraph (a) of this section, a former partner of a partnership that ceases to exist takes a partnership adjustment into account as if the partnership had made an election under section 6226 (regarding the alternative to payment of the imputed underpayment). A former partner must take into account the former partner's share of a partnership adjustment as set forth in the statement described in paragraph (e)(2) of this section in accordance with § 301.6226–3.

(2) *Statements furnished to former partners.* If a partnership is notified by the IRS that the partnership has ceased to exist as described in paragraph (b)(1) of this section, the partnership must furnish to each former partner a statement reflecting such former partner's share of the partnership adjustment required to be taken into account under this section and file a copy of such statement with the IRS in accordance with the rules under § 301.6226–2, except that—

(i) The adjustments are taken into account by the applicable former partner (as described in paragraph (d) of this section), rather than the reviewed year partners (as defined in § 301.6241–1(a)(9)); and

(ii) The partnership must furnish statements to the former partners and file the statements with the IRS no later than 30 days after the date of the notification to the partnership that the IRS has determined that the partnership has ceased to exist.

(3) *Authority to issue statements.* If any statements required by paragraph (e) of this section are not timely furnished to a former partner and filed with the IRS in accordance with paragraph (e)(2)(ii) of this section, the IRS may notify the former partner in writing of such partner's share of the partnership adjustments based on the information reasonably available to the IRS at the time such notification is provided. For purposes of paragraph (e) of this section, a notification to a former partner under this paragraph (e)(3) is treated the same as a statement required to be furnished and filed under paragraph (e)(2) of this section.

(f) *Examples.* The following examples illustrate the provisions of this section. For purposes of the examples, all partnerships and partners are calendar year taxpayers and each partnership is subject to the provisions of subchapter C of chapter 63 of the Code (unless otherwise stated).

(1) *Example 1.* The IRS initiates a proceeding under subchapter C of chapter 63 with respect to the 2020 partnership taxable year of Partnership. During 2023, in accordance with section 6235(b), Partnership extends the period of limitations on adjustments under section 6235(a) until December 31, 2025. On February 1, 2025, the IRS mails Partnership a notice of final partnership adjustment (FPA) that determines partnership adjustments that result in a single imputed underpayment. Partnership does not timely file a petition under section 6234 and does not make a valid election under section 6226. On June 2, 2025, the IRS mails Partnership notice and demand for payment of the amount due resulting from the adjustments determined in the FPA. Partnership fails to make a payment. On September 1, 2029, the IRS determines Partnership ceases to exist for purposes of this section because the Partnership does not have the ability to pay under paragraph (b)(1)(ii) of this section. Under § 301.6241–1(a)(1), the adjustment year is 2025 and A and B, both individuals, are the only adjustment year partners of Partnership during 2025. Accordingly, under paragraph (d)(1) of this section, A and B are former partners. Therefore, A and B are required to take their share of the partnership adjustments determined in the FPA into account under paragraph (e) of this section.

(2) *Example 2.* The IRS initiates a proceeding under subchapter C of chapter 63 with respect to the 2020 partnership taxable year of P, a partnership. G, a partnership that has an election under section 6221(b) in effect for the 2020 taxable year, is a partner of P during 2020 and for every year thereafter. On February 3, 2025, the IRS mails P an FPA that determines partnership adjustments that result in a single imputed underpayment. P does not timely file a petition under section 6234 and does not make a timely election under section 6226. On May 6, 2025, the IRS mails P notice and demand for payment of the amount due resulting from the adjustments determined in the FPA. P does not make a payment. On September 1, 2025, the IRS determines P ceases to exist for purposes of this section because P does not have the ability to pay under paragraph (b)(1)(ii) of this section. G terminated under section 708(b)(1) on December 31, 2024. On September 1, 2025, the IRS determines that G ceased to exist in 2024 for purposes of this section in accordance with paragraph (b)(1)(i) of this section. J and K, individuals, were the only partners of G during 2024. Therefore, under paragraph (d)(1)(ii) of this section, J and K, the partners of G during G's 2024 partnership taxable year, are the former partners of G for purposes of this section. Therefore, J and K are required to take into account their share of the adjustments contained in the statement furnished by P to G in accordance with paragraph (e) of this section.

(g) *Applicability date*—(1) *In general.* Except as provided in paragraph (g)(2) of this section, this section applies to partnership taxable years beginning after December 31, 2017, and ending after August 12, 2018.

(2) *Election under § 301.9100–22 in effect.* This section applies to any partnership taxable year beginning after November 2, 2015, and before January 1, 2018, for which a valid election under § 301.9100–22 is in effect.

■ **Par. 22.** Section 301.6241–4 is added to read as follows:

§ 301.6241–4 Payments nondeductible.

(a) *Payments nondeductible.* No deduction is allowed under subtitle A of the Internal Revenue Code (Code) for any payment required to be made by a partnership under subchapter C of chapter 63 of the Code (subchapter C of chapter 63). Payment by a partnership of any amount required to be paid under subchapter C of chapter 63, including any imputed underpayment (as defined in § 301.6241–1(a)(3)), or interest, penalties, additions to tax, or additional amounts with respect to an imputed underpayment, is treated as an expenditure described in section 705(a)(2)(B).

(b) *Applicability date*—(1) *In general.* Except as provided in paragraph (b)(2) of this section, this section applies to partnership taxable years beginning after December 31, 2017, and ending after August 12, 2018.

(2) *Election under § 301.9100–22 in effect.* This section applies to any partnership taxable year beginning after November 2, 2015, and before January 1, 2018, for which a valid election under § 301.9100–22 is in effect.

■ **Par. 23.** Section 301.6241–5 is added to read as follows:

§ 301.6241–5 Extension to entities filing partnership returns.

(a) *Entities filing a partnership return.* Except as described in paragraph (c) of this section, an entity that files a partnership return for any taxable year is subject to the provisions of subchapter C of chapter 63 of the Internal Revenue Code (subchapter C of chapter 63) with respect to such taxable year even if it is determined that the entity filing the partnership return was not a partnership for such taxable year. Accordingly, any partnership-related item (as defined in § 301.6241–1(a)(6)(ii)) and any person holding an interest in the entity, either directly or indirectly, at any time during that taxable year are subject to the provisions of subchapter C of chapter 63 for such taxable year.

(b) *Partnership return filed but no entity found to exist.* Paragraph (a) of this section also applies where a partnership return is filed for a taxable year, but the IRS determines that no entity existed at all for such taxable year. For purposes of applying paragraph (a) of this section, the partnership return is treated as if it were filed by an entity.

(c) *Exceptions.* Paragraph (a) of this section does not apply to—

(1) Any taxable year for which an election under section 6221(b) is in effect, treating the return as if it were filed by a partnership for the taxable year to which the election relates; and

(2) Any taxable year for which a valid section 761(a) election is made (regarding election out of subchapter K of chapter 1 of the Internal Revenue Code for certain unincorporated organizations).

(d) *Applicability date*—(1) *In general.* Except as provided in paragraph (d)(2) of this section, this section applies to partnership taxable years beginning after December 31, 2017, and ending after August 12, 2018.

(2) *Election under § 301.9100–22 in effect.* This section applies to any partnership taxable year beginning after November 2, 2015, and before January 1, 2018, for which a valid election under § 301.9100–22 is in effect.

■ **Par. 24.** Section 301.6241–6 is added to read as follows:

§ 301.6241–6 Coordination with other chapters of the Internal Revenue Code.

(a) *Coordination with other chapters*—(1) *In general.* Subchapter C of chapter 63 of the Internal Revenue Code (subchapter C of chapter 63) only applies to tax imposed by chapter 1 of the Internal Revenue Code (Code) and not to any tax imposed (including any amount required to be deducted or withheld) under any chapter of the Code other than chapter 1 of the Code (chapter 1), including chapter 2, 2A, 3, or 4 of the Code. Accordingly, for purposes of determining taxes imposed under chapters of the Code other than chapter 1, the Internal Revenue Service (IRS) may make an adjustment to any partnership-related item (as defined in § 301.6241–1(a)(6)(ii)) in a proceeding that is not under subchapter C of chapter 63. To the extent an adjustment or determination is made under subchapter C of chapter 63 for purposes of chapter 1 and is relevant in determining tax imposed under a chapter of the Code other than chapter 1, such adjustment or determination must be taken into account for purposes of determining such tax.

(2) *Examples.* The following examples illustrate the rules of paragraph (a) of this section as applied to cases in which a partnership has a withholding obligation under chapter 3 or chapter 4 with respect to income that the partnership earns. For purposes of these examples, each partnership is subject to the provisions of subchapter C of chapter 63 of the Code, and the partnership and its partners are calendar year taxpayers.

(i) *Example 1.* Partnership, a partnership created or organized in the United States, has two equal partners, A and B. A is a nonresident alien who is a resident of Country A, and B is a U.S. citizen. In 2018, Partnership earned $200 of U.S. source royalty income. Partnership was required to withhold 30 percent of the gross amount of the royalty income allocable to A unless Partnership had documentation that it could rely on to establish that A was entitled to a reduced rate of withholding. See §§ 1.1441–1(b)(1) and 1.1441–5(b)(2)(i)(A) of this chapter. Partnership withheld $15 from the $100 of royalty income allocable to A based on its incorrect belief that A is entitled to a reduced rate of withholding under the U.S.-Country A Income Tax Treaty. In 2020, the IRS determines in an examination of Partnership's Form 1042, Annual Withholding Tax Return for U.S. Source Income of Foreign Persons, that Partnership should have withheld $30 instead of $15 on the $100 of royalty income allocable to A because Partnership failed to obtain documentation from A establishing a valid treaty claim for a reduced rate of withholding. The tax imposed on Partnership for its failure to withhold on that income, however, is not a tax imposed by chapter 1. Rather, it is a tax imposed by chapter 3, which is not a partnership-related item under § 301.6241–1(a)(6)(ii). Therefore, in accordance with section 6221(a), the adjustment to increase Partnership's withholding tax liability by $15 is not determined under subchapter C of chapter 63, and instead must be determined as part of the Form 1042 examination.

(ii) *Example 2.* Partnership, a partnership created or organized in the United States, has two equal partners, A and B. A is a nonresident alien who is a resident of Country A, and B is a U.S. citizen. In 2018, Partnership earned $100 of U.S. source dividend income. Partnership was required to report the dividend income on its 2018 Form 1065, U.S. Return of Partnership Income, and withhold 30 percent of the gross amount of the dividend income allocable to A unless Partnership had documentation that it could rely on to establish that A was entitled to a reduced rate of withholding. See §§ 1.1441–1(b)(1) and 1.1441–5(b)(2)(i)(A) of this chapter. In 2020, in an examination of Partnership's Form 1042, the IRS determines that Partnership earned but failed to report the $100 of U.S. source dividend income in 2018. The adjustment to increase Partnership's dividend income by $100 is an adjustment to a partnership-related item. The tax imposed on Partnership for its failure to withhold on that income, however, is not a tax imposed by chapter 1; rather, it is a tax imposed by chapter 3. Pursuant to § 301.6221(a)–1(a), only chapter 1 tax attributable to adjustments to partnership-related items is assessed under subchapter C of chapter 63. Therefore, because the tax imposed with respect to the adjustment is a chapter 3 tax, under paragraph (a)(1) of this section, the IRS may determine, assess, and collect chapter 3 tax attributable to an adjustment to a partnership-related item without conducting a proceeding under subchapter C of chapter 63. Accordingly, the IRS may determine the chapter 3 tax in the examination of Partnership's Form 1042 by adjusting Partnership's withholding tax liability by an additional $15 for failing to withhold on the $50 of dividend income allocable to A. However, the IRS must initiate an administrative proceeding under subchapter C of chapter 63 to make any adjustments for purposes of chapter 1 attributable to the income. If the IRS subsequently initiates an administrative proceeding under subchapter C of chapter 63 and makes an adjustment to the same item of income, the portion of the dividend income allocable to A will be disregarded in the calculation of the total netted partnership adjustment to the extent that the chapter 3 tax has been collected with respect to such income. See § 301.6225–1(b)(3).

(b) *Coordination with chapters 3 and 4*—(1) *In general.* In the case of any tax imposed under chapter 3 or chapter 4 that is determined with respect to a partnership adjustment determined under subchapter C of chapter 63 for purposes of chapter 1, such tax is determined with respect to the reviewed year (as defined in § 301.6241–1(a)(8)) and is imposed (or required to be deducted and withheld) with respect to the adjustment year (as defined in § 301.6241–1(a)(1)).

(2) *Definitions.* The following definitions apply for purposes of this paragraph (b) and the regulations under subchapter C of chapter 63.

(i) *Amount subject to withholding.* The term *amount subject to withholding* means an amount subject to withholding (as defined in § 1.1441–2(a) of this chapter), a withholdable payment (as defined in § 1.1473–1(a) of this chapter), or the allocable share of effectively connected taxable income (as computed under § 1.1446–2(b) of this chapter).

(ii) *Chapter 3.* The term *chapter 3* means sections 1441 through 1464 of the Code, but does not include section 1443(b) of the Code.

(iii) *Chapter 4.* The term *chapter 4* means sections 1471 through 1474 of the Code.

(3) *Partnership pays an imputed underpayment.* If a partnership pays an imputed underpayment (as determined under § 301.6225–1(b)) and the total netted partnership adjustment (as calculated under § 301.6225–1(b)(2)) includes a partnership adjustment to an amount subject to withholding, the partnership is treated as having paid (at the time that the imputed underpayment is paid) the amount required to be withheld with respect to that partnership adjustment under chapter 3 or chapter 4 for purposes of applying §§ 1.1463–1 and 1.1474–4 of this chapter. See § 301.6225–1(b)(3) for the coordination rule that applies for calculating an imputed underpayment when an adjustment is made to an amount subject to withholding for which tax has been collected under chapter 3 or chapter 4.

(4) *Partnership makes an election under section 6226 with respect to an imputed underpayment*—(i) *In general.* A partnership that makes an election under § 301.6226–1 with respect to an imputed underpayment must pay the amount of tax required to be withheld

under chapter 3 or chapter 4 on the amount of any adjustment set forth in the statement described in § 301.6226–2(a) to the extent that it is an adjustment to an amount subject to withholding, and the IRS has not already collected tax attributable to the adjustment under chapter 3 or chapter 4. The partnership must pay the amount due under this paragraph (b)(4)(i) on or before the due date of the partnership return for the adjustment year (without regard to extension), and must make the payment in the manner prescribed by the IRS in forms, instructions, and other guidance. For the rules governing partners subject to the taxes imposed by chapters 3 and 4 when the partner receives a statement under § 301.6226–2, see § 301.6226–3(f). See § 301.6226–3(e)(3)(v) for the application of the rules of this paragraph (b)(4) to pass-through partners (as defined in § 301.6241–1(a)(5)).

(ii) *Reduced rate of tax.* A partnership may reduce the amount of tax it is required to pay under paragraph (b)(4)(i) of this section to the extent that it can associate valid documentation from a reviewed year partner pursuant to the regulations under chapter 3 or chapter 4 (other than pursuant to § 1.1446–6 of this chapter) with the portion of the adjustment that would have been subject to a reduced rate of tax in the reviewed year. For this purpose, the partnership may rely on documentation that the partnership possesses that is valid with respect to the reviewed year (determined without regard to the expiration after the reviewed year of any validity period prescribed in § 1.1441–1(e)(4)(ii), § 1.1446–1(c)(2)(iv)(A), or § 1.1471–3(c)(6)(ii) of this chapter), or new documentation that the partnership obtains from the reviewed year partner that includes a signed affidavit stating that the information and representations associated with the documentation are accurate with respect to the reviewed year.

(iii) *Reporting requirements.* A partnership required to pay tax under paragraph (b)(4)(i) of this section must file the appropriate return and issue information returns as required by regulations under chapter 3 or chapter 4. For return and information return requirements, see §§ 1.1446–3(d)(1)(iii); 1.1461–1(b), (c); and 1.1474–1(c), (d) of this chapter. The partnership must file the return and issue information returns for the year that includes the date on which the partnership pays the tax required to be withheld under paragraph (b)(4)(i) of this section. The partnership must report the information on the return and information returns in the manner prescribed by the IRS in forms, instructions, and other guidance.

(iv) *Partners subject to withholding.* A reviewed year partner that is subject to withholding under paragraph (b)(4)(i) of this section must follow the rules under § 301.6226–3(f).

(c) *Applicability date*—(1) *In general.* Except as provided in paragraph (c)(2) of this section, this section applies to partnership taxable years beginning after December 31, 2017, and ending after August 12, 2018.

(2) *Election under § 301.9100–22 in effect.* This section applies to any partnership taxable year beginning after November 2, 2015, and before January 1, 2018, for which a valid election under § 301.9100–22 is in effect.

Kirsten Wielobob,

Deputy Commissioner for Services and Enforcement.

Approved: December 17, 2018.

David J. Kautter,

Assistant Secretary of the Treasury (Tax Policy).

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Part III

Department of Commerce

National Oceanic and Atmospheric Administration

50 CFR Part 219

Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to Southeast Fisheries Science Center and Texas Parks and Wildlife Department Fisheries Research; Proposed Rule

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 219

[Docket No. 161109999–8999–01]

RIN 0648–BG44

Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to Southeast Fisheries Science Center and Texas Parks and Wildlife Department Fisheries Research

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS' Office of Protected Resources has received a request from NMFS' Southeast Fisheries Science Center (SEFSC) for authorization to take marine mammals incidental to fisheries research conducted in the Atlantic Ocean along the southeastern U.S. coast and select estuaries, the Gulf of Mexico and select estuaries, and the Caribbean Sea over the course of five years from the date of issuance. We have also received a request from the Texas Parks and Wildlife Department (TPWD) for authorization to take marine mammals incidental to fisheries research in Texas bay systems. Pursuant to the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to issue regulations to the SEFSC and, separately, TPWD, to incidentally take marine mammals during the specified activities. NMFS will consider public comments prior to making any final decision on the issuance of the requested MMPA authorizations and agency responses will be summarized in the final notice of our decision.

DATES: Comments and information must be received no later than March 29, 2019.

ADDRESSES: You may submit comments on this document, identified by NOAA–NMFS–2019–0016, by any of the following methods:

• *Electronic submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *www.regulations.gov/#!docket Detail;D=NOAA-NMFS-2019-0016,* click the ''Comment Now!'' icon, complete the required fields, and enter or attach your comments.

• *Mail:* Submit written comments to Jolie Harrison, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, or Adobe PDF file formats only.

FOR FURTHER INFORMATION CONTACT: Jaclyn Daly, Office of Protected Resources, NMFS, (301) 427–8401. Electronic copies of the application and supporting documents, as well as a list of the references cited in this document, may be obtained online at: *www.nmfs.noaa.gov/pr/permits/incidental/research.htm.* In case of problems accessing these documents, please call the contact listed above.

SUPPLEMENTARY INFORMATION:

Purpose and Need for Regulatory Action

This proposed rule, to be issued under the authority of the MMPA (16 U.S.C. 1361 *et seq.*), establishes a framework for authorizing the take of marine mammals incidental to fisheries-independent research conducted by the SEFSC (in the Atlantic Ocean and associated estuaries, Gulf of Mexico and associated estuaries, and Caribbean Sea) and TPWD (in Texas bays and estuaries). SEFSC and TPWD fisheries research has the potential to take marine mammals due to possible physical interaction with fishing gear (*e.g.,* trawls, gillnets, hook-and-line gear) andexposure to noise generated by SEFSC sonar devices (*e.g.,* echosounders, side-scan sonar). The SEFSC submitted an application to NMFS requesting five-year regulations and a letter of authorization (LOA) to take multiple species and stocks of marine mammals in the three specified research areas (Atlantic, Gulf of Mexico, and Caribbean). The SEFSC has requested take, by mortality, serious injury, and Level A harassment, incidental to the use of various types of fisheries research gear and Level B harassment incidental to the use of active acoustic survey sources. TPWD has requested take of dolphins from four stocks, by mortality or serious injury, incidental to gillnet fishing in Texas bays. For both applicants, the regulations would be valid from 2018 to 2023.

Legal Authority for the Proposed Action

Section 101(a)(5)(A) of the MMPA (16 U.S.C. 1371(a)(5)(A)) directs the Secretary of Commerce to allow, upon request, the incidental, but not intentional taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region for up to five years if, after notice and public comment, the agency makes certain findings and issues regulations that set forth permissible methods of taking pursuant to that activity, as well as monitoring and reporting requirements.

Section 101(a)(5)(A) of the MMPA and the implementing regulations at 50 CFR part 216, subpart I provide the legal basis for issuing this proposed rule containing five-year regulations and Letters of Authorization. As directed by this legal authority, this proposed rule contains mitigation, monitoring, and reporting requirements.

Summary of Major Provisions Within the Proposed Regulations

Following is a summary of the major provisions for the SEFSC within the proposed rulemaking. The SEFSC is required to:

• Delay setting or haul in gear if marine mammal interaction may occur.

• Monitor prior to and during sets for signs of potential marine mammal interaction.

• Implement the ''move-on rule'' mitigation strategy during select surveys (note: this measure does not apply to bottlenose dolphins).

• Limit gear set times (varies based on gear type).

• Haul gear immediately if marine mammals may interact with gear.

• Utilize dedicated marine mammal observations during select surveys.

• Prohibit chumming.

• Continue investigation on the effectiveness of modifying lazy lines to reduce bottlenose dolphin entanglement risk.

• Establish and convene the South Carolina Department of Natural Resources (SCDNR) Working Group to better understand bottlenose dolphin entanglement events and apply effective mitigation strategies.

Following is a summary of the major provisions for the TPWD within the proposed rulemaking. The TPWD is required to:

• Set only new or fully repaired gill nets thereby eliminating holes.

• Set gillnets with minimal slack and a short marker buoy attached to the deep end of the net.

• Conduct dedicated marine mammal observations at least 15 minutes prior to setting nets and avoid setting nets if dolphins are observed at or approaching the sampling station.

• Minimize soak time by utilizing the ''last out/first in'' strategy for gillnets set in grids where marine mammals have been encountered within the last 5 years.

• Avoid fishing grids where dolphins have interacted with gear on more than one occasion or where multiple adjacent grids have had at least one dolphin encounter.

• Modify gillnets to avoid more than a 4 inch (in.) gap between float/lead line and net when net is set.

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (as delegated to NMFS) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

An authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant), and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth.

NMFS has defined ''negligible impact'' in 50 CFR 216.103 as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival. The MMPA states that the term ''take'' means to harass, hunt, capture, kill or attempt to harass, hunt, capture, or kill any marine mammal.

Except with respect to certain activities not pertinent here, the MMPA defines ''harassment'' as any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment).

National Environmental Policy Act

To comply with the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*) and NOAA Administrative Order (NAO) 216–6A, NMFS must review our proposed action (*i.e.,* the issuance of an incidental harassment authorization) with respect to potential impacts on the human environment.

Accordingly, NMFS is preparing an Environmental Assessment (EA) to consider the environmental impacts associated with the issuance of the proposed regulations to SEFSC and TPWD. NMFS' *Draft Programmatic Environmental Assessment (PEA) for Fisheries and Ecosystem Research Conducted and Funded by the Southeast Fisheries Science Center* was made available for public comment from April 20 through May 20, 2016 (81 FR 23276). NMFS is modifying the draft EA to include TPWD gillnet fishing. We will review all comments submitted in response to this notice as we complete the NEPA process, prior to making a final decision on the incidental take authorization request.

Summary of Request

On May 4, 2015, NMFS Office of Protected Resources (OPR) received an application from the SEFSC for a rulemaking and associated 5-year Letter of Authorization (LOA) to take marine mammals incidental to fisheries research activities conducted by the SEFSC and 18 cooperating research partners in the Atlantic Ocean Research Area (ARA), Gulf of Mexico Research Area (GOMRA), and Caribbean Research Area (CRA). The SEFSC submitted a revised draft in October 2015, followed by another revision on April 6, 2016, which we deemed adequate and complete. On April 22, 2016 (81 FR 23677), we published a notice of receipt of the SEFSC's application in the **Federal Register**, requesting comments and information related to the SEFSC's request for thirty days. We received joint comments from The Humane Society of the United States and Whale and Dolphin Conservation, which we considered in development of this proposed rule and are available on the internet at: *www.nmfs.noaa.gov/pr/permits/incidental/research.htm*. The SEFSC request is for the take of 15 species of marine mammals by mortality, serious injury, and Level A harassment (hereafter referred as ''M/SI'' assuming worst case scenario) and 34 species of marine mammals by Level B harassment.

On July 29, 2015, NMFS received an application from TPWD requesting authorization for take of marine mammals incidental to fishery-independent monitoring activities in Texas. On January 6, 2017 (82 FR 1721), we published a notice of receipt of the TPWD's application in the **Federal Register**, requesting comments and information related to the TPWD's request for thirty days. We received comments from the Marine Mammal Commission and the Texas Chapter of the Coastal Conservation Association which we considered in the development of this proposed rule and are available on the internet at: *https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act*. In response to comments, TPWD submitted a subsequent application on May 11, 2017, which we deemed adequate and complete.

Description of the Specified Activity

SEFSC Overview

The SEFSC is the research arm of NMFS in the Southeast Region. The SEFSC plans, develops, and manages a multidisciplinary program of basic and applied research to generate the information necessary for the conservation and management of the region's living marine resources, including the region's marine and anadromous fish and invertebrate populations to ensure they remain at sustainable and healthy levels. The SEFSC collects a wide array of information necessary to evaluate the status of exploited fishery resources and the marine environment from fishery independent (*i.e.,* non-commercial or recreational fishing) platforms. Surveys are conducted from NOAA-owned and operated vessels, NOAA chartered vessels, or research partner-owned or chartered vessels in the state and Federal waters of the Atlantic Ocean south of Virginia, Gulf of Mexico, and Caribbean Sea. All work will occur within the Exclusive Economic Zone (EEZ) except two surveys which may occur outside the EEZ.

The SEFSC plans to administer, fund, or conduct 74 fishery-independent survey programs over the five-year period the proposed regulations would be effective (see Table 1–1 in the SEFSC's application). The SEFSC works with 18 Federal, state, or academic partners to conduct these surveys (see

Table 1–1 in SEFSC's application for a list of cooperating research partners). Of the 74 surveys, only 38 involve gear and equipment with the potential to take marine mammals. Gear types include towed trawl nets fished at various levels in the water column, seine nets, traps, longline and other hook and line gear. Surveys using any type of seine net (*e.g.,* gillnets), trawl net, or hook and line (*e.g.,* longlines) have the potential for marine mammal interaction (*e.g.,* entanglement, hooking) resulting in M/SI harassment. In addition, the SEFSC conducts hydrographic, oceanographic, and meteorological sampling concurrent with many of these surveys which requires the use of active acoustic devices (*e.g.,* side-scan sonar, echosounders). These active sonars result in elevated sound levels in the water column, resulting in the potential to behaviorally disturb marine mammals resulting in Level B harassment.

Many SEFSC surveys only occur at certain times of the year to align with the target species and age class being researched (see Table 1–1 in SEFSC's application); however, in general, the SEFSC conducts some type of sampling year round in various locations. Specific dates and duration of individual surveys are inherently uncertain because they are based on congressional funding levels, weather conditions, and ship contingencies. For example, some surveys are only conducted every two or three years or when funding is available. Timing of the surveys is a key element of their design. Oceanic and atmospheric conditions, as well as ship contingencies, often dictate survey schedules even for routinely-conducted surveys. In addition, cooperative research is designed to provide flexibility on a yearly basis in order to address issues as they arise. Some cooperative research projects last multiple years or may continue with modifications. Other projects only last one year and are not continued. Most cooperative research projects go through an annual competitive selection process to determine which projects should be funded based on proposals developed by many independent researchers and fishing industry participants. The exact location of survey effort also varies year to year (albeit in the same general area) because they are often based on randomized sampling designs. Year-round, in all research areas, there is one or more than one survey planned that has the potential to take marine mammals.

TPWD Overview

TPWD conducts a long-term standardized fishery-independent monitoring program to assess the relative abundance and size of finfish and shellfish in ten Texas bay systems using gillnets set perpendicular to the shoreline. Gill nets are set overnight during each spring and fall season for a total of four weeks per year. Bottlenose dolphins have the potential to become entangled in gillnet gear which can result in M/SI harassment.

Specified Geographic Region—SEFSC

The SEFSC conducts research in three research areas: The Atlantic Ocean from North Carolina to Florida and associated estuaries (ARA), the Gulf of Mexico and associated estuaries (GOMRA), and the Caribbean around Puerto Rico and the US Virgin Islands (CRA). Research surveys occur both inside and outside the U.S. Exclusive Economic Zone (EEZ), and sometimes span across multiple ecological, physical, and political boundaries (see Figure1–2 in the SEFSC's application for map). With respect to gear, Appendix B in the SEFSC Draft Programmatic Environmental Assessment (PEA) includes a table and figures showing the spatial and temporal distribution of fishing gears used during SEFSC research.

The three research areas fully or partially encompass four Large Marine Ecosystems (LMEs): The Northeast U.S. Continental Shelf LME (NE LME), the Southeast U.S. Continental Shelf LME (SE LME), the Gulf of Mexico LME, (GOM LME), and the Caribbean Sea LME (CS LME). LMEs are large areas of coastal ocean space, generally include greater than 200,000 square kilometers (km^2) of ocean surface area and are located in coastal waters where primary productivity is typically higher than in open ocean areas. LME physical boundaries are based on four ecological criteria: bathymetry, hydrography, productivity, and trophic relationships. NOAA has implemented a management approach designed to improve the long-term sustainability of LMEs and their resources by using practices that focus on ensuring the sustainability of the productive potential for ecosystem goods and services. Figure 2–1 in the SEFSC's application shows the location and boundaries of the three research areas with respect to LME boundaries. We note here that, while the SEFSC specified geographical region extends outside of the U.S. EEZ, into the Mexican EEZ (not including Mexican territorial waters), the MMPA's authority does not extend into foreign territorial waters. The following provides a brief introduction to the characteristics of each research area. Additional descriptive material concerning the geology, oceanography, and physical environment influencing species distribution within each of the research areas can be found in Chapter 3 of the Draft PEA.

Atlantic Research Area

The ARA constitutes more than 530,000 square miles (mi^2) from North Carolina to Florida. Three key features of the ARA include the NE LME (however SEFSC research is only conducted south of Virginia), SE LME, and Gulf Stream. The NE LME encompasses approximately 115,831 mi^2, and is structurally complex, with marked temperature changes, winds, river runoff, estuarine exchanges, tides and complex circulation regimes. The Shelf-Slope Front is associated with a southward flow of cold, fresh water from the Labrador Sea. The Mid-Shelf Front follows the 50-m isobath (Ullman and Cornillon 1999). The Nantucket Shoals Front hugs the namesake bank/shaols along 20–30-m isobaths. The Wilkinson Basin Front and Jordan Basin Front separate deep basins from Georges Bank and Browns Bank (Mavor and Bisagni 2001). The SE LME extends from the Straits of Florida to Cape Hatteras, North Carolina in the Atlantic Ocean. It is characterized by a temperate climate and has a surface area of about 300,000 km^2, of which 2.44 percent is protected. It contains 0.27 percent of the world's coral reefs and 18 estuaries and river systems. These estuarine and river systems, such as the Albemarle-Pamlico Sound (the second largest estuary in the nation) contain nearshore and barrier islands, fresh and estuarine waters, and extensive coastal marshes that provide unique habitats for living marine resources, including marine mammals (Aquarone 2009). Adjacent to the SE LME is the warm, saline, northward flowing Gulf Stream which is bounded by two fronts; the inshore Gulf Stream Front and the offshore Gulf Stream Front (see Figure 2–2). The inshore Gulf Stream Front extends over the upper continental slope and shelf break, approximately aligned with the 50-meter isobath (Atkinson and Menzel 1985), while the offshore Gulf Stream Front runs parallel to it approximately 100 kilometers offshore. The Gulf Stream forms a semi-permanent offshore deflection near a deepwater bank southeast of Charleston, South Carolina, called the 'Charleston Bump' at 31.5 degrees north. The Mid-Shelf Front is aligned approximately with the 35-to-40 meter isobaths. Other shelf fronts separate a mixture of water masses formed by wintertime cold air outbreaks, river discharge, tidal mixing and wind-induced coastal upwelling

(Pietrafesa et al. 1985, Belkin et al. 2009).

Gulf of Mexico Research Area

The GOMRA encompasses more than 800,000 mi². The SEFSC conducts fisheries research in portions of the GOM LME, a deep marginal sea bordered by Cuba, Mexico, and the U.S. It is the largest semi-enclosed coastal sea of the western Atlantic, encompassing more than 1.5 million km², of which 1.57 percent is protected, as well as 0.49 percent of the world's coral reefs and 0.02 percent of the world's sea mounts (Sea Around Us 2007). The continental shelf is very extensive, comprising about 30 percent of the total area and is topographically very diverse (Heileman and Rabalais 2009). Oceanic water enters this LME from the Yucatan channel and exits through the Straits of Florida, creating the Loop Current, a major oceanographic feature and part of the Gulf Stream System (Lohrenz et al. 1999) (see Figure 2–4). The LME is strongly influenced by freshwater input from rivers, particularly the Mississippi-Atchafalaya, which accounts for about two-thirds of the flows into the Gulf (Richards & McGowan 1989) while freshwater discharges from the Mississippi River estuary and rivers of the Florida Panhandle contribute to the development and maintenance of 6 major oceanic fronts. Similar to the ARA, the GOMRA includes forty-seven major estuaries, many of which support numerous recreational and commercial fisheries and are home to resident bottlenose dolphin stocks.

Caribbean Research Area

The CRA is the smallest of the SEFSC research areas (approximately 400,000 mi²) and includes portions of the CS LME. The CS LME is a tropic sea bounded by North America (South Florida), Central and South America, and the Antilles chain of islands. The LME has a surface area of about 3.3 million km², of which 3.89 percent is protected (Heileman and Mahon 2009). It contains 7.09 percent of the world's coral reefs and 1.35 percent of the world's sea mounts. The average depth is 2,200 meters, with the Cayman Trench being the deepest part at 7,100 meters. Most of the Caribbean islands are influenced by the nutrient-poor North Equatorial Current that enters the Caribbean Sea through the passages between the Lesser Antilles islands. Run-off from two of the largest river systems in the world, the Amazon and the Orinoco, as well as numerous other large rivers, dominates the north coast of South America (Muller-Karger 1993). Unlike the ARA and GOMRA, the SEFSC does not conduct research in estuarine waters within the CRA.

TPWD Specified Geographic Area

TPWD conducts fisheries research using gillnets in ten Texas bay systems: Laguna Madre, Corpus Christi Bay, Aransas Bay, San Antonio Bay, Matagorda Bay, East Matagorda Bay, Cedar Lakes, West Bay, Galveston Bay, and Sabine Lake (see Figure 1 and 2 in TPWD's application). These systems are wide and shallow with little tidal elevation change.

Detailed Description of Activities

SEFSC

The Federal government has a trust responsibility to protect living marine resources in waters of the U.S., also referred to as Federal waters. These waters generally lie 3 to 200 nautical miles (nm) from the shoreline. Those waters 3–12 nm offshore comprise territorial waters and those 12-to-200 nm offshore comprise the Exclusive Economic Zone (EEZ), except where other nations have adjacent territorial claims. NOAA also conducts research to foster resource protection in state waters (*i.e.,* estuaries and oceanic waters with 3 nm of shore). The U.S. government has also entered into a number of international agreements and treaties related to the management of living marine resources in international waters outside of the U.S. EEZ (*i.e.,* the high seas). To carry out its responsibilities over Federal and international waters, Congress has enacted several statutes authorizing certain Federal agencies to administer programs to manage and protect living marine resources. Among these Federal agencies, NOAA has the primary responsibility for protecting marine finfish and shellfish species and their habitats. Within NOAA, NMFS has been delegated primary responsibility for the science-based management, conservation, and protection of living marine resources.

The SEFSC conducts multi-disciplinary research programs to provide management information to support national and regional programs of NMFS and to respond to the needs of Regional Fishery Management Councils (FMCs), interstate and international fishery commissions, Fishery Development Foundations, government agencies, and the general public. SEFSC develops the scientific information required for fishery resource conservation, fishery development and utilization, habitat conservation, and protection of marine mammals and endangered marine species. Research is pursued to address specific needs in population dynamics, fishery biology and economics, engineering and gear development, and protected species biology. Specifically, research includes monitoring fish stock recruitment, abundance, survival and biological rates, geographic distribution of species and stocks, ecosystem process changes, and marine ecological research.

To carry out this research, the SEFSC proposes to administer or conduct 74 survey programs during the 5-year period the proposed regulations would be effective; however, only 44 surveys have the potential to take marine mammals from gear interaction or acoustic harassment. Surveys would be carried out by SEFSC scientists alone or in combination with Federal, state, or academic partners while some surveys would be carried out solely by cooperating research partners. Surveys not conducted by SEFSC staff are included here because they are funded or have received other support (*e.g.,* gear) by the SEFSC. SEFSC scientists conduct fishery-independent research onboard NOAA-owned and operated vessels or chartered vessels while partners conduct research aboard NOAA, their own or chartered vessels. Table 1 provides a summary of annual projects including survey name, entity conducting the survey, location, gear type, and effort. The information presented here augments the more detailed table included in the SEFSC's application. In the subsequent section, we describe relevant active acoustic devices, which are commonly used in SEFSC survey activities. Appendix A of the SEFSC's application contains detailed descriptions, pictures, and diagrams of all research gear and vessels used by the SEFSC and partners under this proposed rulemaking.

TABLE 1—SUMMARY DESCRIPTION OF FISHERIES AND ECOSYSTEM RESEARCH ACTIVITIES CONDUCTED OR FUNDED BY THE SEFSC IN THE GOMRA, ARA, AND CRA

Survey name (research agency)	General area of operation	Season, frequency, yearly days at sea (DAS)	Vessel used	Gear used	Number of stations
Gulf of Mexico Research Area					
HMS—GOM Shark Pupping & Nursery Survey (GULFSPAN), (SEFSC, USM/GCRL, UWF, FSU/CML) [1] * UWF is inactive.	SEFSC—FL Panhandle in St. Andrew Bay and St. Joseph Bay, 1–10 m depths.	Annual Apr–Oct, 30 DAS, (approximately 4 days/month), daytime operations only.	USCG Class I: R/V *Mokarran, R/V Pristis*.	Set gillnet	SEFSC—16–20 sets/month, up to 120 sets total.
	Mississippi Sound, 1–9 m depths.	Annual Apr–Oct, 8 DAS (1/month), daytime operations only.	USCG Class I: *Small vessel*.	Set gillnet	3 sets/month, 21 sets total.
	Perdido Bay, Pensacola Bay, Choctawhatchee Bay, and Santa Rosa Sound, 1.5–6 m depths.	Annual May–Sep, 10 DAS (2/month), daytime operations only.	USCG Class I: State vessel.	Set gillnet	10 sets/month, 50 sets total.
	Northwest FL state waters, 0.7–7 m depths.	Annual	USCG Class I: R/V *Naucrates*.	Set gillnet	74 sets/yr total.
	(A) Apalachee Bay	(A) Jan–Dec, 12 DAS (1/month).			(A) 24 sets.
	(B) Alligator Pt.-Anclote Keys.	(B) June & July, 20 DAS, daytime operations only.		Bottom longline.	(B) 50 sets. 74 sets/yr total. (A) 24 total. (B) 50 total.
	State waters of southwest FL within Pine Island Sound in the Charlotte Harbor estuary. Depth ranges 0.6–4.6 m depth.	Annual May–Sep, 15 DAS, daytime operations only.	USCG Class I: State vessel.	Set gillnet	16 sets/month (within two designated 10 km^2 grids), 80 sets total.
IJA Coastal Finfish Gillnet Survey, (MDMR) [1].	Mississippi Sound and estuaries; 0.2–2 m depths.	Annual, Jan–Dec, 24 DAS, daytime operations only.	USCG Class I: *Small vessel*.	Sinking gillnet, shallow deployment.	8 sets/month, 96 sets total.
Smalltooth Sawfish Abundance Survey, (SEFSC) [1].	Ten Thousand Islands, FL backcountry region, including areas in Everglades National Park and Ten Thousand Island National Wildlife Refuge in 0.2–1.0 m depths.	Annual, Mar–Nov, 56 DAS (6–7 DAS/trip), daytime operations only.	USCG Class I: R/V *Pristis*.	Set gillnet, shallow deployment.	~20 sets/month, 180–200 sets total.
Pelagic Longline Survey—GOM, (SEFSC) [1].	U.S. GOM	Intermittent, Feb–May, 30 DAS, 24 hour operations (set/haul anytime day or night).	USCG R/V: R/V *Oregon II*.	Pelagic longline CTD profiler	100–125 sets. 100–125 casts.
Shark and Red Snapper Bottom Longline Survey-GOM, (SEFSC) [1].	Randomly selected sites from FL to Brownsville, TX between bottom depths 9–366 m.	Annually, July–Sep, 60 DAS, 24 hour operations (set/haul anytime day or night).	USCG R/V: R/V *Oregon II, R/V Gordon Gunter;*. USCG Small R/V: R/V *Caretta,* R/V *Gandy*.	Bottom longline CTD profiler and rosette water sampler.	175 sets 175 casts.
SEAMAP—GOM Bottom Longline Survey, (ADCNR, USM–GCRL, LDWF, TPWD) [1].	AL—MS Sound, Mobile Bay, and near Dauphin Island. MS—MS Sound, south of the MS Barrier Islands, Chandeleur, and Breton Sound, and the area east of the Chandeleur Islands. LA—LA waters west of the MS River. TX—near Aransas Pass and Bolivar Roads Ship Channel.	Annually, Apr–May, June–July, Aug–Sep. AL—8 DAS, day operations only. MS—16 DAS, day operations only. LA—30 DAS, day operations only. TX—10 DAS, day operations only.	USCG Class III: R/V *E.O. Wilson,* R/V *Alabama Discovery,* R/V *Defender I,* R/V *Tom McIlwain,* RV *Jim Franks,* R/V *Nueces,* R/V *SanJacinto*. USCG R/V: R/V *Blazing Seven* (2011–2014).	Bottom longline CTD Profiler Water quality and chemistry (YSI instruments, Niskin bottles, turbidity meter).	AL—32 sets. MS—40. LA—98. TX—20. AL—32 casts. LA—40. MS—40 casts. TX—20.
IJA Biloxi Bay Beam Trawl Survey, (MDMR) [1].	MS state waters in Biloxi Bay, 1–5 ft depths.	Annually, Jan–Dec, 25 DAS, day operations only.	USCG Class I: R/V *Grav I,* R/V *Grav II,* R/V *Grav IV*.	Modified beam trawl	11 trawls/month, 132 trawls total.
IJA Inshore Finfish Trawl Survey, (MDMR) [1].	MS state waters from Bay St. Louis, to approximately 2 miles south Cat Island, 5–25 ft depths.	Annually, Jan–Dec, 12 DAS, day operations only.	USCG Class I: small vessel R/V *Geoship*.	Otter trawl	72 trawls.
IJA Open Bay Shellfish Trawl Survey, (TPWD) [1].	TX state waters in Galveston, Matagorda, Aransas, and Corpus Christi Bays and the lower Laguna Madre, 3–30 ft depths.	Annually, Jan–Dec, 120 DAS, day operations only.	USCG Class I: small vessel. USCG Class II: R/V *Trinity Bay,* R/V *Copano Bay,* R/V *RJ Kemp*.	Otter trawl Water quality and chemistry (YSI instruments, Niskin bottles, turbidity meter).	90 trawls/month, 1080 trawls total.

TABLE 1—SUMMARY DESCRIPTION OF FISHERIES AND ECOSYSTEM RESEARCH ACTIVITIES CONDUCTED OR FUNDED BY THE SEFSC IN THE GOMRA, ARA, AND CRA—Continued

Survey name (research agency)	General area of operation	Season, frequency, yearly days at sea (DAS)	Vessel used	Gear used	Number of stations
Oceanic Deep-water Trawl—GOM, (SEFSC) [1].	U.S. GOM waters >500 m deep.	Intermittent due to funding, 20 DAS, 24 hour operations. * conducted in 2009 & 2010 and in the future as funding allows.	USCG R/V: R/V *Gunter,* R/V *Pisces.*	High Speed Midwater Trawl, Aleutian Wing Trawl. CTD profiler and rosette water sampler.	60 trawls (2–3 per day). 60 casts. Tow speed: 0. Duration: 60–90 min.
St. Andrew Bay Juvenile Reef Fish Trawl Survey, (SEFSC) [1].	St. Andrew Bay, FL, up to 2 m depths.	Annually, May–Nov, 28 DAS, day operations only, (one day/week).	USCG Class I: Boston Whaler.	Benthic Trawl	13 trawls per week, 24 weeks, 312 trawls total.
Small Pelagics Trawl Survey, (SEFSC) [1].	U.S. GOM in depths of 50–500 m.	Annually, Oct–Nov, 40 DAS, 24 hour operations (set/haul anytime day or night).	USCG R/V: R/V *Gordon Gunter,* R/V *Pisces.*	High-opening bottom trawl. Simrad ME70 Multi-Beam echosounder. EK60 Multi-frequency single-beam active acoustics. ADCP ..... CTD profiler and rosette water sampler.	150–200 trawls. Continuous. Continuous. Continuous. 250 casts.
SEAMAP–GOM Shrimp/Groundfish Trawl Survey, (SEFSC, FFWCC, ADCNR, USM/GCRL, LDWF) [1].	U.S. GOM from FL to Mexico in depths of 30–360 ft.	Annually, summer (June & July) and fall (Oct–Nov), effort evenly divided between seasons unless noted; all surveys have 24 hour operations-set/haul anytime day or night. SEFSC—80 DAS ..... FL—20 DAS (summer only). AL—6 DAS ..... MS—6 DAS ..... LA—5 DAS	USCG Class II: R/V *Trinity Bay,* R/V *Copano Bay,* R/V *RJ Kemp.* USCG Class III: R/V *A.E. Verrill,* R/V *Alabama Discovery,* R/V *Sabine Lake,* R/V *Nueces,* R/V *San Jacinto,* R/V *San Antonio,* R/V *Matagorda Bay.* USCG R/V: R/V *Oregon II,* R/V *Tommy Munro,* R/V *Weatherbird II,* R/V *Pelican,* R/V *Blazing Seven* (2011–2014), R/V *Point Sur.*	Otter trawl ..... CTD profiler and rosette water sampler TPWD uses YSI Datasonde 6600 v2–4.	Effort evenly divided between seasons unless noted. SEFSC—345 trawls (summer), 325 (fall). FL—160 (summer only). AL—16–24. MS—60. LA—32. SEFSC—395 casts (summer), 305 (fall). FL—200 (summer only). AL—20. MS—81. LA—39.
SEFSC BRD Evaluations, (SEFSC) [1].	State and Federal nearshore and offshore waters off FL, AL, MS, and LA at depths of 10–35 m. Also Mississippi Sound at depths of 3–6 m.	Annually, May & Aug (one week/month), 14 DAS, night operations only.	USCG Class III: R/V *Caretta.*	Western jib shrimp trawls	20 paired trawls each season, 40 paired trawls total.
SEFSC–GOM TED Evaluations, (SEFSC) [1].	State and Federal nearshore and offshore waters off FL, AL, MS, and LA at depths of 10–35 m. Also Mississippi Sound at depths of 3–6 m.	Annually, May, Aug, & Sep (one week/month), 21 DAS, day operations only.	USCG Class I & II: NOAA small boats. USCG Class III: R/V *Caretta.*	Western jib shrimp trawls	30 paired trawls per season, 90 paired trawls total.
SEFSC Skimmer Trawl TED Testing, (SEFSC) [1].	Conducted in Mississippi Sound, Chandeleur Sound, and Breton Sound at depths of 2–6 m.	Annually until 2016 (tentative depending on funding and need) May–Dec, 5–15 DAS/month, 60 DAS total, 24 hour operations-set/haul anytime day or night.	USCG Class III: R/V *Caretta.*	Skimmer trawls	600 paired trawls.
SEFSC Small Turtle TED Testing and Gear Evaluations, (SEFSC) [1].	State waters in St. Andrews Bay, FL and off Shell Island and/or Panama City Beach, FL at depths of 7–10 m.	Annually , 21 DAS, day operations only.	USCG Class III: R/V *Caretta.*	Western jib shrimp trawls are utilized during TED evaluations.	100 paired trawls.
IJA Biloxi Bay Seine Survey, (MDMR) [1].	MS state waters in Biloxi Bay, 1–5 ft depths.	Annually, Jan–Dec, 25 DAS, day operations only.	USCG Class I & II: R/V *Grav I,* R/V *Grav II,* R/V *Grav IV,* small vessel.	Bag seine	11 sets/month, 132 sets total.
IJA Oyster Dredge Monitoring Survey, (MDMR).	MS state waters, at commercially important oyster reefs: Pass Christian Complex, Pass Marianne Reef, Telegraph Reef and St. Joe Reef, in 5–15 ft depths.	Annually, Jan–Dec, 12 DAS, day operations only.	USCG Class I: R/V *Rookie.* USCG Class II: R/V *Silvership.*	Oyster dredge	38 tows.

TABLE 1—SUMMARY DESCRIPTION OF FISHERIES AND ECOSYSTEM RESEARCH ACTIVITIES CONDUCTED OR FUNDED BY THE SEFSC IN THE GOMRA, ARA, AND CRA—Continued

Survey name (research agency)	General area of operation	Season, frequency, yearly days at sea (DAS)	Vessel used	Gear used	Number of stations
IJA Shoreline Shellfish Bag Seine Survey, (TPWD) [1].	TX state waters in Galveston, Matagorda, Aransas, and Corpus Christi Bays and the lower Laguna Madre, 0–6 ft depths.	Annually, Jan–Dec, 120 DAS, day operations only.	N/A	Bag seine	100 sets/month, 1200 total.
Marine Mammal and Ecosystem Assessment Survey-GOM, (SEFSC) [1].	Northern GOM	Every three years, June–Sep, 60 DAS, 24 hour operations (set/haul anytime day or night).	USCG R/V: R/V *Gordon Gunter*.	CTD profiler and rosette water sampler.	60 casts.
				Expendable bathythermographs.	300 units.
				ADCP	Continuous.
				Simrad ME70 Multi-Beam echosounder.	Continuous.
				EK60 Multi-frequency single-beam active acoustics.	Continuous.
				Passive acoustic arrays	Continuous.
Northeast GOM MPA Survey, (SEFSC). *Currently Inactive	Madison-Swanson, Steamboat Lumps, and The Edges marine reserves on the West Florida Shelf.	Annually, Feb–Mar, 60 DAS, day operations only.	USCG Class III: R/V *Caretta*.	4-camera array	100—200 deployments
				CTD Profiler	100—200 casts.
Panama City Laboratory Reef Fish (Trap/Video) Survey, (SEFSC).	Penscecola, FL to Cedar Key, FL.	Annually, May–Sep, 40 DAS, day operations only.	USCG Class II: *R/V Harold B,* USCG Class III: *R/V Caretta, R/V Defender, R/V Apalachee*.	4-camera array	200 deployments.
				Chevron fish trap outfitted with one GoPro video camera.	100 sets.
				CTD profiler	200 casts.
SEAMAP–GOM Finfish Vertical Line Survey, (ADCNR, LDWF, USM/GCRL).	State and Federal waters off Alabama at sampling depths from 60 to 500 ft and LA waters west of the Mississippi River across three depth strata (60–120 ft, 120–180 ft, and 180–360 ft) and selected areas of Texas at three depth strata (33–66 ft, 66–132 ft, and 132–495 ft). Stations are sampled during daylight hours.	AL: Annually, two intervals: spring (Apr/May) and summer (July–Sep), 9 DAS, day operations only. LA and TX: Annually, April–Oct.	USCG Class III: R/V *Escape,* R/V *Lady Ann,* R/V *Defender I*. USCG R/V: R/V *Blazing Seven* (2011–2014), *Poseidon, Trident R/V Sabine, San Jacinto, San Antonio, Nueces, Laguna*.	Bandit gear	AL: 120 sets per season, 240 sets total. LA: 100 sets total. TX: 165 sets total.
	State and Federal waters off MS. Sampling depths 5–55 fathoms.. Stations are sampled during daylight hours.	Annually, Mar–Oct, 16 DAS (4 days/month), day operations only.	USCG Class III: R/V *Jim Franks*.	Bandit gear	15 stations/season—45 stations total, 3 sets per station, 135 sets total.
SEAMAP–GOM Plankton Survey, (ADCNR, LDWF, USM/GCRL).	State and Federal waters off the coast of AL, MS, LA, and FL.	AL: Annually, Aug–Sep, 2 DAS, day operations only. LA: Annually, June, Sep, 2 DAS, day operations only. MS: Annually, May and Sep, 4 DAS, 24 hour operations.	USCG Class III: R/V *A.E. Verrill,* R/V *Alabama Discovery,* R/V *Acadiana*. USCG R/V: R/V *Blazing Seven* (2011–2014), R/V *Point Sur;* R/V *Defender*.	Bongo net	AL: 6 tows. LA: 9 tows. MS: 20 tows.
				Neuston net	AL: 6 tows. LA: 9 tows. MS/FL: 20 tows.
				CTD Profiler	AL: 6 casts. LA: 9 casts. MS/FL: 20 casts.
SEAMAP–GOM Plankton Survey, (SEFSC).	Coastal, shelf and open ocean waters of the GOM.	Annually, Feb–Mar (winter), 30 DAS;. Apr–May (spring), 60 DAS;. Aug–Sep (fall), 36 DAS .. 24 hour operations (set/haul anytime day or night).	USCG R/V: R/V *Oregon II,* R/V *Gordon Gunter,* R/V *Pisces*.	Bongo net	650 tows.
				Neuston net	650 tows.
				MOCNESS	378 tows.
				Methot juvenile fish net ..	126 tows.
				CTD profiler and rosette water sampler.	756 casts.
SEAMAP–GOM Reef Fish Monitoring, (FFWCC).	West FL shelf from 26°N to Dry Tortugas, FL.	Annual, July–Sep, 50 DAS, daylight hours.	USCG Class I & II: R/V *No Frills,* R/V *Gulf Mariner,* R/V *Sonic,* R/V *Johnson,* chartered fishing vessels. USCG Small R/V: R/V *Bellows,* R/V *Apalachee*. USCG R/V: *R/V Weatherbird*.	2-camera array	150 deployments.
				Chevron fish trap	300–450 sets.
				CTD profiler	300 casts.

