



FEDERAL REGISTER

Vol. 84 Wednesday,
No. 84 May 1, 2019

Pages 18383–18694

OFFICE OF THE FEDERAL REGISTER



The **FEDERAL REGISTER** (ISSN 0097-6326) is published daily, Monday through Friday, except official holidays, by the Office of the Federal Register, National Archives and Records Administration, under the Federal Register Act (44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). The Superintendent of Documents, U.S. Government Publishing Office, is the exclusive distributor of the official edition. Periodicals postage is paid at Washington, DC.

The **FEDERAL REGISTER** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders, Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress, and other Federal agency documents of public interest.

Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless the issuing agency requests earlier filing. For a list of documents currently on file for public inspection, see www.federalregister.gov.

The seal of the National Archives and Records Administration authenticates the **Federal Register** as the official serial publication established under the Federal Register Act. Under 44 U.S.C. 1507, the contents of the **Federal Register** shall be judicially noticed.

The **Federal Register** is published in paper and on 24x microfiche. It is also available online at no charge at www.govinfo.gov, a service of the U.S. Government Publishing Office.

The online edition of the **Federal Register** is issued under the authority of the Administrative Committee of the Federal Register as the official legal equivalent of the paper and microfiche editions (44 U.S.C. 4101 and 1 CFR 5.10). It is updated by 6:00 a.m. each day the **Federal Register** is published and includes both text and graphics from Volume 1, 1 (March 14, 1936) forward. For more information, contact the GPO Customer Contact Center, U.S. Government Publishing Office. Phone 202-512-1800 or 866-512-1800 (toll free). E-mail, gpocusthelp.com.

The annual subscription price for the **Federal Register** paper edition is \$860 plus postage, or \$929, for a combined **Federal Register**, **Federal Register** Index and List of CFR Sections Affected (LSA) subscription; the microfiche edition of the **Federal Register** including the **Federal Register** Index and LSA is \$330, plus postage. Six month subscriptions are available for one-half the annual rate. The prevailing postal rates will be applied to orders according to the delivery method requested. The price of a single copy of the daily **Federal Register**, including postage, is based on the number of pages: \$11 for an issue containing less than 200 pages; \$22 for an issue containing 200 to 400 pages; and \$33 for an issue containing more than 400 pages. Single issues of the microfiche edition may be purchased for \$3 per copy, including postage. Remit check or money order, made payable to the Superintendent of Documents, or charge to your GPO Deposit Account, VISA, MasterCard, American Express, or Discover. Mail to: U.S. Government Publishing Office—New Orders, P.O. Box 979050, St. Louis, MO 63197-9000; or call toll free 1-866-512-1800, DC area 202-512-1800; or go to the U.S. Government Online Bookstore site, see bookstore.gpo.gov.

There are no restrictions on the republication of material appearing in the **Federal Register**.

How To Cite This Publication: Use the volume number and the page number. Example: 84 FR 12345.

Postmaster: Send address changes to the Superintendent of Documents, Federal Register, U.S. Government Publishing Office, Washington, DC 20402, along with the entire mailing label from the last issue received.

SUBSCRIPTIONS AND COPIES

PUBLIC

Subscriptions:

Paper or fiche 202-512-1800
Assistance with public subscriptions 202-512-1806

General online information 202-512-1530; 1-888-293-6498

Single copies/back copies:

Paper or fiche 202-512-1800
Assistance with public single copies 1-866-512-1800
(Toll-Free)

FEDERAL AGENCIES

Subscriptions:

Assistance with Federal agency subscriptions:

Email FRSubscriptions@nara.gov
Phone 202-741-6000

The Federal Register Printing Savings Act of 2017 (Pub. L. 115-120) placed restrictions on distribution of official printed copies of the daily **Federal Register** to members of Congress and Federal offices. Under this Act, the Director of the Government Publishing Office may not provide printed copies of the daily **Federal Register** unless a Member or other Federal office requests a specific issue or a subscription to the print edition. For more information on how to subscribe use the following website link: <https://www.gpo.gov/frsubs>.



Contents

Federal Register

Vol. 84, No. 84

Wednesday, May 1, 2019

Agency for Healthcare Research and Quality

NOTICES

Agency Information Collection Activities; Proposals, Submissions, and Approvals, 18541–18548

Meetings:

Health Services Research Initial Review Group Committee, 18540–18541

Agriculture Department

See Animal and Plant Health Inspection Service

See Rural Utilities Service

Animal and Plant Health Inspection Service

NOTICES

Pest Risk Analysis:

Importation of Fresh Citrus from China into the Continental United States, 18474–18475

Civil Rights Commission

NOTICES

Meetings; Sunshine Act, 18476

Coast Guard

RULES

Safety Zone:

Coast Guard Exercise Area, Hood Canal, WA, 18387
Sail Grand Prix 2019 Practice Days Safety Zone for Sailing Vessels, San Francisco, CA, 18389–18391

Security Zone:

Corpus Christi Ship Channel, Corpus Christi, TX, 18387–18389

PROPOSED RULES

Safety Zone:

Lake Washington, Seattle, WA, 18452–18454

Commerce Department

See Industry and Security Bureau

See International Trade Administration

See National Institute of Standards and Technology

See National Oceanic and Atmospheric Administration

Commodity Futures Trading Commission

NOTICES

Agency Information Collection Activities; Proposals, Submissions, and Approvals:

Confirmation, Portfolio Reconciliation, Portfolio Compression, and Swap Trading Relationship Documentation Requirements for Swap Dealers and Major Swap Participants, 18521–18522

Community Development Financial Institutions Fund

NOTICES

Funds Availability:

Applications for the Fiscal Year 2019 Funding Round of the Bank Enterprise Award Program, 18635–18648

Consumer Product Safety Commission

NOTICES

Meetings; Sunshine Act, 18522–18523

Defense Department

RULES

Foreign Criminal and Civil Jurisdiction, 18383–18386

PROPOSED RULES

Civil Money Penalties and Assessments Under the Military Health Care Fraud and Abuse Prevention Program, 18437–18452

Drug Enforcement Administration

PROPOSED RULES

Schedules of Controlled Substances:

Temporary Placement of N-Ethylhexedrone, a-PHP, 4-MEAP, MPHP, PV8, and 4-Chloro-a-PVP in Schedule I, 18423–18428

Education Department

NOTICES

Reopening the Application Period for the Fiscal Year 2019 Small, Rural School Achievement Program, 18523

Energy Department

See Federal Energy Regulatory Commission

PROPOSED RULES

Test Procedure Interim Waiver Process, 18414–18423

NOTICES

Application to Export Electric Energy:

Northland Power Energy Marketing (US) Inc., 18523–18524

Environmental Protection Agency

RULES

Air Quality State Implementation Plans; Approvals and Promulgations:

Arizona; Approval and Conditional Approval of State Implementation Plan Revisions; Maricopa County Air Quality Department; Stationary Source Permits; Correction, 18392–18398

Pesticide Tolerances:

Bentazon, 18398–18403

PROPOSED RULES

Aquatic Life Criteria for Aluminum in Oregon, 18454–18468

Equal Employment Opportunity Commission

RULES

Immediate Reinstatement of Revised EEO–1:

Pay Data Collection, 18383

Export-Import Bank

NOTICES

Agency Information Collection Activities; Proposals, Submissions, and Approvals, 18532

Federal Aviation Administration

NOTICES

Agency Information Collection Activities; Proposals, Submissions, and Approvals:

Certification Procedures for Products and Parts Correction, 18630

Submission Deadline for Schedule Information:

John F. Kennedy International Airport, Los Angeles International Airport, Newark Liberty International Airport, and San Francisco International Airport for the Winter 2019/2020 Scheduling Season; Suspension of Level 2 at Chicago O'Hare International Airport, 18630–18634

Federal Communications Commission**RULES**

Channel Lineup Requirements; Modernization of Media Regulation Initiative, 18406–18409
 Use of Spectrum Bands above 24 GHz for Mobile Radio Services; Correcting Amendments, 18405

NOTICES

Agency Information Collection Activities; Proposals, Submissions, and Approvals, 18535–18537
 Privacy Act; Systems of Records, 18532–18534

Federal Emergency Management Agency**RULES**

Suspension of Community Eligibility, 18403–18405

NOTICES

Flood Hazard Determinations, 18558–18560
 Flood Hazard Determinations; Changes, 18560–18564
 Flood Hazard Determinations; Proposals:
 Llano County, Texas and Incorporated Areas;
 Withdrawal, 18558

Federal Energy Regulatory Commission**NOTICES**

Agency Information Collection Activities; Proposals, Submissions, and Approvals, 18531–18532
 Combined Filings, 18525–18526, 18528
 Environmental Impact Statements; Availability, etc.:
 Moriah Hydro Corp., 18530–18531
 Hydroelectric Applications:
 Great River Hydro, LLC, 18529–18530
 South Carolina Gas and Electric Co., 18525
 Initial Market-Based Rate Filings Including Requests for Blanket Section 204 Authorizations:
 Dutch Wind, LLC, 18528
 Mojave 16/17/18, LLC, 18524
 Mojave 3/4/5, LLC, 18526–18527
 PHWD Affiliate, LLC, 18527
 Refresh Wind 2, LLC, 18527
 Refresh Wind, LLC, 18524
 Terra-Gen 251 Wind, LLC, 18530
 Terra-Gen VG Wind, LLC, 18529
 Wilkinson Solar, LLC, 18529
 Request for Comments:
 Security Investments for Energy Infrastructure Technical Conference, 18527–18528

Federal Highway Administration**NOTICES**

Environmental Impact Statements; Availability, etc.:
 Interstate 11 Corridor between Nogales and Wickenburg, AZ, 18634

Federal Reserve System**NOTICES**

Agency Information Collection Activities; Proposals, Submissions, and Approvals, 18537–18538

Federal Trade Commission**NOTICES**

Proposed Consent Agreement:
 ClixSense.com; Analysis to Aid Public Comment, 18538–18540

Fish and Wildlife Service**NOTICES**

Endangered and Threatened Species:
 Receipt of Recovery Permit Applications, 18568–18573

Food and Drug Administration**NOTICES**

Agency Information Collection Activities; Proposals, Submissions, and Approvals:
 Mammography Quality Standards Act Requirements, 18548–18551
 Public Health Service Guideline on Infectious Disease Issues in Xenotransplantation, 18551–18555

Health and Human Services Department

See Agency for Healthcare Research and Quality
See Food and Drug Administration
See National Institutes of Health

Homeland Security Department

See Coast Guard
See Federal Emergency Management Agency
See U.S. Immigration and Customs Enforcement

Housing and Urban Development Department**NOTICES**

Agency Information Collection Activities; Proposals, Submissions, and Approvals:
 Pay for Success Pilot Application Requirements; Withdrawal, 18568
 Mortgage Review Board:
 Administrative Actions, 18565–18568

Industry and Security Bureau**NOTICES**

Meetings:
 Materials Processing Equipment Technical Advisory Committee, 18476–18477

Interior Department

See Fish and Wildlife Service
See Land Management Bureau
See Surface Mining Reclamation and Enforcement Office

Internal Revenue Service**PROPOSED RULES**

Investing in Qualified Opportunity Funds, 18652–18693

International Trade Administration**NOTICES**

Antidumping or Countervailing Duty Investigations, Orders, or Reviews:
 Advance Notification of Sunset Review, 18486–18487
 Glycine from India, 18482–18484
 Glycine from the People's Republic of China, 18489–18490
 Initiation of Five-Year (Sunset) Reviews, 18477–18478
 Opportunity to Request Administrative Review, 18479–18482
 Steel Wire Garment Hangers from the People's Republic of China, 18478–18479
 Determination of Sales at Less Than Fair Value:
 Glycine from India, 18487–18489
 Glycine from Japan, 18484–18486

International Trade Commission**NOTICES**

Antidumping or Countervailing Duty Investigations, Orders, or Reviews:
 Light-Walled Rectangular Pipe and Tube from China, Korea, Mexico, and Turkey, 18577–18579
 Prestressed Concrete Steel Rail Tie Wire from China and Mexico, 18582–18585

Small Diameter Graphite Electrodes from China, 18580–18582

Investigations; Determinations, Modifications, and Rulings, etc.:

Certain Taurine (2-Aminoethanesulfonic Acid), Methods of Production and Processes for Making the Same, and Products Containing the Same, 18576

Meetings; Sunshine Act, 18579–18580

Justice Department

See Drug Enforcement Administration

NOTICES

Agency Information Collection Activities; Proposals, Submissions, and Approvals, 18585

Agency Information Collection Activities; Proposals, Submissions, and Approvals:

Notice of Appeal from a Decision of an Immigration Judge, 18586

Land Management Bureau

NOTICES

Meetings:

Southeast Oregon Resource Advisory Council Public Lands Access Subcommittee, 18573–18574

Maritime Administration

PROPOSED RULES

How Best to Evidence Corporate Citizenship:

Policy and Regulatory Review, 18468–18469

How Best to Simplify Filing Statements of American Fisheries Act Citizenship:

Policy and Regulatory Review, 18469–18471

National Institute of Standards and Technology

NOTICES

Agency Information Collection Activities; Proposals, Submissions, and Approvals:

Analysis of Exoskeleton-Use for Enhancing Human Performance Data Collection, 18492–18493

Issuance of Federal Information Processing Standard 140–3, Security Requirements for Cryptographic Modules, 18493–18495

Request for Information:

Artificial Intelligence Standards, 18490–18492

National Institutes of Health

NOTICES

Agency Information Collection Activities; Proposals, Submissions, and Approvals:

NIH Information Collection Forms to Support Genomic Data Sharing for Research Purposes, 18555–18557

Meetings:

Center for Scientific Review, 18557

National Institute of Diabetes and Digestive and Kidney Diseases, 18557

National Oceanic and Atmospheric Administration

RULES

International Fisheries:

Pacific Tuna Fisheries; 2019 and 2020 Commercial Fishing Restrictions for Pacific Bluefin Tuna in the Eastern Pacific Ocean, 18409–18413

PROPOSED RULES

Fisheries of the Northeastern United States:

Atlantic Mackerel, Squid, and Butterfish Fisheries; Specifications, 18471–18473

NOTICES

Takes of Marine Mammals:

Incidental to Pile Driving and Removal Activities During Construction of a Cruise Ship Berth, Hoonah, AK, 18495–18521

Nuclear Regulatory Commission

NOTICES

Agency Information Collection Activities; Proposals, Submissions, and Approvals:

Access Authorization, 18590–18591

Disposal of High-Level Radioactive Wastes in Geologic Repositories, 18588–18589

Environmental Assessments; Availability, etc.:

Exelon Generation Co., LLC, Oyster Creek Nuclear Generating Station, 18586–18588

Guidance:

Criteria for Accident Monitoring Instrumentation for Nuclear Power Plants, 18591

Postal Service

NOTICES

International Product Change:

GEPS 11 Contracts, 18591–18592

Rural Utilities Service

NOTICES

Loan Applications Procedures and Deadlines for the Rural Energy Savings Program; Update, 18475–18476

Securities and Exchange Commission

NOTICES

Meetings:

Small Business Capital Formation Advisory Committee, 18620–18621

Self-Regulatory Organizations; Proposed Rule Changes:

Financial Industry Regulatory Authority, Inc., 18592–18618

New York Stock Exchange, LLC, 18621–18622

NYSE Arca, Inc., 18626–18627

NYSE Chicago, Inc., 18623–18625

NYSE National, Inc., 18618–18620

State Department

NOTICES

Agency Information Collection Activities; Proposals, Submissions, and Approvals:

National Security Language Initiative for Youth Evaluation, 18627–18628

Meetings:

Advisory Committee on Private International Law, 18628–18629

Surface Mining Reclamation and Enforcement Office

PROPOSED RULES

Illinois Regulatory Program, 18428–18429

Kentucky Regulatory Program, 18430–18433

Missouri Regulatory Program, 18433–18434

Pennsylvania Regulatory Program, 18435–18437

NOTICES

Record of Decision:

San Juan Mine Deep Lease Extension Mining Plan Modification, 18574–18576

Surface Transportation Board

NOTICES

Acquisition Exemption:

Allegheny Valley Railroad Co.; Lines of CSX Transportation, Inc., 18629–18630

Transportation Department

See Federal Aviation Administration

See Federal Highway Administration

See Maritime Administration

NOTICES

Agency Information Collection Activities; Proposals,

Submissions, and Approvals:

National Census of Ferry Operators, 18634–18635

Treasury Department

See Community Development Financial Institutions Fund

See Internal Revenue Service

NOTICES

Request for Information:

Data Collection and Tracking for Qualified Opportunity

Zones, 18648–18649

U.S. Immigration and Customs Enforcement**NOTICES**

Agency Information Collection Activities; Proposals,

Submissions, and Approvals:

Generic Clearance for the Collection of Qualitative

Feedback on Agency Service Delivery, 18564–18565

Separate Parts In This Issue**Part II**

Treasury Department, Internal Revenue Service, 18652–
18693

Reader Aids

Consult the Reader Aids section at the end of this issue for phone numbers, online resources, finding aids, and notice of recently enacted public laws.

To subscribe to the Federal Register Table of Contents electronic mailing list, go to <https://public.govdelivery.com/accounts/USGPOOFR/subscriber/new>, enter your e-mail address, then follow the instructions to join, leave, or manage your subscription.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

10 CFR**Proposed Rules:**

430 18414
431 18414

21 CFR**Proposed Rules:**

1308 18423

26 CFR**Proposed Rules:**

1 18652

29 CFR

1602 18383

30 CFR**Proposed Rules:**

913 18428
917 18430
925 18433
938 18435

32 CFR

151 18383

Proposed Rules:

199 18437
200 18437

33 CFR

165 (3 documents) 18387,
18389

Proposed Rules:

165 18452

40 CFR

52 18392
180 18398

Proposed Rules:

131 18454

44 CFR

64 18403

46 CFR**Proposed Rules:**

355 18468
356 18469

47 CFR

30 18405
76 18406

50 CFR

300 18409

Proposed Rules:

648 18471

Rules and Regulations

Federal Register

Vol. 84, No. 84

Wednesday, May 1, 2019

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.

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

29 CFR Part 1602

[3046-0007]

Reinstatement of Revised EEO-1: Pay Data Collection

AGENCY: Equal Employment Opportunity Commission.

ACTION: Announcement of immediate reinstatement of revised EEO-1: Pay Data Collection.

SUMMARY: The U.S. Equal Employment Opportunity Commission (EEOC) announces immediate reinstatement of the revised EEO-1: Pay Data Collection, and the collection of 2018 pay data (EEO-1 Component 2) from EEO-1 filers by September 30, 2019.

DATES: April 30, 2019. The EEOC expects to begin collecting EEO-1 Component 2 data for calendar year 2018 in mid-July 2019.

FOR FURTHER INFORMATION CONTACT: Rashida Dorsey, Ph.D., MPH, Director, Data Development and Information Products Division and Senior Advisor on Data Strategy, Office of Enterprise Data and Analytics, Equal Employment Opportunity Commission, 131 M Street NE, Room 4SW32L, Washington, DC 20507; (202) 663-4355 (voice) or (202) 663-7063 (TTY). Requests for this notice in an alternative format should be made to the Office of Communications and Legislative Affairs at (202) 663-4191 (voice) or (202) 663-4494 (TTY).

SUPPLEMENTARY INFORMATION: EEO-1 filers should begin preparing to submit Component 2 data for calendar year 2018 by September 30, 2019, in light of the court's recent decision in *National Women's Law Center, et al., v. Office of Management and Budget, et al.*, Civil Action No. 17-cv-2458 (D.D.C.). The EEOC expects to begin collecting EEO-1 Component 2 data for calendar year 2018 in mid-July, 2019, and will notify filers of the precise date the survey will

open as soon as it is available. Filers should continue to use the currently open EEO-1 portal to submit Component 1 data from 2018 by May 31, 2019.

As a result of the court vacating the Office of Management and Budget's stay of Component 2, the EEOC will also collect Component 2 data for either calendar year 2017 or calendar year 2019, and by May 3, 2019, will submit for publication in the **Federal Register** an additional notice announcing its decision.

Because the Component 2 collection has been reinstated by the court, the EEOC's previous **Federal Register** notice, published on September 15, 2017 (82 FR 43362) and announcing the stay of the Component 2 collection, is hereby rescinded.

Dated: April 29, 2019.

For the Commission.

Victoria A. Lipnic,

Acting Chair.

[FR Doc. 2019-09002 Filed 4-30-19; 8:45 am]

BILLING CODE 6570-01-P

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 151

[Docket ID: DOD-2012-OS-0069]

RIN 0790-A189

Foreign Criminal and Civil Jurisdiction

AGENCY: Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: This rule updates procedures concerning trial by foreign criminal courts of, treatment in foreign prisons of, and the payment of counsel fees in certain civil cases for individuals referred to collectively in this rule as "dependents of DoD personnel."

Dependents of DoD personnel serving under a U.S. Chief of Mission are not considered to be "dependents of DoD personnel" for the purposes of this rule.

DATES: This final rule is effective May 31, 2019.

FOR FURTHER INFORMATION CONTACT: Bart Wager, 703-571-9355.

SUPPLEMENTARY INFORMATION:

Public Comments

On Friday, October 19, 2018 (83 FR 53020-53023), the Department of Defense published a proposed rule titled "Foreign Criminal and Civil Jurisdiction" for a 60-day public comment period. Seven commenters provided responses addressing issues that fell within the scope of the rule. These comments are available through the eRulemaking docket, available online at www.regulations.gov, and then navigating to this rulemaking docket, DOD-2012-OS-0069. Although no changes were made to the final rule based on public comment, the Department summarizes the comments and its responses as follows.

Three commenters noted the rule's importance and indicated general support for the rule's protections for dependents of DoD personnel. Two commenters noted implementation would be influenced by the relationship the United States has with the country where DoD personnel are located, and therefore the Department lacked the authority to implement fully the protections described in the rule. DoD acknowledges concerns about the need to rely on the discretion of, and relationship with, foreign countries. The Department believes these issues are addressed by requiring DoD personnel responsible for implementing the rule to work closely with in-country State Department officials. Two commenters expressed concern the rule did not eliminate the possibility of capital punishment in a foreign country for a dependent. DoD acknowledges the concern. However, the United States does not have the authority to eliminate the possibility of a foreign court imposing capital punishment on those affected by the rule.

Authorities

Taken together, two statutes authorize the Secretary of Defense to issue legally binding guidelines on the Department of Defense. Under 10 U.S.C. 113, the Secretary has "authority, direction, and control" over the Department of Defense. The Department of Defense is an "executive department," and the Secretary, as the head of an "executive department," is empowered under 5 U.S.C. 301 to issue departmental regulations. The General Counsel of the Department of Defense has been delegated authority under Department

of Defense Directive 5145.01, “General Counsel of the Department of Defense” (available at <http://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodd/514501p.pdf>), to issue this policy. Title 10 U.S.C. 1037 authorizes the payment of counsel and other fees in certain cases in foreign judicial tribunals and administrative agencies.

Revisions by This Rule

This rule amends 32 CFR part 151, “Status of Forces Policies and Information,” which was last updated on March 28, 1980 (45 FR 20465). In 1985, Section 681 of Public Law 99–145 amended 10 U.S.C. 1037 to authorize the payment of counsel fees for those “not subject to the Uniform Code of Military Justice.” This final rule updates procedures concerning trial by foreign criminal courts of, treatment in foreign prisons of, and the payment of counsel fees in certain civil cases for command-sponsored and non-command sponsored dependents of Armed Forces members, and dependents of nationals and non-nationals of the United States who are serving with or accompanying the Military Services.

Summary of the Major Provisions

For dependents of DoD personnel, when those dependents are in a foreign country as a result of accompanying DoD personnel who are assigned duty in that country, it is Department of Defense policy to: (a) Maximize the exercise of U.S. jurisdiction to the extent permissible under applicable status of forces agreements or other forms of jurisdiction arrangements; (b) protect, to the maximum extent possible, the rights of dependents of DoD personnel who may be subject to criminal trial by foreign courts and imprisonment in foreign prisons; and (c) secure, where possible, the release of an accused to the custody of U.S. authorities pending completion of all foreign judicial proceedings.

A “designated commanding officer” in each geographical area assigned to a Combatant Command is to: (1) Cooperate with the appropriate U.S. Chief of Mission and to the maximum extent possible, ensure that dependents of DoD personnel receive the same treatment, rights, and support as would be extended to U.S. Armed Forces members in comparable situations; (2) report informally and immediately to the General Counsel of the Department of Defense, the applicable geographic Combatant Commander, and the General Counsel and the Judge Advocate General of the respective Military Department, or, in the case of the Marine Corps, to the General Counsel of

the Navy and the Staff Judge Advocate to the Commandant of the Marine Corps, or, in the case of the Coast Guard, the Judge Advocate General of the Coast Guard, about important new cases or important developments in pending cases related to such dependents; and (3) take additional steps that may be authorized under relevant international agreement(s) with the receiving State to implement the policy of this part.

Expected Impact of the Final Rule

The revisions are expected to cause no change to the burden or cost to dependents of DoD personnel. DoD is not changing the process for dependents to access these services and therefore does not anticipate a change in the population of eligible DoD dependents for these services. The Department will continue to provide relevant free legal services to the dependents of DoD personnel and acceptance of these legal services is entirely voluntary.

Regulatory Procedures

Executive Order 12866, “Regulatory Planning and Review” and Executive Order 13563, “Improving Regulation and Regulatory Review”

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

Executive Order 13771, “Reducing Regulation and Controlling Regulatory Costs”

This final rule is not subject to the requirements of Executive Order 13771 (82 FR 9339, February 3, 2017) because this final rule is not significant under Executive Order 12886.

Section 202, Public Law 104–4, “Unfunded Mandates Reform Act” (2 U.S.C. Chapter 25)

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) (2 U.S.C. 1532) requires agencies assess anticipated costs and benefits before issuing any rule whose mandates require spending in any 1 year of \$100 million in 1995 dollars, updated

annually for inflation. This final rule will not mandate any requirements for State, local, or tribal governments, nor will it affect private sector costs.

Public Law 96–354, “Regulatory Flexibility Act” (5 U.S.C. 601)

The Department of Defense certifies that this final rule is not subject to the Regulatory Flexibility Act (5 U.S.C. 601) because it would not, if promulgated, have a significant economic impact on a substantial number of small entities. Therefore, the Regulatory Flexibility Act, as amended, does not require us to prepare a regulatory flexibility analysis.

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

It has been determined that 32 CFR part 151 does not impose reporting or recordkeeping requirements under the Paperwork Reduction Act of 1995.

Executive Order 13132, “Federalism”

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. This final rule will not have a substantial effect on State and local governments.

List of Subjects in 32 CFR Part 151

Courts, Foreign relations, Military personnel, Prisons.

Accordingly, 32 CFR part 151 is revised to read as follows:

PART 151—FOREIGN CRIMINAL AND CIVIL JURISDICTION

Sec.

- 151.1 Purpose.
- 151.2 Applicability.
- 151.3 Definitions.
- 151.4 Policy.
- 151.5 Responsibilities.
- 151.6 Procedures.

Authority: 10 U.S.C. chapter 47, 10 U.S.C. 1037.

§ 151.1 Purpose.

This part establishes policy, assigns responsibilities, and prescribes procedures, supplemental to those provided in DoD Instruction 5525.01, “Foreign Criminal and Civil Jurisdiction,” which will be made available at <http://www.esd.whs.mil/Directives/issuances/dodi/>, concerning trial by foreign criminal courts of, treatment in foreign prisons of, and the payment of counsel fees in certain civil cases for the following individuals, referred to collectively in this part as

“dependents of DoD personnel,” when those individuals are in a foreign country as a result of accompanying DoD personnel who are assigned duty in that country:

(a) Command-sponsored and non-command sponsored dependents of Armed Forces members;

(b) Dependents of nationals and non-nationals of the United States who are serving with or accompanying the Military Services (referred to in this rule as “non-military DoD personnel”) in an area outside the United States and its territories and possessions, the Commonwealth of the Northern Mariana Islands, and the Commonwealth of Puerto Rico (referred to collectively in this rule as “outside the United States”);

(c) Dependents of DoD personnel serving under a U.S. Chief of Mission are not considered to be “dependents of DoD personnel” for the purposes of this part.

§ 151.2 Applicability.

This part applies to the Office of the Secretary of Defense, the Military Departments (including the Coast Guard at all times, including when it is a Service in the Department of Homeland Security by agreement with that Department), the Office of the Chairman of the Joint Chiefs of Staff and the Joint Staff, the Combatant Commands, the Office of the Inspector General of the Department of Defense, the Defense Agencies, the DoD Field Activities, and all other organizational entities within the DoD.

§ 151.3 Definitions.

These terms and their definitions are for the purposes of this part.

Armed Forces. As set forth in 10 U.S.C. 101(a)(4), the Army, Navy, Air Force, Marine Corps, and Coast Guard.

Designated commanding officer (DCO). The military officer who is designated by the appropriate geographic Combatant Commander to fulfill the duties outlined in this part.

DoD personnel. Armed Forces members and non-military DoD personnel. Armed Forces members and non-military DoD personnel serving under a U.S. Chief of Mission are not considered to be “DoD personnel” as defined in this part.

Non-military DoD personnel. Nationals and non-nationals of the United States who are serving with or accompanying the Armed Forces in an area outside the United States and its territories and possessions, the northern Mariana Islands, and the Commonwealth of Puerto Rico.

§ 151.4 Policy.

(a) The Department of Defense will, for dependents of DoD personnel when those dependents are in a foreign country accompanying DoD personnel who are assigned duty to that foreign country:

(1) Maximize the exercise of U.S. jurisdiction to the extent permissible under applicable status of forces agreements or other forms of jurisdiction arrangements.

(2) Protect, to the maximum extent possible, the rights of dependents of DoD personnel who may be subject to criminal trial by foreign courts and imprisonment in foreign prisons.

(3) Secure, where possible, the release of an accused to the custody of U.S. authorities pending completion of all foreign judicial proceedings.

(b) [Reserved]

§ 151.5 Responsibilities.

(a) The Secretaries of the Military Departments ensure the adequacy of regulations in establishing an information and education policy on the laws and customs of the host country for dependents of DoD personnel assigned to foreign areas.

(b) For each country in their respective assigned area of responsibility (AOR), the geographic Combatant Commanders:

(1) Oversee Command implementation of the procedures in this part.

(2) Oversee DCO responsibilities, as described in paragraphs (c)(1) through (4) of this section.

(c) *DCO responsibilities.* The DCOs:

(1) Are responsible for formal invocation, where applicable, of the Senate resolution procedure in each foreign country where dependents of DoD personnel are present, consistent with the U.S. Senate Resolution of Ratification, with reservations, to the North Atlantic Treaty Organization Status of Forces Agreement, as agreed to by the Senate on July 15, 1953.

(2) In cooperation with the appropriate U.S. Chief of Mission and to the maximum extent possible, ensure dependents of DoD personnel receive the same treatment, rights, and support as Armed Forces members when in the custody of foreign authorities, or when confined (pre-trial and post-trial) in foreign penal institutions. DCOs will work with the appropriate U.S. Chief of Mission to make appropriate diplomatic contacts for dependents of DoD personnel who are not U.S. nationals.

(3) Report informally and immediately to the General Counsel of the Department of Defense, the applicable geographic Combatant

Commander, and the General Counsel and the Judge Advocate General of the respective Military Department or, in the case of the U.S. Marine Corps (USMC), to the General Counsel of the Navy and the Staff Judge Advocate to the Commandant of the Marine Corps, or, in the case of the Coast Guard, the Judge Advocate General of the Coast Guard, about important new cases or important developments in pending cases. Important cases include, but are not limited to, instances of denial of the procedural safeguards under any applicable agreement; deficiency in the treatment or conditions of confinement in foreign penal institutions; or arbitrary denial of permission to visit dependents of DoD personnel.

(4) Take additional steps that may be authorized under relevant international agreements with the receiving State to implement the policy of this part.

§ 151.6 Procedures.

(a) *Request to foreign authorities not to exercise their criminal and civil jurisdiction over dependents.* The procedures in this section will be followed when it appears that foreign authorities may exercise criminal jurisdiction over dependents of DoD personnel:

(1) When the DCO determines, after a careful consideration of all the circumstances, including consultation with the Department of Justice where the matter involves possible prosecution in U.S. civilian courts, that suitable action can be taken under existing U.S. laws or administrative regulations, the DCO may request the local foreign authorities to waive the exercise of criminal jurisdiction.

(2) When it appears possible that the accused may not obtain a fair trial, the commander exercising general court-martial jurisdiction over the command to which such persons are attached or with which they are associated will communicate directly with the DCO, reporting the full facts of the case. The DCO will then determine, in the light of legal procedures in effect in that country, if there is a risk that the accused will not receive a fair trial. If the DCO determines that there is a risk that the accused will not receive a fair trial, the DCO will decide, after consultation with the U.S. Chief of Mission, whether a request should be submitted through diplomatic channels to foreign authorities seeking their assurances of a fair trial for the accused or, in appropriate circumstances, that they waive the exercise of jurisdiction over the accused. If the DCO so decides, a recommendation will be submitted through the geographic Combatant

Commander and the Chairman of the Joint Chiefs of Staff to the Secretary of Defense. Copies must be provided to the Secretary concerned and the GC DoD.

(b) *Trial observers and trial observers' reports.* (1) U.S. observers at trials before courts of the receiving country (referred to in this section as "trial observers") must attend and prepare formal reports in all cases of trials by foreign courts or tribunals of dependents of DoD personnel, except for minor offenses. In cases of minor offenses, the observer will attend the trial at the discretion of the DCO, but will not be required to make a formal report.

(i) Unless directed by the DCO, trial observers are not required to attend all preliminary proceedings, such as scheduling hearings, but will attend the trial on the merits and other pre- and post-trial proceedings where significant procedural or substantive matters are decided.

(ii) Trial observer reports regarding dependents of DoD personnel will be handled and processed pursuant to DoD Instruction 5525.01(4)(b-c).

(2) The DCO, upon receipt of a trial observer report, will be responsible for determining whether:

(i) There was any failure to comply with the procedural safeguards secured by the pertinent status of forces agreement.

(ii) The accused received a fair trial under all the circumstances. Due regard should be given to those fair trial rights listed in DoD Instruction 5525.01 "Foreign Criminal and Civil Jurisdiction," Enclosure 5, "Fair Trial Guarantees" that are relevant to the particular facts and circumstances of the trial. A trial will not be determined to be unfair merely because it is not conducted in a manner identical to trials held in the United States.

(A) If the DCO believes that the procedural safeguards specified in pertinent agreements were denied or that the trial was otherwise unjust, the DCO will submit a recommendation as to appropriate action to rectify the trial deficiencies and otherwise to protect the rights or interests of the accused. This recommendation must include a statement of efforts taken or to be taken at the local level to protect the rights of the accused.

(B) The DCO will submit the recommendation to the Secretary of Defense, through the Under Secretary of Defense for Policy (with an advance copy to the General Counsel of the Department of Defense); copies must be provided to the geographic Combatant Commander concerned, the General Counsel and the Judge Advocate General of the Military Department

concerned or, in the case of the USMC, to the General Counsel of the Navy and the Staff Judge Advocate to the Commandant of the Marine Corps, or, in the case of the Coast Guard, the Judge Advocate General of the Coast Guard, and the Chairman of the Joint Chiefs of Staff.

(c) *Counsel fees and related assistance for U.S. personnel not subject to the UCMJ.* In cases of exceptional interest to the Military Department concerned or the Department of Homeland Security involving non-military DoD personnel, the Secretary of that Military Department or the Secretary of Homeland Security may approve, pursuant to 10 U.S.C. 1037, under the following circumstances:

(1) *Criminal cases.* Requests for the provision of counsel fees and payment of expenses in criminal cases may be approved in pre-trial, trial, appellate, and post-trial proceedings in any criminal case where:

(i) The sentence that is normally imposed includes confinement, whether or not such sentence is suspended;

(ii) Capital punishment might be imposed;

(iii) An appeal is made from any proceeding in which there appears to have been a denial of the substantial rights of the accused;

(iv) The case, although not within the criteria established in paragraphs (c)(1)(i) through (iii) of this section, is considered to have significant impact on U.S. interests, including upon the relations of the Armed Forces with the host country.

(2) *Civil cases.* Requests for provision of counsel fees and payment of expenses in civil cases may be granted in trial and appellate proceedings in civil cases where the case is considered to have a significant impact on the relations of the Armed Forces with the host country; or in cases brought against eligible non-military DoD personnel (and in exceptional cases, by such personnel) if the case is considered to involve any other U.S. interest.

(3) *Funding restrictions.* (i) No funds will be provided under this part in cases where the U.S. Government is—in actuality or in legal effect—the plaintiff or the defendant; all such cases shall be referred to the Department of Justice, Office of Foreign Litigation. No funds will be provided under this part in cases where the non-military DoD personnel member is a plaintiff without prior authorization of the Secretary of the Military Department concerned or the Secretary of Homeland Security. The provisions of this paragraph also are applicable to proceedings with civil aspects that are brought by eligible

personnel as criminal cases in accordance with local law. Funds for the posting of bail or bond to secure the release of non-military DoD personnel from confinement will be used as provided by applicable Armed Force regulations.

(ii) No funds will be provided under paragraph (c)(2) of this section to a plaintiff who, if successful, will receive an award, in whole or in part, from the United States.

(iii) As provided for in 10 U.S.C. 1037, a person on whose behalf a payment is made under this provision is not liable to reimburse the United States for that payment, unless he or she is responsible for the forfeiture of bail provided for him or her under this provision.

(d) *Treatment of dependents confined in foreign penal institutions.* In cooperation with the appropriate U.S. Chief of Mission and to the maximum extent possible, military commanders will ensure that dependents of DoD personnel receive the same treatment, rights, and support as would be extended to Armed Forces members when in the custody of foreign authorities, or when confined (pretrial and post-trial) in foreign penal institutions. Commanders will work with the appropriate U.S. Chief of Mission to make appropriate diplomatic contacts for the categories of dependents described in this section who are not U.S. nationals.

(e) *Information policy.* The general public and the Congress must be provided promptly with the maximum information concerning status of forces matters that are consistent with the national interest. Information will be coordinated and provided to the public and the Congress in accordance with established procedures, including those in DoD Directive 5122.05, "Assistant to the Secretary of Defense for Public Affairs (ATSD(PA))" (available at http://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodd/512205_dodd_2017.pdf?ver=2017-08-07-125832-023), 32 CFR part 286, 32 CFR part 310, and DoD Instruction 5400.04, "Provision of Information to Congress" (available at <http://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodi/540004p.pdf>).

Dated: April 26, 2019.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2019-08807 Filed 4-30-19; 8:45 am]

BILLING CODE 5001-06-P

DEPARTMENT OF HOMELAND SECURITY**Coast Guard****33 CFR Part 165****[Docket No. USCG–2019–0277]****Safety Zone, Coast Guard Exercise Area, Hood Canal, Washington****AGENCY:** Coast Guard, DHS.**ACTION:** Notice of enforcement of regulation.

SUMMARY: The Coast Guard will enforce safety zones surrounding vessels involved in Coast Guard training exercises in Hood Canal, WA, from August 19, 2019, through August 23, 2019. This enforcement is necessary to ensure the safety of the maritime public and vessels near training exercises. During the enforcement period, entry into the safety zones is prohibited, unless authorized by the Captain of the Port or her Designated Representative.

DATES: The regulations in 33 CFR 165.1339 will be enforced from 8 a.m. on August 19, 2019, through 5 p.m. on August 23, 2019.

FOR FURTHER INFORMATION CONTACT: If you have questions about this notice of enforcement, call or email LTJG Ellie Wu, Sector Puget Sound Waterways Management Division, Coast Guard; telephone 206–217–6051, email SectorPugetSoundWWM@uscg.mil.

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce the safety zones around vessels involved in Coast Guard training exercises in Hood Canal, WA set forth in 33 CFR 165.1339, from 8 a.m. on August 19, 2019 through 5 p.m. on August 23, 2019. Under the provisions of 33 CFR 165.1339, no person or vessel may enter or remain within 500 yards of any vessel involved in Coast Guard training exercises while such vessel is transiting Hood Canal, WA, between Foul Weather Bluff and the entrance to Dabob Bay, unless authorized by the Captain of the Port or her Designated Representative. In addition, the regulation requires all vessel operators seeking to entry any of the zones during the enforcement period to first obtain permission. You may seek permission by contacting the on-scene patrol commander on VHF channel 13 or 16, or the Sector Puget Sound Joint Harbor Operations Center at 206–217–6001.

You will be able to identify participating vessels as those flying the Coast Guard Ensign. The Captain of the Port may also be assisted in the enforcement of the zone by other

federal, state, or local agencies. The Captain of the Port will issue a general permission to enter the safety zones if the training exercise is completed before 5 p.m. on August 23. In addition to this notice of enforcement in the **Federal Register**, the Coast Guard plans to provide notification of this enforcement period via a Local Notice to Mariners.

Dated: April 25, 2019.

Linda A. Sturgis,*Captain, U.S. Coast Guard, Captain of the Port Puget Sound.*

[FR Doc. 2019–08798 Filed 4–30–19; 8:45 am]

BILLING CODE 9110–04–P**DEPARTMENT OF HOMELAND SECURITY****Coast Guard****33 CFR Part 165****[Docket Number USCG–2019–0295]****RIN 1625–AA87****Security Zone; Corpus Christi Ship Channel, Corpus Christi, TX****AGENCY:** Coast Guard, DHS.**ACTION:** Temporary final rule.

SUMMARY: The Coast Guard establishes two security zones. One of the zones is a temporary fixed security zone for the receiving facility's mooring basin while the Liquefied Natural Gas (LNGC) FUJI LNG is moored at the facility. The other zone is a moving security zone encompassing all navigable waters within a 500-yard radius around the LNGC FUJI LNG while the vessel transits with cargo in the La Quinta Channel and Corpus Christi Ship Channel in Corpus Christi, TX. The security zones are needed to protect personnel, vessels, and the marine environment from potential hazards created by Liquefied Natural Gas (LNG) cargo aboard the vessel. Entry of vessels or persons into these zones is prohibited unless specifically authorized by the Captain of the Port Sector Corpus Christi.

DATES: This rule is effective without actual notice from May 1, 2019 until May 3, 2019. For the purposes of enforcement, actual notice will be used from April 26, 2019 until May 1, 2019.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type USCG–2019–0295 in the “SEARCH” box and click “SEARCH.” Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Petty Officer Kevin Kyles, Sector Corpus Christi Waterways Management Division, U.S. Coast Guard; telephone 361–939–5125, email Kevin.L.Kyles@uscg.mil.

SUPPLEMENTARY INFORMATION:**I. Table of Abbreviations**

CFR Code of Federal Regulations
COTP Captain of the Port Sector Corpus Christi
DHS Department of Homeland Security
FR Federal Register
LNGC Liquefied Natural Gas Carrier
NPRM Notice of proposed rulemaking
§ Section
U.S.C. United States Code

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are “impracticable, unnecessary, or contrary to the public interest.” Under 5 U.S.C. 553(b)(3)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because it is impracticable. We must establish these security zones by April 26, 2019 and lack sufficient time to provide a reasonable comment period and then consider those comments before issuing the rule.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be contrary to the public interest because immediate action is needed to provide for the security of the vessel.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034. The Captain of the Port Sector Corpus Christi (COTP) has determined that potential hazards associated with Liquefied Natural Gas Carrier (LNGC) FUJI LNG between April 26, 2019 and May 03, 2019 will be a security concern while the vessel is moored at the receiving facility and within a 500-yard radius of the vessel while the vessel is loaded with cargo.

IV. Discussion of the Rule

This rule establishes two security zones around LNGC FUJI LNG from April 26, 2019 through May 03, 2019. A fixed security zone will be in effect in the mooring basin bound by 27°52'53.38" N, 097°16'20.66" W on the northern shoreline; thence to 27°52'45.58" N, 097°16'19.60" W; thence to 27°52'38.55" N, 097°15'45.56" W; thence to 27°52'49.30" N, 097°15'45.44" W; thence west along the shoreline to 27°52'53.38" N, 097°16'20.66" W, while LNGC FUJI LNG is moored. A moving security zone will cover all navigable waters within a 500-yard radius of the LNGC FUJI LNG while the vessel transits outbound with cargo through the La Quinta Channel and Corpus Christi Ship Channel. No vessel or person will be permitted to enter the security zones without obtaining permission from the COTP or a designated representative.

Entry into these security zones is prohibited unless authorized by the COTP or a designated representative. A designated representative is a commissioned, warrant, or petty officer of the U.S. Coast Guard assigned to units under the operational control of USCG Sector Corpus Christi. Persons or vessels desiring to enter or pass through the zones must request permission from the COTP or a designated representative on VHF-FM channel 16 or by telephone at 361-939-0450. If permission is granted, all persons and vessels shall comply with the instructions of the COTP or designated representative. The COTP or a designated representative will inform the public through Broadcast Notices to Mariners (BNMs) of the enforcement times and dates for these security zones.

V. Regulatory Analyses

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

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13771 directs agencies to control regulatory costs through a budgeting process. This rule has not been designated a "significant regulatory action," under Executive Order 12866. Accordingly, this rule has

not been reviewed by the Office of Management and Budget (OMB), and pursuant to OMB guidance it is exempt from the requirements of Executive Order 13771.

This regulatory action determination is based on the size, duration, and location of the security zone. This rule will impact a small designated area of the Corpus Christi Ship Channel and La Quinta Channel while the vessel is moored at the receiving facility and during the vessel's transit while loaded with cargo. Moreover, the Coast Guard will issue BNMs via VHF-FM marine channel 16 about the zones and the rule allows vessels to seek permission to enter the zones.

B. Impact on Small Entities

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

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

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

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

small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

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

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023-01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321-4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human

environment. This rule involves a temporary fixed security zone while LNGC FUJI LNG is moored at the receiving facility mooring basin bound by 27°52'53.38" N, 097°16'20.66" W on the northern shoreline; thence to 27°52'45.58" N, 097°16'19.60" W; thence to 27°52'38.55" N, 097°15'45.56" W; thence to 27°52'49.30" N, 097°15'45.44" W; thence west along the shoreline to 27°52'53.38" N, 097°16'20.66" W, and a temporary moving security zone while the vessel transits with cargo within the La Quinta Channel and Corpus Christi Ship Channel, that will prohibit entry within 500-yard radius of LNGC FUJI LNG. It is categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023-01-001-01, Rev. 01. A Record of Environmental Consideration supporting this determination is available in the docket where indicated under **ADDRESSES**.

G. Protest Activities

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

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 46 U.S.C. 70034, 70051; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.T08-0295 to read as follows:

§ 165.T08-0295 Security Zone; Corpus Christi Ship Channel, Corpus Christi, TX.

(a) *Location.* The following areas are security zones:

(1) The mooring basin bound by 27°52'53.38" N, 097°16'20.66" W on the northern shoreline; thence to 27°52'45.58" N, 097°16'19.60" W; thence to 27°52'38.55" N, 097°15'45.56" W; thence to 27°52'49.30" N, 097°15'45.44" W; thence west along the shoreline to

27°52'53.38" N, 097°16'20.66" W, while LNGC FUJI LNG is moored.

(2) All navigable waters encompassing a 500-yard radius around the Liquefied Natural Gas Carrier (LNGC) FUJI LNG while transiting outbound with cargo through the La Quinta Channel and Corpus Christi Ship Channel.

(b) *Effective period.* This section is effective without actual notice from May 1, 2019 until May 3, 2019. For the purposes of enforcement, actual notice will be used from April 26, 2019 until May 1, 2019.

(c) *Period of enforcement.* This section will be enforced from the time LNGC FUJI LNG moors and while the vessel is transiting outbound through the La Quinta Channel and Corpus Christi Ship Channel from April 26, 2019 through May 3, 2019.

(d) *Regulations.* (1) The general regulations in § 165.33 apply. Entry into these zones is prohibited unless authorized by the Captain of the Port Sector Corpus Christi (COTP) or a designated representative. A designated representative is a commissioned, warrant, or petty officer of the U.S. Coast Guard assigned to units under the operational control of USCG Sector Corpus Christi.

(2) Persons or vessels desiring to enter or pass through the zones must request permission from the COTP or a designated representative on VHF-FM channel 16 or by telephone at 361-939-0450.

(3) If permission is granted, all persons and vessels shall comply with the instructions of the COTP or designated representative.

(e) *Information broadcasts.* The COTP or a designated representative will inform the public through Broadcast Notices to Mariners (BNMs) of the enforcement times and date for these security zones.

Dated: April 25, 2019.

E. J. Gaynor,

Captain, U.S. Coast Guard, Captain of the Port Sector Corpus Christi.

[FR Doc. 2019-08763 Filed 4-30-19; 8:45 am]

BILLING CODE 9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG-2019-0101]

RIN 1625-AA00

Safety Zone; Sail Grand Prix 2019 Practice Days Safety Zone for Sailing Vessels; San Francisco, CA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone in the navigable waters of San Francisco Bay in San Francisco, CA in support of the Practice Periods for Sail Grand Prix on April 30, 2019 and May 3, 2019. This safety zone ensures the safety of mariners transiting the area from the dangers accompanying high-speed sailing activities associated with the Sail Grand Prix sailing vessels. Unauthorized persons or vessels are prohibited from entering into, transiting through, or remaining in the safety zone without permission from the Captain of the Port San Francisco or a designated representative.

DATES: This rule is effective on April 30, 2019 and May 3, 2019, between 10:30 a.m. and approximately 4:00 p.m. each day.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG-2019-0101 in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions about this rule, call or email Lieutenant Emily K. Rowan, U.S. Coast Guard District 11, Sector San Francisco, at 415-399-7443, SFWaterways@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
DHS Department of Homeland Security
FR Federal Register
TFR Temporary Final Rule
§ Section
COTP Captain of the Port
PATCOM Patrol Commander
U.S.C. United States Code

II. Background, Purpose, and Legal Basis

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to

authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are “impracticable, unnecessary, or contrary to the public interest.” Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule. The Coast Guard received initial notice of this event on October 12, 2018, but Sail Grand Prix Practice Day dates and details were not finalized until March 2019. Because these imperative details had not been finalized, it would have been impractical to publish this rule for public comment.

For similar reasons as those stated above, under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034 (formerly codified at 33 U.S.C. 1231). The COTP San Francisco has determined that the high-speed sailing activities associated with the Sail Grand Prix sailing vessels during the Practice Periods on April 30, 2019 and May 3, 2019, will present a safety concern for other vessels within the practice course. This rule is needed to keep persons and vessels transiting the area away from sailing race vessels, which exhibit unpredictable maneuverability and have a demonstrated likelihood for capsizing during the simulation of racing scenarios. The safety zone will help prevent injuries that may be caused upon impact by these fast-moving vessels. The provisions of this temporary safety zone will not apply to anchored vessels, nor will it exempt racing vessels from any Federal, state or local laws or regulations, including Nautical Rules of the Road.

IV. Discussion of the Rule

This rule establishes a safety zone from 10:30 a.m. to approximately 4:00 p.m. on April 30, 2019 and 10:30 a.m. to approximately 4:00 p.m. on May 3, 2019, or as announced by Broadcast Notice to Mariners. The safety zone will encompass all navigable waters of the San Francisco Bay, from surface to bottom, within the area formed by connecting the following latitude and longitude points in the following order: 37°49'19" N, 122°27'19" W; thence to 37°49'28" N, 122°25'52" W; thence to

37°48'49" N, 122°25'45" W; thence to 37°48'42" N, 122°27'00" W; thence to 37°48'51" N, 122°27'14" W and thence to the point of beginning. The safety zone will temporarily restrict vessel traffic adjacent to the city of San Francisco waterfront in the vicinity of the Golden Gate Bridge and Alcatraz Island and prohibit vessels and persons not participating in the race event from entering the dedicated race area. No vessel or person will be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative.

On October 12, 2018 the LeadDog Marketing Corporation notified the Coast Guard that they plan to conduct the “Sail Grand Prix 2019” in San Francisco Bay. Sail Grand Prix 2019 is a sailing league featuring world-class sailors racing 50-foot foiling catamarans. The inaugural season started in February 2019 in five iconic cities throughout the world, traveling to San Francisco Bay in May 2019. LeadDog Marketing Corporation has applied for a Marine Event Permit to hold the Sail Grand Prix 2019 race event on the waters of San Francisco Bay in California. The Coast Guard has not approved the Marine Event Permit and is still evaluating the application. A separate notice of proposed rulemaking was issued on March 12, 2019 under docket number USCG–2019–0010 with respect to a special local regulation that would address the race periods.

The San Francisco Grand Prix 2019 event will include two official practice days which are scheduled to take place on April 30, 2019 and May 3, 2019, and during these practice days the race footprint will be established as a safety zone between the hours of 10:30 a.m. and approximately 4:00 p.m. or as announced by Broadcast Notice to Mariners.

V. Regulatory Analyses

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

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13771 directs agencies to control regulatory costs through a budgeting process. This rule has not been designated a “significant

regulatory action,” under Executive Order 12866. Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB), and pursuant to OMB guidance it is exempt from the requirements of Executive Order 13771.

This regulatory action determination is based on the fact that the safety zone is limited in duration and is to a narrowly tailored geographic area. In addition, although this rule restricts access to the waters encompassed by the safety zone, it will not have a significant negative impact because the San Francisco Waterfront will not be impacted and vessels will be authorized to transit along the San Francisco Waterfront normally, without the need to request permission pursuant to this rule. Additionally, the local waterway users will be notified via advance public Broadcast Notice to Mariners to ensure that they can plan accordingly. The entities most likely to be affected are commercial vessels and pleasure craft engaged in recreational activities.

B. Impact on Small Entities

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

This rule may affect owners and operators of commercial vessels and pleasure craft engaged in recreational activities and sightseeing. While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in V.A. above, this rule will not have a significant economic impact on any vessel owner or operator. As stated above, the safety zone will be limited in duration, and even while the safety zone is in effect, vessel traffic will be able to pass safely through waters outside the safety zone. The maritime public will be advised in advance of this safety zone via Broadcast Notice to Mariners so they can plan accordingly.

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

jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

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

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

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

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the

aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023-01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321-4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone of limited size and duration. Normally such actions are categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023-01-001-01, Rev. 01. A preliminary Record of Environmental Consideration supporting this determination is available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

G. Protest Activities

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

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 46 U.S.C. 70034, 70051; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.T11-971 to read as follows:

§ 165.T11-971 Safety Zone; Sail Grand Prix 2019 Practice Days, San Francisco, CA.

(a) *Location.* The following area is a safety zone: all navigable waters of the

San Francisco Bay, from surface to bottom, encompassed by a line connecting the following points beginning at: 37°49'19" N, 122°27'19" W; thence to 37°49'28" N, 122°25'52" W; thence to 37°48'49" N, 122°25'45" W; thence to 37°48'42" N, 122°27'00" W; thence to 37°48'51" N, 122°27'14" W and thence to the point of beginning.

(b) *Enforcement period.* The zone described in paragraph (a) of this section will be enforced from 10:30 a.m. until approximately 4:00 p.m. on April 30 and May 3, 2019. The Captain of the Port (COTP) San Francisco will notify the maritime community of periods during which these zones will be enforced via Notice to Mariners in accordance with § 165.7.

(c) *Definitions.* For the purposes of this section, the following definitions apply:

(1) *Patrol Commander* or *PATCOM* means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer, or a Federal, State, or local officer designated by the COTP San Francisco, to assist in the enforcement of the safety zone.

(2) *Designated representative* means a Coast Guard PATCOM, including a Coast Guard coxswain, petty officer, or other officer on a Coast Guard vessel or a Federal, State, or local officer designated by or assisting the COTP in the enforcement of the safety zone.

(d) *Regulations.* (1) Under the general regulations in subpart C of this part, the safety zone is closed to all vessel traffic, except as may be permitted by the COTP or a designated representative. Entering into, transiting through, or anchoring within this safety zone is prohibited unless authorized by the COTP or a designated representative.

(2) Vessel operators desiring to enter or operate within the safety zone must contact the COTP or a designated representative to obtain permission to do so. Vessel operators given permission to enter or operate in the safety zone must comply with all directions given to them by the COTP or a designated representative. Persons and vessels may request permission to enter the safety zones on VHF-23A or through the 24-hour Command Center at telephone (415) 399-3547.

Dated: April 24, 2019.

Marie B. Byrd,

Captain, U.S. Coast Guard, Captain of the Port, San Francisco.

[FR Doc. 2019-08799 Filed 4-30-19; 8:45 am]

BILLING CODE 9110-04-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R09-OAR-2017-0481; FRL-9992-61—Region 9]

Air Quality State Implementation Plans; Arizona: Approval and Conditional Approval of State Implementation Plan Revisions; Maricopa County Air Quality Department; Stationary Source Permits; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; correction.

SUMMARY: The Environmental Protection Agency (EPA) issued a final rule on April 5, 2019, entitled “Air Quality State Implementation Plans; Arizona: Approval and Conditional Approval of State Implementation Plan Revisions; Maricopa County Air Quality Department; Stationary Source Permits.” This document makes a minor change to the April 5, 2019, action to correct an error in the regulatory text for the rule.

DATES: *Effective:* May 6, 2019.

FOR FURTHER INFORMATION CONTACT: Shaheerah Kelly, (415) 947-4156, kelly.shaheerah@epa.gov.

SUPPLEMENTARY INFORMATION:

Background

The EPA issued “Air Quality State Implementation Plans; Arizona: Approval and Conditional Approval of State Implementation Plan Revisions; Maricopa County Air Quality Department; Stationary Source Permits”

as a final rule on April 5, 2019 (84 FR 13543). This final rule approved revisions to the MCAQD’s portion of the SIP for the State of Arizona. The EPA finalized full approval of Rules 210, 220, 240, and 241, and conditional approval of Rules 100 and 200. The revisions updated the MCAQD’s New Source Review permitting program for new and modified sources of air pollution. For more information, please see the EPA’s rulemaking action at <https://www.regulations.gov> under Docket ID No. EPA-R09-OAR-2017-0481, and the **Federal Register** publications for the proposed rule on June 11, 2018 (83 FR 26912), and the final rule on April 5, 2019 (84 FR 13543).

Need for Correction

As published, the regulatory text in the final rule contains an error that would remove previous SIP approvals in the Code of Federal Regulations that were not intended for deletion in this rulemaking. The EPA finds that there is good cause to make this correction without providing for notice and comment because neither notice nor comment is necessary and would not be in the public interest due to the nature of the correction which is minor, technical and does not change the obligations already existing in the rule. The EPA finds that the corrections are merely restoring the existing provisions of Table 4 that were unchanged by this action so that the provisions of Table 4 may be published correctly in the Code of Federal Regulations.

Correction of Publication

In the regulatory text to the final rule for “Air Quality State Implementation Plans; Arizona: Approval and Conditional Approval of State Implementation Plan Revisions; Maricopa County Air Quality Department; Stationary Source Permits” published April 5, 2019 (84 FR 13543), the EPA is correcting the error by setting out the newly revised Table 4 in paragraph (c), in its entirety, rather than the portion of Table 4 that was published.

List of Subjects in 40 CFR Part 52

Administrative practice and procedure, Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur dioxide, Volatile organic compounds.

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

Federal Register Correction

Effective May 6, 2019, in FR Doc. 2019-06384, published at 84 FR 13543 in the issue of April 5, 2019, on page 13548, in the third column, amendatory instruction 3 for § 52.120 is corrected to read as follows:

§ 52.120 [Corrected]

■ 3. Section 52.120 is amended in paragraph (c) by revising Table 4 to read as follows:

§ 52.120 Identification of plan.

* * * * *
(c) * * *

TABLE 4—EPA-APPROVED MARICOPA COUNTY AIR POLLUTION CONTROL REGULATIONS

County citation	Title/subject	State effective date	EPA approval date	Additional explanation
Pre-July 1988 Rule Codification				
Regulation I—General Provisions				
Rule 2, No. 11 “Alteration or Modification”.	Definitions	June 23, 1980	June 18, 1982, 47 FR 26382	Submitted on March 8, 1982. Revised on April 5, 2019, to remove the definition for No. 33 “Existing Source” which was superseded by Rule 100 submitted on May 18, 2016.
Rule 2, No. 27 “Dust”	Definitions	June 23, 1980	April 12, 1982, 47 FR 15579	Submitted on June 23, 1980. Revised on April 5, 2019. Removed 71 defined terms which were superseded by Rule 100 submitted on May 18, 2016.
Rule 2, No. 29 “Emission”	Definitions	June 23, 1980	April 12, 1982, 47 FR 15579	Submitted on June 23, 1980. Revised on April 5, 2019. Removed 71 defined terms which were superseded by Rule 100 submitted on May 18, 2016.

TABLE 4—EPA-APPROVED MARICOPA COUNTY AIR POLLUTION CONTROL REGULATIONS—Continued

County citation	Title/subject	State effective date	EPA approval date	Additional explanation
Rule 2, No. 34 “Existing Source Performance Standards”.	Definitions	June 23, 1980	April 12, 1982, 47 FR 15579	Submitted on June 23, 1980. Revised on April 5, 2019. Removed 71 defined terms which were superseded by Rule 100 submitted on May 18, 2016.
Rule 2, No. 37 “Fly Ash”	Definitions	June 23, 1980	April 12, 1982, 47 FR 15579	Submitted on June 23, 1980. Revised on April 5, 2019. Removed 71 defined terms which were superseded by Rule 100 submitted on May 18, 2016.
Rule 2, No. 39 “Fuel”	Definitions	June 23, 1980	April 12, 1982, 47 FR 15579	Submitted on June 23, 1980. Revised on April 5, 2019. Removed 71 defined terms which were superseded by Rule 100 submitted on May 18, 2016.
Rule 2, No. 42 “Fume”	Definitions	June 23, 1980	April 12, 1982, 47 FR 15579	Submitted on June 23, 1980. Revised on April 5, 2019. Removed 71 defined terms which were superseded by Rule 100 submitted on May 18, 2016.
Rule 2, No. 55 “Motor Vehicle”.	Definitions	June 23, 1980	April 12, 1982, 47 FR 15579	Submitted on June 23, 1980. Revised on April 5, 2019. Removed 71 defined terms which were superseded by Rule 100 submitted on May 18, 2016.
Rule 2, No. 59 “Non-Point Source”.	Definitions	June 23, 1980	April 12, 1982, 47 FR 15579	Submitted on June 23, 1980. Revised on April 5, 2019. Removed 71 defined terms which were superseded by Rule 100 submitted on May 18, 2016.
Rule 2, No. 60 “Odors”	Definitions	June 23, 1980	April 12, 1982, 47 FR 15579	Submitted on June 23, 1980. Revised on April 5, 2019. Removed 71 defined terms which were superseded by Rule 100 submitted on May 18, 2016.
Rule 2, No. 64 “Organic Solvent”.	Definitions	June 23, 1980	April 12, 1982, 47 FR 15579	Submitted on June 23, 1980. Revised on April 5, 2019. Removed 71 defined terms which were superseded by Rule 100 submitted on May 18, 2016.
Rule 2, No. 70 “Plume”,	Definitions	June 23, 1980	April 12, 1982, 47 FR 15579	Submitted on June 23, 1980. Revised on April 5, 2019. Removed 71 defined terms which were superseded by Rule 100 submitted on May 18, 2016.
Rule 2, No. 80 “Smoke”,	Definitions	June 23, 1980	April 12, 1982, 47 FR 15579	Submitted on June 23, 1980. Revised on April 5, 2019. Removed 71 defined terms which were superseded by Rule 100 submitted on May 18, 2016.
Rule 2, No. 91 “Vapor”	Definitions	June 23, 1980	April 12, 1982, 47 FR 15579	Submitted on June 23, 1980. Revised on April 5, 2019. Removed 71 defined terms which were superseded by Rule 100 submitted on May 18, 2016.

Regulation II—Permits

Rule 21, Section D.1 (AZ R9–3–101, Paragraph 52 “Dust”).	Procedures for obtaining an installation permit.	October 25, 1982	August 10, 1988, 53 FR 30224; vacated; restored on January 29, 1991, 56 FR 3219.	Submitted on March 4, 1983. † Revised on April 5, 2019. Removed 152 defined terms which were superseded by Rule 100 submitted on May 18, 2016.
Rule 21, Section D.1 (AZ R9–3–101, Paragraph 56 “Emission”).	Procedures for obtaining an installation permit.	October 25, 1982	August 10, 1988, 53 FR 30224; vacated; restored on January 29, 1991, 56 FR 3219.	Submitted on March 4, 1983. † Revised on April 5, 2019. Removed 152 defined terms which were superseded by Rule 100 submitted on May 18, 2016.

TABLE 4—EPA-APPROVED MARICOPA COUNTY AIR POLLUTION CONTROL REGULATIONS—Continued

County citation	Title/subject	State effective date	EPA approval date	Additional explanation
Rule 21, Section D.1 (AZ R9–3–101, Paragraph 63 “Existing Source Performance Standards”).	Procedures for obtaining an installation permit.	October 25, 1982	August 10, 1988, 53 FR 30224; vacated; restored on January 29, 1991, 56 FR 3219.	Submitted on March 4, 1983. † Revised on April 5, 2019. Removed 152 defined terms which were superseded by Rule 100 submitted on May 18, 2016.
Rule 21, Section D.1 (AZ R9–3–101, Paragraph 70 “Fuel”).	Procedures for obtaining an installation permit.	October 25, 1982	August 10, 1988, 53 FR 30224; vacated; restored on January 29, 1991, 56 FR 3219.	Submitted on March 4, 1983. † Revised on April 5, 2019. Removed 152 defined terms which were superseded by Rule 100 submitted on May 18, 2016.
Rule 21, Section D.1 (AZ R9–3–101, Paragraph 71 “Fuel Burning Equipment”).	Procedures for obtaining an installation permit.	October 25, 1982	August 10, 1988, 53 FR 30224; vacated; restored on January 29, 1991, 56 FR 3219.	Submitted on March 4, 1983. † Revised on April 5, 2019. Removed 152 defined terms which were superseded by Rule 100 submitted on May 18, 2016.
Rule 21, Section D.1 (AZ R9–3–101, Paragraph 74 “Fume”).	Procedures for obtaining an installation permit.	October 25, 1982	August 10, 1988, 53 FR 30224; vacated; restored on January 29, 1991, 56 FR 3219.	Submitted on March 4, 1983. † Revised on April 5, 2019. Removed 152 defined terms which were superseded by Rule 100 submitted on May 18, 2016.
Rule 21, Section D.1 (AZ R9–3–101, Paragraph 103 “Motor Vehicle”).	Procedures for obtaining an installation permit.	October 25, 1982	August 10, 1988, 53 FR 30224; vacated; restored on January 29, 1991, 56 FR 3219.	Submitted on March 4, 1983. † Revised on April 5, 2019. Removed 152 defined terms which were superseded by Rule 100 submitted on May 18, 2016.
Rule 21, Section D.1 (AZ R9–3–101, Paragraph 114 “Non-Point Source”).	Procedures for obtaining an installation permit.	October 25, 1982	August 10, 1988, 53 FR 30224; vacated; restored on January 29, 1991, 56 FR 3219.	Submitted on March 4, 1983. † Revised on April 5, 2019. Removed 152 defined terms which were superseded by Rule 100 submitted on May 18, 2016.
Rule 21, Section D.1 (AZ R9–3–101, Paragraph 122 “Photochemically Reactive Solvent”).	Procedures for obtaining an installation permit.	October 25, 1982	August 10, 1988, 53 FR 30224; vacated; restored on January 29, 1991, 56 FR 3219.	Submitted on March 4, 1983. † Revised on April 5, 2019. Removed 152 defined terms which were superseded by Rule 100 submitted on May 18, 2016.
Rule 21, Section D.1 (AZ R9–3–101, Paragraph 123 “Plume”).	Procedures for obtaining an installation permit.	October 25, 1982	August 10, 1988, 53 FR 30224; vacated; restored on January 29, 1991, 56 FR 3219.	Submitted on March 4, 1983. † Revised on April 5, 2019. Removed 152 defined terms which were superseded by Rule 100 submitted on May 18, 2016.
Rule 21, Section D.1 (AZ R9–3–101, Paragraph 128 “Process”).	Procedures for obtaining an installation permit.	October 25, 1982	August 10, 1988, 53 FR 30224; vacated; restored on January 29, 1991, 56 FR 3219.	Submitted on March 4, 1983. † Revised on April 5, 2019. Removed 152 defined terms which were superseded by Rule 100 submitted on May 18, 2016.
Rule 21, Section D.1 (AZ R9–3–101, Paragraph 129 “Process Source”).	Procedures for obtaining an installation permit.	October 25, 1982	August 10, 1988, 53 FR 30224; vacated; restored on January 29, 1991, 56 FR 3219.	Submitted on March 4, 1983. † Revised on April 5, 2019. Removed 152 defined terms which were superseded by Rule 100 submitted on May 18, 2016.
Rule 21, Section D.1 (AZ R9–3–101, Paragraph 150 “Smoke”).	Procedures for obtaining an installation permit.	October 25, 1982	August 10, 1988, 53 FR 30224; vacated; restored on January 29, 1991, 56 FR 3219.	Submitted on March 4, 1983. † Revised on April 5, 2019. Removed 152 defined terms which were superseded by Rule 100 submitted on May 18, 2016.
Rule 21, Section D.1 (AZ R9–3–101, Paragraph 152 “Soot”).	Procedures for obtaining an installation permit.	October 25, 1982	August 10, 1988, 53 FR 30224; vacated; restored on January 29, 1991, 56 FR 3219.	Submitted on March 4, 1983. † Revised on April 5, 2019. Removed 152 defined terms which were superseded by Rule 100 submitted on May 18, 2016.
Rule 21, Section D.1 (AZ R9–3–101, Paragraph 160 “Supplementary Control System (SCS)”).	Procedures for obtaining an installation permit.	October 25, 1982	August 10, 1988, 53 FR 30224; vacated; restored on January 29, 1991, 56 FR 3219.	Submitted on March 4, 1983. † Revised on April 5, 2019. Removed 152 defined terms which were superseded by Rule 100 submitted on May 18, 2016.
Rule 21, Section D.1 (AZ R9–3–101, Paragraph 166 “Vapor”).	Procedures for obtaining an installation permit.	October 25, 1982	August 10, 1988, 53 FR 30224; vacated; restored on January 29, 1991, 56 FR 3219.	Submitted on March 4, 1983. † Revised on April 5, 2019. Removed 152 defined terms which were superseded by Rule 100 submitted on May 18, 2016.

TABLE 4—EPA-APPROVED MARICOPA COUNTY AIR POLLUTION CONTROL REGULATIONS—Continued

County citation	Title/subject	State effective date	EPA approval date	Additional explanation
Rule 21, Section D.1 (AZ R9–3–101, Paragraph 167 “Vapor Pressure”).	Procedures for obtaining an installation permit.	October 25, 1982	August 10, 1988, 53 FR 30224; vacated; restored on January 29, 1991, 56 FR 3219.	Submitted on March 4, 1983. † Revised on April 5, 2019. Removed 152 defined terms which were superseded by Rule 100 submitted on May 18, 2016.
Rule 21, Section D.1 (AZ R9–3–101, Paragraph 168 “Visible Emissions”).	Procedures for obtaining an installation permit.	October 25, 1982	August 10, 1988, 53 FR 30224; vacated; restored on January 29, 1991, 56 FR 3219.	Submitted on March 4, 1983. † Revised on April 5, 2019. Removed 152 defined terms which were superseded by Rule 100 submitted on May 18, 2016.
Rule 22 (paragraphs A, C, D, F, G, and H).	Permit Denial-Action-Transfer-Expiration-Posting-Revocation-Compliance.	August 12, 1971 ...	July 27, 1972, 37 FR 15080	Paragraphs B and E have been superseded.
Rule 27	Performance tests	June 23, 1980	April 12, 1982, 47 FR 15579	Submitted on June 23, 1980.
Rule 28	Permit Fees	March 8, 1982	June 18, 1982, 47 FR 26382	Submitted on March 8, 1982.
Regulation III—Control of Air Contaminants				
Rule 32, Paragraph G	Other Industries	October 1, 1975 ...	April 12, 1982, 47 FR 15579	Paragraph G of Rule 32 (“Odors and Gaseous Emissions”) is titled “Other Industries.” Submitted on June 23, 1980.
Rule 32, Paragraph H	Fuel Burning Equipment for Producing Electric Power (Sulfur Dioxide).	October 1, 1975 ...	April 12, 1982, 47 FR 15579	Paragraph H of Rule 32 (“Odors and Gaseous Emissions”) is titled “Fuel Burning Equipment for Producing Electric Power (Sulfur Dioxide).” Submitted on June 23, 1980.
Rule 32, Paragraph J	Operating Requirements for an Asphalt Kettle.	June 23, 1980	April 12, 1982, 47 FR 15579	Paragraph J of Rule 32 (“Odors and Gaseous Emissions”) is titled “Operating Requirements for an Asphalt Kettle.” Submitted on June 23, 1980.
Rule 32, Paragraph K	Emissions of Carbon Monoxide.	June 23, 1980	April 12, 1982, 47 FR 15579	Paragraph K of Rule 32 (“Odors and Gaseous Emissions”) is titled “Emissions of Carbon Monoxide.” Submitted on June 23, 1980.
Rule 32 (Paragraphs A through F only).	Odors and Gaseous Emissions.	August 12, 1971 ...	July 27, 1972, 37 FR 15080	Paragraph G was superseded by approval of paragraph J of amended Rule 32. Submitted on May 26, 1972.
Rule 35	Incinerators	August 12, 1971 ...	July 27, 1972, 37 FR 15080	Superseded by approval of Maricopa Rule 313 published on September 25, 2014, except for Hospital/Medical/Infectious Waste Incinerators. Submitted on May 26, 1972.
Regulation IV—Production of Records; Monitoring; Testing and Sampling Facilities				
Rule 41, paragraph A	Monitoring	August 12, 1971 ...	July 27, 1972, 37 FR 15080	Submitted on May 26, 1972.
Rule 41, paragraph B	Monitoring	October 2, 1978 ...	April 12, 1982, 47 FR 15579	Submitted on January 18, 1979.
Rule 42	Testing and Sampling.	August 12, 1971 ...	July 27, 1972, 37 FR 15080	Submitted on May 26, 1972.
Regulation VII—Emergency Procedures				
Rule 74, paragraph C	Public Notification	June 23, 1980	April 12, 1982, 47 FR 15579	Submitted on June 23, 1980. Paragraphs A, B, and D superseded by approval of Rule 510 published on November 9, 2009.
Regulation VIII—Validity and Operation				
Rule 81	Operation	August 12, 1971 ...	July 27, 1972, 37 FR 15080	Submitted on May 26, 1972.

TABLE 4—EPA-APPROVED MARICOPA COUNTY AIR POLLUTION CONTROL REGULATIONS—Continued

County citation	Title/subject	State effective date	EPA approval date	Additional explanation
Post-July 1988 Rule Codification				
Regulation I—General Provisions				
Rule 100 (except Sections 200.24, 200.73, 200.104(c)).	General Provisions and Definitions.	February 3, 2016 ..	April 5, 2019, (84 FR 13543)	Submitted on May 18, 2016.
Rule 140	Excess Emissions	Revised September 5, 2001.	August 27, 2002, 67 FR 54957.	Submitted on February 22, 2002.
Regulation II—Permits and Fees				
Rule 200	Permit Requirements.	February 3, 2016 ..	April 5, 2019, (84 FR 13543)	Submitted on May 18, 2016.
Rule 210	Title V Permit Provisions.	February 3, 2016 ..	April 5, 2019, (84 FR 13543)	Submitted on May 18, 2016.
Rule 220	Non-Title V Permit Provisions.	February 3, 2016 ..	April 5, 2019, (84 FR 13543)	Submitted on May 18, 2016.
Rule 240 (except Section 305).	Federal Major New Source Review (NSR).	February 3, 2016 ..	April 5, 2019, (84 FR 13543)	Submitted on May 18, 2016.
Rule 241	Minor New Source Review (NSR).	February 3, 2016 ..	April 5, 2019, (84 FR 13543)	Submitted on November 25, 2016.
Rule 242	Emissions Offsets Generated by the Voluntary Paving of Unpaved Roads.	June 20, 2007	August 6, 2007, 72 FR 43538.	Submitted on July 5, 2007.
Regulation III—Control of Air Contaminants				
Rule 300	Visible Emissions	March 12, 2008	July 28, 2010, 75 FR 44141	Submitted on July 10, 2008.
Rule 310	Fugitive Dust From Dust-Generating Operations.	January 27, 2010	December 15, 2010, 75 FR 78167.	Submitted on April 12, 2010. Cites appendices C and F, which are listed separately in this table.
Rule 310.01	Fugitive Dust From Non-Traditional Sources of Fugitive Dust.	January 27, 2010	December 15, 2010, 75 FR 78167.	Submitted on April 12, 2010. Cites appendix C, which is listed separately in this table.
Rule 311	Particulate matter from process industries.	August 2, 1993	April 10, 1995, 60 FR 18010. Vacated by <i>Ober</i> decision. Restored August 4, 1997, 62 FR 41856.	Submitted on March 3, 1994.
Rule 312	Abrasive Blasting ..	July 13, 1988	January 4, 2001, 66 FR 730	Submitted on January 4, 1990.
Rule 313	Incinerators, Burn-Off Ovens and Crematories.	May 9, 2012	September 25, 2014, 79 FR 57445.	Submitted on August 27, 2012.
Rule 314	Open Outdoor Fires and Indoor Fireplaces at Commercial and Institutional Establishments.	March 12, 2008	November 9, 2009, 74 FR 57612.	Submitted on July 10, 2008.
Rule 316	Nonmetallic Mineral Processing.	March 12, 2008	November 13, 2009, 74 FR 58553.	Submitted on July 10, 2008.
Rule 318	Approval of Residential Woodburning Devices.	April 21, 1999	November 8, 1999, 64 FR 60678.	Submitted on August 4, 1999.
Rule 322	Power Plant Operations.	October 17, 2007	October 14, 2009, 74 FR 52693.	Submitted on January 9, 2008.
Rule 323	Fuel Burning Equipment from Industrial/Commercial/Institutional (ICI) Sources.	October 17, 2007	October 14, 2009, 74 FR 52693.	Submitted on January 9, 2008.
Rule 324	Stationary Internal Combustion (IC) Engines.	October 17, 2007	October 14, 2009, 74 FR 52693.	Submitted on January 9, 2008.

TABLE 4—EPA-APPROVED MARICOPA COUNTY AIR POLLUTION CONTROL REGULATIONS—Continued

County citation	Title/subject	State effective date	EPA approval date	Additional explanation
Rule 325	Brick and Structural Clay Products (BSCP) Manufacturing.	August 10, 2005 ...	August 21, 2007, 72 FR 46564.	Element of the Revised PM-10 State Implementation Plan for the Salt River Area, September 2005. Submitted on October 7, 2005.
Rule 331	Solvent Cleaning ..	April 21, 2004	December 21, 2004, 69 FR 76417.	Submitted on July 28, 2004.
Rule 333	Petroleum Solvent Dry Cleaning.	June 19, 1996	February 9, 1998, 63 FR 6489.	Submitted on February 26, 1997.
Rule 334	Rubber Sports Ball Manufacturing.	June 19, 1996	February 9, 1998, 63 FR 6489.	Submitted on February 26, 1997.
Rule 335	Architectural Coatings.	July 13, 1988	January 6, 1992, 57 FR 354	Submitted on January 4, 1990.
Rule 336	Surface Coating Operations.	April 7, 1999	September 20, 1999, 64 FR 50759.	Submitted on August 4, 1999.
Rule 337	Graphic Arts	November 20, 1996.	February 9, 1998, 63 FR 6489.	Submitted on March 4, 1997.
Rule 338	Semiconductor Manufacturing.	June 19, 1996	February 9, 1998, 63 FR 6489.	Submitted on February 26, 1997.
Rule 339	Vegetable Oil Extract Processes.	November 16, 1992.	February 9, 1998, 63 FR 6489.	Submitted on February 4, 1993.
Rule 340	Cutback and Emulsified Asphalt.	September 21, 1992.	February 1, 1996, 61 FR 3578.	Submitted on November 13, 1992.
Rule 341	Metal Casting	August 5, 1994	February 12, 1996, 61 FR 5287.	Submitted on August 16, 1994.
Rule 342	Coating Wood Furniture and Fixtures.	November 20, 1996.	February 9, 1998, 63 FR 6489.	Submitted on March 4, 1997.
Rule 343	Commercial Bread Bakeries.	February 15, 1995	March 17, 1997, 62 FR 12544.	Submitted on August 31, 1995.
Rule 344	Automobile Windshield Washer Fluid.	April 7, 1999	November 30, 2001, 66 FR 59699.	Submitted on August 4, 1999.
Rule 346	Coating Wood Millwork.	November 20, 1996.	February 9, 1998, 63 FR 6489.	Submitted on March 4, 1997.
Rule 347	Ferrous Sand Casting.	March 4, 1998	June 12, 2000, 65 FR 36788	Submitted on August 4, 1999.
Rule 348	Aerospace Manufacturing and Rework Operations.	April 7, 1999	September 20, 1999, 64 FR 50759.	Submitted on August 4, 1999.
Rule 349	Pharmaceutical, Cosmetic, and Vitamin Manufacturing Operations.	April 7, 1999	June 8, 2001, 66 FR 30815	Submitted on August 4, 1999.
Rule 350	Storage of Organic Liquids at Bulk Plants and Terminals.	April 6, 1992	September 5, 1995, 60 FR 46024.	Submitted on June 29, 1992.
Rule 351	Loading of Organic Liquids.	February 15, 1995	February 9, 1998, 63 FR 6489.	Submitted on August 31, 1995.
Rule 352	Gasoline Delivery Vessels.	November 16, 1992.	September 5, 1995, 60 FR 46024.	Submitted on February 4, 1993.
Rule 353	Transfer of Gasoline into Stationary Dispensing Tanks.	April 6, 1992	February 1, 1996, 61 FR 3578.	Submitted on June 29, 1992.
Rule 358	Polystyrene Foam Operations.	April 20, 2005	May 26, 2005, 70 FR 30370	Submitted on April 25, 2005.

Regulation V—Air Quality Standards and Area Classification

Rule 510, excluding Appendix G to the Maricopa County Air Pollution Control Regulations.	Air Quality Standards.	November 1, 2006	November 9, 2009, 74 FR 57612.	Submitted on June 7, 2007.
--	------------------------	------------------	--------------------------------	----------------------------

TABLE 4—EPA-APPROVED MARICOPA COUNTY AIR POLLUTION CONTROL REGULATIONS—Continued

County citation	Title/subject	State effective date	EPA approval date	Additional explanation
Regulation VI—Emergency Episodes				
Rule 600	Emergency Episodes.	July 13, 1988	March 18, 1999, 64 FR 13351.	Submitted on January 4, 1990.
Appendices to Maricopa County Air Pollution Control Rules and Regulations				
Appendix C	Fugitive Dust Test Methods.	March 26, 2008	December 15, 2010, 75 FR 78167.	Cited in Rules 310 and 310.01. Submitted on July 10, 2008.
Appendix F	Soil Designations ..	April 7, 2004	August 21, 2007, 72 FR 46564.	Cited in Rule 310. Submitted on October 7, 2005.

† Vacated by the U.S. Court of Appeals for the Ninth Circuit in *Delaney v. EPA*, 898 F.2d 687 (9th Cir. 1990). Restored by document published January 29, 1991.

* * * * *

Dated: April 18, 2019.

Deborah Jordan,

Acting Regional Administrator,

Region IX.

[FR Doc. 2019-08734 Filed 4-30-19; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA-HQ-OPP-2017-0476; FRL-9991-75]

Bentazon; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a tolerance for residues of bentazon in or on pea, dry, seed. Interregional Project Number 4 (IR-4) requested this tolerance under the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: This regulation is effective May 1, 2019. Objections and requests for hearings must be received on or before July 1, 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-2017-0476, 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 Publishing 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-2017-0476 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 July 1, 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-2017-0476, 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 December 15, 2017 (82 FR 59604) (FRL-9970-50), EPA issued a document pursuant to FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 7E8597) by IR-4, Rutgers, The State University of New Jersey, 500 College Road East, Suite 201 W, Princeton, NJ 08540. The petition requested that 40 CFR 180.355 be amended by increasing the existing tolerance for residues of the herbicide bentazon, (3-isopropyl-1*H*-2,1,3-benzothiadiazin-4(3*H*)-one-2,2-dioxide) and its 6- and 8-hydroxy metabolites, in or on Pea, dry, seed to 3.0 parts per million (ppm). That document referenced a summary of the petition prepared by BASF Corporation, the registrant, which is now available in the docket, <http://www.regulations.gov>. There were no comments received in response to the notice of filing.

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 bentazon including exposure resulting from the tolerances established by this action. EPA’s assessment of exposures and risks associated with bentazon follows.

A. Toxicological Profile

EPA has evaluated the available toxicity database 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.

Bentazon elicits low acute lethality by the oral, inhalation, and dermal routes of exposure. It is moderately irritating to the eye, slightly irritating to the skin and is also a dermal sensitizer. In a 21-day dermal toxicity study of bentazon, no effects were observed up to 1,000 mg/kg/day.

In the acute neurotoxicity study, a clear NOAEL was established for the effect observed in decreased motor activity at the mid- and high-dose groups in males on day 0. There were no effects in the subchronic neurotoxicity study, and no evidence of neurotoxicity observed in the rest of the toxicology database.

In subchronic studies in rats and dogs and in chronic studies in all species, the most toxicologically significant effects were changes in hematological/coagulation parameters following oral administration of bentazon. In rats, subchronic oral exposure caused increased thromboplastin and prothrombin times (PT). In dogs, hemoglobin, hematocrit, and erythrocyte counts were significantly reduced in animals at both 6 weeks and at term. PT and reticulocytes were also elevated.

The effects in the chronic studies in rats, mice and dogs were similar to those in subchronic studies. In a chronic/oncogenicity study in mice, PT were elevated. In addition, the incidence of hemorrhage in liver and heart was increased. In a chronic/oncogenicity study in rats, partial thromboplastin times (PTT) were elevated. In a one-year feeding study in dogs, at the highest dose tested, there were clinical signs (emaciation, dehydration, bloody stool, pale mucous membranes, moderated activity) and a slight to severe anemia (decreased hemoglobin, hematocrit, and erythrocyte count, decreased reticulocytes, platelets, leukocytes, PTT, and abnormal red cell morphology) during the first 13 weeks.

In the rat developmental toxicity study, maternal effects consisted of increased post-implantation loss and fetal resorptions, and developmental effects consisted of skeletal variations and reduced fetal weights. In the rabbit

developmental toxicity study, at the highest dose tested, maternal effects consisted of partial abortions with resorptions, and developmental effects consisted of an increased incidence of no living fetuses. In the two-generation reproductive toxicity study in rats, there was an increased quantitative offspring susceptibility. Offspring toxicity manifested as reduced absolute pup weights during lactation at a dose lower than where parental systemic toxicity was observed. The sole parental effect was an increased incidence of kidney mineralization and liver microgranuloma. In rats and rabbits, fetal effects occurred at doses that caused maternal toxicity.

Bentazon was found not to be mutagenic. It is classified as a Group “E” chemical (evidence of non-carcinogenicity for humans) based upon lack of evidence of carcinogenicity in rats and mice.

Specific information on the studies received and the nature of the adverse effects caused by bentazon as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies can be found at <http://www.regulations.gov> in document SUBJECT: Sodium Bentazon—Preliminary Human Health Risk Assessment for Registration Review at page 32 in docket ID number EPA-HQ-OPP-2017-0476.

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://](http://www2.epa.gov/pesticide-science-and-assessing-pesticide-risks/assessing-human-health-risk-pesticides)

www2.epa.gov/pesticide-science-and-assessing-pesticide-risks/assessing-human-health-risk-pesticides.

A summary of the toxicological endpoints for bentazon used for human risk assessment is shown in the Table of this unit.

TABLE—SUMMARY OF TOXICOLOGICAL DOSES AND ENDPOINTS FOR BENTAZON FOR USE IN HUMAN HEALTH RISK ASSESSMENT

Exposure/scenario	Point of departure and uncertainty/safety factors	RfD, PAD, LOC for risk assessment	Study and toxicological effects
Acute dietary (General population, including infants and children).	NOAEL = 50 mg/kg/day. UF _A = 10x UF _H = 10x FQPA SF = 1x	Acute RfD = 0.5 mg/kg/day. aPAD = 0.05 mg/kg/day	Acute neurotoxicity-Rat. LOAEL = 150 mg/kg/day based on decreased motor activity in males on study day 0.
Chronic dietary (All populations)	NOAEL= 15 mg/kg/day. UF _A = 10x UF _H = 10x FQPA SF = 1x	Chronic RfD = 0.15 mg/kg/day. cPAD = 0.15 mg/kg/day	Reproduction and fertility effects—Rat Offspring LOAEL = 62 mg/kg/day based on decreased absolute pup body weights during lactation.
Incidental oral short- (1–30 days) and Intermediate—term (1–6 months).	NOAEL= 15 mg/kg/day. UF _A = 10X UF _H = 10X FQPA SF= 1X	Residential LOC for MOE = 100.	Reproduction and fertility effects—Rat Offspring LOAEL = 62 mg/kg/day based on decreased absolute pup body weights during lactation.
Inhalation short- (1–30 days) and Intermediate-term (1–6 months).	NOAEL= 15 mg/kg/day. UF _A = 10x UF _H = 10x FQPA SF = 1x	Residential LOC for MOE = 100.	Reproduction and fertility effects—Rat Offspring LOAEL = 62 mg/kg/day based on decreased absolute pup body weights during lactation.
Cancer (Oral, dermal, inhalation).	Bentazon is classified as a Group “E” chemical (evidence of non-carcinogenicity for humans) based upon lack of evidence of carcinogenicity in rats and mice		

FQPA SF = Food Quality Protection Act Safety Factor. LOAEL = lowest-observed-adverse-effect-level. LOC = level of concern. mg/kg/day = milligram/kilogram/day. MOE = margin of exposure. NOAEL = no-observed-adverse-effect-level. PAD = population adjusted dose (a = acute, c = chronic). RfD = reference dose. UF = uncertainty factor. UF_A = extrapolation from animal to human (interspecies). UF_{DB} = to account for the absence of data or other data deficiency. UF_H = potential variation in sensitivity among members of the human population (intraspecies). UF_L = use of a LOAEL to extrapolate a NOAEL. UF_S = use of a short-term study for long-term risk assessment.

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* In evaluating dietary exposure to bentazon, EPA considered exposure under the petitioned-for tolerances as well as all existing bentazon tolerances in 40 CFR 180.355. EPA assessed dietary exposures from bentazon 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 bentazon. In estimating acute dietary exposure, EPA used 2003–2008 food consumption information from the United States Department of Agriculture (USDA) National Health and Nutrition Survey/What We Eat in America (NHANES/WWEIA). The acute dietary (food and drinking water) exposure assessment was conducted using the Dietary Exposure Evaluation Model

software with the Food Commodity Intake Database (DEEM–FCID), Version 3.16. As to residue levels in food, EPA assumed 100 percent crop treated (PCT) and tolerance-level residues for all existing and proposed commodities.

ii. *Chronic exposure.* In conducting the chronic dietary exposure assessment EPA used the 2003–2008 food consumption information from the USDA NHANES/WWEIA. The chronic dietary (food and drinking water) exposure assessment was conducted using DEEM–FCID, Version 3.16. As to residue levels in food, EPA assumed 100 PCT and tolerance-level residues for all existing and proposed commodities.

iii. *Cancer.* Based on the data summarized in Unit III.A., EPA has concluded that bentazon 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.* EPA did not use anticipated residue or PCT

information in the dietary assessment for bentazon. Tolerance level residues and 100 PCT were assumed for all food commodities.

2. *Dietary exposure from drinking water.* The Agency used screening level water exposure models in the dietary exposure analysis and risk assessment for bentazon in drinking water. These simulation models take into account data on the physical, chemical, and fate/transport characteristics of bentazon. 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 1 Rice Model and application rate of two applications of 1.1 pounds (lbs) active ingredient (ai) per acre for a total application of 2.2 lbs ai/acre/year and a soil adsorption coefficient of 0.898, the estimated drinking water concentrations (EDWCs) of bentazon for acute and chronic exposures are estimated to be 2,112

parts per billion (ppb) for surface water which represents “worst case”. The Agency believes all of the other uses of bentazon would produce EDWCs lower than this conservative value for both surface and groundwater because the Tier 1 Rice Model does not consider degradation in the rice paddy and EDWCs will not be adjusted by the percent crop adjustment (PCA) factors.

Modeled estimates of drinking water concentrations were directly entered into the dietary exposure model. For acute dietary risk assessment, the water concentration value of 2,112 ppb was used to assess the contribution to drinking water. For chronic dietary risk assessment, the water concentration of value 2,112 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).

Bentazon is currently registered for the following uses that could result in residential exposures: Turf and ornamentals. EPA developed a quantitative exposure assessment for adult residential handlers and post-application exposure to children, based on the following scenarios.

For adult residential handler exposure estimates, these three scenarios were assessed: (1) Mixing/loading/applying liquids to turf and gardens/trees with manually-pressurized handwand; (2) mixing/loading/applying liquids to turf and gardens/trees with hose-end sprayer; and (3) mixing/loading/applying liquids turf and gardens/trees with backpack.

Since there is no dermal hazard, a quantitative residential handler dermal assessment was not conducted. The inhalation exposure risk estimates for residential handlers at baseline for all scenarios resulted in all MOEs $\geq 75,000$. EPA’s level of concern for bentazon is an MOE < 100 .

The quantitative exposure assessment for residential post-application exposures, i.e., hand-to-mouth; object to mouth; and short- and intermediate-term incidental soil ingestion, is based on the scenario of physical activities on turf for children 1 to < 2 years old (incidental oral).

The lifestages selected for each post-application scenario are based on an analysis provided in EPA’s 2012 Residential Standard Operating Procedures (SOPs). While not the only lifestage potentially exposed for these post-application scenarios, the lifestage that is included in the quantitative

assessment is health protective for the exposures estimates for any other potentially exposed lifestage. All risk estimates for post-application exposure resulted in MOEs $\geq 1,000$ for children.

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 FFDCFA 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 not found bentazon to share a common mechanism of toxicity with any other substances, and bentazon does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has assumed that bentazon does not have a common mechanism of toxicity with other substances. For information regarding EPA’s efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see EPA’s website at <http://www2.epa.gov/pesticide-science-and-assessing-pesticide-risks/cumulative-assessment-risk-pesticides>.

D. Safety Factor for Infants and Children

1. *In general.* Section 408(b)(2)(C) of FFDCFA 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.* In the rat developmental toxicity study, skeletal variations and reduced fetal weights were observed. In the two-generation reproductive toxicity study in rats, there was evidence of increased quantitative offspring susceptibility

based on low pup weights. In the rabbit developmental toxicity study, developmental effects resulted in an increased incidence of no living fetuses at the highest dose tested. Offspring toxicity manifested as reduced absolute pup weights during lactation at a dose lower than where parental systemic toxicity was observed. In rats and rabbits, fetal effects occurred at doses that caused maternal toxicity.

3. *Conclusion.* EPA has concluded that reliable data show 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 available toxicity database for bentazon is complete for FQPA evaluation. Developmental toxicity studies in rats and rabbits, a 2-generation reproduction study in rats, and neurotoxicity studies in rats are available for FQPA consideration.

ii. There is no indication that bentazon should be classified as a neurotoxic chemical. The acute neurotoxicity study established a clear NOAEL for the observed effect (decreased motor activity). However, no evidence of neurotoxicity was observed in the remaining toxicology database, including the subchronic neurotoxicity study. There is no need for a developmental neurotoxicity study or additional UFs to account for neurotoxicity.

iii. There is evidence of increased quantitative offspring susceptibility. However, the concern is low because of (1) a clear NOAEL is established in the offspring; (2) the dose-response for these effects are well defined and characterized; and (3) endpoints selected for risk assessment are protective of the observed offspring and developmental effects. There are no residual uncertainties for pre- and post-natal toxicity.

iv. There are no residual uncertainties identified in the exposure databases. The dietary food exposure assessments were performed based on 100 PCT and tolerance-level residues. The residential exposure assessment is considered health-protective. EPA made conservative (protective) assumptions in the ground and surface water modeling used to assess exposure to bentazon in drinking water. EPA used similarly conservative assumptions to assess post-application exposure of children as well as incidental oral exposure. These assessments will not underestimate the exposure and risks posed by bentazon.

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 bentazon will occupy 73% of the aPAD for all infants less than one year 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 bentazon from food and water will utilize 78% of the cPAD for all infants less than one year old, the population group receiving the greatest exposure. None of the residential exposure scenarios described in Unit III.C.3 result in long-term exposure. Therefore, the chronic risk aggregate risk assessment is equivalent to the chronic dietary risk assessment.

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

Bentazon is currently registered for uses on turf and ornamentals that could result in short-term residential exposures only, as intermediate-term residential exposures are not expected from registered uses. Therefore, EPA determined that it is appropriate to aggregate chronic exposure through food and water with short-term residential exposures to bentazon.

For short-term exposures, incidental oral and inhalation exposure risk assessments are appropriate to aggregate since the PODs for these routes are based on the same study/effects. The short-term incidental oral and inhalation exposures are combined (where appropriate) with chronic dietary (food and water) exposure for determination of aggregate short-term exposures.

Adults are potentially exposed to bentazon through dermal, inhalation, and dietary (food and drinking water)

routes. However, dermal hazard was not identified, so dermal risk estimates were not assessed and are not included in the aggregate. Adult handler inhalation exposures have been aggregated with dietary (food and water) exposures for the short-term duration. The backpack scenario for mixing and loading liquids is the exposure scenario with the greatest exposure; therefore, the exposure estimates for this scenario are protective of other exposure scenarios.

For young children, due primarily to their hand-to-mouth activities, short-term oral (non-dietary) exposures are expected along with dermal and dietary (food and drinking water) exposures. Only the incidental oral exposures have been aggregated with dietary exposures since a dermal hazard was not identified. The non-dietary residential exposures for children 1–2 years old are included in the aggregate assessment and are considered health protective for exposures and risk estimates for other potentially exposed lifestyles.

The short-term aggregate risk estimates for children 1–2 years old and adults are aggregate MOEs of 180 and 330, respectively, and therefore, not of concern to EPA.

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

5. *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 bentazon residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methods are available for the determination of residues of bentazon and its 6- and 8-hydroxy metabolites in/on plant commodities. The Pesticide Analytical Method Volume II (PAM II) lists Method II, a gas liquid chromatography (GLC) method with flame photometric detection for the determination of bentazon and its hydroxy metabolites in/on corn, rice, and soybeans; the limit of detection (LOD) for each compound is 0.05 ppm. Method III, modified from Method II, is available for the determination of bentazon and its hydroxy metabolites in/on peanuts and seed and pod vegetables with a LOD of 0.05 ppm for each compound. A validated analytical method for enforcement of the residue definition is also available, with a combined limit of

quantitation (LOQ) of 0.03 ppm in high water content, high oil content, acidic, and dry commodities (<http://www.efsa.europa.eu/en/efsajournal/doc/2822.pdf>).

The method may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; email address: residuemethods@epa.gov.

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 current U.S. tolerance of 1.0 ppm for sodium bentazon on pea, dry, seed is harmonized with the current Codex MRL, including having identical residue expressions. However, in 2018, the Joint FAO/WHO Meeting on Pesticide Residues (JMPR) recommended that Codex revise the tolerance expression for sodium bentazon to include only the parent chemical and to decrease the MRL for pea, dry, seed to 0.5 ppm. These changes are expected to be finalized during 2019. Since the metabolite residues included in the U.S. tolerance expression are the major residues in some commodities, EPA concluded that it is not appropriate to eliminate these compounds from the U.S. tolerance expression to harmonize with Codex. Because the new dry pea data resulted in residues greater than the current tolerance, EPA is increasing the pea, dry, seed tolerance from 1 ppm to 3 ppm. The new tolerance level and tolerance expression are harmonized with Canada.

V. Conclusion

Therefore, tolerances are established for residues of bentazon, including its metabolites and degradates, in or on Pea, dry, seed at 3 ppm.

In addition to establishing the requested tolerance, EPA is revising the tolerance expression to clarify (1) that, as provided in FFDCA section 408(a)(3), the tolerance covers metabolites and degradates of bentazon not specifically mentioned; and (2) that compliance with the specified tolerance levels is to be determined by measuring only the specific compounds mentioned in the tolerance expression. EPA has determined that it is reasonable to make this change final without prior proposal and opportunity for comment, because public comment is not necessary, in that the change has no substantive effect on the tolerance, but rather is merely intended to clarify the existing tolerance expression.

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: April 24, 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 § 180.355(a)(1):
- a. Revise the introductory text.
- b. Revise the entry for “Pea, dry, seed” in the table.

The revisions read as follows:

§ 180.355 Bentazon; tolerances for residues.

(a) *General.* (1) Tolerances are established for residues of bentazon, including its metabolites and degradates, in or on the commodities in the table below. Compliance with the tolerance levels specified below is to be determined by measuring for only the sum of bentazon (3-(1-methylethyl)-1H-2,1,3-benzothiadiazin-4(3H)-one 2,2-dioxide), 6-hydroxy-3-isopropyl-1H-2,1,3-benzothiadiazin-4(3H)-one 2,2-dioxide, and 8-hydroxy-3-isopropyl-1H-2,1,3-benzothiadiazin-4(3H)-one 2,2-dioxide calculated as the stoichiometric equivalent of bentazon.

Commodity	Parts per million
* * * * *	* *
Pea, dry, seed	3
* * * * *	* *

[FR Doc. 2019-08785 Filed 4-30-19; 8:45 am]
BILLING CODE 6560-50-P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 64

[Docket ID FEMA-2019-0003; Internal Agency Docket No. FEMA-8577]

Suspension of Community Eligibility

AGENCY: Federal Emergency Management Agency, DHS.
ACTION: Final rule.

SUMMARY: This rule identifies communities where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP) that are scheduled for suspension on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of the program. If the Federal Emergency Management Agency (FEMA) receives documentation that the community has adopted the required floodplain management measures prior to the effective suspension date given in this rule, the suspension will not occur and notification of this will be provided by publication in the **Federal Register** on a subsequent date.

DATES: The effective date of each community’s scheduled suspension is the third date (“Susp.”) listed in the third column of the following tables.

ADDRESSES: Information identifying the current participation status of a community can be obtained from FEMA’s Community Status Book (CSB). The CSB is available at <https://www.fema.gov/national-flood-insurance-program-community-status-book>.

FOR FURTHER INFORMATION CONTACT: If you want to determine whether a particular community was suspended on the suspension date or for further information, contact Adrienne L. Sheldon, PE, CFM, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 400 C Street SW, Washington, DC 20472, (202) 212–3966.

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase Federal flood insurance that is not otherwise generally available from private insurers. In return, communities agree to adopt and administer local floodplain management measures aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits the sale of NFIP flood insurance unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed in this document no longer meet that statutory requirement for compliance with program regulations, 44 CFR part 59. Accordingly, the communities will be suspended on the effective date in the third column. As of that date, flood insurance will no longer be available in the community. We recognize that some of these communities may adopt and submit the required documentation of legally enforceable floodplain management measures after this rule is published but prior to the actual suspension date. These communities

will not be suspended and will continue to be eligible for the sale of NFIP flood insurance. A notice withdrawing the suspension of such communities will be published in the **Federal Register**.

In addition, FEMA publishes a Flood Insurance Rate Map (FIRM) that identifies the Special Flood Hazard Areas (SFHAs) in these communities. The date of the FIRM, if one has been published, is indicated in the fourth column of the table. No direct Federal financial assistance (except assistance pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act not in connection with a flood) may be provided for construction or acquisition of buildings in identified SFHAs for communities not participating in the NFIP and identified for more than a year on FEMA’s initial FIRM for the community as having flood-prone areas (section 202(a) of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4106(a), as amended). This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column. The Administrator finds that notice and public comment procedures under 5 U.S.C. 553(b), are impracticable and unnecessary because communities listed in this final rule have been adequately notified.

Each community receives 6-month, 90-day, and 30-day notification letters addressed to the Chief Executive Officer stating that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. Since these notifications were made, this final rule may take effect within less than 30 days.

National Environmental Policy Act. FEMA has determined that the community suspension(s) included in this rule is a non-discretionary action and therefore the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) does not apply.

Regulatory Flexibility Act. The Administrator has determined that this

rule is exempt from the requirements of the Regulatory Flexibility Act because the National Flood Insurance Act of 1968, as amended, Section 1315, 42 U.S.C. 4022, prohibits flood insurance coverage unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed no longer comply with the statutory requirements, and after the effective date, flood insurance will no longer be available in the communities unless remedial action takes place.

Regulatory Classification. This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 13132, Federalism. This rule involves no policies that have federalism implications under Executive Order 13132.

Executive Order 12988, Civil Justice Reform. This rule meets the applicable standards of Executive Order 12988.

Paperwork Reduction Act. This rule does not involve any collection of information for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

Accordingly, 44 CFR part 64 is amended as follows:

PART 64—[AMENDED]

- 1. The authority citation for Part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp.; p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp.; p. 376.

§ 64.6 [Amended]

- 2. The tables published under the authority of § 64.6 are amended as follows:

State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain Federal assistance no longer available in SFHAs
Region VI				
Oklahoma: Tulsa, City of, Osage, Rogers, Tulsa and Wagoner Counties.	405381	November 20, 1970, Emerg; August 13, 1971, Reg; May 2, 2019, Susp.	May 2, 2019	May 2, 2019.
Texas: Galena Park, City of, Harris County	480293	November 29, 1974, Emerg; November 2, 1982, Reg; May 2, 2019, Susp.	.....do*	Do.

*-do- = Ditto.

Code for reading third column: Emerg.—Emergency; Reg.—Regular; Susp.—Suspension.

Dated: April 18, 2019.

Eric Letvin,

Deputy Assistant Administrator for Mitigation, Federal Insurance and Mitigation Administration—FEMA Resilience, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. 2019-08821 Filed 4-30-19; 8:45 am]

BILLING CODE 9110-12-P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 30

[GN Docket No. 14-177, IB Docket Nos. 15-256 and 97-95, RM-11664, WT Docket No. 10-112; FCC 16-89]

Use of Spectrum Bands Above 24 GHz for Mobile Radio Services; Correcting Amendments

AGENCY: Federal Communications Commission.

ACTION: Correcting amendments.

SUMMARY: The Federal Communications Commission (Commission) is correcting a final rule that published in the **Federal Register** on November 14, 2016. The document issued the final rules for the *Use of Spectrum Bands Above 24 GHz for Mobile Radio Services*, GN Docket No. 14-177, FCC 16-89. The Socorro and White Sands coordination zones contained in the Commission's Rules were not correctly published in the **Federal Register**. This document corrects the final regulation.

DATES: Effective May 1, 2019.

FOR FURTHER INFORMATION CONTACT: John Schauble of the Wireless Telecommunications Bureau, Broadband Division at (202) 418-0797 or *John.Schauble@fcc.gov*.

SUPPLEMENTARY INFORMATION: In FR Doc. 2016-25765, published at 81 FR 79894 on November 14, 2016, on page 79942, the Socorro and White Sands

coordination zones contained in Tables 2 and 3 of § 30.205(a) were published in the **Federal Register** incorrectly.

List of Subjects in 47 CFR Part 30

Communications common carriers, Communications equipment, Reporting and recordkeeping requirements.

Accordingly, 47 CFR part 30 is corrected by making the following correcting amendments:

PART 30—UPPER MICROWAVE FLEXIBLE USE SERVICE

■ 1. The authority citation for part 30 continues to read as follows:

Authority: 47 U.S.C. 151, 152, 153, 154, 301, 303, 304, 307, 309, 310, 316, 332, 1302.

■ 2. Amend § 30.205(a) by revising Tables 2 and 3 to read as follows:

§ 30.205 Federal coordination requirements.

(a) * * *

TABLE 2 TO PARAGRAPH (a)—SOCORRO, NEW MEXICO COORDINATION ZONE

60 dBm/100 MHz EIRP		75 dBm/100 MHz EIRP	
Latitude/longitude (decimal degrees)	Latitude/longitude (decimal degrees)	Latitude/longitude (decimal degrees)	Latitude/longitude (decimal degrees)
34.83816/ - 107.66828	33.44401/ - 108.67876	33.10651/ - 108.19320	
34.80070/ - 107.68759	33.57963/ - 107.79895	33.11780/ - 107.99980	
34.56506/ - 107.70233	33.84552/ - 107.60207	33.13558/ - 107.85611	
34.40826/ - 107.71489	33.85964/ - 107.51915	33.80383/ - 107.16520	
34.31013/ - 107.88349	33.86479/ - 107.17223	33.94554/ - 107.15516	
34.24067/ - 107.96059	33.94779/ - 107.15038	33.95665/ - 107.15480	
34.10278/ - 108.23166	34.11122/ - 107.18132	34.08156/ - 107.18137	
34.07442/ - 108.30646	34.15203/ - 107.39035	34.10646/ - 107.18938	
34.01447/ - 108.31694	34.29643/ - 107.51071	35.24269/ - 107.67969	
33.86740/ - 108.48706	34.83816/ - 107.66828	34.06647/ - 108.70438	
33.81660/ - 108.51052		33.35946/ - 108.68902	
33.67909/ - 108.58750		33.29430/ - 108.65004	
33.50223/ - 108.65470		33.10651/ - 108.19320	

TABLE 3 TO PARAGRAPH (a)—WHITE SANDS, NEW MEXICO COORDINATION ZONE

60 dBm/100 MHz EIRP		75 dBm/100 MHz EIRP	
Latitude/longitude (decimal degrees)	Latitude/longitude (decimal degrees)	Latitude/longitude (decimal degrees)	Latitude/longitude (decimal degrees)
33.98689/ - 107.15967	31.78455/ - 106.54058	31.7494/ - 106.49132	32.88382/ - 108.16588
33.91573/ - 107.46301	32.24710/ - 106.56114	32.24524/ - 106.56507	32.76255/ - 108.05679
33.73122/ - 107.73585	32.67731/ - 106.53681	32.67731/ - 106.53681	32.56863/ - 108.43999
33.37098/ - 107.84333	32.89856/ - 106.56882	32.89856/ - 106.56882	32.48991/ - 108.50032
33.25424/ - 107.86409	33.24323/ - 106.70094	33.04880/ - 106.62309	32.39142/ - 108.48959
33.19808/ - 107.89673	33.98689/ - 107.15967	33.21824/ - 106.68992	31.63664/ - 108.40480
33.02128/ - 107.87226		33.24347/ - 106.70165	31.63466/ - 108.20921
32.47747/ - 107.77963		34.00708/ - 107.08652	31.78374/ - 108.20798
32.31543/ - 108.16101		34.04967/ - 107.17524	31.78322/ - 106.52825
31.79429/ - 107.88616		33.83491/ - 107.85971	31.7494/ - 106.49132

* * * * *

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2019-08759 Filed 4-30-19; 8:45 am]

BILLING CODE 6712-01-P

**FEDERAL COMMUNICATIONS
COMMISSION**
47 CFR Part 76

[MB Docket Nos. 18–92 and 17–105; FCC 19–33]

**In the Matter of Channel Lineup
Requirements; Modernization of Media
Regulation Initiative**

AGENCY: Federal Communications
Commission.

ACTION: Final rule.

SUMMARY: In this final rule document, we eliminate two unnecessary rules pertaining to cable operators' channel lineups. First, we eliminate the requirement that cable operators maintain at their local office a current listing of the cable television channels that each cable system delivers to its subscribers. Second, we eliminate the requirement that certain cable operators make their channel lineup available through their Commission-hosted online public inspection file. We conclude that these requirements are unnecessary as channel lineups are readily available to consumers through a variety of other means. Through this proceeding, we continue our efforts to modernize our regulations and reduce unnecessary requirements that can impede competition and innovation in the media marketplace.

DATES: Effective May 1, 2019.

FOR FURTHER INFORMATION CONTACT: Kim Matthews, Media Bureau, Policy Division, 202–418–2154, or email at kim.matthews@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, FCC 19–33, adopted on April 12, 2019 and released on April 12, 2019. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Center, Federal Communications Commission, 445 12th Street SW, Room CY–A257, Washington, DC 20554. This document will also be available via ECFS at <http://fjallfoss.fcc.gov/ecfs/>. Documents will be available electronically in ASCII, Microsoft Word, and/or Adobe Acrobat. Alternative formats are available for people with disabilities (Braille, large print, electronic files, audio format), by sending an email to fcc504@fcc.gov or calling the Commission's Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY).

**Paperwork Reduction Act of 1995
Analysis**

This *Report and Order* eliminates, and thus does not contain new or revised, information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA). In addition, therefore, it does not contain any new or modified "information burden for small business concerns with fewer than 25 employees" pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, 44 U.S.C. 3506(c)(4).

Summary of Report and Order

1. As part of our Modernization of Media Regulation Initiative, last year we released a *Notice of Proposed Rulemaking, Channel Lineup Requirements—Modernization of Media Regulation Initiative*, Notice of Proposed Rulemaking, 83 FR 19033 (2018) (*NPRM*), tentatively concluding that the requirement in § 76.1705 that cable operators maintain a channel lineup locally is outdated and unnecessary and should be eliminated. In response, nearly all commenters agree that it is no longer necessary for cable operators to maintain channel lineup information at their local offices. Specifically, NCTA, ACA, and ITTA maintain that channel lineups are now available in numerous places, making the requirement to maintain a lineup locally unnecessary. Commenters also generally agree with our observation in the *NPRM* that few, if any, consumers interested in channel lineup information are likely to access this information by visiting an operator's local office as other sources of channel lineup information can be viewed far more quickly and easily.

2. We adopt our tentative conclusion and eliminate § 76.1705. As discussed in the *NPRM*, this requirement was originally adopted nearly 50 years ago as part of the Commission's technical standard performance rules for cable. Among the Commission's goals in the *1972 Cable Order* was to ensure that the "channels delivered to subscribers conform to the capability of the television broadcast receiver." While the Commission did not explain in its order exactly why it believed it was necessary for a system to maintain at its local office a list of the channels it delivers, it appears that the requirement was intended to help the Commission verify compliance with technical performance standards that applied to certain cable channels at that time.

3. Regardless of the original purpose of the requirement to maintain a channel lineup locally, we conclude

that the requirement is no longer necessary as information about the channel lineups of individual cable operators is available today through other sources including, in many cases, the operator's own website, on-screen electronic program guides, and paper guides. These sources are more readily and easily accessible to consumers and others than the operator's local office. In addition, as we noted in the *NPRM*, § 76.1602(b) of the Commission's rules separately requires cable operators to provide information to subscribers regarding the "channel positions of programming carried on the system" and "products and services offered" at the time of installation, at least annually, and at any time upon request. Thus, channel lineup information is actively sent to cable subscribers at least once a year and is required to be made available upon request at any time. Moreover, as several commenters point out, cable operators have strong economic incentives to ensure that channel lineup information reaches both existing and prospective customers so that they can better compete in the video marketplace. Commenters note that customers have a choice of MVPDs and not making this information easily available would almost certainly result in the loss of potential and existing customers.

4. Thus, we conclude that because channel lineup information is available from many sources today and operators have an incentive to ensure that this information is widely disseminated, the burden imposed by § 76.1705 is unnecessary, and it is appropriate to eliminate this regulation. In reaching this conclusion, we disagree with CCTV that cable operators should continue to be required to provide channel lineups at local offices because PEG channels and program details may not be included in cable operators' electronic program guides. First, we note that our rules do not require cable operators to provide "program details" in their channel lineups, so our action today will have no impact on the dissemination of program details by operators. Moreover, there is no evidence in the record that the channel lineup information in an operator's local office would be different from that in an electronic program guide or that members of the public visit operators' local offices to obtain channel lineups in order to see which channels are PEG channels. Thus, retaining § 76.1705

would not assure that information regarding PEG channels would be made available in a manner that would satisfy CCTV or produce any meaningful benefit.

5. We also eliminate the requirement in § 76.1700(a)(4) of our rules that cable operators make channel lineup information available for public inspection through the online public file hosted by the Commission. Similar to our determination with respect to § 76.1705, we conclude that the requirement in § 76.1700(a)(4) is unnecessary in light of the widespread availability of channel lineup information from other sources that are more likely to be accessed by customers and others seeking this information.

6. As discussed in the *NPRM*, in 2016, the Commission expanded the list of entities required to maintain an online public file to include, among others, operators of cable systems with at least 1000 subscribers. In the *Expanded Online Public File Order, Expansion of Online Public File Obligations to Cable and Satellite TV Operators and Broadcast and Satellite Radio Licensees*, Report and Order, 81 FR 10105 (2016), the Commission required cable operators subject to the online file requirement to comply with § 76.1700(a)(4) either by uploading to the online public file information regarding their current channel lineup, and keeping the information up-to-date, or by providing a link in the online file to the channel lineup maintained by the operator at another online location. In the *NPRM* in this proceeding, we invited comment on whether we should eliminate the requirement that cable operators make channel lineup information available via the online public file on the ground that consumers have multiple other sources of information about a cable system's current channel lineup. Commenters in favor of eliminating the rule argue generally that channel lineup information is available today from multiple other sources, making the rule unnecessary. Those opposed to eliminating the rule argue generally that it helps ensure that broadcasters and regulators as well as consumers have access to accurate and up-to-date channel lineup information.

7. We agree with NCTA, ACA, and ITTA that, because it is now easy to access channel lineup information from company websites, on-screen electronic program guides, and paper guides, it is unnecessary to require cable operators to also make channel lineup information available via the online public file. We agree with these commenters that consumers seeking channel lineup

information are more likely to look first to these alternate sources of information rather than the Commission's online public file database. It is most likely that current subscribers would first access their cable operator's electronic program guide or website to obtain channel lineup information. Prospective customers also are more likely to look first to a cable provider's website to determine what channels it delivers. In addition, as noted above, operators are also required to make channel lineup information available upon request. Moreover, we note that DBS providers are not currently required to post channel lineup information in their online files. Thus, eliminating § 76.1700(a)(4) will establish regulatory parity between cable operators and DBS providers with respect to channel lineup information. We note that no commenter argues that it is difficult to access channel lineup information for DBS providers or for cable systems with fewer than 1,000 subscribers which are not required to maintain an online public file. Although we note that some commenters, including local regulators, broadcasters, and an organization representing PEG channels urge us to retain this online public file requirement, we find that channel lineup information can just as easily be accessed through other online means such as the cable operator's or a third-party website.

8. We disagree with NAB that other sources of channel lineup information are not an adequate substitute for the requirement that channel lineups be placed in the online public file. As discussed above, we believe that channel lineup information is easily accessible to the public, broadcasters, and regulators via the cable operator's own website or a third-party site. We also disagree with those commenters who argue that alternate sources of channel lineup information are less likely to be up-to-date than the information in the online public file. In fact, many cable operators currently elect to include a link in the online file to the channel lineup they maintain online elsewhere. Thus, for these operators the information available via the operator's website or another website is the same as that in the online file. We also believe that all cable operators have a marketplace incentive to ensure that the channel lineup information they disseminate to the public is accurate, making a regulatory mandate unnecessary.

9. Two commenters claim that channel lineups maintained online by cable operators do not provide accurate and complete listings with respect to

PEG channels. Commenters further argue that cable operators commonly do not include information about PEG channels in electronic program guides. However, we have reviewed the weblinks provided by ACM and, like ACA, we did not detect any omissions of PEG channel listings. Moreover, we note there is no evidence in the record that the channel lineups maintained in operators' online public files differ from those on the operators' own websites, third-party websites, or in electronic program guides. With regard to the claim that PEG program information is lacking in the operators' websites or electronic program guides, as stated above, our rules do not require program information be included alongside the channel listings with regard to *any* channels. We agree with ACA that cable operators have an economic incentive to provide complete and accurate channel listings, including PEG channels. Cable operators incur costs related to carrying every channel and would have no incentive to fail to provide complete information regarding the channels they deliver.

Procedural Matters

A. Final Regulatory Flexibility Analysis

10. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the Notice of Proposed Rulemaking in this proceeding. The Federal Communications Commission (Commission) sought written public comment on the proposals in the *NPRM*, including comment on the IRFA. We received no comments specifically directed toward the IRFA. This Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.

1. Need for, and Objectives of, the Report and Order

11. In this *Report and Order*, we eliminate our rules requiring cable operators to maintain copies of their channel lineups. First, we eliminate § 76.1705, which requires cable operators to maintain at their local office a current listing of the cable television channels that each cable system delivers to its subscribers. Second, we eliminate the requirement in § 76.1700(a)(4) that certain cable operators make their channel lineup available through their Commission-hosted online public inspection file. We conclude that these requirements are unnecessary as channel lineups are readily available to consumers and others through a variety of other sources including, in many cases, the operator's

own website, third-party websites, on-screen electronic program guides, and paper guides. Through this proceeding, we continue our efforts to modernize our regulations and reduce unnecessary requirements that can impede competition and innovation in the media marketplace.

2. Summary of Significant Issues Raised by Public Comments in Response to the IRFA

12. No comments were filed in response to the IRFA.

3. Description and Estimate of the Number of Small Entities To Which the Proposed Rules Will Apply

13. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act. A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA. Below, we provide a description of such small entities, as well as an estimate of the number of such small entities, where feasible.

14. Cable Companies and Systems (Rate Regulation Standard). The Commission has developed its own small business size standards for the purpose of cable rate regulation. Under the Commission's rules, a "small cable company" is one serving 400,000 or fewer subscribers nationwide. Industry data indicate that all but nine of the 4,600 cable operators active nationwide are small under the 400,000 subscriber size standard. In addition, under the Commission's rate regulation rules, a "small system" is a cable system serving 15,000 or fewer subscribers. Of the 4,600 active cable systems nationwide, we estimate that approximately 3,900 percent have 15,000 or fewer subscribers, and 700 have more than 15,000 subscribers. Thus, under this standard as well, we estimate that most cable systems are small entities.

15. Cable System Operators (Telecom Act Standard). The Communications Act of 1934, as amended, also contains a size standard for small cable system operators, which is "a cable operator that, directly or through an affiliate, serves in the aggregate fewer than one

percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed \$250,000,000." There are approximately 52,403,705 cable video subscribers in the United States today. Accordingly, an operator serving fewer than 524,037 subscribers shall be deemed a small operator if its annual revenues, when combined with the total annual revenues of all its affiliates, do not exceed \$250 million in the aggregate. Based on available data, we find that all but nine incumbent cable operators are small entities under this size standard. We note that the Commission neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues exceed \$250 million. Although it seems certain that some of these cable systems operators are affiliated with entities whose gross annual revenues exceed \$250 million, we are unable at this time to estimate with greater precision the number of cable system operators that would qualify as small cable operators under the definition in the Communications Act.

4. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

16. The Commission anticipates that the rule changes adopted in this *Report and Order* will lead to an immediate, long-term reduction in reporting, recordkeeping, and other compliance requirements for all cable operators, including small entities. Specifically, cable operators will no longer be required to maintain a listing of the channels delivered by the system at their local office, and systems with more than 1,000 subscribers will no longer be required to make their channel lineup available through their Commission-hosted online public inspection file.