TABLE 1—SUMMARY DESCRIPTION OF FISHERIES AND ECOSYSTEM RESEARCH ACTIVITIES CONDUCTED OR FUNDED BY THE SEFSC IN THE GOMRA, ARA, AND CRA—Continued

Survey name (research agency)	General area of operation	Season, frequency, yearly days at sea (DAS)	Vessel used	Gear used	Number of stations
SEAMAP–GOM Reef Fish Survey, (SEFSC).	Gulf-wide survey from Brownsville, TX to Key West, FL, in depths of 15–500 ft. Approximately 7.0% of this survey effort (458 stations) occurs within the Florida Garden Banks NMS.	Annual, Apr–July, 60 DAS, 24 hour operations on large vessels (cameras, traps, bandit—daytime only), 12 hour operations on small vessels (daytime only).	USCG Class III: R/V *Caretta*, R/V *Gandy*. USCG R/V: R/V *Pisces*, R/V *Oregon II*. USCG R/V: *Southern Journey*. NOAA Ship: *Gordon Hunter*.	4-camera array ..... Chevron trap (discontinued use in 2013). CTD Profiler ..... Bandit Reels ..... Acoustic Doppler Current Profiler. Simrad ME70 Multi-beam echosounder. EK60 Multi-frequency single-beam active acoustics.	400–600 deployments. 50–100 sets. 400–600 casts. 120 sets. Continuous. Continuous. Continuous.
IJA Oyster Visual Monitoring Survey, (MDMR).	MS state waters, 5–15 ft depths.	Annually, Sep/Oct to Apr/May of following year, 12 DAS, day operations only.	USCG Class I & II: R/V *Silvership*, R/V *Rookie*.	SCUBA divers	~ 20 dives.
Reef Fish Visual Census Survey—Dry Tortugas, Flower Gardens (SEFSC).	Dry Tortugas area in the GOM, <33m deep.	Biannually, May–Sept, 25 DAS, day operations only.	USCG Class II & III: Chartered dive vessel.	SCUBA divers with meter sticks, 30 cm rule and digital camera.	300 stations (4 dives per station).
Tortugas Ecological Reserve Survey, (SEFSC) *. *Currently inactive since 2015..	Tortugas South Ecological Reserve, Florida Keys National Marine Sanctuary.	Biannually, summer (June or July), 6 days, day and night 12 hour operations. *Survey has been discontinued since 2015.	USCG Class II & III: Chartered vessel.	SCUBA divers, transect tape, clipboards/pencils.	16 stations, each station done 2–3 times.
Atlantic Research Area					
ACFCMA American Eel Fyke Net Survey, (SCDNR).	Goose Creek Reservoir or the Cooper River, near Charleston, SC, 1–7 ft depths.	Annually, Feb–Apr, 32 DAS, day operations only.	USCG Class A: John Boat—no motor, walk/wade to work net.	Fyke net ..... Thermometer	1 station per day, 40 collections total. 32 casts.
ACFCMA American Shad Drift Gillnet Survey, (SCDNR) [1].	Santee, Edisto, Waccamaw, Combahee Rivers, SC.	Annual, Jan–Apr, (2–3 trips/week), 40 DAS, day operations only.	USCG Class I: R/V *Bateau* R/V *McKee Craft*.	Drift gillnet	4–5 sets/trip, 120 sets total.
RecFIN Red Drum Trammel Net Survey, (SCDNR).	Coastal estuaries and rivers of SC in depths of 6 ft or less along shoreline..	Annually, Jan–Dec, 120–144 DAS (14–18 days/month), day operations only.	USCG Class I: Florida Mullet Skiffs.	Trammel net	1000 sets/yr covering 225 stations/yr. Operates in 7–9 strata/month.
HMS Chesapeake Bay and Coastal Virginia Bottom Longline Shark Survey, (VIMS) [1].	Chesapeake Bay and state and Federal waters off Virginia.	Annually, May–Oct (5 days/month), 30 DAS, day operations only.	USCG Class III: R/V *Bay Eagle*.	Bottom longline ..... Hydrolab MS5 Sonde	50 sets. 50 casts.
MARMAP Reef Fish Long Bottom Longline Survey, (SCDNR) [1].	South Atlantic Bight (between 27°N and 34°N, but mostly off GA and SC). Sampling occurs in Federal waters. Depths from ~ 500 to 860 ft.	Annually 1996–2012 *, Aug–Oct, 10–20 DAS, day operations only. *Halted in 2012 but will resume annually if funding obtained.	USCG Small R/V: R/V *Lady Lisa*.	Bottom longline ..... CTD profiler	60 sets. 60 casts.
MARMAP/SEAMAP–SA Reef Fish Survey, (SCDNR) [1]. *Inactive 2012–2014	South Atlantic Bight (between 27°N and 34°N).	Annually, year-round but primarily Apr–Oct, 70–120 DAS, day operations only. Bottom longline ..... Bandit reels ..... CTD profiler	USCG R/V: R/V *Palmetto* 60 sets. ..... 400 sets. ..... 300 casts..	Chevron fish trap outfitted with two cameras.	600 sets.
Pelagic Longline Survey-SA, (SEFSC) [1]. (See also effort conducted in the GOMRA).	Cape Hatteras, NC to Cape Canaveral, FL.	Intermittent, Feb–May, 30 DAS, 24 hour operations (set/haul anytime day or night).	USCG R/V: R/V *Oregon II*.	Pelagic Longline ..... CTD profiler	100–125 sets. 100–125 casts.
Shark and Red Snapper Bottom Longline Survey-SA, (SEFSC) [1]. (See also effort conducted in the GOMRA).	Cape Hatteras, NC to Cape Canaveral, FL between bottom depths 9–183 m.	Annually, July–Sep, 60 DAS, 24 hour operations (set/haul anytime day or night).	USCG Class III: R/V *Caretta*. USCG R/V: R/V *Oregon II*, R/V *Gordon Gunter*.	Bottom longline ..... CTD profiler and rosette water sampler. Neuston and bongo effort if needed to augment SEAMAP plankton objectives.	70 sets. 70 casts. 0–20 tows.

TABLE 1—SUMMARY DESCRIPTION OF FISHERIES AND ECOSYSTEM RESEARCH ACTIVITIES CONDUCTED OR FUNDED BY THE SEFSC IN THE GOMRA, ARA, AND CRA—Continued

Survey name (research agency)	General area of operation	Season, frequency, yearly days at sea (DAS)	Vessel used	Gear used	Number of stations
SEAMAP–SA Red Drum Bottom Longline Survey, (NCDEQ, SCDNR, GDNR) [1].	NC: Pamlico Sound or in the nearshore waters of Ocracoke Inlet. SC: Estuaries out to 10 miles in Winyah Bay, Charleston Harbor, St. Helena Sound, and Port Royal Sound. GA: State and Federal waters off the coast of GA and NE FL, (~32°05′N latitude to the north, 29°20′N latitude to the south, 80°30′W longitude to the east, and the coastline to the west.).	Annually ..... NC: mid-July to mid-Oct (2 days/week for 12 weeks), 24 DAS, 12 hour operations, beginning at dusk. SC: Aug–Dec, day operations only 36 DAS GA: Apr–Dec (6 days/month), 54 DAS, day operations only.	USCG Class II: 26 ft outboard. USCG Class III: R/V *Marguerite,* R/V *Silver Crescent*.	Bottom longline ..... YSI (Dissolved oxygen, salinity, temperature).	NC: 75–100 sets total. SC: 360 sets. GA: 200–275 sets. NC: 75–100 casts. SC: 360 casts. GA: 200–275 casts.
ACFCMA Ecological Monitoring Trawl Survey, (GDNR) [1].	Georgia state waters out to three nm, 10–35 ft depths.	Annually, Jan–Dec (7 days/month), 84 DAS, day operations only.	USCG Class III: R/V *Anna*.	Otter trawl ..... YSI 85 (Dissolved oxygen, salinity, temperature).	42 trawls/month, 504 trawls total. 504 casts total.
ACFCMA Juvenile Stage Trawl Survey, (GDNR) [1].	Creeks and rivers of three Georgia sound systems (Ossabaw, Altamaha, and St. Andrew).	Annually, Dec–Jan (3 days/month), 36 DAS, day operations only.	USCG Class I: 19 ft Cape Horn; 25 ft Parker.	Otter trawl ..... YSI 85 (Dissolved oxygen, salinity, temperature).	18 trawls/month, 216 trawls total. 216 casts total.
Atlantic Striped Bass Tagging Bottom Trawl Survey, (USFWS) [1].	North of Cape Hatteras, NC, in state and Federal waters, 30–120 ft depths.	Annually, Jan–Feb, 14 DAS, 24 hour operations (set/haul anytime day or night).	USCG R/V: R/V *Oregon II,* R/V *Cape Hatteras,* R/V *Savannah*.	65 ft high-opening bottom trawls.	200–350 trawls.
Juvenile Sport Fish Trawl Monitoring in Florida Bay, (SEFSC) [1].	Florida Bay, FL	Annually, May–Nov, 35 DAS, day operations only.	USCG Class I: R/V *Batou*.	Otter trawl	−500 trawls.
Oceanic Deep-water Trawl Survey (SEFSC) [1]. *Currently Inactive	Southeastern U.S. Atlantic waters >500 m deep.	Intermittent due to funding, 20 DAS, 24 hour operations (trawls may be set and retrieved day or night), *conducted as funding allows.	USCG R/V: NOAA ships	High Speed Midwater Trawl, Aleutian Wing Trawl. CTD profiler and rosette water sampler.	60 trawls (2–3 per day). 60 casts.
SEAMAP–SA NC Pamlico Sound Trawl Survey, (NCDENR) [1].	Pamlico Sound and the Pamlico, Pungo, and Neuse rivers in waters ≥6 ft deep.	Annually, June & Sep, 20 DAS (10 days/month), day operations only.	USCG Class III: R/V *Carolina Coast*.	Otter trawl: paired mongoose-type Falcon bottom trawls. Ponar grab ..... YSI 556 (Dissolved oxygen, salinity, temperature). Secchi disk	54 trawls each month, 108 trawls total. 54 casts each month, 108 total. 54 casts each month, 108 total. 54 casts each month, 108 total.
SEAMAP–SA Coastal Trawl Survey, (SCDNR) [1].	Cape Hatteras, NC to Cape Canaveral, FL in nearshore oceanic waters of 15–30 ft depth.	Annually, Apr–May (spring), July–Aug (summer), and Oct–Nov (fall), 60–65 DAS, day operations only.	USCG Small R/V: R/V *Lady Lisa*.	Otter trawl: paired mongoose-type Falcon bottom trawls. SEABIRD electronic CTD	300–350 trawls total, evenly divided between seasons. 300–350 casts.
SEFSC–SA TED Evaluations, (SEFSC) [1].	State and Federal waters off Georgia and eastern FL.	Annually, Nov–Apr, 10 DAS, 24 hour operations-set/haul anytime day or night.	USCG Class III: R/V *Georgia Bulldog*.	Otter trawl: Mongoose shrimp trawls.	50 paired trawls.
In-Water Sea Turtle Research (SCDNR) [1].	Winyah Bay, SC to St. Augustine, FL in water depths of 15–45 ft.	Annually, mid-May through late Jul to early Aug, 24–30 DAS, day operations only.	USCG Class III: R/V *Georgia Bulldog*. USCG Small R/V: R/V *Lady Lisa*.	Paired flat net bottom trawls (NMFS Turtle Nets per Dickerson et al. 1995) with tickler chains.	400–450 trawls.

TABLE 1—SUMMARY DESCRIPTION OF FISHERIES AND ECOSYSTEM RESEARCH ACTIVITIES CONDUCTED OR FUNDED BY THE SEFSC IN THE GOMRA, ARA, AND CRA—Continued

Survey name (research agency)	General area of operation	Season, frequency, yearly days at sea (DAS)	Vessel used	Gear used	Number of stations
ACFCMA American Eel Pot Survey for Yellow-phase Eels, (GADNR).	Georgia state waters in the Altamaha River System. Sampling is conducted during daylight hours. Depth ranges from 2 to 20 ft.	Annually. Sampling monthly Nov–Apr. based on water temp. 36 DAS (6 days/month), day operations only.	USCG Class I: 19 ft Cape Horn, 18 ft skiff.	Eel traps/pots with float ..	30 stations (180 sets/month; 30 traps set each of 6 days).
Beaufort Bridgenet Plankton Survey, (SEFSC).	Pivers Island Bridge, NOAA Beaufort facility, Beaufort, NC.	Annually, Nov–May (some years monthly Jan–Dec), night operations only sampling occurs once per week, n + 4 tows per night.	None	Plankton net	125 tows.
Integrated Biscayne Bay Ecological Assessment and Monitoring Project (IBBEAM) Project, (SEFSC).	Western shoreline of Biscayne Bay, FL.	Twice annually, May–Oct (wet season) and Nov–Apr (dry season), 14 DAS, day operations only.	USCG Class II & III vessels.	Human divers ..... Throw trap	100 dives 372 casts.
Intraspecific Diversity in Pink Shrimp Survey, (SEFSC). *Currently inactive	Florida Bay, Whitewater Bay, Fakahatchee Bay, Biscayne Bay, Sanibel shrimp fishery, Tortugas shrimp fishery.	Annually, June–Aug, 16 DAS, day operations only.	USCG Class I: R/V *Privateer*.	Miniature roller-frame trawl. Dip net ..... Bag seine	40 trawls. 40 samples. 40 sets.
Marine Mammal and Ecosystem Assessment Survey-SA, (SEFSC) [1].	Southeastern U.S. Atlantic.	Every three years, June–Sep, 60 DAS, 24 hour operations.	USCG R/V: R/V *Gordon Gunter*.	CTD profiler and rosette water sampler. Expendable bathythermographs. Acoustic Doppler Current Profiler. Simrad ME70 Multi-Beam echosounder. EK60 Multi-frequency single-beam active acoustics. Passive acoustic arrays	60 casts. 300 units. Continuous. Continuous. Continuous. Continuous.
RecFIN Red Drum Electrofishing Survey, (SCDNR).	Coastal estuaries and rivers of SC in depths of 6 ft or less in low salinity waters (0–12 ppt).	Annually, Jan–Dec, 60–72 DAS (5–6 days/month), day operations only.	USCG Class I: Small vessels.	18 ft elecrofishing boat ...	360 stations per year (30 sites/month).
St. Lucie Rod-and-Reel Fish Health Study, (SEFSC) [1]. *Currently inactive	Nearshore reef, inlet, and estuary of St. Lucie River, FL inlet system (Jupiter or Ft. Pierce, FL).	Annually, Jan–Dec, weekly, 156 DAS, day operations only.	USCG Class I: Small vessels.	Rod and reel gear	468 stations per year: 3/day × 3 day/wk.
SEAMAP–SA Gag Ingress Study, (SCDNR). *Inactive since 2016	In the vicinity of Swansboro, NC; Wilmington, NC; Georgetown, SC; Charleston, SC; Beaufort, SC; Savannah, GA; and Brunswick, GA.	Annually, Mar–June, 100 DAS, day operations only.	USCG Class I: Small vessels.	Witham collectors	15 sets (4 collectors at each set), 60 sets total.
Southeast Fishery Independent Survey (SEFIS) (SEFSC) [1].	Cape Hatteras, NC, to St. Lucie Inlet, FL. Fifteen survey stations occur within Gray's Reef NMS.	Annually, Apr–Oct, 30–80 DAS, 24 hour operations (cameras & traps-daytime operations, acoustics—anytime day or night).	USCG R/V: R/V *Nancy Foster*, R/V *Pisces,* R/V *Savannah*.	Chevron fish trap outfitted with 2 high-definition video cameras. CTD profiler ..... Simrad ME70 Multi-Beam echosounder. Multi-frequency single-beam active acoustics.	1000 deployments. 100–200 casts. Continuous. Continuous.
U.S. South Atlantic MPA Survey, (SEFSC) [1].	Jacksonville, FL to Cape Fear, NC on or near the continental shelf edge at depths between 80 and 600 m.	Annually, May–Aug, 14 DAS, 24 hour operations (ROV daytime operations, acoustics—anytime day or night).	USCG R/V: R/V *Pisces,* R/V *Nancy Foster,* R/V *Spree*.	ROV Phantom S2 vehicle with tether attached to CTD cable. CTD profiler ..... Simrad ME70 Multi-Beam echosounder. EK60 Multi-frequency single-beam active acoustics.	10–40 deployments. 28 casts. Every other night for 6–12 hrs. Every other night for 6–12 hrs.

TABLE 1—SUMMARY DESCRIPTION OF FISHERIES AND ECOSYSTEM RESEARCH ACTIVITIES CONDUCTED OR FUNDED BY THE SEFSC IN THE GOMRA, ARA, AND CRA—Continued

Survey name (research agency)	General area of operation	Season, frequency, yearly days at sea (DAS)	Vessel used	Gear used	Number of stations
FL/Dry Tortugas Coral Reef Benthic Survey, (SEFSC).	Survey area encompasses Federal and territorial waters from Dry Tortugas to Martin County, FL. Surveys occur within the Florida Keys NMS (150 stations).	Quarterly-annually, May–Oct, 100 DAS.	USCG Class I & II: small vessels.	SCUBA divers with measuring devices, cameras, and hand tools.	300 dives.
Demographic Monitoring of *Acropora* Species, (SEFSC).	Florida Keys National Marine Sanctuary.	3x per year, ~35 DAS	USCG Class I	SCUBA divers	30 fixed plots.
Reef Fish Visual Census Survey—Florida Keys/SE Florida Shelf, (SEFSC).	Florida Keys NMS and SE Florida Shelf, <33 m deep.	Annually, May–Sep, 25 DAS, day operations only.	USCG Class I: R/V *Aldo Leopold*.	SCUBA divers with meter sticks, 30 cm rule and digital camera.	300 dives.
Caribbean Research Area.					
Caribbean Plankton Recruitment Experiment, (SEFSC).	Caribbean and Mexican waters.	Bi-annually, Feb or June, 15 DAS, 24 hour operations, anytime day or night.	USCG R/V: R/V *Gordon Gunter,* R/V *Nancy Foster*.	Bongo net ..... MOCNESS ..... CTD profiler and rosette water sampler.	75 tows 75 tows 75 casts.
Caribbean Reef Fish Survey, (SEFSC) [1].	PR and USVI, continental shelf waters.	Every two years, Mar–June, 40 DAS, 24 hour operations.	USCG R/V: R/V *Pisces,* R/V *Oregon II*.	Bandit Reels ..... 4-camera array ..... Chevron traps ..... CTD profiler ..... Simrad ME70 Multi-Beam echosounder. Acoustic Doppler Current Profiler. EK60 Multi-frequency single-beam active acoustics.	300 sets. 150 deployments. 100 sets. 300 casts. Continuous. Continuous. Continuous.
Marine Mammal and Ecosystem Assessment Survey-C, (SEFSC) [1].	U.S. Caribbean Sea	Every three years, June–Sep, 60 DAS, 24 hour operations-acoustics—anytime day or night.	USCG R/V: R/V *Gordon Gunter*.	CTD profiler and rosette water sampler. Expendable bathythermographs Acoustic Doppler Current Profiler. Simrad ME70 Multi-Beam echosounder. EK60 Multi-frequency single-beam active acoustics. Passive acoustic arrays	60 casts. 300 units. Continuous. Continuous. Continuous. Continuous.
SEAMAP–C Reef Fish Survey (PR–DNER, USVI–DFW). *Began 2017	USVI and PR territorial and Federal waters at 15–300 ft depths.	Annually, Jan–Dec, ... (Day operations only) ..... PR: 70 DAS for each coast. USVI: ~30 DAS.	USCG Class I & III: ..... *Three chartered vessels*	Camera array—two GoPro cameras and four lasers set on an aluminum frame.	PR: 120 per coast total of 240. USVI: 72 per island, 144 total.
SEAMAP–C Lane Snapper Bottom Longline Survey, (PR–DNER) [1].	East, west, and south coasts of PR in territorial and Federal waters at depths ranging from 15–300 ft.	Annually beginning July 2015, (summer, winter, fall, spring), 120 DAS (30 days/season), night operations only.	USCG Class III: *Two chartered vessels*.	Bottom longline	45 sets/season, 180 sets total.
SEAMAP–C Yellowtail Snapper Rod-and-Reel Survey, (PR–DNER) [1].	East, west, and south coasts of PR in territorial and Federal waters at depths ranging from 15–300 ft.	Annually beginning 2014, (4 sampling seasons), 120 DAS, night operations only.	USCG Class I & III: *Three chartered vessels*.	Rod-and-reel gear	120 stations (360 lines total).
Caribbean Coral Reef Benthic Survey, (SEFSC).	Federal and territorial waters around PR, USVI, and Navassa.	Annual to triennial, May–Oct, 30 DAS, day operations only.	USCG Class I & II: Small vessel <28 ft.	SCUBA divers with measuring devices and hand tools.	300 dives.
Reef Fish Visual Census Survey—U.S. Caribbean, (SEFSC).	PR and USVI waters <100 ft deep.	Annually, May–Sept, 25 DAS, day operations only.	USCG Class I & II: Small vessel <24 ft.	SCUBA divers with meter sticks, 30 cm rule and digital camera.	300 dives.
SEAMAP–C Queen Conch Visual Survey, (PR–DNER, USVI–DFW).	PR and USVI territorial waters in 10–90 ft depths, some sampling occurs in Federal waters.	Annually, ... PR: July–Nov, 35 DAS ... USVI: June–Oct, 62 DAS, day operation only.	USCG Class I & III: *Three chartered vessels*.	SCUBA divers, SCUBA gear and underwater scooters.	PR: 100 dives. USVI: 62 dives.
SEAMAP–C Spiny Lobster Post Larvae Settlement Surveys, (PR–DNER).	PR territorial waters in 6–90 ft depths.	Every four years ..... West cost of PR: Jan–Dec, 84 DAS.	USCG Class I & III: *Three chartered vessels*. R/V Erdman.	Fifty-six modified Witham pueruli collectors.	6 stations along the west coast platform per depth and distance from the shoreline.

TABLE 1—SUMMARY DESCRIPTION OF FISHERIES AND ECOSYSTEM RESEARCH ACTIVITIES CONDUCTED OR FUNDED BY THE SEFSC IN THE GOMRA, ARA, AND CRA—Continued

Survey name (research agency)	General area of operation	Season, frequency, yearly days at sea (DAS)	Vessel used	Gear used	Number of stations
SEAMAP–C Spiny Lobster Artificial Habitat Survey, (PR–DNER, USVI–DFW).	PR and USVI territorial waters in 6–90 ft depths.	Annually, ... PR: Jan–Dec, 84 DAS ... USVI: Jan–Dec, 20 DAS, day operations only.	USCG Class I & III: *Three chartered vessels.*	Juvenile lobster artificial shelters. SCUBA divers, SCUBA gear and underwater scooters.	10 shelters, continuous deployment. PR: 60 dives. USVI: 20 dives.

[1] These surveys have the potential to take marine mammals through M/SI and/or Level B harassment.
* Inactive projects are currently not conducted but could resume if funds became available.

Gillnets—A gillnet is a wall of netting that hangs in the water column, typically made of monofilament or multifilament nylon. Mesh sizes are designed to allow fish to get only their head through the netting, but not their body. The fish's gills then get caught in the mesh as the fish tries to back out of the net. A variety of regulations and factors determine the mesh size, length, and height of commercial gillnets, including area fished and target species. Gillnets can be fished floating or sinking, and stationary or drifting. Set gillnets are attached to poles fixed in the substrate or an anchor system to prevent movement of the net (*i.e.,* stationary) while drift gillnets are free-flowing but kept afloat at the proper depth using a system of weights and buoys attached to the headrope, footrope, or floatline.

A trammel net is a type of gillnet. However, unlike single wall gillnets, which will catch a narrow range of fish sizes, a trammel net is a type of gillnet that will catch a wide variety of fish sizes. Essentially, a trammel net is three layers of netting tied together on a common floatline and common leadline. The two outer layers of netting (known as walls or brails) are constructed out of large mesh netting (12 in to 18 in square) with a twine size of #9 multifilament nylon or 0.81 millimeter (mm) to 0.90 mm monofilament. The light-weight or fine netting sandwiched between the two walls is usually small mesh multifilament or monofilament gill netting. Trammel nets have a large amount of lightweight gill netting hung in the nets, and fish will be caught by gilling or by tangling in the excess netting.

Trammel nets are only used by the SCDNR in the ARA. The SCDNR sets trammel nets in depths of 6 ft or less along a shoreline. Scientists monitor the immediate area 15 minutes prior to deploying the gear. Before the net is set, while the net is being deployed, during the soak, and during haulback, the scientists monitor the net and waters around the net, maintaining a lookout for protected species. Survey protocol calls for a short, 10 minute soak time before the net is hauled.

A total of six survey programs (3 in GOMRA, 3 in ARA) utilize gillnets to accomplish the SEFSC's research objectives (see Table 1–1 in SEFSC's application). In total, 545 set gillnet deployments and 96 sinking gillnet deployments would be made in the GOMRA, primarily in bays, sounds, and estuaries. These surveys occur year-round and each set typically lasts up to 1 hour with the exception of the gillnets fished in shallow waters (0.2 to 1 m) for the Smalltooth Sawfish Abundance Survey which can last 1 to 4 hours. In the ARA, 120 drift gillnet sets would be deployed in rivers and estuaries for the American Shad Drift Gillnet Survey conducted by the SCDNR.

Trawl nets—A trawl is a funnel-shaped net towed behind a boat to capture fish. The codend (or bag) is the fine-meshed portion of the net most distant from the towing vessel where fish and other organisms larger than the mesh size are retained. In contrast to commercial fishery operations, which generally use larger mesh to capture marketable fish, research trawls often use smaller mesh to enable estimates of the size and age distributions of fish in a particular area. The body of a trawl net is generally constructed of relatively coarse mesh that functions to gather schooling fish so that they can be collected in the codend. The opening of the net, called the mouth, is extended horizontally by large panels of wide mesh called wings. The mouth of the net is held open by hydrodynamic force exerted on the trawl doors attached to the wings of the net. As the net is towed through the water, the force of the water spreads the trawl doors horizontally apart. The top of a net is called the headrope, and the bottom is called the footrope.

The SEFSC uses several types of trawl nets: Aleutian Wing Trawl, otter trawls, semi-balloon shrimp trawl, mongoose trawl, western jib shrimp trawls, skimmer trawls, roller frame trawl, and modified beam trawl. Bottom trawls (*e.g.,* shrimp trawls) are designed to capture target species at or near the seafloor. Skimmer trawls are used at the surface. Contrary to skimmer trawls, bottom trawls are not usually visible after they are deployed because they operate at or near the sea floor and the optical properties of the water limit the ability to see the bottom from the surface. Pelagic trawls are designed to operate at various depths within the water column and are most commonly set at the surface or mid-water depths. The trawl gear may be constructed and rigged for various target species and to operate over different types of bottom surfaces.

Trawls typically used in estuaries include semi-balloon shrimp trawls (fished near creeks and rivers of Georgia Sound) and miniature roller-frame trawls (fished at various South Florida estuaries). In coastal waters, the types of trawls (and operating depths) SEFSC and partners typically use include modified beam trawls (1–5 ft), otter trawls (3–360 ft), benthic trawls (up to 7 ft), western jib shrimp trawls (10–20 ft), and skimmer trawls (7–20 ft). Typical offshore trawls (and operating depths) include high speed midwater trawls (> 1,600 ft), Aleutian wing trawls (> 1,600 ft), and high-opening bottom trawls (160 to 1,600 ft).

All trawls have a lazy line attached to the codend. The lazy line floats free during active trawling, and as the net is hauled back, it is retrieved with a boat- or grappling-hook to assist in guiding and emptying the trawl nets. Twisted, three-strand, polypropylene is the most commonly used type of rope for lazy lines due to cost, strength, handling, and low specific gravity (0.91), which allows it to float.

Active acoustic devices (described later) incorporated into the research vessel and the trawl gear monitor the position and status of the net, speed of the tow, and other variables important to the research design. Gear details, schematics, and photos associated with each of these trawl net categories can be found in Table 1–1 of the SEFSC's application and Appendix A of the SEFSC's Draft PEA.

For research purposes, the speed and duration of the tow and the characteristics of the net must be standardized to allow meaningful comparisons of data collected at different times and locations. Typically, tow speed ranges from 2–4 knots (kts) while duration can range from thirty seconds to 3 hours at target depth; however most trawls last less than 30 minutes. The shorter trawls (30 seconds to 30 minutes) occur in estuaries and coastal waters less than 500 meters in depth while the longer trawls (1–3 hours) are reserved for offshore, deepwater research. The only exceptions to this are the BRD Evaluation Survey designed to test various gear for the shrimp fishery in the Gulf of Mexico and the SEFSC-South Atlantic (SA) Turtle Exclusion Device (TED) Evaluation Survey designed to test bycatch reduction devices and TEDs for commercial fishing vessels in the Atlantic Ocean. A total of 40 paired BRD Evaluation Survey trawls occur annually in May and August in state and Federal nearshore and offshore waters, including Mississippi Sound. Each trawl can last up to 2 hours. Fifty paired SEFSC–SA TED Evaluation Survey trawls occur annually from November through April in state and Federal waters off Georgia and Florida, and each trawl can last up to 4 hours.

Bag seines—Bag seines used in the GOMRA during the Inter-jurisdictional Fisheries Act (IJA) Biloxi Bay Seine Survey and IJA Shoreline Shellfish Bag Seine Survey are 50–60 feet long with 6 ft deep lateral wings (½ in stretch nylon multifilament mesh) and 6 ft wide central bag. They are both fished by hand with the Biloxi Bay survey having a 20 minute soak time and the shoreline survey having a 2–3 minute soak time. Bag seines used in the Intraspecific Diversity Pink Shrimp Survey (also in the GOMRA) are 9 ft long and taper from 50 to 10 in at the closed codend. Bag seines and similar gear are not considered to pose any risk to protected species because of their small size, slow deployment speeds, and/or structural details of the gear and are therefore not subject to specific mitigation measures. However, the officer on watch and crew monitor for any unusual circumstances that may arise at a sampling site and use their professional judgment and discretion to avoid any potential risks to marine mammals during deployment of all research equipment.

Plankton nets—SEFSC research activities include the use of several plankton sampling nets that employ very small mesh to sample plankton from various parts of the water column. Plankton sampling nets usually consist of fine mesh attached to a weighted frame. The frame spreads the mouth of the net to cover a known surface area.

1. Bongo nets are used by the SEFSC during various plankton surveys conducted throughout the three research areas. Bongo nets are also used to collect additional data during shark and finfish surveys. Bongo nets consist of two cylindrical nets that come in various diameters and fine mesh sizes (Figure A–13). The bongo nets are towed through the water at an oblique angle to sample plankton over a range of depths. During each plankton tow, the bongo nets are deployed to a depth of approximately 210 m and are then retrieved at a controlled rate so that the volume of water sampled is uniform across the range of depths. In shallow areas, the sampling protocol is adjusted to prevent contact between the bongo nets and the seafloor. A collecting bucket, attached to the end of the net, is used to contain the plankton sample. When the net is retrieved, the collecting bucket can be detached and easily transported to a laboratory. Some bongo nets can be opened and closed using remote control to enable the collection of samples from particular depth ranges. A group of depth-specific bongo net samples can be used to establish the vertical distribution of zooplankton species in the water column at a site. Bongo nets are generally used to collect zooplankton for research purposes and are not used for commercial harvest. There are no documented takes of marine mammals incidental to SEFSC research using bongo nets.

2. *Neuston net*—Neuston nets are used to collect zooplankton that lives in the top few centimeters of the sea surface (the neuston layer). This specialized net has a rectangular mouth opening (usually 2 or 3 times as wide as deep, *i.e.* 60 cm by 20 cm). They are generally towed half submerged at 1–2 kts from the side of the vessel on a boom to avoid the ship's wake. There are no documented takes of marine mammals incidental to SEFSC research using bongo nets.

3. *Other small nets*—The SEFSC also uses Methot juvenile fish nets, Multiple Opening/Closing Net and Environmental Sensing System (MOCNESS), and bag seines. A complete description of this gear and SEFSC operational protocols can be found in Appendix A of the SEFSC's Draft PEA. There are no documented takes of marine mammals and NMFS incidental to research using this gear.

Oyster Dredge—Oyster dredges are constructed from a metal frame with metal chain netting. Along the front edge of the dredge is a long bar with teeth that are dragged on the seafloor to pick up oysters and deposit them into the chain mesh netting. The oyster dredge used for the Mississippi Department of Marine Resource Oyster surveys consists of a nine-tooth bar about 20 inches wide with teeth 4 in. long and spaced 2 in. apart. There are no documented takes of marine mammals incidental to SEFSC research using oyster dredges.

Hook and Line Gear—A variety of SEFSC surveys use hook-and-line gears to sample fish either in the water column or in benthic environments. These gear types include baited hooks deployed on longlines as well as rod-and-reel and bandit gear deployments.

1. Longline—Longlines are basically strings of baited hooks that are either anchored to the bottom, for targeting groundfish, or are free-floating, for targeting pelagic species and represent a passive fishing technique. Pelagic longlines, which notionally fish near the surface with the use of floats, may be deployed in such a way as to fish at different depths in the water column. For example, deep-set longlines targeting tuna may have a target depth of 400 m, while a shallow-set longline targeting swordfish is set at 30–90 m depth. We refer here to bottom and pelagic longlines. Any longline generally consists of a mainline from which leader lines (gangions) with baited hooks branch off at a specified interval and is left to passively fish, or soak, for a set period of time before the vessel returns to retrieve the gear. Longlines are marked by two or more floats that act as visual markers and may also carry radio beacons; aids to detection are of particular importance for pelagic longlines, which may drift a significant distance from the deployment location. Pelagic longlines are generally composed of various diameter monofilament line and are generally much longer, and with more hooks, than are bottom longlines. Bottom longlines may be of monofilament or multifilament natural or synthetic lines.

Longline vessels fish with baited hooks attached to a mainline (or groundline). The length of the longline and the number of hooks depend on the species targeted, the size of the vessel, and the purpose of the fishing activity. Hooks are attached to the mainline by another thinner line called a gangion. The length of the gangion and the distance between gangions depends on the purpose of the fishing activity. Depending on the fishery, longline gear can be deployed on the seafloor (bottom longline), in which case weights are

attached to the mainline, or near the surface of the water (pelagic longline), in which case buoys are attached to the mainline to provide flotation and keep the baited hooks suspended in the water.

Target species for pelagic longline surveys conducted by the SEFSC are pelagic sharks and finfish species. These pelagic longline protocols have a five-nautical mile mainline with 100 gangions. The time period between completing deployment and starting retrieval of the longline gear is referred to as the soak time. Soak time is an important parameter for calculating fishing effort and is typically three hours for SEFSC surveys. Short soak times can help reduce longline interactions with sea turtles and marine mammals. Bottom longlines used by the SEFSC to survey species in deeper water, including sablefish, have a one-mile long monofilament mainline that is anchored on the seafloor with weights at the mid-point and ends. The line is marked at the surface by radar high flyers.

2. Bandit Reels—Bandit reels are heavy duty fishing reels that are used for deep sea fishing. These are used by the SEFSC to sample fish in the nearshore reef inlet and estuary of the St. Lucie River, Florida. The SEFSC uses a bandit reel with a vertical mainline and 10 gangions that is either deployed from the vessel and marked at the surface by a buoy or is fished while maintaining an attachment to the reel. The hook sizes used are 8/0, 11/0, or 15/0 circle hooks with 0 offset.

Traps and pots—Traps and pots are submerged, three-dimensional devices, often baited, that permit organisms to enter the enclosure but make escape extremely difficult or impossible. Most traps are attached by a rope to a buoy on the surface of the water and may be deployed in series. The trap entrance can be regulated to control the maximum size of animal that can enter, and the size of the mesh in the body of the trap can regulate the minimum size that is retained. In general, the species caught depends on the type and characteristics of the pot or trap used. The SEFSC uses fyke nets and various types of small traps and cages.

1. *Fyke nets*—A fyke net is a fish trap that consists of cylindrical or cone-shaped netting bags that are mounted on rings or other rigid structures and fixed on the bottom by anchors, ballast or stakes (Figure A–19). Fyke traps are often outfitted with wings and/or leaders to guide fish towards the entrance of the bags. The Fyke nets used by the SEFSC are constructed with wings that are 18.8 x 9 feet and bag netting of 700 micron mesh.

2. *Chevron traps, shrimp cages, eel traps and throw traps*—Chevron fish traps are wire mesh fish cages that are used to sample fish populations (Figure A–23). The SEFSC uses several different chevron fish traps of various dimensions that are baited to attract target species. Shrimp cages come in various shapes and are constructed of 1-inch PVC poles that were oriented vertically attached to two fiberglass hoops and wrapped in 2mm mesh netting. They work by being lowered from a vessel or shore onto the bottom of the sea floor where they are baited and left for a certain amount of time and then later retrieved. The SEFSC uses 16 x 20 x 11 inch eel traps with ½-inch metal mesh. The openings for the internal funnels are 2 x 3 inches and the trap is baited with horseshoe crabs and shrimp heads. Throw traps are small open ended boxes of aluminum with 1 m^2 walls and a depth of 45 cm. Research using any of these traps or cages has little to no potential to result in marine mammal harassment.

Conductivity, temperature, and depth profilers (CTD)—A CTD profiler measures these parameters and is the primary research tool for determining chemical and physical properties of seawater. A CTD profiler may be a fairly small device or it may be deployed with a variety of other oceanographic sensors and water sampling devices in a large (1 to 2 meter diameter) metal rosette wheel. The CTD profiler is lowered through the water column on a cable, and CTD data are collected either within the device or via a cable connecting to the ship. The data from a suite of samples collected at different depths are often called a depth profile, and are plotted with the value of the variable of interest on the x-axis and the water depth on the y-axis. Depth profiles for different variables can be compared in order to glean information about physical, chemical, and biological processes occurring in the water column.

Remotely Operated Vehicle—The Super Phantom S2 (Figure A–26) is a powerful, versatile remotely operated vehicle (ROV) with high reliability and mobility. This light weight system can be deployed by two operators and is designed as an underwater platform which provides support services including color video, digital still photography, navigation instruments, laser scaling device, lights, position information of the ROV and support ship, vehicle heading, vehicle depth, and a powered tilt platform. The Mini ROV is used during the SEFSC Panama City Reef Fish survey to help conduct line surveys and identify cryptic and rare fish species in the Gulf of Mexico.

Description of Active Acoustic Sound Sources—A wide range of active acoustic devices are used in SEFSC fisheries surveys for remotely sensing bathymetric, oceanographic, and biological features of the environment. Most of these sources involve relatively high frequency, directional, and brief repeated signals tuned to provide sufficient focus and resolution on specific objects. SEFSC active acoustic sources include various echosounders (*e.g.,* multibeam systems), scientific sonar systems, positional sonars (*e.g.,* net sounders for determining trawl position), and environmental sensors (*e.g.,* current profilers). The SEFSC also uses passive listening sensors (*i.e.,* remotely and passively detecting sound rather than producing it), which do not have the potential to impact marine mammals.

Underwater acoustic sources typically used for scientific purposes operate by creating an oscillatory overpressure through rapid vibration of a surface, using either electromagnetic forces or the piezoelectric effect of some materials. A vibratory source based on the piezoelectric effect is commonly referred to as a transducer. Transducers are usually designed to excite an acoustic wave of a specific frequency, often in a highly directive beam, with the directional capability increasing with operating frequency. The main parameter characterizing directivity is the beam width, defined as the angle subtended by diametrically opposite ''half power'' (-3 dB) points of the main lobe. For different transducers at a single operating frequency, the beam width can vary from 180 ° (almost omnidirectional) to only a few degrees. Transducers are usually produced with either circular or rectangular active surfaces. For circular transducers, the beam width in the horizontal plane (assuming a downward pointing main beam) is equal in all directions, whereas rectangular transducers produce more complex beam patterns with variable beam width in the horizontal plane. In general, the more narrow the beam, the shorter distance to which the sound propagates.

The types of active sources employed in fisheries acoustic research and monitoring may be considered in two broad categories here (Category 1 and Category 2), based largely on their respective operating frequency (*i.e.,* within or outside the known audible range of marine species) and other output characteristics (*e.g.,* signal duration, directivity). As described

below, these operating characteristics result in differing potential for acoustic impacts on marine mammals.

Before identifying the active acoustic sources used by the SEFSC, we further describe scientific sonar sound source characteristics here relevant to our analysis. Specifically, we look at the following two ways to characterize sound: By its temporal (continuous or intermittent) and its pulse properties (*i.e.,* impulsive or non-impulsive). Continuous sounds are those whose sound pressure level remains above that of the ambient sound, with negligibly small fluctuations in level (NIOSH, 1998; ANSI, 2005), while intermittent sounds are defined as sounds with interrupted levels of low or no sound (NIOSH, 1998).

Sounds can also be characterized as either impulsive or non-impulsive. Impulsive sounds are typically transient, brief (< 1 sec), broadband, and consist of a high peak pressure with rapid rise time and rapid decay (ANSI, 1986; NIOSH, 1998). Impulsive sounds, by definition, are intermittent. Non-impulsive sounds can be broadband, narrowband or tonal, brief or prolonged, and typically do not have a high peak sound pressure with rapid rise/decay time that impulsive sounds do (ANSI 1995; NIOSH 1998). Non-impulsive sounds can be intermittent or continuous. Scientific sonars, such as the ones used by the SEFSC, are characterized as intermittent and non-impulsive. Discussion on the appropriate harassment threshold associated with these types of sources based on these characteristics can be found in the *Estimated Take* section.

Category 1 active fisheries acoustic sources include those with high output frequencies (>180 kHz) that are outside the known functional hearing capability of any marine mammal. Example Category 1 sources include short range echosounders and acoustic Doppler current profilers). These sources also generally have short duration signals and highly directional beam patterns, meaning that any individual marine mammal would be unlikely to even detect a signal.

While sounds that are above the functional hearing range of marine animals may be audible if sufficiently loud (*e.g.,* Møhl, 1968), the relative output levels of the sources used by the SEFSC would only be detectable to marine mammals out to a few meters from the source. If detected, these sound levels are highly unlikely to be of sufficient intensity to result in behavioral harassment. Two recent studies (Deng *et al.,* 2014; Hastie *et al.,* 2014) demonstrate some behavioral reaction by marine mammals to acoustic signals at frequencies above 180 kHz. These studies generally indicate only that sub-harmonics could be detectable by certain species at distances up to several hundred meters. However, this detectability is in reference to ambient noise, not any harassment threshold for assessing the potential for Level B incidental take for these sources. Source levels of the secondary peaks considered in these studies—those within the hearing range of some marine mammals—range from 135–166 dB, meaning that these sub-harmonics would either be below the threshold for behavioral harassment (160 dB) or would attenuate to such a level within a few meters. Beyond these important study details, these high-frequency (*i.e.,* Category 1) sources and any energy they may produce below the primary frequency that could be audible to marine mammals would be dominated by a few primary sources that are operated near-continuously, and the potential range above threshold would be so small as to essentially discount them. Therefore, Category 1 sources are not expected to have any effect on marine mammals and are not considered further in this document.

Category 2 acoustic sources, which would be present on many vessels operating under this rulemaking include a variety of single, dual, and multi-beam echosounders (many with a variety of modes), sources used to determine the orientation of trawl nets, and several current profilers with lower output frequencies than Category 1 sources. Category 2 active acoustic sources have moderate to high output frequencies (10 to 180 kHz) that are generally within the functional hearing range of marine mammals and therefore have the potential to cause behavioral harassment. However, while likely potentially audible to certain species, these sources have generally short ping durations and are typically highly directional (*i.e.,* narrow beam width) to serve their intended purpose of mapping specific objects, depths, or environmental features. These characteristics reduce the likelihood and or spatial extent of an animal receiving or perceiving the signal. In addition, sources with relatively lower output frequencies coupled with higher output levels, can be operated in different output modes (*e.g.,* energy can be distributed among multiple output beams) which may lessen the likelihood of perception by and potential impact on marine mammals.

Category 2 active acoustic sources are unlikely to be audible to whales and most pinnipeds, whereas they may be detected by odontocete cetaceans and high frequency specialists. Category 2 sources are described further in detail below because, unlike Category 1 sources, they have the potential to take a marine mammal by Level B (behavioral) harassment.

The acoustic system used during a particular survey is optimized for surveying under specific environmental conditions (*e.g.,* depth and bottom type). Lower frequencies of sound travel further in the water than in air but provide lower resolution (*i.e.,* are less precise). Pulse width and power may also be adjusted in the field to accommodate a variety of environmental conditions. Signals with a relatively long pulse width travel further and are received more clearly by the transducer (*i.e.,* good signal-to-noise ratio) but have a lower range resolution. Shorter pulses provide higher range resolution and can detect smaller and more closely spaced objects in the water. Similarly, higher power settings may decrease the utility of collected data. Power level is also adjusted according to bottom type, as some bottom types have a stronger return and require less power to produce data of sufficient quality. Power is typically set to the lowest level possible in order to receive a clear return with the best data.

Survey vessels may be equipped with multiple acoustic systems; each system has different advantages that may be utilized depending on the specific survey area or purpose. In addition, many systems may be operated at one of two frequencies or at a range of frequencies. Characteristics of these sources are summarized in Table 2.

1. *Multi-Frequency Narrow Beam Scientific Echosounders (Simrad EK60)*—Echosounders and sonars work by transmitting acoustic pulses into the water that travel through the water column, reflect off the seafloor, and return to the receiver. Water depth is measured by multiplying the time elapsed by the speed of sound in water (assuming accurate sound speed measurement for the entire signal path), while the returning signal itself carries information allowing ''visualization'' of the seafloor. Multi-frequency split-beam sensors are deployed from SEFSC survey vessels to acoustically map the distributions and estimate the abundances and biomasses of many types of fish; characterize their biotic and abiotic environments; investigate ecological linkages; and gather information about their schooling behavior, migration patterns, and avoidance reactions to the survey vessel. The use of multiple frequencies allows coverage of a broad range of marine

acoustic survey activity, ranging from studies of small plankton to large fish schools in a variety of environments from shallow coastal waters to deep ocean basins. Simultaneous use of several discrete echosounder frequencies facilitates accurate estimates of the size of individual fish and can also be used for species identification based on differences in frequency-dependent acoustic backscattering between species. The SEFSC uses devices that transmit and receive at six frequencies from 18 to 333 kHz.

2. *Multibeam Echosounder and Sonars (Simrad ME70, MS70, SX90)*—Multi-beam echosounders and sonars work by transmitting acoustic pulses into the water then measuring the time required for the pulses to reflect and return to the receiver and the angle of the reflected signal. However, the use of multiple acoustic ''beams'' allows coverage of a greater area compared to single beam sonar. The sensor arrays for multibeam echosounders and sonars are usually mounted on the keel of the vessel and have the ability to look horizontally in the water column as well as straight down. Multibeam echosounders and sonars are used for mapping seafloor bathymetry, estimating fish biomass, characterizing fish schools, and studying fish behavior. The multi-beam echosounders used by the SEFSC emit frequencies in the 70–120 kHz range.

3. *Acoustic Doppler Current Profiler (ADCP)*—An ADCP is a type of sonar used for measuring water current velocities simultaneously at a range of depths. It can be mounted to a mooring or to the bottom of a boat. The ADCP works by transmitting ''pings'' of sound at a constant frequency into the water. As the sound waves travel, they ricochet off particles suspended in the moving water and reflect back to the instrument (WHOI 2011). Sound waves bounced back from a particle moving away from the profiler have a slightly lowered frequency when they return and particles moving toward the instrument send back higher frequency waves. The difference in frequency between the waves the profiler sends out and the waves it receives is called the Doppler shift. The instrument uses this shift to calculate how fast the particle and the water around it are moving. Sound waves that hit particles far from the profiler take longer to come back than waves that strike close by. By measuring the time it takes for the waves to return to the sensor and the Doppler shift, the profiler can measure current speed at many different depths with each series of pings (WHOI 2011).

4. *Trawl Monitoring Systems (Simrad ITI)*—Trawl monitoring systems allow continuous monitoring of net dimensions during towing to assess consistency, maintain quality control, and provide swept area for biomass calculations. Transponders are typically located in various positions on the trawl or cables connecting the trawl to the ship. Data are monitored in real time to make adjustments in ship speed or depth of trawl to meet survey protocols. This system operates in the 27- 33 kHz range, below the functional hearing range of all marine mammals.

TABLE 2—OPERATING CHARACTERISTICS OF SEFSC ACTIVE ACOUSTIC SOURCES

Active acoustic system	Operating frequencies (kHz)	Maximum source level (dB re: 1μPa @1 m)	Nominal beamwidth	Effective exposure area: Sea surface to 200 m depth (km^2)	Effective exposure area: Sea surface to 160 dB threshold depth (km^2)
Simrad EK60 narrow beam echosounder	18, 38, 70, 120, 200*, 333*	224	11° @18 kHz, 7° @38 kHz	0.0142	0.1411
Simrad ME70 multibeam echosounder	70–120	205	140°	0.0201	0.0201
Teledyne RD Instruments ADCP, Ocean Surveyor	75	223.6	N/A	0.0086	0.0187
Simrad EQ50	50, 200*	210	16 @50kHz, 7 @200kHz	0.0075	0.008
Simrad ITI Trawl Monitoring System	27–33	<200	40° × 100°	0.0032	0.0032

* Devices working at this frequency is outside of known marine mammal hearing range and is not considered to have the potential to result in marine mammal harassment.

SEFSC Vessels Used for Survey Activities

The SEFSC and its research partners use a variety of different types and sizes of vessels to meet their needs and objectives. Vessels may be owned and operated by NMFS, owned and operated by the cooperative partners, or chartered. Vessels vary in size, including, small fishing vessels (U.S. Coast Guard [USCG] Class A—up to 16 ft. and Class I—16 to <26 ft.), medium vessels (USCG Class II—26 to <40 ft. and Class III—40 to 65 ft.), USCG Small Research Vessel (R/V) (>65 ft. and <300 gross tons) and USCG Research Vessel (R/V) (>65 ft. and >300 gross tons). Several Motor Vessels (M/V) >65 feet and USCG Research Vessels are also chartered and used by partner agencies. Please see Appendix A of the SEFSC's Draft PEA for detailed information on all vessels over 65 ft used during fisheries research.

TPWD Gillnet Research

TPWD conducts a long-term standardized fishery-independent monitoring program to assess the relative abundance and size of finfish and shellfish in Texas bays. TPWD is mandated by the Texas Legislature to conduct continuous research and study the supply, economic value, environment, and breeding habits of the various species of finfish, shrimp and oysters under Parks and Wildlife Code sections 66.217, 76.302 and 77.004. Results from this program are primarily used by the agency to manage Texas' marine finfish and shellfish resources. Data are also available for use by other agencies (*e.g.,* USFWS, Gulf of Mexico Fishery Management Council, Gulf States Marine Fisheries Commission, Texas Water Development Board, and Texas Commission on Environmental Quality), universities, non-governmental organizations, and the private sector.

The current sampling protocol began in the spring of 1983 for seven of the ten bay systems; the remaining three bay systems were gradually added. The number of gill net sets was standardized in 1985. The monitoring program utilizes a stratified random sample design, with each bay system as an independent stratum. Gill net sample locations are randomly selected from grids (1 minute latitude by 1 minute longitude), with each selected grid further subdivided into 144 5-second gridlets. Sample sites are then randomly selected from gridlets containing less than 15.2 m of shoreline.

TPWD utilizes gill nets to conduct fishery-independent modeling on relative abundance, diversity, and age

and size distributions of adult and subadult finfish in Texas waters. Samples collected also provide data for genetic, life history and age and growth analyses. Statistically, gill nets provide for the lowest variability and the best fishery-independent measure of adult and subadult finfish abundance with a low coefficient of variation for most species requiring a low sample size. Standardized sampling methods have low operational bias allowing comparison between and among bay systems and years.

Gill nets are typically set in shallow open bay systems with little to no tidal movement. In this type of system, long gill net soak times are needed to catch a statistically-significant number of fish. The average number of fish caught in the overnight gill net sets is 90 fish per gill net which equates to 1 fish per 27 ft^2 or 6.7 ± 0.07 fish per hour (CPUE) of all species per hour. CPUE for two important recreational species, red drum and spotted seatrout, is 0.97 ± .02 and 0.68 ± .01 respectively.

Each gillnet is 183 m (600 ft) long, 1.2 m (3 ft) deep, and comprised of four 45 m (150 ft) long panels. Each panel is a different sized mesh: 7.6 cm (3 in.), 10.2 cm (4 in.), 12.7 cm (5 in.), and 15.2 cm (6 in.) to capture different sized fish. Each panel is sewn to the next panel; therefore, there are no gaps between panels. Currently, the float line and net mesh are tied together at 8 in. intervals. This results in a 6–8 in gap between the float line and the mesh when the net is set. TPWD will modify this design so that the float line and net mesh are tied together at 4 in. intervals. This will reduce the gap to approximately one to two inches. This gear modification would also be done for the lead line to reduce gaps between the lead line and net mesh. Reducing gaps between the lines and mesh are designed to minimize the potential of a dolphin getting its pectoral fins or flukes caught in these gaps.