5. Steps Taken To Minimize Significant Economic Impact on Small Entities and Significant Alternatives Considered

17. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): "(1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (3) the use of performance, rather than design standards; and (4) an exemption

from coverage of the rule, or any part thereof, for small entities."

18. The Commission considered but ultimately declined to impose new public file requirements on cable systems with fewer than 1,000 subscribers. Such systems have always been exempt from online public file requirements but must maintain local public inspection files. In addition, these smaller cable operators are currently subject to the requirement in § 76.1705, being eliminated in this *Report and Order*, that they maintain a copy of their current channel lineup locally. In the *NPRM*, we asked whether, if we eliminate § 76.1705, there will continue to be adequate access to information about the channels delivered by smaller cable systems and whether we should require them to continue to make channel lineup information available locally or make it available online. Consistent with our conclusions regarding larger cable systems, the Commission concluded in the *Report and Order* that operators of smaller systems also routinely make their channel lineups available through other sources and have an economic incentive to ensure that information about their channel lineups is accurate, complete, and widely disseminated. Accordingly, the Commission concludes that no new regulatory mandates with respect to channel lineup information are necessary to ensure that adequate information is available regarding the channels delivered by these smaller cable systems.

19. Overall, we believe the *Report and Order* appropriately balances the interests of the public against the interests of the entities who are subject to the rules, including those that are small entities.

6. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rule

20. None.

B. Paperwork Reduction Act Analysis

21. This document eliminates, and thus does not contain new or revised, information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13, 44 U.S.C. 3501-3520. In addition, therefore, it does not contain any new or modified "information burden for small business concerns with fewer than 25 employees" pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, 44 U.S.C. 3506(c)(4).

C. Congressional Review Act

22. The Commission will send a copy of this Order in a report to Congress and the Government Accountability Office pursuant to the Congressional Review Act, see 5 U.S.C. 801(a)(1)(A).

Ordering Clauses

23. Accordingly, *It is ordered* that, pursuant to the authority contained in Sections 1, 4(i), 4(j), 303(r), 601, and 624(e) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), 303(r), 521, and 544(e), the Report and *order is adopted*.

24. *It is further ordered* that the Commission's rules are hereby amended as set forth in the Final Rules, effective as of the date of publication of a summary in the **Federal Register**.

25. *It is further ordered* that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, shall send a copy of this Report and Order, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration

26. *It is further ordered* that the Commission will send a copy of the Report and Order in a report to Congress and the Government Accountability Office pursuant to the Congressional Review Act (CRA).

27. *It is further ordered* that should no petitions for reconsideration or petitions for judicial review be timely filed, MB Docket No. 18–92 shall be terminated and its docket closed.

List of Subjects in 47 CFR Part 76

Cable television, Recording and recordkeeping requirements.

Federal Communications Commission.

Marlene Dortch,
Secretary.

Final Rules

For reasons set forth in the preamble, the Federal Communications Commission amends 47 CFR part 76 to read as follows:

PART 76—MULTICHANNEL VIDEO AND CABLE TELEVISION SERVICE

■ 1. The authority citation for part 76 continues to read as follows:

Authority: 47 U.S.C. 151, 152, 153, 154, 301, 302, 302a, 303, 303a, 307, 308, 309, 312, 315, 317, 325, 338, 339, 340, 341, 503, 521, 522, 531, 532, 534, 535, 536, 537, 543, 544, 544a, 545, 548, 549, 552, 554, 556, 558, 560, 561, 571, 572, 573.

§ 76.1700 [Amended]

■ 2. Amend § 76.1700 by removing and reserving paragraph (a)(4).

§ 76.1705 [Removed and Reserved]

■ 3. Remove and reserve § 76.1705.

[FR Doc. 2019–08756 Filed 4–30–19; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration****50 CFR Part 300**

[Docket No. 180716667–9383–02]

RIN 0648–BI36

International Fisheries; Pacific Tuna Fisheries; 2019 and 2020 Commercial Fishing Restrictions for Pacific Bluefin Tuna in the Eastern Pacific Ocean

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

ACTION: Final rule.

SUMMARY: The National Marine Fisheries Service (NMFS) is issuing regulations under the Tuna Conventions Act of 1950 (TCA) to implement Inter-American Tropical Tuna Commission (IATTC) Resolution C–18–01 (*Measures for the Conservation and Management of Bluefin Tuna in the Eastern Pacific Ocean, 2019–2020*) and Resolution C–18–02 (*Amendment to Resolution C–16–08 on a Long-term Management Framework for the Conservation and Management of Pacific Bluefin Tuna in the Eastern Pacific Ocean*). This rule would implement annual limits on commercial catch of Pacific bluefin tuna (*Thunnus orientalis*) in the eastern Pacific Ocean (EPO) for 2019 and 2020. This action is necessary to conserve Pacific bluefin tuna (PBF) and for the United States to satisfy its obligations as a member of the IATTC.

DATES: The final rule is effective *May 8, 2019*.

ADDRESSES: Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this final rule may be submitted to NMFS West Coast Region (WCR) Sustainable Fisheries Division (SFD), 501 W Ocean Blvd., Suite 4200, Long Beach, CA 90208, and by email to *OIRA_Submission@omb.eop.gov* or fax to (202) 395–5806.

Copies of supporting documents are available via the Federal eRulemaking Portal: <http://www.regulations.gov>, docket NOAA–NMFS–2018–0126, or contact the Acting Highly Migratory Species Branch Chief, Rachael

Wadsworth, NMFS WCR SFD, 501 W Ocean Blvd., Suite 4200, Long Beach, CA 90208, or *WCR.HMS@noaa.gov*.

FOR FURTHER INFORMATION CONTACT: Celia Barroso, NMFS WCR SFD, (562) 432–1850, *Celia.Barroso@noaa.gov*.

SUPPLEMENTARY INFORMATION:**Background**

On December 27, 2018, NMFS published a proposed rule in the **Federal Register** to revise regulations at 50 CFR part 300, subpart C, for the commercial catch of PBF applicable to U.S. commercial vessels in 2019–2020 (83 FR 66665). The public comment period was open for 30 days. However, due to a partial lapse in appropriations, the Federal e-Rulemaking Portal link in the proposed rule used to provide public comment was not active. Consequently, NMFS re-opened the public comment period for an additional 15 days (February 19, 2019; 84 FR 4758).

This final rule is implemented under the authority of the TCA (16 U.S.C. 951 *et seq.*), which directs the Secretary of Commerce, after approval by the Secretary of State, to promulgate regulations as necessary to implement resolutions adopted by the IATTC. The Secretary of Commerce has delegated this authority to NMFS.

The proposed rule contains additional background information on the IATTC, the international obligations of the United States as a member of the IATTC, and the need for regulations. Changes from the proposed rule, and public comments received, are addressed below.

New Regulations for Commercial Pacific Bluefin Tuna for 2019–2020

This final rule establishes catch and trip limits for U.S. commercial fishing vessels that catch PBF in the IATTC Convention Area. The IATTC Convention Area is defined as the area bounded by the west coast of the Americas, the 50° N and 50° S parallels, the 150° W meridian, and the waters of the eastern Pacific Ocean (EPO). The rule also establishes pre-trip notification requirements and accelerated landing receipt submission deadlines for 2019 and 2020.

Catch Limit for 2019 and 2020

The U.S. biennial catch limit for 2019 and 2020 is 630 metric tons (mt) for U.S. commercial fishing vessels, which includes the addition of 30 mt resulting from an under-harvest from the previous biennial limit, as provided for in Resolutions C–18–01 and C–18–02. The 2019 catch limit is 425 mt. NMFS will announce the 2020 catch limit in a

Federal Register notice, which will be calculated as the amount caught in 2019 subtracted from the biennial limit, but not to exceed 425 mt.

Trip Limits

For 2019 and 2020, NMFS is implementing a 15-mt trip limit for each U.S. commercial fishing vessel until catch is within 50 mt of the annual limit, at which time the trip limit will be reduced to 2 mt per vessel through the end of the year, or until the fishery is closed. However, if the annual limit in 2020 is 125 mt or less, the trip limit will be 2 mt for each U.S. commercial fishing vessel for the entire calendar year, or until the fishery is closed.

Landing Receipt Submission

Under the California Code of Regulations, electronic landing receipts (*i.e.*, E-tickets) will be required as of July 1, 2019, and must be submitted within three business days of landing (Title 14, § 197). This final rule requires E-tickets that include PBF landings in California to be submitted within 24 hours of landing, which is 48 hours earlier than the deadline established under State regulations. This accelerated submission deadline will assist NMFS in monitoring the catch limits and anticipate when these limits will be reached.

Pre-Trip Notification

When the trip limit is 15 mt, purse seine vessels are required to submit a pre-trip notification to NMFS, at least 24 hours in advance of the fishing trip, in order to retain or land more than 2 mt of PBF. The pre-trip notification must include the vessel owner's or operator's name, contact information, vessel name, port of departure, and the intended date of departure for the trip. NMFS will use the contact information provided in the pre-trip notification to notify purse seine vessel owners or operators if an inseason action (*i.e.*, reduction in trip limit or fishery closure) is expected or imposed. The pre-trip notification must be sent by email to pbfnotifications@noaa.gov. A reply will be sent automatically to the vessel operator to confirm receipt of the pre-trip notification.

The pre-trip notification will assist NMFS in tracking catch to manage trip limits and fishery closures. For the purposes of tracking catch of PBF, NMFS will assume that 15 mt of PBF will be caught on every trip for which a pre-trip notification is provided. NMFS will use this and other available fishery information (*e.g.*, landings receipts) to estimate when the overall catch is expected to reach either the

threshold to reduce the trip limit (*i.e.*, within 50 mt of the annual limit) or the annual limit. NMFS will make decisions on inseason actions based on those estimates. NMFS encourages purse seine vessel owners or operators to call NMFS at (562) 432-1850 in advance of landing with an estimate of how much PBF was caught on the trip.

Inseason Action Announcements

When NMFS determines that catch is expected to be within 50 mt of the annual limit (based on pre-trip notifications, landing receipts, or other available information), a 2-mt trip limit will be imposed by NMFS, effective upon the time and date that would appear in a notice on the NMFS website (<https://www.fisheries.noaa.gov/west-coast/commercial-fishing/pacific-bluefin-tuna-commercial-harvest-status>). The reduced trip limit will be announced over a U.S. Coast Guard (USCG) Notice to Mariners, to be broadcast three times per day for four days on USCG channel 16 VHF. NMFS will publish a notice of the reduced trip limit in the **Federal Register** as soon as practicable. The 2-mt trip limit will be effective upon the date and time on the website notice, unless the inseason action is published in the **Federal Register** earlier. PBF in excess of 2 mt already on board a fishing vessel on the effective date and time of the notice may be landed within 48 hours of the effective date and time of the notice, provided a pre-trip notification has been submitted. If the annual limit in 2020 is 125 mt or less, NMFS will not provide a notice that the trip limit has been reduced, because the trip limit would be 2 mt for the entire calendar year.

When NMFS determines that the annual catch limit is expected to be reached in 2019 or 2020 (based on pre-trip notifications, landings receipts, or other available fishery information), NMFS will prohibit commercial fishing for, or retention of, PBF for the remainder of the calendar year (*i.e.*, fishery closure). NMFS will provide a notice on the NMFS website, and the USCG would provide a Notice to Mariners three times per day for four days on USCG channel 16 VHF, announcing that the targeting, retaining, transshipping or landing of PBF will be prohibited on a specified effective time and date through the end of that calendar year. Upon that effective date, no U.S. commercial fishing vessel may be used to target, retain on board, transship, or land PBF captured in the Convention Area. However, any PBF already on board a fishing vessel on the effective date may be retained on board, transshipped, and/or landed, to the

extent authorized by applicable laws and regulations, provided that they are landed within 14 days of the effective date of the fishery closure. NMFS will then publish a notice of the fishery closure in the **Federal Register** as soon as practicable.

In 2020, NMFS will publish a notice in the **Federal Register** announcing the 2020 catch limit.

After landing receipts have been received and the landed catch quantity confirmed, if NMFS learns that the trip limit is reduced early, or the fishery is closed due to an overestimation of catch, NMFS may increase the trip limit to 15 mt or re-open the fishery. NMFS will announce these actions on the NMFS website and by USCG Notice to Mariners to be broadcast three times per day for four days on USCG channel 16 VHF, and publish the inseason action in the **Federal Register** as soon as practicable.

Changes From the Proposed Rule

NMFS had proposed an annual limit of 300 mt for 2019, which was more restrictive than the annual limit in Resolution C-18-01. NMFS proposed this limit based on a recommendation from the Pacific Fishery Management Council (PFMC) at its September 2018 meeting because it would provide additional assurances that the annual limit in Resolution C-18-01 would not be exceeded. This final rule includes several measures (*i.e.*, lower trip limits, new closure procedures, pre-trip notifications, and accelerated E-ticket submission deadlines) to address the PFMC concern about exceeding the annual limits. After further consideration of comments on the proposed rule, as explained below, discussion at the November 2018 PFMC meeting and the PFMC's Highly Migratory Species Advisory Subpanel recommendation, the final rule increases the 2019 catch limit to 425 mt to be consistent with Resolution C-18-01. This allows vessel operators to optimize catch over the two-year management period in the event that PBF are more available to U.S. vessels in 2019 than in 2020. NOAA's National Weather Service Climate Prediction Center predicts weak El Niño conditions are likely to continue into the summer of 2019. PBF are more abundant in U.S. waters during El Niño conditions and should this climate pattern change, it is possible that PBF will be less abundant in 2020. Therefore, the final rule allows the U.S. fleet to not be additionally constrained by a lower catch limit than provided in the Resolution if more PBF are available in 2019 than 2020.

As described above, coastal purse seine vessel operators would be required to submit a pre-trip notification 24 hours in advance of a trip during the period when the trip limit is 15 mt and only if landing greater than 2 mt of PBF per trip. NMFS had proposed 48 hours in advance of a trip resulting in any landings of PBF, but as a result of a PFMC recommendation and public comment, NMFS has decreased the requirement to 24 hours. A decrease in the time required before a trip to submit a pre-trip notification will provide greater flexibility to the fleet by allowing vessel operators to plan trips targeting PBF a minimum of one day in advance, rather than two. Allowing up to 2 mt to be landed without the pre-trip notification will allow coastal purse seine vessels to potentially harvest PBF incidentally or in small quantities without creating a risk of exceeding the annual limit. The pre-trip notification was not entirely removed from the final rule because it is expected to further effective management of the inseason actions described above. This requirement is particularly important to ensure the United States does not exceed the internationally-agreed annual limit of 425 mt.

Because NMFS has estimated the 2017–2018 catch, the biennial catch limit is definitively 630 mt, which includes 30 mt resulting from the under-harvest of the 2017–2018 catch limit. The regulatory text has been amended to reflect this change.

The proposed rule stated, in the supplementary information section, that if the catch limit in 2020 is 125 mt or less, the trip limit will be 2 mt for the entire calendar year. However, this text was mistakenly left out of the proposed regulatory text. NMFS did not receive any comments on this portion of the proposed rule and this regulatory text was added to the final rule.

Lastly, PBF in excess of 2 mt on board a vessel may be landed within 48 hours of the effective date and time of the notice to reduce the trip limit from 15 mt to 2 mt, provided a pre-trip notification has been submitted. NMFS made this change recognizing that vessels that target PBF in quantities greater than 2 mt may not reach port by the effective date and time.

Catch Reporting

NMFS will provide updates on PBF catches in the Convention Area to the public via the IATTC listserv and the NMFS website: <https://www.fisheries.noaa.gov/west-coast/commercial-fishing/pacific-bluefin-tuna-commercial-harvest-status>. Specifically, beginning April 15 of each

year, NMFS will update the NMFS website weekly, at a minimum, provided the updates do not disclose confidential information (in accordance with Magnuson-Stevens Fishery Conservation and Management Act section 402 (b), 16 U.S.C. 1881a). These updates are intended to help participants in the U.S. commercial fishery plan for reduced trip limits and attainment of the annual limits.

Public Comments and Responses

NMFS received 14 written comments on the proposed rule. Many of the comments had common themes; therefore, they are addressed by topic below.

Comment 1: Six commenters supported the rule. Of these six, two requested additional information on enforcement.

Response: NMFS will monitor landing receipts in coordination with the California Department of Fish and Wildlife to ensure that pre-trip notifications, trip limits, and fishery closures are followed in accordance with regulations. If it is found that an illegal landing potentially took place, the case will be referred to the NMFS Office of Law Enforcement. The NOAA Office of General Counsel reports penalty schedules and policy at the following website: <https://www.gc.noaa.gov/enforce-office3.html>.

Comment 2: Six commenters expressed concern about either the annual limit proposed for 2019, the pre-trip notification, or both. It was noted, both in public comments submitted on the proposed rule and at the March 2019 PFMC meeting, that the fishery targets PBF opportunistically, and a catch limit of 300 mt could disadvantage the U.S. fleet if PBF are more available in U.S. waters in only one of the two years in which this rule would apply. NMFS increased the annual limit in 2019 to 425 mt in the final rule for reasons explained above in the section, Changes from the Proposed Rule.

Response: NMFS solicited comment on a recommendation from the November 2019 PFMC meeting to reduce the pre-trip notification from 48 hours in advance of a trip, as initially proposed, to 24 hours. Commenters expressed concern that a pre-trip notification, whether 48 or 24 hours, would be burdensome because fishermen often quickly make the decision to target PBF. One commenter also noted that the pre-trip notification is not necessary because of the 24-hour e-ticket requirement. As described above, NMFS reduced the pre-trip notification timeline requirement to 24 hours in this final rule, which is

expected to achieve the management goals. NMFS notes that the 24-hour e-ticket requirement is not effective until July 1, 2019, when e-tickets will be required under the California Code of Regulations (Title 14, § 197).

Comment 3: One commenter suggested that a 15-mt trip limit is too low and will lead to incidental discards, and inquired if NMFS had examined the logbooks from 2017.

Response: NMFS notes that logbooks have not been turned in for every trip that resulted in landings of tuna. According to the logbooks NMFS received from trips made in 2017, weight estimates of PBF sets ranged from 1 mt to 25 mt, with an average of 15.1 mt.

Comment 4: Three commenters suggested that PBF are found in schools mixed with skipjack and yellowfin tuna, both of which are target species for the coastal purse seine fishery. These commenters expressed concern that requiring the pre-trip notification could result in discards when more than 2 mt of PBF are caught in association with other tunas and that a 2 mt trip limit would limit yellowfin tuna catches.

Response: NMFS notes that, although mixing could be occurring, this is not supported by the logbook data NMFS has received. In the logbooks submitted to NMFS for 2017 and 2018, only 2 sets out of 97 sets that resulted in catches of tuna indicated that PBF was caught in association with other tunas in a single set. Additionally, while the regulations may impact operations relative to historic targeting strategies, 2018 landings data indicate that a reduction in PBF trip limits to 2 mt is not expected to have a significant impact on revenue. This is evidenced by a shift away from targeted PBF trips after 2 mt trip limits were imposed in 2018. PBF purse seine fleet revenue declined by an average of \$411,000 from 2016–2017 to 2018. Over the same period, revenue from skipjack tuna on purse seine trips increased by a total of \$911,000, and yellowfin revenues increased by \$229,000. Because the fleet was able to successfully harvest both skipjack and yellowfin in 2018 under the lower catch limits, it is not expected that the trip limits in the proposed rule will result in limiting yellowfin catches.

Comment 5: One commenter challenged NMFS' assessment that the economic impact of the rule to the purse seine fleet is not significant.

Response: This commenter did not provide specific data or evidence and NMFS did not find evidence that coastal purse seine vessels have been relying on PBF revenue after the sardine fishery closure in 2015. The coastal purse seine

fleet continues to derive the majority of its revenue from market squid, with sardines having accounted for 4 percent of revenue in 2011, 2012, and 2014 (note there was no purse seine fishery for PBF in 2013). After the sardine

closure, revenue from PBF has decreased relative to the coastal purse seine sector portfolio, from 4 percent to 2 percent of total landed revenue. These vessels have increased revenue from Pacific bonito, skipjack tuna, and

yellowfin tuna, resulting in a 60 percent increase in total fleet revenue in the three years following the sardine closure compared to the 3 years prior to the closure.

PERCENTAGE OF TOTAL REVENUE BY SPECIES FOR THE U.S. COASTAL PURSE SEINE FLEET

	2011, 2012, 2014	2016–2018
Total Inflation-Adjusted Revenue	\$24,477,811	\$39,066,168
	Percent	Percent
Pacific bluefin tuna	4	2
Chub mackerel	4	4
Market squid	84	77
Northern anchovy	0	1
Pacific bonito	0	3
Pacific sardine	4	0
Skipjack tuna	0	3
Yellowfin tuna	4	10
Other	0	0

Comment 6: One commenter inquired about the process of implementing inseason actions as a result of an overestimation of catch.

Response: As stated in the rule, NMFS will make an assumption that 15 mt of PBF will be caught on each trip for which a pre-trip notification was provided. NMFS encourages vessel operators to call (562) 432-1850 with an estimate of landing quantity to provide more accurate estimates. NMFS will review landing receipts to update catch estimates and, if necessary, take inseason action, as specified in the final rule, to reverse the original action.

Comment 7: Two commenters suggested considering allocation of the catch limit based on gear types.

Response: Allocation based on gear types is outside the scope of this rulemaking; however, NMFS will be hosting a stakeholder meeting on May 2, 2019, and intends to discuss approaches to the long-term domestic management of the stock (April 12, 2019; 84 FR 14914). NMFS looks forward to continuing the discussion on topics of this nature at that meeting.

Classification

After consulting with the Department of State and the U. S. Coast Guard, the NOAA Assistant Administrator for Fisheries has determined that this rule is consistent with the TCA and other applicable laws.

This rule was determined to be not significant for purposes of Executive Order 12866.

The NOAA Assistant Administrator for Fisheries has determined that the need to conserve PBF and comply with

our international obligations constitutes good cause, under 5 U.S.C. 553(d)(3), to waive the requirement for a 30-day delay in effectiveness. In recent years, PBF have remained in significant numbers in waters off of southern California, and U.S. commercial vessels currently have a greater opportunity to fish for PBF off of the U.S West Coast than in previous years. If the trip limits implemented by this rule were subject to the 30-day delay in effectiveness, and taking into account that a single trip could catch up to 75 mt, there is potential for a derby-style fishery that would result in exceeding the 425-mt catch limit for 2019 before this rule goes into effect. Although justification exists to waive the 30-day delay in effectiveness, NMFS is implementing a 7-day delay in effectiveness to provide sufficient time for currently-operating vessels to comply with the new regulations (vessels that target PBF in large quantities (*i.e.*, purse seine vessels) typically complete their fishing trips within one to two days). As soon as the rule is published, notice will be given to fishery participants through an email sent to the IATTC distribution list. Therefore, to conserve PBF, which are overfished, and to remain in compliance with IATTC Resolutions C-18-01 and C-18-02, NMFS has determined that implementing these measures 7 days after publishing in the **Federal Register** is in the public's interest.

This rule contains a collection-of-information requirement subject to the Paperwork Reduction Act (PRA), which has been approved by OMB under control number 0649-0778. Public reporting burden for E-ticket

submission, pre-trip notification, and voluntary pre-landing notification is estimated to average 4 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining data, and completing and reviewing the collection of information. Comments regarding this burden estimate, or any other aspect of this data collection, including suggestions for reducing the burden, may be sent to NMFS (see **ADDRESSES**), by email to *OIRA_Submission@omb.eop.gov*, or fax to (202) 395-5806. All currently approved NOAA collections of information may be viewed at: http://www.cio.noaa.gov/services_programs/prasubs.html. There is also an existing collection-of-information requirement associated with the Fishery Management Plan for U.S. West Coast Fisheries for Highly Migratory Species. These requirements have been approved by the Office of Management and Budget under Control Number 0648-0204. Notwithstanding any other provision of the law, no person is required to respond to, and no person shall be subject to penalty for failure to comply with, a collection-of-information subject to the requirements of the PRA, unless that collection-of-information displays a currently valid OMB control number.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration during the proposed rule stage that, for purposes of the Regulatory Flexibility Act, this action would not have a significant economic impact on a

substantial number of small entities. The factual basis for the certification was published in the proposed rule and is not repeated here. NMFS received one comment on the certification, which is addressed above under the Public Comments and Responses section. No information received during the public comment period changes NMFS' analysis. Therefore, the initial certification published with the proposed rule—that this rule is not expected to have a significant economic impact on a substantial number of small entities—remains unchanged. As a result, a regulatory flexibility analysis was not required and none was prepared.

List of Subjects in 50 CFR Part 300

Administrative practice and procedure, Fish, Fisheries, Fishing, Marine resources, Reporting and recordkeeping requirements, Treaties.

Dated: April 25, 2019.

Samuel D. Rauch, III,

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

For the reasons set out in the preamble, 50 CFR part 300 is amended as follows:

PART 300—INTERNATIONAL FISHERIES REGULATIONS

■ 1. The authority citation for part 300, subpart C, continues to read as follows:

Authority: 16 U.S.C. 951 *et seq.*

■ 2. In § 300.24, revise paragraph (u) to read as follows:

§ 300.24 Prohibitions.

* * * * *

(u) Use a United States commercial fishing vessel in the Convention Area to target, retain on board, transship, or land Pacific bluefin tuna in contravention of § 300.25(g)(4) through (8) and (g)(10) through (11).

* * * * *

■ 3. In § 300.25, revise paragraph (g) to read as follows:

§ 300.25 Fisheries management.

* * * * *

(g) *Pacific bluefin tuna (Thunnus orientalis) commercial catch limits in the eastern Pacific Ocean for 2019–2020.* The following is applicable to the U.S. commercial fishery for Pacific bluefin tuna in the Convention Area in the years 2019 and 2020.

(1) The 2019–2020 biennial limit is 630 metric tons.

(2) For the calendar year 2019, all commercial fishing vessels of the United States combined may capture, retain, transship, or land no more than 425 metric tons.

(3) In 2020, NMFS will publish a notice in the **Federal Register** announcing the 2020 catch limit. For the calendar year 2020, all commercial fishing vessels of the United States combined may capture, retain on board, transship, or land no more than the 2020 annual catch limit. The 2020 catch limit is the lesser of: The 2019–2020 biennial limit reduced by the amount caught by U.S. commercial vessels in 2019; or 425 metric tons.

(4) In 2019 and 2020, a 15-metric ton trip limit will be in effect until NMFS anticipates that catch will be within 50 metric tons of the catch limit, after which a 2-metric ton trip limit will be in effect upon the effective date provided in actual notice, in accordance with paragraph (g)(8) of this section. In 2020, if the catch limit is 125 mt or less, a 2-metric ton trip limit will be in effect for the entire calendar year.

(5) After NMFS determines that the catch limits under paragraphs (g)(2) and (3) of this section are expected to be reached, NMFS will close the fishery effective upon the date and time provided in the actual notice, in accordance with paragraph (g)(9) of this section. Upon the effective date in the actual notice, targeting, retaining on board, transshipping, or landing Pacific bluefin tuna in the Convention Area shall be prohibited, as described in paragraph (g)(6) of this section.

(6) After NMFS determines that the catch limits under paragraph (g)(4) of this section are expected to be reached, a 2 mt trip limit will be in effect upon the date and time provided in the actual notice, in accordance with paragraph (g)(9) of this section. Pacific bluefin tuna in excess of 2 mt already on board a vessel on the effective date and time of the actual notice may be landed within 48 hours of the effective date and time provided in the actual notice, provided a pre-trip notification has been submitted to NMFS.

(7) Beginning on the date provided in the actual notice of the fishing closure announced under paragraph (g)(5) of this section, a commercial fishing vessel of the United States may not be used to target, retain on board, transship, or land Pacific bluefin tuna captured in the Convention Area through the end of the calendar year, with the exception that any Pacific bluefin tuna already on

board a fishing vessel on the effective date of the notice may be retained on board, transshipped, and/or landed within 14 days after the effective date published in the fishing closure notice, to the extent authorized by applicable laws and regulations.

(8) If an inseason action taken under paragraphs (g)(4), (5), (6), or (7) of this section is based on overestimate of actual catch, NMFS will reverse that action in the timeliest possible manner, provided NMFS finds that reversing that action is consistent with the management objectives for the affected species. The fishery will reopen effective on the date provided in the actual notice in accordance with paragraph (g)(9) of this section.

(9) Inseason actions taken under paragraphs (g)(4), (5), (6), (7), and (8) of this section will be by actual notice from posting on the National Marine Fisheries Service website (<https://www.fisheries.noaa.gov/west-coast/commercial-fishing/pacific-bluefin-tuna-commercial-harvest-status>) and a United States Coast Guard Notice to Mariners. The Notice to Mariners will be broadcast three times daily for four days. This action will also be published in the **Federal Register** as soon as practicable. Inseason actions will be effective from the time specified in the actual notice of the action (*i.e.*, website posting and United States Coast Guard Notice to Mariners), unless the inseason action is published in the **Federal Register** at an earlier time.

(10) For a purse seine vessel to retain or land greater than 2 metric tons of Pacific bluefin tuna while the 15-metric ton trip limit is in effect, the vessel owner or operator must provide a pre-trip notification to NMFS 24 hours in advance of departing on the fishing trip. The notification shall be made to NMFS at pbfnofifications@noaa.gov, and must include the owner or operator's name, contact information, vessel name, port of departure, and intended date and time of departure.

(11) As of July 1, 2019, if landing Pacific bluefin tuna into the State of California, fish landing receipts (*i.e.*, E-tickets) must be submitted within 24 hours to the California Department of Fish and Wildlife in accordance with the requirements of applicable State regulations.

[FR Doc. 2019–08804 Filed 4–30–19; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register

Vol. 84, No. 84

Wednesday, May 1, 2019

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF ENERGY

10 CFR Parts 430 and 431

[EERE-2019-BT-NOA-0011]

RIN 1904-AE24

Test Procedure Interim Waiver Process

AGENCY: Office of Energy Efficiency and Renewable Energy, U.S. Department of Energy.

ACTION: Notice of proposed rulemaking; request for comment.

SUMMARY: The U.S. Department of Energy (DOE) proposes to streamline its test procedure waiver decision-making process to require the Department to notify, in writing, an applicant for an interim waiver of the disposition of the request within 30 business days of receipt of the application. Should DOE fail to satisfy this requirement, the request for interim waiver would be deemed granted based on the criteria in DOE regulations. Specifically, DOE regulations require that DOE grant an interim waiver if it determines that it is desirable for public policy reasons to grant immediate relief pending a determination of the petition for waiver. An interim waiver would remain in effect until a waiver decision is published or until DOE publishes a new or amended test procedure that addresses the issues presented in the application, whichever is earlier. This proposal is intended to address delays in DOE's current process for considering requests for interim waivers and waivers from the DOE test method, which in turn can result in significant delays for manufacturers in bringing new and innovative products to market.

DATES: The comment period for this proposed rule will end on July 1, 2019.

ADDRESSES: You may submit comments, identified by docket number [EERE-2019-BT-NOA-0011], and/or Regulation Identification Number (RIN) 1904-AE24 in one of four ways (please select only one of the ways listed):

1. *Federal e-Rulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

2. *Email:* TPWaiverProcess2019NOA0011@ee.doe.gov. Include docket number [EERE-2019-BT-NOA-0011] and/or RIN 1904-AE24 in the subject line of the email. Please include the full body of your comments in the text of the message or as an attachment. If you have additional information such as studies or journal articles and cannot attach them to your electronic submission, please send them on a CD or USB flash drive to the address listed in paragraph 4. The additional material must clearly identify your electronic comments by name, date, subject, and docket number [EERE-2019-BT-NOA-0011].

3. *Mail:* Address written comments to Appliance and Equipment Standards Program, U.S. Department of Energy, Building Technologies Office, Mailstop EE-5B, 1000 Independence Avenue SW, Washington, DC 20585-0121 (due to potential delays in DOE's receipt and processing of mail sent through the U.S. Postal Service, we encourage respondents to submit comments electronically to ensure timely receipt). If possible, please submit all items on a CD or USB flash drive, in which case it is not necessary to include printed copies.

4. *Hand Delivery/Courier:* Appliance and Equipment Standards Program, U.S. Department of Energy, Building Technologies Office, 950 L'Enfant Plaza SW, Suite 600, Washington, DC 20024. Telephone (202) 287-1445. If possible, please submit all items on a CD or USB flash drive, in which case it is not necessary to include printed copies.

For detailed instructions on submitting comments and additional information on the rulemaking process, see Section IV of this document (Public Participation).

Docket: The docket, which includes **Federal Register** notices, public meeting attendee lists and transcripts, comments, and other supporting documents/materials, is available for review at <http://www.regulations.gov>. All documents in the docket are listed in the <http://www.regulations.gov> index. However, some documents listed in the index, such as those containing information that is exempt from public disclosure, may not be publicly available. A link to the docket web page

can be found at: <http://www.regulations.gov/docket?D=EERE-2019-BT-NOA-0011>. The <http://www.regulations.gov> web page contains instructions on how to access all documents, including public comments, in the docket. See Section IV of this document (Public Participation) for further information on how to submit comments through <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: Ms. Jennifer Tiedeman, U.S. Department of Energy, Office of the General Counsel, GC-33, 1000 Independence Avenue SW, Washington, DC 20585-0121. Telephone: (202) 287-6111. Email: Jennifer.Tiedeman@hq.doe.gov.

SUPPLEMENTARY INFORMATION:

- I. Legal Background
- II. Discussion of Proposed Amendments
- III. Discussion of Data
- IV. Procedural Requirements
 - A. Review Under Executive Orders 12866 and 13563
 - B. Review Under Executive Orders 13771 and 13777
 - C. Review Under the Regulatory Flexibility Act
 - D. Review Under the Paperwork Reduction Act
 - E. Review Under the National Environmental Policy Act
 - F. Review Under Executive Order 12988
 - G. Review Under Executive Order 13132
 - H. Review Under Executive Order 13175
 - I. Review Under the Unfunded Mandates Reform Act of 1995
 - J. Review Under Executive Order 13211
 - K. Review Under the Treasury and General Government Appropriations Act, 1999
 - L. Review Under the Treasury and General Government Appropriations Act, 2001
- V. Public Participation
 - A. Submission of Information
 - B. Issues on Which DOE Seeks Information
- VI. Approval of the Office of the Secretary

I. Legal Background

The Energy Policy and Conservation Act of 1975 ("EPCA" or "the Act"),¹ Public Law 94-163 (42 U.S.C. 6291-6317) authorizes DOE to regulate the energy efficiency of a number of consumer products and industrial equipment types. Title III, Part B² of EPCA established the Energy Conservation Program for Consumer Products Other Than Automobiles. Title

¹ All references to EPCA in this document refer to the statute as amended through the Energy Efficiency Improvement Act of 2015, Public Law 114-11 (April 30, 2015).

² For editorial reasons, Part B was redesignated as Part A upon codification in the U.S. Code.

III, Part C³ of EPCA established the Energy Conservation Program for Certain Industrial Equipment. Under EPCA, DOE's energy conservation program consists essentially of four parts: (1) Testing, (2) labeling, (3) Federal energy conservation standards, and (4) certification and enforcement procedures.

The Federal testing requirements consist of test procedures that manufacturers of covered products and equipment must use as the basis for: (1) Certifying to DOE that their products or equipment complies with the applicable energy conservation standards adopted pursuant to EPCA (42 U.S.C. 6295(s); 42 U.S.C. 6316(a)), and (2) making representations about the efficiency of those products or equipment (42 U.S.C. 6293(c); 42 U.S.C. 6314(d)). Similarly, DOE must use these test procedures to determine whether the products or equipment complies with relevant standards promulgated under EPCA. (42 U.S.C. 6295(s); 42 U.S.C. 6316 (a))

Under 42 U.S.C. 6293 and 6314, EPCA sets forth the criteria and procedures DOE is required to follow when prescribing or amending test procedures for covered products and equipment. EPCA requires that test procedures must be reasonably designed to produce test results that reflect energy efficiency, energy use or estimated annual operating cost of a covered product or covered equipment during a representative average use cycle or period of use and requires that test procedures not be unduly burdensome to conduct (42 U.S.C. 6293(b)(3); 42 U.S.C. 6314(a)(2)). DOE's regulations provide that upon receipt of a petition, DOE will grant a waiver from the test procedure requirements if DOE determines either that the basic model for which the waiver was requested contains a design characteristic that prevents testing of the basic model according to the prescribed test procedures, or that the prescribed test procedures evaluate the basic model in a manner so unrepresentative of its true energy consumption characteristics as to provide materially inaccurate comparative data. 10 CFR 430.27(a)(1) and 10 CFR 431.401(f)(2). DOE may grant the waiver subject to conditions, including adherence to alternate test procedures.

In addition to the full waiver ("decision and order") described above, the waiver process permits parties submitting a petition for waiver to also file an application for interim waiver from the applicable test procedure

requirements. 10 CFR 430.27(a) and 10 CFR 431.401(a). The current regulations specify that, if administratively feasible, DOE will notify the applicant in writing of the disposition of a petition for interim waiver within 30 business days of receipt of the application. The Assistant Secretary will grant an interim waiver if it appears likely that the petition for waiver will be granted, and/or the Assistant Secretary determines that it would be desirable for public policy reasons to grant immediate relief pending a determination of the petition for waiver. 10 CFR 430.27(e)(2) and 10 CFR 430.401(e)(2). Notice of DOE's determination on the petition for interim waiver will also be published in the **Federal Register**. 10 CFR 430.27(e)(1) and 10 CFR 431.401(e)(1). Within one year of issuance of an interim waiver, DOE will either: (i) Publish in the **Federal Register** a determination on the petition for waiver; or (ii) publish in the **Federal Register** a new or amended test procedure that addresses the issues presented in the waiver. 10 CFR 430.27(h)(1) and 10 CFR 431.401(h)(2). When DOE amends the test procedure to address the issues presented in a waiver, the waiver will automatically terminate on the date on which use of that test procedure is required to demonstrate compliance. 10 CFR 430.27(h)(2) and 10 CFR 431.401(h)(2).

II. Discussion of Proposed Amendments

In this proposed rule, DOE is proposing amendments to its regulations that would reduce manufacturers' burden associated with the interim waiver application process, provide them with greater certainty, and speed the availability of innovative product options to consumers. DOE's proposal responds to stakeholder concerns regarding lengthy waiting times following submission of interim waiver and waiver applications, and the burden that lengthy processing time imposes on manufacturers, who are unable to sell their products or equipment absent an interim waiver or waiver from DOE.⁴ This burden may be especially pronounced for manufacturers of seasonal appliances, such as room air conditioners, in cases where interim waiver delays cause a product to miss the applicable seasonal sale window.

Specifically, this proposal is intended to address delays in DOE's current process for considering requests for

interim waivers and waivers from the DOE test method, which in turn can result in significant delays for manufacturers in bringing new and innovative products to market. DOE has in the past incurred delays by not responding to petitions in a timely manner, and this delay has imposed negative consequences for manufacturers who cannot bring their products to market absent a waiver from the Department that allows them to test their products and certify them as compliant with DOE energy conservation standards. Additional information on the length and cost to manufacturers of the delays is described in Section III. DOE's proposal would ensure that manufacturers would need to wait only a maximum of 30 business days before selling products under an approved interim waiver. If the petition for waiver ultimately requires the use of a different test method than that granted under the interim waiver, manufacturers would have an additional grace period of 180 days to begin using the test method required by the waiver.

DOE regulations currently require the Department to notify an applicant in writing of the disposition of a petition for interim waiver within 30 business days of receipt of the application "[i]f administratively feasible." 10 CFR 430.27(e)(1) and 10 CFR 431.401(e)(1). DOE proposes in this notice to amend 10 CFR 430.27(e)(1) and 10 CFR 431.401(e)(1) to require the Department to issue decisions on interim waiver applications within 30 business days, removing the language "[i]f administratively feasible." Under the proposal, an application for interim waiver would be deemed granted, thereby permitting use of the alternate test procedure suggested by the applicant in its application, if DOE fails to notify the applicant in writing of the disposition of an application within 30 business days of receipt of the application. DOE's decision on the interim waiver request will not depend on DOE's view of the sufficiency of the associated petition for waiver, because DOE can work with the petitioner to gather any additional information or conduct any additional analysis deemed necessary to reach a decision on the petition while the manufacturer is able to sell the product or equipment at issue under the interim waiver. DOE's regulations specify that DOE may grant an interim waiver if DOE determines that it would be desirable for public policy reasons to grant immediate relief pending a determination of the petition for waiver. 10 CFR 430.27(e)(2) and 10 CFR 430.401(e)(2).

³ For editorial reasons, Part C was redesignated as Part A-1 upon codification in the U.S. Code.

⁴ See, e.g., <https://energy.gov/sites/prod/files/2018/01/f46/NAFEM%20Regulatory%20Reform%20Roundtable%20Meeting%20Notes%20-%202010.31.17.pdf>.

Because manufacturers may not distribute covered products or equipment in commerce without demonstrating compliance with an applicable energy conservation standard pursuant to testing under the DOE test procedure or a waiver or interim waiver approved by DOE, DOE determines that it is desirable for public policy reasons, including burden reduction on regulated parties and administrative efficiency, to grant immediate relief on each application for interim waiver where DOE has not notified the applicant of its interim waiver decision within the 30-business day period.⁵

This proposal would dovetail with DOE's proposed amendments to 10 CFR 430.27(h) and 10 CFR 431.401(h), which would specify that an interim waiver remains in effect until the earlier of the following: (1) DOE publishes in the **Federal Register** a determination on the petition for waiver or (2) DOE publishes in the **Federal Register** a new or amended test procedure that addresses the issues presented in the waiver application. Under these proposals, manufacturers would receive a decision on their application from DOE within a reasonable time period and would no longer be precluded from distributing covered products or equipment in commerce while waiting for DOE to conclude its analysis, which often stretches significantly beyond 30 business days (see section III, Discussion of Data).

DOE's intent in issuing these proposals is to provide certainty to regulated entities while reducing

regulatory burden and achieving cost savings for manufacturers by reducing the delay in revenue from products pending an interim waiver. Manufacturers who cannot test their products under the DOE test procedure or for whom use of the test procedure produces results that do not reflect the energy consumption of their products cannot sell their products absent an interim waiver or waiver from DOE. To the extent that DOE previously has issued interim waiver decisions in excess of 30 business days after receipt of petitions, the time saved under this proposal is expected to significantly reduce the costs imposed on these manufacturers who cannot sell their products during the time it takes DOE to process an application for interim waiver or waiver request. Additionally, the certainty of a prescribed period prior to the issuance of a decision by the Department should provide manufacturers better information with which to plan for testing requirements. Manufacturers would also be able to proceed with distribution under the interim waiver pending any decision on a waiver application or publication of a new or amended test procedure by the Department. The expected cost savings from this proposed rule, if adopted, are discussed in Section III of this document.

DOE also proposes that if DOE ultimately denies the petition for waiver or grants the petition with a different alternate test procedure than specified in the interim waiver, DOE will provide a grace period of 180 days for the

manufacturer to begin to use the alternate test procedure specified in the decision and order on the petition. This is consistent with the EPCA provision providing 180 days from issuance of a new or amended test procedure for manufacturers to begin using the test procedure for representations of energy efficiency. See 42 U.S.C. 6293(c)(2).

Issue: DOE requests comment on its proposal to specify that an interim waiver would remain in effect until the earlier of the following: A waiver decision is published or DOE publishes a new or amended test procedure that addresses the issues presented in the waiver.

III. Discussion of Data

DOE has reviewed data on the time lags between receipt of an application for interim waiver and issuance of an interim waiver. To the extent that this proposed change would deem as granted interim waiver applications that would be eventually granted under DOE's current process for granting waivers, DOE anticipates cost savings to accrue to manufacturers and consumer surplus to accrue to consumers who benefit from the timely availability of desired products.

Between 2016 and 2018, DOE received 40 waiver applications, 33 of which also included a request for an interim waiver. Of these, two waivers were withdrawn and one waiver was delayed pending ongoing litigation. DOE presents data on the remaining 37 waiver applications below.⁶

TOTAL WAIVERS REQUESTED 2016–2018

Waivers requested	40
% of waivers concluded in under 1 year	69
% of waivers concluded in over 1 year	31
Interim waivers requested	32
% of interim waivers concluded in under 100 days	20
% of interim waivers concluded in more than 100 days	80

Although DOE regulations specify that, if administratively feasible, DOE will notify the applicant in writing of the disposition of a petition for interim waiver within 30 business days of receipt of the application, only one of

the interim waiver requests in this dataset met this timeframe; one-fifth of interim waiver requests were resolved in under 100 days. On average, interim waiver requests received in 2016 took 162 days to resolve; those received in

2017 took 202 days on average, and those received in 2018 took on average 208 days.⁷ This significantly exceeds DOE's objective of turning around interim waiver petitions within 30 business days, or approximately 45

⁵ DOE notes that granting an interim waiver application, as proposed, is not a final agency action as contemplated by the Administrative Procedure Act (APA). The APA defines an "agency action" as including "the whole or a part of an agency rule, order, license, sanction, relief, or the equivalent or denial thereof, or failure to act." 5 U.S.C. 551(13). The Supreme Court has explained that to be "final," an agency action must "mark the consummation of the agency's decision making process, and must either determine rights or obligations or occasion legal consequences." *Alaska*

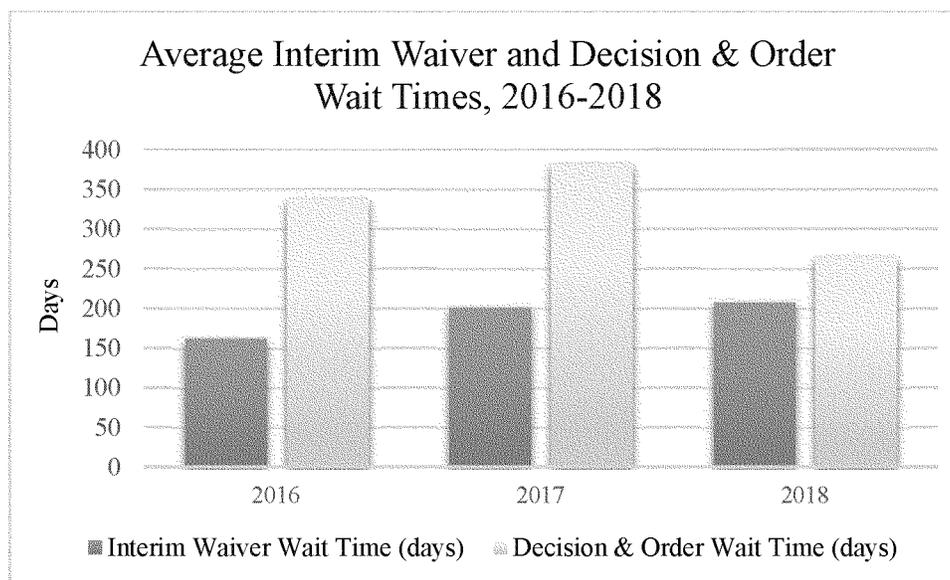
Dep't of Env'tl. Conservation v. EPA, 540 U.S. 461, 482 (2004) (quotation omitted); see *Bennett v. Spear*, 520 U.S. 154, 178 (1997). In this case, interim waivers do not represent the consummation of the Department's decision making process. Indeed, while manufacturers would be able to test and distribute their products or equipment in commerce if granted an interim waiver under the proposal, DOE regulations still contemplate issuance of a final decision on the associated petition for waiver, or a final rule amending the test procedure. Either of these actions could have rights

or obligations, or consequences, that differ from those provided temporarily under an interim waiver.

⁶ In 2016, five of the applications for waiver, four of which included a request for an interim waiver, were addressed in a single final rule amending the test procedures for central air conditioners and heat pumps (81 FR 36991). DOE did not act on the four requests for interim waiver, and there is no accompanying data on the time lag associated with these interim waiver requests.

days. In 2017 alone, four requests for interim waiver took longer than 350 days each to resolve.

interim waiver took longer than 350 days each to resolve.



This time lag between submission of waiver and interim waiver requests and DOE's decision on interim waivers would be somewhat less significant if waiver decisions and orders were issued in a timely manner. However, on average it took DOE nearly one year to issue decisions and orders on waiver petitions submitted in 2016 and 2017.⁸ As of this writing, DOE had one outstanding petition for waiver from 2016 and 3 outstanding petitions submitted in 2017, and has yet to reach a decision on 90% of the petitions for waiver received in 2018. These data illustrate the need for issuance of a timely interim waiver while the full waiver application is pending. Enhancing the efficiency of DOE's interim waiver approval process has the potential to reduce uncertainty for manufacturers and provide consumers with more options.

Issue: DOE requests comment on the length of time manufacturers have previously waited for DOE to provide notification of the disposition of applications for interim waiver (or final decisions on waiver petitions), and the correlated extent of cost savings and any other benefits they expect to realize as a result of the proposal to specify in the regulations that if the Department fails to issue an interim waiver decision within 30 business days following

receipt of an application, the application is deemed granted. DOE seeks, in particular, comment on whether interim waiver delays have affected the availability of seasonal products during peak season, and the effects of these delays on manufacturers and consumers.

IV. Procedural Requirements

A. Review Under Executive Order 12866 and 13563

This regulatory action has been determined to be "significant" under Executive Order 12866, "Regulatory Planning and Review" (58 FR 51735, October 4, 1993). Accordingly, this action was subject to review under that Executive Order by the Office of Information and Regulatory Affairs (OIRA) of the Office of Management and Budget (OMB).

DOE has also reviewed this proposed regulation pursuant to Executive Order 13563, issued on January 18, 2011 (76 FR 3281, Jan. 21, 2011). E.O. 13563 is supplemental to and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866. To the extent permitted by law, agencies are required by Executive Order 13563 to: (1) Propose or adopt a regulation only upon a reasoned determination

that its benefits justify its costs (recognizing that some benefits and costs are difficult to quantify); (2) tailor regulations to impose the least burden on society, consistent with obtaining regulatory objectives, taking into account, among other things, and to the extent practicable, the costs of cumulative regulations; (3) select, in choosing among alternative regulatory approaches, those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity); (4) to the extent feasible, specify performance objectives, rather than specifying the behavior or manner of compliance that regulated entities must adopt; and (5) identify and assess available alternatives to direct regulation, including providing economic incentives to encourage the desired behavior, such as user fees or marketable permits, or providing information upon which choices can be made by the public. DOE concludes that this proposed rule is consistent with these principles. The proposed amendments to DOE's regulations are intended to expedite DOE's processing of test procedure interim waiver applications, thereby reducing financial and administrative burdens for all manufacturers; as such, the proposed

totals for 2017 and 2018 will continue to increase until these requests are concluded.

⁷ Fifty percent of the requests for interim waiver received in 2018 were still pending resolution as of this writing; as a result, totals for 2018 will continue to increase until these requests are concluded.

⁸ 2018 data is omitted here as only one decision and order has yet been issued for waivers requested in 2018 and all remaining requests are still pending. Multiple requests for waiver received in 2017 were also still pending as of this writing; as a result,

rule satisfies the criteria in Executive Order 13563.

B. Review Under Executive Orders 13771 and 13777

On January 30, 2017, the President issued Executive Order 13771, “Reducing Regulation and Controlling Regulatory Costs.” That Order stated the policy of the executive branch is to be prudent and financially responsible in the expenditure of funds, from both public and private sources. The Order stated that it is essential to manage the costs associated with the governmental imposition of private expenditures required to comply with Federal regulations. DOE considers this proposed rule to be an E.O. 13771 deregulatory action, resulting in expected cost savings to manufacturers.

Additionally, on February 24, 2017, the President issued Executive Order 13777, “Enforcing the Regulatory Reform Agenda.” The Order required the head of each agency designate an agency official as its Regulatory Reform Officer (RRO). Each RRO shall oversee the implementation of regulatory reform initiatives and policies to ensure that agencies effectively carry out regulatory reforms, consistent with applicable law. Further, E.O. 13777 requires the establishment of a regulatory task force at each agency. The regulatory task force will make recommendations to the agency head regarding the repeal, replacement, or modification of existing regulations, consistent with applicable law. At a minimum, each regulatory reform task force shall attempt to identify regulations that:

- (i) Eliminate jobs, or inhibit job creation;
- (ii) Are outdated, unnecessary, or ineffective;
- (iii) Impose costs that exceed benefits;
- (iv) Create a serious inconsistency or otherwise interfere with regulatory reform initiatives and policies;
- (v) Are inconsistent with the requirements of Information Quality Act, or the guidance issued pursuant to that Act, in particular those regulations that rely in whole or in part on data, information, or methods that are not publicly available or that are insufficiently transparent to meet the standard for reproducibility; or
- (vi) Derive from or implement Executive Orders or other Presidential directives that have been subsequently rescinded or substantially modified.

As noted, this proposed rule is deregulatory, and is expected to reduce both financial and administrative burdens on regulated parties. Specifically, the proposed amendments to DOE’s regulations discussed in the proposal should improve upon current waiver regulations, which potentially are inhibiting job creation; are ineffective in creating certainty for manufacturers with respect to business decisions; and impose costs that exceed benefits. Specifically, the length of time manufacturers have previously waited for DOE to provide notification of the disposition of applications for interim waiver (or final decisions on waiver petitions), made possible by the open-ended nature of the current regulations, would be significantly shortened by the current proposal. As noted above, the cost savings and other benefits manufacturers should realize by waiting no more than 30 days for an interim waiver should create cost savings, as manufacturers would be able to introduce their products and equipment into commerce in a timely fashion. These cost savings may lead to increased job creation, and create other potentially significant economic benefits.

i. National Cost Savings and Foregone Benefits

The primary anticipated cost saving is from reducing the number of days by which manufacturer revenues are delayed for affected products. This value is monetized using the interest that a manufacturer might have earned on product revenue if an interim waiver were approved within 30 business days (approximately 45 days). On average, between 2016 and 2018, DOE concluded interim waivers after 185 days, or 140 days beyond the 30 business days specified in DOE’s regulations. DOE uses 7% interest per the Office of Management and Budget’s Circular A–4,⁹ and calculates the foregone interest that could have accrued for each affected product during the 140 day delay period.

DOE monetized the scope of delay using average prices for products in

interim waiver petitions and the proportion of affected shipments, based on the proportion of basic models listed in interim waiver petitions relative to the total number of basic models within each product category. A full list of petitions for interim waiver can be accessed at <https://www.energy.gov/eere/buildings/current-test-procedure-waivers>. This list indicates how many interim waiver petitions were received for each product category. Each petition for interim waiver also lists the number of affected basic models, which DOE used to assess the proportion of shipments affected by each petition. Total numbers of basic models per product category are accessible via the DOE’s Compliance Certification Database.¹⁰

Between 2016 and 2018, 5,322 basic models of 12 residential and commercial products were affected by interim waiver delays, totaling 1.31 million in estimated annual shipments and \$1.76 billion in annual sales. The affected products are outlined in Table IV.B.1 below.¹¹ While all affected shipments are represented in Table IV.B.1 below, DOE monetized the cost of delay only for those basic models for which manufacturers would be unable to test or certify absent an interim waiver. For one petition, the manufacturer was unable to test or certify half of the basic models requested absent a waiver; the estimated cost of delay is proportionate to those models. DOE calculated the interest that could have been earned on this revenue over the 140-day average delay period and multiplied the average cost of delay per petition by 11, the average number of interim waiver requests received per year, to reach an annual cost of delay. In undiscounted terms, DOE expects that this proposal will result in \$17.3 million in annual cost savings. DOE assumes that these sales are delayed rather than foregone.

⁹ “The 7 percent rate is an estimate of the average before-tax rate of return to private capital in the U.S. economy. It is a broad measure that reflects the returns to real estate and small business capital as well as corporate capital.” <https://www.whitehouse.gov/sites/whitehouse.gov/files/omb/circulars/A4/a-4.pdf>.

¹⁰ https://www.regulations.doe.gov/certification-data/#q=Product_Group_s%3A*.

¹¹ Walk-in Coolers and Freezers (WICF) are counted as a single affected product. However, Table IV.B.1. breaks out which petitions concerned which WICF components, as their annual shipments and prices vary accordingly.

TABLE IV.B.1—SHIPMENTS AND AVERAGE PRICES OF PRODUCTS/EQUIPMENT AFFECTED BY INTERIM WAIVER DELAYS 2016–2018

Product/equipment	Affected shipments	Average price (2016\$) ¹²	Estimated product sales	Cost of delay
Residential				
Battery Chargers	74,694	\$7.92	\$591,738	\$16,569
Ceiling Fans	48,397	110.43	5,344,688	149,651
Central Air Conditioners & Heat Pumps	481,200	3,086.07	1,371,615,829	38,405,243
Clothes Washers	31,780	700.24	22,253,510	623,098
Dishwashers	24,912	301.92	7,521,486	210,602
Refrigerators	40,968	655.30	26,846,375	751,699
Commercial				
Commercial Refrigeration Equipment	22,036	3,902.71	85,998,189	2,407,949
Walk-in Coolers & Freezers—Doors	190,950	585.60	111,821,271	3,097,477
Walk-in Coolers & Freezers—Systems	700	2,681.82	1,876,011	52,528
Total				45,714,816
Average Cost of Delay per Petition (29 petitions total)				1,576,373
Average Cost of Delay per Year (11 petitions/year)				17,340,103

Note that totals may not add due to rounding.

Foregone Benefits

To the extent that this policy would cause DOE to automatically grant interim waiver requests that it would not have granted in the status quo, this proposal may result in foregone benefits to consumers or the environment. Based on historical data, these effects are anticipated to be relatively small. Of 21 concluded interim waiver petitions, DOE granted 18 in full and granted the

remaining 3 with modifications. Of the modified interim waivers, one was granted in part, one was granted with minor modifications, and one was granted with a different alternative test measure than proposed. DOE estimated the foregone environmental benefits and energy savings of granting the petitions as received, rather than as modified by the Department.

All foregone benefits and savings are annual, rather than one-time, and are

projected in the table below using a perpetual time horizon and discounted to 2016. DOE expects these changes to result in \$457.7 million or \$204.4 million in total cost savings, discounted at 3% and 7%, respectively. In annualized terms, DOE expects \$13.7 million in net cost savings, discounted at 3%, or \$14.3 million in net cost savings discounted at 7%.

TABLE IV.B.2—COST IMPACT OF PROPOSED INTERIM WAIVER RULE (2016\$)

	Costs or (Savings)	Costs or (Savings) millions
Annual Cost Savings of Reduced Delay	(\$17,340,000)	(\$17.34)
Annual Foregone Energy Savings	\$164,000	\$0.16
Annualized Carbon Emissions (SCC), 3% †	\$1,764,000	\$1.76
Annualized Carbon Emissions (SCC), 7% †	\$827,000	\$0.83
Net Present Value at 3%	(\$457,763,000)	(\$457.76)
Net Present Value at 7%	(\$204,428,000)	(\$204.43)
Annualized Costs or (Savings) at 3%	(\$13,733,000)	(\$13.73)
Annualized Costs or (Savings) at 7%	(\$14,310,000)	(\$14.31)

† Undiscounted annual SCC values are not available for comparison.

C. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires that a Federal agency prepare an initial regulatory flexibility analysis for any regulation for which a general notice of proposed rulemaking is required, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial

number of small entities (5 U.S.C. 605(b)).

This proposed rule would impose a requirement on the Department that it must make a decision on interim waiver applications within 30 business days after receipt of a petition. An interim waiver would remain in effect until a waiver decision is published or until DOE publishes a new or amended test procedure that addresses the issues

presented in the waiver, whichever is earlier.

The proposed rule would not impose any new requirements on any manufacturers, including small businesses. The proposed rule would provide greater certainty to manufacturers applying for interim waivers that their petitions would be considered and adjudicated promptly, allowing them, upon DOE grant of an interim waiver, to distribute their

¹² Average price is generally the base case average MSP of equipment from the life-cycle cost year in

the most recently published technical support document. This represents a shipment-weighted

average across efficiency distribution and across all product classes.

products or equipment in commerce while the Department considered its final decision on the petition for waiver. No additional requirements with respect to the waiver application process would be imposed.

For these reasons, DOE certifies that this proposed rule, if promulgated, would not have a significant economic impact on a substantial number of small entities, and therefore, no regulatory flexibility analysis has been prepared. DOE's certification and supporting statement of factual basis will be provided to the Chief Counsel of Advocacy of the SBA pursuant to 5 U.S.C. 605(b).

D. Review Under the Paperwork Reduction Act

Manufacturers of covered products and equipment must certify to DOE that their products or equipment comply with any applicable energy conservation standards. In certifying compliance, manufacturers must test their products and equipment according to the DOE test procedures, including any amendments adopted for those test procedures. DOE has established regulations for the certification and recordkeeping requirements for all covered consumer products and commercial equipment. 76 FR 12422 (March 7, 2011); 80 FR 5099 (Jan. 30, 2015). The collection-of-information requirement for the certification and recordkeeping is subject to review and approval by OMB under the Paperwork Reduction Act (PRA). This requirement has been approved by OMB under OMB control number 1910-1400. Public reporting burden for the certification is estimated to average 30 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

E. Review Under the National Environmental Policy Act

DOE has concluded that promulgation of this proposed rule falls into a class of actions that would not individually or cumulatively have a significant impact on the human environment, as determined by DOE's regulations implementing the National Environmental Policy Act of 1969 (42

U.S.C. 4321 *et seq.*). Specifically, this proposed rule amends existing regulations without changing the environmental effect of the regulations being amended, and, therefore, is covered under the Categorical Exclusion in paragraph A5 of appendix A to subpart D, 10 CFR part 1021. Accordingly, neither an environmental assessment nor an environmental impact statement is required.

F. Review Under Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, "Civil Justice Reform" (61 FR 4729, February 7, 1996), imposes on Federal agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; and (3) provide a clear legal standard for affected conduct rather than a general standard and promote simplification and burden reduction. Section 3(b)(2) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any, to be given to the regulation; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any, to be given to the regulation; (5) defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of the standards. DOE has completed the required review and determined that, to the extent permitted by law, this proposed rule meets the relevant standards of Executive Order 12988.

G. Review Under Executive Order 13132

Executive Order 13132, "Federalism" (64 FR 43255, August 4, 1999), imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have federalism implications. Agencies are required to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and carefully assess the necessity for such actions. DOE has examined this

proposed rule and has determined that it would not preempt State law and would not have a substantial direct effect on the States, the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government. No further action is required by Executive Order 13132.

H. Review Under Executive Order 13175

Under Executive Order 13175 (65 FR 67249, November 6, 2000) on "Consultation and Coordination with Indian Tribal Governments," DOE may not issue a discretionary rule that has "tribal" implications and imposes substantial direct compliance costs on Indian tribal governments. DOE has determined that the proposed rule would not have such effects and concluded that Executive Order 13175 does not apply to this proposed rule.

I. Review Under the Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) requires each Federal agency to assess the effects of Federal regulatory actions on State, local, and Tribal governments and the private sector. Public Law 104-4, sec. 201 (codified at 2 U.S.C. 1531). For regulatory actions likely to result in a rule that may cause the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector of \$100 million or more in any one year (adjusted annually for inflation), section 202 of UMRA requires a Federal agency to publish a written statement that estimates the resulting costs, benefits, and other effects on the national economy. (2 U.S.C. 1532(a),(b)) UMRA also requires a Federal agency to develop an effective process to permit timely input by elected officers of State, local, and Tribal governments on a "significant intergovernmental mandate," and requires an agency plan for giving notice and opportunity for timely input to potentially affected small governments before establishing any requirements that might significantly or uniquely affect them. On March 18, 1997, DOE published a statement of policy on its process for intergovernmental consultation under UMRA. 62 FR 12820. (This policy is also available at <http://energy.gov/gc/office-general-counsel>.) DOE examined this proposed rule according to UMRA and its statement of policy and has tentatively determined that the rule contains neither an intergovernmental mandate, nor a mandate that may result in the expenditure by State, local, and Tribal government, in the aggregate, or by the private sector, of \$100 million or

more in any year. Accordingly, no further assessment or analysis is required under UMRA.

J. Review Under Executive Order 13211

Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use," 66 FR 28355 (May 22, 2001) requires Federal agencies to prepare and submit to the OMB a Statement of Energy Effects for any proposed significant energy action. A "significant energy action" is defined as any action by an agency that promulgated or is expected to lead to promulgation of a final rule, and that: (1) Is a significant regulatory action under Executive Order 12866, or any successor order; and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy, or (3) is designated by the Administrator of OIRA as a significant energy action. For any proposed significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use should the proposal be implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use. This regulatory action would not have a significant adverse effect on the supply, distribution, or use of energy and is therefore not a significant energy action. Accordingly, DOE has not prepared a Statement of Energy Effects.

K. Review Under the Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105-277) requires Federal agencies to issue a Family Policymaking Assessment for any proposed rule that may affect family well-being. The proposed rule would not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

L. Review Under the Treasury and General Government Appropriations Act, 2001

The Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516 note) provides for agencies to review most disseminations of information to the public under guidelines established by each agency pursuant to general guidelines issued by OMB. OMB's guidelines were published at 67 FR 8452 (February 22, 2002), and DOE's guidelines were published at 67

FR 62446 (October 7, 2002). DOE has reviewed this proposed rule under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

V. Public Participation

A. Submission of information

DOE will accept comments, data and information regarding this proposed rule before or after the public hearings, but no later than the date provided in the **DATES** section at the beginning of this proposed rule. Interested individuals are invited to participate in this proceeding by submitting data, views, or arguments with respect to this proposed rule using any of the methods described in the **ADDRESSES** section at the beginning of this proposed rule. To help the Department review the submitted comments, commenters are requested to reference the paragraph(s), e.g., § 835.3(a), to which they refer where possible.

1. *Submitting comments via <http://www.regulations.gov>.* The <http://www.regulations.gov> web page will require you to provide your name and contact information. Your contact information will be viewable to DOE's Office of Energy Efficiency and Renewable Energy staff only. Your contact information will not be publicly viewable except for your first and last names, organization name (if any), and submitter representative name (if any). If your comment is not processed properly because of technical difficulties, DOE will use this information to contact you. If DOE cannot read your comment due to technical difficulties and cannot contact you for clarification, DOE may not be able to consider your comment. However, your contact information will be publicly viewable if you include it in the comment itself or in any documents attached to your comment. Any information that you do not want to be publicly viewable should not be included in your comment, nor in any document attached to your comment. Otherwise, persons viewing comments will see only first and last names, organization names, correspondence containing comments, and any documents submitted with the comments.

Do not submit to <http://www.regulations.gov> information for which disclosure is restricted by statute, such as trade secrets and commercial or financial information (hereinafter referred to as Confidential Business Information (CBI)). Comments submitted through <http://www.regulations.gov> cannot be claimed

as CBI. Comments received through the website will waive any CBI claims for the information submitted. For information on submitting CBI, see the "Confidential Business Information" section.

DOE processes submissions made through <http://www.regulations.gov> before posting them. Normally, comments will be posted within a few days of being submitted. However, if large volumes of comments are being processed simultaneously, your comment may not be viewable for up to several weeks. Please keep the comment tracking number that <http://www.regulations.gov> provides after you have successfully uploaded your comment.

2. *Submitting comments via email, mail or hand delivery/courier.* Comments and documents submitted via email, mail, or hand delivery/courier, also will be posted to <http://www.regulations.gov>. If you do not want your personal contact information to be publicly viewable, do not include it in your comment or any accompanying documents. Instead, provide your contact information in a cover letter. Include your first and last names, email address, telephone number, and optional mailing address. The cover letter will not be publicly viewable as long as it does not include any comments.

Include contact information each time you submit comments, data, documents, and other information to DOE. If you submit via mail or hand delivery/courier, please provide all items on a CD or USB flash drive, if feasible. It is not necessary to submit printed copies. No facsimiles (faxes) will be accepted.

Comments, data, and other information submitted to DOE electronically should be provided in PDF (preferred), Microsoft Word or Excel, WordPerfect, or text (ASCII) file format. Provide documents that are not secured, that are written in English, and that are free of any defects or viruses. Documents should not contain special characters or any form of encryption and, if possible, they should carry the electronic signature of the author.

3. *Confidential Business Information.* Pursuant to the provisions of 10 CFR 1004.11, anyone submitting information or data he or she believes to be confidential and exempt by law from public disclosure should submit via email, postal mail two well-marked copies: one copy of the document marked "CONFIDENTIAL BUSINESS INFORMATION" including all the information believed to be confidential, and one copy of the document marked "NO CONFIDENTIAL BUSINESS

INFORMATION” with the information believed to be confidential deleted. Submit these documents via email or CD, if feasible. DOE will make its own determination as to the confidentiality of the information and treat it accordingly. Factors of interest to DOE when evaluating requests to treat submitted information as confidential include: (1) A description of the items; (2) whether and why such items are customarily treated as confidential within the industry; (3) whether the information is generally known by or available from other sources; (4) whether the information has previously been made available to others without obligation concerning its confidentiality; (5) an explanation of the competitive injury to the submitting person which would result from public disclosure; (6) when such information might lose its confidential character due to the passage of time; and (7) why disclosure of the information would be contrary to the public interest.

It is DOE’s policy that all comments may be included in the public docket, without change and as received, including any personal information provided in the comments (except information deemed to be exempt from public disclosure).

4. *Campaign form letters.* Please submit campaign form letters by the originating organization in batches of between 50 to 500 form letters per PDF or as one form letter with a list of supporters’ names compiled into one or more PDFs. This reduces comment processing and posting time.

B. Issues on Which DOE Seeks Information

1. DOE requests comment on the length of time manufacturers have previously waited for DOE to provide notification of the disposition of applications for interim waiver (or final decisions on waiver petitions), and the correlated extent of cost savings and any other benefits they expect to realize as a result of the proposal to specify in the regulations that if the Department fails to issue an interim waiver decision within 30 business days following receipt of an application, the application is deemed granted. DOE also requests comment on its proposal to specify that an interim waiver would remain in effect until the earlier of the following: a waiver decision is published or DOE publishes a new or amended test procedure that addresses the issues presented in the waiver.

VI. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of this proposed rule.

List of Subjects

10 CFR Part 430

Administrative practice and procedure, Confidential business information, Energy conservation, Household appliances, Imports, Incorporation by Reference, Intergovernmental relations, Small businesses.

10 CFR Part 431

Administrative practice and procedure, Confidential business information, Test procedures, Incorporation by reference, Reporting and recordkeeping requirements.

Signed in Washington, DC, on April 24, 2019.

Daniel R. Simmons,

Assistant Secretary, Energy Efficiency and Renewable Energy.

For the reasons set forth in the preamble, the Department of Energy proposes to amend parts 430 and 431 of Chapter II, Subchapter D, of Title 10 of the Code of Federal Regulations, as set forth below:

PART 430—ENERGY CONSERVATION PROGRAM FOR CONSUMER PRODUCTS

■ 1. The authority citation for part 430 continues to read as follows:

Authority: 42 U.S.C. 6291–6309; 28 U.S.C. 2461 note.

■ 2. Section 430.27 is amended by revising paragraphs (e)(1) and (h)(1) to read as follows:

§ 430.27 Petitions for waiver and interim waiver.

* * * * *

(e) *Provisions specific to interim waivers—(1) Disposition of application.* (i) DOE will notify the applicant in writing of the disposition of the petition for interim waiver within 30 days of receipt of the application. If DOE does not notify the applicant in writing of the disposition of the petition for interim waiver within 30 business days of receipt of the application, the interim waiver, as requested in the application, is deemed granted. Notice of DOE’s determination on the petition for interim waiver will be published in the **Federal Register**.

(ii) A waiver is considered received on the date it is received by the Department through the Department’s established email box for receipt of waiver or, if delivered by mail, on the

date the waiver is stamped as received by the Department.

(iii) If DOE ultimately denies the petition for waiver or grants the petition with a different alternate test procedure than specified in the interim waiver, DOE will provide a grace period of 180 days for the manufacturer to begin to use the DOE test procedure or the alternate test procedure specified in the decision and order on the petition to make representations of energy efficiency.

* * * * *

(h) *Duration.* (1) Interim waivers remain in effect until the earlier of the following:

(i) DOE publishes a decision on a petition for waiver in the **Federal Register** pursuant to paragraph (f) of this section; or

(ii) DOE publishes in the **Federal Register** a new or amended test procedure that addresses the issues presented in the waiver.

* * * * *

PART 431—ENERGY EFFICIENCY PROGRAM FOR CERTAIN COMMERCIAL AND INDUSTRIAL EQUIPMENT

■ 3. The authority citation for part 431 continues to read as follows:

Authority: 42 U.S.C. 6291–6317; 28 U.S.C. 2461 note.

■ 4. Section 431.401 is amended by revising paragraphs (e)(1) and (h)(1) to read as follows:

§ 431.401 Petitions for waiver and interim waiver.

* * * * *

(e) *Provisions specific to interim waivers—(1) Disposition of application.* (i) DOE will notify the applicant in writing of the disposition of the petition for interim waiver within 30 business days of receipt of the application. If DOE does not notify the applicant in writing of the disposition of the petition for interim waiver within 30 business days of receipt of the application, the interim waiver, as requested in the application, is deemed granted. Notice of DOE’s determination on the petition for interim waiver will be published in the **Federal Register**.

(ii) A waiver is considered received on the date it is received by the Department through the Department’s established email box for receipt of waiver or, if delivered by mail, on the date the waiver is stamped as received by the Department.

(iii) If DOE ultimately denies the petition for waiver or grants the petition with a different alternate test procedure than specified in the interim waiver,

DOE will provide a grace period of 180 days for the manufacturer to begin to use the DOE test procedure or the alternate test procedure specified in the decision and order on the petition to make representations of energy efficiency.

* * * * *

(h) *Duration.* (1) Interim waivers remain in effect until the earlier of the following:

(i) DOE publishes a decision on a petition for waiver pursuant to paragraph (f) of this section in the **Federal Register**; or

(ii) DOE publishes in the **Federal Register** a new or amended test procedure that addresses the issues presented in the waiver.

* * * * *

[FR Doc. 2019-08699 Filed 4-30-19; 8:45 am]

BILLING CODE 6450-01-P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1308

[Docket No. DEA-495]

Schedules of Controlled Substances: Temporary Placement of *N*-Ethylhexedrone, α -PHP, 4-MEAP, MPHP, PV8, and 4-Chloro- α -PVP in Schedule I

AGENCY: Drug Enforcement Administration, Department of Justice.

ACTION: Proposed amendment; notice of intent.

SUMMARY: The Acting Administrator of the Drug Enforcement Administration is issuing this notice of intent to publish a temporary order to schedule the synthetic cathinones, *N*-ethylhexedrone; *alpha*-pyrrolidinohexanophenone (trivial name: α -PHP); 4-methyl-*alpha*-ethylaminopentiphenone (trivial name: 4-MEAP); 4'-methyl-*alpha*-pyrrolidinoheptiphenone (trivial name: MPHP); *alpha*-pyrrolidinoheptiphenone (trivial name: PV8); and 4-chloro-*alpha*-pyrrolidinovalerophenone (trivial name: 4-chloro- α -PVP), in schedule I. When it is issued, the temporary scheduling order will impose regulatory requirements under the Controlled Substances Act (CSA) on the manufacture, distribution, reverse distribution, possession, importation, exportation, research, conduct of instructional activities, and chemical analysis of these synthetic cathinones, as well as administrative, civil, and criminal remedies with respect to persons who fail to comply with such

requirements or otherwise violate the CSA with respect to these substances.

DATES: May 1, 2019.

FOR FURTHER INFORMATION CONTACT: Lynnette M. Wingert, Regulatory Drafting and Policy Support Section (DPW), Diversion Control Division, Drug Enforcement Administration; Mailing Address: 8701 Morrisette Drive, Springfield, Virginia 22152; Telephone: (202) 598-6812.

SUPPLEMENTARY INFORMATION: This notice of intent contained in this document is issued pursuant to the temporary scheduling provisions of 21 U.S.C. 811(h). The Drug Enforcement Administration (DEA) intends to issue a temporary scheduling order (in the form of a temporary amendment) placing *N*-ethylhexedrone, α -PHP, 4-MEAP, MPHP, PV8, and 4-chloro- α -PVP in schedule I of the Controlled Substances Act (CSA).¹ The temporary scheduling order will be published in the **Federal Register** on or after May 31, 2019.

Legal Authority

Section 201 of the Controlled Substances Act (CSA), 21 U.S.C. 811, provides the Attorney General with the authority to temporarily place a substance in schedule I of the CSA for two years without regard to the requirements of 21 U.S.C. 811(b), if he finds that such action is necessary to avoid an imminent hazard to the public safety. 21 U.S.C. 811(h)(1). In addition, if proceedings to control a substance permanently are initiated under 21 U.S.C. 811(a)(1) while the substance is temporarily controlled under section 811(h), the Attorney General may extend the temporary scheduling for up to one year. 21 U.S.C. 811(h)(2).

Where the necessary findings are made, a substance may be temporarily scheduled if it is not listed in any other schedule under section 202 of the CSA, 21 U.S.C. 812, or if there is no exemption or approval in effect for the substance under section 505 of the Federal Food, Drug, and Cosmetic Act (FDCA), 21 U.S.C. 355. 21 U.S.C. 811(h)(1); 21 CFR part 1308. The Attorney General has delegated scheduling authority under 21 U.S.C. 811 to the Administrator of the DEA. 28 CFR 0.100.

Background

Section 201(h)(4) of the CSA, 21 U.S.C. 811(h)(4), requires the

¹ Though DEA has used the term "final order" with respect to temporary scheduling orders in the past, this notice of intent adheres to the statutory language of 21 U.S.C. 811(h), which refers to a "temporary scheduling order." No substantive change is intended.

Administrator to notify the Secretary of the Department of Health and Human Services (HHS) of his intention to temporarily place a substance in schedule I of the CSA.² The Acting Administrator transmitted notice of his intent to place *N*-ethylhexedrone, α -PHP, 4-MEAP, MPHP, PV8, and 4-chloro- α -PVP in schedule I on a temporary basis to the Assistant Secretary for Health of HHS by letter dated March 9, 2018. The Acting Assistant Secretary responded to this notice of intent by letter dated March 27, 2018, and advised that based on a review by the Food and Drug Administration (FDA), there were currently no approved new drug applications or active investigational new drug applications for *N*-ethylhexedrone, α -PHP, 4-MEAP, MPHP, PV8, and 4-chloro- α -PVP. The Acting Assistant Secretary also stated that the HHS had no objection to the temporary placement of *N*-ethylhexedrone, α -PHP, 4-MEAP, MPHP, PV8, and 4-chloro- α -PVP in schedule I of the CSA. *N*-Ethylhexedrone, α -PHP, 4-MEAP, MPHP, PV8, and 4-chloro- α -PVP are not currently listed in any schedule under the CSA, and no exemptions or approvals are in effect for *N*-ethylhexedrone, α -PHP, 4-MEAP, MPHP, PV8, and 4-chloro- α -PVP under section 505 of the FDCA, 21 U.S.C. 355.

In order to find that placing a substance temporarily in schedule I of the CSA is necessary to avoid an imminent hazard to the public safety, the Administrator is required to consider three of the eight factors set forth in 21 U.S.C. 811(c): The substance's history and current pattern of abuse; the scope, duration and significance of abuse; and what, if any, risk there is to the public health. 21 U.S.C. 811(h)(3). Consideration of these factors includes actual abuse, diversion from legitimate channels, and clandestine importation, manufacture, or distribution. 21 U.S.C. 811(h)(3).

A substance meeting the statutory requirements for temporary scheduling may only be placed in schedule I. 21 U.S.C. 811(h)(1). Substances in schedule I are those that have a high potential for abuse, no currently accepted medical use in treatment in the United States,

² As discussed in a memorandum of understanding entered into by the Food and Drug Administration (FDA) and the National Institute on Drug Abuse (NIDA), the FDA acts as the lead agency within the HHS in carrying out the Secretary's scheduling responsibilities under the CSA, with the concurrence of NIDA. 50 FR 9518, Mar. 8, 1985. The Secretary of the HHS has delegated to the Assistant Secretary for Health of the HHS the authority to make domestic drug scheduling recommendations. 58 FR 35460, July 1, 1993.

and a lack of accepted safety for use under medical supervision. 21 U.S.C. 812(b)(1).

Synthetic Cathinones

Recently, novel synthetic cathinones that mimic the biological effects of substances with stimulant-like effects have emerged on the illicit drug market. These novel cathinones, also known as designer drugs, are structurally similar to several drugs of abuse such as schedule I synthetic cathinones (e.g., methcathinone, mephedrone, methylone, pentylone, and 3,4-methylenedioxypyrovalerone (MDPV)). The illicit use of synthetic cathinones has continued throughout the United States, resulting in severe adverse effects, overdoses, and deaths. Indeed, hospital reports, scientific publications and/or law enforcement reports demonstrate that these types of substances are being abused for their psychoactive properties and they cause harm (see DEA 3-Factor Analysis). Recreational effects reported by abusers of synthetic cathinones include euphoria, sense of well-being, increased sociability, energy, empathy, increased alertness, improved concentration, and focus. Adverse effects such as tachycardia, hypertension, rhabdomyolysis, hyponatremia, seizures, and altered mental status (paranoia, hallucinations, and delusions) have also been reported from the abuse of synthetic cathinones. Consequently, there are documented reports of emergency room admissions and deaths associated with the abuse of synthetic cathinone substances. With many generations of synthetic cathinones having been encountered since 2009, the abuse of *N*-ethylhexedrone, α -PHP, 4-MEAP, MPHP, PV8, and 4-chloro- α -PVP is impacting or will negatively impact communities.

Law enforcement data indicate that *N*-ethylhexedrone, α -PHP, 4-MEAP, MPHP, PV8, and 4-chloro- α -PVP have appeared in the United States' illicit drug market (see DEA 3-Factor Analysis). Law enforcement encounters include those reported to the National Forensic Laboratory Information System (NFLIS), a DEA sponsored program that systematically collects drug identification results and associated information from drug cases analyzed by Federal, State, and local forensic laboratories. From January 2012 to September 24, 2018, NFLIS registered 1,131 drug exhibits pertaining to the trafficking, distribution and abuse of *N*-ethylhexedrone, α -PHP, 4-MEAP, MPHP, PV8, and 4-chloro- α -PVP. These exhibits had a net weight of

approximately 18.7 kilograms and were encountered in powder, crystal, rock, resin, capsule, and tablet forms.

As observed by the DEA and by the United States Customs and Border Protection (CBP), synthetic cathinones originate from foreign sources, such as China. Bulk powder substances are smuggled via common carrier into the United States and find their way to clandestine designer drug product manufacturing operations located in residential neighborhoods, garages, warehouses, and other similar destinations throughout the country. Encounters of *N*-ethylhexedrone, α -PHP, 4-MEAP, MPHP, PV8, and 4-chloro- α -PVP have occurred by the CBP (see DEA 3-Factor Analysis).

N-Ethylhexedrone, α -PHP, 4-MEAP, MPHP, PV8, and 4-chloro- α -PVP have no accepted medical use in the United States. *N*-Ethylhexedrone, α -PHP, 4-MEAP, MPHP, PV8, and 4-chloro- α -PVP have been seized by law enforcement in the United States. The misuse of α -PHP, 4-MEAP, MPHP, and PV8 has been reported to result in adverse effects in humans in the United States. Although no overdose information is currently available for *N*-ethylhexedrone and 4-chloro- α -PVP, law enforcement seizures of these two substances and their pharmacological similarity to currently controlled schedule I synthetic cathinones (e.g., methcathinone, mephedrone, methylone, pentylone, MDPV) suggest that these two synthetic cathinones are likely to produce adverse effects similar to those produced by other synthetic cathinones.

N-Ethylhexedrone, α -PHP, 4-MEAP, MPHP, PV8, and 4-chloro- α -PVP are synthetic cathinones that have pharmacological effects similar to schedule I synthetic cathinone substances such as methcathinone, mephedrone, methylone, pentylone, and MDPV and schedule II stimulants such as methamphetamine and cocaine. The misuse of α -PHP, 4-MEAP, MPHP, and PV8 has been associated with one or more overdoses with some requiring emergency medical intervention in the United States. With no approved medical use and limited safety or toxicological information, *N*-ethylhexedrone, α -PHP, 4-MEAP, MPHP, PV8, and 4-chloro- α -PVP have emerged on the designer drug market, and the abuse or trafficking of these substances for their psychoactive properties is concerning.

Factor 4. History and Current Pattern of Abuse

N-Ethylhexedrone, α -PHP, 4-MEAP, MPHP, PV8, and 4-chloro- α -PVP are synthetic cathinones that have been

identified in the United States' illicit drug market. Evidence indicates that these substances are being substituted for schedule I synthetic cathinones. Products containing synthetic cathinones have been falsely marketed as "research chemicals," "jewelry cleaner," "stain remover," "plant food or fertilizer," "insect repellants," or "bath salts." They have been sold at smoke shops, head shops, convenience stores, adult bookstores, and gas stations. They can also be purchased on the internet. These substances are commonly encountered in the form of powders, crystals, tablets, and capsules. Other encountered forms include resin, rock, liquid, and deposits on plant matter. Law enforcement has encountered *N*-ethylhexedrone, α -PHP, 4-MEAP, MPHP, PV8, and 4-chloro- α -PVP in powder, crystal, resin, rock, capsule, or tablet forms. The packages of these commercial products usually contain the warning "not for human consumption," most likely in an effort to circumvent statutory restrictions for these substances.

N-Ethylhexedrone, α -PHP, 4-MEAP, MPHP, PV8, and 4-chloro- α -PVP are likely to be abused in the same manner as schedule I synthetic cathinones such as methcathinone, mephedrone, methylone, pentylone, and MDPV. Information from published scientific studies indicate that the most common routes of administration for synthetic cathinones are nasal insufflation by snorting the powder and ingestion by swallowing capsules or tablets. The powder can also be injected or swallowed. Other methods of intake include rectal administration, ingestion by "bombing" (wrapping a dose of powder in a paper wrap and swallowing) and intramuscular injection.

Based upon the information collected from case reports, medical journals, and scientific publications including survey data, the main users of synthetic cathinones are youths and young adults. Given that *N*-ethylhexedrone, α -PHP, 4-MEAP, MPHP, PV8, and 4-chloro- α -PVP are newly emerging synthetic cathinones, it is likely that these substances will be used by the same population. This is consistent with data collected from the use of schedule I synthetic cathinones (e.g., mephedrone, methylone, pentylone, MDPV). According to Monitoring the Future (MTF) survey data,³ the 2017 annual

³ Monitoring the Future (MTF) is a research program conducted at the University of Michigan's Institute for Social Research under grants from NIDA. MTF tracks drug use trends among United States adolescents in the 8th, 10th, and 12th grades

prevalence rate of synthetic cathinone use was 0.6% for high school seniors and 0.3% for young adults (19–30 years). However, there was an 18 percentage point increase in the perceived risk of trying “bath salts” in young adults (aged 19–26 years).

N-Ethylhexedrone, α -PHP, 4-MEAP, MPHP, PV8, and 4-chloro- α -PVP are likely to have duration of effects similar to those of schedule I synthetic cathinones because of their structural and pharmacological similarities. Users report (drug surveys, scientific and medical literature, *etc.*) that the effects of synthetic cathinones occur a few minutes to 15 minutes after administration, depending on the synthetic cathinone and the route of administration (oral, insufflation, intravenous, *etc.*), and can last up to three hours.

Evidence indicated that *N*-ethylhexedrone, α -PHP, 4-MEAP, MPHP, PV8, and 4-chloro- α -PVP are ingested with other substances. This is likely to either heighten the effects or ameliorate the come-down effects of the synthetic cathinones. Co-ingestions can be from the ingestion of multiple products separately or a single product that is composed of multiple substances (*e.g.*, one tablet containing *N*-ethylhexedrone, α -PHP, 4-MEAP, MPHP, PV8, 4-chloro- α -PVP and other illicit substances). Indeed, law enforcement routinely encounters synthetic cathinone mixtures. Substances found in combination with *N*-ethylhexedrone, α -PHP, 4-MEAP, MPHP, PV8, or 4-chloro- α -PVP are: Other synthetic cathinones (*e.g.*, MDPV, 4-chloromethcathinone, *N*-ethylpentylone, α -PVP), common cutting agents (*e.g.*, caffeine), or other recreational substances (*e.g.*, methamphetamine, fentanyl, fentanyl analogues, carfentanil, benzodiazepines (*e.g.*, alprazolam), heroin, cocaine, synthetic cannabinoids, fluoroamphetamine, MDMA). Multiple drug use and potential co-ingestions are confirmed by forensic analysis of seized and purchased synthetic cathinone products.

Factor 5. Scope, Duration and Significance of Abuse

Since 2009, the popularity of synthetic cathinones and their associated products has continued, as evidenced by law enforcement seizures, public health information, and media reports. As one synthetic cathinone is controlled, another unscheduled synthetic cathinone appears in the

recreational drug market. *N*-Ethylhexedrone, α -PHP, 4-MEAP, MPHP, PV8, and 4-chloro- α -PVP are synthetic cathinones that have been identified in the United States' illicit drug market (*see* DEA 3-Factor Analysis for a full discussion).

Law enforcement data indicate that *N*-ethylhexedrone, α -PHP, 4-MEAP, MPHP, PV8, and 4-chloro- α -PVP are being abused in the United States as recreational drugs. While law enforcement data are not direct evidence of abuse, the data can infer that a drug has been diverted and abused.⁴ Forensic laboratories have confirmed the presence of these substances in drug exhibits received from state, local, and federal law enforcement agencies. From January 2012 to September 24, 2018, there were 1,131 exhibits reported to NFLIS databases (federal, state, and local forensic laboratories) pertaining to the trafficking, distribution and abuse of *N*-ethylhexedrone, α -PHP, 4-MEAP, MPHP, PV8, and 4-chloro- α -PVP. These exhibits had a net weight of approximately 18.7 kilograms. These data also indicated that the abuse of *N*-ethylhexedrone, α -PHP, 4-MEAP, MPHP, PV8, and 4-chloro- α -PVP is widespread and has been encountered in many states since 2012 in the United States.

The following information details data obtained from the NFLIS database (queried on September 24, 2018), including dates of first encounter, exhibits/reports, and locations.

N-ethylhexedrone: NFLIS—233 reports, first encountered in August 2016, locations include: Arizona, Florida, Georgia, Illinois, Indiana, Kansas, Kentucky, Louisiana, Michigan, Minnesota, Mississippi, Missouri, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, South Carolina, Tennessee, Texas, Virginia, and Wyoming.

α -PHP: NFLIS—395 reports, first encountered in May 2014, locations include: Arkansas, California, Colorado, Florida, Georgia, Idaho, Illinois, Indiana, Iowa, Kentucky, Maine, Massachusetts, Michigan, Minnesota, Missouri, New Hampshire, New Jersey, New York, Ohio, Oregon, Pennsylvania, South Carolina, South Dakota, Tennessee, Texas, Utah, Virginia, Wisconsin, and Wyoming.

4-MEAP: NFLIS—105 reports, first encountered in August 2013, locations include: Alabama, Arkansas, California, Colorado, Connecticut, Florida, Georgia, Illinois, Indiana, Kansas, Louisiana, Maryland, Minnesota, New Hampshire,

New York, Ohio, Oklahoma, Oregon, Pennsylvania, Tennessee, and Texas.

MPHP: NFLIS—71 reports, first encountered in June 2012, locations include: California, Connecticut, Florida, Georgia, Indiana, Kansas, Kentucky, Maine, Minnesota, Missouri, Nebraska, Nevada, New Jersey, Ohio, Pennsylvania, and Texas.

PV8: NFLIS—166 reports, first encountered in December 2013, locations include: Arizona, Connecticut, District of Columbia, Florida, Georgia, Idaho, Indiana, Iowa, Kentucky, Louisiana, Maine, Massachusetts, Minnesota, Missouri, Nebraska, Nevada, New Hampshire, New Jersey, New York, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, South Carolina, Tennessee, Texas, Utah, Virginia, and Wisconsin.

4-Chloro- α -PVP: NFLIS—160 reports, first encountered in December 2015, locations include: California, District of Columbia, Louisiana, Maryland, Arizona, Connecticut, Florida, Georgia, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Maine, Massachusetts, Minnesota, Missouri, New Jersey, New York, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, Tennessee, Texas, Utah, Virginia, and Washington.

Additionally, encounters/seizures of these substances have occurred by the CBP at United States ports of entry. As observed by the DEA and CBP, synthetic cathinones originate from foreign sources, such as China. Bulk powder substances are smuggled via common carrier into the United States and find their way to clandestine designer drug product manufacturing operations located in residential neighborhoods, garages, warehouses, and other similar destinations throughout the country. From 2014 to 2017, CBP encountered 73 shipments of products containing *N*-ethylhexedrone, α -PHP, 4-MEAP, MPHP, PV8, or 4-chloro- α -PVP. Additional evidence indicates that some of these synthetic cathinones have been seized abroad. *N*-Ethylhexedrone and 4-chloro- α -PVP have been identified in seized materials in China and Poland, respectively. These data demonstrate that these substances are being trafficked and abused in the United States and abroad.

Concerns over the abuse of synthetic cathinone substances have led to the control of many synthetic cathinones. The DEA controlled 13 synthetic cathinones: methylone, mephedrone, MDPV, 4-methyl-*N*-ethylcathinone (4-MEC), 4-methyl-*alpha*-pyrrolidinopropiophenone (4-MePPP), *alpha*-pyrrolidinopentiophenone (α -PVP), butylone (1-(1,3-benzodioxol-5-

and high school graduates into adulthood by conducting national surveys.

⁴ See 76 FR 77330, 77332, Dec. 12, 2011.

yl)-2-(methylamino)butan-1-one), pentedrone (2-(methylamino)-1-phenylpentan-1-one), pentylone, 4-fluoro-*N*-methylcathinone (4-FMC), 3-fluoro-*N*-methylcathinone (3-FMC), naphyrone (1-(naphthalen-2-yl)-2-(pyrrolidin-1-yl)pentan-1-one), and *alpha*-pyrrolidinobutiophenone (α -PBP) from 2011 to 2014 (October 21, 2011; 76 FR 65371 and March 7, 2014; 79 FR 12938). Recently, the DEA controlled another synthetic cathinone, *N*-ethylpentylone (August, 31, 2018; 83 FR 44474), as a schedule I substance.

Factor 6. What, if Any, Risk There Is to the Public Health

Available evidence on the overall public health risks associated with the use of synthetic cathinones suggests that *N*-ethylhexedrone, α -PHP, 4-MEAP, MPHP, PV8, and 4-chloro- α -PVP can cause acute health problems leading to emergency department (ED) admissions, violent behaviors causing harm to self or others, or death. Acute adverse effects of synthetic cathinone substances are those typical of sympathomimetic agents (e.g., cocaine, methamphetamine, amphetamine) and include among other effects tachycardia, headache, palpitations, agitation, anxiety, mydriasis, tremor, fever or sweating, and hypertension. Other effects, with possible public health risk implications, that have been reported from the use of synthetic cathinone substances include psychological effects such as psychosis, paranoia, hallucinations, and agitation.

α -PHP, 4-MEAP, MPHP, and PV8 have been associated with the overdoses or deaths of individuals. There have been documented reports of ED admissions or deaths associated with the abuse of α -PHP, 4-MEAP, MPHP, and PV8. Individuals under the influence of 4-MEAP and MPHP have acted violently or unpredictably causing harm, or even death, to themselves or others. Adverse effects associated with α -PHP, 4-MEAP, MPHP, and PV8 abuse included vomiting, agitation, paranoia, hypertension, unconsciousness, tachycardia, seizures, cardiac arrest, rhabdomyolysis, or death. No overdose information is currently available for *N*-ethylhexedrone and 4-chloro- α -PVP, but the pharmacological similarity of these substances to other currently controlled schedule I synthetic cathinones (e.g., methcathinone, mephedrone, methylone, pentylone, MDPV) suggests that these substances can also pose an imminent hazard to public safety.

It remains highly likely that additional cases of adverse health effects involving α -PHP, 4-MEAP, MPHP, and PV8 in the United States may have occurred and will continue to

be under-reported as these substances, as well as *N*-ethylhexedrone and 4-chloro- α -PVP, are not part of standard panels for biological specimens. The pharmacological data for *N*-ethylhexedrone, α -PHP, 4-MEAP, MPHP, PV8, and 4-chloro- α -PVP alone or combined with documented case reports, if any, demonstrate that the potential for fatal and non-fatal overdoses exists for *N*-ethylhexedrone, α -PHP, 4-MEAP, MPHP, PV8, and 4-chloro- α -PVP; thus, these substances pose an imminent hazard to the public health and safety.

As found with other synthetic cathinone substances, products containing synthetic cathinones often do not bear labeling information regarding the ingredients or the health risks and potential hazards associated with these products. The limited knowledge about product content and its purity, as well as lack of information about its effects, pose additional risks for significant adverse health effects to the users.

Based on pharmacological data or documented case reports of overdose fatalities, the misuse and abuse of *N*-ethylhexedrone, α -PHP, 4-MEAP, MPHP, PV8, and 4-chloro- α -PVP leads to the same qualitative public health risks as schedule I and II substances such as cathinone, methcathinone, mephedrone, methylone, pentylone, MDPV, methamphetamine, cocaine, and MDMA. α -PHP, MPHP, and PV8 have been associated with fatalities. As the data demonstrates, the potential for fatal and non-fatal overdoses exists for *N*-ethylhexedrone, α -PHP, 4-MEAP, MPHP, PV8, and 4-chloro- α -PVP pose an imminent hazard to the public safety.

N-ethylhexedrone, α -PHP, 4-MEAP, MPHP, PV8, and 4-chloro- α -PVP are being encountered on the illicit drug market in the United States and have no accepted medical use in the United States. Regardless, these products continue to be easily available and abused by diverse populations.

Finding of Necessity of Schedule I Placement To Avoid Imminent Hazard to Public Safety

In accordance with 21 U.S.C. 811(h)(3), based on the available data and information summarized above, the continued uncontrolled manufacture, distribution, reverse distribution, importation, exportation, conduct of research and chemical analysis, possession, and/or abuse of *N*-ethylhexedrone, α -PHP, 4-MEAP, MPHP, PV8, and 4-chloro- α -PVP, resulting from the lack of control of

these substances, pose an imminent hazard to the public safety. The DEA is not aware of any currently accepted medical uses for *N*-ethylhexedrone, α -PHP, 4-MEAP, MPHP, PV8, and 4-chloro- α -PVP in the United States. A substance meeting the statutory requirements for temporary scheduling, 21 U.S.C. 811(h)(1), may only be placed in schedule I. Substances in schedule I are those that have a high potential for abuse, no currently accepted medical use in treatment in the United States, and a lack of accepted safety for use under medical supervision. Available data and information for *N*-ethylhexedrone, α -PHP, 4-MEAP, MPHP, PV8, and 4-chloro- α -PVP indicate that these synthetic cathinones have a high potential for abuse, no currently accepted medical use in treatment in the United States, and a lack of accepted safety for use under medical supervision. As required by section 201(h)(4) of the CSA, 21 U.S.C. 811(h)(4), the Acting Administrator, through a letter dated March 9, 2018, notified the Acting Assistant Secretary of the DEA's intention to temporarily place *N*-ethylhexedrone, α -PHP, 4-MEAP, MPHP, PV8, and 4-chloro- α -PVP in schedule I.

Conclusion

This notice of intent provides the 30-day notice pursuant to section 201(h) of the CSA, 21 U.S.C. 811(h), of the DEA's intent to issue a temporary scheduling order. In accordance with the provisions of section 201(h) of the CSA, 21 U.S.C. 811(h), the Acting Administrator considered available data and information, herein set forth the grounds for his determination to temporarily schedule *N*-ethylhexedrone; alpha-pyrrolidinohexanophenone (trivial name: α -PHP); 4-methyl-alpha-ethylaminopentiophenone (trivial name: 4-MEAP); 4'-methyl-alpha-pyrrolidinohexiophenone (trivial name: MPHP); alpha-pyrrolidinoheptaphenone (trivial name: PV8); and 4-chloro-alpha-pyrrolidinovalerophenone (trivial name: 4-chloro- α -PVP) in schedule I of the CSA, and finds that placement of *N*-ethylhexedrone, α -PHP, 4-MEAP, MPHP, PV8, and 4-chloro- α -PVP in schedule I of the CSA on a temporary basis is necessary to avoid an imminent hazard to the public safety.

The temporary placement of *N*-ethylhexedrone, α -PHP, 4-MEAP, MPHP, PV8, and 4-chloro- α -PVP in schedule I of the CSA will take effect pursuant to a temporary scheduling order, which will not be issued before May 31, 2019. Because the Acting Administrator hereby finds that it is necessary to temporarily place *N*-

ethylhexedrone, α -PHP, 4-MEAP, MPHP, PV8, and 4-chloro- α -PVP in schedule I to avoid an imminent hazard to the public safety, the temporary order scheduling these substances will be effective on the date that the order is published in the **Federal Register** and will be in effect for a period of two years, with a possible extension of one additional year, pending completion of the regular (permanent) scheduling process. 21 U.S.C. 811(h)(1) and (2). It is the intention of the Acting Administrator to issue a temporary scheduling order as soon as possible after the expiration of 30 days from the date of publication of this notice. Upon publication of the temporary order, *N*-ethylhexedrone, α -PHP, 4-MEAP, MPHP, PV8, and 4-chloro- α -PVP will be subject to the regulatory controls and administrative, civil, and criminal sanctions applicable to the manufacture, distribution, reverse distribution, importation, exportation, research, conduct of instructional activities and chemical analysis, and possession of a schedule I controlled substance.

The CSA sets forth specific criteria for scheduling a drug or other substance. Regular scheduling actions in accordance with 21 U.S.C. 811(a) are subject to formal rulemaking procedures done "on the record after opportunity for a hearing" conducted pursuant to the provisions of 5 U.S.C. 556 and 557. 21 U.S.C. 811. The regular scheduling process of formal rulemaking affords interested parties with appropriate process and the government with any additional relevant information needed to make a determination. Final decisions that conclude the regular scheduling process of formal rulemaking are subject to judicial review. 21 U.S.C. 877. Temporary scheduling orders are not subject to judicial review. 21 U.S.C. 811(h)(6).

Regulatory Matters

Section 201(h) of the CSA, 21 U.S.C. 811(h), provides for a temporary scheduling action where such action is necessary to avoid an imminent hazard to the public safety. As provided in this subsection, the Attorney General may, by order, schedule a substance in schedule I on a temporary basis. Such an order may not be issued before the expiration of 30 days from (1) the publication of a notice in the **Federal Register** of the intention to issue such order and the grounds upon which such order is to be issued, and (2) the date that notice of the proposed temporary scheduling order is transmitted to the Assistant Secretary of HHS. 21 U.S.C. 811(h)(1).

Inasmuch as section 201(h) of the CSA directs that temporary scheduling actions be issued by order (as distinct from a rule) and sets forth the procedures by which such orders are to be issued, the DEA believes that the notice and comment requirements of section 553 of the Administrative Procedure Act (APA), 5 U.S.C. 553, which are applicable to rulemaking, do not apply to this notice of intent. The APA expressly differentiates between an order and a rule, as it defines an "order" to mean a "final disposition, whether affirmative, negative, injunctive, or declaratory in form, of an agency *in a matter other than rule making.*" 5 U.S.C. 551(6) (emphasis added). The specific language chosen by Congress indicates an intention for the DEA to proceed through the issuance of an *order* instead of proceeding by rulemaking. Given that Congress specifically requires the Attorney General to follow rulemaking procedures for *other* kinds of scheduling actions, *see* section 201(a) of the CSA, 21 U.S.C. 811(a), it is noteworthy that, in section 201(h), Congress authorized the issuance of temporary scheduling actions by order rather than by rule.

In the alternative, even assuming that this notice of intent might be subject to section 553 of the APA, the Acting Administrator finds that there is good cause to forgo the notice and comment requirements of section 553, as any further delays in the process for issuance of temporary scheduling orders would be impracticable and contrary to the public interest in view of the manifest urgency to avoid an imminent hazard to the public safety.

Although the DEA believes this notice of intent to issue a temporary scheduling order is not subject to the notice and comment requirements of section 553 of the APA, the DEA notes that in accordance with 21 U.S.C. 811(h)(4), the Acting Administrator took into consideration comments submitted by the Assistant Secretary in response to the notice that DEA transmitted to the Assistant Secretary pursuant to section 811(h)(4).

Further, the DEA believes that this temporary scheduling action is not a "rule" as defined by 5 U.S.C. 601(2), and, accordingly, is not subject to the requirements of the Regulatory Flexibility Act (RFA). The requirements for the preparation of an initial regulatory flexibility analysis in 5 U.S.C. 603(a) are not applicable where, as here, the DEA is not required by section 553 of the APA or any other law to publish a general notice of proposed rulemaking.

Additionally, this action is not a significant regulatory action as defined

by Executive Order 12866 (Regulatory Planning and Review), section 3(f), and, accordingly, this action has not been reviewed by the Office of Management and Budget.

This action will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132 (Federalism), it is determined that this action does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 21 CFR Part 1308

Administrative practice and procedure, Drug traffic control, Reporting and recordkeeping requirements.

For the reasons set out above, the DEA proposes to amend 21 CFR part 1308 as follows:

PART 1308—SCHEDULES OF CONTROLLED SUBSTANCES

- 1. The authority citation for part 1308 continues to read as follows:

Authority: 21 U.S.C. 811, 812, 871(b), 956(b), unless otherwise noted.

- 2. In § 1308.11, add paragraphs (h)(42) through (47) to read as follows:

§ 1308.11 Schedule I.

* * * * *	
(h) * * *	
(42) <i>N</i> -Ethylhexedrone, its optical, positional, and geometric isomers, salts and salts of isomers ..	(7246)
(43) <i>alpha</i> -Pyrrolidinohexanophenone, its optical, positional, and geometric isomers, salts and salts of isomers (Other names: α -PHP)	(7544)
(44) 4-Methyl- <i>alpha</i> -ethylaminopentiophenone, its optical, positional, and geometric isomers, salts and salts of isomers (Other names: 4-MEAP)	(7245)
(45) 4'-Methyl- <i>alpha</i> -pyrrolidinohexiophenone, its optical, positional, and geometric isomers, salts and salts of isomers (Other names: MPHP)	(7446)
(46) <i>alpha</i> -Pyrrolidinoheptaphenone, its optical, positional, and geometric isomers, salts and salts of isomers (Other names: PV8)	(7548)
(47) 4-Chloro- <i>alpha</i> -pyrrolidinovalerophenone, its optical, positional, and geometric isomers, salts and salts of isomers (Other names: 4-chloro- α -PVP)	(7443)

Dated: April 22, 2019.

Uttam Dhillon,

Acting Administrator.

[FR Doc. 2019-08704 Filed 4-30-19; 8:45 am]

BILLING CODE 4410-09-P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 913

[SATS No. IL-109-FOR; Docket ID: OSM-2019-0003 S1D1S SS08011000 SX064A000 190S180110; S2D2S SS08011000 SX064A000 19XS501520]

Illinois Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Proposed rule; public comment period and opportunity for public hearing on proposed amendment.

SUMMARY: We, the Office of Surface Mining Reclamation and Enforcement (OSMRE), are announcing receipt of a proposed amendment to the Illinois regulatory program (Illinois program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). Illinois proposes revisions to its regulations, including allowing the extraction of coal as an incidental part of a government-financed construction project, revising its Ownership and Control rules, and clarifying land use changes requiring a significant permit revision. Illinois intends to revise its program to be as effective as the Federal regulations. This document gives the times and locations where the Illinois program documents and this proposed amendment to that program are available for your inspection, establishes the comment period during which you may submit written comments on the amendment, and describes the procedures that we will follow for the public hearing, if one is requested.

DATES: We will accept written comments on this amendment until 4:00 p.m., CST, May 31, 2019. If requested, we will hold a public hearing on the amendment on May 28, 2019. We will accept requests to speak at a hearing until 4:00 p.m., CST on May 16, 2019.

ADDRESSES: You may submit comments, identified by SATS No. IL-109-FOR, by any of the following methods:

- *Mail/Hand Delivery:* Paul Ehret, Acting Chief, Alton Field Division, Office of Surface Mining Reclamation and Enforcement, 501 Belle Street, Suite 216, Alton, Illinois 62002-6169.

- *Fax:* (618) 463-6470
- *Federal eRulemaking Portal:* The amendment has been assigned Docket ID OSM-2019-0003. If you would like to submit comments go to <http://www.regulations.gov>. Follow the instructions for submitting comments.

Instructions: All submissions received must include the agency name and docket number for this rulemaking. For detailed instructions on submitting comments and additional information on the rulemaking process, see the “Public Comment Procedures” heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: For access to the docket to review copies of the Illinois program, this amendment, a listing of any scheduled public hearings, and all written comments received in response to this document, you must go to the address listed below during normal business hours, Monday through Friday, excluding holidays. You may receive one free copy of the amendment by contacting OSMRE’s Alton Field Division, or the full text of the program amendment is available for you to review at www.regulations.gov. Paul J. Ehret, Acting Chief, Alton Field Division, Office of Surface Mining Reclamation and Enforcement, 501 Belle Street, Suite 216, Alton, Illinois 62002-6169, Telephone: (618) 463-6463, Email: pehret@osmre.gov.

In addition, you may review a copy of the amendment during regular business hours at the following location: Office of Mines and Minerals, Illinois Department of Natural Resources, One Natural Resources Way, Springfield, IL 62702-1271, Telephone: (618) 439-9111.

FOR FURTHER INFORMATION CONTACT: Paul Ehret, Acting Chief, Alton Field Division, Telephone: (618) 463-6463, Email: pehret@osmre.gov.

SUPPLEMENTARY INFORMATION:

- I. Background on the Illinois Program
- II. Description of the Proposed Amendment
- III. Public Comment Procedures
- IV. Procedural Determinations

I. Background on the Illinois Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its program includes, among other things, State laws and regulations that govern surface coal mining and reclamation operations in accordance with the Act and consistent with the Federal regulations. See 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Illinois program effective June 1, 1982.

You can find background information on the Illinois program, including the Secretary’s findings, the disposition of comments, and the conditions of approval of the Illinois program in the June 1, 1982, **Federal Register** (47 FR 23858). You can also find later actions concerning the Illinois program and program amendments at 30 CFR 913.10, 913.15, and 913.17.

II. Description of the Proposed Amendment

By letter dated December 5, 2018 (Administrative Record No. IL-5100), Illinois sent us an amendment to its program under SMCRA (30 U.S.C. 1201 *et seq.*) at its own initiative. By email dated December 11, 2018, Illinois requested that OSMRE’s review be put on hold until they could resubmit the proposed amendment due to editorial changes requested by the Illinois Joint Committee on Administrative Rules. Illinois resubmitted the proposed amendment to OSMRE on February 20, 2019. OSMRE will use this date for its review. Below is a summary of the changes proposed by Illinois. The full text of the program amendment is available for you to read at the locations listed above under **ADDRESSES**.

Illinois proposes to revise the Illinois Surface Coal Mining Land Conservation and Reclamation Act (225 ILCS 720), Section 1.06, “Scope of the Act,” by adding language allowing coal extraction as an incidental part of a government-financed project. The language added is nearly identical to that found in Section 528 of SMCRA (30 U.S.C. 1278).

Illinois also proposes to revise the following Parts of Title 62 of the Illinois Administrative Code:

Section 1701 Appendix A. Definitions

Illinois proposes to revise its regulation at section 1701 Appendix A, amending a number of its definitions, including those for “ownership,” “control,” and “violations,” to conform with the Federal definitions at 30 CFR 701.5 and 707.5.

Section 1703 Exemption for Coal Extraction Incident to Government-Financed Highway or Other Construction

Illinois proposes adding a new section 1703 to allow the extraction of coal as an incidental part of a government-financed construction project, which incorporates language identical to the Federal regulations at 30 CFR part 707.

Section 1773 Requirements for Permits and Permit Processing

Illinois proposes to amend section 1773.15, "Review of Permit Applications" to comport with changes made to the Federal regulations at 30 CFR 773.12. These changes preclude the Department from considering violations upstream of the permit applicant by removing "person who owns or controls the applicant" from this section.

Illinois also proposes to amend section 1773.25, "Standards for Challenging Ownership or Control Links and the Status Violations," to update a subsection reference.

Section 1774 Permit Revisions

Illinois proposes to amend section 1774.13, "Permit Revisions," to provide further clarification as to which reclamation plan land use changes require a significant revision for a permit application. Illinois proposes to remove the requirement for a significant revision for land use changes involving greater than five percent of the total permit acreage after finding the five percent limitation to be unduly restrictive and burdensome. Instead, the Department will consider changes in the reclamation plan for post-mining land use in determining whether a significant revision to the permit must be obtained. These changes are proposed in order to make the Illinois rules as effective as the Federal regulations at 30 CFR 774.13.

Section 1778 Permit Applications—Minimum Requirements for Legal, Financial, Compliance, and Related Information

Illinois proposes adding a new section 1778.9, "Certifying and Updating Existing Permit Application Information," which incorporates language identical to the Federal regulations at 30 CFR 778.9.

Illinois proposes to amend section 1778.13, "Identification of Interests," to comport with changes made to the Federal regulations at 30 CFR 778.11 and 778.12.

Illinois proposes to amend section 1778.14, "Violation Information," to comport with changes made to the Federal regulations at 30 CFR 778.14.

Illinois proposes to amend section 1778.15, "Right of Entry Information," to add language found in the Federal regulations at 30 CFR 778.13 related to property interest information to the existing right of entry language in this section, which corresponds to 30 CFR 778.15, so that all property related rules are located in one section.

III. Public Comment Procedures

Under the provisions of 30 CFR 732.17(h), we are seeking your comments on whether the amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If we approve the amendment, it will become part of the State program.

Electronic or Written Comments

If you submit written comments, they should be specific, confined to issues pertinent to the proposed regulations, and explain the reason for any recommended change(s). We appreciate any and all comments, but those most useful and likely to influence decisions on the final program will be those that either involve personal experience or include citations to and analyses of SMCRA, its legislative history, its implementing regulations, case law, other pertinent State or Federal laws or regulations, technical literature, or other relevant publications.

We cannot ensure that comments received after the close of the comment period (see **DATES**) or sent to an address other than those listed (see **ADDRESSES**) will be included in the docket for this rulemaking and considered.

Public Availability of Comments

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Public Hearing

If you wish to speak at the public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4:00 p.m., CST on May 16, 2019. If you are disabled and need reasonable accommodations to attend a public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT**. We will arrange the location and time of the hearing with those persons requesting the hearing. If no one requests an opportunity to speak, we will not hold a hearing.

To assist the transcriber and ensure an accurate record, we request, if possible, that each person who speaks at the public hearing provide us with a written copy of his or her comments. The public hearing will continue on the specified date until everyone scheduled to speak has been given an opportunity to be heard. If you are in the audience and

have not been scheduled to speak and wish to do so, you will be allowed to speak after those who have been scheduled. We will end the hearing after everyone scheduled to speak and others present in the audience who wish to speak, have been heard.

Public Meeting

If only one person requests an opportunity to speak, we may hold a public meeting rather than a public hearing. If you wish to meet with us to discuss the amendment, please request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings are open to the public and, if possible, we will post notices of meetings at the locations listed under **ADDRESSES**. We will make a written summary of each meeting a part of the administrative record.

IV. Procedural Determinations

Executive Order 12866—Regulatory Planning and Review

Pursuant to Office of Management and Budget (OMB) Guidance and dated October 12, 1993, the approval of state program amendments is exempted from OMB review under Executive Order 12866.

Other Laws and Executive Orders Affecting Rulemaking

When a State submits a program amendment to OSMRE for review, our regulations at 30 CFR 732.17(h) require us to publish a notice in the **Federal Register** indicating receipt of the proposed amendment, its text or a summary of its terms, and an opportunity for public comment. We conclude our review of the proposed amendment after the close of the public comment period and determine whether the amendment should be approved, approved in part, or not approved. At that time, we will also make the determinations and certifications required by the various laws and executive orders governing the rulemaking process and include them in the final rule.

List of Subjects in 30 CFR Part 913

Intergovernmental relations, Surface mining, Underground mining.

Dated: February 22, 2019.

Alfred L. Clayborne,

Regional Director, Mid-Continent Region.

[FR Doc. 2019-08868 Filed 4-30-19; 8:45 am]

BILLING CODE 4310-05-P

DEPARTMENT OF INTERIOR**Office of Surface Mining Reclamation and Enforcement****30 CFR Part 917**

[KY-259-FOR; Docket ID: OSM-2018-0004
S1D1S SS08011000 SX064A000
189S180110; S2D2S SS08011000
SX064A000 18XS501520]

Kentucky Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSMRE), Interior.

ACTION: Proposed rule; public comment period and opportunity for public hearing on proposed amendment.

SUMMARY: We, the Office of Surface Mining Reclamation and Enforcement (OSMRE), are announcing receipt of a proposed amendment to the Kentucky regulatory program, hereinafter the Kentucky program, under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). Through this proposed amendment, Kentucky seeks to revise its program to include statutory changes that remove the requirement to permit the area overlying underground mine works and amend related public notification requirements. Kentucky also seeks to revise or add administrative regulations that implement the statutory changes, define necessary terms, prescribe how underground permitting would be addressed moving forward, remove the requirement to submit a preliminary application, and update required forms. This document gives the times and locations that the Kentucky program and this proposed amendment to that program are available for your inspection, the comment period during which you may submit written comments on the amendment, and the procedures that we will follow for the public hearing, if one is requested.

DATES: We will accept written comments on this amendment until 4:00 p.m., Eastern Standard Time (e.s.t.), May 31, 2019. If requested, we will hold a public hearing on the amendment on May 28, 2019. We will accept requests to speak at a hearing until 4:00 p.m., e.s.t. on May 16, 2019.

ADDRESSES: You may submit comments, identified by SATS No. KY-259-FOR, Docket ID: OSM-2018-0004, by any of the following methods:

- *Mail/Hand Delivery:* Mr. Michael Castle, Field Office Director, Lexington Field Office, Office of Surface Mining Reclamation and Enforcement, 2675 Regency Road, Lexington, Kentucky 40503.

- *Fax:* (859) 260-8410.
- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

Instructions: All submissions received must include the agency name and docket number for this rulemaking. For detailed instructions on submitting comments and additional information on the rulemaking process, see the “Public Comment Procedures” heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: For access to the docket to review copies of the Kentucky program, this amendment, a listing of any scheduled public hearings, and all written comments received in response to this document, you must go to the address listed below during normal business hours, Monday through Friday, excluding holidays. You may receive one free copy of the amendment by contacting OSMRE’s Lexington Field Office or the full text of the program amendment is available for you to read at www.regulations.gov.

Mr. Michael Castle, Field Office Director, Lexington Field Office, Office of Surface Mining Reclamation and Enforcement, 2675 Regency Road, Lexington, Kentucky 40503, Telephone: (859) 260-3900, Email: mcastle@osmre.gov.

In addition, you may review a copy of the amendment during regular business hours at the following location:

Mr. John D. Small, Acting Commissioner, Kentucky Department for Natural Resources, 300 Sower Boulevard, Frankfort, Kentucky 40601, Telephone: (502) 564-6940, Email: johnd.small@ky.gov.

FOR FURTHER INFORMATION CONTACT: Mr. Michael Castle, Field Office Director, Lexington Field Office, Office of Surface Mining Reclamation and Enforcement, 2675 Regency Road, Lexington, Kentucky 40503, Telephone: (859) 260-3900, Email: mcastle@osmre.gov.

SUPPLEMENTARY INFORMATION:

- I. Background on the Kentucky Program
- II. Description of the Proposed Amendment
- III. Public Comment Procedures
- IV. Procedural Determinations

I. Background on the Kentucky Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its State program includes, among other things, State laws and regulations that govern surface coal mining and reclamation operations in accordance with the Act and consistent

with the Federal regulations. See 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Kentucky program effective May 18, 1982. You can find additional background information on the Kentucky program, including the Secretary’s findings, the disposition of comments, and conditions of approval in the May 18, 1982, **Federal Register**, (47 FR 21434). You can also find later actions concerning Kentucky’s program and program amendments at 30 CFR 917.11, 917.12, 917.13, 917.15, 917.16, and 917.17.

II. Description of the Proposed Amendment

By letter dated February 6, 2018, Kentucky sent OSMRE an amendment to its program under SMCRA (30 U.S.C. 1201 *et seq.*), that includes changes to statutory provisions of the Kentucky Revised Statutes (KRS) and changes to its Kentucky Administrative Regulations (KAR) (Administrative Record No. KY-259-49). On March 20, 2018, and July 26, 2018, Kentucky sent OSMRE clarifying information in the form of marked-up regulations that identify the additions and deletions that were made to the existing regulatory provisions (Administrative Record Nos. KY-259-1 through 48 and KY-259-50).

The General Assembly of the Commonwealth of Kentucky enacted statutory changes through House bill 234 on March 27, 2017, and the changes became effective on June 29, 2017. The statutory changes involved removing Kentucky’s requirement to permit the area overlying underground mine works or “shadow area.” The changes are codified at Chapter 350, *Surface Coal Mining*, sections 350.055 and 350.060 of the Kentucky Revised Statutes (KRS). Due to the requirements of the bill, the Kentucky Department for Natural Resources was required to promulgate administrative regulations to define necessary terms and provide information on how underground permitting would be addressed moving forward. The administrative regulations were promulgated to incorporate these new requirements at Title 405 KAR, *Energy and Environment Cabinet, Department for Natural Resources*. On January 1, 2018, the Kentucky Legislative Research Commission approved the revisions to the administrative regulations, which address the revised statutory requirements mentioned above as well as revisions that address preliminary applications and forms. The revised statutory provisions of 350 KRS and new and revised administrative

regulations of 405 KAR are described below:

A. Statutory Revisions—Changes at KRS 350, Surface Coal Mining.

1. KRS 350.055, Publication of Notice of Intention to Mine by Permit Applicant, Notification of Various Local Government Bodies by Cabinet.

Kentucky seeks to revise its statutory provision at KRS 350, section 1(3)(b), by requiring that a public notice of the filing of an application include, but not be limited to, the location, ownership, and boundaries of the permitted area, rather than the boundaries of the mining site, as previously provided.

2. KRS 350.060, Permit Requirement, Contents of Application, Fee, Bond, Administrative Regulations, Successive Renewal, Auger Mining of Previously Mined Area, Exempt Operations.

Kentucky seeks to revise its statutory provision at KRS 350.060, section (12), by removing the requirement that all the areas overlying underground workings be permitted.

B. Regulatory Revisions—Changes at KAR 405, Energy and Environment Cabinet, Department for Natural Resources. Kentucky seeks to revise its administrative regulatory provisions that address the statutory changes noted above by revising the definition of “permit area”; adding the definition of “shadow area”; revising other sections affected by the permit area definition change; and addressing underground mining requirements that relate to permit revisions, right of entry, application requirements, criteria for approval, bonding requirements, active acre/acreage fees, cost recovery, permanent abandonment of operations, and temporary cessation of operations. Kentucky seeks to revise other administrative regulations not affected by the statutory provisions. These revisions involve preliminary permit applications and updates to standard forms. The following sections of 405 KAR are revised:

1. 7:001, Definitions for 405 KAR Chapter 7. Kentucky seeks to revise its administrative regulations at 7:001, *Definitions for 405 KAR Chapter 7, General Provisions*, by revising the definition of *permit area* and adding the definition of *shadow area* as follows:

a. Definition of Permit Area: The definition of “*permit area*” at Section 1.(61) is being changed from:

the area of land and water within boundaries designated in the approved permit application, which shall include, at a minimum, all areas which are or will be affected by surface coal mining and reclamation operations under that permit.

to:

the area of land, indicated on the approved map submitted by the permittee with an application, required to be covered by the permittee’s performance bond pursuant to 405 KAR Chapter 10 and that includes the area of land upon which the permittee proposes to conduct surface coal mining and reclamation operations pursuant to the permit, including all disturbed areas. Areas adequately bonded under another valid permit, pursuant to 405 KAR Chapter 10, could be excluded from the permit area.

b. Definition of Shadow Area: The definition of “*shadow area*” is added to the list of definitions at subsection (74). A shadow area is defined as the surface area overlying underground mine works and surface areas associated with auger and in situ mining.

2. Other Regulations that Include the Definitions of Permit Area and Shadow Area: Kentucky seeks to revise the following administrative regulations at 405 KAR that include the revised definition of *permit area* and/or the new definition of *shadow area* as defined by 405 KAR 7:001:

○ *8:001, Definitions for 405 KAR Chapter 8, (Permits).* Section 1, *Definitions*, subsection (82) for permit area and subsection (109) for shadow area;

○ *10:001, Definitions for 405 KAR Chapter 10, (Bond and Insurance Requirements).* Section 1, *Definitions*, subsection (37) for permit area;

○ *12:001, Definitions for 405 KAR Chapter 12, (Inspection and Enforcement)* Section 1, *Definitions*, subsection (20) for permit area; and

○ *16:001, Definitions for 405 KAR Chapter 16, (Performance Standards for Surface Mining Activities),* Section 1, *Definitions*, subsection (77) for permit area and (99) for shadow area.

○ *18:001, Definitions for 405 KAR Chapter 18, (Performance Standards for Underground Mining Activities),* Section 1, *Definitions*, subsection (80) for permit area and (101) for shadow area,

○ *20:001, Definitions for 405 KAR Chapter 20, (Special Performance Standards),* Section 1, *Definitions*, subsection (52) for permit area and (66) for shadow area.

3. Revised Regulations that Involve the Permit Area and Shadow Area: Kentucky seeks to revise the following administrative regulation sections at 405 KAR that apply to the permit area as well as the shadow area by adding *shadow area* to many provisions that previously only mentioned the *permit area*, since the shadow area is no longer included within the definition of permit area.

○ *7:001, Definitions for 405 KAR Chapter 7 (General Provisions);*

○ *7:095, Assessment of civil penalties;*

○ *8:001, Definitions for 405 KAR Chapter 8 (Permits, underground coal mining permits, and permits for special categories of mining;*

○ *8:010, General provisions for permits;*

○ *8:040, Underground coal mining permits;*

○ *16:001, Definitions for 405 KAR Chapter 16 (Performance Standards for Surface Mining Activities);*

○ *16:110, Surface and groundwater monitoring;*

○ *18:010, General provisions (Chapter 18: Performance Standards for Underground Mining Activities (definitions, general provisions, casing and sealing of underground openings, general hydrologic requirements, and surface and groundwater monitoring);*

○ *18:040, Casing and sealing of underground openings;*

○ *18:060, General hydrologic requirements;*

○ *18:110, Surface and groundwater monitoring;*

○ *18:260, Other facilities; and*

○ *20:080, In situ processing*

The revised regulations at the sections noted above add the word *shadow area* within many subsections of the regulations. They involve subject areas, including, but not limited to: Other definitions, permit applications, maps and drawings, protection of the hydrologic balance; prohibited mining areas; general requirements for baseline geologic and hydrologic information, surface and groundwater monitoring, fish and wildlife information, land use information, the mine reclamation plan, and utility installations.

4. Underground Mining Regulations.

Kentucky seeks to revise or add the following provisions that pertain to underground mining operations.

a. 8:010, General provisions for permits. Kentucky seeks to revise Section 2, *General Requirements*, subsection (2)(a) by adding that the provisions of this section also apply to underground only operations, in addition to surface coal mining and reclamation operations. Kentucky seeks to revise Section 20, *Permit Revisions*, by adding subsection (3)(g), which requires that extensions of the underground mining area that are not incidental boundary revisions and do not include planned subsidence or other new proposed disturbances shall be considered minor permit revisions.

b. 8:040, Underground coal mining permits. Kentucky seeks to revise Section 4, *Right of Entry and Right to Mine*, subsection (3) to add that nothing in the regulation shall be construed to

authorize the cabinet to require right of entry for shadow areas. Kentucky seeks to revise Section 25, *MRP; Existing Structures*, subsection (1)(d) by deleting a part of the regulation. The regulation requires the application include a description of each existing structure proposed to be used in connection with or to facilitate the surface coal mining and reclamation operation. Part of the description includes a showing, including relevant monitoring data or other evidence, of whether the structure meets the performance standards of 405 KAR Chapters 16 through 20. It also requires that if the structure does not meet those performance standards, the application should provide a showing of whether the structure meets the interim performance standards of 405 KAR Chapter 3. With this change, Kentucky is removing the requirement to provide a showing of whether the structure meets the interim performance standards.

c. *8:050, Permits for special categories of mining.* This regulation establishes permit requirements for special categories, which include mining on prime farmland, augering, in situ processes, off-site coal preparation plants, mountaintop removal mining, and mining on steep slopes. Kentucky seeks to add Section 9, *Underground Only Permits*, to this regulation. The regulation applies to an underground only operation that does not have a surface disturbance and includes provisions that involve application requirements, criteria for approval, and bonding requirements.

d. *10:001, Definitions for 405 KAR Chapter 10.* This regulation defines certain essential terms used in Chapter 10, *Bond and Insurance Requirements*. Kentucky seeks to revise Section 1, *Definitions*, subsection (d) by deleting the statement that an active area does not include the acreage of a permit that is permitted and bonded for underground acreage only.

e. *20:090, Underground only permits.* Kentucky seeks to add this new regulation to its program. This chapter sets forth certain performance standards for underground only permits. It provisions address cost recovery, permanent abandonment of operations, and temporary cessation of operations.

5. Other Regulatory Changes.

a. *Section 8:010, General Provisions.* Kentucky seeks to revise Section 4, *Preliminary Requirements*, subsections (1) and (2), by revising the regulations to no longer require a preliminary application for a permit, but provide the option to submit a preliminary application. Section 5, *General Format and Content of Applications*, subsection

(c) of this section is revised to remove the Preliminary Application form from the list of forms required to be submitted with a permit application. Section 26, *Incorporation by Reference*, Subsections (a), (d), and (k) of this section are revised to reflect 2017 updates to the following documents: Preliminary Application; Technical Information for a Mining Permit; and Application for Renewal of a Mining Permit. In addition, the following form is added: Application for a Coal Marketing Deferment, dated August 2017.

Minor changes such as edits, renumbered paragraphs, and changes in reference citations are also included.

The full text of the program amendment is available for you to read at the locations listed above under **ADDRESSES** or at www.regulations.gov.

III. Public Comment Procedures

Under the provisions of 30 CFR 732.17(h), we are seeking your comments on whether the amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If we approve the amendment, it will become part of Kentucky's State program.

Electronic or Written Comments

If you submit written or electronic comments on the proposed rule during the 30-day comment period, they should be specific, confined to issues pertinent to the proposed regulations, and explain the reason for any recommended change(s). We appreciate any and all comments, but those most useful and likely to influence decisions on the final regulations will be those that either involve personal experience or include citations to and analyses of SMCRA, its legislative history, its implementing regulations, case law, other pertinent State or Federal laws or regulations, technical literature, or other relevant publications.

We cannot ensure that comments received after the close of the comment period (see **DATES**) or sent to an address other than those listed (see **ADDRESSES**) will be included in the docket for this.

Public Availability of Comments

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment including your personal identifying information, may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Public Hearing

If you wish to speak at the public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4:00 p.m., e.s.t. on May 16, 2019. If you are disabled and need reasonable accommodations to attend a public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT**. We will arrange the location and time of the hearing with those persons requesting the hearing. If no one requests an opportunity to speak, we will not hold a hearing.

To assist the transcriber and ensure an accurate record, we request, if possible, that each person who speaks at the public hearing provide us with a written copy of his or her comments. The public hearing will continue on the specified date until everyone scheduled to speak has been given an opportunity to be heard. If you are in the audience and have not been scheduled to speak and wish to do so, you will be allowed to speak after those who have been scheduled. We will end the hearing after everyone scheduled to speak, and others present in the audience who wish to speak, have been heard.

Public Meeting

If only one person requests an opportunity to speak, we may hold a public meeting rather than a public hearing. If you wish to meet with us to discuss the amendment, please request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings are open to the public and, if possible, we will post notices of meetings at the locations listed under **ADDRESSES**. We will make a written summary of each meeting a part of the administrative record.

IV. Procedural Determinations

Executive Order 12866—Regulatory Planning and Review

Pursuant to Office of Management and Budget (OMB) Guidance dated October 12, 1993, the approval of State program amendments is exempted from OMB review under Executive Order 12866.

Other Laws and Executive Orders Affecting Rulemaking

When a State submits a program amendment to OSMRE for review, our regulations at 30 CFR 732.17(h) require us to publish a notice in the **Federal Register** indicating receipt of the proposed amendment, its text or a summary of its terms, and an opportunity for public comment. We will conclude our review of the proposed amendment after the close of the public comment period and

determine whether the amendment should be approved, approved in part, or not approved. At that time, we will also make the determinations and certifications required by the various laws and executive orders governing the rulemaking process and include them in the final rule.

List of Subjects in 30 CFR Part 938

Intergovernmental relations, Surface mining, Underground mining.

Dated: August 30, 2018.

Thomas D. Shope,

Regional Director, Appalachian Region.

Editorial note: This document was received for publication by the Office of the Federal Register on April 26, 2019.

[FR Doc. 2019-08864 Filed 4-30-19; 8:45 am]

BILLING CODE 4310-05-P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 925

[SATS No. MO-048-FOR; Docket ID: OSM-2019-0001 S1D1S SS08011000 SX064A000 190S180110; S2D2S SS08011000 SX064A000 19XS501520]

Missouri Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Proposed rule; public comment period and opportunity for public hearing on proposed amendment.

SUMMARY: We, the Office of Surface Mining Reclamation and Enforcement (OSMRE), are announcing receipt of a proposed amendment to the Missouri regulatory program (Missouri program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). As a result of Missouri's Red Tape Reduction Initiative (Executive Order 17-03), Missouri proposes amendments and rescissions to its Missouri Coal Mining Regulations in order to reduce the volume of these regulations without reducing the program's requirements. Missouri proposes amendments to multiple sections of its regulations to incorporate by reference the corresponding Federal regulations. Missouri also proposes to rescind multiple sections of its regulations that will be incorporated by reference in the aforementioned proposed amended sections. Missouri intends these revisions to its program to remain as effective as the Federal regulations.

This document gives the times and locations where the Missouri program

documents and this proposed amendment to that program are available for your inspection, establishes the comment period during which you may submit written comments on the amendment, and describes the procedures that we will follow for the public hearing, if one is requested.

DATES: We will accept written comments on this amendment until 4:00 p.m., CST, May 31, 2019. If requested, we will hold a public hearing on the amendment on May 28, 2019. We will accept requests to speak at a hearing until 4:00 p.m., CST on May 16, 2019.

ADDRESSES: You may submit comments, identified by SATS No. MO-048-FOR, by any of the following methods:

- *Mail/Hand Delivery:* Paul Ehret, Acting Chief, Alton Field Division, Office of Surface Mining Reclamation and Enforcement, 501 Belle Street, Suite 216, Alton, Illinois 62002-6169.
- *Fax:* (618) 463-6470.
- *Federal eRulemaking Portal:* The amendment has been assigned Docket ID OSM-2019-0001. If you would like to submit comments go to <http://www.regulations.gov>. Follow the instructions for submitting comments.

Instructions: All submissions received must include the agency name and docket number for this rulemaking. For detailed instructions on submitting comments and additional information on the rulemaking process, see the "Public Comment Procedures" heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: For access to the docket to review copies of the Missouri program, this amendment, a listing of any scheduled public hearings, and all written comments received in response to this document, you must go to the address listed below during normal business hours, Monday through Friday, excluding holidays. You may receive one free copy of the amendment by contacting OSMRE's Alton Field Division, or the full text of the program amendment is available for you to review at www.regulations.gov.

Paul J. Ehret, Acting Chief, Alton Field Division, Office of Surface Mining Reclamation and Enforcement, 501 Belle Street, Suite 216, Alton, Illinois 62002-6169, Telephone: (618) 463-6463, Email: pehret@osmre.gov.

In addition, you may review a copy of the amendment during regular business hours at the following location: Land Reclamation Program, Missouri Department of Natural Resources, 1101 Riverside Drive, Jefferson City, MO 65102-0176, Telephone: (573) 751-4041.

FOR FURTHER INFORMATION CONTACT: Paul J. Ehret, Acting Chief, Alton Field Division. Telephone: (618) 463-6463, Email: pehret@osmre.gov.

SUPPLEMENTARY INFORMATION:

- I. Background on the Missouri Program
- II. Description of the Proposed Amendment
- III. Public Comment Procedures
- IV. Procedural Determinations

I. Background on the Missouri Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its program includes, among other things, State laws and regulations that govern surface coal mining and reclamation operations in accordance with the Act and consistent with the Federal regulations. See 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Missouri program effective November 21, 1980. You can find background information on the Missouri program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the Missouri program in the November 21, 1980, **Federal Register** (47 FR 77027). You can also find later actions concerning the Missouri program and program amendments at 30 CFR 925.10, 925.12, 925.15, and 925.16.

II. Description of the Proposed Amendment

By letter dated February 8, 2019 (Administrative Record No. MO-684), Missouri sent us an amendment to its program under SMCRA (30 U.S.C. 1201 *et seq.*) at its own initiative. Below is a summary of the changes proposed by Missouri. The full text of the program amendment is available for you to read at the locations listed above under

ADDRESSES.

Missouri proposes to amend the following sections of the Missouri Coal Mining Regulations to incorporate by reference to corresponding Federal regulations:

- 10 CSR 40-3.060—Requirements for the Disposal of Excess Soil
- 10 CSR 40-3.170—Signs and Markers for Underground Operations
- 10 CSR 40-4.020—Auger Mining Requirements
- 10 CSR 40-4.040—Operations on Steep Slopes
- 10 CSR 40-4.060—Concurrent Surface and Underground Mining
- 10 CSR 40-4.070—In Situ Processing
- 10 CSR 40-6.100—Underground Mining Permit Applications—Minimum

Requirements for Legal, Financial, Compliance, and Related Information

Missouri proposes to rescind the following sections of the Missouri Coal Mining Regulations as they have been incorporated in the aforementioned proposed amended sections:

- 10 CSR 40–3.180—Casing and Sealing of Exposed Underground Openings
- 10 CSR 40–3.190—Requirements for Topsoil Removal, Storage and Redistribution for Underground Operations
- 10 CSR 40–3.200—Requirements for the Protection of the Hydrologic Balance for Underground Operations
- 10 CSR 40–3.210—Requirements for the Use of Explosions for Underground Operations
- 10 CSR 40–3.220—Disposal of Underground Development Waste and Excess Spoil
- 10 CSR 40–3.230—Requirements for the Disposal of Coal Processing Waste for Underground Operations
- 10 CSR 40–3.240—Air Resource Protection for Underground Operations
- 10 CSR 40–3.250—Requirements for the Protection of Fish, Wildlife and Related Environmental Values and Protection of Fish, Wildlife and Related Environmental Values and Protection Against Slides and Other Damage
- 10 CSR 40–3.260—Requirements for Backfilling and Grading for Underground Operations
- 10 CSR 40–3.270—Revegetation Requirements for Underground Operations
- 10 CSR 40–3.280—Requirements for Subsidence Control Associated with Underground Mining Operations
- 10 CSR 40–3.290—Requirements for Road and Other Transportation Associated with Underground Operations
- 10 CSR 40–3.300—Postmining Land Use Requirements for Underground Operations
- 10 CSR 40–3.310—Coal Recovery, Land Reclamation and Cessation of Operation for Underground Operations
- 10 CSR 40–6.110—Underground Mining Permit Applications Minimum Requirements for Information on Environmental Resources
- 10 CSR 40–6.120—Underground Mining Permit Applications Minimum Requirements for Reclamation and Operations Plan

III. Public Comment Procedures

Under the provisions of 30 CFR 732.17(h), we are seeking your

comments on whether the amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If we approve the amendment, it will become part of the State program.

Electronic or Written Comments

If you submit written comments, they should be specific, confined to issues pertinent to the proposed regulations, and explain the reason for any recommended change(s). We appreciate any and all comments, but those most useful and likely to influence decisions on the final program will be those that either involve personal experience or include citations to and analyses of SMCRA, its legislative history, its implementing regulations, case law, other pertinent State or Federal laws or regulations, technical literature, or other relevant publications.

We cannot ensure that comments received after the close of the comment period (see **DATES**) or sent to an address other than those listed (see **ADDRESSES**) will be included in the docket for this rulemaking and considered.

Public Availability of Comments

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Public Hearing

If you wish to speak at the public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4:00 p.m., CST on May 16, 2019. If you are disabled and need reasonable accommodations to attend a public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT**. We will arrange the location and time of the hearing with those persons requesting the hearing. If no one requests an opportunity to speak, we will not hold a hearing.

To assist the transcriber and ensure an accurate record, we request, if possible, that each person who speaks at the public hearing provide us with a written copy of his or her comments. The public hearing will continue on the specified date until everyone scheduled to speak has been given an opportunity to be heard. If you are in the audience and have not been scheduled to speak and wish to do so, you will be allowed to speak after those who have been

scheduled. We will end the hearing after everyone scheduled to speak and others present in the audience who wish to speak, have been heard.

Public Meeting

If only one person requests an opportunity to speak, we may hold a public meeting rather than a public hearing. If you wish to meet with us to discuss the amendment, please request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings are open to the public and, if possible, we will post notices of meetings at the locations listed under **ADDRESSES**. We will make a written summary of each meeting a part of the administrative record.

IV. Procedural Determinations

Executive Order 12866—Regulatory Planning and Review

Pursuant to Office of Management and Budget (OMB) Guidance and dated October 12, 1993, the approval of State program amendments is exempted from OMB review under Executive Order 12866.

Other Laws and Executive Orders Affecting Rulemaking

When a State submits a program amendment to OSMRE for review, our regulations at 30 CFR 732.17(h) require us to publish a notice in the **Federal Register** indicating receipt of the proposed amendment, its text or a summary of its terms, and an opportunity for public comment. We conclude our review of the proposed amendment after the close of the public comment period and determine whether the amendment should be approved, approved in part, or not approved. At that time, we will also make the determinations and certifications required by the various laws and executive orders governing the rulemaking process and include them in the final rule.

List of Subjects in 30 CFR Part 925

Intergovernmental relations, Surface mining, Underground mining.

Dated: February 15, 2019.

Alfred L. Clayborne,

Regional Director, Mid-Continent Region.

[FR Doc. 2019–08866 Filed 4–30–19; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF INTERIOR**Office of Surface Mining Reclamation and Enforcement****30 CFR Part 938**

[PA-170-FOR; Docket ID: OSM-2018-0007
S1D1S SS08011000 SX064A000
190S180110; S2D2S SS08011000
SX064A000 19XS501520]

Pennsylvania Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSMRE), Interior.

ACTION: Proposed rule; public comment period and opportunity for public hearing on a request to remove a required amendment.

SUMMARY: We, the Office of Surface Mining Reclamation and Enforcement (OSMRE), are announcing receipt of a request to remove a required amendment to the Pennsylvania regulatory program, hereinafter the Pennsylvania program, under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). Pennsylvania provided a rationale it believes supports its position that an amendment we required related to the timing of the reclamation of temporary storm water control facilities (siltation structures) should be removed. This document gives the times and locations that the Pennsylvania program and this request are available for your inspection, the comment period during which you may submit written comments, and the procedures that we will follow for the public hearing, if one is requested.

DATES: We will accept written comments on this request until 4:00 p.m., Eastern Standard Time (e.s.t.), May 31, 2019. If requested, we will hold a public hearing on the request on May 28, 2019. We will accept requests to speak at a hearing until 4:00 p.m., e.s.t. on May 16, 2019.

ADDRESSES: You may submit comments, identified by SATS No. PA-170-FOR, Docket ID: OSM-2018-0007, by any of the following methods:

- *Mail/Hand Delivery:* Mr. Ben Owens, Chief, Pittsburgh Field Division Office of Surface Mining Reclamation and Enforcement, 3 Parkway Center, Pittsburgh, Pa 15220.
- *Fax:* (412) 937-2177.
- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

Instructions: All submissions received must include the agency name and docket number for this rulemaking. For detailed instructions on submitting

comments and additional information on the rulemaking process, see the "Public Comment Procedures" heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: For access to the docket to review copies of the Pennsylvania program, this request, a listing of any scheduled public hearings, and all written comments received in response to this document, you must go to the address listed below during normal business hours, Monday through Friday, excluding holidays. You may receive one free copy of the request by contacting OSMRE's Pittsburgh Field Division or the full text of the request is available for you to read at www.regulations.gov.

Ms. Ben Owens, Chief, Pittsburgh Field Division, Office of Surface Mining Reclamation and Enforcement, 3 Parkway Center, Pittsburgh, Pa 15220, Telephone: (412) 937-2827, Email: bowens@osmre.gov.

In addition, you may review a copy of the request during regular business hours at the following location: Mr. William S. Allen Jr., Director, Bureau of Mining Programs, Pennsylvania Department of Environmental Protection, Rachel Carson State Office Building, 400 Market St., Harrisburg, Pa 17105-8461, Telephone: (717) 787-5103, Email: wallen@pa.gov.

FOR FURTHER INFORMATION CONTACT: Mr. Ben Owens, Chief, Pittsburgh Field Division, Office of Surface Mining Reclamation and Enforcement, 3 Parkway Center, Pittsburgh, Pa 15220, Telephone: (412) 937-2827, Email: bowens@osmre.gov.

SUPPLEMENTARY INFORMATION:

- I. Background on the Pennsylvania Program
- II. Description of the Request
- III. Public Comment Procedures
- IV. Procedural Determinations

I. Background on the Pennsylvania Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its State program includes, among other things, State laws and regulations that govern surface coal mining and reclamation operations in accordance with the Act and consistent with the Federal regulations. See 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Pennsylvania program effective July 31, 1982. You can find additional background information on the Pennsylvania program, including the Secretary's findings, the disposition of

comments, and conditions of approval in the July 30, 1982, **Federal Register**, (47 FR 33050). You can also find later actions concerning Pennsylvania's program and program amendments at 30 CFR 938.11, 938.12, 938.13, 938.15, and 938.16.

II. Description of the Request

By letter dated August 9, 2018, Pennsylvania sent us rationale it believes supports its request that a program amendment OSMRE required on November 7, 1997, at 30 CFR 938.16(rrr), which involves hydrologic balance protections and siltation structures, be removed (Administrative Record No. PA 903.00). See 62 FR 60172. The Federal regulations at 30 CFR parts 816 and 817 (Permanent Program Performance Standards for surface mining and underground mining respectively) include requirements for protection of the hydrologic balance within the permit and adjacent areas and to prevent material damage to the hydrologic balance outside the permit area during mining and reclamation activities. The standards address ground-water quality and surface water protections and include the requirement that additional contributions of suspended solids sediment to streamflow or runoff outside the permit area be prevented to the extent possible. One of the mechanisms used to address this requirement is the construction of siltation structures, which include sedimentation ponds. These ponds are designed, constructed and maintained to provide adequate sediment storage volume and adequate detention time to allow the effluent from the ponds to meet State and Federal effluent limitations.

In 1996, through a program amendment request, Pennsylvania proposed requiring that sedimentation ponds be maintained until the disturbed area is stabilized and revegetated and removal is approved by the Department of Environmental Protection (herein referred to as the "Department"). The regulation also added that ponds may not be removed sooner than two years after the last augmented seeding, unless the Department finds that the disturbed area has been sufficiently revegetated and stabilized. The regulations at 30 CFR 816.46(b)(5), *Hydrologic balance: Siltation structures, general requirements* (applicable to surface mining) and 817.46(b)(5), (applicable to underground mining), specifically prohibit the removal of siltation structures (e.g., sedimentation ponds) sooner than two years after the last augmented seeding. Therefore OSMRE imposed a requirement at 938.16(rrr)

that Pennsylvania submit a program amendment to 25 Pennsylvania Code (Pa Code) subsections 87.108(c), *Hydrologic balance: sedimentation ponds* (applicable to surface coal mining), 89.24(c), *Performance Standards: Sedimentation ponds* (applicable to underground coal mining), and 90.108(c), *Hydrologic balance: sedimentation ponds* (applicable to coal refuse disposal sites), or otherwise amend its program to require, without exception, that sedimentation ponds not be removed sooner than two years after the last augmented seeding.

Pennsylvania states that it included language requiring the two-year limitation in 1995 when it submitted the regulation to the Pennsylvania Environmental Quality Board (EQB) for review and approval, but the EQB revised the proposed regulation and added an exception to allow removal of the siltation structures sooner than the two-year time frame. The EQB provided an exception to the two-year limitation and allowed removal when the Department determines that the reclaimed area has been sufficiently revegetated and stabilized. Pennsylvania states the basis for the EQB allowing a lesser period of time was that a properly managed site will normally be revegetated and stabilized within one year and as few as eight months when ideal conditions exist.

With this request, Pennsylvania provides rationale it contends supports its position that the required amendment be removed. Pennsylvania presents the following four reasons why the required amendment should be removed.

1. The Federal regulations and Pennsylvania regulations require the approval by the regulatory authority before siltation structures can be removed. Pennsylvania reasons that its regulations at §§ 87.108(c), 89.24(c), and 90.108(c) require the regulatory authority to approve the removal of the ponds as required by Federal regulation.

2. Pennsylvania's approved program requires the use of the Best Technology Currently Available (BTCA) to prevent erosion and sedimentation and that vegetation can serve as BTCA. Pennsylvania refers to the Federal regulation at § 816.46(b)(1), which requires additional contributions of suspended sediment to streamflow or runoff outside the permit area be prevented to the extent possible using the BTCA. Pennsylvania points out that the Federal requirement at 816.46(b)(2) that existed in 1986 required all surface drainage from the disturbed area be passed through a siltation structure

before leaving the permit area, but the regulation was suspended on December 22, 1986, due to a 1985 court order. See the November 20, 1986, **Federal Register** (51 FR 41952, 51957). The regulation was suspended due to litigation that resulted in the determination that the preamble to the regulations failed to provide a sufficient rationale for requiring siltation structures in every instance. *In re Permanent Surface Mining Reclamation Litigation*, 620 F. Supp. 1519, 1568 (1985). Pennsylvania states the result of the suspension is that the regulation at 816.46(b)(1) is now the governing regulation. Pennsylvania asserts the regulation only requires the use of BTCA, when possible, and that vegetation serves as the BTCA where successful vegetation has served to meet the sedimentation control requirements. The vegetation is intended to assure drainage meets effluent limits and does not contribute suspended solids to the streamflow.

Regarding surface mines and coal refuse disposal facilities, Pennsylvania states its approved program at §§ 87.108(i) and 90.108(j), respectively, requires the implementation of BTCA upon reclamation of the sedimentation ponds, which is consistent with § 816.46(b)(1). Pennsylvania points to the regulations at these sections, which provide when a sedimentation pond is to be removed, the affected land shall be regraded and revegetated in accordance with §§ 87.147 and 90.151, *Revegetation: general requirements*, (applicable to surface mining and coal refuse disposal sites respectively). Pennsylvania specifically references subsections (c) and (d) of §§ 87.147 and 90.151, which require that revegetation provide a quick germinating, fast-growing, vegetative cover capable of stabilizing the soil surface from erosion; be completed in compliance with the reclamation plan as approved by Pennsylvania in the permit; and be carried out in a manner that encourages a prompt vegetative cover and recovery of productivity levels compatible with the approved postmining land use.

Regarding underground mining, Pennsylvania refers to the general revegetation requirements in § 89.86, *Performance Standards: Revegetation* which provide for implementation of BTCA for the reclamation of stormwater controls. It notes that this section is applicable to all reclamation, including the reclamation of stormwater controls. Pennsylvania also notes the specific requirements in subsections (c) and (d), which address seeding, planting, mulching, and other soil stabilizing practices.

Pennsylvania asserts at least two states (Ohio and Montana) have amended their programs and received OSMRE approval to allow removal of sedimentation ponds sooner than two years after last augmented seeding if replaced by BTCA and, in these cases, the BTCA includes sediment control measures, in the form of vegetation. See the November 15, 1994, **Federal Register** (59 FR 58778) and the May 11, 1990, **Federal Register** (55 FR 19727), respectively.

3. Based on Pennsylvania's experience, revegetation is often established in less than two years. Further, Pennsylvania adds that because siltation structures pose reclamation liability, and in some cases a potential public safety hazard, they should be removed as soon as they are no longer necessary, which is often less than two years.

4. There is no statutory prohibition to Pennsylvania's approach.

In conclusion, Pennsylvania asserts that its program is no less effective than the Federal program for all the reasons mentioned above and requests the required amendment be removed.

The full text of the justification to remove the required amendment is available for you to read at the locations listed above under **ADDRESSES** or at www.regulations.gov.

III. Public Comment Procedures

Under the provisions of 30 CFR 732.17(h), we are seeking your comments on whether the justification is sufficient to remove the required amendment at 30 CFR 938.16(rrr). If we approve the request, we will remove the provision at 938.16(rrr).

Electronic or Written Comments

If you submit written or electronic comments on the request during the 30-day comment period, they should be specific, confined to issues pertinent to the request, and explain the reason for any recommended change(s). We appreciate any and all comments, but those most useful and likely to influence our decision will be those that either involve personal experience or include citations to and analyses of SMCRA, its legislative history, its implementing regulations, case law, other pertinent State or Federal laws or regulations, technical literature, or other relevant publications.

We cannot ensure that comments received after the close of the comment period (see **DATES**) or sent to an address other than those listed (see **ADDRESSES**) will be included in the docket for this rulemaking and considered.

Public Availability of Comments

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment including your personal identifying information, may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Public Hearing

If you wish to speak at the public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4:00 p.m., e.s.t. on May 16, 2019. If you are disabled and need reasonable accommodations to attend a public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT**. We will arrange the location and time of the hearing with those persons requesting the hearing. If no one requests an opportunity to speak, we will not hold a hearing.

To assist the transcriber and ensure an accurate record, we request, if possible, that each person who speaks at the public hearing provide us with a written copy of his or her comments. The public hearing will continue on the specified date until everyone scheduled to speak has been given an opportunity to be heard. If you are in the audience and have not been scheduled to speak and wish to do so, you will be allowed to speak after those who have been scheduled. We will end the hearing after everyone scheduled to speak, and others present in the audience who wish to speak, have been heard.

Public Meeting

If only one person requests an opportunity to speak, we may hold a public meeting rather than a public hearing. If you wish to meet with us to discuss the amendment, please request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings are open to the public and, if possible, we will post notices of meetings at the locations listed under **ADDRESSES**. We will make a written summary of each meeting a part of the administrative record.

IV. Procedural Determinations

Executive Order 12866—Regulatory Planning and Review

Pursuant to Office of Management and Budget (OMB) Guidance dated October 12, 1993, the approval of State program amendments is exempted from OMB review under Executive Order 12866.

Other Laws and Executive Orders Affecting Rulemaking

When a State submits a program amendment to OSMRE for review, our regulations at 30 CFR 732.17(h) require us to publish a notice in the **Federal Register** indicating receipt of the proposed amendment, its text or a summary of its terms, and an opportunity for public comment. We will conclude our review of the request for removal of the required amendment after the close of the public comment period and determine whether the amendment should be removed.

List of Subjects in 30 CFR Part 938

Intergovernmental relations, Surface mining, Underground mining.

Editorial Note: This document was received for publication by the Office of the Federal Register on April 26, 2019.

Dated: October 5, 2018.

Thomas D. Shope,

Regional Director, Appalachian Region.

[FR Doc. 2019-08867 Filed 4-30-19; 8:45 am]

BILLING CODE 4310-05-P

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Parts 199 and 200

[DOD-2018-HA-0059]

RIN 0720-AB74

Civil Money Penalties and Assessments Under the Military Health Care Fraud and Abuse Prevention Program

AGENCY: Office of the Secretary, Department of Defense (DoD).

ACTION: Proposed rule.

SUMMARY: This proposed rule would implement authority provided to the Secretary of Defense under the Social Security Act. This authority allows the Secretary of Defense as the administrator of a Federal healthcare program to impose civil monetary penalties (CMPs or penalties) as described in section 1128A of the Social Security Act against providers and suppliers who commit fraud and abuse in the TRICARE program. This proposed rule establishes a program within the DoD to impose civil monetary penalties for certain such unlawful conduct in the TRICARE program. To the extent applicable, we are proposing to adopt the Department of Health and Human Service's (HHS's), well-established CMP rules and procedures. This will enable

both TRICARE and TRICARE providers to rely upon Medicare precedents and guidance issued by the HHS Office of Inspector General regarding conduct that implicates the civil monetary penalty law. The program to impose civil monetary penalties in the TRICARE program shall be called the Military Health Care Fraud and Abuse Prevention Program.

DATES: To ensure consideration, comments must be received no later than July 1, 2019. The Defense Health Agency may not fully consider comments received after this date.

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

Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

Mail: Department of Defense, Office of the Chief Management Officer, Directorate for Oversight and Compliance, 4800 Mark Center Drive, Suite 08D09, Attn: Mailbox 24, Alexandria, VA 22350-1700.

Instructions: All submissions received must include the agency name and docket number or Regulatory Information Number (RIN) for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at <http://www.regulations.gov> as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Michael J. Zleit, at 703-681-6012.

SUPPLEMENTARY INFORMATION:

I. Executive Summary

1. Purpose

A. Need For Regulatory Action

The Defense Health Agency (DHA), the agency of the Department of Defense responsible for administration of the TRICARE Program, has as its primary mission the support and delivery of an integrated, affordable, and high quality health service to all DoD beneficiaries and in doing so, is a responsible steward of taxpayer dollars. In recent years, fraud and abuse has been inhibiting DHA's mission. One example involves compound drugs. In fiscal year 2004, DoD paid about \$5 million for compound drugs. Ten years later in fiscal year 2014, the amount paid had risen over 10,000% exceeding \$514 million, and for fiscal year 2015, the cost exceeded \$1.3 billion in expenditures just for compound drugs.

Significantly, compounded drugs make up only 0.5 percent of the total number of prescriptions provided through TRICARE, but in 2015 accounted for more than 20 percent of TRICARE's total pharmacy expenditures. The astronomical increase in expenditures related to compound drugs was almost solely due to fraud and abuse, resulting in many investigations and prosecutions by the Department of Justice (DOJ). However, because DOJ is responsible for the prosecution of all fraud and abuse in all Federal healthcare programs, including Medicare, TRICARE, and the Federal Employees Health Benefits Program and does not have unlimited resources, DOJ must prioritize cases and is unable to prosecute a large portion of those entities who commit fraud and abuse in the TRICARE Program. Therefore, the Department of Defense, acting through the DHA, seeks to implement its authority under section 1128A(m) of the Social Security Act (42 U.S.C. 1320a-7a(m)) to initiate administrative proceedings to impose civil monetary penalties against those who commit fraud and abuse in the TRICARE Program. Because CMPs may be imposed in addition to criminal proceedings, we believe that the establishment of a CMP Program within the DoD will serve a complementary function to the criminal justice process and provide additional deterrence to fraudulent actions against the Federal TRICARE Program and the recovery of funds lost to fraud and abuse. The purpose of this proposed rule utilizing CMP authority is to ensure the integrity of TRICARE and make the government whole for funds lost to fraud and abuse, which is necessary to the delivery of an integrated, affordable, and high quality health service for all DoD beneficiaries.

B. Costs and Benefits of This Proposed Rule

This proposed rule would reduce Defense Health Program requirements by \$74 million from FY 2020–FY 2024. The savings estimates were based on recent history of TRICARE fraud and abuse audits and investigations that, for a variety of reasons, did not result in criminal or civil actions by the Department of Justice under other legal authorities. The saving estimates were based on the estimate of 50 cases per year with an average penalty of \$600,000 per case and a collection rate of 60%. Additionally, the estimated recovery amount subtracts out appeal costs, full-time equivalent costs, and administrative costs.

The proposed rule along with additional proposed legislation allows the funds collected to be credited to

appropriations available for expenses of the affected DoD health care program. Based on the results of the HHS civil money penalty program, the expectation is that funds recovered will more than pay for the activities associated with investigating abuses and administering the civil money penalty program, producing savings for DoD.

Because CMPs may be imposed in addition to criminal proceedings, we believe that the benefit of the establishment of a CMP Program within the DoD will serve a complementary function to the criminal justice process and provide additional deterrence to fraudulent actions against the Federal TRICARE Program and the recovery of funds lost to fraud and abuse. We believe the recovery of funds lost to fraud and abuse will make the government whole and will help ensure the continued delivery of an integrated, affordable, and high quality health service for all DoD beneficiaries.

C. Authority Provided to All Federal Healthcare Programs

The specific legal authority authorizing the Department of Defense, to establish a program to impose CMPs in the TRICARE Program is provided in section 1128A(m) of the Social Security Act [42 U.S.C. 1320a-7a(m)]. This provision of law authorizes Federal Departments other than HHS with jurisdiction over a Federal health care program (as defined in section 1128B(f) of the Social Security Act), to impose CMPs as enumerated in section 1128A of the Social Security Act. Some of the CMPs enumerated in section 1128A of the Social Security Act limit the applicability to conduct only involving Medicare and Medicaid; therefore, this proposed rule would implement all CMP authorities under section 1128A that are not specifically limited to Medicare, Medicaid, or other HHS-exclusive authority.

D. Summary of the Major Provisions of the Proposed Rule

We propose to establish Civil Monetary Penalties (CMP) regulations at 32 CFR part 200 to implement authority provided to the Department of Defense under section 1128A of the Social Security Act, as amended. The proposed rule closely follows the organization and substance of HHS's CMP regulations. We propose to follow HHS's process and procedure for imposing CMPs, as well as HHS's methodology for calculating the amount of penalties and assessments. Additionally, for ease of interpretation and transparency, we have adopted HHS's numerical structure for this proposed regulation.

Accordingly, the numerical provisions of the proposed 32 CFR part 200 directly correspond to HHS's numerical provisions at 42 CFR part 1003. Following this organizational construct and HHS rules and procedures, the proposed rule addresses such matters as: Liability for penalties and assessments, determinations regarding the amount of penalties and assessments, CMPs and assessments for false and fraudulent claims and other similar misconduct, penalties and assessments for unlawful kickbacks, CMPs and assessments for contracting organization misconduct, procedures for the imposition of CMPs and assessments, judicial review, time limitations for CMPs and assessments, statistical sampling, and appeals.

II. Provisions of the Proposed Rule

A. Background

For over 25 years, the HHS Office of Inspector General (OIG) has exercised the authority to impose CMPs, assessments, and exclusions in furtherance of its mission to protect the Federal health care programs and their beneficiaries from fraud and abuse. As those programs have changed over the last two decades, HHS-OIG has received new fraud-fighting CMP authorities in response. Section 231 of HIPAA expanded the reach of CMPs to include federal health programs other than those funded by HHS. In 1977, Congress first mandated the exclusion of physicians and other practitioners convicted of program-related crimes from participation in Medicare and Medicaid through the Medicare-Medicaid Anti-Fraud and Abuse Amendments, Public Law 95-142 (now codified at section 1128 of the Social Security Act (the SSA)). This was followed in 1981 with Congress enacting the Civil Monetary Penalties Law (CMPL), Public Law 97-35, section 1128A of the SSA, 42 U.S.C. 1320a-7a, to further address health care fraud and abuse. The CMPL authorized the Secretary to impose penalties and assessments on a person, as defined in 42 CFR part 1003, who defrauded Medicare or Medicaid or engaged in certain other wrongful conduct. The CMPL also authorized the Secretary of Health and Human Services to exclude persons from Medicare and all State health care programs (including Medicaid). Congress later expanded the CMPL and the scope of exclusion to apply to all Federal health care programs. The Secretary of HHS delegated the CMPL's authorities to HHS-OIG. 53 FR 12993 (April 20, 1988). Since 1981, Congress has created various other CMP authorities covering

numerous types of fraud and abuse. These new authorities were also delegated by the Secretary to HHS–OIG and were added to part 1003.

In 1996, Section 231 of the Health Insurance Portability and Accountability Act of 1996 (HIPAA) expanded the reach of certain CMPs to include Federal health programs other than HHS, including specific CMPs that may be implemented to prevent fraud and abuse against programs such as TRICARE. The CMPL authorizes the Department or agency head to impose CMPs, assessments, and program exclusions against individuals and entities who submit false or fraudulent, or otherwise improper claims for payment under Federal healthcare programs administered by that Department or agency. HHS has an active, robust process in place to seek CMPs. Additionally, in September 2016, HHS substantially increased the amount of the penalty it may collect for each act of fraud and abuse. The Office of Personnel Management (OPM) also actively seeks civil monetary penalties under the Federal Employees Health Benefits (FEHB) Program. Subsequent to HIPAA, Congress expanded CMP authorities to reach additional conduct, such as: (1) Failure to grant an OIG timely access to records, upon reasonable request; (2) ordering or prescribing while excluded when the excluded person knows or should know that the item or service may be paid for by a Federal health care program; (3) making false statements, omissions, or misrepresentations in an enrollment or similar bid or application to participate in a Federal health care program; (4) failure to report and return an overpayment that is known to the person; and (5) making or using a false record or statement that is material to a false or fraudulent claim. Most recently, in the Bipartisan Budget Act of 2018, Congress doubled the maximum amount of penalties and assessments under section 1128A.

B. Imposition of CMPs and Assessments in the TRICARE Program

1. Introduction

As noted above, section 1128A(m) of the SSA authorizes the applicable Department head to impose civil monetary penalties (CMPs), assessments, and program exclusions against individuals and entities who submit false or fraudulent, or otherwise improper claims for payment. To date, DoD has not implemented its authority under this law, but proposes to now do so. The Defense Health Agency will utilize this authority and create the

regulatory framework in this proposed rule to initiate a program to impose civil monetary penalties against those who commit fraud or abuse against the TRICARE program. The DHA will utilize the authority in section 1128A of the SSA to impose civil monetary penalties and assessments, but, unlike the HHS CMP Program, TRICARE will not utilize authority to impose program exclusions as part of its CMP program. Rather, program exclusions in the TRICARE program will remain under TRICARE's established authority and process at 32 CFR 199.9(f). In order to integrate this proposed rule into TRICARE's exclusion process under 32 CFR 199.9(f), we propose to amend 32 CFR 199.9(f)(1)(ii) by adding a sentence at the end of the provision stating: "A final determination of an imposition of a civil monetary penalty under 32 CFR part 200 shall constitute an administrative determination of fraud and abuse." We believe that this amendment will clarify that a final determination of an imposition of a CMP, implicating conduct under 32 CFR part 200, may subject the respondent of the CMP to exclusion as authorized under 32 CFR 199.9(f)(1)(ii).

2. Delegation of Authority

Section 1128A(m) of the SSA provides the Secretary of Defense with CMP authority over claims involving the TRICARE Program. This proposed rule reflects a delegation of authority from the Secretary of Defense to the DHA Director to impose CMPs and assessments against any person who has violated one or more provisions of CMPL as applicable to the TRICARE Program. We propose that the authority at 32 CFR 200.150 will include all powers to impose and compromise civil monetary penalties and assessments under section 1128A of the Social Security Act.

3. Prohibited Acts

We propose that the following prohibited acts under section 1128A(a) [42 U.S.C. 1320a–7a(a)] be subject to the imposition of civil monetary penalties in the TRICARE Program. These prohibitions include (but are not limited to) any person (including an organization, agency, or other entity, but excluding a beneficiary, as defined in subsection (i)(5) of this section) that—

- knowingly presents or causes to be presented to an officer, employee, or agent of the United States, or of any department or agency thereof, or of any State agency a claim that—
 - Is for a medical or other item or service that the person knows or should know was not provided as claimed,

including any person who engages in a pattern or practice of presenting or causing to be presented a claim for an item or service that is based on a code that the person knows or should know will result in a greater payment to the person than the code the person knows or should know is applicable to the item or service actually provided [1320a–7a(a) (1)(A)];

- Is for a medical or other item or service and the person knows or should know the claim is false or fraudulent [1320a–7a(a)(1)(B)];

- Is presented for a physician service by a person who knows or should know that the individual who furnished the service—(i) was not licensed as a physician, (ii) was licensed as a physician, but such license had been obtained through a misrepresentation of material fact (including cheating on an examination required for licensing), or (iii) represented to the patient at the time the service was furnished that the physician was certified in a medical specialty by a medical specialty board when the individual was not so certified [1320a–7a(a)(1)(C)];

- Is for a medical or other item or service furnished during a period in which the person was excluded from the TRICARE program under 32 CFR 199.9(f) or other Federal health care program (as defined in section 1128B(f) of the Social Security Act) under which the claim was made pursuant to Federal law [1320a–7a(a)(1)(D)];

- Is for a pattern of medical or other items or services that the person knows or should know are not medically necessary [1320a–7a(a)(1)(E)].

- arranges or contracts (by employment or otherwise) with an individual or entity that the person knows or should know is excluded from participation in a Federal health care program (as defined in section 1320a–7b(f) of this title), for the provision of items or services for which payment may be made under such a program; [1320a–7a(a)(6)].

- commits an act described in paragraph (1) or (2) of section 1320a–7b(b) of title 42; [1320a–7a(a)(7)].

- knowingly makes, uses, or causes to be made or used, a false record or statement material to a false or fraudulent claim for payment for items and services furnished under a Federal health care program; [1320a–7a(a)(8)].

- fails to grant timely access, upon reasonable request (as defined by the Secretary in regulations), to the Office of Inspector General (OIG), for the purpose of audits, investigations, evaluations, or other statutory functions of the OIG; [1320a–7a(a)(9)].

- orders or prescribes a medical or other item or service during a period in which the person was excluded from a Federal health care program (as so defined), in the case where the person knows or should know that a claim for such medical or other item or service will be made under such a program [1320a-7a(a)(8)]; (*Note:* There are two section 1320a-7a(a)(8) provisions enacted into the statute).

- knowingly makes or causes to be made any false statement, omission, or misrepresentation of a material fact in any application, bid, or contract to participate or enroll as a provider of services or a supplier under a Federal health care program (as so defined) [1320a-7a(a)(9)]; (*Note:* There are two section 1320a-7a(a)(9) provisions enacted into the statute).

- knows of an overpayment (as defined in paragraph (4) of section 1128)(d) [42 U.S.C. 1320a-7k(d)] and does not report and return the overpayment in accordance with such section [1320a-7a(a)(10)].

4. Coordination With HHS and DOJ

DHA will coordinate with the Department of Justice (DOJ) and Defense Criminal Investigative Organizations (DCIOs) in resolving all CMP matters. Allegations of fraud will be referred promptly for investigation to the appropriate DCIO consistent with the requirements of Department of Defense Instruction 5505.02. In cases where DOJ or the appropriate DCIO does not participate the case will be governed by either DHA's or HHS's CMPL authorities depending on whether the relevant claims are primarily TRICARE Claims or Medicare Claims. In cases involving mixed Medicare and TRICARE Claims, DHA will seek to resolve only those cases which consist of primarily TRICARE claims. Medicare will take the lead role in resolving cases which consist of primarily Medicare claims. Administrators from both HHS and the DHA will coordinate in resolving cases with mixed TRICARE and Medicare claims. If claims implicated by CMPL are primarily TRICARE claims, those claims will be governed by DHA's applicable CMP authorities. In some cases, disclosing parties may request release under the False Claims Act (FCA), and in other cases, DOJ may choose to participate in the disposition of the matters. DOJ determines the approach in cases in which it is involved. If DOJ participates, the matter will be resolved as DOJ determines is appropriate consistent with its resolution of FCA cases.

5. Amount of Penalties and Assessments

In order to ensure full compliance with the authority delegated to the Secretary of Defense in section 1128A(m), DoD proposes to impose penalties and assessments in the amount not to exceed the maximum adjusted civil penalty amounts prescribed in 32 CFR part 269. DoD proposes to follow annually updated penalty amounts, as adjusted in accordance with the Federal Civil Monetary Penalty Inflation Adjustment Act of 1990 (Pub. L. 101-140), as amended by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (section 701 of Pub. L. 114-74); and the Bipartisan Budget Act of 2018.

6. Exclusion

The time period and effect of exclusion will follow TRICARE's established exclusion process at 32 CFR 199.9(f). A person who has been excluded from the TRICARE Program may apply for reinstatement at the end of the period of exclusion. The process for reinstatement will be in accordance with the pertinent provisions of 32 CFR 199.9(h). Unlike HHS's CMP process, whereby HHS imposes penalties, assessments and exclusions, DHA will not exercise authority over exclusions in the TRICARE Program as part of the CMP implementation. Exclusion actions under the TRICARE Program will continue to be governed under the established process at 32 CFR 199.9(f). Appeals of exclusions will be in accordance with the established process at 32 CFR 199.10 and will not be part of the proposed CMP appeals process.

Additionally, as part of this proposed rule we are proposing an amendment to 32 CFR 199.9(f)(1)(ii) that would clarify that a final determination of an imposition of a civil monetary penalty under 32 CFR part 200 would be considered an administrative determination of fraud and abuse. By clarifying that a final determination of an imposition of a civil monetary penalty is an administrative determination of fraud and abuse, it will allow the TRICARE program an additional, appropriate basis for exclusion under the existing exclusion process at § 199.9(f). Therefore, once a final determination has been made to impose a CMP, the claim will be referred for consideration of exclusion pursuant to 32 CFR 199.9(f), under the normal TRICARE process where there has been a determination of fraud and abuse.

7. Notice of a Proposed Determination

Where sufficient evidence supports the imposition of a CMP, the DHA may serve a notice of proposed determination on the respondent, in any manner authorized by Rule 4 of the Federal Rules of Civil Procedure detailing the basis and remedy sought. This proposed rule at 32 CFR 200.1500 mirrors the requirements of 42 CFR 1003.1500, but eliminates the requirement in 42 CFR 1003.1500(a)(7) involving a termination of a Medicare Provider Agreement pursuant to 1866(b)(2)(C) of the SSA, because the provision governing Medicare Provider Agreements is not applicable to the TRICARE Program.

8. Factors Relevant To Determining Amount of Penalty and Assessment

For clarity, to improve transparency in DHA's decision-making processes, and for consistency with HHS's CMP process, we propose to use the very same factors in determining the amount of penalties and assessments for violations as HHS uses codified at 42 CFR 1003.140. As codified in the proposed regulation at 32 CFR 200.140, the primary factors for determining the amount of penalties and assessments for violations that we will consider are: (1) The nature and circumstances of the violation, (2) the degree of culpability of the person, (3) the history of prior offenses, (4) other wrongful conduct, and (5) other matters as justice may require.

9. Statute of Limitations

In accordance with the authority delegated to the Secretary of Defense, the imposition of CMPs in the TRICARE Program will be subject to a six year statute of limitations.

10. Statistical Sampling and Extrapolation

The proposed regulation at § 200.1580 provides that a statistical sampling study, if based upon an appropriate sampling and computed by valid statistical methods, shall constitute prima facie evidence of the number and amount of claims or requests for payment. The use of statistical sampling will allow DHA to impose penalties and assessments based upon an extrapolated number and amount of claims. Additionally, statistical sampling will allow DHA to recover the extrapolated amount of overpaid funds through administrative recoupment.

11. Appeals of Civil Money Penalties and Assessments

Administrative review of the imposition of a civil monetary penalty

under the TRICARE Program will be before an Administrative Law Judge (ALJ). We propose entering into an arrangement with the HHS Departmental Appeals Board (DAB), pursuant to an interagency agreement between DoD and HHS for the DAB to hear TRICARE CMP appeals. However, as an alternative, DHA continues to evaluate possibly utilizing ALJ's currently assigned to the Department of Defense, and invites public comments on this alternative as well as the DAB proposal included in the text of the proposed rule.

The proposed appeals process would involve appeals of civil monetary penalties and assessments but not include appeals of exclusions, which will be governed by the established process at 32 CFR 199.9(f). We believe that DAB ALJs, would be good candidates to preside over TRICARE CMP appeals. DAB ALJs currently hear CMP appeals for the Medicare Program pursuant to HHS regulations at 42 CFR part 1005, which provide for a direct appeal to the DAB for CMPs assessed by Medicare. During the appeals process, the DHA will have exclusive authority to settle any issues or case without consent of the ALJ. If the imposition of the CMP is successful on appeal, the determination of the CMP by the Secretary of Defense will become final. Once a determination by the Secretary has become final, collection of any penalty and assessment will be the responsibility of DHA. A penalty or an assessment imposed under this program may be compromised by the DHA and may be recovered in a civil action brought in the United States district court for the district where the claim was presented or where the respondent resides.

Although we continue to evaluate the use of DoD ALJs, we believe that utilization of DAB ALJs and HHS's long established appeals process will be the most efficient means to adjudicate appeals under the TRICARE Program. The HHS appeals process would not add any additional process or burden to those in the industry who might be impacted by CMP law, because those entities implicated by the CMP law under TRICARE are for the most part the same entities that are already subject to the same civil monetary penalties law under Medicare. Additionally, we believe the adoption of HHS appeals regulations will assist the seamless adjudication of TRICARE Appeals by HHS ALJs with familiarity and experience working with the Medicare Appeals regulations.

We are proposing the adoption of a 120 day deadline, extending the 60 day

deadline established in 42 CFR 1005.20(c) for the ALJ to issue a decision following the close of the record. We are also proposing extending the 60 day deadline established in 42 CFR 1005.21(i) for the Board to issue a decision following the close of the record. After consultation with the HHS DAB, the DAB has requested that in order to ensure adequate resources necessary to properly adjudicate CMP Appeals, including complex statistical sampling cases, that the deadline to issue a decision be extended from 60 days to 120 days for the ALJ and the Board to issue a decision following the close of the record. We believe that the requested extension to 120 days for the issuance of an ALJ and Board decision provides appellants with appropriate due process. Accordingly, pursuant to the DAB recommendation we propose the deadline for decision by the ALJ in 42 CFR 1005.20(c) and the decision by the Board § 1005.21(i) to be 120 days from the date the record is closed.

Therefore, with the exception of regulations involving exclusions and the extension of deadlines for the ALJ and Board to issue a decision, in part for purposes of uniformity with Medicare, we propose that the regulations at 42 CFR part 1005, §§ 1005.1 through 1005.23, be adopted in full to the extent applicable to appeals of civil momentary penalties and assessments in the TRICARE Civil Monetary Penalty Program. These appeals regulations are codified in this proposed regulation under 32 CFR 200.2001 through 200.2023.

III. Regulatory Impact Statement

Public Comments Invited

This is being issued as proposed rule to implement authority provided to the Secretary of Defense in section 1128A(m) of the SSA. DoD invites public comments on this proposed rule and is committed to considering all comments and issuing a final rule as soon as practicable.

Executive Order (E.O.) 13771, "Reducing Regulation and Controlling Regulatory Costs"

E.O. 13771 seeks to control costs associated with the government imposition of private expenditures required to comply with Federal regulations and to reduce regulations that impose such costs. Consistent with the analysis in OMB Circular A-4 and Office of Information and Regulatory Affairs guidance on implementing E.O. 13771, this proposed rule does not involve regulatory costs subject to E.O. 13771.

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

Executive Orders 13563 and 12866 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distribute impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. It has been determined that this rule is not a significant regulatory action. The rule does not: (1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy; a section of the economy; productivity; competition; jobs; the environment; public health or safety; or State, local, or tribal governments or communities; (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another Agency; (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in these Executive Orders.

This is not an economically significant rule because it does not reach that economic threshold of \$100 million or more. This proposed rule is designed to implement statutory provisions, authorizing the Department of Defense to impose CMPs. The vast majority of providers and Federal health care programs would be minimally impacted, if at all, by these proposed revisions. Accordingly, the aggregate economic effect of these regulations would be significantly less than \$100 million.

Congressional Review Act, 5 U.S.C. 804(2)

Under the Congressional Review Act, a major rule may not take effect until at least 60 days after submission to Congress of a report regarding the rule. A major rule is one that would have an annual effect on the economy of \$100 million or more; or a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity,

innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets. This final rule is not a major rule, because it does not reach the economic threshold or have other impacts as required under the Congressional Review Act.

Public Law 96–354, “Regulatory Flexibility Act” (RFA) (5 U.S.C. 601)

The RFA and the Small Business Regulatory Enforcement and Fairness Act of 1996, which amended the RFA, require agencies to analyze options for regulatory relief of small businesses. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and government agencies. Most providers are considered small entities by having revenues of \$5 million to \$25 million or less in any one year. For purposes of the RFA, most physicians and suppliers are considered small entities. The aggregate effect of implementing a CMP Program within the TRICARE Program would be minimal. In summary, we have concluded that this proposed rule should not have a significant impact on the operations of a substantial number of small providers and that a regulatory flexibility analysis is not required for this rulemaking. Therefore, this proposed rule is not subject to the requirements of the RFA.

Public Law 104–4, Sec. 202, “Unfunded Mandates Reform Act”

Section 202 of the Unfunded Mandates Reform Act of 1995, Public Law 104–4, also requires that agencies assess anticipated costs and benefits before issuing any rule that may result in expenditures in any one year by State, local, or tribal governments, in the aggregate, or by the private sector, of \$100 million in 1995 dollars, updated annually for inflation. That threshold level is currently approximately \$140 million. As indicated above, these proposed rules implement statutory authority to impose CMPs on claims submitted to the TRICARE Program in a similar manner as implemented by the Department of Health and Human Services in the Medicare Program. It has been determined that there are no significant costs associated with the proposed implementation of a CMP Program to impose CMPs on claims submitted to the TRICARE Program that would impose any mandates on State, local, or tribal governments or the private sector that would result in an expenditure of \$140 million or more (adjusted for inflation) in any given year and that a full analysis under the

Unfunded Mandates Reform Act is not necessary.

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

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

Executive Order 13132, “Federalism”

This proposed rule has been examined for its impact under E.O. 13132, and it does not contain policies that have federalism implications that would have substantial direct effects on the States, on the relationship between the national Government and the States, or on the distribution of powers and responsibilities among the various levels of Government. Therefore, consultation with State and local officials is not required.

List of Subjects

32 CFR Part 199

Claims, Dental health, Health care, Health insurance, Individuals with disabilities, Mental health, Mental health parity, Military personnel.

32 CFR Part 200

Administrative practice and procedure, Fraud, Health care, Health insurance, Penalties.

For the reasons stated in the preamble, the Department of Defense proposes to amend 32 CFR subchapter M as set forth below:

PART 199—CIVILIAN HEALTH AND MEDICAL PROGRAM OF THE UNIFORMED SERVICES (CHAMPUS)

■ 1. The authority citation for part 199 continues to read as follows:

Authority: 5 U.S.C. 301; 10 U.S.C. chapter 55.

■ 2. Section 199.9 paragraph (f)(1)(ii) is revised to read as follows:

§ 199.9 Administrative remedies for fraud, abuse, and conflict of interest.

* * * * *

(f) * * *

(1) * * *

(ii) *Administrative determination of fraud or abuse under CHAMPUS.* If the Director, Defense Health Agency determines that a provider has committed fraud or abuse as defined in this part, the provider shall be excluded or suspended from CHAMPUS/TRICARE for a period of time determined by the Director. A final determination of an imposition of a civil

monetary penalty under 32 CFR part 200 shall constitute an administrative determination of fraud and abuse.

* * * * *

■ 3. Add part 200 to read as follows:

PART 200—CIVIL MONEY PENALTY AUTHORITIES FOR THE TRICARE PROGRAM

Sec.

Subpart A—General Provisions

200.100 Basis and purpose.

200.110 Definitions.

200.120 Liability for penalties and assessments.

200.130 Assessments.

200.140 Determinations regarding the amount of penalties and assessments.

200.150 Delegation of authority.

Subpart B—Civil Money Penalties (CMPs) and Assessments for False or Fraudulent Claims and Other Similar Misconduct

200.200 Basis for civil money penalties and assessments.

200.210 Amount of penalties and assessments.

200.220 Determinations regarding the amount of penalties and assessments.

Subpart C—CMPs and Assessments for Anti-Kickback Violations

200.300 Basis for civil money penalties and assessments.

200.310 Amount of penalties and assessments.

200.320 Determinations regarding the amount of penalties and assessments.

Subpart D—CMPs and Assessments for Contracting Organization Misconduct

200.400 Basis for civil money penalties and assessments.

200.410 Amount of penalties and assessments for contracting organization.

200.420 Determinations regarding the amount of penalties and assessments.

Subparts E–N [Reserved]

Subpart O—Procedures for the Imposition of CMPs and Assessments

200.1500 Notice of proposed determination.

200.1510 Failure to request a hearing.

200.1520 Collateral estoppel.

200.1530 Settlement.

200.1540 Judicial review.

200.1550 Collection of penalties and assessments.

200.1560 Notice to other agencies.

200.1570 Limitations.

200.1580 Statistical sampling.

200.1590–200.1990 [Reserved]

Subpart P—Appeals of CMPs and Assessments

200.2001 Definitions.

200.2002 Hearing before an ALJ.

200.2003 Rights of parties.

200.2004 Authority of the ALJ.

200.2005 Ex parte contacts.

200.2006 Prehearing conferences.

200.2007 Discovery.

200.2008 Exchange of witness lists, witness statements and exhibits.

- 200.2009 Subpoenas for attendance at hearing.
- 200.2010 Fees.
- 200.2011 Form, filing and service of papers.
- 200.2012 Computation of time.
- 200.2013 Motions.
- 200.2014 Sanctions.
- 200.2015 The hearing and burden of proof.
- 200.2016 Witnesses.
- 200.2017 Evidence.
- 200.2018 The record.
- 200.2019 Post-hearing briefs.
- 200.2020 Initial decision.
- 200.2021 Appeal to DAB.
- 200.2022 Stay of initial decision.
- 200.2023 Harmless error.

Authority: 5 U.S.C. 301; 10 U.S.C. chapter 55; 42 U.S.C. 1320a–7a.

Subpart A—General Provisions

§ 200.100 Basis and purpose.

(a) *Basis.* This part implements section 1128A of the Social Security Act (42 U.S.C. 1320a–7a) (the Act).

(b) *Purpose.* This part—

(1) Provides for the imposition of civil money penalties and, as applicable, assessments against persons who have committed an act or omission that violates one or more provisions of this part; and

(2) Sets forth the appeal rights of persons subject to a penalty and assessment.

§ 200.110 Definitions.

For purposes of this part, with respect to terms not defined in this section but defined in 32 CFR 199.2, the definition in such § 199.2 shall apply. For purposes of this part, the following definitions apply:

Assessment means the amounts described in this part and includes the plural of that term.

Claim means an application for payment for an item or service under TRICARE/CHAMPUS.

Contracting organization means a public or private entity or other organization that has contracted with the Department to furnish, or otherwise pay for, items and services to TRICARE beneficiaries pursuant to chapter 55 of title 10, U.S. Code. The term expressly does not include entities with which the Department contracts to provide “managed care support” or “fiscal intermediary” services to the TRICARE program under Section 1097 of title 10, U.S. Code.

Defense Health Agency or DHA means the Director of the Defense Health Agency or designee.

Items and services or items or services includes without limitation, any item, device, drug, biological, supply, or service (including management or administrative services), including, but not limited to, those that are listed in an

itemized claim for program payment or a request for payment; for which payment is included in any TRICARE/CHAMPUS reimbursement method, such as a prospective payment system or managed care system; or that are, in the case of a claim based on costs, required to be entered in a cost report, books of account, or other documents supporting the claim (whether or not actually entered).

Knowingly means that a person, with respect to an act, has actual knowledge of the act, acts in deliberate ignorance of the act, or acts in reckless disregard of the act, and no proof of specific intent to defraud is required.

Material means having a natural tendency to influence, or be capable of influencing, the payment or receipt of money or property.

Non-separately-billable item or service means an item or service that is a component of, or otherwise contributes to the provision of, an item or a service, but is not itself a separately billable item or service.

Office of Inspector General or OIG means the Office of Inspector General of the Department of Defense; the Defense Criminal Investigative Service (DCIS); or the Office of Inspector General for the Defense Health Agency.

Overpayment means any funds that a person receives or retains under TRICARE/CHAMPUS to which the person, after applicable reconciliation, is not entitled under such program.

Penalty means the amount described in this part and includes the plural of that term.

Person means an individual, trust or estate, partnership, corporation, professional association or corporation, or other entity, public or private.

Preventive care, for purposes of the definition of the term “remuneration” as set forth in this section and the preventive care exception to section 231(h) of HIPAA, means any service that—

(1) Is a prenatal service or a post-natal well-baby visit or is a specific clinical service covered by TRICARE; and

(2) Is reimbursable in whole or in part by TRICARE as a preventive care service.

Reasonable request, with respect to § 200.200(b)(6), means a written request, signed by a designated representative of the OIG and made by a properly identified agent of the OIG during reasonable business hours. The request will include: A statement of the authority for the request, the person’s rights in responding to the request, the definition of “reasonable request” and “failure to grant timely access” under this part, the deadline by which the OIG

requests access, and the amount of the civil money penalty or assessment that could be imposed for failure to comply with the request, and the earliest date that a request for reinstatement would be considered.

Remuneration, for the purposes of this part, is consistent with the definition in section 1128A(i)(6) of the Social Security Act and includes the waiver of copayment, coinsurance and deductible amounts (or any part thereof) and transfers of items or services for free or for other than fair market value. The term “remuneration” does not include:

(1) The waiver of coinsurance and deductible amounts by a person, if the waiver is not offered as part of any advertisement or solicitation; the person does not routinely waive coinsurance or deductible amounts; and the person waives coinsurance and deductible amounts after determining in good faith that the individual is in financial need or failure by the person to collect coinsurance or deductible amounts after making reasonable collection efforts.

(2) Any permissible practice as specified in section 1128B(b)(3) of the Act or in regulations issued by the Secretary.

(3) Differentials in coinsurance and deductible amounts as part of a benefit plan design (as long as the differentials have been disclosed in writing to all beneficiaries, third party payers and providers), to whom claims are presented.

(4) Incentives given to individuals to promote the delivery of preventive care services where the delivery of such services is not tied (directly or indirectly) to the provision of other services reimbursed in whole or in part by TRICARE, Medicare or an applicable State health care program. Such incentives may include the provision of preventive care, but may not include—

(i) Cash or instruments convertible to cash; or

(ii) An incentive the value of which is disproportionately large in relationship to the value of the preventive care service (*i.e.*, either the value of the service itself or the future health care costs reasonably expected to be avoided as a result of the preventive care).

(5) Items or services that improve a beneficiary’s ability to obtain items and services payable by TRICARE, and pose a low risk of harm to TRICARE beneficiaries and the TRICARE program by—

(i) Being unlikely to interfere with, or skew, clinical decision making;

(ii) Being unlikely to increase costs to Federal health care programs or beneficiaries through overutilization or inappropriate utilization; and

(iii) Not raising patient safety or quality-of-care concerns.

(6) The offer or transfer of items or services for free or less than fair market value by a person if—

(i) The items or services consist of coupons, rebates, or other rewards from a retailer;

(ii) The items or services are offered or transferred on equal terms available to the general public, regardless of health insurance status; and

(iii) The offer or transfer of the items or services is not tied to the provision of other items or services reimbursed in whole or in part by the program under chapter 55 of title 10, U.S. Code.

(7) The offer or transfer of items or services for free or less than fair market value by a person, if—

(i) The items or services are not offered as part of any advertisement or solicitation;

(ii) The offer or transfer of the items or services is not tied to the provision of other items or services reimbursed in whole or in part by the program under chapter 55 of title 10, U.S. Code;

(iii) There is a reasonable connection between the items or services and the medical care of the individual; and

(iv) The person provides the items or services after determining in good faith that the individual is in financial need.

Request for payment means an application submitted by a person to any person for payment for an item or service.

Respondent means the person upon whom the Department has imposed, or proposes to impose, a penalty and/or assessment.

Separately billable item or service means an item or service for which an identifiable payment may be made under a Federal health care program, e.g., an itemized claim or a payment under a prospective payment system or other reimbursement methodology.

Should know, or should have known, means that a person, with respect to information, either acts in deliberate ignorance of the truth or falsity of the information or acts in reckless disregard of the truth or falsity of the information. For purposes of this definition, no proof of specific intent to defraud is required.

TRICARE or TRICARE/CHAMPUS or CHAMPUS means any program operated under the authority of 32 CFR part 199.

§ 200.120 Liability for penalties and assessments.

(a) In any case in which it is determined that more than one person was responsible for a violation described in this part, each such person may be held separately liable for the entire penalty prescribed by this part.

(b) In any case in which it is determined that more than one person was responsible for a violation described in this part, an assessment may be imposed, when authorized, against any one such person or jointly and severally against two or more such persons, but the aggregate amount of the assessments collected may not exceed the amount that could be assessed if only one person was responsible.

(c) Under this part, a principal is liable for penalties and assessments for the actions of his or her agent acting within the scope of his or her agency. The provision in this paragraph (c) does not limit the underlying liability of the agent.

§ 200.130 Assessments.

The assessment in this part is in lieu of damages sustained by the Department because of the violation.

§ 200.140 Determinations regarding the amount of penalties and assessments.

(a) Except as otherwise provided in this part, in determining the amount of any penalty or assessment in accordance with this part, the DHA will consider the following factors—

(1) The nature and circumstances of the violation;

(2) The degree of culpability of the person against whom a civil money penalty and assessment is proposed. It should be considered an aggravating circumstance if the respondent had actual knowledge where a lower level of knowledge was required to establish liability (e.g., for a provision that establishes liability if the respondent “knew or should have known” a claim was false or fraudulent, it will be an aggravating circumstance if the respondent knew the claim was false or fraudulent). It should be a mitigating circumstance if the person took appropriate and timely corrective action in response to the violation. For purposes of this part, corrective action must include disclosing the violation to the DHA by initiating a self-disclosure and fully cooperating with the DHA’s review and resolution of such disclosure;

(3) The history of prior offenses. Aggravating circumstances include, if at any time prior to the violation, the individual—or in the case of an entity, the entity itself; any individual who had a direct or indirect ownership or control interest (as defined in section 1124(a)(3) of the Act) in a sanctioned entity at the time the violation occurred and who knew, or should have known, of the violation; or any individual who was an officer or a managing employee (as defined in section 1126(b) of the Act) of

such an entity at the time the violation occurred—was held liable for criminal, civil, or administrative sanctions in connection with a program covered by this part or in connection with the delivery of a health care item or service;

(4) Other wrongful conduct.

Aggravating circumstances include proof that the individual—or in the case of an entity, the entity itself; any individual who had a direct or indirect ownership or control interest (as defined in section 1124(a)(3) of the Act) in a sanctioned entity at the time the violation occurred and who knew, or should have known, of the violation; or any individual who was an officer or a managing employee (as defined in section 1126(b) of the Act) of such an entity at the time the violation occurred—engaged in wrongful conduct, other than the specific conduct upon which liability is based, relating to a government program or in connection with the delivery of a health care item or service. The statute of limitations governing civil money penalty proceedings does not apply to proof of other wrongful conduct as an aggravating circumstance; and

(5) Such other matters as justice may require. Other circumstances of an aggravating or mitigating nature should be considered if, in the interests of justice, they require either a reduction or an increase in the penalty or assessment to achieve the purposes of this part.

(b)(1) After determining the amount of any penalty and assessment in accordance with this part, the DHA considers the ability of the person to pay the proposed civil money penalty or assessment. The person shall provide, in a time and manner requested by the DHA, sufficient financial documentation, including, but not limited to, audited financial statements, tax returns, and financial disclosure statements, deemed necessary by the DHA to determine the person’s ability to pay the penalty or assessment.

(2) If the person requests a hearing in accordance with § 200.2002, the only financial documentation subject to review is that which the person provided to the DHA during the administrative process, unless the Administrative Law Judge (ALJ) finds that extraordinary circumstances prevented the person from providing the financial documentation to the DHA in the time and manner requested by the DHA prior to the hearing request.

(c) In determining the amount of any penalty and assessment to be imposed under this part the following circumstances are also to be considered—

(1) If there are substantial or several mitigating circumstances, the aggregate amount of the penalty and assessment should be set at an amount sufficiently below the maximum permitted by this part to reflect that fact.

(2) If there are substantial or several aggravating circumstances, the aggregate amount of the penalty and assessment should be set at an amount sufficiently close to or at the maximum permitted by this part to reflect that fact.

(3) Unless there are extraordinary mitigating circumstances, the aggregate amount of the penalty and assessment should not be less than double the approximate amount of damages and costs (as defined by paragraph (e)(2) of this section) sustained by the United States, or any State, as a result of the violation.

(4) The presence of any single aggravating circumstance may justify imposing a penalty and assessment at or close to the maximum even when one or more mitigating factors is present.

(d)(1) The standards set forth in this section are binding, except to the extent that their application would result in imposition of an amount that would exceed limits imposed by the United States Constitution.

(2) The amount imposed will not be less than the approximate amount required to fully compensate the United States, for its damages and costs, tangible and intangible, including, but not limited to, the costs attributable to the investigation, prosecution, and administrative review of the case.

(3) Nothing in this part limits the authority of the Department or the DHA to settle any issue or case as provided by § 200.1530 or to compromise any penalty and assessment as provided by § 200.1550.

(4) Penalties and assessments imposed under this part are in addition to any other penalties, assessments, or other sanctions prescribed by law.

§ 200.150 Delegation of authority.

The DHA is delegated authority from the Secretary to impose civil money penalties and, as applicable, assessments against any person who has violated one or more provisions of this part. The delegation of authority includes all powers to impose and compromise civil monetary penalties, assessments under section 1128A of the Act.

Subpart B—Civil Money Penalties (CMPs) and Assessments for False or Fraudulent Claims and Other Similar Misconduct

§ 200.200 Basis for civil money penalties and assessments.

(a) The DHA may impose a penalty, assessment against any person who it determines has knowingly presented, or caused to be presented, a claim that was for—

(1) An item or service that the person knew, or should have known, was not provided as claimed, including a claim that was part of a pattern or practice of claims based on codes that the person knew, or should have known, would result in greater payment to the person than the code applicable to the item or service actually provided;

(2) An item or service for which the person knew, or should have known, that the claim was false or fraudulent;

(3) An item or service furnished during a period in which the person was excluded from participation under 32 CFR 199.9(f) or by another Federal health care program (as defined in section 1128B(f) of the Act) to which the claim was presented;

(4) A physician's services (or an item or service) for which the person knew, or should have known, that the individual who furnished (or supervised the furnishing of) the service—

(i) Was not licensed as a physician;

(ii) Was licensed as a physician, but such license had been obtained through a misrepresentation of material fact (including cheating on an examination required for licensing); or

(iii) Represented to the patient at the time the service was furnished that the physician was certified by a medical specialty board when he or she was not so certified; or

(5) An item or service that a person knew, or should have known was not medically necessary, and which is part of a pattern of such claims.

(b) The DHA may impose a penalty and, where authorized, an assessment against any person who it determines—

(1) Arranges or contracts (by employment or otherwise) with an individual or entity that the person knows, or should know, is excluded from participation in Federal health care programs for the provision of items or services for which payment may be made under such a program;

(2) Orders or prescribes a medical or other item or service during a period in which the person was excluded from a Federal health care program, in the case when the person knows, or should know, that a claim for such medical or

other item or service will be made under such a program;

(3) Knowingly makes, or causes to be made, any false statement, omission, or misrepresentation of a material fact in any application, bid, or contract to participate or enroll as a provider of services or a supplier under a Federal health care program, including contracting organizations, and entities that apply to participate as providers of services or suppliers in such contracting organizations;

(4) Knows of an overpayment and does not report and return the overpayment in accordance with section 1128J(d) of the Act;

(5) Knowingly makes, uses, or causes to be made or used, a false record or statement material to a false or fraudulent claim for payment for items and services furnished under a Federal health care program; or

(6) Fails to grant timely access to records, documents, and other material or data in any medium (including electronically stored information and any tangible thing), upon reasonable request, to the OIG, for the purpose of audits, investigations, evaluations, or other OIG statutory functions. Such failure to grant timely access means:

(i) Except when the OIG reasonably believes that the requested material is about to be altered or destroyed, the failure to produce or make available for inspection and copying the requested material upon reasonable request or to provide a compelling reason why they cannot be produced, by the deadline specified in the OIG's written request; and

(ii) When the OIG has reason to believe that the requested material is about to be altered or destroyed, the failure to provide access to the requested material at the time the request is made.

§ 200.210 Amount of penalties and assessments.

(a) *Penalties.*¹ (1) Except as provided in this section, the DHA may impose a penalty of not more than \$20,000 for each individual violation that is subject to a determination under this subpart.

(2) For each individual violation of § 200.200(b)(1), the DHA may impose a penalty of not more than \$20,000 for each separately billable or non-separately-billable item or service

¹ The penalty amounts in this section are updated annually, as adjusted in accordance with the Federal Civil Monetary Penalty Inflation Adjustment Act of 1990 (Pub. L. 101-140), as amended by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (section 701 of Pub. L. 114-74). Annually adjusted amounts are published at 32 CFR part 269.

provided, furnished, ordered, or prescribed by an excluded individual or entity.

(3) The DHA may impose a penalty of not more than \$100,000 for each false statement, omission, or misrepresentation of a material fact in violation of § 200.200(b)(3).

(4) The DHA may impose a penalty of not more than \$100,000 for each false record or statement in violation of § 200.200(b)(5).

(5) The DHA may impose a penalty of not more than \$20,000 for each item or service related to an overpayment that is not reported and returned in accordance with section 1128J(d) of the Act in violation of § 200.200(b)(4).

(6) The DHA may impose a penalty of not more than \$30,000 for each day of failure to grant timely access in violation of § 200.200(b)(6).

(b) *Assessments.* (1) Except for violations of § 200.200(b)(1) and (3), the DHA may impose an assessment for each individual violation of § 200.200, of not more than 3 times the amount claimed for each item or service.

(2) For violations of § 200.200(b)(1), the DHA may impose an assessment of not more than 3 times—

(i) The amount claimed for each separately billable item or service provided, furnished, ordered, or prescribed by an excluded individual or entity; or

(ii) The total costs (including salary, benefits, taxes, and other money or items of value) related to the excluded individual or entity incurred by the person that employs, contracts with, or otherwise arranges for an excluded individual or entity to provide, furnish, order, or prescribe a non-separately-billable item or service.

(3) For violations of § 200.200(b)(3), the DHA may impose an assessment of not more than 3 times the total amount claimed for each item or service for which payment was made based upon the application containing the false statement, omission, or misrepresentation of material fact.

§ 200.220 Determinations regarding the amount of penalties and assessments.

In considering the factors listed in § 200.140—

(a) It should be considered a mitigating circumstance if all the items or services or violations included in the action brought under this part were of the same type and occurred within a short period of time, there were few such items or services or violations, and the total amount claimed or requested for such items or services was less than \$5,000.

(b) Aggravating circumstances include—

(1) The violations were of several types or occurred over a lengthy period of time;

(2) There were many such items or services or violations (or the nature and circumstances indicate a pattern of claims or requests for payment for such items or services or a pattern of violations);

(3) The amount claimed or requested for such items or services, or the amount of the overpayment was \$50,000 or more;

(4) The violation resulted, or could have resulted, in patient harm, premature discharge, or a need for additional services or subsequent hospital admission; or

(5) The amount or type of financial, ownership, or control interest or the degree of responsibility a person has in an entity was substantial with respect to an action brought under § 200.200(b)(3).

Subpart C—CMPs and Assessments for Anti-Kickback Violations

§ 200.300 Basis for civil money penalties and assessments.

The DHA may impose a penalty and an assessment against any person who it determines in accordance with this part has violated section 1128B(b) of the Act by unlawfully offering, paying, soliciting, or receiving remuneration to induce or in return for the referral of business paid for, in whole or in part, by TRICARE/CHAMPUS.

§ 200.310 Amount of penalties and assessments.

(a) *Penalties.*² The DHA may impose a penalty of not more than \$100,000 for each offer, payment, solicitation, or receipt of remuneration that is subject to a determination under § 200.300.

(b) *Assessments.* The DHA may impose an assessment of not more than 3 times the total remuneration offered, paid, solicited, or received that is subject to a determination under § 200.300. Calculation of the total remuneration for purposes of an assessment shall be without regard to whether a portion of such remuneration was offered, paid, solicited, or received for a lawful purpose.

§ 200.320 Determinations regarding the amount of penalties and assessments.

In considering the factors listed in § 200.140:

(a) It should be considered a mitigating circumstance if all the items, services, or violations included in the action brought under this part were of

the same type and occurred within a short period of time; there were few such items, services, or violations; and the total amount claimed or requested for such items or services was less than \$5,000.

(b) Aggravating circumstances include—

(1) The violations were of several types or occurred over a lengthy period of time;

(2) There were many such items, services, or violations (or the nature and circumstances indicate a pattern of claims or requests for payment for such items or services or a pattern of violations);

(3) The amount claimed or requested for such items or services or the amount of the remuneration was \$50,000 or more; or

(4) The violation resulted, or could have resulted, in harm to the patient, a premature discharge, or a need for additional services or subsequent hospital admission.

Subpart D—CMPs and Assessments for Contracting Organization Misconduct

§ 200.400 Basis for civil money penalties and assessments.

The DHA may impose a penalty against any contracting organization that—

(a) Fails substantially to provide an enrollee with medically necessary items and services that are required (under chapter 55 of title 10, U.S. Code, applicable regulations, or contract with the Department of Defense) to be provided to such enrollee and the failure adversely affects (or has the substantial likelihood of adversely affecting) the enrollee;

(b) Imposes a premium on an enrollee in excess of the amounts permitted under chapter 55 of title 10, U.S. Code; and

(c) Engages in any practice that would reasonably be expected to have the effect of denying or discouraging enrollment by beneficiaries whose medical condition or history indicates a need for substantial future medical services, except as permitted by chapter 55 of title 10, U.S. Code.

§ 200.410 Amount of penalties and assessments for contracting organization.

(a) *Penalties.*³ (1) The DHA may impose a penalty of up to \$25,000 for each individual violation under

² The penalty amounts in this section are adjusted for inflation annually. Adjusted amounts are published at 32 CFR part 269.

³ The penalty amounts in this section are adjusted for inflation annually. Adjusted amounts are published at 32 CFR part 269.

§ 200.400, except as provided in this section.

(2) The DHA may impose a penalty of up to \$100,000 for each individual violation under § 200.400(a)(3).

(b) *Additional penalties.* In addition to the penalties described in paragraph (a) of this section, the DHA may impose—

(1) An additional penalty equal to double the amount of excess premium charged by the contracting organization for each individual violation of § 200.400(a)(2). The excess premium amount will be deducted from the penalty and returned to the enrollee.

(2) An additional \$30,000⁴ penalty for each individual expelled or not enrolled in violation of § 200.400(a)(3).

§ 200.420 Determinations regarding the amount of penalties and assessments.

In considering the factors listed in § 200.140, aggravating circumstances include—

(a) Such violations were of several types or occurred over a lengthy period of time;

(b) There were many such violations (or the nature and circumstances indicate a pattern of incidents);

(c) The amount of money, remuneration, damages, or tainted claims involved in the violation was \$15,000 or more; or

(d) Patient harm, premature discharge, or a need for additional services or subsequent hospital admission resulted, or could have resulted, from the incident; and

(e) The contracting organization knowingly or routinely engaged in any prohibited practice that acted as an inducement to reduce or limit medically necessary services provided with respect to a specific enrollee in the organization.

Subparts E–N [Reserved]

Subpart O—Procedures for the Imposition of CMPs and Assessments

§ 200.1500 Notice of proposed determination.

(a) If the DHA proposes a penalty and, when applicable, an assessment, as applicable, in accordance with this part, the DHA must serve on the respondent, in any manner authorized by Rule 4 of the Federal Rules of Civil Procedure, written notice of the DHA's intent to impose a penalty and if applicable an assessment. The notice will include—

(1) Reference to the statutory basis for the penalty and the assessment;

(2) A description of the violation for which the penalty, and assessment are proposed (except in cases in which the DHA is relying upon statistical sampling in accordance with § 200.1580, in which case the notice shall describe those claims and requests for payment constituting the sample upon which the DHA is relying and will briefly describe the statistical sampling technique used by the DHA);

(3) The reason why such violation subjects the respondent to a penalty, and an assessment;

(4) The amount of the proposed penalty and assessment (where applicable);

(5) Any factors and circumstances described in this part that were considered when determining the amount of the proposed penalty and assessment;

(6) Instructions for responding to the notice, including—

(i) A specific statement of the respondent's right to a hearing; and

(ii) A statement that failure to request a hearing within 60 days permits the imposition of the proposed penalty, assessment, without right of appeal; and

(b) Any person upon whom the DHA has proposed the imposition of a penalty, and/or an assessment, may appeal such proposed penalty, and/or assessment to the Departmental Appeals Board in accordance with § 200.2002. The provisions of subpart P of this part govern such appeals.

(c) If the respondent fails, within the time period permitted, to exercise his or her right to a hearing under this section, any penalty, and/or assessment becomes final.

§ 200.1510 Failure to request a hearing.

If the respondent does not request a hearing within 60 days after the notice prescribed by § 200.1500(a) is received, as determined by § 200.2002(c), by the respondent, the DHA may impose the proposed penalty and assessment, or any less severe penalty and assessment. The DHA shall notify the respondent in any manner authorized by Rule 4 of the Federal Rules of Civil Procedure of any penalty and assessment that have been imposed and of the means by which the respondent may satisfy the judgment. The respondent has no right to appeal a penalty, an assessment with respect to which he or she has not made a timely request for a hearing under § 200.2002.

§ 200.1520 Collateral estoppel.

(a) Where a final determination pertaining to the respondent's liability for acts that violate this part has been rendered in any proceeding in which the respondent was a party and had an

opportunity to be heard, the respondent shall be bound by such determination in any proceeding under this part.

(b) In a proceeding under this part, a person is estopped from denying the essential elements of the criminal offense if the proceeding—

(1) Is against a person who has been convicted (whether upon a verdict after trial or upon a plea of guilty or nolo contendere) of a Federal crime charging fraud or false statements; and

(2) Involves the same transactions as in the criminal action.

§ 200.1530 Settlement.

The DHA has exclusive authority to settle any issues or case without consent of the ALJ.

§ 200.1540 Judicial review.

(a) Section 1128A(e) of the Social Security Act authorizes judicial review of a penalty and an assessment that has become final. The only matters subject to judicial review are those that the respondent raised pursuant to § 200.2021, unless the court finds that extraordinary circumstances existed that prevented the respondent from raising the issue in the underlying administrative appeal.

(b) A respondent must exhaust all administrative appeal procedures established by the Secretary or required by law before a respondent may bring an action in Federal court, as provided in section 1128A(e) of the Social Security Act, concerning any penalty and assessment imposed pursuant to this part.

(c) Administrative remedies are exhausted when a decision becomes final in accordance with § 200.2021(j).

§ 200.1550 Collection of penalties and assessments.

(a) Once a determination by the Secretary has become final, collection of any penalty and assessment will be the responsibility of the Defense Health Agency.

(b) A penalty or an assessment imposed under this part may be compromised by the DHA and may be recovered in a civil action brought in the United States district court for the district where the claim was presented or where the respondent resides.

(c) The amount of penalty or assessment, when finally determined, or the amount agreed upon in compromise, may be deducted from any sum then or later owing by the United States Government or a State agency to the person against whom the penalty or assessment has been assessed.

(d) Matters that were raised, or that could have been raised, in a hearing

⁴ This penalty amount is adjusted for inflation annually. Adjusted amounts are published at 32 CFR part 269.

before an ALJ or in an appeal under section 1128A(e) of the Social Security Act may not be raised as a defense in a civil action by the United States to collect a penalty or assessment under this part.

§ 200.1560 Notice to other agencies.

Whenever a penalty and/or an assessment becomes final, the following organizations and entities will be notified about such action and the reasons for it: HHS Office of Inspector General, the appropriate State or local medical or professional association; the appropriate quality improvement organization; as appropriate, the State agency that administers each State health care program; the appropriate TRICARE Contractor; the appropriate State or local licensing agency or organization (including the Medicare and Medicaid State survey agencies); and the long-term-care ombudsman.

§ 200.1570 Limitations.

No action under this part will be entertained unless commenced, in accordance with § 200.1500(a), within 6 years from the date on which the violation occurred.

§ 200.1580 Statistical sampling.

(a) In meeting the burden of proof in § 200.2015, the DHA may introduce the results of a statistical sampling study as evidence of the number and amount of claims and/or requests for payment, as described in this part, that were presented, or caused to be presented, by the respondent. Such a statistical sampling study, if based upon an appropriate sampling and computed by valid statistical methods, shall constitute prima facie evidence of the number and amount of claims or requests for payment, as described in this part.

(b) Once the DHA has made a prima facie case, as described in paragraph (a) of this section, the burden of production shall shift to the respondent to produce evidence reasonably calculated to rebut the findings of the statistical sampling study. The DHA will then be given the opportunity to rebut this evidence.

(c) Where the DHA establishes a number and amount of claims subject to penalties using a statistical sampling study, the DHA may use the results of the study to extrapolate a total amount of overpaid funds to be collected pursuant to 32 CFR 199.11.

§§ 200.1590–200.1990 [Reserved]

Subpart P—Appeals of CMPs and Assessments

§ 200.2001 Definitions.

For purposes of this subpart, the following definitions apply:

Civil money penalty cases refer to all proceedings arising under any of the statutory bases for which the DHA has been delegated authority to impose civil money penalties under TRICARE.

DAB refers to the Department of Health and Human Services, Departmental Appeals Board or its delegate, or other administrative appeals decision maker designated by the Director, DHA.

§ 200.2002 Hearing before an ALJ.

(a) A party sanctioned under any criteria specified in this part may request a hearing before an ALJ.

(b) In civil money penalty cases, the parties to the proceeding will consist of the respondent and the DHA.

(c) The request for a hearing will be made in writing to the DAB; signed by the petitioner or respondent, or by his or her attorney; and sent by certified mail. The request must be filed within 60 days after the notice, provided in accordance with § 200.1500, is received by the petitioner or respondent. For purposes of this section, the date of receipt of the notice letter will be presumed to be 5 days after the date of such notice unless there is a reasonable showing to the contrary.

(d) The request for a hearing will contain a statement as to the specific issues or findings of fact and conclusions of law in the notice letter with which the petitioner or respondent disagrees, and the basis for his or her contention that the specific issues or findings and conclusions were incorrect.

(e) The ALJ will dismiss a hearing request where—

(1) The petitioner's or the respondent's hearing request is not filed in a timely manner;

(2) The petitioner or respondent withdraws his or her request for a hearing;

(3) The petitioner or respondent abandons his or her request for a hearing; or

(4) The petitioner's or respondent's hearing request fails to raise any issue which may properly be addressed in a hearing.

§ 200.2003 Rights of parties.

(a) Except as otherwise limited by this part, all parties may—

(1) Be accompanied, represented and advised by an attorney;

(2) Participate in any conference held by the ALJ;

(3) Conduct discovery of documents as permitted by this part;

(4) Agree to stipulations of fact or law which will be made part of the record;

(5) Present evidence relevant to the issues at the hearing;

(6) Present and cross-examine witnesses;

(7) Present oral arguments at the hearing as permitted by the ALJ; and

(8) Submit written briefs and proposed findings of fact and conclusions of law after the hearing.

(b) Fees for any services performed on behalf of a party by an attorney are not subject to the provisions of section 206 of title II of the Act, which authorizes the Secretary to specify or limit these fees.

§ 200.2004 Authority of the ALJ.

(a) The ALJ will conduct a fair and impartial hearing, avoid delay, maintain order and assure that a record of the proceeding is made.

(b) The ALJ has the authority to—

(1) Set and change the date, time and place of the hearing upon reasonable notice to the parties;

(2) Continue or recess the hearing in whole or in part for a reasonable period of time;

(3) Hold conferences to identify or simplify the issues, or to consider other matters that may aid in the expeditious disposition of the proceeding;

(4) Administer oaths and affirmations;

(5) Issue subpoenas requiring the attendance of witnesses at hearings and the production of documents at or in relation to hearings;

(6) Rule on motions and other procedural matters;

(7) Regulate the scope and timing of documentary discovery as permitted by this part;

(8) Regulate the course of the hearing and the conduct of representatives, parties, and witnesses;

(9) Examine witnesses;

(10) Receive, rule on, exclude or limit evidence;

(11) Upon motion of a party, take official notice of facts;

(12) Upon motion of a party, decide cases, in whole or in part, by summary judgment where there is no disputed issue of material fact; and

(13) Conduct any conference, argument or hearing in person or, upon agreement of the parties, by telephone.

(c) The ALJ does not have the authority to—

(1) Find invalid or refuse to follow Federal statutes or regulations or secretarial delegations of authority;

(2) Enter an order in the nature of a directed verdict;

(3) Compel settlement negotiations;
 (4) Enjoin any act of the Secretary; or
 (5) Review the exercise of discretion by the DHA to impose a CMP or assessment under this part.

§ 200.2005 Ex parte contacts.

No party or person (except employees of the ALJ's office) will communicate in any way with the ALJ on any matter at issue in a case, unless on notice and opportunity for all parties to participate. This provision does not prohibit a person or party from inquiring about the status of a case or asking routine questions concerning administrative functions or procedures.

§ 200.2006 Prehearing conferences.

(a) The ALJ will schedule at least one prehearing conference, and may schedule additional prehearing conferences as appropriate, upon reasonable notice to the parties.

(b) The ALJ may use prehearing conferences to discuss the following—

- (1) Simplification of the issues;
 - (2) The necessity or desirability of amendments to the pleadings, including the need for a more definite statement;
 - (3) Stipulations and admissions of fact or as to the contents and authenticity of documents;
 - (4) Whether the parties can agree to submission of the case on a stipulated record;
 - (5) Whether a party chooses to waive appearance at an oral hearing and to submit only documentary evidence (subject to the objection of other parties) and written argument;
 - (6) Limitation of the number of witnesses;
 - (7) Scheduling dates for the exchange of witness lists and of proposed exhibits;
 - (8) Discovery of documents as permitted by this part;
 - (9) The time and place for the hearing;
 - (10) Such other matters as may tend to encourage the fair, just and expeditious disposition of the proceedings; and
 - (11) Potential settlement of the case.
- (c) The ALJ will issue an order containing the matters agreed upon by the parties or ordered by the ALJ at a prehearing conference.

§ 200.2007 Discovery.

(a) A party may make a request to another party for production of documents for inspection and copying which are relevant and material to the issues before the ALJ.

(b) For the purpose of this section, the term documents includes information, reports, answers, records, accounts, papers and other data and documentary

evidence. Nothing contained in this section will be interpreted to require the creation of a document, except that requested data stored in an electronic data storage system will be produced in a form accessible to the requesting party.

(c) Requests for documents, requests for admissions, written interrogatories, depositions and any forms of discovery, other than those permitted under paragraph (a) of this section, are not authorized.

(d) This section will not be construed to require the disclosure of interview reports or statements obtained by any party, or on behalf of any party, of persons who will not be called as witnesses by that party, or analyses and summaries prepared in conjunction with the investigation or litigation of the case, or any otherwise privileged documents.

(e)(1) When a request for production of documents has been received, within 30 days the party receiving that request will either fully respond to the request, or state that the request is being objected to and the reasons for that objection. If objection is made to part of an item or category, the part will be specified. Upon receiving any objections, the party seeking production may then, within 30 days or any other time frame set by the ALJ, file a motion for an order compelling discovery. (The party receiving a request for production may also file a motion for protective order any time prior to the date the production is due.)

(2) The ALJ may grant a motion for protective order or deny a motion for an order compelling discovery if the ALJ finds that the discovery sought—

- (i) Is irrelevant;
- (ii) Is unduly costly or burdensome;
- (iii) Will unduly delay the proceeding; or
- (iv) Seeks privileged information.

(3) The ALJ may extend any of the time frames set forth in paragraph (e)(1) of this section.

(4) The burden of showing that discovery should be allowed is on the party seeking discovery.

§ 200.2008 Exchange of witness lists, witness statements and exhibits.

(a) At least 15 days before the hearing, the ALJ will order the parties to exchange witness lists, copies of prior written statements of proposed witnesses and copies of proposed hearing exhibits, including copies of any written statements that the party intends to offer in lieu of live testimony in accordance with § 200.2016.

(b)(1) If at any time a party objects to the proposed admission of evidence not

exchanged in accordance with paragraph (a) of this section, the ALJ will determine whether the failure to comply with paragraph (a) of this section should result in the exclusion of such evidence.

(2) Unless the ALJ finds that extraordinary circumstances justified the failure to timely exchange the information listed under paragraph (a) of this section, the ALJ must exclude from the party's case-in-chief:

(i) The testimony of any witness whose name does not appear on the witness list; and

(ii) Any exhibit not provided to the opposing party as specified in paragraph (a) of this section.

(3) If the ALJ finds that extraordinary circumstances existed, the ALJ must then determine whether the admission of such evidence would cause substantial prejudice to the objecting party. If the ALJ finds that there is no substantial prejudice, the evidence may be admitted. If the ALJ finds that there is substantial prejudice, the ALJ may exclude the evidence, or at his or her discretion, may postpone the hearing for such time as is necessary for the objecting party to prepare and respond to the evidence.

(c) Unless another party objects within a reasonable period of time prior to the hearing, documents exchanged in accordance with paragraph (a) of this section will be deemed to be authentic for the purpose of admissibility at the hearing.

§ 200.2009 Subpoenas for attendance at hearing.

(a) A party wishing to procure the appearance and testimony of any individual at the hearing may make a motion requesting the ALJ to issue a subpoena if the appearance and testimony are reasonably necessary for the presentation of a party's case.

(b) A subpoena requiring the attendance of an individual in accordance with paragraph (a) of this section may also require the individual (whether or not the individual is a party) to produce evidence authorized under § 200.2007 at or prior to the hearing.

(c) When a subpoena is served by a respondent or petitioner on a particular individual or particular office of the DHA, the DHA may comply by designating any of its representatives to appear and testify.

(d) A party seeking a subpoena will file a written motion not less than 30 days before the date fixed for the hearing, unless otherwise allowed by the ALJ for good cause shown. Such request will:

(1) Specify any evidence to be produced;

(2) Designate the witnesses; and

(3) Describe the address and location with sufficient particularity to permit such witnesses to be found.

(e) The subpoena will specify the time and place at which the witness is to appear and any evidence the witness is to produce.

(f) Within 15 days after the written motion requesting issuance of a subpoena is served, any party may file an opposition or other response.

(g) If the motion requesting issuance of a subpoena is granted, the party seeking the subpoena will serve it by delivery to the individual named, or by certified mail addressed to such individual at his or her last dwelling place or principal place of business.

(h) The individual to whom the subpoena is directed may file with the ALJ a motion to quash the subpoena within 10 days after service.

(i) The exclusive remedy for contempt by, or refusal to obey a subpoena duly served upon, any person is specified in section 205(e) of the Social Security Act (42 U.S.C. 405(e)).

§ 200.2010 Fees.

The party requesting a subpoena will pay the cost of the fees and mileage of any witness subpoenaed in the amounts that would be payable to a witness in a proceeding in United States District Court. A check for witness fees and mileage will accompany the subpoena when served, except that when a subpoena is issued on behalf of the DHA, a check for witness fees and mileage need not accompany the subpoena.

§ 200.2011 Form, filing and service of papers.

(a) *Forms.* (1) Unless the ALJ directs the parties to do otherwise, documents filed with the ALJ will include an original and two copies.

(2) Every pleading and paper filed in the proceeding will contain a caption setting forth the title of the action, the case number, and a designation of the paper, such as motion to quash subpoena.

(3) Every pleading and paper will be signed by, and will contain the address and telephone number of the party or the person on whose behalf the paper was filed, or his or her representative.

(4) Papers are considered filed when they are mailed.

(b) *Service.* A party filing a document with the ALJ or the Secretary will, at the time of filing, serve a copy of such document on every other party. Service upon any party of any document will be

made by delivering a copy, or placing a copy of the document in the United States mail, postage prepaid and addressed, or with a private delivery service, to the party's last known address. When a party is represented by an attorney, service will be made upon such attorney in lieu of the party.

(c) *Proof of service.* A certificate of the individual serving the document by personal delivery or by mail, setting forth the manner of service, will be proof of service.

§ 200.2012 Computation of time.

(a) In computing any period of time under this part or in an order issued thereunder, the time begins with the day following the act, event or default, and includes the last day of the period unless it is a Saturday, Sunday or legal holiday observed by the Federal Government, in which event it includes the next business day.

(b) When the period of time allowed is less than 7 days, intermediate Saturdays, Sundays and legal holidays observed by the Federal Government will be excluded from the computation.

(c) Where a document has been served or issued by placing it in the mail, an additional 5 days will be added to the time permitted for any response. This paragraph (c) does not apply to requests for hearing under § 200.2002.

§ 200.2013 Motions.

(a) An application to the ALJ for an order or ruling will be by motion. Motions will state the relief sought, the authority relied upon and the facts alleged, and will be filed with the ALJ and served on all other parties.

(b) Except for motions made during a prehearing conference or at the hearing, all motions will be in writing. The ALJ may require that oral motions be reduced to writing.

(c) Within 10 days after a written motion is served, or such other time as may be fixed by the ALJ, any party may file a response to such motion.

(d) The ALJ may not grant a written motion before the time for filing responses has expired, except upon consent of the parties or following a hearing on the motion, but may overrule or deny such motion without awaiting a response.

(e) The ALJ will make a reasonable effort to dispose of all outstanding motions prior to the beginning of the hearing.

§ 200.2014 Sanctions.

(a) The ALJ may sanction a person, including any party or attorney, for failing to comply with an order or procedure, for failing to defend an

action or for other misconduct that interferes with the speedy, orderly or fair conduct of the hearing. Such sanctions will reasonably relate to the severity and nature of the failure or misconduct. Such sanction may include—

(1) In the case of refusal to provide or permit discovery under the terms of this part, drawing negative factual inferences or treating such refusal as an admission by deeming the matter, or certain facts, to be established;

(2) Prohibiting a party from introducing certain evidence or otherwise supporting a particular claim or defense;

(3) Striking pleadings, in whole or in part;

(4) Staying the proceedings;

(5) Dismissal of the action;

(6) Entering a decision by default; and

(7) Refusing to consider any motion or other action that is not filed in a timely manner.

(b) In civil money penalty cases commenced under section 1128A of the Social Security Act or under any provision which incorporates section 1128A(c)(4) of the Social Security Act, the ALJ may also order the party or attorney who has engaged in any of the acts described in paragraph (a) of this section to pay attorney's fees and other costs caused by the failure or misconduct.

§ 200.2015 The hearing and burden of proof.

(a) The ALJ will conduct a hearing on the record in order to determine whether the petitioner or respondent should be found liable under this part.

(b) With regard to the burden of proof in civil money penalty cases under this part—

(1) The respondent or petitioner, as applicable, bears the burden of going forward and the burden of persuasion with respect to affirmative defenses and any mitigating circumstances; and

(2) The DHA bears the burden of going forward and the burden of persuasion with respect to all other issues.

(c) The burden of persuasion will be judged by a preponderance of the evidence.

(d) The hearing will be open to the public unless otherwise ordered by the ALJ for good cause shown.

(e)(1) A hearing under this part is not limited to specific items and information set forth in the notice letter to the petitioner or respondent. Subject to the 15-day requirement under § 200.2008, additional items and information, including aggravating or mitigating circumstances that arose or

became known subsequent to the issuance of the notice letter, may be introduced by either party during its case-in-chief unless such information or items are—

(i) Privileged; or

(ii) Deemed otherwise inadmissible under § 200.2017.

(2) After both parties have presented their cases, evidence may be admitted on rebuttal even if not previously exchanged in accordance with § 200.2008.

§ 200.2016 Witnesses.

(a) Except as provided in paragraph (b) of this section, testimony at the hearing will be given orally by witnesses under oath or affirmation.

(b) At the discretion of the ALJ, testimony (other than expert testimony) may be admitted in the form of a written statement. The ALJ may, at his or her discretion, admit prior sworn testimony of experts which has been subject to adverse examination, such as a deposition or trial testimony. Any such written statement must be provided to all other parties along with the last known address of such witnesses, in a manner that allows sufficient time for other parties to subpoena such witness for cross-examination at the hearing. Prior written statements of witnesses proposed to testify at the hearing will be exchanged as provided in § 200.2008.

(c) The ALJ will exercise reasonable control over the mode and order of interrogating witnesses and presenting evidence so as to:

(1) Make the interrogation and presentation effective for the ascertainment of the truth;

(2) Avoid repetition or needless consumption of time; and

(3) Protect witnesses from harassment or undue embarrassment.

(d) The ALJ will permit the parties to conduct such cross-examination of witnesses as may be required for a full and true disclosure of the facts.

(e) The ALJ may order witnesses excluded so that they cannot hear the testimony of other witnesses. This does not authorize exclusion of—

(1) A party who is an individual;

(2) In the case of a party that is not an individual, an officer or employee of the party appearing for the entity pro se or designated as the party's representative; or

(3) An individual whose presence is shown by a party to be essential to the presentation of its case, including an individual engaged in assisting the attorney for the Inspector General (IG).

§ 200.2017 Evidence.

(a) The ALJ will determine the admissibility of evidence.

(b) Except as provided in this part, the ALJ will not be bound by the Federal Rules of Evidence. However, the ALJ may apply the Federal Rules of Evidence where appropriate, for example, to exclude unreliable evidence.

(c) The ALJ must exclude irrelevant or immaterial evidence.

(d) Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or by considerations of undue delay or needless presentation of cumulative evidence.

(e) Although relevant, evidence must be excluded if it is privileged under Federal law.

(f) Evidence concerning offers of compromise or settlement made in this action will be inadmissible to the extent provided in Rule 408 of the Federal Rules of Evidence.

(g) Evidence of crimes, wrongs or acts other than those at issue in the instant case is admissible in order to show motive, opportunity, intent, knowledge, preparation, identity, lack of mistake, or existence of a scheme. Such evidence is admissible regardless of whether the crimes, wrongs or acts occurred during the statute of limitations period applicable to the acts which constitute the basis for liability in the case, and regardless of whether they were referenced in the DHA's notice sent in accordance with § 200.1500.

(h) The ALJ will permit the parties to introduce rebuttal witnesses and evidence.

(i) All documents and other evidence offered or taken for the record will be open to examination by all parties, unless otherwise ordered by the ALJ for good cause shown.

(j) The ALJ may not consider evidence regarding the issue of willingness and ability to enter into and successfully complete a corrective action plan when such evidence pertains to matters occurring after the submittal of the case to the Secretary. The determination regarding the appropriateness of any corrective action plan is not reviewable.

§ 200.2018 The record.

(a) The hearing will be recorded and transcribed. Transcripts may be obtained following the hearing from the ALJ.

(b) The transcript of testimony, exhibits and other evidence admitted at the hearing, and all papers and requests filed in the proceeding constitute the record for the decision by the ALJ and the Secretary.

(c) The record may be inspected and copied (upon payment of a reasonable

fee) by any person, unless otherwise ordered by the ALJ for good cause shown.

(d) For good cause, the ALJ may order appropriate redactions made to the record.

§ 200.2019 Post-hearing briefs.

The ALJ may require the parties to file post-hearing briefs. In any event, any party may file a post-hearing brief. The ALJ will fix the time for filing such briefs which are not to exceed 60 days from the date the parties receive the transcript of the hearing or, if applicable, the stipulated record. Such briefs may be accompanied by proposed findings of fact and conclusions of law. The ALJ may permit the parties to file reply briefs.

§ 200.2020 Initial decision.

(a) The ALJ will issue an initial decision, based only on the record, which will contain findings of fact and conclusions of law.

(b) The ALJ may affirm, increase or reduce the penalties, assessment proposed or imposed by the DHA.

(c) The ALJ will issue the initial decision to all parties within 120 days after the time for submission of post-hearing briefs and reply briefs, if permitted, has expired. The decision will be accompanied by a statement describing the right of any party to file a notice of appeal with the DAB and instructions for how to file such appeal. If the ALJ fails to meet the deadline contained in this paragraph, he or she will notify the parties of the reason for the delay and will set a new deadline.

(d) Except as provided in paragraph (e) of this section, unless the initial decision is appealed to the DAB, it will be final and binding on the parties 30 days after the ALJ serves the parties with a copy of the decision. If service is by mail, the date of service will be deemed to be 5 days from the date of mailing.

(e) If an extension of time within which to appeal the initial decision is granted under § 200.2021(a), except as provided in § 200.2022(a), the initial decision will become final and binding on the day following the end of the extension period.

§ 200.2021 Appeal to DAB.

(a) Any party may appeal the initial decision of the ALJ to the DAB by filing a notice of appeal with the DAB within 30 days of the date of service of the initial decision. The DAB may extend the initial 30 day period for a period of time not to exceed 30 days if a party files with the DAB a request for an extension within the initial 30 day period and shows good cause.

(b) If a party files a timely notice of appeal with the DAB, the ALJ will forward the record of the proceeding to the DAB.

(c) A notice of appeal will be accompanied by a written brief specifying exceptions to the initial decision and reasons supporting the exceptions. Any party may file a brief in opposition to exceptions, which may raise any relevant issue not addressed in the exceptions, within 30 days of receiving the notice of appeal and accompanying brief. The DAB may permit the parties to file reply briefs.

(d) There is no right to appear personally before the DAB or to appeal to the DAB any interlocutory ruling by the ALJ, except on the timeliness of a filing of the hearing request.

(e) The DAB will not consider any issue not raised in the parties' briefs, nor any issue in the briefs that could have been raised before the ALJ but was not.

(f) If any party demonstrates to the satisfaction of the DAB that additional evidence not presented at such hearing is relevant and material and that there were reasonable grounds for the failure to adduce such evidence at such hearing, the DAB may remand the matter to the ALJ for consideration of such additional evidence.

(g) The DAB may decline to review the case, or may affirm, increase, reduce, reverse or remand any penalty or assessment determined by the ALJ.

(h) The standard of review on a disputed issue of fact is whether the initial decision is supported by substantial evidence on the whole record. The standard of review on a disputed issue of law is whether the initial decision is erroneous.

(i) Within 120 days after the time for submission of briefs and reply briefs, if permitted, has expired, the DAB will issue to each party to the appeal a copy of the DAB's decision and a statement describing the right of any petitioner or respondent who is found liable to seek judicial review.

(j) Except with respect to any penalty or assessment remanded by the ALJ, the DAB's decision, including a decision to decline review of the initial decision, becomes final and binding 60 days after the date on which the DAB serves the parties with a copy of the decision. If service is by mail, the date of service will be deemed to be 5 days from the date of mailing.

(k)(1) Any petition for judicial review must be filed within 60 days after the DAB serves the parties with a copy of the decision. If service is by mail, the date of service will be deemed to be 5 days from the date of mailing.

(2) In compliance with 28 U.S.C. 2112(a), a copy of any petition for judicial review filed in any U.S. Court of Appeals challenging a final action of the DAB will be sent by certified mail, return receipt requested, to the General Counsel of the DHA. The petition copy will be time-stamped by the clerk of the court when the original is filed with the court.

(3) If the General Counsel of the DHA receives two or more petitions within 10 days after the DAB issues its decision, the General Counsel of the DHA will notify the U.S. Judicial Panel on Multidistrict Litigation of any petitions that were received within the 10-day period.

§ 200.2022 Stay of initial decision.

(a) In a CMP case under section 1128A of the Act, the filing of a respondent's request for review by the DAB will automatically stay the effective date of the ALJ's decision.

(b)(1) After the DAB renders a decision in a CMP case, pending judicial review, the respondent may file a request for stay of the effective date of any penalty or assessment with the ALJ. The request must be accompanied by a copy of the notice of appeal filed with the Federal court. The filing of such a request will automatically act to stay the effective date of the penalty or assessment until such time as the ALJ rules upon the request.

(2) The ALJ may not grant a respondent's request for stay of any penalty or assessment unless the respondent posts a bond or provides other adequate security.

(3) The ALJ will rule upon a respondent's request for stay within 10 days of receipt.

§ 200.2023 Harmless error.

No error in either the admission or the exclusion of evidence, and no error or defect in any ruling or order or in any act done or omitted by the ALJ or by any of the parties, including Federal representatives or TRICARE contractors is ground for vacating, modifying or otherwise disturbing an otherwise appropriate ruling or order or act, unless refusal to take such action appears to the ALJ or the DAB inconsistent with substantial justice. The ALJ and the DAB at every stage of the proceeding will disregard any error or defect in the proceeding that does not affect the substantial rights of the parties.

Dated: April 26, 2019.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2019-08858 Filed 4-30-19; 8:45 am]

BILLING CODE 5001-06-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2019-0214]

RIN 1625-AA00

Safety Zone; Lake Washington, Seattle, WA

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is proposing to amend the safety zone for the Seattle Seafair Air Show Performance by moving the safety zone location. This action is necessary to safeguard participants and spectators from the safety hazards associated with the Air Show Performance, which include low-flying high-speed aircraft. This proposed rulemaking would prohibit persons and vessels from entering or remaining in the new safety zone location unless authorized by the Captain of the Port Puget Sound or a designated representative. We invite your comments on this proposed rulemaking.

DATES: Comments and related material must be received by the Coast Guard on or before May 31, 2019.

ADDRESSES: You may submit comments identified by docket number USCG-2019-0214 using the Federal eRulemaking Portal at <https://www.regulations.gov>. See the "Public Participation and Request for Comments" portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions about this proposed rulemaking, call or email Petty Officer Zachary Spence, Sector Puget Sound Waterways Management Branch, U.S. Coast Guard; telephone 206-217-6051, email SectorPugetSoundWWM@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

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

II. Background, Purpose, and Legal Basis

On March 12, 2019, the Seattle Seafair Organization notified the Coast Guard that it will be moving its annual Air

Show Performance location due to the Interstate 90 Floating Bridge construction project for the Sound Transit Light Rail and subsequent light rail operations. In order to avoid closing the Interstate 90 Floating Bridge on Lake Washington during the Air Show Performance which would be required under the current safety zone regulations, the Seattle Seafair Organization has moved Air Show Performance location south of the Interstate 90 Floating Bridge.

The northern boundary of the proposed safety zone would encompass the navigable waters of Lake Washington approximately 1,700 yards south of the existing safety zone's northern boundary to the southern Interstate 90 floating bridge. The proposed safety zone location would then overlap the existing safety zone location south of the Interstate 90 Bridge to southern boundary line, a line perpendicular to the Bailey Peninsula to Mercer Island. The southern boundary would then be extended 1,100 yards further south past the existing boundary line.

The Air Show Performance poses several dangers to the public, including low-flying high-speed aircraft, excessive noise, and potential objects falling from aircraft. The Captain of the Port Puget Sound (COTP) has determined that potential hazards associated with the Air Show Performance would be a safety concern for anyone near the Air Show Performance.

The purpose of this rulemaking is to ensure the safety of vessels and the navigable waters near the new Air Show Performance location immediately before, during, and after the scheduled event. The Coast Guard is proposing this rulemaking under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231).

III. Discussion of Proposed Rule

The COTP is proposing to amend the current safety zone location by moving it south in conjunction with the new Air Show Performance location. The safety zone would cover all navigable waters of Lake Washington south of the Interstate 90 Floating Bridge and north of Bailey Peninsula. No vessel or person would be permitted to enter or remain in the safety zone without obtaining permission from the COTP or a designated representative. The regulatory text we are proposing appears at the end of this document.

IV. Regulatory Analyses

We developed this proposed rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses

based on a number of these statutes and Executive orders and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

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

This regulatory action determination is based on the size, location, duration, and time of day the safety zone. Vessel traffic would be able to safely transit around the safety zone which would impact a small designated area of Lake Washington during the Air Show Performance.

B. Impact on Small Entities

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

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

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

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

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

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

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

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this proposed rule under Department of Homeland

Security Directive 023-01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321-4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule involves amending a safety zone by moving the regulated area south of the Interstate 90 Bridge and north of Bailey Peninsula. Normally such actions are categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023-01-001-01, Rev. 01. A preliminary Record of Environmental Consideration supporting this determination is available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

G. Protest Activities

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

V. Public Participation and Request for Comments

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

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

We accept anonymous comments. All comments received will be posted without change to <https://www.regulations.gov> and will include any personal information you have provided. For more about privacy and

the docket, visit <https://www.regulations.gov/privacyNotice>.

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

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 46 U.S.C. 70034, 70051; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Department of Homeland Security Delegation No. 0170.1.2. In § 165.1319, revise paragraph (b) to read as follows:

§ 165.1319 Seafair Air Show Performance, Seattle, WA.

* * * * *

(b) *Location.* The following is a safety zone: All waters of Lake Washington south of the Interstate 90 Floating West Bound Bridge and north of the points between Bailey Peninsula at 47°33'14.4" N, 122°14'47.3" and Mercer Island at 47°33'24.5" N, 122°13'52.5" W.

* * * * *

Dated: April 25, 2019.

L.A. Sturgis,

Captain, U.S. Coast Guard, Captain of the Port Puget Sound.

[FR Doc. 2019-08800 Filed 4-30-19; 8:45 am]

BILLING CODE 9110-04-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 131

[EPA-HQ-OW-2016-0694; FRL-9967-13-OW]

RIN 2040-AF70

Aquatic Life Criteria for Aluminum in Oregon

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (the EPA) proposes to establish

federal Clean Water Act (CWA) aquatic life criteria for fresh waters under the State of Oregon's jurisdiction, to protect aquatic life from the effects of exposure to harmful levels of aluminum. In 2013, the EPA disapproved the State's freshwater acute and chronic aluminum criteria. The CWA directs the EPA to promptly propose water quality standards (WQS) that meet CWA requirements if a state does not adopt WQS addressing the Agency's disapproval. The State has not adopted and submitted revised freshwater acute and chronic aluminum criteria to the EPA to address the EPA's 2013 disapproval. Therefore, in this notice, the EPA proposes federal freshwater acute and chronic aluminum criteria to protect aquatic life uses in Oregon.

DATES: Comments must be received on or before June 17, 2019.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-HQ-OW-2016-0694, at <http://www.regulations.gov> (our preferred method), or the other methods identified in this **ADDRESSES** section. Once submitted, comments cannot be edited or removed from the docket. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.*, on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www.epa.gov/dockets/commenting-epa-dockets>.

The EPA is offering two online public hearings so that interested parties may provide oral comments on this proposed rule. The first public hearing will be on Tuesday, June 11, 2019, from 4:00 p.m. to 6:00 p.m. Pacific Time. The second public hearing will be on Wednesday, June 12, 2019, from 9:00 a.m. to 11:00 a.m. Pacific Time. The EPA plans to make a transcript of the public hearings available to the public in the rulemaking docket. The EPA will respond to substantive comments received as part of developing the final rule and will include comment responses in the

rulemaking docket. For more details on the public hearings and a link to register, please visit <http://www.epa.gov/wqs-tech/water-quality-standards-regulations-oregon>.

FOR FURTHER INFORMATION CONTACT:

Heather Goss, Office of Water, Standards and Health Protection Division (4305T), Environmental Protection Agency, 1200 Pennsylvania Avenue NW, Washington, DC 20460; telephone number: (202) 566-1198; email address: OregonAluminumCriteriaRule@epa.gov.

SUPPLEMENTARY INFORMATION: This proposed rule is organized as follows:

- I. General Information
 - Does this action apply to me?
- II. Background
 - A. Statutory and Regulatory Authority
 - B. The EPA's Disapproval of Oregon's Freshwater Aluminum Criteria
 - C. General Recommended Approach for Deriving Aquatic Life Criteria
- III. Freshwater Aluminum Aquatic Life Criteria
 - A. The EPA's CWA Section 304(a) National Recommended Freshwater Aluminum Criteria
 - B. Proposed Acute and Chronic Aluminum Criteria for Oregon's Fresh Waters
 - C. Implementation of Proposed Freshwater Acute and Chronic Aluminum Criteria in Oregon
 - D. Incorporation by Reference
- IV. Critical Low Flows and Mixing Zones
- V. Endangered Species Act
- VI. Under what conditions will federal standards not be promulgated or be withdrawn?

- VII. Alternative Regulatory Approaches and Implementation Mechanisms
 - A. Designating Uses
 - B. WQS Variances
 - C. NPDES Permit Compliance Schedules
- VIII. Economic Analysis
 - A. Identifying Affected Entities
 - B. Method for Estimating Costs
 - C. Results
- IX. Statutory and Executive Order Reviews
 - A. Executive Order 12866 (Regulatory Planning and Review) and Executive Order 13563 (Improving Regulation and Regulatory Review)
 - B. Executive Order 13771 (Reducing Regulations and Controlling Regulatory Costs)
 - C. Paperwork Reduction Act
 - D. Regulatory Flexibility Act
 - E. Unfunded Mandates Reform Act
 - F. Executive Order 13132 (Federalism)
 - G. Executive Order 13175 (Consultation and Coordination With Indian Tribal Governments)
 - H. Executive Order 13045 (Protection of Children From Environmental Health and Safety Risks)
 - I. Executive Order 13211 (Actions That Significantly Affect Energy Supply, Distribution, or Use)
 - J. National Technology Transfer and Advancement Act of 1995
 - K. Executive Order 12898 (Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations)

I. General Information

Does this action apply to me?

Aluminum naturally occurs in surface waters, but under certain environmental conditions, it can be converted to toxic

forms that can be toxic to aquatic life. Anthropogenic activities such as bauxite mining, alumina refining, production of aluminum products, and manufacturing processes can contribute aluminum to surface waters.¹ In addition, alum (potassium aluminum sulfate), used in clarification processes in drinking water and wastewater processes, can contribute to levels of aluminum in surface waters. Lastly, certain activities, such as wastewater discharges, stormwater runoff, mining, or agriculture can influence a waterbody's pH, dissolved organic carbon (DOC), or total hardness and, therefore, the toxicity of aluminum in that waterbody.

Entities such as industrial facilities, stormwater management districts, or publicly owned treatment works (POTWs) that discharge pollutants to fresh waters of the United States under the State of Oregon's jurisdiction could be indirectly affected by this rulemaking, because federal WQS promulgated by the EPA would be applicable WQS for the State for CWA purposes. These WQS are the minimum standards which must be used in CWA regulatory programs, such as National Pollutant Discharge Elimination System (NPDES) permitting² and identifying impaired waters under CWA section 303(d). Citizens concerned with water quality in Oregon could also be interested in this rulemaking. Categories and entities that could potentially be affected include the following:

Category	Examples of potentially affected entities
Industry	Industries discharging pollutants to fresh waters of the United States in Oregon.
Municipalities	Publicly owned treatment works or other facilities discharging pollutants to fresh waters of the United States in Oregon.
Stormwater Management Districts ..	Entities responsible for managing stormwater runoff in the State of Oregon.