Gill nets are set perpendicular to the shoreline with the smaller mesh end (3″ mesh panel) of the net anchored to the shoreline and the progressively larger mesh (up to 6″ mesh panel) extending baywards for 600 ft. All gill net are set in water depths ranging from 0.0–1.1 m on the shallow end of the net and from 0.1–4.6 m (0.33 to 15 ft) on the deep end of the net. However, 86 percent of gill net sets occur at a deep-end depth of 1.5 m (4 ft) or less. Where depths are greater than 4 ft, the top of the gillnet will be submerged because it is only 3 ft high. A marker bouy is typically attached to the float line at the intersection of each mesh panel (150 ft) with sufficant length line to reach the surface. When setting the net, TPWD pulls it as taut as possible with one person pulling on the net while the anchor is set.

Gill nets are set overnight during each spring and fall season. The spring season begins with the second full week in April and extends for ten weeks. The fall season begins with the second full week in September and extends for ten weeks. Nets are set within one hour before sunset and retrieved within 4 hours after the following sunrise. Soak times vary from approximately 12–14 hours. Gill nets are set overnight to eliminate day-use disturbances (boaters running the shoreline) that can alter normal fish behavior and movement patterns, reduce the amount of disturbance by and to anglers and boaters (user conflicts), and increase boater safety (reduced likelihood of striking nets). TPWD sets two to three nets on two separate nights for each of the 10 bay systems where they fish which are separated by at least 1 km and usually miles apart. No more than one gill net is set in the same grid on the same night, nor set more than two times in the same grid in a season. Fishing effort is evenly distributed between spring and fall season. Up to 90 sets per area could occur each year the proposed regulations would be valid. This sampling rate proposed for the next five years is identical to past sampling efforts.

Description of Marine Mammals in the Area of the Specified Activity

Sections 3 and 4 of the SEFSC's application summarize available information regarding status and trends, distribution and habitat preferences, and behavior and life history, of the potentially affected species. Additional information regarding population trends and threats may be found in NMFS' Stock Assessment Reports (SAR; *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessment-reports-region*) and more general information about these species (*e.g.,* physical and behavioral descriptions) may be found on NMFS' website (*https://www.fisheries.noaa.gov/find-species*). Additional species and stock information can be found in NMFS' Draft PEA (*https://www.fisheries.noaa.gov/node/23111*). In some cases, species are treated as guilds. In general ecological terms, a guild is a group of species that have similar requirements and play a similar role within a community. However, for purposes of stock assessment or abundance prediction, certain species may be treated together as a guild because they are difficult to distinguish visually and many observations are ambiguous. For example, NMFS' Atlantic SARs assess *Mesoplodon* spp. and *Kogia* spp. as guilds. Here, we consider pilot whales, beaked whales (excluding the northern bottlenose whale), and *Kogia* spp. as guilds. That is, where not otherwise specified, references to ''pilot whales'' includes both the long-finned and short-finned pilot whale, ''beaked whales'' includes the Cuvier's, Blainville's, Gervais, Sowerby's, and True's beaked whales, and ''*Kogia* spp.'' includes both the dwarf and pygmy sperm whale.

Table 3a lists all species (n = 33) with expected potential for occurrence in ARA, GOMRA, and CRA and summarizes information related to the population or stock, including regulatory status under the MMPA and ESA and potential biological removal (PBR), where known. PBR is defined by the MMPA as the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population (as described in NMFS' SARs). The use of PBR in this analysis is described in later detail in the *Negligible Impact Analyses and Determination* section. Excluding bottlenose dolphins, species with potential occurrence in the ARA and GOMRA constitute 56 managed stocks under the MMPA. Bottlenose dolphins contribute an additional 17 stocks in the ARA (1 offshore, 5 coastal, and 11 estuarine), 36 stocks in the GOMRA (1 offshore, 1 continental shelf, 3 coastal, and 31 bays, sounds, and estuaries (BSE)), and 1 stock in the CRA for a total of 54 bottlenose dolphin stocks. In total, 110 stocks have the potential to occur in the SEFSC research area.

Species that could occur in a given research area but are not expected to have the potential for interaction with SEFSC research gear or that are not likely to be harassed by SEFSC's use of active acoustic devices are listed here but omitted from further analysis. These include extralimital species, which are species that do not normally occur in a given area but for which there are one or more occurrence records that are considered beyond the normal range of the species. Extralimital or rarely sighted species within the SEFSC's ARA include the North Atlantic bottlenose whale (*Hyperoodon ampullatus*), Bryde's whale (*B. edeni*), Atlantic white-sided dolphins (*Lagenorhynchus acutus*), white-beaked dolphins (*Lagenorhynchus albirostris*), Sowerby's beaked whale (*Mesoplodon bidens*), harp seal (*Pagophilus groenlandicus*), and hooded seal (*Cystophora cristata*).

Extralimital or rarely sighted species in the GOMRA include the North Atlantic right whale (*Eubalaena glacialis*), blue whale, fin whale (*B. physalus*), sei whale, minke whale (*B. acutorostrata*), humpback whale (*Megaptera novaeangliae*), and Sowerby's beaked whale. In the CRA, extralimital or rarely sighted species include blue whale, fin whale, sei whale, Bryde's whale, minke whale, harbor seal (*Phoca vitulina*), gray seal (*Halichoerus grypus*), harp seal, and hooded seal. In addition, Caribbean manatees (*Trichechus manatus*) may be found in all three research areas. However, manatees are managed by the U.S. Fish and Wildlife Service and are not considered further in this document.

Marine mammal abundance estimates presented in this document represent the total number of individuals that make up a given stock or the total number estimated within a particular study or survey area. NMFS' stock abundance estimates for most species represent the total estimate of individuals within the geographic area, if known, that comprises that stock. For some species, this geographic area may extend beyond U.S. waters. For some species, survey abundance (as compared to stock or species abundance) is the total number of individuals estimated within the survey area, which may or may not align completely with a stock's geographic range as defined in the SARs. These surveys may also extend beyond U.S. waters.

To provide a background for how estuarine bottlenose dolphin stocks are identified, we provide the following excerpt from the Bottlenose Dolphin Stock Structure Research Plan for the Central Northern Gulf of Mexico (NMFS, 2007) which more specifically describes the stock structure of bottlenose dolphins within the bays, sounds, and estuaries of the Gulf of Mexico: The distinct stock status for each of the 31 inshore areas of contiguous, enclosed, or semi-enclosed bodies of waters is community-based. That is, stock delineation is based on the finding, through photo-identification (photo-ID) studies, of relatively discrete dolphin ''communities'' in the few GOM areas that have been studied (Waring *et al.* 2007). This finding was then generalized to all enclosed inshore GOM waters where bottlenose dolphins exist. A ''community'' consists of resident dolphins that regularly share large portions of their ranges, and interact with each other to a much greater extent than with dolphins in adjacent waters. The term emphasizes geographic, and social relationships of dolphins. Bottlenose dolphin communities do not necessarily constitute closed demographic populations, as individuals from adjacent communities may interbreed.

All values presented in Table 3a and 3b are the most recent available at the time of publication and are available in the most recent SAR for that stock, including draft 2018 SARs (Hayes et al., 2018) available at *https://www.fisheries.noaa.gov/national/marine-mammal-protection/draft-marine-mammal-stock-assessment-reports*) .

TABLE 3a—MARINE MAMMALS POTENTIALLY PRESENT IN THE ATLANTIC, GULF OF MEXICO, AND CARIBBEAN RESEARCH AREAS DURING FISHERY RESEARCH

Common name	Scientific name	MMPA stock	Research area			ESA status (L/NL), MMPA strategic (Y/N) [1]	Stock abundance (CV, N_{min}) [2]	PBR [3]	Annual M/SI [4]
			ARA	GOM	CRA				
Order Cetartiodactyla—Cetacea—Suborder Mysticeti (baleen whales)									
Family Balaenopteridae (rorquals):									
North Atlantic right whale.	*Eubalaena glacialis*	Western North Atlantic	X	.....	.....	L, Y	451 (0, 445)	0.9	5.56
Humpback whale	*Megaptera novaeangliae.*	Gulf of Maine [5]	X	X	X	NL, Y	896 (0, 896)	14.6	9.8
Blue whale	*Balaenoptera musculus.*	Western North Atlantic	X	.....	.....	L, Y	unk (unk, 440, 2010)	0.9	unk
Fin whale	*Balaenoptera physalis*	Western North Atlantic	X	.....	.....	L, Y	1,618 (0.33, 1,234)	2.5	2.65
Minke whale	*Balaenoptera acutorostrata.*	Canadian East Coast	X	X	X	NL, N	2,591 (0.81, 1,425)	14	7.5
Bryde's whale	*Balaenoptera edeni*	Northern Gulf of Mexico.	.....	X	.....	NL,[6] Y	33 (1.07, 16)	0.03	0.7
Sei whale	*Balaenoptera borealis*	Nova Scotia	X	.....	.....	L, Y	357 (0.52, 236)	0.5	0.6
Order Cetartiodactyla—Cetacea—Suborder Odontoceti (toothed whales)									
Family Physeteridae:									
Sperm whale	*Physeter macrocephalus.*	North Atlantic	X	.....	.....	L, Y	2,288 (0.28,1,815)	3.6	0.8
		Northern Gulf of Mexico.	.....	X	.....	L, Y	763 (0.38, 560)	1.1	0
		Puerto Rico and U.S. Virgin Islands.	.....	.....	X	L, Y	unk	unk	unk
Family Kogiidae:									
Pygmy sperm whale.	*Kogia breviceps*	Western North Atlantic	X	.....	X	NL, N	3,785 (0.47, 2,598) [7]	21	3.5
		Northern Gulf of Mexico.	.....	X	.....	NL, N	186 (1.04, 90) [8]	0.9	0.3
Dwarf sperm whale.	*K. sima*	Western North Atlantic	X	.....	X	NL, N	3,785 (0.47, 2,598) [7]	21	3.5
		Northern Gulf of Mexico.	.....	X	.....	NL, N	186 (1.04, 90) [8]	0.9	0
Family Ziphiidae (beaked whales):									
Cuvier's beaked whale.	*Ziphius cavirostris*	Western North Atlantic	X	.....	.....	NL, N	6,532 (0.32, 5,021)	50	0.4

TABLE 3a—MARINE MAMMALS POTENTIALLY PRESENT IN THE ATLANTIC, GULF OF MEXICO, AND CARIBBEAN RESEARCH AREAS DURING FISHERY RESEARCH—Continued

Common name	Scientific name	MMPA stock	Research area			ESA status (L/NL), MMPA strategic (Y/N) [1]	Stock abundance (CV, N_{min}) [2]	PBR [3]	Annual M/SI [4]
			ARA	GOM	CRA				
		Northern Gulf of Mexico.	.....	X	.....	NL, N	74 (1.04, 36)	0.4	0
		Puerto Rico and U.S. Virgin Islands.	.....	.....	X	NL, N	Unk	unk	unk
Blainville's beaked whale.	*Mesoplodon densirostris.*	Western North Atlantic	X	.....	X	NL, N	7,092 (0.54, 4,632) [9]	46	0.2
		Northern Gulf of Mexico.	.....	X	.....	NL, N	149 (0.91, 77)	0.8	0
Gervais' beaked whale.	*Mesoplodon europaeus.*	Western North Atlantic	X	.....	X	NL, N	7,092 (0.54, 4,632) [9]	46	0
		Northern Gulf of Mexico.	.....	X	.....	NL, N	149 (0.91, 77)	0.8	0
Sowerby's beaked whale.	*Mesoplodon bidens*	Western North Atlantic	X	.....	X	NL, N	7,092 (0.54, 4,632) [9]	46	0
True's beaked whale.	*Mesoplodon mirus*	Western North Atlantic	X	.....	X	NL, N	7,092 (0.54, 4,632) [9]	46	0
Family Delphinidae (dolphins):									
Melon-headed whales.	*Peponocephala electra.*	Western North Atlantic	X	.....	X	NL, N	unk	unk	0
		Northern Gulf of Mexico.	.....	X	.....	NL, N	2,235 (0.75, 1,274)	13	0
Risso's dolphin	*Grampus griseus*	Western North Atlantic	X	.....	X	NL, N	18,250 (0.46, 12,619)	126	49.9
		Northern Gulf of Mexico.	.....	X	.....	NL, N	2,442 (0.57, 1,563)	16	7.9
Short-finned pilot whales.	*Globicephala macrorhynchus.*	Western North Atlantic	X	.....	.....	NL, N	28,924 (0.24, 23,637)	236	168
		Northern Gulf of Mexico.	.....	X	.....	NL, N	2,415 (0.66, 1,456)	15	0.5
		Puerto Rico and U.S. Virgin Islands.	.....	.....	X	NL, N	unk	unk	unk
Long-finned pilot whales.	*Globicephala melas*	Western North Atlantic	X	.....	.....	NL, N	5,636 (0.63, 3,464)	35	27
Bottlenose dolphin	*Tursiops truncatus*	See table 3b.							
Common dolphin	*Delphinus delphis*	Western North Atlantic	X	.....	.....	NL, N	70,184 (0.28, 55,690)	557	406
Atlantic spotted dolphin.	*Stenella frontalis*	Western North Atlantic	X	.....	.....	NL, N	44,715 (0.43, 31,610)	316	0
		Northern Gulf of Mexico.	.....	X	.....	NL, N	unk	unk	42
		Puerto Rico and U.S. Virgin Islands.	.....	.....	X	NL, N	unk	unk	unk
Pantropical spotted dolphin.	*Stenella attenuata*	Western North Atlantic	X	.....	X	NL, N	3,333 (0.91, 1,733)	17	0
		Northern Gulf of Mexico.	.....	X	.....		50,880 (0.27, 40,699)	407	4.4
Striped dolphin	*Stenella coeruleoalba*	Western North Atlantic	X	.....	X	NL, N	54,807 (0.3, 42,804)	428	0
		Northern Gulf of Mexico.	.....	X	.....	NL, N	1,849 (0.77, 1,041)	10	0
Fraser's dolphin	*Lagenodelphis hosei*	Western North Atlantic	X	.....	X	NL, N	unk	unk	0
		Gulf of Mexico	.....	X	.....	NL, N	unk	undet	0
Rough-toothed dolphin.	*Steno bredanensis*	Western North Atlantic	X	.....	X	NL, N	136 (1.0, 67)	0.7	0
		Northern Gulf of Mexico.	.....	X	.....	NL, N	624 (0.99, 311)	2.5	0.8
Clymene dolphin	*Stenella clymene*	Western North Atlantic	X	.....	X	NL, N	unk	undet	0
		Northern Gulf of Mexico.	.....	X	.....	NL, N	129 (1.0, 64)	0.6	0
Spinner dolphin	*Stenella longirostris*	Western North Atlantic	X	.....	.....	NL, N	unk	unk	0
		Northern Gulf of Mexico.	.....	X	.....	NL, N	11,441 (0.83, 6,221)	62	0
		Puerto Rico and U.S. Virgin Islands.	.....	.....	X	NL, N	unk	unk	unk
Killer whale	*Orcinus orca*	Western North Atlantic	X	.....	X	NL, N	unk	unk	0
		Northern Gulf of Mexico.	.....	X	.....	NL, N	28 (1.02, 14)	0.1	0
Pygmy killer whale.	*Feresa attenuata*	Western North Atlantic	X	.....	X	NL, N	unk	unk	0
		Northern Gulf of Mexico.	.....	X	.....	NL, N	152 (1.02, 75)	0.8	0
False killer whale	*Pseudorca crassidens*	Western North Atlantic	X	.....	X	NL, N	442 (1.06, 212)	2.1	unk
		Northern Gulf of Mexico.	.....	X	.....	NL, N	unk	undet	0
Family Phocoenidae (porpoises):									

TABLE 3a—MARINE MAMMALS POTENTIALLY PRESENT IN THE ATLANTIC, GULF OF MEXICO, AND CARIBBEAN RESEARCH AREAS DURING FISHERY RESEARCH—Continued

Common name	Scientific name	MMPA stock	Research area			ESA status (L/NL), MMPA strategic (Y/N) [1]	Stock abundance (CV, N_{min}) [2]	PBR [3]	Annual M/SI [4]
			ARA	GOM	CRA				
Harbor porpoise ..	*Phocoena phocoena vomerina.*	Gulf of Maine/Bay of Fundy.	X	.....	.....	NL, N	79,833 (0.32, 61,415)	706	255
Order Carnivora—Superfamily Pinnipedia									
Family Phocidae (earless seals):									
Harbor seal	*Phoca vitulina richardii*	Western North Atlantic	X	.....	.....	NL, N	75,834 (0.15, 66,884)	2,006	345
Gray seal	*Halichoerus grypus*	Western North Atlantic	X	.....	.....	NL, N	27,131 (0.19, 23,158)	1,389	5,688

[1] Endangered Species Act (ESA) status: Endangered (E), Threatened (T)/MMPA status: Depleted (D). NL indicates that the species is not listed under the ESA and is not designated as depleted under the MMPA. Under the MMPA, a strategic stock is one for which the level of direct human-caused mortality exceeds PBR or which is determined to be declining and likely to be listed under the ESA within the foreseeable future. Any species or stock listed under the ESA is automatically designated under the MMPA as depleted and as a strategic stock.

[2] NMFS marine mammal stock assessment reports at: *www.nmfs.noaa.gov/pr/sars/.* CV is coefficient of variation; N_{min} is the minimum estimate of stock abundance.).

[3] PBR indicates Potential Biological Removal as referenced from NMFS 2017 SARs. PBR is defined by the MMPA as the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population. It is the product of minimum population size, one-half the maximum net productivity rate and a recovery factor for endangered, depleted, threatened stocks, or stocks of unknown status relative to OSP.

[4] These values, found in NMFS' SARs, represent annual levels of human-caused mortality plus serious injury from all sources combined (*e.g.,* commercial fisheries, subsistence hunting, ship strike). Annual M/SI often cannot be determined precisely and is in some cases presented as a minimum value. All M/SI values are as presented in the 2016 SARs.

[5] Humpback whales present off the southeastern U.S. are thought to be predominantly from the Gulf of Maine stock; however, could include animals from Canadian stocks (*e.g.,* Nova Scotia) (NMFS, 2017). Here we provide estimates for the Gulf of Maine stock only as a conservative value.

[6] The Bryde's whale is proposed for listing under the ESA (81 FR 88639, December 8, 2016). NMFS decision is pending.

[7] This estimate includes both dwarf and pygmy sperm whales in the N. Atlantic stock.

[8] This estimate includes both dwarf and pygmy sperm whales in the Gulf of Mexico stock.

[9] This estimate includes all species of *Mesoplodon* in the N.Atlantic stock.

TABLE 3b—BOTTLENOSE DOLPHIN STOCKS POTENTIALLY PRESENT IN THE ATLANTIC, GULF OF MEXICO, AND CARIBBEAN RESEARCH AREAS DURING FISHERY RESEARCH

Stock	MMPA status	Stock abundance (CV, N_{min}) [1]	PBR	Annual M/SI
ATLANTIC RESEARCH AREA				
Western North Atlantic, Offshore	Not Strategic	77,532 (0.40, 56,053)	561	39.4
Northern Migratory Coastal	Depleted	6,639 (0.41, 4,759)	48	6.1–13.2
Southern Migratory Coastal	Depleted	3,751 (0.06, 2,353)	23	0–14.3
South Carolina & Georgia Coastal	Depleted	6,027 (0.34, 4,569)	46	1.4–1.6
Northern Florida Coastal	Depleted	877 (0.0.49, 595)	6	0.6
Central Florida Coastal	Depleted	1,218 (0.71, 2,851)	9.1	0.4
Northern North Carolina Estuarine System	Strategic	823 (0.06, 782)	7.8	0.8–18.2
Southern North Carolina Estuarine System	Strategic	unk	Undet	0.4–0.6
Northern South Carolina Estuarine System	Strategic	unk	Undet	0.2
Charleston Estuarine System	Strategic	unk	Undet	unk
Northern Georgia/Southern South Carolina Estuarine System.	Strategic	unk	undet	1.4
Central Georgia Estuarine System	Strategic	192 (0.04, 185)	1.9	unk
Southern Georgia Estuarine System	Strategic	194 (0.05, 185)	1.9	unk
Jacksonville Estuarine System	Strategic	unk	undet	1.2
Biscayne Bay	Strategic	unk	undet	unk
Florida Bay	Not Strategic	unk	undet	unk
GULF OF MEXICO RESEARCH AREA				
Oceanic	Not Strategic	5,806 (0.39, 4,230)	42	6.5
Continental Shelf	Not Strategic	51,192 (0.1, 46,926)	469	0.8
Western Coastal	Not Strategic	20,161 (0.17, 17,491)	175	0.6
Northern Coastal	Not Strategic	7,185 (0.21, 6,004)	60	0.4
Eastern Coastal	Not Strategic	12,388 (0.13, 11,110)	111	1.6
Northern Gulf of Mexico Bay, Sound, and Estuary [2 3]				
Laguna Madre	Strategic	80 (1.57, unk)	undet	0.4
Nueces Bay, Corpus Christi Bay	Strategic	58 (0.61, unk)	undet	0
Copano Bay, Aransas Bay, San Antonio Bay, Redfish Bay, Espirtu Santo Bay.	Strategic	55 (0.82, unk)	undet	0.2
Matagorda Bay, Tres Palacios Bay, Lavaca Bay	Strategic	61 (0.45, unk)	undet	0.4
West Bay	Strategic	48 (0.03, 46)	0.5	0.2

TABLE 3b—BOTTLENOSE DOLPHIN STOCKS POTENTIALLY PRESENT IN THE ATLANTIC, GULF OF MEXICO, AND CARIBBEAN RESEARCH AREAS DURING FISHERY RESEARCH—Continued

Stock	MMPA status	Stock abundance (CV, N_{min}) [1]	PBR	Annual M/SI
Galveston Bay, East Bay, Trinity Bay	Strategic	152 (0.43, unk)	undet	0.4
Sabine Lake	Strategic	0 (-,-)	undet	0.2
Calcasieu Lake	Strategic	0 (-,-)	undet	0.2
Vermillion Bay, West Cote Blanche Bay, Atchafalaya Bay.	Strategic	0 (-,-)	undet	0
Terrebonne Bay, Timbalier Bay	Strategic	3,870 (0.15, 3426)	27	0.2
Barataria Bay	Strategic	2306 (0.09, 2,138)	17	160
Mississippi River Delta	Strategic	332 (0.93, 170)	1.4	0.2
Mississippi Sound, Lake Borgne, Bay Boudreau	Strategic	3,046 (0.06, 2,896)	23	310
Mobile Bay, Bonsecour Bay	Strategic	122 (0.34, unk)	undet	1
Perdido Bay	Strategic	0 (-,-)	undet	0.6
Pensacola Bay, East Bay	Strategic	33 (	undet	unk
Choctawhatchee Bay	Strategic	179 (0.04, unk)	undet	0.4
St. Andrews Bay	Strategic	124 (0.57, unk)	undet	0.2
St. Joseph Bay	Strategic	152 (0.08, unk)	undet	unk
St. Vincent Sound, Apalachicola Bay, St. Georges Sound.	Strategic	439 (0.14,-)	undet	0
Apalachee Bay	Strategic	491 (0.39, unk)	undet	0
Waccasassa Bay, Withlacoochee Bay, Crystal Bay	Strategic	unk	undet	0
St. Joseph Sound, Clearwater Harbor	Strategic	unk	undet	0.4
Tampa Bay	Strategic	unk	undet	0.6
Sarasota Bay, Little Sarasota Bay	Strategic	158 (0.27, 126)	1.3	0.6
Pine Island Sound, Charlotte Harbor, Gasparilla Sound, Lemon Bay.	Strategic	826 (0.09, -)	undet	1.6
Caloosahatchee River	Strategic	0 (-,-)	undet	0.4
Estero Bay	Strategic	unk	undet	0.2
Chokoloskee Bay, Ten Thousand Islands, Gullivan Bay.	Strategic	unk	undet	0
Whitewater Bay	Strategic	unk	undet	0
Florida Keys (Bahia Honda to Key West)	Strategic	unk	undet	0
CARRIBEAN RESEARCH AREA				
Puerto Rico and U.S. Virgin Islands	Strategic	unk	undet	unk

[1] CV is coefficient of variation; N_{min} is the minimum estimate of stock abundance).
[2] Details for these 25 stocks are included in the report: Common bottlenose dolphin (Tursiops truncatus truncatus), Northern Gulf of Mexico Bay, Sound, and Estuary Stocks.
[3] The total annual human-caused mortality and serious injury for these stocks of common bottlenose dolphins is unknown because these stocks may interact with unobserved fisheries. Also, for Gulf of Mexico BSE stocks, mortality estimates for the shrimp trawl fishery are calculated at the state level and have not been included within mortality estimates for individual BSE stocks. Therefore, minimum counts of human-caused mortality and serious injury for these stocks are presented.

Take reduction planning—Incidental take of marine mammals in commercial fisheries has been and continues to be a serious issue in the Southeast region. In compliance with section 118 of the MMPA, NMFS has developed and implemented several Take Reduction Plans (TRPs) to reduce serious injuries and mortality of strategic marine mammal stocks that interact with certain commercial fisheries. Strategic stocks are those species listed as threatened or endangered under the ESA, those species listed as depleted under the MMPA, and those species with human-caused mortality that exceeds the PBR for the species. The immediate goal of TRPs is to reduce serious injury and mortality for each species below PBR within six months of the TRP's implementation. The long-term goal is to reduce incidental serious injury and mortality of marine mammals from commercial fishing operations to insignificant levels approaching a zero serious injury and mortality rate, taking into account the economics of the fishery, the availability of existing technology, and existing state or regional fishery management plans.

TRPs relevant to the fisheries research areas in this rule include the Atlantic Large Whale Take Reduction Plan (ALWTRP), the Bottlenose Dolphin Take Reduction Plan (BDTRP), and the Pelagic Longline Take Reduction Plan (PLTRP). The ALWTRP was developed to reduce serious injury and mortality of North Atlantic right, humpback, fin, and minke whales from Northeast/Mid-Atlantic lobster trap/pot, Atlantic blue crab trap/pot, Atlantic mixed species trap/pot, Northeast sink gillnet, Northeast anchored float gillnet, Northeast drift gillnet, Mid-Atlantic gillnet, Southeastern U.S. Atlantic shark gillnet, and Southeastern Atlantic gillnet fisheries (NMFS 2010c). Gear requirements vary by geographic area and date. Universal gear modification requirements and restrictions apply to all traps/pots and anchored gillnets, including: no floating buoy line at the surface; no wet storage of gear (all gear must be hauled out of the water at least once every 30 days); fishermen are encouraged, but not required, to maintain knot-free buoy lines; and all groundlines must be made of sinking line. Additional gear modification requirements and restrictions vary by location, date, and gear type. Additional requirements may include the use of weak links, and gear marking and configuration specifications. Detailed requirements may be found in the regional guides to gillnet and pot/trap gear fisheries available at *http://www.nero.noaa.gov/Protected/whaletrp/*. The SEFSC MARMAP/SEAMAP–SA Reef Fish Survey (carried out by the SCDNR) and SEFIS (carried

out by the SEFSC) surveys meet the requirements necessary to implement TRP regulations; both surveys abide by all ALWTRP requirements.

In 2006, NMFS implemented the BDTRP to reduce the serious injury and mortality of Western North Atlantic coastal bottlenose dolphins incidental to 13 Category I and II U.S. commercial fisheries. In addition to multiple non-regulatory provisions for research and education, the BDTRP requires modifications of fishing practices or gear for small, medium, and large-mesh gillnet fisheries from New York to Florida, and Virginia pound nets in Virginia state waters (50 CFR 229.35). The BDTRP also established seasonal closures for certain gillnet commercial fisheries in state waters. The following general requirements are contained with BDTRP: Spatial/temporal gillnet restrictions, gear proximity (fishermen must stay within a set distance of gear), gear modifications for gillnets and Virginia pound nets, non-regulatory gear modifications for crab pots, and other non-regulatory conservation measures (71 FR 24776, April 26, 2006; 77 FR 45268, July 31, 2012; and 80 FR 6925, February 9, 2015). Due to substantial differences between SEFSC research fishing practices (*e.g.,* smaller gear size, reduced set time, spatial and temporal differences) and scientific survey methods versus commercial fishing practices, the SEFSC and research partners do not have any surveys that meet the requirements necessary to implement BDTRP regulations. However, the SEFSC would abide by the mitigation, monitoring, and reporting requirements included in this proposed rule.

The Pelagic Longline Take Reduction Plan (PLTRP) addresses incidental serious injury and mortality of long-finned and short-finned pilot whales and Risso's dolphins in commercial pelagic longline fishing gear in the Atlantic. Regulatory measures include limiting mainline length to 20 nm or less within the Mid-Atlantic Bight and posting an informational placard on careful handling and release of marine mammals in the wheelhouse and on working decks of the vessel (NMFS 2009). Currently, the SEFSC uses gear that is only 5 nm long and per the PLTRP, uses the Pelagic Longline Marine Mammal Handling and Release Guidelines for any pelagic longline sets made within the Atlantic EEZ.

Unusual Mortality Events (UME)—The marine mammal UME program was established in 1991. A UME is defined under the MMPA as a stranding that is unexpected; involves a significant die-off of any marine mammal population; and demands immediate response. From 1991 to present, there have been 62 formally recognized UMEs in the U.S., involving a variety of species and dozens to hundreds of individual marine mammals per event. Twenty-seven of these UMEs have occurred within SEFSC fisheries research operating areas (we note 7 of these UMEs were for manatees managed by the USFWS). For the GOMRA, Litz *et al.* (2014) provides a review of historical UMEs in the Gulf of Mexico from 1990 through 2009. For more information on UMEs, please visit the internet at: *www.nmfs.noaa.gov/pr/health/mmume/events.html.*

From 2010 through 2014, NMFS declared a multi-year, multi-cetacean UME in response to the Deepwater Horizon (DWH) oil spill in the Northern Gulf of Mexico. The species and temporal and spatial boundaries included all cetaceans stranded in Alabama, Mississippi, and Louisiana from March 2010 through July 2014 and all cetaceans other than bottlenose dolphins stranded in the Florida Panhandle (Franklin County through Escambia County) from March 2010 through July 2014. The UME involved 1,141 cetacean strandings in the Northern Gulf of Mexico (5 percent stranded alive and 95 percent stranded dead).

The Deepwater Horizon Natural Resource Damage Assessment (NRDA) Trustees' 2016 Final Programmatic Damage Assessment and Restoration Plan (PDARP) and Final Programmatic Environmental Impact Statement (PEIS) quantified injuries to marine mammals in the Gulf of Mexico that were exposed to the oil spill, including bottlenose dolphins in four bay, sound, and estuary areas: Barataria Bay, the Mississippi River Delta, Mississippi Sound, and Mobile Bay (NRDA Trustees, 2016; DWH MMIQT, 2015). Both stocks are estimated to have been reduced significantly in population size from the DWH oil spill (DWH MMIQT 2015; Schwacke et al. 2017). According to the PDARP, 24 percent of the Mississippi Sound stock had adverse health effects from DWH oil spill. Of the pregnant females studied in Barataria Bay and Mississippi Sound between 2010 and 2014, 19.2 percent gave birth to a viable calf. In contrast, dolphin populations in Florida and South Carolina have a pregnancy success rate of 64.7 percent (DWH MMIQT, 2015).

Dolphin and whale species living farther offshore were also affected. Many of these species are highly susceptible to population changes because of their low initial population numbers. Thus, it is unclear how effectively these populations can recover from lower estimated injuries. For example, Deepwater Horizon oil exposure resulted in up to an estimated 7-percent decline in the population of endangered sperm whales, which will require 21 years to recover. For Bryde's whales, 48 percent of the population was impacted by Deepwater Horizon oil, resulting in up to an estimated 22-percent decline in population that will require 69 years to recover. For both nearshore and offshore populations, injuries were most severe in the years immediately following the spill. Health assessments on bottlenose dolphins in BBES and MS Sound have shown that there has been some improvement post spill, but that there are still persistent injuries (Smith et al. 2017).

Biologically Important Areas

In 2015, NOAA's Cetacean Density and Distribution Mapping Working Group identified Biologically Important Areas (BIAs) for 24 cetacean species, stocks, or populations in seven regions (US East Coast, Gulf of Mexico, West Coast, Hawaiian Islands, Gulf of Alaska, Aleutian Islands and Bering Sea, and Arctic) within U.S. waters through an expert elicitation process. BIAs are reproductive areas, feeding areas, migratory corridors, and areas in which small and resident populations are concentrated. BIAs are region-, species-, and time-specific. A description of the types of BIAs found within the SEFSC's fishery research areas follows:

Reproductive Areas: Areas and months within which a particular species or population selectively mates, gives birth, or is found with neonates or other sensitive age classes.

Feeding Areas: Areas and months within which a particular species or population selectively feeds. These may either be found consistently in space and time, or may be associated with ephemeral features that are less predictable but can be delineated and are generally located within a larger identifiable area.

Migratory Corridors: Areas and months within which a substantial portion of a species or population is known to migrate; the corridor is typically delimited on one or both sides by land or ice.

Small and Resident Population: Areas and months within which small and resident populations occupying a limited geographic extent exist.

The delineation of BIAs does not have direct or immediate regulatory consequences. Rather, the BIA assessment is intended to provide the best available science to help inform regulatory and management decisions

under existing authorities about some, though not all, important cetacean areas in order to minimize the impacts of anthropogenic activities on cetaceans and to achieve conservation and protection goals. In addition, the BIAs and associated information may be used to identify information gaps and prioritize future research and modeling efforts to better understand cetaceans, their habitat, and ecosystems. Table 4 provides a list of BIA's found within the SEFSC's fisheries research areas.

TABLE 4—BIOLOGICALLY IMPORTANT AREAS WITHIN THE ARA AND GOMRA

BIA name	Species	BIA type	Time of year	Size (km^2)
ATLANTIC RESEARCH AREA				
Eastern Atlantic	N. Atlantic right whale	Migration	North: March–April; South: November–December.	269,448
Southeast Atlantic—Calving	N. Atlantic right whale	Reproduction	Mid-Nov–April	43,783
Northern North Carolina Estuarine System—Inland & Coastal.	Bottlenose dolphin	Small and resident	July–October	8,199
Northern North Carolina Estuarine System—Coastal.	Bottlenose dolphin	Small and resident	July–March	534
Southern North Carolina Estuarine System.	Bottlenose dolphin	Small and resident	July–October	783
Prince Inlet, SC; Charleston Harbor; North Edisto River.	Bottlenose dolphin	Small and resident	Year-round	152
St. Helena Sound, SC to Ossabaw Sound, GA.	Bottlenose dolphin	Small and resident	Year-round	676
Southern Georgia, GA	Bottlenose dolphin	Small and resident	Year-round	411
Jacksonville, FL	Bottlenose dolphin	Small and resident	Year-round	195
Indian River Lagoon Estuarine System.	Bottlenose dolphin	Small and resident	Year-round	776
Biscayne Bay, FL	Bottlenose dolphin	Small and resident	Year-round	614
GULF OF MEXICO				
Florida Bay, FL	Bottlenose dolphin	Small and resident	Year-round	1,527
Lemon Bay, Charlotte Harbor, Pine Island Sound, FL.	Bottlenose dolphin	Small and resident	Year-round	892
Sarasota Bay and Little Sarasota Bay, FL.	Bottlenose dolphin	Small and resident	Year-round	117
Tampa Bay, FL	Bottlenose dolphin	Small and resident	Year-round	899
St. Vincent Sound and Apalachicola Bay, FL.	Bottlenose dolphin	Small and resident	Year-round	262
St. Joseph Bay, FL	Bottlenose dolphin	Small and resident	Year-round	371
Mississippi Sound, MS	Bottlenose dolphin	Small and resident	Year-round	1,335
Caminada Bay and Barataria Bay, LA.	Bottlenose dolphin	Small and resident	Year-round	253
Galveston Bay, TX	Bottlenose dolphin	Small and resident	Year-round	1,222
San Luis Pass, TX	Bottlenose dolphin	Small and resident	Year-round	143
Matagorda Bay and Espiritu Santo Bay, TX.	Bottlenose dolphin	Small and resident	Year-round	740
Aransas Pass, TX	Bottlenose dolphin	Small and resident	Year-round	273
Eastern Gulf of Mexico	Bryde's whale	Small and resident	Year round	23,559

Marine Mammal Hearing

Hearing is the most important sensory modality for marine mammals underwater, and exposure to anthropogenic sound can have deleterious effects. To appropriately assess the potential effects of exposure to sound, it is necessary to understand the frequency ranges marine mammals are able to hear. Current data indicate that not all marine mammal species have equal hearing capabilities (*e.g.,* Richardson *et al.*, 1995; Wartzok and Ketten, 1999; Au and Hastings, 2008). To reflect this, Southall *et al.* (2007) recommended that marine mammals be divided into functional hearing groups based on directly measured or estimated hearing ranges on the basis of available behavioral response data, audiograms derived using auditory evoked potential techniques, anatomical modeling, and other data. Note that no direct measurements of hearing ability have been successfully completed for mysticetes (*i.e.,* low-frequency cetaceans). Subsequently, NMFS (2016) described generalized hearing ranges for these marine mammal hearing groups. Generalized hearing ranges were chosen based on the approximately 65 dB threshold from the normalized composite audiograms, with the exception for lower limits for low-frequency cetaceans where the lower bound was deemed to be biologically implausible and the lower bound from Southall *et al.* (2007) retained. The functional groups and the associated frequencies are indicated below (note that these frequency ranges correspond to the range for the composite group, with the entire range not necessarily reflecting the capabilities of every species within that group):

- Low-frequency cetaceans (mysticetes): Generalized hearing is estimated to occur between approximately 7 Hz and 35 kHz.
- Mid-frequency cetaceans (larger toothed whales, beaked whales, and most delphinids): Generalized hearing is estimated to occur between approximately 150 Hz and 160 kHz.

• High-frequency cetaceans (porpoises, river dolphins, and members of the genera Kogia and Cephalorhynchus; including two members of the genus Lagenorhynchus, on the basis of recent echolocation data and genetic data): Generalized hearing is estimated to occur between approximately 275 Hz and 160 kHz.

• Pinnipeds in water; Phocidae (true seals): Generalized hearing is estimated to occur between approximately 50 Hz to 86 kHz.

• Pinnipeds in water; Otariidae (eared seals): Generalized hearing is estimated to occur between 60 Hz and 39 kHz.

The pinniped functional hearing group was modified from Southall *et al.* (2007) on the basis of data indicating that phocid species have consistently demonstrated an extended frequency range of hearing compared to otariids, especially in the higher frequency range (Hemilä *et al.,* 2006; Kastelein *et al.,* 2009; Reichmuth and Holt, 2013).

For more detail concerning these groups and associated frequency ranges, please see NMFS (2016) for a review of available information. Thirty three marine mammal species (31 cetacean and 2 pinniped (both phocid) species) have the reasonable potential to co-occur with the proposed survey activities (Table 3a). Of the cetacean species that may be present, six are classified as low-frequency cetaceans (*i.e.,* all mysticete species), 24 are classified as mid-frequency cetaceans (*i.e.,* all delphinid and ziphiid species and the sperm whale), and 1 is classified as high-frequency cetaceans (*i.e.,* harbor porpoise and Kogia spp.).

Potential Effects of Specified Activities on Marine Mammals and Their Habitat

This section includes a summary and discussion of the ways that components of the specified activity may impact marine mammals and their habitat. The ''Estimated Take by Incidental Harassment'' section later in this document includes a quantitative analysis of the number of individuals that are expected to be taken by this activity. The ''Negligible Impact Analysis and Determination'' section considers the content of this section, the ''Estimated Take by Incidental Harassment'' section, and the ''Proposed Mitigation'' section, to draw conclusions regarding the likely impacts of these activities on the reproductive success or survivorship of individuals and how those impacts on individuals are likely to impact marine mammal species or stocks.

In the following discussion, we consider potential effects to marine mammals from ship strike, gear interaction (*e.g.,* entanglement in nets and trawls, accidental hooking) and exposure to active acoustic fisheries research sources. We also include, where relevant, knowns takes of marine mammals incidental to previous SEFSC research. These data come from NMFS' Protected Species Incidental Take (PSIT) database, a formal incidental take reporting system that documents incidental takes of protected species by all NMFS Science Centers and partners; NMFS requires this reporting to be completed within 48 hours of the occurrence. The PSIT generates automated messages to NMFS staff, alerting them to the event and to the fact that updated information describing the circumstances of the event has been entered into the database.

Ship Strike

Vessel collisions with marine mammals, or ship strikes, can result in death or serious injury of the animal. Wounds resulting from ship strike may include massive trauma, hemorrhaging, broken bones, or propeller lacerations (Knowlton and Kraus, 2001). An animal at the surface may be struck directly by a vessel, a surfacing animal may hit the bottom of a vessel, or an animal just below the surface may be cut by a vessel's propeller. Ship strikes may kill an animal; however, more superficial strikes may result in injury. Ship strikes generally involve commercial shipping, which is much more common in both space and time than is research activity. Jensen and Silber (2004) summarized ship strikes of large whales worldwide from 1975–2003 and found that most collisions occurred in the open ocean and involved large vessels (*e.g.,* commercial shipping). Commercial fishing vessels were responsible for three percent of recorded collisions, while only one such incident (0.75 percent) was reported for a research vessel during that time period.

The severity of injuries typically depends on the size and speed of the vessel, with the probability of death or serious injury increasing as vessel speed increases (Knowlton and Kraus, 2001; Laist *et al.,* 2001; Vanderlaan and Taggart, 2007; Conn and Silber, 2013). Impact forces increase with speed, as does the probability of a strike at a given distance (Silber *et al.,* 2010; Gende *et al.,* 2011). Pace and Silber (2005) found the predicted probability of serious injury or death increased from 45 to 75 percent as vessel speed increased from 10 to 14 kn, and exceeded ninety percent at 17 kn. Higher speeds during collisions result in greater force of impact and appear to increase the chance of severe injuries or death through increased likelihood of collision by pulling whales toward the vessel (Clyne, 1999; Knowlton *et al.,* 1995). In a separate study, Vanderlaan and Taggart (2007) analyzed the probability of lethal mortality of large whales at a given speed, showing that the greatest rate of change in the probability of a lethal injury to a large whale as a function of vessel speed occurs between 8.6 and 15 kn. The chances of a lethal injury decline from approximately eighty percent at 15 kn to approximately twenty percent at 8.6 kn. At speeds below 11.8 kn, the chances of lethal injury drop below fifty percent, while the probability asymptotically increases toward one hundred percent above 15 kn.

In an effort to reduce the number and severity of strikes of the endangered North Atlantic right whale (*Eubalaena glacialis*), NMFS implemented speed restrictions in 2008 (73 FR 60173; October 10, 2008). These restrictions require that vessels greater than or equal to 65 ft (19.8 m) in length travel at less than or equal to 10 kn near key port entrances and in certain areas of right whale aggregation along the U.S. eastern seaboard. Conn and Silber (2013) estimated that these restrictions reduced total ship strike mortality risk levels by eighty to ninety percent.

For vessels used in SEFSC-related research activities, transit speeds average 10 kn (but vary from 6–14 kn), while vessel speed during active sampling is typically only 2–4 kn. At sampling speeds, both the possibility of striking a marine mammal and the possibility of a strike resulting in serious injury or mortality are discountable. At average transit speed, the probability of serious injury or mortality resulting from a strike is less than fifty percent. However, it is possible for ship strikes to occur while traveling at slow speeds. For example, a NOAA-chartered survey vessel traveling at low speed (5.5 kn) while conducting multi-beam mapping surveys off the central California coast struck and killed a blue whale in 2009. The State of California determined the whale had suddenly and unexpectedly surfaced beneath the hull, with the result that the propeller severed the whale's vertebrae, and that this was an unavoidable event. This strike represents the only such incident in approximately 540,000 hours of similar coastal mapping activity ($p = 1.9 \times 10^{-6}$; 95% CI = 0–5.5 x 10^{-6}; NMFS, 2013). The NOAA vessel *Gordon Gunter* was conducting a marine mammal survey cruise off the coast of Savannah, Georgia in July 2011, when a group of Atlantic spotted dolphin began bow riding. The animals

eventually broke off and a dead calf was seen in the ship's wake with a large gash that was attributed to the propeller. This is the only documented ship strike by the SEFSC since 2002.

In summary, we anticipate that vessel collisions involving SEFSC research vessels, while not impossible, represent unlikely, unpredictable events. Other than the 2009 and 2011 events, no other ship strikes have been reported from any fisheries research activities nationally. Given the relatively slow speeds of research vessels, the presence of bridge crew watching for obstacles at all times (including marine mammals), the presence of marine mammal observers on some surveys, and the small number of research cruises, we believe that the possibility of ship strike is discountable. Further, the implementation of the North Atlantic ship strike rule protocols will greatly reduce the potential for interactions with North Atlantic right whales. As such, no incidental take resulting from ship strike is anticipated nor is proposed to be authorized; therefore, this potential effect of research will not be discussed further.

Gear Interaction

The types of research gear used by the SEFSC were described previously under ''Detailed Description of Activity.'' Here, we broadly categorize these gears into those which we believe may result in marine mammal interaction and those which we consider to have an extremely unlikely potential to result in marine mammal interaction. Gears with the potential for marine mammal interaction include trawl nets (*e.g.,* bottom trawls, skimmer trawls), gillnets, and hook and line gear (*i.e.,* longlines). Gears such as fyke nets, eel traps, ROVs, etc. do not have the potential for marine mammal interaction either due to small size of gear and fishing methods, and therefore do not have the potential for injury or harassment.

Entanglement in Nets, Trawls, or Longlines—Gillnets, trawl nets, and longlines deployed by the SEFSC are similar to gear used in various commercial fisheries which have a history of taking marine mammals. Read *et al.* (2006) estimated marine mammal bycatch in U.S. fisheries from 1990–99 and derived an estimate of global marine mammal bycatch by expanding U.S. bycatch estimates using data on fleet composition from the United Nations Food and Agriculture Organization (FAO). Most U.S. bycatch for both cetaceans (84 percent) and pinnipeds (98 percent) occurred in gillnets. However, global marine mammal bycatch in trawl nets and longlines is likely substantial given that total global bycatch is thought to number in the hundreds of thousands of individuals (Read *et al.,* 2006). In addition, global bycatch via longline has likely increased, as longlines have become the most common method of capturing swordfish and tuna since the United Nations banned the use of high seas driftnets over 2.5 km long in 1991 (high seas driftnets were previously often 40–60 km long) (Read, 2008; FAO, 2001).

Gear interactions can result in injury or death for the animal(s) involved and/or damage to fishing gear. Coastal animals, including various pinnipeds, bottlenose dolphins, and harbor porpoises, are perhaps the most vulnerable to these interactions and set or passive fishing gear (*e.g.,* gillnets, traps) are the most likely to be interacted with (*e.g.,* Beverton, 1985; Barlow *et al.,* 1994; Read *et al.,* 2006; Byrd *et al.,* 2014; Lewison *et al.,* 2014). Although interactions are less common for use of trawl nets and longlines, they do occur with sufficient frequency to necessitate the establishment of required mitigation measures for multiple U.S. fisheries using both types of gear (NMFS, 2014). It is likely that no species of marine mammal can be definitively excluded from the potential for interaction with fishing gear (*e.g.,* Northridge, 1984); however, the extent of interactions is likely dependent on the biology, ecology, and behavior of the species involved and the type, location, and nature of the fishery.

As described above, since 2002, NMFS Science Centers have been documenting and recording all fishery research related incidental takes of marine mammals in PSIT database. There is also a documented take on record from 2001. We present all takes documented by the SEFSC in Table 5.

TABLE 5—SEFSC RESEARCH GEAR INTERACTIONS WITH MARINE MAMMALS SINCE 2001

Survey name (lead organization)	Species taken (stock)	Gear type	Date taken	# Killed [1]	# Released alive [2]	Total taken
ATLANTIC RESEARCH AREA						
SEFSC In-Water Sea Turtle Research (SCDNR [3]).	Bottlenose dolphin (South Carolina/Georgia coastal).	Bottom trawl	20 July 2016	1	0	1
SEAMAP–SA Coastal Trawl Survey_Spring (SCDNR).	Bottlenose dolphin (Northern Florida coastal).	Bottom trawl	11 April 2014	1	0	1
SEAMAP–SA Coastal Trawl Survey_Summer (SCDNR).	Bottlenose dolphin (South Carolina/Georgia coastal).	Bottom trawl	2 Aug 2012	1	0	1
In-Water Sea Turtle Trawl Survey (SCDNR).	Bottlenose dolphin (South Carolina/Georgia coastal).	Bottom trawl	11 July 2012	0	1	1
SEAMAP–SA Coastal Trawl Survey_Fall (SCDNR).	Bottlenose dolphin (southern migratory).	Bottom trawl	5 October 2006	1	0	1
SEAMAP–SA Coastal Trawl Survey_Summer (SCDNR).	Bottlenose dolphin (South Carolina/Georgia coastal).	Bottom trawl	28 July 2006	1	0	1
RecFIN Red Drum Trammel Net Survey (SCDNR).	Bottlenose dolphin (Charleston Estuarine System).	Trammel net	22 August 2002	2	0	2
In-Water Sea Turtle Trawl Survey (SCDNR).	Bottlenose dolphin (unk)	Bottom Trawl	2001 [3]	0	1	1
ARA TOTAL				7	2	9
GULF OF MEXICO RESEARCH AREA						
Gulf of Mexico Shark Pupping and Nursery GULFSPAN (SEFSC).	Bottlenose dolphin (Sarasota Bay)	Gillnet	03 July 2018	0	1	1
Gulf of Mexico Shark Pupping and Nursery GULFSPAN (USA/DISL [2]).	Bottlenose dolphin (northern Gulf of Mexico).	Gillnet	15 July 2016	1	0	1
Skimmer Trawl TED Testing (SEFSC)	Bottlenose dolphin (MS Sound, Lake Borgne, Bay Boudreau).	Skimmer trawl	1 October 2014	1	0	1
Skimmer Trawl TED Testing (SEFSC)	Bottlenose dolphin (MS Sound, Lake Borgne, Bay Boudreau).	Skimmer trawl	23 October 2013	0	1	1

TABLE 5—SEFSC RESEARCH GEAR INTERACTIONS WITH MARINE MAMMALS SINCE 2001—Continued

Survey name (lead organization)	Species taken (stock)	Gear type	Date taken	# Killed [1]	# Released alive [2]	Total taken
SEAMAP–GOM Bottom Longline Survey (ADCNR [3]).	Bottlenose dolphin (Mobile Bay, Bonsecour Bay).	Bottom longline	6 August 2013	0	1 (SI)	1
Gulf of Mexico Shark Pupping and Nursery GULFSPAN (USA/DISL).	Bottlenose dolphin (MS Sound, Lake Borgne, Bay Boudreau).	Gillnet	18 April 2011	1	0	1
GOMRA TOTAL	.....	.....	.....	3	3	6
TOTAL ALL AREAS [3]	.....	.....	.....	10	5	15

[1] If there was question over an animal's fate after it was released (*e.g.,* it was struggling to breath/swim), it was considered ''killed''. Serious injury determinations were not previously made for animals released alive but are now part of standard protocols for released animals and will be reported in stock assessment reports.
[2] Animals released alive but were considered seriously injured as marked as SI.
[3] This take occurred prior to development of the PSIT database but we include it here because it is documented.
[4]There have been no SEFSC fishery research-related takes of marine mammals in the CRA.

Gillnets—According to the PSIT database, there are five documented takes of marine mammals (2 ARA, 3 GOMRA) incidental to SEFSC gillnet fishery research since 2002. On August 22, 2002, two bottlenose dolphins belonging to the Charleston Estuarine System stock became entangled in a trammel net (a type of gillnet) during the RecFIN Red Drum Trammel Net survey. One animal died before biologists could untangle it. The second animal was disentangled and released but it was listless; and, when freed, it sank and no subsequent resurface or breath was observed. Both animals were documented as a mortality. On April 18, 2013, a single bottlenose dolphin calf became entangled during the Gulf of Mexico Shark Pupping and Nursery (GULFSPAN) survey. On July 15, 2016, the lead line of a gillnet used for the same survey became wrapped around the fluke of an adult bottlenose dolphin. Both animals were considered part of the Northern Gulf of Mexico coastal stock and documented as taken by mortality. Most recently, on July 3, 3018, a dolphin from the Sarasota Bay stock was entangled in a GULFSPAN survey gillnet. Researchers were attending the net when the dolphin became entangled and were able to respond immediately. All gear was removed from the animal, no injuries were observed, and the dolphin was observed breathing multiple times after release.

TPWD also has a history of taking bottlenose dolphins during gillnet fisheries research. In 35 years of TPWD gill net sampling (1983–2017), and with over 26,067 gillnet sets, there have been 32 to 35 dolphin entangled in the net (range is due to possible double counting incidents or two animals being entangled at the same time but logged as one incident during early years of reporting). According to the incident reports submitted to NMFS, 7 encounters (comprising eight animals) resulted in mortality, 2 were serious injury, 14 animals were released alive, and the condition of 10 animals was recorded as unknown.