This table is not intended to be exhaustive, but rather provides a guide for readers to identify entities that could potentially be affected by this action. Any parties or entities who depend upon or contribute to the water quality of Oregon's waters could be affected by this proposed rule. To determine whether your facility or activities could be affected by this action, you should carefully examine this proposed rule. If you have questions regarding the

applicability of this action to a particular entity, consult the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

II. Background

A. Statutory and Regulatory Authority

CWA section 303(c) (33 U.S.C. 1313(c)) directs states to adopt WQS for their waters subject to the CWA. CWA section 303(c)(2)(A)³ provides that WQS shall consist of designated uses of the

waters and water quality criteria based on those uses. The EPA's regulations at 40 CFR 131.11(a)(1) provide that "[s]uch criteria must be based on sound scientific rationale and must contain sufficient parameters or constituents to protect the designated use [and] [f]or waters with multiple use designations, the criteria shall support the most sensitive use." In addition, 40 CFR 131.10(b) provides that "[i]n designating uses of a water body and the appropriate

¹ Agency for Toxic Substances and Disease Registry (ATSDR) Toxicological Profile for Aluminum, 2008 (<https://www.atsdr.cdc.gov/toxprofiles/tp22.pdf>).

² Before any water quality based effluent limit is included in an NPDES permit, the permitting authority (here, the State of Oregon), will first determine whether a discharge "will cause or has the reasonable potential to cause, or contribute to

an excursion above any WQS." 40 CFR 122.44 (d)(1)(i) and (ii).

³ CWA section 303(c)(2)(A): Whenever the State revises or adopts a new standard, such revised or new standard shall be submitted to the Administrator. Such revised or new water quality standard shall consist of the designated uses of the navigable waters involved and the water quality criteria for such waters based upon such uses. Such

standards shall be such as to protect the public health or welfare, enhance the quality of water and serve the purposes of this chapter. Such standards shall be established taking into consideration their use and value for public water supplies, propagation of fish and wildlife, recreational purposes, and agricultural, industrial, and other purposes, and also taking into consideration their use and value for navigation.

criteria for those uses, the [s]tate shall take into consideration the water quality standards of downstream waters and shall ensure that its water quality standards provide for the attainment and maintenance of the water quality standards of downstream waters.”

States are required to review applicable WQS at least once every three years and, if appropriate, revise or adopt new WQS (CWA section 303(c)(1)⁴ and 40 CFR 131.20). Any new or revised WQS must be submitted to the EPA for review and approval or disapproval (CWA section 303(c)(2)(A) and (c)(3)⁵ and 40 CFR 131.20 and 131.21). If the EPA disapproves a state’s new or revised WQS, the CWA provides the state 90 days to adopt a revised WQS that meets CWA requirements, and if it fails to do so, the Agency shall promptly propose and then within 90 days promulgate such WQS unless the Agency approves a state replacement WQS first (CWA section 303(c)(3) and (c)(4)⁶).

Under CWA section 304(a), the EPA periodically publishes criteria recommendations for states to consider when adopting water quality criteria for particular pollutants to meet the CWA section 101(a)(2) goals. Where the EPA has published recommended criteria, states should establish numeric water quality criteria based on the Agency’s

⁴ CWA section 303(c)(1): The Governor of a State or the state water pollution control agency of such State shall from time to time (but at least once each three year period beginning with October 18, 1972) hold public hearings for the purpose of reviewing applicable water quality standards and, as appropriate, modifying and adopting standards. Results of such review shall be made available to the Administrator.

⁵ CWA section 303(c)(3): If the Administrator, within sixty days after the date of submission of the revised or new standard, determines that such standard meets the requirements of this chapter, such standard shall thereafter be the water quality standard for the applicable waters of that State. If the Administrator determines that any such revised or new standard is not consistent with the applicable requirements of this chapter, he shall not later than the ninetieth day after the date of submission of such standard notify the State and specify the changes to meet such requirements. If such changes are not adopted by the State within ninety days after the date of notification, the Administrator shall promulgate such standard pursuant to paragraph (4) of this subsection.

⁶ CWA section 303(c)(4): The Administrator shall promptly prepare and publish proposed regulations setting forth a revised or new water quality standard for the navigable waters involved—(A) if a revised or new water quality standard submitted by such State under paragraph (3) of this subsection for such waters is determined by the Administrator not to be consistent with the applicable requirements of this Act . . . The Administrator shall promulgate any revised or new standard . . . not later than ninety days after he publishes such proposed standards, unless prior to such promulgation, such State has adopted a revised or new water quality standard which the Administrator determines to be in accordance with this chapter.”

CWA section 304(a) recommended criteria, CWA section 304(a) recommended criteria modified to reflect site-specific conditions, or other scientifically defensible methods (40 CFR 131.11(b)(1)). In all cases criteria must be sufficient to protect the designated use and be based on sound scientific rationale (40 CFR 131.11(a)(1)).

B. The EPA’s Disapproval of Oregon’s Freshwater Aluminum Criteria

On July 8, 2004, Oregon submitted 89 revised aquatic life criteria for 25 pollutants to the EPA for review under CWA section 303(c) including acute and chronic criteria for aluminum. Many of Oregon’s revised criteria were the same as the EPA’s national recommended CWA section 304(a) aquatic life criteria at the time. Oregon subsequently submitted revised WQS to the EPA for CWA section 303(c) review on April 23, 2007. The EPA did not take CWA section 303(c) action to approve or disapprove within the statutorily mandated timeline (CWA 303(c)(3)). On May 29, 2008, the U.S. District Court for the District of Oregon entered a consent decree setting deadlines for the EPA to take action under section 303(c) of the CWA on Oregon’s July 8, 2004, submission of aquatic life criteria (*Northwest Environmental Advocates v. U.S. EPA*, No. 06–479–HA (D. Or. 2006)). On November 27, 2012, the District Court issued an extension of the applicable deadlines for the EPA’s CWA section 303(c) action and amended the decree to require the Agency to act by January 31, 2013, on Oregon’s July 8, 2004, submission of aquatic life criteria, as amended by subsequent submissions by Oregon dated April 23, 2007, and July 21, 2011.

The EPA initially considered approving Oregon’s aluminum criteria. Prior to taking a final action on the aquatic life criteria, however, the EPA requested formal consultation with the National Marine Fisheries Service (NMFS) and the U.S. Fish and Wildlife Service (USFWS) on its proposed approval of the State’s criteria, consistent with section 7(a)(2) of the Endangered Species Act (ESA). The EPA initiated this consultation on January 14, 2008, by submitting a biological evaluation to NMFS and USFWS, which contained an analysis of the potential effects of the Agency’s proposed approval of Oregon’s criteria, including criteria for aluminum, on threatened and endangered species in Oregon.

Before receiving a biological opinion from NMFS or USFWS, the EPA realized that the Agency’s initial understanding that Oregon’s criteria

were entirely equivalent to the Agency’s 1988 CWA section 304(a) recommended criteria was incorrect. While the EPA’s 1988 CWA section 304(a) recommended aluminum criteria “apply at pH values of 6.5–9.0,” the Agency later identified a footnote to Oregon’s revised aluminum criteria table specifying that Oregon’s aluminum criteria applied “to waters with pH values less than 6.6 and hardness values less than 12 mg/L (as CaCO₃).” The State had not supplied a scientific rationale to justify the application of the criteria to pH values less than 6.6 and hardness values less than 12 mg/L. As a result, the EPA prepared to disapprove the aluminum criteria. The EPA sent a letter to NMFS and USFWS identifying this change. USFWS had already completed and transmitted its biological opinion to the EPA by that point and the Agency was therefore unable to withdraw the consultation request for aluminum. USFWS biological opinion (provided to the EPA on July 31, 2012) found that the Agency’s proposed approval of Oregon’s aquatic life criteria (which at the time of the consultation, was based on the application of the aluminum criteria to waters with pH 6.5–9.0) would not jeopardize the continued existence of listed species or result in the destruction or adverse modification of designated critical habitat under USFWS jurisdiction.

NMFS had not yet transmitted its analysis to the EPA at that time, so the Agency sent a letter to NMFS withdrawing its request for consultation on Oregon’s acute and chronic aluminum criteria. NMFS acknowledged the EPA’s request to withdraw the aluminum criteria from consultation in the biological opinion; however, NMFS did not modify the document to exclude the acute and chronic aluminum criteria. On August 14, 2012, NMFS concluded in its biological opinion that seven of Oregon’s revised freshwater criteria would jeopardize the continued existence of endangered species in Oregon for which NMFS was responsible, including acute and chronic aluminum (applied to waters with pH 6.5–9.0).⁷ NMFS acknowledged the EPA’s request to withdraw the aluminum criteria from consultation and indicated that it would await a further request from the EPA regarding

⁷ In addition to acute and chronic aluminum, the other criteria were the freshwater criteria Oregon adopted to protect aquatic life from adverse acute and chronic effects from ammonia and copper, as well as the criterion to prevent adverse acute effects from cadmium.

the EPA's future actions on Oregon's aluminum criteria.

On January 31, 2013, the EPA disapproved several of the State's revised aquatic life criteria under CWA section 303(c). The EPA disapproved the State's aluminum criteria because the State had not supplied a scientific rationale for the conditions under which the criteria would apply. On April 20, 2015, the EPA was sued for failing to promptly prepare and publish replacement criteria for seven of the aquatic life criteria disapproved in its January 31, 2013 action (*Northwest Environmental Advocates v. U.S. EPA*, 3:15-cv-00663-BR (D. Or. 2015)). This lawsuit was resolved in a consent decree entered by the District Court on June 9, 2016 which established deadlines for the EPA to address the disapproved aquatic life criteria by either approving replacement criteria submitted by Oregon or by proposing and promulgating federal criteria. The State and the EPA have addressed the disapprovals for five of the criteria subject to the consent decree,⁸ but the State has not yet addressed the EPA's 2013 disapproval of its freshwater criteria for acute and chronic aluminum (the sixth and seventh of the disapproved criteria). For the freshwater aluminum criteria, the consent decree originally established deadlines for the EPA to propose federal criteria by December 15, 2017, and to take final action on the proposal by September 28, 2018. On December 5, 2017, the District Court granted an extension of the applicable deadlines for the EPA's proposal and final action. At that time, the consent decree required the EPA to propose federal criteria for the State by March 15, 2018, and to take final action on the proposal by March 27, 2019. On March 1, 2018, the District Court again granted an extension of the consent decree deadlines for the EPA's proposed and final actions. The consent decree required that by March 15, 2019, the EPA will either approve aluminum criteria submitted by Oregon or the EPA will sign a notice of federal rulemaking proposing aluminum criteria for Oregon. The consent decree includes a *force majeure* clause relating to "circumstances outside the reasonable control of EPA [that] could delay compliance with the deadlines specified in this Consent Decree. Such circumstances include . . . a government shutdown." Due to the 35-

⁸ For more information on how the State and the EPA proceeded with regard to the other parameters, the proposed rule for copper and cadmium and final rule for cadmium are included in the docket for this rule.

day government shutdown that occurred between December 22, 2018, and January 25, 2019, the deadline for signing a rule proposal is April 19, 2019. As a result, the EPA is proposing freshwater acute and chronic criteria for aluminum in Oregon in this rule in accordance with CWA section 303(c)(3) and (c)(4) requirements, and consistent with the schedule established in the consent decree. The consent decree also requires that by March 27, 2020, the EPA will either approve aluminum criteria submitted by Oregon or sign a notice of final rulemaking.

C. General Recommended Approach for Deriving Aquatic Life Criteria

The proposed aluminum criteria for Oregon are based on the EPA's 2018 final CWA section 304(a) national recommended freshwater aquatic life criteria for aluminum (Final Aquatic Life Ambient Water Quality Criteria for Aluminum 2018, EPA 822-R-18-001, as cited in 83 FR 65663), which were developed consistent with the EPA's *Guidelines for Deriving Numerical National Water Quality Criteria for the Protection of Aquatic Organisms and Their Uses* (referred to as the "Aquatic Life Guidelines").⁹ These criteria apply to fresh waters and account for water chemistry characteristics that affect aluminum bioavailability and toxicity. The final 2018 CWA section 304(a) national recommended freshwater aquatic life criteria for aluminum replaced the previous CWA section 304(a) national recommended freshwater aquatic life criteria for aluminum which were issued in 1988.¹⁰ While the earlier criteria were in place at the time that EPA disapproved the State's aluminum criteria, the EPA has since updated its CWA 304(a) national recommended criteria and is proposing criteria for Oregon consistent with the new recommendations.

Under the Agency's CWA section 304(a) authority, the EPA develops recommended criteria and methodologies to protect aquatic life and human health for specific pollutants and pollutant parameters. These recommended criteria and methodologies are subject to public comment as well as scientific expert

⁹ USEPA. 1985. *Guidelines for Deriving Numerical National Water Quality Criteria for the Protection of Aquatic Organisms and Their Uses*. U.S. Environmental Protection Agency, Office of Research and Development, Duluth, MN, Narragansett, RI, Corvallis, OR. PB85-227049. <https://www.epa.gov/sites/production/files/2016-02/documents/guidelines-water-quality-criteria.pdf>.

¹⁰ Ambient Water Quality Criteria for Aluminum—1988, EPA 440/5-86-008, August 1988, <https://nepis.epa.gov/Exec/QueryPDF.cgi/2000M5FC.PDF?Dockey=2000M5FC.PDF>.

review before the EPA releases them as formal Agency recommendations for states to consider when developing and adopting water quality criteria. The EPA derives criteria for the protection of aquatic life consistent with its Aquatic Life Guidelines. The EPA's Aquatic Life Guidelines describe an objective way to estimate the highest concentration of a substance in water that will not present a significant risk to the aquatic organisms in the water. If a CWA section 304(a) recommendation exists, states may use it as a basis for their WQS or, alternatively, can use a modified version that reflects site-specific conditions, or another scientifically defensible method. 40 CFR 131.11(b).

Numeric criteria derived consistent with the EPA's Aquatic Life Guidelines are expressed as short-term (acute) and long-term (chronic) values. The combination of a criterion maximum concentration (CMC), a one-hour average value, and a criterion continuous concentration (CCC), typically specified as a four-day average value, protects aquatic life from acute and chronic toxicity, respectively. Neither value is to be exceeded more than once in three years. The EPA selected the CMC's one-hour averaging period because high concentrations of certain pollutants can cause death in one to three hours, and selected the CCC's four-day averaging period to prevent increased adverse effects on sensitive life stages. The EPA based its maximum exceedance frequency recommendation of once every three years on the ability of aquatic ecosystems to recover from the exceedances. An exceedance occurs when the average concentration over the duration of the averaging period is above the CCC or the CMC.

The Aquatic Life Guidelines recommend having toxicity test data from a minimum of eight taxa of aquatic organisms to derive criteria. These taxa are intended to be representative of a wide spectrum of aquatic life, and act as surrogates for untested species. Therefore, the specific test organisms do not need to be present in the water(s) where the criteria will apply. However, a state may develop site-specific criteria using species residing at a local site. In developing site-specific criteria, the EPA recommends that the state maintain similar broad taxonomic representation in calculating the site-specific criteria to ensure protection of the most sensitive species at the site and so the state can demonstrate that the species included in the derivation of the EPA's national criteria recommendation

is not present/does not serve as a surrogate for other species at the site.

III. Freshwater Aluminum Aquatic Life Criteria

A. The EPA's CWA Section 304(a) National Recommended Freshwater Aluminum Criteria

In December 2018, the EPA published in the **Federal Register** (83 FR 65663) CWA section 304(a) national recommended freshwater aquatic life criteria for aluminum (referred to in this notice as “final 2018 recommended national criteria”). The published final 2018 recommended national criteria represent the latest scientific knowledge and understanding of the interaction between water chemistry and aluminum toxicity and is a scientifically defensible method upon which the EPA is basing this CWA action.¹¹ The final 2018 recommended national criteria are based upon Multiple Linear Regression (MLR) models for fish and invertebrate species that use pH, DOC, and total hardness to quantify the effects of these water chemistry parameters on the bioavailability and resultant toxicity of aluminum to aquatic organisms. The MLR models are then used to normalize the available toxicity data to accurately reflect the effects of the water chemistry (pH, DOC, total hardness) on the toxicity of aluminum to tested species. These normalized toxicity test data are then used in a criteria calculator to generate criteria for specific water chemistry conditions, the water-chemistry-condition-specific CMC and CCC outputs.

The final 2018 recommended national aluminum criteria are expressed as total recoverable metal concentrations. The EPA notes that while the criteria values for metals are typically expressed as dissolved metal concentrations, the current EPA-approved CWA Test Methods¹² for aluminum in natural waters and waste waters measure total recoverable aluminum. The use of total recoverable aluminum may be considered conservative because it includes monomeric (both organic and inorganic) forms, polymeric and colloidal forms, as well as particulate forms and aluminum sorbed to clays. However, toxicity data comparing toxicity of aluminum using total recoverable aluminum and dissolved aluminum demonstrated that toxic effects increased with increasing concentrations of total recoverable

aluminum even though the concentration of dissolved aluminum was relatively constant. If aluminum criteria were based on dissolved concentrations, toxicity would likely be underestimated, as colloidal forms and hydroxide precipitates of the metal that can dissolve under natural conditions and become biologically available would not be measured. The criteria document contains more discussion of the studies that informed the choice to use total recoverable aluminum as the basis for the final 2018 recommended national criteria.

The numeric outputs of the final 2018 recommended national criteria models for a given set of conditions will depend on the specific pH, DOC, and total hardness entered into the models. The model outputs (CMC and CCC) for a given set of input conditions are numeric values that would be protective for that set of input conditions. Users of the models can determine outputs in two ways: (1) Use the look-up tables provided in the criteria document to find the numeric aluminum CMC and CCC most closely corresponding to the local conditions for pH, DOC, and total hardness or (2) use the provided Aluminum Criteria Calculator V.2.0 to enter the pH, DOC, and total hardness conditions at a specific site to calculate the numeric aluminum CMC and CCC corresponding to the local input conditions.

As with all scientific analyses, there are potential uncertainties in the aluminum criteria approaches to quantifying the toxic effects of aluminum to aquatic life in the environment, particularly when the input parameters fall outside the bounds of the toxicity data underlying the MLR model that supports the criteria calculator. Section 5 of the EPA's final 2018 recommended national criteria document contains more detailed information regarding these uncertainties and the ways the EPA has addressed these uncertainties in developing the criteria document and calculator to ensure the criteria values are protective of applicable aquatic life designated uses. In the case of Oregon waters, an estimated 99% of the State's waters fall within the bounds of the model, and criteria values generated by the calculator are expected to be protective of applicable aquatic life designated uses.¹³ In situations where water chemistry for a particular water falls outside the bounds of the model and the results are more uncertain, the State

should use its discretion and risk management judgment to determine if additional toxicity data should be generated to further validate toxicity predictions or if it should develop new or modified models for site specific criteria for such locations.

In order to calculate numeric water quality criteria that will protect the aquatic life designated uses of a site over the full range of ambient conditions and toxicity, multiple model outputs will need to be reconciled. The following section describes options for reconciling model outputs.

B. Proposed Acute and Chronic Aluminum Criteria for Oregon's Fresh Waters

To protect aquatic life in Oregon's fresh waters, the EPA proposes aluminum criteria for Oregon that incorporate by reference the calculation of CMC and CCC freshwater aluminum criteria values for a site using the final 2018 recommended national criteria. That means that the proposed CMC and CCC freshwater aluminum criteria values for a site shall be calculated using the 2018 Aluminum Criteria Calculator V.2.0 (*Aluminum Criteria Calculator V.2.0.xlsx*) or a calculator in R¹⁴ or other software package using the same 1985 Guidelines calculation approach and underlying model equations as in the *Aluminum Criteria Calculator V.2.0.xlsx* as established in the final 2018 recommended national criteria. Consistent with the final 2018 recommended national criteria, the EPA proposes to express the CMC as a one-hour average total recoverable aluminum concentration (in µg/L) and the CCC as a four-day average total recoverable aluminum concentration (in µg/L), and that the CMC and CCC are not to be exceeded more than once every three years.

The EPA concludes that its final 2018 recommended national criteria represent the latest scientific knowledge on aluminum speciation, bioavailability, and toxicity, and provides predictable and repeatable outcomes. Consistent with the Aquatic Life Guidelines, the final 2018 recommended national criteria protect aquatic life for acute effects (mortality and immobility) as well as chronic effects (growth, reproduction, and survival) at a level of 20% chronic Effects Concentration (EC20) for the 95th percentile of sensitive genera. The final 2018 recommended national criteria are

¹¹ Aquatic Life Ambient Water Quality Criteria for Aluminum, EPA 822-R-18-001, December 2018, <https://www.epa.gov/wqc/2018-final-aquatic-life-criteria-aluminum-freshwater>.

¹² 40 CFR part 136.3 and Appendix C.

¹³ “Analysis of the Protectiveness of Default Ecoregional Aluminum Criteria Values,” which can be found in the docket.

¹⁴ R is a free software environment for statistical computing that compiles and runs on a wide variety of UNIX platforms, Windows and MacOS. (<https://www.r-project.org/>).

based on a range of toxicological data including data on Oregon threatened and endangered species or their closest taxonomic surrogates. The models on which the criteria are based are therefore appropriate for deriving CMC and CCC values that will protect aquatic life in Oregon. The EPA recommends that commenters consult the docket for the final 2018 recommended national criteria document for information on the science underlying that recommendation [Docket: EPA-HQ-OW-2017-0260].

The EPA requests comment on the proposal to promulgate aluminum criteria for freshwaters in Oregon based on the final 2018 recommended national criteria. The EPA also requests comment on any alternative scientifically defensible criteria calculation methods or models that differ from the final 2018 recommended national criteria. The EPA may consider modifications to the criteria the EPA is proposing for Oregon if warranted based on, among other things, public input, tribal consultation, new data, or evaluations of listed species completed during ESA consultation, or the results of ESA consultation. The docket for this rule contains more information on possible considerations.

The EPA's proposed rule provides that the criteria calculator, which incorporates pH, DOC, and total hardness as input parameters, be used to calculate protective acute and chronic aluminum criteria values for a site as set forth in the final 2018 recommended national criteria. These calculated criteria values would protect aquatic life under the full range of ambient conditions found at each site, including conditions when aluminum is most toxic given the spatial and temporal variability of the water chemistry at the site. Characterization of the parameters that affect the bioavailability, and associated toxicity, of aluminum is the primary feature to determine protectiveness of aquatic life at a site at any given time. Oregon will need to use ambient water chemistry data (*i.e.*, pH, DOC, total hardness) as inputs to the model in order to determine protective aluminum criteria values for specific sites, unless the State develops default values to be used in implementation. Oregon has the discretion to select the appropriate method to reconcile model outputs and calculate the final criteria values for each circumstance as long as the resulting calculated criteria values shall protect aquatic life throughout the site and throughout the range of spatial and temporal variability, including when aluminum is most toxic. The EPA strongly recommends that the State

develop implementation materials to outline its approach.

The EPA suggests three methods that the State could use to reconcile model outputs and calculate criteria values that will result in protection of aquatic life at a site. Alternatively, the State may use its own alternate methods to reconcile outputs to generate protective criteria values. The appropriate method for each circumstance will depend primarily on data availability.

With method one, users identify protective criteria values by selecting one or more individual model outputs based upon spatially and temporally representative site-specific measured values for model inputs. Method one can be used where input datasets are complete and inputs are measured frequently enough to statistically represent changes in the toxicity of aluminum, including conditions under which aluminum is most toxic. In this case, the criteria values are determined by selecting one or more individual outputs that will be protective of aquatic life under the full range of ambient conditions, including conditions of high aluminum toxicity. Method one could be used to also establish criteria values to apply on a seasonal basis where the data are sufficient.

When using method two, users calculate protective criteria values from the lowest 10th percentile of the distribution of individual model outputs, based upon spatially and temporally representative site-specific measured model input values. While the 10th percentile of outputs should be protective in a majority of cases, certain circumstances may warrant use of a more stringent model output (*e.g.*, consideration of listed species). Sufficient data to characterize the appropriate distribution of model outputs are necessary to derive a protective percentile so that the site is protected under conditions of high aluminum toxicity.

In method three, users select the lowest model outputs (the lowest CMC and the lowest CCC) calculated from spatially and temporally representative input datasets that capture the most toxic conditions at a site as the criteria values. Method three should be used where ten or fewer individual model outputs are available.

The EPA solicits comments on these methods and any other scientifically defensible methods that could be used to select criteria values to protect aquatic life by reconciling model outputs, as well as whether the Agency should promulgate any or all of these suggested methods for Oregon as part of this rulemaking.

Additionally, the EPA solicits comment on promulgating ecoregional default criteria values for aluminum in the final rule to ensure protection of the designated use when available data are insufficient to characterize a site.

The EPA calculated ecoregional default aluminum criteria values from measured pH and measured or estimated DOC and total hardness based on existing concentrations of these variables in waters within each of Oregon's Level III Ecoregions.¹⁵ These defaults are provided in Table 1 below.

TABLE 1—ECOREGIONAL DEFAULT ALUMINUM CRITERIA VALUES FOR EACH LEVEL III ECOREGION IN OREGON

Level III Ecoregion	CMC (µg/L)	CCC (µg/L)
1 Coast Range	680	350
3 Willamette Valley	870	440
4 Cascades	600	350
9 Eastern Cascades Slopes and Foothills	1100	600
10 Columbia Plateau	1400	840
11 Blue Mountains	1300	780
12 Snake River Plain	3000	1200
78 Klamath Mountains	1300	780
80 Northern Basin and Range	1400	790

To calculate ecoregional default criteria values, the EPA relied on publicly available data (U.S. Geological Survey (USGS) National Water Information System (NWIS); Oregon DEQ)¹⁶ collected in accordance with quality assurance procedures established by each collecting entity. From 2001–2015, a total of 19,274 samples across all Level III Ecoregions in Oregon provided adequate data to calculate corresponding acute and chronic criteria magnitudes. Adequate data to calculate criteria magnitudes included samples with paired measurements of pH, DOC, and total hardness, where available (1,689 samples). When paired measurements of pH, DOC, and total hardness were not available, the EPA paired empirical pH measurements with DOC and/or total hardness data estimated from measured Total Organic Carbon (TOC) and specific conductivity, respectively (17,585 samples). The EPA used DOC and total hardness estimates to expand

¹⁵ USEPA. 2013. U.S. Environmental Protection Agency, 2013. Level III ecoregions of the continental United States: Corvallis, Oregon, U.S. EPA—National Health and Environmental Effects Research Laboratory, map scale 1:7,500,000, http://www.epa.gov/wed/pages/ecoregions/level_iii_iv.h. Omernik, J.M. 1987. Ecoregions of the conterminous United States. *Annals of the Association of American Geographers* 77:118–125.

¹⁶ USGS NWIS, <https://waterdata.usgs.gov/nwis>. Oregon Wastewater Permits Database, <http://www.deq.state.or.us/wq/sisdata/sisdata.asp>.

available data and better represent the potential distribution of criteria magnitudes across Level III Ecoregions in Oregon. The calculation of the default criteria values presented here incorporates the EPA’s effort to closely follow Oregon DEQ’s approach to developing default DOC input values for Oregon’s copper aquatic life criteria rule. More information on the data sources and transformations is available in the docket for this proposal. The EPA then calculated the 10th percentile CMC and CCC for each ecoregion from the distributions of model outputs. The EPA selected the 10th percentile as a statistic that represents a lower bound of spatially and temporally variable conditions that will be protective in the majority of cases.

The EPA solicits comments on the Agency’s use of the 10th percentile of the ecoregional model output distributions of the measured and transformed data to derive ecoregional default aluminum criteria values. The EPA also solicits comment on whether a different percentile of the model output distribution should be used, or if combined ecoregional (georegional) distributions of outputs should be used instead of the Level III ecoregional distributions to derive the defaults. Additional information on the inputs used to derive outputs and how the ecoregional default criteria values were selected using percentiles of the model output distribution is provided in the document entitled “Analysis of the Protectiveness of Default Ecoregional Aluminum Criteria Values” which can be found in the docket. The EPA solicits comment on alternative methods to developing default ecoregional criteria values, as presented in the Analysis of the Protectiveness of Default Ecoregional Aluminum Criteria Values. The EPA solicits comment on the inclusion of such default criteria values in the final rule. The EPA also solicits

comment on whether there are alternative approaches to ensure that protective model outcomes can be identified for all waterbodies using the proposed criteria, and to ease implementation.

In addition to soliciting comment on including default ecoregional criteria, the EPA also solicits comment on whether the Agency should include default DOC input values in the final rule. Among the input parameters, ambient data are least likely to be available for DOC. DOC influences aluminum toxicity unidirectionally. Higher levels of DOC provide more mitigation of aluminum toxicity. For water bodies for which sufficient pH and total hardness data are available, but DOC data are not available, the EPA solicits comment on whether to promulgate in the final rule the default DOC input values provided in Table 2. If the EPA were to promulgate both the default ecoregional aluminum criteria values provided in Table 1 and the default DOC input values in Table 2, in addition to the EPA’s the calculation of CMC and CCC freshwater aluminum criteria values for a site using the final 2018 recommended national criteria, the State could choose to use the default ecoregional aluminum criteria values or use the default DOC input values in Table 2 and calculate criteria. The default DOC input values could be used in combination with measured data for pH and total hardness to calculate aluminum criteria outputs that are more specific to site conditions than the ecoregional default criteria values provided in Table 1. The EPA derived the default DOC input values as the 15th or 20th percentile of the distribution of data from a compilation of high quality data available for Oregon’s georegions (aggregated ecoregions with similar water quality characteristics), compiled by Oregon DEQ and the US Geological Survey (see the “Analysis of the

Protectiveness of Default Dissolved Organic Carbon Options,” which can be found in the docket.) The calculation of the default DOC input values presented in this preamble reflects the EPA’s effort to closely follow Oregon DEQ’s approach to developing default DOC input values for Oregon’s copper aquatic life criteria rule. The EPA selected the 15th or 20th percentiles as low-end percentile of georegional DOC concentrations as a statistic that represents a lower bound of spatially and temporally variable conditions that will be protective in the majority of cases. The use of default DOC input values would ensure protection of the designated use when site-specific ambient DOC inputs are unavailable. Additional information on the derivation of the default DOC input values is provided in the Analysis of the Protectiveness of Default Dissolved Organic Carbon Options, which can be found in the docket.

The EPA solicits comments on the Agency’s use of the 15th and 20th percentiles of the georegional distributions of the available US Geological Survey and Oregon DEQ DOC data to derive default DOC input values for calculating aluminum outputs when DOC data are unavailable. More information on the data and input analysis is available in the Analysis of the Protectiveness of Default Dissolved Organic Carbon Options. The EPA solicits comment on alternative methods to developing default DOC input values, as presented in the Analysis of the Protectiveness of Default Dissolved Organic Carbon Options. The EPA also solicits comments on using default DOC input values based on a different percentile, such as the 5th or 25th percentile of the distribution (or another protective percentile within that range), as well as using default DOC values for ecoregions rather than georegions.

TABLE 2—DEFAULT DOC INPUT VALUES FOR EACH GEOREGION IN OREGON

EPA ecoregion	ODEQ georegion	Percentile	DOC (mg/L)
Willamette Valley (03)	Willamette	15th	0.83
Coast Range (01)	Coastal	20th	0.83
Klamath Mountains (78)			
Cascades (04)	Cascades	20th	0.83
Eastern Cascades Slopes (09)	Eastern	15th	0.83
Columbia Plateau (10)			
Northern Basin and Range (80)			
Blue Mountains (11)			
SNAKE RIVER PLAIN (12)			
NA	Columbia River	20th	1.39

The EPA is not considering the development of default input values for

pH and total hardness because the relationship between these parameters

and aluminum toxicity is not unidirectional, which means that a

given percentile of pH and total hardness may be conservative in some circumstances but not others (see the EPA's final 2018 recommended national criteria document for more information). Also, data for these parameters are more likely to be available (Analysis of the Protectiveness of Default Dissolved Organic Carbon Options). Given the complex nature of aluminum toxicity and how it dynamically varies with water chemistry (especially with pH and total hardness), it is not possible to calculate a universally protective set of water chemistry conditions in cases where the water chemistry is unknown. For example, total hardness at low pH tends to increase criteria magnitudes whereas total hardness at high pH tends to reduce criteria magnitudes. That relationship is also dependent on DOC concentration (see final 2018 recommended national criteria document for further details). Therefore, measured pH and total hardness data are essential to calculate reliable aluminum criteria.

C. Implementation of Proposed Freshwater Acute and Chronic Aluminum Criteria in Oregon

This proposal, if finalized, would likely be the first occasion that a state or authorized tribe would have aluminum criteria based on the final 2018 recommended national criteria. The EPA understands that states have certain flexibility under 40 CFR part 131 with how they implement water quality standards such as these aluminum criteria. The EPA is recommending possible approaches below for the State's consideration and for public comment. The State may choose to use these recommendations or to implement the final aluminum criteria in other ways that are consistent with 40 CFR part 131.

For NPDES permitting, monitoring and assessment, and total maximum daily load (TMDL) development purposes, the State can use different methods to process model outputs in order to generate criteria values for a specific site, as discussed in section III.B. Because of this flexibility, the State should ensure public transparency and predictable, repeatable outcomes. When Oregon calculates aluminum criteria values, the EPA recommends that the State make each site's ambient water chemistry data, including the inputs used in the aluminum criteria value calculations, resultant criteria values, and the geographic extent of the site, publicly available on the State's website.

Where a NPDES permitted discharge is present, the EPA recommends that

Oregon ensure that sufficiently representative ambient pH, DOC, and total hardness data are collected to have confidence that conditions in the water body are being adequately captured both upstream of and downstream from the point of discharge. The State should use the criteria calculated values that will be protective at the most toxic conditions to develop water quality-based effluent limits (WQBELs). Input parameter values outside the empirical ranges of the MLR models (as identified in sections 2.7.1 and 5.3.6 of the final 2018 recommended national criteria document) may indicate other potential toxicity issues at a site. When input parameters fall outside those stated ranges, the EPA makes the following recommendations that the State could implement for the protection of designated uses. NPDES permit conditions could include: (1) Additional monitoring approaches such as Whole Effluent Toxicity (WET) testing or biological monitoring; and (2) increased frequency of input parameter and aluminum concentration monitoring. Once criteria values protective of the most toxic conditions are calculated, critical low flows for the purposes of dilution of the pollutant concentration in effluent, combined with critical effluent concentrations of the pollutant, may be used to establish whether there is reasonable potential for the discharge to cause or contribute to an excursion above the applicable criteria and therefore, a need to establish WQBELs, per the EPA's *NPDES Permit Writers' Manual*.¹⁷ Critical low flows and mixing zones for NPDES permitting purposes are further discussed in Section IV.

In addition, for transparency the EPA recommends that Oregon describe in its NPDES permit fact sheets or statements of basis how the criteria values were calculated, including the input data or summary of input data and source of data. The EPA also recommends that the fact sheets or statements of basis include descriptions of how the criteria values were used to determine whether there is reasonable potential for the discharge to cause or contribute to an excursion above the criteria ("reasonable potential") and if so, how they were used to derive WQBELs. Similarly, for TMDLs, the EPA recommends that Oregon describe in the TMDL document how the criteria values were calculated and used to determine TMDL targets. In the assessment and impaired waters listing context, the EPA recommends

¹⁷ USEPA. 2010. *NPDES Permit Writers' Manual*. U.S. Environmental Protection Agency, Office of Water, Washington, DC EPA-833-K-10-001. September 2010.

that Oregon describe how it calculated criteria values and the process used to make water quality attainment decisions in the assessment methodology for the Integrated Report.¹⁸

The water quality conditions that determine the bioavailability and toxicity of metals, including aluminum, are unique to each site and can vary widely in both space and time, changing with biological activity, flow, geology, human activities, watershed landscape, and other features of the water body. It is important that the State capture the spatial and temporal variability at sites, and consider establishment of site boundaries carefully. As mentioned above in Section III. B., Oregon should ensure that sufficiently representative data are collected for the model's input parameters (pH, DOC, and total hardness) to have confidence that the most toxic conditions are adequately characterized. To accomplish this, Oregon may evaluate the input parameter data and resultant criteria values that are calculated over time for different flows and seasons through the use of appropriate analytical methods, such as a Monte Carlo¹⁹ simulation or another analytical tool. Also, when defining a site to which to apply criteria for aluminum, the EPA recommends that Oregon consider that metals are generally persistent, so calculating a criterion value using input parameter values from a location at or near the discharge point could result in a criterion value that is not protective of areas that are outside of that location. For example, if downstream waters have different pH conditions that might increase aluminum toxicity downstream from the facility, the permit should account for that. The EPA also recommends that Oregon consider that as the size of a site increases, the spatial and temporal variability is likely to increase; thus, more water samples may be required to adequately characterize the entire site.

Substantial changes in a site's ambient input parameter concentrations will likely affect aluminum toxicity and the relevant criteria values for aluminum at that site. In addition, as a robust, site-specific dataset is developed with regular monitoring, criteria values can be updated to more accurately

¹⁸ The Integrated Report is intended to satisfy the listing requirements of Section 303(d) and the reporting requirements of Sections 305(b) and 314 of the Clean Water Act (CWA).

¹⁹ Given sufficient data, Monte Carlo simulation or equivalent analysis such as bootstrapping can be used to determine the probability of identifying the most toxic time period for a series of monitoring scenarios. From such an analysis, the State can select the appropriate monitoring regime.

reflect site conditions. Therefore, the EPA recommends that Oregon revisit each water body's aluminum criteria values periodically (for example, with each CWA section 303(d) listing cycle or WQS triennial review) and re-run the models when changes in water chemistry are evident or suspected at a site and as additional monitoring data become available. This will ensure that the criteria values accurately reflect the toxicity of aluminum and maintain protective values.

The State may use multiple methods to calculate site-specific criteria values in order to implement the criteria for CWA purposes. For example, the State could use Method one, after collecting sufficiently representative model input data for all parameters, as well as corresponding ambient aluminum measurements as described in section III.B, to determine whether the paired aluminum measurements exceed the calculated model output magnitude more than once in three years for assessment purposes. Alternatively, the State could use the output dataset to select a single CMC and a single CCC that are sufficiently protective at the most toxic conditions for the purposes of permitting an aluminum discharge or establishing a TMDL. In contrast, using Methods two or three, the State could calculate a single numeric expression of the criteria that would be the basis for all monitoring, assessment, TMDL, and NPDES permitting purposes.

D. Incorporation by Reference

The Agency is proposing that the final EPA regulatory text incorporate one EPA document by reference. In accordance with the requirements of 1 CFR 51.5, the EPA is proposing to incorporate by reference the EPA's Final Aquatic Life Ambient Water Quality Criteria for Aluminum 2018 (EPA 822-R-18-001), discussed in Section III.A of this preamble. Incorporating this document by reference will allow the State to access all of the underlying information and data the EPA used to develop the final 2018 recommended national criteria. With access to this information, the State will have the flexibility to create its own version of the calculator built upon the underlying peer-reviewed model. The EPA has made, and will continue to make, this document generally available electronically through www.regulations.gov at the docket associated with this rulemaking and at <https://www.epa.gov/wqc/aquatic-life-criteria-aluminum>.

IV. Critical Low Flows and Mixing Zones

To ensure that the proposed criteria are applied appropriately to protect Oregon's aquatic life uses, the EPA recommends Oregon use critical low flow values consistent with longstanding EPA guidance²⁰ when calculating the available dilution for the purposes of determining the need for and establishing WQBELs in NPDES permits. Dilution is one of the primary mechanisms by which the concentrations of contaminants in effluent discharges are reduced following their introduction into a receiving water. During a low flow event, there is less water available for dilution, resulting in higher instream pollutant concentrations. If criteria are implemented using inappropriate critical low flow values (*i.e.*, values that are too high), the resulting ambient concentrations could exceed criteria values when low flows occur.²¹

The EPA notes that in ambient settings, critical low flow conditions used for NPDES permit limit derivation purposes may not always correspond with conditions of highest aluminum bioavailability and toxicity. The EPA's *NPDES Permit Writers' Manual* describes the importance of characterizing effluent and receiving water critical conditions, because if a discharge is controlled so that it does not cause water quality criteria to be exceeded in the receiving water under critical conditions, then water quality criteria should be attained under all other conditions.²² The State's implementation procedures should clearly define how the State will consider critical conditions related to critical low flows and the greatest aluminum bioavailability and toxicity to ensure that reasonable potential is assessed and, if needed, appropriate permit limits are established that fully protect aquatic life uses under the full range of ambient conditions.

The EPA's March 1991 *Technical Support Document for Water Quality-based Toxics Control* recommends two methods for calculating acceptable critical low flow values: The traditional hydrologically-based method developed

by the USGS and a biologically based method developed by the EPA.²³ The hydrologically-based critical low flow value is determined statistically, using probability and extreme values, while the biologically-based critical low flow is determined empirically using the specific duration and frequency associated with the criterion. For the acute and chronic aluminum criteria, the EPA recommends the following critical low flow values, except where modeling demonstrates that the most significant critical conditions occur at other than low flow:

Acute Aquatic Life (CMC): 1Q10 or 1B3
Chronic Aquatic Life (CCC): 7Q10 or 4B3

Using the hydrologically-based method, the 1Q10 represents the lowest one-day average flow event expected to occur once every ten years, on average, and the 7Q10 represents the lowest seven-consecutive-day average flow event expected to occur once every ten years, on average. Using the biologically-based method, 1B3 represents the lowest one-day average flow event expected to occur once every three years, on average, and 4B3 represents the lowest four-consecutive-day average flow event expected to occur once every three years, on average.²⁴ The EPA seeks comment on whether the Agency should promulgate these acute and chronic critical low flow values in the final rule or should promulgate alternative critical low flow values.

The criteria in this proposed rule, once finalized, must be attained at the point of discharge unless Oregon authorizes a mixing zone. Where Oregon authorizes a mixing zone, the criteria would apply at the locations allowed by the mixing zone (*i.e.*, the CMC would apply at the defined boundary of the acute mixing zone and the CCC would apply at the defined boundary of the chronic mixing zone).²⁵

V. Endangered Species Act

The EPA's final 2018 recommended national criteria for aluminum represent the best available science. The EPA proposes to promulgate acute and chronic aquatic life aluminum criteria for Oregon based on the EPA's final 2018 recommended national criteria. The EPA is proposing these criteria pursuant to CWA section 303(c)(4)(A),

²⁰ USEPA. 1991. *Technical Support Document For Water Quality-based Toxics Control*. U.S. Environmental Protection Agency, Office of Water, Washington, DC EPA/505/2-90-001. <http://www3.epa.gov/npdes/pubs/owm0264.pdf>.

²¹ USEPA. 2014. *Water Quality Standards Handbook-Chapter 5: General Policies*. U.S. Environmental Protection Agency, Office of Water, Washington, DC EPA-820-B-14-004. <http://www.epa.gov/sites/production/files/2014-09/documents/handbook-chapter5.pdf>.

²² The same principle holds for developing a TMDL target.

²³ USEPA. 1991. *Technical Support Document For Water Quality-based Toxics Control*. U.S. Environmental Protection Agency, Office of Water, Washington, DC EPA/505/2-90-001. <http://www3.epa.gov/npdes/pubs/owm0264.pdf>.

²⁴ See USEPA, 2014.

²⁵ See USEPA, 1991.

as described in Section II.A of this document, and in compliance with the consent decree described in Section II.B of this document. Section 7(a)(2) of the ESA requires that each Federal Agency ensure that any action authorized, funded, or carried out by such Agency is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of critical habitat. The EPA has initiated ESA consultation on this proposed action and will continue to work closely with NMFS and USFWS to ensure that any acute and chronic aluminum criteria that the Agency finalizes are not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of designated critical habitat in Oregon. The EPA will continue ESA consultation with NMFS and USFWS while the Agency develops final aluminum criteria for Oregon that are consistent with the requirements of ESA section 7(a)(2), as well as with the EPA's Aquatic Life Guidelines.

VI. Under what conditions will Federal standards not be promulgated or be withdrawn?

Under the CWA, Congress gave states and authorized tribes primary responsibility for developing and adopting WQS for their navigable waters (CWA section 303(a)–(c)). Although the EPA is proposing aluminum aquatic life criteria for Oregon's fresh waters to remedy the Agency's 2013 disapproval of Oregon's 2004 criteria, Oregon continues to have the option to adopt and submit to the Agency acute and chronic aluminum criteria for the State's fresh waters consistent with CWA section 303(c) and the Agency's implementing regulation at 40 CFR part 131. The EPA encourages Oregon to expeditiously adopt protective aluminum aquatic life criteria. Consistent with CWA section 303(c)(4), if Oregon adopts and submits aluminum aquatic life criteria, and the EPA approves such criteria before finalizing this proposed rule, the Agency would not proceed with the promulgation for those waters and/or pollutants for which the Agency approves Oregon's criteria. Under those circumstances, federal promulgation would no longer be necessary to meet the requirements of the Act.

If the EPA finalizes this proposed rule, and Oregon subsequently adopts and submits aluminum aquatic life criteria, the Agency would approve the State's criteria if those criteria meet the requirements of section 303(c) of the

CWA and the Agency's implementing regulation at 40 CFR part 131. If the EPA's federally-promulgated criteria are more stringent than the State's criteria, the EPA's federally-promulgated criteria are and will be the applicable water quality standard for purposes of the CWA until the Agency withdraws those federally-promulgated standards. The EPA would expeditiously undertake such a rulemaking to withdraw the federal criteria if and when Oregon adopts, and the Agency approves corresponding criteria that meet the requirements of section 303(c) of the CWA and the EPA's implementing regulation at 40 CFR part 131. After the EPA's withdrawal of federally promulgated criteria, the State's EPA-approved criteria would become the applicable criteria for CWA purposes. If the State's adopted criteria are as stringent or more stringent than the federally-promulgated criteria, then the State's criteria would become the CWA applicable WQS upon the EPA's approval (40 CFR 131.21(c)).

VII. Alternative Regulatory Approaches and Implementation Mechanisms

The federal WQS regulation at 40 CFR part 131 provides several tools that Oregon has available to use at its discretion when implementing or deciding how to implement these aquatic life criteria, once finalized. Among other things, the EPA's WQS regulation: (1) Specifies how states and authorized tribes establish, modify, or remove designated uses (40 CFR 131.10); (2) specifies the requirements for establishing criteria to protect designated uses, including criteria modified to reflect site-specific conditions (40 CFR 131.11); (3) authorizes and provides regulatory guidelines for states and authorized tribes to adopt WQS variances that provide time to achieve the applicable WQS (40 CFR 131.14); and (4) allows states and authorized tribes to authorize the use of compliance schedules in NPDES permits to meet WQBELs derived from the applicable WQS (40 CFR 131.15). Each of these approaches are discussed in more detail in the next sections. Whichever approach a state pursues, however, all NPDES permits would need to comply with the EPA's regulations at 40 CFR 122.44(d)(1)(i).

A. Designating Uses

The EPA's proposed aluminum criteria apply to fresh waters in Oregon where the protection of fish and aquatic life is a designated use (see Oregon Administrative Rules at 340–041–8033, Table 30). The federal regulation at 40 CFR 131.10 provides regulatory

requirements for establishing, modifying, and removing designated uses. If Oregon removes designated uses such that no fish or aquatic life uses apply to any particular water body affected by this rule and adopts the highest attainable use,²⁶ the State must also adopt criteria to protect the newly designated highest attainable use consistent with 40 CFR 131.11. It is possible that criteria other than the federally promulgated criteria would protect the highest attainable use. If the EPA finds removal or modification of the designated use and the adoption of the highest attainable use and criteria to protect that use to be consistent with CWA section 303(c) and the implementing regulation at 40 CFR part 131, the Agency would approve the revised WQS. The EPA would then undertake a rulemaking to withdraw the corresponding federal WQS for the relevant water(s).

B. WQS Variances

Oregon's WQS provide sufficient authority to apply WQS variances when implementing federally promulgated criteria for aluminum, as long as such WQS variances are adopted consistent with 40 CFR 131.14 and submitted to the EPA for review under CWA section 303(c). Federal regulations at 40 CFR 131.3(o) define a WQS variance as a time-limited designated use and criterion, for a specific pollutant or water quality parameter, that reflects the highest attainable condition during the term of the WQS variance. WQS variances adopted in accordance with 40 CFR 131.14 (including a public hearing consistent with 40 CFR 25.5) provide a flexible but defined pathway for states and authorized tribes to comply with NPDES permitting requirements, while providing dischargers with the time they need to meet a WQS that is not immediately attainable but may be in the future. When adopting a WQS variance, states and authorized tribes specify the interim requirements of the WQS variance by identifying a quantitative expression that reflects the highest attainable condition (HAC) during the

²⁶ If a state or authorized tribe adopts a new or revised WQS based on a required use attainability analysis, then it must also adopt the highest attainable use (40 CFR 131.10(g)). Highest attainable use is the modified aquatic life, wildlife, or recreation use that is both closest to the uses specified in section 101(a)(2) of the Act and attainable, based on the evaluation of the factor(s) in 40 CFR 131.10(g) that preclude(s) attainment of the use and any other information or analyses that were used to evaluate attainability. There is no required highest attainable use where the state demonstrates the relevant use specified in section 101(a)(2) of the Act and sub-categories of such a use are not attainable (see 40 CFR 131.3(m)).

term of the WQS variance, establishing the term of the WQS variance, and describing the pollutant control activities expected to occur over the specified term of the WQS variance. WQS variances provide a legal avenue by which NPDES permit limits can be written to comply with the WQS variance rather than the underlying WQS for the term of the WQS variance. If dischargers are still unable to meet the WQBELs derived from the applicable WQS once a WQS variance term is complete, the regulation allows the State to adopt a subsequent WQS variance if it is adopted consistent with 40 CFR 131.14. The EPA is proposing a criterion that applies to use designations that Oregon has already established. Oregon's WQS regulations currently include the authority to use WQS variances when implementing criteria, as long as such WQS variances are adopted consistent with 40 CFR 131.14. Oregon may use the EPA-approved WQS variance procedures when adopting such WQS variances.

C. NPDES Permit Compliance Schedules

The EPA's regulations at 40 CFR 122.47 and 40 CFR 131.15 address how permitting authorities can use permit compliance schedules in NPDES permits if dischargers need additional time to undertake actions like facility upgrades or operation changes to meet their WQBELs based on the applicable WQS. The EPA's regulation at 40 CFR 122.47 allows permitting authorities to include compliance schedules in their NPDES permits, when appropriate and where authorized by the state, in order to provide a discharger with additional time to meet its WQBELs implementing applicable WQS. The EPA's regulation at 40 CFR 131.15 requires that states that intend to allow the use of NPDES permit compliance schedules adopt specific provisions authorizing their use and obtain EPA approval under CWA section 303(c) to ensure that a decision to allow permit compliance schedules is transparent and allows for public input (80 FR 51022, August 21, 2015). Oregon already has an EPA-approved provision authorizing the use of permit compliance schedules (see OAR 340-041-0061), consistent with 40 CFR 131.15. That State provision is not affected by this rule. Oregon is authorized to grant permit compliance schedules, as appropriate, based on the federal criteria, as long as such permit compliance schedules are consistent with the EPA's permitting regulation at 40 CFR 122.47.

VIII. Economic Analysis

The proposed criteria would serve as a basis for development of new or revised NPDES permit limits in Oregon for regulated dischargers found to have reasonable potential to cause or contribute to an excursion of the proposed aluminum criteria. However, the EPA cannot anticipate how Oregon would choose to calculate criteria values based on the proposed criteria and what impact they would have on dischargers. Oregon also has NPDES permitting authority, and retains discretion in implementing standards. While Oregon may choose to incorporate the ecoregional default criteria values (from Table 1) directly into certain permits, it has other options available to it as well as discussed in section III.C. For example, the State can calculate criteria values using ambient data. Furthermore, if the State calculates criteria values using ambient data in the model, the State can choose its own method of reconciling multiple outputs. Despite this discretion, if Oregon determines that a permit is necessary, such permit would need to comply with the EPA's regulations at 40 CFR 122.44(d)(1)(i). Still, to best inform the public of the potential impacts of this proposed rule, the EPA made some assumptions to evaluate the potential costs associated with State implementation of the EPA's proposed criteria. The EPA chose to evaluate the expected costs associated with State implementation of the Agency's proposed aluminum criteria based on available information. This analysis is documented in *Economic Analysis for the Proposed Rule: Aquatic Life Criteria for Aluminum in Oregon*, which can be found in the record for this rulemaking. The EPA seeks public comment on all aspects of the economic analysis including, but not limited to, its assumptions relating to the baseline criteria, affected entities, implementation, and compliance costs.

For the economic analysis, the EPA assumed that in the baseline, Oregon fully implements existing water quality criteria (*i.e.*, "baseline criteria") and then estimated the incremental impacts for compliance with the aluminum criteria in this proposed rule. As Oregon has not promulgated numeric aquatic life criteria for aluminum, the "baseline criteria" for aluminum are assumed to be the State's narrative criteria. Because the baseline criteria are narrative, and because few data on aluminum NPDES discharges and assessments are available, there is uncertainty regarding how to numerically express the baseline criteria. The EPA therefore, assumed that the narrative criteria are fully

implemented, and in the absence of information to the contrary, the EPA had to make assumptions based on the available data to determine how to attribute costs to comply with the numeric aluminum criteria in this proposed rule. For point source costs, the EPA assumed any NPDES-permitted facility that discharges aluminum and is found to have reasonable potential would be subject to effluent limits and would incur compliance costs if it chose to continue operating. The types of affected facilities include industrial facilities, drinking water treatment plants, and publicly owned treatment works (POTWs) discharging sanitary wastewater to surface waters (*i.e.*, point sources). For nonpoint sources, those that contribute aluminum loadings to waters that would be considered impaired for aluminum under the proposed criteria may incur incremental costs for additional best management practices (BMPs). It is possible that the narrative criteria are not being fully implemented; in that case, some of the impacts and costs assumed to be attributed to this proposal in this analysis would actually be baseline costs, and thus the costs here would be overestimated.

A. Identifying Affected Entities

To evaluate potential costs to NPDES-permitted facilities and the potential for impaired waters, the EPA used the ecoregional default criteria values, calculated from the 10th percentile of the distribution of individual MLR-based calculated criteria outputs for each of Oregon's nine Level III ecoregions, as provided in Table 1. EPA is not proposing these default values as a component of Oregon's aluminum criteria, but is soliciting comment on whether EPA should include them in Oregon's final criteria. For the purposes of this economic analysis, the EPA refers to the ecoregional default criteria values as the "economic analysis criteria." The economic analysis criteria are likely different from and possibly lower (more stringent) than the actual site-specific criteria that Oregon would calculate using ambient data from each water body and therefore, may be conservative cost estimates. As described earlier in this proposed rule, the EPA recommends that Oregon collect sufficiently representative ambient data to calculate the most accurate and protective aluminum criteria values.

The EPA identified one point source facility, a major discharger, with

sufficient data for evaluation²⁷ of reasonable potential and therefore potentially be affected by the rule. The EPA also identified one minor facility with aluminum effluent limits, however, aluminum effluent data are not available in ICIS-NPDES for the EPA to readily evaluate this facility. The EPA did not include facilities covered by general permits in its analysis because none of the general permits reviewed include specific effluent limits or monitoring requirements for aluminum. Because of the lack of data for aluminum in point source discharges in the State, along with the potential incremental impairments described below, the EPA took additional steps to identify potential costs for point source dischargers that utilize aluminum in their operations. These steps focused on facilities in specific industries that could be affected by the rule: Aluminum anodizing facilities, drinking water treatment plants, and wastewater treatment facilities. For these facilities, the EPA considered both additional controls and product substitution. This analysis supplements the standard analysis that uses data from specific facilities in Oregon to determine potential point source costs based on reasonable potential to cause or contribute to an exceedance of a WQS. See the Economic Analysis for more details.

B. Method for Estimating Costs

For the one NPDES-permitted facility with available data, the EPA evaluated the reasonable potential to exceed the economic analysis criteria. There was no reasonable potential to exceed the economic analysis criteria and therefore no basis for estimating projected effluent limitations based on reasonable potential analysis.

For the supplemental point source analysis, the EPA evaluated potential costs to three types of facilities that would incur costs under the proposed rule if they were found to have reasonable potential and were therefore subject to effluent limits. First, several aluminum anodizing facilities discharge to local publicly owned treatment works (POTWs). The proposed criteria could result in the POTWs establishing local (pretreatment) limits for these aluminum anodizers. The EPA identified two options for potential treatment upgrades that may be required (countercurrent cascade rinsing and countercurrent cascade rinsing plus

chemical precipitation/flocculation). The EPA developed cost estimates for each of those. Second, drinking water treatment plants often use alum in treatment processes as a coagulant, and discharge filter backwash that may contain aluminum. The proposed criteria may result in the State's drinking water systems needing to reduce aluminum concentrations in their wastewater discharges. For this analysis, the EPA assumed that all water treatment plants in Oregon that discharge directly to surface waters currently use alum as a coagulant and estimated costs to the plants if they were to reduce their wastewater discharges of aluminum and divert the aluminum to sludge disposal. If these assumptions are incorrect, the costs estimated here would be either an overestimate or an underestimate. Third, wastewater treatment facilities often use chemical precipitation followed by filtration to remove phosphorus from the wastewater prior to discharge. The EPA examined the wastewater treatment facilities in the State that have permit limits for total phosphorus and therefore may use alum for phosphorus removal. The EPA assumed that these facilities would substitute ferrous coagulants for the aluminum coagulants, and estimated costs for that change.

If waters were to be identified as impaired when applying the economic analysis criteria, resulting in the need for TMDL development, there could be some costs to nonpoint sources of aluminum. Using available ambient monitoring data, the EPA compared total recoverable aluminum concentrations to the economic analysis criteria, and identified waterbodies that are potentially impaired. There are 826 samples across 260 stations. Note that the EPA was not able to identify BMPs for aluminum and therefore cannot make an estimate of potential nonpoint source costs associated with these discharges.

C. Results

The NPDES-permitted facility for which monitoring data are available does not have reasonable potential to exceed the economic analysis criteria. Therefore, there are no data indicating that point source dischargers will incur annual costs to comply with the proposed rule.

For the supplemental point source analysis, the EPA made both a low-end and a high-end estimate for the costs to the State's 12 aluminum anodizers, based on two different technology upgrade options. Without information to know which option each facility would

choose if they had to upgrade, the EPA estimated that if all 12 facilities upgraded to countercurrent cascade rinsing technology, the total annual cost would be \$51,600 (at a 3% discount rate over the 20-year life of the capital equipment). On the high end, the EPA estimated that if all 12 facilities upgraded to countercurrent cascade rinsing technology plus chemical precipitation and settling, the total annual cost would be \$5.77 million (at a 3% discount rate over the 20-year life of the capital equipment). For the 57 drinking water treatment plants assumed to use alum as a coagulant, the EPA estimated the annual costs for chemical and sludge disposal at \$1.35 million (no additional capital equipment). For the four wastewater treatment facilities currently using alum as a coagulant, the EPA found that if they were to switch to a ferrous coagulant, they would realize \$0.64 million in annual cost savings. Although the analysis would suggest potential cost savings, the EPA assumes that, in absence of the proposed rule, the facilities would already be using the lowest cost treatment. Therefore, the EPA estimated that the rule would result in no change in cost for these facilities. Because these estimates are based on assumed need for control strategies simply based on the projected presence of aluminum in various operations, with no specific knowledge of actual levels in any waste stream, these costs are highly speculative.

Based on available monitoring data and the economic analysis criteria, water quality may be impaired for 53 stations. Without additional information about how Oregon might categorize water bodies for the purpose of defining reaches impaired for aluminum, the EPA assumed that the 53 stations represent an upper bound on the number of incremental TMDLs. It may be possible to combine TMDLs for common water bodies (*i.e.*, if the State decides to combine development of TMDLs for a class of waters with impairments for similar causes) and reduce development costs, though the EPA has no way to know in advance whether the State will do this, or for how many waters. If there is water quality impairment under the economic analysis criteria, there could be costs for TMDL development. The EPA (2001) reports that the average cost to develop a TMDL for a single source of impairment ranges from \$27,000 to \$29,000 (in 2000 dollars) or \$37,000 to \$40,000 when updated to 2017

²⁷ The EPA initially used ICIS-NPDES to identify facilities in Oregon whose NPDES permits contain effluent limitations and/or monitoring requirements for aluminum. The EPA obtained facility-specific information from NDPES permits and fact sheets.

dollars.²⁸ TMDL development costs are one-time costs that the EPA assumed would be uniformly spread out over several years (e.g., a 10-year time period). Spread uniformly over a 10-year period, the annual average costs for TMDL development would range from \$196,000 to \$212,000 for the development of 53 TMDLs.

Combining the potential costs for point source compliance from the supplemental point source analysis with the incremental cost of TMDL development, the total cost annualized at a 3% discount rate would range from \$1.6 million to \$7.3 million for the first 10 years. The cost would be slightly less in subsequent years after the TMDL development is complete.²⁹ The fully annualized costs of the rule³⁰ are \$1.5 million to \$7.2 million at a 3% discount rate; results at the, 7% discount rate are included in the *Economic Analysis for the Proposed Rule: Aquatic Life Criteria for Aluminum in Oregon*, but are quite similar.

Note that, while this analysis is based on the best publicly available data and Oregon's current practices regarding water quality impairments, it may not fully reflect the impact of the proposed criteria to nonpoint sources and implementing authorities. If additional monitoring data were available, or if ODEQ increases its monitoring of ambient conditions in future assessment periods, additional impairments may be identified under the baseline criteria and/or final criteria. Conversely, there may be fewer waters identified as impaired for aluminum after Oregon has fully implemented activities to address sources of existing impairments for other contaminants (e.g., metals in stormwater runoff from urban, industrial, or mining areas).

The total costs presented in the *Economic Analysis for the Proposed Rule: Aquatic Life Criteria for Aluminum in Oregon* are a product of a series of assumptions and subsequent analyses that are intended to be both conservative and as comprehensive as possible. This proposed rule includes

²⁸ These unit cost estimates derive from values provided in a U.S. EPA draft report from 2001, entitled *The National Costs of the Total Maximum Daily Load Program* (EPA 841-D-01-003), escalated to \$2017. The EPA used the Implicit Price Deflator for Gross Domestic Product (from the Bureau of Economic Analysis to update the costs (2000 = 78.078; 2017 = 107.948). These unit costs per TMDL represent practices from nearly 20 years ago, and therefore, may not reflect increased costs of analysis using more sophisticated contemporary methods.

²⁹ After the 10-year period of TMDL development ends, the annual costs would drop to \$1.4 million to \$7.1 million.

³⁰ That is, the costs when abstracting from the difference in costs between the first ten years and subsequent years.

several safeguards inherent in both how aluminum criteria would be calculated for a given water body in practice, and in the implementation of WQS, in general. Permitting procedures such as reasonable potential analysis and TMDL development procedures ensure that entities that are significant contributors and have the capability of load reduction are properly identified and their impacts are accurately quantified. Furthermore, WQS allow for consideration of natural conditions, anthropogenic impacts that cannot be remedied, and social and economic impacts of additional controls through discharger-specific WQS variances and designated use modifications. In short, there are systems in place to evaluate tradeoffs that are central to any benefit-cost analysis. However, these tradeoffs cannot be evaluated without a comprehensive set of WQS that address all important water quality parameters. This and other analyses have demonstrated that aluminum is among the important water quality parameters with respect to supporting aquatic life designated uses. Numeric aluminum criteria can help facilitate the consideration of tradeoffs between control costs and the value of market and non-market use, and non-use benefits.

IX. Statutory and Executive Order Reviews

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

As determined by the Office of Management and Budget (OMB), this action is a significant regulatory action and was submitted to OMB for review. Any changes made during OMB's review have been documented in the docket. The EPA evaluated the potential costs to NPDES dischargers associated with State implementation of the Agency's proposed criteria. This analysis, *Economic Analysis for the Proposed Rule: Aquatic Life Criteria for Aluminum in Oregon*, is summarized in section VIII of the preamble and is available in the docket.

B. Executive Order 13771 (Reducing Regulations and Controlling Regulatory Costs)

This action is expected to be an Executive Order 13771 regulatory action. Details on the estimated costs of this proposed rule can be found in the EPA's analysis of the potential costs and benefits associated with this action.

C. Paperwork Reduction Act

This action does not impose an information collection burden under the Paperwork Reduction Act. While actions to implement these WQS could entail additional paperwork burden, this action does not directly contain any information collection, reporting, or record-keeping requirements.

D. Regulatory Flexibility Act

I certify that this action will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act. This action will not impose any requirements on small entities. The EPA-promulgated WQS are implemented through various water quality control programs including the NPDES program, which limits discharges to navigable waters except in compliance with a NPDES permit. CWA section 301(b)(1)(C)³¹ and the EPA's implementing regulations at 40 CFR 122.44(d)(1) and 122.44(d)(1)(A) provide that all NPDES permits shall include any limits on discharges that are necessary to meet applicable WQS. Thus, under the CWA, the EPA's promulgation of WQS establishes WQS that the State implements through the NPDES permit process. While the State has discretion in developing discharge limits, as needed to meet the WQS, those limits, per regulations at 40 CFR 122.44(d)(1)(i), "must control all pollutants or pollutant parameters (either conventional, nonconventional, or toxic pollutants) which the Director determines are or may be discharged at a level that will cause, have the reasonable potential to cause, or contribute to an excursion above any [s]tate water quality standard, including [s]tate narrative criteria for water quality." As a result of this action, the State of Oregon will need to ensure that permits it issues include any limitations on discharges necessary to comply with the WQS established in the final rule. In doing so, the State will have a number of choices associated with permit writing. While Oregon's implementation of the rule may ultimately result in new or revised permit conditions for some dischargers, including small entities, the EPA's action, by itself, does not impose

³¹ CWA section 301(b) Timetable for Achievement of Objectives In order to carry out the objective of this chapter there shall be achieved— (1)(C): Not later than July 1, 1977, any more stringent limitation, including those necessary to meet water quality standards, treatment standards, or schedules of compliance, established pursuant to any State law or regulations (under authority preserved by section 1370 of this title) or any other Federal law or regulation, or required to implement any applicable water quality standard established pursuant to this chapter.

any of these requirements on small entities; that is, these requirements are not self-implementing.

E. Unfunded Mandates Reform Act

This action contains no federal mandates under the provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531–1538 for state, local, or tribal governments or the private sector. As these water quality criteria are not self-implementing, the EPA's action imposes no enforceable duty on any state, local or tribal governments or the private sector. Therefore, this action is not subject to the requirements of sections 202 or 205 of the UMRA. This action is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that could significantly or uniquely affect small governments.

F. Executive Order 13132 (Federalism)

Under the technical requirements of Executive Order 13132, the EPA has determined that this proposed rule may not have federalism implications but believes that the consultation requirements of the Executive Order have been satisfied in any event. On several occasions over the course of September 2017 through February 2019, the EPA discussed with the Oregon Department of Environmental Quality the Agency's development of the federal rulemaking and clarified early in the process that if and when the State decided to develop and establish its own aluminum standards, the EPA would instead assist the State in its process. During these discussions, the EPA explained the scientific basis for the proposed criteria; the external peer review process and the comments the Agency received on the revised CWA section 304(a) criteria recommendation on which the proposed criteria are based; the Agency's consideration of those comments and responses; possible alternatives for criteria, including default criteria and input values; and the overall timing of the federal rulemaking effort. The EPA took these discussions with the State into account during the drafting of this proposed rule. The EPA considered the State's initial feedback in making the Agency's decision to propose the criteria as drafted and solicit comment on the default criteria values and default DOC input values as described in Section B. Proposed Acute and Chronic Aluminum Criteria for Oregon's fresh waters of this proposed rulemaking.

The EPA specifically solicits comments on this proposed action from State and local officials.

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

This action does not have tribal implications as specified in Executive Order 13175. This proposed rule does not impose substantial direct compliance costs on federally recognized tribal governments, nor does it substantially affect the relationship between the federal government and tribes, or the distribution of power and responsibilities between the federal government and tribes. Thus, Executive Order 13175 does not apply to this action.

Many tribes in the Pacific Northwest hold reserved rights to take fish for subsistence, ceremonial, religious, and commercial purposes. The EPA developed the criteria in this proposed rule to protect aquatic life in Oregon from the effects of exposure to harmful levels of aluminum. Protecting the health of fish in Oregon will, therefore, support tribal reserved fishing rights, including treaty-reserved rights, where such rights apply in waters under State jurisdiction.

Consistent with the EPA Policy on Consultation and Coordination with Indian Tribes, the Agency consulted with tribal officials during the development of this action. The EPA has sent a letter to tribal leaders in Oregon offering to consult on the proposed aluminum criteria in this rule. The EPA will hold a conference call with tribal water quality technical contacts and tribal officials to explain the Agency's proposed action and timeline approximately two weeks after the proposal is published and the comment period is initiated. The EPA will continue to communicate with the tribes prior to its final action.

H. Executive Order 13045 (Protection of Children from Environmental Health and Safety Risks)

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the Agency has reason to believe may disproportionately affect children, per the definition of "covered regulatory action" in section 2–202 of the Executive Order. This action is not subject to Executive Order 13045 because it does not concern an environmental health risk or safety risk.

I. Executive Order 13211 (Actions that Significantly Affect Energy Supply, Distribution, or Use)

This action is not a "significant energy action" because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

J. National Technology Transfer and Advancement Act of 1995

This proposed rulemaking does not involve technical standards.

K. Executive Order 12898 (Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations)

The human health or environmental risk addressed by this action will not have potential disproportionately high and adverse human health or environmental effects on minority, low-income or indigenous populations. The criteria in this proposed rule, once finalized, will support the health and abundance of aquatic life in Oregon, and will therefore benefit all communities that rely on Oregon's ecosystems.

List of Subjects in 40 CFR Part 131

Environmental protection, Incorporation by reference, Indians-lands, Intergovernmental relations, Reporting and recordkeeping requirements, Water pollution control.

Dated: April 18, 2019.

Andrew R. Wheeler,
Administrator.

For the reasons set forth in the preamble, the EPA proposes to amend 40 CFR part 131 as follows:

PART 131—WATER QUALITY STANDARDS

- 1. The authority citation for part 131 continues to read as follows:

Authority: 33 U.S.C. 1251 *et seq.*

Subpart D—Federally Promulgated Water Quality Standards

- 2. Add § 131.[XX] to read as follows:

§ 131.[XX] Aquatic life criteria for aluminum in Oregon.

(a) *Scope.* This section promulgates aquatic life criteria for aluminum in fresh waters in Oregon.

(b) *Criteria for aluminum in Oregon.* The aquatic life criteria in Table 1 apply to all fresh waters in Oregon to protect the fish and aquatic life designated uses.

TABLE 1—PROPOSED ALUMINUM AQUATIC LIFE CRITERIA FOR OREGON FRESH WATERS

Metal	CAS No.	Criterion maximum concentration (CMC) ² (µg/L)	Criterion continuous concentration (CCC) ³ (µg/L)
Aluminum ¹	7429905	Acute (CMC) and chronic (CCC) freshwater aluminum criteria values for a site shall be calculated using the 2018 Aluminum Criteria Calculator (<i>Aluminum Criteria Calculator V.2.0.xlsx</i> , or a calculator in R or other software package using the same 1985 Guidelines calculation approach and underlying model equations as in the <i>Aluminum Criteria Calculator V.2.0.xlsx</i>) as established in the EPA's Final Aquatic Life Ambient Water Quality Criteria for Aluminum 2018 (EPA 822-R-18-001) ⁴ . Calculator outputs shall be used to calculate criteria values for a site that protect aquatic life throughout the site under the full range of ambient conditions, including when aluminum is most toxic given the spatial and temporal variability of the water chemistry at the site.	

¹ The criteria for aluminum are expressed as total recoverable metal concentrations.

² The CMC is the highest allowable one-hour average instream concentration of aluminum. The CMC is not to be exceeded more than once every three years. The CMC is rounded to two significant figures.

³ The CCC is the highest allowable four-day average instream concentration of aluminum. The CCC is not to be exceeded more than once every three years. The CCC is rounded to two significant figures.

⁴ EPA 822-R-18-001, Final Aquatic Life Ambient Water Quality Criteria for Aluminum 2018, is incorporated by reference into this section with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. All approved material is available from U.S. Environmental Protection Agency, Office of Water, Health and Ecological Criteria Division (4304T), 1200 Pennsylvania Avenue NW, Washington, DC 20460; telephone number: (202) 566-1143, <https://www.epa.gov/wqc/aquatic-life-criteria-aluminum>. It is also available for inspection 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 www.archives.gov/federal-register/cfr/ibr-locations.html.

(c) *Applicability.* (1) The criteria in paragraph (b) of this section are the applicable acute and chronic aluminum aquatic life criteria in all fresh waters in Oregon to protect the fish and aquatic life designated uses.

(2) The criteria established in this section are subject to Oregon's general rules of applicability in the same way and to the same extent as are other federally promulgated and state-adopted numeric criteria when applied to fresh waters in Oregon to protect the fish and aquatic life designated uses.

(3) For all waters with mixing zone regulations or implementation procedures, the criteria apply at the appropriate locations within or at the boundary of the mixing zones and outside of the mixing zones; otherwise the criteria apply throughout the water body including at the end of any discharge pipe, conveyance or other discharge point within the water body.

[FR Doc. 2019-08464 Filed 4-30-19; 8:45 am]

BILLING CODE 6560-50-P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

46 CFR Part 355

[Docket No. MARAD-2019-0069]

RIN 2133-AB90

How Best to Evidence Corporate Citizenship: Policy and Regulatory Review

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Advance notice of proposed rulemaking (ANPRM), request for comments.

SUMMARY: The Maritime Administration (MARAD) is publishing this notice to solicit public comment on steps MARAD could take to simplify and/or modernize the process for evidencing United States citizenship of corporations and other entities participating in MARAD programs. To be eligible to participate in various MARAD programs and activities, applicants and interested parties must demonstrate at least a majority of ownership and control by United States citizens at each tier of ownership. MARAD is not considering any changes to that standard, but to the types of documents or evidence applicants provide to MARAD.

DATES: Comments must be received on or before July 1, 2019. MARAD will consider comments filed after this date to the extent practicable.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD-2019-0069 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Search MARAD-2019-0069 and follow the instructions for submitting comments.

- *Email:* Rulemakings.MARAD@dot.gov. Include MARAD-2019-0069 in the subject line of the message and provide your comments in the body of the email or as an attachment.

- *Mail or Hand Delivery:* Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is: U.S. Department of Transportation, MARAD-2019-0069, 1200 New Jersey Avenue SE, West Building, Room W12-140, Washington, DC 20590, between 9 a.m. and 5 p.m.,

Monday through Friday, except on Federal holidays.

Note: If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

Instructions: All submissions received must include the agency name and specific docket number. All comments received will be posted without change to the docket at www.regulations.gov, including any personal information provided. For detailed instructions on submitting comments, see the section entitled Public Participation.

FOR FURTHER INFORMATION CONTACT: T. Mitchell Hudson, Jr., Office of Chief Counsel, Division of Legislation and Regulations, (202) 366-9373 or via email at Mitch.Hudson@dot.gov. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339 to contact the above individual during business hours. The FIRS is available twenty-four hours a day, seven days a week, to leave a message or question. You will receive a reply during normal business hours. You may send mail to Department of Transportation, Maritime Administration, Office of Chief Counsel, Division of Legislation and Regulations, W24-220, 1200 New Jersey Avenue SE, Washington, DC 20590-0001.

SUPPLEMENTARY INFORMATION:

Background

Improvement of regulations is a continuous focus for the Department of Transportation (DOT) and MARAD. For that reason, DOT/MARAD regularly and

deliberately review their rules in accordance with DOT's 1979 Regulatory Policies and Procedures (44 FR 11034), Executive Order (E.O.) 12866, E.O. 13563, and section 610 of the Regulatory Flexibility Act. That process is summarized in Appendix D of DOT's semi-annual regulatory agenda (*e.g.*, 81 FR 94784). In E.O. 13771 and E.O. 13777, President Trump directed agencies to further scrutinize their regulations. Comments received will inform the review described in this notice and supplement MARAD's periodic regulatory review and its activities under E.O. 13771 and E.O. 13777. This request for comments is narrowly focused on improving and modernizing MARAD's program administration.

Accordingly, MARAD has identified its regulations at 46 CFR part 355 governing requirements for evidencing United States citizenship for consideration consistent with the President's direction. This notice seeks to solicit comments to ensure that MARAD's programs remain effective, modern, and the least burdensome to the public. As part of our review, MARAD is issuing this notice to engage the public and the broad spectrum of stakeholders that may be affected. Information received will be used to evaluate the issues and determine whether to propose a change in how corporations evidence their citizenship.

Citizenship eligibility criteria and documentation requirements may affect stakeholders who participate, directly or indirectly, in MARAD programs and activities, including ship managers and agents of MARAD-owned ships (herein collectively referred to as "Vessel Operators") which may be used by the Department of Defense (DOD) in support of certain DOD-controlled activities. For example, Vessel Operators are required by regulation to be at least majority owned and controlled by United States citizens at each tier of ownership.

Scope of Comments

MARAD is interested in learning how it could reduce or remove regulatory burdens on the public. Accordingly, commenters may want to focus on the following: (1) Recognition of modern business forms in addition to corporations (*e.g.*, limited liability companies and limited partnerships) and modern securities ownership practices (*e.g.*, street name securities); (2) aligning with current best business practices; (3) reducing the cost of compliance; and (4) revising the corporate citizenship affidavit.

Content of Comments

We are interested in information on how any changes to 46 CFR part 355 could impact small businesses, either positively or negatively. In describing a burden placed on your organization by our regulations or potential changes to the regulations, direct experience and quantifiable data are more useful than anecdotal descriptions. If the commenter believes that there is a less burdensome alternative, the commenter should describe that alternative in verifiable detail.

Under this notice, MARAD is not soliciting petitions for rulemaking.

Public Participation

How do I submit comments?

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

Please note that even after the comment period has closed, MARAD will continue to file relevant information in the Docket as it becomes available.

Where do I go to read public comments and find supporting information?

Go to the docket online at <http://www.regulations.gov>, keyword search MARAD-2019-0069 or visit us in person at the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

Will my comments be made available to the public?

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

May I submit comments confidentially?

If you wish to submit comments under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Department of Transportation, Maritime Administration, Office of Legislation and Regulations, MAR-225, W24-220, 1200 New Jersey Avenue SE, Washington, DC 20590. Include a cover

letter setting forth with specificity the basis for any such claim and, if possible, a summary of your submission that can be made available to the public.

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, to www.regulations.gov, as described in the system of records notice, DOT/ALL-14 FDMS, accessible through www.dot.gov/privacy. To facilitate comment tracking and response, we encourage commenters to provide their name, or the name of their organization; however, submission of names is completely optional. Whether or not commenters identify themselves, all timely comments will be fully considered. If you wish to provide comments containing proprietary or confidential information, please contact the agency for alternate submission instructions.

(Authority: 49 CFR Sections 1.92 and 1.93)

* * * * *

Dated: April 26, 2019.

By Order of the Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2019-08859 Filed 4-30-19; 8:45 am]

BILLING CODE 4910-81-P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

46 CFR Part 356

[Docket No. MARAD-2019-0070]

RIN 2133-AB91

How Best To Simplify Filing Statements of American Fisheries Act Citizenship: Policy and Regulatory Review

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Advance notice of proposed rulemaking (ANPRM), request for comments.

SUMMARY: The Maritime Administration (MARAD) is publishing this notice to solicit public comment on steps MARAD could take to simplify annual citizenship filing procedures under the American Fisheries Act Program to reduce costs or administrative burdens placed on program participants. MARAD is responsible for ensuring compliance with the American Fisheries Act's (AFA's) U.S. citizen ownership and control requirements for certain

U.S. flag fishing industry vessels, including determining whether vessels 100 feet or greater in length are owned and controlled by U.S. citizens and eligible for fishery endorsements. MARAD is not considering any changes to those standards, but to the types of documents or evidence applicants provide to MARAD.

DATES: Comments must be received on or before July 1, 2019. MARAD will consider comments filed after this date to the extent practicable.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD–2019–0070 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Search MARAD–2019–0070 and follow the instructions for submitting comments.
- *Email:* Rulemakings.MARAD@dot.gov. Include MARAD–2019–0070 in the subject line of the message and provide your comments in the body of the email or as an attachment.
- *Mail or Hand Delivery:* Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is: U.S. Department of Transportation, MARAD–2019–0070, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

Note: If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

Instructions: All submissions received must include the agency name and specific docket number. All comments received will be posted without change to the docket at www.regulations.gov, including any personal information provided. For detailed instructions on submitting comments, see the section entitled Public Participation.

FOR FURTHER INFORMATION CONTACT: T. Mitchell Hudson, Jr., Office of Chief Counsel, Division of Legislation and Regulations, (202) 366–9373 or via email at Mitch.Hudson@dot.gov. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during business hours. The FIRS is available twenty-four hours a day, seven days a week, to leave a message or question. You will receive a

reply during normal business hours. You may send mail to Department of Transportation, Maritime Administration, Office of Chief Counsel, Division of Legislation and Regulations, W24–220, 1200 New Jersey Avenue SE, Washington, DC 20590–0001.

SUPPLEMENTARY INFORMATION:

Background

Improvement of regulations is a continuous focus for the Department of Transportation (DOT) and MARAD. For that reason, DOT/MARAD regularly and deliberately review their rules in accordance with DOT's 1979 Regulatory Policies and Procedures (44 FR 11034), Executive Order (E.O.) 12866, E.O. 13563, and section 610 of the Regulatory Flexibility Act. That process is summarized in Appendix D of DOT's semi-annual regulatory agenda (*e.g.*, 81 FR 94784). In E.O. 13771 and E.O. 13777, President Trump directed agencies to further scrutinize their regulations. Comments received will inform the review described in this notice and supplement MARAD's periodic regulatory review and its activities under E.O. 13771 and E.O. 13777. This request for comments is narrowly focused on improving and modernizing MARAD's program administration.

Accordingly, MARAD has identified its AFA regulations governing citizenship procedures for consideration consistent with the President's direction. This notice seeks to solicit comments to ensure that the program remains effective, modern, and the least burdensome to the public. As part of our review, MARAD is issuing this notice to engage the public and the broad spectrum of stakeholders that may be affected. Information received will be used to evaluate the issues and determine whether to propose a change in acceptable statements of citizenship.

Scope of Comments

MARAD is interested in learning how it could reduce or remove regulatory burdens on the public. Accordingly, commenters may want to focus on the following: (1) Whether there are less burdensome methods to evidence corporate citizenship annually; (2) how those alternatives may be applied to improve MARAD program administration consistent with E.O. 13771; and (3) how program participants will benefit from a revision of our AFA regulations.

Content of Comments

We are interested in information on how any changes to these regulations could impact small businesses, either

positively or negatively. In describing a burden placed on your organization by our regulations or potential changes to the regulations, direct experience and quantifiable data are more useful than anecdotal descriptions. If the commenter believes that there is a less burdensome alternative, the commenter should describe that alternative in verifiable detail.

Under this notice, MARAD is not soliciting petitions for rulemaking.

Public Participation

How do I submit comments?

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

Please note that even after the comment period has closed, MARAD will continue to file relevant information in the Docket as it becomes available.

Where do I go to read public comments, and find supporting information?

Go to the docket online at <http://www.regulations.gov>, keyword search MARAD–2019–0070 or visit us in person at the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

Will my comments be made available to the public?

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

May I submit comments confidentially?

If you wish to submit comments under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Department of Transportation, Maritime Administration, Office of Legislation and Regulations, MAR–225, W24–220, 1200 New Jersey Avenue SE, Washington, DC 20590. Include a cover letter setting forth with specificity the basis for any such claim and, if possible, a summary of your submission that can be made available to the public.

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, to www.regulations.gov, as described in the system of records notice, DOT/ALL-14 FDMS, accessible through www.dot.gov/privacy. To facilitate comment tracking and response, we encourage commenters to provide their name, or the name of their organization; however, submission of names is completely optional. Whether or not commenters identify themselves, all timely comments will be fully considered. If you wish to provide comments containing proprietary or confidential information, please contact the agency for alternate submission instructions.

(Authority: 49 CFR Sections 1.92 and 1.93)

* * * * *

Dated: April 26, 2019.

By Order of the Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2019-08857 Filed 4-30-19; 8:45 am]

BILLING CODE 4910-81-P

DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration****50 CFR Part 648**

[Docket No. 181129999-9376-01]

RIN 0648-XG657

Fisheries of the Northeastern United States; Atlantic Mackerel, Squid, and Butterfish Fisheries; Specifications

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

ACTION: Proposed rule, request for comments.

SUMMARY: NMFS proposes new *Illex* squid specifications, while maintaining previously approved longfin squid and butterfish specifications for the 2019 fishing year. NMFS previously set specifications for all three species for 2018–2020 but proposes to increase the 2019 *Illex* squid acceptable biological catch by 2,000 mt based on updated scientific advice. No changes to the previously approved 2019 longfin squid or butterfish specifications are proposed in this action. This action is necessary to specify catch levels for the *Illex* squid fishery based on updated information

on allowable catch levels and to provide notice that NMFS is maintaining the previously approved longfin squid and butterfish specifications. These proposed specifications are intended to promote the sustainable utilization and conservation of the squid and butterfish resources.

DATES: Public comments must be received by May 31, 2019.

ADDRESSES: Copies of supporting documents used by the Mid-Atlantic Fishery Management Council, including the Environmental Assessment (EA), the Supplemental Information Report (SIR), the Regulatory Impact Review (RIR), and the Regulatory Flexibility Act (RFA) analysis are available from: Dr. Christopher M. Moore, Executive Director, Mid-Atlantic Fishery Management Council, 800 North State Street, Suite 201, Dover, DE 19901, telephone (302) 674-2331. The EA/RIR/RFA analysis is also accessible via the internet at www.regulations.gov/#/docketDetail;D=NOAA-NMFS-2018-0135.

You may submit comments, identified by NOAA–NMFS–2018–0135, by any of the following methods:

- **Electronic Submission:** Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to www.regulations.gov/#/docketDetail;D=NOAA-NMFS-2018-0135, click the “Comment Now!” icon, complete the required fields, and enter or attach your comments.
- **Mail:** Submit written comments to NMFS, Greater Atlantic Regional Fisheries Office, 55 Great Republic Drive, Gloucester, MA 01930. Mark the outside of the envelope “Comments on 2019 MSB Specifications.”
- **Fax:** 978-281-9135; Attn: Douglas Christel.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on www.regulations.gov without change. All personal identifying information (e.g., name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter “N/A” in the required fields if you wish to remain anonymous).

FOR FURTHER INFORMATION CONTACT: Douglas Christel, Fishery Policy Analyst, (978) 281-9141, fax (978) 281-9135.

SUPPLEMENTARY INFORMATION:

Background

This rule proposes specifications, which are the combined suite of commercial and recreational catch levels established for one or more fishing years, for *Illex* squid. Section 302(g)(1)(B) of the Magnuson-Stevens Fishery Conservation and Management Act states that the Scientific and Statistical Committee (SSC) for each regional fishery management council shall provide its Council ongoing scientific advice for fishery management decisions, including recommendations for acceptable biological catch (ABC), preventing overfishing, ensuring maximum sustainable yield, and achieving rebuilding targets. The ABC is a level of catch that accounts for the scientific uncertainty in the estimate of the stock’s defined overfishing level (OFL).

The regulations implementing the Atlantic Mackerel, Squid, and Butterfish Fishery Management Plan (FMP) require the Mid-Atlantic Fishery Management Council’s Atlantic Mackerel, Squid, and Butterfish Monitoring Committee to develop specification recommendations for each species based upon the ABC advice of the Council’s SSC. The FMP regulations also require the specification of annual catch limits (ACL) and accountability measure (AM) provisions for butterfish. Both squid species are exempt from the ACL/AM requirements because they have a life cycle of less than one year. In addition, the regulations require the specification of domestic annual harvest (DAH), domestic annual processing (DAP), total allowable level of foreign fishing (TALFF), joint venture processing (JVP), commercial and recreational annual catch targets (ACT), the butterfish mortality cap in the longfin squid fishery, and initial optimum yield (IOY) for both squid species.

On March 1, 2018 (83 FR 8764), we published a final rule in the **Federal Register** implementing *Illex* and longfin squid and butterfish specifications for 2018 and projected specifications for fishing years 2019 and 2020. Since then, the Council’s SSC met on May 8, 2018, to reevaluate the 2019 specifications based upon the latest information. At that meeting, the SSC concluded that no adjustments to these specifications were warranted. However, the SSC met again on September 18, 2018, at the request of the Council to reevaluate its *Illex* squid specification recommendation and consider increasing the 2019 *Illex* landing limit given the fishery had fully harvested available quotas in both the 2017 and 2018 fishing years. The SSC reiterated its observation that landings

up to 26,000 mt have not caused harm to the *Illex* stock. It concluded that raising the *Illex* squid ABC to 26,000 mt for 2019 and maybe 2020 would not likely result in a greater than 40 percent chance of overfishing this stock. On October 3, 2018, the Council adopted the updated SSC recommendations for a 26,000-mt *Illex* squid ABC in 2019 and 2020, but did not recommend any changes to the previously approved 2019 specifications for longfin squid and butterfish. The Council submitted its recommendations, as summarized below, along with the required analyses, for initial agency review on February 11, 2019. NMFS must review the Council's recommendations for compliance with the FMP and applicable law, and conduct notice-and-comment rulemaking to propose and implement the final specifications.

This action does not consider revisions to existing specifications for Atlantic mackerel. On August 13, 2018, the Council approved Framework Adjustment 13 to the FMP. This action includes a rebuilding program for Atlantic mackerel and annual specifications for 2019–2021. We will publish a separate proposed rule in the **Federal Register** to solicit public input on the specifications for the Atlantic mackerel fishery. Until new specifications are implemented, the existing Atlantic mackerel, longfin squid, and butterfish specifications, as described below, will continue pursuant to 50 CFR 648.22(d)(1).

2019 Longfin Squid Specifications

This action maintains the existing longfin squid ABC of 23,400 mt for 2019, as implemented on March 1, 2018 (83 FR 8764). The background for this ABC is discussed in the proposed rule to implement the 2018–2020 squid and butterfish specifications (December 13, 2017; 82 FR 58583) and is not repeated here. The IOY, DAH, and DAP are calculated by deducting an estimated discard rate (2.0 percent) from the ABC. This results in a 2019 IOY, DAH, and DAP of 22,932 mt (Table 1). This action also maintains the existing allocation of longfin squid DAH among trimesters according to percentages specified in the FMP (Table 2). The Council will review these specifications during its annual specifications process following annual data updates each spring, and may change its recommendation for 2020 if new information is available.

TABLE 1—2019 LONGFIN SQUID SPECIFICATIONS IN METRIC TONS (mt)

OFL	Unknown.
ABC	23,400.

TABLE 1—2019 LONGFIN SQUID SPECIFICATIONS IN METRIC TONS (mt)—Continued

IOY	22,932.
DAH/DAP	22,932.

TABLE 2—2019 LONGFIN QUOTA TRIMESTER ALLOCATIONS

Trimester	Percent	Metric tons
I (Jan–Apr)	43	9,861
II (May–Aug)	17	3,898
III (Sep–Dec)	40	9,173

2019 Butterfish Specifications

This action also maintains the previously approved 2019 butterfish specifications outlined in Table 3, as implemented on March 1, 2018 (83 FR 8764). The background for these specifications is discussed in the proposed rule to implement the 2018–2020 squid and butterfish specifications (December 13, 2017; 82 FR 58583) and is not repeated here. In summary, the 2019 butterfish specifications are based on long-term recruitment estimates and include a 7.5 percent management uncertainty buffer and an estimated discard rate of 2.4 percent. These specifications maintain the existing butterfish mortality cap in the longfin squid fishery (3,884 mt) and the existing allocation of the butterfish mortality cap among longfin squid trimesters (Table 4).

TABLE 3—2019 BUTTERFISH SPECIFICATIONS IN METRIC TONS (mt)

OFL	37,637
ACL = ABC	27,108
Commercial ACT (ABC—management uncertainty buffers for each year) ...	25,075
DAH (ACT minus butterfish cap and discards)	20,061
Directed Fishery closure limit (DAH–1,000 mt incidental landings buffer)	19,061
Butterfish Cap (in the longfin squid fishery)	3,884

TABLE 4—TRIMESTER ALLOCATION OF BUTTERFISH MORTALITY CAP ON THE LONGFIN SQUID FISHERY FOR 2019

Trimester	Percent	Metric tons
I (Jan–Apr)	43	1,670
II (May–Aug)	17	660
III (Sep–Dec)	40	1,554
Total	100	3,844

Proposed 2019 *Illex* Squid Specifications

Consistent with the Council's recommendation summarized above, NMFS proposes to increase the 2019 *Illex* ABC from 24,000 mt to 26,000 mt. The Council recommended that the ABC be reduced by the status quo discard rate of 4.52 percent, which results in a 2019 IOY, DAH, and DAP of 24,825 mt (Table 5), an increase of 8 percent compared to 2018 levels (22,915 mt). The Council will review this decision during its annual specifications process following annual data updates each spring, and may change its recommendations for 2020 if new information is available.

TABLE 5—PROPOSED 2019 *Illex* SQUID SPECIFICATIONS IN METRIC TON (mt)

OFL	Unknown.
ABC	26,000.
IOY	24,825.
DAH/DAP	24,825.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this proposed rule is consistent with the Atlantic Mackerel, Squid, and Butterfish FMP, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment.

This action is exempt from review under E.O. 12866. This proposed rule is not expected to be an Executive Order 13771 regulatory action because this proposed rule is exempt from E.O. 12866.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. The purpose, context, and statutory basis for this action is described above and not repeated here. Business entities affected by this action include vessels that are issued limited access longfin squid, *Illex* squid, and butterfish permits. Although vessels issued open access incidental catch permits for these species are also potentially affected by this action, because these vessels land only small amounts of squid and butterfish and this action would not revise the amount of squid and butterfish that these vessels can land, these entities would not be affected by this proposed rule.

Any entity with combined annual fishery landing receipts less than \$11 million is considered a small entity based on standards published in the **Federal Register** (80 FR 81194, December 29, 2015). In 2017, 63 separate vessels were issued limited access *Illex* squid permits in 2017. These vessels were owned by 51 entities, 45 of which earned less than \$11 million in revenue and were small business entities that would be affected by this action. Average revenues for these entities was \$2.0 million in 2017.

The previously approved longfin squid and butterfish commercial landing limits would not be changed by this proposed action, while the commercial *Illex* squid landing limit would be increased by 8 percent (1,910 mt). Fishing revenue and, therefore, economic impacts of yearly *Illex* squid specifications depend upon species availability, which may change yearly. For example, the *Illex* squid fishery

landed 14.7 million lb in 2016 for a value of \$7.2 million, yet landed over 49.6 million lb in 2017 for a value of just over \$22 million. The proposed 1,910-mt increase in the 2019 *Illex* squid landing limit would increase fishing revenue by nearly \$1.9 million compared to the 2018 landing limit if the fishery lands all available quota. If the fishery fully harvests the proposed 2019 commercial landing limit, it could generate approximately \$25 million in fishing revenue based on 2016 prices. In determining the significance of the economic impacts of the proposed action, we considered the following two criteria outlined in applicable National Marine Fisheries Service guidance: Disproportionality and profitability. The proposed measures would not place a substantial number of small entities at a significant competitive disadvantage to large entities; all entities affected by this action would be equally affected.

Accordingly, there are no distributional economic effects from this action between small and large entities. Proposed measures would not reduce fishing opportunities based on recent squid and butterfish landings, change any entity's access to these resources, or impose any costs to affected entities. Therefore, this action would not reduce revenues or profit for affected entities compared to recent levels. Based on the above justification, the proposed action is not expected to have a significant economic impact on a substantial number of small entities.

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

Dated: April 24, 2019.

Samuel D. Rauch, III,

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

[FR Doc. 2019-08761 Filed 4-30-19; 8:45 am]

BILLING CODE 3510-22-P

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS-2014-0005]

Notice of Availability of a Pest Risk Analysis for the Importation of Fresh Citrus From China Into the Continental United States

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of availability.

SUMMARY: We are advising the public that we have prepared a pest risk analysis that evaluates the risks associated with the importation of fresh citrus fruit (pomelo, Nanfeng honey mandarin, ponkan, sweet orange, and Satsuma mandarin) from China into the continental United States. Based on the analysis, we have determined that the application of one or more phytosanitary measures will be sufficient to mitigate the risks of introducing or disseminating plant pests or noxious weeds via the importation of fresh citrus fruit from China. We are making the pest risk analysis available to the public for review and comment.

DATES: We will consider all comments that we receive on or before July 1, 2019.

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

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov/#!docketDetail;D=APHIS-2014-0005>.

- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS-2014-0005, 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/#!docketDetail;D=APHIS-2014-0005> 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) 799-7039 before coming.

FOR FURTHER INFORMATION CONTACT: Ms. Claudia Ferguson, Senior Regulatory Policy Specialist, Regulatory Coordination and Compliance, PPQ, APHIS, 4700 River Road, Unit 133, Riverdale, MD 20737-1236; (301) 851-2352.

SUPPLEMENTARY INFORMATION:

Background

Under the regulations in “Subpart L—Fruits and Vegetables” (7 CFR 319.56–1 through 319.56–12, referred to below as the regulations) the Animal and Plant Health Inspection Service (APHIS) prohibits or restricts the importation of fruits and vegetables into the United States from certain parts of the world to prevent plant pests from being introduced into or disseminated within the United States.

In response to a request from the national plant protection organization (NPPO) of China, on August 28, 2014, APHIS published a proposed rule¹ in the *Federal Register* (79 FR 51267–51273, Docket No. APHIS-2014-0005) to amend the regulations to allow the importation of five species of commercially produced citrus fruit from China into the continental United States. These citrus fruits were: *Citrus grandis* (L.) Osbeck cv. Guanximiyou, referred to in this document as pomelo; *Citrus kinokuni* Hort. ex Tanaka, referred to in this document as Nanfeng honey mandarin; *Citrus poonensis* Hort. ex Tanaka, referred to in this document as ponkan; *Citrus sinensis* (L.) Osbeck, referred to in this document as sweet orange; and *Citrus unshiu* Marcov., referred to in this document as Satsuma mandarin. In evaluating China’s request, APHIS prepared a pest risk assessment (PRA) and a risk management document (RMD), which we made available along with the proposed rule.

We solicited comments concerning our proposal for 60 days ending October

27, 2014. We received a total of 29 comments by that date. They were from citrus growers, marketing cooperatives, a State department of agriculture, private citizens, and the National Plant Board.

Following the end of the comment period, the NPPO of China expressed concerns regarding some elements of the rule, particularly our proposed requirement that citrus fruit be bagged with double-layered paper bags when the fruit are no more than 2 cm in diameter and still on the tree. This requirement was based on APHIS’ understanding that such bagging was a standard industry practice in China for all citrus intended for export. While this is true of pomelo fruit, the NPPO stated that it was not true of the other four species of fruit covered by the proposed rule and would not be operationally feasible for producers of those species. We therefore elected not to finalize the proposed rule.

In 2017, China again requested that we evaluate the risk associated with the importation of pomelo, Nanfeng honey mandarin, ponkan, sweet orange, and Satsuma mandarin from China into the continental United States.

In response to China’s request, we prepared a new PRA to identify the pests of quarantine significance that could follow the pathway of the importation of fresh pomelo, Nanfeng honey mandarin, ponkan, sweet orange, and Satsuma mandarin from China into the continental United States. We did this because an initial review of scientific literature suggested additional pests of citrus had been discovered in China since the time the 2014 PRA was prepared. This, in turn, led us to broaden our literature review for the new PRA to incorporate additional sources of information about plant pests in China. As a result, the new PRA has a significantly longer pest list than the 2014 PRA, and identifies two additional quarantine pests, both Lepidoptera, that could follow the pathway on fresh pomelo, Nanfeng honey mandarin, ponkan, sweet orange, and Satsuma mandarin from China imported into the continental United States. Based on this new PRA, a new RMD was prepared to identify phytosanitary measures that could be applied to the fresh pomelo, Nanfeng honey mandarin, ponkan, sweet orange, and Satsuma mandarin to mitigate the pest risk.

¹To view the proposed rule, supporting documents, and the comments we received, go to <http://www.regulations.gov/#!docketDetail;D=APHIS-2014-0005>.

Section 319.56–4 contains a performance-based process for approving the importation of certain fruits and vegetables that, based on the findings of a pest risk analysis, can safely be imported into the United States subject to one or more of the five designated phytosanitary measures listed in paragraph (b) of that section. Based on the new RMD that we have prepared, we have concluded that fresh pomelo, Nanfeng honey mandarin, ponkan, sweet orange, and Satsuma mandarin can safely be imported from China into the continental United States using one or more of the five designated phytosanitary measures listed in § 319.56–4(b). The NPPO of China would have to enter into an operational workplan with APHIS that sets forth the daily procedures that the NPPO of China will take to implement the measures identified in the RMD. These measures are summarized below:

- Importation in commercial consignments only.
- Registration of places of production and packinghouses with the NPPO of China.
- Certification by the NPPO of propagative material used at places of production as being free of quarantine pests.
- Periodic inspections of places of production throughout the shipping season.
 - Grove sanitation.
 - Pest-free places of production for *Bactrocera minax* and *B. tsuneonis*.
 - Pest-free places of production for *B. correcta*, *B. cucurbitae*, *B. dorsalis*, *B. orientalis*, *B. pedestris*, and *B. tau*; or determination that places of production are located in areas of low pest prevalence for these species of fruit fly based on trapping, and in-transit cold treatment as an additional phytosanitary safeguard.
- Maintaining the identity and origin of the lot of fruit throughout the export process to the United States.
 - Safeguarding of harvested fruit.
 - Post-harvest visual inspection of fruit by the NPPO or officials authorized by the NPPO according to a biometric sample.
 - Cutting a portion of the fruit in the sample to inspect for quarantine pests.
 - Washing, brushing, and treatment with a surface disinfectant.
 - Issuance of a phytosanitary certificate with an additional declaration.
 - Port of entry inspections.
 - Importation under a permit issued by APHIS.
 - Possible remedial measures in the event of detection of quarantine pests at registered places of production or

packinghouses, or in/on consignments of citrus fruit from China at ports of entry into the United States.

We are also proposing to exempt pomelos that are grown in areas that are free of *B. minax* and *B. tsuneonis* and that are of low pest prevalence (identified by the NPPO as having low levels for the specified pests and subject to effective surveillance, control, or eradication measures) for *B. correcta*, *B. cucurbitae*, *B. dorsalis*, *B. orientalis*, *B. pedestris*, and *B. tau* from cold treatment for fruit flies, if the pomelos are bagged with double-layered paper bags no more than 2 months before harvest.

Each of the pest mitigation measures that would be required, along with evidence of their efficacy in removing pests of concern from the pathway, are described in detail in the RMD.

Therefore, in accordance with § 319.56–4(c)(3)(ii), we are announcing the availability of our PRA and RMD for public review and comment. Those documents, as well as a description of the economic considerations associated with the importation of fresh citrus fruit from China, 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 request paper copies of these documents by calling or writing to the person listed under **FOR FURTHER INFORMATION CONTACT**. Please refer to the subject of the analysis you wish to review when requesting copies.

After reviewing any comments we receive, we will announce our decision regarding the import status of fresh citrus fruit from China in a subsequent notice. If the overall conclusions of our analysis and determination of risk remain unchanged following our consideration of the comments, then we will authorize the importation of fresh citrus fruit from China into the continental United States subject to the requirements specified in the RMD.

Authority: 7 U.S.C. 1633, 7701–7772, and 7781–7786; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

Done in Washington, DC, on April 25, 2019.

Kevin Shea,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2019–08767 Filed 4–30–19; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Announcement of Loan Applications Procedures and Deadlines for the Rural Energy Savings Program (RESP); Update

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice.

SUMMARY: The Rural Utilities Service (RUS), a Rural Development agency of the United States Department of Agriculture, published a Notice of Funding Availability (NOFA) in the **Federal Register** on Monday, August 6, 2018 (83 FR 38273) announcing funding availability, soliciting letters of intent for loan applications, outlining the application process for those loans, and setting forth deadlines for applications from eligible entities under the Rural Energy Savings Program (RESP). Since the publication of the NOFA, the Agriculture Improvement Act of 2018 (2018 Farm Bill) became law on December 20, 2018, and included statutory changes affecting RESP. The purpose of this notice is to inform the public of changes made to RESP pursuant to section 6303 of the Farm Bill.

DATES: Effective May 1, 2019 and remaining in effect until further notice or publication of a regulation.

FOR FURTHER INFORMATION CONTACT: Robert Coates, Engineering Branch, Office of Loan Origination and Approval, 1400 Independence Avenue SW, Stop 1567, (Room 0221), Washington, DC 20250–1567. Telephone: (202) 260–5415. Email: Robert.Coates@wdc.usda.gov.

SUPPLEMENTARY INFORMATION: RUS is amending the funding availability and solicited letters of intent for loan applications under RESP in the **Federal Register** on Monday, August 6, 2018 (83 FR 38273). Since the publication of the NOFA, the Agriculture Improvement Act of 2018, (2018 Farm Bill) became law (Pub. L. 115–334) which included statutory changes to the RESP statute (7 U.S.C. 8107a). The following changes became effective on the date of enactment of the Agriculture Improvement Act of 2018 (December 20, 2018):

1. Cost-effective on-or off grid renewable energy is added to the list of eligible energy efficiency measures;
2. cost-effective storage systems is added to the list of eligible energy efficiency measures;
3. the maximum permitted interest rate that can be charged by a borrower

to a qualified consumer is raised from 3% to 5%; and

4. recurring service bills were added as approved methods of repayment of RESP loans by Qualified consumers to RESP borrowers (the previous statutory language only allowed repayment through the electric service bill).

5. Additionally, the 2018 Farm Bill included new legislative language that directs the Agency not to consider any debt incurred by a borrower under this program in the calculation of the debt-equity ratio of the borrower for purposes of eligibility for loans under the Rural Electrification Act of 1936 (7 U.S.C. 901 *et seq.*).

All new and pending RESP letters of intent as well as all new and pending RESP loan applications will be reviewed consistent with the new statutory provisions. Requests to modify previously approved RESP loan agreements consistent with the new statutory provisions and other relevant law will be considered on a case-by-case basis where RESP funds have not been advanced.

Applicants may amend their application and reapply if they were denied under the existing NOFA of August 6, 2018 (83 FR 38273) or not invited to proceed in the application process if the new statutory provisions apply to their energy efficiency proposal. Such amendments will not interrupt continued acceptance of applications. The current NOFA provided for a first come, first served process, and this process will continue, and any reapplications will move into line with the reapplication date.

In the **Federal Register** on August 6, 2018 (83 FR 38273) make the following correction:

Summary of Changes

1. On page 38275, in the second column, under section A. Program Description, revise the fourth sentence to read as follows:

Loans made by RESP borrowers under this program may be repaid through charges added to the Qualified consumer's recurring service bill for the property or properties for, or at which, energy efficiencies are or will be implemented.

2. On page 38279, in the second column, under d. EE Program Compliance, second paragraph, revise the second sentence to read as follows:

Nonetheless, under no circumstances will the RESP borrower be able to charge more than 5 percent interest rate to its customers.

3. On page 38279, in the second column, under section d. EE Program

Compliance, revise the first sentence in the third paragraph to read as follows:

Qualified consumers must ordinarily repay their loans to the RESP borrower through charges added by the RESP borrower to the consumer's recurring service bill associated with the property where the energy efficiency measures are or will be implemented.

4. On page 38280, in the second column, under the B. Variable frequency drive section, revise (ix) to read as follows:

Efficient cost-effective on- or off-grid renewable energy systems if consistent with the statutory purpose of RESP.

5. On page 38280, in the second column, under B. Variable frequency drive section, revise (x) to read as follows:

Efficient cost-effective energy storage systems if permanently installed to reduce the energy cost or usage of small businesses and families within a rural area.

Chad Rupe,

Acting Administrator, Rural Utilities Service.

[FR Doc. 2019-08796 Filed 4-30-19; 8:45 am]

BILLING CODE P

CIVIL RIGHTS COMMISSION

Sunshine Act Meeting Notice

AGENCY: United States Commission on Civil Rights.

ACTION: Notice of Commission Telephonic Business Meeting.

DATES: Monday, May 6, 2019, at 1:30 p.m. ET.

ADDRESSES: Meeting to take place by telephone.

FOR FURTHER INFORMATION CONTACT: Brian Walch, (202) 376-8371, publicaffairs@usccr.gov.

SUPPLEMENTARY INFORMATION: This business meeting is open to the public by telephone only. Participant access instructions: public call-in line (listen-only): dial 1-800-682-9934; call ID # 796-3908. You can stay abreast of updates at www.usccr.gov and on Twitter and Facebook.

Meeting Agenda

- I. Approval of Agenda.
- II. Discussion of report update following April 12, 2019 public comment session on condition of immigration detention centers and treatment of immigrants in detention.
- III. Adjourn Meeting.

Dated: April 29, 2019.

Brian Walch,

Director, Communications and Public Engagement.

[FR Doc. 2019-09009 Filed 4-29-19; 4:15 pm]

BILLING CODE 6335-01-P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Materials Processing Equipment Technical Advisory Committee; Notice of Partially Closed Meeting

The Materials Processing Equipment Technical Advisory Committee (MPETAC) will meet on May 14, 2019, 9:00 a.m., Room 3884, in the Herbert C. Hoover Building, 14th Street between Pennsylvania and Constitution Avenues NW, Washington, DC The Committee advises the Office of the Assistant Secretary for Export Administration with respect to technical questions that affect the level of export controls applicable to materials processing equipment and related technology.

Agenda

Open Session

1. Opening remarks and introductions.
2. Presentation of papers and comments by the Public.
3. Discussions on results from last, and proposals from last Wassenaar meeting.
4. Report on proposed and recently issued changes to the Export Administration Regulations.
5. Other business.

Closed Session

6. Discussion of matters determined to be exempt from the provisions relating to public meetings found in 5 U.S.C. app. 2 §§ 10 (a) (1) and 10 (a) (3).

The open session will be accessible via teleconference to 20 participants on a first come, first serve basis. To join the conference, submit inquiries to Ms. Yvette Springer at Yvette.Springer@bis.doc.gov, no later than May 7, 2019.

A limited number of seats will be available for the public session. Reservations are not accepted. To the extent that time permits, members of the public may present oral statements to the Committee. The public may submit written statements at any time before or after the meeting. However, to facilitate the distribution of public presentation materials to the Committee members, the Committee suggests that presenters forward the public presentation materials prior to the meeting to Ms. Springer via email.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on April 19, 2019, pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. app. 2 § 10(d)), that the portion of the meeting dealing with matters the premature disclosure of which would be likely to frustrate significantly implementation of a proposed agency action as described in 5 U.S.C. 552b(c)(9)(B) shall be exempt from the provisions relating to public meetings found in 5 U.S.C. app. 2 §§ 10(a) (1) and 10(a) (3). The remaining portions of the meeting will be open to the public.

For more information, call Yvette Springer at (202) 482-2813.

Yvette Springer,

Committee Liaison Officer.

[FR Doc. 2019-08794 Filed 4-30-19; 8:45 am]

BILLING CODE 3510-JT-P

DEPARTMENT OF COMMERCE

International Trade Administration

Initiation of Five-Year (Sunset) Reviews

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: In accordance with the Tariff Act of 1930, as amended (the Act), the Department of Commerce (Commerce) is automatically initiating the five-year reviews (Sunset Reviews) of the antidumping and countervailing duty (AD/CVD) order(s) listed below. The International Trade Commission (the Commission) is publishing concurrently with this notice its notice of *Institution of Five-Year Reviews* which covers the same order(s).

DATES: Applicable (May 1, 2019).

FOR FURTHER INFORMATION CONTACT: Commerce official identified in the *Initiation of Review* section below at AD/CVD Operations, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230. For

information from the Commission contact Mary Messer, Office of Investigations, U.S. International Trade Commission at (202) 205-3193.

SUPPLEMENTARY INFORMATION:

Background

Commerce’s procedures for the conduct of Sunset Reviews are set forth in its *Procedures for Conducting Five-Year (Sunset) Reviews of Antidumping and Countervailing Duty Orders*, 63 FR 13516 (March 20, 1998) and 70 FR 62061 (October 28, 2005). Guidance on methodological or analytical issues relevant to Commerce’s conduct of Sunset Reviews is set forth in *Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Duty Proceedings; Final Modification*, 77 FR 8101 (February 14, 2012).

Initiation of Review

In accordance with section 751(c) of the Act and 19 CFR 351.218(c), we are initiating the Sunset Reviews of the following antidumping and countervailing duty order(s):¹

DOC case No.	ITC case No.	Country	Product	Commerce contact
A-570-914	731-TA-1118	China	Light-Walled Rectangular Pipe and Tube (2nd Review).	Jacqueline Arrowsmith (202) 482-5255.
C-570-915	701-TA-449	China	Light-Walled Rectangular Pipe and Tube (2nd Review).	Joshua Poole (202) 482-1293.
A-570-990	731-TA-1207	China	Prestressed Concrete Steel Rail Tie (1st Review).	Joshua Poole (202) 482-1293.
A-570-929	731-TA-1143	China	Small Diameter Graphite Electrodes (2nd Review).	Joshua Poole (202) 482-1293.
A-201-836	731-TA-1120	Mexico	Light-Walled Rectangular Pipe and Tube (2nd Review).	Jacqueline Arrowsmith (202) 482-5255.
A-201-843	731-TA-1208	Mexico	Prestressed Concrete Steel Rail Tie (1st Review).	Joshua Poole (202) 482-5255.
A-580-859	731-TA-1119	Republic of Korea ...	Light-Walled Rectangular Pipe and Tube (2nd Review).	Jacqueline Arrowsmith (202) 482-5255.
A-489-815	731-TA-1121	Turkey	Light-Walled Rectangular Pipe and Tube (2nd Review).	Jacqueline Arrowsmith (202) 482-5255.

Filing Information

As a courtesy, we are making information related to sunset proceedings, including copies of the pertinent statute and Commerce’s regulations, Commerce’s schedule for Sunset Reviews, a listing of past revocations and continuations, and current service lists, available to the public on Commerce’s website at the following address: <http://>

enforcement.trade.gov/sunset/. All submissions in these Sunset Reviews must be filed in accordance with Commerce’s regulations regarding format, translation, and service of documents. These rules, including electronic filing requirements via Enforcement and Compliance’s Antidumping and Countervailing Duty Centralized Electronic Service System

(ACCESS), can be found at 19 CFR 351.303.²

Any party submitting factual information in an AD/CVD proceeding must certify to the accuracy and completeness of that information.³ Parties must use the certification formats provided in 19 CFR 351.303(g).⁴ Commerce intends to reject factual submissions if the submitting party does

¹ In the sunset initiation notice that published on April 1, 2019 (84 FR 12227) Commerce inadvertently omitted the word “pipe” from the antidumping and countervailing duty cases Circular Welded Carbon Quality Steel Line Pipe from China. Circular Welded Carbon Quality Steel Line Pipe is

the correct case name. This serves as a correction notice.

² See also *Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures*, 76 FR 39263 (July 6, 2011).

³ See section 782(b) of the Act.

⁴ See also *Certification of Factual Information to Import Administration During Antidumping and Countervailing Duty Proceedings*, 78 FR 42678 (July 17, 2013) (*Final Rule*). Answers to frequently asked questions regarding the *Final Rule* are available at http://enforcement.trade.gov/tlei/notices/factual_info_final_rule_FAQ_07172013.pdf.

not comply with applicable revised certification requirements.

On April 10, 2013, Commerce modified two regulations related to AD/CVD proceedings: The definition of factual information (19 CFR 351.102(b)(21)), and the time limits for the submission of factual information (19 CFR 351.301).⁵ Parties are advised to review the final rule, available at <http://enforcement.trade.gov/frn/2013/1304frn/2013-08227.txt>, prior to submitting factual information in these segments. To the extent that other regulations govern the submission of factual information in a segment (such as 19 CFR 351.218), these time limits will continue to be applied. Parties are also advised to review the final rule concerning the extension of time limits for submissions in AD/CVD proceedings, available at <http://enforcement.trade.gov/frn/2013/1309frn/2013-22853.txt>, prior to submitting factual information in these segments.⁶

Letters of Appearance and Administrative Protective Orders

Pursuant to 19 CFR 351.103(d), Commerce will maintain and make available a public service list for these proceedings. Parties wishing to participate in any of these five-year reviews must file letters of appearance as discussed at 19 CFR 351.103(d). To facilitate the timely preparation of the public service list, it is requested that those seeking recognition as interested parties to a proceeding submit an entry of appearance within 10 days of the publication of the Notice of Initiation. Because deadlines in Sunset Reviews can be very short, we urge interested parties who want access to proprietary information under administrative protective order (APO) to file an APO application immediately following publication in the **Federal Register** of this notice of initiation. Commerce's regulations on submission of proprietary information and eligibility to receive access to business proprietary information under APO can be found at 19 CFR 351.304–306.

Information Required From Interested Parties

Domestic interested parties, as defined in section 771(9)(C), (D), (E), (F), and (G) of the Act and 19 CFR 351.102(b), wishing to participate in a Sunset Review must respond not later than 15 days after the date of

⁵ See *Definition of Factual Information and Time Limits for Submission of Factual Information: Final Rule*, 78 FR 21246 (April 10, 2013).

⁶ See *Extension of Time Limits*, 78 FR 57790 (September 20, 2013).

publication in the **Federal Register** of this notice of initiation by filing a notice of intent to participate. The required contents of the notice of intent to participate are set forth at 19 CFR 351.218(d)(1)(ii). In accordance with Commerce's regulations, if we do not receive a notice of intent to participate from at least one domestic interested party by the 15-day deadline, Commerce will automatically revoke the order without further review.⁷

If we receive an order-specific notice of intent to participate from a domestic interested party, Commerce's regulations provide that *all parties* wishing to participate in a Sunset Review must file complete substantive responses not later than 30 days after the date of publication in the **Federal Register** of this notice of initiation. The required contents of a substantive response, on an order-specific basis, are set forth at 19 CFR 351.218(d)(3). Note that certain information requirements differ for respondent and domestic parties. Also, note that Commerce's information requirements are distinct from the Commission's information requirements. Consult Commerce's regulations for information regarding Commerce's conduct of Sunset Reviews. Consult Commerce's regulations at 19 CFR part 351 for definitions of terms and for other general information concerning antidumping and countervailing duty proceedings at Commerce.

This notice of initiation is being published in accordance with section 751(c) of the Act and 19 CFR 351.218(c).

Dated: April 25, 2019.

Gary Taverman,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2019-08825 Filed 4-30-19; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-570-918]

Steel Wire Garment Hangers From the People's Republic of China; 2017–2018; Partial Rescission of the Tenth Antidumping Duty Administrative Review

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: On December 11, 2018, the Department of Commerce (Commerce) published a notice of initiation of an

administrative review of the antidumping duty order on steel wire garment hangers from the People's Republic of China (China). Based on M&B Metal Products Co., Ltd.'s (the petitioner) timely withdrawal of the requests for review of certain companies, we are now rescinding this administrative review for the period October 1, 2017, through September 30, 2018, with respect to two companies.

DATES: Applicable May 1, 2019.

FOR FURTHER INFORMATION CONTACT: Trenton Duncan, 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) 482-3539.

SUPPLEMENTARY INFORMATION:

Background

On October 1, 2018, Commerce published a notice of "Opportunity to Request Administrative Review" of the antidumping order on steel wire garment hangers from China.¹ In October 2018, Commerce received timely requests to conduct administrative reviews of the antidumping duty order on steel wire garment hangers from China from the petitioner and Shanghai Wells Hanger Co., Ltd., and its two affiliates.² Based upon these requests, on December 11, 2018, Commerce published a notice of initiation of an administrative review of the order covering the period October 1, 2017, to September 30, 2018.³ Commerce initiated the administrative review with respect to four companies.⁴ On December 14, 2018, the petitioner withdrew its request for an

¹ See *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 83 FR 49358 (October 1, 2018).

² See the petitioner's letter, "Steel Wire Garment Hangers from China: Petitioner's Request for Tenth Administrative Review," dated October 26, 2018; See Shanghai Wells' letter, "Steel Wire Garment Hangers from the People's Republic of China: Review Request," dated October 31, 2018. In the first administrative review of the Order, Commerce found that Shanghai Wells Hanger Co., Ltd. and Hong Kong Wells Ltd. (collectively Shanghai Wells) are a single entity. See *Steel Wire Garment Hangers from the People's Republic of China: Preliminary Results and Preliminary Rescission, in Part, of the First Antidumping Duty Administrative Review*, 75 FR 68758, 68761 (November 9, 2010), unchanged in *First Administrative Review of Steel Wire Garment Hangers from the People's Republic of China: Final Results and Final Partial Rescission of Antidumping Duty Administrative Review*, 76 FR 27994, 27996 (May 13, 2011).

³ See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 83 FR 63615 (December 11, 2018).

⁴ *Id.*

⁷ See 19 CFR 351.218(d)(1)(iii).

administrative review of two companies.⁵

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, 2019.⁶ If the new deadline falls on a non-business day, in accordance with Commerce's practice, the deadline will become the next business day. Accordingly, the revised deadline for the preliminary results of review is now August 12, 2019.

Partial Rescission

Pursuant to 19 CFR 351.213(d)(1), the Secretary will rescind an administrative review, in whole or in part, if the party who requested the review withdraws the request within 90 days of the date of publication of notice of initiation of the requested review. The petitioner timely withdrew its review request, in part, and no other party requested a review of the companies for which the petitioner requested a review. Of the four companies for which the petitioner requested an administrative review, the petitioner withdrew its request for review of two companies, Hangzhou Qingqing Mechanical Co. Ltd. and Hangzhou Yingqing Material Co. Ltd. Accordingly, we are rescinding this review of steel wire garment hangers from China for the period October 1, 2017, through September 30, 2018, in part, with respect to these entities, in accordance with 19 CFR 351.213(d)(1).

This administrative review will continue with respect to Hong Kong Wells Ltd. and Shanghai Wells Hanger Co., Ltd.

Assessment

Commerce will instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties on all appropriate entries. For the companies for which this review is rescinded, 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 October 1, 2017, to September 30, 2018, in accordance with 19 CFR 351.212(c)(1)(i). Commerce intends to issue appropriate assessment instructions directly to CBP 15 days

⁵ See the petitioner's letter, "Re: Tenth Administrative Review of Steel Wire Garment Hangers from China—Petitioner's Withdrawal of Review Requests for Specific Companies" dated December 14, 2018.

⁶ 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.

after publication of this notice in the **Federal Register**, if appropriate.

Notification to Importers

This notice serves as the only reminder to importers for whom this review is being rescinded, as of the publication date of this notice, 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 the Secretary's presumption that reimbursement of the antidumping duties occurred and the subsequent assessment of double antidumping duties.

Notification Regarding Administrative Protective Orders

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, 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.

Notification to Interested Parties

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: April 25, 2019.