Commercial gillnet fisheries are also implicated in taking marine mammals. In the ARA, the mid-Atlantic gillnet fishery has the highest documented level of mortality of coastal morphotype common bottlenose dolphins. The sink gillnet gear in North Carolina is the largest component in terms of fishing effort and observed takes (Waring *et al.* 2015). The SEFSC does not use sink gillnets in the ARA. The North Carolina Division of Marine Fisheries (NCDMF) has operated systematic coverage of the fall (September-December) flounder gillnet fishery (greater 5 in. mesh) in Pamlico Sound. In May 2010, NCDMF expanded the observer coverage to include gillnet effort using nets greater than 4 in. mesh in most internal state waters and throughout the year, with a goal of 7–10 percent coverage. No bycatch of bottlenose dolphins has been recorded by state observers, although stranding data continue to indicate interactions with this fishery occur. One gillnet take has also occurred in commercial fishing off a Florida's east coast in March 2015 (eastern coastal stock); the animal was released alive but considered seriously injured. In the GOMRA, no marine mammal mortalities associated with commercial gillnet fisheries have been reported or observed despite observer coverage on commercial fishing vessels in Alabama, Mississippi, and Louisiana since 2012 (Waring *et al.* 2016).

Trawl nets—As described previously, trawl nets are towed nets (*i.e.,* active fishing) consisting of a cone-shaped net with a codend or bag for collecting the fish and can be designed to fish at the bottom, surface, or any other depth in the water column. Trawls are categorized as bottom, skimmer or mid-water trawls based on where they are towed in the water column. Trawl nets have the potential to capture or entangle marine mammals. The likelihood of an animal being caught in a skimmer trawl is less than a bottom trawl because the gear can be observed directly; the SEFSC research permit 20339 authorizing research on sea turtles contains monitoring and mitigation measures related to marine mammals during skimmer trawling.

Globally, at least seventeen cetacean species are known to feed in association with trawlers and individuals of at least 25 species are documented to have been killed by trawl nets, including several large whales, porpoises, and a variety of delphinids (Young and Iudicello, 2007; Karpouzli and Leaper, 2004; Hall *et al.,* 2000; Fertl and Leatherwood, 1997; Northridge, 1991; Song *et al.,* 2010). Fertl and Leatherwood (1997) provide a comprehensive overview of marine mammal-trawl interactions, including foraging behavior and considerations regarding entanglement risks. Capture or entanglement may occur whenever marine mammals are swimming near the gear, intentionally (*e.g.,* foraging) or unintentionally (*e.g.,* migrating), and any animal captured in a net is at significant risk of drowning unless quickly freed. Animals can also be captured or entangled in netting or tow lines (also called lazy lines) other than the main body of the net; animals may become entangled around the head, body, flukes, pectoral fins, or dorsal fin.

Interaction that does not result in the immediate death of the animal by drowning can cause injury (*i.e.,* Level A harassment) or serious injury. Constricting lines wrapped around the animal can immobilize the animal or injure by cutting into or through blubber, muscles and bone (*i.e.,* penetrating injuries) or constricting blood flow to or severing appendages. Immobilization of the animal can cause internal injuries from prolonged stress and/or severe struggling and/or impede the animal's ability to feed (resulting in starvation or reduced fitness) (Andersen *et al.,* 2008).

As described in the *Description of Specific Activity* section, all trawls have lazy lines. For otter trawls, conventional lazy lines are attached at their forward end to the top/back edge of the inside trawl door closest to the vessel and at their aft end to either a ''choker strap'' that consists of a line looped around the forward portion of the codend or a ring in the ''elephant ear,'' which is a triangle of reinforced webbing sewn to the codend. Both ''choker straps'' and ''elephant ears'' act as lifting straps to bring the codend onboard the vessel. The length of the lazy line is dependent on trawl size with conventional lazy lines having sufficient length to allow the codend of the trawl to be hauled to the side of the vessel after trawls have been retrieved. The lazy line is routed through a block and wound around a capstan to lift the codend to the side of the boat where the catch can be easily emptied on deck. During active commercial trawling, the lazy line is long enough to form a 10–12 ft loop behind the codend. When traditional polypropylene rope is used, this loop floats even with or slightly above and behind the codend. It is in this loop section where many lazy line dolphin interactions have been observed.

Lazy lines are most commonly made from polypropylene. Because polypropylene is manufactured in a manner that produces soft lay rope, it is limber and can be dropped in a pile. This property lends to the potential risk of half hitching around bottlenose dolphin flukes when they interact with the line. In addition, polypropylene rope does not absorb water or lose strength when wet and becomes prickly to the touch as it ages, which may contribute to bottlenose dolphin rubbing behavior.

When interacting with lazy lines, bottlenose dolphins are often observed rubbing, corkscrewing, or biting the aft portion of the line ahead of the point of attachment on the trawl (Greenman 2012). Although reasons for these behaviors are poorly understood, this type of interaction poses an entanglement threat. When corkscrewing on the lazy line, animals run the risk of the line wrapping around their fluke in a half-hitch preventing escapement. Soldevilla *et al.* (2016) provided bottlenose dolphin bycatch estimates for the Gulf of Mexico (GOM) shrimp otter trawl fishery for 2012–2014. The study found interactions with lazy lines represented the most common mode of entanglement observed.

The SEFSC Harvesting Systems Unit (HSU) has conducted limited research examining the potential use of lazy lines constructed of alternative materials. In 2007, the HSU conducted preliminary diver assisted trials with polydac and polyester hard lay ropes as a replacement for traditional polypropylene. Polydac rope is a blend of polyester and polypropylene. Compared to polypropylene, polydac rope has similar properties including negligible water absorption and ultraviolet (UV) light resistance. However, polydac may be constructed with a harder lay than traditional polypropylene rope, which prevents it from knotting easily. Divers found the polydac and polyester lines to be significantly stiffer and less pliable underwater than the conventional polypropylene lines. When towed, divers noted that the polypropylene rope was positively buoyant and arced upward, while polydac and polyester ropes were negatively buoyant and arced downward.

The 2007 diver evaluations were followed by sea trial evaluations of five different types of rope made from polypropylene, polyethylene, or nylon as lazy lines in a standard twin-rigged shrimp trawl configuration (Hataway 2008). The study utilized a Dual-Frequency Identification Sonar (DIDSON) to image bottlenose dolphins interacting with the lazy lines. Dolphin behaviors observed during the study included; rubbing, sliding down, and pulling the lazy line. No statistical analyses were conducted, but researchers noted that no differences in the frequency or types of interactions observed were apparent between line types.

In the estuary and coastal waters, dolphins are attracted to and are consistently present during fishery research trawls. Dolphins are known to attend operating nets in order to either benefit from disturbance of the bottom or to prey on discards or fish within the net. Researchers have also identified that holes in trawl nets from dolphins are typically located in net pockets where fish congregate. Pelagic trawls have the potential to capture cetaceans because the nets may be towed at faster speeds. These trawls are more likely to target species that are important prey for marine mammals (*e.g.,* squid, mackerel), and the likelihood of working in deeper waters means that a more diverse assemblage of species could potentially be present (Hall *et al.,* 2000).

According to the PSIT database, there are nine documented takes of marine mammals (7 ARA, 2 GOMRA) incidental to SEFSC trawl-based fishery research since 2002; all are bottlenose dolphins. In the ARA, all animals were taken in a bottom trawl while skimmer trawls were implicated in takes in the GOMRA. Six of the animals were dead upon net retrieval and two animals were released alive and determined not be serious injury. In 2001, a dolphin was caught in a bottom trawl during SCDNR's sea turtle research survey. Information regarding this take are sparse (date and location are unknown) but the animal was released alive. On July 28, 2006, and again later that year on October 5, bottlenose dolphins belonging to South Carolina/Georgia coastal and southern migratory coastal stock, respectively, was found dead in a bottom trawl net used during the fall Southeast Area Monitoring and Assessment Program (SEAMAP) SA Coastal Trawl survey. Both animals were taken back to partner labs for necropsy. On July 11, 2012, a bottlenose dolphin belonging to the South Carolina/Georgia coastal stock was also caught in a bottom trawl net during the In-Water Sea Turtle Research survey. The net was immediately retrieved and the animal was released alive, breathing without difficulty and swiftly swimming away. On August 2, 2012 a bottlenose dolphin also belonging to the South Carolina/Georgia coastal stock was captured in the trawl net during the summer SEAMAP–SA Coastal Trawl survey. The animal was dead upon net retrieval. Most recently, on July 20, 2016, a bottlenose dolphin belonging to the South Carolina/Georgia coastal stock was taken in a bottom trawl during the In-Water Sea Turtle Research survey. Upon net retrieval, a suspected juvenile bottlenose dolphin, approximately 6 feet in length, was observed in the starboard codend of the trawl net. Although the animal was released alive, it was listless and not actively swimming when returned to the water. Therefore, the event was documented as a take by mortality.

In the GOMRA, a bottlenose dolphin belonging to the Mississippi Sound, Lake Borge, Bay Boudreau stock was captured in a skimmer trawl on October 23, 2013, during the SEFSC Skimmer Trawl TED Testing survey. The animal was observed breathing at the surface in the trawl upon retrieval of tailbag. To free the animal, the researchers redeployed the bag and slowed the vessel, allowing the animal to swim away unharmed. On October 1, 2014, a bottlenose dolphin belonging to the same stock was taken during the same survey. The animal was dead upon net retrieval.

In November 2010, NMFS elevated the Southeast Atlantic shrimp trawl fishery from a Category II to Category III fishing. From May through December 2010, Greenman *et al.* (2013) investigated interactions between the South Carolina shrimping fleet and

bottlenose dolphins. Methods included fishery-independent (SCNDR fisheries research surveys) and fishery-dependent onboard observations, a shrimper survey, and stranding record research. The authors found that of the 385 tows observed, dolphins were present 45 percent of the time (173 tows). Of these tows, dolphins were present 12 percent of the time at set-out and 44 percent of the time during haul back. According to the shrimper survey, most fishermen report dolphins rubbing bodies on the net or biting or tugging on nets or lines. However, 39 of the 44 fishermen surveyed reported a dolphin has never become entangled in the net while 38 of the 44 fishermen reported a dolphin has never become entangled in the lazy line.

Hook and Line—Marine mammals may be hooked or entangled in longline gear, with interactions potentially resulting in death due to drowning, strangulation, severing of carotid arteries or the esophagus, infection, an inability to evade predators, or starvation due to an inability to catch prey (Hofmeyr *et al.,* 2002), although it is more likely that animals will survive being hooked if they are able to reach the surface to breathe. Injuries, which may include serious injury, include lacerations and puncture wounds. Animals may attempt to depredate either bait or catch, with subsequent hooking, or may become accidentally entangled. As described for trawls, entanglement can lead to constricting lines wrapped around the animals and/or immobilization, and even if entangling materials are removed the wounds caused may continue to weaken the animal or allow further infection (Hofmeyr *et al.,* 2002).

Large whales may become entangled in a longline and then break free with a portion of gear trailing, resulting in alteration of swimming energetics due to drag and ultimate loss of fitness and potential mortality (Andersen *et al.,* 2008). Weight of the gear can cause entangling lines to further constrict and further injure the animal. Hooking injuries and ingested gear are most common in small cetaceans and pinnipeds but have been observed in large cetaceans (*e.g.,* sperm whales). The severity of the injury depends on the species, whether ingested gear includes hooks, whether the gear works its way into the gastrointestinal (GI) tract, whether the gear penetrates the GI lining, and the location of the hooking (*e.g.,* embedded in the animal's stomach or other internal body parts) (Andersen *et al.,* 2008).

Bottom longlines pose less of a threat to marine mammals due to their deployment on the ocean bottom but can still result in entanglement in buoy lines or hooking as the line is either deployed or retrieved. The rate of interaction between longline fisheries and marine mammals depends on the degree of overlap between longline effort and species distribution, hook style and size, type of bait and target catch, and fishing practices (such as setting/hauling during the day or at night).

Rod and reel gear carry less potential for marine mammal interaction, but the use of baited hooks in the presence of inquisitive marine mammals carries some risk. However, the small amount of hook and line operations in relation to longline operations and the lack of extended, unattended soak times mean that use of rod and reel is much less likely to result in marine mammal interactions for pelagic species. However, bottlenose dolphins are known to interact with commercial and recreational rod and reel fishermen. The SEFSC rod and reel fishing would implement various mitigation measures including consistent monitoring and pulling lines from water should marine mammals, especially bottlenose dolphins, be at risk of interaction. Therefore, we find a reduced potential for interaction from SEFSC rod and reel surveys than compared to commercial and recreational fishing.

Many species of cetaceans and pinnipeds are documented to have been killed by longlines, including several large whales, porpoises, a variety of delphinids, seals, and sea lions (Perez, 2006; Young and Iudicello, 2007; Northridge, 1984, 1991; Wickens, 1995). Generally, direct interaction between longlines and marine mammals (both cetaceans and pinnipeds) has been recorded wherever longline fishing and animals co-occur. A lack of recorded interactions where animals are known to be present may indicate simply that longlining is absent or an insignificant component of fisheries in that region or that interactions were not observed, recorded, or reported.

In evaluating risk relative to a specific fishery (or research survey), one must consider the length of the line and number of hooks deployed as well as frequency, timing, and location of deployment. These considerations inform determinations of whether interaction with marine mammals is likely. As with other gear and fishing practice comparisons to those involved in commercial fisheries, the longlines used by the SEFSC are shorter and are not set as long.

According to the PSIT database, one bottlenose dolphin belonging to the Mobile Bay, Bonsecour Bay stock was taken incidental to longline fisheries research. On August 6, 2013, while retrieving bottom longline gear during the SEAMAP–GOM Bottom Longline survey, a dolphin was caught by a circle hook during a longline research survey. After less than 60 seconds, the animal broke free from the gear and swam away vigorously, but the hook and approximately 2 m of trailing line remained attached to the animal. As such, the incident was documented as a serious injury. While a lack of repeated historical interaction does not in and of itself indicate that future interactions are unlikely, we believe that the historical record, considered in context with the frequency and timing of these activities, as well as mitigation measures employed indicate that future marine mammal interactions with these gears would be uncommon but not totally unexpected.

Other research gear—All other gear used in SEFSC fisheries research (*e.g.,* a variety of plankton nets, eel and chevron traps, CTDs, ROVs) do not have the expected potential for marine mammal interactions and are not known to have been involved in any marine mammal interaction. Specifically, we consider very small nets (*e.g.,* bongo and nueston nets), CTDs, ROVs, and vertically deployed or towed imaging systems to be no-impact gear types.

Unlike trawl nets, gillents, and hook and line gear, which are used in both scientific research and commercial fishing applications, the gear and equipment discussed here are not considered similar or analogous to any commercial fishing gear and are not designed to capture any commercially salable species, or to collect any sort of sample in large quantities. They do not have the potential to take marine mammals primarily because of their design, size, or how they are deployed. For example, CTDs are typically deployed in a vertical cast on a cable and have no loose lines or other entanglement hazards. A bongo net is typically deployed on a cable, whereas neuston nets (these may be plankton nets or small trawls) are often deployed in the upper one meter of the water column; either net type has very small size (*e.g.,* two bongo nets of 0.5 m^2 each or a neuston net of approximately 2 m^2) and no trailing lines. Due to lack of potential to result in harassment to marine mammals, these other gear types are not considered further in this document.

Potential Effects of Underwater Sound—Anthropogenic sounds cover a broad range of frequencies and sound levels and can have a range of highly variable impacts on marine life, from

none or minor to potentially severe responses, depending on received levels, duration of exposure, behavioral context, and various other factors. The potential effects of underwater sound from active acoustic sources can potentially result in one or more of the following: Temporary or permanent hearing impairment, non-auditory physical or physiological effects, behavioral disturbance, stress, and masking (Richardson *et al.,* 1995; Gordon *et al.,* 2004; Nowacek *et al.,* 2007; Southall *et al.,* 2007; Götz *et al.,* 2009). The degree of effect is intrinsically related to the signal characteristics, received level, distance from the source, duration of the sound exposure, and context in which the signal is received.

When considering the potential for a marine mammal to be harassed by a sound-generating source, we consider multiple signal characteristics, including, but not limited to, sound type (*e.g.,* impulsive vs. non-impulsive; continuous vs. intermittent), frequency (expressed as hertz (Hz) or kilohertz (kHz), and source levels (expressed as decibels (dB)). A sound pressure level (SPL) in dB is described as the ratio between a measured pressure and a reference pressure (for underwater sound, this is 1 microPascal [μPa]). Typically SPLs are expressed as root mean square (rms) values which is the quadratic mean sound pressure over the duration of an impulse or sound exposure levels (SEL; represented as dB re 1 μPa^2-s) which represents the total energy contained within a pulse, and considers both intensity and duration of exposure.

The SEFSC would not use acoustic sources with spectral characteristics resembling non-impulsive, continuous noise (*e.g.,* drilling). For impulsive sounds, peak sound pressure levels (PK) also provide an indication of potential harassment. We also consider other source characteristics when assessing potential effects such as directionality and beam width of fishery sonar equipment such as the ones involved here.

As described above, category 1 sources (those operating above 180kHz), are determined to have essentially no probability of being detected by or resulting in any potential adverse impacts on marine species. This conclusion is based on the fact that operating frequencies are above the known hearing capabilities of any marine species (as described above). Although sounds that are above the functional hearing range of marine animals may be audible if sufficiently loud (*e.g.,* see Møhl, 1968), the relative output levels of these sources and the levels that would likely be required for animals to detect them would be on the order of a few meters. The probability for injury or disturbance from these sources is discountable; therefore, no take is proposed to be authorized by Category 1 sources.

Auditory Thresholds Shifts

NMFS defines threshold shift (TS) as ''a change, usually an increase, in the threshold of audibility at a specified frequency or portion of an individual's hearing range above a previously established reference level'' (NMFS, 2016). Threshold shift can be permanent (PTS) or temporary (TTS). As described in NMFS (2016), there are numerous factors to consider when examining the consequence of TS, including, but not limited to, the signal temporal pattern (*e.g.,* impulsive or non-impulsive), likelihood an individual would be exposed for a long enough duration or to a high enough level to induce a TS, the magnitude of the TS, time to recovery (seconds to minutes or hours to days), the frequency range of the exposure (*i.e.,* spectral content), the hearing and vocalization frequency range of the exposed species relative to the signal's frequency spectrum (*i.e.,* how animal uses sound within the frequency band of the signal; *e.g.,* Kastelein et al. 2014b), and their overlap (*e.g.,* spatial, temporal, and spectral).

Permanent Threshold Shift

NMFS defines PTS as ''a permanent, irreversible increase in the threshold of audibility at a specified frequency or portion of an individual's hearing range above a previously established reference level'' (NMFS, 2016). It is the permanent elevation in hearing threshold resulting from irreparable damage to structures of the inner ear (*e.g.,* sensory hair cells, cochlea) or central auditory system (ANSI, 1995; Ketten 2000). Available data from humans and other terrestrial mammals indicate that a measured 40 dB threshold shift approximates PTS onset (see Ward *et al.* 1958; Ward *et al.* 1959; Kryter *et al.* 1966; Miller 1974; Henderson *et al.* 2008). Unlike TTS, NMFS considers PTS auditory injury and therefore constitutes Level A harassment, as defined in the MMPA.

With the exception of a single study unintentionally inducing PTS in a harbor seal (Kastak *et al.*, 2008), there are no empirical data measuring PTS in marine mammals largely due to the fact that, for various ethical reasons, experiments involving anthropogenic noise exposure at levels inducing PTS are not typically pursued or authorized (NMFS, 2016). As described in the SWFSC and NWFSC proposed rules for incidental take of marine mammals incidental to fisheries research and the SEFSC's application, the potential for PTS is extremely low given the high frequency and directionality of the active acoustic sources used during fisheries research. Because the frequency ranges of all sources are outside the hearing range of baleen whales (with the exception of the 18 kHz mode of the Simrad EK60), we do not anticipate PTS to occur for mysticetes. Any potential PTS for mid-frequency and high-frequency cetaceans is also very low given the cone of highest received levels is centered under the ship because, while echosounders may transmit at high sound pressure levels, the very short duration of their pulses and their high spatial selectivity make them unlikely to cause damage to marine mammal auditory systems (Lurton and DeRuiter, 2011). Natural avoidance responses by animals to the proximity of the vessel at these extremely close ranges would likely further reduce their probability of being exposed to these levels.

Temporary Threshold Shift

NMFS defines TTS as ''a temporary, reversible increase in the threshold of audibility at a specified frequency or portion of an individual's hearing range above a previously established reference level'' (NMFS, 2016). A TTS of 6 dB is considered the minimum threshold shift clearly larger than any day-to-day or session-to-session variation in a subject's normal hearing ability (Schlundt *et al.,* 2000; Finneran *et al.,* 2000; Finneran *et al.* 2002, as reviewed in Southall *et al.,* 2007 for a review)). TTS can last from minutes or hours to days (*i.e.,* there is recovery), occur in specific frequency ranges (*i.e.,* an animal might only have a temporary loss of hearing sensitivity between the frequencies of 1 and 10 kHz)), and can be of varying amounts (for example, an animal's hearing sensitivity might be temporarily reduced by only 6 dB or reduced by 30 dB). Currently, TTS measurements exist for only four species of cetaceans (bottlenose dolphins, belugas, harbor porpoises, and Yangtze finless porpoise) and three species of pinnipeds (Northern elephant seal, harbor seal, and California sea lion). These TTS measurements are from a limited number of individuals within these species.

Depending on the degree (elevation of threshold in dB), duration (*i.e.,* recovery time), and frequency range of TTS, and the context in which it is experienced, TTS can have effects on marine mammals ranging from discountable to

serious (similar to those discussed in auditory masking, below). For example, a marine mammal may be able to readily compensate for a brief, relatively small amount of TTS in a non-critical frequency range that takes place during a time when the animal is traveling through the open ocean, where ambient noise is lower and there are not as many competing sounds present. Alternatively, a larger amount and longer duration of TTS sustained during time when communication is critical for successful mother/calf interactions could have more serious impacts. We note that reduced hearing sensitivity as a simple function of aging has been observed in marine mammals, as well as humans and other taxa (Southall *et al.,* 2007), so we can infer that strategies exist for coping with this condition to some degree, though likely not without cost.

As described previously (see *Description of Active Acoustic Sound Sources*), the SEFSC proposes to use various active acoustic sources, including echosounders (*e.g.,* multibeam systems), scientific sonar systems, positional sonars (*e.g.,* net sounders for determining trawl position), and environmental sensors (*e.g.,* current profilers). These acoustic sources are not as powerful as many typically investigated acoustic sources (*e.g.,* seismic airguns, low- and mid-frequency active sonar used for military purposes) which produce signals that are either much lower frequency and/or higher total energy (considering output sound levels and signal duration) than the high-frequency mapping and fish-finding systems used by the SEFSC. There has been relatively little attention given to the potential impacts of high-frequency sonar systems on marine life, largely because their combination of high output frequency and relatively low output power means that such systems are less likely to impact many marine species. However, some marine mammals do hear and produce sounds within the frequency range used by these sources and ambient noise is much lower at high frequencies, increasing the probability of signal detection relative to other sounds in the environment.

As noted above, relatively high levels of sound are likely required to cause TTS in marine mammals. However, there may be increased sensitivity to TTS for certain species generally (harbor porpoise; Lucke *et al.,* 2009) or specifically at higher sound exposure frequencies, which correspond to a species' best hearing range (20 kHz vs. 3 kHz for bottlenose dolphins; Finneran and Schlundt, 2010). Based on discussion provided by Southall *et al.* (2007), Lurton and DeRuiter (2011) modeled the potential impacts of conventional echosounders on marine mammals, estimating TTS onset at typical distances of 10–100 m for the kinds of sources considered here. Kremser *et al.* (2005) modeled the potential for TTS in blue, sperm, and beaked whales (please see Kremser *et al.* (2005) for discussion of assumptions regarding TTS onset in these species) from a multibeam echosounder, finding similarly that TTS would likely only occur at very close ranges to the hull of the vessel. The authors estimated ship movement at 12 kn (faster than SEFSC vessels would typically move), which would result in an underestimate of the potential for TTS to occur. But the modeled system (Hydrosweep) operates at lower frequencies and with a wider beam pattern than do typical SEFSC systems, which would result in a likely more significant overestimate of TTS potential. The results of both studies emphasize that these effects would very likely only occur in the cone ensonified below the ship and that animal responses to the vessel (sound or physical presence) at these extremely close ranges would very likely influence their probability of being exposed to these levels. At the same distances, but to the side of the vessel, animals would not be exposed to these levels, greatly decreasing the potential for an animal to be exposed to the most intense signals. For example, Kremser *et al.* (2005) note that SPLs outside the vertical lobe, or beam, decrease rapidly with distance, such that SPLs within the horizontal lobes are about 20 dB less than the value found in the center of the beam. For certain species (*i.e.,* odontocete cetaceans and especially harbor porpoises), these ranges may be somewhat greater based on more recent data (Lucke *et al.,* 2009; Finneran and Schlundt, 2010) but are likely still on the order of hundreds of meters. In addition, potential behavioral responses further reduce the already low likelihood that an animal may approach close enough for any type of hearing loss to occur.

Various other studies have evaluated the environmental risk posed by use of specific scientific sonar systems. Burkhardt *et al.* (2007) considered the Simrad EK60, which is used by the SEFSC, and concluded that direct injury (*i.e.,* sound energy causes direct tissue damage) and indirect injury (*i.e.,* self-damaging behavior as response to acoustic exposure) would be unlikely given source and operational use (*i.e.,* vessel movement) characteristics, and that any behavioral responses would be unlikely to be significant. Similarly, Boebel *et al.* (2006) considered the Hydrosweep system in relation to the risk for direct or indirect injury, concluding that (1) risk of TTS (please see Boebel *et al.* (2006) for assumptions regarding TTS onset) would be less than two percent of the risk of ship strike and (2) risk of behaviorally-induced damage would be essentially nil due to differences in source characteristics between scientific sonars and sources typically associated with stranding events (*e.g.,* mid-frequency active sonar, but see discussion of the 2008 Madagascar stranding event below). It should be noted that the risk of direct injury may be greater when a vessel operates sources while on station (*i.e.,* stationary), as there is a greater chance for an animal to receive the signal when the vessel is not moving.

Boebel *et al.* (2005) report the results of a workshop in which a structured, qualitative risk analysis of a range of acoustic technology was undertaken, specific to use of such technology in the Antarctic. The authors assessed a single-beam echosounder commonly used for collecting bathymetric data (12 kHz, 232 dB, 10° beam width), an array of single-beam echosounders used for mapping krill (38, 70, 120, and 200 kHz; 230 dB; 7° beam width), and a multibeam echosounder (30 kHz, 236 dB, 150° x 1° swath width). For each source, the authors produced a matrix displaying the severity of potential consequences (on a six-point scale) against the likelihood of occurrence for a given degree of severity. For the former two systems, the authors determined on the basis of the volume of water potentially affected by the system and comparisons between its output and available TTS data that the chance of TTS only exists in a small volume immediately under the transducers, and that consequences of level four and above were inconceivable, whereas level one consequences (''Individuals show no response, or only a temporary (minutes) behavior change'') would be expected in almost all instances. Some minor displacement of animals in the immediate vicinity of the ship may occur. For the multibeam echosounder, Boebel *et al.* (2005) note that the high output and broad width of the swath abeam of the vessel makes displacement of animals more likely. However, the fore and aft beamwidth is small and the pulse length very short, so the risk of ensonification above TTS levels is still considered quite small and the likelihood of auditory or other injuries low. In general, the authors reached the

same conclusions described for the single-beam systems but note that more severe impacts—including fatalities resulting from herding of sensitive species in narrow sea ways—are at least possible (*i.e.,* may occur in exceptional circumstances). However, the probability of herding remains low not just because of the rarity of the necessary confluence of species, bathymetry, and likely other factors, but because the restricted beam shape makes it unlikely that an animal would be exposed more than briefly during the passage of the vessel (Boebel *et al.,* 2005). More recently, Lurton (2016) conducted a modeling exercise and concluded similarly that likely potential for acoustic injury from these types of systems is negligible, but that behavioral response cannot be ruled out.

Characteristics of the sound sources used by SEFSC reduce the likelihood of effects to marine mammals, as well as the intensity of effect assuming that an animal perceives the signal. Intermittent exposures—as would occur due to the brief, transient signals produced by these sources—require a higher cumulative SEL to induce TTS than would continuous exposures of the same duration (*i.e.,* intermittent exposure results in lower levels of TTS) (Mooney *et al.,* 2009a; Finneran *et al.,* 2010). In addition, animals recover from intermittent exposures faster in comparison to continuous exposures of the same duration (Finneran *et al.,* 2010). Although echosounder pulses are, in general, emitted rapidly, they are not dissimilar to odontocete echolocation click trains. Research indicates that marine mammals generally have extremely fine auditory temporal resolution and can detect each signal separately (*e.g.,* Au *et al.,* 1988; Dolphin *et al.,* 1995; Supin and Popov, 1995; Mooney *et al.,* 2009b), especially for species with echolocation capabilities. Therefore, it is likely that marine mammals would indeed perceive echosounder signals as being intermittent.

We conclude that, on the basis of available information on hearing and potential auditory effects in marine mammals, high-frequency cetacean species would be the most likely to potentially incur temporary hearing loss from a vessel operating high-frequency fishery research sonar sources, and the potential for PTS to occur for any species is so unlikely as to be discountable. Even for high-frequency cetacean species, individuals would have to make a very close approach and also remain very close to vessels operating these sources in order to receive multiple exposures at relatively high levels, as would be necessary to cause TTS. Additionally, given that behavioral responses typically include the temporary avoidance that might be expected (see below), the potential for auditory effects considered physiological damage (injury) is considered extremely low in relation to realistic operations of these devices. Given the fact that fisheries research survey vessels are moving, the likelihood that animals may avoid the vessel to some extent based on either its physical presence or due to aversive sound (vessel or active acoustic sources), and the intermittent nature of many of these sources, the potential for TTS is probably low for high-frequency cetaceans and very low to zero for other species.

Behavioral Effects on Marine Mammals

Category 2 active acoustic sources are likely to be audible to some marine mammal species. Among the marine mammals, most of these sources are unlikely to be audible to whales and most pinnipeds, whereas they may be detected by odontocete cetaceans (and particularly high frequency specialists such as harbor porpoise). Richardson *et al.* (1995) described zones of increasing intensity of effect that might be expected to occur, in relation to distance from a source and assuming that the signal is within an animal's hearing range. First is the area within which the acoustic signal would be audible (potentially perceived) to the animal but not strong enough to elicit any overt behavioral or physiological response. The next zone corresponds with the area where the signal is audible to the animal and of sufficient intensity to elicit behavioral or physiological responses. Third is a zone within which, for signals of high intensity, the received level is sufficient to potentially cause discomfort or tissue damage to auditory or other systems. Overlaying these zones to a certain extent is the area within which masking (*i.e.,* when a sound interferes with or masks the ability of an animal to detect a signal of interest that is above the absolute hearing threshold) may occur; the masking zone may be highly variable in size.

Behavioral disturbance may include a variety of effects, including subtle changes in behavior (*e.g.,* minor or brief avoidance of an area or changes in vocalizations), more conspicuous changes in similar behavioral activities, and more sustained and/or potentially severe reactions, such as displacement from or abandonment of high-quality habitat. Behavioral responses to sound are highly variable and context-specific and any reactions depend on numerous intrinsic and extrinsic factors (*e.g.,* species, state of maturity, experience, current activity, reproductive state, auditory sensitivity, time of day), as well as the interplay between factors (*e.g.,* Richardson *et al.,* 1995; Wartzok *et al.,* 2003; Southall *et al.,* 2007; Weilgart, 2007; Archer *et al.,* 2010). Behavioral reactions can vary not only among individuals but also within an individual, depending on previous experience with a sound source, context, and numerous other factors (Ellison *et al.,* 2012), and can vary depending on characteristics associated with the sound source (*e.g.,* whether it is moving or stationary, number of sources, distance from the source).

Habituation can occur when an animal's response to a stimulus wanes with repeated exposure, usually in the absence of unpleasant associated events (Wartzok *et al.,* 2003). Animals are most likely to habituate to sounds that are predictable and unvarying. It is important to note that habituation is appropriately considered as a ''progressive reduction in response to stimuli that are perceived as neither aversive nor beneficial,'' rather than as, more generally, moderation in response to human disturbance (Bejder *et al.,* 2009). The opposite process is sensitization, when an unpleasant experience leads to subsequent responses, often in the form of avoidance, at a lower level of exposure. As noted, behavioral state may affect the type of response. For example, animals that are resting may show greater behavioral change in response to disturbing sound levels than animals that are highly motivated to remain in an area for feeding (Richardson *et al.,* 1995; NRC, 2003; Wartzok *et al.,* 2003). Controlled experiments with captive marine mammals have showed pronounced behavioral reactions, including avoidance of loud sound sources (Ridgway *et al.,* 1997; Finneran *et al.,* 2003). Observed responses of wild marine mammals to loud pulsed sound sources (typically seismic airguns or acoustic harassment devices) have been varied but often consist of avoidance behavior or other behavioral changes suggesting discomfort (Morton and Symonds, 2002; see also Richardson *et al.,* 1995; Nowacek *et al.,* 2007).

Available studies show wide variation in response to underwater sound; therefore, it is difficult to predict specifically how any given sound in a particular instance might affect marine mammals perceiving the signal. If a marine mammal does react briefly to an underwater sound by changing its behavior or moving a small distance, the

impacts of the change are unlikely to be significant to the individual, let alone the stock or population. However, if a sound source displaces marine mammals from an important feeding or breeding area for a prolonged period, impacts on individuals and populations could be significant (*e.g.,* Lusseau and Bejder, 2007; Weilgart, 2007; NRC, 2005). However, there are broad categories of potential response, which we describe in greater detail here, that include alteration of dive behavior, alteration of foraging behavior, effects to breathing, interference with or alteration of vocalization, avoidance, and flight.

Changes in dive behavior can vary widely and may consist of increased or decreased dive times and surface intervals as well as changes in the rates of ascent and descent during a dive (*e.g.,* Frankel and Clark, 2000; Costa *et al.,* 2003; Ng and Leung, 2003; Nowacek *et al.;* 2004; Goldbogen *et al.,* 2013a, b). Variations in dive behavior may reflect interruptions in biologically significant activities (*e.g.,* foraging) or they may be of little biological significance. The impact of an alteration to dive behavior resulting from an acoustic exposure depends on what the animal is doing at the time of the exposure and the type and magnitude of the response.

Disruption of feeding behavior can be difficult to correlate with anthropogenic sound exposure, so it is usually inferred by observed displacement from known foraging areas, the appearance of secondary indicators (*e.g.,* bubble nets or sediment plumes), or changes in dive behavior. As for other types of behavioral response, the frequency, duration, and temporal pattern of signal presentation, as well as differences in species sensitivity, are likely contributing factors to differences in response in any given circumstance (*e.g.,* Croll *et al.,* 2001; Nowacek *et al.;* 2004; Madsen *et al.,* 2006; Yazvenko *et al.,* 2007). A determination of whether foraging disruptions incur fitness consequences would require information on or estimates of the energetic requirements of the affected individuals and the relationship between prey availability, foraging effort and success, and the life history stage of the animal.

Variations in respiration naturally vary with different behaviors and alterations to breathing rate as a function of acoustic exposure can be expected to co-occur with other behavioral reactions, such as a flight response or an alteration in diving. However, respiration rates in and of themselves may be representative of annoyance or an acute stress response. Various studies have shown that respiration rates may either be unaffected or could increase, depending on the species and signal characteristics, again highlighting the importance in understanding species differences in the tolerance of underwater noise when determining the potential for impacts resulting from anthropogenic sound exposure (*e.g.,* Kastelein *et al.,* 2001, 2005b, 2006; Gailey *et al.,* 2007).

Marine mammals vocalize for different purposes and across multiple modes, such as whistling, echolocation click production, calling, and singing. Changes in vocalization behavior in response to anthropogenic noise can occur for any of these modes and may result from a need to compete with an increase in background noise or may reflect increased vigilance or a startle response. For example, in the presence of potentially masking signals, humpback whales and killer whales have been observed to increase the length of their songs (Miller *et al.,* 2000; Fristrup *et al.,* 2003; Foote *et al.,* 2004), while right whales have been observed to shift the frequency content of their calls upward while reducing the rate of calling in areas of increased anthropogenic noise (Parks *et al.,* 2007b). In some cases, animals may cease sound production during production of aversive signals (Bowles *et al.,* 1994).

Avoidance is the displacement of an individual from an area or migration path as a result of the presence of a sound or other stressors, and is one of the most obvious manifestations of disturbance in marine mammals (Richardson *et al.,* 1995). For example, gray whales are known to change direction—deflecting from customary migratory paths—in order to avoid noise from seismic surveys (Malme *et al.,* 1984). Avoidance may be short-term, with animals returning to the area once the noise has ceased (*e.g.,* Bowles *et al.,* 1994; Goold, 1996; Morton and Symonds, 2002; Gailey *et al.,* 2007). Longer-term displacement is possible, however, which may lead to changes in abundance or distribution patterns of the affected species in the affected region if habituation to the presence of the sound does not occur (*e.g.,* Blackwell *et al.,* 2004; Bejder *et al.,* 2006; Teilmann *et al.,* 2006).

A flight response is a dramatic change in normal movement to a directed and rapid movement away from the perceived location of a sound source. The flight response differs from other avoidance responses in the intensity of the response (*e.g.,* directed movement, rate of travel). Relatively little information on flight responses of marine mammals to anthropogenic signals exist, although observations of flight responses to the presence of predators have occurred (Connor and Heithaus, 1996). The result of a flight response could range from brief, temporary exertion and displacement from the area where the signal provokes flight to, in extreme cases, marine mammal strandings (Evans and England, 2001). However, it should be noted that response to a perceived predator does not necessarily invoke flight (Ford and Reeves, 2008), and whether individuals are solitary or in groups may influence the response.

Behavioral disturbance can also impact marine mammals in more subtle ways. Increased vigilance may result in costs related to diversion of focus and attention (*i.e.,* when a response consists of increased vigilance, it may come at the cost of decreased attention to other critical behaviors such as foraging or resting). These effects have generally not been demonstrated for marine mammals, but studies involving fish and terrestrial animals have shown that increased vigilance may substantially reduce feeding rates (*e.g.,* Beauchamp and Livoreil, 1997; Fritz *et al.,* 2002; Purser and Radford, 2011). In addition, chronic disturbance can cause population declines through reduction of fitness (*e.g.,* decline in body condition) and subsequent reduction in reproductive success, survival, or both (*e.g.,* Harrington and Veitch, 1992; Daan *et al.,* 1996; Bradshaw *et al.,* 1998). However, Ridgway *et al.* (2006) reported that increased vigilance in bottlenose dolphins exposed to sound over a five-day period did not cause any sleep deprivation or stress effects.

Many animals perform vital functions, such as feeding, resting, traveling, and socializing, on a diel cycle (24-hour cycle). Disruption of such functions resulting from reactions to stressors such as sound exposure are more likely to be significant if they last more than one diel cycle or recur on subsequent days (Southall *et al.,* 2007). Consequently, a behavioral response lasting less than one day and not recurring on subsequent days is not considered particularly severe unless it could directly affect reproduction or survival (Southall *et al.,* 2007). Note that there is a difference between multi-day substantive behavioral reactions and multi-day anthropogenic activities. For example, just because an activity lasts for multiple days does not necessarily mean that individual animals are either exposed to activity-related stressors for multiple days or, further, exposed in a manner resulting in sustained multi-day substantive behavioral responses.

Few experiments have been conducted to explicitly test for potential effects of echosounders on the behavior of wild cetaceans. Quick *et al.* (2017) describe an experimental approach to assess potential changes in short-finned pilot whale behavior during exposure to an echosounder (Simrad EK60 operated at 38 kHz, which is commonly used by SESC). In 2011, digital acoustic recording tags (DTAG) were attached to pilot whales off of North Carolina, with five of the nine tagged whales exposed to signals from the echosounder over a period of eight days and four treated as control animals. DTAGS record both received levels of noise as well as orientation of the animal. Results did not show an overt response to the echosounder or a change to foraging behavior of tagged whales, but the whales did increase heading variance during exposure. The authors suggest that this response was not a directed avoidance response but was more likely a vigilance response, with animals maintaining awareness of the location of the echosounder through increased changes in heading variance (Quick *et al.,* 2017). Visual observations of behavior did not indicate any dramatic response, unusual behaviors, or changes in heading, and cessation of biologically important behavior such as feeding was not observed. These less overt responses to sound exposure are difficult to detect by visual observation, but may have important consequences if the exposure does interfere with biologically important behavior.

We considered behavioral data from these species when assessing the potential for take (see Estimated Take section). There are few studies that obtained detailed beaked whale behavioral data in response to echosounders (*e.g.,* Quick *et al.* (2016), Cholewiak *et al.* (2017)) as more effort has been focused on mid-frequency active sonar (*e.g.,* Cox *et al.* (2006), Tyack *et al.* (2006, 2011). In 2013, passive acoustic monitoring of beaked whales in the Atlantic Ocean occurred during and in absence of prey studies using an EK60 echosounder (Cholewiak *et al.,* 2017). There was a significant reduction of acoustic detections during echosounder use; indicating beaked whales may have moved out of the detection range, initiated directed movement away from the ship, the animals remained in the area but temporarily suspend foraging activity. The authors also noted that due to some potential outliers in the data, the analysis may not be sensitive enough to fully evaluate the relationship between beaked whale sightings and echosounder use. Beaked whales have also not consistently been observed to elicit behaviors across species or source type. For example, Cuvier's beaked whales have strongly avoided playbacks of mid-frequency active sonar at distances of 10 km but reacted much less severely to naval sonar operating 118 km away, despite similar RLs (DeRuiter *et al.* 2013).

Based on the available data, NMFS anticipates beaked whales and harbor porpoise are more likely to respond in a manner that may rise to the level of take to SEFSC acoustic sources. However, the method by which take is quantified in this proposed rule is conservative (*e.g.,* simplified, conservative Level B harassment area to the 160dB isopleth, conservative amount of time surveys may occur) and adequately accounts for the number of individuals which may be taken. We also note harbor porpoise occur as far south as North Carolina in the ARA during winter months (January through March) and do not inhabit the GOMRA or CRA. Therefore, the potential for harassment from scientific sonar used by the SEFSC is unlikely outside of the January through March timeframe off of North Carolina constituting a very small subset of space and time when considering all three research areas and research effort. More information on take estimate methodology is found in the Estimated Take section.

Stress responses—An animal's perception of a threat may be sufficient to trigger stress responses consisting of some combination of behavioral responses, autonomic nervous system responses, neuroendocrine responses, or immune responses (*e.g.,* Seyle, 1950; Moberg, 2000). In many cases, an animal's first and sometimes most economical (in terms of energetic costs) response is behavioral avoidance of the potential stressor. Autonomic nervous system responses to stress typically involve changes in heart rate, blood pressure, and gastrointestinal activity. These responses have a relatively short duration and may or may not have a significant long-term effect on an animal's fitness.

Neuroendocrine stress responses often involve the hypothalamus-pituitary-adrenal system. Virtually all neuroendocrine functions that are affected by stress—including immune competence, reproduction, metabolism, and behavior—are regulated by pituitary hormones. Stress-induced changes in the secretion of pituitary hormones have been implicated in failed reproduction, altered metabolism, reduced immune competence, and behavioral disturbance (*e.g.,* Moberg, 1987; Blecha, 2000). Increases in the circulation of glucocorticoids are also equated with stress (Romano *et al.,* 2004).

The primary distinction between stress (which is adaptive and does not normally place an animal at risk) and ''distress'' is the cost of the response. During a stress response, an animal uses glycogen stores that can be quickly replenished once the stress is alleviated. In such circumstances, the cost of the stress response would not pose serious fitness consequences. However, when an animal does not have sufficient energy reserves to satisfy the energetic costs of a stress response, energy resources must be diverted from other functions. This state of distress will last until the animal replenishes its energetic reserves sufficient to restore normal function.

Relationships between these physiological mechanisms, animal behavior, and the costs of stress responses are well-studied through controlled experiments and for both laboratory and free-ranging animals (*e.g.,* Holberton *et al.,* 1996; Hood *et al.,* 1998; Jessop *et al.,* 2003; Krausman *et al.,* 2004; Lankford *et al.,* 2005). Stress responses due to exposure to anthropogenic sounds or other stressors and their effects on marine mammals have also been reviewed (Fair and Becker, 2000; Romano *et al.,* 2002b) and, more rarely, studied in wild populations (*e.g.,* Romano *et al.,* 2002a). For example, Rolland *et al.* (2012) found that noise reduction from reduced ship traffic in the Bay of Fundy was associated with decreased stress in North Atlantic right whales. These and other studies lead to a reasonable expectation that some marine mammals will experience physiological stress responses upon exposure to acoustic stressors and that it is possible that some of these would be classified as ''distress.'' In addition, any animal experiencing TTS would likely also experience stress responses (NRC, 2003).

Auditory masking—Sound can disrupt behavior through masking, or interfering with, an animal's ability to detect, recognize, or discriminate between acoustic signals of interest (*e.g.,* those used for intraspecific communication and social interactions, prey detection, predator avoidance, navigation) (Richardson *et al.,* 1995; Erbe *et al.,* 2016). Masking occurs when the receipt of a sound is interfered with by another coincident sound at similar frequencies and at similar or higher intensity, and may occur whether the sound is natural (*e.g.,* snapping shrimp, wind, waves, precipitation) or anthropogenic (*e.g.,* shipping, sonar,

seismic exploration) in origin. The ability of a noise source to mask biologically important sounds depends on the characteristics of both the noise source and the signal of interest (*e.g.,* signal-to-noise ratio, temporal variability, direction), in relation to each other and to an animal's hearing abilities (*e.g.,* sensitivity, frequency range, critical ratios, frequency discrimination, directional discrimination, age or TTS hearing loss), and existing ambient noise and propagation conditions.

Under certain circumstances, marine mammals experiencing significant masking could also be impaired from maximizing their performance fitness in survival and reproduction. Therefore, when the coincident (masking) sound is man-made, it may be considered harassment when disrupting or altering critical behaviors. It is important to distinguish TTS and PTS, which persist after the sound exposure, from masking, which occurs during the sound exposure. Because masking (without resulting in TS) is not associated with abnormal physiological function, it is not considered a physiological effect, but rather a potential behavioral effect.

The frequency range of the potentially masking sound is important in determining any potential behavioral impacts. For example, low-frequency signals may have less effect on high-frequency echolocation sounds produced by odontocetes but are more likely to affect detection of mysticete communication calls and other potentially important natural sounds such as those produced by surf and some prey species. The masking of communication signals by anthropogenic noise may be considered as a reduction in the communication space of animals (*e.g.,* Clark *et al.,* 2009) and may result in energetic or other costs as animals change their vocalization behavior (*e.g.,* Miller *et al.,* 2000; Foote *et al.,* 2004; Parks *et al.,* 2007b; Di Iorio and Clark, 2009; Holt *et al.,* 2009). Masking can be reduced in situations where the signal and noise come from different directions (Richardson *et al.,* 1995), through amplitude modulation of the signal, or through other compensatory behaviors (Houser and Moore, 2014). Masking can be tested directly in captive species (*e.g.,* Erbe, 2008), but in wild populations it must be either modeled or inferred from evidence of masking compensation. There are few studies addressing real-world masking sounds likely to be experienced by marine mammals in the wild (*e.g.,* Branstetter *et al.,* 2013).

Masking affects both senders and receivers of acoustic signals and can potentially have long-term chronic effects on marine mammals at the population level as well as at the individual level. Low-frequency ambient sound levels have increased by as much as 20 dB (more than three times in terms of SPL) in the world's ocean from pre-industrial periods, with most of the increase from distant commercial shipping (Hildebrand, 2009). All anthropogenic sound sources, but especially chronic and lower-frequency signals (*e.g.,* from vessel traffic), contribute to elevated ambient sound levels, thus intensifying masking.

We have also considered the potential for severe behavioral responses such as stranding and associated indirect injury or mortality from SEFSC acoustic survey equipment, on the basis of a 2008 mass stranding of approximately one hundred melon-headed whales in a Madagascar lagoon system. An investigation of the event indicated that use of a high-frequency mapping system (12-kHz multibeam echosounder; it is important to note that all SEFSC sources operate at higher frequencies (see Table 1)) was the most plausible and likely initial behavioral trigger of the event, while providing the caveat that there is no unequivocal and easily identifiable single cause (Southall *et al.,* 2013). The panel's conclusion was based on (1) very close temporal and spatial association and directed movement of the survey with the stranding event; (2) the unusual nature of such an event coupled with previously documented apparent behavioral sensitivity of the species to other sound types (Southall *et al.,* 2006; Brownell *et al.,* 2009); and (3) the fact that all other possible factors considered were determined to be unlikely causes. Specifically, regarding survey patterns prior to the event and in relation to bathymetry, the vessel transited in a north-south direction on the shelf break parallel to the shore, ensonifying large areas of deep-water habitat prior to operating intermittently in a concentrated area offshore from the stranding site. This may have trapped the animals between the sound source and the shore, thus driving them towards the lagoon system. The investigatory panel systematically excluded or deemed highly unlikely nearly all potential reasons for these animals leaving their typical pelagic habitat for an area extremely atypical for the species (*i.e.,* a shallow lagoon system). Notably, this was the first time that such a system has been associated with a stranding event.

The panel also noted several site- and situation-specific secondary factors that may have contributed to the avoidance responses that led to the eventual entrapment and mortality of the whales. Specifically, shoreward-directed surface currents and elevated chlorophyll levels in the area preceding the event may have played a role (Southall *et al.,* 2013). The report also notes that prior use of a similar system in the general area may have sensitized the animals and also concluded that, for odontocete cetaceans that hear well in higher frequency ranges where ambient noise is typically quite low, high-power active sonars operating in this range may be more easily audible and have potential effects over larger areas than low frequency systems that have more typically been considered in terms of anthropogenic noise impacts. It is, however, important to note that the relatively lower output frequency, higher output power, and complex nature of the system implicated in this event, in context of the other factors noted here, likely produced a fairly unusual set of circumstances that indicate that such events would likely remain rare and are not necessarily relevant to use of lower-power, higher-frequency systems more commonly used for scientific applications. The risk of similar events recurring may be very low, given the extensive use of active acoustic systems used for scientific and navigational purposes worldwide on a daily basis and the lack of direct evidence of such responses previously reported.

Characteristics of the sound sources predominantly used by SEFSC further reduce the likelihood of effects to marine mammals, as well as the intensity of effect assuming that an animal perceives the signal. Intermittent exposures—as would occur due to the brief, transient signals produced by these sources—require a higher cumulative SEL to induce TTS than would continuous exposures of the same duration (*i.e.,* intermittent exposure results in lower levels of TTS) (Mooney *et al.,* 2009a; Finneran *et al.,* 2010). In addition, intermittent exposures recover faster in comparison with continuous exposures of the same duration (Finneran *et al.,* 2010). Although echosounder pulses are, in general, emitted rapidly, they are not dissimilar to odontocete echolocation click trains. Research indicates that marine mammals generally have extremely fine auditory temporal resolution and can detect each signal separately (*e.g.,* Au *et al.,* 1988; Dolphin *et al.,* 1995; Supin and Popov, 1995; Mooney *et al.,* 2009b), especially for species with echolocation capabilities.

Therefore, it is likely that marine mammals would indeed perceive echosounder signals as being intermittent.

We conclude here that, on the basis of available information on hearing and potential auditory effects in marine mammals, the potential for threshold shift from exposure to fishery research sonar is low to discountable. High-frequency cetacean species would be the most likely to potentially incur some minimal amount of temporary hearing loss from a vessel operating high-frequency sonar sources, and the potential for PTS to occur for any species is so unlikely as to be discountable. Even for high-frequency cetacean species, individuals would have to make a very close approach and also remain very close to vessels operating these sources in order to receive multiple exposures at relatively high levels, as would be necessary to cause TTS. Additionally, given that behavioral responses typically include the temporary avoidance that might be expected (see below), the potential for auditory effects considered physiological damage (injury) is considered extremely low in relation to realistic operations of these devices. Given the fact that fisheries research survey vessels are moving, the likelihood that animals may avoid the vessel to some extent based on either its physical presence or due to aversive sound (vessel or active acoustic sources), and the intermittent nature of many of these sources, the potential for TTS is probably low for high-frequency cetaceans and very low to zero for other species.

Based on the source operating characteristics, most of these sources may be detected by odontocete cetaceans (and particularly high-frequency specialists such as porpoises) but are unlikely to be audible to mysticetes (*i.e.,* low-frequency cetaceans) and some pinnipeds. While low-frequency cetaceans and pinnipeds have been observed to respond behaviorally to low- and mid-frequency sounds (*e.g.,* Frankel, 2005), there is little evidence of behavioral responses in these species to high-frequency sound exposure (*e.g.,* Jacobs and Terhune, 2002; Kastelein *et al.,* 2006). If a marine mammal does perceive a signal from a SEFSC active acoustic source, it is likely that the response would be, at most, behavioral in nature. Behavioral reactions of free-ranging marine mammals to scientific sonars are likely to vary by species and circumstance. For example, Watkins *et al.* (1985) note that sperm whales did not appear to be disturbed by or even aware of signals from scientific sonars and pingers (36–60 kHz) despite being very close to the transducers. But Gerrodette and Pettis (2005) report that when a 38-kHz echosounder and ADCP were on (1) the average size of detected schools of spotted dolphins and pilot whales was decreased; (2) perpendicular sighting distances increased for spotted and spinner dolphins; and (3) sighting rates decreased for beaked whales.

As described above, behavioral responses of marine mammals are extremely variable, depending on multiple exposure factors, with the most common type of observed response being behavioral avoidance of areas around aversive sound sources. Certain odontocete cetaceans (particularly harbor porpoises and beaked whales) are known to avoid high-frequency sound sources in both field and laboratory settings (*e.g.,* Kastelein *et al.,* 2000, 2005b, 2008a, b; Culik *et al.,* 2001; Johnston, 2002; Olesiuk *et al.,* 2002; Carretta *et al.,* 2008). There is some additional, low probability for masking to occur for high-frequency specialists, but similar factors (directional beam pattern, transient signal, moving vessel) mean that the significance of any potential masking is probably inconsequential.