Gary Taverman,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2019-08827 Filed 4-30-19; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

FOR FURTHER INFORMATION CONTACT: Brenda E. Brown, Office of AD/CVD Operations, Customs Liaison Unit, Enforcement and Compliance,

International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230, telephone: (202) 482-4735.

Background

Each year during the anniversary month of the publication of an antidumping or countervailing duty order, finding, or suspended investigation, an interested party, as defined in section 771(9) of the Tariff Act of 1930, as amended (the Act), may request, in accordance with 19 CFR 351.213, that the Department of Commerce (Commerce) conduct an administrative review of that antidumping or countervailing duty order, finding, or suspended investigation.

All deadlines for the submission of comments or actions by Commerce discussed below refer to the number of calendar days from the applicable starting date.

Respondent Selection

In the event Commerce limits the number of respondents for individual examination for administrative reviews initiated pursuant to requests made for the orders identified below, Commerce intends to select respondents based on U.S. Customs and Border Protection (CBP) data for U.S. imports during the period of review. We intend to release the CBP data under Administrative Protective Order (APO) to all parties having an APO within five days of publication of the initiation notice and to make our decision regarding respondent selection within 21 days of publication of the initiation **Federal Register** notice. Therefore, we encourage all parties interested in commenting on respondent selection to submit their APO applications on the date of publication of the initiation notice, or as soon thereafter as possible. Commerce invites comments regarding the CBP data and respondent selection within five days of placement of the CBP data on the record of the review.

In the event Commerce decides it is necessary to limit individual examination of respondents and conduct respondent selection under section 777A(c)(2) of the Act:

In general, Commerce finds that determinations concerning whether particular companies should be "collapsed" (*i.e.*, treated as a single entity for purposes of calculating antidumping duty rates) require a substantial amount of detailed information and analysis, which often require follow-up questions and analysis. Accordingly, Commerce will not conduct collapsing analyses at the

respondent selection phase of a review and will not collapse companies at the respondent selection phase unless there has been a determination to collapse certain companies in a previous segment of this antidumping proceeding (i.e., investigation, administrative review, new shipper review or changed circumstances review). For any company subject to a review, if Commerce determined, or continued to treat, that company as collapsed with others, Commerce will assume that such companies continue to operate in the same manner and will collapse them for respondent selection purposes. Otherwise, Commerce will not collapse companies for purposes of respondent selection. Parties are requested to (a) identify which companies subject to review previously were collapsed, and (b) provide a citation to the proceeding in which they were collapsed. Further, if companies are requested to complete a Quantity and Value Questionnaire for purposes of respondent selection, in general each company must report volume and value data separately for itself. Parties should not include data for any other party, even if they believe they should be treated as a single entity with that other party. If a company was collapsed with another company or companies in the most recently

completed segment of a proceeding where Commerce considered collapsing that entity, complete quantity and value data for that collapsed entity must be submitted.

Deadline for Withdrawal of Request for Administrative Review

Pursuant to 19 CFR 351.213(d)(1), a party that requests a review may withdraw that request within 90 days of the date of publication of the notice of initiation of the requested review. The regulation provides that Commerce may extend this time if it is reasonable to do so. Determinations by Commerce to extend the 90-day deadline will be made on a case-by-case basis.

Deadline for Particular Market Situation Allegation

Section 504 of the Trade Preferences Extension Act of 2015 amended the Act by adding the concept of particular market situation (PMS) for purposes of constructed value under section 773(e) of the Act.¹ Section 773(e) of the Act states that “if a particular market situation exists such that the cost of materials and fabrication or other processing of any kind does not accurately reflect the cost of production in the ordinary course of trade, the administering authority may use

another calculation methodology under this subtitle or any other calculation methodology.” When an interested party submits a PMS allegation pursuant to section 773(e) of the Act, Commerce will respond to such a submission consistent with 19 CFR 351.301(c)(v). If Commerce finds that a PMS exists under section 773(e) of the Act, then it will modify its dumping calculations appropriately.

Neither section 773(e) of the Act nor 19 CFR 351.301(c)(v) set a deadline for the submission of PMS allegations and supporting factual information. However, in order to administer section 773(e) of the Act, Commerce must receive PMS allegations and supporting factual information with enough time to consider the submission. Thus, should an interested party wish to submit a PMS allegation and supporting new factual information pursuant to section 773(e) of the Act, it must do so no later than 20 days after submission of initial Section D responses.

Opportunity to Request a Review: Not later than the last day of May 2019,² interested parties may request administrative review of the following orders, findings, or suspended investigations, with anniversary dates in May for the following periods:

	Period of Review
Antidumping Duty Proceedings	
AUSTRIA: Carbon and Alloy Steel Cut-To-Length Plate, A-433-812	5/1/18-4/30/19
BELGIUM:	
Carbon and Alloy Steel Cut-To-Length Plate, A-423-812	5/1/18-4/30/19
Stainless Steel Plate in Coils, A-423-808	5/1/18-4/30/19
BRAZIL: Iron Construction Castings, A-351-503	5/1/18-4/30/19
CANADA:	
Citric Acid and Citrate Salt, A-122-853	5/1/18-4/30/19
Polyethylene Terephthalate Resin, A-122-855	5/1/18-4/30/19
FRANCE: Carbon and Alloy Steel Cut-To-Length Plate, A-427-828	5/1/18-4/30/19
GERMANY: Carbon and Alloy Steel Cut-To-Length Plate, A-428-844	5/1/18-4/30/19
INDIA:	
Certain Welded Carbon Steel Standard Pipes and Tubes, A-533-502	5/1/18-4/30/19
Polyethylene Terephthalate Resin, A-533-861	5/1/18-4/30/19
Silicomanganese, A-533-823	5/1/18-4/30/19
INDONESIA: Polyethylene Retail Carrier Bags, A-560-822	5/1/18-4/30/19
ITALY:	
Carbon and Alloy Steel Cut-To-Length Plate, A-475-834	5/1/18-4/30/19
Carbon and Alloy Steel Wire Rod, A-475-836	10/31/17-4/30/19
JAPAN:	
Carbon and Alloy Steel Cut-To-Length Plate, A-588-875	5/1/18-4/30/19
Diffusion-Annealed Nickel-Plated Flat-Rolled Steel Products, A-588-869	5/1/18-4/30/19
Gray Portland Cement and Cement Clinker, A-588-815	5/1/18-4/30/19
KAZAKHSTAN: Silicomanganese, A-834-807	5/1/18-4/30/19
OMAN: Polyethylene Terephthalate Resin, A-523-810	5/1/18-4/30/19
PAKISTAN: Circular Welded Carbon-Quality Steel Pipe, ³ A-535-903	12/1/17-11/30/18
REPUBLIC OF KOREA:	
Carbon and Alloy Steel Cut-To-Length Plate, A-580-887	5/1/18-4/30/19
Carbon and Alloy Steel Wire Rod, A-580-891	10/31/17-4/30/19
Ferrovanadium, A-580-886	5/1/18-4/30/19
Polyester Staple Fiber, A-580-839	5/1/18-4/30/19

¹ See Trade Preferences Extension Act of 2015, Pub. L. 114-27, 129 Stat. 362 (2015).

² Or the next business day, if the deadline falls on a weekend, federal holiday or any other day when Commerce is closed.

	Period of Review
SOCIALIST REPUBLIC OF VIETNAM: Polyethylene Retail Carrier Bags, A-552-806	5/1/18-4/30/19
SOUTH AFRICA: Stainless Steel Plate in Coils, A-791-805	5/1/18-4/30/19
SPAIN: Carbon and Alloy Steel Wire Rod, A-469-816	10/31/17-4/30/19
TAIWAN:	
Carbon and Alloy Steel Cut-To-Length Plate, A-583-858	5/1/18-4/30/19
Certain Circular Welded Carbon Steel Pipes and Tubes, A-583-008	5/1/18-4/30/19
Polyester Staple Fiber, A-583-833	5/1/18-4/30/19
Polyethylene Retail Carrier Bags, A-583-843	5/1/18-4/30/19
Stainless Steel Plate in Coil, A-583-830	5/1/18-4/30/19
Stilbenic Optical Brightening Agents, A-583-848	5/1/18-4/30/19
THE PEOPLE'S REPUBLIC OF CHINA:	
1-Hydroxyethylidene-1, 1-Diphosphonic Acid (Hedp), A-570-045	5/1/18-4/30/19
Aluminum Extrusions, A-570-967	5/1/18-4/30/19
Carton-Closing Staples, A-570-055	11/3/17-4/30/2018
Circular Welded Carbon Quality Steel Line Pipe, A-570-935	5/1/18-4/30/19
Citric Acid and Citrate Salt, A-570-937	5/1/18-4/30/19
Iron Construction Castings, A-570-502	5/1/18-4/30/19
Oil Country Tubular Goods, A-570-943	5/1/18-4/30/19
Polyethylene Terephthalate Resin, A-570-024	5/1/18-4/30/19
Pure Magnesium, A-570-832	5/1/18-4/30/19
Stilbenic Optical Brightening Agents, A-570-972	5/1/18-4/30/19
TURKEY:	
Carbon and Alloy Steel Wire Rod, A-489-831	10/31/17-4/30/19
Circular Welded Carbon Steel Pipes and Tubes, A-489-501	5/1/18-4/30/19
Light-Walled Rectangular Pipe and Tube, A-489-815	5/1/18-4/30/19
UNITED ARAB EMIRATES: Steel Nails, A-520-804	5/1/18-4/30/19
THE UNITED KINGDOM: Carbon and Alloy Steel Wire Rod, A-412-826	10/31/17-4/30/19
VENEZUELA: Silicomanganese, A-307-820	5/1/18-4/30/19
Countervailing Duty Proceedings	
BRAZIL: Iron Construction Castings, C-351-504	1/1/18-12/31/18
INDIA: Polyethylene Terephthalate Resin, C-533-862	1/1/18-12/31/18
ITALY: Carbon and Alloy Steel Wire Rod, C-475-837	9/5/2017-12/31/2018
REPUBLIC OF KOREA: Carbon and Alloy Steel Cut-To-Length Plate, C-580-888	1/1/18-12/31/18
SOCIALIST REPUBLIC OF VIETNAM: Polyethylene Retail Carrier Bags, C-552-805	1/1/18-12/31/18
SOUTH AFRICA: Stainless Steel Plate in Coils, C-791-806	1/1/18-12/31/18
THE PEOPLE'S REPUBLIC OF CHINA:	
1-Hydroxyethylidene-1, 1-Diphosphonic Acid (Hedp), C-570-046	1/1/18-12/31/18
Aluminum Extrusions, C-570-968	1/1/18-12/31/18
Citric Acid and Citrate Salt, C-570-938	1/1/18-12/31/18
Polyethylene Terephthalate Resin, C-570-025	1/1/18-12/31/18

Suspension Agreements

None.

In accordance with 19 CFR 351.213(b), an interested party as defined by section 771(9) of the Act may request in writing that the Secretary conduct an administrative review. For both antidumping and countervailing duty reviews, the interested party must specify the individual producers or exporters covered by an antidumping finding or an antidumping or countervailing duty order or suspension agreement for which it is requesting a review. In addition, a domestic interested party or an interested party described in section 771(9)(B) of the Act must state why it desires the Secretary to review those particular producers or

exporters. If the interested party intends for the Secretary to review sales of merchandise by an exporter (or a producer if that producer also exports merchandise from other suppliers) which was produced in more than one country of origin and each country of origin is subject to a separate order, then the interested party must state specifically, on an order-by-order basis, which exporter(s) the request is intended to cover.

Note that, for any party Commerce was unable to locate in prior segments, Commerce will not accept a request for an administrative review of that party absent new information as to the party's location. Moreover, if the interested party who files a request for review is unable to locate the producer or exporter for which it requested the review, the interested party must provide an explanation of the attempts it made to locate the producer or exporter at the same time it files its request for review, in order for the Secretary to determine if the interested

party's attempts were reasonable, pursuant to 19 CFR 351.303(f)(3)(ii).

As explained in *Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003), and *Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties*, 76 FR 65694 (October 24, 2011), Commerce clarified its practice with respect to the collection of final antidumping duties on imports of merchandise where intermediate firms are involved. The public should be aware of this clarification in determining whether to request an administrative review of merchandise subject to antidumping findings and orders.⁴

Commerce no longer considers the non-market economy (NME) entity as an exporter conditionally subject to antidumping duty administrative

³ In the Opportunity to Request Administrative Review Notice that published on December 3, 2018 (83 FR 62293), Commerce inadvertently listed the incorrect case number for Circular Welded Carbon-Quality Steel Pipe from Pakistan as A-553-903. Commerce is hereby correcting this case number to A-535-903.

⁴ See also the Enforcement and Compliance website at <http://trade.gov/enforcement/>.

reviews.⁵ Accordingly, the NME entity will not be under review unless Commerce specifically receives a request for, or self-initiates, a review of the NME entity.⁶ In administrative reviews of antidumping duty orders on merchandise from NME countries where a review of the NME entity has not been initiated, but where an individual exporter for which a review was initiated does not qualify for a separate rate, Commerce will issue a final decision indicating that the company in question is part of the NME entity. However, in that situation, because no review of the NME entity was conducted, the NME entity's entries were not subject to the review and the rate for the NME entity is not subject to change as a result of that review (although the rate for the individual exporter may change as a function of the finding that the exporter is part of the NME entity). Following initiation of an antidumping administrative review when there is no review requested of the NME entity, Commerce will instruct CBP to liquidate entries for all exporters not named in the initiation notice, including those that were suspended at the NME entity rate.

All requests must be filed electronically in Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS) on Enforcement and Compliance's ACCESS website at <http://access.trade.gov>.⁷ Further, in accordance with 19 CFR 351.303(f)(1)(i), a copy of each request must be served on the petitioner and each exporter or producer specified in the request.

Commerce will publish in the **Federal Register** a notice of "Initiation of Administrative Review of Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation" for requests received by the last day of May 2019. If Commerce does not receive, by the last day of May 2019, a request for review of entries covered by an order, finding, or suspended investigation listed in this notice and for the period identified above, Commerce will

⁵ See *Antidumping Proceedings: Announcement of Change in Department Practice for Respondent Selection in Antidumping Duty Proceedings and Conditional Review of the Nonmarket Economy Entity in NME Antidumping Duty Proceedings*, 78 FR 65963 (November 4, 2013).

⁶ In accordance with 19 CFR 351.213(b)(1), parties should specify that they are requesting a review of entries from exporters comprising the entity, and to the extent possible, include the names of such exporters in their request.

⁷ See *Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures*, 76 FR 39263 (July 6, 2011).

instruct CBP to assess antidumping or countervailing duties on those entries at a rate equal to the cash deposit of estimated antidumping or countervailing duties required on those entries at the time of entry, or withdrawal from warehouse, for consumption and to continue to collect the cash deposit previously ordered.

For the first administrative review of any order, there will be no assessment of antidumping or countervailing duties on entries of subject merchandise entered, or withdrawn from warehouse, for consumption during the relevant provisional-measures "gap" period of the order, if such a gap period is applicable to the period of review.

This notice is not required by statute but is published as a service to the international trading community.

Dated: April 22, 2019.

James Maeder,

Associate Deputy Assistant Director for Antidumping and Countervailing Duty Operations performing the duties of Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2019-08824 Filed 4-30-19; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

[C-533-884]

Countervailing Duty Investigation of Glycine From India: Affirmative Final 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 glycine from India during the period of investigation (POI), January 1, 2017, through December 31, 2017.

DATES: Applicable May 1, 2019.

FOR FURTHER INFORMATION CONTACT: Davina Friedmann or Julie Geiger, AD/CVD Operations, Office VI, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone (202) 482-0698 and (202) 482-2057, respectively.

SUPPLEMENTARY INFORMATION:

Background

On September 4, 2018, Commerce published in the **Federal Register** the *Preliminary Determination* in the countervailing duty (CVD) investigation

of glycine from India, which aligned the final determination in this CVD investigation with the final determination in the companion antidumping duty (AD) investigation of glycine from India.¹ A summary of the events that occurred since Commerce published the *Preliminary Determination* may be found in the Issues and Decision Memorandum that is dated concurrently with this determination and hereby 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. Accordingly, the revised deadline for the final determination is now April 24, 2019.

Period of Investigation

The POI is January 1, 2017, through December 31, 2017.

Scope of the Investigation

The product covered by this investigation is glycine from India. For a complete description of the scope of this investigation, see Appendix I.

Scope Comments

We invited parties to comment on Commerce's Preliminary Scope Decision Memorandum.⁴ Commerce has reviewed the briefs submitted by interested parties, considered the arguments therein, and has made no changes to the scope of the

¹ See *Glycine from India: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Determination with Final Antidumping Duty Determination*, 83 FR 44859 (September 4, 2018) (*Preliminary Determination*), and accompanying Memorandum, "Decision Memorandum for the Affirmative Preliminary Determination: Countervailing Duty Investigation of Glycine from India," dated August 27, 2018.

² See Memorandum, "Issues and Decision Memorandum for the Final Determination of the Countervailing Duty Investigation of Glycine from India," dated concurrently with, and hereby adopted by, this notice (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, "Glycine from India, Japan, the People's Republic of China and Thailand: Scope Comments Decision Memorandum for the Preliminary Determinations," dated August 27, 2018 (Preliminary Scope Decision Memorandum).

investigation. For further discussion, see Commerce's Scope Comments Final Decision Memorandum.⁵

Analysis of Comments Received

All issues raised in the parties' briefs are addressed in the Issues and Decision Memorandum, dated concurrently with, and hereby adopted by, this notice. A list of issues addressed is attached as Appendix II to this notice. The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at <http://access.trade.gov>; the Issues and Decision Memorandum is available to all parties in the Central Records Unit (CRU), 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/>. The signed and electronic versions of the Issues and Decision Memorandum are identical in content.

Methodology

Commerce conducted this investigation in accordance with section 701 of the Tariff Act of 1930, as amended (the Act). For each subsidy program 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 Act, in September and October 2018, we conducted verification of the information reported by the Government of India, mandatory respondents Kumar Industries, India (Kumar) and Paras Intermediates Private Limited (Paras), as well as Avid Organics, Private Limited (Avid), for use in the final determination. We used standard verification procedures, including an examination of relevant accounting

⁵ See Memorandum, "Glycine from India, Japan, the People's Republic of China and Thailand: Scope Comments Decision Memorandum for the Final Determinations," dated April 24, 2019 (Scope Comments Final Decision Memorandum).

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.

records and original source documents provided by the respondents.⁷

Changes Since the Preliminary Determination

Based on our analysis of comments received, as well as minor corrections and additional items discovered at verification, we made certain changes to the respondents' subsidy rate calculations set forth in the *Preliminary Determination*. As a result of these changes, we have also revised the "all-others" rate. For a discussion of these changes, see the Issues and Decision Memorandum and the Final Calculation Memoranda.⁸

All-Others Rate

In accordance with section 705(c)(1)(B)(i)(I) of the Act, Commerce calculated a countervailable subsidy rate for the individually examined exporters/producers of subject merchandise. Section 705(c)(5)(A) of the Act provides that 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. In this investigation, we calculated individual estimated countervailable subsidy rates for Kumar and Paras that are not zero, *de minimis*, or based entirely on facts available. Because we do not have publicly ranged data from all company respondents with which to calculate the all-others rate using a weighted-average of individual

⁷ See Memorandum, "Countervailing Duty Investigation of Glycine from India; Verification of Verification of Paras Intermediates Private Limited," dated November 23, 2018 (Paras Verification Report); see also Memorandum, "Countervailing Duty Investigation of Glycine from India; Verification of the Questionnaire Responses Submitted by the Government of India," dated December 11, 2018 (GOI Verification Report); Memorandum, "Countervailing Duty Investigation of Glycine from India; Verification of Kumar Industries, India Questionnaire Responses," dated December 11, 2018 (Kumar Verification Report); Memorandum, "Countervailing Duty Investigation of Glycine from India; Verification of Avid Organics Pvt. Ltd. Questionnaire Responses," dated December 13, 2018 (Avid Verification Report).

⁸ See Memoranda, "Final Determination of Countervailing Duty Investigation of Glycine from India: Calculation Memorandum for Kumar Industries, India," "Final Determination of Countervailing Duty Investigation of Glycine from India: Calculation Memorandum for Avid Organics Pvt. Ltd.," and "Final Determination of Countervailing Duty Investigation of Glycine from India: Calculation Memorandum for Paras Intermediates Private Limited," each dated concurrently with this notice (Final Calculation Memoranda).

estimated subsidy rates, pursuant to our practice,⁹ we calculated a simple average of the two responding companies' rates.

Final Determination

Commerce determines that the following final countervailable subsidy rates exist for this investigation:

Company	Subsidy rate (percent)
Kumar Industries, India	6.99
Paras Intermediates Private Limited	3.03
All Others	5.01

Disclosure

Commerce intends to disclose to interested parties the calculations performed in connection with this final determination within five days of any public announcement of our final determination in the **Federal Register**, in accordance with 19 CFR 351.224(b).

Continuation of Suspension of Liquidation

As a result of our *Preliminary Determination*, and pursuant to sections 703(d)(1)(B) and (2) of the Act, we instructed U.S. Customs and Border Protection (CBP) to suspend liquidation of all entries of merchandise under consideration from India that were entered or withdrawn from warehouse, for consumption, on or after September 4, 2018, 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 January 2, 2019, but to continue the suspension of liquidation of all entries from September 4, 2018, through January 1, 2019.

If the U.S. International Trade Commission (the ITC) issues a final affirmative injury determination, we will issue a CVD order and will reinstate the suspension of liquidation under section 706(a) of the Act and will 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

⁹ See, *e.g.*, *Countervailing Duty Investigation of Fine Denier Polyester Staple Fiber from the People's Republic of China: Final Affirmative Determination*, 83 FR 3120, 3121 (January 23, 2018).

a result of the suspension of liquidation will be refunded or canceled.

International Trade Commission Notification

In accordance with section 705(d) of the Act, we will notify the ITC of our final determination. Because Commerce's final determination is affirmative, in accordance with section 705(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 glycine, 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 posted will be refunded. If the ITC determines that such injury does exist, Commerce will issue a countervailing duty order directing CBP to assess, upon further instruction by Commerce, countervailing 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 "Suspension of Liquidation" section.

Notification Regarding Administrative Protective Orders

This notice will serve as a reminder to the parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305. 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 terms of an APO is a sanctionable violation.

Notification to Interested Parties

This determination is issued and published in accordance with sections 705(d) and 777(i)(1) of the Act and 19 CFR 351.210(c).

Dated: April 24, 2019.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

Appendix I

Scope of the Investigation

The merchandise covered by this investigation is glycine at any purity level or grade. This includes glycine of all purity levels, which covers all forms of crude or technical glycine including, but not limited to, sodium glycinate, glycine slurry and any other forms of amino acetic acid or glycine.

Subject merchandise also includes glycine and precursors of dried crystalline glycine that are processed in a third country, including, but not limited to, refining or any other processing that would not otherwise remove the merchandise from the scope of this investigation if performed in the country of manufacture of the in-scope glycine or precursors of dried crystalline glycine. Glycine has the Chemical Abstracts Service (CAS) registry number of 56-40-6. Glycine and glycine slurry are classified under Harmonized Tariff Schedule of the United States (HTSUS) subheading 2922.49.43.00. Sodium glycinate is classified in the HTSUS under 2922.49.80.00. While the HTSUS subheadings and CAS registry number 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 Investigation
- IV. Scope Comments
- V. Changes from the Preliminary Determination
- VI. Subsidies Valuation Information
- VII. Analysis of Programs
 1. Duty Drawback Program
 2. Merchandise Export from India Scheme
 3. Export Promotion of Capital Goods Scheme
 4. Status Holder Incentive Scrip Scheme
 5. Land for Less than Adequate Remuneration
 6. State Government of Gujarat Water Supply Program
- VIII. Discussion of the Issues

Comment 1: Commerce's Reliance on Past Determinations

Comment 2: Calculation of Kumar's Subsidy Rate

Comment 3: Land for Less Than Adequate Remuneration by the Gujarat Industrial Development Corporation

Comment 4: Duty Drawback Program Countervailability

Comment 5: Export Promotion of Capital Goods Scheme Countervailability

Comment 6: Status Holder Incentive Scrip Program Countervailability

Comment 7: Merchandise Exporter Incentive Scheme Countervailability

Comment 8: State Government of Gujarat Water Supply Program Countervailability
- IX. Recommendation

[FR Doc. 2019-08830 Filed 4-30-19; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-588-878]

Glycine From Japan: 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 glycine from Japan 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 May 1, 2019.

FOR FURTHER INFORMATION CONTACT:

Madeline Heeren or John McGowan, AD/CVD Operations, Office VI, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482-9179 or (202) 482-3019, respectively.

SUPPLEMENTARY INFORMATION:

Background

On October 31, 2018, Commerce published in the *Federal Register* the *Preliminary Determination* of sales at LTFV of glycine from Japan.¹ 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.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

¹ See *Glycine from Japan: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 83 FR 54718 (October 31, 2018) (*Preliminary Determination*) and accompanying memorandum, "Decision Memorandum for the Preliminary Determination in the Less-Than-Fair-Value Investigation of Glycine from Japan" (PDM).

² See Memorandum, "Issues and Decision Memorandum for the Final Affirmative Determination in the Less-Than-Fair-Value Investigation of Glycine from Japan," dated concurrently with this determination 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.

become the next business day. Accordingly, the revised deadline for the final determination of this investigation is now April 24, 2019.

Period of Investigation

The POI is January 1, 2017, through December 31, 2017.

Scope of the Investigation

The product covered by this investigation is glycine from Japan. For a complete description of the scope of this investigation, see Appendix I.

Scope Comments

We invited parties to comment on Commerce's Preliminary Scope Decision Memorandum.⁴ Commerce has reviewed the briefs submitted by interested parties, considered the arguments therein, and has made no changes to the scope of the investigation. For further discussion, see Commerce's Scope Comments Final Decision Memorandum.⁵

Analysis of Comments Received

All issues raised in the case briefs and rebuttal briefs submitted by interested parties in this proceeding are discussed in the Issues and Decision Memorandum. A list of the issues raised by parties and responded to by Commerce in the Issues and Decision Memorandum is attached at Appendix II. The Issues and Decision Memorandum is a public document and is available 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 B-8024 of Commerce's main building. In addition, a complete version of the Issues and Decision Memorandum can be accessed at <http://enforcement.trade.gov/frn/>. The signed Issues and Decision Memorandum and electronic version are identical in content.

Verification

As provided in section 782(i) of the Tariff Act of 1930, as amended (the Act), Commerce verified the sales and cost data reported by Yuki Gosei Kogyo Co., Ltd. (Yuki Gosei), as well as affiliations, corporate structure, and U.S. sales

⁴ See Memorandum, "Glycine from India, Japan, the People's Republic of China and Thailand: Scope Comments Decision Memorandum for the Preliminary Determinations," dated August 27, 2018 (Preliminary Scope Decision Memorandum).

⁵ See Memorandum, "Glycine from India, Japan, the People's Republic of China and Thailand: Scope Comments Decision Memorandum for the Final Determinations," dated April 24, 2019.

reported by Nagase & Co., Ltd. (Nagase) 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 the respondents.⁶

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 Yuki Gosei since the *Preliminary Determination*. 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 individually investigated exporters and producers, excluding any margins that are zero or *de minimis* or any margins determined entirely under section 776 of the Act. In this investigation, Commerce assigned a rate based entirely on adverse facts available to Showa Denko K. K. (Showa Denko). We did not calculate a company-specific rate for Nagase.⁷ The cash deposit rate requirements for Nagase will be determined consistent with the "Continuation of Suspension of Liquidation" section of this notice. Therefore, the only rate that is not zero, *de minimis*, or based entirely on facts otherwise available is the rate calculated for Yuki Gosei. Consequently, the rate calculated for Yuki Gosei is also assigned as the rate for all other producers and exporters.

Final Determination

The weighted-average dumping margins are as follows:

⁶ See Memorandum, "Verification of the Sales Response of Yuki Gosei Kogyo, Ltd. in the Antidumping Investigation of Glycine from Japan," dated February 5, 2019 (Yuki Gosei Sales Verification Report); see also Memorandum, and "Verification of the Cost Response of Yuki Gosei Kogyo Co., Ltd. in the Antidumping Duty Investigation of Glycine from Japan," dated December 18, 2018 (Yuki Gosei Cost Verification Report); Memorandum, "Verification of the Questionnaire Responses of Nagase & Co., Ltd. in the Less-Than-Fair-Value Investigation of Glycine from Japan," dated February 5, 2019 (Nagase Verification Report).

⁷ See *Preliminary Determination*, and accompanying PDM at 4-5, and 13-14.

Exporter/producer	Weighted-average margins (percent)
Yuki Gosei Kogyo	53.66
Showa Denko K.K.	86.22
All Others	53.66

Disclosure

We will disclose the calculations performed in this final determination within five days of any public announcement of this notice 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 glycine, as described in Appendix I of this notice, which are entered, or withdrawn from warehouse, for consumption on or after October 31, 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. Because the final determination in this proceeding 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 glycine from Japan 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 intends to 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.

Notification Regarding Administrative Protective Orders

This notice serves as the only 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 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 the terms of an APO is a violation subject to sanction.

Notification to Interested Parties

This determination and this notice are issued and published pursuant to sections 735(d) and 777(i) of the Act and 19 CFR 351.210(c).

Dated: April 24, 2019.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

Appendix I

Scope of the Investigation

The merchandise covered by this investigation is glycine at any purity level or

grade. This includes glycine of all purity levels, which covers all forms of crude or technical glycine including, but not limited to, sodium glycinate, glycine slurry and any other forms of amino acetic acid or glycine. Subject merchandise also includes glycine and precursors of dried crystalline glycine that are processed in a third country, including, but not limited to, refining or any other processing that would not otherwise remove the merchandise from the scope of this investigation if performed in the country of manufacture of the in-scope glycine or precursors of dried crystalline glycine. Glycine has the Chemical Abstracts Service (CAS) registry number of 56-40-6. Glycine and glycine slurry are classified under Harmonized Tariff Schedule of the United States (HTSUS) subheading 2922.49.43.00. Sodium glycinate is classified in the HTSUS under 2922.49.80.00. While the HTSUS subheadings and CAS registry number 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. Period of the Investigation
- IV. Scope of the Investigation
- V. Changes Since the Preliminary Determination
- VI. Discussion of the Issues
 - Comment 1: Adjustment of General and Administrative Expense Ratio for Research and Development Expenses
 - Comment 2: Adjustment of Indirect Selling Expense in Calculating the Financial Expense Ratio for Self-Produced Sales
 - Comment 3: Inclusion of Commission Fees in Financial Expense Ratio for Self-Produced Sales
 - Comment 4: Adjustment of Cost Data To Account for Returns
 - Comment 5: Adjustment of Warehouse Expenses
 - Comment 6: Incorrect Invoice Dates
 - Comment 7: Treatment of Nagase for the Final Determination

VII. Recommendation

[FR Doc. 2019-08829 Filed 4-30-19; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Advance Notification of Sunset Review

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

Background

Every five years, pursuant to the Tariff Act of 1930, as amended (the Act), the Department of Commerce (Commerce) and the International Trade Commission automatically initiate and conduct reviews to determine whether revocation of a countervailing or antidumping duty order or termination of an investigation suspended under section 704 or 734 of the Act would be likely to lead to continuation or recurrence of dumping or a countervailable subsidy (as the case may be) and of material injury.

Upcoming Sunset Reviews for June 2019

Pursuant to section 751(c) of the Act, the following Sunset Reviews are scheduled for initiation in June 2019 and will appear in that month's *Notice of Initiation of Five-Year Sunset Reviews* (Sunset Review).

	Department Contact
Antidumping Duty Proceedings	
Carbon and Certain Alloy Steel Wire Rod from Brazil (A-351-832) (3rd Review)	Joshua Poole, (202) 482-1293.
Circular Welded Austenitic Stainless Pressure Pipe from China (A-570-930) (2nd Review)	Matthew Renkey, (202) 482-2312.
Carbon and Certain Alloy Steel Wire Rod from Brazil (A-351-832) (3rd Review)	Joshua Poole, (202) 482-1293.
Carbon and Certain Alloy Steel Wire Rod from Indonesia (A-560-815) (3rd Review)	Matthew Renkey, (202) 482-2312.
Welded Stainless Steel Pressure from Malaysia (A-557-815) (1st Review)	Matthew Renkey, (202) 482-2312.
Carbon and Certain Alloy Steel Wire Rod from Moldova (A-841-805) (3rd Review)	Joshua Poole, (202) 482-1293.
Silicon Metal from Russia (A-821-817) (3rd Review)	Jacqueline Arrowsmith, (202) 482-5255.
Welded Stainless Steel Pressure from Socialist of Vietnam (A-552-816) (1st Review)	Matthew Renkey, (202) 482-2312.
Welded Stainless Steel Pressure from Thailand (A-549-830) (1st Review)	Matthew Renkey, (202) 482-2312.
Carbon and Certain Alloy Steel Wire Rod from Trinidad and Tobago (A-274-804) (3rd Review)	Joshua Poole, (202) 482-1293.
Countervailing Duty Proceedings	
Carbon and Certain Alloy Steel Wire Rod from Brazil (C-351-833) (3rd Review)	Joshua Poole, (202) 482-1293.
Circular Welded Austenitic Stainless Pressure Pipe from China (C-570-931) (2nd Review)	Joshua Poole, (202) 482-1293.
Suspended Investigations	
Oil Country Tubular Goods from Ukraine (A-823-815) (1st Review)	Matthew Renkey, (202) 482-2312.

Commerce's procedures for the conduct of Sunset Review are set forth in 19 CFR 351.218. The *Notice of Initiation of Five-Year (Sunset) Review* provides further information regarding what is required of all parties to participate in Sunset Review.

Pursuant to 19 CFR 351.103(c), Commerce will maintain and make available a service list for these proceedings. To facilitate the timely preparation of the service list(s), it is requested that those seeking recognition as interested parties to a proceeding contact Commerce in writing within 10 days of the publication of the Notice of Initiation.

Please note that if Commerce receives a Notice of Intent to Participate from a member of the domestic industry within 15 days of the date of initiation, the review will continue.

Thereafter, any interested party wishing to participate in the Sunset Review must provide substantive comments in response to the notice of initiation no later than 30 days after the date of initiation.

This notice is not required by statute but is published as a service to the international trading community.

Dated: April 22, 2019.

James Maeder,

Associate Deputy Assistant Director for Antidumping and Countervailing Duty Operations performing the duties of Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2019-08823 Filed 4-30-19; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-533-883]

Glycine From India: 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 glycine from India 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 May 1, 2019.

FOR FURTHER INFORMATION CONTACT: Edythe Artman or Kent Boydston, AD/CVD Operations, Office VI, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue

NW, Washington, DC 20230; telephone: (202) 482-3931 or (202) 482-5649, respectively.

SUPPLEMENTARY INFORMATION:

Background

On October 31, 2018, Commerce published in the *Federal Register* the *Preliminary Determination of Sales at LTFV of glycine from India*.¹ 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.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. Accordingly, the revised deadline for the final determination of this investigation is now April 24, 2019.

Period of Investigation

The POI is January 1, 2017, through December 31, 2017.

Scope of the Investigation

The product covered by this investigation is glycine from India. For a complete description of the scope of this investigation, see Appendix I.

Scope Comments

We invited parties to comment on Commerce's Preliminary Scope Decision Memorandum.⁴ Commerce has reviewed the briefs submitted by interested parties, considered the arguments therein, and has made no changes to the scope of the investigation. For further discussion, see

¹ See *Glycine from India: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Extension of Provisional Measures*, 83 FR 54713 (October 31, 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 Glycine from India," dated concurrently with this determination 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 "Glycine from India, Japan, the People's Republic of China and Thailand: Scope Comments Decision Memorandum for the Preliminary Determinations," dated August 27, 2018 (Preliminary Scope Decision Memorandum).

Commerce's Scope Comments Final Decision Memorandum.⁵

Analysis of Comments Received

All issues raised in the case briefs and rebuttal briefs submitted by interested parties in this proceeding are discussed in the Issues and Decision Memorandum. A list of the issues raised by parties and responded to by Commerce in the Issues and Decision Memorandum is attached at Appendix II. The Issues and Decision Memorandum is a public document and is available 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 B-8024 of Commerce's main building. In addition, a complete version of the Issues and Decision Memorandum can be accessed at <http://enforcement.trade.gov/frn/>. The signed Issues and Decision Memorandum and electronic version are identical in content.

Verifications

As provided in section 782(i) of the Tariff Act of 1930, as amended (the Act), Commerce verified the sales and cost data reported by Kumar Industries, India (Kumar), and Paras Intermediates Private Limited (Paras) 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 the respondents.

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 Kumar and Paras since the *Preliminary Determination*. 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 individually investigated

⁵ See Memorandum, "Glycine from India, Japan, the People's Republic of China and Thailand: Scope Comments Decision Memorandum for the Final Determinations," dated April 24, 2019.

exporters and producers, excluding any margins that are zero or *de minimis* or any margins determined entirely under section 776 of the Act. In this investigation, Commerce calculated a company-specific rate for Kumar and Paras. Consequently, the weighted average of the rates calculated for the two companies will be assigned as the rate for all other producers and exporters.

Final Determination

The weighted-average dumping margins are as follows:

Exporter/pro-ducer	Estimated weighted-average dumping margin (percent)	Cash deposit rate (adjusted for subsidy offset(s)) (percent)
Kumar Industries, India	⁶ 7.75	0.76
Paras Intermediates Private Limited	⁷ 10.86	7.83
All Others	9.31	4.30

Disclosure

We will disclose the calculations performed in this final determination within five days of any public announcement of this notice 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 glycine from India, as described in Appendix I of this notice, which are entered, or withdrawn from warehouse, for consumption on or after October 31, 2018, the date of publication in the **Federal Register** of the affirmative *Preliminary Determination*.

Further, Commerce 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 (CVD) investigation. Consistent with our longstanding practice, where the product under

investigation is also subject to a concurrent CVD 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 CVD 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 CVD investigation of glycine from India, 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 CVD investigation, and so long as suspension of liquidation continues under this antidumping duty investigation, the cash deposit rates for this antidumping 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. Because the final determination in this proceeding 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 glycine from India 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 intends to 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.

⁶ See Memorandum to the File, "Final Determination Margin Calculation Memorandum for Kumar Industries, India", dated concurrently with this memorandum.

⁷ See Analysis Memorandum for Paras, "Analysis of Data Submitted by Paras Intermediates Private Limited in the Final Determination of the Antidumping Duty Investigation of Glycine from India," dated concurrently with this memorandum.

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).

Notification Regarding Administrative Protective Orders

This notice serves as the only 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 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 the terms of an APO is a violation subject to sanction.

Notification to Interested Parties

This determination and this notice are issued and published pursuant to sections 735(d) and 777(i) of the Act and 19 CFR 351.210(c).

Dated: April 24, 2019.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

Appendix I

Scope of the Investigation

The merchandise covered by this investigation is glycine at any purity level or grade. This includes glycine of all purity levels, which covers all forms of crude or technical glycine including, but not limited to, sodium glycinate, glycine slurry and any other forms of amino acetic acid or glycine. Subject merchandise also includes glycine and precursors of dried crystalline glycine that are processed in a third country, including, but not limited to, refining or any other processing that would not otherwise remove the merchandise from the scope of this investigation if performed in the country of manufacture of the in-scope glycine or precursors of dried crystalline glycine. Glycine has the Chemical Abstracts Service (CAS) registry number of 56-40-6. Glycine and glycine slurry are classified under Harmonized Tariff Schedule of the United States (HTSUS) subheading 2922.49.43.00. Sodium glycinate is classified in the HTSUS under 2922.49.80.00. While the HTSUS subheadings and CAS registry number 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. Period of Investigation
- IV. Scope of the Investigation
- V. Adjustment for Countervailable Export Subsidies
- VI. Changes Since the Preliminary Determination
- VII. Discussion of the Issues
 - Comment 1: Application of Total Adverse Facts Available to Kumar
 - Comment 2: Paras' Contributions for Corporate Social Responsibility

Comment 3: Calculation of Paras' Short-term Interest Income
 VIII. Recommendation
 [FR Doc. 2019-08831 Filed 4-30-19; 8:45 am]
 BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration
 [C-570-081]

Glycine From the People's Republic of China: 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 glycine from the People's Republic of China (China) for the period of investigation (POI) January 1, 2017, through December 31, 2017.

DATES: Applicable May 1, 2019.

FOR FURTHER INFORMATION CONTACT: Yasmin Bordas or Tyler Weinhold, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482-3813 or (202) 482-0121, respectively.

SUPPLEMENTARY INFORMATION:

Background

This final determination is made in accordance with section 705 of the Tariff Act of 1930, as amended (the Act). The petitioners in this investigation are GEO Specialty Chemicals, Inc. and Chattem Chemicals, Inc. (the petitioners).¹ The mandatory respondents in this investigation are JC Chemicals Limited and Simagchem Corp. Neither the mandatory respondents nor the Government of China responded to our requests for information in this investigation. On September 4, 2018, Commerce published in the *Federal Register* the *Preliminary Determination* and invited interested parties to comment.² We received no comments regarding the *Preliminary Determination* but did receive scope comments from certain

¹ See Petitioners' letter, "Glycine from the People's Republic of China, India, Japan and Thailand: Petitions for the Imposition of Antidumping and Countervailing Duties," dated March 28, 2018 (Petition).

² See *Glycine From the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination*, 83 FR 44863 (September 4, 2018) (*Preliminary Determination*), and the accompanying Preliminary Decision Memorandum.

interested parties. 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 Accordingly, the revised deadline for the final determination is now April 24, 2019.

Period of Investigation

The period of investigation is January 1, 2017, through December 31, 2017.

Scope Comments

We invited parties to comment on Commerce's Preliminary Scope Decision Memorandum.⁴ In October 2018, we received timely scope comments from Ajinomoto Health and Nutrition North America, and the petitioners, GEO Specialty Chemicals, Inc., and Chattem Chemicals, Inc., filed rebuttal scope comments.⁵ We issued a final scope decision memorandum, concurrent with this final determination, in response to these comments.⁶ We made no changes to the scope of the investigation since the *Preliminary Determination*.

Commerce has reviewed the comments submitted by interested parties, considered the arguments therein, and has made no changes to the scope of the investigation. For further discussion, see Commerce's Scope Comments Final Decision Memorandum.⁷

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 investigation affected by the partial federal government closure have been extended by 40 days. If the new deadline falls on a non-business day, in accordance with Commerce's practice, the deadline will become the next business day.

⁴ See Memorandum, "Glycine from India, Japan, the People's Republic of China and Thailand: Scope Comments Decision Memorandum for the Preliminary Determinations," dated August 27, 2018.

⁵ See Letter from AHN, "Glycine from the People's Republic of China, India, Japan, and Thailand: Comments on the Scope of the Investigation", dated October 4, 2018; Letter from the petitioners, "Glycine from India, Japan, the People's Republic of China and Thailand: Petitioners' Rebuttal to Ajinomoto Health and Nutrition North America, Inc.'s Comments on the Scope of Less-Than-Fair-Value and Countervailing Duty Investigations", dated October 8, 2018.

⁶ See Memorandum, "Glycine from India, Japan, the People's Republic of China and Thailand: Scope Comments Decision Memorandum for the Final Determinations," dated April 24, 2019.

⁷ See Memorandum, "Glycine from India, Japan, the People's Republic of China and Thailand: Scope Comments Final Decision Memorandum," dated concurrently with this memorandum.

Scope of the Investigation

The merchandise covered by this investigation is glycine from China. For a complete description of the scope of this investigation, see Appendix.

Analysis of Subsidy Programs and Comments Received—Adverse Facts Available (AFA)

For purposes of this final determination, we relied solely on facts available because neither the Government of China nor any of the selected mandatory respondents participated in this investigation. Further, because the mandatory respondents and the Government of China did not cooperate to the best of their abilities in responding to our requests for information in this investigation, we drew adverse inferences in selecting from among the facts otherwise available, in accordance with sections 776(a)–(b) of the Act. Therefore, consistent with the *Preliminary Determination*, we continue to apply adverse facts available to JC Chemicals Limited and Simagchem Corp. No interested party submitted comments on the *Preliminary Determination*. Thus we made no changes to the subsidy rates for the mandatory respondents for the final determination. A detailed discussion of our application of AFA was provided in the *Preliminary Determination* and the accompanying Preliminary Decision Memorandum.⁸

All-Others Rate

As discussed in the *Preliminary Determination*, Commerce based the selection of the all-others rate on the countervailable subsidy rate established for the mandatory respondents, in accordance with section 705(c)(5)(A)(ii) of the Act.⁹ We made no changes to the selection of the all-others rate for this final determination.

Final Determination

Company	Subsidy rate
JC Chemicals Limited	144.01 percent.
Simagchem Corp	144.01 percent.
All Others	144.01 percent.

⁸ See *Preliminary Determination*, and the accompanying Preliminary Decision Memorandum at "Use of Facts Otherwise Available and Adverse Inferences."

⁹ See *Preliminary Determination*, 83 FR at 44863, and the accompanying Preliminary Decision Memorandum at "Calculation of the All-Others Rate."

Commerce determines that the following estimated countervailable subsidy rates exist:

Disclosure

The subsidy rate calculations in the *Preliminary Determination* were based on AFA.¹⁰ As noted above, there are no changes to the calculations. Thus, no additional disclosure is necessary for this final determination.

Suspension of Liquidation

As a result of our *Preliminary Determination*, and pursuant to sections 703(d)(1)(B) and (2) of the Act, we instructed U.S. Customs and Border Protection (CBP) to suspend liquidation of all entries of glycine from China that were entered, or withdrawn from warehouse, for consumption, on or after September 4, 2018, the date of publication of the *Preliminary Determination* in the **Federal Register**.¹¹ Additionally, 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, for consumption on or after January 2, 2019.

If the U.S. International Trade Commission (the ITC) issues a final affirmative injury determination, we will issue a countervailing duty (CVD) order, will reinstate the suspension of liquidation under section 706(a) of the Act, and will require a cash deposit of estimated CVDs 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.

International Trade Commission 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.

Notification Regarding Administrative Protective Orders

This notice also serves as a reminder to parties subject to APOs 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 the 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 pursuant to sections 705(d) and 777(i) of the Act.

Dated: April 24, 2019.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

Appendix

Scope of the Investigation

The merchandise covered by this investigation is glycine at any purity level or grade. This includes glycine of all purity levels, which covers all forms of crude or technical glycine including, but not limited to, sodium glycinate, glycine slurry and any other forms of amino acetic acid or glycine. Subject merchandise also includes glycine and precursors of dried crystalline glycine that are processed in a third country, including, but not limited to, refining or any other processing that would not otherwise remove the merchandise from the scope of this investigation if performed in the country of manufacture of the in-scope glycine or precursors of dried crystalline glycine. Glycine has the Chemical Abstracts Service (CAS) registry number of 56-40-6. Glycine and glycine slurry are classified under Harmonized Tariff Schedule of the United States (HTSUS) subheading 2922.49.43.00. Sodium glycinate is classified in the HTSUS under 2922.49.80.00. While the HTSUS subheadings and CAS registry number are provided for convenience and customs purposes, the written description of the scope of this investigation is dispositive.

[FR Doc. 2019-08826 Filed 4-30-19; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

[Docket Number: [190312229-9229-01]]

Artificial Intelligence Standards

AGENCY: National Institute of Standards and Technology, U.S. Department of Commerce.

ACTION: Notice; Request for Information (RFI).

SUMMARY: The February 11, 2019, Executive Order on Maintaining American Leadership in Artificial Intelligence (AI) directs the National Institute of Standards and Technology (NIST) to create a plan for Federal engagement in the development of technical standards and related tools in support of reliable, robust, and trustworthy systems that use AI technologies (Plan). This notice requests information to help NIST understand the current state, plans, challenges, and opportunities regarding the development and availability of AI technical standards and related tools, as well as priority areas for federal involvement in AI standards-related activities. To assist in developing the Plan, NIST will consult with Federal agencies, the private sector, academia, non-governmental entities, and other stakeholders with interest in and expertise relating to AI.

DATES: Comments in response to this notice must be received May 31, 2019.

ADDRESSES: Written comments in response to this RFI may be submitted by mail to AI-Standards, National Institute of Standards and Technology, 100 Bureau Drive, Stop 2000, Gaithersburg, MD 20899. Online submissions in electronic form may be sent to ai_standards@nist.gov. Submissions may be in any of the following formats: HTML, ASCII, Word, RTF, or PDF. Please cite "RFI: Developing a Federal AI Standards Engagement Plan" in all correspondence. All relevant comments received by the deadline will be posted at <https://www.nist.gov/topics/artificial-intelligence/ai-standards> and [regulations.gov](https://www.nist.gov/topics/artificial-intelligence/ai-standards-regulations) without change or redaction, so commenters should not include information they do not wish to be posted (e.g., personal or confidential business information). Comments that contain profanity, vulgarity, threats, or other inappropriate language or content will not be posted or considered.

FOR FURTHER INFORMATION CONTACT: For questions about this RFI contact: Elham Tabassi, NIST, MS 8900, 100 Bureau Drive, Gaithersburg, MD 20899, telephone (301) 975-5292, email elham.tabassi@nist.gov. Please direct media inquiries to NIST's Public Affairs Office at (301) 975-NIST.

SUPPLEMENTARY INFORMATION:

¹⁰ See Preliminary Decision Memorandum at Appendix—"AFA Rate Calculation."

¹¹ See *Preliminary Determination*, 83 FR at 44863-64.

Genesis of the Plan for Federal Engagement in Artificial Intelligence Standards

The Executive Order (E.O.) on AI¹ states that “[c]ontinued American leadership in AI is of paramount importance to maintaining the economic and national security of the United States and to shaping the global evolution of AI in a manner consistent with our Nation’s values, policies, and priorities.” Accordingly, Section 1 of the E.O. calls for a coordinated Federal Government strategy, the American AI Initiative, and notes that the U.S. must drive development of appropriate AI technical standards in order to enable the creation of new AI-related industries and the adoption of AI by today’s industries. This can be achieved through the work and partnership of industry, academia, and government.

Section 1(d) of the E.O. states that the U.S. must foster public trust and confidence in AI technologies and protect civil liberties, privacy, and American values in their application in order to fully realize the potential of AI technologies for the American people.

Section 2(d) of the E.O. directs Federal agencies to ensure that technical standards minimize vulnerability to attacks from malicious actors and reflect Federal priorities for innovation, public trust, and public confidence, and to develop international standards to promote and protect those priorities.

Section 6(d) of the E.O. directs the Secretary of Commerce, acting through the Director of NIST, to issue a Plan for Federal engagement in the development of technical standards and related tools in support of reliable, robust, and trustworthy systems that use AI technologies. It further directs NIST to lead the development of the Plan with participation from relevant agencies, as determined by the Secretary of Commerce.

Approach for Developing This Plan

NIST will develop the Plan in a manner that fulfills the objectives of the E.O. and is consistent with relevant provisions of the Office of Management and Budget (OMB) Circular A–119, “Federal Participation in the Development and Use of Voluntary Consensus Standards and in Conformity Assessment Activities,” and NIST’s mission to promote U.S. innovation and industrial competitiveness. NIST has a special interest in advancing the development and use of standards relied upon by all sectors of the economy and

¹ <https://www.whitehouse.gov/presidential-actions/executive-order-maintaining-american-leadership-artificial-intelligence/>.

society, recognizing that the vast majority of standards are developed through a voluntary process led by the private sector.

NIST will be informed through an open process that will include this RFI and other opportunities, such as a public workshop, to provide input. NIST expects to develop a draft Plan on which it will seek comment from the public and Federal agencies. Information about this effort, including ways to provide input, and future steps, will be available at <https://www.nist.gov/topics/artificial-intelligence/ai-standards>.

Goals of This Request for Information

Timely and fit-for-purpose AI technical standards—whether developed by national or international organizations—will play a crucial role in the development and deployment of AI technologies, and will be essential in building trust and confidence about AI technologies and for achieving economies of scale.

NIST seeks to understand the:

- Current status and plans regarding the availability, use, and development of AI technical standards and tools in support of reliable, robust, and trustworthy systems that use AI technologies;
- Needs and challenges regarding the existence, availability, use, and development of AI standards and tools; and
- The current and potential future role of Federal agencies regarding the existence, availability, use, and development of AI technical standards and tools in order to meet the nation’s needs.

For purposes of this Plan,² AI technologies and systems are considered

² This RFI is intended to be broadly directed to any and all technologies that might be considered AI by the US Government and other interested parties. AI systems have been defined in different ways, and this RFI is directed to any information that might fall within any of these definitions. See, for example, section 238(g) of the John S. McCain National Defense Authorization Act, 2019 (Pub. L. 115–232), in which AI is defined to include the following:

- (1) Any artificial system that performs tasks under varying and unpredictable circumstances without significant human oversight, or that can learn from experience and improve performance when exposed to data sets;
- (2) An artificial system developed in computer software, physical hardware, or other context that solves tasks requiring human-like perception, cognition, planning, learning, communication, or physical action;
- (3) An artificial system designed to think or act like a human, including cognitive architectures and neural networks;
- (4) A set of techniques, including machine learning, that is designed to approximate a cognitive task; and

to be comprised of software and/or hardware that can learn to solve complex problems, make predictions or solve tasks that require human-like sensing (such as vision, speech, and touch), perception, cognition, planning, learning, communication, or physical action. Examples are wide-ranging and expanding rapidly. They include, but are not limited to, AI assistants, computer vision systems, automated vehicles, unmanned aerial systems, voicemail transcriptions, advanced game-playing software, facial recognition systems as well as application of AI in both Information Technology (IT) and Operational Technology (OT).

Responding to This Request for Information

The scope of this RFI includes AI technical standards and related tools regardless of origin or use.³ Respondents may define “standards” as they desire, indicating clearly what they mean when using the term. AI technical standards and related tools should include those necessary or helpful to reduce barriers to the safe testing and deployment of AI and to support reliable, robust, and trustworthy systems that use AI technologies.

Respondents may define tools as broadly or as narrowly as they wish. They should indicate clearly what they mean when using specific terms (*e.g.*, practices, datasets, guidelines). An illustrative, non-exclusive list of standards-related tools includes:

- Test tools (*e.g.*, executable test code) for conformance testing, performance testing, stress testing, interoperability testing, and other purposes;
- Use cases;
- Reference data and datasets;
- Reference implementations; and
- Training programs.

Where this RFI uses the term “organizations,” it refers to private, public, and non-profit bodies, and

(5) An artificial system designed to act rationally, including an intelligent software agent or embodied robot that achieves goals using perception, planning, reasoning, learning, communicating, decision making, and acting.

³ OMB Circular A–119 defines standards broadly to include: (1) Common and repeated use of rules, conditions, guidelines or characteristics for products or related processes and production methods, and related management systems practices; and (2) The definition of terms; classification of components; delineation of procedures; specification of dimensions, materials, performance, designs, or operations; measurement of quality and quantity in describing materials, processes, products, systems, services, or practices; test methods and sampling procedures; or descriptions of fit and measurements of size or strength.

includes both national and international organizations. If desired, commenters may provide information about: The type, size, and location of their organization(s); and whether their organization develops AI technology and related tools; uses or potentially uses AI technology and related tools; and/or participates in the development of AI standards or related tools. Provision of such information is optional and will not affect NIST's full consideration of the comment.

Comments containing references—including specific standards and related tools—studies, research, and other empirical data that are not widely published (e.g., available on the internet) should include paper or electronic copies of those materials, unless they are restricted due to copyright or are otherwise proprietary. In those cases, NIST encourages respondents to provide clear descriptions and designations of those references. Do not include in comments or otherwise submit any information deemed to be proprietary, private, or in any way confidential, as all comments relevant to this RFI topic area that are received by the deadline will be made available publicly at <https://www.nist.gov/topics/artificial-intelligence/ai-standards-and-regulations.gov>.

The following list of topics covers the major areas about which NIST seeks information. This list is not intended to limit the topics that may be addressed by respondents, who may provide information about any topic which would inform the development of the Plan. Possible topics, subdivided by area, are:

AI Technical Standards and Related Tools Development: Status and Plans

1. AI technical standards and tools that have been developed, and the developing organization, including the aspects of AI these standards and tools address, and whether they address sector-specific needs or are cross-sector in nature;

2. Reliable sources of information about the availability and use of AI technical standards and tools;

3. The needs for AI technical standards and related tools. How those needs should be determined, and challenges in identifying and developing those standards and tools;

4. AI technical standards and related tools that are being developed, and the developing organization, including the aspects of AI these standards and tools address, and whether they address sector-specific needs or are cross sector in nature;

5. Any supporting roadmaps or similar documents about plans for developing AI technical standards and tools;

6. Whether the need for AI technical standards and related tools is being met in a timely way by organizations; and

7. Whether sector-specific AI technical standards needs are being addressed by sector-specific organizations, or whether those who need AI standards will rely on cross-sector standards which are intended to be useful across multiple sectors.

8. Technical standards and guidance that are needed to establish and advance trustworthy aspects (e.g., accuracy, transparency, security, privacy, and robustness) of AI technologies.

Defining and Achieving U.S. AI Technical Standards Leadership

9. The urgency of the U.S. need for AI technical standards and related tools, and what U.S. effectiveness and leadership in AI technical standards development should look like;

10. Where the U.S. currently is effective and/or leads in AI technical standards development, and where it is lagging;

11. Specific opportunities for, and challenges to, U.S. effectiveness and leadership in standardization related to AI technologies; and

12. How the U.S. can achieve and maintain effectiveness and leadership in AI technical standards development.

Prioritizing Federal Government Engagement in AI Standardization

13. The unique needs of the Federal government and individual agencies for AI technical standards and related tools, and whether they are important for broader portions of the U.S. economy and society, or strictly for Federal applications;

14. The type and degree of Federal agencies' current and needed involvement in AI technical standards to address the needs of the Federal government;

15. How the Federal government should prioritize its engagement in the development of AI technical standards and tools that have broad, cross-sectoral application versus sector- or application-specific standards and tools;

16. The adequacy of the Federal government's current approach for government engagement in standards development,⁴ which emphasizes

⁴ See the National Technology Transfer and Advancement Act, <https://www.nist.gov/standardsgov/national-technology-transfer-and-advancement-act-1995>, and OMB Circular A-119, <https://www.whitehouse.gov/wp-content/uploads/2017/11/Circular-119-1.pdf>.

private sector leadership, and, more specifically, the appropriate role and activities for the Federal government to ensure the desired and timely development of AI standards for Federal and non-governmental uses;

17. Examples of Federal involvement in the standards arena (e.g., via its role in communications, participation, and use) that could serve as models for the Plan, and why they are appropriate approaches; and

18. What actions, if any, the Federal government should take to help ensure that desired AI technical standards are useful and incorporated into practice.

Kevin A. Kimball,
Chief of Staff.

[FR Doc. 2019-08818 Filed 4-30-19; 8:45 am]

BILLING CODE 3510-13-P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Proposed Information Collection; Comment Request; Analysis of Exoskeleton-Use for Enhancing Human Performance Data Collection

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before July 1, 2019.

ADDRESSES: Direct all written comments to Jennifer Jessup, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6616, 1401 Constitution Avenue NW, Washington, DC 20230 (or via the internet at PRAComments@doc.gov).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Elizabeth Reinhart, NIST Management and Organization Office, 100 Bureau Drive, Gaithersburg, MD 20899; 301-975-8707; elizabeth.reinhart@nist.gov.

SUPPLEMENTARY INFORMATION:

I. Abstract

Exoskeletons—sometimes called wearable robots—are a very rapidly

expanding domain with a range of applications and a broad diversity of designs. NIST's Engineering Laboratory will be developing methods to evaluate performance of exoskeletons in two key areas (1) The fit and motion of the exoskeleton device with respect to the users' body and (2) The impact that using an exoskeleton has on the performance of users executing tasks that are representative of activities in industrial settings. The results of these experiments will inform future test method development at NIST, other organizations, and under the purview of the new American Society for Testing Materials (ASTM) Committee F48 on Exoskeletons and Exosuits.

For the first research topic, NIST will evaluate the usefulness of a NIST prototype apparatus for measuring the difference in performance of a person wearing an exoskeleton versus the person's baseline without the exoskeleton while positioning loads and tools. The NIST Position and Load Test Apparatus for Exoskeletons (PoLoTAE), which presents abstractions of industrial task challenges, will be evaluated in this research.

For the second research topic, NIST will evaluate a method for measuring the alignment of an exoskeleton to human joint (knee) and any relative movement between the exoskeleton and user. Measurement methods prototyped by NIST for evaluating exoskeleton on mannequin position and motion will be applied to human subjects to verify the usefulness of optical tracking system and designed artifacts worn by users as measurement methods.

Participants will be chosen from volunteers within NIST and adult NIST visitors to participate in the study. Gender and size diversity will be sought in the population of participants. No personally identifiable information (PII) will be recorded unless subject consent for PII disclosure is received. NIST intends to publish information on the analysis and results.

II. Method of Collection

Participants will give informed consent prior to participating in the research. Information may be collected via a paper background questionnaire which may include disclosure of health information which may be relevant for safety and research reasons. Data will be collected using a combination of heart rate monitor, and video and still cameras to collect time and subject activity to correlate heart rate with activity and an optical tracking system which detects markers. Participants will be asked to complete a paper survey once data is collected for the research.

III. Data

OMB Control Number: 0693-0083.

Form Number(s): None.

Type of Review: Revision and extension of a current information collection.

Affected Public: Individuals or households.

Estimated Number of Respondents: 250.

Estimated Time per Response: 1.5 hours.

Estimated Total Annual Burden Hours: 375 hours.

Estimated Total Annual Cost to Public: \$0.

IV. Request for Comments

NIST invites comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Sheleen Dumas,

Departmental Lead PRA Officer, Office of the Chief Information Officer, Commerce Department.

[FR Doc. 2019-08816 Filed 4-30-19; 8:45 am]

BILLING CODE 3510-13-P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

[Docket No. 170810743-8858-01]

RIN 0693-XC079

Announcing Issuance of Federal Information Processing Standard (FIPS) 140-3, Security Requirements for Cryptographic Modules

AGENCY: National Institute of Standards and Technology (NIST), Commerce.

ACTION: Notice.

SUMMARY: This notice announces the Secretary of Commerce's issuance of Federal Information Processing

Standard (FIPS) 140-3, Security Requirements for Cryptographic Modules. FIPS 140-3 includes references to existing International Organization for Standardization/International Electrotechnical Commission (ISO/IEC) 19790:2012(E) *Information technology—Security techniques—Security requirements for cryptographic modules* and ISO/IEC 24759:2017(E) *Information technology—Security techniques—Test requirements for cryptographic modules*. As permitted by the standards, the NIST Special Publication (SP) series 800-140 will specify updates, replacements, or additions to the currently cited ISO/IEC standard as necessary.

DATES: FIPS 140-3 is effective September 22, 2019. FIPS 140-3 testing will begin on September 22, 2020. FIPS 140-2 testing will continue for at least a year after FIPS 140-3 testing begins.

ADDRESSES: FIPS 140-3 is available electronically from the NIST website at: <https://csrc.nist.gov/publications/fips>. Comments that were received on the proposed changes are also published electronically at <https://csrc.nist.gov/projects/fips-140-3-development>.

FOR FURTHER INFORMATION CONTACT: Michael Cooper, (301) 975-8077, National Institute of Standards and Technology, 100 Bureau Drive, Mail Stop 8930, Gaithersburg, MD 20899-8930, email: michael.cooper@nist.gov.

SUPPLEMENTARY INFORMATION: NIST has been participating in the ISO/IEC process for developing standards for cryptographic modules and working closely with international industry to unify several cryptographic security standards. ISO/IEC 19790:2012(E), *Information technology—Security techniques—Security requirements for cryptographic modules*, is an international standard based on updates of the earlier versions of FIPS 140, *Security Requirements for Cryptographic Modules*. ISO/IEC 24759:2017(E), *Information technology—Security techniques—Test requirements for cryptographic modules* is an international standard based on the Derived Test Requirements for FIPS 140-2, *Security Requirements for Cryptographic Modules*. The National Technology Transfer and Advancement Act (NTTAA), Public Law 104-113, directs Federal agencies with respect to their use of and participation in the development of voluntary consensus standards. The NTTAA's objective is for Federal agencies to adopt voluntary consensus standards, wherever possible, in lieu of creating proprietary, non-consensus standards. The implementation of commercial

cryptography, which is used to protect U.S. non-national security information and information systems, is now commoditized and built, marketed and used globally. Therefore, FIPS 140–3 applies ISO/IEC 19790:2012(E) and ISO/IEC 24759:2017(E) as the security requirements for cryptographic modules. The SP 800–140 series, which is currently under development, will be used to specify updates, replacements, or additions to requirements as allowed by ISO/IEC 19790:2012(E), with the Cryptographic Module Validation Program (CMVP) executing the role of the validation authority as defined in the ISO/IEC standard.¹ During the transition period prior to FIPS 140–3 becoming effective, FIPS 140–2 testing will continue, and NIST will introduce the SP 800–140 series documents (at <https://csrc.nist.gov/publications/sp800>). The series is expected to consist of:

- SP 800–140, *FIPS 140–3 Derived Test Requirements (DTR)*;
- SP 800–140A, *CMVP Documentation Requirements*;
- SP 800–140B, *CMVP Security Policy Requirements*;
- SP 800–140C, *CMVP Approved Security Functions*;
- SP 800–140D, *CMVP Approved Sensitive Security Parameter Generation and Establishment Methods*;
- SP 800–140E, *CMVP Approved Authentication Mechanisms*; and
- SP 800–140F, *CMVP Non-Invasive Attack Mitigation Test Metrics*.

FIPS 140–1, first published in 1994, was developed by a government and industry working group. The working group identified requirements for four security levels for cryptographic modules to provide for a wide spectrum of data sensitivity (e.g., low value administrative data, million-dollar funds transfers, and life protecting data) and a diversity of application environments (e.g., a guarded facility, an office, and a completely unprotected location). Four security levels were specified for each of 11 requirement areas. Each security level offered an increase in security over the preceding level. These four increasing levels of security allowed cost-effective solutions that were appropriate for different degrees of data sensitivity and different application environments.

In 2001, FIPS 140–2 superseded FIPS 140–1. FIPS 140–2 incorporated changes in applicable standards and technology since the development of FIPS 140–1 as well as changes that were based on

comments received from the public. Though the standard was reviewed after five years, consensus to move forward was not achieved until the 2012 revision of ISO/IEC 19790.

FIPS 140–3 supercedes FIPS 140–2. FIPS 140–3 aligns with ISO/IEC 19790:2012(E) with modifications of the Annexes allowed by the specific user communities. The testing for these requirements shall be in accordance with ISO/IEC 24759:2017(E), with the modifications, additions or deletions of vendor evidence and testing allowed as a validation authority under paragraph 5.2 of ISO/IEC 24759:2017(E).

On August 12, 2015, NIST published a notice in the **Federal Register** (80 FR 48295) requesting public comments on the potential use of ISO/IEC standards for cryptographic algorithm and cryptographic module testing, conformance, and validation activities, currently specified by FIPS 140–2. Comments were submitted by 17 entities, including four accredited cryptographic testing laboratories, eight vendors of cryptographic modules, one industry association, and four individuals. Some comments only addressed specific aspects of the proposal. Eleven of the comments supported a revised standard, five were neutral and one was opposed. Many comments asked for clarification on the continued use of implementation guidance and administration guidance to the testing laboratories. NIST will consolidate the implementation guidance and administration guidance into the SP 800–140 series documents, which will be made available for public review and comment. Other comments provided feedback on perceived market demand, comparisons of test coverage between FIPS 140–2 and the ISO/IEC standards and the potential risks that might be assumed with the use of the ISO/IEC standard. Most of the commenters were concerned about the payment model for accessing and obtaining the ISO/IEC standards compared with the free access to the current FIPS 140–2. All of the suggestions, questions, and recommendations within the scope of NIST's request for comments were carefully reviewed, and changes were made to the FIPS, where appropriate. Some comments submitted questions or raised issues that were related but outside the scope of this FIPS. Comments that were outside the scope of this FIPS, but that were within the scope of one of the related Special Publications, are deferred for later consideration in the context of development of the SP 800–140 series.

The following is a summary and analysis of the comments received during the public comment period, and NIST's responses to them, including the interests, concerns, recommendations, and issues considered in the development of FIPS 140–3:

Comment: Nine commenters responded that they have been asked by customers about testing for ISO/IEC standards or have had requests to test using the ISO/IEC standard.

Response: NIST will be revising its guidance by moving to the ISO/IEC standards embraced in FIPS 140–3.

Comment: Seven commenters responded that they were concerned about the ability of researchers, academics and small organizations to obtain the ISO/IEC standard due to the payment model used by ISO/IEC.

Response: NIST intends to work with the appropriate parties to help ensure that the ISO/IEC standard will be made reasonably available to researchers, academics and small organizations.

Comment: Eleven commenters indicated that changing to the ISO/IEC standard did not increase the risk of using cryptography or decrease trust in the use of cryptography as compared to the current FIPS 140–2.

Response: NIST intends to make the normative reference to the ISO/IEC standard specific to a version that NIST believes is acceptable to provide assurances in the cryptography used by the Federal Government. In its role as the approval authority² under ISO/IEC 19790:2012(E), NIST is permitted to replace most of the supporting requirements with NIST guidance, most of which are currently utilized in the existing FIPS 140–2.

Comment: One commenter expressed concern that adoption of an international, consensus based standard would put the US in the position of using future versions of the ISO/IEC standard as it is updated and evolves.

Response: NIST plans on continuing its robust participation in the relevant ISO/IEC working groups, and will thoroughly discuss any changes necessary to keep these requirements relevant. If an update or change is made to the ISO/IEC standards that NIST does not feel is adequate for the security needs of the Federal Government, NIST will have the flexibility to adopt a different standard. By working with ISO/IEC experts, NIST can maintain flexibility within the standards as allowed by the validation authorities as

¹ ISO/IEC 19790 defines the validation authority as the entity that will validate the test results for conformance to this international standard.

² ISO/IEC 19790 defines the approval authority as any national or international organization/authority mandated to approve and/or evaluate security functions.

described in the ISO/IEC standards. Should these measures prove insufficient, NIST can, through FIPS 140–3 or the SP 800–140 series development process, create a revised standard, controlled by NIST, to maintain the most secure posture possible.

FIPS 140–3 is available electronically from the NIST website at: <https://csrc.nist.gov/publications/fips>.

Authority: 44 U.S.C. 3553(f)(1), 15 U.S.C. 278g–3.

Kevin A. Kimball,
Chief of Staff.

[FR Doc. 2019–08817 Filed 4–30–19; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XG874

Taking of Marine Mammals Incidental to Specific Activities; Taking of Marine Mammals Incidental to Pile Driving and Removal Activities During Construction of a Cruise Ship Berth, Hoonah, Alaska

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

ACTION: Notice; proposed incidental harassment authorization; request for comments on proposed authorization and possible renewal.

SUMMARY: NMFS has received a request Duck Point Development II, LLC. (DPD) for authorization to take marine mammals incidental pile driving and removal activities during construction of a second cruise ship berth and new lightering float at Cannery Point (Icy Strait) on Chichagof Island near Hoonah, Alaska. Pursuant to the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to issue an incidental harassment authorization (IHA) to incidentally take marine mammals during the specified activities. NMFS is also requesting comments on a possible one-year renewal that could be issued under certain circumstances and if all requirements are met, as described in *Request for Public Comments* at the end of this notice. 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 May 31, 2019.

ADDRESSES: Comments should be addressed to Jolie Harrison, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service. Physical comments should be sent to 1315 East-West Highway, Silver Spring, MD 20910 and electronic comments should be sent to ITP.Egger@noaa.gov.

Instructions: NMFS is not responsible for comments sent by any other method, to any other address or individual, or received after the end of the comment period. Comments received electronically, including all attachments, must not exceed a 25-megabyte file size. Attachments to electronic comments will be accepted in Microsoft Word or Excel or Adobe PDF file formats only. All comments received are a part of the public record and will generally be posted online at <https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act> without change. All personal identifying information (e.g., name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT: Stephanie Egger, 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: <https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act>. In case of problems accessing these documents, please call the contact listed above.

SUPPLEMENTARY INFORMATION:

Background

The MMPA prohibits the “take” of marine mammals, with certain exceptions. 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 incidental take authorization may be provided to the public for review.

Authorization for incidental takings shall be granted if NMFS finds that the

taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for taking for subsistence uses (where relevant). Further, NMFS must prescribe the permissible methods of taking and other “means of effecting the least practicable adverse impact” on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stocks for taking for certain subsistence uses (referred to in shorthand as “mitigation”); and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth.

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. This action is consistent with categories of activities identified in Categorical Exclusion B4 (incidental harassment authorizations with no anticipated serious injury or mortality) of the Companion Manual for NOAA Administrative Order 216–6A, which do not individually or cumulatively have the potential for significant impacts on the quality of the human environment and for which we have not identified any extraordinary circumstances that would preclude this categorical exclusion. Accordingly, NMFS has preliminarily determined that the issuance of the proposed IHA qualifies to be categorically excluded from further NEPA review.

We will review all comments submitted in response to this notice prior to concluding our NEPA process or making a final decision on the IHA request.

Summary of Request

On December 28, 2018 NMFS received a request DPD for an IHA to take marine mammals incidental to pile driving and removal activities during construction of a second cruise ship berth and new lightering float at Cannery Point (Icy Strait) on Chichagof Island near Hoonah, Alaska. The application was deemed adequate and complete on April 3, 2019. The applicant’s request is for take nine species of marine mammals by Level B harassment and three species by Level A harassment. Neither DPD nor NMFS

expects serious injury or mortality to result from this activity and, therefore, an IHA is appropriate. NMFS previously issued an IHA to the Huna Totem Corporation for the first cruise ship berth in Hoonah, AK in 2015 (80 FR 31352; June 2, 2015).

Description of Proposed Activity

Overview

The purpose of this project is to construct a second offshore mooring facility and small-craft lightering float to accommodate the exponential growth in cruise ship traffic Hoonah is currently experiencing. The project is needed because the existing berth configuration does not have the capacity to support multiple cruise ships at the same time. Furthermore, the increase in small vessel traffic generated by the increase in visitor numbers necessitates the addition of a small-boat lightering float for short excursions around Icy Strait Point. Once the project is constructed, Hoonah will be better able to accommodate the increased number of cruise ships and passengers visiting the community. Therefore, Duck Point Development proposes to construct a second cruise ship berth and new lightering float at Cannery Point (Icy Strait) on Chichagof Island near Hoonah, Alaska, in order to accommodate the increase in cruise ship and visitor traffic since completion of the first permanent cruise ship berth completion in 2016 (80 FR 31352; June 2, 2015). The in-water sound from the pile driving and removal activities, may incidentally take nine species of marine

mammals by Level B harassment and three species by Level A harassment.

Revenue generated from the tourism industry is a vital part of Hoonah's economy. Since the addition the permanent cruise ship berth in 2016, Hoonah has become a top cruise ship port in Alaska, with growth from 34 ship visits in 2004 to a projected 122 visits in 2019 (Alaska Business Monthly 2018). Prior to placement of the permanent berth, cruise ship passengers were transferred to shore via smaller, "lightering" vessels. Construction of the berth allowed for direct walking access from ships to the shore, and more passengers disembarking in Hoonah. In 2016, an estimated 150,000 passengers visited Hoonah on 78 large-scale cruise ships, with many visiting Hoonah's shops and restaurants (LeMay Engineering & Consulting 2018).

The existing berth can only accommodate one large vessel at a time. Oftentimes a second visiting ship is forced to idle in Port Frederick Inlet near the cannery to wait for mooring space, or return to the traditional methods of lightering passengers to shore via small vessels. In addition to safety concerns stemming from decreased large-ship maneuverability at this location, idling ships and lightering vessels increase fuel consumption, noise, and hydrocarbon pollution within the inlet. A second shore berth is needed to allow multiple cruise ships' pedestrian visitors access directly to shore.

The increase in visitors to Hoonah has concurrently increased demand for offshore day excursions around Port

Frederick and Icy Strait for wildlife viewing. An additional lightering float on the west side of the point, nearer to the Icy Strait Cannery, is needed to add mooring capacity for small vessels providing these short-day excursions.

Dates and Duration

The applicant is requesting an IHA to conduct pile driving and removal over 75 working days (not necessarily consecutive) beginning June 1, 2019 and extending into November 2019 as needed. Approximately 39 days of vibratory and 8 days of impact hammering will occur. An additional 14 days of socketing and 14 days of anchoring will occur to stabilize the piles. These are discussed in further detail below.

Specific Geographic Region

The proposed project is located off Cannery Point, approximately 2.4 kilometers (km) north of Hoonah in Southeast Alaska; T43S, R61E, S20, Copper River Meridian, USGS Quadrangle Juneau A5 NE; latitude 58.1351 and longitude -135.4506 (see Figure 1 of the application). The project is located at the confluence of Icy Strait and Port Frederick Inlet. The proposed cruise ship berth would be installed approximately 0.5 kilometer (km) (0.3 miles) east of the existing permanent cruise ship berth in Icy Strait. A separate small craft lightering float would be installed between two existing docks in Port Frederick Inlet on the west side of Cannery Point (alternatively called Icy Strait Point; see Figure 1 below and Figure 4 of the application).

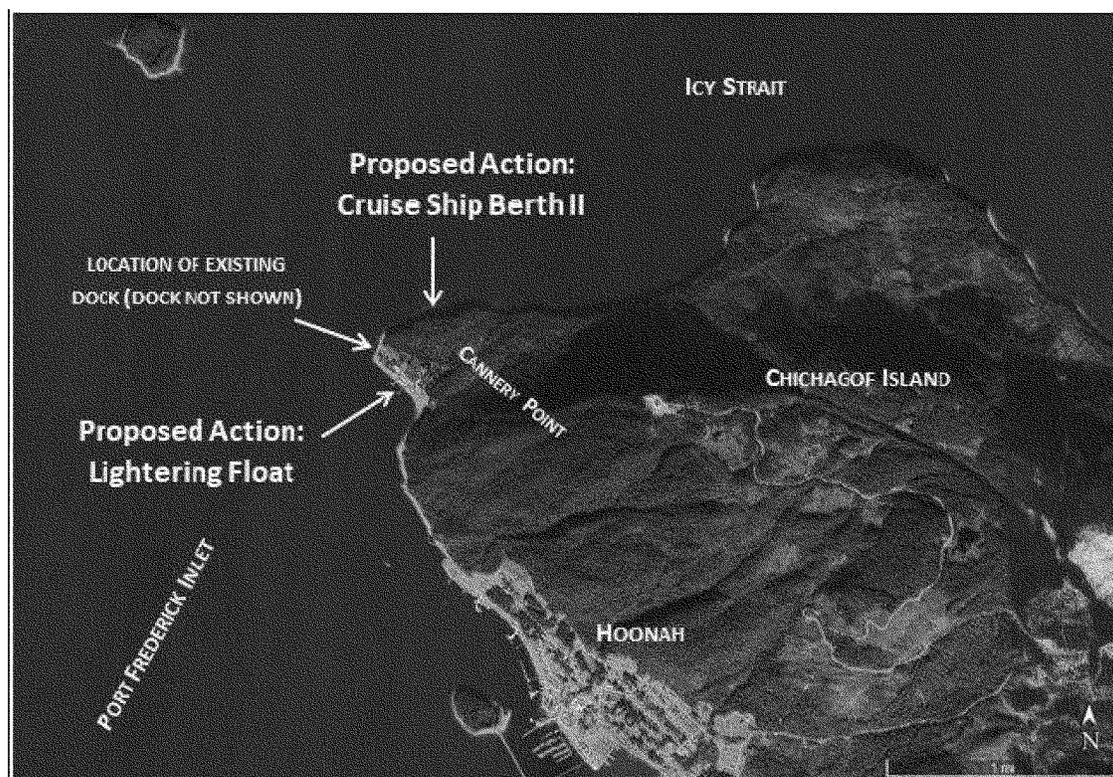


Figure 1. Project Location of Cruise Ship Berth II and Lightering Float, Hoonah, Alaska.

Icy Strait is part of Alaska's Inside Passage, a route for ships through Southeast Alaska's network of islands, located between Chichagof Island and the North American mainland. Port Frederick is a 24-km inlet that dips into northeast Chichagof Island from Icy Strait, leading to Neka Bay and Salt Lake Bay. The inlet varies between 4 and almost 6 km wide with a depth of up to 150 meters (m). The inlet near the proposed project is 14 to 35 m deep (Figure 9, NOAA 2016). NMFS's ShoreZone Mapper details the proposed project site as a semi-protected/partially mobile/sediment or rock and sediment habitat class with gravel beaches environmental sensitivity index (NMFS 2018c).

Detailed Description of Specific Activity

To construct a new cruise ship berth (Berth II), lightering float, associated support structures, and pedestrian walkway connections to shore, the project would require the following:

- Installation of 62 temporary 30-inch (in) diameter steel piles as templates to guide proper installation of permanent piles (these piles would be removed prior to project completion);
- Installation of 8 permanent 42-in diameter steel piles, 16 permanent 36-in

diameter steel piles, and 18 permanent 24-in diameter steel piles to support a new 500 feet (ft) × 50 ft floating pontoon dock, its attached 400 ft × 12 ft small craft float, mooring structures, and shore-access fixed-pier walkway (Figure 6 of the application)

- Installation of three permanent 30-in diameter steel piles to support a 120 ft × 20 ft lightering float, and four permanent 16-in diameter steel piles above the high tide line to construct a 12 ft × 40 ft fixed pier for lightering float shore access (Figure 7 of the application);
- Installation of bull rail, floating fenders, mooring cleats, and mast lights. (Note: These components would be installed out of the water.)
- Socketing and rock anchoring to stabilize the piles.

Construction Sequence

In-water construction of Berth II would begin with installation of an approximately 300-ft-long fixed pier. Temporary 30-in piles would be driven into the bedrock by a vibratory hammer to create a template to guide installation of the permanent piles. A frame would be welded around the temporary piles. Permanent 36-in and 42-in piles would

then be driven into the bedrock using vibratory and impact pile driving.

Installation of the lightering float and fixed pier would begin with removal of a single existing wood pile separate from the existing wooden pier by direct-pull methods using a crane. Three 30-in steel piles would then be driven in using a vibratory hammer in to support the new lightering float structure. Additionally, (4) 16-in steel piles would be installed with a vibratory hammer (on land) for the lightering float's fixed pier and placement of a gangway to connect the two components. The 16-in steel piles are not discussed further because they occur on land and are not expected to impact species under water.

Installation and Removal of Temporary (Template) Piles

Temporary 30-in steel piles would be installed and removed using a vibratory hammer (Table 1). If needed for stability, the contractor would socket in up to 10 of these piles if a sufficient quantity of overburden is not present (Table 1). Socketing is also known as down-the-hole drilling or downhole drilling (DTH drilling) to secure a pile to the bedrock. During socketing, the DTH hammer and under-reamer bit drill a hole into the bedrock and then socket

the pile into the bedrock. We refer to it as socketing throughout this document to clarify this method from rock anchoring, which also uses a drill.

Installation of Permanent Piles

Eighteen permanent 24-in steel piles would be installed through sand and gravel with a vibratory hammer (Table 1). All of the 18 permanent 24in steel piles will be secured into underlying bedrock with socketing (Table 1). Socket depths are expected to be approximately five ft (as determined by the geotechnical engineer). Two of the 24-in steel piles may also be secured through rock anchoring (Table 1). Rock anchoring is the method of drilling a

shaft into the concrete, inside of the existing pile, and filling it with concrete to stabilize the pile. After a pile is impacted, the pile would be anchored using an 8in diameter drilled shaft within the pile. Once the shaft is drilled, a DTH hammer with an 8in diameter bit will be used to drill a shaft (depth as determined by geotechnical engineer) into the bedrock and filled with concrete to install the rock anchors.

Sixteen permanent 36-in steel piles and 8 permanent 42-in steel piles would be driven through sand and gravel with a vibratory hammer and impacted into bedrock (Table 1). After being impacted, all 24 of these piles would be anchored

using a smaller 33-in diameter drilled shaft within the pile (Table 1). Once the shaft is drilled, a DTH hammer with a 33-in diameter bit (isolated from the steel casing) will be used to drill a shaft (depth as determined by geotechnical engineer) into the bedrock and filled with concrete to install the rock anchors. During this anchor drilling, the larger diameter piles would not be touched by the drill; therefore, anchoring will not generate steel-on-steel hammering noise (noise that is generated during socketing).

In addition, 3 permanent 30-in steel piles would be driven through sand and gravel with a vibratory hammer only to support the lightering float (Table 1).

TABLE 1—PILE DRIVING AND REMOVAL ACTIVITIES REQUIRED FOR THE HOONAH BERTH II AND LIGHTERING FLOAT

Description	Project Component					
	Temporary pile installation	Temporary pile removal	Permanent pile installation	Permanent pile installation	Permanent pile installation	Permanent pile installation
Diameter of Steel Pile (inches)	30	30	24	30	36	42
# of Piles	62	62	18	3	16	8
Vibratory Pile Driving						
Total Quantity	62	62	18	3	16	8
Max # Piles Vibrated per Day	6	6	4	2	2	2
Impact Pile Driving						
Total Quantity	0	0	0	0	16	8
Max # Piles Impacted per Day	0	0	0	0	4	2
Socketed Pile Installation (Down-Hole Drilling)						
Total Quantity	10	0	18	0	0	0
Max # Piles Socketed per Day	2	0	2	0	0	0
Rock Anchor Installation (Drilled Shaft)						
Total Quantity	0	0	2	0	16	8
Diameter of Anchor .....	.....	.....	8	0	33	33
Max # Piles Anchored per Day	0	0	1	0	2	2

In addition to the activities described above, the proposed action will involve other in-water construction and heavy machinery activities. Other types of in-water work including with heavy machinery will occur using standard barges, tug boats, barge-mounted excavators, or clamshell equipment to place or remove material; and positioning piles on the substrate via a crane (i.e., “stabbing the pile”). Workers will be transported from shore to the barge work platform by a 25-ft skiff with a 125–250 horsepower motor in the morning and at the end of the work day. The travel distance will be less than 300 ft. There could be multiple (up to eight) shore-to-barge trips during the day; however, the area of travel will be relatively small and close to shore. We

do not expect any of these other in-water construction and heavy machinery activities to take marine mammals as these activities occur close to the shoreline (less than 300 feet), but as additional mitigation, DPD is proposing a 10 m shutdown zone for these additional in-water activities. Therefore, these other in-water construction and heavy machinery activities will not be discussed further.

For further details on the proposed action and project components, please refer to Section 1.2.4. and 1.2.5 of the application.

Proposed mitigation, monitoring, and reporting measures are described in detail later in this document (please see *Proposed Mitigation* and *Proposed Monitoring and Reporting*).

Description of Marine Mammals in the Area of Specified Activities

Sections 3 and 4 of the 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’s Stock Assessment Reports (SARs; <https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments>) and more general information about these species (e.g., physical and behavioral descriptions) may be found on NMFS’s website (<https://www.fisheries.noaa.gov/find-species>).

Table 2 lists all species with expected potential for occurrence in the project area and summarizes information related to the population or stock, including regulatory status under the MMPA and ESA and potential biological removal (PBR), where known. For taxonomy, we follow Committee on Taxonomy (2016). 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's SARs). While no mortality is anticipated or authorized here, PBR and annual serious injury and mortality from anthropogenic sources are included here as gross indicators of the status of the species and other threats.

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's 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. All managed stocks in this region are assessed in NMFS's U.S. Pacific and Alaska SARs (Carretta *et al.*, 2018; Muto *et al.*, 2018). All values presented in Table 2 are the most recent available at the time of publication (draft SARS available online at: <https://www.fisheries.noaa.gov/national/marine-mammal-protection/draft-marine-mammal-stock-assessment-reports>).

TABLE 2—MARINE MAMMALS OCCURRENCE IN THE PROJECT AREA

Common name	Scientific name	Stock	ESA/ MMPA status; strategic (Y/N) ¹	Stock abundance (CV, N _{min} , most recent abundance survey) ²	PBR	Annual M/SI ³
Order Cetartiodactyla—Cetacea—Superfamily Mysticeti (baleen whales)						
Family Eschrichtiidae: Gray Whale	<i>Eschrichtius robustus</i>	Eastern N Pacific	- , - , N	26,960 (0.05, 25,849, 2016) ..	801	138
Family Balaenopteridae (rorquals):						
Minke Whale	<i>Balaenoptera acutorostrata</i>	Alaska	- , - , N	N/A (see SAR, N/A, see SAR)	UND	0
Humpback Whale	<i>Megaptera novaeangliae</i>	Central N Pacific (Hawaii and Mexico DPS).	- , - , Y	10,103 (0.3, 7,890, 2006) (Hawaii DPS 9,487 ^a Mex- ico DPS 606 ^a).	83	25
Superfamily Odontoceti (toothed whales, dolphins, and porpoises)						
Family Physeteridae: Sperm whale	<i>Physeter macrocephalus</i>	North Pacific	E, D, Y	N/A (see SAR, N/A, 2015)	See SAR	4.4
Family Delphinidae:						
Killer Whale	<i>Orcinus orca</i>	Alaska Resident	- , - , N	2,347 c (N/A, 2347, 2012)	24	1
		Northern Resident	- , - , N	261 c (N/A, 261, 2011)	1.96	0
		West Coast Transient	- , - , N	243 c (N/A, 243, 2009)	2.4	0
		N Pacific	- , - , N	26,880 (N/A, N/A, 1990)	UND	0
Pacific White-Sided Dol- phin.	<i>Lagenorhynchus obliquidens</i>					
Family Phocoenidae (por- poises):						
Dall's Porpoise	<i>Phocoenoides dalli</i>	AK	- , - , N	83,400 (0.097, N/A, 1991)	UND	38
Harbor Porpoise	<i>Phocoena phocoena</i>	Southeast Alaska	- , - , Y	see SAR (see SAR, see SAR, 2012).	8.9	34
Order Carnivora—Superfamily Pinnipedia						
Family Otariidae (eared seals and sea lions):						
Steller Sea Lion	<i>Eumetopias jubatus</i>	Western DPS	E, D, Y	54,267 a (see SAR, 54,267, 2017).	326	252
		Eastern DPS	T, D, Y	41,638 a (see SAR, 41,638, 2015).	2498	108
Family Phocidae (earless seals):						
Harbor Seal	<i>Phoca vitulina</i>	Glacier Bay/Icy Strait	- , - , N	7,210 (see SAR, 5,647, 2011)	169	104

¹ Endangered Species Act (ESA) status: Endangered (E), Threatened (T)/MMPA status: Depleted (D). A dash (-) indicates that the species is not listed under the ESA or 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 online at: www.nmfs.noaa.gov/pr/sars/. CV is coefficient of variation; N_{min} is the minimum estimate of stock abundance. In some cases, CV is not applicable [explain if this is the case].

³ These values, found in NMFS's SARs, represent annual levels of human-caused mortality plus serious injury from all sources combined (e.g., commercial fisheries, ship strike). Annual M/SI often cannot be determined precisely and is in some cases presented as a minimum value or range. A CV associated with estimated mortality due to commercial fisheries is presented in some cases.

Note—Italicized species are not expected to be taken or proposed for authorization.

^a Under the MMPA humpback whales are considered a single stock (Central North Pacific); however, we have divided them here to account for distinct population segments (DPSs) listed under the ESA. Using the stock assessment from Muto *et al.* 2018 for the Central North Pacific stock (10,103) and calculations in Wade *et al.* 2016, 93.9% of the humpback whales in Southeast Alaska are expected to be from the Hawaii DPS and 6.1% are expected to be from the Mexico DPS.

All species that could potentially occur in the proposed survey areas are included in Table 2. In addition, the Northern sea otter (*Enhydra lutris*

kenyonii) may be found in the project area. However, sea otters are managed by the U.S. Fish and Wildlife Service

and are not considered further in this document.

Minke Whale

In the North Pacific Ocean, minke whales occur from the Bering and Chukchi seas south to near the Equator (Leatherwood *et al.*, 1982). In the northern part of their range, minke whales are believed to be migratory, whereas, they appear to establish home ranges in the inland waters of Washington and along central California (Dorsey *et al.* 1990). Minke whales are observed in Alaska's nearshore waters during the summer months (National Park Service (NPS) 2018). Minke whales are usually sighted individually or in small groups of 2–3, but there are reports of loose aggregations of hundreds of animals (NMFS 2018d). Minke whales are rare in the action area, but they could be encountered. During the construction of the first Icy Strait cruise ship berth, a single minke was observed during the 135-day monitoring period (June 2015 through January 2016) (BergerABAM 2016).

No abundance estimates have been made for the number of minke whales in the entire North Pacific. However, some information is available on the numbers of minke whales in some areas of Alaska. Line-transect surveys were conducted in shelf and nearshore waters (within 30–45 nautical miles of land) in 2001–2003 from the Kenai Fjords in the Gulf of Alaska to the central Aleutian Islands. Minke whale abundance was estimated to be 1,233 (CV = 0.34) for this area (Zerbini *et al.*, 2006). This estimate has also not been corrected for animals missed on the trackline. The majority of the sightings were in the Aleutian Islands, rather than in the Gulf of Alaska, and in water shallower than 200 m. So few minke whales were seen during three offshore Gulf of Alaska surveys for cetaceans in 2009, 2013, and 2015 that a population estimate for this species in this area could not be determined (Rone *et al.*, 2017).

Humpback Whale

The humpback whale is distributed worldwide in all ocean basins and a broad geographical range from tropical to temperate waters in the Northern Hemisphere and from tropical to near-ice-edge waters in the Southern Hemisphere. The humpback whales that forage throughout British Columbia and Southeast Alaska undertake seasonal migrations from their tropical calving and breeding grounds in winter to their high-latitude feeding grounds in summer. They may be seen at any time of year in Alaska, but most animals winter in temperate or tropical waters near Hawaii. In the spring, the animals

migrate back to Alaska where food is abundant.

Within Southeast Alaska, humpback whales are found throughout all major waterways and in a variety of habitats, including open-ocean entrances, open-strait environments, near-shore waters, area with strong tidal currents, and secluded bays and inlets. They tend to concentrate in several areas, including northern Southeast Alaska. Patterns of occurrence likely follow the spatial and temporal changes in prey abundance and distribution with humpback whales adjusting their foraging locations to areas of high prey density (Clapham 2000).

Humpback whales may be found in and around Chichagof Island, Icy Strait, and Port Frederick Inlet at any given time. While many humpback whales migrate to tropical calving and breeding grounds in winter, they have been observed in Southeast Alaska in all months of the year (Bettridge *et al.*, 2015). Diet for humpback whales in the Glacier Bay/Icy Strait area mainly consists of small schooling fish (capelin, juvenile walleye pollock, sand lance, and Pacific herring) rather than euphausiids (krill). They migrate to the northern reaches of Southeast Alaska (Glacier Bay) during spring and early summer following these fish and then move south towards Stephens Passage in early fall to feed on krill, passing the project area on the way (Krieger and Wing 1986). Over 32 years of humpback whale monitoring in the Glacier Bay/Icy Strait area reveals a substantial decline in population since 2014; a total of 164 individual whales were documented in 2016 during surveys conducted from June-August, making it the lowest count since 2008 (Neilson *et al.*, 2017)

During construction of the first Icy Strait cruise ship berth from June 2015 through January 2016, humpback whales were observed in the action area on 84 of the 135 days of monitoring; most often in September and October. Up to 18 humpback sightings were reported on a single day (October 2, 2015), and a total of 226 Level B harassments were recorded during project construction (June 2015 through January 2016) (BergerABAM 2016).

Gray Whale

Gray whales are found exclusively in the North Pacific Ocean. The Eastern North Pacific stock of gray whales inhabit the Chukchi, Beaufort, and Bering Seas in northern Alaska in the summer and fall and California and Mexico in the winter months, with a migration route along the coastal waters of Southeast Alaska. Gray whales have also been observed feeding in waters off

Southeast Alaska during the summer (NMFS 2018e).

The migration pattern of gray whales appears to follow a route along the western coast of Southeast Alaska, traveling northward from British Columbia through Hecate Strait and Dixon Entrance, passing the west coast of Chichagof Island from late March to May (Jones *et al.* 1984, Ford *et al.* 2013). Since the project area is on the east coast of Chichagof Island it is less likely there will be gray whales sighted during project construction; however, the possibility exists.

During the 2016 construction of the first cruise ship terminal at Icy Strait Point, no gray whales were seen during the 135-day monitoring period (June 2015 through January 2016) (BergerABAM 2016).

Killer Whale

Killer whales have been observed in all oceans and seas of the world, but the highest densities occur in colder and more productive waters found at high latitudes. Killer whales are found throughout the North Pacific and occur along the entire Alaska coast, in British Columbia and Washington inland waterways, and along the outer coasts of Washington, Oregon, and California (NMFS 2018f).

The Alaska Resident stock occurs from Southeast Alaska to the Aleutian Islands and Bering Sea. The Northern Resident stock occurs from Washington State through part of Southeast Alaska; and the West Coast Transient stock occurs from California through Southeast Alaska (Muto *et al.*, 2018) and are thought to occur frequently in Southeast Alaska (Straley 2017).

Transient killer whales can pass through the waters surrounding Chichagof Island, in Icy Strait and Glacier Bay, feeding on marine mammals. Because of their transient nature, it is difficult to predict when they will be present in the area. Whales from the Alaska Resident stock and the Northern Resident stock are thought to primarily feed on fish. Like the transient killer whales, they can pass through Icy Strait at any given time (North Gulf Oceanic Society 2018).

Killer whales were observed on 11 days during construction of the first Icy Strait cruise ship berth during the 135-day monitoring period (June 2015 through January 2016). Killer whales were observed a few times a month. Usually a singular animal was observed, but a group containing 8 individuals was seen in the action area on one occasion, for a total of 24 animals observed during in-water work (BergerABAM 2016).

Pacific White-Sided Dolphin

Pacific white-sided dolphins are a pelagic species. They are found throughout the temperate North Pacific Ocean, north of the coasts of Japan and Baja California, Mexico (Muto *et al.*, 2018). They are most common between the latitudes of 38° North and 47° North (from California to Washington). The distribution and abundance of Pacific white-sided dolphins may be affected by large-scale oceanographic occurrences, such as El Niño, and by underwater acoustic deterrent devices (NPS 2018a).

No Pacific white-sided dolphins were observed during construction of the first cruise ship berth during the 135-day monitoring period (June 2015 through January 2016) (BergerABAM 2016). They are rare in the action area, likely because they are pelagic and prefer more open water habitats than are found in Icy Strait and Port Frederick Inlet. Pacific white-sided dolphins have been observed in Alaska waters in groups ranging from 20 to 164 animals, with the sighting of 164 animals occurring in Southeast Alaska near Dixon Entrance (Muto *et al.*, 2018).

Dall's Porpoise

Dall's porpoises are widely distributed across the entire North Pacific Ocean. They show some migration patterns, inshore and offshore and north and south, based on morphology and type, geography, and seasonality (Muto *et al.*, 2018). They are common in most of the larger, deeper channels in Southeast Alaska and are rare in most narrow waterways, especially those that are relatively shallow and/or with no outlets (Jefferson *et al.*, 2019). In Southeast Alaska, abundance varies with season.

Jefferson *et al.* (2019) recently published a report with survey data spanning from 1991 to 2012 that studied Dall's porpoise density and abundance in Southeast Alaska. They found Dall's porpoise were most abundant in spring, observed with lower numbers in summer, and lowest in fall. Surveys found Dall's porpoise to be common in Icy Strait and sporadic with very low densities in Port Frederick (Jefferson *et al.*, 2019). During a 16-year survey of cetaceans in Southeast Alaska, Dall's porpoises were commonly observed during spring, summer, and fall in the nearshore waters of Icy Strait (Dahlheim *et al.*, 2009). Dall's porpoises were observed on two days during the 135-day monitoring period (June 2015 through January 2016) of the construction of the first cruise ship berth (BergerABAM 2016). Both were single individuals transiting within the

waters of Port Frederick in the vicinity of Halibut Island. Dall's porpoises generally occur in groups from 2–12 individuals (NMFS 2018g).

Harbor Porpoise

In the eastern North Pacific Ocean, the Bering Sea and Gulf of Alaska harbor porpoise stocks range from Point Barrow, along the Alaska coast, and the west coast of North America to Point Conception, California. The Southeast Alaska stock ranges from Cape Suckling, Alaska to the northern border of British Columbia. Within the inland waters of Southeast Alaska, harbor porpoises' distribution is clustered with greatest densities observed in the Glacier Bay/Icy Strait region and near Zarembo and Wrangell Islands and the adjacent waters of Sumner Strait (Dahlheim *et al.*, 2015). Harbor porpoises also were observed primarily between June and September during construction of the Huna Berth I cruise ship terminal project. Harbor porpoises were observed on 19 days during the 135-day monitoring period (June 2015 through January 2016) (BergerABAM 2016) and seen either singularly or in groups from two to four animals.

There is no official stock abundance associated with the SARS for harbor porpoise. Both aerial and vessel based surveys have been conducted for this species. Aerial surveys of this stock were conducted in June and July 1997 and resulted in an observed abundance estimate of 3,766 harbor porpoise (Hobbs and Waite 2010) and the surveys included a subset of smaller bays and inlets. Correction factors for observer perception bias and porpoise availability at the surface were used to develop an estimated corrected abundance of 11,146 harbor porpoise in the coastal and inside waters of Southeast Alaska (Hobbs and Waite 2010). Vessel based spanning the 22-year study (1991–2012) found the relative abundance of harbor porpoise varied in the inland waters of Southeast Alaska. Abundance estimated in 1991–1993 (N = 1,076; 95% CI = 910–1,272) was higher than the estimate obtained for 2006–2007 (N = 604; 95% CI = 468–780) but comparable to the estimate for 2010–2012 (N = 975; 95% CI = 857–1,109; Dahlheim *et al.*, 2015). These estimates assume the probability of detection directly on the trackline to be unity ($g(0) = 1$) because estimates of $g(0)$ could not be computed for these surveys. Therefore, these abundance estimates may be biased low to an unknown degree. A range of possible $g(0)$ values for harbor porpoise vessel surveys in other regions is 0.5–0.8 (Barlow 1988, Palka 1995), suggesting

that as much as 50 percent of the porpoise can be missed, even by experienced observers.

Further, other vessel based survey data (2010–2012) for the inland waters of Southeast Alaska, calculated abundance estimates for the concentrations of harbor porpoise in the northern and southern regions of the inland waters (Dahlheim *et al.* 2015). The resulting abundance estimates are 398 harbor porpoise (CV = 0.12) in the northern inland waters (including Cross Sound, Icy Strait, Glacier Bay, Lynn Canal, Stephens Passage, and Chatham Strait) and 577 harbor porpoise (CV = 0.14) in the southern inland waters (including Frederick Sound, Summer Strait, Wrangell and Zarembo Islands, and Clarence Strait as far south as Ketchikan). Because these abundance estimates have not been corrected for $g(0)$, these estimates are likely underestimates.

The vessel based surveys are not complete coverage of harbor porpoise habitat and not corrected for bias and likely underestimate the abundance. Whereas, the aerial survey in 1997, although outdated, had better coverage of the range and is likely to be more of an accurate representation of the stock abundance (11,146 harbor porpoise) in the coastal and inside waters of Southeast Alaska.

Harbor Seal

Harbor seals range from Baja California north along the west coasts of Washington, Oregon, California, British Columbia, and Southeast Alaska; west through the Gulf of Alaska, Prince William Sound, and the Aleutian Islands; and north in the Bering Sea to Cape Newenham and the Pribilof Islands. They haul out on rocks, reefs, beaches, and drifting glacial ice and feed in marine, estuarine, and occasionally fresh waters. Harbor seals are generally non-migratory and, with local movements associated with such factors as tide, weather, season, food availability and reproduction.

Distribution of the Glacier Bay/Icy Strait stock, the only stock considered in this application, ranges along the coast from Cape Fairweather and Glacier Bay south through Icy Strait to Tenakee Inlet on Chichagof Island (Muto *et al.*, 2018).

The Glacier Bay/Icy Strait stock of harbor seals are common residents of the action area and can occur on any given day in the area, although they tend to be more abundant during the fall months (Womble and Gende 2013). A total of 63 harbor seals were seen during 19 days of the 135-day monitoring period (June 2015 through January 2016)

(BergerABAM 2016), while none were seen during the 2018 test pile program (SolsticeAK 2018). Harbor seals were primarily observed in summer and early fall (June to September). Harbor seals were seen singularly and in groups of two or more, but on one occasion, 22 individuals were observed hauled out on Halibut Rock, across Port Frederick approximately 1.5 miles from the location of pile installation activity (BergerABAM 2016).

There are two known harbor seal haulouts within the project area. According to the AFSC list of harbor seal haulout locations, the closest listed haulout (id 1,349; name CF39A) is located in Port Frederick, approximately 1,850 m west (AFSC 2018). The group of 22 animals was observed using Halibut Rock (approximately 2,000 m from any potential pile-driving activities) as a haulout.

Steller Sea Lion

Steller sea lions range along the North Pacific Rim from northern Japan to California, with centers of abundance in the Gulf of Alaska and Aleutian Islands (Loughlin *et al.*, 1984).

Of the two Steller sea lion populations in Alaska, the Eastern DPS includes sea lions born on rookeries from California north through Southeast Alaska and the Western DPS includes those animals born on rookeries from Prince William Sound westward, with an eastern boundary set at 144° W (NMFS 2018h). Both WDPS and EDPS Steller sea lions are considered in this application because the WDPS are common within the geographic area under consideration (north of Summer Strait) (Fritz *et al.*, 2013, NMFS 2013).

Steller sea lions are not known to migrate annually, but individuals may widely disperse outside of the breeding season (late-May to early-July), leading to intermixing of stocks (Jemison *et al.* 2013; Allen and Angliss 2015).

Steller sea lions are common in the inside waters of Southeast Alaska. They are residents of the project vicinity and are common year-round in the action area, moving their haulouts based on seasonal concentrations of prey from exposed rookeries nearer the open Pacific Ocean during the summer to more protected sites in the winter (Alaska Department of Fish & Game (ADF&G) 2018). During the construction of the existing Icy Strait cruise ship

berth a total of 180 Steller sea lions were observed on 47 days of the 135 monitoring days, amounting to an average of 1.3 sightings per day (BergerABAM 2016). Steller sea lions were frequently observed in groups of two or more individuals, but lone individuals were also observed regularly (BergerABAM 2016). During a test pile program performed at the project location by the Hoonah Cruise Ship Dock Company in May 2018, a total of 15 Steller sea lions were seen over the course of 7 hours in one day (SolsticeAK 2018). They can occur in groups of 1–10 animals, but may congregate in larger groups near rookeries and haulouts (NMFS 2018h). No documented rookeries or haulouts are near the project area.

Critical habitat has been defined in Southeast Alaska at major haulouts and major rookeries (50 CFR 226.202). The nearest rookery is on the White Sisters Islands near Sitka and the nearest major haulouts are at Benjamin Island, Cape Cross, and Graves Rocks. The White Sisters rookery is located on the west side of Chichagof Island, about 72 km southwest of the project area. Benjamin Island is about 60 km northeast of Hoonah. Cape Cross and Graves Rocks are both about 70 km west of Hoonah. Steller sea lions are known to haul out on land, docks, buoys, and navigational markers. However, during the summer months when the proposed project would be constructed Steller sea lions are less likely to be in the protected waters around the project area, preferring exposed rookeries on the western shores of Southeast Alaska.

Sperm Whales

Tagged sperm whales have been tracked within the Gulf of Alaska, and multiple whales have been tracked in Chatham Strait, in Icy Strait, and in the action area in 2014 and 2015 (<http://seaswap.info/whaletracker> Accessed 4/15/19). Tagging studies primarily show that sperm whales use the deep water slope habitat extensively for foraging (Mathias *et al.*, 2012). Interaction studies between sperm whales and the longline fishery have been focused along the continental slope of the eastern Gulf of Alaska in water depths between about 1,970 and 3,280 ft (600 and 1,000 m) (Straley *et al.* 2005, Straley *et al.* 2014). The known sperm whale habitat (these shelf-edge/slope waters of

the Gulf of Alaska) are far outside of the action area.

Also, more recently in November 2018 (4 whales) and March 2019 (2 whales), sperm whales have been observed in southern Lynn Canal, and on March 20, 2019, NMFS performed a necropsy on a sperm whale that died from trauma consistent with a ship strike. However, NMFS believes is highly unlikely that sperm whales will occur in the action area where pile driving activities will occur because they are generally found in far deeper waters than those in which the project will occur. Therefore, sperm whales are not being proposed for take authorization and not discussed further.

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 (2018) described generalized hearing ranges for these marine mammal hearing groups. Generalized hearing ranges were chosen based on the approximately 65 decibel (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. Marine mammal hearing groups and their associated hearing ranges are provided in Table 2.

TABLE 2—MARINE MAMMAL HEARING GROUPS (NMFS, 2018)

Hearing group	Generalized hearing range *
Low-frequency (LF) cetaceans (baleen whales)	7 Hz to 35 kHz.
Mid-frequency (MF) cetaceans (dolphins, toothed whales, beaked whales, bottlenose whales)	150 Hz to 160 kHz.

TABLE 2—MARINE MAMMAL HEARING GROUPS (NMFS, 2018)—Continued

Hearing group	Generalized hearing range *
High-frequency (HF) cetaceans (true porpoises, <i>Kogia</i> , river dolphins, cephalorhynchid, <i>Lagenorhynchus cruciger</i> & <i>L. australis</i>).	275 Hz to 160 kHz.
Phocid pinnipeds (PW) (underwater) (true seals)	50 Hz to 86 kHz.
Otariid pinnipeds (OW) (underwater) (sea lions and fur seals)	60 Hz to 39 kHz.

* Represents the generalized hearing range for the entire group as a composite (*i.e.*, all species within the group), where individual species' hearing ranges are typically not as broad. Generalized hearing range chosen based on ~65 dB threshold from normalized composite audiogram, with the exception for lower limits for LF cetaceans (Southall *et al.* 2007) and PW pinniped (approximation).

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 (2018) for a review of available information. Nine marine mammal species (7 cetacean and 2 pinniped (1 otariid and 1 phocid) species) have the reasonable potential to occur during the proposed activities. Please refer to Table 2. Of the cetacean species that may be present, three are classified as low-frequency cetaceans (*i.e.*, all mysticete species), two are classified as mid-frequency cetaceans (*i.e.*, all delphinid species), and two are classified as high-frequency cetaceans (*i.e.*, harbor porpoise and Dall's porpoise).

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.

Acoustic effects on marine mammals during the specified activity can occur from vibratory and impact pile driving as well as during socketing and anchoring of the piles. The effects of underwater noise from DPD's proposed activities have the potential to result in

Level B behavioral harassment of marine mammals in the vicinity of the action area.

Description of Sound Sources

This section contains a brief technical background on sound, on the characteristics of certain sound types, and on metrics used in this proposal inasmuch as the information is relevant to the specified activity and to a discussion of the potential effects of the specified activity on marine mammals found later in this document. For general information on sound and its interaction with the marine environment, please see, *e.g.*, Au and Hastings (2008); Richardson *et al.* (1995); Urick (1983).

Sound travels in waves, the basic components of which are frequency, wavelength, velocity, and amplitude. Frequency is the number of pressure waves that pass by a reference point per unit of time and is measured in hertz (Hz) or cycles per second. Wavelength is the distance between two peaks or corresponding points of a sound wave (length of one cycle). Higher frequency sounds have shorter wavelengths than lower frequency sounds, and typically attenuate (decrease) more rapidly, except in certain cases in shallower water. Amplitude is the height of the sound pressure wave or the "loudness" of a sound and is typically described using the relative unit of the decibel (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)), and is a logarithmic unit that accounts for large variations in amplitude; therefore, a relatively small change in dB corresponds to large changes in sound pressure. The source level (SL) represents the SPL referenced at a distance of 1 m from the source (referenced to 1 μPa), while the received level is the SPL at the listener's position (referenced to 1 μPa).

Root mean square (rms) is the quadratic mean sound pressure over the duration of an impulse. Root mean square is calculated by squaring all of

the sound amplitudes, averaging the squares, and then taking the square root of the average (Urick, 1983). Root mean square accounts for both positive and negative values; squaring the pressures makes all values positive so that they may be accounted for in the summation of pressure levels (Hastings and Popper, 2005). This measurement is often used in the context of discussing behavioral effects, in part because behavioral effects, which often result from auditory cues, may be better expressed through averaged units than by peak pressures.

Sound exposure level (SEL; represented as dB re 1 $\mu\text{Pa}^2\text{-s}$) represents the total energy in a stated frequency band over a stated time interval or event, and considers both intensity and duration of exposure. The per-pulse SEL is calculated over the time window containing the entire pulse (*i.e.*, 100 percent of the acoustic energy). SEL is a cumulative metric; it can be accumulated over a single pulse, or calculated over periods containing multiple pulses. Cumulative SEL represents the total energy accumulated by a receiver over a defined time window or during an event. Peak sound pressure (also referred to as zero-to-peak sound pressure or 0-pk) is the maximum instantaneous sound pressure measurable in the water at a specified distance from the source, and is represented in the same units as the rms sound pressure.

When underwater objects vibrate or activity occurs, sound-pressure waves are created. These waves alternately compress and decompress the water as the sound wave travels. Underwater sound waves radiate in a manner similar to ripples on the surface of a pond and may be either directed in a beam or beams or may radiate in all directions (omnidirectional sources), as is the case for sound produced by the pile driving activity considered here. The compressions and decompressions associated with sound waves are detected as changes in pressure by aquatic life and man-made sound receptors such as hydrophones.

Even in the absence of sound from the specified activity, the underwater

environment is typically loud due to ambient sound, which is defined as environmental background sound levels lacking a single source or point (Richardson *et al.*, 1995). The sound level of a region is defined by the total acoustical energy being generated by known and unknown sources. These sources may include physical (*e.g.*, wind and waves, earthquakes, ice, atmospheric sound), biological (*e.g.*, sounds produced by marine mammals, fish, and invertebrates), and anthropogenic (*e.g.*, vessels, dredging, construction) sound. A number of sources contribute to ambient sound, including wind and waves, which are a main source of naturally occurring ambient sound for frequencies between 200 hertz (Hz) and 50 kilohertz (kHz) (Mitson, 1995). In general, ambient sound levels tend to increase with increasing wind speed and wave height. Precipitation can become an important component of total sound at frequencies above 500 Hz, and possibly down to 100 Hz during quiet times. Marine mammals can contribute significantly to ambient sound levels, as can some fish and snapping shrimp. The frequency band for biological contributions is from approximately 12 Hz to over 100 kHz. Sources of ambient sound related to human activity include transportation (surface vessels), dredging and construction, oil and gas drilling and production, geophysical surveys, sonar, and explosions. Vessel noise typically dominates the total ambient sound for frequencies between 20 and 300 Hz. In general, the frequencies of anthropogenic sounds are below 1 kHz and, if higher frequency sound levels are created, they attenuate rapidly.

The sum of the various natural and anthropogenic sound sources that comprise ambient sound at any given location and time depends not only on the source levels (as determined by current weather conditions and levels of biological and human activity) but also on the ability of sound to propagate through the environment. In turn, sound propagation is dependent on the spatially and temporally varying properties of the water column and sea floor, and is frequency-dependent. As a result of the dependence on a large number of varying factors, ambient sound levels can be expected to vary widely over both coarse and fine spatial and temporal scales. Sound levels at a given frequency and location can vary by 10–20 decibels (dB) from day to day (Richardson *et al.*, 1995). The result is that, depending on the source type and its intensity, sound from the specified activity may be a negligible addition to

the local environment or could form a distinctive signal that may affect marine mammals.

Sounds are often considered to fall into one of two general types: Pulsed and non-pulsed (defined in the following). The distinction between these two sound types is important because they have differing potential to cause physical effects, particularly with regard to hearing (*e.g.*, Ward, 1997 in Southall *et al.*, 2007). Please see Southall *et al.* (2007) for an in-depth discussion of these concepts. The distinction between these two sound types is not always obvious, as certain signals share properties of both pulsed and non-pulsed sounds. A signal near a source could be categorized as a pulse, but due to propagation effects as it moves farther from the source, the signal duration becomes longer (*e.g.*, Greene and Richardson, 1988).

Pulsed sound sources (*e.g.*, airguns, explosions, gunshots, sonic booms, impact pile driving) produce signals that are brief (typically considered to be less than one second), broadband, atonal transients (ANSI, 1986, 2005; Harris, 1998; NIOSH, 1998; ISO, 2003) and occur either as isolated events or repeated in some succession. Pulsed sounds are all characterized by a relatively rapid rise from ambient pressure to a maximal pressure value followed by a rapid decay period that may include a period of diminishing, oscillating maximal and minimal pressures, and generally have an increased capacity to induce physical injury as compared with sounds that lack these features.

Non-pulsed sounds can be tonal, narrowband, or broadband, brief or prolonged, and may be either continuous or intermittent (ANSI, 1995; NIOSH, 1998). Some of these non-pulsed sounds can be transient signals of short duration but without the essential properties of pulses (*e.g.*, rapid rise time). Examples of non-pulsed sounds include those produced by vessels, aircraft, machinery operations such as drilling or dredging, vibratory pile driving, and active sonar systems. The duration of such sounds, as received at a distance, can be greatly extended in a highly reverberant environment.

The impulsive sound generated by impact hammers is characterized by rapid rise times and high peak levels. Vibratory hammers produce non-impulsive, continuous noise at levels significantly lower than those produced by impact hammers. Rise time is slower, reducing the probability and severity of injury, and sound energy is distributed over a greater amount of time (*e.g.*,

Nedwell and Edwards, 2002; Carlson *et al.*, 2005).

Acoustic Effects on Marine Mammals

We previously provided general background information on marine mammal hearing (see “Description of Marine Mammals in the Area of the Specified Activity”). Here, we discuss the potential effects of sound on marine mammals.

Note that, in the following discussion, we refer in many cases to a review article concerning studies of noise-induced hearing loss conducted from 1996–2015 (*i.e.*, Finneran, 2015). For study-specific citations, please see that work. 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, and duration of the sound exposure. In general, sudden, high level sounds can cause hearing loss, as can longer exposures to lower level sounds. Temporary or permanent loss of hearing will occur almost exclusively for noise within an animal’s hearing range. We first describe specific manifestations of acoustic effects before providing discussion specific to pile driving and removal activities.

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 responsiveness. 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.

We describe the more severe effects (*i.e.*, certain non-auditory physical or physiological effects) only briefly as we do not expect that there is a reasonable likelihood that pile driving may result in such effects (see below for further discussion). Potential effects from explosive impulsive sound sources can range in severity from effects such as behavioral disturbance or tactile perception to physical discomfort, slight injury of the internal organs and the auditory system, or mortality (Yelverton *et al.*, 1973). Non-auditory physiological effects or injuries that theoretically might occur in marine mammals exposed to high level underwater sound or as a secondary effect of extreme behavioral reactions (*e.g.*, change in dive profile as a result of an avoidance reaction) caused by exposure to sound include neurological effects, bubble formation, resonance effects, and other types of organ or tissue damage (Cox *et al.*, 2006; Southall *et al.*, 2007; Zimmer and Tyack, 2007; Tal *et al.*, 2015). The construction activities considered here do not involve the use of devices such as explosives or mid-frequency tactical sonar that are associated with these types of effects.

Threshold Shift—Marine mammals exposed to high-intensity sound, or to lower-intensity sound for prolonged periods, can experience hearing threshold shift (TS), which is the loss of hearing sensitivity at certain frequency ranges (Finneran, 2015). TS can be permanent (PTS), in which case the loss of hearing sensitivity is not fully recoverable, or temporary (TTS), in which case the animal's hearing threshold would recover over time (Southall *et al.*, 2007). Repeated sound exposure that leads to TTS could cause PTS. In severe cases of PTS, there can be total or partial deafness, while in most cases the animal has an impaired ability to hear sounds in specific frequency ranges (Kryter, 1985).

When PTS occurs, there is physical damage to the sound receptors in the ear (*i.e.*, tissue damage), whereas TTS represents primarily tissue fatigue and is reversible (Southall *et al.*, 2007). In addition, other investigators have suggested that TTS is within the normal bounds of physiological variability and tolerance and does not represent physical injury (*e.g.*, Ward, 1997). Therefore, NMFS does not consider TTS to constitute auditory injury.

Relationships between TTS and PTS thresholds have not been studied in marine mammals, and there is no PTS data for cetaceans, but such relationships are assumed to be similar to those in humans and other terrestrial mammals. PTS typically occurs at exposure levels at least several decibels above (a 40-dB threshold shift approximates PTS onset; *e.g.*, Kryter *et al.*, 1966; Miller, 1974) that inducing mild TTS (a 6-dB threshold shift approximates TTS onset; *e.g.*, Southall *et al.* 2007). Based on data from terrestrial mammals, a precautionary assumption is that the PTS thresholds for impulse sounds (such as impact pile driving pulses as received close to the source) are at least 6 dB higher than the TTS threshold on a peak-pressure basis and PTS cumulative sound exposure level thresholds are 15 to 20 dB higher than TTS cumulative sound exposure level thresholds (Southall *et al.*, 2007). Given the higher level of sound or longer exposure duration necessary to cause PTS as compared with TTS, it is considerably less likely that PTS could occur.

TTS is the mildest form of hearing impairment that can occur during exposure to sound (Kryter, 1985). While experiencing TTS, the hearing threshold rises, and a sound must be at a higher level in order to be heard. In terrestrial and marine mammals, TTS can last from minutes or hours to days (in cases of strong TTS). In many cases, hearing sensitivity recovers rapidly after exposure to the sound ends. Few data on sound levels and durations necessary to elicit mild TTS have been obtained for marine mammals.

Marine mammal hearing plays a critical role in communication with conspecifics, and interpretation of environmental cues for purposes such as predator avoidance and prey capture. 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. 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 occurs during a time 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.

Currently, TTS data only exist for four species of cetaceans (bottlenose dolphin (*Tursiops truncatus*), beluga whale

(*Delphinapterus leucas*), harbor porpoise, and Yangtze finless porpoise (*Neophocoena asiaticaorientalis*)) and three species of pinnipeds (northern elephant seal, harbor seal, and California sea lion) exposed to a limited number of sound sources (*i.e.*, mostly tones and octave-band noise) in laboratory settings (Finneran, 2015). TTS was not observed in trained spotted (*Phoca largha*) and ringed (*Pusa hispida*) seals exposed to impulsive noise at levels matching previous predictions of TTS onset (Reichmuth *et al.*, 2016). In general, harbor seals and harbor porpoises have a lower TTS onset than other measured pinniped or cetacean species (Finneran, 2015). Additionally, the existing marine mammal TTS data come from a limited number of individuals within these species. There are no data available on noise-induced hearing loss for mysticetes. For summaries of data on TTS in marine mammals or for further discussion of TTS onset thresholds, please see Southall *et al.* (2007), Finneran and Jenkins (2012), Finneran (2015), and NMFS (2018).

Behavioral Effects—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). Please see Appendices B–C of Southall *et al.* (2007) for a review of studies involving marine mammal behavioral responses to sound.