Anticipated Effects on Marine Mammal Habitat

Effects to prey—In addition to direct, or operational, interactions between fishing gear and marine mammals, indirect (*i.e.,* biological or ecological) interactions occur as well, in which marine mammals and fisheries both utilize the same resource, potentially resulting in competition that may be mutually disadvantageous (*e.g.,* Northridge, 1984; Beddington *et al.,* 1985; Wickens, 1995). Marine mammal prey varies by species, season, and location and, for some, is not well documented. There is some overlap in prey of marine mammals and the species sampled and removed during SEFSC research surveys, with primary prey of concern being zooplankton, estuarine fishes, and invertebrates. The majority of fish affected by SEFSC-affiliated research projects are caught and killed during these six annual surveys: SEAMAP–SA Coastal Trawl Survey, SEAMAP–GOM Shrimp/Groundfish (Summer/Fall) Trawl, Small Pelagics Trawl Survey, Shark and Red Snapper Bottom Longline Survey, SEAMAP–GOM Shrimp/Groundfish (Summer/Fall) Trawl Survey, and the MARMAP Reef Fish Long Bottom Longline Survey. The species caught in greatest abundance in the ARA are the great northern tilefish, Atlantic bumper, banded drum and star drum. In the GOMRA, the species caught in greatest abundance is the Atlantic croaker followed by the longspine porgy and Rough scad. In the CRA, the horse-eye jack and yellowtail snapper comprise the greatest catch. However, in all research areas, the total amount of these species taken in research surveys is very small relative to their overall biomass in the area (See Section 4.2.3 of the SEFSC EA for more information on fish catch during research surveys). Tables 4.2–8 through 4.2–12 in the SEFSC's Draft EA indicate that, while mortality to fish species is a direct effect of the SEFSC Atlantic Research Area surveys, there are likely no measurable population changes occurring as a result of these research activities because they represent such a small percentage of allowable quota in commercial and recreational fisheries, which are just fractions of the total populations for these species.

In addition to the small total biomass taken, some of the size classes of fish targeted in research surveys are very small, and these small size classes are not known to be prey of marine mammals. Research catches are also distributed over a wide area because of the random sampling design covering large sample areas. Fish removals by research are therefore highly localized and unlikely to affect the spatial concentrations and availability of prey for any marine mammal species. The overall effect of research catches on marine mammals through competition for prey may therefore be considered insignificant for all species.

Acoustic habitat—Acoustic habitat is the soundscape—which encompasses all of the sound present in a particular location and time, as a whole—when considered from the perspective of the animals experiencing it. Animals produce sound for, or listen for sounds produced by, conspecifics (communication during feeding, mating, and other social activities), other animals (finding prey or avoiding predators), and the physical environment (finding suitable habitats, navigating). Together, sounds made by animals and the geophysical environment (*e.g.,* produced by earthquakes, lightning, wind, rain, waves) make up the natural contributions to the total acoustics of a place. These acoustic conditions, termed acoustic habitat, are one attribute of an animal's total habitat.

Soundscapes are also defined by, and acoustic habitat influenced by, the total contribution of anthropogenic sound. This may include incidental emissions from sources such as vessel traffic, or

may be intentionally introduced to the marine environment for data acquisition purposes (as in the SEFSC's use of active acoustic sources). Anthropogenic noise varies widely in its frequency content, duration, and loudness, and these characteristics greatly influence the potential habitat-mediated effects to marine mammals (please see also the previous discussion on masking under ''Acoustic Effects''), which may range from local effects for brief periods of time to chronic effects over large areas and for long durations. Depending on the extent of effects to habitat, animals may alter their communications signals (thereby potentially expending additional energy) or miss acoustic cues (either conspecific or adventitious). For more detail on these concepts see, *e.g.,* Barber *et al.,* 2010; Pijanowski *et al.,* 2011; Francis and Barber, 2013; Lillis *et al.,* 2014.

As described above (''Acoustic Effects''), the signals emitted by SEFSC active acoustic sources are of higher frequencies, short duration with high directionality, and transient. These factors mean that the signals will likely attenuate rapidly (not travel over great distances), may not be perceived or affect perception even when animals are in the vicinity, and would not be considered chronic in any given location. SEFSC use of these sources is widely dispersed in both space and time. In conjunction with the prior factors, this means that it is highly unlikely that SEFSC use of these sources would, on their own, have any appreciable effect on acoustic habitat.

Physical habitat—The SEFSC conducts some bottom trawling, which may physically damage seafloor habitat. Physical damage may include furrowing and smoothing of the seafloor as well as the displacement of rocks and boulders, and such damage can increase with multiple contacts in the same area (Morgan and Chuenpagdee, 2003; Stevenson *et al.,* 2004). Damage to seafloor habitat may also harm infauna and epifauna (*i.e.,* animals that live in or on the seafloor or on structures on the seafloor), including corals. In general, physical damage to the seafloor would be expected to recover within eighteen months through the action of water currents and natural sedimentation, with the exception of rocks and boulders which may be permanently displaced (Stevenson *et al.,* 2004). Relatively small areas would be impacted by SEFSC bottom trawling and, because such surveys are conducted in the same areas but not in the exact same locations, they are expected to cause single rather than repeated disturbances in any given area. SEFSC activities would not be expected to have any other impacts on physical habitat.

As described in the preceding, the potential for SEFSC research to affect the availability of prey to marine mammals or to meaningfully impact the quality of physical or acoustic habitat is considered to be insignificant for all species. Effects to habitat will not be discussed further in this document.

Estimated Take

This section provides an estimate of the number of incidental takes proposed for authorization through this IHA, which will inform both NMFS' consideration of whether the number of takes is ''small'' and the negligible impact determination. When discussing take, we consider three manners of take: Mortality, serious injury, and harassment. Serious injury is defined as an injury that could lead to mortality while injury refers to injury that does not lead to mortality. Except with respect to certain activities not pertinent here, the MMPA defines ''harassment'' as any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment).

As previously described, the SEFSC has a history of take of marine mammals incidental to fisheries research. The degree of take resulting from gear interaction can range from mortality, serious injury, Level A harassment (injury), or released unharmed with no observable injury. However, given that we cannot predict the degree of take, we conservatively assume that any interaction may result in mortality or serious injury and have issued take as such. In the case of the Mississippi Sound stock, we have also authorized a single take from Level A harassment (injury) only. The amount of research conducted in Mississippi Sound using gear with the potential for marine mammal interaction increases the potential for interaction above other estuarine systems. However, there is evidence that, even without the proposed prescribed mitigation and monitoring measures, take may not result in mortality or serious injury (*e.g.,* the October 13, 2013 skimmer trawl take which did not result in serious injury or mortality). The proposed mitigation and monitoring measures described in this proposed rulemaking are designed to further reduce risk of take and degree of take.

Estimated Take Due to Gear Interaction

Given the complex stock structure of bottlenose dolphins throughout the ARA and GOMRA as well as the vulnerability of this species to be taken incidental to fishery research, we have partitioned this section into two categories to present requested and proposed take in an organized manner. Below we present our analysis informing the proposed take of estuarine and coastal bottlenose dolphins followed by pelagic marine mammals which includes all relevant non-bottlenose dolphin species and open ocean stocks of bottlenose dolphins.

Estuarine and Coastal Bottlenose Dolphin Take—SEFSC

In order to estimate the number of potential bottlenose dolphin takes in estuarine and coastal waters, we considered the SEFSC's and TPWD's record of such past incidents and other sources of take (*e.g.,* commercial fisheries and non-SEFSC or TPWD affiliated research). We consulted the SARs, marine mammal experts at the SEFSC, and information emerging from the BDTRT to identify these other sources of mortality. We then assessed the similarities and differences between fishery research and commercial fisheries gear and fishing practices. Finally, we evaluated means of affecting the least practicable adverse impact on bottlenose dolphins through the proposed mitigation and additional mitigation developed during the proposed rulemaking process.

In total, since 2001 and over the course of thousands of hours of research effort, 15 marine mammals (all bottlenose dolphins) have been entangled in SEFSC-affiliated research gear. All takes occurred between April through October; however, this is likely a result of research effort concentrated during this time period and there does not appear to be any trend in increased vulnerability throughout the year.

In the ARA, the SEFSC has nine documented takes of bottlenose dolphins (in 8 instances) from fishing gear (Table 5) and 1 take of an Atlantic spotted dolphin. The Atlantic spotted dolphin take was a calf struck by a propeller during a marine mammal research cruise. Given the anomalous nature of the incident and proposed mitigation measures, NMFS is not proposing to authorize take by ship strike. Therefore, this take is not discussed further. Of the eight gear-related takes, two animals were taken at once in a trammel net by the SCDNR in

2002. However, the SCDNR has since changed fishing methods and implemented monitoring and mitigation measures essentially eliminating the potential for take during this survey. No other trammel net-related takes have occurred since these changes were implemented. Therefore, we believe the potential for a take in SCDNR trammel nets is discountable. The remaining six gear-related takes have been a result of interaction with bottom trawl gear during SEAMAP and TED research surveys resulting in an average 0.38 takes per year (6 takes/16 years).

To further assess the potential for take in any given year, we considered where takes have occurred and the possible stock origin from which an animal was taken. The July 2006 take occurred offshore of Fripp Island, SC; the October 2006 take occurred off Oak Island, NC; the July 2012 take occurred off Little Tybee Island, GA; the August 2012 take occurred off Pawley's Island, SC; the April 2014 take occurred just off the coast of Florida between St. Augustine and Daytona Beach; and the July 2016 take occurred off Sea Island, Georgia which is nestled between Little St. Simon's Island and St. Simon's Island. Therefore, the dolphins taken could have originated from any of the five coastal stocks (the Northern Migratory and Southern Migratory stock, South Carolina/Georgia Coastal stock, Northern Florida Coastal stock and a Central Florida stock), although they were assigned to the stock based on the location where the take occurred. Taking the average rate of 0.38 animals/five stocks equates to an average taking of 0.08 animals per stock per year. This average would be even less if one considers an estuarine stock may be the stock of origin.

According to the SEFSC's application, three trawl surveys and 2 bottom longline surveys conducted by the SEFSC or research partner overlap spatially with the NNCES stock (Table 1). These are the Atlantic Striped Bass Tagging Bottom Trawl Survey (USFWS), SEAMAP–SA Coastal Trawl Survey (SCDNR), SEAMAP–SA North Carolina Pamlico Sound Trawl Survey (NCDENR), Shark and Red Snapper Bottom Longline Survey (SEFSC), and the SEAMAP–SA Red Drum Bottom Longline Survey (NCDNR). No gillnet surveys would take place in waters overlapping with this stock. Based on data in the PSIT database, no dolphins from the NNCES stock have been taken from SEFSC or partner fishery research surveys, including those described above which have taken place for many years.

Despite the lack of historical take, we further investigated the potential for future interaction. Based on commercial fishery and SEFSC fishery survey bycatch rates of marine mammals, we would expect the trawl surveys to be more likely to take a dolphin than the bottom longline surveys. An evaluation of each survey type occurring is provided below to more thoroughly evaluate the potential for taking a bottlenose dolphin belonging to the NNCES stock.

The Atlantic Striped Bass Bottom Trawl Survey (conducted by the USFWS) is limited to two weeks (200–350 trawls) during January and February in coastal waters north of Cape Hatteras ranging from 30 to 120 ft in depth. The USFWS uses dual 65-ft trawl nets with 3.75 in. stretch nylon multifilament mesh codend. Tow speed is 3 kts and tow time does not exceed 30 minutes at depth. Trawl operations are conducted day and night from the R/V Oregon II, R/V Oregon, or R/V Savannah (please refer to the EA for detailed vessel descriptions). The winter operations of this survey overlaps in time with when some animals move out of Pamlico Sound and into coastal waters. However, photo-ID studies, available tag data and stable isotope data indicate that the portion of the stock that moves out of Pamlico Sound into coastal waters remain south of Cape Hatteras during cold water months (Waring *et al.* 2016). The USFWS has historically conducted surveys north of Cape Hatteras. However, the survey is currently inactive due to funding constraints. If funding becomes available, they may undertake this survey. However, the spatial and temporal specifications described above greatly reduce the likelihood of a take from the NNCES stock. In addition, given the short duration of the survey (2 weeks) and short tow time durations (up to 30 minutes), the chance of marine mammal interaction is limited. This logic is supported by the lack of take from this survey. At this time, for the reasons described above, we believe the likelihood of an animal from the NNCES stock being taken during Atlantic Striped Bass Bottom Trawl Survey is unlikely.

The SEAMAP–SA Pamlico Sound Trawl Survey (NCDENR) is conducted to support stock assessments and management of finfish, shrimp, and crab species in Pamlico Sound and its bays and rivers. The otter trawl survey takes place for 10 days in June and 10 days in September during daylight hours. Up to 54 trawls are completed each month (total = 108 trawls) aboard the R/V Carolina Coast. The general area of operation is Pamlico Sound and the Pamlico, Pungo, and Neuse rivers in waters greater than or equal to 6 ft. Despite spatial and temporal overall with the NNCES stock, this survey has no record of interacting with a marine mammal. Given the lack of historical interaction, limited number of tows, and implementation of the proposed monitoring and mitigation measures, we do not believe there is reasonable likelihood of take from this survey.

The SEAMAP–SA Coastal Trawl Survey (SCDNR) operates 300–350 trawls annually from Cape Hatteras, NC to Cape Canaveral, FL in nearshore oceanic waters of 15–30 ft depth. Its goal is collect long-term fishery independent data on ecologically, commercially, and recreationally important fishes and invertebrates, including shrimp and blue crab. Tow time is approximately 20 minutes. This survey is not associated with sea turtle research surveys, which have longer tow times. SCDNR uses the R/V Lady Lisa outfitted with an otter trawl comprised of paired mongoose-type Falcon bottom trawls. All takes of dolphins have occurred in coastal waters (none from estuarine waters), and all assigned takes have been from coastal stocks. However, because estuarine stocks may venture into coastal waters, there is a small possibility takes from this survey could have been from the SNCES (n=1), Northern South Carolina Estuarine System (n=1), Northern Georgia/Southern South Carolina Estuarine System (n= 2), and Southern Georgia Estuarine System (n=1) (Table 6). This is the only survey which may potentially overlap with the NNCES and SNCES stock but does so in coastal waters where coastal stocks overlap in time and space. It is most likely a take from this survey would be from a coastal stock. Therefore, we are not proposing to authorize take from the NNCES or SNCES stock.

TABLE 6—POSSIBLE STOCK ORIGIN OF BOTTLENOSE DOLPHINS TAKEN IN THE ARA

Date	Location Taken	Possible Stocks	
		Coastal	Estuarine.
2001	Unknown	Unknown	Unknown.
July 2006	Off Fripp Island, GA	W.N. Atlantic South Carolina-Georgia Coastal.	Northern Georgia/Southern South Carolina Estuarine System.
October 2006	Off Oak Island, NC	Southern Migratory	Southern North Carolina Estuarine System.
July 2012	Off Little Tybee Island, GA	W.N. Atlantic South Carolina-Georgia Coastal.	Northern Georgia/Southern South Carolina Estuarine System.
August 2012	Off Pawley's Island, SC	W.N. Atlantic South Carolina-Georgia Coastal.	Northern South Carolina Estuarine System.
April 2014	Off the coast of Florida between St. Augustine and Daytona Beach.	W.N. Atlantic Northern Florida Coastal	W.N. Atlantic Central Florida Coastal.
July 2016	Off Sea Island, Georgia	W.N. Atlantic South Carolina-Georgia Coastal.	Southern Georgia Estuarine System.

The only survey overlapping with the Indian River Lagoon (IRL) stock is the St. Lucie Rod-and-Reel Fish Health Study. There are no documented instances of the SEFSC taking a dolphin from this survey. Therefore, we believe the likelihood of take is low and mitigation measures (*e.g.* quickly reeling in line if dolphins are likely to interact with gear) would be effective at further reducing take potential to discountable. In consideration of this, we are not proposing to issue take of the IRL stock.

In summary, we are not proposing to authorize requested take in the ARA for the NNCES, SNCES, and Indian River Lagoon stocks due to low to discountable potential for take. For all other estuarine stocks for which take was requested (n=7), we are proposing to authorize the requested 1 take over 5 years by M/SI (Table 7). We are proposing to issue the requested 3 M/SI takes per stock of each of the coastal stocks and the offshore stock in the ARA over 5 years (Table 7).

In the GOMRA, the SEFSC is requesting to take one dolphin from each of the 21 estuarine stocks, three dolphins from the Mississippi Sound stock, and three dolphins per year from the coastal stocks (Table 7). Similar to the ARA, NMFS examined the SEFSC's request and assessed authorizing take based on fishing effort and stock spatial and temporal parameters, the potential for take based on fishing practices (*e.g.,* gear description, tow/soak times). In addition, the SEFSC has provided supplemental information indicating some surveys are discontinued or currently inactive and are not likely to take place during the proposed 5-year regulations.

When examining the survey gear used and fishing methods, we determined that the IJA Open Bay Shellfish Trawl Survey (conducted by TPWD) has a very low potential to take dolphins. This survey has no documented dolphin/gear interactions despite high fishing effort (90 trawls for month/1080 trawls per year). This is likely because TPWD uses a very small (20 ft wide) otter shrimp trawl which is towed for only 10 minutes in 3–30 ft of water. The nets can be retrieved within one to two minutes. The IJA Open Bay Shellfish Trawl Survey is the only survey conducted by the SEFSC that overlaps with the following BSE bottlenose dolphin stocks: Laguna Madre; Nueces Bay, Corpus Christi Bay; Copano Bay, Aransas Bay, San Antonio Bay, Redfish Bay, Espirtu Santo Bay; Matagorda Bay, Tres Palacios Bay, Lavaca Bay; West Bay, and Galveston Bay, East Bay, Trinity Bay. TPWD has no documented take of dolphins from the IJA Open Bay Shellfish Trawl Survey despite years of research effort. Due to the discountable potential for take from the IJA Open Bay Shellfish Trawl Survey, we are not proposing to authorize take of these Texas bottlenose dolphin stocks to the SEFSC.

Another stock with a discountable potential for take is the Barataria Bay stock. This stock's habitat includes Caminada Bay, Barataria Bay east to Bastian Bay, Bay Coquette, and Gulf coastal waters extending 1 km from the shoreline. The SEFSC has committed to avoiding conducting fisheries independent monitoring in these waters. Hence, we find the potential for take from the Barataria Bay stock is discountable and we are not proposing to authorize the requested take.

On December 22, 2017, the SEFSC indicated the Gulfspan shark survey conducted by University of West Florida (UWF) is considered inactive as of 2017 and would not likely take place over the course of the proposed regulations due to staffing changes. This is the only survey overlapping with the Perdido Bay, Pensacola Bay, Choctawhatchee Bay stocks. Therefore, we find the potential for take from these stocks is discountable and we are not proposing to authorize the requested take.

There are nine surveys in the GOMRA overlapping with the Mississippi Sound, Lake Borgne, Bay Boudreau stock (MS Sound stock): Four trawl, three gillnet, and two hook and line. While there are four documented takes from this stock since 2011 (from gillnet and trawl surveys), there are none prior to that year. The SEFSC requested three M/SI takes from the MS Sound stock due to the amount of fishing effort in this waterbody. However, we find two takes are warranted over the life of the 5-year regulations given the lack of take prior to 2011 and implementation of the proposed mitigation and monitoring measures. Further, previous takes indicate there is potential that a marine mammal may not die or be seriously injured in fishing gear but be injured. Therefore, we are proposing to authorize one take by M/SI and one take by Level A harassment for the Mississippi Sound stock over the 5-year regulations (Table 7).

TABLE 7—SEFSC TOTAL REQUESTED AND PROPOSED TAKE OF BOTTLENOSE DOLPHINS IN ARA, GOMRA, AND CRA OVER THE LIFE OF THE PROPOSED 5-YEAR REGULATIONS

Stock	Total requested take (M/SI)	Total proposed take (M/SI)
Northern North Carolina Estuarine System Stock	1	[1] 0
Southern North Carolina Estuarine System Stock	1	[1] 0
Northern South Carolina Estuarine Stock	1	1
Charleston Estuarine System Stock	1	1
Northern Georgia/Southern South Carolina Estuarine System Stock	1	1
Central Georgia Estuarine System	1	1
Southern Georgia Estuarine System Stock	1	1
Jacksonville Estuarine System Stock	1	1
Indian River Lagoon Estuarine System Stock	1	[1] 0
Biscayne Bay Stock	0	0
Florida Bay Stock	1	1
Western North Atlantic South Carolina/Georgia Coastal Stock	3	3
Western North Atlantic Northern Florida Coastal Stock	3	3
Western North Atlantic Central Florida Coastal Stock	3	3
Western North Atlantic Northern Migratory Coastal Stock	3	3
Western North Atlantic Southern Migratory Coastal Stock	3	3
Western North Atlantic Offshore Stock	3	3
Puerto Rico and US Virgin Islands Stock	1	1
Laguna Madre	1	[1] 0
Nueces Bay, Corpus Christi Bay	1	[1] 0
Copano Bay, Aransas Bay, San Antonio Bay, Redfish Bay, Espirtu Santo Bay	1	[1] 0
Matagorda Bay, Tres Palacios Bay, Lavaca Bay	1	[1] 0
West Bay	1	[1] 0
Galveston Bay, East Bay, Trinity Bay	1	[1] 0
Sabine Lake	1	[1] 0
Calcasieu Lake	0	0
Atchalfalaya Bay, Vermilion Bay, West Cote Blanche Bay	0	0
Terrabonne Bay, Timbalier Bay	1	1
Barataria Bay Estuarine System	1	[2] 0
Mississippi River Delta	1	1
Mississippi Sound, Lake Bornge, Bay Boudreau	3	[3] 1 M/SI, 1 Level A
Mobile Bay, Bonsecour Bay	1	1
Perdido Bay	1	[2] 0
Pensacola Bay, East Bay	1	[2] 0
Choctwhatchee Bay	1	[2] 0
St. Andrew Bay	1	1
St. Joseph Bay	1	1
St. Vincent Sound, Apalachiola Bay, St. George Sound	1	1
Apalachee Bay	1	1
Waccasassa Bay, Withlacoochee Bay, Crystal Bay	1	1
St. Joseph Sound, Clearwater Harbor	0	0
Tampa Bay	0	0
Sarasota Bay, Little Sarasota Bay	0	0
Pine Island Sound, Charlotte Harbor, Gasparilla Sound, Lemon Bay	1	1
Caloosahatchee River	0	0
Estero Bay	0	0
Chokoloskee Bay, Ten Thousand Islands, Gullivan Bay	1	1
Whitewater Bay	0	0
Florida Keys-Bahia Honda to Key West	0	0
Northern Gulf of Mexico Western Coastal Stock	3	3
Northern Gulf of Mexico Northern Coastal Stock	3	3
Northern Gulf of Mexico Eastern Coastal Stock	3	3

[1] Surveys overlapping these stocks have a low to discountable potential to take marine mammals due to temporal and spatial overlap with stock, fishing methods, and/or gear types. The SEFSC has no history of taking individuals from these stocks.
[2] No surveys are proposed that overlap with these stocks.
[3] The SEFSC has the potential to take one marine mammal by M/SI and one marine mammal by Level A harassment (injury) only for the Mississippi Sound stock.

Estuarine Bottlenose Dolphin Take—TPWD

During gillnet surveys, the TPWD may incidentally take bottlenose dolphins. TPWD conducts research in seven major bays, sounds, and estuaries in Texas. There is no history of take in three of those waterbodies (Sabine Lake, West Bay, and Galveston Bay), therefore, TPWD has not requested, and we are not proposing, to authorize take from these stocks as the potential for take from these stocks is discountable.

Historical take from TPWD's gillnet surveys is random in time and space making it difficult to predict where and how often future takes could occur. TPWD has taken 32–35 bottlenose dolphins during the 35 years of gillnet fishing (exact number is not clear due to potential errors in early reporting and record keeping). In 18 of the 35 years (52 percent) there were zero dolphins taken (see Table 3 in TPWD's

application). However, the long term average equates to approximately one animal per year (32–34 dolphins in 35 years) To cover the life of the 5-yr regulations, this would equate to five takes. However, TPWD would remove grids meeting ''hot spot'' criteria and remove potential sources of entanglement (*e.g.,* the gap between the float line and the net). Therefore, we are proposing to issue one M/SI take from each of the previously taken stocks over the life of the proposed regulations for a total of four takes over the life of the regulations. We also consider that the regulations would be conditioned with mitigation measures designed to reduce the risk of take (*e.g.,* new gear modification, removal of sampling areas deemed dolphin ''hot spots''). Therefore, NMFS is proposing to issue one take by M/SI from the following stocks of bottlenose stocks: (1) Laguna Madre; (2) Corpus Christi Bay, Nueces Bay; (3) Copano Bay, Aransas Bay, San Antonio Bay, Redfish Bay, Espiritu Santa Bay; and (4) MatagordaBay, Tres Palacios Bay, Lavaca Bay. In total, four M/SI takes (one from each stock) would be authorized over the life of the proposed regulations.

Pelagic Marine Mammals Take—SEFSC

Since systematic record keep began in 2002, the SEFSC and affiliated research partners have taken no marine mammals species other than bottlenose dolphins due to gear interaction. However, NMFS has assessed other sources of M/SI for these species (*e.g.,* commercial fishing) to inform the potential for incidental takes of marine mammals in the ARA, GOMRA, and CRA under this proposed rule. These species have not been taken historically by SEFSC research activities but inhabit the same areas and show similar types of behaviors and vulnerabilities to such gear used in other contexts. To more comprehensively identify where vulnerability and potential exists for take between SEFSC research and other species of marine mammals, we compared with similar commercial fisheries by way of the 2017 List of Fisheries (LOF) and the record of interactions from non-SEFSC affiliated research.

NMFS LOF classifies U.S. commercial fisheries into one of three categories according to the level of incidental marine mammal M/SI that is known to have occured on an annual basis over the most recent five-year period (generally) for which data has been analyzed: Category I, frequent incidental M/SI; Category II, occasional incidental M/SI; and Category III, remote likelihood of or no known incidental M/SI. In accordance with the MMPA (16 U.S.C. 1387(e)) and 50 CFR 229.6, any vessel owner or operator, or gear owner or operator (in the case of non-vessel fisheries), participating in a fishery listed on the LOF must report to NMFS all incidental mortalities and injuries of marine mammals that occur during commercial fishing operations, regardless of the category in which the fishery is placed. The LOF for 2016 was based on, among other things, stranding data; fisher self-reports; and SARs, primarily the 2014 SARs, which are generally based on data from 2008–2012. Table 8 indicates which species (other than bottlenose dolphins) have been known to interact with commercial fishing gear in the three research areas based on the 2016 LOF (81 FR 20550; April 8, 2016). More information on the 2016 LOF can be found at *http://www.nmfs.noaa.gov/pr/interactions/fisheries/lof.html.*

TABLE 8—GEAR TYPES IMPLICATED FOR INTERACTION WITH MARINE MAMMALS IN THE ATLANTIC OCEAN, GULF OF MEXICO, AND CARIBBEAN COMMERCIAL FISHERIES

Species	Fishery by Gear Type [1]			
	Gillnet Fisheries	Trawl Fisheries	Trap/Pot	Longline
N. Atlantic right whale	Y		Y	
Humpback whale	Y		Y	
Fin whale	Y		Y	
Minke whale	Y	Y	Y	Y
Risso's dolphin	Y	Y		Y
Cuvier's beaked whale				Y
Gervais beaked whale				Y
Beaked whale (*Mesoplodon spp*)				Y
False killer whale				Y
Killer whale				Y
Pygmy sperm whale				Y
Sperm Whale				Y
Long-finned pilot whale	Y	Y		Y
Short-finned pilot whale				Y
White-sided dolphin	Y	Y		
Atlantic spotted dolphin		Y		Y
Pantropical spotted dolphin	Y			Y
Common dolphin	Y	Y		Y
Harbor porpoise	Y	Y		
Harbor seal	Y	Y	Y	
Gray seal		Y		

[1] Only fisheries with gear types used by the SEFSC during the course of the proposed regulations are included here. For example, purse seine and aquaculture fisheries are also known to interact with marine mammals in the specified geographic region; however, the SEFSC would not use those gears during their research.

In addition to examining known interaction, we also considered a number of activity-related factors (*e.g.,* gear size, set duration, etc.) and species-specific factors (*e.g.,* species-specific knowledge regarding animal behavior, overall abundance in the geographic region, density relative to SEFSC survey effort, feeding ecology, propensity to travel in groups commonly associated with other species historically taken) to determine whether a species may have a similar vulnerability to certain types of gear as historically taken species. For example, despite known take in

commercial trap/pot fisheries, here we rule out the potential for traps/pots to take marine mammals incidental to SEFSC research for a number of reasons. Commercial fisheries often involve hundreds of unattended traps that are located on a semi-permanent basis, usually with long, loose float lines, in shallow waters close to shore. In contrast, SEFSC research gear is fished in deeper waters, and typically only one pot is fished at a time and monitored continuously for short soak times (*e.g.,* one hour). These differences in fishing practices, along with the fact no marine mammals have been taken in a SEFSC trap/pot, negate the potential for take to a level NMFS does not believe warrants authorization of take, and there is no historical documentation of take from this gear incidental to SEFSC surveys. Therefore, we do not expect take incidental to SEFSC research activities using trap/pot gear.

It is well documented that multiple marine mammal species are taken in commercial longline fisheries (Table 8). We used this information to help make an informed decision on the probability of specific cetacean and large whale interactions with longline gear and other hook-and-line gear while taking into account many other factors affecting the vulnerability of a species to be taken in SEFSC research surveys (*e.g.,* relative survey effort, survey location, similarity in gear type, animal behavior, prior history of SEFSC interactions with longline gear etc.). First we examined species known to be taken in longline fisheries but for which the SEFSC has not requested take. For example, the SEFSC is not requesting take of large whales in longline gear. Although large whale species could become entangled in longline gear, the probability of interaction with SEFSC longline gear is extremely low considering a far lower level of survey effort relative to that of commercial fisheries, much shorter set durations, shorter line lengths, and monitoring and mitigation measures implemented by the SEFSC (*e.g.,* the move-on rule). Although data on commercial fishing efforts comparable to the known SEFSC research protocols (net size, tow duration and speed, and total number of tows) are not publically available, based on the amount of fish caught by commercial fisheries versus SEFSC fisheries research, the ''footprint'' of research effort compared to commercial fisheries is very small (see Section 9 in the SEFSC's application). As such, the SEFSC has not requested, nor is NMFS proposing, to authorize take of large whales (*i.e.,* mysticetes) incidental to longline research. There are situations with hook-and-line (*e.g.,* longline) fisheries research gear when a caught animal cannot be identified to species with certainty. This might occur when a hooked or entangled dolphin frees itself before being identified or when concerns over crew safety, weather, or sea state conditions necessitate quickly releasing the animal before identification is possible. The top priority for live animals is to release them as quickly and safely as possible. The SEFSC ship's crew and research personnel make concerted efforts to identify animals incidentally caught in research gear whenever crew and vessel safety are not jeopardized.

With respect to trawling, both commercial fisheries and non-SEFSC affiliated research trawls in the Gulf of Mexico have taken pelagic marine mammals. For example, a mid-water research trawl conducted to monitor the effects of the Deepwater Horizon oil spill in the Gulf of Mexico took 3 pantropical spotted dolphins in one trawl in 2012. Additionally, an Atlantic spotted dolphin was taken in non-SEFSC research bottom trawl in 2014. Known takes in commercial trawl fisheries in the ARA and GOMRA include a range of marine mammal species (Table 8). NMFS examined the similarities between species known to be taken in commercial and non-SEFSC research trawls with those species that overlap in time and space with SEFSC research trawls in the open ocean. Because some species exhibit similar behavior, distribution, abundance, and vulnerability to research trawl gear to these species, NMFS proposes to authorize take of eight species of pelagic cetaceans and two pinniped species in the ARA and nine species of cetaceans in the GOMRA (Table 9). In addition, NMFS provides allowance of one take of an unidentified species in the ARA, GOMRA, and CRA over the life of these proposed regulations to account for any animal that cannot be identified to a species level. Takes would occur incidental to trawl and hook and line (including longline) research in the ARA and GOMRA. However, because the SEFSC does not use trawl gear in the CRA, take is proposed incidental to hook and line gear in the Caribbean (see Tables 6.4- 6.6 in SEFSC's application for more detail). We are proposing to authorize the amount of take requested by the SEFSC's for these stocks listed in Table 9.

TABLE 9—PROPOSED TOTAL TAKE, BY SPECIES AND STOCK, OF PELAGIC MARINE MAMMALS IN THE ARA AND GOMRA INCIDENTAL TO TRAWL AND HOOK AND LINE RESEARCH AND, IN THE CRA, INCIDENTAL TO HOOK AND LINE RESEARCH ACTIVITIES OVER THE 5 YEAR REGULATIONS

Species	Stock	Total Proposed M&SI Take
Risso's dolphin	Western North Atlantic.	
	N. Gulf of Mexico.	
Melon headed whale	N. Gulf of Mexico	3
Short-finned pilot whale	Western North Atlantic	1
	N. Gulf of Mexico	1
Long-finned pilot whale	Western North Atlantic	1
Short-beaked common dolphin	Western North Atlantic	4
Atlantic spotted dolphin	Western North Atlantic	4
	N. Gulf of Mexico	4
Pantropical spotted dolphin	Western North Atlantic	1
	N. Gulf of Mexico	4
Striped dolphin	Western North Atlantic	3
	N. Gulf of Mexico	3
Spinner dolphin	N. Gulf of Mexico	3
Rough-toothed dolphin	N. Gulf of Mexico	1
Bottlenose dolphin	Western North Atlantic Oceanic	4
	N. Gulf of Mexico Oceanic	4
	N. Gulf of Mexico Continental Shelf	4

TABLE 9—PROPOSED TOTAL TAKE, BY SPECIES AND STOCK, OF PELAGIC MARINE MAMMALS IN THE ARA AND GOMRA INCIDENTAL TO TRAWL AND HOOK AND LINE RESEARCH AND, IN THE CRA, INCIDENTAL TO HOOK AND LINE RESEARCH ACTIVITIES OVER THE 5 YEAR REGULATIONS—Continued

Species	Stock	Total Proposed M&SI Take
	Puerto Rico/USVI	1
Harbor porpoise	Gulf of Maine/Bay of Fundy	1
Undetermined delphinid	Western North Atlantic	1
	N. Gulf of Mexico	1
Harbor seal	Western North Atlantic	1
Gray seal	Western North Atlantic	1

Estimated Take Due to Acoustic Harassment

As described previously (''Potential Effects of the Specified Activity on Marine Mammals''), we believe that SEFSC use of active acoustic sources has, at most, the potential to cause Level B harassment of marine mammals. In order to attempt to quantify the potential for Level B harassment to occur, NMFS (including the SEFSC and acoustics experts from other parts of NMFS) developed an analytical framework considering characteristics of the active acoustic systems described previously under *Description of Active Acoustic Sound Sources,* their expected patterns of use, and characteristics of the marine mammal species that may interact with them. This quantitative assessment benefits from its simplicity and consistency with current NMFS acoustic guidance regarding Level B harassment but we caution that, based on a number of deliberately precautionary assumptions, the resulting take estimates may be seen as an overestimate of the potential for behavioral harassment to occur as a result of the operation of these systems. Additional details on the approach used and the assumptions made that result in these estimates are described below.

Acoustic Thresholds

Using the best available science, NMFS has developed acoustic thresholds that identify the received level of underwater sound above which exposed marine mammals would be reasonably expected to be behaviorally harassed (equated to Level B harassment) or to incur PTS of some degree (Level A harassment). We note NMFS has begun efforts to update its behavioral thresholds, considering all available data, and is formulating a strategy for updating those thresholds for all types of sound sources considered in incidental take authorizations. It is NMFS intention to conduct both internal and external review of any new thresholds prior to finalizing. In the interim, we apply the traditional thresholds.

Level B Harassment for non-explosive sources—Though significantly driven by received level, the onset of behavioral disturbance from anthropogenic noise exposure is also informed to varying degrees by other factors related to the source (*e.g.,* frequency, predictability, duty cycle), the environment (*e.g.,* bathymetry), and the receiving animals (hearing, motivation, experience, demography, behavioral context) and can be difficult to predict (Southall *et al.,* 2007, Ellison et al., 2011). Based on what the best available science indicates and the practical need to use a threshold based on a factor that is both predictable and measurable for most activities, NMFS uses a generalized acoustic threshold based on received level to estimate the onset of behavioral harassment. NMFS predicts that marine mammals are likely to be behaviorally harassed in a manner we consider Level B harassment when exposed to underwater anthropogenic noise above received levels of 120 dB re 1 μPa (rms) for continuous (*e.g.* vibratory pile-driving, drilling) and above 160 dB re 1 μPa (rms) for non-explosive impulsive (*e.g.,* seismic airguns) or intermittent (*e.g.,* scientific sonar) sources. Neither threshold is used for military sonar due to the unique source characteristics.

The Marine Mammal Commission (Commission) has previously suggested NMFS apply the 120 dB continuous threshold to scientific sonar such as the ones proposed by the SEFSC. NMFS has responded to this comment in multiple **Federal Register** notices of issuance for other NMFS science centers. However, we provide more clarification here on why the 160 dB threshold is appropriate when estimating take from acoustic sources used during SEFSC research activities. NMFS historically has referred to the 160 dB threshold as the impulsive threshold, and the 120 dB threshold as the continuous threshold, which in and of itself is conflicting as one is referring to pulse characteristics and the other is referring to the temporal component. A more accurate term for the impulsive threshold is the intermittent threshold. This distinction is important because, when assessing the potential for hearing loss (PTS or TTS) or non-auditory injury (*e.g.,* lung injury), the spectral characteristics of source (impulsive vs. non-impulsive) is critical to assessing the potential for such impacts. However, for behavior, the temporal component is more appropriate to consider. Gomez et al. (2016) conducted a systematic literature review (370 papers) and analysis (79 studies, 195 data cases) to better assess probability and severity of behavioral responses in marine mammals exposed to anthropogenic sound. They found a significant relationship between source type and behavioral response when sources were split into broad categories that reflected whether sources were continuous, sonar, or seismic (the latter two of which are intermittent sources). Moreover, while Gomez et al (2017) acknowledges acoustically sensitive species (beaked whales and harbor porpoise), the authors do not recommend an alternative method for categorizing sound sources for these species when assessing behavioral impacts from noise exposure.

To apply the continuous 120 dB threshold to all species based on data from known acoustically sensitive species (one species of which is the harbor porpoise which is likely to be rarely encountered in the ARA and do not inhabit the GOMRA or CRA) is not warranted as it would be unnecessarily conservative for non-sensitive species. Qualitatively considered in our effects analysis below is that beaked whales and harbor porpoise are more acoustically sensitive than other cetacean species, and thus are more likely to demonstrate overt changes in behavior when exposed to such sources. Further, in absence of very sophisticated acoustic modeling, our propagation rates are also conservative. Therefore, the distance to the 160 dB threshold is

likely much closer to the source than calculated. In summary, the SEFSC's proposed activity includes the use of intermittent sources (scientific sonar). Therefore, the 160 dB re 1 μPa (rms) threshold is applicable when quantitatively estimating take by behavioral harassment incidental to SEFSC scientific sonar for all marine mammal species.

Level A harassment for non-explosive sources—NMFS' Technical Guidance for Assessing the Effects of Anthropogenic Sound on Marine Mammal Hearing (Technical Guidance, 2018) identifies dual criteria to assess auditory injury (Level A harassment) to five different marine mammal groups (based on hearing sensitivity) as a result of exposure to noise from two different types of sources (impulsive or non-impulsive). However, as described in greater detail in the Potential Effects section, given the highly direction, *e.g.,*narrow beam widths, NMFS does not anticipate animals would be exposed to noise levels resulting in PTS. Therefore, the Level A criteria do not apply here and are not discussed further; NMFS is proposing take by Level B harassment only.

The operating frequencies of active acoustic systems used by the SEFSC sources range from 18–333 kHz (see Table 2). These frequencies are within the very upper hearing range limits of baleen whales (7 Hz to 35 kHz). The Simrad EK60 may operate at frequency of 18 kHz which is the only frequency that might be detectable by baleen whales. However, the beam pattern is extremely narrow (11 degrees) at that frequency. The Simrad ME70 echosounder, EQ50, and Teledyne RD ADCP operate at 50–200 kHz which are all outside of baleen whale hearing capabilities. Therefore, we would not expect any exposures to these signals to result in behavioral harassment. The Simrad EK60 lowest operating frequency (18 kHz) is within baleen whale hearing capabilities.

The assessment paradigm for active acoustic sources used in SEFSC fisheries research mirrors approaches by other NMFS Science Centers applying for regulations. It is relatively straightforward and has a number of key simple and conservative assumptions. NMFS' current acoustic guidance requires in most cases that we assume Level B harassment occurs when a marine mammal receives an acoustic signal at or above a simple step-function threshold. For use of these active acoustic systems used during SEFSC research, NMFS uses the threshold is 160 dB re 1 μPa (rms) as the best available science indicates the temporal characteristics of a source are most influential in determining behavioral impacts (Gomez *et al.,* 2016), and it is NMFS long standing practice to apply the 160 dB threshold to intermittent sources. Estimating the number of exposures at the specified received level requires several determinations, each of which is described sequentially below:

(1) A detailed characterization of the acoustic characteristics of the effective sound source or sources in operation;

(2) The operational areas exposed to levels at or above those associated with Level B harassment when these sources are in operation;

(3) A method for quantifying the resulting sound fields around these sources; and

(4) An estimate of the average density for marine mammal species in each area of operation.

Quantifying the spatial and temporal dimension of the sound exposure footprint (or ''swath width'') of the active acoustic devices in operation on moving vessels and their relationship to the average density of marine mammals enables a quantitative estimate of the number of individuals for which sound levels exceed the relevant threshold for each area. The number of potential incidents of Level B harassment is ultimately estimated as the product of the volume of water ensonified at 160 dB rms or higher and the volumetric density of animals determined from simple assumptions about their vertical stratification in the water column. Specifically, reasonable assumptions based on what is known about diving behavior across different marine mammal species were made to segregate those that predominately remain in the upper 200 m of the water column versus those that regularly dive deeper during foraging and transit. Methods for estimating each of these calculations are described in greater detail in the following sections, along with the simplifying assumptions made, and followed by the take estimates.

Sound source characteristics—An initial characterization of the general source parameters for the primary active acoustic sources operated by the SEFSC was conducted, enabling a full assessment of all sound sources used by the SEFSC and delineation of Category 1 and Category 2 sources, the latter of which were carried forward for analysis here. This auditing of the active acoustic sources also enabled a determination of the predominant sources that, when operated, would have sound footprints exceeding those from any other simultaneously used sources. These sources were effectively those used directly in acoustic propagation modeling to estimate the zones within which the 160 dB rms received level would occur.

Many of these sources can be operated in different modes and with different output parameters. In modeling their potential impact areas, those features among those given previously in Table 2 (*e.g.,* lowest operating frequency) that would lead to the most precautionary estimate of maximum received level ranges (*i.e.,* largest ensonified area) were used. The effective beam patterns took into account the normal modes in which these sources are typically operated. While these signals are brief and intermittent, a conservative assumption was taken in ignoring the temporal pattern of transmitted pulses in calculating Level B harassment events. Operating characteristics of each of the predominant sound sources were used in the calculation of effective line-kilometers and area of exposure for each source in each survey (Table 10).

TABLE 10—EFFECTIVE EXPOSURE AREAS FOR PREDOMINANT ACOUSTIC SOURCES ACROSS TWO DEPTH STRATA

Active acoustic system	Effective exposure area: Sea surface to 200 m depth (km^2)	Effective exposure area: Sea surface to depth at which 160-dB threshold is reached (km^2)
Simrad EK60 narrow beam echosounder	0.0142	0.1411
Simrad ME70 multibeam echosounder	0.0201	0.0201
Simrad FS70 trawl sonar	0.008	0.008
Simrad SX90 narrow beam sonar [1]	0.0654	0.1634
Teledyne RD Instruments ADCP, Ocean Surveyor	0.0086	0.0187

TABLE 10—EFFECTIVE EXPOSURE AREAS FOR PREDOMINANT ACOUSTIC SOURCES ACROSS TWO DEPTH STRATA—Continued

Active acoustic system	Effective exposure area: Sea surface to 200 m depth (km^2)	Effective exposure area: Sea surface to depth at which 160-dB threshold is reached (km^2)
Simrad ITI trawl monitoring system	0.0032	0.0032

[1] Exposure area varies greatly depending on the tilt angle setting of the SX90. To approximate the varied usage this system might receive, the exposure area for each depth strata was averaged by assuming equal usage at tilt angles of 5, 20, 45, and 80 degrees.

Calculating effective line-kilometers—As described below, based on the operating parameters for each source type, an estimated volume of water ensonified at or above the 160 dB rms threshold was calculated. In all cases where multiple sources are operated simultaneously, the one with the largest estimated acoustic footprint was considered to be the effective source. Two depth zones were defined for each research area: A Continental Shelf Region defined by having bathymetry 0–200 m and an Offshore Region with bathymetry >200 m. Effective line distance and volume insonified was calculated for each depth stratum (0–200 m and > 200 m), where appropriate (*i.e.* in the Continental Shelf region, where depth is <200 m, only the exposure area for the 0–200 m depth stratum was calculated). In some cases, this resulted in different sources being predominant in each depth stratum for all line km when multiple sources were in operation. This was accounted for in estimating overall exposures for species that utilize both depth strata (deep divers). For each ecosystem area, the total number of line km that would be surveyed was determined, as was the relative percentage of surveyed linear km associated with each source. The total line km for each vessel, the effective portions associated with each of the dominant sound types, and the effective total km for operation for each sound type is given in Tables 6–8a and 6–8b in SEFSC's application. In summary, line transect kms range from 1149 to 3352 in the ARA and 16,797 to 30,146 km with sources operating 20–100 percent of the time depending on the source.

Calculating volume of water ensonified—The cross-sectional area of water ensonified to a 160 dB rms received level was calculated using a simple spherical spreading model of sound propagation loss (20 log R) such that there would be 60 dB of attenuation over 1,000 m. The spherical spreading model accounted for the frequency dependent absorption coefficient and the highly directional beam pattern of most of these sound sources. For absorption coefficients, the most commonly used formulas given by Francios and Garrison (1982) were used. The lowest frequency was used for systems that are operated over a range of frequencies. The vertical extent of this area is calculated for two depth strata (surface to 200 m, and for deep water operations > 200 m, surface to range at which the on-axis received level reaches 160 dB RMS). This was applied differentially based on the typical vertical stratification of marine mammals (see Tables 6–9 and 6–10 in SEFSC's application).

For each of the three predominant sound sources, the volume of water ensonified is estimated as the cross-sectional area (in square kilometers) of sound at or above 160 dB rms multiplied by the total distance traveled by the ship (see Table 6a and 6b in SEFSC's application). Where different sources operating simultaneously would be predominant in each different depth strata (*e.g.,* ME70 and EK60 operating simultaneously may be predominant in the shallow stratum and deep stratum, respectively), the resulting cross-sectional area calculated took this into account. Specifically, for shallow-diving species this cross-sectional area was determined for whichever was predominant in the shallow stratum, whereas for deeper-diving species, this area was calculated from the combined effects of the predominant source in the shallow stratum and the (sometimes different) source predominating in the deep stratum. This creates an effective total volume characterizing the area ensonified when each predominant source is operated and accounts for the fact that deeper-diving species may encounter a complex sound field in different portions of the water column.

Marine mammal densities—One of the primary limitations to traditional estimates of behavioral harassment from acoustic exposure is the assumption that animals are uniformly distributed in time and space across very large geographical areas, such as those being considered here. There is ample evidence that this is in fact not the case, and marine species are highly heterogeneous in terms of their spatial distribution, largely as a result of species-typical utilization of heterogeneous ecosystem features. Some more sophisticated modeling efforts have attempted to include species-typical behavioral patterns and diving parameters in movement models that more adequately assess the spatial and temporal aspects of distribution and thus exposure to sound (*e.g.,* Navy, 2013). While simulated movement models were not used to mimic individual diving or aggregation parameters in the determination of animal density in this estimation, the vertical stratification of marine mammals based on known or reasonably assumed diving behavior was integrated into the density estimates used.

The marine mammal abundance estimates used for the ARA and GOM were obtained from Stock Assessment Reports for the Atlantic and the Gulf of Mexico ecosystem areas (Waring *et al.* 2012, 2013, 2014, and 2015), and the best scientific information available to SEFSC staff. We note abundances for cetacean stocks in western North Atlantic U.S. waters are the combined estimates from surveys conducted by the NMFS Northeast Fisheries Science Center (NEFSC) from central Virginia to the lower Bay of Fundy and surveys conducted by the SEFSC from central Virginia to central Florida. The SEFSC primary area of research is south of central Virginia. Therefore, densities are based on abundance estimates from central Virginia to central Florida and are reported in the stock assessment report for each stock. For example, the fin whale abundance estimate for the stock is 1,618. However, most of those animals occur in the northeast with only about 23 individuals in the southeast where SEFSC would occur. Therefore, an abundance estimate of 23 was used to estimate density. Density estimates in areas where a species is known to occur, but where published density data is absent were calculated based on values published for the species in adjacent

regions by analogy and SEFSC expertise. For example, in the CRA there are records of marine mammal species occurrence (*e.g.,* Mignucci-Giannoni 1998, Roden and Mullin 2000), However, area specific abundance estimates are unavailable so the density estimates for the GOMRA were used as proxies where appropriate to estimate acoustic take in the CRA. There are a number of caveats associated with these estimates:

(1) They are often calculated using visual sighting data collected during one season rather than throughout the year. The time of year when data were collected and from which densities were estimated may not always overlap with the timing of SEFSC fisheries surveys (detailed previously in ''Detailed Description of Activities'').

(2) The densities used for purposes of estimating acoustic exposures do not take into account the patchy distributions of marine mammals in an ecosystem, at least on the moderate to fine scales over which they are known to occur. Instead, animals are considered evenly distributed throughout the assessed area, and seasonal movement patterns are not taken into account.

In addition, and to account for at least some coarse differences in marine mammal diving behavior and the effect this has on their likely exposure to these kinds of often highly directional sound sources, a volumetric density of marine mammals of each species was determined. This value is estimated as the abundance averaged over the two-dimensional geographic area of the surveys and the vertical range of typical habitat for the population. Habitat ranges were categorized in two generalized depth strata (0–200 m and 0 to greater than 200 m) based on gross differences between known generally surface-associated and typically deep-diving marine mammals (*e.g.,* Reynolds and Rommel, 1999; Perrin *et al.,* 2009). Animals in the shallow-diving stratum were assumed, on the basis of empirical measurements of diving with monitoring tags and reasonable assumptions of behavior based on other indicators, to spend a large majority of their lives (*i.e.,* greater than 75 percent) at depths shallower than 200 m. Their volumetric density and thus exposure to sound is therefore limited by this depth boundary. In contrast, species in the deeper-diving stratum were assumed to regularly dive deeper than 200 m and spend significant time at these greater depths. Their volumetric density and thus potential exposure to sound at or above the 160 dB rms threshold is extended from the surface to the depth at which this received level condition occurs (*i.e.,* corresponding to the 0 to greater than 200 m depth stratum). The volumetric densities are estimates of the three-dimensional distribution of animals in their typical depth strata. For shallow-diving species the volumetric density is the area density divided by 0.2 km (*i.e.,* 200 m). For deeper diving species, the volumetric density is the area density divided by a nominal value of 0.5 km (*i.e.,* 500 m). The two-dimensional and resulting three-dimensional (volumetric) densities for each species in each ecosystem area are provided in Table 11.

TABLE 11—ABUNDANCES AND VOLUMETRIC DENSITIES CALCULATED FOR EACH SPECIES IN SEFSC RESEARCH AREAS USED IN TAKE ESTIMATION

Species [1]	Abundance	Typical dive depth strata		Continental shelf area [2] density (#/km^2)	Offshore area [3] density (#/km^2)	Continental shelf area volumetric density (#/km^3)	Offshore area volumetric density (#/km^3)
		0–200 m	>200 m				
Atlantic Research Area [4]							
Fin whale	23	X			0.00005		0.00025
Sperm whale	695		X		0.00148		0.00296
Pygmy/dwarf sperm whales [5]	2,002		X		0.00426		0.00852
False killer whale	442	X			0.00094		0.00470
Beaked whales [5]	3,163		X		0.00673		0.01346
Risso's dolphin	3,053	X			0.00650		0.03248
Short-finned pilot whale	16,964		X		0.03610		0.07219
Short-beaked common dolphin	2,993	X			0.00637		0.03184
Atlantic spotted dolphin	17,917	X		0.39209	0.03812	1.96043	0.19062
Pantropical spotted dolphin	3,333	X			0.00709		0.03546
Striped dolphin	7,925	X			0.01686		0.08431
Rough-toothed dolphin	271	X			0.00058		0.00288
Bottlenose dolphin	50,766 (offshore), 31,212 (cont. shelf)	X		0.25006	0.10802	1.25028	0.54010
Gulf of Mexico Research Area							
Bryde's whale	33	X			0.00011		0.00054
Sperm whale	763		X		0.00438		0.00876
Pygmy/dwarf sperm whales [5]	184		X		0.01857		0.00101
Pygmy killer whale	152	X			0.00080		0.00400
False killer whale	Unk	X			0.00086		0.00432
Beaked whales [5 6]	149		X		0.00925		0.00081
Melon-headed whale	2,235	X			0.00487		0.02434
Risso's dolphin	2,442	X			0.00523		0.02613
Short-finned pilot whale	2,415		X		0.00463		0.00925
Atlantic spotted dolphin [7]	37,611	X		0.09971	unk	0.49854	Unk
Pantropical spotted dolphin	50,880	X			0.09412		0.47062
Striped dolphin	1,849	X			0.00735		0.03677
Rough-toothed dolphin	624	X		0.00401	0.00664	0.02006	0.03322
Clymene dolphin [8]	129	X			0.00907		0.04537
Spinner dolphin	11,441	X			0.01888		0.09439
Bottlenose dolphin	5,806 (oceanic) 51,192 (cont. shelf)	X		0.29462	0.02347	1.47311	0.11735
Caribbean Research Area [9]							
Sperm whale	763		X	na	0.00438	na	0.008761
Pygmy/dwarf sperm whales [5 6]	186		X	na	0.01857	na	0.00101
Killer whale	184	X		na	0.00000	na	0

TABLE 11—ABUNDANCES AND VOLUMETRIC DENSITIES CALCULATED FOR EACH SPECIES IN SEFSC RESEARCH AREAS USED IN TAKE ESTIMATION—Continued

Species [1]	Abundance	Typical dive depth strata		Continental shelf area [2] density (#/km²)	Offshore area [3] density (#/km²)	Continental shelf area volumetric density (#/km³)	Offshore area volumetric density (#/km³)
		0–200 m	>200 m				
Pygmy killer whale	152	X		na	0.00080	na	0.003998
False killer whale	Unk	X		na	0.00086	na	0.004324
Beaked whales [5 6]	149		X	na	0.00925	na	0.00081
Melon-headed whale	2,235	X		na	0.00487	na	0.024343
Risso's dolphin	2,442	X		na	0.00523	na	0.026132
Short-finned pilot whale	2,415		X	na	0.00463	na	0.009255
Pantropical spotted dolphin	50,880	X		na	0.09412	na	0.470615
Striped dolphin	1,849	X		na	0.00735	na	0.036771
Fraser's dolphin		X		na	0.00000	na	0
Rough-toothed dolphin	624	X		na	0.00664	na	0.03322
Clymene dolphin	129	X		na	0.00907	na	0.045365
Spinner dolphin	11,441	X		na	0.01888	na	0.094389
Bottlenose dolphin	5,806 (oceanic), 51,192 (cont. shelf)	X		na	0.02347	na	0.117349

[1] Those species known to occur in the ARA and GOMRA with unknown volumetric densities have been omitted from this table. Those omitted include: for the ARA—North Atlantic right whale, minke whale, humpback whale, melon-headed whale, pygmy killer whale, long-finned pilot whale, Fraser's dolphin, spinner dolphin, Clymene dolphin, harbor porpoise, gray seal, and harbor seal; for the GOMRA—killer whale and Fraser's dolphin. This does not mean they were all omitted for take as proxy species provided in this table were used to estimate take, where applicable.

[2] Continental shelf area means 0–200 m bottom depth

[3] Offshore area means 200 m bottom depth.

[4] Abundances for cetacean stocks in western North Atlantic U.S. waters are the combined estimates from surveys conducted by the NEFSC from central Virginia to the lower Bay of Fundy and surveys conducted by the SEFSC from central Virginia to central Florida. The SEFSC primary area of research is south of central Virginia. Therefore, acoustic take estimates are based on abundance estimates from central Virginia to central Florida and are reported in the stock assessment report for each stock. However, these acoustic takes are compared to the abundance for the entire stock.

[5] Density estimates are based on the estimates of dwarf and pygmy sperm whale SAR abundances and the combined abundance estimates of all beaked whales (Mesoplodon spp. + Cuvier's beaked whale). These groups are cryptic and difficult to routinely identify to species in the field.

[6] Data from acoustic moorings in the Gulf of Mexico suggest that both beaked whales and dwarf/pygmy sperm whales are much more abundant than visual surveys suggest. Therefore, acoustic take estimates for these groups were based on abundance estimates extrapolated from acoustic mooring data (DWH–NRDAT 2016).

[7] The most reasonable estimate Atlantic spotted dolphin abundance is in the Gulf of Mexico is based on ship surveys of continental shelf waters conducted from 2000–2001. In the Gulf of Mexico the continental shelf is the Atlantic spotted dolphin's primary habitat. Ship surveys have not been conducted in shelf waters since 2001.

[8] Three previous abundance estimates for the Clymene dolphin in the Gulf of Mexico were based surveys conducted over several years and estimates ranged from 5,000 to over 17,000 dolphins. The current estimate is based on one survey in 2009 from the 200 m isobaths to the EEZ and is probably negatively biased.

[9] Estimates for the CRA are based on proxy values taken from the GOMRA where available and appropriate. Species omitted due to lack of data were humpback whale, minke whale, Bryde's whale, and Atlantic spotted dolphin.

Using area of ensonification and volumetric density to estimate exposures—Estimates of potential incidents of Level B harassment (*i.e.,* potential exposure to levels of sound at or exceeding the 160 dB rms threshold) are then calculated by using (1) the combined results from output characteristics of each source and identification of the predominant sources in terms of acoustic output; (2) their relative annual usage patterns for each operational area; (3) a source-specific determination made of the area of water associated with received sounds at either the extent of a depth boundary or the 160 dB rms received sound level; and (4) determination of a volumetric density of marine mammal species in each area. Estimates of Level B harassment by acoustic sources are the product of the volume of water ensonified at 160 dB rms or higher for the predominant sound source for each portion of the total line-kilometers for which it is used and the volumetric density of animals for each species. However, in order to estimate the additional volume of ensonified water in the deep stratum, the SEFSC first subtracted the cross-sectional ensonified area of the shallow stratum (which is already accounted for) from that of the deep stratum. Source- and stratum-specific exposure estimates are the product of these ensonified volumes and the species-specific volumetric densities (Table 12). The general take estimate equation for each source in each depth statrum is density * (ensonified volume * linear kms). If there are multiple sources of take in both depth stata, individual take estimates were summed. To illustrate, we use the ME70 and the pantropical spotted dolphin, which are found only in the 0–200 m depth stratum, as an example:

(1) ME70 ensonified volume (0–200 m) = 0.0201 km²

(2) Total Linear kms = 1,794 km (no pantropical spotted dolphins are found on the shelf so those trackline distances are not included here)

(3) Pantropical spotted dolphin density (0–200 m) = 0.47062 dolphins/km³

(4) Estimated exposures to sound ≥160 dB rms = 0.47062 pantropical spotted dolphin/km³ * (0.0201 km² * 1,794 km) = 16.9 (rounded up) = 17 estimated pantropical spotted dolphin exposures to SPLs ≥ 160 dB rms resulting from use of the ME70.

TABLE 12—ESTIMATED SOURCE-, STRATUM-, AND SPECIES-SPECIFIC ANNUAL ESTIMATES OF LEVEL B HARASSMENT

Species	Estimated Level B Harassment (#s of animals) in 0–200 m dive depth stratum			Estimated Level B Harassment in >200 m dive depth stratum		Total calculated take
	EK60	ME70	EQ50	EK60	EQ50	
Atlantic Continental Shelf						
Bottlenose dolphin	67.00	21.43	21.43	0.00	0.00	110

TABLE 12—ESTIMATED SOURCE-, STRATUM-, AND SPECIES-SPECIFIC ANNUAL ESTIMATES OF LEVEL B HARASSMENT—Continued

Species	Estimated Level B Harassment (#s of animals) in 0–200 m dive depth stratum			Estimated Level B Harassment in >200 m dive depth stratum		Total calculated take
	EK60	ME70	EQ50	EK60	EQ50	
Atlantic Offshore						
Fin whale	0.02	0.00	0.00	0.00	0.00	1
Sperm whale	0.18	0.02	0.01	1.75	0.00	2
Pygmy/dwarf sperm whales	0.52	0.06	0.02	5.03	0.00	6
False killer whale	0.29	0.03	0.01	0.00	0.00	1
Beaked whales	0.83	0.09	0.03	7.95	0.00	9
Risso's dolphin	2.00	0.21	0.08	0.00	0.00	3
Short-finned pilot whale	4.43	0.48	0.17	42.65	0.00	48
Short-beaked common dolphin	1.96	0.21	0.07	0.00	0.00	3
Atlantic spotted dolphin	11.71	1.26	0.45	0.00	0.00	14
Pantropical spotted dolphin	2.18	0.23	0.08	0.00	0.00	3
Striped dolphin	5.18	0.56	0.20	0.00	0.00	6
Rough-toothed dolphin	0.18	0.02	0.01	0.00	0.00	1
Bottlenose dolphin	33.18	3.57	1.27	0.00	0.00	39
Gulf of Mexico Continental Shelf						
Atlantic spotted dolphin	161.80	12.95	22.75	0.00	0.00	198
Bottlenose dolphin	269.16	21.55	37.84	0.00	0.88	329
Gulf of Mexico Offshore						
Bryde's whale	0.23	0.02	0.01	0.00	0.00	1
Sperm whale	1.58	00.15	0.06	15.04	0.06	17
Pygmy/dwarf sperm whales	0.38	0.04	0.01	3.66	0.01	5
Pygmy killer whale	0.79	0.07	0.03	0.00	0.00	1
False killer whale	1.63	0.15	0.06	0.00	0.00	2
Beaked whales	0.31	0.03	0.01	2.93	0.01	4
Melon-headed whale	11.55	1.09	0.41	0.00	0.00	13
Risso's dolphin	15.78	1.49	0.55	0.00	0.00	18
Short-finned pilot whale	4.99	0.47	0.18	0.00	0.00	4
Pantropical spotted dolphin	179.45	16.97	6.31	0.00	0.00	203
Striped dolphin	14.02	1.33	0.49	0.00	0.00	16
Rough-toothed dolphin	3.23	0.30	0.11	0.00	0.00	4
Clymene dolphin	0.67	0.06	0.02	0.00	0.00	1
Spinner dolphin	59.13	5.59	2.08	0.00	0.00	67
Bottlenose dolphin	44.75	4.23	1.57	0.00	0.00	51
Caribbean Offshore						
Sperm whale	0.18	0.01	0.00	1.66	0.00	2
Pygmy/dwarf sperm whales	0.38	0.04	0.01	3.66	0.01	5
Pygmy killer whale	0.09	0.00	0.00	0.00	0.00	1
False killer whale	0.19	0.00	0.00	0.00	0.00	1
Beaked whales	0.31	0.03	0.01	2.93	0.01	4
Melon-headed whale	1.34	0.03	0.01	0.00	0.00	2
Risso's dolphin	1.83	0.04	0.02	0.00	0.00	2
Short-finned pilot whale	0.58	0.01	0.01	0.00	0.00	1
Pantropical spotted dolphin	20.80	0.50	0.23	0.00	0.00	22
Striped dolphin	1.63	0.04	0.02	0.00	0.00	2
Rough-toothed dolphin	1.47	0.04	0.02	0.00	0.00	1
Clymene dolphin	0.08	0.05	0.02	0.00	0.00	1
Spinner dolphin	6.85	0.16	0.07	0.00	0.00	8
Bottlenose dolphin	5.19	0.12	0.06	0.00	0.00	6

In some cases, the calculated Level B take estimates resulted in low numbers of animals which are known to be gregarious or travel in group sizes larger than the calculated take estimate. In those cases, we have adjusted the requested take in the application to reflect those groups sizes (see proposed take column in Table 13).

TABLE 13—CALCULATED AND PROPOSED LEVEL B TAKE ESTIMATES

Common name	MMPA stock	Calculated take	Avg. group size [1]	Proposed take
Fin whale	Western North Atlantic	1	2	4

TABLE 13—CALCULATED AND PROPOSED LEVEL B TAKE ESTIMATES—Continued

Common name	MMPA stock	Calculated take	Avg. group size [1]	Proposed take
Blue whale	Western North Atlantic	N/A	2	4
Bryde's whale	Northern Gulf of Mexico	1	2	4
Sperm whale	North Atlantic	2	2.1	4
	Northern Gulf of Mexico	17	2.6	17
	Puerto Rico and U.S. Virgin Islands	4	unk	4
Pygmy/dwarf sperm whale [1]	Western North Atlantic	6	1.9	10
	Northern Gulf of Mexico	5	2	6
	Northern Gulf of Mexico (CRA)	5	2	6
Beaked whale [2]	Western North Atlantic	9	2.3	9
	Northern Gulf of Mexico (GOMRA)	4	2	4
	Northern Gulf of Mexico (CRA)	4	2	4
Melon-headed whales	Northern Gulf of Mexico	13	99.6	100
Risso's dolphin	Western North Atlantic	3	15.4	15
	Northern Gulf of Mexico	18	10.2	10
	Puerto Rico and U.S. Virgin Island	2	10.2	10
Short-finned pilot whales	Western North Atlantic	48	16.6	48
	Northern Gulf of Mexico	6	24.9	25
	Puerto Rico and U.S. Virgin Islands	1	unk	20
Common dolphin	Western North Atlantic	3	267.2	268
Atlantic spotted dolphin	Western North Atlantic	14	37	37
	Northern Gulf of Mexico	198	22	198
	Puerto Rico and U.S. Virgin Islands	unk	unk	50
Pantropical spotted dolphin	Western North Atlantic	4	77.5	78
	Northern Gulf of Mexico	203	71.3	203
Striped dolphin	Western North Atlantic	6	74.6	75
	Northern Gulf of Mexico	16	46.1	46
Bottlenose dolphin	Western North Atlantic (offshore)	39	11.8	39
	Western North Atlantic (coastal/continental shelf).	110	10	110
	Northern Gulf of Mexico (coastal)	[2] 329	10	[2] 350
	Northern Gulf of Mexico (continental shelf)	329	10	350
	Northern Gulf of Mexico (oceanic)	51	20.6	100
	Puerto Rico and U.S. Virgin Islands	6	unk	50
Rough-toothed dolphin	Western North Atlantic	1	8	10
	Northern Gulf of Mexico	4	14.1	20
Clymene dolphin	Western North Atlantic	20	110	100
	Northern Gulf of Mexico	1	89.5	100
Spinner dolphin	Western North Atlantic	unk	unk	100
	Northern Gulf of Mexico	16	151.5	200
	Puerto Rico and U.S. Virgin Islands	n/a	unk	50
Pygmy killer whale	Northern Gulf of Mexico	1	18.5	20
False killer whale	Western North Atlantic	1	unk	20
	Northern Gulf of Mexico	n/a	27.6	20
Harbor porpoise	Gulf of Maine/Bay of Fundy	n/a	[3] 8	16

[1] Groups sizes based on Fulling *et al.,* 2003; Garrison *et al.,* 2011; Mullin *et al.,* 2003; and Mullin *et al.,* 2004.

[2] We note the SEFSC's application did not request take, by Level B harassment, of bottlenose dolphins belonging to coastal stocks; however, because surveys occur using scientific sonar in waters where coastal dolphins may occur, we are proposing to issue the same amount of Level B take as requested for the continental shelf stock.

[3] The American Cetacean Society reports average group size of harbor porpoise range from 6 to 10 individuals. We propose an average group size of 8 for the ARA which is likely conservative given the low density of animals off North Carolina. Given the short and confined spatio-temporal scale of SEFSC surveys in North Carolina during winter months, we assume two groups per year could be encountered.

Proposed Mitigation

In order to issue an incidental take authorization under Section 101(a)(5)(A or D) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to such activity, ''and other means of effecting the least practicable impact on such species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stock for taking'' for certain subsistence uses. NMFS regulations require applicants for incidental take authorizations to include information about the availability and feasibility (economic and technological) of equipment, methods, and manner of conducting such activity or other means of effecting the least practicable adverse impact upon the affected species or stocks and their habitat (50 CFR 216.104(a)(11)).

In evaluating how mitigation may or may not be appropriate to ensure the least practicable adverse impact on species or stocks and their habitat, as well as subsistence uses where applicable, we carefully consider two primary factors:

(1) The manner in which, and the degree to which, the successful implementation of the measure(s) is expected to reduce impacts to marine mammals, marine mammal species or stocks, and their habitat. This considers the nature of the potential adverse impact being mitigated (likelihood, scope, range). It further considers the likelihood that the measure will be effective if implemented (probability of accomplishing the mitigating result if implemented as planned) the likelihood of effective implementation (probability implemented as planned). and; (2) the practicability of the measures for

applicant implementation, which may consider such things as cost, impact on operations, and, in the case of a military readiness activity, personnel safety, practicality of implementation, and impact on the effectiveness of the military readiness activity.

SEFSC Mitigation for Marine Mammals and Their Habitat

The SEFSC has invested significant time and effort in identifying technologies, practices, and equipment to minimize the impact of the proposed activities on marine mammal species and stocks and their habitat. The mitigation measures discussed here have been determined to be both effective and practicable and, in some cases, have already been implemented by the SEFSC. In addition, the SEFSC is actively conducting research to determine if gear modifications are effective at reducing take from certain types of gear; any potentially effective and practicable gear modification mitigation measures will be discussed as research results are available as part of the adaptive management strategy included in this rule. As for other parts of this rule, all references to the SEFSC, unless otherwise noted, include requirements for all partner institutions identified in the SEFSC's application.

Coordination and communication—When SEFSC survey effort is conducted aboard NOAA-owned vessels, there are both vessel officers and crew and a scientific party. Vessel officers and crew are not composed of SEFSC staff, but are employees of NOAA's Office of Marine and Aviation Operations (OMAO), which is responsible for the management and operation of NOAA fleet ships and aircraft and is composed of uniformed officers of the NOAA Commissioned Corps as well as civilians. The ship's officers and crew provide mission support and assistance to embarked scientists, and the vessel's Commanding Officer (CO) has ultimate responsibility for vessel and passenger safety and, therefore, decision authority. When SEFSC-funded surveys are conducted aboard cooperative platforms (*i.e.,* non-NOAA vessels), ultimate responsibility and decision authority again rests with non-SEFSC personnel (*i.e.,* vessel's master or captain). Decision authority includes the implementation of mitigation measures (*e.g.,* whether to stop deployment of trawl gear upon observation of marine mammals). The scientific party involved in any SEFSC survey effort is composed, in part or whole, of SEFSC staff and is led by a Chief Scientist (CS). Therefore, because the SEFSC—not OMAO or any other entity that may have authority over survey platforms used by the SEFSC—is the applicant to whom any incidental take authorization issued under the authority of these proposed regulations would be issued, we require that the SEFSC take all necessary measures to coordinate and communicate in advance of each specific survey with OMAO, and other relevant parties, to ensure that all mitigation measures and monitoring requirements described herein, as well as the specific manner of implementation and relevant event-contingent decision-making processes, are clearly understood and agreed-upon. This may involve description of all required measures when submitting cruise instructions to OMAO or when completing contracts with external entities. The SEFSC will coordinate and conduct briefings at the outset of each survey and as necessary between ship's crew (CO/master or designee(s), as appropriate) and scientific party in order to explain responsibilities, communication procedures, marine mammal monitoring protocol, and operational procedures. SEFSC will also coordinate as necessary on a daily basis during survey cruises with OMAO personnel or other relevant personnel on non-NOAA platforms to ensure that requirements, procedures, and decision-making processes are understood and properly implemented. The CS will be responsible for coordination with the Officer on Deck (OOD; or equivalent on non-NOAA platforms) to ensure that requirements, procedures, and decision-making processes are understood and properly implemented.

For fisheries research being conducted by partner entities, it remains the SEFSC's responsibility to ensure those partners are communicating and coordinating with the SEFSC, receiving all necessary marine mammal mitigation and monitoring training, and implementing all required mitigation and monitoring in a manner compliant with the proposed rule and LOA. The SEFSC will incorporate specific language into its contracts that specifies training requirements, operating procedures, and reporting requirements for protected species that will be required for all surveys conducted by research partners, including those conducted on chartered vessels. To facilitate this requirement, SEFSC would be required to hold at least one training per year with at least one representative from each partner institution (preferably chief scientists of the fishery independent surveys discussed in this rule) to review the proposed mitigation, monitoring and reporting requirements. The SEFSC would also provide consistent, timely support throughout the year to address any questions or concerns researchers may have regarding these measures.

SEFSC would also be required to establish and maintain cooperating partner working group(s) to identify circumstances of a take should it occur and any action necessary to avoid future take. Each working group shall consist of at least one SEFSC representative knowledgeable of the mitigation, monitoring and reporting requirements contained within these regulations, one or more research institution or SEFSC representative(s) (preferably researcher(s) aboard vessel when take or risk of take occurred), one or more staff from NMFS Southeast Regional Office Protected Resources Division, and one or more staff from NMFS Office of Protected Resources. At the onset of these regulations, SEFSC shall maintain the recently established SCDNR working group to identify actions necessary to reduce the amount of take from SCDNR trawling. Other working groups shall be established if a partner takes more than one marine mammal within 5 years to identify circumstances of marine mammal take and necessary action to avoid future take. Each working group shall meet at least once annually. The SEFSC will maintain a centralized repository for all working group findings to facilitate sharing and coordination.

While at sea, best professional judgement is used to determine if a marine mammal is at risk of entanglement/hooking and if and what type of actions should be taken to decrease risk of interaction. To improve judgement consistency across the region, the SEFSC will initiate a process for SEFSC and partner institution FPCs, SWLs, scientists, and vessel captains and crew to communicate with each other about their experiences with protected species interactions during research work with the goal of improving decision-making regarding avoidance of adverse interactions. The SEFSC will host at least one training annually (may be combined with other training requirements) to inform decision-makers of various circumstances that may arise during surveys, necessary action, and follow-up coordination and reporting of instances of take or possible take. The intent of this new training program would be to draw on the collective experience of people who have been making those decisions, provide a forum for the exchange of information about what went right and what went wrong, and try to determine if there are any rules-

of-thumb or key factors to consider that would help in future decisions regarding avoidance practices. The SEFSC would coordinate not only among its staff and vessel captains and crew but also with those from other fisheries science centers, research partners, the Southeast Regional Office, and other institutions with similar experience.

The SEFSC will coordinate with the local Southeast Regional Stranding Coordinator and the NMFS Stranding Coordinator for any unusual protected species behavior and any stranding, beached live/dead, or floating protected species that are encountered during field research activities. If a large whale is alive and entangled in fishing gear, the vessel will immediately call the U.S. Coast Guard at VHF Ch. 16 and/or the appropriate Marine Mammal Health and Stranding Response Network for instructions. All entanglements (live or dead) and vessel strikes must be reported immediately to the NOAA Fisheries Marine Mammal Stranding Hotline at 1–877–433–8299.

General Fishing Gear Measures

The following measures describe mitigation application to all SEFSC surveys while measures specific to gear types follow. SEFSC will take all necessary measures to avoid marine mammal interaction with fishing gear used during fishery research surveys. This includes implementing the move-on rule (when applicable), which means delaying setting gear when marine mammals are observed at or approaching the sampling site and are deemed to be at-risk of becoming entangled or hooked on any type of fishing gear, and immediately pulling gear from the water when marine mammals are deemed to be at-risk of becoming entangled or hooked on any type of fishing gear. SEFSC will, at all times, monitor for any unusual circumstances that may arise at a sampling site and use best professional judgment to avoid any potential risks to marine mammals during use of all research equipment.

In some cases, marine mammals may be attracted to the vessel during fishing. To avoid increased risk of interaction, the SEFSC will conduct fishery research sampling as soon as practicable upon arriving at a sampling station and prior to conducting environmental sampling. If fishing operations have been suspended because of the presence of marine mammals, SEFSC may resume fishing operations when interaction with marine mammals is deemed unlikely. SEFSC may use best professional judgment in making this determination. SEFSC shall coordinate with all research partners, at least once annually, to ensure mitigation, monitoring and reporting requirements, procedures and decision-making processes contained within the proposed regulations and LOA are understood. All vessels must comply with applicable and relevant take reduction plans, including any required soak time limits and gear length restrictions.

Trawl Mitigation Measures

The SEFSC and research partners use a variety of bottom trawl gears for different research purposes. These trawl types include various shrimp trawls (otter, western jib, mongoose, Falcon), high-opening bottom trawls, and flat net bottom trawls (see Table 1–1 and Appendix A in the DPEA). The SEFSC and its research partners also use modified beam trawls and benthic trawls pulled by hand that are not considered to pose a risk to protected species due to their small size and very short tow durations. Therefore, these smaller, hand pulled trawls are not subject to the mitigation measures provided here.

The following mitigation measures apply for trawl surveys:

- Limit tow times to 30 minutes (except for sea turtle research trawls);
- open codend close to deck/sorting table during haul back to avoid damage to animals that may be caught in gear and empty gear as quickly as possible after retrieval haul back;
- delay gear deployment if marine mammals are believed to be at-risk of interaction;
- retrieve gear immediately if marine mammals is believed to be entangled or at-risk of entanglement;
- implement marine mammal mitigation measures included in the NMFS ESA Scientific Research permit under which a survey may be operating;
- dedicated marine mammal observations shall occur at least 15 minutes to beginning of net deployment; this watch may include approach to the sampling station;
- at least one scientist will monitor for marine mammals while the trawl is deployed and upon haul-back;
- minimize ''pocketing'' in areas of the net where dolphin depredation evidence is commonly observed; and
- continue investigation into gear modifications (*e.g.,* stiffening lazy lines) and *e.g.,* the effectiveness of gear modification.

In 2008, standard tow durations for fishery bottom trawl surveys were reduced from 55 minutes to 30 minutes or less at target depth (excluding deployment and retrieval time). These short tow durations decrease the opportunity for curious marine mammals to find the vessel and investigate. Tow times are less than the 55 minute tow time restriction required for commercial shrimp trawlers not using turtle excluder devices (TEDs) (50 CFR 223.206). The resulting tow distances are typically one to two nm or less, depending on the survey and trawl speed. Short tow times reduce the likelihood of entangling protected species.

The move-on rule will be applied to all oceanic deep water trawls if sightings occur anywhere around vessel (within 2 nm) during a 30 minute pre-gear deployment monitoring timeframe. Vessels will move away if animals appear at risk or trawling will be delayed until marine mammals have not been sighted for 30 min or otherwise determined to no longer be at risk. If animals are still at risk after moving or 30 minutes have lapsed, the vessel will move again or the station will be skipped.

Bottom trawl surveys conducted for purposes of researching gears designed to reduce sea turtle interaction (*e.g.,* turtle exclusion device (TED) testing) and develop finfish bycatch mitigation measures for commercial trawl fisheries may have tow times of up to four hours. These exceptions to the short tow duration protocols are necessary to meet research objectives. TEDs are used in nets that are towed in excess of 55 minutes as required by 50 CFR 223.206. When research objectives prevent the installation of TEDs, tow time limits will match those set by commercial fishing regulations such as the skimmer trawl fishery which has a 55 min tow time limit. This research is covered under the authority of the ESA and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR parts 222–226). The SEFSC began using skimmer trawls in their TED testing in 2012. Mitigation measures in Scientific Research permit 20339, issued May 23, 2017, include:

- Trawling must not be initiated when marine mammals (except dolphins or porpoises) are observed within the vicinity of the research and the marine mammals must be allowed to either leave or pass through the area safely before trawling is initiated;
- Researchers must make every effort to prevent interactions with marine mammals and researchers must be aware of the presence and location of these animals at all times as they conduct trawling activities;

• During skimmer trawl surveys, a minimum of two staff, one on each side (port/starboard) of the vessel, must inspect the gear every five minutes to monitor for the presence of marine mammals,

• Prior to retrieving the skimmer trawl tail bags, the vessel must be slowed from the active towing speed to 0.5–1.0 kn;

• If a marine mammal enters the net, becomes entangled or dies, researchers must (a) stop trawling activities and immediately free the animal, (b) notify the appropriate NMFS Regional Stranding Coordinator as soon as possible and (c) report the incident (permitted activities will be suspended until the Permits Division has granted approval to continue research); and

• Video monitoring of the TED must be used when trawling around Duck, North Carolina, to reduce take of Atlantic sturgeon (although this requirement is not geared toward marine mammals, the camera feed can be used to observe marine mammals to inform decisions regarding implementing mitigation).

The SEFSC also holds an ESA-research permit to assess sea turtle abundance, stock identification, life history, and impacts of human activities; determine sea turtle movements, fine-scale habitat characteristics and selection, and delineation of foraging and nursery areas; and examine how sea turtle distributions correlate with temporal trends and environmental data (Scientific Research Permit 16733–04). That research permit includes a number of marine mammal conditions that must be followed and are incorporated into this proposed rule by reference:

• Trawl tow times must not exceed 30 minutes (bottom time) except in cases when the net is continuously monitored with a real-time video camera or multi-beam sonar system;

• Haul back must begin once a sea turtle or marine mammal enters the net regardless of time limits;

• Seine net pulls must not exceed 45 minutes as part of a 2-hour deployment;

• Nets must not be put in the water and trawls must not be initiated when marine mammals are observed within the vicinity of the research;

• Marine mammals must be allowed to either leave or pass through the area safely before net setting or trawling is initiated;

• Researchers must make every effort to prevent interactions with marine mammals;

• Researchers must be aware of the presence and location of these animals at all times as they conduct activities;

• During skimmer trawl surveys, a minimum of two staff, one on each side (port/starboard) of the vessel, must inspect the gear every five minutes to monitor for the presence of marine mammals;

• Prior to retrieving the skimmer trawl tail bags, the vessel must be slowed from the active towing speed to 0.5–1.0 kn;

• Should marine mammals enter the research area after the seine or tangle nets have been set, the lead line must be raised and dropped in an attempt to make marine mammals in the vicinity aware of the net;

• If marine mammals remain within the vicinity of the research area, tangle or seine nets must be removed; and

• If a marine mammal enters the trawl net, becomes entangled or captured, researchers must stop activities and immediately free the animal, notify the NMFS Southeast Regional Stranding Coordinator as soon as possible, report the incident within 2 weeks and, in addition to the written report, the Permit Holder must contact the Permits Division.

Other mitigation measures are included in research permit 16733–04 that are designed for sea turtles but also have benefits to minimizing entanglement of marine mammals. These include:

• Highly visible buoys must be attached to the float line of each net and spaced at intervals of 10 yards or less; Nets must be checked at intervals of less than 30 minutes, and more frequently whenever turtles or other organisms are observed in the net. If water temperatures are ≤10 °C or ≥30 °C, nets must be checked at less than 20-minute intervals (''net checking'' is defined as a complete and thorough visual check of the net either by snorkeling the net in clear water or by pulling up on the top line such that the full depth of the net is viewed along the entire length); The float line of all nets must be observed at all times for movements that indicate an animal has encountered the net (when this occurs the net must be immediately checked). During diver assisted gear evaluations (SEFSC Small Turtle TED Testing and Gear Evaluations), dive teams are deployed on the trawls while they are being towed. During this research, divers actively monitor the gear for protected species interactions and use emergency signal floats to notify the vessel if an interaction occurs. When the signal float is deployed the vessel terminates the tow and slows the gear down to a minimal forward speed of less than 0.5 knots, which allows divers to assist the protected species escape.

Live feed video or sonar monitoring of the trawl may be used in lieu of tow time limits. This mitigation measure is also used in addition to TEDs during some projects. Video or sonar feeds are monitored for the duration of the tow. If a TED is not installed in the trawl and a protected species is observed in the trawl then the tow is immediately terminated. If a TED is installed and a marine mammal is observed to have difficulty escaping through the TED opening, or the individual is lost from the video or sonar feed then the tow is immediately terminated. For all trawl types, the lazy line is a source of entanglement. In particular, dolphins like to rub the line. Loose lines are prone to create a half-hitch around their tail. Therefore, to mitigate this type of interaction, the SEFSC Harvesting Systems Unit (HSU) has conducted limited research examining the potential use of lazy lines constructed of alternative materials designed to reduce marine mammal entanglement with respect to material, thickness, and stiffness. Polyester rope, also known as Dacron, may be a suitable alternative to traditionally used polypropylene. Polyester rope is UV and abrasion resistant and has less elasticity than nylon, but does not lose strength when wet. Polyester, like polypropylene, does not absorb water, but has a higher specific gravity (1.38), which causes it to sink. Polyester can be constructed using a process that results in a medium or hard lay rope that that is stiff, avoids hockling (a twist in the line which gets caught in a block) and is self-coiling when loaded or unloaded off a capstan or gear hauler. The high specific gravity of this type of rope may pose a snagging or hang-up hazard when used as a lazy line in trawl operations. However, the smooth feel of the rope compared to polypropylene may reduce the attractiveness of the line to the rubbing behavior of bottlenose dolphin.

In 2007, the HSU conducted preliminary NOAA diver assisted trials with High Density Polyethylene (HDPE) rope as a replacement for traditional polypropylene. Compared to polypropylene, HDPE polyethylene has similar properties including negligible water absorption, UV resistance, and low specific gravity, which allows it to float. However, HDPE polyethylene may be constructed with a harder lay than traditional polypropylene rope. Divers found that half-hitching the line was more difficult than traditional polypropylene line. However, operational trials were not conducted to examine performance and usability

aboard the vessel during extended fishing operations.

Another alternative may be replacement of the lazy line with ⅜ in. stainless steel cable or replacement of the aft portion of the lazy line with ⅜ in. stainless steel cable. Replacement of the entire lazy line with cable would require block replacement and the use of dedicated winches for hauling the gear. Replacing the aft portion of the lazy line, where bottlenose dolphins typically interact with the line, would not require any changes as long as the rope to cable connection is able to smoothly pass through existing blocks. However, each of these changes would result in sinking and potential snagging or hang-up hazards. These modifications are also not without consequences. Lazy line modifications may require vessel equipment changes (*e.g.,* blocks on research vessels) or may change the effectiveness of the catch, precluding comparison of new data to long-term data sets. In 2017, the HSU conducted a follow-up study, funded by NMFS Office of Science and Technology, to further investigate gear modification and the potential effectiveness at reducing dolphin entanglement.

The following summarizes HSU's 2017 research efforts on shrimp trawl gear modification which was carried out to inform development of this proposed rule (the fully report can be found at *https://www.fisheries.noaa.gov/node/23111*). Gearhart and Hathaway (2018) provide the following summary of research methods and findings: From June 9–22, 2017, HSU conducted gear evaluations in Panama City, Florida, with various lazy lines and configurations. In addition to traditional polypropylene, three types of 3 strand rope were examined; Samson Ultra-Blue Medium Hard Lay (MHL); Samson SSR 100 MHL; and Samson XLR. Vertical and horizontal profiles of each rope type were measured with and without a ''sugar line'' attached in a twin-rigged trawl configuration. In addition, dolphin interactions were simulated by NMFS divers with an aluminum dolphin fluke model. Results indicate that the vertical profiles were reduced and horizontal profiles increased for all rope types when a 25 ft (7.6 m) ''sugar line'' was added. Due to differences in elasticity when compared to polypropylene, the alternative rope types experienced greater tension with vertical profiles flattening, while the polypropylene rope maintained vertical relief. Results of simulated dolphin interactions were inconclusive with divers able to introduce half-hitch loops around the model fluke with both polypropylene and the stiffest alternative rope, Samson SSR 100 MHL. However divers commented that it was more difficult to introduce the loop in the stiffer Samson SSR 100 MHL than the polypropylene line and more difficult to introduce the loop along the outer portion of the lazy line with the sugar line attached due to the increased tension on the line. Use of an alternative stiffer line with low stretch in combination with a short sugar line may reduce the potential for bottlenose dolphin takes on lazy lines. However, additional usability research is needed with these alternative rope types to see how they perform under commercial conditions. Finally, more directed dolphin/lazy line interaction behavior research is needed to better understand the modes of interaction and provide conservation engineers with the knowledge required to better formulate potential solutions.

Given the report's results and recommendations, NMFS is not requiring the SEFSC implement lazy line modifications at this time. However, as an adaptive management strategy, NMFS will be periodically assessing lazy line modification as a potential mitigation measure in this and future regulations. NMFS will continue to work with the SEFSC to determine if gear modifications such as stiffer lazy lines are both warranted and practicable to implement. Should the SEFSC volunteer to modify trawl lazy lines, NMFS will work with the researchers to identify any potential benefit and costs to doing so.

In addition to interactions with the lazy line, the SEFSC has identified that holes in trawl nets resulting from dolphin depredation are most numerous around net ''pockets'' where fish congregate. Reinforcing these more vulnerable sections of the net could help reduce entanglement. Similar to lazy line modification investigations, this potential mitigation measure will be further examined to determine its effectiveness and practicability. The proposed regulations identify ''pocketing'' of the net should be minimized.

Finally, marine mammal monitoring will occur during all trawls. Bottlenose dolphins are consistently interacting with research trawls in the estuary and nearshore waters and are seemingly attracted to the vessel, with most dolphins converging around the net during haul-back (SCDNR Working Group, pers. comm., February 2, 2016). This makes it difficult to ''lose'' dolphins, even if moving stations. Due to the known persistent behavior of dolphins around trawls in the estuary and nearshore waters, the move-on rule will not be required for such surveys. However, the chief scientist and/or vessel captain will be required to take immediate action to reduce dolphin interaction should animals appear to be at risk or are entangled in the net. For skimmer trawl research, both the lazy line and net can be monitored from the vessel. However, this is not possible for bottom trawls. Therefore, for bottom trawls, researchers should use best professional judgement to determine if gear deployment should be delayed or hauled. For example, the SCDNR has noted one instance upon which dolphins appeared distressed, evident by the entire group converging on the net during haul-back. They quickly discovered a dolphin was entangled in the net. This and similar types of overt distress behaviors should be used by researchers monitoring the net to identify potential entanglement, requiring the net be hauled-in immediately and quickly.

Pelagic trawls conducted in deep water (500–800 m deep) are typically mid-water trawls and occur in oceanic waters where marine mammal species diversity is greater increased compared to the coast or estuaries. Oceanic species often travel in very large groups and are less likely to have prior encounters and experience with trawl gear than inshore bottlenose dolphins. For these trawls, a dedicated marine mammal observer would observe around the vessel for no less than 30 minutes prior to gear deployment. If a marine mammal is observed within 2 nm of the vessel, gear deployment would be delayed until that animal is deemed to not be at risk of entanglement (*e.g.,* the animal is moving on a path away from the vessel) or the vessel would move to a location absent of marine mammals and deploy gear. If trawling operations have been delayed because of the presence of protected species, the vessel resumes trawl operations (when practicable) only when these species have not been sighted within 30 minutes or are determined to no longer be at risk (*e.g.,* moving away from deployment site). If the vessel moves, the required 30-minute monitoring period begins again. In extreme circumstances, the survey station may need to be cancelled if animals (*e.g.,* delphinids) follow the vessel. In addition to implementing the ''move-on'' rule, all trawling would be conducted first to reduce the opportunity to attract marine mammals to the vessel. However, the order of gear deployment is at the discretion of the FPC or SWL based on environmental conditions. Other activities, such as

water sampling or plankton tows, are conducted in conjunction with, or upon completion of, trawl activities.

Once the trawl net is in the water, the officer on watch, FPC or SWL, and/or crew standing watch continue to monitor the waters around the vessel and maintain a lookout for protected species as far away as environmental conditions allow. If protected species are sighted before the gear is fully retrieved, the most appropriate response to avoid incidental take is determined by the professional judgment of the FPC or SWL, in consultation with the officer on watch. These judgments take into consideration the species, numbers, and behavior of the animals, the status of the trawl net operation (net opening, depth, and distance from the stern), the time it would take to retrieve the net, and safety considerations for changing speed or course. Most marine mammals have been caught during haul-back operations, especially when the trawl doors have been retrieved and the net is near the surface and no longer under tension. In some situations, risk of adverse interactions may be diminished by continuing to trawl with the net at depth until the protected species have left the area before beginning haul-back operations. In other situations, swift retrieval of the net may be the best course of action. The appropriate course of action to minimize the risk of incidental take of protected species is determined by the professional judgment of the FPC or SWL based on all situation variables, even if the choices compromise the value of the data collected at the station. Care is taken when emptying the trawl, including opening the codend as close as possible to the deck of the checker (or sorting table) in order to avoid damage to protected species that may be caught in the gear but are not visible upon retrieval. The gear is emptied as quickly as possible after retrieval in order to determine whether or not protected species are present.

Seine Nets

The SEFSC will implement the following mitigation measures when fishing with seine nets (*e.g.,* gillnets, trammel nets):

- Conduct gillnet and trammel net research activities during daylight hours only;
- Limit soak times to the least amount of time required to conduct sampling;
- Conduct dedicated marine mammal observation monitoring beginning 15 minutes prior to deploying the gear and continue through deployment and haulback;
- Hand-check the net every 30 minutes if soak times are longer than 30 minutes or immediately if disturbance is observed;
- Pull gear immediately if disturbance in the nets is observed;
- Reduce net slack and excess floating and trailing lines;
- Repair damaged nets prior to deploying; and
- Delay or pull all gear immediately and implement the move-on rule if marine mammal is at-risk of entanglement.

The dedicated observation will be made by scanning the water and marsh edge (if visible when working in estuarine waters) 360 degrees around the vessel where the net would be set. If a marine mammal is sighted during this observation period, nets would not be deployed until the animal has left the area, is on a path away from where the net would be set, or has not been re-sighted within 15 minutes. Alternatively, the research team may move the vessel to an area clear of marine mammals. If the vessel moves, the 15 minute observation period is repeated. Monitoring by all available crew would continue while the net is being deployed, during the soak, and during haulback.

If marine mammals are sighted in the peripheral sampling area during active netting, the SEFSC will raise and lower the net leadline. If marine mammals do not immediately depart the area and the animal appears to be at-risk of entanglement (*e.g.,* interacting with or on a path towards the net), the SEFSC delay or pull all gear immediately and, if required, implement the move-on rule if marine mammal is at-risk of entanglement.

If protected species are not sighted during the 15 minute observation period, the gear may be set. Waters surrounding the net and the net itself would be continuously monitored during the soak. If protected species are sighted during the soak and appear to be at risk of interaction with the gear, then the gear is pulled immediately. If fishing operations are halted, operations resume when animal(s) have not been sighted within 15 minutes or are determined to no longer be at risk, as determined by the judgment of the FPC or SWL. In other instances, the station is moved or cancelled. If any disturbance in the gear is observed in the gear, it is immediately checked or pulled.

Hook and Line Gear Mitigation

In addition to the general mitigation measures listed above, the SEFSC will implement the following mitigation measures:

- Monitor area for marine mammals and, if present, delay setting gear until the animal is deemed not at risk.
- Immediately reel in lines if marine mammals are deemed to be at risk of interacting with gear.
- Following existing Dolphin Friendly Fishing Tips: *http://sero.nmfs.noaa.gov/protected_resources/outreach_and_education/documents/dolphin_friendly_fishing_tips.pdf.*
- Not discard leftover bait overboard while actively fishing.
- Inspect tackles daily to avoid unwanted line breaks.

When fishing with bottom or pelagic longlines, the SEFSC will: (1) Limit longline length and soak times to the minimum amount possible; (2) deploy longline gear first (after required monitoring) prior to conducting environmental sampling; (3) if any marine mammals are observed, delay deploying gear unless animal is not at risk of hooking; (4) pull gear immediately and implement the move-on rule if any marine mammal is hooked or at risk of being hooked; (5) deploy longline gear prior to environmental sampling; and (6) avoid chumming (*i.e.,* baiting water). More detail on these measures are described below.

Prior to arrival on station (but within 0.5 nautical mile), the officer, crew members, and scientific party on watch visually scan for protected species for 30 minutes prior to station arrival for pelagic longline surveys and 15 minutes prior for other surveys. Binoculars will be used as necessary to survey the area while approaching and upon arrival at the station, while the gear is deployed, and during haulback. Additional monitoring is conducted 15 minutes prior to setting longline gear by members of the scientific crew that monitor from the back deck while baiting hooks. If protected species are sighted prior to setting the gear or at any time the gear is in the water, the bridge crew and SWL are alerted immediately. Environmental conditions (*e.g.,* lighting, sea state, precipitation, fog, etc.) often limit the distance for effective visual monitoring of protected species. If marine mammals are sighted during any monitoring period, the ''move-on'' rule, as described in the trawling mitigation section above would be implemented. If longline operations have been delayed because of the presence of protected species, the vessel resumes longline operations only when these species have not been sighted within 15 minutes or otherwise determined to no longer be at risk. The risk decision is at the discretion of the FPC or SWL and is dependent on the situation. After the

required monitoring period, longline gear is always the first equipment or fishing gear to be deployed when the vessel arrives on station.

If marine mammals are detected during setting operations or while the gear is in the water and are considered to be at risk (*e.g.,* moving towards deployment site, displaying behaviors of potentially interacting with gear, etc.), the FPC or SWL in conjunction with the officer on watch may halt the setting operation or call for retrieval of gear already set. The species, number, and behavior of the protected species are considered along with the status of the ship and gear, weather and sea conditions, and crew safety factors when making decisions regarding gear deployment delay or retrieval.

There are also a number of standard measures designed to reduce hooking potential and minimize injury. In all pelagic longline sets, gangions are 110 percent as long as the drop line depth; therefore, this gear configuration allows a potentially hooked marine mammal the ability to reach the surface. SEFSC longline protocols specifically prohibit chumming reducing any attraction. Further, no stainless steel hooks are used so that in the event a hook can not be retrieved from an animal, it will corrode. Per PLTRP, the SEFSC pelagic longline survey uses the Pelagic Longline Marine Mammal Handling and Release Guidelines for any pelagic longline sets made within the Atlantic EEZ. These procedures would also be implemented in the GOMRA and CRA.

Other gears—The SEFSC deploys a wide variety of gear to sample the marine environment during all of their research cruises. Many of these types of gear (*e.g.,* chevron fish trap, eel traps, dip nets, video cameras and ROV deployments) are not considered to pose any risk to marine mammals due to their size, deployment methods, or location, and therefore are not subject to mitigation. However, at all times when the SEFSC is conducting survey operations at sea, the OOD and/or CS and crew will monitor for any unusual circumstances that may arise at a sampling site and use best professional judgment to avoid any potential risks to marine mammals during all vessel operation and use of research equipment.

Electrofishing—Electrofishing occurs on small vessels and operates with a 3000 watt pulsed direct current for 15 minutes. The electric field is less than 20 feet around the electrofishing vessel. Before the electrofishing vessel begins operating, a dedicated marine mammal observer would scan the surrounding waters for at least 15 minutes prior to fishing. If a marine mammal is observed within 50 meters of the vessel or on a path toward the vessel, electrofishing would be delayed. Fishing would not begin until the animal is outside of the 50 m safety zone or on a consistent path away from the vessel. Alternatively, if animals do not leave the area, the vessel could move to another sampling station. If the vessel moves, the 15 minutes observation period is repeated. During electrofishing, the research crew would also monitor for marine mammals. If animals are observed within or a path toward the 50 m safety zone, electrofishing would be terminated and not resume until the animal is clear of and on a path away from the 50 m safety zone. All samples collected during electrofishing are to remain on the vessel and not discarded until all electrofishing is completed to avoid attracting protected species.

Vessel speed—Vessel speed during active sampling is less than 5 kn (average 2–3 kn) while transit speeds to and from sampling sites vary from 6–14 kn but average 10 kn. These low vessel speeds minimize the potential for ship strike (see ''Potential Effects of the Specified Activity on Marine Mammals and Their Habitat'' for an in-depth discussion of ship strike). At any time during a survey or in transit, if a crew member standing watch or dedicated marine mammal observer sights marine mammals that may intersect with the vessel course that individual will immediately communicate the presence of marine mammals to the bridge for appropriate course alteration or speed reduction, as possible, to avoid incidental collisions.

While transiting in areas subjected to the North Atlantic ship strike rule, all SEFSC- affiliated research vessels (NOAA vessels, NOAA chartered vessels, and research partner vessels) will abide by the required speed restrictions and sighting alert protocols. The ship strike rule for the southeast U.S. seasonal management area (SMA) requires that, from November 15 through April 15, all vessels 65 feet or longer must slow to 10 kn or less in the right whale calving and nursery grounds which are bounded to the north by latitude 31°27′ N, to the south by 29°45′ N, and to the east by 80°51′36″ W. Mid-Atlantic SMAs include several port or bay entrances from northern Georgia to Rhode Island between November 1 and April 30. In addition, dynamic management areas (DMAs) are temporary areas created around right whale sightings, the size of which depends on the number of whales sighted. Voluntary speed reductions may apply when no SMA is in effect. All NOAA research vessels operating in North Atlantic right whale habitat participate in the Right Whale Early Warning System.

SEFSC research vessel captains and crew watch for marine mammals while underway during daylight hours and take necessary actions to avoid them. There are currently no Marine Mammal Observers (MMOs) aboard the vessels dedicated to watching for marine mammals to minimize the risk of collisions, although the large NOAA vessels (*e.g.,* NOAA Ship *Pisces*) operated by the NOAA Office of Marine and Aviation Operations (OMAO) include one bridge crew dedicated to watching for obstacles at all times, including marine mammals. At any time during a survey or in transit, any bridge personnel that sights marine mammals that may intersect with the vessel course immediately communicates their presence to the helm for appropriate course alteration or speed reduction as soon as possible to avoid incidental collisions, particularly with large whales (*e.g.,* North Atlantic right whales).

The Right Whale Early Warning System is a multi-agency effort that includes the SEFSC, the Florida Fish and Wildlife Conservation Commission (FWCC), U.S. Coast Guard, U.S. Navy, and volunteer observers. Sightings of the critically endangered North Atlantic right whale are reported from aerial surveys, shipboard surveys, whale watch vessels, and opportunistic sources (U.S. Coast Guard, commercial ships, fishing vessels, and the general public). Whale sightings are reported in real time to the Right Whale Early Warning System network and information is disseminated to mariners within a half hour of a sighting. The program was designed to reduce collisions between ships and North Atlantic right whales by alerting mariners to the presence of the whales in near real time. Under the proposed rule, all NOAA-affiliated vessels operating in North Atlantic right whale habitat will be required to participate in the Right Whale Early Warning System.

Acoustic and Visual Deterrent Devices—Acoustic and visual deterrents include, but are not limited; to pingers, recordings of predator vocalizations, light sticks, and reflective twine/rope. Pingers are underwater sound-emitting devices attached to gear that have been shown to decrease the probability of interacuetions with certain species of marine mammals. Pingers have been shown to be effective in deterring some marine mammals, particularly harbor porpoises, from interacting with gillnet gear (Nowacek et al. 2007, Carretta and

Barlow 2011). Multiple studies have reported large decreases in harbor porpoise mortality (approximately eighty to ninety percent) in bottom-set gillnets (nets composed of vertical panes of netting, typically set in a straight line and either anchored to the bottom or drifting) during controlled experiments (*e.g.,* Kraus *et al.,* 1997; Trippel *et al.,* 1999; Gearin *et al.,* 2000). Using commercial fisheries data rather than a controlled experiment, Palka *et al.* (2008) reported that harbor porpoise bycatch rates in the northeast U.S gillnet fishery when fishing without pingers was about two to three times higher compared to when pingers were used. After conducting a controlled experiment in a California drift gillnet fishery during 1996–97, Barlow and Cameron (2003) reported significantly lower bycatch rates when pingers were used for all cetacean species combined, all pinniped species combined, and specifically for short-beaked common dolphins (85 percent reduction) and California sea lions (69 percent reduction). While not a statistically significant result, catches of Pacific white-sided dolphins (which are historically one of the most frequently captured species in SEFSC surveys; see Table 4) were reduced by seventy percent. Carretta *et al.* (2008) subsequently examined nine years of observer data from the same drift gillnet fishery and found that pinger use had eliminated beaked whale bycatch. Carretta and Barlow (2011) assessed the long-term effectiveness of pingers in reducing marine mammal bycatch in the California drift gillnet fishery by evaluating fishery data from 1990–2009 (with pingers in use beginning in 1996), finding that bycatch rates of cetaceans were reduced nearly fifty percent in sets using a sufficient number of pingers. However, in a behavioral response study investigating bottlenose dolphin behavior around gillnets outfitted with acoustic alarms in North Carolina, there was no significant difference is number of dolphins or closest approach between nets with alarms and nets without alarms (Cox *et al.,* 2003). Studies of acoustic deterrents in a trawl fishery in Australia concluded that pingers are not likely to be effective in deterring bottlenose dolphins, as they are already aware of the gear due to the noisy nature of the fishery (Stephenson and Wells 2008, Allen et al. 2014). Acoustic deterrents were also ineffective in reducing bycatch of common dolphins in the U.K. bass pair trawl fishery (Mackay and Northridge 2006).

The use and effectiveness of acoustic deterrent devices in fisheries in which bottlenose dolphins have the potential to interact has been approached with caution. Two primary concerns expressed with regard to pinger effectiveness in reducing marine mammal bycatch relate to habituation (*i.e.,* marine mammals may become habituated to the sounds made by the pingers, resulting in increasing bycatch rates over time; Dawson, 1994; Cox *et al.,* 2001; Carlström *et al.,* 2009) and the ''dinner bell effect'' (Dawson, 1994; Richardson *et al.,* 1995), which implies that certain predatory marine mammal species may come to associate pingers with a food source (*e.g.,* fish caught in nets) with the result that bycatch rates may be higher in nets with pingers than in those without.

The BDTRP, after years of directed investigation, found pingers are not effective at deterring bottlenose dolphins from depredating on fish captured by trawls and gillnets. During research driven by the BDTRT efforts to better understand the effectiveness of pingers on bottlenose dolphins, one became entangled and drowned in a net outfitted with a pinger. Dolphins can become attracted to the sound of the pinger because they learn it signals the presence of fish (*i.e.,* the ''dinner bell effect''), raising concerns about potential increased entanglement risks (Cox et al., 2003; Read et al., 2004 and 2006; and Read and Waples 2010). Due to the lack of evidence that pingers are effective at deterring bottlenose dolphins coupled with the potential dinner-bell effect, the BDTRP does not recommend them for use in SEFSC for bottlenose dolphins.