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 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). However, many delphinids approach low-frequency airgun source vessels with no apparent discomfort or obvious behavioral change (*e.g.*, Barkaszi *et al.*, 2012), indicating the importance of frequency output in relation to the species’ hearing sensitivity.

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, 2013b). 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, 2005, 2006; Gailey *et al.*, 2007; Gailey *et al.*, 2016).

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.*, 2007). 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 airgun 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; Stone *et al.*, 2000; 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.

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.*, 2007; 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.

Potential Effects of DPD's Activity—As described previously (see “Description of Active Acoustic Sound Sources”), DPD proposes to conduct pile driving, including impact and vibratory driving (inclusive of socketing and anchoring). The effects of pile driving on marine mammals are dependent on several factors, including the size, type, and depth of the animal; the depth, intensity, and duration of the pile driving sound; the depth of the water column; the substrate of the habitat; the standoff distance between the pile and the animal; and the sound propagation properties of the environment. With both types, it is likely that the pile driving could result in temporary, short term changes in an animal's typical behavioral patterns and/or avoidance of the affected area. These behavioral changes may include (Richardson *et al.*, 1995): changing durations of surfacing and dives, number of blows per surfacing, or moving direction and/or speed; reduced/increased vocal activities; changing/cessation of certain behavioral activities (such as socializing or feeding); visible startle response or aggressive behavior (such as tail/fluke slapping or jaw clapping); avoidance of areas where sound sources are located; and/or flight responses.

The biological significance of many of these behavioral disturbances is difficult

to predict, especially if the detected disturbances appear minor. However, the consequences of behavioral modification could be expected to be biologically significant if the change affects growth, survival, or reproduction. Significant behavioral modifications that could lead to effects on growth, survival, or reproduction, such as drastic changes in diving/surfacing patterns or significant habitat abandonment are extremely unlikely in this area (*i.e.*, shallow waters in modified industrial areas).

Whether impact or vibratory driving, sound sources would be active for relatively short durations, with relation to potential for masking. The frequencies output by pile driving activity are lower than those used by most species expected to be regularly present for communication or foraging. We expect insignificant impacts from masking, and any masking event that could possibly rise to Level B harassment under the MMPA would occur concurrently within the zones of behavioral harassment already estimated for vibratory and impact pile driving, and which have already been taken into account in the exposure analysis.

Anticipated Effects on Marine Mammal Habitat

The proposed activities would not result in permanent impacts to habitats used directly by marine mammals except the actual footprint of the project. The footprint of the project is small, and equal to the area of the cruise ship berth and associated pile placement. The small lightering facility nearer to the cannery would not impact any marine mammal habitat since its proposed location is in between two existing, heavily-traveled docks, and within an active marine commercial and tourist area. Over time, marine mammals may be deterred from using habitat near the project area, due to an increase in vessel traffic and tourist activity in this area. The number of cruise ships traveling to Hoonah is expected to increase. Hoonah's increased traffic as a top Alaskan cruise port-of-call is already occurring. However, this project would decrease small vessel traffic to and from cruise ships unable to dock at the existing berth.

The proposed activities may have potential short-term impacts to food sources such as forage fish. The proposed activities could also affect acoustic habitat (see masking discussion above), but meaningful impacts are unlikely. There are no known foraging hotspots, or other ocean bottom

structures of significant biological importance to marine mammals present in the marine waters in the vicinity of the project areas. Therefore, the main impact issue associated with the proposed activity would be temporarily elevated sound levels and the associated direct effects on marine mammals, as discussed previously. The most likely impact to marine mammal habitat occurs from pile driving effects on likely marine mammal prey (*i.e.*, fish) near where the piles are installed. Impacts to the immediate substrate during installation and removal of piles are anticipated, but these would be limited to minor, temporary suspension of sediments, which could impact water quality and visibility for a short amount of time, but which would not be expected to have any effects on individual marine mammals. Impacts to substrate are therefore not discussed further.

Effects to Prey—Sound may affect marine mammals through impacts on the abundance, behavior, or distribution of prey species (*e.g.*, crustaceans, cephalopods, fish, zooplankton). Marine mammal prey varies by species, season, and location and, for some, is not well documented. Here, we describe studies regarding the effects of noise on known marine mammal prey.

Fish utilize the soundscape and components of sound in their environment to perform important functions such as foraging, predator avoidance, mating, and spawning (*e.g.*, Zelick *et al.*, 1999; Fay, 2009). Depending on their hearing anatomy and peripheral sensory structures, which vary among species, fishes hear sounds using pressure and particle motion sensitivity capabilities and detect the motion of surrounding water (Fay *et al.*, 2008). The potential effects of noise on fishes depends on the overlapping frequency range, distance from the sound source, water depth of exposure, and species-specific hearing sensitivity, anatomy, and physiology. Key impacts to fishes may include behavioral responses, hearing damage, barotrauma (pressure-related injuries), and mortality.

Fish react to sounds which are especially strong and/or intermittent low-frequency sounds, and behavioral responses such as flight or avoidance are the most likely effects. Short duration, sharp sounds can cause overt or subtle changes in fish behavior and local distribution. The reaction of fish to noise depends on the physiological state of the fish, past exposures, motivation (*e.g.*, feeding, spawning, migration), and other environmental factors. Hastings and Popper (2005) identified several

studies that suggest fish may relocate to avoid certain areas of sound energy. Additional studies have documented effects of pile driving on fish, although several are based on studies in support of large, multiyear bridge construction projects (e.g., Scholik and Yan, 2001, 2002; Popper and Hastings, 2009). Several studies have demonstrated that impulse sounds might affect the distribution and behavior of some fishes, potentially impacting foraging opportunities or increasing energetic costs (e.g., Fewtrell and McCauley, 2012; Pearson *et al.*, 1992; Skalski *et al.*, 1992; Santulli *et al.*, 1999; Paxton *et al.*, 2017). However, some studies have shown no or slight reaction to impulse sounds (e.g., Pena *et al.*, 2013; Wardle *et al.*, 2001; Jorgenson and Gyselman, 2009; Cott *et al.*, 2012). More commonly, though, the impacts of noise on fish are temporary.

SPLs of sufficient strength have been known to cause injury to fish and fish mortality. However, in most fish species, hair cells in the ear continuously regenerate and loss of auditory function likely is restored when damaged cells are replaced with new cells. Halvorsen *et al.* (2012a) showed that a TTS of 4–6 dB was recoverable within 24 hours for one species. Impacts would be most severe when the individual fish is close to the source and when the duration of exposure is long. Injury caused by barotrauma can range from slight to severe and can cause death, and is most likely for fish with swim bladders. Barotrauma injuries have been documented during controlled exposure to impact pile driving (Halvorsen *et al.*, 2012b; Casper *et al.*, 2013).

The action area supports marine habitat for prey species including large populations of anadromous fish including Pacific salmon (five species), cutthroat and steelhead trout, and Dolly Varden (NMFS 2018i) and other species of marine fish such as halibut, rock sole, sculpins, Pacific cod, herring, and eulachon (NMFS 2018j). The most likely impact to fish from pile driving activities at the project areas would be temporary behavioral avoidance of the area. The duration of fish avoidance of an area after pile driving stops is unknown, but a rapid return to normal recruitment, distribution and behavior is anticipated. In general, impacts to marine mammal prey species are expected to be minor and temporary due to the expected short daily duration of individual pile driving events and the relatively small areas being affected.

The following essential fish habitat (EFH) species may occur in the project area during at least one phase of their

lifestage: Chum Salmon (*Oncorhynchus keta*), Pink Salmon (*O. gorbuscha*), Coho Salmon (*O. kisutch*), Sockeye Salmon (*O. nerka*), and Chinook Salmon (*O. tshawytscha*). No habitat areas of particular concern or EFH areas protected from fishing are identified near the project area (NMFS 2018i). There are no documented anadromous fish streams in the project area. The closest documented anadromous fish stream is approximately 2.5 miles southeast of the project area (ADF&G 2018a).

The area impacted by the project is relatively small compared to the available habitat in Port Frederick Inlet and Icy Strait. Any behavioral avoidance by fish of the disturbed area would still leave significantly large areas of fish and marine mammal foraging habitat in the nearby vicinity. As described in the preceding, the potential for DPD's construction 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. 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 "small numbers" and the negligible impact determination.

Except with respect to certain activities not pertinent here, section 3(18) of 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).

Take of marine mammals incidental to DPD's pile driving and removal activities (as well as during socketing and anchoring) could occur as a result of Level A and Level B harassment. Below we describe how the potential take is estimated. As described previously, no mortality is anticipated or proposed to be authorized for this activity. Below we describe how the take is estimated.

Generally speaking, we estimate take by considering: (1) Acoustic thresholds above which NMFS believes the best available science indicates marine mammals will be behaviorally harassed or incur some degree of permanent

hearing impairment; (2) the area or volume of water that will be ensonified above these levels in a day; (3) the density or occurrence of marine mammals within these ensonified areas; and, (4) and the number of days of activities. We note that while these basic factors can contribute to a basic calculation to provide an initial prediction of takes, additional information that can qualitatively inform take estimates is also sometimes available (e.g., previous monitoring results or average group size). Below, we describe the factors considered here in more detail and present the proposed take estimate.

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 (equated to Level A harassment).

Level B Harassment—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.*, 2012). Based on what the 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 μ Pa (rms) for continuous (e.g., vibratory pile driving) and above 160 dB re 1 μ Pa (rms) for impulsive sources (e.g., impact pile driving). DPD's proposed activity includes the use of continuous (vibratory pile driving) and impulsive (impact pile driving) sources, and therefore the 120 and 160 dB re 1 μ Pa (rms) are applicable.

Level A harassment—NMFS' *Technical Guidance for Assessing the Effects of Anthropogenic Sound on Marine Mammal Hearing* (Version 2.0) (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. The technical guidance identifies the received levels, or thresholds, above which individual marine mammals are predicted to experience changes in their hearing sensitivity for all underwater anthropogenic sound sources, and reflects the best available science on the potential for noise to affect auditory sensitivity by:

- Dividing sound sources into two groups (*i.e.*, impulsive and non-

impulsive) based on their potential to affect hearing sensitivity;

- Choosing metrics that best address the impacts of noise on hearing sensitivity, *i.e.*, sound pressure level (peak SPL) and sound exposure level (SEL) (also accounts for duration of exposure); and
- Dividing marine mammals into hearing groups and developing auditory weighting functions based on the science supporting that not all marine mammals hear and use sound in the same manner.

These thresholds were developed by compiling and synthesizing the best

available science, and are provided in Table 3 below. The references, analysis, and methodology used in the development of the thresholds are described in NMFS 2018 Technical Guidance, which may be accessed at <https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-acoustic-technical-guidance>.

DPD’s pile driving and removal activity includes the use of impulsive (impact pile driving) and non-impulsive (vibratory pile driving and removal) sources.

TABLE 3—THRESHOLDS IDENTIFYING THE ONSET OF PERMANENT THRESHOLD SHIFT (AUDITORY INJURY)

Hearing group	PTS onset acoustic thresholds* (received level)	
	Impulsive	Non-impulsive
Low-Frequency (LF) Cetaceans	Cell 1: $L_{pk,flat}$: 219 dB; $L_{E,LF,24h}$: 183 dB	Cell 2: $L_{E,LF,24h}$: 199 dB.
Mid-Frequency (MF) Cetaceans	Cell 3: $L_{pk,flat}$: 230 dB; $L_{E,MF,24h}$: 185 dB	Cell 4: $L_{E,MF,24h}$: 198 dB.
High-Frequency (HF) Cetaceans	Cell 5: $L_{pk,flat}$: 202 dB; $L_{E,HF,24h}$: 155 dB	Cell 6: $L_{E,HF,24h}$: 173 dB.
Phocid Pinnipeds (PW) (Underwater)	Cell 7: $L_{pk,flat}$: 218 dB; $L_{E,PW,24h}$: 185 dB	Cell 8: $L_{E,PW,24h}$: 201 dB.
Otariid Pinnipeds (OW) (Underwater)	Cell 9: $L_{pk,flat}$: 232 dB; $L_{E,OW,24h}$: 203 dB	Cell 10: $L_{E,OW,24h}$: 219 dB.

* Dual metric acoustic thresholds for impulsive sounds: Use whichever results in the largest isopleth for calculating PTS onset. If a non-impulsive sound has the potential of exceeding the peak sound pressure level thresholds associated with impulsive sounds, these thresholds should also be considered.

Note: Peak sound pressure (L_{pk}) has a reference value of 1 μ Pa, and cumulative sound exposure level (L_E) has a reference value of 1 μ Pa²s. In this Table, thresholds are abbreviated to reflect American National Standards Institute standards (ANSI 2013). However, peak sound pressure is defined by ANSI as incorporating frequency weighting, which is not the intent for this Technical Guidance. Hence, the subscript “flat” is being included to indicate peak sound pressure should be flat weighted or unweighted within the generalized hearing range. The subscript associated with cumulative sound exposure level thresholds indicates the designated marine mammal auditory weighting function (LF, MF, and HF cetaceans, and PW and OW pinnipeds) and that the recommended accumulation period is 24 hours. The cumulative sound exposure level thresholds could be exceeded in a multitude of ways (*i.e.*, varying exposure levels and durations, duty cycle). When possible, it is valuable for action proponents to indicate the conditions under which these acoustic thresholds will be exceeded.

Ensonified Area

Here, we describe operational and environmental parameters of the activity that will feed into identifying the area ensonified above the acoustic thresholds, which include source levels and transmission loss coefficient.

Sound Propagation

Transmission loss (TL) is the decrease in acoustic intensity as an acoustic pressure wave propagates out from a source. TL parameters vary with frequency, temperature, sea conditions, current, source and receiver depth, water depth, water chemistry, and bottom composition and topography. The general formula for underwater TL is:

$$TL = B * \log_{10}(R_1/R_2), \text{ where:}$$

- B = transmission loss coefficient (assumed to be 15)
- R₁ = the distance of the modeled SPL from the driven pile, and
- R₂ = the distance from the driven pile of the initial measurement.

This formula neglects loss due to scattering and absorption, which is assumed to be zero here. The degree to which underwater sound propagates away from a sound source is dependent on a variety of factors, most notably the water bathymetry and presence or absence of reflective or absorptive conditions including in-water structures and sediments. Spherical spreading occurs in a perfectly unobstructed (free-field) environment not limited by depth or water surface, resulting in a 6 dB reduction in sound level for each doubling of distance from the source (20*log(range)). Cylindrical spreading occurs in an environment in which sound propagation is bounded by the water surface and sea bottom, resulting in a reduction of 3 dB in sound level for each doubling of distance from the source (10*log(range)). As is common practice in coastal waters, here we assume practical spreading loss (4.5 dB reduction in sound level for each doubling of distance). Practical spreading is a compromise that is often

used under conditions where water depth increases as the receiver moves away from the shoreline, resulting in an expected propagation environment that would lie between spherical and cylindrical spreading loss conditions.

Sound Source Levels

The intensity of pile driving sounds is greatly influenced by factors such as the type of piles, hammers, and the physical environment in which the activity takes place. There are source level measurements available for certain pile types and sizes from the similar environments recorded from underwater pile driving projects in Alaska (*e.g.*, JASCO Reports—Denes *et al.*, 2017 and Austin *et al.*, 2016.) that were evaluated and used as proxy sound source levels to determine reasonable sound source levels likely result from DPD’s pile driving and removal activities (Table 4). Many source levels used were more conservative as the values were from larger pile sizes.

TABLE 6—NMFS TECHNICAL GUIDANCE (2018) USER SPREADSHEET INPUT TO CALCULATE PTS ISOPLETHS FOR IMPACT PILE DRIVING

User spreadsheet input—impact pile driving Spreadsheet Tab E.1 impact pile driving used		
	36-in piles (permanent)	42-in piles (permanent)
Source Level (Single Strike/shot SEL)	186.7	186.7
Weighting Factor Adjustment (kHz)	2	2
Number of strikes per pile	100	135
Number of piles per day	4	2
Propagation (xLogR)	15	15
Distance of source level measurement (meters)	10	10

TABLE 7—NMFS TECHNICAL GUIDANCE (2018) USER SPREADSHEET OUTPUTS TO CALCULATE LEVEL A HARASSMENT PTS ISOPLETHS

User spreadsheet output		PTS isopleths (meters)				
Activity	Sound source level at 10 m	Level A harassment				
		Low-frequency cetaceans	Mid-frequency cetaceans	High-frequency cetaceans	Phocid	Otariid
Vibratory Pile Driving/Removal						
24-in steel installation	161.9 SPL ¹	6.0	0.5	8.8	3.6	0.3
30-in steel temporary installation	161.9 SPL ¹	12.4	1.1	18.4	7.6	0.5
30-in steel removal	161.9 SPL ¹	7.8	0.7	11.6	4.8	0.3
30-in steel permanent installation	161.9 SPL ¹	7.8	0.7	11.6	4.8	0.3
36-in steel permanent installation	168.2 SPL ²	20.6	1.8	30.5	12.5	0.9
42-in steel permanent installation	168.2 SPL ²	32.7	2.9	48.4	19.9	1.4
Impact Pile Driving						
36-in steel permanent installation	186.7 SEL/198.6 SPL ²	956.7	34.0	1,139.6	512.0	37.3
42-in steel permanent installation	186.7 SEL/198.6 SPL ²	736.2	26.2	876.9	394.0	28.7
Socketed Pile Installation						
24-in steel permanent installation	166.2 SPL ³	24.1	2.1	35.6	14.6	1.0
30-in steel temporary installation	166.2 SPL ³	24.1	2.1	35.6	14.6	1.0
Rock Anchor Installation						
8-in anchor permanent installation (for 24-in piles)	166.2 SPL ³	15.2	1.3	22.4	9.2	0.6
33-in anchor permanent installation (for 36-in piles)	166.2 SPL ³	60.7	5.4	89.7	36.9	2.6
33-in anchor permanent installation (for 42-in piles)	166.2 SPL ³	60.7	5.4	89.7	36.9	2.6

¹ The 24-in and 30-in-diameter source levels for vibratory driving are proxy from median measured source levels from pile driving of 30-in-diameter piles to construct the Ketchikan Ferry Terminal (Denes *et al.* 2016, Table 72).

² The 36-in and 42-in-diameter pile source levels are proxy from median measured source levels from pile driving (vibratory and impact hammering) of 48-in piles for the Port of Anchorage test pile project (Austin *et al.* 2016, Tables 9 and 16). We calculated the distances to impact pile driving Level A harassment thresholds for 36-in piles assuming 100 strikes per pile and a maximum of 4 piles installed in 24 hours; for 42-in piles we assumed 135 strikes per pile and a maximum of 2 piles installed in 24 hours.

³ The socketing and rock anchoring source level is proxy from median measured sources levels from down-hole drilling of 24-in-diameter piles to construct the Kodiak Ferry Terminal (Denes *et al.* 2016, Table 72).

Level B Harassment

Utilizing the practical spreading loss model, DPD determined underwater noise will fall below the behavioral effects threshold of 120 dB rms for marine mammals at the distances shown in Table 8 for vibratory pile driving/removal, socketing, and rock anchoring. With these radial distances, and due to

the occurrence of landforms (See Figure 8, 12, 13 of IHA Application), the largest Level B Harassment Zone calculated for vibratory pile driving for 36-in and 42-in steel piles equaled 193 km² and socket and rock anchoring equaled 116 km². For calculating the Level B Harassment Zone for impact driving, the practical spreading loss model was used

with a behavioral threshold of 160 dB rms. The maximum radial distance of the Level B Harassment Zone for impact piling equaled 3,744 meters. At this radial distance, the entire Level B Harassment Zone for impact piling equaled 19 km². Table 8 below provides all Level B Harassment radial distances

(m) and their corresponding areas (km²) during DPD's proposed activities.

TABLE 8—RADIAL DISTANCES (METERS) TO RELEVANT BEHAVIORAL ISOPLETHS AND ASSOCIATED ENSONIFIED AREAS (SQUARE KILOMETERS) USING THE PRACTICE SPREADING MODEL

Activity	Received level at 10 meters	Level B harassment zone (m) *	Level B harassment zone (km ²)
Vibratory Pile Driving/Removal			
24-in steel installation	161.9 SPL ³	6,215 (calculated 6,213)	39 km ²
30-in steel temporary installation	161.9 SPL ³	6,215 (calculated 6,213).	
30-in steel removal	161.9 SPL ³	6,215 (calculated 6,213).	193 km ²
30-in steel permanent installation	161.9 SPL ³	6,215 (calculated 6,213).	
36-in steel permanent installation	168.2 SPL ⁴	16,345 (calculated 16,343)	
42-in steel permanent installation	168.2 SPL ⁴	16,345 (calculated 16,343).	
Impact Pile Driving^{5 6}			
36-in steel permanent installation	186.7 SEL/198.6 SPL ⁴	3,745 (calculated 3,744)	19 km ²
42-in steel permanent installation	186.7 SEL/198.6 SPL ⁴	3,745 (calculated 3,744).	
Socketed Pile Installation			
24-in steel permanent installation	166.2 SPL ⁷	12,025 (calculated 12,023)	116 km ²
30-in steel temporary installation	166.2 SPL ⁷	12,025 (calculated 12,023).	
Rock Anchor Installation			
8-in anchor permanent installation (for 24-in piles).	166.2 SPL ⁷	12,025 (calculated 12,023)	116 km ²
33-in anchor permanent installation (for 36-in piles).	166.2 SPL ⁷	12,025 (calculated 12,023).	
33-in anchor permanent installation (for 42-in piles).	166.2 SPL ⁷	12,025 (calculated 12,023).	

* Numbers rounded up to nearest 5 meters.

Marine Mammal Occurrence and Take Calculation and Estimation

In this section we provide the information about the presence, density, or group dynamics of marine mammals that will inform the take calculations. Potential exposures to impact pile driving, vibratory pile driving/removal and socketing/rock anchoring noises for each acoustic threshold were estimated using group size estimates and local observational data. As previously stated, take by Level B harassment as well as small numbers of take by Level A harassment will be considered for this action. Take by Level B and Level A harassment are calculated differently for some species based on monthly or daily sightings data and average group sizes within the action area using the best available data. Take by Level A harassment is being proposed for three species where the Level A harassment isopleths are very large during impact pile driving (harbor porpoise, harbor seal, and Steller sea lion), and is based on average group size multiplied by the number of days of impact pile driving. Distances to Level A harassment thresholds for other project activities (vibratory pile driving/

removal, socketing, rock anchoring) are considerably smaller compared to impact pile driving, and mitigation is expected to avoid Level A harassment from these other activities.

Minke Whales

There are no density estimates of minke whales available in the project area. These whales are usually sighted individually or in small groups of 2–3, but there are reports of loose aggregations of hundreds of animals (NMFS 2018). There was one sighting of a minke whale during the 135 days of monitoring during the Huna Berth I construction project (June 2015 through January 2016) (BergerABAM 2016). To be conservative, we predict that three minke whales in a group could be sighted 3 times over the 6-month project period for a total of 9 minke whales that are proposed to be taken by Level B harassment.

Humpback Whales

There are no density estimates of humpback whales available in the project area. Humpback whale presence in the action area is likely steady through the work period until

November, when most humpbacks migrate back to Hawaii or Mexico. NMFS has received a few reports of humpback whales over-wintering in Southeast Alaska, but numbers of animals and exact locations are very hard to predict, and NMFS assumes the presence of much fewer humpbacks in the action area in November and later winter months. During the previous Huna Berth I project, humpback whales were observed on 84 of the 135 days of monitoring; most often in September and October (BergerABAM 2016). The best available information on the distribution of humpbacks in the project area was obtained from several sources including: Icy Strait observations from 2015 (BergerABAM 2016), Glacier Bay/Icy Strait NPS Survey data 2014–2018 (provided by NPS, March 2019), Whale Alert opportunistic reported sightings 2016–2018, and reported HB whale bubble-net feeding group to NPS, 2015–2018 (provided by NPS, March 2019).

The National Park Service Glacier Bay/Icy Strait survey is designed to observe humpback whales and has regular effort in June, July, and August. This is the primary data source used to estimate exposures of humpback whales

in the action area during those months, except for when a maximum group size reported in Whale Alert data was greater, then the Whale Alert number was used (June and July maximum group size). The on-site marine mammal monitoring data from BergerABAM (2016) was used to estimate takes in September and October and Whale Alert data was the only data source available in November and could represent a minimum number of observations due to fewer opportunistic sightings recorded in that month. In addition, a single group of bubble-net feeding humpbacks of 10 animals was added to the total estimated exposures for June and October, based on anecdotal data provided by NPS of bubble-net feeding groups of humpbacks in the action area in those months of construction.

To estimate the number of exposures, NMFS looked at the proportion of days of the month when the numbers of animals observed were within one standard deviation of that month's average daily sightings. That proportion was 0.7. The average number of sightings was estimated as exposures on those days. For the remaining 30 percent of work days, the maximum number of observations on any single day were estimated to be exposed on those days. For example, in June, the average number of daily observations (1.31) was estimated to occur on 70 percent of the 17 work days, which resulted in 15.59 exposures. On the other 30 percent of the 17 work days, the maximum number of observations on any day (10) resulted in 51 estimated exposures. In addition, in June, NMFS estimates that one bubble-net feeding group of 10 individuals could be exposed, due to anecdotal evidence of this feeding activity occurring inside the proposed action area. NMFS estimates a total of 76.59 humpback whales could be exposed in June. Humpback whales could be in larger groups when large amounts of prey are available, but this is difficult to predict with any precision. Although we are not proposing to authorize takes by month, we are demonstrating how the total take was calculated. The total number of exposures per month was calculated to be 76.59 (June), 68.02 (July), 71.93 (August), 132.07 (September), 78.82 (October), and 6.20 (November). The total proposed whales to be taken by Level B harassment from June to November is 434 (433.63) humpback whales with 27 of those whales anticipated being from the Mexico DPS (0.0601 percentage of the total animals).

Gray Whales

There are no density estimates of gray whales available in the project area. Gray whales travel alone or in small, unstable groups, although large aggregations may be seen in feeding and breeding grounds (NMFS 2018e). Observations in Glacier Bay and nearby waters recorded two gray whales documented over a 10-year period (Keller *et al.*, 2017). None were observed during Huna Berth I project monitoring (BergerABAM 2016). We conservatively estimate a small group to be 3 gray whales x 1 sighting over the 6-month work period for a total of three gray whale proposed to be taken by Level B harassment.

Killer Whales

There are no density estimates of killer whales available in the project area. Killer whales occur commonly in the waters of the project area, and could include members of several designated stocks that may occur in the vicinity of the proposed project area. Whales are known to use the Icy Strait corridor to enter and exit inland waters and are observed in every month of the year, with certain pods being observed inside Port Frederick passing directly in front of Hoonah. Group size of resident killer whale pods in the Icy Strait area ranges from 42 to 79 and occur in every month of the year (Dahlheim pers. comm. to NMFS 2015). As determined during a line-transect survey by Dalheim *et al.* (2008), the greatest number of transient killer whale observed occurred in 1993 with 32 animals seen over two months for an average of 16 sightings per month. NMFS estimates that group size of 79 resident killer whales and 16 transient killer whales could occur each month during the 6-month project period for a total of 570 takes by Level B harassment.

Pacific White-Sided Dolphin

There are no density estimates of Pacific white-sided dolphins available in the project area. Pacific white-sided dolphins have been observed in Alaska waters in groups ranging from 20 to 164 animals, with the sighting of 164 animals occurring in Southeast Alaska near Dixon Entrance (Muto *et al.*, 2018). There were no Pacific white-sided dolphins observed during the 135-day monitoring period during the Huna Berth I project. However, to be conservative NMFS estimates 164 Pacific white-sided dolphins may be seen once over the 6-month project period for a total of 164 takes by Level B harassment.

Dall's Porpoise

Little information is available on the abundance of Dall's porpoise in the inland waters of Southeast Alaska. Dall's porpoise are most abundant in spring, observed with lower numbers in the summer, and lowest numbers in fall. Jefferson *et al.*, 2019 presents the first abundance estimates for Dall's porpoise in these waters and found the abundance in summer (N = 2,680, CV = 19.6 percent), and lowest in fall (N = 1,637, CV = 23.3 percent). Dall's porpoise are common in Icy Strait and sporadic with very low densities in Port Frederick (Jefferson *et al.*, 2019). Dahlheim *et al.* (2008) observed 346 Dall's porpoise in Southeast Alaska (inclusive of Icy Strait) during the summer (June/July) of 2007 for an average of 173 animals per month as part of a 17-year study period. During the previous Huna Berth I project, only two Dall's porpoise were observed, and were transiting within the waters of Port Frederick in the vicinity of Halibut Island. Therefore, NMFS' estimates 173 Dall's porpoise per month may be seen each month of the 6-month project period for a total of 1,038 takes by Level B harassment.

Harbor Porpoise

Dahlheim *et al.* (2015) observed 332 resident harbor porpoises occur in the Icy Strait area, and harbor porpoise are known to use the Port Frederick area as part of their core range. During the Huna Berth I project monitoring, a total of 32 harbor porpoise were observed over 19 days during the 4-month project. The harbor porpoises were observed in small groups with the largest group size reported was four individuals and most group sizes consisting of three or fewer animals. NMFS conservatively estimates that 332 harbor porpoises could occur in the project area each month over the 6-month project period for a total of 1,932 takes by Level B harassment. Because the Level A harassment zone is significantly larger than the shutdown zone during impact pile driving, NMFS predicts that some take by Level A harassment may occur. Based on the previous monitoring results, we estimate that a group size of four harbor porpoises multiplied by 1 group per day over 8 days of impact pile driving would yield a total of 32 takes by Level A harassment.

Harbor Seal

There are no density estimates of harbor seals available in the project area. Keller *et al.* (2017) observed an average of 26 harbor seal sightings each month between June and August of 2014

in Glacier Bay and Icy Strait. During the monitoring of the Huna Berth I project, harbor seals typically occur in groups of one to four animals and a total of 63 seals were observed during 19 days of the 135-day monitoring period. NMFS conservatively estimate that 26 harbor seals could occur in the project area each month during the 6-month project period for a total of 156 takes by Level B harassment. Because the Level A harassment zone is significantly larger than the shutdown zone during impact pile driving, NMFS predicts that some take by Level A harassment may occur. Based on the previous monitoring results, we estimate that a group size of two harbor seals multiplied by 1 group per day over 8 days of impact pile driving would yield a total of 16 takes by Level A harassment.

Steller Sea Lion

There are no density estimates of Steller sea lions available in the project area. NMFS expects that Steller sea lion presence in the action area will vary due to prey resources and the spatial distribution of breeding versus non-breeding season. In April and May, Steller sea lions are likely feeding on herring spawn in the action area. Then, most Steller sea lions likely move to the rookeries along the outside coast (away from the action area) during breeding

season, and would be in the action area in greater numbers in August and later months (J. Womble, NPS, pers. comm. to NMFS AK Regional Office, March 2019). However, Steller sea lions are also opportunistic predators and their presence can be hard to predict.

Steller sea lions typically occur in groups of 1–10 animals, but may congregate in larger groups near rookeries and haulouts. The previous Huna Berth I project observed a total of 180 Steller sea lion sightings over 135 days in 2015, amounting to an average of 1.3 sightings per day (BergerABAM 2016). During a test pile program performed at the project location by the Hoonah Cruise Ship Dock Company in May 2018, a total of 15 Steller sea lions were seen over the course of 7 hours in one day (SolsticeAK 2018).

We used the same process to calculate Steller sea lion take as explained above or humpback whales, except that 79 percent of the work days in each month are expected to expose the average number of animals, and 21 percent of the work days would expose the maximum number of animals. For example, in June, the average number of daily observations (1.6) was estimated to occur on 13.43 work days, which would result in 21.48 exposures. On the other 21 percent of the 17 work days, the maximum number of observations on

any day (26) could result in 92.82 estimated exposures. NMFS estimates a total of 114.31 Steller sea lions could be exposed in June. Although we are not proposing to authorize takes by month, we are demonstrating how the total take was calculated. The total number of exposures per month was calculated to be 114.31 (June), 57.19 (July), 92.89 (August), 199.23 (September), 79.10 (October), and 16.57 (November). Therefore, the total proposed Steller sea lions that may be taken by Level B harassment from June to November is 559 Steller sea lions with 39 of those sea lions anticipated being from the Western DPS (0.0702 percentage of the total animals (L. Jemison draft unpublished Steller sea lion data, 2019). Because the Level A harassment zone is significantly larger than the shutdown zone during impact pile driving, NMFS predicts that some take by Level A harassment may occur. Based on the previous monitoring results, we estimate that a group size of two Steller sea lions multiplied by 1 group per day over 8 days of impact pile driving would yield a total of 16 takes by Level A harassment.

Table 9 below summarizes the proposed estimated take for all the species described above as a percentage of stock abundance.

TABLE 9—PROPOSED TAKE ESTIMATES AS A PERCENTAGE OF STOCK ABUNDANCE

Species	Stock (N _{EST})	Level A harassment	Level B harassment	Percent of stock
Minke Whale	N/A	0	9	N/A
Humpback Whale	Hawaii DPS (9,487) ^a	0	406	4.3
	Mexico DPS (606) ^a	0	27	4.5
			(Total 433).	
Gray Whale	Eastern North Pacific (26,960)	0	3	Less than 1 percent
Killer Whale	Alaska Resident (2,347)	0	469	19.9 ^b
	Northern Resident (261)	0	52	19.9 ^b
	West Coast Transient (243)		49	20.2 ^b
			(Total 570).	
Pacific White-Sided Dolphin	North Pacific (26,880)	0	164	Less than 1 percent
Dall's Porpoise	Alaska (83,400) ^c	0	1,038	1.2
Harbor Porpoise	NA	32	1,932	NA
Harbor Seal	Glacier Bay/Icy Strait (7,210)	16	156	2.16
Steller Sea Lion	Eastern U.S. (41,638)	15	520	1.25
	Western U.S. (53,303)		1	Less than 1 percent
		(Total 16)	(Total 559).	39

^a Under the MMPA humpback whales are considered a single stock (Central North Pacific); however, we have divided them here to account for DPSs listed under the ESA. Using the stock assessment from Muto *et al.* 2018 for the Central North Pacific stock (10,103 whales) and calculations in Wade *et al.* 2016; 9,487 whales are expected to be from the Hawaii DPS and 606 from the Mexico DPS.

^b Take estimates are weighted based on calculated percentages of population for each distinct stock, assuming animals present would follow same probability of presence in project area.

^c Jefferson *et al.* 2019 presents the first abundance estimates for Dall's porpoise in the waters of Southeast Alaska with highest abundance recorded in spring (N = 5,381, CV = 25.4%), lower numbers in summer (N = 2,680, CV = 19.6%), and lowest in fall (N = 1,637, CV = 23.3%). However, NMFS currently recognizes a single stock of Dall's porpoise in Alaskan waters and an estimate of 83,400 Dall's porpoises is used by NMFS for the entire stock (Muto *et al.*, 2018).

Proposed Mitigation

In order to issue an IHA under Section 101(a)(5)(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 (latter not applicable for this action). 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.

The following mitigation measures are proposed in the IHA:

Timing Restrictions

All work will be conducted during daylight hours. If poor environmental conditions restrict visibility full visibility of the shutdown zone, pile installation would be delayed.

Sound Attenuation

To minimize noise during impact pile driving, pile caps (pile softening material) will be used. DPD will use high-density polyethylene (HDPE) or ultra-high-molecular-weight polyethylene (UHMW) softening material on all templates to eliminate steel on steel noise generation.

Shutdown Zone for In-Water Heavy Machinery Work

For in-water heavy machinery work (using, e.g., movement of the barge to the pile location; positioning of the pile on the substrate via a crane (i.e., stabling

the pile), removal of the pile from the water column/substrate via a crane (i.e., deadpull); or placement of sound attenuation devices around the piles.) If a marine mammal comes within 10 m of such operations, operations shall cease and vessels shall reduce speed to the minimum level required to maintain steerage and safe working conditions.

Shutdown Zones

For all pile driving/removal and drilling activities, DPD will establish a shutdown zone for a marine mammal species that is greater than its corresponding Level A harassment zone; except for a few circumstances during impact pile driving, over the course of 8 days, where the shutdown zone is smaller than the Level A harassment zone for high frequency cetaceans and phocids due to the practicability of shutdowns on the applicant and to the potential difficulty of observing these animals in the large Level A harassment zones. The calculated PTS isopleths were rounded up to a whole number to determine the actual shutdown zones that the applicant will operate under (Table 10). The purpose of a shutdown zone is generally to define an area within which shutdown of the activity would occur upon sighting of a marine mammal (or in anticipation of an animal entering the defined area).

TABLE 10—PILE DRIVING SHUTDOWN ZONES DURING PROJECT ACTIVITIES

Source	Shutdown zones (radial distance in meters, area in km ²)				
	Low-frequency cetaceans	Mid-frequency cetaceans	High-frequency cetaceans	Phocids	Otariids
In-Water Construction Activities					
Barge movements, pile positioning, sound attenuation placement *	10 m (0.00093 km ²) ..	10 m (0.00093 km ²) ..	10 m (0.00093 km ²) ..	10 m (0.00093 km ²) ..	10 m (0.00093 km ²)
Vibratory Pile Driving/Removal					
24-in steel installation (18 piles; ~40 min per day on 4.5 days).	25 m (0.005763 km ²)	10 m (0.00093 km ²) ..	25 m (0.005763 km ²)	10 m (0.00093 km ²) ..	10 m (0.00093 km ²)
30-in steel temporary installation (62 piles; ~2 hours per day on 10.5 days).	25 m (0.005763 km ²)	10 m (0.00093 km ²) ..	25 m (0.005763 km ²)	10 m (0.00093 km ²) ..	10 m (0.00093 km ²)
30-in steel removal (62 piles; ~1 hour per day on 10.5 days).	25 m (0.005763 km ²)	10 m (0.00093 km ²) ..	25 m (0.005763 km ²)	10 m (0.00093 km ²) ..	10 m (0.00093 km ²)
30-in steel permanent installation (3 piles; ~1 hour per day on 1.5 days).	25 m (0.005763 km ²)	10 m (0.00093 km ²) ..	25 m (0.005763 km ²)	10 m (0.00093 km ²) ..	10 m (0.00093 km ²)
36-in steel permanent installation (16 piles; ~1 hour per day on 8 days).	25 m (0.005763 km ²)	10 m (0.00093 km ²) ..	50 m (0.02307 km ²) ..	25 m (0.005763 km ²)	10 m (0.00093 km ²)
42-in steel permanent installation (8 piles; ~2 hours per day on 4 days).	50 m (0.02307 km ²) ..	10 m (0.00093 km ²) ..	50 m (0.02307 km ²) ..	25 m (0.005763 km ²)	10 m (0.00093 km ²)
Impact Pile Driving					
36-in steel permanent installation (16 piles; ~10 minutes per day on 4 days).	1,000 m (2.31 km ²) ...	50 m (0.02307 km ²) ..	100 m* (0.0875 km ²)	50 m* (0.02307 km ²)	50 m (0.02307 km ²)
42-in steel permanent installation (8 piles; ~6 minutes per day on 4 days).	750 m (1.44 km ²)	50 m (0.02307 km ²) ..	100 m* (0.0875 km ²)	50 m* (0.02307 km ²)	50 m (0.02307 km ²)
Socketed Pile Installation					
24-in steel permanent installation (18 piles; ~2 hours per day on 9 days).	25 m (0.005763 km ²)	10 m (0.00093 km ²) ..	50 m (0.02307 km ²) ..	15 m (0.0021 km ²)	10 m (0.00093 km ²)
30-in steel temporary installation (up to 10 piles; ~2 hours per day on 5 days).	25 m (0.005763 km ²)	10 m (0.00093 km ²) ..	50 m (0.02307 km ²) ..	15 m (0.0021 km ²)	10 m (0.00093 km ²)

TABLE 10—PILE DRIVING SHUTDOWN ZONES DURING PROJECT ACTIVITIES—Continued

Source	Shutdown zones (radial distance in meters, area in km ²)				
	Low-frequency cetaceans	Mid-frequency cetaceans	High-frequency cetaceans	Phocids	Otariids
Rock Anchor Installation					
8-in anchor permanent installation (for 24-in piles, 2 anchors; ~1 hour per day on 2 days).	25 m (0.005763 km ²)	10 m (0.00093 km ²) ..	25 m (0.005763 km ²)	10 m (0.00093 km ²) ..	10 m (0.00093 km ²)
33-in anchor permanent installation (for 36- and 42-in piles, 24 anchors; ~8 hours per day on 12 days).	100 m (0.0875 km ²) ..	10 m (0.00093 km ²) ..	100 m (0.0875 km ²) ..	50 m (0.02307 km ²) ..	10 m (0.00093 km ²)

* Due to practicability of the applicant to shutdown and the difficulty of observing some species and low occurrence of some species in the project area, such as high frequency cetaceans or pinnipeds out to this distance, the shutdown zones were reduced and Level A harassment takes were requested.

Non-Authorized Take Prohibited

If a species enters or approaches the Level B zone and that species is either not authorized for take or its authorized takes are met, pile driving and removal activities must shut down immediately using delay and shut-down procedures. Activities must not resume until the animal has been confirmed to have left the area or an observation time period of 15 minutes has elapsed for pinnipeds and small cetaceans and 30 minutes for large whales.

Soft Start

The use of a soft-start procedure are believed to provide additional protection to marine mammals by providing warning and/or giving marine mammals a chance to leave the area prior to the impact hammer operating at full capacity. For impact pile driving, contractors will be required to provide an initial set of three strikes from the hammer at 40 percent energy, followed by a one-minute waiting period. Then two subsequent three strike sets would occur. Soft Start is not required during vibratory pile driving and removal activities.

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.

Proposed Monitoring and Reporting

In order to issue an IHA for an activity, Section 101(a)(5)(D) 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) indicate that requests for 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. Effective reporting is critical both to compliance as well as ensuring that the most value is obtained from the required monitoring.

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 area in which take is anticipated (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.

DPD Briefings

DPD will conduct briefings between construction supervisors and crews,

marine mammal monitoring team, and DPD staff prior to the start of all pile driving activities and when new personnel join the work, in order to explain responsibilities, communication procedures, marine mammal monitoring protocol, and operational procedures. The crew will be requested to alert the PSO when a marine mammal is spotted in the action area.

Protected Species Observer Check-In With Construction Crew

Each day prior to commencing pile driving activities, the lead NMFS approved Protected Species Observer (PSO) will conduct a radio check with the construction foreman or superintendent to confirm the activities and zones to be monitored that day. The construction foreman and lead PSO will maintain radio communications throughout the day so that the PSOs may be alerted to any changes in the planned construction activities and zones to be monitored.

Pre-Activity Monitoring

Prior to the start of daily in-water construction activity, or whenever a break in pile driving of 30 min or longer occurs, PSOs will observe the shutdown and monitoring zones for a period of 30 min. The shutdown zone will be cleared when a marine mammal has not been observed within the zone for that 30-min period. If a marine mammal is observed within the shutdown zone, pile driving activities will not begin until the animal has left the shutdown zone or has not been observed for 15 min. If the Level B Harassment Monitoring Zone has been observed for 30 min and no marine mammals (for which take has not been authorized) are present within the zone, work can continue even if visibility becomes impaired within the Monitoring Zone. When a marine mammal permitted for Level B harassment take has been permitted is present in the Monitoring zone, piling activities may begin and

Level B harassment take will be recorded.

Monitoring Zones

DPD will establish and observe monitoring zones for Level B harassment as presented in Table 8. The monitoring zones for this project are areas where SPLs are equal to or exceed 120 dB rms (for vibratory pile driving/removal and socketing/rock anchoring) and 160 dB rms (for impact pile driving). These zones provide utility for monitoring conducted for mitigation purposes (*i.e.*, shutdown zone monitoring) by establishing monitoring protocols for areas adjacent to the shutdown zones. Monitoring of the Level B harassment zones enables observers to be aware of and communicate the presence of marine mammals in the project area, but outside the shutdown zone, and thus prepare for potential shutdowns of activity.

Visual Monitoring

Monitoring would be conducted 30 minutes before, during, and 30 minutes after all pile driving/removal and socking/rock anchoring activities. In addition, PSO shall record all incidents of marine mammal occurrence, regardless of distance from activity, and shall document any behavioral reactions in concert with distance from piles being driven/removed or during socketing and rock anchoring. Pile driving/removal and socketing/anchoring activities include the time to install, remove, or socket/rock anchor a single pile or series of piles, as long as the time elapsed between uses of the pile driving equipment is no more than thirty minutes.

Monitoring will be conducted by PSOs from on land and from a vessel. The number of PSOs will vary from three to four, depending on the type of pile driving, method of pile driving and size of pile, all of which determines the size of the harassment zones. Monitoring locations will be selected to provide an unobstructed view of all water within the shutdown zone and as much of the Level B harassment zone as possible for pile driving activities. Three PSOs will monitor during all impact pile driving activity at the lightering float project site. Three PSOs will monitor during all impact pile driving activities at the Berth II project site. Three PSOs will monitor during vibratory pile driving of 24-in and 30-in steel piles. Four PSOs will monitor during vibratory pile driving of 36-in and 42-in steel piles and during all socketing/rock anchoring activities.

Three PSOs will monitor during all pile driving activities at the lightering float project site, with locations as follows: PSO #1: Stationed at or near the site of pile driving; PSO #2: Stationed on Long Island (southwest of Hoonah in Port Frederick Inlet) and positioned to be able to view west into Port Frederick Inlet and north towards the project area; and PSO #3: Stationed on a vessel traveling a circuitous route through the Level B monitoring zone.

Three PSOs will monitor during all impact pile driving activities at the Berth II project site, with locations as follows: PSO #1: Stationed at or near the site of pile driving; PSO #2: Stationed on Halibut Island (northwest of the project site in Port Frederick Inlet) and positioned to be able to view east towards Icy Strait and southeast towards the project area; and PSO #3: Stationed on a vessel traveling a circuitous route through the Level B monitoring zone.

Three PSOs will monitor during vibratory pile driving of 24- and 30-in steel piles at the Berth II project site, with locations as follows: PSO #1: Stationed at or near the site of pile driving; PSO #2: Stationed on Scraggy Island (northwest of the project site in Port Frederick Inlet) and positioned to be able to view south towards the project area; and PSO #3: Stationed on a vessel traveling a circuitous route through the Level B monitoring zone.

Four PSOs will monitor during vibratory pile driving of 36-in and 42-in steel piles and during all socketing/rock anchoring activities with locations as follows: PSO #1: Stationed at or near the site of pile driving; PSO #2: Stationed on Hoonah Island (northwest of the project site in Port Frederick Inlet) and positioned to be able to view south towards the project site; PSO #3: Stationed across Icy Strait north of the project site (on the mainland or the Porpoise Islands) and positioned to be able to view west into Icy Strait and southwest towards the project site; and PSO #4: Stationed on a vessel traveling a circuitous route through the Level B monitoring zone.

In addition, PSOs will work in shifts lasting no longer than 4 hours with at least a 1-hour break between shifts, and will not perform duties as a PSO for more than 12 hours in a 24-hour period (to reduce PSO fatigue).

Monitoring of pile driving shall be conducted by qualified, NMFS-approved PSOs, who shall have no other assigned tasks during monitoring periods. DPD shall adhere to the following conditions when selecting PSOs:

- Independent PSOs shall be used (*i.e.*, not construction personnel);

- At least one PSO must have prior experience working as a marine mammal observer during construction activities;

- Other PSOs may substitute education (degree in biological science or related field) or training for experience;

- Where a team of three or more PSOs are required, a lead observer or monitoring coordinator shall be designated. The lead observer must have prior experience working as a marine mammal observer during construction;
- DPD shall submit PSO CVs for approval by NMFS for all observers prior to monitoring.

DPD shall ensure that the PSOs have the following additional qualifications:

- Visual acuity in both eyes (correction is permissible) sufficient for discernment of moving targets at the water's surface with ability to estimate target size and distance; use of binoculars may be necessary to correctly identify the target;

- Experience and ability to conduct field observations and collect data according to assigned protocols;

- Experience or training in the field identification of marine mammals, including the identification of behaviors;

- Sufficient training, orientation, or experience with the construction operation to provide for personal safety during observations;

- Writing skills sufficient to prepare a report of observations including but not limited to the number and species of marine mammals observed; dates and times when in-water construction activities were conducted; dates, times, and reason for implementation of mitigation (or why mitigation was not implemented when required); and marine mammal behavior;

- Ability to communicate orally, by radio or in person, with project personnel to provide real-time information on marine mammals observed in the area as necessary; and

- Sufficient training, orientation, or experience with the construction operations to provide for personal safety during observations.

Notification of Intent To Commence Construction

DPD shall inform NMFS OPR and the NMFS Alaska Region Protected Resources Division one week prior to commencing construction activities.

Interim Monthly Reports

During construction, DPD will submit brief, monthly reports to the NMFS Alaska Region Protected Resources Division that summarize PSO

observations and recorded takes. Monthly reporting will allow NMFS to track the amount of take (including extrapolated takes), to allow reinitiation of consultation in a timely manner, if necessary. The monthly reports will be submitted by email to a NMFS representative. The reporting period for each monthly PSO report will be the entire calendar month, and reports will be submitted by close of business on the fifth day of the month following the end of the reporting period (*e.g.*, the monthly report covering September 1–30, 2019, would be submitted to the NMFS by close of business on October 5, 2019).

Final Report

DPD shall submit a draft report to NMFS no later than 90 days following the end of construction activities or 60 days prior to the issuance of any subsequent IHA for the project. DPD shall provide a final report within 30 days following resolution of NMFS' comments on the draft report. Reports shall contain, at minimum, the following:

- Date and time that monitored activity begins and ends for each day conducted (monitoring period);
- Construction activities occurring during each daily observation period, including how many and what type of piles driven;
 - Deviation from initial proposal in pile numbers, pile types, average driving times, etc.;
 - Weather parameters in each monitoring period (*e.g.*, wind speed, percent cloud cover, visibility);
 - Water conditions in each monitoring period (*e.g.*, sea state, tide state);
 - For each marine mammal sighting:
 - Species, numbers, and, if possible, sex and age class of marine mammals;
 - Description of any observable marine mammal behavior patterns, including bearing and direction of travel and distance from pile driving activity;
 - Type of construction activity that was taking place at the time of sighting;
 - Location and distance from pile driving activities to marine mammals and distance from the marine mammals to the observation point;
 - If shutdown was implemented, behavioral reactions noted and if they occurred before or after shutdown.
 - Estimated amount of time that the animals remained in the Level A or B Harassment Zone.
 - Description of implementation of mitigation measures within each monitoring period (*e.g.*, shutdown or delay);
 - Other human activity in the area within each monitoring period;

- A summary of the following:
 - Total number of individuals of each species detected within the Level B Harassment Zone, and estimated as taken if correction factor appropriate.
 - Total number of individuals of each species detected within the Level A Harassment Zone and the average amount of time that they remained in that zone.
 - Daily average number of individuals of each species (differentiated by month as appropriate) detected within the Level B Harassment Zone, and estimated as taken, if appropriate.

Negligible Impact Analysis and Determination

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” through harassment, NMFS considers other factors, such as the likely nature of any responses (*e.g.*, intensity, duration), the context of any responses (*e.g.*, critical reproductive time or location, migration), as well as effects on habitat, and the likely effectiveness of the 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, or ambient noise levels).

As stated in the proposed mitigation section, shutdown zones that are larger than the Level A harassment zones will be implemented in the majority of construction days, which, in combination with the fact that the zones are so small to begin with, is expected to avoid the likelihood of Level A harassment for six of the nine species. For the other three species (Steller sea

lions, harbor seals, and harbor porpoises), a small amount of Level A harassment has been conservatively proposed because the Level A harassment zones are larger than the proposed shutdown zones. However, given the nature of the activities and sound source and the unlikelihood that animals would stay in the vicinity of the pile-driving for long, any PTS incurred would be expected to be of a low degree and unlikely to have any effects on individual fitness.

Exposures to elevated sound levels produced during pile driving activities may cause behavioral responses by an animal, but they are expected to be mild and temporary. Effects on individuals that are taken by Level B harassment, on the basis of reports in the literature as well as monitoring from other similar activities, will likely be limited to reactions such as increased swimming speeds, increased surfacing time, or decreased foraging (if such activity were occurring) (*e.g.*, Thorson and Reyff, 2006; Lerma, 2014). Most likely, individuals will simply move away from the sound source and be temporarily displaced from the areas of pile driving, although even this reaction has been observed primarily only in association with impact pile driving. These reactions and behavioral changes are expected to subside quickly when the exposures cease.

To minimize noise during pile driving, DPC will use pile caps (pile softening material). Much of the noise generated during pile installation comes from contact between the pile being driven and the steel template used to hold the pile in place. The contractor will use high-density polyethylene (HDPE) or ultra-high-molecular-weight polyethylene (UHMW) softening material on all templates to eliminate steel on steel noise generation.

During all impact driving, implementation of soft start procedures and monitoring of established shutdown zones will be required, significantly reducing the possibility of injury. Given sufficient notice through use of soft start (for impact driving), marine mammals are expected to move away from an irritating sound source prior to it becoming potentially injurious. In addition, PSOs will be stationed within the action area whenever pile driving/removal and socketing/rock anchoring activities are underway. Depending on the activity, DDP will employ the use of three to four PSOs to ensure all monitoring and shutdown zones are properly observed. Although the expansion of Berth facilities would have some permanent removal of habitat available to marine mammals, the area

lost would be small, approximately equal to the area of the cruise ship berth and associated pile placements. These impacts have been minimized by use of a floating, pile-supported design rather than a design requiring dredging or fill. The proposed design would not impede migration of marine mammals through the proposed action area. The small lightering facility nearer to the cannery would likely not impact any marine mammal habitat since its proposed location is in between two existing, heavily-traveled docks, and within an active marine commercial and tourist area. There are no known pinniped haulouts or other biologically important areas for marine mammals near the action area.

In addition, impacts to marine mammal prey species are expected to be minor and temporary. Overall, the area impacted by the project is very small compared to the available habitat around Hoonah. The most likely impact to prey will be temporary behavioral avoidance of the immediate area. During pile driving/removal and socketing/rock anchoring activities, it is expected that fish and marine mammals would temporarily move to nearby locations and return to the area following cessation of in-water construction activities. Therefore, indirect effects on marine mammal prey during the construction are not expected to be substantial.

In summary and as described above, the following factors primarily support our preliminary determination that the impacts resulting from this activity are not expected to adversely affect the species or stock through effects on annual rates of recruitment or survival:

- No mortality is anticipated or authorized;
- Minimal impacts to marine mammal habitat are expected;
- The action area is located and within an active marine commercial and tourist area;
- There are no rookeries, or other known areas or features of special significance for foraging or reproduction in the project area;
- Anticipated incidents of Level B harassment consist of, at worst, temporary modifications in behavior; and
- The required mitigation measures (*i.e.* shutdown zones and pile caps) are expected to be effective in reducing the effects of the specified activity.

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 the proposed activity will have a negligible impact on all 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.

Six of the nine marine mammal stocks proposed for take is less than five percent of the stock abundance. For Alaska resident, northern resident and transient killer whales, the number of proposed instances of take as compared to the stock abundance are 19.9 percent, 19.9, and 20.2 percent, respectively. However, since three stocks of killer whales could occur in the action area, the 570 total killer whale takes are likely split among the three stocks. Nonetheless, since NMFS does not have a good way to predict exactly how take will be split, NMFS looked at the most conservative scenario, which is that all 570 takes could potentially be distributed to each of the three stocks. This is a highly unlikely scenario to occur and the percentages of each stock taken are predicted to be significantly lower than values presented in Table 9 for killer whales. Further, these percentages do not take into consideration that some number of these take instances are likely repeat takes incurred by the same individuals, thereby lowering the number of individuals.

There are no official stock abundances for harbor porpoise and minke whales; however, as discussed in greater detail in the "Description of Marine Mammals in the Area of Specified Activities," we believe for the abundance information that is available, the estimated takes are likely small percentages of the stock abundance. For harbor porpoise, the abundance for the Southeast Alaska stock is likely more represented by the aerial surveys that were conducted as these surveys had better coverage and were corrected for observer bias. Based on this data, the estimated take could

potentially be approximately 17 percent of the stock abundance. However, this is unlikely and the percentage of the stock taken is likely lower as the proposed take estimates are conservative and the project occurs in a small footprint compared to the available habitat in Southeast Alaska. For minke whales, in the northern part of their range they are believed to be migratory and so few minke whales have been seen during three offshore Gulf of Alaska surveys that a population estimate could not be determined. With only nine proposed takes for this species, the percentage of take in relation to the stock abundance is likely to be very small.

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

In September 2018, DPD contacted the Indigenous People's Council for Marine Mammals (IPCoMM), the Alaska Sea Otter and Steller Sea Lion Commission, and the Hoonah Indian Association (HIA) to determine potential project impacts on local subsistence activities. No comments were received from IPCoMM or the Alaska Sea Otter and Steller Sea Lion Commission. On October 23, 2018, a conference call between representatives from DPD, Turnagain Marine Construction, SolsticeAK, and the HIA were held to discuss tribal concerns regarding subsistence impacts. The tribe confirmed that Steller sea lions and harbor seals are harvested in and around the project area. The HIA referenced the 2012 subsistence technical paper by Wolf *et al.* (2013) as the most recent information available on marine mammal harvesting in Hoonah and agreed that the proposed construction activities are unlikely to have significant impacts to marine mammals as they are used in subsistence applications. Information on the timing of the IHA issuance was provided by DPD via email to the tribe on October 23, 2018. There have been no further comments on this project.

Therefore, we believe there are no relevant subsistence uses of the affected marine mammal stocks or species implicated by this action. NMFS has preliminarily 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.

Endangered Species Act (ESA)

Section 7(a)(2) of the Endangered Species Act of 1973 (ESA: 16 U.S.C. 1531 *et seq.*) requires that each Federal agency insure that any action it authorizes, funds, or carries out is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of designated critical habitat. To ensure ESA compliance for the issuance of IHAs, NMFS consults internally, in this case with the Alaska Regional Office (AKRO) whenever we propose to authorize take for endangered or threatened species.

NMFS is proposing to authorize take of Mexico DPS humpback whales, which are listed and Western DPS Steller sea lions under the ESA. The Permit and Conservation Division has requested initiation of Section 7 consultation with the Alaska Regional Office for the issuance of this IHA. NMFS will conclude the ESA consultation prior to reaching a determination regarding the proposed issuance of the authorization.

Proposed Authorization

As a result of these preliminary determinations, NMFS proposes to issue an IHA to DPD's for conducting for the proposed pile driving and removal activities for construction of the Hoonah Berth II cruise ship terminal and lightering float, Icy Strait, Hoonah Alaska for one year, beginning June 2019, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated. A draft of the proposed IHA can be found at <https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act>.

Request for Public Comments

We request comment on our analyses, the proposed authorization, and any other aspect of this Notice of Proposed IHA for the proposed pile driving and removal activities for construction of the Hoonah Berth II cruise ship terminal and lightering float. We also request comment on the potential for renewal of this proposed IHA as described in the paragraph below. Please include with your comments any supporting data or literature citations to help inform our final decision on the request for MMPA authorization.

On a case-by-case basis, NMFS may issue a one-year IHA renewal with an expedited public comment period (15

days) when (1) another year of identical or nearly identical activities as described in the Specified Activities section is planned or (2) the activities would not be completed by the time the IHA expires and a second IHA would allow for completion of the activities beyond that described in the Dates and Duration section, provided all of the following conditions are met:

- A request for renewal is received no later than 60 days prior to expiration of the current IHA.

- The request for renewal must include the following:

(1) An explanation that the activities to be conducted under the proposed Renewal are identical to the activities analyzed under the initial IHA, are a subset of the activities, or include changes so minor (*e.g.*, reduction in pile size) that the changes do not affect the previous analyses, mitigation and monitoring requirements, or take estimates (with the exception of reducing the type or amount of take because only a subset of the initially analyzed activities remain to be completed under the Renewal); and

(2) A preliminary monitoring report showing the results of the required monitoring to date and an explanation showing that the monitoring results do not indicate impacts of a scale or nature not previously analyzed or authorized.

- Upon review of the request for renewal, the status of the affected species or stocks, and any other pertinent information, NMFS determines that there are no more than minor changes in the activities, the mitigation and monitoring measures will remain the same and appropriate, and the findings in the initial IHA remain valid.

Dated: April 26, 2019.

Catherine G. Marzin,

Deputy Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2019-08848 Filed 4-30-19; 8:45 am]

BILLING CODE 3510-22-P

COMMODITY FUTURES TRADING COMMISSION

Agency Information Collection Activities: Notice of Intent To Renew Collection Numbers 3038-0068 and 3038-0083: Confirmation, Portfolio Reconciliation, Portfolio Compression, and Swap Trading Relationship Documentation Requirements for Swap Dealers and Major Swap Participants

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice.

SUMMARY: The Commodity Futures Trading Commission (“CFTC” or “Commission”) is announcing an opportunity for public comment on the proposed renewal of two collections of certain information by the agency. Under the Paperwork Reduction Act (“PRA”), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment. This notice solicits comments on the collections of information mandated by Commission regulations (Confirmation, Portfolio Reconciliation, Portfolio Compression, and Swap Trading Relationship Documentation Requirements for Swap Dealers and Major Swap Participants).

DATES: Comments must be submitted on or before July 1, 2019.

ADDRESSES: You may submit comments, identified by “Confirmation, Portfolio Reconciliation, Portfolio Compression, and Swap Trading Relationship Documentation Requirements for Swap Dealers and Major Swap Participants,” and Collection Numbers 3038-0068 and 3038-0083, by any of the following methods:

- The Agency’s website, at <http://comments.cftc.gov/>. Follow the instructions for submitting comments through the website.

- *Mail:* Christopher Kirkpatrick, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581.

- *Hand Delivery/Courier:* Same as Mail above.

Please submit your comments using only one method. All comments must be submitted in English, or if not, accompanied by an English translation. Comments will be posted as received to <http://www.cftc.gov>.

FOR FURTHER INFORMATION CONTACT:

Gregory Scopino, Special Counsel, Division of Swap Dealer and Intermediary Oversight, Commodity Futures Trading Commission, (202) 418-5175; email: gscopino@cftc.gov.

SUPPLEMENTARY INFORMATION: Under the PRA, Federal agencies must obtain approval from the Office of Management and Budget (“OMB”) for each collection of information they conduct or sponsor. “Collection of Information” is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3 and includes agency requests or requirements that members of the public submit reports, keep records, or provide

information to a third party. Section 3506(c)(2)(A) of the PRA, 44 U.S.C. 3506(c)(2)(A), requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, the CFTC is publishing notice of the proposed collections of information—treated as a consolidated collection—listed below.

Title: Confirmation, Portfolio Reconciliation, Portfolio Compression, and Swap Trading Relationship Documentation Requirements for Swap Dealers and Major Swap Participants (OMB Control Nos. 3038–0068 and 3038–0083).¹ This is a request for an extension of currently approved information collections.

Abstract: On September 11, 2012 the Commission adopted Commission regulations 23.500–23.505 (Confirmation, Portfolio Reconciliation, Portfolio Compression, and Swap Trading Relationship Documentation Requirements for Swap Dealers and Major Swap Participants)² under sections 4s(f), (g) and (i)³ of the Commodity Exchange Act (“CEA”). Commission regulations 23.500–23.505 require, among other things, that swap dealers (“SDs”)⁴ and major swap participants (“MSPs”)⁵ develop and retain written swap trading relationship documentation. The regulations also establish requirements for SDs and MSPs regarding swap confirmation, portfolio reconciliation, and portfolio compression. Under the regulations, swap dealers and major swap participants are obligated to maintain records of the policies and procedures required by the rules.⁶ Confirmation,

portfolio reconciliation, and portfolio compression are important post-trade processing mechanisms for reducing risk and improving operational efficiency. The information collection obligations imposed by the regulations are necessary to ensure that each swap dealer and major swap participant maintains the required records of their business activities and an audit trail sufficient to conduct comprehensive and accurate trade reconstruction. The information collections contained in the regulations are essential to ensuring that swap dealers and major swap participants document their swaps, reconcile their swap portfolios to resolve discrepancies and disputes, and wholly or partially terminate some or all of their outstanding swaps through regular portfolio compression exercises. The collections of information are mandatory. 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.

With respect to the collections of information, the CFTC invites comments on:

- Whether the proposed collections of information are necessary for the proper performance of the functions of the Commission, including whether the information will have a practical use;
- The accuracy of the Commission’s estimate of the burdens of the proposed collections of information, including the validity of the methodology and assumptions used;
- Ways to enhance the quality, usefulness, and clarity of the information to be collected; and
- Ways to minimize the burdens of collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology; e.g., permitting electronic submission of responses.

You 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.⁷

The Commission reserves the right, but shall have no obligation, to review,

master netting agreements and custody agreements that prohibit custodian of margin from re-hypothecating, repledging, reusing, or otherwise transferring the funds held by the custodian.

⁷ 17 CFR 145.9.

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 information collection request 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.

Burden Statement: The Commission is revising its estimate of the burdens for the collections to reflect the current number of respondents and estimated burden hours. The respondent burdens for the collections are estimated to be as follows:

- OMB Control No. 3038–0068 (Confirmation, Portfolio Reconciliation, and Portfolio Compression Requirements for Swap Dealers and Major Swap Participants)

Number of Registrants: 101.
Estimated Average Burden Hours per Registrant: 1,274.5.

Estimated Aggregate Burden Hours: 128,724.5.

Frequency of Recordkeeping: As applicable.

- OMB Control No. 3038–0083 (Orderly Liquidation Termination Provision in Swap Trading Relationship Documentation for Swap Dealers and Major Swap Participants)

Number of Registrants: 101.
Estimated Average Burden Hours per Registrant: 270.

Estimated Aggregate Burden Hours: 27,270.

Frequency of Recordkeeping: As applicable.

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

Dated: April 26, 2019.

Robert Sidman,

Deputy Secretary of the Commission.

[FR Doc. 2019–08809 Filed 4–30–19; 8:45 am]

BILLING CODE 6351–01–P

CONSUMER PRODUCT SAFETY COMMISSION

Sunshine Act Meetings

TIME AND DATE: Wednesday, May 8, 2019, 2:00 p.m.–3:00 p.m.

PLACE: Hearing Room 420, Bethesda Towers, 4330 East-West Highway, Bethesda, MD 20814.

STATUS: Commission Meeting—Open to the Public.

MATTERS TO BE CONSIDERED: Decisional Matter: Fees for Production of Records; Technical Amendments.

¹ Historically, PRA Collections 3038–0068, 3038–0083, and 3038–0088, which impose interrelated requirements, were renewed as a consolidated collection. See 81 FR 6241 (Feb. 5, 2016). However, on April 1, 2019, the CFTC published an interim final rule (IFR), which allows uncleared swaps to retain its legacy status when transferred in connection with a no-deal Brexit. See 84 FR 12233. This IFR directly affects the calculation of burdens in PRA Collection 3038–0088. Accordingly, the proposed renewal now treats collections 3038–0068 and 3038–0083 as a consolidated collection, with collection 3038–0088 being considered separately.

² 17 CFR 23.500–23.505.

³ 7 U.S.C. 6s(f), (g) & (i).

⁴ For the definition of SD, see Section 1a(49) of the CEA and Commission regulation 1.3, 7 U.S.C. 1a(49) and 17 CFR 1.3.

⁵ For the definitions of MSP, see Section 1a(33) of the CEA and Commission regulation 1.3, 7 U.S.C. 1a(33) and 17 CFR 1.3.

⁶ SDs and MSPs are required to maintain all records of policies and procedures in accordance with Commission regulation 1.31, including policies, procedures and models used for eligible

A live webcast of the meeting can be viewed at <https://www.cpsc.gov/live>.

CONTACT PERSON FOR MORE INFORMATION: Alberta E. Mills, Secretary, Division of the Secretariat, Office of the General Counsel, U.S. Consumer Product Safety Commission, 4330 East-West Highway, Bethesda, MD 20814, (301) 504-7479.

Dated: April 29, 2019.

Alberta E. Mills,
Secretary.

[FR Doc. 2019-08941 Filed 4-29-19; 11:15 am]

BILLING CODE 6355-01-P

DEPARTMENT OF EDUCATION

Notice Reopening the Application Period for the Fiscal Year (FY) 2019 Small, Rural School Achievement (SRSA) Program

AGENCY: Office of Elementary and Secondary Education, Department of Education.

ACTION: Notice.

SUMMARY: On March 12, 2019, we published in the **Federal Register** a notice of application deadline (84 FR 8846) for the FY 2019 SRSA Program application cycle, Catalog of Federal Domestic Assistance (CFDA) number 84.358A. The Secretary is reopening the FY 2019 SRSA application cycle, Catalog of Federal Domestic Assistance (CFDA) number 84.358A, for all eligible LEAs. The Secretary takes this action to allow small, rural LEAs, especially those impacted by recent flooding, additional time to submit their applications.

DATES: *Deadline for Transmittal of Applications:* May 10, 2019.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Hitchcock, U.S. Department of Education, 400 Maryland Avenue SW, Room 3E-218, Washington, DC 20202. Telephone: (202) 260-1472. Email: reap@ed.gov.

If you use a telecommunications device for the deaf or a text telephone, call the Federal Relay Service, toll free, at 1-800-877-8339.

SUPPLEMENTARY INFORMATION: On March 12, 2019, we published in the **Federal Register** a notice of application deadline (84 FR 8846) for the FY 2019 SRSA application cycle. This notice reopens the period for transmittal of applications for all SRSA applicants.

All LEAs eligible for FY 2019 SRSA funds must submit an application electronically via *Grants.gov* by 11:59:59 p.m., Eastern Time, on May 10, 2019.

All other information in the original notice of application, including

application submission instructions and requirements, remains the same.

Information about the SRSA Program is available on the Department's website at www2.ed.gov/programs/reapsrsa/contacts.html.

Program Authority: Sections 5211-5212 of the Elementary and Secondary Education Act, as amended, 20 U.S.C. 7345-7345a.

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.

Frank T. Brogan,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 2019-08856 Filed 4-30-19; 8:45 am]

BILLING CODE 4000-01-P

DEPARTMENT OF ENERGY

[**OE Docket No. EA-473**]

Application To Export Electric Energy; Northland Power Energy Marketing (US) Inc.

AGENCY: Office of Electricity, Department of Energy (DOE).

ACTION: Notice of application.

SUMMARY: Northland Power Energy Marketing (US) Inc. (Applicant or NPEMUS) has applied for 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 May 31, 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 April 22, 2019, DOE received an application from NPEMUS for authorization to transmit electric energy from the United States to Canada 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 electric generation, transmission, or distribution facilities in the United States and does not hold a franchise or service territory or native load obligation within the United States or Canada." 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 NPEMUS's application to

export electric energy to Canada should be clearly marked with OE Docket No. EA-473. An additional copy is to be provided directly to both Mark C. Williams, Morgan, Lewis & Bockius LLP, 1111 Pennsylvania Avenue NW, Washington, DC 20004, and Michael Shadbolt, c/o Northland Power Inc., 30 St. Clair Avenue West, 12th Floor, Toronto, Ontario, Canada M4V 3A1.

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 April 24, 2019.

Christopher Lawrence,

*Management and Program Analyst,
Transmission Permitting and Technical
Assistance, Office of Electricity.*

[FR Doc. 2019-08828 Filed 4-30-19; 8:45 am]

BILLING CODE 6450-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER19-1662-000]

Mojave 16/17/18 LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Mojave 16/17/18 LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard

to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is May 15, 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: April 25, 2019.

Nathaniel J. Davis, Sr.,
Deputy Secretary.

[FR Doc. 2019-08838 Filed 4-30-19; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER19-1664-000]

Refresh Wind, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Refresh Wind, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal

Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is May 15, 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: April 25, 2019.

Nathaniel J. Davis, Sr.,
Deputy Secretary.

[FR Doc. 2019-08841 Filed 4-30-19; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY**Federal Energy Regulatory Commission**

[Project No. 1894–209]

South Carolina Gas and Electric Company; Notice of Application Accepted for Filing, Soliciting Comments, Motions To Intervene, and Protests

Take notice that the following hydroelectric application has been filed with the Federal Energy Regulatory Commission and is available for public inspection:

- a. *Type of Application*: Non-Project Use Application.
- b. *Project No*: 1894–209.
- c. *Date Filed*: October 26, 2018 and November 28, 2018.
- d. *Applicant*: South Carolina Gas and Electric Company (licensee)
- e. *Name of Project*: Parr Shoals Hydroelectric Project.
- f. *Location*: The hydroelectric project is located on the Broad River in Fairfield and Newberry counties, South Carolina and is located in part within the nuclear exclusion zone for the V.C. Summer Nuclear Station.
- g. *Filed Pursuant to*: Federal Power Act, 16 U.S.C. 791a–825r.
- h. *Applicant Contact*: James M. Landreth, Mail Code A221, 220 Operations Way, Cayce, SC 29033–3701, 803–217–7224.
- i. *FERC Contact*: Michael Calloway at 202–502–8041, or michael.calloway@ferc.gov.
- j. *Deadline for filing comments, motions to intervene, and protests* is 30 days from the issuance of this notice by the Commission. The Commission strongly encourages electronic filing. Please file motions to intervene, protests, and comments using the Commission's eFiling system at <http://www.ferc.gov/docs-filing/efiling.asp>. Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at <http://www.ferc.gov/docs-filing/ecomment.asp>. You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at FERCOnlineSupport@ferc.gov, (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. The first page of any filing should include docket number P–1894–209.
- k. *Description of Request*: The licensee requests Commission approval to allow Newberry Sand Inc.'s Blair

Mine to utilize 6.7 acres of project lands and waters downstream of the Hwy 34 bridge crossing of the project reservoir for mining and processing sand. The mining facility is currently operating, and the facility extracts an average of 22,500 tons of sand per year.

1. *Locations of the Application*: A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street NE, Room 2A, Washington, DC 20426, or by calling 202–502–8371. This filing may also be viewed on the Commission's website at <http://www.ferc.gov> using the eLibrary link. Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at <http://www.ferc.gov/docs-filing/esubscription.asp> to be notified via email of new filings and issuances related to this or other pending projects. For assistance, call 866–208–3676 or email FERCOnlineSupport@ferc.gov, for TTY, call 202–502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene*: Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents*: Any filing must (1) bear in all capital letters the title COMMENTS; PROTEST, or MOTION TO INTERVENE as applicable; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, motions to intervene, or protests must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). All comments, motions to intervene, or

protests should relate to the non-project use application. Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. If an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

Dated: April 25, 2019.

Kimberly D. Bose,
Secretary.

[FR Doc. 2019–08793 Filed 4–30–19; 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: EC19–80–000.
Applicants: Emera Maine, Maine Electric Power Company, Maine Yankee Atomic Power Company.
Description: Application for Authorization Under Section 203 of the Federal Power Act, et al. of Emera Maine, et al.

Filed Date: 4/24/19.

Accession Number: 20190424–5247.

Comments Due: 5 p.m. ET 5/15/19.

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG19–94–000.
Applicants: Oberon Solar IA, LLC.
Description: Notice of Self-Certification of Exempt Wholesale Generator Status of Oberon Solar IA, LLC.

Filed Date: 4/24/19.

Accession Number: 20190424–5186.

Comments Due: 5 p.m. ET 5/15/19.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER19–263–002.
Applicants: AMP Transmission, LLC, PJM Interconnection, L.L.C.
Description: Compliance filing; AMPT's Compliance Filing Pursuant to

March 26, 2019 Order re: H-32A and H-32B to be effective 1/1/2019.

Filed Date: 4/25/19.

Accession Number: 20190425-5084.

Comments Due: 5 p.m. ET 5/16/19.

Docket Numbers: ER19-1270-001.

Applicants: Midcontinent

Independent System Operator, Inc.

Description: Tariff Amendment: 2019-04-25 SA 3264 Brown Valley Conductor Clearance Sub MPFCA (J488 J493 J526) to be effective 5/13/2019.

Filed Date: 4/25/19.

Accession Number: 20190425-5133.

Comments Due: 5 p.m. ET 5/16/19.

Docket Numbers: ER19-1668-000.

Applicants: Northern Indiana Public Service Company.

Description: § 205(d) Rate Filing: Filing of a CIAC Agreement to be effective 4/19/2019.

Filed Date: 4/24/19.

Accession Number: 20190424-5182.

Comments Due: 5 p.m. ET 5/15/19.

Docket Numbers: ER19-1669-000.

Applicants: Grande Prairie Wind, LLC.

Description: § 205(d) Rate Filing: Grande Prairie Wind, LLC MBR Tariff Amendments to be effective 6/24/2019.

Filed Date: 4/24/19.

Accession Number: 20190424-5183.

Comments Due: 5 p.m. ET 5/15/19.

Docket Numbers: ER19-1670-000.

Applicants: Marshall Wind Energy LLC.

Description: § 205(d) Rate Filing: Marshall Wind MBR Tariff Amendment Filing to be effective 6/24/2019.

Filed Date: 4/24/19.

Accession Number: 20190424-5184.

Comments Due: 5 p.m. ET 5/15/19.

Docket Numbers: ER19-1671-000.

Applicants: CalEnergy, LLC.

Description: § 205(d) Rate Filing: CalEnergy MBR Tariff Amendment Filing to be effective 6/24/2019.

Filed Date: 4/24/19.

Accession Number: 20190424-5185.

Comments Due: 5 p.m. ET 5/15/19.

Docket Numbers: ER19-1672-000.

Applicants: Southwest Power Pool, Inc.

Description: § 205(d) Rate Filing: 1148R25 American Electric Power NITSA and NOA to be effective 4/1/2019.

Filed Date: 4/25/19.

Accession Number: 20190425-5036.

Comments Due: 5 p.m. ET 5/16/19.

Docket Numbers: ER19-1673-000.

Applicants: Midcontinent

Independent System Operator, Inc.,
Union Electric Company.

Description: § 205(d) Rate Filing: 2019-04-25 SA 2015 Ameren-City of Jackson 3rd Rev WDS to be effective 4/1/2019.

Filed Date: 4/25/19.

Accession Number: 20190425-5060.

Comments Due: 5 p.m. ET 5/16/19.

Docket Numbers: ER19-1675-000.

Applicants: Ohio Power Company, AEP Ohio Transmission Company, Inc., PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: AEP Ohio submits ILDSA, Service Agreement No. 1430 and City of Wapakoneta FA to be effective 4/25/2019.

Filed Date: 4/25/19.

Accession Number: 20190425-5062.

Comments Due: 5 p.m. ET 5/16/19.

Docket Numbers: ER19-1676-000.

Applicants: Virginia Electric and Power Company.

Description: Compliance filing: Chesapeake—Deactivation of Certain Units to be effective N/A.

Filed Date: 4/25/19.

Accession Number: 20190425-5102.

Comments Due: 5 p.m. ET 5/16/19.

Docket Numbers: ER19-1677-000.

Applicants: Coyanosa Gas Services Corporation.

Description: § 205(d) Rate Filing: Coyanosa Gas Services Corp Notice of Succession Filing to be effective 4/25/2019.

Filed Date: 4/25/19.

Accession Number: 20190425-5103.

Comments Due: 5 p.m. ET 5/16/19.

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: April 25, 2019.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2019-08833 Filed 4-30-19; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER19-1660-000]

Mojave 3/4/5 LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Mojave 3/4/5 LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is May 15, 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: April 25, 2019.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2019-08837 Filed 4-30-19; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER19-1665-000]

Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization: Refresh Wind 2, LLC

This is a supplemental notice in the above-referenced proceeding of Refresh Wind 2, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is May 15, 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: April 25, 2019.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2019-08842 Filed 4-30-19; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER19-1663-000]

Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization: PHWD Affiliate LLC

This is a supplemental notice in the above-referenced proceeding of PHWD Affiliate LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is May 15, 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: April 25, 2019.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2019-08840 Filed 4-30-19; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. AD19-12-000]

Security Investments for Energy Infrastructure Technical Conference; Notice Inviting Post-Technical Conference Comments

On Thursday, March 28, 2019, the Federal Energy Regulatory Commission and the United States Department of Energy convened a Commissioner- and DOE senior official-led technical conference to discuss current cyber and physical security practices used to protect energy infrastructure and to explore how Federal and State authorities can provide incentives and cost recovery for security investments in energy infrastructure, particularly for the electric and natural gas sectors.

Specifically, the technical conference was aimed at better understanding (1) the types of cyber and physical security threats to energy infrastructure, particularly electric transmission, generation, and natural gas pipelines; (2) the need for security investments that go beyond those measures already required by mandatory reliability standards, including in infrastructure not subject to those standards (*e.g.*, natural gas pipelines); (3) how the costs

of such investments are or could be recovered; and (4) whether additional incentives for making such investments are needed, and if so, how those incentives should be designed.

All interested persons are invited to file post-technical conference comments on the topics discussed during the technical conference, including the questions listed in the Supplemental Notices issued in this proceeding on March 1, 2019 and March 21, 2019. Commenters need not respond to all questions asked. Commenters should organize responses consistent with the numbering of the questions in the Supplemental Notices and identify to what extent their responses are generally applicable. Commission staff may post additional follow-up questions related to those panels if deemed necessary. In addition, commenters are encouraged, when possible, to provide specific examples and data in support of their answers. Comments must be submitted on or before 30 days from the date of this notice and should not exceed 30 pages.

For further information about this Notice, please contact: Carolyn R. Templeton, Office of Energy Infrastructure Security, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, (202) 502-8785, carolyn.templeton@ferc.gov.

Dated: April 25, 2019.

Kimberly D. Bose,
Secretary.

[FR Doc. 2019-08792 Filed 4-30-19; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER19-1658-000]

Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization: Dutch Wind, LLC

This is a supplemental notice in the above-referenced Dutch Wind, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice

and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is May 15, 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: April 25, 2019.

Nathaniel J. Davis, Sr.,
Deputy Secretary.

[FR Doc. 2019-08836 Filed 4-30-19; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice Of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Number: PR19-45-001.

Applicants: EnLink LIG, LLC.

Description: Tariff filing per 284.123(b),(e)+(g): Amendment of

Petition for Rate Approval and SOC to be effective 4/23/2019.

Filed Date: 4/23/19.

Accession Number: 201904235064.

Comments Due: 5 p.m. ET 5/14/19.

284.123(g) Protests Due: 5 p.m. ET 6/24/19.

Docket Number: PR19-57-000.

Applicants: Southern California Gas Company.

Description: Tariff filing per 284.123(b),(e)+(g): Offshore Delivery Service Rate Revision—April 2019 to be effective 4/1/2019.

Filed Date: 4/24/19.

Accession Number: 201904245003.

Comments Due: 5 p.m. ET 5/15/19.

284.123(g) Protests Due: 5 p.m. ET 6/24/19.

Docket Numbers: RP19-1147-000.

Applicants: Rockies Express Pipeline LLC.

Description: Compliance filing NAESB 3.1 Compliance Filing to be effective 8/1/2019.

Filed Date: 4/24/19.

Accession Number: 20190424-5000.

Comments Due: 5 p.m. ET 5/6/19.

Docket Numbers: RP19-1148-000.

Applicants: Discovery Gas Transmission LLC.

Description: Imbalance Cash-out Report for 2018 Activity for Discovery Gas Transmission LLC under RP19-1148.

Filed Date: 4/24/19.

Accession Number: 20190424-5068.

Comments Due: 5 p.m. ET 5/6/19.

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: April 25, 2019.

Nathaniel J. Davis, Sr.,
Deputy Secretary.

[FR Doc. 2019-08834 Filed 4-30-19; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY**Federal Energy Regulatory Commission**

[Docket No. ER19-1667-000]

Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization: Terra-Gen VG Wind, LLC

This is a supplemental notice in the above-referenced proceeding of Terra-Gen VG Wind, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is May 15, 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: April 25, 2019.

Nathaniel J. Davis, Sr.,*Deputy Secretary.*

[FR Doc. 2019-08844 Filed 4-30-19; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY**Federal Energy Regulatory Commission**

[Docket No. ER19-1656-000]

Wilkinson Solar LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced Wilkinson Solar LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is May 15, 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: April 25, 2019.

Nathaniel J. Davis, Sr.,*Deputy Secretary.*

[FR Doc. 2019-08835 Filed 4-30-19; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY**Federal Energy Regulatory Commission**

[Project No. 2323-226]

Great River Hydro, LLC; Notice of Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Protests

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Non-capacity amendment of license.

b. *Project No.:* 2323-226.

c. *Date Filed:* January 4, 2019, and supplemented February 22, 2019 and April 17, 2019.

d. *Applicant:* Great River Hydro, LLC.

e. *Name of Project:* Deerfield River Hydroelectric Project.

f. *Location:* The project is located on the Deerfield River in Berkshire and Franklin counties, Massachusetts, and Bennington and Windham counties Vermont.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791 (a)-825(r).

h. *Applicant Contact:* Mr. John Ragonese, FERC License Manager, Great River Hydro, LLC, One Harbour Place, Suite 330, Portsmouth, NH 03801, (603) 498-2851.

i. *FERC Contact:* Steven Sachs, (202) 502-8666, Steven.Sachs@ferc.gov.

j. *Deadline for filing comments, motions to intervene, and protests is 30 days from the issuance of this notice by the Commission. The Commission strongly encourages electronic filing. Please file comments, motions to intervene, and protests using the Commission's eFiling system at <http://www.ferc.gov/docs-filing/efiling.asp>.*

Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at <http://www.ferc.gov/doc-sfiling/ecomment.asp>. You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at FERCOnlineSupport@ferc.gov, (866) 208-3676 (toll free), or (202) 502-8659 (TTY). In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. The first page of any filing should include docket number P-2323-226.

k. *Description of Request:* The applicant proposes to install a 230-kilowatt turbine-generator unit within the existing minimum flow release pipe at the No. 5 development of its Deerfield River Hydroelectric Project. The new unit would have a maximum hydraulic capacity of 87 cubic feet per second and produce approximately 1,269 megawatt-hours annually.

l. *Locations of the Applications:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street NE, Room 2A, Washington, DC 20426, or by calling (202) 502-8371. The filing may also be viewed on the Commission's website at <http://www.ferc.gov/docs-filing/elibrary.asp>. Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at <http://www.ferc.gov/docs-filing/esubscription.asp> to be notified via email of new filings and issuances related to this or other pending projects. For assistance, call 1-866-208-3676 or email FERCOnlineSupport@ferc.gov, for TTY, call (202) 502-8659. Agencies may obtain copies of the application directly from the applicant.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Motions to Intervene, or Protests:* Anyone may submit comments, a motion to intervene, or a protest in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, motions to intervene, or protests must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents:* Any filing must (1) bear in all capital letters the title COMMENTS, MOTION TO INTERVENE, or PROTEST as applicable; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, motions to intervene, or protests must set forth their evidentiary basis. Any filing made by an intervenor must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 385.2010.

p. *Waiver of Pre-filing Consultation:* Based on a review of the application, resource agency consultation letters, and comments filed to date, we accept the consultation that has occurred on this project as satisfying our requirements for the standard 3-stage consultation process under 18 CFR 4.38, and are waiving the requirement to conduct second stage consultation pursuant to section 4.38(c)(4) of the Commission's regulations, as requested by the applicant.

Dated: April 25, 2019.

Kimberly D. Bose,
Secretary.

[FR Doc. 2019-08790 Filed 4-30-19; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER19-1666-000]

Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization: Terra-Gen 251 Wind, LLC

This is a supplemental notice in the above-referenced proceeding of Terra-Gen 251 Wind, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice

and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is May 15, 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: April 25, 2019.

Nathaniel J. Davis, Sr.,
Deputy Secretary.

[FR Doc. 2019-08843 Filed 4-30-19; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 12635-002]

Moriah Hydro Corporation; Notice of Intent To Prepare an Environmental Impact Statement

On February 13, 2015, Moriah Hydro Corporation filed an application for an original major license to construct and operate its proposed 240-megawatt Mineville Energy Storage Project No.

12635 (Mineville Project or project). The project would be located in a decommissioned subterranean mine complex¹ in the town of Moriah, Essex County, New York. No federal lands would be occupied by the project works or located within the project boundary.

In accordance with the National Environmental Policy Act and the Commission's regulations, Commission staff held public scoping meetings for the proposed Mineville Project on December 7, 2016, in Warrensburg, New York, and on December 8, 2016, in Port Henry, New York. Commission staff originally intended to prepare an Environmental Assessment (EA) to analyze project effects.² However, during preparation of the EA and review of the project record, staff has determined that the Mineville Project may constitute a major federal action significantly affecting the quality of the human environment. Therefore, staff now intends to prepare an Environmental Impact Statement (EIS) that addresses the licensing of the Mineville Project.

A draft EIS will be issued and circulated for review by all interested parties. All comments filed on the draft EIS will be analyzed by the staff and considered in the final EIS. The staff's conclusions and recommendations will be available for the Commission's consideration in reaching its final licensing decision.

The application will be processed according to the following schedule. Revisions to the schedule may be made as appropriate.

Milestone	Target date
Issue draft EIS	June 2019.
Draft EIS public meeting	July 2019.
Comments on draft EIS due	August 2019.
Commission issues final EIS.	February 2020.

This notice informs all interested individuals, organizations, and agencies with environmental expertise and concerns, that: (1) The Commission staff has decided to prepare an EIS addressing the licensing of the Mineville Project; and (2) the prior scoping conducted on this project by Commission staff and comments filed with the Commission on the application will be taken into account in the EIS.

Any questions regarding this notice may be directed to Chris Millard (202)

¹ The existing mine complex comprises the interconnected Old Bed Mine, Harmony Mine, and 21 Mine and pit.

² See November 4, 2016, Notice of Scoping Meetings and Environmental Site Review and Soliciting Scoping Comments.

502-8256 or christopher.millard@ferc.gov.

Dated: April 25, 2019.

Kimberly D. Bose,
Secretary.

[FR Doc. 2019-08791 Filed 4-30-19; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC19-12-000]

Commission Information Collection Activities (FERC-592); Comment Request

AGENCY: Federal Energy Regulatory Commission.

ACTION: Comment request.

SUMMARY: In compliance with the requirements of the Paperwork Reduction Act of 1995, the Federal Energy Regulatory Commission (Commission or FERC) is submitting its information collection FERC-592 (Standards of Conduct for Transmission Provider and Marketing Affiliates of Interstate Pipelines) to the Office of Management and Budget (OMB) for review of the information collection requirements. Any interested person may file comments directly with OMB and should address a copy of those comments to the Commission as explained below. The Commission previously published a Notice in the **Federal Register** on December 18, 2018 (83 FR 63818), requesting public comments. The Commission received no comments and is making this notation in its submittal to OMB.

DATES: Comments on the collection of information are due by May 31, 2019.

ADDRESSES: Comments filed with OMB, identified by the OMB Control No. 1902-0157, should be sent via email to the Office of Information and Regulatory Affairs: oira_submission@omb.gov. Attention: Federal Energy Regulatory Commission Desk Officer.

A copy of the comments should also be sent to the Commission, in Docket No. IC19-12-000, by either of the following methods:

- *eFiling at Commission's website:* <http://www.ferc.gov/docs-filing/efiling.asp>.
- *Mail/Hand Delivery/Courier:*

Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE, Washington, DC 20426.

Instructions: All submissions must be formatted and filed in accordance with submission guidelines at: <http://>

www.ferc.gov/help/submission-guide.asp. For user assistance contact FERC Online Support by email at ferconlinesupport@ferc.gov, or by phone at: (866) 208-3676 (toll-free), or (202) 502-8659 for TTY.

Docket: Users interested in receiving automatic notification of activity in this docket or in viewing/downloading comments and issuances in this docket may do so at <http://www.ferc.gov/docs-filing/docs-filing.asp>.

FOR FURTHER INFORMATION CONTACT:

Ellen Brown may be reached by email at DataClearance@FERC.gov, by telephone at (202) 502-8663, and by fax at (202) 273-0873.

SUPPLEMENTARY INFORMATION:

Title: Standards of Conduct for Transmission Provider and Marketing Affiliates of Interstate Pipelines.

OMB Control No.: 1902-0157.

Type of Request: Three-year extension of the FERC-592 information collection requirements with no changes to the current reporting requirements.

Abstract: The Commission uses the information maintained and posted by the respondents to monitor the pipeline's transportation, sales, and storage activities for its marketing affiliate to deter undue discrimination by pipeline companies in favor of their marketing affiliates. Non-affiliated shippers and other entities (e.g., state commissions) also use information to determine whether they have been harmed by affiliate preference and to prepare evidence for proceedings following the filing of a complaint.

18 CFR Part 358 (Standards of Conduct)

Respondents maintain and provide the information required by part 358 on their internet websites. When the Commission requires a pipeline to post information on its website following a disclosure of non-public information to its marketing affiliate, non-affiliated shippers obtain comparable access to the non-public transportation information, which allows them to compete with marketing affiliates on a more equal basis.

18 CFR 250.16, and the FERC-592 Log/Format

This form (log/format) provides the electronic formats for maintaining information on discounted transportation transactions and capacity allocation to support monitoring of activities of interstate pipeline marketing affiliates. Commission staff considers discounts given to shippers in litigated rate cases.

Without this information collection:

- The Commission would be unable to effectively monitor whether pipelines

are giving discriminatory preference to their marketing affiliates; and

- non-affiliated shippers and state commissions and others would be unable to determine if they have been

harmed by affiliate preference or prepare evidence for proceedings following the filing of a complaint.
Type of Respondents: Natural gas pipelines.

*Estimate of Annual Burden:*¹ The Commission estimates the annual reporting burden and cost for the information collection as:

FERC-592—STANDARDS FOR CONDUCT FOR TRANSMISSION PROVIDERS MARKETING AFFILIATES OF INTERSTATE PIPELINES

	Number of respondents	Annual number of responses per respondent	Total number of responses	Average burden & cost per response ²	Total annual burden hours & total annual cost	Cost per respondent (\$)
	(1)	(2)	(1) * (2) = (3)	(4)	(3) * (4) = (5)	(5) ÷ (1)
FERC 592 ³	85	1	85	116.62 hrs.; \$9,212.98	9,913 hrs.; \$783,127	\$9,212.98

Comments: Comments are invited on:
 (1) Whether the collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility;
 (2) the accuracy of the agency's estimate of the burden and cost of the collection of information, including the validity of the methodology and assumptions used;
 (3) ways to enhance the quality, utility and clarity of the information collection; and
 (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Dated: April 25, 2019.

Kimberly D. Bose,
Secretary.

[FR Doc. 2019-08789 Filed 4-30-19; 8:45 am]

BILLING CODE 6717-01-P

EXPORT-IMPORT BANK

[Public Notice 2019-3011]

Agency Information Collection Activities: Comment Request

AGENCY: Export-Import Bank of the United States.

ACTION: Submission for OMB review and comments request.

SUMMARY: The Export-Import Bank of the United States (EXIM), as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal Agencies to comment on the proposed information collection, as required by the Paperwork Reduction Act of 1995. Financial institutions interested in

becoming an Approved Finance Provider (AFP) with EXIM must complete this application in order to obtain approval to make loans under EXIM insurance policies and/or enter into one or more Master Guarantee Agreements (MGA) with EXIM.

DATES: Comments must be received on or before May 31, 2019 to be assured of consideration.

ADDRESSES: Comments may be submitted electronically on WWW.REGULATIONS.GOV (EIB 10-06) or by email to Office of Information and Regulatory Affairs, 725 17th Street NW, Washington, DC 20038, Attn: OMB 3048-0032.

The information collection tool can be reviewed at: <https://www.exim.gov/sites/default/files/pub/pending/EIB10-06.pdf>.

SUPPLEMENTARY INFORMATION: An AFP may participate in the Medium-Term Insurance, Bank Letter of Credit, and Financial Institution Buyer Credit programs as an insured lender, while AFPs approved for an MGA may apply for multiple loan or lease transactions to be guaranteed by EXIM.

EXIM uses the information provided in the form and the supplemental information required to be submitted with the form to determine whether the lender qualifies to participate in its lender insurance and guarantee programs. The details are necessary to evaluate whether the lender has the capital to fund potential transactions, proper due diligence procedures, and the monitoring capacity to carry out transactions.

Title and Form Number: EIB 10-06 Application for Approved Finance Provider.

OMB Number: 3048-0032.

Type of Review: Renew.

Need and Use: The information collected will allow EXIM to determine compliance and content for transaction requests submitted to the Export-Import Bank under its insurance, guarantee, and direct loan programs.

Affected Public: This form affects entities involved in the export of U.S. goods and services.

Annual Number of Respondents: 50.

Estimated Time per Respondent: 30 minutes.

Annual Burden Hours: 25 hours.

Frequency of Reporting of Use: As required.

Government Expenses:

Reviewing time per year: 25 hours.

Average Wages per Hour: \$42.50.

Average Cost per Year: \$1,062.50 (time*wages).

Benefits and Overhead: 20%.

Total Government Cost: \$1,275.

Bassam Doughman,

IT Specialist.

[FR Doc. 2019-08808 Filed 4-30-19; 8:45 am]

BILLING CODE 6690-01-P

FEDERAL COMMUNICATIONS COMMISSION

Privacy Act of 1974; System of Records

AGENCY: Federal Communications Commission.

ACTION: Notice of a modified System of Records.

SUMMARY: The Federal Communications Commission (FCC, Commission, or Agency) has modified an existing

¹ Burden is defined as the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. For further explanation of what is included in the information collection burden, reference 5 Code of Federal Regulations 1320.3.

² The estimates for cost per response are derived using the following formula: Average Burden Hours per Response \$79.00/hour = Average cost/response. The figure is the 2018 FERC average hourly cost (for wages and benefits) of \$79.00 (and an average annual salary of \$164,820/year). Commission staff is using the FERC average salary because we

consider any reporting requirements completed in response to the FERC-592 to be compensated at rates similar to the work of FERC employees.

³ The requirements for this collection are contained in 18 CFR part 358 and 18 CFR part 250.16.

system of records, FCC/OMD–12, Integrated Library System (ILS) Records, subject to the Privacy Act of 1974, as amended. This action is necessary to meet the requirements of the Privacy Act to publish in the **Federal Register** notice of the existence and character of records maintained by the Agency. The FCC's Office of the Secretary (OS) in the Office of Managing Director (OMD) uses the records in OMD–12 to keep track of items borrowed by registered users from the FCC Library's collection and to ensure that all items are returned to the FCC Library in a timely manner and/or upon a FCC employee's resignation from the Commission.

DATES: This action will become effective on May 1, 2019. Written comments on the system's routine uses are due by May 31, 2019. The routine uses in this action will become effective on May 31, 2019 unless written comments are received that require a contrary determination.

ADDRESSES: Send comments to Leslie F. Smith, Privacy Manager, Information Technology (IT), Room 1–C216, Federal Communications Commission, 445 12th Street SW, Washington, DC 20554, or via the internet at Leslie.Smith@fcc.gov.

FOR FURTHER INFORMATION CONTACT: Leslie F. Smith (202) 418–0217, or Leslie.Smith@fcc.gov (and to obtain a copy of the Narrative Statement and the Supplementary Documentation, which includes details of the modifications to this system of records).

SUPPLEMENTARY INFORMATION: This notice serves to update and modify FCC/OMD–12 as a result of the various necessary changes and updates, including more advanced electronic information technologies, *i.e.*, cloud technology, and format changes required by OMB Circular A–108, since its previous publication. The substantive changes and modifications to the previously published version of the FCC/OMD–12 system of records include:

1. Updating the language in the Security Classification to follow OMB guidance.
2. Making minor changes to the language in the Categories of Records to be consistent with the language and phrasing now used in the FCC's SORNs.
3. Updating and/or revising language in four routine uses: (1) Adjudication and Litigation; (2) Law Enforcement and Investigation; (3) Congressional Inquiries; and (4) Government-wide Program Management and Oversight.
4. Adding four new routine uses: (1) For Non-Federal Personnel to allow contractors performing or working on a contract for the Federal Government

access to information; (6) Breach Notification to address real or suspected data breach situations at the FCC; (7) Assistance to Federal Agencies and Entities for assistance with other Federal agencies' data breach situations; and (8) Recovering Overdue Library Materials to allow FCC managers or supervisors to facilitate the recovery of overdue books or other loaned library materials recalled due to emergencies. Routine Uses (6) and (7) are required by OMB Memorandum M–17–12.

5. Adding two new sections: Reporting to a Consumer Reporting Agency to address valid and overdue debts owed by individuals to the FCC under the Debt Collection Act, as recommended by OMB; and a History section referencing the previous publication of this SORN in the **Federal Register**, as required by OMB Circular A–108.

6. Adding a new records retention and disposal schedule approved by the National Archives and Records Administration (NARA).

The system of records is also updated to reflect various administrative changes related to the system managers and system addresses; policy and practices for storage retrieval of the information; administrative, technical, and physical safeguards; and updated notification, records access, and contesting records procedures.

SYSTEM NAME AND NUMBER

FCC/OMD–12, Integrated Library System (ILS) Records.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

FCC Library, Office of the Secretary, Office of Managing Director (OMD), 445 12th Street SW, Washington, DC 20554.

SYSTEM MANAGER(S):

Office of the Secretary, Office of Managing Director (OMD), 445 12th Street SW, Washington, DC 20554.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

44 U.S.C. 3101 and 47 U.S.C. 154(I).

PURPOSE(S) OF THE SYSTEM:

The information is maintained and used to keep track of items borrowed by registered users from the FCC Library's collection and to ensure that all items are returned to the FCC Library in a timely manner and/or upon a FCC employee's resignation from the Commission.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Information on current Federal Communications Commission (FCC)

employees who have registered as library users.

CATEGORIES OF RECORDS IN THE SYSTEM:

Information in this system includes, but is not limited to records on checked-out and/or checked-in items contained in the FCC Library collection. The records may include, but are not limited to such information as the individual's name, organizational unit, telephone number, room number, building access badge number, library barcode identifier, and position title.

RECORD SOURCE CATEGORIES:

FCC employees who provide contact information in order to checkout materials from the FCC library and the FCC Library collection inventory.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, all or a portion of the records or information contained in this system may be disclosed to authorized entities, as is determined to be relevant and necessary, outside the FCC as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows.

1. Adjudication and Litigation—To disclose information to the Department of Justice (DOJ) or other administrative or adjudicative bodies before which the FCC is authorized to appear when: (a) The FCC or any component thereof; or (b) any employee of the FCC in his or her official capacity; or (c) any employee of the FCC in his or her individual capacity where the DOJ or the FCC has agreed to represent the employee; or (d) the United States is a party to litigation or has an interest in such litigation, and the use of such records by the DOJ or the FCC is deemed by the FCC to be relevant and necessary to the litigation;

2. Law enforcement and Investigation—To disclose pertinent information to the appropriate Federal, State, and/or local agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, where the FCC becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

3. Congressional Inquiries—To provide information to a Congressional office from the record of an individual in response to an inquiry from that Congressional office made at the written request of that individual.

4. Government-wide Program Management and Oversight—To

disclose information to the National Archives and Records Administration (NARA) for use in its records management inspections; to the Government Accountability Office (GAO) for oversight purposes; to the Department of Justice (DOJ) to obtain that department's advice regarding disclosure obligations under the Freedom of Information Act (FOIA); or to the Office of Management and Budget (OMB) to obtain that office's advice regarding obligations under the Privacy Act.

5. For Non-Federal Personnel—To disclose information to contractors performing or working on a contract to provide library and/or IT services for the Federal Government who may require access to this system of records.

6. Breach Notification—To disclose information to appropriate agencies, entities, and persons when: (a) The Commission suspects or has confirmed that there has been a breach of the system of records; (b) the Commission has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, the Commission (including its information systems, programs, and operations), the Federal Government, or national security; and (c) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Commission's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

7. Assistance to Federal Agencies and Entities—To another Federal agency or Federal entity, when the Commission determines that information from this system is reasonably necessary to assist the recipient agency or entity in: (a) Responding to a suspected or confirmed breach or (b) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, program, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

8. Recovering Overdue Library Materials—To disclose information to FCC managers or supervisors to facilitate the recovery of books or other lent library materials that are overdue or have been recalled due to an emergency situation.

REPORTING TO A CONSUMER REPORTING AGENCY:

In addition to the routine uses listed above, the Commission may share information from this system of records with a consumer reporting agency regarding an individual who has not paid a valid and overdue debt owed to

the Commission, following the procedures set out in the Debt Collection Act, 31 U.S.C. 3711(e).

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Records are maintained electronically in the Integrated Library System (ILS) Records database. The database is password protected and updated daily.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Information in this system may be retrieved by the patron's name, bureau/office, office telephone number, room number, barcode number, and position title.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Information in this system is maintained and disposed of in accordance with the Disposition Authority of the National Archives and Records Administration (NARA) General Records Schedule (GRS): 4.4 as follows:

DAA-GRS-2015-0003-0001: Library administrative records—Destroy when 3 years old or 3 years after superseded or obsolete, whichever is applicable. Longer retention is authorized for business use.

DAA-GRS-2015-0003-0002: Library operations records—Destroy when business use ceases. The FCC disposes of the paper documents by shredding. The electronic records, files, and data are destroyed either by physical destruction of the electronic storage media or by erasure of the electronic data.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

The electronic data, records, and files are stored within FCC accreditation boundaries. Access to the electronic files is restricted to OS, library, and IT staff; ILS and IT contractors; and vendors who maintain the networks and services. Other FCC employees, contractors, vendors, and users may be granted access on a "need-to-know" basis. The FCC's data are protected by the FCC and third-party privacy safeguards, a comprehensive and dynamic set of IT safety and security protocols and features that are designed to meet all Federal IT privacy standards, including those required by the Federal Information Security Modernization Act of 2014 (FISMA), the Office of Management and Budget (OMB), and the National Institute of Standards and Technology (NIST).

The ILS staff may print paper copies of the electronic records for various, short-term uses, as necessary. These

paper documents (copies) are stored in locked file cabinets in the FCC Library office suite, when not in use. These paper documents are destroyed by shredding when no longer needed.

Access to the electronic records and files and the paper documents, files, and records is restricted to the employees in the Office of the Secretary (OS); employees and contractors in the FCC Library; and IT staff and contractors who maintain the FCC's computer network. Other FCC employees and contractors may be granted access to this information, as required, for specific purposes.

RECORD ACCESS PROCEDURES:

Individuals wishing to request access to and/or amendment of records about them should follow the Notification Procedure below.

CONTESTING RECORD PROCEDURES:

Individuals wishing to request an amendment of records about them should follow the Notification Procedure below.

NOTIFICATION PROCEDURES:

Individuals wishing to determine whether this system of records contains information about them may do so by writing to Leslie F. Smith, Privacy Manager, Information Technology, Federal Communications Commission, 445 12th Street SW, Washington, DC 20554, or email Leslie.Smith@fcc.gov.

Individuals must furnish reasonable identification by showing any two of the following: Social security card; driver's license; employee identification card; Medicare card; birth certificate; bank credit card; or other positive means of identification, or by signing an identity statement stipulating that knowingly or willfully seeking or obtaining access to records about another person under false pretenses is punishable by a fine of up to \$5,000.

Individuals requesting access must also comply with the FCC's Privacy Act regulations regarding verification of identity and access to records (47 CFR part 0, subpart E).

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

The FCC last gave full notice of this system of records, FCC/OMD-12, Integrated Library System (ILS) Records, by publication in the **Federal Register** on April 5, 2006 (71 FR 17234, 17255).

Federal Communications Commission.

Marlene Dortch,
Secretary.

[FR Doc. 2019-08760 Filed 4-30-19; 8:45 am]

BILLING CODE 6712-01-P

FEDERAL COMMUNICATIONS COMMISSION**[OMB 3060–0986]****Information Collection Being Submitted for Review and Approval to the Office of Management and Budget****AGENCY:** Federal Communications Commission.**ACTION:** Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995, the Federal Communications Commission (FCC or the Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collection.

Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The Commission may not conduct or sponsor a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

DATES: Written comments should be submitted on or before May 31, 2019. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contacts listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicholas A. Fraser, OMB, via email Nicholas_A_Fraser@omb.eop.gov; and to Nicole Ongele, FCC, via email PRA@fcc.gov and to Nicole.Ongele@fcc.gov. Include in the comments the OMB control number as shown in the **SUPPLEMENTARY INFORMATION** below.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection, contact Nicole

Ongele at (202) 418–2991. To view a copy of this information collection request (ICR) submitted to OMB: (1) Go to the web page <http://www.reginfo.gov/public/do/PRAMain>, (2) look for the section of the web page called “Currently Under Review,” (3) click on the downward-pointing arrow in the “Select Agency” box below the “Currently Under Review” heading, (4) select “Federal Communications Commission” from the list of agencies presented in the “Select Agency” box, (5) click the “Submit” button to the right of the “Select Agency” box, (6) when the list of FCC ICRs currently under review appears, look for the OMB control number of this ICR and then click on the ICR Reference Number. A copy of the FCC submission to OMB will be displayed.

SUPPLEMENTARY INFORMATION: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the Federal Communications Commission (FCC or the Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collection.

Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

OMB Control Number: 3060–0986.

Title: High-Cost Universal Service Support.

Form Number: FCC Form 481, and FCC Form 525.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit, Not-for-profit institutions and State, Local or Tribal Government.

Number of Respondents and Responses: 1,877 respondents; 11,977 responses.

Estimated Time per Response: 0.1–15 hours.

Frequency of Response: On occasion, quarterly and annual reporting requirements, recordkeeping requirement and third-party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in 47 U.S.C. 151–154, 155, 201–206, 214, 218–220, 251, 252, 254, 256, 303(r), 332, 403, 405, 410, and 1302.

Total Annual Burden: 51,080 hours.

Total Annual Cost: No Cost.

Privacy Act Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: The Commission notes that the Universal Service Administrative Company (USAC) must preserve the confidentiality of all data obtained from respondents and contributors to the universal service support program mechanism; must not use the data except for purposes of administering the universal service program; must not use the data except for purposes of administering the universal support program; and must not disclose data in company-specific form unless directed to do so by the Commission. Parties may submit confidential information in relation pursuant to a protective order. Also, respondents may request materials or information submitted to the Commission or to the Administrator believed confidential to be withheld from public inspection under 47 CFR 0.459 of the FCC's rules.

Needs and Uses: The Commission is requesting the Office of Management and Budget (OMB) approval for this revised information collection. On November 18, 2011, the Commission adopted an order reforming its high-cost universal service support mechanisms. *Connect America Fund; A National Broadband Plan for Our Future; Establish Just and Reasonable Rates for Local Exchange Carriers; High-Cost Universal Service Support; Developing a Unified Intercarrier Compensation Regime; Federal-State Joint Board on Universal Service; Lifeline and Link-Up; Universal Service Reform—Mobility Fund*, WC Docket Nos. 10–90, 07–135, 05–337, 03–109; GN Docket No. 09–51; CC Docket Nos. 01–92, 96–45; WT Docket No. 10–208, Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663 (2011) (*USF/ICC Transformation Order*), and the Commission and Wireline Competition Bureau have since adopted a number of orders that implement the *USF/ICC Transformation Order*; see also *Connect America Fund et al.*, WC Docket No. 10–90 et al., Third Order on Reconsideration, 27 FCC Rcd 5622 (2012); *Connect America Fund et al.*, WC Docket No. 10–90 et al., Order, 27 FCC Rcd 605 (Wireline Comp. Bur. 2012); *Connect America Fund et al.*, WC Docket No. 10–90 et al., Fifth Order on

Reconsideration, 27 FCC Rcd 14549 (2012); *Connect America Fund et al.*, WC Docket No. 10–90 et al., Order, 28 FCC Rcd 2051 (Wireline Comp. Bur. 2013); *Connect America Fund et al.*, WC Docket No. 10–90 et al., Order, 28 FCC Rcd 7227 (Wireline Comp. Bur. 2013); *Connect America Fund*, WC Docket No. 10–90, Report and Order, 28 FCC Rcd 7766 (Wireline Comp. Bur. 2013); *Connect America Fund*, WC Docket No. 10–90, Report and Order, 28 FCC Rcd 7211 (Wireline Comp. Bur. 2013); *Connect America Fund*, WC Docket No. 10–90, Report and Order, 28 FCC Rcd 10488 (Wireline Comp. Bur. 2013); *Connect America Fund et al.*, WC Docket No. 10–90 et al., Report and Order on Reconsideration and Further Notice of Proposed Rulemaking, 31 FCC Rcd 3087 (2016); *Connect America Fund et al.*, WC Docket Nos. 10–90, 16–271; WT Docket No. 10–208, Report and Order and Further Notice of Proposed Rulemaking, 31 FCC Rcd 10139 (2016); *Connect America Fund; ETC Annual Reports and Certifications*, WC Docket Nos. 10–90, 14–58, Report and Order, 32 FCC Rcd 5944 (2017). The Commission has received OMB approval for most of the information collections required by these orders. At a later date, the Commission plans to submit additional revisions for OMB review to address other reforms adopted in the orders (e.g., 47 CFR 54.313(a)(6)).

More recently, in the *2018 Rate-of-Return Order*, the Commission adopted a rule requiring rate-of-return ETCs receiving high-cost universal service support to identify on their annual FCC Form 481 their cost consultants and cost consulting firm, or other third-party, if any, used to prepare financial and operations data disclosures used to calculate high-cost support for their submissions to the National Exchange Carrier Association, USAC, or the Commission. *Connect America Fund et al.*, WC Docket No. 10–90 et al., Report and Order, Third Order on Reconsideration, and Notice of Proposed Rulemaking, FCC 18–29, at 19–20, para. 42 (Mar. 23, 2018) (*2018 Rate-of-Return Order*). See also 47 CFR 54.313(f)(4).

The Commission therefore proposes to revise this information collection, as well as Form 481 and its accompanying instructions, to reflect this new requirement. Any increased burdens for particular reporting requirements are associated with ETCs newly subject to those requirements as a condition of receiving high-cost support.

Federal Communications Commission.
Marlene Dortch,
Secretary, Office of the Secretary.
[FR Doc. 2019–08757 Filed 4–30–19; 8:45 am]
BILLING CODE 6712-01-P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0289]

Information Collection Being Reviewed by the Federal Communications Commission

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995, the Federal Communications Commission (FCC or Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

DATES: Written PRA comments should be submitted on or before July 1, 2019. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Cathy Williams, FCC, via email PRA@fcc.gov and to Cathy.Williams@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information about the

information collection, contact Cathy Williams at (202) 418–2918.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0289.
Title: Section 76.76.601, Performance Tests; Section 76.1704, Proof of Performance Test Data; 76.1717, Compliance with Technical Standards.
Form Number: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit entities; State, local or Tribal Government.

Number of Respondents and Responses: 1,455 respondents; 1,505 responses.

Estimated Time per Response: 1–70 hours.

Frequency of Response: Recordkeeping requirement, Semi-annual and Triennial reporting requirements; Third party disclosure requirement.

Total Annual Burden: 101,900 hours.

Total Annual Costs: None.

Obligation To Respond: Required to obtain or retain benefits. The statutory authority for this collection of information is contained in Sections 4(i) and 624(e) of the Communications Act of 1934, as amended.

Nature and Extent of Confidentiality: There is no need for confidentiality with this collection of information.

Privacy Impact Assessment: No impact(s).

Needs and Uses: The Commission adopted a Report and Order on April 12, 2019, In the Matter of Channel Requirements, Sections 76.1705 and 76.1700(a)(4), Modernization of Media Regulation Initiative, MB Docket No. 18–92, MB Docket No. 17–105, FCC 19–33. In this Report and Order, the information collection requirement contained in 47 CFR 76.105 was eliminated. The Commission felt that it was an unnecessary requirement which pertains to cable operators' channel lineups. Section 76.1705, which requires cable operators to maintain at their local office a current listing of the cable television channels that each cable system delivers to its subscribers. This requirement is unnecessary as channel lineups are readily available to consumers through a variety of other means. In FCC 19–33, the Commission continue our efforts to modernize our regulations and reduce unnecessary requirements that can impede competition and innovation in the media marketplace.

The information collection requirements approved under this collection remain the same and are as follows:

47 CFR 76.601(b) requires the operator of each cable television system shall conduct complete performance tests of that system at least twice each calendar year (at intervals not to exceed seven months), unless otherwise noted below. The performance tests shall be directed at determining the extent to which the system complies with all the technical standards set forth in § 76.605(a) and shall be as follows:

(1) For cable television systems with 1,000 or more subscribers but with 12,500 or fewer subscribers, proof-of-performance tests conducted pursuant to this section shall include measurements taken at six (6) widely separated points. However, within each cable system, one additional test point shall be added for every additional 12,500 subscribers or fraction thereof (e.g., 7 test points if 12,501 to 25,000 subscribers; 8 test points if 25,001 to 37,500 subscribers, etc.). In addition, for technically integrated portions of cable systems that are not mechanically continuous (i.e., employing microwave connections), at least one test point will be required for each portion of the cable system served by a technically integrated microwave hub. The proof-of-performance test points chosen shall be balanced to represent all geographic areas served by the cable system. At least one-third of the test points shall be representative of subscriber terminals most distant from the system input and from each microwave receiver (if microwave transmissions are employed), in terms of cable length. The measurements may be taken at convenient monitoring points in the cable network: Provided, that data shall be included to relate the measured performance of the system as would be viewed from a nearby subscriber terminal. An identification of the instruments, including the makes, model numbers, and the most recent date of calibration, a description of the procedures utilized, and a statement of the qualifications of the person performing the tests shall also be included.

(2) Proof-of-performance tests to determine the extent to which a cable television system complies with the standards set forth in § 76.605(a)(3), (4), and (5) shall be made on each of the NTSC or similar video channels of that system. Unless otherwise as noted, proof-of-performance tests for all other standards in § 76.605(a) shall be made on a minimum of four (4) channels plus one additional channel for every 100 MHz, or fraction thereof, of cable distribution system upper frequency limit (e.g., 5 channels for cable television systems with a cable

distribution system upper frequency limit of 101 to 216 MHz; 6 channels for cable television systems with a cable distribution system upper frequency limit of 217–300 MHz; 7 channels for cable television systems with a cable distribution upper frequency limit to 300 to 400 MHz, etc.). The channels selected for testing must be representative of all the channels within the cable television system.

(3) The operator of each cable television system shall conduct semi-annual proof-of-performance tests of that system, to determine the extent to which the system complies with the technical standards set forth in § 76.605(a)(4) as follows. The visual signal level on each channel shall be measured and recorded, along with the date and time of the measurement, once every six hours (at intervals of not less than five hours or no more than seven hours after the previous measurement), to include the warmest and the coldest times, during a 24-hour period in January or February and in July or August.

(4) The operator of each cable television system shall conduct triennial proof-of-performance tests of its system to determine the extent to which the system complies with the technical standards set forth in § 76.605(a)(11).

Note 1 to 47 CFR 76.601 states prior to additional testing pursuant to Section 76.601(c), the local franchising authority shall notify the cable operator, who will then be allowed thirty days to come into compliance with any perceived signal quality problems which need to be corrected.

47 CFR 76.1704 requires that proof of performance test required by 47 CFR 76.601 shall be maintained on file at the operator's local business office for at least five years. The test data shall be made available for inspection by the Commission or the local franchiser, upon request. If a signal leakage log is being used to meet proof of performance test recordkeeping requirement in accordance with Section 76.601, such a log must be retained for the period specified in 47 CFR 76.601(d).

47 CFR 76.1717 states that an operator shall be prepared to show, on request by an authorized representative of the Commission or the local franchising authority, that the system does, in fact, comply with the technical standards rules in part 76, subpart K.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2019-08758 Filed 4-30-19; 8:45 am]

BILLING CODE 6712-01-P

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Announcement of Board Approval Under Delegated Authority and Submission to OMB

AGENCY: Board of Governors of the Federal Reserve System.

SUMMARY: The Board of Governors of the Federal Reserve System (Board) is adopting a proposal to extend for three years, with revision, the Central Bank Survey of Foreign Exchange and Derivatives Market Activity (FR 3036; OMB No. 7100-0285).

DATES: The revisions are applicable for the April Turnover survey.

FOR FURTHER INFORMATION CONTACT: Federal Reserve Board Clearance Officer—Nuha Elmaghrabi—Office of the Chief Data Officer, Board of Governors of the Federal Reserve System, Washington, DC, 20551 (202) 452-3829. Telecommunications Device for the Deaf (TDD) users may contact (202) 263-4869, Board of Governors of the Federal Reserve System, Washington, DC 20551.

Office of Management and Budget (OMB) Desk Officer—Shagufta Ahmed—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW, Washington, DC 20503 or by fax to (202) 395-6974.

SUPPLEMENTARY INFORMATION: On June 15, 1984, OMB delegated to the Board authority under the Paperwork Reduction Act (PRA) to approve and assign OMB control numbers to collection of information requests and requirements conducted or sponsored by the Board. Board-approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the PRA submission, supporting statements and approved collection of information instrument(s) are placed into OMB's public docket files. The Board 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.

Final Approval Under OMB Delegated Authority of the Extension for Three Years With Revision of the Following Information Collection

Report title: Central Bank Survey of Foreign Exchange and Derivatives Market Activity.

Agency form number: FR 3036.

OMB control number: 7100–0285.

Effective Date: April 2019.

Frequency: Triennially.

Respondents: Financial institutions

that serve as intermediaries in the wholesale foreign exchange and derivatives market.

Estimated number of respondents: 21.

Estimated average hours per response: 55.

Estimated annual burden hours:

1,155.

General description of report: The survey is a comprehensive source of global information on the volume of foreign exchange and derivatives trading and, as such, is useful to the Federal Reserve System and other government agencies in understanding market developments and trends and for conducting Federal Reserve and U.S. Treasury foreign exchange operations. Survey data are also used by market participants to gain a perspective on the market that is not available from data at the firm level. Academics and the general public also use the survey's data for research and analysis.

Legal authorization and confidentiality:

The FR 3036 is authorized pursuant to sections 2A and 12A of the Federal Reserve Act (FRA). Section 2A of the FRA requires that the Board and the Federal Open Market Committee (FOMC) maintain long-run growth of the monetary and credit aggregates commensurate with the economy's long run potential to increase production, so as to promote effectively the goals of maximum employment, stable prices, and moderate long-term interest rates (12 U.S.C. 225a). Under section 12A of the FRA, the FOMC is required to implement regulations relating to the open market operations conducted by Federal Reserve Banks. Those transactions must be governed with a view to accommodating commerce and business and with regard to their bearing upon the general credit situation of the country (12 U.S.C. 263). The Board and the FOMC use the information obtained from the FR 3036 to help fulfill these obligations.

The FR 3036 is a voluntary survey. Because the release of this information would cause substantial harm to the competitive position of the entity from whom the information was obtained, the information collected on the FR 3036 may be granted confidential treatment under exemption (b)(4) of the Freedom of Information Act, 5 U.S.C. 552(b)(4), which protects from disclosure "trade secrets and commercial or financial information obtained from a person and privileged or confidential."

Current actions: On February 7, 2019, the Board published a notice in the

Federal Register (84 FR 2506)

requesting public comment for 60 days on the extension, with revision, of the Central Bank Survey of Foreign Exchange and Derivatives Market Activity. The comment period for this notice expired on April 8, 2019. The Board did not receive any comments. The revisions will be implemented as proposed.

Board of Governors of the Federal Reserve System, April 25, 2019.