The effectiveness of acoustic and visual deterrents for species encountered in the ARA, GOMRA, and CRA is uncertain. Therefore, the SEFSC will not be required to outfit gear with deterrent devices but is encouraged to undertake investigations on the efficacy of these measures where unknown (*i.e.,* not for surveys in which bottlenose dolphins are primary bycatch) in order to minimize potential for take.

Disentanglement Handling Procedures—The SEFSC will implement a number of handling protocols to minimize potential harm to marine mammals that are incidentally taken during the course of fisheries research activities. In general, protocols have already been prepared for use on commercial fishing vessels. Although commercial fisheries are known to take a larger number of marine mammals than fisheries research, the nature of entanglements are similar. Therefore, the SEFSC would adopt commercial fishery disentanglement protocols, which are expected to increase post-release survival. Handling or disentangling marine mammals carries inherent safety risks, and using best professional judgment and ensuring human safety is paramount.

Captured live or injured marine mammals are released from research gear and returned to the water as soon as possible with no gear or as little gear remaining on the animal as possible. Animals are released without removing them from the water if possible, and data collection is conducted in such a manner as not to delay release of the animal(s) or endanger the crew. SEFSC is responsible for training SEFSC and partner researchers on how to identify different species; handle and bring marine mammals aboard a vessel; assess the level of consciousness; remove fishing gear; and return marine mammals to water. Human safety is always the paramount concern.

At least two persons aboard SEFSC ships and one person aboard smaller vessels, including vessels operated by partners where no SEFSC staff are present, will be trained in marine mammal handling, release, and disentanglement procedures. If a marine mammal is entangled or hooked in fishery research gear and discovered alive, the SEFSC or affiliate will follow safe handling procedures. To facilitate this training, SEFSC would be required to ensure relevant researchers attend the NMFS Highly Migratory Species/Protected Species Safe Handling, Release, and Identification Workshop *www.nmfs.noaa.gov/sfa/hms/compliance/workshops/protected_species_workshop/index.html* or other similar training. The SEFSC shall provide SEFSC scientists and partner institutions with the Protected Species Safe Handling and Release Manual (see Appendix D is SEFSC's application) and advise researchers to follow this manual, in addition to lessons learned during training, should a marine mammal become entangled during a survey. For those scientists conducting longline surveys, the SEFSC shall provide training on the Pelagic Longline Take Reduction Team Marine Mammal Handling and Release Guidelines.

Based on our evaluation of the applicant's proposed measures, as well as other measures considered by NMFS, NMFS has preliminarily determined that the proposed mitigation measures provide the means of effecting the least practicable impact on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

Based on our evaluation of the SEFSC's proposed measures, as well as other measures considered by NMFS,

NMFS has preliminarily determined that the proposed mitigation measures provide the means effecting the least practicable impact on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

TPWD Mitigation for Marine Mammals and Their Habitat

The TPWD would undertake a number of measures to minimize risk of entangling bottlenose dolphins. Only new or fully repaired gill nets will be used thereby eliminating holes. Gill nets will be set with minimal slack and a very short marker buoy attached to the deep end of the net. This reduction in slack and float buoy length is designed to reduce possible entanglement. The TPWD would also modify the nets to greatly reduce or eliminate any gaps between the float/lead line and the net. As currently configured, nets are tied to the lines every eight in. creating a gap between the net and line of approximately six to eight in. depending on the mesh size. TPWD field crews report that entanglement has typically occurred in the float or lead lines in or near the gap in question. TPWD would tie the net to the lines at no more than 4 in. intervals, reducing the gap size to less than four in. should help prevent getting a tail, pectoral, or fluke fin getting caught in these gaps.

Prior to setting nets, dedicated marine mammal observations will be conducted by at least one researcher trained in marine mammal detection techniques. If dolphins are observed around or on a path toward the sampling site, TPWD would delay setting the net until the animal has moved and is on a path away from the site. If an animal is observed around and on a path toward the sampling area while setting the net, the net will be hauled back aboard until the animal has moved on. If animals remain in the area, TPWD will move on to another site not in the animal's path without setting the net. When a net is set, TPWD would minimize soak time by utilizing the ''last out/first in'' strategy for gill nets set in sites where marine mammals have been encountered within the last 5 years. A net set in this manner will be deployed last and retrieved first, reducing soak times by an average of 1.35 hours but a maximum of 6.6 hours.

TPWD researchers will immediately respond to net disturbances when setting and retrieving nets to determine if a dolphin is entangled and, if so, will release the dolphin immediately. All nets set the night before will be inspected for the presence of bottlenose dolphins and sea turtles before any nets are retrieved. If these animals are observed they will be released immediately. At least one TPWD research aboard gillnetting survey vessels will be trained in NMFS-approved Marine Mammal Handling Procedures.

The TPWD would remove fishing grids from their sampling areas where dolphins have been taken on more than one occasion or where multiple adjacent grids have had at least one dolphin encounter. To date, grids which meet one or both of these criteria are (1) Aransas Bay, just south of Allyn's Bight (grid #'s 280, 290, 291, 301, see Fig.3 in TPWD's application), (2) Corpus Christi Bay, south of Ingleside shoreline (CC grid #132, see Fig. 4 in TPWD's application), and (3) Lower Laguna Madre, in Redfish Bay (LLM grid #47, see Fig 5 in TPWD's application).

Based on our evaluation of the TPWD's proposed measures, as well as other measures considered by NMFS, NMFS has preliminarily determined that the proposed mitigation measures provide the means effecting the least practicable impact on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

Proposed Monitoring and Reporting

In order to issue an incidental take authorization for an activity, section 101(a)(5)(A) of the MMPA states that NMFS must set forth ''requirements pertaining to the monitoring and reporting of such taking.'' The MMPA implementing regulations at 50 CFR 216.104 (a)(13) require that requests for incidental take authorizations must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present in the proposed action area.

Monitoring and reporting requirements prescribed by NMFS should contribute to improved understanding of one or more of the following:

- Occurrence of marine mammal species or stocks in the action area (*e.g.,* presence, abundance, distribution, density);
- Nature, scope, or context of likely marine mammal exposure to potential stressors/impacts (individual or cumulative, acute or chronic), through better understanding of: (1) Action or environment (*e.g.,* source characterization, propagation, ambient noise); (2) affected species (*e.g.,* life history, dive patterns); (3) co-occurrence of marine mammal species with the action; or (4) biological or behavioral context of exposure (*e.g.,* age, calving or feeding areas).
- Individual marine mammal responses (behavioral or physiological) to acoustic stressors (acute, chronic, or cumulative), other stressors, or cumulative impacts from multiple stressors;
- How anticipated responses to stressors impact either: (1) Long-term fitness and survival of individual marine mammals; or (2) populations, species, or stocks;
- Effects on marine mammal habitat (*e.g.,* marine mammal prey species, acoustic habitat, or other important physical components of marine mammal habitat); and
- Mitigation and monitoring effectiveness.

SEFSC Proposed Monitoring and Reporting

The SEFSC plans to make more systematic its training, operations, data collection, animal handling and sampling protocols, etc. in order to improve its ability to understand how mitigation measures influence interaction rates and ensure its research operations are conducted in an informed manner and consistent with lessons learned from those with experience operating these gears in close proximity to marine mammals. We propose the monitoring requirements described below.

Marine mammal watches are a standard part of conducting fisheries research activities and are implemented as described previously in ''Proposed Mitigation.'' Dedicated marine mammal observations occur as described (1) for some period prior to deployment of most research gear; (2) throughout deployment and active fishing of all research gears; (3) for some period prior to retrieval of gear; and (4) throughout retrieval of research gear. Observers should record the species and estimated number of animals present and their behaviors, which may be valuable information towards an understanding of whether certain species may be attracted to vessels or certain survey gears. Separately, on white boats, marine mammal watches are conducted by watch-standers (those navigating the vessel and other crew; these will typically not be SEFSC personnel) at all times when the vessel is being operated. The primary focus for this type of watch is to avoid striking marine mammals and to generally avoid navigational hazards. These watch-standers typically

have other duties associated with navigation and other vessel operations and are not required to record or report to the scientific party data on marine mammal sightings, except when gear is being deployed or retrieved.

Training

The SEFSC anticipates that additional information on practices to avoid marine mammal interactions can be gleaned from training sessions and more systematic data collection standards. The SEFSC will conduct annual trainings for all chief scientists and other personnel who may be responsible for conducting dedicated marine mammal visual observations to explain mitigation measures and monitoring and reporting requirements, mitigation and monitoring protocols, marine mammal identification, recording of count and disturbance observations (relevant to AMLR surveys), completion of datasheets, and use of equipment. Some of these topics may be familiar to SEFSC staff, who may be professional biologists, The SEFSC shall determine the agenda for these trainings and ensure that all relevant staff have necessary familiarity with these topics. The first such training will include three primary elements:

First, the course will provide an overview of the purpose and need for the authorization, including mandatory mitigation measures by gear and the purpose for each, and species that the SEFSC is authorized to incidentally take.

Second, the training will provide detailed descriptions of reporting, data collection, and sampling protocols. This portion of the training will include instruction on how to complete new data collection forms such as the marine mammal watch log, the incidental take form (*e.g.,* specific gear configuration and details relevant to an interaction with protected species), and forms used for species identification and biological sampling. The biological data collection and sampling training module will include the same sampling and necropsy training that is used for the Southeast Regional Observer training.

The SEFSC will also dedicate a portion of training to discussion of best professional judgment (which is recognized as an integral component of mitigation implementation; see ''Proposed Mitigation''), including use in any incidents of marine mammal interaction and instructive examples where use of best professional judgment was determined to be successful or unsuccessful. We recognize that many factors come into play regarding decision-making at sea and that it is not practicable to simplify what are inherently variable and complex situational decisions into rules that may be defined on paper. However, it is our intent that use of best professional judgment be an iterative process from year to year, in which any at-sea decision-maker (*i.e.,* responsible for decisions regarding the avoidance of marine mammal interactions with survey gear through the application of best professional judgment) learns from the prior experience of all relevant SEFSC personnel (rather than from solely their own experience). The outcome should be increased transparency in decision-making processes where best professional judgment is appropriate and, to the extent possible, some degree of standardization across common situations, with an ultimate goal of reducing marine mammal interactions. It is the responsibility of the SEFSC to facilitate such exchange.

Handling Procedures and Data Collection

Improved standardization of handling procedures were discussed previously in ''Proposed Mitigation.'' In addition to the benefits implementing these protocols are believed to have on animals through increased post-release survival, SEFSC believes adopting these protocols for data collection will also increase the information on which ''serious injury'' determinations (NMFS, 2012a, b) are based and improve scientific knowledge about marine mammals that interact with fisheries research gears and the factors that contribute to these interactions. SEFSC personnel will be provided standard guidance and training regarding handling of marine mammals, including how to identify different species, bring an individual aboard a vessel, assess the level of consciousness, remove fishing gear, return an individual to water and log activities pertaining to the interaction.

The SEFSC will record interaction information on either existing data forms created by other NMFS programs or will develop their own standardized forms. To aid in serious injury determinations and comply with the current NMFS Serious Injury Guidelines, researchers will also answer a series of supplemental questions on the details of marine mammal interactions.

Finally, for any marine mammals that are killed during fisheries research activities, when practicable, scientists will collect data and samples pursuant to Appendix D of the SEFSC DEA, ''Protected Species Handling Procedures for SEFSC Fisheries Research Vessels.''

SEFSC Reporting

As is normally the case, SEFSC will coordinate with the relevant stranding coordinators for any unusual marine mammal behavior and any stranding, beached live/dead, or floating marine mammals that are encountered during field research activities. The SEFSC will follow a phased approach with regard to the cessation of its activities and/or reporting of such events, as described in the proposed regulatory text following this preamble. In addition, Chief Scientists (or cruise leader, CS) will provide reports to SEFSC leadership and to the Office of Protected Resources (OPR). As a result, when marine mammals interact with survey gear, whether killed or released alive, a report provided by the CS will fully describe any observations of the animals, the context (vessel and conditions), decisions made and rationale for decisions made in vessel and gear handling. The circumstances of these events are critical in enabling the SEFSC and OPR to better evaluate the conditions under which takes are most likely occur. We believe in the long term this will allow the avoidance of these types of events in the future.

The SEFSC will submit annual summary reports to OPR including:

(1) Annual line-kilometers surveyed during which the EK60, ME70, SX90 (or equivalent sources) were predominant (see ''Estimated Take by Acoustic Harassment'' for further discussion), specific to each region;

(2) Summary information regarding use of all trawl, net, and hook and line gear, including number of sets, tows, hook hours, etc., specific to each research area and gear;

(3) Accounts of all incidents of marine mammal interactions, including circumstances of the event and descriptions of any mitigation procedures implemented or not implemented and why;

(4) Summary information related to any disturbance of marine mammals and distance of closest approach;

(5) A written description of any mitigation research investigation efforts and findings (*e.g.,* lazy line modifications);

(6) A written evaluation of the effectiveness of SEFSC mitigation strategies in reducing the number of marine mammal interactions with survey gear, including best professional judgment and suggestions for changes to the mitigation strategies, if any; and

(7) Details on marine mammal-related training taken by SEFSC and partner scientists.

The period of reporting will be annually, beginning one year post-issuance of any LOA, and the report must be submitted not less than ninety days following the end of a given year.

Submission of this information is in service of an adaptive management framework allowing NMFS to make appropriate modifications to mitigation and/or monitoring strategies, as necessary, during the proposed five-year period of validity for these regulations.

Should an incidental take occur, the SEFSC, or affiliated partner involved in the taking, shall follow the NMFS Final Take Reporting and Response Procedures, dated January 15, 2016. NMFS has established a formal incidental take reporting system, the PSIT database, requiring that incidental takes of protected species be reported within 48 hours of the occurrence. The PSIT generates automated messages to NMFS leadership and other relevant staff, alerting them to the event and to the fact that updated information describing the circumstances of the event has been inputted to the database. The PSIT and CS reports represent not only valuable real-time reporting and information dissemination tools but also serve as an archive of information that may be mined in the future to study why takes occur by species, gear, region, etc.

The SEFSC will also collect and report all necessary data, to the extent practicable given the primacy of human safety and the well-being of captured or entangled marine mammals, to facilitate serious injury (SI) determinations for marine mammals that are released alive. The SEFSC will require that the CS complete data forms and address supplemental questions, both of which have been developed to aid in SI determinations. The SEFSC understands the critical need to provide as much relevant information as possible about marine mammal interactions to inform decisions regarding SI determinations. In addition, the SEFSC will perform all necessary reporting to ensure that any incidental M/SI is incorporated as appropriate into relevant SARs.

TPWD Proposed Monitoring and Reporting

Issuance of the proposed regulations would require TPWD to monitor for marine mammals starting 0.5 miles (800 meters) from sampling site and for 15 minutes at sampling site prior to setting the net. Should a marine mammal be observed within 0.5 miles (800 meters) of the site and is on a path toward the site, the net would not be deployed. Should a marine mammal be observed during the 15-minute observation period at the site, the net would not be deployed. The net may only be deployed if marine mammals are observed on a path away from the site consistently for 15 minutes or are not re-sighted within 15 minutes.

TPWD currently reports marine mammal entanglements to NMFS Southeast Regional Office (SERO). However, reporting is not standardized and, in the past, has led to questions regarding the circumstances of the take and disposition of the animal. The proposed regulations would standardize a comprehensive reporting scheme and require TPWD to report all incidents of marine mammal interaction to OPR and NMFS SERO within 48 hours of occurrence. Also within 48 hours, TPWD shall log the incident in NMFS' Protected Species Incidental Take (PSIT) database and provide any supplemental information to OPR and SERO upon request. Information related to marine mammal interaction (animal captured or entangled in research gear) must include the following:

- Time, date, and location (latitude/longitude) of the incident;
- Monitoring conducted prior to and occurring at the time of incident;
- Environmental conditions (*e.g.,* wind speed and direction, Beaufort sea state, cloud cover, visibility);
- Description of the animal(s) involved (*e.g.,* size, age class);
- Water depth and net location where entangled;
- Nature of the entanglement (*i.e.,* part of animal entangled, where in net entangled)
- Fate of the animal(s);
- Detailed description of events, including how animals was disentangled and behavior upon release, including signs of injury (if alive);
- Photographs or video footage of the animal(s).

TPWD would also be required to submit an annual report to OPR not later than ninety days following the end of the fall sampling season. TPWD would provide a final report within thirty days following resolution of comments on the draft report. These reports shall contain, at minimum, the following:

- Locations and time/date of all net sets;
- all instances of marine mammal observations and descriptions of any mitigation procedures implemented or not implemented and why;
- all incidents of marine mammal interactions, including all information required in § 219.86(b);
- A written evaluation of the effectiveness of TPWD mitigation strategies in reducing the number of marine mammal interactions with survey gear, including gear modifications and best professional judgment and suggestions for changes to the mitigation strategies, if any;
- A summary of all relevant marine mammal training.

Negligible Impact Analyses and Determinations

Introduction—NMFS has defined negligible impact as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival (50 CFR 216.103). A negligible impact finding is based on the lack of likely adverse effects on annual rates of recruitment or survival (*i.e.,* population-level effects). An estimate of the number of takes alone is not enough information on which to base an impact determination. In addition to considering estimates of the number of marine mammals that might be ''taken'' by mortality, serious injury, and Level A or Level B harassment, we consider other factors, such as the likely nature of any behavioral responses (*e.g.,* intensity, duration), the context of any such responses (*e.g.,* critical reproductive time or location, migration), as well as effects on habitat, and the likely effectiveness of mitigation. We also assess the number, intensity, and context of estimated takes by evaluating this information relative to population status. Consistent with the 1989 preamble for NMFS's implementing regulations (54 FR 40338; September 29, 1989), the impacts from other past and ongoing anthropogenic activities are incorporated into this analysis via their impacts on the environmental baseline (*e.g.,* as reflected in the regulatory status of the species, population size and growth rate where known, ongoing sources of human-caused mortality, and specific consideration of take by M/SI previously authorized for other NMFS research activities).

We note here that the takes from potential gear interactions enumerated below could result in non-serious injury, but their worse potential outcome (mortality) is analyzed for the purposes of the negligible impact determination.

We discuss here the connection, and differences, between the legal mechanisms for authorizing incidental take under section 101(a)(5) for activities such as SEFSC's research activities, and for authorizing incidental take from commercial fisheries. In 1988, Congress amended the MMPA's provisions for addressing incidental take of marine mammals in commercial fishing operations. Congress directed NMFS to develop and recommend a new long-term regime to govern such

incidental taking (see MMC, 1994). The need to develop a system suited to the unique circumstances of commercial fishing operations led NMFS to suggest a new conceptual means and associated regulatory framework. That concept, Potential Biological Removal (PBR), and a system for developing plans containing regulatory and voluntary measures to reduce incidental take for fisheries that exceed PBR were incorporated as sections 117 and 118 in the 1994 amendments to the MMPA.

PBR is defined in Section 3 of the MMPA as the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population (OSP) and, although not controlling, can be one measure considered among other factors when evaluating the effects of M/SI on a marine mammal species or stock during the section 101(a)(5)(A) process. OSP is defined in section 3 of the MMPA as the number of animals which will result in the maximum productivity of the population or the species, keeping in mind the carrying capacity of the habitat and the health of the ecosystem of which they form a constituent element. A primary goal of the MMPA is to ensure that each species or stock of marine mammal is maintained at or returned to its OSP.

PBR values are calculated by NMFS as the level of annual removal from a stock that will allow that stock to equilibrate within OSP at least 95 percent of the time, and is the product of factors relating to the minimum population estimate of the stock (N_{min}); the productivity rate of the stock at a small population size; and a recovery factor. Determination of appropriate values for these three elements incorporates significant precaution, such that application of the parameter to the management of marine mammal stocks may be reasonably certain to achieve the goals of the MMPA. For example, calculation of the minimum population estimate (N_{min}) incorporates the precision and variability associated with abundance information, while also providing (typically the 20th percentile of a log-normal distribution of the population estimate) reasonable assurance that the stock size is equal to or greater than the estimate (Barlow *et al.,* 1995). In general, the three factors are developed on a stock-specific basis in consideration of one another in order to produce conservative PBR values that appropriately account for both imprecision that may be estimated as well as potential bias stemming from lack of knowledge (Wade, 1998).

Congress called for PBR to be applied within the management framework for commercial fishing incidental take under section 118 of the MMPA. As a result, PBR cannot be applied appropriately outside of the section 118 regulatory framework without consideration of how it applies within section 118 framework, as well as how other statutory management frameworks in the MMPA differ from the framework in section 118. PBR was not designed and is not used as an absolute threshold limiting commercial fisheries. Rather, it serves as a means to evaluate the relative impacts of those activities on marine mammal stocks. Even where commercial fishing is causing M/SI at levels that exceed PBR, the fishery is not suspended. When M/SI exceeds PBR in the commercial fishing context under section 118, NMFS may develop a take reduction plan, usually with the assistance of a take reduction team. The take reduction plan will include measures to reduce and/or minimize the taking of marine mammals by commercial fisheries to a level below the stock's PBR. That is, where the total annual human-caused M/SI exceeds PBR, NMFS is not required to halt fishing activities contributing to total M/SI but rather utilizes the take reduction process to further mitigate the effects of fishery activities via additional bycatch reduction measures. In other words, under section 118 of the MMPA, PBR does not serve as a strict cap on the operation of commercial fisheries that may incidentally take marine mammals.

Similarly, to the extent PBR may be relevant when considering the impacts of incidental take from activities other than commercial fisheries, using it as the sole reason to deny (or issue) incidental take authorization for those activities would be inconsistent with Congress's intent under section 101(a)(5) and the use of PBR under section 118. The standard for authorizing incidental take under section 101(a)(5) continues to be, among other things, whether the total taking will have a negligible impact on the species or stock. When Congress amended the MMPA in 1994 to add section 118 for commercial fishing, it did not alter the standards for authorizing non-commercial fishing incidental take under section 101(a)(5), implicitly acknowledging that the negligible impact under section 101(a)(5) is a separate from the PBR metric under section 118. In fact, in 1994, Congress also amended section 101(a)(5)(E) (a separate provision governing commercial fishing incidental take for species listed under the Endangered Species Act) to add compliance with the new section 118 but kept the requirement for a negligible impact finding. Congress thus understood that the determination of negligible impact and application of PBR may share certain features but are, in fact, different.

Since the introduction of PBR, NMFS has used the concept almost entirely within the context of implementing sections 117 and 118 and other commercial fisheries management-related provisions of the MMPA. Although there are a few examples where PBR has informed agency deliberations under other sections of the MMPA, where PBR has been raised, it has been a consideration and not dispositive to the issue at hand. Further, the agency's thoughts regarding the potential role of PBR in relation to other programs of the MMPA have evolved since the agency's earlier applications to section 101(a)(5) decisions. The MMPA requires that PBR be estimated in stock assessment reports and that it be used in applications related to the management of take incidental to commercial fisheries (*i.e.,* the take reduction planning process described in section 118 of the MMPA and the determination of whether a stock is ''strategic'' (16 U.S.C. 1362(19))), but nothing in the MMPA requires the application of PBR outside the management of commercial fisheries interactions with marine mammals.

Nonetheless, NMFS recognizes that as a quantitative metric, PBR may be useful in certain instances as a consideration when evaluating the impacts of other human-caused activities on marine mammal stocks. Outside the commercial fishing context, and in consideration of all known human-caused mortality, PBR can help inform the potential effects of M/SI caused by activities authorized under 101(a)(5)(A) on marine mammal stocks. As noted by NMFS and the USFWS in our implementation regulations for the 1986 amendments to the MMPA (54 FR 40341, September 29, 1989), the Services consider many factors, when available, in making a negligible impact determination, including, but not limited to, the status of the species or stock relative to OSP (if known); whether the recruitment rate for the species or stock is increasing, decreasing, stable, or unknown; the size and distribution of the population; and existing impacts and environmental conditions. In this multi-factor analysis, PBR can be a useful indicator for when, and to what extent, the agency should take an especially close look at the circumstances associated with the potential mortality, along with any other

factors that could influence annual rates of recruitment or survival.

When considering PBR during evaluation of effects of M/SI under section 101(a)(5)(A), we first calculate a metric for each species or stock that incorporates information regarding ongoing anthropogenic M/SI into the PBR value (*i.e.,* PBR minus the total annual anthropogenic mortality/serious injury estimate), which is called ''residual PBR'' (Wood *et al.,* 2012). We focus our analysis on residual PBR because it incorporates anthropogenic mortality occurring from other sources. We then consider how the anticipated potential incidental M/SI from the activities being evaluated compares to residual PBR utilizing the following framework.

Where a specified activity could cause (and NMFS is contemplating authorizing) incidental M/SI that is less than 10 percent of residual PBR (the ''insignificance threshold, see below), we consider M/SI from the specified activities to represent an insignificant incremental increase in ongoing anthropogenic M/SI for the marine mammal stock in question that alone (*i.e.,* in the absence of any other take) will not adversely affect annual rates of recruitment and survival. As such, this amount of M/SI would not be expected to affect rates of recruitment or survival in a manner resulting in more than a negligible impact on the affected stock unless there are other factors that could affect reproduction or survival, such as Level A and/or Level B harassment, or considerations such as information that illustrates the uncertainty involved in the calculation of PBR for some stocks. In a prior incidental take rulemaking, this threshold was identified as the ''significance threshold,'' but it is more accurately labeled an insignificance threshold, and so we use that terminology here. Assuming that any additional incidental take by Level A or Level B harassment from the activities in question would not combine with the effects of the authorized M/SI to exceed the negligible impact level, the anticipated M/SI caused by the activities being evaluated would have a negligible impact on the species or stock. However, M/SI above the 10 percent insignificance threshold does not indicate that the M/SI associated with the specified activities is approaching a level that would necessarily exceed negligible impact. Rather, the 10 percent insignificance threshold is meant only to identify instances where additional analysis of the anticipated M/SI is not required because the negligible impact standard clearly will not be exceeded on that basis alone.

Where the anticipated M/SI is near, at, or above residual PBR, consideration of other factors (positive or negative), including those outlined above, as well as mitigation are especially important to assessing whether the M/SI will have a negligible impact on the species or stock. PBR is a conservative metric and not sufficiently precise to serve as an absolute predictor of population effects upon which mortality caps would appropriately be based. For example, in some cases stock abundance (which is one of three key inputs into the PBR calculation) is underestimated because marine mammal survey data within the U.S. EEZ are used to calculate the abundance even when the stock range extends well beyond the U.S. EEZ. An underestimate of abundance could result in an underestimate of PBR. Alternatively, we sometimes may not have complete M/SI data beyond the U.S. EEZ to compare to PBR, which could result in an overestimate of residual PBR. M/SI that exceeds PBR may still potentially be found to be negligible in light of other factors that offset concern, especially when robust mitigation and adaptive management provisions are included.

This action is similar to the Navy's authorization under the MMPA litigated in *Conservation Council for Hawaii* v. *National Marine Fisheries Service,* 97 F. Supp.3d 1210, 1225 (D. Haw. 2015) because both authorize mortalities of marine mammals. *Conservation Council for Hawaii* v. *National Marine Fisheries Service* concerned a challenge to NMFS' issuance of letters of authorization to the Navy for activities in an area of the Pacific Ocean known as the HSTT Study Area, and the Court reached a different conclusion regarding the relationship between PBR and negligible impact, stating, ''[b]ecause any mortality level that exceeds PBR will not allow the stock to reach or maintain its OSP, such a mortality level could not be said to have only a 'negligible impact' on the stock.'' As described above, the Court's statement fundamentally misunderstands the two terms and incorrectly indicates that these concepts (PBR and ''negligible impact'') are directly connected, when in fact nowhere in the MMPA is it indicated that these two terms are equivalent.

Specifically, PBR was designed as a tool for evaluating mortality and is defined as the number of animals that can be removed while allowing the stock to reach or maintain OSP, with the formula for PBR designed to ensure that growth towards OSP is not reduced by more than 10 percent (or equilibrate to OSP 95 percent of the time). Separately, and without reference to PBR, NMFS' long-standing MMPA implementing regulations state that take will have a negligible impact when it does not adversely affect the species or stock through effects on annual rates of recruitment or survival. OSP (to which PBR is linked) is defined in the statute as a population which falls within a range from the population level that is the largest supportable within the ecosystem to the population level that results in maximum net productivity. OSP is an aspirational goal of the overall statute and PBR is designed to ensure minimal deviation from this overarching goal. The ''negligible impact'' determination and finding protects against ''adverse impacts on the affected species and stocks'' when evaluating specific activities.

For all these reasons, even where M/SI exceeds residual PBR, it is still possible for the take to have a negligible impact on the species or stock. While ''allowing a stock to reach or maintain OSP'' would ensure that NMFS approached the negligible impact standard in a conservative and precautionary manner so that there were not ''adverse effects on affected species or stocks,'' it is equally clear that in some cases the time to reach this aspirational OSP could be slowed by more than 10 percent *(i.e.,* total human-caused mortality in excess of PBR could be allowed) without adversely affecting a species or stock. Another difference between the two standards is the temporal scales upon which the terms focus. That is, OSP contemplates the incremental, 10 percent reduction in the rate to approach a goal that is tens or hundreds of years away. The negligible impact analysis, on the other hand, necessitates an evaluation of annual rates of recruitment or survival to support the decision of whether to issue five-year regulations.

Accordingly, while PBR is useful for evaluating the effects of M/SI in section 101(a)(5)(A) determinations, it is just one consideration to be assessed in combination with other factors and should not be considered determinative. The accuracy and certainty around the data that feed any PBR calculation (*e.g.,* the abundance estimates) must be carefully considered. This approach of using PBR as a trigger for concern while also considering other relevant factors provides a reasonable and appropriate means of evaluating the effects of potential mortality on rates of recruitment and survival, while demonstrating that it is possible to exceed PBR by some small amount and still make a negligible impact

determination under section 101(a)(5)(A).

Our evaluation of the M/SI for each of the species and stocks for which mortality could occur follows. In addition, all mortality authorized for some of the same species or stocks over the next several years pursuant to our final rulemakings for NEFSC has been incorporated into the residual PBR.

We first consider maximum potential incidental M/SI for each stock (Table 14 and 15) in consideration of NMFS's threshold for identifying insignificant M/SI take (10 percent of residual PBR (69 FR 43338; July 20, 2004)). By considering the maximum potential incidental M/SI in relation to residual PBR and ongoing sources of anthropogenic mortality, we begin our evaluation of whether the potential incremental addition of M/SI through SEFSC research activities may affect the species' or stock's annual rates of recruitment or survival. We also consider the interaction of those mortalities with incidental taking of that species or stock by harassment pursuant to the specified activity.

Negligible Impact Analysis and Determinations for the SEFSC

We methodically examined each stock above the insignificance threshold to determine if the amount and degree of proposed taking would have effects to annual rates of recruitment or survival (*i.e.,* have a negligible impact on the population). These rates are inherently difficult to quantify for marine mammals because adults of long-lived, birth-pulse populations (*e.g.,* many cetaceans, polar bears and walrus) may not breed every year because of parental care, long gestation periods or nutritional constraints (Taylor et al., 1987). Therefore, we pursued a combination of quantitative and qualitative analyses to inform our determinations.

First we compiled data to assess the baseline population status of each stock for which the SEFSC is requesting take. These data were pulled from the most recent SARs (Hayes *et al.,* 2017) and, where information was unknown or undetermined in the SARs, we consulted marine mammal experts at the SEFSC and on TRTs to fill data gaps to the best of our ability based on the best available science. Data pulled from these sources include population size and demographics (where known), PBR, known mortality and serious injury from commercial and recreational fishing and other human-caused sources (*e.g.,* direct shootings), stock trends (*i.e.,* declining, stable, or increasing), threats, and other sources of potential take M/SI (*e.g.,* MMPA 101(a)(5)(A or D) applications and scientific research permit applications). In addition, we looked at ongoing management actions (*e.g.,* TRT gear restrictions) to identify where efforts are being focused and are successful at reducing incidental take.

Estuarine and Coastal Bottlenose Dolphins

For estuarine bottlenose dolphin stocks, reaching our preliminary negligible impact determination required a hard examination of the status of each of the 7 ARA and 11 GOMRA stocks for which we propose to authorize take. We recognize that PBR is technically undetermined for many stocks because abundance data is more than eight years old. Therefore, we consulted with marine mammal experts at the SEFSC to derive best estimates of PBR based on the available data. Overall, PBR is low (less than one animal) because stock sizes are generally small (tens to hundreds) in southeast estuaries (with notable exceptions such as Mississippi Sound). Stock sizes are expected to be small because the abundance of a dolphin stock in an estuary is bounded by the capabilities of the bays and estuarine systems to support that stock (*i.e.,* carrying capacity of the system) due to the residential nature of these stocks, among other things. With respect to rates of annual M/SI, we note some fisheries in the GoM (*e.g.,* shrimp fishery) do not have full observer coverage. Estimates of take from these fisheries are both extrapolated and aggregated to the state level, making total M/SI rates from commercial fisheries applicable to any given stock rather than all stocks within a state not possible.

We approached the issue of outdated abundance information by working closely with SEFSC experts and have developed estimated abundance data and PBR values. The resulting values follow the general trend of small stock sizes and are very conservative in some cases. For example, recent abundance surveys in Barataria Bay and Terrebonne Bay revealed stock numbers were in the thousands compared to the previously estimated populations of approximately 200–300 animals (Hayes et al., 2018). In addition, three stocks, including the Perdido Bay stock have population estimates showing zero. However, it is well documented dolphins inhabit these areas. We also consulted with the NMFS Southeast Regional Office (SERO) bottlenose dolphin conservation coordinator to better understand the nature of the takes identified in the SARs M/SI values (*i.e.,* the source of take such as commercial fishery or research). That is, if we relied solely on the SAR annual M/SI values reported in the SARs and added the proposed M/SI take to these numbers, we would be double-counting M/SI as some takes were attributed to the research for which we are proposing to authorize take. Therefore, where M/SI takes were contributed to SEFSC research, we have adjusted annual M/SI values from Table 3b above so as not to ''double count'' potential take. Table 14 reflects these adjustments.

In the ARA, all estuarine and coastal stocks for which we are proposing to authorize take are below the insignificance threshold (10 percent r-PBR) except for the Northern South Carolina Estuarine, Northern Georgia/Southern South Carolina Estuarine, Central Georgia Estuarine, and Southern Georgia Estuarine stocks (Table 14). The latter two stocks are only slightly above the insignificance threshold (11.76 and 10.35 percent, respectively). The proposed take for the Northern Georgia/Southern South Carolina stock constitutes 28.57 percent of r-PBR. Sources of anthropogenic mortality for this stock include hook and line and crab pot/trap fisheries. The proposed M/SI take (0.2/year) of the Northern South Carolina stock is 50 percent of PBR. However, considering an average of one animal every 5 years is taken in commercial fisheries (likely gillnet or crab pot/trap), the proposed take and annual M/SI constitute 100 percent of r-PBR. The Northern South Carolina Estuarine System stock is delimited as dolphins inhabiting estuarine waters from Murrells Inlet, South Carolina, southwest to Price Inlet, South Carolina, the northern boundary of Charleston Estuarine System stock. The region has little residential, commercial, and industrial development and contains the Cape Romain National Wildlife Refuge. As such, the stock is not facing heavy anthropogenic pressure, and there are no identified continuous indirect stressors threatening the stock.

Of the nine estuarine stocks in the GOMRA for which we are proposing to authorize take by M/SI, three are below the insignificance threshold (10% r-PBR): Terrebonne Bay/Timbalier Bay; St. Vincent Sound/Apalachicola Bay/St. George Sound, and Apalachee Bay. The three coastal stocks are also below the insignificance threshold. Four stocks are between 14 and 40 percent r-PBR. The Mississippi Sound stock is already above PBR in absence of the proposed authorization, while authorizing take in Mobile Bay would put the stock above PBR (Table 14).

TABLE 14—SUMMARY INFORMATION OF ESTUARINE AND COASTAL BOTTLENOSE DOLPHIN STOCKS RELATED TO SEFSC PROPOSED M/SI TAKE IN THE ARA, GOMRA, AND CRA

Stock	Stock abundance (N_{best})	Proposed M/SI take (annual)	PBR	Annual M/SI	NEFSC authorized take by M/SI (annual)	r-PBR [2]	Proposed M/SI take/r-PBR (%) [3]
Atlantic							
Northern South Carolina Estuarine Stock	[1] 50	0.2	[1] 0.4	0.2	0	0.2	100.00
Charleston Estuarine System Stock	[1] 289	0.2	[1] 2.8	0.2	0	2.6	7.69
Northern Georgia/Southern South Carolina Estuarine	[1] 250	0.2	[1] 2.1	1.4	0	0.7	28.57
Central Georgia Estuarine	192	0.2	1.9	0.2	0	1.7	11.76
Southern Georgia Estuarine	194	0.2	1.9	0	0	1.9	10.53
Jacksonville Estuarine System	[1] 412	0.2	[1] 3.9	1.2	0	2.7	7.41
Florida Bay	[1] 514	0.2	[1] 4.5	0	0	4.5	4.44
South Carolina/Georgia Coastal	[1] 6,027	0.6	[1] 46	1.0–1.4	0	44.6–45	1.35
Northern Florida Coastal	[1] 877	0.6	[1] 6	0.6	0	5.4	11.11
Central Florida Coastal	[1] 1,218	0.6	[1] 9.1	0.2	0	8.9	6.74
Northern Migratory Coastal	6,639	0.6	48	6.1–13.2	1.6	33.2–43.5	0.4–0.6
Southern Migratory Coastal	3,751	0.6	23	14.3	1.6	7.1	8.45
Gulf of Mexico							
Terrebonne Bay, Timbalier Bay	3,870	0.2	27	0.2	0	26.8	0.75
Mississippi River Delta	332	0.2	1.4	[4] 0	0	1.4	14.29
Mississippi Sound, Lake Borgne, Bay Boudreau [5]	3,046	.02 (M/SI), 0.2 (Level A)	23	310	0	−281	Neg.
Mobile Bay, Bonsecour Bay	122	0.2	[1] 0.9	[5] 0.8	0	0.1	Neg.
St. Andrew Bay	124	0.2	[1] 0.9	0.2	0	0.7	28.57
St. Joseph Bay	152	0.2	1.41	0.4	0	1.01	19.80
St. Vincent Sound, Apalachicola Bay, St. George Sound	439	0.2	[1] 3.91	0	0	3.91	5.12
Apalachee Bay	491	0.2	[1] 3.61	0	0	3.61	5.54
Waccasassa Bay, Withlacoochee Bay, Crystal Bay	[1] 100	0.2	[1] 0.5	0	0	0.5	40.00
Northern Gulf of Mexico Western Coastal Stock	20,161	0.6	175	0.6	0	174.4	0.34
Northern Gulf of Mexico Northern Coastal Stock	7,185	0.6	60	0.4	0	59.6	1.01
Northern Gulf of Mexico Eastern Coastal Stock	12,388	0.6	111	1.6	0	109.4	0.55

[1] For many estuarine stocks, the draft 2018 SAR has unknown abundance estimates and undetermined PBRs. Where this occurred, we used either the most recent estimates (even if more than 8 years old) or we consulted with SEFSC marine mammal experts for best judgement (pers. comm., K. Mullin).
[2] r-BPR = PBR − (annual M/I + NEFSC authorized take). For example, for the southern migratory coastal stock r-PBR = 23 − (14.3 + 1.6).
[3] Values in the column reflect what the proposed take represents as a percentage of r-PBR. The insignificance threshold is 10 percent.
[4] The annual M/SI in the draft 2018 SAR is 0.2 for the Mississippi River stock; however, the takes considered were from gillnet fishery research; therefore, we reduced M/SI to 0.
[5] The annual M/SI in the draft 2018 SAR is 1.0; however, one take used in those calculations is from fisheries research for which we propose to authorize take; therefore, we reduced M/SI to 0.8.

For the Mississippi Sound stock, we evaluated various aspects of stock status. According to this stock's 2017 SAR, the mean annual fishery-related mortality and serious injury during 2012–2015 for observed fisheries and strandings and at-sea observations identified as fishery-caused related is 1.0. Additional mean annual mortality and serious injury during 2011–2015 due to other human-caused actions (fishery research, sea turtle relocation trawling, gunshot wounds, and DWH oil spill) is 309 with the majority sourced from DWH. Projected annual M/SI over the next five years from commercial fishing and DWH are 6 and 1539, respectively. Management and research actions, including ongoing health assessments and Natural Resource Damage Plan efforts designed to restore injury to the stock, are anticipated to improve the status of the stock moving forward. Further, marine mammal population modeling indicates Barataria Bay dolphin should begin recovery nine years post spill (NRDA Trustees, 2016; DWH MMIQT 2015). Applying that model to the Mississippi Sound stock, we should begin to see the population recover during the life of the proposed regulations. We note the three research-related mortalities discussed in the 2017 SAR for this stock are from the specified activities for which we are now proposing to authorize take. Therefore, the proposed take would not be in addition to but would account for these research-related takes.

Our proposal to authorize one M/SI take from the Mobile Bay stock over 5 years would result in the stock being above r-PBR. The known takes of this stock includes one mortality in blue crab trap/pot gear in 2015, one mortality in stranding data where cause of death could not be determined and the animal could have been from the Northern Coastal stock, and one SI interaction in 2016. As with other estuarine stocks where abundance data is severely outdated, the population estimate is small compared to other estuarine stocks more recently and thoroughly studied. This could be a result of sampling methods. For example, the abundance estimate of 122 animals for Mobile Bay is based on aerial survey data collected during September through October in 1992 and 1993 with 16 percent of animals observed in bay (Blaylock and Hoggard, 1994). Sounds and estuaries were eliminated from the analysis. Murky water in GoM estuaries and dark, grey animals makes it very difficult to detect dolphins from aerial surveys. Further, Mobile Bay is a large estuarine system (approximately 456 km^2), similar in size to Barataria Bay where the population estimate is over 2,000 animals based on vessel-based surveys. Therefore, it is reasonable to assume the population of dolphin in Mobile Bay and other places, such as Perdido Bay, are higher than estimated in old surveys using aerial observations. Looking beyond the quantitative abundance and PBR data, we also considered non-quantitative factors to determine the effects of the proposed authorization on estuarine dolphin stocks in the ARA and GOMRA.

We consider qualitative information such as population dynamics and

context to determine if the proposed amount of take of estuarine and coastal bottlenose dolphins in the ARA and GOMRA would have a negligible impact on annual rates of survival and reproduction. Marine mammals are K-selected species, meaning they have few offspring, long gestation and parental care periods, and reach sexual maturity later in life. Therefore, between years, reproduction rates vary based on age and sex class ratios. As such, population dynamics is a driver when looking at reproduction rates. We focus on reproduction here because we conservatively consider inter-stock reproduction is the primary means of recruitment for these stocks. We note this is a conservative assumption, as some individuals are known to travel, and there is some mixing between the estuarine stocks and adjacent coastal stocks (Hayes *et al,* 2017). Given reproduction is the primary means of recruitment and females play a significantly larger role in their offspring's reproductive success (also known as Bateman's Principle), the mortality of females rather than males is, in general, more likely to influence recruitment rate. Several studies have purported that male bottlenose dolphins are more likely to engage in depredation or related behaviors with trawls and recreational fishing (Corkeron *et al.,* 1990; Powell & Wells, 2011) or become entangled in gear (Reynolds *et al.,* 2000; Adimey *et al.,* 2014). Male bias has also been reported for strandings with evidence of fishery interaction (Stolen *et al.,* 2007; Fruet *et al.,* 2012; Adimey *et al.,* 2014) and for *in situ* observations of fishery interaction (Corkeron *et al.,* 1990; Finn *et al.,* 2008; Powell & Wells, 2011). Byrd and Hohn (2017) examined stranding data to determine whether there was differential risk of bycatch based on sex and age class from gillnet fisheries in North Carolina. They found more males than females stranded. However, the relative gillnet bycatch risk was not different for males and females. In summary, these data suggest the risk of gear interaction from trawls and hook and line is likely higher for males while gillnet interactions may pose equal risk for males and females. For this rulemaking, the majority of historical gear interactions are from trawls. Therefore, we believe males (which are less likely to influence recruitment rate) are more likely at risk than females.

Understanding the population dynamics of each bottlenose dolphin stock considered in this rulemaking is not possible as the data simply do not exist for each stock. Therefore, we considered a well-studied population, the Sarasota Bay stock, as a proxy for assessing population dynamics of other estuarine stocks throughout the ARA and GOMRA. The Sarasota Bay stock is the most data rich population of bottlenose dolphins in the United States. The Sarasota Bay Research Program (SBRP) possesses 40 years of data on the resident dolphin population. Research topics include, but are not limited to, population structure and dynamics, health and physiology, and human interaction and impacts.

The Sarasota Bay stock demonstrates high recruitment and survival rates. Wells *et al.* (2014) found 83 percent (95 percent CI = 0.52 to 0.99) of detected pregnancies were documented as resulting in live births. Eight of the 10 calves (80 percent) resulting from documented pregnancies survived through the calendar year of their birth and, therefore, were considered to have been successfully recruited into the Sarasota Bay bottlenose dolphin population. This value compares favorably with the 81 percent first year survival reported by Wells & Scott (1990) for Sarasota Bay bottlenose dolphins. Thus, approximately 66 percent of documented pregnancies led to successful recruitment. Mann *et al.* (2000) found dolphin interbirth intervals for surviving calves are between 3 and 6.2 years, resulting in annual variability in reproductive rates. With respect to survival, Wells and Scott (1990) calculated a mean annual survival rate of Sarasota Bay dolphins at 96.2 percent. In comparison, a mark-recapture study of dolphins near Charleston, South Carolina reported an apparent annual survival rate of 95.1 percent (95 percent CI: 88.2–100) (Speakman *et al.,* 2010). In summary, survival rate and reproductive success of the Sarasota Bay stock is high and, except for those stocks for which we know individual marine mammal health and reproductive success are compromised from the Deepwater Horizon oil spill (*e.g.,* Mississippi Sound stock), we consider estuarine bottlenose stocks in the ARA and GOMRA to have similar rates of recruitment and survival.

For stocks that are known to be experiencing levels of stress from fishing and other anthropogenic sources (*e.g..,* annual rates of human-caused mortality and serious injury reach or exceed PBR levels in absence of the requested take from the SEFSC), we look toward the ongoing management actions and research designed to reduce those pressures when considering our preliminary negligible impact determination. Overall, many estuarine bottlenose dolphin stocks are facing anthropogenic stressors such as commercial and recreational fishing, coastal development, habitat degradation (*e.g.,* oil spills, harmful algal blooms), and directed violence (intentional killing/injury) and have some level of annual M/SI. NOAA, including the SEFSC, is dedicated to reducing fishery take, both in commercial fisheries and research surveys. For example, the Atlantic BDTRT is in place to decrease M/SI in commercial fisheries and scientists at NOAA's National Center for Coastal Ocean Science (NCCOS) in Charleston, South Carolina, are undertaking research and working with local fishermen to reduce crab pot/trap and trawling entanglement (*e.g.,* McFee et al., 2006, 2007; Greenman and McFee, 2014). In addition, through this rulemaking, the SEFSC has invested in developing measures that may be adopted by commercial fisheries to reduce bycatch rates, thereby decreasing the rate of fishing-related M/SI. For example, in 2017, the SEFSC executed the previously described Lazy Line Modification Mitigation Work Plan (see *Potential Effects* section) and the SEFSC is investigating the feasibility of applying gear modifications to select research trawl surveys. Also as a result of this rulemaking process, the SEFSC has a heightened awareness of the risk of take and a commitment to not only implement the mitigation measures proposed in this rulemaking but to develop additional mitigation measures beyond this rule they find effective and practicable. Because all NMFS Science Centers are dedicated to decreasing gear interaction risk, each Science Center is also committed to sharing information about reducing marine mammal bycatch, further educating fishery researchers on means by which is make best professional judgements and minimize risk of take.

Region-wide, Gulf of Mexico states, in coordination with Federal agencies, are taking action to recover from injury sustained during the DWH spill. Funds from the spill have been allocated specifically for marine mammal restoration to the Florida, Alabama, Mississippi, Louisiana, Texas, Open Ocean, and Region-wide Trustee Implementation Groups (TIGs). In June 2017, the Trustees released their Strategic Framework for Marine Mammal Restoration Activities. The framework includes a number of marine mammal restoration goals which would improve marine mammal populations over the course of the proposed regulations. These goals include, but are

not limited to, (1) collecting and using monitoring information, such as population and health assessments, and spatiotemporal distribution information; (2) implementing an integrated portfolio of restoration approaches to restore injured bay, sound, and estuarine (BSE); coastal; shelf; and oceanic marine mammals across the diverse habitats and geographic ranges they occupy; (3) identifying and implementing actions that support ecological needs of the stocks; (4) improving resilience to natural stressors; and (5) addressing direct human-caused threats such as bycatch in commercial fisheries, vessel collisions, noise, industrial activities, illegal feeding and harassment, and hook-and-line fishery interactions. The Alabama TIG has made the most progress on executing this strategic framework. In 2018, the Alabama TIG committed to three projects designed to restore marine mammals: (1) Enhancing Capacity for the Alabama Marine Mammal Stranding Network; (2) Assessment of Alabama Estuarine Bottlenose Dolphin Populations & Health (including the Mobile Bay stock); and (3) Alabama Estuarine Bottlenose Dolphin Protection: Enhancement & Education.

Offshore Pelagic Stocks

For all offshore pelagic stocks where PBR is known, except for gray seal, the level of taking is less than 10 percent of r-PBR after considering other sources of human-caused mortality (Table 15). Again, for those stocks with total incidental M/SI less than the significance threshold (*i.e.,* ten percent of residual PBR), we consider the effects of the specified activity to represent an insignificant incremental increase in ongoing anthropogenic M/SI and need not consider other factors in making a negligible impact determination except in combination with additional incidental take by acoustic harassment.

TABLE 15—SUMMARY INFORMATION OF PELAGIC STOCKS RELATED TO PROPOSED M/SI TAKE TO THE SEFSC IN THE ARA, GOMRA, AND CRA

Species	Stock	Proposed M/SI take (annual)	PBR	Annual M/SI (SAR)	NEFSC authorized take by M/SI (annual)	r-PBR	Proposed MI/SI take/r-PBR (%)
Risso's dolphin	Western North Atlantic	0.2	126	49.9	0.6	75.5	0.26
	N Gulf of Mexico	0.2	16	7.9	0	8.1	2.47
	Puerto Rico/USVI	0.2	15	0.5	0	14.5	1.38
Melon headed whale	N Gulf of Mexico	0.6	13	0	0	13	4.62
Short-finned pilot whale	Western North Atlantic	0.2	236	168	0	68	0.29
	N Gulf of Mexico	0.2	15	0.5	0	14.5	1.38
	Puerto Rico/USVI	0.2	unk	unk	0	unk	unk
Common dolphin	Western North Atlantic	0.8	557	406	1.4	149.6	0.53
Atlantic spotted dolphin	Western North Atlantic	0.8	316	0	0.4	315.6	0.25
	N Gulf of Mexico	0.8	undet	42	0	unk	unk
	Puerto Rico/USVI	0.2	unk	unk	0	unk	unk
Pantropical spotted dolphin	Western North Atlantic	0.2	17	0	0	17	1.18
	N Gulf of Mexico	0.8	407	4.4	0	402.6	0.20
Striped dolphin	Western North Atlantic	0.6	428	0	0	428	0.14
	N Gulf of Mexico	0.6	10	0	0	10	6.00
Spinner dolphin	Western North Atlantic	0	unk	0	0	unk	.....
	N Gulf of Mexico	0.6	62	0	0	62	0
	Puerto Rico/USVI	0	unk	unk	0	unk	0
Rough-toothed dolphin	Western North Atlantic	0	1.3	0	0	1.3	0
	N Gulf of Mexico	0.2	3	0.8	0	2.2	9.09
Bottlenose dolphin	Western North Atlantic Offshore	0.8	561	39.4	1.6	520	0.15
	N Gulf of Mexico Oceanic	0.8	60	0.4	0	59.6	1.34
	N Gulf of Mexico Continental Shelf	0.8	469	0.8	0	468.2	0.17
	Puerto Rico/USVI	0.2	unk	0	0	unk	unk
Harbor porpoise	Gulf of Maine/Bay of Fundy	0.2	706	437	0	269	0.07
Unidentified delphinid	Western North Atlantic	0.2	—	—	0.6	n/a	n/a
	N Gulf of Mexico	0.2	—	—	0	n/a	n/a
	Puerto Rico/USVI	0.2	—	—	0	n/a	n/a
Harbor seal	Western North Atlantic	0.2	2,006	389	12	1,605	0.01
Gray seal	Western North Atlantic	0.2	1,389	5,688		−4,299	N/A

Gray seals are the only stock where, at first look, annual M/SI is above PBR (Table 15). However, the minimum abundance estimate provided in the SAR is based on the U.S. population estimate of 23,158 and does not include the Canada population. The total estimated Canadian gray seal population in 2016 was estimated to be 424,300 (95% CI=263,600 to 578,300) (DFO 2017). This would be acceptable except that the annual M/SI rate of 5,688 includes M/SI from both the U.S. and Canada populations. Therefore, we should compare population to population. The draft 2018 indicates the annual M/SI for the U.S. population is 878. That equates to an r-PBR of 511. Considering the SEFSC is requesting one take, by M/SI, of gray seal over 5 years (or 0.2 animals per year), this results in a percentage of 0.003, well under the 10 percent insignificance threshold. Further, given the proposed M/SI of one animal over five years, this amount of take can be considered discountable given the large population size.

We note that for all stocks, we have conservatively considered in this analysis that any gear interaction would result in mortality or serious injury when it has been documented that some gear interactions may result in Level A harassment (injury) or no injury at all, as serious injury determinations are not made in all cases where the disposition of the animal is ''released alive'' and, in some cases, animals are disentangled from nets without any injury observations (*e.g.,* no wounds, no blood in water, etc).