Michele Taylor Fennell,

Assistant Secretary of the Board.

[FR Doc. 2019–08779 Filed 4–30–19; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL TRADE COMMISSION

[File No. 1723003]

ClixSense.com; Analysis to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement and Statement of the Commission.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices. The attached Analysis to Aid Public Comment describes both the allegations in the complaint and the terms of the consent order—embodied in the consent agreement—that would settle these allegations. The attached Statement of the Commission describes new requirements in recent data security orders.

DATES: Comments must be received on or before May 31, 2019.

ADDRESSES: Interested parties may file comments online or on paper, by following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Write: "ClixSense.com; File No. 1723003" on your comment, and file your comment online at <https://www.regulations.gov> by following the instructions on the web-based form. If you prefer to file your comment on paper, mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Suite CC–5610 (Annex D), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW, 5th Floor, Suite 5610 (Annex D), Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Jamie Hine (202–326–2188), Bureau of

Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 15 U.S.C. 46(f), and FTC Rule 2.34, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for April 24, 2019), on the World Wide Web, at <https://www.ftc.gov/news-events/commission-actions>.

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before May 31, 2019. Write "ClixSense.com; File No. 1723003" on your comment. Your comment—including your name and your state—will be placed on the public record of this proceeding, including, to the extent practicable, on the <https://www.regulations.gov> website.

Postal mail addressed to the Commission is subject to delay due to heightened security screening. As a result, we encourage you to submit your comments online through the <https://www.regulations.gov> website.

If you prefer to file your comment on paper, write "ClixSense.com; File No. 1723003" on your comment and on the envelope, and mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Suite CC–5610 (Annex D), Washington, DC 20580; or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW, 5th Floor, Suite 5610 (Annex D), Washington, DC 20024. If possible, submit your paper comment to the Commission by courier or overnight service.

Because your comment will be placed on the publicly accessible website at <https://www.regulations.gov>, you are solely responsible for making sure that your comment does not include any sensitive or confidential information. In particular, your comment should not include any sensitive personal information, such as your or anyone else's Social Security number; date of

birth; driver's license number or other state identification number, or foreign country equivalent; passport number; financial account number; or credit or debit card number. You are also solely responsible for making sure that your comment does not include any sensitive health information, such as medical records or other individually identifiable health information. In addition, your comment should not include any "trade secret or any commercial or financial information which . . . is privileged or confidential"—as provided by Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2)—including in particular competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

Comments containing material for which confidential treatment is requested must be filed in paper form, must be clearly labeled "Confidential," and must comply with FTC Rule 4.9(c). In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. See FTC Rule 4.9(c). Your comment will be kept confidential only if the General Counsel grants your request in accordance with the law and the public interest. Once your comment has been posted on the public FTC website—as legally required by FTC Rule 4.9(b)—we cannot redact or remove your comment from the FTC website, unless you submit a confidentiality request that meets the requirements for such treatment under FTC Rule 4.9(c), and the General Counsel grants that request.

Visit the FTC website at <http://www.ftc.gov> to read this Notice and the news release describing it. The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding, as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before May 31, 2019. For information on the Commission's privacy policy, including routine uses permitted by the Privacy Act, see <https://www.ftc.gov/site-information/privacy-policy>.

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission ("Commission") has accepted, subject to final approval, an agreement containing a consent order from James V. Grago, Jr.,

individually and doing business as *ClixSense.com* ("Respondent").

The proposed consent order ("proposed order") has been placed on the public record for thirty (30) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the agreement and the comments received, and will decide whether it should withdraw from the agreement and take appropriate action or make final the agreement's proposed order.

This matter involves *ClixSense.com* ("ClixSense"), an online rewards website owned and operated by James V. Grago, Jr. ("Mr. Grago") since 2010. As the sole owner of ClixSense, Mr. Grago controlled or had authority to control, or participated in the acts or practices alleged in the proposed complaint.

ClixSense pays its users for clicking on advertisements, performing online tasks, or completing online surveys. ClixSense makes money from advertisers and from marketers who purchase information generated from consumer surveys. As part of the enrollment process, ClixSense collects and stores personal information on its computer network about its users, including full names, physical addresses, dates of birth, gender, and email addresses. ClixSense also requires users to create a username, a password, and an answer to a security question that it stores in its database. For users who earn more than \$600 annually, ClixSense requires a Social Security number.

The Commission's proposed three-count complaint alleges that Respondent has violated Section 5(a) of the Federal Trade Commission Act.

First, the proposed complaint alleges that Respondent deceived its users about the level of encryption it used. As alleged in the proposed complaint, Respondent has expressly represented to its users through a Frequently Asked Question ("FAQ") entitled "Is my personal information secure?" that it uses the latest encryption techniques to ensure the security of account information. Contrary to this claim, the proposed complaint alleges that Respondent used no encryption to protect consumers' personal information. In fact, Respondent stored consumers' personal information, including SSNs, in clear text.

Second, the proposed complaint alleges that Respondent misrepresented to its users that it utilized the latest security techniques to ensure the security of users' personal information.

As alleged in the proposed complaint, Respondent failed to utilize the latest security techniques in multiple areas.

Third, the proposed complaint alleges that Respondent has engaged in a number of unreasonable security practices that led to a breach of information regarding 6.6 million consumers. The proposed complaint alleges that Respondent:

- Failed to implement readily available security measures to limit access between computers on ClixSense's network, and between such computers and the internet;
- permitted employees to store plain text user credentials in personal email accounts, and on ClixSense's laptops;
- failed to change default login and password credentials for third-party company network resources; and
- maintained consumers' personal information, including consumers' names, addresses, email addresses, dates of birth, gender, answers to security questions, login and password credentials, and Social Security numbers, in clear text on ClixSense's network and devices.

The proposed complaint alleges that Respondent could have addressed each of the failures described above by implementing readily available and relatively low-cost security measures.

The proposed complaint alleges that Respondent's failures caused or are likely to cause substantial injury to consumers that is not outweighed by countervailing benefits to consumers or competition and is not reasonably avoidable by consumers themselves. Such practice constitutes an unfair act or practice under Section 5 of the FTC Act.

The proposed order contains injunctive provisions addressing the alleged deceptive and unfair conduct in connection with Respondent's operation of an online rewards website. Part I of the proposed order prohibits Respondent from false or deceptive statements regarding the extent to which Respondent maintains and protects the privacy, security, confidentiality, or integrity of Personal Information, including the extent to which it utilizes (1) encryption techniques and (2) security techniques.

Part II of the proposed order prohibits Respondent, in connection with any business that Mr. Grago controls directly and indirectly, including ClixSense, from transferring, selling, sharing, collecting, maintaining, or storing personal information unless it establishes and implements, and thereafter maintains, a comprehensive information security program that is designed to protect the security,

confidentiality, and integrity of such personal information.

Part III of the proposed order requires any business that Mr. Grago controls, directly or indirectly, that collects personal information online to obtain initial and biennial data security assessments for twenty years.

Part IV of the agreement prohibits Respondent from misrepresenting any fact material to the assessments required by Provision III.

Part V requires any business that Mr. Grago controls directly or indirectly, including ClixSense, to submit an annual certification from a senior corporate manager (or senior officer responsible for its information security program) that Respondent has implemented the requirements of the Order and is not aware of any material noncompliance that has not been corrected or disclosed to the Commission.

Parts VI through IX of the proposed order are reporting and compliance provisions, which include recordkeeping requirements and provisions requiring Respondent to provide information or documents necessary for the Commission to monitor compliance. Part X states that the proposed order will remain in effect for 20 years, with certain exceptions.

The purpose of this analysis is to aid public comment on the proposed order. It is not intended to constitute an official interpretation of the complaint or proposed order, or to modify in any way the proposed order's terms.

By direction of the Commission.

Julie A. Mack,
Acting Secretary.

Statement of the Federal Trade Commission

April 24, 2019

Today, the Commission announces cases against ClixSense and i-Dressup,¹ which include allegations that the companies failed to employ reasonable security to protect consumers' sensitive data. The orders obtained in these matters contain strong injunctive provisions, including new requirements that go beyond requirements from previous data security orders. For example, the orders include requirements that a senior officer provide annual certifications of compliance to the Commission, and explicit provisions prohibiting the defendants from making

misrepresentations to the third parties conducting assessments of their data security programs. These new requirements will provide greater assurances that consumers' data will be protected going forward.

Since joining the Commission, we have instructed staff to closely review our orders to determine whether they could be strengthened and improved—particularly in the areas of privacy and data security. Through ongoing discussions both internally and with external stakeholders, including through our public *Hearings on Competition and Consumer Protection in the 21st Century* and the comment process,² we continue to consider changes to our orders. We will adjust our data security orders, as needed, to reflect our ongoing discussions regarding the FTC's remedial authority and needs, as well as the specific facts and circumstances of each case.

We are particularly committed to strengthening the order provisions regarding data security assessments of companies by third parties. The Commission expects that these third parties will faithfully assess data security practices to identify potential noncompliance with appropriate order provisions. Future orders will better ensure that third-party assessors know they are accountable for providing meaningful, independent analysis of the data practices under examination. The announcements today reflect the beginning of our thinking, but we anticipate further refinements, and these orders may not reflect the approach that we intend to use in every data security enforcement action going forward.

[FR Doc. 2019-08786 Filed 4-30-19; 8:45 am]

BILLING CODE 6750-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality Notice of Meetings

AGENCY: Agency for Healthcare Research and Quality (AHRQ), HHS.

ACTION: Notice of Five AHRQ Subcommittee Meetings.

SUMMARY: The subcommittees listed below are part of AHRQ's Health Services Research Initial Review Group Committee. Grant applications are to be reviewed and discussed at these

meetings. Each subcommittee meeting will commence in open session before closing to the public for the duration of the meeting.

DATES: See below for dates of meetings:

- 1. Health System and Value Research (HSVR)**
Date: May 22, 2019 (Open from 8:00 a.m. to 8:30 a.m. on May 22nd and closed for remainder of the meeting)
- 2. Health Care Research and Training (HCRT)**
Date: May 23–24, 2019 (Open from 8:00 a.m. to 8:30 a.m. on May 23rd and closed for remainder of the meeting)
- 3. Healthcare Effectiveness and Outcomes Research (HEOR)**
Date: June 5–6, 2019 (Open from 8:30 a.m. to 9:00 a.m. on June 5th and closed for remainder of the meeting)
- 4. Healthcare Information Technology Research (HITR)**
Date: June 6–7, 2019 (Open from 8:00 a.m. to 8:30 a.m. on June 6th and closed for remainder of the meeting)
- 5. Healthcare Safety and Quality Improvement Research (HSQR)**
Date: June 12–13, 2019 (Open from 7:30 a.m. to 8:00 a.m. on June 12th and closed for remainder of the meeting)

ADDRESSES: Hilton Rockville & Executive Meeting Center, 1750 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: (To obtain a roster of members, agenda or minutes of the non-confidential portions of the meetings.)

Heather Phelps, Acting Committee Management Officer, Office of Extramural Research Education and Priority Populations, Agency for Healthcare Research and Quality (AHRQ), 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 427-1128.

SUPPLEMENTARY INFORMATION: In accordance with section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App. 2), AHRQ announces meetings of the above-listed scientific peer review groups, which are subcommittees of AHRQ's Health Services Research Initial Review Group Committees. Each subcommittee meeting will commence in open session before closing to the public for the duration of the meeting. The subcommittee meetings 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). The grant applications and the discussions could disclose confidential trade secrets or commercial

¹ Although the Commission's settlement with i-Dressup addresses broader COPPA violations, this statement focuses specifically on the data security requirements set forth in the proposed stipulated order.

² See, e.g., *FTC Hearings on Competition and Consumer Protection in the 21st Century* (Session 9—Data Security), Dec. 11–12, 2018, <https://www.ftc.gov/news-events/events-calendar/ftc-hearing-competition-consumer-protection-21st-century-december-2018>.

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.

Agenda items for these meetings are subject to change as priorities dictate.

Gopal Khanna,

Director.

[FR Doc. 2019-08764 Filed 4-30-19; 8:45 am]

BILLING CODE 4160-90-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Agency for Healthcare Research and Quality, HHS.

ACTION: Notice.

SUMMARY: This notice announces the intention of the Agency for Healthcare Research and Quality (AHRQ) to request that the Office of Management and Budget (OMB) approve the proposed information collection project “Safety Program in Perinatal Care (SPPC)–II Demonstration Project.”

DATES: Comments on this notice must be received by July 1, 2019.

ADDRESSES: Written comments should be submitted to: Doris Lefkowitz, Reports Clearance Officer, AHRQ, by email at doris.lefkowitz@AHRQ.hhs.gov.

Copies of the proposed collection plans, data collection instruments, and specific details on the estimated burden can be obtained from the AHRQ Reports Clearance Officer.

FOR FURTHER INFORMATION CONTACT: Doris Lefkowitz, AHRQ Reports Clearance Officer, (301) 427-1477, or by emails at doris.lefkowitz@AHRQ.hhs.gov.

SUPPLEMENTARY INFORMATION:

Proposed Project

Safety Program in Perinatal Care (SPPC)–II Demonstration Project

In accordance with the Paperwork Reduction Act, 44 U.S.C. 3501–3521, AHRQ invites the public to comment on this proposed information collection. Maternal mortality and severe maternal morbidity (SMM) increased significantly and continuously in the United States (U.S.) over the past 30 years. A considerable proportion of these adverse events are attributable to preventable harm and unintended consequences

arising from clinical practice and the system of delivering perinatal care. To address these alarming trends, AHRQ has developed the Safety Program in Perinatal Care (SPPC). During its initial phase (SPPC–I), the program was comprised of three pillars: Teamwork and communication, patient safety bundles, and in situ simulations. Despite several promising results, the evaluation of SPPC–I revealed considerable hospital attrition due to heavy data burden and competing safety initiatives. Also, differences in the local adaptation of the SPPC–I patient safety bundles selected by implementation sites thwarted a meaningful cross-site comparison of programmatic impact.

The current, second phase of the program (SPPC–II), focuses on integrating the teamwork and communication pillar into patient safety bundles developed by key professional organizations and implemented in 20+ U.S. states with technical assistance by the Alliance for Innovation on Maternal Health (AIM) program and funding from the Health Resources and Services Administration (HRSA). Of note, the model used by AIM to implement these bundles is through statewide perinatal quality collaboratives (PQC) aiming to enroll all birthing hospitals in the state in the PQC.

During the *Planning Phase* of SPPC–II, the contractor, Johns Hopkins University (JHU), developed SPPC–II Training Toolkits for two AIM patient safety bundles: Obstetric hemorrhage and severe hypertension in pregnancy. The aim of the SPPC–II *Demonstration Project* is to implement and evaluate an integrated AIM–SPPC II program that overlays the SPPC–II Training Toolkits and the AIM patient safety bundles and program infrastructure in two states—Oklahoma (OK), currently implementing the severe hypertension bundle; and Texas (TX), currently implementing the hemorrhage bundle.

Over the next five years, the AIM program is expected to cover about two thirds of U.S. states. Therefore, there is need to determine the feasibility and impact of the proposed integrated AIM–SPPC II program, and inform future government funding decisions regarding these two programs.

To this end, the SPPC–II *Demonstration Project* has the following goals:

(1) To implement the integrated AIM–SPPC II program in birthing hospitals in OK and TX in coordination with AIM and the respective state PQC;

(2) To assess the implementation of the integrated AIM–SPPC II program in these hospitals; and

(3) To ascertain the short- and medium-term impact of the integrated AIM–SPPC II program on hospital (*i.e.* perinatal unit) teamwork and communication, patient safety, and key maternal health outcomes.

This study is being conducted by AHRQ through its contractor, Johns Hopkins University (JHU) and the AIM program, JHU’s subcontractor, pursuant to AHRQ’s statutory authority to conduct and support research on health care and on systems for the delivery of such care, including activities with respect to the quality, effectiveness, efficiency, appropriateness and value of health care services and with respect to quality measurement and improvement. 42 U.S.C. 299a (a)(1) and (2).

Method of Collection

To achieve the goals of this project the following data collections will be implemented:

(a) Training of AIM Team Leads from 48 birthing hospitals in OK and 210 birthing hospitals in TX (*i.e.*, all birthing hospitals enrolled in the respective state PQC) on using teamwork and communication tools and strategies in clinical obstetric practice. The training will be conducted in-person, through a full-day workshop organized in collaboration and coordination with the AIM program and state PQCs, and led by JHU. Only one such training workshop will be conducted in OK using the SPPC–II Toolkit for severe hypertension in pregnancy. Given the size of the state, potential long distances to be traveled by trainees, and the cost-efficiency of coordinating with back-to-back regional PQC meetings planned in TX this fall, five training workshops will be conducted in this state using the SPPC–II Toolkit for obstetric hemorrhage. We expect about half of the birthing hospitals in both states to send 2 hospital champions, of which one to be designated as AIM Team Lead, for training. JHU will keep and bi-annually update a roster of AIM Team Leads in each hospital to assess the need for training of new AIM Team Leads if turnover occurs. Training workshop evaluation forms will be distributed for completion by trainees on a voluntary basis to assess the perceived utility of training workshops.

(b) Training of all frontline clinical staff in 48 birthing hospitals in OK and 210 birthing hospitals in TX on teamwork and communication tools and strategies will be coordinated by AIM Team Leads in each hospital by: (a) Providing unique trainee IDs and information for them to access 8 training e-modules online, and (b) using the JHU-developed facilitator guide

included in the SPPC–II Toolkits to facilitate brief, in-person demonstration sessions on how to use the information from the training e-modules in clinical practice. Each of the eight training e-modules will take about 15 minutes to complete online, for a total of about 120 minutes. Because these training e-modules will be accessed and completed online, tracking of e-module completion and re-take, needed to assess overall staff exposure to training, is possible through the online training platform.

c) Coaching calls will be organized monthly and led by JHU to address program implementation questions and assist with potential challenges. AIM Team Leads in all *Demonstration Project* hospitals will be invited to join these calls and ask questions. A list of coaching call participants and topics addressed will be maintained by JHU.

(d) AIM Team Lead self-administered baseline surveys will be made available 2–3 weeks before the AIM Team Leads training workshop, together with a corresponding consent form. The purpose of this survey is to assess key characteristics of project hospitals, including human resources, processes in place for AIM bundle implementation, and use of teamwork and communication tools in clinical practice. Respondents will have the option to complete the survey online or on paper, in line with the current administration of the Hospital Survey on Patient Safety Culture. The expected response rate for this survey is 95% in both states.

(e) Clinical staff self-administered baseline surveys will be made available before the first training workshop with AIM Team Leads, together with a corresponding consent form. The purpose of this survey is to assess baseline levels of previous teamwork and communication training, overall use of teamwork and communication tools and strategies, teamwork and communication perceptions, experience with AIM bundle implementation. Three respondents will be randomly selected in each hospital using comprehensive lists of clinical staff developed by the AIM Team Leads. These lists will be updated by AIM Team Leads on a quarterly basis to capture new hires and staff turnover. Respondents will be given the option to complete the survey online or on paper, in line with the administration of the national Hospital Survey on Patient

Safety Culture. The expected response rate for this survey is 85% in both states.

(f) Qualitative, semi-structured interviews with AIM Team Leads will be conducted by phone about 3–4 months after their training workshop to assess the perceived utility of the training and assistance needed with the rollout of training to all frontline clinical staff using the e-modules and facilitation sessions to consolidate the information. An interview guide developed based on the Consolidated Framework for Implementation Research framework will be used to conduct the interviews, together with a corresponding consent form.

(g) Clinical staff self-administered implementation surveys will be made available at about 6, 18, and 30 months after the first AIM Team Leads training, together with a corresponding consent forms, to assess training knowledge, transfer, and results such as use of teamwork and communication tools and strategies, teamwork and communication perceptions, experience with AIM bundle implementation overlaid with the teamwork and communication tools. The time points were chosen to assess: *Early* adoption and results of the training (6-month survey); adoption and results of the training at the *time when unit culture changes are expected* per available implementation research (18-month survey); and medium-term program sustainability (30-month survey). For each survey, three respondents will be randomly selected in each hospital using the most up to date comprehensive lists of clinical staff developed by the AIM Team Leads. Respondents will have the option to complete these surveys online or on paper, in line with the administration of the national Hospital Survey on Patient Safety Culture. The expected response rates are 80%, 77.5% and 75% for surveys completed at 6, 18 and 30 months after AIM Team Leads training workshops, respectively.

(h) AIM program data will be obtained from the AIM program, a subcontractor of JHU's, under a data use agreement signed by all hospitals at the state PQC meetings in the fall of 2019. These data are needed for the evaluation of the SPPC–II *Demonstration Project* to assess changes in key AIM program processes and maternal health outcomes, such as severe maternal morbidity, throughout the project.

Estimated Annual Respondent Burden

Exhibit 1 shows the estimated annualized burden hours for the respondents' time to participate in the SPPC–II Demonstration Project.

An estimated 387 AIM Team Leads from the 258 Demonstration Project sites will be trained during 8-hour workshops using the SPPC–II Toolkit. An evaluation form, which will take approximately 5 minutes to complete, will be distributed to them at the end of the workshop, and about 75% of them (290 AIM Team Leads) are expected to complete the evaluation. They will also be asked to extract from an available human resources computerized database and update bi-annually rosters of frontline clinical staff in their units—first extraction and each update is expected to take about 5 minutes.

An estimated 15,480 frontline clinical staff are expected to be trained using the training e-modules in the SPPC–II Toolkit. Completion of the 8 e-modules will take about 2 hours. These trainings will be complemented by four 15-min facilitation sessions led by AIM Team Leads in their respective units. The AIM Team Leads will track attendance of the facilitation session, work estimated to take about 15 minutes after each session.

Monthly 1-hour coaching calls will be organized during the first 18 months of the project and at least one representative from about half of the sites is expected to participate at each coaching call.

Several surveys will be administered throughout the Demonstration Project, specifically: Baseline, 20-minute surveys with AIM Team Leads at each of 258 sites; baseline, 25-minute surveys with 3 randomly selected frontline clinical staff at each of 258 sites; and 30-minute implementation surveys with 3 randomly selected frontline clinical staff at each of 258 sites will be conducted at 6, 18, and 30 months after the initial training workshops in both states. In addition, one-hour qualitative interviews will be conducted with 25 AIM Team Leads in the 2 states about 3–4 months after the initial training workshops in their respective state.

DUAs will be obtained from each site in order to access AIM data; their review and signature will take about 5 minutes at each site.

The total annual burden hours are estimated to be 54, 654 hours.

EXHIBIT 1—ESTIMATED ANNUALIZED BURDEN HOURS

Form name	Number of respondents	Number of responses per respondent	Hours per response	Total burden hours
Training of AIM Team Leads	387	1	8	3,096
Frontline staff rosters developed by AIM Team Leads	258	6	0.08	124
Evaluation form for training of AIM Team Leads	290	1	0.08	23
Training of frontline clinical staff	15,480	1	2.00	30,960
Facilitation sessions	15,480	4	0.25	15,480
Tracking attendance of facilitation sessions	258	4	1.00	1,032
Coaching calls	129	18	1.00	2,322
Self-administered baseline surveys with AIM Team Leads	258	1	0.33	85
Self-administered baseline surveys with clinical staff	774	1	0.42	325
Qualitative semi-structured interviews with AIM Team Leads	25	1	1.00	25
Self-administered implementation surveys with clinical staff at 6 months	774	1	0.50	387
Self-administered implementation surveys with clinical staff at 18 months	774	1	0.50	387
Self-administered implementation surveys with clinical staff at 30 months	774	1	0.50	387
DUA for AIM data	258	1	0.08	21
Total	36,048	NA	NA	54,654

Exhibit 2 shows the estimated annualized cost burden based on the respondents' time to submit their data.

The cost burden is estimated to be \$1,489,998.34 annually.

EXHIBIT 2—ESTIMATED ANNUALIZED COST BURDEN

Form name	Number of respondents	Total burden hours	Average hourly wage rate*	Total cost burden
Training of AIM Team Leads	387	3,096	\$49.83	\$154,273.68
Frontline staff rosters developed by AIM Team Leads	258	124	49.83	6,178.92
Evaluation form for training of AIM Team Leads	290	23	49.83	1,146.09
Training of frontline clinical staff	15,480	30,960	66.32	2,053,267.20
Facilitation sessions	15,480	15,480	66.32	1,026,633.60
Tracking attendance of facilitation sessions	258	1,032	49.83	51,424.56
Coaching calls	129	2,322	66.32	153,995.04
Self-administered baseline surveys with AIM Team Leads	258	85	49.83	4,235.55
Self-administered baseline surveys with clinical staff	774	325	66.32	21,554
Qualitative semi-structured interviews with AIM Team Leads	25	25	49.83	1,245.75
Self-administered implementation surveys with clinical staff at 6 months	774	387	66.32	25,665.84
Self-administered implementation surveys with clinical staff at 18 months	774	387	66.32	25,665.84
Self-administered implementation surveys with clinical staff at 30 months	774	387	66.32	25,665.84
DUA for AIM data	258	21	49.83	1,046.43
Total	36,048	54,716	.....	1,489,998.34

* National Compensation Survey: Occupational wages in the United States May 2017 "U.S. Department of Labor, Bureau of Labor Statistics."

^a Hourly wage for nurse-midwives (\$48.36; occupation code 29-1161).

^b Weighted mean hourly wage for obstetrician-gynecologists (\$113.10; occupation code 29-1064; 30%); nurse-midwives (\$49.83; occupation code 29-1161; 30%); registered nurses (\$35.36; occupation code 29-1161; 20%); and nurse practitioners (\$51.86; occupation code 29-1171; 20%).

Request for Comments

In accordance with the Paperwork Reduction Act, comments on AHRQ's information collection are requested with regard to any of the following: (a) Whether the proposed collection of information is necessary for the proper performance of AHRQ's health care research and health care information dissemination functions, including whether the information will have practical utility; (b) the accuracy of AHRQ's estimate of burden (including hours and costs) of the proposed collection(s) of information; (c) ways to enhance the quality, utility and clarity

of the information to be collected; and (d) ways to minimize the burden of the collection of information upon the respondents, including the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the Agency's subsequent request for OMB approval of the proposed information collection. All

comments will become a matter of public record.

Gopal Khanna,

Director.

[FR Doc. 2019-08766 Filed 4-30-19; 8:45 am]

BILLING CODE 4160-90-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Agency for Healthcare Research and Quality, HHS.

ACTION: Notice.

SUMMARY: This notice announces the intention of the Agency for Healthcare Research and Quality (AHRQ) to request that the Office of Management and Budget (OMB) approve the proposed updates to the currently approved information collection project: “*Medical Expenditure Panel Survey (MEPS) Household Component.*”

DATES: Comments on this notice must be received by July 1, 2019.

ADDRESSES: Written comments should be submitted to: Doris Lefkowitz, Reports Clearance Officer, AHRQ, by email at doris.lefkowitz@AHRQ.hhs.gov.

Copies of the proposed collection plans, data collection instruments, and specific details on the estimated burden can be obtained from the AHRQ Reports Clearance Officer.

FOR FURTHER INFORMATION CONTACT: Doris Lefkowitz, AHRQ Reports Clearance Officer, (301) 427-1477, or by emails at doris.lefkowitz@AHRQ.hhs.gov.

SUPPLEMENTARY INFORMATION:

Proposed Project

In accordance with the Paperwork Reduction Act, 44 U.S.C. 3501-3521, AHRQ invites the public to comment on this proposed information collection. This request is for an update to the previously submitted and OMB-approved clearance for the data collections of the Household and Medical Provider Components of the Medical Expenditure Panel Survey (MEPS). The previous OMB clearance request for the MEPS was approved November, 2018, with an expiration date of November 30, 2021. We propose updating the MEPS –HC by (1) adding a self-administered questionnaire focusing on mental health, (2) collecting a health insurance cost-sharing document and (3) implementing a pilot study to evaluate the potential effectiveness of including a sample of NHIS nonrespondents in future MEPS panels as a strategy to improve the overall MEPS response rate.

Medical Expenditure Panel Survey (MEPS) Household Component and the MEPS Medical Provider Component

- Household Component: A sample of households participating in the National Health Interview Survey (NHIS) in the prior calendar year are interviewed 5 times over a 2 and one half (2.5) year period. These 5 interviews yield two years of information on use of, and expenditures for, health care, sources of payment for that health care, insurance status, employment, health status and health care quality.

- Medical Provider Component: The MEPS-MPC collects information from medical and financial records maintained by hospitals, physicians, pharmacies and home health agencies named as sources of care by household respondents.

- Insurance Component (MEPS-IC): The MEPS-IC collects information on establishment characteristics, insurance offerings and premiums from employers. The MEPS-IC is conducted by the Census Bureau for AHRQ and is cleared separately.

The MEPS is a multi-purpose survey. In addition to collecting data to yield annual estimates for a variety of measures related to health care use and expenditures, MEPS also provides estimates of measures related to health status, consumer assessment of health care, health insurance coverage, demographic characteristics, employment and access to health care indicators. Estimates can be provided for individuals, families and population subgroups of interest. Data obtained in this study are used to provide, among others, the following national estimates:

- Annual estimates of health care use and expenditures for persons and families
- annual estimates of sources of payment for health care utilizations, including public programs such as Medicare and Medicaid, private insurance, and out of pocket payments
- annual estimates of health care use, expenditures and sources of payment of persons and families by type of utilization including inpatient stay, ambulatory care, home health, dental care and prescribed medications
- the number and characteristics of the population eligible for public programs including the use of services and expenditures of the population(s) eligible for benefits under Medicare and Medicaid
- the number, characteristics, and use of services and expenditures of persons and families with various forms of insurance

- annual estimates of consumer satisfaction with health care, and indicators of health care quality for key conditions
- annual estimates to track disparities in health care use and access

In addition to national estimates, data collected in this ongoing longitudinal study are used to study the determinants of the use of services and expenditures, and changes in the access to and the provision of health care in relation to:

- Socio-economic and demographic factors such as employment or income
- the health status and satisfaction with health care of individuals and families
- the health needs and circumstances of specific subpopulation groups such as the elderly and children

To meet the need for national data on health care use, access, cost and quality, MEPS-HC collects information on:

- Access to care and barriers to receiving needed care
- satisfaction with usual providers
- health status and limitations in activities
- medical conditions for which health care was used
- use, expense and payment (as well as insurance status of person receiving care) for health services

Given the twin problems of nonresponse and response error of some household reported data, information is collected directly from medical providers in the MEPS-MPC to improve the accuracy of expenditure estimates derived from the MEPS-HC. Because of their greater level of precision and detail, we also use MEPS-MPC data as the main source of imputations of missing expenditure data. Thus, the MEPS-MPC is designed to satisfy the following analytical objectives:

- Serve as source data for household reported events with missing expenditure information
- Serve as an imputation source to reduce the level of bias in survey estimates of medical expenditures due to item nonresponse and less complete and less accurate household data
- Serve as the primary data source for expenditure estimates of medical care provided by separately billing doctors in hospitals, emergency rooms, and outpatient departments, Medicaid recipients and expenditure estimates for pharmacies
- Allow for an examination of the level of agreement in reported expenditures from household respondents and medical providers

Data from the MEPS, both the HC and MPC components, are intended for a number of annual reports produced by AHRQ, including the National Healthcare Quality and Disparities Report.

This study is being conducted by AHRQ through its contractors, Westat and RTI International, pursuant to AHRQ's statutory authority to conduct and support research on health care and on systems for the delivery of such care, including activities with respect to the cost and use of health care services and with respect to health statistics and surveys. 42 U.S.C. 299a(a)(3) and (8); 42 U.S.C. 299b-2.

Method of Collection

To achieve the goals of the MEPS–HC the following data collections are implemented:

1. **Household Component Core Instrument.** The core instrument collects data about persons in sample households. Topical areas asked in each round of interviewing include priority condition enumeration, health status, health care utilization including prescribed medicines, expenses and payments, employment, and health insurance. Other topical areas that are asked only once a year include access to care, income, assets, satisfaction with providers, and children's health. While many of the questions are asked about the entire reporting unit (RU), which is typically a family, only one person normally provides this information. All sections of the current core instrument are available on the AHRQ website at http://meps.ahrq.gov/mepsweb/survey_comp/survey_questionnaires.jsp.

2. **Adult Self-Administered Questionnaire.** A brief self-administered questionnaire (SAQ) is used to collect self-reported (rather than through household proxy) health opinions and satisfaction with health care, and information on health status, preventive care and health care quality measures for adults 18 and older.

3. **Diabetes Care SAQ.** A brief self-administered paper-and-pencil questionnaire on the quality of diabetes care is administered once a year (during rounds 3 and 5) to persons identified as having diabetes. Included are questions about the number of times the respondent reported having a hemoglobin A1c blood test, whether the respondent reported having his or her feet checked for sores or irritations, whether the respondent reported having an eye exam in which the pupils were dilated, the last time the respondent had his or her blood cholesterol checked and whether the diabetes has caused kidney or eye problems. Respondents are also

asked if their diabetes is being treated with diet, oral medications or insulin.

4. **Authorization forms for the MEPS–MPC Provider and Pharmacy Survey.** We ask respondents for authorization to obtain supplemental information from their medical providers (hospitals, physicians, home health agencies and institutions) and pharmacies.

5. **MEPS Validation Interview.** Each interviewer is required to have at least 15 percent of his/her caseload validated to insure that the computer assisted personal interview (CAPI) questionnaire content was asked appropriately and procedures followed, for example, the use of show cards. Validation flags are set programmatically for cases pre-selected by data processing staff before each round of interviewing. Home office and field management may also request that other cases be validated throughout the field period. When an interviewer fails a validation their work is subject to 100 percent validation. Additionally, any case completed in less than 30 minutes is validated. A validation abstract form containing selected data collected in the CAPI interview is generated and used by the validator to guide the validation interview.

Proposed HC Additions

6. **Mental Health SAQ.** MEPS will include a new self-administered questionnaire for spring of 2020 data collection targeting the adult (age 18 and over) population. The questionnaire includes questions addressing issues in regards to an individual's mental health and mental health treatment including mental health status, access to care, barriers to care, experiences with care, and use of peer support and other services. AHRQ worked with several experts in the mental health field to develop this self-administered questionnaire and used their expertise to take advantage of already tested and widely accepted measures in the SAQ.

7. **Health Insurance Cost Sharing Collection.** AHRQ is seeking to enhance data collection practices in the 2020 fielding of the MEPS–HC to collect more detailed health insurance cost-sharing information from respondents with current private insurance, Medicare Advantage, or Medicare Part D Prescription Drug plans. Specifically, we will ask respondents to provide a document for themselves and family members that includes information on plan deductibles, out-of-pocket maximums and other cost sharing details for specific services. An example of the type of document we propose to collect is the Summary of Benefits and Coverage (SBC). AHRQ worked with experts on a feasibility study to identify

the best methods for collecting these types of documents in a way that would minimize respondent burden (OMB approval 0935–0124).

8. **Pilot Test on Sampling NHIS Nonrespondents.** This test will be conducted on a relatively small sample of households in a few selected primary sampling units (PSUs) in the 2020 spring data collection cycle. The sample households for this test will be drawn from nonrespondents to the 2019 NHIS (which are not currently part of the MEPS frame) and only the MEPS Round 1 interview will be administered. The purpose of the test is to evaluate the potential effectiveness of including a sample of NHIS nonrespondents in future MEPS panels to mitigate the impact of declining NHIS response rates on the overall MEPS response rate. The general trend of declining response rates for household surveys is problematic and this evaluation is designed to explore an avenue to stop further declines and potentially improve the overall MEPS response rate.

To achieve the goal of the MEPS–MPC the following data collections are implemented. No updates to the MEPS–MPC are being requested:

1. **MPC Contact Guide/Screening Call.** An initial screening call is placed to determine the type of facility, whether the practice or facility is in scope for the MEPS–MPC, the appropriate MEPS–MPC respondent and some details about the organization and availability of medical records and billing at the practice/facility. All hospitals, physician offices, home health agencies, institutions and pharmacies are screened by telephone. A unique screening instrument is used for each of these seven provider types in the MEPS–MPC, except for the two home care provider types which use the same screening form.

2. **Home Care Provider Questionnaire for Health Care Providers.** This questionnaire is used to collect data from home health care agencies which provide medical care services to household respondents. Information collected includes type of personnel providing care, hours or visits provided per month, and the charges and payments for services received. Some HMOs may be included in this provider type.

3. **Home Care Provider Questionnaire for Non-Health Care Providers.** This questionnaire is used to collect information about services provided in the home by non-health care workers to household respondents because of a medical condition; for example, cleaning or yard work, transportation, shopping, or child care.

4. Medical Event Questionnaire for Office-Based Providers. This questionnaire is for office-based physicians, including doctors of medicine (MDs) and osteopathy (DOs), as well as providers practicing under the direction or supervision of an MD or DO (e.g., physician assistants and nurse practitioners working in clinics). Providers of care in private offices as well as staff model HMOs are included.

5. Medical Event Questionnaire for Separately Billing Doctors. This questionnaire collects information from physicians identified by hospitals (during the Hospital Event data collection) as providing care to sampled persons during the course of inpatient, outpatient department or emergency room care, but who bill separately from the hospital.

6. Hospital Event Questionnaire. This questionnaire is used to collect information about hospital events, including inpatient stays, outpatient department, and emergency room visits. Hospital data are collected not only from the billing department, but from medical records and administrative records departments as well. Medical records departments are contacted to determine the names of all the doctors who treated the patient during a stay or visit. In many cases, the hospital administrative office also has to be contacted to determine whether the doctors identified by medical records billed separately from the hospital; doctors that do bill separately from the hospital will be contacted as part of the Medical Event Questionnaire for Separately Billing Doctors. HMOs are included in this provider type.

7. Institutions Event Questionnaire. This questionnaire is used to collect information about institution events, including nursing homes, rehabilitation facilities and skilled nursing facilities. Institution data are collected not only from the billing department, but from medical records and administrative records departments as well. Medical records departments are contacted to determine the names of all the doctors who treated the patient during a stay. In many cases, the institution's administrative office also has to be contacted to determine whether the doctors identified by medical records billed separately from the institution itself. Some HMOs may be included in this provider type.

8. Pharmacy Data Collection Questionnaire. This questionnaire

requests the National Drug Code (NDC) and when that is not available the prescription name, strength and form as well as the date prescription was filled, payments by source, the quantity, and person for whom the prescription was filled. When the NDC is available, we do not ask for prescription name, strength or form because that information is embedded in the NDC; this reduces burden on the respondent. Most pharmacies have the requested information available in electronic format and respond by providing a computer generated printout of the patient's prescription information. If the computerized form is unavailable, the pharmacy can report their data to a telephone interviewer. Pharmacies are also able to provide a CD-ROM with the requested information if that is preferred. HMOs are included in this provider type.

Dentists, optometrists, psychologists, podiatrists, chiropractors, and others not providing care under the supervision of a MD or DO are considered out of scope for the MEPS-MPC.

Estimated Annual Respondent Burden

Exhibit 1 shows the estimated annualized burden hours for the respondents' time to participate in the MEPS-HC and the MEPS-MPC.

The MEPS-HC Core Interview will be completed by 13,338 * (see note below Exhibit 1) "family level" respondents, also referred to as RU respondents. Since the MEPS-HC consists of 5 rounds of interviewing covering a full two years of data, the annual average number of responses per respondent is 2.5 responses per year. The MEPS-HC core requires an average response time of 92 minutes to administer. The Adult Female SAQ (PSAQ) and Adult SAQ (SAQ) will be completed once a year by each female person in the RU that is 18 years old and older, an estimated 12,984 persons. The Adult Male SAQ (PSAQ) and Adult SAQ (SAQ) will be completed once a year by each male person in the RU that is 18 years old and older, an estimated 11,985 persons. The Adult SAQs each require an average of 7 minutes to complete. The Mental Health SAQ will be completed during Round 1, Panel 25; Round 3, Panel 24; Round 5, Panel 23 interviews by each person in the RU that is 18 years old and older, an estimated 24,969 persons, and takes about 7 minutes to complete. The Diabetes care SAQ will be completed once a year by each person

in the RU identified as having diabetes, an estimated 2,072 persons, and takes about 3 minutes to complete. The 12,804 RUs in the MEPS-HC will complete an average of 5.4 forms, which require about 3 minutes each to complete. The authorization form for the MEPS-MPC Pharmacy Survey will be completed once for each pharmacy for any RU member who has obtained a prescription medication. RUs will complete an average of 3.1 forms, which take about 3 minutes to complete. The Health Insurance Cost Sharing collection will be completed during Round 1, Panel 25 and Round 3, Panel 24 by each RU with a current private health insurance plan, a Medicare Advantage plan, or a Medicare Part D plan. An estimated 5,835 respondents will locate and provide cost-sharing documentation for an average of 1.3 plans per eligible RU. This activity will require 45 minutes to complete for each plan. About one third of all interviewed RUs will complete a validation interview as part of the MEPS-HC quality control, which takes an average of 5 minutes to complete. The total annual burden hours for the MEPS-HC are estimated to be 68,772 hours.

All medical providers and pharmacies included in the MEPS-MPC will receive a screening call and the MEPS-MPC uses 7 different questionnaires; 6 for medical providers and 1 for pharmacies. Each questionnaire is relatively short and requires 2 to 13 minutes to complete. The total annual burden hours for the MEPS-MPC are estimated to be 17,388 hours. The total annual burden for the MEPS-HC and MPC is estimated to be 86,160 hours.

The total estimated annual burden hours for the MEPS has increased from 77,666 hours in the previous clearance to 86,160 hours in this clearance request, an increase of 2,913 hours due to the addition of the Mental Health SAQ, 5,689 hours due to the health insurance cost sharing collection, and 230 hours due to the pilot test on sampling NHIS nonrespondents.

Exhibit 2 shows the estimated annual cost burden associated with the respondents' time to participate in this information collection. The annual cost burden for the MEPS-HC is estimated to be \$1,673,909; the annual cost burden for the MEPS-MPC is estimated to be \$298,580. The total annual cost burden for the MEPS-HC and MPC is estimated to be \$1,972,489.

EXHIBIT 1—ESTIMATED ANNUALIZED BURDEN HOURS

Form name	Number of respondents	Number of responses per respondent	Hours per response	Total burden hours
MEPS-HC				
MEPS-HC Core Interview	13,338	2.5	92/60	51,129
Adult Female SAQ (PSAQ)—Years 2019 and 2021; Adult SAQ (SAQ)—Year 2020	12,984	1	7/60	1,515
Adult Male SAQ (PSAQ)—Years 2019 and 2021; Adult SAQ (SAQ)—Year 2020	11,985	1	7/60	1,398
Diabetes care SAQ	2,072	1	3/60	104
Mental Health SAQ—Year 2020	24,969	1	7/60	2,913
Authorization form for the MEPS-MPC Provider Survey	12,804	5.4	3/60	3,457
Authorization form for the MEPS-MPC Pharmacy Survey	12,804	3.1	3/60	1,985
Health Insurance Cost Sharing Collection—2020	5,835	1.3	45/60	5,689
MEPS-HC Validation Interview	4,225	1	5/60	352
Pilot Test on Sampling NHIS Nonrespondents—2020	150	1	92/60	230
Subtotal for the MEPS-HC	102,366	na	na	68,772
MEPS-MPC				
MPC Contact Guide/Screening Call **	36,598	1	2/60	1,220
Home care for health care providers questionnaire	635	1.53	9/60	146
Home care for non-health care providers questionnaire	11	1	11/60	2
Office-based providers questionnaire	11,210	1.65	10/60	3,083
Separately billing doctors questionnaire	12,397	3.46	13/60	9,294
Hospitals questionnaire	5,310	3.26	9/60	2,597
Institutions (non-hospital) questionnaire	116	2.05	9/60	36
Pharmacies questionnaire	6,919	2.92	3/60	1,010
Subtotal for the MEPS-MPC	73,196	na	na	17,388
Grand Total	175, 562	na	na	86,160

* While the expected number of responding units for the annual estimates is 12,804, it is necessary to adjust for survey attrition of initial respondents by a factor of 0.96 (13,338=12,804/0.96).

** There are 6 different contact guides; one for office based, separately billing doctor, hospital, institution, and pharmacy provider types, and the two home care provider types, which use the same contact guide.

EXHIBIT 2—ESTIMATED ANNUALIZED COST BURDEN

Form name	Number of respondents	Total burden hours	Average hourly wage rate	Total cost burden
MEPS-HC				
MEPS-HC Core Interview	13,338	51,129	\$24.34	\$1,244,480
Adult Female SAQ (PSAQ)—Years 2019 and 2021; Adult SAQ (SAQ)—Year 2020	12,984	1,515	*24.34	36,875
Adult Male SAQ (PSAQ)—Years 2019 and 2021; Adult SAQ (SAQ)—Year 2020	11,985	1,398	*24.34	34,027
Diabetes care SAQ	2,072	104	*24.34	2,531
Mental Health SAQ—Year 2020	24,969	2,913	*24.34	70,902
Authorization forms for the MEPS-MPC Provider Survey	12,804	3,457	*24.34	84,143
Authorization form for the MEPS-MPC Pharmacy Survey	12,804	1,985	*24.34	48,315
Health Insurance Cost Sharing Collection—2020	5,835	5,689	*24.34	138,470
MEPS-HC Validation Interview	4,225	352	*24.34	8,568
Pilot Test on Sampling NHIS Nonrespondents—2020	150	230	*24.34	5,598
Subtotal for the MEPS-HC	102,366	68,800	na	1,673,909
MEPS-MPC				
MPC Contact Guide/Screening Call	36,598	1,220	**17.25	21,045
Home care for health care providers questionnaire	635	146	**17.25	2,519
Home care for non-health care providers questionnaire	11	2	**17.25	35
Office-based providers questionnaire	11,210	3,083	**17.25	53,182
Separately billing doctors questionnaire	12,397	9,294	**17.25	160,322
Hospitals questionnaire	5,310	2,597	**17.25	44,798
Institutions (non-hospital) questionnaire	116	36	**17.25	621
Pharmacies questionnaire	6,919	1,010	***15.90	16,059
Subtotal for the MEPS-MPC	73,196	17,388	na	298,580
Grand Total	175, 562	.....	na	1,972,489

* Mean hourly wage for All Occupations (00–0000).

** Mean hourly wage for Medical Secretaries (43–6013).

*** Mean hourly wage for Pharmacy Technicians (29–2052).

Occupational Employment Statistics, May 2017 National Occupational Employment and Wage Estimates United States, U.S. Department of Labor, Bureau of Labor Statistics.

Request for Comments

In accordance with the Paperwork Reduction Act, comments on AHRQ's information collection are requested with regard to any of the following: (a) Whether the proposed collection of information is necessary for the proper performance of AHRQ's health care research and health care information dissemination functions, including whether the information will have practical utility; (b) the accuracy of AHRQ's estimate of burden (including hours and costs) of the proposed collection(s) of information; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information upon the respondents, including the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the Agency's subsequent request for OMB approval of the proposed information collection. All comments will become a matter of public record.

Gopal Khanna,

Director.

[FR Doc. 2019–08765 Filed 4–30–19; 8:45 am]

BILLING CODE 4160–90–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2013–N–0134]

Agency Information Collection Activities; Proposed Collection; Comment Request; Mammography Quality Standards Act Requirements

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing an opportunity for public comment on the proposed collection of certain information by the Agency. Under the Paperwork Reduction Act of 1995 (PRA), Federal Agencies are required to publish notice in the **Federal Register** concerning each

proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the estimated reporting, recordkeeping, and third-party disclosure burden associated with the Mammography Quality Standards Act requirements.

DATES: Submit either electronic or written comments on the collection of information by July 1, 2019.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. Electronic comments must be submitted on or before July 1, 2019. The <https://www.regulations.gov> electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of July 1, 2019. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are postmarked or the delivery service acceptance receipt is on or before that date.

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–2013–N–0134 for “Agency Information Collection Activities; Proposed Collection; Comment Request; Mammography Quality Standards Act Requirements.” Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as “Confidential Submissions,” publicly viewable at <https://www.regulations.gov> or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday.

- **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.

FOR FURTHER INFORMATION CONTACT: Amber Sanford, Office of Operations, Food and Drug Administration, Three White Flint North, 10A-12M, 11601 Landsdown St., North Bethesda, MD 20852, 301-796-8867, PRAStaff@fda.hhs.gov.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501-3520), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal Agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites

comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Mammography Quality Standards Act Requirements—21 CFR Part 900

OMB Control Number 0910-0309—Extension

The Mammography Quality Standards Act (Pub. L. 102-539) requires the establishment of a Federal certification and inspection program for mammography facilities; regulations and standards for accreditation and certification bodies for mammography facilities; and standards for mammography equipment, personnel, and practices, including quality assurance. The intent of these regulations is to assure safe, reliable, and accurate mammography on a nationwide level. Under the regulations, as a first step in becoming certified, mammography facilities must become accredited by an FDA-approved accreditation body (AB). This requires undergoing a review of their clinical

images and providing the AB with information showing that they meet the equipment, personnel, quality assurance, and quality control standards, and have a medical reporting and recordkeeping program, a medical outcomes audit program, and a consumer complaint mechanism. On the basis of this accreditation, facilities are then certified by FDA or an FDA-approved State certification agency and must prominently display their certificate. These actions are taken to ensure safe, accurate, and reliable mammography on a nationwide basis.

The following sections of Title 21 of the Code of Federal Regulations (CFR) are not included in the burden tables because they are considered usual and customary practice and were part of the standard of care prior to the implementation of the regulations, therefore, they resulted in no additional burden: 21 CFR 900.12(c)(1) and (3) and 900.3(f)(1). 21 CFR 900.24(c) was also not included in the burden tables because if a certifying State had its approval withdrawn, FDA would take over certifying authority for the affected facilities. Because FDA already has all the certifying State's electronic records, there wouldn't be an additional reporting burden.

We have rounded numbers in the "Total Hours" column in all three burden tables. (Where the number was a portion of 1 hour, it has been rounded to 1 hour. All other "Total Hours" have been rounded to the nearest whole number.)

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN

Activity/21 CFR section/FDA Form No.	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours ¹	Total capital costs	Total operating and maintenance costs
Notification of intent to become an AB—900.3(b)(1).	0.33	1	0.33	1	1		
Application for approval as an AB; full ² —900.3(b)(3).	0.33	1	0.33	320	106	\$10,776	
Application for approval as an AB; limited ³ —900.3(b)(3).	5	1	5	30	150		
AB renewal of approval—900.3(c)	1	1	1	15	15		
AB application deficiencies—900.3(d)(2)	0.1	1	0.1	30	3		
AB resubmission of denied applications—900.3(d)(5).	0.1	1	0.1	30	3		
Letter of intent to relinquish accreditation authority—900.3(e).	0.1	1	0.1	1	1		
Summary report describing all facility assessments—900.4(f).	330	1	330	7	2,310		\$83,618
AB reporting to FDA; facility ⁴ —900.4(h)	8,654	1	8,654	1	8,654		4,663
AB reporting to FDA; AB ⁵ —900.4(h)	5	1	5	10	50		
AB financial records—900.4(i)(2)	1	1	1	16	16		
Former AB new application—900.6(c)(1)	0.1	1	0.1	60	6		
Reconsideration of accreditation following appeal—900.15(d)(3)(ii).	1	1	1	2	2		
Application for alternative standard—900.18(c).	2	1	2	2	4		
Alternative standard amendment—900.18(e)	10	1	10	1	10		
Certification agency application—900.21(b)	0.33	1	0.33	320	106	32,327	224

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN—Continued

Activity/21 CFR section/FDA Form No.	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours ¹	Total capital costs	Total operating and maintenance costs
Certification agency application deficiencies—900.21(c)(2).	0.1	1	0.1	30	3		
Certification electronic data transmission—900.22(h).	5	200	1000	0.083 (5 minutes)	83		
Changes to standards—900.22(i)	2	1	2	30	60		22
Certification agency minor deficiencies—900.24(b).	1	1	1	30	30		
Appeal of adverse action taken by FDA—900.25(a).	0.2	1	0.2	16	3		
Inspection fee exemption—Form FDA 3422	700	1	700	0.25 (15 minutes)	175		
Total					11,791	43,103	88,527

¹ Total hours have been rounded.
² One-time burden.
³ Refers to accreditation bodies applying to accredit specific full-field digital mammography units.
⁴ Refers to the facility component of the burden for this requirement.
⁵ Refers to the AB component of the burden for this requirement.

TABLE 2—ESTIMATED ANNUAL RECORDKEEPING BURDEN

Activity/21 CFR section	Number of record-keepers	Number of records per recordkeeper	Total annual records	Average burden per recordkeeping	Total hours ¹	Total capital costs	Total operating and maintenance costs
AB transfer of facility records—900.3(f)(1) ...	0.1	1	0.1	0	1		
Consumer complaints system; AB—900.4(g)	5	1	5	1	5		
Documentation of interpreting physician initial requirements—900.12(a)(1)(i)(B)(2).	87	1	87	8	696		
Documentation of interpreting physician personnel requirements—900.12(a)(4).	8,654	4	34,616	1	34,616		
Permanent medical record—900.12(c)(4)	8,654	1	8,654	1	8,654	\$30,171	
Procedures for cleaning equipment—900.12(e)(13).	8,654	52	450,008	0.083 (5 minutes)	37,351		
Audit program—900.12(f)	8,654	1	8,654	16	138,464		
Consumer complaints system; facility—900.12(h)(2).	8,654	2	17,308	1	17,308		
Certification agency conflict of interest—900.22(a).	5	1	5	1	5		
Processes for suspension and revocation of certificates—900.22(d).	5	1	5	1	5		
Processes for appeals—900.22(e)	5	1	5	1	5		
Processes for additional mammography review—900.22(f).	5	1	5	1	5		
Processes for patient notifications—900.22(g).	3	1	3	1	3		\$32
Evaluation of certification agency—900.23 ...	5	1	5	20	100		
Appeals—900.25(b)	5	1	5	1	5		
Total					237,223	30,171	32

¹ Total hours have been rounded.

TABLE 3—ESTIMATED ANNUAL THIRD-PARTY DISCLOSURE BURDEN ¹

Activity/21 CFR section	Number of respondents	Number of disclosures per respondent	Total annual disclosures	Average burden per disclosure	Total hours ²	Total operating and maintenance costs
Notification of facilities that AB relinquishes its accreditation—900.3(f)(2).	0.1	1	0.1	200	20	\$54
Clinical images; facility ³ —900.4(c), 900.11(b)(1), and 900.11(b)(2).	2,885	1	2,885	1.44	4,154	248,670
Clinical images; AB ⁴ —900.4(c)	5	1	5	416	2,080	
Phantom images; facility ³ —900.4(d), 900.11(b)(1), and 900.11(b)(2).	2,885	1	2,885	0.72 (43 minutes)	2,077	
Phantom images; AB ⁴ —900.4(d) ..	5	1	5	208	1,040	
Annual equipment evaluation and survey; facility ³ —900.4(e), 900.11(b)(1), and 900.11(b)(2).	8,654	1	8,654	1	8,654	9,325
Annual equipment evaluation and survey; AB ⁴ —900.4(e).	5	1	5	1,730	8,650	

TABLE 3—ESTIMATED ANNUAL THIRD-PARTY DISCLOSURE BURDEN¹—Continued

Activity/21 CFR section	Number of respondents	Number of disclosures per respondent	Total annual disclosures	Average burden per disclosure	Total hours ²	Total operating and maintenance costs
Provisional mammography facility certificate extension application—900.11(b)(3).	0	1	0	0.5 (30 minutes)	1	
Mammography facility certificate reinstatement application—900.11(c).	312	1	312	5	1,560	
Lay summary of examination—900.12(c)(2).	8,654	5,085	44,055,590	0.083 (5 minutes)	3,652,464	25,861,265
Lay summary of examination; patient refusal ⁵ —900.12(c)(2).	87	1	87	0.5 (30 minutes)	44	
Report of unresolved serious complaints—900.12(h)(4).	20	1	20	1	20	
Information regarding compromised quality; facility ³ —900.12(j)(1).	20	1	20	200	4,000	324
Information regarding compromised quality; AB ⁴ —900.12(j)(1).	20	1	20	320	6,400	646
Patient notification of serious risk—900.12(j)(2).	5	1	5	100	500	20,878
Reconsideration of accreditation—900.15(c).	5	1	5	2	10	
Notification of requirement to correct major deficiencies—900.24(a).	0.4	1	0.4	200	80	73
Notification of loss of approval; major deficiencies—900.24(a)(2).	0.15	1	0.15	100	15	27
Notification of probationary status—900.24(b)(1).	0.3	1	0.3	200	60	55
Notification of loss of approval; minor deficiencies—900.24(b)(3).	0.15	1	0.15	100	15	27
Total					3,691,842	26,141,344

¹ There are no capital costs associated with the collection of information.

² Total hours have been rounded.

³ Refers to the facility component of the burden for this requirement.

⁴ Refers to the AB component of the burden for this requirement.

⁵ Refers to the situation where a patient specifically does not want to receive the lay summary of her exam.

FDA has adjusted the number of respondents for § 900.3(c) “AB renewal of approval” to one. This adjustment resulted in a 14-hour increase to the hour-burden estimate. Additionally, we updated the capital costs and operating and maintenance costs by adjusting them for inflation since the last update to those estimates. This adjustment resulted in a \$1,893,071 increase to the estimated capital and operating and maintenance costs (\$24,410,106 previously; \$26,303,177 current extension request).

Dated: April 24, 2019.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2019-08784 Filed 4-30-19; 8:45 am]

BILLING CODE 4164-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA-2012-N-0559]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Public Health Service Guideline on Infectious Disease Issues in Xenotransplantation

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by May 31, 2019.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, Fax: 202-395-7285, or emailed to oir_submission@omb.eop.gov. All comments should be identified with the OMB control number 0910-0456. Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: JonnaLynn Capezuto, Office of Operations, Food and Drug Administration, Three White Flint North, 10A-12M, 11601 Landsdown St., North Bethesda, MD 20852, 301-796-3794, PRStaff@fda.hhs.gov.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Public Health Service Guideline on Infectious Disease Issues in Xenotransplantation

OMB Control Number 0910-0456—Extension

The statutory authority to collect this information is provided under sections 351 and 361 of the Public Health Service (PHS) Act (42 U.S.C. 262 and 264) and the provisions of the Federal Food, Drug, and Cosmetic Act that apply to drugs (21 U.S.C. 321 *et seq.*). In the **Federal Register** of January 29, 2001 (66 FR 8120), FDA announced the availability of the “PHS Guideline on Infectious Disease Issues in Xenotransplantation.” The guideline was developed by the PHS to identify general principles for the prevention and control of infectious diseases associated with xenotransplantation that may pose a risk to public health. The PHS guideline recommends procedures to diminish the risk of transmission of infectious agents to the xenotransplantation product recipient and to the general public. The PHS guideline is intended to address public health issues raised by xenotransplantation, through identification of general principles of prevention and control of infectious diseases associated with xenotransplantation that may pose a hazard to the public health. The collection of information described in this guideline is intended to provide general guidance on the following topics: (1) The development of xenotransplantation clinical protocols; (2) the preparation of submissions to FDA; and (3) the conduct of xenotransplantation clinical trials. Also, the collection of information will help ensure that the sponsor maintains important information in a cross-referenced system that links the relevant records of the xenotransplantation product recipient, xenotransplantation product, source animal(s), animal procurement center, and significant nosocomial exposures. The PHS guideline describes an occupational health service program for the protection of health care workers involved in xenotransplantation procedures, caring for xenotransplantation product recipients, and performing associated laboratory testing. The PHS guideline is intended

to protect the public health and to help ensure the safety of using xenotransplantation products in humans by preventing the introduction, transmission, and spread of infectious diseases associated with xenotransplantation.

The PHS guideline also recommends that certain specimens and records be maintained for 50 years beyond the date of the xenotransplantation. These include: (1) Records linking each xenotransplantation product recipient with relevant health records of the source animal, herd or colony, and the specific organ, tissue, or cell type included in or used in the manufacture of the product (3.2.7.1); (2) aliquots of serum samples from randomly selected animal and specific disease investigations (3.4.3.1); (3) source animal biological specimens designated for PHS use (3.7.1); animal health records (3.7.2), including necropsy results (3.6.4); and (4) recipients’ biological specimens (4.1.2). The retention period is intended to assist health care practitioners and officials in surveillance and in tracking the source of an infection, disease, or illness that might emerge in the recipient, the source animal, or the animal herd or colony after a xenotransplantation.

The recommendation for maintaining records for 50 years is based on clinical experience with several human viruses that have presented problems in human to human transplantation and are therefore thought to share certain characteristics with viruses that may pose potential risks in xenotransplantation. These characteristics include long latency periods and the ability to establish persistent infections. Several also share the possibility of transmission among individuals through intimate contact with human body fluids. Human immunodeficiency virus (HIV) and Human T-lymphotropic virus are human retroviruses. Retroviruses contain ribonucleic acid that is reverse-transcribed into deoxyribonucleic acid (DNA) using an enzyme provided by the virus and the human cell machinery. That viral DNA can then be integrated into the human cellular DNA. Both viruses establish persistent infections and have long latency periods before the onset of disease, 10 years and 40 to 60 years, respectively. The human hepatitis

viruses are not retroviruses, but several share with HIV the characteristic that they can be transmitted through body fluids, can establish persistent infections, and have long latency periods, *e.g.*, approximately 30 years for Hepatitis C.

In addition, the PHS guideline recommends that a record system be developed that allows easy, accurate, and rapid linkage of information among the specimen archive, the recipient’s medical records, and the records of the source animal for 50 years. The development of such a record system is a one-time burden. Such a system is intended to cross-reference and locate relevant records of recipients, products, source animals, animal procurement centers, and significant nosocomial exposures.

Respondents to this collection of information are the sponsors of clinical studies of investigational xenotransplantation products under investigational new drug applications (INDs) and xenotransplantation product procurement centers, referred to as source animal facilities. There are an estimated three respondents who are sponsors of INDs that include protocols for xenotransplantation in humans and five clinical centers doing xenotransplantation procedures. Other respondents for this collection of information are an estimated four source animal facilities which provide source xenotransplantation product material to sponsors for use in human xenotransplantation procedures. These four source animal facilities keep medical records of the herds/colonies as well as the medical records of the individual source animal(s). The burden estimates are based on FDA’s records of xenotransplantation-related INDs and estimates of time required to complete the various reporting, recordkeeping, and third-party disclosure tasks described in the PHS guideline.

In the **Federal Register** of September 25, 2018 (83 FR 48441), FDA published a 60-day notice requesting public comment on the proposed collection of information. No comments were received.

FDA is requesting an extension of OMB approval for the following reporting, recordkeeping, and third-party disclosure recommendations in the PHS guideline:

TABLE 1—REPORTING RECOMMENDATIONS

PHS guideline section	Description
3.2.7.2	Notify sponsor or FDA of new archive site when the source animal facility or sponsor ceases operations.

TABLE 2—RECORDKEEPING RECOMMENDATIONS

PHS guideline section	Description
3.2.7	Establish records linking each xenotransplantation product recipient with relevant records.
4.3	Sponsor to maintain cross-referenced system that links all relevant records (recipient, product, source animal, animal procurement center, and nosocomial exposures).
3.4.2	Document results of monitoring program used to detect introduction of infectious agents which may not be apparent clinically.
3.4.3.2	Document full necropsy investigations including evaluation for infectious etiologies.
3.5.1	Justify shortening a source animal's quarantine period of 3 weeks prior to xenotransplantation product procurement.
3.5.2	Document absence of infectious agent in xenotransplantation product if its presence elsewhere in source animal does not preclude using it.
3.5.4	Add summary of individual source animal record to permanent medical record of the xenotransplantation product recipient.
3.6.4	Document complete necropsy results on source animals (50-year record retention).
3.7	Link xenotransplantation product recipients to individual source animal records and archived biologic specimens.
4.2.3.2	Record baseline sera of xenotransplantation health care workers and specific nosocomial exposure.
4.2.3.3 and 4.3.2	Keep a log of health care workers' significant nosocomial exposure(s).
4.3.1	Document each xenotransplant procedure.
5.2	Document location and nature of archived specimens in health care records of xenotransplantation product recipient and source animal.

TABLE 3—DISCLOSURE RECOMMENDATIONS

PHS guideline section	Description
3.2.7.2	Notify sponsor or FDA of new archive site when the source animal facility or sponsor ceases operations.
3.4	Standard operating procedures (SOPs) of source animal facility should be available to review bodies.
3.5.1	Include increased infectious risk in informed consent if source animal quarantine period of 3 weeks is shortened.
3.5.4	Sponsor to make linked records described in section 3.2.7 available for review.
3.5.5	Source animal facility to notify clinical center when infectious agent is identified in source animal or herd after xenotransplantation product procurement.

FDA estimates the burden for this collection of information as follows:

TABLE 4—ESTIMATED ANNUAL REPORTING BURDEN ¹

PHS guideline section	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
3.2.7.2 ²	1	1	1	0.50 (30 minutes)	0.5

¹ There are no capital costs or operating and maintenance costs associated with this collection of information.

² FDA is using 1 animal facility or sponsor for estimation purposes.

TABLE 5—ESTIMATED ANNUAL RECORDKEEPING BURDEN ¹

PHS guideline section	Number of recordkeepers	Number of records per recordkeeper	Total annual records	Average burden per recordkeeping	Total hours
3.2.7 ²	1	1	1	16	16
4.3 ³	3	1	3	0.75 (45 minutes)	2.25
3.4.2 ⁴	3	10.67	32	0.25 (15 minutes)	8
3.4.3.2 ⁵	3	2.67	8	0.25 (15 minutes)	2
3.5.1 ⁶	3	0.33	1	0.50 (30 minutes)	0.5
3.5.2 ⁶	3	0.33	1	0.25 (15 minutes)	0.25
3.5.4	3	1	3	0.17 (10 minutes)	0.51
3.6.4 ⁷	3	2.67	8	0.25 (15 minutes)	2
3.7 ⁷	4	2	8	0.08 (5 minutes)	0.64
4.2.3.2 ⁸	5	25	125	0.17 (10 minutes)	21.25
4.2.3.2 ⁶	5	0.20	1	0.17 (10 minutes)	0.17
4.2.3.3 and 4.3.2 ⁶	5	0.20	1	0.17 (10 minutes)	0.17
4.3.1	3	1	3	0.25 (15 minutes)	0.75
5.2 ⁹	3	4	12	0.08 (5 minutes)	0.96

TABLE 5—ESTIMATED ANNUAL RECORDKEEPING BURDEN ¹—Continued

PHS guideline section	Number of recordkeepers	Number of records per record-keeper	Total annual records	Average burden per recordkeeping	Total hours
Total	55.45

¹ There are no capital costs or operating and maintenance costs associated with this collection of information.

² A one-time burden for new respondents to set up a recordkeeping system linking all relevant records. FDA is using 1 new sponsor for estimation purposes.

³ FDA estimates there is minimal recordkeeping burden associated with maintaining the record system.

⁴ Monitoring for sentinel animals (subset representative of herd) plus all source animals. There are approximately 6 sentinel animals per herd × 1 herd per facility × 4 facilities = 24 sentinel animals. There are approximately 8 source animals per year (see footnote 7 of this table); 24 + 8 = 32 monitoring records to document.

⁵ Necropsy for animal deaths of unknown cause estimated to be approximately 2 per herd per year × 1 herd per facility × 4 facilities = 8.

⁶ Has not occurred in the past 3 years and is expected to continue to be a rare occurrence.

⁷ On average 2 source animals are used for preparing xenotransplantation product material for one recipient. The average number of source animals is 2 source animals per recipient × 4 recipients annually = 8 source animals per year. (See footnote 5 of table 6 of this document.)

⁸ FDA estimates there are 5 clinical centers doing xenotransplantation procedures × approximately 25 health care workers involved per center = 125 health care workers.

⁹ Eight source animal records + 4 recipient records = 12 total records.

TABLE 6—ESTIMATED ANNUAL THIRD-PARTY DISCLOSURE BURDEN ¹

PHS guideline section	Number of respondents	Number of disclosures per respondent	Total annual disclosures	Average burden per disclosure	Total hours
3.2.7.2 ²	1	1	1	0.50 (30 minutes)	0.5
3.4 ³	4	0.25	1	0.08 (5 minutes)	0.08
3.5.1 ⁴	4	0.25	1	0.25 (15 minutes)	0.25
3.5.4 ⁵	4	1	4	0.50 (30 minutes)	2
3.5.5 ⁴	4	0.25	1	0.25 (15 minutes)	0.25
Total .....	.....	.....	.....	.....	3.08

¹ There are no capital costs or operating and maintenance costs associated with this collection of information.

² FDA is using 1 animal facility or sponsor for estimation purposes.

³ FDA's records indicate that an average of 1 INDs are expected to be submitted per year.

⁴ To our knowledge, has not occurred in the past 3 years and is expected to continue to be a rare occurrence.

⁵ Based on an estimate of 12 patients treated over a 3-year period, the average number of xenotransplantation product recipients per year is estimated to be 4.

Because of the potential risk for cross-species transmission of pathogenic persistent virus, the guideline recommends that health records be retained for 50 years. Since these records are medical records, the retention of such records for up to 50 years is not information subject to the PRA (5 CFR 1320.3(h)(5)). Also, because of the limited number of clinical studies with small patient populations, the number of records is expected to be insignificant at this time.

Information collections in this guideline not included in tables 1 through 6 can be found under existing regulations and approved under the OMB control numbers as follows: (1)

“Current Good Manufacturing Practice for Finished Pharmaceuticals,” 21 CFR 211.1 through 211.208, approved under OMB control number 0910–0139; (2) “Investigational New Drug Application,” 21 CFR 312.1 through 312.160, approved under OMB control number 0910–0014; and (3) information included in a biologics license application, 21 CFR 601.2, approved under OMB control number 0910–0338. (Although it is possible that a xenotransplantation product may not be regulated as a biological product (e.g., it may be regulated as a medical device), FDA believes, based on its knowledge and experience with

xenotransplantation, that any xenotransplantation product subject to FDA regulation within the next 3 years will most likely be regulated as a biological product.) However, FDA recognized that some of the information collections go beyond approved collections; assessments for these burdens are included in tables 1 through 6.

In table 7, FDA identifies those collection of information activities that are already encompassed by existing regulations or are consistent with voluntary standards which reflect industry’s usual and customary business practice.

TABLE 7—COLLECTION OF INFORMATION REQUIRED BY CURRENT REGULATIONS AND STANDARDS

PHS guideline section	Description of collection of information activity	21 CFR section (unless otherwise stated)
2.2.1	Document off-site collaborations	312.52.
2.5	Sponsor ensures counseling patient + family + contacts	312.62(c).
3.1.1 and 3.1.6	Document well-characterized health history and lineage of source animals.	312.23(a)(7)(a) and 211.84.
3.1.8	Registration with and import permit from the Centers for Disease Control and Prevention.	42 CFR 71.53.

TABLE 7—COLLECTION OF INFORMATION REQUIRED BY CURRENT REGULATIONS AND STANDARDS—Continued

PHS guideline section	Description of collection of information activity	21 CFR section (unless otherwise stated)
3.2.2	Document collaboration with accredited microbiology labs	312.52.
3.2.3	Procedures to ensure the humane care of animals	9 CFR parts 1, 2, and 3 and PHS Policy. ¹
3.2.4	Procedures consistent for accreditation by the Association for Assessment and Accreditation of Laboratory Animal Care International (AAALAC International) and consistent with the National Research Council's (NRC) Guide.	AAALAC International Rules of Accreditation ² and NRC Guide. ³
3.2.5, 3.4, and 3.4.1	Herd health maintenance and surveillance to be documented, available, and in accordance with documented procedures; record standard veterinary care.	211.100 and 211.122.
3.2.6	Animal facility SOPs	PHS Policy. ¹
3.3.3	Validate assay methods	211.160(a).
3.6.1	Procurement and processing of xenografts using documented aseptic conditions.	211.100 and 211.122.
3.6.2	Develop, implement, and enforce SOP's for procurement and screening processes.	211.84(d) and 211.122(c).
3.6.4	Communicate to FDA animal necropsy findings pertinent to health of recipient.	312.32(c).
3.7.1	PHS specimens to be linked to health records; provide to FDA justification for types of tissues, cells, and plasma, and quantities of plasma and leukocytes collected.	312.23(a)(6).
4.1.1	Surveillance of xenotransplant recipient; sponsor ensures documentation of surveillance program life-long (Justify >2 yrs.); investigator case histories (2 yrs. after investigation is discontinued).	312.23(a)(6)(iii)(f) and (g), and 312.62(b) and (c).
4.1.2	Sponsor to justify amount and type of reserve samples	211.122.
4.1.2.2	System for prompt retrieval of PHS specimens and linkage to medical records (recipient and source animal).	312.57(a).
4.1.2.3	Notify FDA of a clinical episode potentially representing a xenogeneic infection.	312.32.
4.2.2.1	Document collaborations (transfer of obligation)	312.52.
4.2.3.1	Develop educational materials (sponsor provides investigators with information needed to conduct investigation properly).	312.50.
4.3	Sponsor to keep records of receipt, shipment, and disposition of investigative drug; investigator to keep records of case histories.	312.57 and 312.62(b).

¹ The "Public Health Service Policy on Humane Care and Use of Laboratory Animals" (<https://www.grants.nih.gov/grants/olaw/references/phspol.htm>).

² AAALAC International Rules of Accreditation (<https://www.aaalac.org/accreditation/rules.cfm>).

³ The NRC's "Guide for the Care and Use of Laboratory Animals."

Based on a review of the information collection since our last request for OMB approval, we have made no adjustments to our burden estimate.

Dated: April 26, 2019.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2019-08845 Filed 4-30-19; 8:45 am]

BILLING CODE 4164-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Proposed Collection; 60-Day Comment Request; NIH Information Collection Forms To Support Genomic Data Sharing for Research Purposes (OD)

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: In compliance with the requirement of the Paperwork Reduction Act of 1995, for opportunity

for public comment on proposed data collection projects, the National Institutes of Health Office of the Director (OD) will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

DATES: Comments regarding this information collection are best assured of having their full effect if received within 60 days of the date of this publication.

FOR FURTHER INFORMATION CONTACT: To obtain a copy of the data collection plans and instruments, submit comments in writing, or request more information on the proposed project, contact: Dr. Lyric A. Jorgenson, Acting Director, Division of Scientific Data Sharing Policy, Office of Science Policy, NIH, 6705 Rockledge Dr., Suite 750, Bethesda, MD 20892, or call non-toll-free number (301) 496-9838 or email your request including your address to: SciencePolicy@mail.nih.gov Formal

requests for additional plans and instruments must be requested in writing.

SUPPLEMENTARY INFORMATION: Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 requires: Written comments and/or suggestions from the public and affected agencies are invited to address one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and (4) Ways to minimize the burden of the collection of information from those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection

techniques or other forms of information technology.

Proposed Collection Title: NIH Information Collection Forms to Support Genomic Data Sharing for Research Purposes—0925–0670—Expiration Date 07/31/2019—EXTENSION—Office of the Director (OD), National Institutes of Health (NIH).

Need and Use of Information Collection: Sharing research data supports the National Institutes of Health (NIH) mission and is essential to facilitate the translation of research results into knowledge, products, and procedures that improve human health. NIH has longstanding policies to make a broad range of research data, including genomic data, publicly available in a timely manner from the research activities that it funds. Genomic research data sharing is an integral element of the NIH mission as it facilitates advances in our understanding of factors that influence health and disease, while also providing opportunities to accelerate research through the power of combining large and information-rich datasets. To promote robust sharing of human and non-human data from a wide range of large-scale genomic research and provide appropriate protections for

research involving human data, the NIH issued the NIH Genomic Data Sharing Policy (NIH GDS Policy). Human genomic data submissions and controlled-access are managed through a central data repository, the database of Genotypes and Phenotypes (dbGaP) which is administered by the National Center for Biotechnology Information (NCBI), part of the National Library of Medicine at NIH.

Under the NIH GDS Policy, all investigators who receive NIH funding to conduct large-scale genomic research are expected to register studies with human genomic data in dbGaP, no matter which NIH-designated data repository will maintain the data. As part of the registration process, investigators must provide basic study information such as the type of data that will be submitted to dbGaP, a description of the study, and an institutional assurance (*i.e.* Institutional Certification) of the data submission which delineates any limitations on the secondary use of the data (*e.g.*, data cannot be shared with for-profit companies, data can be used only for research of particular diseases).

Investigators interested in using controlled-access data for secondary research must apply through dbGaP and be granted permission from the relevant

NIH Data Access Committee(s). As part of the application process, investigators and their institutions must provide information such as a description of the proposed research use of controlled-access datasets that conforms to any data use limitations, agree to the Genomic Data User Code of Conduct, and agree to the terms of access through a Data Use Certification agreement. Requests to renew data access and reports to close out data use are similar to the initial data access request, requiring sign-off by both the requestor and the institution, but also ask for information about how the data have been used, and about publications, presentations, or intellectual property based on the research conducted with the accessed data as well as any data security issues or other data management incidents.

NIH has developed online forms, available through dbGaP, in an effort to reduce the burden for researchers and their institutional officials to complete the study registration, data submission, data access, and renewal and closeout processes.

OMB approval is requested for 3 years. There are no costs to respondents other than their time. The total estimated annualized burden hours are 5,850.

ESTIMATED ANNUALIZED BURDEN HOURS

Form name	Type of respondent	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total annual burden hour
Study Registration and Data Submission					
dbGaP Registration and Submission.	Investigator Submitting Data	300	1	1	300
	Institutional Official to Certify Submission.	300	1	30/60	150
Requesting Access to Data					
Data Access Request	Requester Submitting Request.	1,500	2	45/60	2,250
Data Access Request	Institutional Signing Official to Certify Request.	1,500	2	30/60	1,500
Project Renewal or Project Close-out					
Project Renewal or Project Close-out form.	Requester Submitting Request.	1,500 (same individuals as listed above).	2	15/60	750
Project Renewal or Project Close-out form.	Institutional Signing Official to Certify Request.	1,500 (same individuals as listed above).	2	18/60	900
Grand Total .....	.....	6,600	12,600	.....	5,850

Dated: April 23, 2019.

Lawrence A. Tabak,

Principal Deputy Director, National Institutes of Health.

[FR Doc. 2019-08855 Filed 4-30-19; 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 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: Cell Biology Integrated Review Group; Cellular Signaling and Regulatory Systems Study Section.

Date: May 23–24, 2019.

Time: 8:00 a.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites Chevy Chase, 4300 Military Road NW, Washington, DC 20015.

Contact Person: David Balasundaram, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5189, MSC 7840, Bethesda, MD 20892 301-435-1022, balasundaramd@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Fellowships: Behavioral Neuroscience.

Date: May 29–30, 2019.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Wyndham Grand Chicago Riverfront, 71 E Wacker Drive, Chicago, IL 60601.

Contact Person: Mei Qin, MD, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5213, Bethesda, MD 20892, 301-875-2215, qinmei@csr.nih.gov.

Name of Committee: Population Sciences and Epidemiology Integrated Review Group; Social Sciences and Population Studies A Study Section.

Date: May 30–31, 2019.

Time: 9:00 a.m. to 12:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Renaissance Mayflower Hotel, 1127 Connecticut Avenue NW, Washington, DC 20036.

Contact Person: Suzanne Ryan, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3139, MSC 7770, Bethesda, MD 20892, (301) 435-1712, ryansj@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: April 25, 2019.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019-08780 Filed 4-30-19; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The cooperative agreement applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the cooperative agreement applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; RFA-DK-18-014: Human Islet Research Network—Consortium on Targeting and Regeneration (HIRN-CTAR) (U01 Clinical Trial Not Allowed).

Date: June 5, 2019.

Time: 11:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate cooperative agreement applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy

Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Najma S. Begum, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 7349, 6707 Democracy Boulevard, Bethesda, MD 20892-5452, (301) 594-8894, begumn@niddk.nih.gov.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; RFA-DK-18-015: Human Pancreas Analysis Program (HPAP-T1D).

Date: June 18, 2019.

Time: 12:00 p.m. to 3:00 p.m.

Agenda: To review and evaluate cooperative agreement applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Najma S. Begum, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 7349, 6707 Democracy Boulevard, Bethesda, MD 20892-5452, (301) 594-8894, begumn@niddk.nih.gov.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; RFA-DK-18-016: Human Pancreas Analysis Program for Type-2 Diabetes (HPAP-T2D).

Date: June 19, 2019.

Time: 12:00 p.m. to 5:30 p.m.

Agenda: To review and evaluate cooperative agreement applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Najma S. Begum, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 7349, 6707 Democracy Boulevard, Bethesda, MD 20892-5452, (301) 594-8894, begumn@niddk.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: April 25, 2019.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019-08775 Filed 4-30-19; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA-2019-0002; Internal Agency Docket No. FEMA-B-1523]

Proposed Flood Hazard Determinations for Llano County, Texas and Incorporated Areas

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice; withdrawal.

SUMMARY: The Federal Emergency Management Agency (FEMA) is withdrawing its proposed notice concerning proposed flood hazard determinations, which may include the addition or modification of any Base Flood Elevation, base flood depth, Special Flood Hazard Area boundary or zone designation, or regulatory floodway (herein after referred to as proposed flood hazard determinations) on the Flood Insurance Rate Maps and, where applicable, in the supporting Flood Insurance Study reports for Llano County, Texas and Incorporated Areas.

DATES: This withdrawal is effective May 1, 2019.

ADDRESSES: You may submit comments, identified by Docket No. FEMA-B-1523 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.

SUPPLEMENTARY INFORMATION: On August 19, 2015, FEMA published a proposed notice at 80 FR 50313, proposing flood hazard determinations for Llano County, Texas and Incorporated Areas. FEMA is withdrawing the proposed notice.

Authority: 42 U.S.C. 4104; 44 CFR 67.4.

Michael M. Grimm,

Assistant Administrator for Risk Management, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. 2019-08812 Filed 4-30-19; 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 August 1, 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
City and Borough of Sitka, Alaska Docket No.: FEMA-B-1667	
City and Borough of Sitka	100 Lincoln Street, Sitka, AK 99835.

Community	Community map repository address
DuPage County, Illinois and Incorporated Areas Docket No.: FEMA-B-1773	
City of Aurora City of Chicago City of Darien City of Elmhurst City of Naperville City of Oakbrook Terrace City of Warrenville City of West Chicago City of Wheaton City of Wood Dale Unincorporated Areas of DuPage County	City Hall, Engineering Department, 44 East Downer Place, Aurora, IL 60505. Department of Buildings, Stormwater Management, 121 North LaSalle Street, Room 906, Chicago, IL 60602. City Hall, 1702 Plainfield Road, Darien, IL 60561. City Hall, 209 North York Street, Elmhurst, IL 60126. City Hall, 400 South Eagle Street, Naperville, IL 60540. City Hall, 17W275 Butterfield Road, Oakbrook Terrace, IL 60181. City Hall, 28W701 Stafford Place, Warrenville, IL 60555. City Hall, 475 Main Street, West Chicago, IL 60185. City Hall, 303 West Wesley Street, Wheaton, IL 60187. City Hall, 404 North Wood Dale Road, Wood Dale, IL 60191. County Administration Building, Stormwater Management, 421 North County Farm Road, Wheaton, IL 60187.
Village of Addison Village of Bartlett Village of Bensenville Village of Bloomingdale Village of Bolingbrook Village of Burr Ridge Village of Carol Stream Village of Clarendon Hills Village of Downers Grove Village of Elk Grove Village Village of Glendale Heights Village of Glen Ellyn Village of Hanover Park Village of Hinsdale Village of Itasca Village of Lemont Village of Lisle Village of Lombard Village of Oak Brook Village of Roselle Village of Schaumburg Village of Villa Park Village of Wayne Village of Westmont Village of Willowbrook Village of Winfield Village of Woodridge	Village Hall, 1 Friendship Plaza, Addison, IL 60101. Village Hall, 228 South Main Street, Bartlett, IL 60103. Village Hall, 12 South Center Street, Bensenville, IL 60106. Village Hall, 201 South Bloomingdale Road, Bloomingdale, IL 60108. Village Hall, 375 West Briarcliff Road, Bolingbrook, IL 60440. Village Hall, 7660 County Line Road, Burr Ridge, IL 60527. Village Hall, 505 East North Avenue, Carol Stream, IL 60188. Village Hall, 1 North Prospect Avenue, Clarendon Hills, IL 60514. Village Hall, 801 Burlington Avenue, Downers Grove, IL 60515. Village Hall, 901 Wellington Avenue, Elk Grove Village, IL 60007. Village Hall, 300 Civic Center Plaza, Glendale Heights, IL 60139. Village Hall, 535 Duane Street, Glen Ellyn, IL 60137. Village Hall, 2121 Lake Street, Hanover Park, IL 60133. Village Hall, 19 East Chicago Avenue, Hinsdale, IL 60521. Village Hall, 550 West Irving Park Road, Itasca, IL 60143. Village Hall, 418 Main Street, Lemont, IL 60439. Village Hall, 925 Burlington Avenue, Lisle, IL 60532. Village Hall, 255 East Wilson Avenue, Lombard, IL 60148. Village Hall, 1200 Oak Brook Road, Oak Brook, IL 60523. Village Hall, 31 South Prospect Street, Roselle, IL 60172. Village Hall, 101 Schaumburg Court, Schaumburg, IL 60193. Village Hall, 20 South Ardmore Avenue, Villa Park, IL 60181. Village Hall, 5N430 Railroad Street, Wayne, IL 60184. Village Hall, 31 West Quincy Street, Westmont, IL 60559. Village Hall, 835 Midway Drive, Willowbrook, IL 60527. Village Hall, 27W465 Jewell Road, Winfield, IL 60190. Village Hall, 5 Plaza Drive, Woodridge, IL 60517.
Hamilton County, Nebraska and Incorporated Areas Docket No.: FEMA-B-1813	
City of Aurora Unincorporated Areas of Hamilton County Village of Giltner Village of Hampton Village of Hordville Village of Marquette Village of Stockham Village of Trumbull	City Hall, 905 13th Street, Aurora, NE 68818. Hamilton County Courthouse, 1111 13th Street, Aurora, NE 68818. Village Office, 4021 North Commercial Avenue, Giltner, NE 68841. Village Clerk's Office, 126 North 3rd Street, Hampton, NE 68843. First State Bank, 201 Main Street, Hordville, NE 68846. Village Office, 302 Marquis Avenue, Marquette, NE 68854. Town Hall, 304 Main Street, Stockham, NE 68818. Village Office, 131 Main Street, Trumbull, NE 68980.
York County, Nebraska and Incorporated Areas Docket No.: FEMA-B-1813	
City of Henderson City of York Unincorporated Areas of York County Village of Benedict Village of Bradshaw Village of Gresham Village of McCool Junction Village of Thayer Village of Waco	City Hall, 1044 North Main Street, Henderson, NE 68371. Municipal Building, 100 East 4th Street, York, NE 68467. York County Courthouse, 510 North Lincoln Avenue, York, NE 68467. Village Office, 206 Sherman Street, Benedict, NE 68316. Village Office, 455 Lincoln Street, Bradshaw, NE 68319. Village Office, 310 Elm Street, Gresham, NE 68367. Village Office, 323 East M Street, McCool Junction, NE 68401. Village of Thayer Clerk's Office, 401 4th Street, Waco, NE 68460. Village Office, 403 Midland Street, Waco, NE 68460.

[FR Doc. 2019-08813 Filed 4-30-19; 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-1924]

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: Tuscaloosa	City of Northport (18-04-7201P).	The Honorable Donna Aaron, Mayor, City of Northport, 3500 McFarland Boulevard, Northport, AL 35476.	Planning and Inspections Department, 3500 McFarland Boulevard, Northport, AL 35476.	https://msc.fema.gov/portal/advanceSearch .	Jul. 9, 2019	010202
Tuscaloosa	Unincorporated areas of Tuscaloosa County (18-04-7201P).	The Honorable Ward D. Robertson, III, Probate Judge, Tuscaloosa County, 714 Greensboro Avenue, Tuscaloosa, AL 35401.	Tuscaloosa County Public Works Department, 2810 35th Street, Tuscaloosa, AL 35401.	https://msc.fema.gov/portal/advanceSearch .	Jul. 9, 2019	010201

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.
California: Orange	City of Irvine (18-09-2376P).	Mr. John Russo, City of Irvine Manager, 1 Civic Center Plaza, Irvine, CA 92606.	Department of Public Works, 1 Civic Center Plaza, Irvine, CA 92606.	https://msc.fema.gov/portal/advanceSearch .	Jul. 12, 2019 ...	060222
Colorado: Arapahoe	City of Centennial (18-08-1262P).	The Honorable Stephanie Piko, Mayor, City of Centennial, 13133 East Arapahoe Road, Centennial, CO 80112.	Southeast Metro Stormwater Authority, 7437 South Fairplay Street, Centennial, CO 80112.	https://msc.fema.gov/portal/advanceSearch .	Jul. 5, 2019	080315
Douglas	Town of Castle Rock (18-08-0968P).	The Honorable Jason Gray, Mayor, Town of Castle Rock, 100 North Wilcox Street, Castle Rock, CO 80104.	Water Department, 175 Kellogg Court, Castle Rock, CO 80109.	https://msc.fema.gov/portal/advanceSearch .	Jul. 26, 2019 ...	080050
Garfield	Town of Parachute (18-08-1058P).	The Honorable Roy McClung, Mayor, Town of Parachute, 222 Grand Valley Way, Parachute, CO 81635.	Town Hall, 222 Grand Valley Way, Parachute, CO 81635.	https://msc.fema.gov/portal/advanceSearch .	Jun. 20, 2019 ..	080215
Garfield	Unincorporated areas of Garfield County (18-08-1058P).	The Honorable John Martin, Chairman, Garfield County Board of Commissioners, 108 8th Street, Suite 101, Glenwood Springs, CO 81601.	Garfield County Administration Building, 108 8th Street, Glenwood Springs, CO 81601.	https://msc.fema.gov/portal/advanceSearch .	Jun. 20, 2019 ..	080205
Jefferson	Unincorporated areas of Jefferson County (18-08-0795P).	The Honorable Libby Szabo, Chair, Jefferson County Board of Commissioners, 100 Jefferson County Parkway, Golden, CO 80419.	Jefferson County Planning and Zoning Division, 100 Jefferson County Parkway, Golden, CO 80419.	https://msc.fema.gov/portal/advanceSearch .	Jul. 12, 2019 ...	080087
Delaware: Sussex	Unincorporated areas of Sussex County (18-03-1948P).	The Honorable Michael H. Vincent, President, Sussex County Council, P.O. Box 589, Georgetown, DE 19947.	Sussex County Planning and Zoning Department, #2 The Circle, Georgetown, DE 19947.	https://msc.fema.gov/portal/advanceSearch .	Jul. 19, 2019 ...	100029
Florida: Charlotte	Unincorporated areas of Charlotte County (18-04-6799P).	The Honorable Ken Doherty, Chairman, Charlotte County Board of Commissioners, 18500 Murdock Circle, Suite 536, Port Charlotte, FL 33948.	Charlotte County Community Development Department, 18400 Murdock Circle, Port Charlotte, FL 33948.	https://msc.fema.gov/portal/advanceSearch .	Jul. 5, 2019	120061
Clay	Unincorporated areas of Clay County (18-04-6869P).	The Honorable Mike Cella, Chairman, Clay County Board of Commissioners, P.O. Box 1366, Green Cove Springs, FL 32043.	Clay County Zoning Department, 477 Houston Street, Green Cove Springs, FL 32043.	https://msc.fema.gov/portal/advanceSearch .	Jul. 9, 2019	120064
Lee	Town of Fort Myers Beach (19-04-1243P).	The Honorable Tracey Gore, Mayor, Town of Fort Myers Beach, 2525 Estero Boulevard, Fort Myers Beach, FL 33931.	Community Development Department, 2525 Estero Boulevard, Fort Myers Beach, FL 33931.	https://msc.fema.gov/portal/advanceSearch .	Jul. 18, 2019 ...	120673
Lee	Unincorporated areas of Lee County (19-04-0850P).	The Honorable Larry Kiker, Chairman, Lee County Board of Commissioners, P.O. Box 398, Fort Myers, FL 33902.	Lee County Building Department, 1500 Monroe Street, Fort Myers, FL 33902.	https://msc.fema.gov/portal/advanceSearch .	Jun. 25, 2019 ..	125124
Marion	Unincorporated areas of Marion County (18-04-6729P).	The Honorable Michelle Stone, Chair, Marion County Board of Commissioners, 601 Southeast 25th Avenue, Ocala, FL 34471.	Marion County Public Works Department, 601 Southeast 25th Avenue, Ocala, FL 34471.	https://msc.fema.gov/portal/advanceSearch .	Jul. 9, 2019	120160

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.
Miami-Dade	City of Miami (19-04-1242P).	The Honorable Francis X. Suarez, Mayor, City of Miami, 3500 Pan American Drive, Miami, FL 33133.	Building Department, 444 Southwest 2nd Avenue, 4th Floor, Miami, FL 33130.	https://msc.fema.gov/portal/advanceSearch .	Jul. 18, 2019 ...	120650
Sarasota	City of Sarasota (19-04-2012P).	The Honorable Liz Alpert, Mayor, City of Sarasota, 1565 1st Street, Room 101, Sarasota, FL 34236.	Development Services Department, 1565 1st Street, Sarasota, FL 34236.	https://msc.fema.gov/portal/advanceSearch .	Jul. 25, 2019 ...	125150
Sarasota	Unincorporated areas of Sarasota County (19-04-1456P).	The Honorable Charles D. Hines, Chairman, 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 .	Jul. 26, 2019 ...	125144
Volusia	City of Deltona (18-04-7217P).	Ms. Jane K. Shang, Manager, City of Deltona, 2345 Providence Boulevard, Deltona, FL 32725.	City Hall, 2345 Providence Boulevard, Deltona, FL 32725.	https://msc.fema.gov/portal/advanceSearch .	Jul. 16, 2019 ...	120677
Maryland: Prince George's.	Unincorporated areas of Prince George's County (18-03-1633P).	The Honorable Angela D. Alsobrooks, Prince George's County Executive, 1301 McCormick Drive, Suite 4000, Largo, MD 20774.	Prince George's County Inglewood Center II, 1801 McCormick Drive, Suite 500, Largo, MD 20774.	https://msc.fema.gov/portal/advanceSearch .	Jul. 19, 2019 ...	245208
Mississippi: Lafayette.	City of Oxford (18-04-7495P).	The Honorable Robyn Tannehill, Mayor, City of Oxford, 107 Courthouse Square, Oxford, MS 38655.	City Hall, 107 Courthouse Square, Oxford, MS 38655.	https://msc.fema.gov/portal/advanceSearch .	Jun. 19, 2019 ..	280094
New Hampshire: Grafton.	Town of Hebron (18-01-1456P).	Mr. Patrick Moriarty, Chairman, Town of Hebron Select Board, P.O. Box 188, Hebron, NH 03241.	Public Safety Department, 37 Groton Road, Hebron, NH 03241.	https://msc.fema.gov/portal/advanceSearch .	Jul. 24, 2019 ...	330058
North Carolina: Wake.	Town of Apex (18-04-6277P).	The Honorable Lance Olive, Mayor, Town of Apex, P.O. Box 250, Apex, NC 27502.	Engineering Department, 73 Hunter Street, Apex, NC 27502.	https://msc.fema.gov/portal/advanceSearch .	Jul. 16, 2019 ...	370467
Oklahoma: Payne	City of Stillwater (18-06-1552P).	The Honorable William Joyce, Mayor, City of Stillwater, 723 South Lewis Street, Stillwater, OK 74074.	Development Services Department, 723 South Lewis Street, Stillwater, OK 74074.	https://msc.fema.gov/portal/advanceSearch .	Jun. 10, 2019 ..	405380
Pennsylvania: Bedford	Borough of Hyndman (18-03-1776P).	The Honorable Newton Huffman, Mayor, Borough of Hyndman, P.O. Box 74, Hyndman, PA 15545.	Borough Hall, 3945 Center Street, Suite 2, Hyndman, PA 15545.	https://msc.fema.gov/portal/advanceSearch .	Jul. 1, 2019	420021
Bedford	Township of Londonderry (18-03-1776P).	The Honorable Stephen Stouffer, Chairman, Township of Londonderry Board of Supervisors, P.O. Box 215, Hyndman, PA 15545.	Township Hall, 4303 Hyndman Road, Hyndman, PA 15545.	https://msc.fema.gov/portal/advanceSearch .	Jul. 1, 2019	421345
Indiana	Township of White (18-03-1378P).	Mr. Milton Lady, Manager, Township of White, 950 Indian Springs Road, Indiana, PA 15701.	Township Hall, 950 Indian Springs Road, Indiana, PA 15701.	https://msc.fema.gov/portal/advanceSearch .	Jul. 24, 2019 ...	421725
South Carolina: Berkeley	Unincorporated areas of Berkeley County (18-04-3968P).	The Honorable Johnny Cribb, Supervisor, Berkeley County Council, P.O. Box 6122, Moncks Corner, SC 29461.	Berkeley County Planning and Zoning Department, 1003 Highway 52, Moncks Corner, SC 29461.	https://msc.fema.gov/portal/advanceSearch .	Jul. 25, 2019 ...	450029

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.
Dorchester	Town of Summerville (18-04-3968P).	The Honorable Wiley Johnson, Mayor, Town of Summerville, 200 South Main Street, Summerville, SC 29483.	Public Works, Engineering Department, 200 South Main Street, Summerville, SC 29483.	https://msc.fema.gov/portal/advanceSearch .	Jul. 25, 2019 ...	450073
South Dakota: Lincoln.	Unincorporated areas of Lincoln County (18-08-0685P).	The Honorable David Gillespie, Chairman, Lincoln County Board of Commissioners, 104 North Main Street, Suite 120, Canton, SD 57013.	Lincoln County GIS Department, 104 North Main Street, Canton, SD 57013.	https://msc.fema.gov/portal/advanceSearch .	Jun. 21, 2019 ..	460277
Tennessee: Hamilton.	Unincorporated areas of Hamilton County (18-04-2279P).	The Honorable Jim Coppinger, Mayor, Hamilton County, 208 Courthouse, 625 Georgia Avenue, Chattanooga, TN 37402.	Hamilton County Engineering Department, 1250 Market Street, Suite 3046, Chattanooga, TN 37402.	https://msc.fema.gov/portal/advanceSearch .	Jun. 17, 2019 ..	470071
Texas:						
Collin	City of Allen (19-06-0043P).	Mr. Peter H. Vargas, Manager, City of Allen, 305 Century Parkway, Allen, TX 75013.	Engineering and Traffic Department, 305 Century Parkway, Allen, TX 75013.	https://msc.fema.gov/portal/advanceSearch .	Jul. 19, 2019 ...	480131
Collin	City of Lucas (18-06-3533P).	The Honorable Jim Olk, Mayor, City of Lucas, 665 Country Club Road, Lucas, TX 75002.	City Hall, 665 Country Club Road, Lucas, TX 75002.	https://msc.fema.gov/portal/advanceSearch .	Jun. 24, 2019 ..	481545
Collin	City of Parker (18-06-2161P).	The Honorable Lee Pettie, Mayor, City of Parker, 5700 East Parker Road, Parker, TX 75002.	City Hall, 5700 East Parker Road, Parker, TX 75002.	https://msc.fema.gov/portal/advanceSearch .	Jul. 1, 2019	480139
Collin	City of Parker (18-06-3533P).	The Honorable Lee Pettie, Mayor, City of Parker, 5700 East Parker Road, Parker, TX 75002.	City Hall, 5700 East Parker Road, Parker, TX 75002.	https://msc.fema.gov/portal/advanceSearch .	Jun. 24, 2019 ..	480139
Collin	Unincorporated areas of Collin County (18-06-2161P).	The Honorable Chris Hill, Collin County Judge, 2300 Bloomdale Road, Suite 4192, McKinney, TX 75071.	Collin County Emergency Management Department, 4690 Community Avenue, Suite 200, McKinney, TX 75071.	https://msc.fema.gov/portal/advanceSearch .	Jul. 1, 2019	480130
Collin and Denton.	City of Frisco (19-06-0831P).	The Honorable Jeff Cheney, Mayor, City of Frisco, 6101 Frisco Square Boulevard, Frisco, TX 75034.	Engineering Services Department, 6101 Frisco Square Boulevard, Frisco, TX 75034.	https://msc.fema.gov/portal/advanceSearch .	Jul. 22, 2019 ...	480134
Denton	Unincorporated areas of Denton County (18-06-3265P).	The Honorable Andy Eads, Denton County Judge, 110 West Hickory Street, 2nd Floor, Denton, TX 76201.	Denton County Public Works, Engineering Department, 1505 East McKinney Street, Suite 175, Denton, TX 76209.	https://msc.fema.gov/portal/advanceSearch .	Jul. 29, 2019 ...	480774
Kaufman	City of Forney (18-06-2436P).	The Honorable Rick Wilson, Mayor, City of Forney, 101 East Main Street, Forney, TX 75126.	City Hall, 101 East Main Street, Forney, TX 75126.	https://msc.fema.gov/portal/advanceSearch .	Jul. 19, 2019 ...	480410
Kendall	Unincorporated areas of Kendall County (18-06-1938P).	The Honorable Darrel L. Lux, Kendall County Judge, 201 East San Antonio Avenue, Suite 122, Boerne, TX 78006.	Kendall County Engineering Department, 201 East San Antonio Avenue, Suite 101, Boerne, TX 78006.	https://msc.fema.gov/portal/advanceSearch .	Jun. 17, 2019 ..	480417
Montgomery ...	City of Conroe (18-06-0092P).	The Honorable Toby Powell, Mayor, City of Conroe, 300 West Davis Street, Conroe, TX 77301.	Engineering Department, 300 West Davis Street, Conroe, TX 77301.	https://msc.fema.gov/portal/advanceSearch .	Jun. 25, 2019 ..	480484
Parker	Unincorporated areas of Parker County (18-06-3601P).	The Honorable Pat Deen, Parker County Judge, 1 Courthouse Square, Weatherford, TX 76086.	Parker County Emergency Management Department, 1114 Santa Fe Drive, Weatherford, TX 76086.	https://msc.fema.gov/portal/advanceSearch .	Jul. 22, 2019 ...	480520

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.
Smith	Unincorporated areas of Smith County (18-06-2029P).	The Honorable Nathaniel Moran, Smith County Judge, 200 East Ferguson Street, Suite 100, Tyler, TX 75702.	Smith County Road and Bridge Department, 1700 West Claude Street, Tyler, TX 75702.	https://msc.fema.gov/portal/advanceSearch .	Jul. 15, 2019 ...	481185
Tarrant	City of Fort Worth (18-06-3021P).	The Honorable Betsy Price, Mayor, City of Fort Worth, 200 Texas Street, Fort Worth, TX 76102.	City Hall, 200 Texas Street, Fort Worth, TX 76102.	https://msc.fema.gov/portal/advanceSearch .	Jul. 15, 2019 ...	480596
Tarrant	City of Haslet (18-06-2131P).	The Honorable Bob Golden, Mayor, City of Haslet, 101 Main Street, Haslet, TX 76052.	Planning and Development Department, 101 Main Street, Haslet, TX 76052.	https://msc.fema.gov/portal/advanceSearch .	Jul. 11, 2019 ...	480600
Virginia: Stafford ...	Unincorporated areas of Stafford County (18-03-1812P).	Mr. Thomas C. Foley, Stafford County Administrator, P.O. Box 339, Stafford, VA 22555.	Stafford County Department of Code Administration, 1300 Courthouse Road, Stafford, VA 22554.	https://msc.fema.gov/portal/advanceSearch .	Jun. 20, 2019 ..	510154
Wyoming: Laramie	Unincorporated areas of Laramie County (18-08-1199P).	The Honorable Linda Heath, Chair, Laramie County Board of Commissioners, 310 West 19th Street, Suite 300, Cheyenne, WY 82001.	Laramie County Planning and Development Department, 3966 Archer Parkway, Cheyenne, WY 82009.	https://msc.fema.gov/portal/advanceSearch .	Jul. 29, 2019 ...	560029

[FR Doc. 2019-08783 Filed 4-30-19; 8:45 am]

BILLING CODE 9110-12-P

DEPARTMENT OF HOMELAND SECURITY

U.S. Immigration and Customs Enforcement

[OMB Control Number 1653-0050]

Agency Information Collection Activities; Extension of a Currently Approved Collection: Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery

AGENCY: U.S. Immigration and Customs Enforcement, Department of Homeland Security.

ACTION: 60-Day notice.

SUMMARY: In accordance with the Paperwork Reduction Act (PRA) of 1995 the Department of Homeland Security (DHS), U.S. Immigration and Customs Enforcement (ICE) will submit the following Information Collection Request (ICR) to the Office of Management and Budget (OMB) for review and clearance.

DATES: Comments are encouraged and will be accepted until July 1, 2019.

ADDRESSES: All submissions received must include the OMB Control Number 1653-0050 in the body of the letter, the agency name and Docket ID ICEB-2019-0003. All comments received will be posted without change to <http://www.regulations.gov>, including any

personal information provided. To avoid duplicate submissions, please use only *one* of the following methods to submit comments:

- (1) *Online.* Submit comments via the Federal eRulemaking Portal website at <http://www.regulations.gov> under e-Docket ID number ICEB-2019-0003;
- (2) *Mail:* Submit written comments to DHS, ICE, Office of the Chief Information Officer (OCIO), PRA Clearance, Washington, DC 20536-5800.

SUPPLEMENTARY INFORMATION:

Comments

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

- (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- (2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- (3) Enhance the quality, utility, and clarity of the information to be collected; and
- (4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology,

e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* U.S. Immigration and Customs Enforcement.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or Households; Farms; Business or other for-profit; Not-for-profit institutions; State, local or Tribal governments; The information collection garners qualitative customer and stakeholder feedback in an efficient and 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 provides insights into customer or stakeholder perceptions, experiences and expectations, provides an early warning of issues with service, or focuses attention on areas where communication, training or changes in

operations might improve delivery of products or services. These collections allow for ongoing, collaborative and actionable communications between the Agency and its customers and stakeholders. It also allows feedback to contribute directly to the improvement of program management. Feedback collected under this generic clearance provides useful information, but it will not yield data that can be generalized to the overall population. This type of generic clearance for qualitative information will not be used for quantitative information collections that are designed to yield reliably actionable results, such as monitoring trends over time or documenting program performance. Such data uses require more rigorous designs that address: The target population to which generalizations will be made, the sampling frame, the sample design (including stratification and clustering), the precision requirements or power calculations that justify the proposed sample size, the expected response rate, methods for assessing potential nonresponse bias, the protocols for data collection, and any testing procedures that were or will be undertaken prior fielding the study. Depending on the degree of influence the results are likely to have, such collections may still be eligible for submission for other generic mechanisms that are designed to yield quantitative results.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 139,587 responses at 5 minutes (0.0833 hours) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 11,586 annual burden hours.

Dated: April 25, 2019.

Scott Elmore,

PRA Clearance Officer, Office of the Chief Information Officer, U.S. Immigration and Customs Enforcement, Department of Homeland Security.

[FR Doc. 2019-08773 Filed 4-30-19; 8:45 am]

BILLING CODE 9111-28-P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-6163-N-01]

Mortgagee Review Board: Administrative Actions

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, Department of Housing and Urban Development (“HUD”).

ACTION: Notice.

SUMMARY: In compliance with Section 202(c)(5) of the National Housing Act, this notice advises of the cause and description of administrative actions taken by HUD’s Mortgagee Review Board against HUD-approved mortgagees.

FOR FURTHER INFORMATION CONTACT:

Nancy A. Murray, Secretary to the Mortgagee Review Board, 451 Seventh Street SW, Room B-133/3150, Washington, DC 20410-8000; telephone (202) 708-2224 (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 Information Service at (800) 877-8339.

SUPPLEMENTARY INFORMATION: Section 202(c)(5) of the National Housing Act (12 U.S.C. 1708(c)(5)) requires that HUD “publish a description of and the cause for administrative action against a HUD-approved mortgagee” by HUD’s Mortgagee Review Board (“Board”). In compliance with the requirements of Section 202(c)(5), this notice advises of actions that have been taken by the Board in its meetings from October 1, 2017 to November 14, 2018.

I. Civil Money Penalties, Withdrawals of FHA Approval, Suspensions, Probations, and Reprimands

1. American Eagle Mortgage Company, LLC Lorain, Ohio [Docket No. 17-1859]

Action: On October 27, 2017, the Board voted to accept a settlement agreement with American Eagle Mortgage Company, LLC (“American Eagle”) that required American Eagle to pay a civil money penalty in the amount of \$11,650 and to refrain from making any claim for insurance benefits and/or indemnify FHA for all losses associated with one FHA insured loan. The settlement did not constitute an admission of liability or fault.

Cause: The Board took this action based on the following violations of HUD/FHA requirements alleged by HUD: American Eagle failed to (a) calculate properly the maximum mortgage amount for a mortgage loan submitted for endorsement; (b) pay upfront mortgage insurance premiums to HUD for forty-seven FHA insurance mortgages within ten days of closing or the disbursement date; and (c) remit timely periodic mortgage insurance premiums to HUD or notify HUD within fifteen calendar days of the termination of the contract of mortgage insurance or of the sale of the mortgage loan for fourteen FHA insured loans.

2. American Financial Network, Inc., Brea, CA [Docket No. 17-1833-MR]

Action: On April 26, 2018, the Board voted to accept a settlement agreement with American Financial Network, Inc. (“AFN”) that required AFN to pay a civil money penalty in the amount of \$282,000 and to refrain from making any claim for insurance benefits and/or indemnify FHA for all losses associated with thirty-three FHA insured loans. The settlement did not constitute an admission of liability or fault.

Cause: The Board took this action based on the following violations of HUD/FHA requirements alleged by HUD: AFN (a) employed an excluded party as a branch manager contemporaneous with that branch manager being subject to a five-year debarment; (b) failed to timely notify FHA both of a June 21, 2016 settlement with and imposition of sanctions by the Commonwealth of Virginia, State Corporation Commission, Commissioner of Financial Institutions and of a June 21, 2016 settlement with and imposition of sanctions by the Ohio Department of Commerce, Division of Financial Institutions, Consumer Finance Section in June 21, 2016; and (c) falsely certified to HUD that 33 loans originated during the period of the debarred branch manager’s employment were eligible for FHA insurance.

3. Bank34, Alamogordo, NM [Docket No. 17-1843-MR]

Action: On April 26, 2018, the Board voted to accept a settlement agreement with Bank34 that required Bank34 to pay a civil money penalty in the amount of \$8,500 and to refrain from making any claim for insurance benefits and/or indemnify FHA for all losses associated with one FHA insured loan. The settlement did not constitute an admission of liability or fault.

Cause: The Board took this action based on the following violations of HUD/FHA requirements alleged by HUD: Bank34 (a) failed to comply with a “case warning” prior to endorsing a loan for FHA insurance; and (b) fraudulently misrepresented that a loan had been manually underwritten by Bank34 when such underwriting was a condition for endorsement.

4. Berkshire Bank, Pittsfield, MA [Docket No. 17-1894-MRT]

Action: On April 26, 2018, the Board voted to accept a settlement agreement with Berkshire Bank (“Berkshire”) that required Berkshire to pay a civil money penalty in the amount of \$28,559. Contemporaneous with this action, the Board voted to withdraw for one year

the FHA approval of First Choice Bank ("First Choice"), for which Berkshire was a successor-in-interest. The settlements did not constitute admissions of liability or fault.

Cause: The Board took this action based on the following violations of HUD/FHA requirements alleged by HUD: (a) On December 2, 2016, First Choice merged into Berkshire; however, both Berkshire and First Choice failed to notify FHA timely of the merger between the entities; and (b) in October 2017, Berkshire acquired, an entity that was not FHA approved, and Berkshire failed to notify FHA timely of the merger between the entities.

5. CrossCountry Mortgage, Inc., Brecksville, OH [Docket No. 17-1844-MR]

Action: On April 26, 2018, the Board voted to accept a settlement agreement with CrossCountry Mortgage, Inc. ("CrossCountry") that required CrossCountry to pay a civil money penalty in the amount of \$71,904. The settlement did not constitute an admission of liability or fault.

Cause: The Board took this action based on the following violations of HUD/FHA requirements alleged by HUD: (a) CrossCountry failed to notify FHA timely of both a March 25, 2013 consent order with and imposition of sanctions by the Commonwealth of Kentucky and an October 21, 2013 settlement agreement with and imposition of sanctions by the State of Division of Financial Institutions for the Ohio Department of Commerce; (b) CrossCountry submitted a false certification for fiscal year ended December 31, 2013; (c) CrossCountry failed to notify FHA timely of unresolved findings during fiscal year ended December 31, 2014; (d) CrossCountry submitted a false certification for fiscal year ended December 31, 2014; (e) CrossCountry failed to notify FHA timely of a January 14, 2015 Consent Order with and imposition of sanctions by the Commonwealth of Massachusetts; (f) CrossCountry submitted a false certification for fiscal year ended December 31, 2015; (g) CrossCountry failed to notify FHA timely of an October 26, 2016 Consent Order with and impositions of sanctions by the State of California Department of Business Oversight; (h) CrossCountry submitted a false certification for the fiscal year ending on December 31, 2016; and (i) CrossCountry failed to notify FHA timely of a February 6, 2017 Cease and Desist Order with and imposition of sanctions by the State of

Oregon, Division of Financial Regulation.

6. Finance of America Mortgage, LLC, Horsham, PA [Docket No. 17-1845-MR]

Action: On April 26, 2018, the Board voted to accept a settlement agreement with Finance of America Mortgage, LLC ("Finance of America") that required Finance of America to pay a civil money penalty in the amount of \$4,500. The settlement did not constitute an admission of liability or fault.

Cause: The Board took this action based on the following violations of HUD/FHA requirements alleged by HUD: Finance of America failed to notify FHA timely of an October 10, 2016 consent order with and imposition of sanctions by the Commonwealth of Kentucky Department of Financial Institutions.

7. Finance of America Mortgage, LLC, Horsham, PA [16-cv-750 (N.D.N.Y.)]

Action: On September 28, 2018, the Board voted to accept a settlement agreement between the United States and Finance of America in which Finance of America paid the United States \$14.5 million. The settlement did not constitute an admission of liability or fault.

Cause: The Board took this action based on the following alleged violations of HUD/FHA requirements: The fraudulent submission of ineligible loans for FHA insurance and the failure to comply with FHA quality control and self-reporting requirements.

8. Frandsen Bank and Trust, New Ulm, MN [Docket No. 17-1855-MR]

Action: On April 26, 2018, the Board voted to accept a settlement agreement with Frandsen Bank and Trust ("Frandsen") that required Frandsen to pay a civil money penalty in the amount of \$4,500. The settlement did not constitute an admission of liability or fault.

Cause: The Board took this action based on the following violation of HUD/FHA requirements alleged by HUD: Frandsen failed to notify FHA timely of its March 31, 2016 merger with another lender.

9. Freedom Mortgage Corporation, Mount Laurel, NJ [Docket No. 17-1851-MR]

Action: On April 26, 2018, the Board voted to accept a settlement agreement with Freedom Mortgage Corporation ("Freedom") that required Freedom to pay a civil money penalty in the amount of \$40,000. The settlement did not constitute an admission of liability or fault.

Cause: The Board took this action based on the following violations of HUD/FHA requirements alleged by HUD: (a) Freedom failed to notify FHA timely of both an August 15, 2015 Consent Order with and imposition of sanctions by the State of Oklahoma Department of Consumer Credit and a September 23, 2015 Cease and Desist Order with and imposition of sanctions by the Texas Department of Savings and Mortgage Lending; (b) Freedom violated lender approval and annual recertification requirements in 2016 by falsely certifying that it had not been sanctioned; and (c) Freedom failed to notify FHA timely of a January 26, 2016 Settlement Order with and the imposition of sanctions by the Commonwealth of Virginia Bureau of Financial Institutions, a March 5, 2016 agreement with and imposition of sanctions by the State of Tennessee Department of Financial Institutions, an April 15, 2016 settlement with and the imposition of sanctions by the U.S. Department of Justice, and a July 26, 2016 settlement agreement with and imposition of sanctions by the State of Ohio Department of Commerce.

10. Golden Empire Mortgage, Inc., Bakersfield, CA [Docket No. 17-1847-MR]

Action: On April 26, 2018, the Board voted to accept a settlement agreement with Golden Empire Mortgage, Inc. ("GEM") that required GEM to pay a civil money penalty in the amount of \$8,500. The settlement did not constitute an admission of liability or fault.

Cause: The Board took this action based on the following violation of HUD/FHA requirements alleged by HUD: GEM failed to notify FHA timely that it entered into a February 16, 2016 letter agreement with the State of Hawaii Division of Financial Institutions.

11. IberiaBank FSD, Lafayette, LA [Docket No. 15-1903-MR]

Action: On October 27, 2017, the Board voted to accept a settlement agreement between the United States and Iberia Bank FSD ("IberiaBank") in which IberiaBank paid the United States \$11,692,149. The settlement did not constitute an admission of liability or fault.

Cause: The Board took this action based on the following alleged violations of HUD/FHA requirements: the fraudulent submission of ineligible loans for FHA insurance, the failure to comply with FHA quality control and self-reporting requirements, and

prohibited commission payments to underwriters.

12. Liberty Home Equity Solutions, Inc., Rancho Cordova, CA [Docket No. 17-1856-MR]

Action: On April 26, 2018, the Board voted to accept a settlement agreement with Liberty Home Equity Solutions, Inc. (“Liberty”) that required Liberty to pay a civil money penalty in the amount of \$4,500. The settlement did not constitute an admission of liability or fault.

Cause: The Board took this action based on the following violation of HUD/FHA requirements alleged by HUD: Liberty failed to notify FHA timely of an August 11, 2016 Agreed Order with and imposition of sanctions by the Department of Financial Institutions of the Commonwealth of Kentucky.

13. Movement Mortgage, LLC, Virginia Beach, VA [Docket No. 17-1832-MR]

Action: On August 15, 2018, the Board voted to accept a settlement agreement with Movement Mortgage, LLC (“Movement”) that required Movement to pay a civil money penalty in the amount of \$299,750 and to refrain from making any claim for insurance benefits and/or indemnify FHA for all losses associated with eighteen FHA insured loans. The settlement did not constitute an admission of liability or fault.

Cause: The Board took this action based on the following violations of HUD/FHA requirements alleged by HUD: Movement failed to (a) obtain necessary documentation for source and adequacy of borrower funds; (b) identify and resolve discrepancies and/or irregularities in the documentation used to approve a loan; (c) consider all of a borrower’s liabilities and potential liabilities during underwriting; (d) document adequately a borrower’s income and stability of income; (e) ensure that the subject property met the Minimum Property Requirements or Standards; (f) ensure that the property was the borrower’s principal residence; (g) ensure the borrower’s eligibility for an FHA insured loan; (h) ensure that documents used to underwrite the loan were dated not in excess of 120 days; (i) comply with HUD Quality Control requirements; and (j) report to HUD material findings revealed to Movement during its Quality Control review.

14. Seckel Capital LLC, Newtown, PA [Docket No. 17-1986-MR]

Action: On April 26, 2018, the Board authorized the filing of civil money penalty complaint and the permanent

withdrawal of Seckel Capital LLC’s (“Seckel”) FHA approval.

Cause: The Board took this action based on the following violations of HUD/FHA requirements alleged by HUD: Seckel (a) violated HUD requirements by submitting fraudulent audited financial statements for fiscal year 2012; (b) violated HUD requirements by submitting fraudulent audited financial statements for fiscal year 2013; (c) violated HUD requirements by submitting a false certification for fiscal year 2013; (d) violated HUD requirements by submitting fraudulent audited financial statements for fiscal year 2014; (e) violated HUD requirements by submitting a false certification for fiscal year 2014; (f) violated HUD requirements by submitting fraudulent Audit Financial Statements for fiscal year 2015; (g) violated HUD requirements by submitting a false certification to HUD for fiscal year 2015; (h) violated HUD’s requirements by failing to remit the Upfront Mortgage Insurance Premiums for 83 FHA insured loans within ten calendar days from 2015 through 2017; (i) allowing an employee to engage in dual employment without determining that such dual employment did not create a prohibited conflict of interest and failing to designate as the officer in charge a full-time corporate officer; and (j) submitting 1,040 FHA loans for insurance that were not eligible for FHA insurance.

15. Secure One Capital Corporation, d/b/a The Lending Leader Newport Beach, CA [Docket No. 17-1837-MR]

Action: On August 15, 2018, the Board voted to accept a settlement agreement with Secure One Capital Corporation (“Secure”) that required Secure to pay a civil money penalty in the amount of \$27,436. The settlement did not constitute an admission of liability or fault.

Cause: The Board took this action based on the following violations of HUD/FHA requirements alleged by HUD: Secure (1) violated the underwriting guidelines for FHA insured refinance mortgage by failing to (a) obtain and retain in the case binder AUS Feedback Certificate; (b) document properly a satisfactory payment history for the borrower’s existing mortgage; (c) include the initial URLA and 92900-A in the case binder; and (d) ensure that the subject property met HUD’s minimum property requirements; and (2) (a) failed to maintain a minimum adjusted net worth in fiscal year 2016, (b) failed to notify HUD timely of any adjusted net worth deficiency during fiscal year 2016, (c) falsely certified that

it was in compliance with all requirements for fiscal year 2016 when it filed for its annual recertification of FHA approval.

16. Specialized Loan Servicing, L.L.C., Highlands Ranch, CO [Docket No. 17-0849-MR]

Action: On April 26, 2018, the Board voted to accept a settlement agreement with Specialized Loan Servicing, L.L.C. (“SLS”) that required SLS to pay a civil money penalty in the amount of \$13,000. The settlement did not constitute an admission of liability or fault.

Cause: The Board took this action based on the following violations of HUD/FHA requirements alleged by HUD: SLS failed to notify FHA timely of (a) a November 5, 2015 Settlement Agreement with and the imposition of sanctions by the State of Michigan Department of Insurance and Financial Services; and (b) a March 21, 2016 Settlement Agreement with and imposition of sanctions by the State of Hawaii Division of Financial Institutions.

17. Vinson Mortgage Services, Inc., St. Louis, MO [Docket No. 17-0849-MR]

Action: On March 15, 2016, the Board issued a Notice of Administrative Action through which it involuntarily withdrew for one-year the FHA approval of Vinson Mortgage Services, Inc. (“Vinson Mortgage”). On January 9, 2018, through an Order on Secretarial Review, HUD affirmed the Board’s one-year involuntary withdrawal of Vinson Mortgage. Vinson Mortgage’s subsequent challenge in Federal court of its withdrawal ended with a November 2018 settlement agreement in which Vinson Mortgage agreed to a two-year withdrawal of its FHA approval and to a civil money penalty payment of \$100,000. The settlement did not constitute an admission of liability or fault.

Cause: The Board took this action based on the following violation of HUD/FHA requirements alleged by HUD: Vinson Mortgage failed to meet the requirements for annual recertification of HUD/FHA approval.

II. Lenders That Failed To Timely Meet Requirements for Annual Recertification of HUD/FHA Approval but Came Into Compliance

Action: The Board entered into settlement agreements with the following lenders, which required the lender to pay a civil money penalty without admitting fault or liability.