Level B Take From Acoustic Sources

As described in greater depth previously (see ''Acoustic Effects''), we do not believe that SEFSC use of active acoustic sources has the likely potential

to result in Level A harassment, serious injury, or mortality. In addition, for the majority of species, the proposed annual take by Level B harassment is very low in relation to the population abundance estimate (less than one percent). We have produced what we believe to be precautionary estimates of potential incidents of Level B harassment (Table 13). The procedure for producing these estimates, described in detail in ''Estimated Take Due to Acoustic Harassment,'' represents NMFS' best effort towards balancing the need to quantify the potential for occurrence of Level B harassment due to production of underwater sound with a general lack of information related to the specific way that these acoustic signals, which are generally highly directional and transient, interact with the physical environment and to a meaningful understanding of marine mammal perception of these signals and occurrence in the areas where the SEFSC operates. The sources considered here have moderate to high output frequencies (10 to 180 kHz), generally short ping durations, and are typically focused (highly directional with narrow beam width) to serve their intended purpose of mapping specific objects, depths, or environmental features. In addition, some of these sources can be operated in different output modes (*e.g.,* energy can be distributed among multiple output beams) that may lessen the likelihood of perception by and potential impacts on marine mammals in comparison with the quantitative estimates that guide our proposed take authorization.

As described previously, there is some minimal potential for temporary effects to hearing capabilities within specific frequency ranges for select marine mammals, but most effects would likely be limited to temporary behavioral disturbance. If individuals are in close proximity to active acoustic sources they may temporarily increase swimming speeds (presumably swimming away from the source) and surface time or decrease foraging effort (if such activity were occurring). These reactions are considered to be of low severity due to the short duration of the reaction. Individuals may move away from the source if disturbed. However, because the source is itself moving and because of the directional nature of the sources considered here, it is unlikely any temporary displacement from areas of significance would occur, and any disturbance would be of short duration. In addition, because the SEFSC survey effort is widely dispersed in space and time, repeated exposures of the same individuals would be very unlikely. For these reasons, we do not consider the proposed level of take by acoustic disturbance to represent a significant additional population stressor when considered in context with the proposed level of take by M/SI for any species. Further, we note no take by harassment is proposed for estuarine bottlenose dolphins; therefore, only M/SI is incorporated into our negligible impact analysis for those stocks. For Level B take of coastal stocks in both the ARA and GOMRA, it is not possible to quantify take per stock given overlap in time and space. However, we consider the anticipated amount of take to have the potential to occur from some combination of coastal stocks.

Summary of Negligible Impact Determination for SEFSC

In summary, we consider the proposed authorization would not impact annual rates or recruitment or survival on any of the stocks considered here because: (1) The possibility of injury, serious injury, or mortality from the use of active acoustic devices may reasonably be considered discountable; (2) the anticipated incidents of Level B harassment from the use of active acoustic devices consist of, at worst, temporary and relatively minor modifications in behavior; (3) the predicted number of incidents of potential mortality are at insignificant levels (*i.e.,* below ten percent of residual PBR) for select stocks; (4) consideration of more detailed data for gray seals do not reveal cause for concern; (5) for stocks above the insignificance threshold, the loss of one animal over five years, especially if it is male (the sex more likely to interact with trawls), is not likely to contribute to measurable changes in annual rates of recruitment or survival; (7) some stocks are subjected to ongoing management actions designed to improve stock understanding and reduce sources of M/SI from other anthropogenic stressors (*e.g.,* BDTRT management actions, pelagic longline TRT); (8) the efforts by the DHW Trustees are designed to restore for injury and address ongoing stressors such as commercial fishery entanglement which would improve stock conditions; (9) implementation of this proposed rule would build upon research designed to reduce fishery related mortality (*e.g.,* NCCOS crap pot/trap and trawl interaction research; HSU lazy line research); and (10) the presumed efficacy of the planned mitigation measures in reducing the effects of the specified activity to the level of least practicable adverse impact.

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the proposed monitoring and mitigation measures, NMFS preliminarily finds that the total marine mammal take from SEFSC fisheries research activities will have a negligible impact on affected marine mammal species or stocks.

Negligible Impact Analysis and Determination—TPWD

Similar to the SEFSC approach of considering the proposed M/SI take relative to r-PBR, we looked at known M/SI as identified in the SARs (excluding those from the proposed TPWD surveys) to estimate annual rates of M/SI (Table 16). No Level B harassment of estuarine bottlenose dolphins is proposed to be authorized to the TPWD; therefore, our analysis is limited to take by M/SI.

The stocks for which we propose to authorize take by TPWD are grouped in the Gulf of Mexico BSE SAR. Abundance data show all but 2 of the 27 stocks grouped into the SAR are more than 8 years old and, therefore, PBR is undetermined. Similar to the SEFSC, we consulted marine mammal experts at the SEFSC to derive abundance and PBRs for all stocks. Similar to other areas in the Gulf, annual rates of BSE dolphin M/SI are aggregated for the entire state of Texas (which contains seven stocks) in the Gulf of Mexico BSE SAR. Therefore, we again used information, where available, for each stock from the SAR and Southeast Marine Mammal Stranding Database to calculate but are described in text for each of the sources of M/SI (*e.g.* hook and line, crab pot fishery). Two stocks are positively identified in the 2016 SAR (Hayes *et al.,* 2017) as subject to fishing pressure (other than gillnet research for which we are proposing take): The Copano Bay/Aransas Bay/San Antonio Bay/Redfish Bay/Espiritu Santo Bay stock and the Nueces Bay/Corpus Christi Bay stock. For the first stock, in 2010, a calf was disentangled by stranding network personnel from a crab trap line wrapped around its peduncle. The animal swam away with no obvious injuries but was considered seriously injured because it is unknown whether it was reunited with its mother (Maze-Foley and Garrison, 2016). Hayes et al. (2016) also notes hook and line fisheries have taken animals from this stock; however, the exact number of animals is not provided. Therefore, we used the Marine Mammal Stranding Database for more information on these takes and the

Nueces Bay stock because they were implicated in the hook and line takes. For the Copano Bay et al. stock, one animal was a serious injury and two were mortality from hook and line interaction. For the Nueces Bay stock, one animal was taken by mortality in 2010 and one in 2013 from hook and line interaction.

TABLE 16—SUMMARY INFORMATION OF ESTUARINE BOTTLENOSE DOLPHIN STOCKS RELATED TO TPWD GILLNET FISHERY SURVEYS

Stock	Stock abundance (Nbest) [1]	Proposed M/SI take (annual)	PBR [1]	Estimated annual M/SI [2]	Residual PBR [3]	Proposed take/R–PBR (%)
Laguna Madre	80	0.2	0.3	0	0.3	66.67
Nueces Bay, Corpus Christi Bay [4]	150	0.2	1.3	0.4	0.9	22.22
Copano Bay, Aransas Bay, San Antonio Bay, Redfish Bay, Espiritu Santo Bay [5]	250	0.2	2.1	0.8	0.9	22.2
Matagorda Bay, Tres Palacios Bay, Lavaca Bay [6]	150	0.2	1.3	0	1.1	18.18

[1] In all cases, population estimates for these stocks are greater than 8 years old (last survey year was 1992); therefore, abundance and PBR are unknown. We solicited expert opinion of the SEFSC to gather the best available data to generate a population estimate for each stock and then calculated PBR using the estimated N_{best}.

[2] The estimated annual M/SI reflects the estimated M/SI less the takes for which M/SI take authorization is now proposed (*i.e.,* it does not include historical takes from TPWD gillnet fishing). Annual M/SI was derived from the SAR and consulting the NMFS Southeast Marine Mammal Stranding database.

[3] Residual PBR (r-PBR) = PBR—annual M/SI. No other M/SI is authorized for Texas BSE dolphin stocks.

[4] The SEFSC conducted stock structure research (biopsy sampling surveys) from 2012–2014. During the biopsy sampling, photos were taken for photo-ID and 285 individual dolphins with distinct dorsal fins were identified within this stock boundaries (NMFS SEFSC, UNPUBLISHED DATA). The N_{best} and PBR values reflect these data.

[5] The SEFSC conducted stock structure research (biopsy sampling surveys) from 2012–2014. During the biopsy sampling, photos were taken for photo-ID and 524 individual dolphins with distinct dorsal fins were identified within this stock boundaries (NMFS SEFSC, UNPUBLISHED DATA). The N_{best} and PBR values reflect these data.

[6] The SEFSC conducted stock structure research (biopsy sampling surveys) from 2012–2014. During the biopsy sampling, photos were taken for photo-ID and 323 individual dolphins with distinct dorsal fins were identified within this stock boundaries (NMFS SEFSC, UNPUBLISHED DATA). The N_{best} and PBR values reflect these data.

The proposed take exceeds the insignificance threshold (10 percent r-PBR) for all four Texas stocks. However, it does not exceed r-PBR when considering other sources of M/SI for any stock. For two stocks (Laguna Madre and Matagorda Bay, Tres Palacios Bay, Lavaca Bay), there is no other known source of M/SI according to the SAR. The driving factor behind the higher percentages of r-PBR is the small stock size which results in a low PBR. For example, the Laguna Madre stocks has a population estimate of 80 individuals resulting in low PBR (0.3). This is a similar scenario to some of the estuarine stocks for which we propose to issue take to the SEFSC. TPWD would implement mitigation designed to reduce the potential for take, including research investigating the effectiveness of reducing gaps between the lead lines and net. Further, as discussed earlier, dolphins are K-selected species with variable reproductive rates, and estuarine stocks are not discretely closed populations with few animals migrating to and from coastal areas and adjacent waterbodies. The loss of one animal over 5 years is unlikely to result in more than a negligible impact to the stock's recruitment and survival rates.

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the proposed monitoring and mitigation measures, NMFS preliminarily finds that the total marine mammal take from TPWD's gillnet fishing surveys will have a negligible impact on affected marine mammal species or stocks.

Small Numbers

As noted above, only small numbers of incidental take may be authorized under Section 101(a)(5)(D) of the MMPA for specified activities other than military readiness activities. The MMPA does not define small numbers and so, in practice, where estimated numbers are available, NMFS compares the number of individuals taken to the most appropriate estimation of abundance of the relevant species or stock in our determination of whether an authorization is limited to small numbers of marine mammals. Additionally, other qualitative factors may be considered in the analysis, such as the temporal or spatial scale of the activities.

Small Numbers Analysis—SEFSC

The total amount of take proposed for all estuarine and coastal bottlenose dolphin stocks is less than one percent of each estuarine stock and less than 12 percent of all coastal stocks (Table 17; we note this 12 percent is conservatively high because it considers that all Level B take would come from any given single stock). For pelagic stocks, the total amount of take is less than 13 percent of the estimated population size (Table 18).

TABLE 17—AMOUNT OF PROPOSED TAKING OF ESTUARINE AND COASTAL BOTTLENOSE DOLPHIN STOCKS IN THE ARA AND GOMRA RELATED TO STOCK ABUNDANCE

Stock	Stock abundance (Nbest)	Proposed level B Take	Proposed M/SI take (annual)	Proposed take % population
Atlantic				
Northern South Carolina Estuarine Stock [1]	50	0	0.2	0.40
Charleston Estuarine System Stock [1]	289		0.2	0.07
Northern Georgia/Southern South Carolina Estuarine System Stock [1]	250		0.2	0.08
Central Georgia Estuarine System	192		0.2	0.10
Southern Georgia Estuarine System Stock	194		0.2	0.10
Jacksonville Estuarine System Stock [1]	412		0.2	0.05
Florida Bay Stock [1]	514		0.2	0.04

TABLE 17—AMOUNT OF PROPOSED TAKING OF ESTUARINE AND COASTAL BOTTLENOSE DOLPHIN STOCKS IN THE ARA AND GOMRA RELATED TO STOCK ABUNDANCE—Continued

Stock	Stock abundance (Nbest)	Proposed level B Take	Proposed M/SI take (annual)	Proposed take % population
South Carolina/Georgia Coastal Stock	6,027		0.6	0.01
Northern Florida Coastal Stock	877	110	0.6	12.61
Central Florida Coastal Stock	1,218		0.6	9.08
Northern Migratory Coastal Stock	6,639		0.6	1.67
Southern Migratory Coastal Stock	3,751		0.6	2.95
Gulf of Mexico				
Terrebonne Bay, Timbalier Bay [1]	100	0	0.2	0.20
Mississippi River Delta [1]	332		0.2	0.06
Mississippi Sound, Lake Borgne, Bay Boudreau [3]	3,046		0.2 (M/SI), 0.2 (Level A)	0.01
Mobile Bay, Bonsecour Bay [1]	122		0.2	0.16
St. Andrew Bay [1]	124		0.2	0.16
St. Joseph Bay	152		0.2	0.13
St. Vincent Sound, Apalachicola Bay, St. George Sound [1]	439		0.2	0.05
Apalachee Bay [1]	491		0.2	0.04
Waccasassa Bay, Withlacoochee Bay, Crystal Bay [1]	100		0.2	0.20
Northern Gulf of Mexico Western Coastal Stock	20,161	350	0.6	1.74
Northern Gulf of Mexico Northern Coastal Stock	7,185		0.6	4.88
Northern Gulf of Mexico Eastern Coastal Stock	12,388		0.6	2.83

TABLE 18—AMOUNT OF PROPOSED TAKING OF PELAGIC STOCKS IN THE ARA, GOMRA, AND CRA TO THE SEFSC RELATED TO STOCK ABUNDANCE

Species	Stock	Abundance (Nbest)	Proposed level B take (annual)	Proposed M/SI take (annual)	Total proposed take % population
N Atlantic right whale	Western North Atlantic	451	4	0	0.89
Fin whale	Western North Atlantic	1,618	4	0	0.25
Sei whale	Western North Atlantic	357	4	0	1.12
Humpback whale	Gulf of Maine	896	4	0	0.45
Minke whale	Western North Atlantic	2,591	4	0	0.15
Bryde's whale	Northern Gulf of Mexico	33	4	0	12.12
Sperm whale	North Atlantic	2,288	4	0	0.17
	Northern Gulf of Mexico	763	17	0	2.23
	Puerto Rico/USVI	unk	4	0	unk
Risso's dolphin	Western North Atlantic	18,250	15	0.2	0.08
	N Gulf of Mexico	2,442	10	0.2	0.42
	Puerto Rico/USVI	21,515	10	0.2	0.05
Kogia	Western North Atlantic	3,785	10	0	0.26
	N Gulf of Mexico	186	12	0	6.45
Beaked whales	Western North Atlantic	7,092	9	0	0.13
	N Gulf of Mexico	149	8	0	5.37
Melon headed whale	N Gulf of Mexico	2,235	100	0.6	4.50
Short-finned pilot whale	Western North Atlantic	28,924	48	0.2	0.17
	N Gulf of Mexico	2,415	25	0.2	1.04
	Puerto Rico/USVI	unk	20	0.2	unk
Common dolphin	Western North Atlantic	70,184	268	0.8	0.38
Atlantic spotted dolphin	Western North Atlantic	44,715	37	0.8	0.08
	N Gulf of Mexico	unk	198	0.8	unk
	Puerto Rico/USVI	unk	50	0.2	unk
Pantropical spotted dolphin	Western North Atlantic	3,333	78	0.2	2.35
	N Gulf of Mexico	50,807	203	0.8	0.40
Striped dolphin	Western North Atlantic	54,807	75	0.6	0.14
	N Gulf of Mexico	1,849	46	0.6	2.52
Spinner dolphin	Western North Atlantic	unk	100	0	unk
	N Gulf of Mexico	11,441	200	0.6	1.75
	Puerto Rico/USVI	unk	50	0	unk
Rough-toothed dolphin	Western North Atlantic	136	10	0	7.35
	N Gulf of Mexico	624	20	0.2	3.24
Bottlenose dolphin	Western North Atlantic Offshore	77,532	39	0.8	0.05
	N Gulf of Mexico Oceanic	5,806	100	0.8	1.74
	N Gulf of Mexico Continental Shelf	51,192	350	0.8	0.69
	Puerto Rico/USVI	unk	50	0.2	unk
Harbor porpoise	Gulf of Maine/Bay of Fundy	79,833	0	0.2	0.00

TABLE 18—AMOUNT OF PROPOSED TAKING OF PELAGIC STOCKS IN THE ARA, GOMRA, AND CRA TO THE SEFSC RELATED TO STOCK ABUNDANCE—Continued

Species	Stock	Abundance (Nbest)	Proposed level B take (annual)	Proposed M/SI take (annual)	Total proposed take % population
Unidentified delphinid	Western North Atlantic.	n/a	0	0.2	n/a
	N Gulf of Mexico			0.2	
	Puerto Rico/USVI			0.2	
Harbor seal	Western North Atlantic	75,834	0	0.2	0.00
Gray seal	Western North Atlantic	27,131	0	0.2	0.00

The majority of stocks would see take less than 5 percent of the population taken with the greatest percentage being 12 from Bryde's whales in the Gulf of Mexico. However, this is assuming all takes came from the same stock of beaked whales which is unlikely. Where stock numbers are unknown, we would expect a similar small amount of take relative to population sizes.

Based on the analysis contained herein of the proposed activity (including the proposed mitigation and monitoring measures) and the anticipated take of marine mammals, NMFS preliminarily finds that small numbers of marine mammals will be taken relative to the population size of the affected species or stocks.

Small Numbers Analysis—TPWD

As noted above, only small numbers of incidental take may be authorized under Section 101(a)(5)(A) of the MMPA for specified activities. The MMPA does not define small numbers and so, in practice, where estimated numbers are available, NMFS compares the number of individuals taken to the most appropriate estimation of abundance of the relevant species or stock in our determination of whether an authorization is limited to small numbers of marine mammals. Additionally, other qualitative factors may be considered in the analysis, such as the temporal or spatial scale of the activities.

Table 19 provides information relating to this small numbers analysis for the proposed authorization to TPWD. The total annual amount of taking proposed for authorization is less than one percent for affected Texas estuarine dolphin stocks.

TABLE 19—AMOUNT OF PROPOSED TAKING OF TEXAS BOTTLENOSE DOLPHIN STOCKS RELATIVE TO STOCK ABUNDANCE

Stock	Abundance (Nbest)	Proposed M/SI take (annual)	Proposed take % Population
Laguna Madre [4]	80	0.2	0.25
Nueces Bay, Corpus Christi Bay [5]	150	0.2	0.13
Copano Bay, Aransas Bay, San Antonio Bay, Redfish Bay, Espirtu Santo Bay [6]	250	0.2	0.08
Matagorda Bay, Tres Palacios Bay, Lavaca Bay [7]	150	0.2	0.13

Based on the analysis contained herein of the proposed activity (including the proposed mitigation and monitoring measures) and the anticipated take of marine mammals, NMFS preliminarily finds that small numbers of marine mammals will be taken relative to the population size of the affected species or stocks.

Unmitigable Adverse Impact Analysis and Determination

There are no relevant subsistence uses of the affected marine mammal stocks or species implicated by the issuance of regulations to the SEFSC or TPWD. Therefore, NMFS has determined that the total taking of affected species or stocks would not have an unmitigable adverse impact on the availability of such species or stocks for taking for subsistence purposes.

Adaptive Management

The proposed regulations governing the take of marine mammals incidental to SEFSC fisheries research survey operations contain an adaptive management component which is both valuable and necessary within the context of five-year regulations for activities that have been associated with marine mammal mortality. The use of adaptive management allows OPR to consider new information from different sources to determine (with input from the SEFSC and TPWD regarding practicability) on an annual or biennial basis if mitigation or monitoring measures should be modified (including additions or deletions). The coordination and reporting requirements in this proposed rule are designed to provide OPR with data to allow consideration of whether any changes to mitigation and monitoring is necessary. OPR and the SEFSC or TPWD will meet annually to discuss the monitoring reports and current science and whether mitigation or monitoring modifications are appropriate. Decisions will also be informed by findings from any established working groups, investigations into gear modifications and dolphin-gear interactions, new stock data, and coordination efforts between all NMFS Fisheries Science Centers. Mitigation measures could be modified if new data suggest that such modifications would have a reasonable likelihood of reducing adverse effects to marine mammals and if the measures are practicable. In addition, any M/SI takes by the SEFSC or TPWD and affiliates are required to be submitted within 48 hours to the PSIT database and OPR will be made aware of the take. If there is an immediate need to revisit monitoring and mitigation measures based on any given take, OPR and SEFSC or TPWD would meet as needed.

The following are some of the possible sources of applicable data to be considered through the adaptive management process: (1) Results from monitoring reports, as required by MMPA authorization; (2) results from general marine mammal and sound research; (3) any information which reveals that marine mammals may have been taken in a manner, extent, or

number not authorized by these regulations or subsequent LOAs; and (4) findings from any mitigation research (*e.g.,* gear modification). In addition, developments on the effectiveness of mitigation measures as discovered through research (*e.g.,* stiffness of lazy lines) will inform adaptive management strategies. Finally, the SEFSC–SCDNR working group is investigating the relationships between SCDNR research surveys and marine mammal takes. Any report produced by that working group will inform improvements to marine mammal monitoring and mitigation.

Endangered Species Act (ESA)

On May 9, 2016, NMFS Southeast Regional Office (SERO) issued a Biological Opinion on Continued Authorization and Implementation of National Marine Fisheries Service's Integrated Fisheries Independent Monitoring Activities in the Southeast Region. The Biological Opinion found independent fishery research is not likely to adversely affect the following ESA-listed species: Blue whales, sei whales, sperm whales, fin whales, humpback whales, North Atlantic right whales, gulf sturgeon and all listed corals in the action area. NMFS amended this Biological Opinion on June 4, 2018, updating hearing group information based on the best available science and adding NMFS OPR as an action agency. Similar to the previous finding, the amended Biological Opinion concluded SEFSC independent fishery research is not likely to adversely affect listed marine mammals.

Bottlenose dolphins are not listed under the ESA; therefore, consultation under section 7 of the ESA is not warranted for the issuance of regulations and associated LOA to the TPWD.

Request for Information

NMFS requests interested persons to submit comments, information, and suggestions concerning the NWFSC request and the proposed regulations (see **ADDRESSES**). All comments will be reviewed and evaluated as we prepare final rules and make final determinations on whether to issue the requested authorizations. This notice and referenced documents provide all environmental information relating to our proposed action for public review.

Classification

Pursuant to the procedures established to implement Executive Order 12866, the Office of Management and Budget has determined that this proposed rule is not significant.

Pursuant to section 605(b) of the Regulatory Flexibility Act (RFA), the Chief Counsel for Regulation of the Department of Commerce has certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. The SEFSC and TPWD are the sole entities that would be subject to the requirements in these proposed regulations, and the SEFSC and TPWD are not small governmental jurisdictions, small organizations, or small businesses, as defined by the RFA. Because of this certification, a regulatory flexibility analysis is not required and none has been prepared.

The proposed rule for the SEFSC does not contain a collection-of-information requirement subject to the provisions of the Paperwork Reduction Act (PRA) because the applicant is a Federal agency. However, the TWPD is not a federal agency. Notwithstanding any other provision of law, no person is 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 PRA unless that collection of information displays a currently valid OMB control number. The proposed rule for TPWD contains collection-of-information requirements subject to the provisions of the PRA. These requirements have been approved by OMB under control number 0648–0151 and include applications for regulations, subsequent LOAs, and reports.

List of Subjects in 50 CFR Part 219

Endangered and threatened species, Fish, Marine mammals, Reporting and recordkeeping requirements, Wildlife.

Dated: February 13, 2019.

Samuel D. Rauch III,

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

For reasons set forth in the preamble, 50 CFR part 219 is proposed to be amended as follows:

PART 219—REGULATIONS GOVERNING THE TAKING AND IMPORTING OF MARINE MAMMALS

■ 1. The authority citation for part 219 continues to read as follows:

Authority: 16 U.S.C. 1361 *et seq.*

■ 2. Add subpart H to part 219 to read as follows:

Subpart H—Taking Marine Mammals Incidental to Southeast Fisheries Science Center Fisheries Research in the Atlantic Ocean, Gulf of Mexico, and Caribbean Sea

Sec.
219.71 Specified activity and specified geographical region.
219.72 Effective dates.
219.73 Permissible methods of taking.
219.74 Prohibitions.
219.75 Mitigation requirements.
219.76 Requirements for monitoring and reporting.
219.77 Letters of Authorization.
219.78 Renewals and modifications of Letters of Authorization.
219.79–219.80 [Reserved]

Subpart H—Taking Marine Mammals Incidental to Southeast Fisheries Science Center Fisheries Research in the Atlantic Ocean, Gulf of Mexico, and Caribbean Sea

§ 219.71 Specified activity and specified geographical region.

(a) Regulations in this subpart apply only to the National Marine Fisheries Service's (NMFS) Southeast Fisheries Science Center (SEFSC) and those persons it authorizes or funds to conduct fishery-independent research surveys on its behalf for the taking of marine mammals that occurs in the area outlined in paragraph (b) of this section and that occurs incidental to SEFSC and partner research survey program operations.

(b) The taking of marine mammals by the SEFSC and partners may be authorized in a 5-year Letter of Authorization (LOA) only if it occurs during fishery research surveys in the Atlantic Ocean, Gulf of Mexico, and Caribbean Sea.

§ 219.72 Effective dates.

Regulations in this subpart are effective from [EFFECTIVE DATE OF FINAL RULE] through [DATE 5 YEARS AFTER EFFECTIVE DATE OF FINAL RULE].

§ 219.73 Permissible methods of taking.

(a) Under a LOA issued pursuant to §§ 216.106 of this chapter and 219.77, the Holder of the LOA (hereinafter ''SEFSC'') may incidentally, but not intentionally, take marine mammals within the areas described in § 219.71 by Level A harassment, serious injury, or mortality associated with fisheries research gear including trawls, gillnets, and hook and line, and Level B harassment associated with use of active acoustic systems provided the activity is in compliance with all terms, conditions, and requirements of the regulations in this subpart and the relevant LOA.

§ 219.74 Prohibitions.

Notwithstanding takings contemplated in § 219.73 and authorized by a LOA issued under §§ 216.106 of this chapter and 219.77, no person in connection with the activities described in § 219.71 may:

(a) Violate, or fail to comply with, the terms, conditions, and requirements of this subpart or a LOA issued under §§ 216.106 of this chapter and 219.77;

(b) Take any marine mammal species or stock not specified in the LOA;

(c) Take any marine mammal in any manner other than as specified in the LOA;

(d) Take a marine mammal specified in such LOA in numbers exceeding those for which NMFS determines results in more than a negligible impact on the species or stocks of such marine mammal; or

(e) Take a marine mammal specified in such LOA if NMFS determines such taking results in an unmitigable adverse impact on the species or stock of such marine mammal for taking for subsistence uses.

§ 219.75 Mitigation requirements.

When conducting the activities identified in § 219.71, the mitigation measures contained in any LOA issued under §§ 216.106 of this chapter and 219.77 must be implemented. These mitigation measures shall include but are not limited to:

(a) *General conditions.* (1) SEFSC shall take all necessary measures to coordinate and communicate in advance of each specific survey with the National Oceanic and Atmospheric Administration's (NOAA) Office of Marine and Aviation Operations (OMAO) or other relevant parties on non-NOAA platforms to ensure that all mitigation measures and monitoring requirements described herein, as well as the specific manner of implementation and relevant event-contingent decision-making processes, are clearly understood and agreed upon;

(2) SEFSC shall coordinate and conduct briefings at the outset of each survey and as necessary between ship's crew (Commanding Officer/master or designee(s), as appropriate) and scientific party in order to explain responsibilities, communication procedures, marine mammal monitoring protocol, and operational procedures;

(3) SEFSC shall coordinate, on an annual basis, with all partners to ensure that requirements, procedures, and decision-making processes are understood and properly implemented.

(4) Where appropriate, SEFSC shall establish and maintain cooperating partner working group(s) to identify circumstances of a take should it occur and any action necessary to avoid future take.

(i) Working groups shall be established if a partner takes more than one marine mammal within 5 years to identify circumstances of marine mammal take and necessary action to avoid future take. Each working group shall meet at least once annually.

(ii) Each working group shall consist of at least one SEFSC representative knowledgeable of the mitigation, monitoring and reporting requirements contained within these regulations, one or more research institution or SEFSC representative(s) (preferably researcher(s) aboard vessel when take or risk of take occurred), one or more staff from NMFS Southeast Regional Office Protected Resources Division, and one or more staff from NMFS Office of Protected Resources.

(5) When deploying any type of sampling gear at sea, SEFSC shall at all times monitor for any unusual circumstances that may arise at a sampling site and use best professional judgment to avoid any potential risks to marine mammals during use of all research equipment.

(6) SEFSC shall implement handling and/or disentanglement protocols as specified in the guidance that shall be provided to survey personnel. At least two persons aboard SEFSC ships and one person aboard smaller vessels, including vessels operated by partners where no SEFSC staff are present, will be trained in marine mammal handling, release, and disentanglement procedures.

(7) For all research surveys using trawl, hook and line, or seine net gear in open-ocean waters (as defined from the coastline seaward), the SEFSC must implement move-on rule mitigation protocol upon observation of any marine mammal other than dolphins and porpoises attracted to the vessel. If marine mammals (other than dolphins or porpoises) are observed within 500 m of the planned location in the 10 minutes before setting gear, or are considered at risk of interacting with the vessel or research gear, or appear to be approaching the vessel and are considered at risk of interaction, the SEFSC shall move on to another sampling location or remain on site but delay gear deployment until the animals departs the area or appears to no longer be at risk of interacting with the vessel or gear. Once the animal is no longer considered a risk, another 10-minute observation shall be conducted. If no marine mammals are observed during this subsequent observation period or the visible animal(s) still does not appear to be at risk of interaction, then the set may be made. If the vessel is moved to a different section of the sampling area, the move-on rule mitigation protocol would begin anew. If, after moving on, marine mammals remain at risk of interaction, the SEFSC shall move again or skip the station. Marine mammals that are sighted further than 500 m from the vessel shall be monitored to determine their position and movement in relation to the vessel to determine whether the move-on rule mitigation protocol should be implemented. The SEFSC may use best professional judgment, in accordance with this paragraph, in making decisions related to deploying gear.

(8) SEFSC shall maintain visual monitoring effort during the entire period of time that trawl, hook and line, and seine net gear is in the water (*i.e.,* throughout gear deployment, fishing, and retrieval). If marine mammals are sighted before the gear is fully removed from the water, SEFSC shall take the most appropriate action to avoid marine mammal interaction. SEFSC may use best professional judgment in making this decision.

(9) If research operations have been suspended because of the presence of marine mammals, SEFSC may resume operations when practicable only when the animals are believed to have departed the area. SEFSC may use best professional judgment in making this determination;

(b) *Trawl and seine survey mitigation.* In addition to the general conditions provided in § 219.75(a), the following measures must be implemented during trawl and seine surveys:

(1) SEFSC shall conduct fishing operations as soon as is practicable upon arrival at the sampling station and prior to other environmental sampling not involving trawl nets.

(2) The SEFSC shall limit tow times to 30 minutes (except for sea turtle research trawls);

(3) The SEFSC shall, during haul back, open cod end close to deck/sorting table to avoid damage to animals that may be caught in gear and empty gear as quickly as possible after retrieval haul back;

(4) The SEFSC shall delay gear deployment if any marine mammals are believed to be at-risk of interaction;

(5) The SEFSC shall retrieve gear immediately if any marine mammals are believed to be entangled or at-risk of entanglement;

(6) Dedicated marine mammal observations shall occur at least 15 minutes prior to the beginning of net deployment. This watch may include

approach to the sampling station. Marine mammal watches should be conducted by systematically scanning the surrounding waters and marsh edge (if visible) 360 degrees around the vessel. If dolphin(s) are sighted and believed to be at-risk of interaction (*e.g.,* moving in the direction of the vessel/gear; moms/calves close to the gear; etc.), gear deployment should be delayed until the animal(s) are no longer at risk or have left the area on their own. If species other than dolphins are sighted, trawling must not be initiated and the marine mammal(s) must be allowed to either leave or pass through the area safely before trawling is initiated. All marine mammal sightings must be logged and reported per 219.76 of this section.

(7) Retrieve gear immediately if marine mammals are believed to be captured/entangled and follow disentanglement protocols.

(8) The SEFSC shall minimize ''pocketing'' in areas of trawl nets where dolphin depredation evidence is commonly observed;

(9) When conducting research under an ESA section 10(a)(1)(A) scientific research permit issued by NMFS, all marine mammal monitoring protocol contained within that permit must be implemented.

(10) SEFSC shall implement standard survey protocols to minimize potential for marine mammal interactions, including maximum tow durations at target depth and maximum tow distance, and shall carefully empty the trawl as quickly as possible upon retrieval. Trawl nets must be cleaned prior to deployment.

(11) The SEFSC shall continue investigation into gear modifications (*e.g.,* stiffening lazy lines) and the effectiveness of gear modification.

(c) *Hook and line (including longline) survey mitigation*—In addition to the General Conditions provided in paragraph(a) of this section, the following measures must be implemented during hook and line surveys:

(1) SEFSC shall deploy hook and line gear as soon as is practicable upon arrival at the sampling station.

(2) SEFSC shall initiate marine mammal watches (visual observation) no less than 30 minutes prior to both deployment and retrieval of longline gear. Marine mammal watches shall be conducted by scanning the surrounding waters with the naked eye and range-finding binoculars (or monocular). During nighttime operations, visual observation shall be conducted using the naked eye and available vessel lighting.

(3) SEFSC shall implement the move-on rule mitigation protocol, as described in § paragraph(a)(6) of this section.

(4) SEFSC shall maintain visual monitoring effort during the entire period of gear deployment and retrieval. If marine mammals are sighted before the gear is fully deployed or retrieved, SEFSC shall take the most appropriate action to avoid marine mammal interaction. SEFSC may use best professional judgment in making this decision.

(5) If deployment or retrieval operations have been suspended because of the presence of marine mammals, SEFSC may resume such operations when practicable only when the animals are believed to have departed the area. SEFSC may use best professional judgment in making this decision.

(6) SEFSC shall implement standard survey protocols, including maximum soak durations and a prohibition on chumming.

§ 219.76 Requirements for monitoring and reporting.

(a) *Compliance coordination.* SEFSC shall designate a compliance coordinator who shall be responsible for ensuring and documenting compliance with all requirements of any LOA issued pursuant to §§ 216.106 of this chapter and 219.77 and for preparing for any subsequent request(s) for incidental take authorization.

(b) *Visual monitoring program.* (1) Marine mammal visual monitoring shall occur prior to deployment of trawl, net, and hook and line gear, respectively; throughout deployment of gear and active fishing of research gears (not including longline soak time); prior to retrieval of longline gear; and throughout retrieval of all research gear.

(2) Marine mammal watches shall be conducted by watch-standers (those navigating the vessel and/or other crew) at all times when the vessel is transiting to avoid ship strike.

(c) *Training.* (1) SEFSC must conduct annual training for all SEFSC and affiliate chief scientists and other personnel who may be responsible for conducting dedicated marine mammal visual observations to explain mitigation measures and monitoring and reporting requirements in the LOA, mitigation and monitoring protocols, marine mammal identification, completion of datasheets, and use of equipment. SEFSC may determine the agenda for these trainings.

(2) SEFSC shall also dedicate a portion of training to discussion of best professional judgment, including use in any incidents of marine mammal interaction and instructive examples where use of best professional judgment was determined to be successful or unsuccessful.

(3) SEFSC shall coordinate with NMFS' Office of Science and Technology to ensure training and guidance related to handling procedures and data collection is consistent with other fishery science centers, where appropriate.

(d) *Handling procedures and data collection.* (1) SEFSC must implement standardized marine mammal handling, disentanglement, and data collection procedures. These standard procedures will be subject to approval by NMFS' Office of Protected Resources (OPR).

(2) For any marine mammal interaction involving the release of a live animal, SEFSC shall collect necessary data to facilitate a serious injury determination.

(3) SEFSC shall provide its relevant personnel with standard guidance and training regarding handling of marine mammals, including how to identify different species, bring an individual aboard a vessel, assess the level of consciousness, remove fishing gear, return an individual to water, and log activities pertaining to the interaction.

(4) SEFSC shall record such data on standardized forms, which will be subject to approval by OPR. SEFSC shall also answer a standard series of supplemental questions regarding the details of any marine mammal interaction.

(e) *Reporting.* (1) Marine mammal capture/entanglements (live or dead) must be reported immediately to the Southeast Region Marine Mammal Stranding Hotline at 1–877–433–8299 and SEFSC and to OPR and NMFS Southeast Regional Office (SERO, 727–551–5780) within 48 hours of occurrence. Also within 48 hours, SEFSC shall log the incident in NMFS' Protected Species Incidental Take (PSIT) database and provide any supplemental information to OPR and SERO upon request. Information related to marine mammal interaction (animal captured or entangled in research gear) must include details of research survey, monitoring conducted prior to interaction, full descriptions of any observations of the animals, the context (vessel and conditions), decisions made, and rationale for decisions made in vessel and gear handling.

(2) Annual reporting:

(i) SEFSC shall submit an annual summary report to OPR not later than ninety days following the end of a given year. SEFSC shall provide a final report within thirty days following resolution of comments on the draft report;

(ii) These reports shall contain, at minimum, the following:

(A) Annual line-kilometers and locations surveyed during which the EK60, ME70, SX90 (or equivalent sources) were predominant and associated pro-rated estimates of actual take;

(B) Summary information regarding use of all trawl, gillnet, and hook and line gear, including location, number of sets, hook hours, tows, etc., specific to each gear;

(C) Accounts of surveys where marine mammals were observed during sampling but no interactions occurred;

(D) All incidents of marine mammal interactions, including circumstances of the event and descriptions of any mitigation procedures implemented or not implemented and why and, if released alive, serious injury determinations;

(E) A written evaluation of the effectiveness of SEFSC mitigation strategies in reducing the number of marine mammal interactions with survey gear, including gear modifications and best professional judgment and suggestions for changes to the mitigation strategies, if any;

(F) A summary of all relevant training provided by SEFSC and any coordination with NMFS Office of Science and Technology and the Southeast Regional Office; and

(G) A summary of meetings and workshops outcomes with the South Carolina Department of Natural Resources designed to reduce the number of marine mammal interactions

(f) *Reporting of injured or dead marine mammals.* (1) In the unanticipated event that the activity defined in § 219.71(a) clearly causes the take of a marine mammal in a prohibited manner, SEFSC personnel engaged in the research activity shall immediately cease such activity until such time as an appropriate decision regarding activity continuation can be made by the SEFSC Director (or designee). The incident must be reported immediately to OPR and SERO. OPR and SERO will review the circumstances of the prohibited take and work with SEFSC to determine what measures are necessary to minimize the likelihood of further prohibited take. The immediate decision made by SEFSC regarding continuation of the specified activity is subject to OPR concurrence. The report must include the information included in paragraph (f)(2) of this section.

(2) SEFSC or partner shall report all injured or dead marine mammals observed during fishery research surveys that are not attributed to the specified activity to the Southeast Regional Stranding Coordinator within 24 hours. If the discovery is made by a partner, the report shall also be submitted to the SEFSC Environmental Compliance Coordinator. The following information shall be provided:

(i) Time, date, and location (latitude/longitude) of the incident;

(ii) Description of the incident including, but not limited to, monitoring prior to and occurring at time of incident;

(iii) Environmental conditions (*e.g.,* wind speed and direction, Beaufort sea state, cloud cover, visibility);

(iv) Description of all marine mammal observations in the 24 hours preceding the incident;

(v) Species identification or description of the animal(s) involved;

(vi) Status of all sound source or gear used in the 24 hours preceding the incident;

(vii) Water depth;

(viii) Fate of the animal(s) (*e.g.,* dead, injured but alive, injured and moving, blood or tissue observed in the water, status unknown, disappeared, etc.); and

(ix) Photographs or video footage of the animal(s).

(3) In the event of a ship strike of a marine mammal by any SEFSC or partner vessel involved in the activities covered by the authorization, SEFSC or partner shall immediately report the information in paragraph (f)(2) of this section, as well as the following additional information:

(i) Vessel's speed during and leading up to the incident;

(ii) Vessel's course/heading and what operations were being conducted,

(iii) Status of all sound sources in use,

(iv) Description of avoidance measures/requirements that were in place at the time of the strike and what additional measures were taken, if any, to avoid strike.

(v) Estimated size and length of animal that was struck;

(vi) Description of the behavior of the marine mammal immediately preceding and following the strike.

§ 219.77 Letters of Authorization.

(a) To incidentally take marine mammals pursuant to these regulations, SEFSC must apply for and obtain an LOA.

(b) An LOA, unless suspended or revoked, may be effective for a period of time not to exceed the expiration date of these regulations.

(c) In the event of projected changes to the activity or to mitigation and monitoring measures required by an LOA, SEFSC must apply for and obtain a modification of the LOA as described in § 219.78.

(d) The LOA shall set forth:

(1) Permissible methods of incidental taking;

(2) Means of effecting the least practicable adverse impact (*i.e.,* mitigation) on the species, its habitat, and on the availability of the species for subsistence uses; and

(3) Requirements for monitoring and reporting.

(e) Issuance of the LOA shall be based on a determination that the level of taking will be consistent with the findings made for the total taking allowable under these regulations.

(f) Notice of issuance or denial of an LOA shall be published in the **Federal Register** within thirty days of a determination.

§ 219.78 Renewals and modifications of Letters of Authorization.

(a) An LOA issued under §§ 216.106 of this chapter and 219.77 for the activity identified in § 219.71(a) shall be renewed or modified upon request by the applicant, provided that:

(1) The proposed specified activity and mitigation, monitoring, and reporting measures, as well as the anticipated impacts, are the same as those described and analyzed for these regulations (excluding changes made pursuant to the adaptive management provision in paragraph (c)(1) of this section), and

(2) OPR determines that the mitigation, monitoring, and reporting measures required by the previous LOA under these regulations were implemented.

(b) For an LOA modification or renewal requests by the applicant that include changes to the activity or the mitigation, monitoring, or reporting (excluding changes made pursuant to the adaptive management provision in paragraph (c)(1) of this section) that do not change the findings made for the regulations or result in no more than a minor change in the total estimated number of takes (or distribution by species or years), OPR may publish a notice of proposed LOA in the **Federal Register**, including the associated analysis of the change, and solicit public comment before issuing the LOA.

(c) An LOA issued under §§ 216.106 of this chapter and 219.77 for the activity identified in § 219.71(a) may be modified by Office of Protected Resources (OPR) under the following circumstances:

(1) *Adaptive management.* OPR may modify or augment the existing mitigation, monitoring, or reporting measures (after consulting with SEFSC regarding the practicability of the modifications) if doing so creates a

reasonable likelihood of more effectively accomplishing the goals of the mitigation and monitoring set forth in the preamble for these regulations.

(i) If, through adaptive management, the modifications to the mitigation, monitoring, or reporting measures are substantial, OPR will publish a notice of proposed LOA in the **Federal Register** and solicit public comment.

(ii) [Reserved]

(2) *Emergencies.* If OPR determines that an emergency exists that poses a significant risk to the well-being of the species or stocks of marine mammals specified in LOAs issued pursuant to §§ 216.106 of this chapter and 219.77, an LOA may be modified without prior notice or opportunity for public comment. Notice would be published in the **Federal Register** within thirty days of the action.

§§ 219.79—219.80 [Reserved]

PART 219—REGULATIONS GOVERNING THE TAKING AND IMPORTING OF MARINE MAMMALS

■ 3. The authority citation for part 219 continues to read as follows:

Authority: 16 U.S.C. 1361 *et seq.*

■ 4. Add subpart I to part 219 to read as follows:

Subpart I—Taking Marine Mammals Incidental to Texas Parks and Wildlife Department Gillnet Fisheries Research in the Gulf of Mexico

Sec.

219.81 Specified activity and specified geographical region.
219.82 Effective dates.
219.83 Permissible methods of taking.
219.84 Prohibitions.
219.85 Mitigation requirements.
219.86 Requirements for monitoring and reporting.
219.87 Letters of Authorization.
219.88 Renewals and modifications of Letters of Authorization.
219.89–219.90 [Reserved]

Subpart I—Taking Marine Mammals Incidental to Texas Parks and Wildlife Department Gillnet Fisheries Research in the Gulf of Mexico

§ 219.81 Specified activity and specified geographical region.

(a) Regulations in this subpart apply only to the Texas Parks and Wildlife Department (TPWD) and those persons acting under its authority during gillnet fishery research surveys for the taking of marine mammals that occurs in the area outlined in paragraph (b) of this section and that occurs incidental to research survey program operations.

(b) The taking of marine mammals by TPWD may be authorized in a 5-year Letter of Authorization (LOA) only if the taking occurs within the following Texas bays: East Matagorda, Matagorda, San Antonio, Aransas, Corpus Christi, upper Laguna Madre and lower Laguna Madre.

§ 219.82 Effective dates.

Regulations in this subpart are effective from [EFFECTIVE DATE OF FINAL RULE] through [DATE 5 YEARS AFTER EFFECTIVE DATE OF FINAL RULE].

§ 219.83 Permissible methods of taking.

Under a LOA issued pursuant to §§ 216.106 of this chapter and 219.87, the Holder of the LOA (hereinafter ''TPWD'') may incidentally, but not intentionally, take marine mammals within the areas described in § 219.81 by Level A harassment, serious injury, or mortality associated with gillnet fisheries research gear provided the activity is in compliance with all terms, conditions, and requirements of the regulations in this subpart and the relevant LOA.

§ 219.84 Prohibitions.

Notwithstanding takings contemplated in § 219.103 and authorized by a LOA issued under §§ 216.106 of this chapter and 219.87, no person in connection with the activities described in § 219.81 may:

(a) Violate, or fail to comply with, the terms, conditions, and requirements of this subpart or a LOA issued under §§ 216.106 of this chapter and 219.87;

(b) Take any marine mammal species or stock not specified in the LOA;

(c) Take any marine mammal in any manner other than as specified in the LOA;

(d) Take a marine mammal specified in such LOA in numbers exceeding those for which NMFS determines results in more than a negligible impact on the species or stocks of such marine mammal; or

(e) Take a marine mammal specified in such LOA if NMFS determines such taking results in an unmitigable adverse impact on the species or stock of such marine mammal for taking for subsistence uses.

§ 219.85 Mitigation requirements.

When conducting the activities identified in § 219.81(a), the mitigation measures contained in any LOA issued under §§ 216.106 of this chapter and 219.87 must be implemented. These mitigation measures shall include but are not limited to:

(a) Only new or fully repaired gillnets shall be used. No holes greater than six inches are permitted.

(b) Upon close approach to the site and prior to setting the net, researchers shall conduct a dedicated observation for marine mammals for 15 minutes. If no marine mammals are observed during this time, the net may be set. If marine mammals are observed during this time or while setting the net, the net shall not be deployed or will be immediately removed from the water until such time as the animals has left the area and is on a path away from the net site.

(c) TPWD shall not set gillnets in dolphin ''hot spots'' defined as grids where dolphins have been taken on more than one occasion or where multiple adjacent grids have had at least one dolphin encounter.

(d) TPWD shall tie the float line/lead line to the net at no more than 4-inch intervals.

(e) Captured live or injured marine mammals shall be released from research gear and returned to the water as soon as possible with no gear or as little gear remaining on the animal as possible. Animals are released without removing them from the water.

(f) At least one person aboard TPWD gillnet vessel shall be trained in NMFS-approved marine mammal handling, release, and disentanglement procedures via attendance at NMFS Highly Migratory Species/Protected Species Safe Handling, Release, and Identification Workshop (*www.nmfs.noaa.gov/sfa/hms/compliance/workshops/protected_species_workshop/index.html*) or other similar training.

(g) Each TPWD gillnet researcher shall be familiar with NMFS Protected Species Safe Handling and Release Manual.

§ 219.86 Requirements for monitoring and reporting.

(a) *Marine mammal monitoring.* TPWD shall monitor for marine mammals upon 0.5 miles from sampling site and for 15 minutes at sampling site prior to setting the net. Should a marine mammal be observed within 0.5 miles of the site and is on a path toward the site, the net will not be deployed. The net may only be deployed if marine mammals are observed on a path away from the site consistently for 15 minutes or are not re-sighted within 15 minutes. Should a marine mammal be observed within 0.5 miles of the site and is on a path toward the site, the net will not be deployed. Should a marine mammal be observed during the 15-minute observation period at the site, the net shall not be deployed. The net may only be deployed if marine mammals are observed on a path away from the site

consistently for 15 minutes or are not re-sighted within 15 minutes.

(b) *Reporting of injured or dead marine mammals.* (1) In the unanticipated event that the activity defined in § 219.81(a) clearly causes the take of a marine mammal in a prohibited manner, NMFS Office of Protected Resources (OPR) and NMFS Southeast Regional Office (SERO). TPWD shall not set any more nets until such time as an appropriate decision regarding activity continuation can be made by NMFS OPR and SERO. OPR and SERO will review the circumstances of the prohibited take and work with SEFSC to determine what measures are necessary to minimize the likelihood of further prohibited take. The report must include the information included in paragraph (b)(2) of this section, details of research survey, monitoring conducted prior to interaction, full descriptions of any observations of the animals, the context (vessel and conditions), decisions made, and rationale for decisions made in vessel and gear handling.

(2) TPWD shall report all injured or dead marine mammals observed during fishery research surveys that are not attributed to the specified activity to the Southeast Regional Stranding Coordinator within 24 hours. The following information shall be provided:

(i) Time, date, and location (latitude/longitude) of the incident;

(ii) Description of the incident including, but not limited to, monitoring prior to and occurring at time of incident;

(iii) Environmental conditions (*e.g.,* wind speed and direction, Beaufort sea state, cloud cover, visibility);

(iv) Description of all marine mammal observations in the 24 hours preceding the incident;

(v) Species identification or description of the animal(s) involved;

(vi) Status of all sound source or gear used in the 24 hours preceding the incident;

(vii) Water depth;

(viii) Fate of the animal(s) (*e.g.* dead, injured but alive, injured and moving, blood or tissue observed in the water, status unknown, disappeared, etc.); and

(ix) Photographs or video footage of the animal(s).

(c) *Annual reporting.* (1) TPWD shall submit an annual summary report to OPR not later than ninety days following the end of the fall sampling season. TPWD shall provide a final report within thirty days following resolution of comments on the draft report.

(2) These reports shall contain, at minimum, the following:

(i) Locations and time/date of all net sets;

(ii) All instances of marine mammal observations and descriptions of any mitigation procedures implemented or not implemented and why;

(iii) All incidents of marine mammal interactions, including all information required in paragraph (b) of this section;

(iv) A written evaluation of the effectiveness of TPWD mitigation strategies in reducing the number of marine mammal interactions with survey gear, including gear modifications and best professional judgment and suggestions for changes to the mitigation strategies, if any;

(v) A summary of all relevant marine mammal training and any coordination with OPR and SERO.

§ 219.87 Letters of Authorization.

(a) To incidentally take marine mammals pursuant to these regulations, SEFSC must apply for and obtain an LOA.

(b) An LOA, unless suspended or revoked, may be effective for a period of time not to exceed the expiration date of these regulations.

(c) In the event of projected changes to the activity or to mitigation and monitoring measures required by an LOA, TPWD must apply for and obtain a modification of the LOA as described in § 219.88.

(d) The LOA shall set forth:

(1) Permissible methods of incidental taking;

(2) Means of effecting the least practicable adverse impact (*i.e.,* mitigation) on the species, its habitat, and on the availability of the species for subsistence uses; and

(3) Requirements for monitoring and reporting.

(e) Issuance of the LOA shall be based on a determination that the level of taking will be consistent with the findings made for the total taking allowable under these regulations.

(f) Notice of issuance or denial of an LOA shall be published in the **Federal Register** within thirty days of a determination.

§ 219.88 Renewals and modifications of Letters of Authorization.

(a) An LOA issued under §§ 216.106 of this chapter and 219.87 for the activity identified in § 219.81(a) shall be renewed or modified upon request by the applicant, provided that:

(1) The proposed specified activity and mitigation, monitoring, and reporting measures, as well as the anticipated impacts, are the same as those described and analyzed for these regulations (excluding changes made pursuant to the adaptive management provision in paragraph (c)(1) of this section); and

(2) OPR determines that the mitigation, monitoring, and reporting measures required by the previous LOA under these regulations were implemented;

(b) For an LOA modification or renewal requests by the applicant that include changes to the activity or the mitigation, monitoring, or reporting (excluding changes made pursuant to the adaptive management provision in paragraph (c)(1) of this section) that do not change the findings made for the regulations or result in no more than a minor change in the total estimated number of takes (or distribution by species or years), OPR may publish a notice of proposed LOA in the **Federal Register**, including the associated analysis of the change, and solicit public comment before issuing the LOA.

(c) An LOA issued under §§ 216.106 of this chapter and 219.87 for the activity identified in § 219.71(a) may be modified by Office of Protected Resources (OPR) under the following circumstances:

(1) *Adaptive Management.* OPR may modify or augment the existing mitigation, monitoring, or reporting measures (after consulting with SEFSC regarding the practicability of the modifications) if doing so creates a reasonable likelihood of more effectively accomplishing the goals of the mitigation and monitoring set forth in the preamble for these regulations.

(i) If, through adaptive management, the modifications to the mitigation, monitoring, or reporting measures are substantial, OPR will publish a notice of proposed LOA in the **Federal Register** and solicit public comment.

(ii) [Reserved]

(2) *Emergencies.* If OPR determines that an emergency exists that poses a significant risk to the well-being of the species or stocks of marine mammals specified in LOAs issued pursuant to §§ 216.106 of this chapter and 219.87, an LOA may be modified without prior notice or opportunity for public comment. Notice would be published in the **Federal Register** within thirty days of the action.

§ 219.89–219.90 [Reserved]

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