Cause: The Board took these actions based upon allegations that the listed

lenders failed to comply with HUD's annual recertification requirements in a timely manner.

1. American Lending, Costa Mesa, CA, (\$4,500) [Docket No. 17-1901-MRT]
2. American Mortgage Company, North Platte, NE (\$4,500) [Docket No. 17-1877-MRT]
3. Bank of the Rockies N.A., White Sulphur Spring, MT (\$4,500) [Docket No. 17-1887-MRT]
4. Citizens Trust Bank, Atlanta, GA (\$9,468) [Docket No. 17-1981-MRT]
5. Columbia Bank, Lake City, FL (\$4,500) [Docket No. 17-1921-MRT]
6. Cross River Bank, Teaneck, NJ (\$9,468) [Docket No. 17-1909-MRT]
7. Denali Federal Credit Union, Anchorage, AK (\$4,500) [Docket No. 17-1984-MRT]
8. First Commerce Credit Union, Tallahassee, FL (\$4,500) [Docket No. 17-1721-MRT]
9. FirstCity Bank of Commerce, Palm Beach Gardens, FL (\$9,623) [Docket No. 18-1838-MRT]
10. Home Federal Savings and Loan, Grand Island, NE (\$4,500) [Docket No. 17-2004-MRT]
11. Legends Bank, Clarksville, TN (\$9,468) [Docket No. 17-1910-MRT]
12. LenderLive Network, LLC, Denver, CO (\$4,500) [Docket No. 17-1977-MRT]
13. Lyons Federal Bank, Lyons, KS (\$4,500) [Docket No. 17-1730-MRT]
14. Midwest Regional Bank, Festus, MO (\$4,500) [Docket No. 17-1874-MRT]
15. Pinnacle Federal Credit Union, Edison, NJ (\$4,500) [Docket No. 17-1978-MRT]
16. Prime Mortgage Lending Inc., Apex, NC (\$4,500) [Docket No. 17-1897-MRT]
17. Progressive National Bank of De Soto, Mansfield, LA (\$4,500) [Docket No. 17-1892-MRT]
18. Service First Federal Credit Union, Sioux Falls, SD (\$4,500) [Docket No. 17-1719-MRT]
19. SouthStar Bank, Moulton, TX (\$4,500) [Docket No. 17-1867-MRT]
20. Thompson Kane & Company, LLC, Madison, WI (\$4,500) [Docket No. 17-1888-MRT]
21. US Home Capital LLC, East Brunswick, NJ (\$9,468) [Docket No. 17-1879-MRT]
22. Waterford Bank NA, Toledo, OH (\$4,500) [Docket No. 17-1905-MRT]
23. Wendover Financial Services, Greensboro, NC (\$9,648) [Docket No. 17-1854-MRT]
24. Western National Bank Cass Lake, Cass Lake, MN (\$4,500) [Docket No. 17-1920-MRT]

III. Lenders That Failed To Meet Requirements for Annual Recertification of HUD/FHA Approval

Action: The Board voted to withdraw the FHA approval of each of the lenders listed below for a period of one (1) year.

Cause: The Board took this action based upon allegations that the lenders listed below were not in compliance with HUD's annual recertification requirements.

1. Full Access Mortgage Inc., La Vista, NE [Docket No. 18-1865-MRT]
2. Guaranty Bank FSB, Brown Deer, WI [Docket No. 19-1903-MRT]
3. Key Mortgage Company Inc., Columbia, KY [Docket No. 17-1882-MRT]
4. Mortgage Enterprise LTD, Carle Place, NY [Docket No. 19-1904-MRT]
5. Proficio Bank, Cottonwood Heights, UT [Docket No. 19-1905-MRT]
6. Ukrainian Selfreliance Federal Credit Union, Philadelphia, PA [Docket No. 19-1906-MRT]
7. Urban Fulfillment Services, LLC., Highlands Ranch, CO [Docket No. 19-1907-MRT]

Dated: April 18, 2019.

Brian Montgomery,

Assistant Secretary for Housing/FHA Commissioner, Chairman, Mortgagee Review Board.

[FR Doc. 2019-08851 Filed 4-30-19; 8:45 am]

BILLING CODE 4210-67-P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-7014-N-13]

60-Day Notice of Proposed Information Collection: Pay for Success Pilot Application Requirements; Withdrawal

AGENCY: Office of the General Counsel, HUD.

ACTION: Notice.

SUMMARY: On April 25, 2019 at 84 FR 17416, HUD published a 60-day notice of proposed information collection entitled, "Pay for Success Pilot Application Requirements" (FR-7014-N-12) (FR Doc. 2019-08366). The notice contained typographical errors and was published inadvertently. Today's notice withdraws the 60-day notice published on April 25, 2019. HUD will publish a corrected version of the notice in the **Federal Register** at a later date.

FOR FURTHER INFORMATION CONTACT: Josh Geyer, Office of Environment and Energy, Department of Housing and Urban Development, 451 7th Street SW, Washington, DC 20410; email Joshua.m.geyer@hud.gov or telephone (415) 489-6418. 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.

Dated: April 25, 2019.

Aaron Santa Anna,

Assistant General Counsel for Regulations.

[FR Doc. 2019-08852 Filed 4-30-19; 8:45 am]

BILLING CODE 4210-67-P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS-R2-ES-2019-N041;
FXES1113020000-19-FF02ENEH00]

Endangered Species and Threatened Species; Receipt of Recovery Permit Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of permit applications; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service, have received applications for permits to conduct activities intended to enhance the propagation or survival of endangered species under the Endangered Species Act of 1973, as amended. We invite the public and local, State, Tribal, and Federal agencies to comment on these applications. Before issuing any of the requested permits, we will take into consideration any information that we receive during the public comment period.

DATES: We must receive your written comments by May 31, 2019.

ADDRESSES: *Document availability and comment submission:* Submit requests for copies of the applications and related documents and submit any comments by one of the following methods. All requests and comments should specify the applicant name(s) and application number(s) (e.g., TEXXXXXX):

- *Email:* susan_jacobsen@fws.gov.
- *U.S. Mail:* Susan Jacobsen, Chief, Classification and Recovery Division, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, NM 87103.

FOR FURTHER INFORMATION CONTACT: Vanessa Burge, Recovery Permits Coordinator, Ecological Services, 505-248-6641 (phone); fw2_te_permits@fws.gov (email). Individuals who are hearing or speech impaired may call the Federal Relay Service at 1-800-877-8339 for TTY assistance.

SUPPLEMENTARY INFORMATION:

Background

The ESA prohibits certain activities with endangered and threatened species unless authorized by a Federal permit. The ESA and our implementing regulations in part 17 of title 50 of the Code of Federal Regulations (CFR) provide for the issuance of such permits and require that we invite public

comment before issuing permits for activities involving endangered species. A recovery permit issued by us under section 10(a)(1)(A) of the ESA authorizes the permittee to conduct activities with endangered species for scientific purposes that promote recovery or for enhancement of propagation or survival of the species. Our regulations implementing section 10(a)(1)(A) for these permits are found

at 50 CFR 17.22 for endangered wildlife species, 50 CFR 17.32 for threatened wildlife species, 50 CFR 17.62 for endangered plant species, and 50 CFR 17.72 for threatened plant species.

Permit Applications Available for Review and Comment

We invite local, State, and Federal agencies, Tribes, and the public to comment on the following applications.

Application No.	Applicant	Species	Location	Activity	Type of take	Permit action
TE-15101D	O'Shea, Lauren E.; Norman, Oklahoma.	American burying beetle (<i>Nicrophorus americanus</i>).	Arkansas, Kansas, Oklahoma, Texas.	Presence/absence surveys, habitat surveys.	Capture, injury, death ..	New.
TE-13585D	Donato, Erin V.; Houston, Texas.	Houston toad (<i>Anaxyrus houstonensis</i>)	Texas	Presence/absence surveys.	Harm, harass, injury, death.	New.
TE-13007D	Allen, Joshua M.; Easton, Kansas.	Indiana bat (<i>Myotis sodalis</i>), gray bat (<i>Myotis grisescens</i>), northern long-eared bat (<i>Myotis septentrionalis</i>).	Oklahoma	Presence/absence surveys, mist-netting.	Capture, injury, death ..	New.
TE-800611	SWCA; Austin, Texas.	Whooping crane (<i>Grus americana</i>), multiple karst invertebrate species, red-cockaded woodpecker (<i>Leuconotopicus borealis</i>), American burying beetle (<i>Nicrophorus americanus</i>), Louisianan pine snake (<i>Pituophis ruthveni</i>), Texas hornshell (<i>Popenaias popeii</i>), golden-cheeked warbler (<i>Setophaga chrysoparia</i>), interior least tern (<i>Sterna antillarum athalassos</i>), Houston toad (<i>Bufo houstonensis</i>).	Arkansas, Kansas, Louisiana, Massachusetts, Michigan, Missouri, Nebraska, New Mexico, Ohio, Oklahoma, Rhode Island, South Dakota, Texas.	Presence/absence surveys, monitoring studies, habitat assessments and evaluations.	Capture, collect, harass, injury, death.	Renewal.
TE-813088	Bureau of Reclamation; Albuquerque, New Mexico.	Arkansas River shiner (<i>Notropis girardi</i>), Comanche Springs pupfish (<i>Cyprinodon elegans</i>), Pecos gambusia (<i>Gambusia nobilis</i>), Rio Grande silvery minnow (<i>Hybognathus amarus</i>).	New Mexico, Texas	Biological monitoring, research, transport, salvage.	Capture, collect, harass, harm, injury, death.	Renewal.
TE-03800D	Borderlands Restoration Network; Patagonia, Arizona.	Canelo Hills ladies-tresses (<i>Spiranthes delitescens</i>).	Arizona	Survey, seed and root collection, restoration.	N/A	New.
TE-03789D	Gargaro, Madison; San Antonio, Texas.	Golden-cheeked warbler (<i>Setophaga chrysoparia</i>).	Texas	Presence/absence surveys, habitat assessments.	Harass, harm	New.
TE-069320	Groundwater & Environmental Services Inc.; Lewisville, Texas.	Piping plover (<i>Charadrius melodus</i>), fountain darter (<i>Etheostoma fonticola</i>), American Burying Beetle (<i>Nicrophorus americanus</i>), red-cockaded woodpecker (<i>Picoides borealis</i>), least tern (<i>Sterna antillarum</i>).	Arizona, Kansas, Louisiana, Oklahoma, South Dakota, Texas.	Presence/absence surveys.	Capture, harass, injury, death.	Renewal.
TE-053109	Stefferd, Sally E.; Phoenix, Arizona.	Gila topminnow (<i>Poeciliopsis occidentalis</i>), desert pupfish (<i>Cyprinodon macularius</i>).	Arizona	Surveys, capture, mark and collect voucher specimens.	Capture, collect, injury, death.	Renewal.
TE-092622	Valdes, Gabriels A.; Gilbert, AZ.	Coastal California gnatcatcher (<i>Poliophtila californica californica</i>), least Bell's vireo (<i>Vireo bellii pusillus</i>), southwestern willow flycatcher (<i>Empidonax traillii extimus</i>).	Arizona, California, New Mexico, Texas.	Presence surveys, nest monitoring and surveys.	Harass, harm	Renewal.
TE-11469D	Pride, Lora; Virginia Beach, Virginia.	American burying beetle (<i>Nicrophorus americanus</i>).	Oklahoma	Presence/absence surveys.	Capture, harm, injury, death.	New.

Application No.	Applicant	Species	Location	Activity	Type of take	Permit action
TE-08563D	Kuhl, John J.; Austin, Texas.	Attwater's greater prairie-chicken (<i>Tympanuchus cupido attwateri</i>), golden-cheeked warbler (<i>Setophaga chrysoparia</i>), least tern (<i>Sterna antillarum</i>), northern Aplomado falcon (<i>Falco femoralis septentrionalis</i>), piping plover (<i>Charadrius melodus</i>), red-cockaded woodpecker (<i>Picoides borealis</i>), southwestern willow flycatcher (<i>Empidonax traillii extimus</i>), Houston toad (<i>Anaxyrus houstonensis</i>), bald eagle (<i>Haliaeetus leucocephalus</i>), black-capped vireo (<i>Vireo atricapilla</i>).	Arizona, Louisiana, New Mexico, Oklahoma, Texas.	Presence/absence surveys, habitat and nesting search and mapping, counts, handling.	Capture, harm, harass, injury.	New.
TE-20166A	Bey, Trinity G.; Boerne, Texas.	Golden-cheeked warbler (<i>Setophaga chrysoparia</i>).	Texas	Presence/absence surveys, habitat assessments.	Harm, harass	Renewal.
TE-000101D	Hayes, Hannah L.; Ponca City, Oklahoma.	Indiana bat (<i>Myotis sodalis</i>), gray bat (<i>Myotis grisescens</i>), northern long-eared bat (<i>Myotis septentrionalis</i>), Ozark big-eared bat (<i>Corynorhinus (=plecotus) townsendii ingens</i>), Virginia big-eared bat (<i>Corynorhinus (=plecotus) townsendii virginianus</i>).	Alabama, Arkansas, Connecticut, Delaware, Florida, Georgia, Illinois, Indiana, Iowa, Kentucky, Louisiana, Maine, Massachusetts, Maryland, Michigan Minnesota, Missouri, New Hampshire, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, South Carolina, Tennessee, Virginia, Vermont, West Virginia.	Presence/absence surveys.	Capture, injury, death ..	New.
TE-07467D	Schmalzel, Robert J.; Tucson, Arizona.	Pima pineapple cactus (<i>Coryphantha scheeri</i> var. <i>robustispina</i>).	Arizona	Research	N/A	New.
TE-25819D	Shashy, Peter; San Antonio, Texas.	Golden-cheeked warbler (<i>Setophaga chrysoparia</i>).	Texas	Presence/absence surveys.	Harass, harm	New.
TE-25818D	Aragon, Felicia; Peralta, New Mexico.	Southwestern willow flycatcher (<i>Empidonax traillii extimus</i>).	Arizona, California, Colorado, Nevada, New Mexico, Texas, Utah.	Presence/absence surveys.	Harass, harm	New.
TE-25816D	Jacobs Engineering Group; Phoenix, Arizona.	Southwestern willow flycatcher (<i>Empidonax traillii extimus</i>), Yuma clapper rail (<i>Rallus longirostris yumanensis</i>), black-footed ferret (<i>Mustela nigripes</i>).	Arizona, California, Nevada, New Mexico, Utah.	Presence/absence surveys, nest searches and monitoring.	Harass, harm	New.
TE-25792D	Nelson, Pamela; Chelsea, Oklahoma.	Ozark big-eared bat (<i>Corynorhinus (=plecotus) townsendii ingens</i>), gray bat (<i>Myotis grisescens</i>), American burying beetle (<i>Nicrophorus americanus</i>).	Arizona, Arkansas, Kansas, Missouri, Nevada, Oklahoma, South Dakota, Texas.	Presence/absence surveys, mist nets, harp traps,.	Capture, harass, harm, injury, death.	New.
TE-25790D	Stark, Kailin; Phoenix, Arizona.	Southwestern willow flycatcher (<i>Empidonax traillii extimus</i>).	Arizona	Presence/absence surveys.	Harass, harm	New.
TE-25781D	Atkins North America, Inc; Austin, Texas.	Least tern (<i>Sterna antillarum</i>), piping plover (<i>Charadrius melodus</i>), golden-cheeked warbler (<i>Dendroica chrysoparia</i>).	Texas	Presence/absence surveys.	Harass, harm	New.

Application No.	Applicant	Species	Location	Activity	Type of take	Permit action
TE-798920	City of Austin, Balcones Canyonlands Preserve; Austin, Texas.	Golden-cheeked warbler (<i>Dendroica chrysoparia</i>), ground beetles (no common name; <i>Rhadine exilis</i> and <i>Rhadine infernalis</i>), Helotes mold beetle (<i>Batrissodes venyivi</i>), Cokendolpher Cave harvestman (<i>Texella cokendolpheri</i>), Robber Baron Cave meshweaver (<i>Cicurina baronia</i>), Madia Cave meshweaver (<i>Cicurina madla</i>), Bracken Bat Cave meshweaver (<i>Cicurina venii</i>), Government Canyon Bat Cave meshweaver (<i>Cicurina vespera</i>), Government Canyon Bat Cave spider (<i>Neoleptoneta microps</i>), Tooth Cave spider (<i>Neoleptoneta myopica</i>), Tooth Cave pseudoscorpion (<i>Tartarocreagris texana</i>), Bee Creek Cave harvestman (<i>Texella reddelli</i>), Kretschman-Cave mold beetle (<i>Texamaurops reddelli</i>), Tooth Cave ground beetle (<i>Rhadine persephone</i>), Bone Cave harvestman (<i>Texella reyesi</i>), Coffin Cave mold beetle (<i>Batrissodes texanus</i>).	Texas	Presence/absence surveys, mist netting, nest monitoring, collection, salvage.	Capture, harass, harm, injury, death.	Renewal.
TE-19661B	Tetra Tech Inc; Albuquerque, New Mexico.	Southwestern willow flycatcher (<i>Empidonax traillii extimus</i>).	Arizona, New Mexico	Presence/absence surveys.	Harass, harm	Renewal.
TE-053083	Kutz, Julie; Albuquerque, New Mexico.	Southwestern willow flycatcher (<i>Empidonax traillii extimus</i>).	New Mexico	Presence/absence surveys.	Harass, harm	Renewal.
TE-039466	USGS Idaho Cooperative Fish and Wildlife Unit; Moscow, Idaho.	Yuma clapper rail (<i>Rallus longirostris yumanensis</i>).	Arizona	Research, capture and handling.	Harm, harass, injury, death.	Amendment.
TE-63651A	POWER Engineers Inc; Austin, Texas.	Golden-cheeked warbler (<i>Dendroica chrysoparia</i>).	Texas	Presence/absence surveys and habitat surveys.	Harass, harm	Renewal.
TE-106551	Fischer, Clay V.; Austin, Texas.	Ocelot (<i>Leopardus (=felis) pardalis</i>), Gulf Coast jaguarundi (<i>Herpailurus (=felis) yagouaroundi cacomitli</i>), golden-cheeked warbler (<i>Dendroica chrysoparia</i>), piping plover (<i>Charadrius melodus</i>), southwestern willow flycatcher (<i>Empidonax traillii extimus</i>), Houston toad (<i>Bufo houstonensis</i>).	Texas	Presence/absence surveys and habitat assessments.	Harass, harm	Renewal.
TE-01837D	McMahan, Michael; San Antonio, Texas.	Golden-cheeked warbler (<i>Dendroica chrysoparia</i>).	Texas	Presence/absence surveys.	Harass, harm	New.
TE-44547B	Dixon, Thomas (Freese and Nichols, Inc); Austin, Texas.	Least tern (<i>Sterna antillarum</i>), piping plover (<i>Charadrius melodus</i>), northern Aplomado falcon (<i>Falco femoralis septentrionalis</i>), Texas hornshell (<i>Popenaias popeii</i>), red-cockaded woodpecker (<i>Picoides borealis</i>).	Texas	Presence/absence surveys, relocations.	Harass, harm, injury, death.	Amendment.
TE-232639	DESCO Environmental Consultants; Magnolia, Texas.	Red-cockaded woodpecker (<i>Picoides borealis</i>), American burying beetle (<i>Nicrophorus americanus</i>).	Oklahoma, Texas	Presence absence surveys.	Harass, harm, injury, death.	Renewal.

Application No.	Applicant	Species	Location	Activity	Type of take	Permit action
TE-841353	Blair Wildlife Consulting; Kyle, Texas.	Ground beetles (no common name; <i>Rhadine exilis</i> and <i>Rhadine infernalis</i>), Helotes mold beetle (<i>Batrisodes venyivi</i>), Cokendolpher Cave harvestman (<i>Texella cokendolpheri</i>), Robber Baron Cave meshweaver (<i>Cicurina baronia</i>), Madla Cave meshweaver (<i>Cicurina madla</i>), Bracken Bat Cave meshweaver (<i>Cicurina venii</i>), Government Canyon Bat Cave meshweaver (<i>Cicurina vespera</i>), Government Canyon Bat Cave spider (<i>Neoleptoneta microps</i>), Tooth Cave spider (<i>Neoleptoneta myopica</i>), Tooth Cave pseudoscorpion (<i>Tartarocreagris texana</i>), Bee Creek Cave harvestman (<i>Texella reddelli</i>), Kretschman-Cave mold beetle (<i>Texamaurops reddelli</i>), Tooth Cave ground beetle (<i>Rhadine persephone</i>), Bone Cave harvestman (<i>Texella reyes</i>), Coffin Cave mold beetle (<i>Batrisodes texanus</i>).	Texas	Presence absence surveys.	Harass, harm	Amendment.
TE-226653	The Arboretum at Flagstaff; Flagstaff, Arizona.	Todsens pennyroyal (<i>Hedeoma todsenii</i>), Holy Ghost ipomopsis (<i>Ipomopsis sancti-spiritus</i>), Brady pincushion cactus (<i>Pediocactus bradyi</i>), Peebles Navajo cactus (<i>Pediocactus peeblesianus</i> var. <i>peeblesianus</i>), Arizona cliffrose (<i>Purshia (=cowania) subintegra</i>), Wright fishhook cactus (<i>Sclerocactus wrightiae</i>), Autumn buttercup (<i>Ranunculus aestivalis (=acriformis)</i>).	Arizona, New Mexico, Utah.	Surveys, monitoring, collection.	.....	Renewal.
TE-26393D	Gilliam, Erick; Poteau, Oklahoma.	American Burying Beetle (<i>Nicrophorus americanus</i>).	Arkansas, Kansas, Oklahoma, Texas.	Presence/absence surveys, habitat surveys.	Capture, injury, death ..	New.
TE-26391D	La Tierra Environmental Consulting; Las Cruces, New Mexico.	Southwestern willow flycatcher (<i>Empidonax traillii extimus</i>), northern Aplomado falcon (<i>Falco femoralis septentrionalis</i>).	New Mexico	Presence/absence surveys, monitoring.	Harass, harm	New.
TE-26389D	Patterson, Rande R.; Houston, Texas.	Rusty patched bumble bee (<i>Bombus affinis</i>).	Illinois, Indiana, Iowa, Maine, Massachusetts, Minnesota, Ohio, Virginia, Wisconsin.	Presence/absence surveys, monitoring.	Harass, harm	New.
TE-02164C	Bonar, Scott A.; Tucson, Arizona.	Razorback sucker (<i>Xyrauchen texanus</i>)	Arizona	Presence/absence surveys, monitoring.	Capture, injury, death ..	Amend.
TE-33632D	Graham, Sean P.; Alpine, Texas.	Big bend gambusia (<i>Gambusia gaigei</i>)	Texas	Monitoring ...	Capture, injury, death ..	New.
TE-33639D	ECHO, LLC.; Tahlequah, Oklahoma.	American burying beetle (<i>Nicrophorus americanus</i>), Indiana bat (<i>Myotis sodalis</i>), gray bat (<i>Myotis grisescens</i>), northern long-eared bat (<i>Myotis septentrionalis</i>).	Oklahoma, Arkansas	Presence/absence surveys.	Capture, injury, death ..	New.
TE-33641D	Mahoney, Sean; Flagstaff, Arizona.	Southwestern willow flycatcher (<i>Empidonax traillii extimus</i>).	Arizona, California, New Mexico, Utah.	Presence/absence surveys.	Harass, harm	New.
TE-00284A	Rainwater, Stephanie; Tulsa, Oklahoma.	American burying beetle (<i>Nicrophorus americanus</i>).	Arkansas, Kansas, Missouri, Nebraska, Ohio, Oklahoma, South Dakota, Texas.	Presence/absence surveys.	Capture, injury, death ..	Renewal.
TE-053839	SME Environmental; Durango, Colorado.	Southwestern willow flycatcher (<i>Empidonax traillii extimus</i>).	New Mexico	Presence/absence surveys.	Harass, harm	Renewal.

Application No.	Applicant	Species	Location	Activity	Type of take	Permit action
TE-066226	Moors, Amanda; Globe, Arizona.	Lesser long-nosed bat (<i>Leptonycteris curasoae yerbabuena</i>), Mexican long-nosed bat (<i>Leptonycteris nivalis</i>), Sonoran pronghorn (<i>Antilocapra americana sonoriensis</i>), Yuma clapper rail (<i>Rallus longirostris yumanensis</i>), southwestern willow flycatcher (<i>Empidonax traillii extimus</i>), Mount Graham red squirrel (<i>Tamiasciurus hudsonicus grahamensis</i>).	Arizona, New Mexico, Texas.	Presence/absence surveys, capture, collect, release, tag, midden searches.	Capture, harass, harm, injury, death.	Renewal.
TE-841353	Blair Wildlife Consulting LLC; Kyle, Texas.	Ground beetles (no common name; <i>Rhadine exilis</i> and <i>Rhadine infernalis</i>), Helotes mold beetle (<i>Batrisodes ventyvi</i>), Cokendolpher Cave harvestman (<i>Texella cokendolpheri</i>), Robber Baron Cave meshweaver (<i>Cicurina baronia</i>), Madla Cave meshweaver (<i>Cicurina madla</i>), Bracken Bat Cave meshweaver (<i>Cicurina venii</i>), Government Canyon Bat Cave meshweaver (<i>Cicurina vespera</i>), Government Canyon Bat Cave spider (<i>Neoleptoneta microps</i>), Tooth Cave spider (<i>Neoleptoneta myopica</i>), Tooth Cave pseudoscorpion (<i>Tartarocreagris texana</i>), Bee Creek Cave harvestman (<i>Texella reddelli</i>), Kretschman-Cave mold beetle (<i>Texamaurops reddelli</i>), Tooth Cave ground beetle (<i>Rhadine persephone</i>), Bone Cave harvestman (<i>Texella reyesi</i>), Coffin Cave mold beetle (<i>Batrisodes texanus</i>).	Texas	Presence absence surveys.	Harass, harm	Amendment.
TE-26445D	Terra Tech Environmental Services; Evergreen, Colorado.	New Mexico meadow jumping mouse (<i>Zapus hudsonius luteus</i>), least tern (<i>Sterna antillarum</i>), southwestern willow flycatcher (<i>Empidonax traillii extimus</i>), Jemez Mountains salamander (<i>Plethodon neomexicanus</i>), Rio Grande silvery minnow (<i>Hybognathus amarus</i>), Zuni Bluehead Sucker (<i>Catostomus discobolus yarrowi</i>).	New Mexico	Presence/absence surveys, habitat surveys.	Harass, harm	New.

Public Availability of Comments

Written comments we receive become part of the administrative record associated with this **Federal Register** notice. 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.

Next Steps

If we decide to issue permits to any of the applicants listed in this notice,

we will publish a notice in the **Federal Register**.

Authority

We publish this notice under section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: March 19, 2019.

Amy Lueders,

Regional Director, Southwest Region.

[FR Doc. 2019-08889 Filed 4-30-19; 8:45 am]

BILLING CODE 4333-15-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLORB00000. L10200000. BS0000.LXSSH1060000.19X.HAG 19-0058]

Notice of Public Meeting for the Southeast Oregon Resource Advisory Council Public Lands Access Subcommittee

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act of 1976 and the Federal Advisory Committee Act of 1972, the U.S. Department of the Interior, Bureau of Land Management (BLM) Southeast Oregon Resource Advisory Council (RAC) Public Lands Access Subcommittee will meet as indicated below.

DATES: The Southeast Oregon RAC Public Lands Access Subcommittee will meet via teleconference Wednesday,

May 29, 2019, from 9:00 a.m. to 2:00 p.m. Mountain Time.

ADDRESSES: The Southeast Oregon RAC Public Lands Access Subcommittee meeting will be held via teleconference. The telephone conference line number for the meeting is 1-877-922-8971, Participant Code: 5867492.

FOR FURTHER INFORMATION CONTACT: Larisa Bogardus; Public Affairs Officer; 3100 H Street, Baker City, Oregon 97814; 541-523-1407; *lbogardus@blm.gov*. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service (FRS) at 1-800-877-8339 to contact the above individual during normal business hours. The FRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The 15-member Southeast Oregon RAC was chartered and its members appointed by the Secretary of the Interior. The members provide diverse perspectives in commodity, conservation, and general interests. The Public Lands Access Subcommittee was formed in May 2018 to compile information regarding public lands access issues in southeast Oregon. This Subcommittee is involved in providing information to the Southeast RAC on the Southeast Oregon Resource Management Plan (RMP) Amendment and Draft Environmental Impact Statement (EIS). The meeting will include review and discussion of the draft RMP Amendment and Draft EIS as part of the public participation process. A final agenda will be posted online at <https://www.blm.gov/get-involved/resource-advisory-council/near-you/oregon-washington/southeast-oregon-rac> at least one week prior to the teleconference.

All meetings are open to the public in their entirety and a public comment period is scheduled for 11:30 a.m. to noon.

Before including your address, phone number, email address, or other personal identifying information in your comments, please be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority: 43 CFR 1784.4-2.

Holly Orr,

Burns Associate District Manager.

[FR Doc. 2019-08850 Filed 4-30-19; 8:45 am]

BILLING CODE 4310-33-P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

[S1D1S SS08011000 SX064A000
190S180110; S2D2S SS08011000 SX064A00
19XS501520]

Notice of Record of Decision for the San Juan Mine Deep Lease Extension Mining Plan Modification

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Notice of Record of Decision.

SUMMARY: In accordance with the National Environmental Policy Act (NEPA) of 1969, as amended, the Office of Surface Mining Reclamation and Enforcement (OSMRE) has prepared a Record of Decision (ROD) for the Westmoreland San Juan Mining, LLC (SJCC) proposed Deep Lease Extension (DLE) at the existing San Juan Mine (Project) in San Juan County, New Mexico. This Notice of Availability (NOA) serves to notify the public that the ROD has been prepared and is available for review. In developing the ROD, the OSMRE considered the public comments received on the Final EIS.

ADDRESSES: You can download the ROD at the following OSMRE Western Region website: <https://www.wrcc.osmre.gov/initiatives/sanJuanMine.shtm>.

FOR FURTHER INFORMATION CONTACT: For further information about the Project, contact: Gretchen Pinkham, OSMRE Project Manager, at 303-293-5088 or by email at *osm-nepa-co@osmre.gov*. Persons who use a telecommunications device for the deaf may call the Federal Information Relay Service (FIRS) at 1-800-877-8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION:

- I. Background on the Project
- II. Background on the San Juan Generating Station
- III. Mining Plan Modification for the DLE
- IV. Alternatives
- V. Environmental Impact Analysis
- VI. Decision

I. Background on the Project

As established by the Mineral Leasing Act (MLA) of 1920, the Surface Mining Control and Reclamation Act (SMCRA) of 1977, as amended (30 U.S.C. 1201-1328), and the Cooperative Agreement between the State of New Mexico and the Secretary of the U.S. Department of the Interior (DOI) in accordance with Section 523(c) of SMCRA (30 U.S.C. 1273(c)), SJCC's Permit Application Package (PAP) must be reviewed by the OSMRE and a mining plan modification approved by the Assistant Secretary for Land and Minerals Management (ASLM) before SJCC may significantly disturb the environment in order to develop the DLE Federal Coal Lease Tract NM-99144. The NM Mining and Minerals Division (NM MMD) is the SMCRA regulatory authority principally responsible for reviewing and approving PAPs. Under the MLA, the OSMRE is responsible for making a recommendation to the ASLM about whether the proposed mining plan modification should be approved, disapproved, or approved with conditions (30 CFR 746.13). The NM MMD approved the PAP for the DLE on October 22, 1999. The ASLM first approved the mining plan modification for DLE Federal Coal Lease Tract NM-99144 on January 17, 2008, after receiving a recommendation from the OSMRE for approval that included a Finding of No Significant Impact signed by the OSMRE in 2007 and the Bureau of Land Management's (BLM) 1998 decision record on an amendment to the 1988 Farmington Resource Management Plan to include Federal Coal Lease Tract NM-99144.

The OSMRE's NEPA analysis supporting the 2008 mining plan modification was challenged in the U.S. District Court of New Mexico. *WildEarth Guardians v. U.S. Office of Surface Mining et al.*, Case 1:14-cv-00112-RJ-CG (D. NM) (amended petition filed March 14, 2014). On August 31, 2016, the Court granted the OSMRE's Motion for Voluntary Remand, which remanded the matter to the OSMRE to prepare an EIS within 3 years of the Court's order. The Final EIS available today has been prepared in accordance with the voluntary remand.

The San Juan Mine has contractual obligations to deliver approximately 3 million tons of coal per year to the San Juan Generating Station (Generating Station) from 2008 through 2022. Mining activities within the DLE have been ongoing since the OSMRE approval in 2008 and continue presently. Per the voluntary remand, mining operations within the DLE are

allowed to proceed during the EIS process. However, the court-approved voluntary remand indicated that the Secretary's approval of the 2008 mining plan modification for the DLE would be vacated if the agency does not complete the required NEPA analysis in a timely manner. As a result, the OSMRE has prepared the Final EIS to re-evaluate its previous mining plan modification recommendation for this area. Among other information, the Final EIS considers (1) the PAP submitted to the OSMRE and NM MMD, and (2) new information available since the 2008 MPDD approval for potentially affected resources considered under direct, indirect, and cumulative analytical frameworks.

The DLE underground operations use longwall mining methods consisting of one longwall miner and two continuous miners (*i.e.*, pieces of equipment). The mine employed approximately 282 people in 2017. The mining plan modification would not add any acres of federal surface lands or any acres of federal coal to the approved permit area but would authorize the recovery of approximately 53 million tons of coal from 4,464.87 acres of federal coal and would add approximately 10 to 15 years to the life of the operation until 2033. For reasons discussed in sections II and III below, annual production rates of the mine are projected to be approximately 3 million tons per year in order to meet the contractual obligations with the Generating Station.

The BLM, U.S. Environmental Protection Agency (EPA), U.S. Fish and Wildlife Service (USFWS), and New Mexico MMD are Cooperating Agencies for this NEPA process. As the NEPA analysis proceeded, the OSMRE also consulted with the New Mexico State Historic Preservation Officer in compliance with Section 106 of the National Historic Preservation Act (NHPA) of 1966, as amended (54 U.S.C. 300101–307108), as provided for in 36 CFR part 800.2(d)(3) and providing for public involvement, as required. Consultations with Native American Tribes have been completed in accordance with DOI policy. The OSMRE has completed the Section 106 process and has included the final stipulations in Appendix B of the ROD and the stipulations will be in effect once the ROD is signed.

As part of its consideration of impacts of the proposed Project on threatened and endangered species, the OSMRE initiated informal consultation with the USFWS on May 8, 2018, pursuant to Section 7 of the Endangered Species Act (ESA) of 1973, as amended (16 U.S.C. 1531 *et seq.*) and its implementing

regulations. The consultation considered direct and indirect impacts from the proposed Project, including Project related coal combustion emissions from the Generating Station. On June 27, 2018, USFWS signed a letter concurring with the OSMRE's findings in its Biological Assessment, completing the consultation process.

In addition to compliance with NEPA, NHPA Section 106, and ESA Section 7, all Federal actions will be in compliance with applicable requirements of the SMCRA; the Clean Water Act, 33 U.S.C. 1251–1387; the Clean Air Act of 1970, as amended, 42 U.S.C. 7401–7671q; the Native American Graves Protection and Repatriation Act of 1990, as amended, 25 U.S.C. 3001–3013; and all applicable laws, regulations, and Executive Orders on topics such as Environmental Justice, Sacred Sites, and Tribal Consultation.

II. Background on the San Juan Generating Station

The Generating Station, operated by the Public Service Company of New Mexico, is one of the largest coal-fired generating stations in the United States and provides power to customers in Arizona, New Mexico, and Utah. The Generating Station is located approximately 4 miles northeast of Waterflow, NM and 15 miles west of Farmington, NM. Pursuant to an agreement with the EPA, the Generating Station shut down two of the four energy generation units (Units 2 and 3) on December 19, 2017, decreasing the power output from approximately 1,800 megawatts to 910 megawatts (specifically, Units 2 and 3). On December 31, 2018, Public Service Company of New Mexico (PNM) filed for abandonment of their share of the San Juan Generating Station with the State of New Mexico. Through 2022, the continued operation of Units 1 and 4 will require approximately 3 million tons of coal per year to produce the 910 megawatts.

III. Mining Plan Modification for the DLE

SJCC's mining plan modification would continue to develop the DLE, Federal Lease NM–99144, within the San Juan Mine. Due to the retirement of energy generating Units 2 and 3 at the Generating Station, the annual production rate of the DLE was reduced from the previous annual production rate of 6 million tons to an annual production rate of approximately 3 million tons beginning in 2017. Federal lease NM–99144 encompasses 4,464.87 acres and includes: Township 30, North,

Range 14 West, New Mexico Prime Meridian

Section 17: All;
Section 18: All;
Section 19: All;
Section 20: All;
Section 29: All;
Section 30: All; and portions of
Section 31: (Lots 1, 2, 3, and 4).

With the completion of the NEPA process (via publication of the Final EIS) and issuance of the Record of Decision, the OSMRE will submit a mining plan decision document to the ASLM that will recommend approval of the proposed mining plan modification for the continuation or cessation of the San Juan Mine to mine the DLE within federal coal lease NM–99144. The ASLM will decide whether the mining plan modification is approved, disapproved, or approved with conditions.

IV. Alternatives

The OSMRE selected Alternative B, its preferred alternative, after consideration of all alternatives analyzed in the Final EIS. The analysis in the Final EIS considers direct, indirect, and cumulative impacts of the Proposed Action and two Alternatives. Per 40 CFR 1501.7, the issues raised during the scoping period (March 22–May 8, 2017) were used to inform the analyses and identify the alternatives considered in the EIS. Alternatives for the Project that were analyzed in the Final EIS include:

- Alternative A—Proposed Action: As described above in Section I, second paragraph. The Proposed Action Alternative would be as approved from the time of the original PAP and initial approval of the mining plan modification in 2008 until 2033.

- Alternative B—Continuation of San Juan Mine Operations Following Generating Station Shut-Down in 2022: This alternative assumes that that the remaining units of the Generating Station shut down in 2022, but that mining continues at the DLE at the same rate (approximately 3 million tons annually) from 2023 through 2033. After 2023, this alternative assumes that either a new operator will purchase the Generating Station or the mine will send the coal to an unidentified coal-fired power plant(s). Without knowing the location of the end-use of the DLE coal, the Final EIS bounds the potential effects of combusting DLE coal at an unidentified power plant by relying on the analysis of effects at the San Juan Generating Station. Under Alternative B, the mining techniques would be identical to those for the Proposed Action.

- Alternative C—No Action

Alternative: This alternative assumes that the OSMRE would recommend that the ASLM disapprove the mining plan modification for the DLE at the San Juan Mine, the ASLM disapproves of the mining plan modification, and mining ceases on August 31, 2019. Implementation of the No Action Alternative would result in the discontinuation of mining activities in the DLE on August 31, 2019, completion of all mining activities at the San Juan Mine in December 2019 and cessation of burning coal from San Juan Mine at the Generating Station approximately 6 months later. Under this alternative, SJCC would complete reclamation activities of all surface disturbance in accordance with its existing permit. Considering mining activities in the DLE have been ongoing since 2008 and have continued throughout the NEPA process, the baseline conditions for the No Action Alternative includes mining through August 2019.

A wide range of additional Alternatives were considered by the OSMRE but not carried forward for detailed analysis in the EIS. The following Alternatives were not analyzed in the EIS because they either did not meet the purpose and need of the Project or were not considered technically feasible or economically feasible or

- Alternative D—“Just” Transition Alternative
- Alternative E—Alternative Panel Alignment, Timing or Sequence
- Alternative F—Continue to Mine at a Rate of 6 Million Tons Per Year
- Alternative G—Modifications to Underground Mining Technique
- Alternative H—Relocation of Portal Sites
- Alternative I—Alternative Coal Combustion Residue Disposal Sites

V. Environmental Impact Analysis

The Final EIS analyzes the potential environmental impacts to 16 different resource categories, including:

- Air Quality
- Climate Change
- Geology and Soils
- Archaeology and Cultural Resources
- Water Resources and Hydrology
- Vegetation
- Wildlife and Habitats
- Special Status Species
- Land Use, Transportation, and Agriculture
- Recreation
- Social and Economic Values
- Environmental Justice
- Visual Resources
- Noise and Vibration impacts

- Hazardous and Solid Wastes
- Public Health and Safety

VI. Decision

In consideration of the information presented above, the OSMRE approves the ROD and selects Alternative B (Continuation of San Juan Mine Operations Following Generating Station Shut-Down in 2022) as the Preferred Alternative as described in the FEIS (Section 2.2.2). This action can be implemented following approval of the MPDD by the ASLM.

Dated: April 22, 2019.

David Berry,

Western Regional Director, OSMRE.

[FR Doc. 2019-08869 Filed 4-30-19; 8:45 am]

BILLING CODE 4310-05-P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-1146]

Certain Taurine (2-Aminoethanesulfonic Acid), Methods of Production and Processes for Making the Same, and Products Containing the Same; 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 April 10, 2019 initial determination (“ID”) (Order No. 8) terminating this investigation in its entirety based on the withdrawal of the complaint. The investigation is terminated.

FOR FURTHER INFORMATION CONTACT: Ron Traud, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205-3427. 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 (EDIS) at [https://](https://edis.usitc.gov)

edis.usitc.gov. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission’s TDD terminal at 202-205-1810.

SUPPLEMENTARY INFORMATION: On March 6, 2019, the Commission instituted this investigation under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337 (“section 337”), based on a complaint filed on behalf of Vitaworks IP, LLC of North Brunswick, New Jersey; Vitaworks, LLC of North Brunswick, New Jersey; and Dr. Songzhou Hu of North Brunswick, New Jersey (collectively, “Vitaworks”). 84 FR 81110 (Mar. 6, 2019). The complaint alleges a violation of section 337 by reason of infringement of certain claims of U.S. Patent Nos. 9,573,890; 9,745,258; and 10,040,755. *Id.* The Commission’s notice of investigation named twenty-seven respondents. *Id.* The Office of Unfair Import Investigations (OUII) is also a party in this investigation. *Id.*

On April 1, 2019, Vitaworks filed an unopposed motion pursuant to Commission Rule 210.21(a) seeking to terminate this investigation in its entirety based on the withdrawal of the complaint. On April 8, 2019, the respondents filed a response indicating that they do not oppose the motion and OUII filed a response supporting the motion.

On April 10, 2019, the presiding ALJ issued Order No. 8, the subject ID, which grants the motion. The ID finds that the motion complies with Commission Rule 210.21(a). The ID additionally finds that no extraordinary circumstances exist that would prevent termination of the investigation and that terminating the investigation is in the public interest. No petitions for review of the ID were filed.

The Commission has determined not to review the ID. This investigation is terminated.

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: April 25, 2019.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2019-08768 Filed 4-30-19; 8:45 am]

BILLING CODE 7020-02-P

**INTERNATIONAL TRADE
COMMISSION**

[Investigation Nos. 701–TA–449 and 731–
TA–1118–1121 (Second Review)]

**Light-Walled Rectangular Pipe and
Tube From China, Korea, Mexico, and
Turkey; Institution of Five-Year
Reviews**

AGENCY: United States International
Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice that it has instituted reviews pursuant to the Tariff Act of 1930 (“the Act”), as amended, to determine whether revocation of the countervailing duty order on light-walled rectangular pipe and tube from China and revocation of the antidumping duty orders on light-walled rectangular pipe and tube from China, Korea, Mexico, and Turkey would be likely to lead to continuation or recurrence of material injury. Pursuant to the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission.

DATES: Instituted May 1, 2019. To be assured of consideration, the deadline for responses is May 31, 2019. Comments on the adequacy of responses may be filed with the Commission by July 15, 2019.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202–205–3193), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission’s TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (<https://www.usitc.gov>). The public record for this proceeding may be viewed on the Commission’s electronic docket (EDIS) at <https://edis.usitc.gov>.

SUPPLEMENTARY INFORMATION:

Background.—On May 30, 2008, the Department of Commerce (“Commerce”) issued an antidumping duty order on imports of light-walled rectangular pipe and tube from Turkey (73 FR 31065). On August 5, 2008, Commerce issued a countervailing duty order on imports of light-walled rectangular pipe and tube from China (73 FR 45405) and antidumping duty orders on imports of

light-walled rectangular pipe and tube from China, Korea, and Mexico (73 FR 45403). Following first five-year reviews by Commerce and the Commission, effective June 23, 2014, Commerce issued a continuation of the countervailing duty order on imports of light-walled rectangular pipe and tube from China and antidumping duty orders on imports of light-walled rectangular pipe and tube from China, Korea, Mexico, and Turkey (79 FR 35522). The Commission is now conducting second reviews pursuant to section 751(c) of the Act, as amended (19 U.S.C. 1675(c)), to determine whether revocation of the orders would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. Provisions concerning the conduct of this proceeding may be found in the Commission’s Rules of Practice and Procedure at 19 CFR parts 201, subparts A and B and 19 CFR part 207, subparts A and F. The Commission will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct full or expedited reviews. The Commission’s determinations in any expedited reviews will be based on the facts available, which may include information provided in response to this notice.

Definitions.—The following definitions apply to these reviews:

(1) *Subject Merchandise* is the class or kind of merchandise that is within the scope of the five-year reviews, as defined by Commerce.

(2) The *Subject Countries* in these reviews are China, Korea, Mexico, and Turkey.

(3) The *Domestic Like Product* is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the *Subject Merchandise*. In its original determinations and its full first five-year reviews, the Commission defined a single *Domestic Like Product* consisting of light-walled rectangular pipe and tube, coextensive with Commerce’s scope.

(4) The *Domestic Industry* is the U.S. producers as a whole of the *Domestic Like Product*, or those producers whose collective output of the *Domestic Like Product* constitutes a major proportion of the total domestic production of the product. In its original determinations and its full first five-year review determinations, the Commission defined the *Domestic Industry* to consist of all U.S. producers of light-walled rectangular pipe and tube.

(5) An *Importer* is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the *Subject Merchandise* into the United States from a foreign manufacturer or through its selling agent.

Participation in the proceeding and public service list.—Persons, including industrial users of the *Subject Merchandise* and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the proceeding as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11(b)(4) of the Commission’s rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the proceeding.

Former Commission employees who are seeking to appear in Commission five-year reviews are advised that they may appear in a review even if they participated personally and substantially in the corresponding underlying original investigation or an earlier review of the same underlying investigation. The Commission’s designated agency ethics official has advised that a five-year review is not the same particular matter as the underlying original investigation, and a five-year review is not the same particular matter as an earlier review of the same underlying investigation for purposes of 18 U.S.C. 207, the post employment statute for Federal employees, and Commission rule 201.15(b) (19 CFR 201.15(b)), 79 FR 3246 (Jan. 17, 2014), 73 FR 24609 (May 5, 2008). Consequently, former employees are not required to seek Commission approval to appear in a review under Commission rule 19 CFR 201.15, even if the corresponding underlying original investigation or an earlier review of the same underlying investigation was pending when they were Commission employees. For further ethics advice on this matter, contact Charles Smith, Office of the General Counsel, at 202–205–3408.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and APO service list.—Pursuant to section 207.7(a) of the Commission’s rules, the Secretary will make BPI submitted in this proceeding available to authorized applicants under the APO issued in the proceeding, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized

applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the proceeding. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Certification.—Pursuant to section 207.3 of the Commission's rules, any person submitting information to the Commission in connection with this proceeding must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will acknowledge that information submitted in response to this request for information and throughout this proceeding or other proceeding may be disclosed to and used: (i) By the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel, solely for cybersecurity purposes. All contract personnel will sign appropriate nondisclosure agreements.

Written submissions.—Pursuant to section 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is May 31, 2019. Pursuant to section 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct expedited or full reviews. The deadline for filing such comments is July 15, 2019. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's Handbook on E-Filing, available on the Commission's website at <https://edis.usitc.gov>, elaborates upon the Commission's rules with respect to electronic filing. Also, in accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the proceeding must be served on all other parties to the proceeding (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document

(if you are not a party to the proceeding you do not need to serve your response).

No response to this request for information is required if a currently valid Office of Management and Budget ("OMB") number is not displayed; the OMB number is 3117 0016/USITC No. 19–5–429, expiration date June 30, 2020. Public reporting burden for the request is estimated to average 15 hours per response. Please send comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436.

Inability to provide requested information.—Pursuant to section 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to section 776(b) of the Act (19 U.S.C. 1677e(b)) in making its determinations in the reviews.

Information to be provided in response to this notice of institution: If you are a domestic producer, union/worker group, or trade/business association; import/export *Subject Merchandise* from more than one *Subject Country*; or produce *Subject Merchandise* in more than one *Subject Country*, you may file a single response. If you do so, please ensure that your response to each question includes the information requested for each pertinent *Subject Country*. As used below, the term "firm" includes any related firms.

(1) The name and address of your firm or entity (including World Wide Web address) and name, telephone number, fax number, and Email address of the certifying official.

(2) A statement indicating whether your firm/entity is an interested party under 19 U.S.C. 1677(9) and if so, how, including whether your firm/entity is a U.S. producer of the *Domestic Like Product*, a U.S. union or worker group, a U.S. importer of the *Subject Merchandise*, a foreign producer or exporter of the *Subject Merchandise*, a U.S. or foreign trade or business association (a majority of whose members are interested parties under

the statute), or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in this proceeding by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the antidumping and countervailing duty orders on the *Domestic Industry* in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of *Subject Merchandise* on the *Domestic Industry*.

(5) A list of all known and currently operating U.S. producers of the *Domestic Like Product*. Identify any known related parties and the nature of the relationship as defined in section 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the *Subject Merchandise* and producers of the *Subject Merchandise* in each *Subject Country* that currently export or have exported *Subject Merchandise* to the United States or other countries after 2013.

(7) A list of 3–5 leading purchasers in the U.S. market for the *Domestic Like Product* and the *Subject Merchandise* (including street address, World Wide Web address, and the name, telephone number, fax number, and Email address of a responsible official at each firm).

(8) A list of known sources of information on national or regional prices for the *Domestic Like Product* or the *Subject Merchandise* in the U.S. or other markets.

(9) If you are a U.S. producer of the *Domestic Like Product*, provide the following information on your firm's operations on that product during calendar year 2018, except as noted (report quantity data in short tons and value data in U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the *Domestic Like Product* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm to produce the *Domestic Like Product* (that is, the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix);

(c) the quantity and value of U.S. commercial shipments of the *Domestic Like Product* produced in your U.S. plant(s);

(d) the quantity and value of U.S. internal consumption/company transfers of the *Domestic Like Product* produced in your U.S. plant(s); and

(e) the value of (i) net sales, (ii) cost of goods sold (COGS), (iii) gross profit, (iv) selling, general and administrative (SG&A) expenses, and (v) operating income of the *Domestic Like Product* produced in your U.S. plant(s) (include both U.S. and export commercial sales, internal consumption, and company transfers) for your most recently completed fiscal year (identify the date on which your fiscal year ends).

(10) If you are a U.S. importer or a trade/business association of U.S. importers of the *Subject Merchandise* from any *Subject Country*, provide the following information on your firm's(s') operations on that product during calendar year 2018 (report quantity data in short tons and value data in U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping or countervailing duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of *Subject Merchandise* from each *Subject Country* accounted for by your firm's(s') imports;

(b) the quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. commercial shipments of *Subject Merchandise* imported from each *Subject Country*; and

(c) the quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. internal consumption/company transfers of *Subject Merchandise* imported from each *Subject Country*.

(11) If you are a producer, an exporter, or a trade/business association of producers or exporters of the *Subject Merchandise* in any *Subject Country*, provide the following information on your firm's(s') operations on that

product during calendar year 2018 (report quantity data in short tons and value data in U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping or countervailing duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of *Subject Merchandise* in each *Subject Country* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm(s) to produce the *Subject Merchandise* in each *Subject Country* (that is, the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix); and

(c) the quantity and value of your firm's(s') exports to the United States of *Subject Merchandise* and, if known, an estimate of the percentage of total exports to the United States of *Subject Merchandise* from each *Subject Country* accounted for by your firm's(s') exports.

(12) Identify significant changes, if any, in the supply and demand conditions or business cycle for the *Domestic Like Product* that have occurred in the United States or in the market for the *Subject Merchandise* in each *Subject Country* after 2013, and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the *Domestic Like Product* produced in the United States, *Subject Merchandise* produced in each *Subject Country*, and such merchandise from other countries.

(13) (OPTIONAL) A statement of whether you agree with the above definitions of the *Domestic Like Product* and *Domestic Industry*; if you disagree

with either or both of these definitions, please explain why and provide alternative definitions.

Authority: This proceeding is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.61 of the Commission's rules.

By order of the Commission.

Issued: April 24, 2019.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2019-08670 Filed 4-30-19; 8:45 am]

BILLING CODE 7020-02-P

INTERNATIONAL TRADE COMMISSION

[USITC SE-19-015]

Sunshine Act Meetings

Agency Holding the Meeting: United States International Trade Commission.

TIME AND DATE: May 10, 2019 at 11:00 a.m.

PLACE: Room 101, 500 E Street SW, Washington, DC 20436, Telephone: (202) 205-2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. *Agendas for future meetings:* None.
2. Minutes.
3. Ratification List.
4. Vote on Inv. No. 731-TA-1446 (Preliminary) (Sodium Sulfate Anhydrous from Canada). The Commission is currently scheduled to complete and file its determination on May 13, 2019; views of the Commission are currently scheduled to be completed and filed on May 20, 2019.

5. *Outstanding action jackets:* None.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

By order of the Commission.

Issued: April 29, 2019.

William Bishop,

Supervisory Hearings and Information Officer.

[FR Doc. 2019-08961 Filed 4-29-19; 4:15 pm]

BILLING CODE 7020-02-P

INTERNATIONAL TRADE COMMISSION

[USITC SE-19-014]

Sunshine Act Meetings

Agency Holding the Meeting: United States International Trade Commission.

TIME AND DATE: May 9, 2019 at 9:30 a.m.

PLACE: Room 101, 500 E Street SW, Washington, DC 20436, Telephone: (202) 205–2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. *Agendas for future meetings:* None.
2. Minutes.
3. Ratification List.
4. Vote on Inv. No. 731–TA–747 (Fourth Review) (Fresh Tomatoes from Mexico). The Commission is currently scheduled to complete and file its determination and views of the Commission by June 4, 2019.

5. *Outstanding action jackets:* None. In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

By order of the Commission.

Issued: April 29, 2019.

William Bishop,

Supervisory Hearings and Information Officer.

[FR Doc. 2019–08960 Filed 4–29–19; 4:15 pm]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–1143 (Second Review)]

Small Diameter Graphite Electrodes From China; Institution of a Five-Year Review

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice that it has instituted a review pursuant to the Tariff Act of 1930 (“the Act”), as amended, to determine whether revocation of the antidumping duty order on small diameter graphite electrodes from China would be likely to lead to continuation or recurrence of material injury. Pursuant to the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission.

DATES: Instituted May 1, 2019. To be assured of consideration, the deadline for responses is May 31, 2019. Comments on the adequacy of responses may be filed with the Commission by July 15, 2019.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202–205–3193), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain

information on this matter by contacting the Commission’s TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (<https://www.usitc.gov>). The public record for this proceeding may be viewed on the Commission’s electronic docket (EDIS) at <https://edis.usitc.gov>.

SUPPLEMENTARY INFORMATION:

Background.— On February 26, 2009, the Department of Commerce (“Commerce”) issued an antidumping duty order on imports of small diameter graphite electrodes from China (74 FR 8775). Following the first five-year reviews by Commerce and the Commission, effective June 23, 2014, Commerce issued a continuation of the antidumping duty order on imports of small diameter graphite electrodes from China (79 FR 35523). The Commission is now conducting a second five-year review pursuant to section 751(c) of the Act, as amended (19 U.S.C. 1675(c)), to determine whether revocation of the order would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. Provisions concerning the conduct of this proceeding may be found in the Commission’s Rules of Practice and Procedure at 19 CFR parts 201, subparts A and B and 19 CFR part 207, subparts A and F. The Commission will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct a full review or an expedited review. The Commission’s determination in any expedited review will be based on the facts available, which may include information provided in response to this notice.

Definitions.—The following definitions apply to this review:

(1) *Subject Merchandise* is the class or kind of merchandise that is within the scope of the five-year review, as defined by Commerce.

(2) The *Subject Country* in this review is China.

(3) The *Domestic Like Product* is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the *Subject Merchandise*. In its original determination and its expedited first five-year review determination, the Commission defined the *Domestic Like Product* as all small diameter graphite

electrodes coextensive with Commerce’s scope.

(4) The *Domestic Industry* is the U.S. producers as a whole of the *Domestic Like Product*, or those producers whose collective output of the *Domestic Like Product* constitutes a major proportion of the total domestic production of the product. In its original determination and its expedited first five-year review determination, the Commission defined the *Domestic Industry* as all U.S. producers of small diameter graphite electrodes.

(5) An *Importer* is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the *Subject Merchandise* into the United States from a foreign manufacturer or through its selling agent.

Participation in the proceeding and public service list.—Persons, including industrial users of the *Subject Merchandise* and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the proceeding as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11(b)(4) of the Commission’s rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the proceeding.

Former Commission employees who are seeking to appear in Commission five-year reviews are advised that they may appear in a review even if they participated personally and substantially in the corresponding underlying original investigation or an earlier review of the same underlying investigation. The Commission’s designated agency ethics official has advised that a five-year review is not the same particular matter as the underlying original investigation, and a five-year review is not the same particular matter as an earlier review of the same underlying investigation for purposes of 18 U.S.C. 207, the post employment statute for Federal employees, and Commission rule 201.15(b) (19 CFR 201.15(b)), 79 FR 3246 (Jan. 17, 2014), 73 FR 24609 (May 5, 2008). Consequently, former employees are not required to seek Commission approval to appear in a review under Commission rule 19 CFR 201.15, even if the corresponding underlying original investigation or an earlier review of the same underlying investigation was pending when they were Commission employees. For further ethics advice on this matter, contact Charles Smith,

Office of the General Counsel, at 202–205–3408.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and APO service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in this proceeding available to authorized applicants under the APO issued in the proceeding, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the proceeding. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Certification.—Pursuant to section 207.3 of the Commission's rules, any person submitting information to the Commission in connection with this proceeding must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will acknowledge that information submitted in response to this request for information and throughout this proceeding or other proceeding may be disclosed to and used: (i) By the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel, solely for cybersecurity purposes. All contract personnel will sign appropriate nondisclosure agreements.

Written submissions.—Pursuant to section 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is May 31, 2019. Pursuant to section 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct an expedited or full review. The deadline for filing such comments July 15, 2019. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the

Commission's rules. The Commission's Handbook on E-Filing, available on the Commission's website at <https://edis.usitc.gov>, elaborates upon the Commission's rules with respect to electronic filing. Also, in accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the proceeding must be served on all other parties to the proceeding (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the proceeding you do not need to serve your response).

No response to this request for information is required if a currently valid Office of Management and Budget ("OMB") number is not displayed; the OMB number is 3117 0016/USITC No. 19–5–431, expiration date June 30, 2020. Public reporting burden for the request is estimated to average 15 hours per response. Please send comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436.

Inability to provide requested information.—Pursuant to section 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to section 776(b) of the Act (19 U.S.C. 1677e(b)) in making its determination in the review.

Information to be provided in response to this notice of institution: As used below, the term "firm" includes any related firms.

(1) The name and address of your firm or entity (including World Wide Web address) and name, telephone number, fax number, and Email address of the certifying official.

(2) A statement indicating whether your firm/entity is an interested party under 19 U.S.C. 1677(9) and if so, how, including whether your firm/entity is a U.S. producer of the *Domestic Like Product*, a U.S. union or worker group, a U.S. importer of the *Subject Merchandise*, a foreign producer or

exporter of the *Subject Merchandise*, a U.S. or foreign trade or business association (a majority of whose members are interested parties under the statute), or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in this proceeding by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the antidumping duty order on the *Domestic Industry* in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of *Subject Merchandise* on the *Domestic Industry*.

(5) A list of all known and currently operating U.S. producers of the *Domestic Like Product*. Identify any known related parties and the nature of the relationship as defined in section 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the *Subject Merchandise* and producers of the *Subject Merchandise* in the *Subject Country* that currently export or have exported *Subject Merchandise* to the United States or other countries after 2013.

(7) A list of 3–5 leading purchasers in the U.S. market for the *Domestic Like Product* and the *Subject Merchandise* (including street address, World Wide Web address, and the name, telephone number, fax number, and Email address of a responsible official at each firm).

(8) A list of known sources of information on national or regional prices for the *Domestic Like Product* or the *Subject Merchandise* in the U.S. or other markets.

(9) If you are a U.S. producer of the *Domestic Like Product*, provide the following information on your firm's operations on that product during calendar year 2018, except as noted (report quantity data in metric tons and value data in U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of

total U.S. production of the *Domestic Like Product* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm to produce the *Domestic Like Product* (that is, the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix);

(c) the quantity and value of U.S. commercial shipments of the *Domestic Like Product* produced in your U.S. plant(s);

(d) the quantity and value of U.S. internal consumption/company transfers of the *Domestic Like Product* produced in your U.S. plant(s); and

(e) the value of (i) net sales, (ii) cost of goods sold (COGS), (iii) gross profit, (iv) selling, general and administrative (SG&A) expenses, and (v) operating income of the *Domestic Like Product* produced in your U.S. plant(s) (include both U.S. and export commercial sales, internal consumption, and company transfers) for your most recently completed fiscal year (identify the date on which your fiscal year ends).

(10) If you are a U.S. importer or a trade/business association of U.S. importers of the *Subject Merchandise* from the *Subject Country*, provide the following information on your firm's(s') operations on that product during calendar year 2018 (report quantity data in metric tons and value data in U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of *Subject Merchandise* from the *Subject Country* accounted for by your firm's(s') imports;

(b) the quantity and value (f.o.b. U.S. port, including antidumping duties) of U.S. commercial shipments of *Subject Merchandise* imported from the *Subject Country*; and

(c) the quantity and value (f.o.b. U.S. port, including antidumping duties) of U.S. internal consumption/company transfers of *Subject Merchandise* imported from the *Subject Country*.

(11) If you are a producer, an exporter, or a trade/business association of producers or exporters of the *Subject Merchandise* in the *Subject Country*, provide the following information on

your firm's(s') operations on that product during calendar year 2018 (report quantity data in metric tons and value data in U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of *Subject Merchandise* in the *Subject Country* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm(s) to produce the *Subject Merchandise* in the *Subject Country* (that is, the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix); and

(c) the quantity and value of your firm's(s') exports to the United States of *Subject Merchandise* and, if known, an estimate of the percentage of total exports to the United States of *Subject Merchandise* from the *Subject Country* accounted for by your firm's(s') exports.

(12) Identify significant changes, if any, in the supply and demand conditions or business cycle for the *Domestic Like Product* that have occurred in the United States or in the market for the *Subject Merchandise* in the *Subject Country* after 2013, and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the *Domestic Like Product* produced in the United States, *Subject Merchandise* produced in the *Subject Country*, and such merchandise from other countries.

(13) (OPTIONAL) A statement of whether you agree with the above definitions of the *Domestic Like Product* and *Domestic Industry*; if you disagree

with either or both of these definitions, please explain why and provide alternative definitions.

Authority: This proceeding is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.61 of the Commission's rules.

By order of the Commission.

Issued: April 24, 2019.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2019-08669 Filed 4-30-19; 8:45 am]

BILLING CODE 7020-02-P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 731-TA-1207-1208 (Review)]

Prestressed Concrete Steel Rail Tie Wire From China and Mexico; Institution of Five-Year Reviews

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice that it has instituted reviews pursuant to the Tariff Act of 1930 ("the Act"), as amended, to determine whether revocation of the antidumping duty orders on prestressed concrete steel rail tie wire from China and Mexico would be likely to lead to continuation or recurrence of material injury. Pursuant to the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission.

DATES: Instituted May 1, 2019. To be assured of consideration, the deadline for responses is May 31, 2019. Comments on the adequacy of responses may be filed with the Commission by July 15, 2019.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202-205-3193), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202-205-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-205-2000. General information concerning the Commission may also be obtained by accessing its internet server (<https://www.usitc.gov>). The public record for this proceeding may be viewed on the Commission's electronic docket (EDIS) at <https://edis.usitc.gov>.

SUPPLEMENTARY INFORMATION:

Background.—On June 24, 2014, the Department of Commerce (“Commerce”) issued antidumping duty orders on imports of prestressed concrete steel rail tie wire from China and Mexico (79 FR 35727). The Commission is conducting reviews pursuant to section 751(c) of the Act, as amended (19 U.S.C. 1675(c)), to determine whether revocation of the orders would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. Provisions concerning the conduct of this proceeding may be found in the Commission’s Rules of Practice and Procedure at 19 CFR parts 201, subparts A and B and 19 CFR part 207, subparts A and F. The Commission will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct full or expedited reviews. The Commission’s determinations in any expedited reviews will be based on the facts available, which may include information provided in response to this notice.

Definitions.—The following definitions apply to these reviews:

(1) *Subject Merchandise* is the class or kind of merchandise that is within the scope of the five-year reviews, as defined by Commerce.

(2) The *Subject Countries* in these reviews are China and Mexico.

(3) The *Domestic Like Product* is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the *Subject Merchandise*. In its original determinations, the Commission defined the one *Domestic Like Product* consisting of all prestressed concrete steel rail tie wire coextensive with Commerce’s scope.

(4) The *Domestic Industry* is the U.S. producers as a whole of the *Domestic Like Product*, or those producers whose collective output of the *Domestic Like Product* constitutes a major proportion of the total domestic production of the product. In its original determinations, the Commission defined the *Domestic Industry* as all U.S. producers of prestressed concrete steel rail tie wire.

(5) The *Order Date* is the date that the antidumping duty orders under review became effective. In these reviews, the *Order Date* is June 24, 2014.

(6) An *Importer* is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the *Subject Merchandise* into the United States from a foreign manufacturer or through its selling agent.

Participation in the proceeding and public service list.—Persons, including industrial users of the *Subject Merchandise* and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the proceeding as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11(b)(4) of the Commission’s rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the proceeding.

Former Commission employees who are seeking to appear in Commission five-year reviews are advised that they may appear in a review even if they participated personally and substantially in the corresponding underlying original investigation or an earlier review of the same underlying investigation. The Commission’s designated agency ethics official has advised that a five-year review is not the same particular matter as the underlying original investigation, and a five-year review is not the same particular matter as an earlier review of the same underlying investigation for purposes of 18 U.S.C. 207, the post employment statute for Federal employees, and Commission rule 201.15(b) (19 CFR 201.15(b)), 79 FR 3246 (Jan. 17, 2014), 73 FR 24609 (May 5, 2008). Consequently, former employees are not required to seek Commission approval to appear in a review under Commission rule 19 CFR 201.15, even if the corresponding underlying original investigation or an earlier review of the same underlying investigation was pending when they were Commission employees. For further ethics advice on this matter, contact Charles Smith, Office of the General Counsel, at 202–205–3408.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and APO service list.—Pursuant to section 207.7(a) of the Commission’s rules, the Secretary will make BPI submitted in this proceeding available to authorized applicants under the APO issued in the proceeding, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the proceeding. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Certification.—Pursuant to section 207.3 of the Commission’s rules, any person submitting information to the Commission in connection with this proceeding must certify that the information is accurate and complete to the best of the submitter’s knowledge. In making the certification, the submitter will acknowledge that information submitted in response to this request for information and throughout this proceeding or other proceeding may be disclosed to and used: (i) By the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel, solely for cybersecurity purposes. All contract personnel will sign appropriate nondisclosure agreements.

Written submissions.—Pursuant to section 207.61 of the Commission’s rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is May 31, 2019. Pursuant to section 207.62(b) of the Commission’s rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct expedited or full reviews. The deadline for filing such comments is July 15, 2019. All written submissions must conform with the provisions of section 201.8 of the Commission’s rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission’s rules. The Commission’s Handbook on E-Filing, available on the Commission’s website at <https://edis.usitc.gov>, elaborates upon the Commission’s rules with respect to electronic filing. Also, in accordance with sections 201.16(c) and 207.3 of the Commission’s rules, each document filed by a party to the proceeding must be served on all other parties to the proceeding (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the proceeding you do not need to serve your response).

No response to this request for information is required if a currently valid Office of Management and Budget (“OMB”) number is not displayed; the OMB number is 3117 0016/USITC No. 19–5–430, expiration date June 30,

2020. Public reporting burden for the request is estimated to average 15 hours per response. Please send comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436.

Inability to provide requested information.—Pursuant to section 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to section 776(b) of the Act (19 U.S.C. 1677e(b)) in making its determinations in the reviews.

Information to be provided in response to this notice of institution: If you are a domestic producer, union/worker group, or trade/business association; import/export *Subject Merchandise* from more than one *Subject Country*; or produce *Subject Merchandise* in more than one *Subject Country*, you may file a single response. If you do so, please ensure that your response to each question includes the information requested for each pertinent *Subject Country*. As used below, the term "firm" includes any related firms.

(1) The name and address of your firm or entity (including World Wide Web address) and name, telephone number, fax number, and Email address of the certifying official.

(2) A statement indicating whether your firm/entity is an interested party under 19 U.S.C. 1677(9) and if so, how, including whether your firm/entity is a U.S. producer of the *Domestic Like Product*, a U.S. union or worker group, a U.S. importer of the *Subject Merchandise*, a foreign producer or exporter of the *Subject Merchandise*, a U.S. or foreign trade or business association (a majority of whose members are interested parties under the statute), or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate

in this proceeding by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the antidumping duty orders on the *Domestic Industry* in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of *Subject Merchandise* on the *Domestic Industry*.

(5) A list of all known and currently operating U.S. producers of the *Domestic Like Product*. Identify any known related parties and the nature of the relationship as defined in section 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the *Subject Merchandise* and producers of the *Subject Merchandise* in each *Subject Country* that currently export or have exported *Subject Merchandise* to the United States or other countries since the *Order Date*.

(7) A list of 3–5 leading purchasers in the U.S. market for the *Domestic Like Product* and the *Subject Merchandise* (including street address, World Wide Web address, and the name, telephone number, fax number, and Email address of a responsible official at each firm).

(8) A list of known sources of information on national or regional prices for the *Domestic Like Product* or the *Subject Merchandise* in the U.S. or other markets.

(9) If you are a U.S. producer of the *Domestic Like Product*, provide the following information on your firm's operations on that product during calendar year 2018, except as noted (report quantity data in pounds and value data in U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the *Domestic Like Product* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm to produce the *Domestic Like Product* (that is, the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks

per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix);

(c) the quantity and value of U.S. commercial shipments of the *Domestic Like Product* produced in your U.S. plant(s);

(d) the quantity and value of U.S. internal consumption/company transfers of the *Domestic Like Product* produced in your U.S. plant(s); and

(e) the value of (i) net sales, (ii) cost of goods sold (COGS), (iii) gross profit, (iv) selling, general and administrative (SG&A) expenses, and (v) operating income of the *Domestic Like Product* produced in your U.S. plant(s) (include both U.S. and export commercial sales, internal consumption, and company transfers) for your most recently completed fiscal year (identify the date on which your fiscal year ends).

(10) If you are a U.S. importer or a trade/business association of U.S. importers of the *Subject Merchandise* from any *Subject Country*, provide the following information on your firm's(s') operations on that product during calendar year 2018 (report quantity data in pounds and value data in U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of *Subject Merchandise* from each *Subject Country* accounted for by your firm's(s') imports;

(b) the quantity and value (f.o.b. U.S. port, including antidumping duties) of U.S. commercial shipments of *Subject Merchandise* imported from each *Subject Country*; and

(c) the quantity and value (f.o.b. U.S. port, including antidumping duties) of U.S. internal consumption/company transfers of *Subject Merchandise* imported from each *Subject Country*.

(11) If you are a producer, an exporter, or a trade/business association of producers or exporters of the *Subject Merchandise* in any *Subject Country*, provide the following information on your firm's(s') operations on that product during calendar year 2018 (report quantity data in pounds and value data in U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of

total production of *Subject Merchandise* in each *Subject Country* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm(s) to produce the *Subject Merchandise* in each *Subject Country* (that is, the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix); and

(c) the quantity and value of your firm's(s') exports to the United States of *Subject Merchandise* and, if known, an estimate of the percentage of total exports to the United States of *Subject Merchandise* from each *Subject Country* accounted for by your firm's(s') exports.

(12) Identify significant changes, if any, in the supply and demand conditions or business cycle for the *Domestic Like Product* that have occurred in the United States or in the market for the *Subject Merchandise* in each *Subject Country* since the *Order Date*, and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the *Domestic Like Product* produced in the United States, *Subject Merchandise* produced in each *Subject Country*, and such merchandise from other countries.

(13) (OPTIONAL) A statement of whether you agree with the above definitions of the *Domestic Like Product* and *Domestic Industry*; if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

Authority: This proceeding is being conducted under authority of Title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.61 of the Commission's rules.

By order of the Commission.

Issued: April 24, 2019.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2019-08668 Filed 4-30-19; 8:45 am]

BILLING CODE 7020-02-P

DEPARTMENT OF JUSTICE

[OMB Number 1103-NEW]

Agency Information Collection Activities: New Information Collection Instrument

ACTION: 60-Day notice.

SUMMARY: The Department of Justice (DOJ) Office of Community Oriented Policing Services (COPS) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

DATES: The purpose of this notice is to allow for 60 days for public comment July 1, 2019.

FOR FURTHER INFORMATION CONTACT: If you have 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 Lashon M. Hilliard, Department of Justice Office of Community Oriented Policing Services, 145 N Street NE, Washington, DC 20530, (202) 514-6563.

Written comments and/or suggestions can also be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20530 or sent to OIRA_submissions@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
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to

respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* New Information Collection Instrument.

(2) *Title of the Form/Collection:* Developing and Validating Self-Guided Wellness and Stress Management Tools for Law Enforcement Agencies.

(3) *The agency form number 1103-****.* U.S. Department of Justice Office of Community Oriented Policing Services.

(4) *Affected public who will be asked or required to respond as well as a brief abstract:*

Primary: Law Enforcement Agencies and community partners.

Abstract: The study proposes an innovative and methodologically sophisticated research design to address the critical issue of law enforcement officer health and wellness.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* The estimate of the data collection tasks for respondents assigned to four groups for a total of 1,550 respondents and anticipated at 45 minutes per respondent.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated time burden is 893 hours.

If additional information is required contact: Melody Braswell, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE, Room 3E, Room 405A, Washington, DC 20530.

Dated: April 26, 2019.

Melody Braswell,

Department Clearance Officer, PRA, U.S. Department of Justice.

[FR Doc. 2019-08805 Filed 4-30-19; 8:45 am]

BILLING CODE 4410-AT-P

DEPARTMENT OF JUSTICE

[OMB Number 1125-0002]

Agency Information Collection Activities; Proposed Collection; Comments Requested; Notice of Appeal From a Decision of an Immigration Judge

AGENCY: Executive Office for Immigration Review, Department of Justice.

ACTION: 60-Day notice.

SUMMARY: The Department of Justice (DOJ), Executive Office for Immigration Review, will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

DATES: Comments are encouraged and will be accepted for 60 days until May 31, 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 Lauren Alder Reid, Assistant Director, Office of Policy, Executive Office for Immigration Review, 5107 Leesburg Pike, Suite 2500, Falls Church, VA 22041, telephone: (703) 305-0289.

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;
- Enhance the quality, utility, and clarity of the information to be collected; and/or
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Revision of a currently approved collection.

(2) *The Title of the Form/Collection:* Notice of Appeal from a Decision of an Immigration Judge.

(3) *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* The form number is EOIR-26, Executive Office for Immigration Review, United States Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individual aliens determined to be removable from the United States and the Department of Homeland Security, Immigration and Customs Enforcement (ICE). Other: None. Abstract: A party (either the alien or ICE) affected by a decision of an Immigration Judge may appeal that decision to the Board, provided that the Board has jurisdiction pursuant to 8 CFR 1003.1(b). An appeal from an Immigration Judge's decision is taken by completing the Form EOIR-26 and submitting it to the Board.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 26,536 respondents will complete the form annually with an average of 30 minutes per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The estimated public burden associated with this collection is 13,268 hours.

If additional information is required contact: Melody Braswell, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE 3E.405B, Washington, DC 20530.

Dated: April 26, 2019.

Melody D. Braswell,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2019-08806 Filed 4-30-19; 8:45 am]

BILLING CODE 4410-30-P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-219; NRC-2019-0096]

Exelon Generation Company, LLC; Oyster Creek Nuclear Generating Station

AGENCY: Nuclear Regulatory Commission.

ACTION: Environmental assessment and finding of no significant impact; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of an exemption to Exelon Generation Company, LLC (Exelon or the licensee) that would change the effective date for the implementation of exemptions, approved on October 16, 2018. The proposed action would permit the licensee to reduce its emergency planning (EP) activities at the Oyster Creek Nuclear Generating Station (Oyster Creek) and change the effective date from 365 days to 285 days.

DATES: The EA and FONSI referenced in this document are available on May 1, 2019.

ADDRESSES: Please refer to Docket ID NRC-2019-0096 when contacting the NRC about the availability of information regarding this document. You may obtain publicly-available information related to this document using any of the following methods:

- *Federal Rulemaking website:* Go to <http://www.regulations.gov> and search for Docket ID NRC-2019-0096. Address questions about NRC dockets in [Regulations.gov](http://www.regulations.gov) to Jennifer Borges; telephone: 301-287-9127; email: Jennifer.Borges@nrc.gov. For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at <http://www.nrc.gov/reading-rm/adams.html>. To begin the search, select "Begin Web-based ADAMS Search." For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1-800-397-4209, 301-415-4737, or by email to pdr.resource@nrc.gov. The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in this document. In addition, for the convenience of the reader, the ADAMS accession numbers are provided in a table in the "Availability of Documents" section of this document.

- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1-F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: John G. Lamb, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001; telephone: 301-415-3100; email: John.Lamb@nrc.gov.

SUPPLEMENTARY INFORMATION:**I. Introduction**

The NRC is considering issuing an exemption, pursuant to section 50.12 of title 10 of the *Code of Federal Regulations* (10 CFR), “Specific exemptions,” from 10 CFR 50.47 and appendix E to 10 CFR part 50, to change the effective date for implementation of previously-approved exemptions for Facility Operating License No. DPR-16, issued on July 2, 1991, for operation of Oyster Creek, which is located in Ocean County, New Jersey, approximately 2 miles south of Forked River, New Jersey. The proposed action is in response to the licensee’s application dated October 16, 2018 (ADAMS Accession No. ML18220A980), for Oyster Creek from certain EP requirements in 10 CFR part 50, “Domestic Licensing of Production and Utilization Facilities.”

By letter dated January 7, 2011 (ADAMS Accession No. ML110070507), Exelon notified the NRC that Oyster Creek will be permanently shut down no later than December 31, 2019, and subsequently the nuclear power plant will be in the process of decommissioning. By letter dated February 14, 2018 (ADAMS Accession No. ML18045A084), Exelon updated its notification and informed the NRC that Oyster Creek will be permanently shut down no later than October 31, 2018.

By letter dated September 25, 2018 (ADAMS Accession No. ML18268A258), Exelon certified that all fuel had been permanently removed from the Oyster Creek reactor vessel and placed in the spent fuel pool (SFP). Since Exelon submitted certifications of permanent cessation of operations and permanent removal of fuel from the reactor vessel, pursuant to 10 CFR 50.82(a)(2), Oyster Creek is no longer authorized to operate or to have fuel placed into its reactor vessel, but the licensee is still authorized to possess and store irradiated nuclear fuel. Irradiated nuclear fuel is currently being stored onsite at Oyster Creek in an SFP and in an independent spent fuel storage installation.

In accordance with 10 CFR 51.21, the NRC has prepared an environmental assessment (EA) that analyzes the environmental effects of the proposed action. Based on the results of the EA, and in accordance with 10 CFR 51.31(a), the NRC has determined not to prepare an environmental impact statement for the proposed licensing action, and is issuing a finding of no significant impact (FONSI).

II. Environmental Assessment*Description of the Proposed Action*

The proposed action would revise the effective date for previously-approved exemptions that exempt Exelon from (1) certain standards as set forth in 10 CFR 50.47, “Emergency plans,” regarding onsite and offsite emergency response plans for nuclear power reactors; (2) requirements in 10 CFR 50.47(c)(2) to establish plume exposure and ingestion pathway emergency planning zones (EPZs) for nuclear power reactors; and (3) certain requirements in appendix E, section IV, to 10 CFR part 50, “Emergency Planning and Preparedness for Production and Utilization Facilities,” which establishes the elements that make up the content of emergency plans.

These exemptions were approved on October 16, 2018. The proposed action of granting this exemption to revise the effective date would shorten the period of time since the reactor has been permanently shut down and defueled from 365 days to 285 days for the implementation of exemptions that eliminated the requirements for Exelon to maintain offsite radiological emergency plans in accordance with 44 CFR 350 and reduce some of the onsite EP activities at Oyster Creek.

The proposed action is also described in the licensee’s application dated November 6, 2018 (ADAMS Accession No. ML18310A306), as supplemented by letter dated February 13, 2019 (ADAMS Accession No. ML19044A643).

Need for the Proposed Action

The proposed action would allow Exelon to revise the Oyster Creek Emergency Plan once the reactor has been permanently shutdown and defueled for a period of 285 days instead of 365 days.

In its letter dated November 6, 2018, Exelon stated that complete application of the EP rule to Oyster Creek, since it is permanently shut down and defueled, does not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule. Exelon also stated that it would incur undue hardship or other costs in the application of operating plant EP requirements for the maintenance of an emergency response organization in excess of that actually needed to respond to the diminished scope of credible accidents for a permanently shutdown and defueled reactor.

Environmental Impacts of the Proposed Action

The proposed action would change the effective date for the

implementation of the exemptions that mainly consisted of changes related to the elimination of requirements for the licensee to maintain offsite radiological emergency plans in accordance with 44 CFR 350 and reduce some of the onsite EP activities at Oyster Creek. The exemption is based on the licensee’s revised Zirconium Fire Analysis that demonstrated a reduction of risk after the reactor has been permanently shut down and defueled for a period of 285 days. However, requirements for certain onsite capabilities to communicate and coordinate with offsite response authorities are retained and offsite EP provisions to protect public health and safety will still exist through State and local government use of comprehensive emergency management (all-hazards) planning.

With regard to potential nonradiological environmental impacts, the proposed action would have no direct impacts on land use or water resources, including terrestrial and aquatic biota, as it involves no new construction or modification of plant operational systems. There would be no changes to the quality or quantity of nonradiological effluents and no changes to the plants’ National Pollutant Discharge Elimination System permits would be needed. In addition, there would be no noticeable effect on socioeconomic and environmental justice conditions in the region, air quality impacts, and no potential to affect historic properties. Therefore, there would be no significant nonradiological environmental impacts associated with the proposed action.

As stated above, the proposed action would not increase the probability or consequences of radiological accidents or change the types of effluents released offsite. In addition, there would be no significant increase in the amount of any radioactive effluents released offsite and, no significant increase in occupational or public radiation exposure. Therefore, there would be no significant radiological environmental impacts associated with the proposed action.

Environmental Impacts of the Alternatives to the Proposed Action

As an alternative to the proposed action, the NRC staff considered denial of the proposed action (*i.e.*, the “no-action” alternative). The denial of the exemption request would result in no change in current environmental impacts. Therefore, the environmental impacts of the proposed action and the alternative action would be similar.

Alternative Use of Resources

There are no unresolved conflicts concerning alternative uses of available resources under the proposed action.

Agencies or Persons Consulted

No additional agencies or persons were consulted regarding the environmental impact of the proposed action. On April 3, 2019, the New Jersey state representative was notified of this EA and FONSI.

III. Finding of No Significant Impact

The licensee has requested a change to the effective date for the implementation of exemptions from: (1) Certain standards in 10 CFR 50.47(b) regarding onsite and offsite emergency response plans for nuclear power reactors; (2) requirement in 10 CFR 50.47(c)(2) to establish plume exposure and ingestion pathway EPZs for nuclear power reactors; and (3) certain requirements in 10 CFR part 50, appendix E, section IV, which establishes the elements that make up the content of emergency plans, which were approved on October 16, 2018. The proposed action of granting this exemption to revise the effective date of the exemptions is based on the licensee’s revised Zirconium Fire analysis that demonstrated a reduction of risk after the reactor has been permanently shut down and defueled

for a period of 285 days. However, requirements for certain onsite capabilities to communicate and coordinate with offsite response authorities are retained and offsite EP provisions to protect public health and safety will still exist through State and local government use of comprehensive emergency management (all-hazards) plan.

The NRC is considering issuing the requested exemption. The proposed action would not significantly affect plant safety, would not have a significant adverse effect on the probability of an accident occurring, and would not have any significant radiological or nonradiological impacts. Therefore, the proposed action would not have a significant effect on the environment. The reason the human environment would not be significantly affected is that the proposed exemption would not involve any construction or modification of the facility.

Consistent with 10 CFR 51.21, the NRC conducted the EA for the proposed action, and this FONSI incorporates by reference the EA in Section II of this notice. Therefore, the NRC concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined that there is no need to prepare an environmental impact statement for the proposed action.

As required by 10 CFR 51.32(a)(5), the related environmental document is the “Generic Environmental Impact Statement for License Renewal of Nuclear Plants: Regarding Oyster Creek Nuclear Generating Station, Final Report,” NUREG–1437, Supplement 28, Volumes 1 and 2, which provides the latest environmental review of current operations and description of environmental conditions at Oyster Creek.

The finding and other related environmental documents may be examined, and/or copied for a fee, at the NRC’s Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. Publicly-available records are accessible electronically from ADAMS Public Electronic Reading Room on the internet at the NRC’s website: <http://www.nrc.gov/reading-rm/adams.html>. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC’s PDR Reference staff by telephone at 1–800–397–4209 or 301–415–4737, or by email to pdr.resource@nrc.gov.

IV. Availability of Documents

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

Document	ADAMS accession No.
Docket No. 50–219, Request for Exemptions from Portions of 10 CFR 50.47 and 10 CFR part 50, appendix E, Oyster Creek Nuclear Generating Station, November 6, 2018.	ML18310A306
Docket No. 50–219, Response to Request for Additional Information Request for Exemptions from Portions of 10 CFR 50.47 and 10 CFR part 50, appendix E, Oyster Creek Nuclear Generating Station, February 13, 2019.	ML19044A643
Docket No. 50–219, Certification of Permanent Cessation of Operations at Oyster Creek Nuclear Generating Station, January 7, 2011.	ML110070507
Docket No. 50–219, Certification of Permanent Cessation of Power Operations for Oyster Creek Nuclear Generating Station, February 14, 2018.	ML18045A084
Docket No. 50–219, Certification of Permanent Removal of Fuel from the Reactor Vessel for Oyster Creek Nuclear Generating Station, September 25, 2018.	ML18268A258
Docket No. 50–219, Oyster Creek Nuclear Generating Station—Exemptions from Certain Emergency Plan Requirements and Related Safety Evaluation, October 16, 2018.	ML18220A980
Docket No. 50–219, “Final Environmental Statement—related to operation of Oyster Creek Nuclear Generating Station,” December 1974.	ML072200150
NUREG–1437, Supplement 28, “Generic Environmental Impact Statement for License Renewal of Nuclear Plants Regarding Oyster Creek Nuclear Generating Station,” January 2007.	ML070100234

Dated at Rockville, Maryland, this 26th day of April, 2019.

For the Nuclear Regulatory Commission.

John G. Lamb,

Senior Project Manager, Plant Licensing Branch II–1, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2019–08815 Filed 4–30–19; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2018–0240]

Information Collection: Disposal of High-Level Radioactive Wastes in Geologic Repositories

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of submission to the Office of Management and Budget; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) has recently submitted a request for renewal of an existing collection of information to the Office of Management and Budget (OMB) for review. The information collection is entitled, “Disposal of High-

Level Radioactive Wastes in Geologic Repositories.”

DATES: Submit comments by May 31, 2019.

ADDRESSES: Submit comments directly to the OMB reviewer at: OMB Office of Information and Regulatory Affairs (3150-0127), Attn: Desk Officer for the Nuclear Regulatory Commission, 725 17th Street NW, Washington, DC 20503; email: oir_submission@omb.eop.gov.

FOR FURTHER INFORMATION CONTACT: David Cullison, NRC Clearance Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001; telephone: 301-415-2084; email:

INFOCOLLECTS.Resource@nrc.gov.

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC-2018-0240 when contacting the NRC about the availability of information for this action. You may obtain publicly-available information related to this action by any of the following methods:

- *Federal rulemaking website:* Go to <http://www.regulations.gov> and search for Docket ID NRC-2018-0240. A copy of the collection of information and related instructions may be obtained without charge by accessing Docket ID NRC-2018-0240 on this website.

- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at <http://www.nrc.gov/reading-rm/adams.html>. To begin the search, select “ADAMS Public Documents” and then select “Begin Web-based ADAMS Search.” For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1-800-397-4209, 301-415-4737, or by email to pdr.resource@nrc.gov. The supporting statement is available in ADAMS under Accession No. ML19077A010.

- *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.

- *NRC's Clearance Officer:* A copy of the collection of information and related instructions may be obtained without charge by contacting the NRC's Clearance Officer, David Cullison, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001; telephone: 301-415-2084; email: INFOCOLLECTS.Resource@NRC.GOV.

B. Submitting Comments

The NRC cautions you not to include identifying or contact information in comment submissions that you do not want to be publicly disclosed in your comment submission. All comment submissions are posted at <http://www.regulations.gov> and entered into ADAMS. Comment submissions are not routinely edited to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the OMB, 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 comment submissions are not routinely edited to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

II. Background

Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the NRC recently submitted a request for renewal of an existing collection of information to OMB for review entitled, “Disposal of High-Level Radioactive Wastes in Geologic Repositories.” The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

The NRC published a **Federal Register** notice with a 60-day comment period on this information collection on January 31, 2019 (84 FR 821).

1. *The title of the information collection:* Disposal of High-Level Radioactive Wastes in Geologic Repositories.
2. *OMB approval number:* 3150-0127.
3. *Type of submission:* Extension.
4. *The form number if applicable:* Not applicable.
5. *How often the collection is required or requested:* The information need only be submitted one time.

6. *Who will be required or asked to respond:* State or Indian Tribes, or their representatives, requesting consultation with the NRC staff regarding review of a potential high-level radioactive waste geologic repository site, or wishing to participate in a license application review for a potential geologic repository (other than a potential geologic repository site at Yucca Mountain, Nevada, which is regulated under 10 CFR part 63).

7. *The estimated number of annual responses:* 6; however, none are expected in the next three years.

8. *The estimated number of annual respondents:* 6; however, none are expected in the next three years.

9. *An estimate of the total number of hours needed annually to comply with the information collection requirement or request:* 726, however, none are expected in the next three years.

10. *Abstract:* Part 60 of 10 CFR requires States and Indian Tribes to submit certain information to the NRC if they request consultation with the NRC staff concerning the review of a potential repository site, or wish to participate in a license application review for a potential repository (other than the Yucca Mountain, Nevada site, which is regulated under 10 CFR part 63). States and Indian Tribes are required to submit information regarding requests for consultation with the NRC and participation in the review of a site characterization plan and/or license application, but only if they wish to obtain NRC consultation services and/or participate in the reviews. The information submitted by the States and Indian Tribes is used by the Director of the Office of Nuclear Material Safety and Safeguards as a basis for decisions about the commitment of NRC staff resources to the consultation and participation efforts. The NRC anticipates conducting a public rulemaking to revise portions of 10 CFR part 60 in the future. If, as part of this rulemaking, revisions are made affecting the information collection requirements, the NRC will follow OMB requirements for obtaining approval for any revised information collection requirements. Note: All of the information collection requirements pertaining to Yucca Mountain were included in 10 CFR part 63, and were approved by OMB under control number 3150-0199. The Yucca Mountain site is regulated under 10 CFR part 63 (66 FR 55792; November 2, 2001).

Dated at Rockville, Maryland, this 26th day of April, 2019.

For the Nuclear Regulatory Commission.

David C. Cullison,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 2019-08820 Filed 4-30-19; 8:45 am]

BILLING CODE 7590-01-P

NUCLEAR REGULATORY COMMISSION

[NRC–2018–0272]

Information Collection: Access Authorization

AGENCY: Nuclear Regulatory Commission.

ACTION: Renewal of existing information collection; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) invites public comment on the renewal of Office of Management and Budget (OMB) approval for an existing collection of information. The information collection is entitled, “Access Authorization.”

DATES: Submit comments by July 1, 2019. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only for comments received on or before this date.

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

- *Federal Rulemaking website:* Go to <http://www.regulations.gov> and search for Docket ID NRC–2018–0272. Address questions about NRC dockets to Jennifer Borges; telephone: 301–287–9127; email: Jennifer.Borges@nrc.gov. For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

- *Mail comments to:* David Cullison, Office of the Chief Information Officer, Mail Stop: T–6 A10M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

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

FOR FURTHER INFORMATION CONTACT: David Cullison, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2084; email: Infocollects.Resource@nrc.gov.

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2018–0272 when contacting the NRC about the availability of information for this action. You may obtain publicly-available information related to this action by any of the following methods:

- *Federal Rulemaking website:* Go to <http://www.regulations.gov> and search

for Docket ID NRC–2018–0272. A copy of the collection of information and related instructions may be obtained without charge by accessing Docket ID NRC–2018–0272 on this website.

- *NRC’s Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at <http://www.nrc.gov/reading-rm/adams.html>. To begin the search, select “ADAMS Public Documents” and then select “Begin Web-based ADAMS Search.” For problems with ADAMS, please contact the NRC’s Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to pdr.resource@nrc.gov. The supporting statement and burden spreadsheet are available in ADAMS under Accession Nos. ML19044A591 and ML19045A659.

- *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.

- *NRC’s Clearance Officer:* A copy of the collection of information and related instructions may be obtained without charge by contacting NRC’s Clearance Officer, David Cullison, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2084; email: Infocollects.Resource@nrc.gov.

B. Submitting Comments

Please include Docket ID NRC–2018–0272 in the subject line of your comment submission, in order to ensure that the NRC is able to make your comment submission available to the public in this docket.

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

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

submissions available to the public or entering the comment into ADAMS.

II. Background

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the NRC is requesting public comment on its intention to request the OMB’s approval for the information collection summarized below.

1. *The title of the information collection:* 10 CFR part 25, “Access Authorization.”
2. *OMB approval number:* 3150–0046.
3. *Type of submission:* Revision.
4. *The form number, if applicable:* Not applicable.
5. *How often the collection is required or requested:* On occasion.
6. *Who will be required or asked to respond:* NRC-regulated facilities and other organizations requiring access to NRC-classified information.
7. *The estimated number of annual responses:* 383.8.
8. *The estimated number of annual respondents:* 78.
9. *The estimated number of hours needed annually to comply with the information collection requirement or request:* 188.6.

10. *Abstract:* NRC collects information on individuals in order to determine their eligibility for an NRC access authorization for access to classified information. NRC-regulated facilities and other organization are required to provide information to the NRC when requested on the cleared individual and maintain records to ensure that only individuals with the adequate level of protection is provided access to NRC classified information and material.

III. Specific Requests for Comments

The NRC is seeking comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?
2. Is the estimate of the burden of the information collection accurate?
3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?
4. How can the burden of the information collection on respondents be minimized, including the use of automated collection techniques or other forms of information technology?

Dated at Rockville, Maryland, this 26th day of April, 2019. For the Nuclear Regulatory Commission.

David C. Cullison,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 2019-08814 Filed 4-30-19; 8:45 am]

BILLING CODE 7590-01-P

NUCLEAR REGULATORY COMMISSION

[NRC-2017-0237]

Criteria for Accident Monitoring Instrumentation for Nuclear Power Plants

AGENCY: Nuclear Regulatory Commission.

ACTION: Regulatory guide; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing Revision 5 to Regulatory Guide (RG) 1.97, “Criteria for Accident Monitoring Instrumentation for Nuclear Power Plants.” This guide describes an approach that is acceptable to the staff of the NRC to meet regulatory requirements for instrumentation to monitor accidents in nuclear power plants. It endorses, with exceptions and clarifications, the Institute of Electrical and Electronic Engineers (IEEE) Standard (Std.) 497-2016, “IEEE Standard Criteria for Accident Monitoring Instrumentation for Nuclear Power Generating Stations.”

DATES: Revision 5 to RG 1.97 is available on May 1, 2019.

ADDRESSES: Please refer to Docket ID NRC-2017-0237 when contacting the NRC about the availability of information regarding this document. You may obtain publicly-available information related to this document using any of the following methods:

- *Federal Rulemaking website:* Go to <http://www.regulations.gov> and search for Docket ID NRC-2017-0237. Address questions about NRC docket IDs to Jennifer Borges; telephone: 301-287-9127; email: Jennifer.Borges@nrc.gov.

For technical questions, contact the individuals listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

- *NRC’s Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Document collection at <https://www.nrc.gov/reading-rm/adams.html>. To begin the search, select “Begin Web-based ADAMS Search.” For problems with ADAMS, 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. Revision 5 to RG 1.97 and the regulatory analysis may be found in ADAMS under Accession Nos. ML18136A762 and ML17083A133, respectively. Regulatory guides are not copyrighted, and NRC approval is not required to reproduce them.

- *NRC’s PDR:* You may examine and purchase copies of public documents at the NRC’s PDR, Room O1-F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT:

Pong Chung, telephone: 301-415-2363, email: Pong.Chung@nrc.gov and Stephen Burton, telephone: 301-415-7000, email: Stephen.Burton@nrc.gov. Both are staff of the Office of Nuclear Regulatory Research at the U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001.

SUPPLEMENTARY INFORMATION:

I. Discussion

The NRC is issuing a revision to an existing guide 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 agency’s regulations, techniques that the NRC staff uses in evaluating specific issues or postulated events, and data that the NRC staff needs in its review of applications for permits and licenses.

Revision 5 of RG 1.97 was issued with a temporary identification of Draft Regulatory Guide, DG-1335 (ADAMS Accession No. ML17083A134). The staff is issuing Revision 5 of RG 1.97 to endorse IEEE Std. 497-2016 “Criteria for Accident Monitoring Instrumentation for Nuclear Power Plants,” with exceptions and clarifications. Revision 5 also makes further clarifying revisions by expressly expanding the applicability of RG 1.97 to holders of, or applicants for, power reactor design certifications or combined licenses under part 52 of title 10 of the *Code of Federal Regulations* (10 CFR), and by adding references to the NRC’s 10 CFR part 52 regulations and related NRC guidance documents.

II. Additional Information

The NRC published a notice of the availability of DG-1335 in the **Federal Register** on December 26, 2017 (82 FR 61043) for a 60-day public comment period. The public comment period closed on February 26, 2018. Public comments on DG-1335 and the staff responses to the public comments are available in ADAMS under Accession No. ML18136A761.

III. Congressional Review Act

This RG is a rule as defined in the Congressional Review Act (5 U.S.C. 801-808). However, the Office of Management and Budget has not found it to be a major rule as defined in the Congressional Review Act.

IV. Backfitting and Issue Finality

As discussed in the “Implementation” section of Revision 5 to RG 1.97, the NRC has no current intention to impose this draft regulatory guide on holders of current operating licenses or combined licenses. Revision 5 to RG 1.97 would endorse, with certain exceptions and clarifications, the 2016 revision of IEEE Std. 497, which contains a more technology-neutral approach and brings current guidance more in line with related international standards. This Revision introduces a new set of variables for parameters that may be monitored when following severe accident management guidelines. Applicants and licensees may voluntarily use the guidance in Revision 5 to RG 1.97 to demonstrate compliance with the underlying NRC regulations. Current licensees may continue to use guidance the NRC found previously acceptable for complying with the identified regulations as long as their current licensing basis remains unchanged. As such, this regulatory guide would not constitute backfitting as defined in 10 CFR 50.109 (the Backfit Rule) and is not otherwise inconsistent with the issue finality provisions in 10 CFR part 52, “Licenses, Certifications and Approvals for Nuclear Power Plants.”

Dated at Rockville, Maryland, on April 25, 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. 2019-08819 Filed 4-30-19; 8:45 am]

BILLING CODE 7590-01-P

POSTAL SERVICE

International Product Change—GEPS 11 Contracts

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add Global Expedited Package Services 11 to the Competitive Products List.

DATES: Date of notice: May 1, 2019.

FOR FURTHER INFORMATION CONTACT: Christopher C. Meyerson, (202) 268-7820.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642, on April 24, 2019, it filed with the Postal Regulatory Commission a *Request of The United States Postal Service to add Global Expedited Package Services 11 to the Competitive Products List*. Documents are available at www.prc.gov, Docket Nos. MC2019-132 and CP2019-142.

Christopher C. Meyerson

Attorney, Corporate and Postal Business Law.

[FR Doc. 2019-08769 Filed 4-30-19; 8:45 am]

BILLING CODE 7710-12-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-85715; File No. SR-FINRA-2019-012]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of a Proposed Rule Change To Amend FINRA Rule 5110 (Corporate Financing Rule—Underwriting Terms and Arrangements) To Make Substantive, Organizational and Terminology Changes

April 25, 2019.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² notice is hereby given that on April 11, 2019, Financial Industry Regulatory Authority, Inc. (“FINRA”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by FINRA. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

FINRA is proposing to amend FINRA Rule 5110 (Corporate Financing Rule—Underwriting Terms and Arrangements) (the “Rule”) to make substantive, organizational and terminology changes to the Rule. The proposed rule change is intended to modernize Rule 5110 and to simplify and clarify its provisions while maintaining important protections for market participants, including issuers and investors

participating in offerings. The proposed rule change would also update cross-references and make other non-substantive changes within FINRA rules due to the proposed amendments to Rule 5110.

The text of the proposed rule change is available on FINRA’s website at <http://www.finra.org>, at the principal office of FINRA and at the Commission’s Public Reference Room.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FINRA included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FINRA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization’s Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The ability of small and large businesses to raise capital efficiently is critical to job creation and economic growth. Since its adoption in 1992 in response to persistent problems with underwriters dealing unfairly with issuers, Rule 5110 has played an important role in the capital raising process by prohibiting unfair underwriting terms and arrangements in connection with the public offering of securities. Moreover, Rule 5110 continues to be important to ensuring investor protection and market integrity through effective and efficient regulation that facilitates vibrant capital markets.

Rule 5110 requires a member that participates in a public offering to file documents and information with FINRA about the underwriting terms and arrangements.³ FINRA’s Corporate Financing Department (“Department”) reviews this information prior to the commencement of the offering to

determine whether the underwriting compensation and other terms and arrangements meet the requirements of the applicable FINRA rules.⁴

Rule 5110 was last revised in 2004 to better reflect the various financial activities of multi-service members.⁵ After years of experience with those amendments, and subsequent narrower amendments that addressed industry practices regarding particular underwriting terms and arrangements, FINRA recently conducted the equivalent of a retrospective review⁶ to further modernize the Rule by, among other things, significantly improving the administration of the Rule and simplifying the Rule’s provisions while maintaining important protections for market participants, including issuers and investors participating in offerings.

As part of this retrospective review, FINRA engaged in extensive consultation with the industry to better understand what aspects of the Rule needed to be modernized, simplified and clarified. This retrospective review, including its industry consultation component and comments FINRA received in response to *Regulatory Notice 17-15* (April 2017) (“*Notice 17-15 Proposal*”) (as further discussed in Items II.B. and II.C. *infra*), has shaped and informed this proposed rule change. The proposed rule change includes a range of amendments to Rule 5110, including reorganizing and improving the readability of the Rule. FINRA proposes changes to the following areas: (1) Filing requirements; (2) filing requirements for shelf offerings; (3) exemptions from filing and substantive requirements; (4) underwriting

⁴ FINRA does not approve or disapprove an offering; rather, the review relates solely to the FINRA rules governing underwriting terms and arrangements and does not purport to express any determination of compliance with any federal or state laws, or other regulatory or self-regulatory requirements regarding the offering. A member may proceed with a public offering only if FINRA has provided an opinion that it has no objection to the proposed underwriting terms and arrangements. See current Rule 5110(b)(4)(B)(ii). See also proposed Rule 5110(a)(1)(C)(ii).

⁵ In recognition of the expansion in the variety of services provided by members to their corporate financing clients, such as venture capital investment, financial consulting, commercial lending, hedging risk through derivative transactions and investment banking services, the Rule was revised in 2004 to accommodate the expanded corporate financing activities of members, while protecting issuers and investors from unreasonable or coercive practices. See Securities Exchange Act Release No. 48989 (December 23, 2003), 68 FR 75684 (December 31, 2003) (Order Approving File No. SR-NASD-2000-04). See also *Notice to Members 04-13* (February 2004).

⁶ Because the review began before FINRA initiated formal retrospective review procedures, it did not follow the specific procedures that are now followed.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ The following are examples of public offerings that are routinely filed: (1) Initial public offerings (“IPOs”); (2) follow-on offerings; (3) shelf offerings; (4) rights offerings; (5) offerings by direct participation programs (“DPPs”) as defined in FINRA Rule 2310(a)(4) (Direct Participation Programs); (6) offerings by real estate investment trusts (“REITs”); (7) offerings by a bank or savings and loan association; (8) exchange offerings; (9) offerings pursuant to SEC Regulation A; and (10) offerings by closed-end funds.

compensation; (5) venture capital exceptions; (6) treatment of non-convertible or non-exchangeable debt securities and derivatives; (7) lock-up restrictions; (8) prohibited terms and arrangements; and (9) defined terms.⁷ The changes to these areas should lessen the regulatory costs and burdens incurred when complying with the Rule.

Filing Requirements

The proposed rule change would amend Rule 5110's filing requirements to create a process that is both more flexible and more efficient for members. The proposed rule change would allow members more time to make the required filings with FINRA (from one business day after filing with the SEC or a state securities commission or similar state regulatory authority to three business days).⁸ This change is intended to help with logistical issues or inadvertent delays in making filings without impeding FINRA's ability to timely review the underwriting terms and arrangements.

The proposed rule change would clarify and further reduce the types of documents and information that must be filed by directing members to provide the SEC document identification number if available,⁹ and require filing: (1) Industry-standard master forms of agreement *only* if specifically requested to do so by FINRA;¹⁰ (2) amendments to previously filed documents *only* if there have been changes relating to the disclosures that impact the underwriting terms and arrangements for the public offering in those

documents;¹¹ (3) a representation as to whether any associated person or affiliate of a participating member is a beneficial owner of 5 percent or more of "equity and equity-linked securities";¹² and (4) an estimate of the maximum value for each item of underwriting compensation.¹³

The proposed rule change would clarify that a member participating in an offering is not required to file with FINRA if the filing has been made by another member participating in the offering.¹⁴ In addition, rather than providing a non-exhaustive list of types of public offerings that are required to be filed, the proposed rule change would instead state that a public offering in which a member participates must be filed for review unless exempted by the Rule.¹⁵ The proposed rule change would clarify the general standard that no member may engage in the distribution or sale of securities unless FINRA has provided an opinion that it has no objection to the proposed underwriting terms and arrangements.¹⁶ The proposed rule change also would clarify that any member acting as a managing underwriter or in a similar capacity must notify the other members participating in the public offering if informed of an opinion by FINRA that the underwriting terms and arrangements are unfair and unreasonable and the proposed terms and arrangements have not been appropriately modified.¹⁷ Providing members with more time to file relevant documents and information and reducing the filing of duplicative or otherwise unnecessary documents and information would lessen members' filing burdens while maintaining the Rule's important protections for market participants.

The new provision addressing terminated offerings provides that, when an offering is not completed according to the terms of an agreement entered into by the issuer and a

member, but the member has received underwriting compensation, the member must give written notification to FINRA of all underwriting compensation received or to be received, including a copy of any agreement governing the arrangement.¹⁸ Information regarding underwriting compensation received or to be received in terminated offerings is relevant to FINRA's evaluation of compliance with Rule 5110 and, in particular, paragraph (g)(5) of the proposed Rule. This new provision would allow FINRA to provide more effective oversight when a member's services have been terminated.

Filing Requirements for Shelf Offerings

Issuers meeting specified reporting history and other requirements are eligible to use shelf registration statements. A shelf-eligible issuer can use a shelf takedown to publicly offer securities on a continuous or delayed basis to meet funding needs or to take advantage of favorable market windows. Public offerings by some shelf-eligible issuers have historically been exempt from Rule 5110's filing requirement; however, for the reasons discussed below, public offerings by other shelf-eligible issuers have historically been subject to Rule 5110's filing requirement. The proposed rule change would codify the historical standards for public offerings that are exempt from the filing requirement and would streamline the filing requirements for shelf offerings that remain subject to the filing requirement.

Public Offerings Exempt From the Filing Requirement

Substantively consistent with the current Rule, the proposed rule change would exempt from Rule 5110's filing requirement a public offering by an "experienced issuer" (*i.e.*, an issuer with a 36-month reporting history and at least \$150 million aggregate market value of voting stock held by non-affiliates or, alternatively, the aggregate market value of voting stock held by non-affiliates is at least \$100 million and the issuer has an annual trading volume of three million shares or more

⁷ As discussed below, the proposal retains the current approach to itemized disclosure of underwriting compensation, but makes explicit the existing practice of disclosing specified material terms and arrangements related to underwriting compensation, such as exercise terms, in the prospectus. In addition, the proposed rule change does not include any changes to current Rule 5110(h) (Non-Cash Compensation). These provisions are the subject of a separate consolidated approach to non-cash compensation. See *Regulatory Notice* 16-29 (August 2016).

⁸ See proposed Rule 5110(a)(3)(A). The documents and information required to be filed under Rule 5110 are filed in FINRA's Public Offering System ("FINRA System") for review and, if available, the associated SEC document identification number should be provided. See proposed Rule 5110(a)(4).

⁹ Depending on the filing type, an SEC document identification number could include a document control number, document file number or accession number. For purposes of clarity, the lack of an SEC document identification number does not obviate the need to submit the documents and information set forth in proposed Rule 5110(a)(4).

¹⁰ See proposed Rule 5110(a)(4)(A)(ii). A member may use a master form of agreement which is a standard form used across like offerings and transactions in which the member participates (*e.g.*, a master agreement among underwriters).

¹¹ See proposed Rule 5110(a)(4)(A)(iii).

¹² See proposed Rule 5110(a)(4)(B)(iii) and proposed Rule 5110(j)(7). Contrast with current Rule 5110(b)(6)(A)(iii), which requires a statement or association related to "any class of the issuer's securities."

¹³ See proposed Rule 5110(a)(4)(B)(ii).

¹⁴ See proposed Rule 5110(a)(3)(B). Participating members are responsible for filing public offerings with FINRA. While an issuer may file an offering with FINRA if a participating member has not yet been engaged, a participating member must assume filing responsibilities once it has been engaged. As discussed *infra*, issuer filings continue to be permitted for shelf offerings.

¹⁵ See proposed Rule 5110(a)(2). As discussed *infra*, the proposed rule change would add the defined term "public offering" to Rule 5110.

¹⁶ See proposed Rule 5110(a)(1)(C).

¹⁷ See proposed Rule 5110(a)(1)(B).

¹⁸ See proposed Rule 5110(a)(4)(C) and proposed Rule 5110(g)(5). In 2014, FINRA amended Rule 5110 to expand and specify the circumstances under which underwriting compensation in excess of a reimbursement of out-of-pocket expenses, such as termination fees and rights of first refusal ("ROFR"), could be received in connection with an offering that was not completed or when a member was terminated from an offering. See Securities Exchange Act Release No. 72114 (May 7, 2014), 79 FR 27355 (May 13, 2014) (Order Approving File No. SR-FINRA-2014-004).

in the stock).¹⁹ Unless subject to another exemption, public offerings of issuers that do not meet the reporting history or float requirement to be codified in the experienced issuer definition have historically been subject to Rule 5110's filing requirement, including shelf offerings by these issuers.

Public Offerings Subject to the Filing Requirement

There are many benefits for eligible issuers in using a shelf registration statement, including the ability of issuers to take advantage of favorable market conditions on short notice to quickly raise capital through takedown offerings. While shelf offerings have historically been less likely to have compliance problems, previously filed shelf offerings have given rise to issues under Rule 5110, including those related to: (1) Excessive underwriting compensation; (2) indeterminate underwriting compensation in the form of convertible debt or equity securities that do not have a market value; (3) undisclosed underwriting compensation, primarily in the form of uncapped expense reimbursements; and (4) termination fees and ROFRs that do not satisfy the Rule's requirements.

Given the issues that have arisen in shelf offerings, the proposed rule change would continue to apply Rule 5110's filing requirement to shelf offerings by issuers that do not meet the "experienced issuer" standard. However, to facilitate the ability of issuers to take advantage of favorable market conditions on short notice to quickly raise capital through takedown offerings, the proposed rule change would streamline the filing requirements for shelf offerings. The proposed rule change would provide that only the following documents and information must be filed: (1) The Securities Act of 1933 ("Securities Act") registration statement number; and (2) if specifically requested by FINRA, other documents and information set forth in Rule 5110(a)(4)(A) and (B).²⁰

FINRA would access the base shelf registration statement, amendments and prospectus supplements in the SEC's Electronic Data Gathering, Analysis, and Retrieval ("EDGAR") system and

populate the information necessary to conduct a review in the FINRA System. Upon filing of the required registration statement number and documents and information, if any, that FINRA requested pursuant to proposed Rule 5110(a)(4)(E), FINRA would provide the no objections opinion. To further facilitate issuers' ability to timely access capital markets, FINRA's review of documents and information related to a shelf takedown offering for compliance with Rule 5110 would occur on a post-takedown basis.²¹

Exemptions From Filing and Substantive Requirements

Rule 5110 includes two categories of exempt public offerings—offerings that are exempt from filing, but remain subject to the substantive provisions of Rule 5110, and offerings that are exempt from both the filing requirements and substantive provisions of Rule 5110. The proposed rule change would expand and clarify the scope of the exemptions, which is expected to reduce members' filing and compliance costs.

Consistent with historical practice in interpreting the exemption that is currently available to corporate issuers, the proposed rule change would clarify that securities of banks that have qualifying outstanding debt securities are exempt from the filing requirement.²²

The proposed rule change would also expand the current list of offerings that are exempt from both the filing requirements and substantive provisions of Rule 5110 to include public offerings of closed-end "tender offer" funds (*i.e.*, closed-end funds that repurchase shares from shareholders pursuant to tender offers), insurance contracts and unit investment trusts.²³ Exempting these public offerings is appropriate because they relate to highly regulated entities governed by the Investment Company Act of 1940 ("Investment Company Act") whose offering terms would be subject to FINRA Rule 2341 (Investment Company Securities). In addition, as discussed *infra*, in response to comments to the *Notice 17-15* Proposal, the proposed rule change reclassifies three items from the offerings exempt from filing and rule compliance to

offerings excluded from the definition of public offering. The three items are: (1) Offerings exempt from registration with the SEC pursuant to Section 4(a)(1), (2) and (6) of the Securities Act; (2) offerings exempt from registration under specified SEC Regulation D provisions; and (3) offerings of exempted securities as defined in Section 3(a)(12) of the Exchange Act. This reclassification is consistent with the treatment of such offerings in FINRA Rule 5121 (Public Offerings of Securities With Conflicts of Interest).²⁴

Disclosure Requirements

The SEC's Regulation S-K requires fees and expenses identified by FINRA as underwriting compensation to be disclosed in the prospectus.²⁵ The *Notice 17-15* Proposal would have modified Rule 5110's underwriting compensation disclosure requirements. Although a description of each item of underwriting compensation would have been required to be disclosed, the *Notice 17-15* Proposal would have no longer required that the disclosure include the dollar amount ascribed to each individual item of compensation. Rather, the *Notice 17-15* Proposal would have permitted a member to disclose the maximum aggregate amount of all underwriting compensation, except the discount or commission that must be disclosed on the cover page of the prospectus.

FINRA is no longer proposing to eliminate the itemized disclosure that Rule 5110 currently requires. As discussed in Item II.C. *infra*, commenters had conflicting views on the proposed change to allow aggregation of underwriting compensation with one commenter stating that the itemized disclosure may be beneficial for investors in better understanding the underwriting compensation paid and incentives that may be present in the public offering. Recognizing commenters' conflicting views, the proposed rule change would retain the current requirements for itemized disclosure of underwriting compensation and disclosing dollar amounts ascribed to each such item.²⁶ The proposed rule change would incorporate the requirements for disclosure of specified material terms and arrangements that are consistent with current practice.²⁷

¹⁹ The proposed rule change would delete references to the pre-1992 standards for Form S-3 and standards approved in 1991 for Form F-10 and instead codify the requirement that the issuer have a 36-month reporting history and at least \$150 million aggregate market value of voting stock held by non-affiliates or alternatively the aggregate market value of voting stock held by non-affiliates is at least \$100 million and the issuer has an annual trading volume of three million shares or more in the stock. See proposed Rule 5110(j)(6).

²⁰ See proposed Rule 5110(a)(4)(E).

²¹ Issuers would continue to be permitted to file a base shelf registration statement in anticipation of retaining a member to participate in a takedown offering.

²² See proposed Rule 5110(h)(1)(A). The exemption has historically been interpreted to apply to qualifying securities offered by a bank; however, the lack of a specific reference to bank securities in the Rule text has raised questions by members.

²³ See proposed Rule 5110(h)(2)(E), (K) and (L).

²⁴ See proposed Rule 5110(j)(18).

²⁵ See 17 CFR 229.508(e).

²⁶ See proposed Rule 5110(b)(1) and Supplementary Material .05 to Rule 5110. See also proposed Rule 5110(e)(1)(B) requiring disclosure of lock-ups.

²⁷ See proposed Supplementary Material .05 to Rule 5110.

The *Notice 17–15* Proposal also included an explicit requirement to disclose specified material terms and arrangements in the prospectus. The current proposal includes the same obligation, which makes explicit the existing practice of disclosing specified material terms and arrangements related to underwriting compensation in the prospectus. This explicit provision would require a description for: (1) Any ROFR granted to a participating member and its duration; and (2) the material terms and arrangements of the securities acquired by the participating member (e.g., exercise terms, demand rights, piggyback registration rights and lock-up periods).²⁸

Underwriting Compensation

The proposed rule change would clarify what is considered underwriting compensation for purposes of Rule 5110. As an initial matter, the proposed rule change would consolidate the various provisions of the current Rule that address what constitutes underwriting compensation into a single, new definition of “underwriting compensation.” Underwriting compensation would be defined to mean “any payment, right, interest, or benefit received or to be received by a participating member from any source for underwriting, allocation, distribution, advisory and other investment banking services in connection with a public offering.” Underwriting compensation would also include “finder’s fees, underwriter’s counsel fees and securities.”²⁹

Rule 5110 currently provides that all items of value received or to be received from any source are presumed to be underwriting compensation when received during the period commencing 180 days before the required filing date of the registration statement, and up to 90 days following the effectiveness or commencement of sales of a public offering.³⁰ However, this approach may not reflect the various types of offerings subject to Rule 5110. For example, a best efforts offering may be distributed for months or years and underwriters may receive compensation throughout the offering period, or a base shelf registration statement may become effective months or years before a

takedown offering for which an underwriter is compensated.

To better reflect the different types of offerings subject to Rule 5110, the proposed rule change would introduce the defined term “review period” and the applicable time period would vary based on the type of offering. Specifically, the proposed rule change would define the review period to mean: (1) For a firm commitment offering, the 180-day period preceding the required filing date through the 60-day period following the effective date of the offering; (2) for a best efforts offering, the 180-day period preceding the required filing date through the 60-day period following the final closing of the offering; and (3) for a firm commitment or best efforts takedown or any other continuous offering made pursuant to Securities Act Rule 415, the 180-day period preceding the required filing date of the takedown or continuous offering through the 60-day period following the final closing of the takedown or continuous offering.³¹ Accordingly, payments and benefits received during the applicable review period would be considered in evaluating underwriting compensation.

The proposed rule change would continue to provide two non-exhaustive lists of examples of payments or benefits that would be and would not be considered underwriting compensation.³² Although the Rule would no longer incorporate the concept of “items of value” (i.e., the non-exhaustive list of payments and benefits that would be included in the underwriting compensation calculation), the proposed non-exhaustive lists are derived from the examples of payments or benefits that currently are considered and not considered items of value. The proposed examples of payments or benefits that would be underwriting compensation is comparable to the list of items of value in the current Rule with some additional clarifying changes. For example, the proposed rule change would expand the current item of value related to reimbursement of expenses to provide that fees and expenses paid or reimbursed to, or paid on behalf of, the participating members, including but not limited to road show fees and expenses and due diligence expenses, would be underwriting compensation.³³

Consistent with current practice, the proposed rule change would also include in underwriting compensation non-cash compensation.³⁴

The proposed examples of payments or benefits that would not be underwriting compensation include several new examples to provide greater clarity and to address questions raised by members. For instance, in response to questions from members, the proposed rule change would clarify that payments for records management and advisory services received by members in connection with some corporate reorganizations would not be considered underwriting compensation.³⁵ Similarly, the proposed rule change would clarify that the payment or reimbursement of legal costs resulting from a contractual breach or misrepresentation by the issuer would not be considered underwriting compensation.³⁶ The proposed rule change also would clarify that securities acquired pursuant to a governmental or court approved proceeding or plan of reorganization as a result of action by the government or court (e.g., bankruptcy or tax court proceeding) would not be considered underwriting compensation.³⁷ These payments are for services beyond the traditional scope of underwriting activities and, therefore, are appropriately excluded from the coverage of Rule 5110.

In addition, to give members reasonable flexibility with respect to issuer securities acquired in certain circumstances, the proposed rule change would take a principles-based approach in considering whether issuer securities acquired from third parties or in directed sales programs may be excluded from underwriting compensation. This principles-based approach starts with the presumption that the issuer securities received during the review period would be underwriting compensation. However, FINRA would consider the factors set forth in proposed Supplementary Material to Rule 5110 and discussed below in determining whether the securities may be excluded from

reimbursed to, or paid on behalf of, the participating members (except for reimbursement of “blue sky” fees) as underwriting compensation.

²⁸ See proposed Supplementary Material .01(a)(14) to Rule 5110.

²⁹ See proposed Supplementary Material .01(b)(3) to Rule 5110.

³⁰ See proposed Supplementary Material .01(b)(4) to Rule 5110.

³¹ See proposed Supplementary Material .01(b)(22) to Rule 5110. See also comments from ABA, Davis Polk and SIFMA discussed in Item II.C *infra*.

²⁸ See proposed Supplementary Material .05 to Rule 5110.

²⁹ See proposed Rule 5110(j)(22).

³⁰ See current Rule 5110(d)(1). See also current Rule 5110(b)(6)(A)(vi)b, which provides that details of any new arrangement entered into within 90 days following the date of effectiveness or commencement of sales of the public offering must be filed.

³¹ See proposed Rule 5110(j)(20).

³² See proposed Supplementary Material .01 to Rule 5110.

³³ See proposed Supplementary Material .01(a)(2) to Rule 5110. See also proposed Supplementary Material .01(a)(3) and (4) to Rule 5110 which includes fees and expenses of participating members’ counsel and finder’s fees paid or

underwriting compensation.³⁸ A participating member is responsible for providing documents and information sufficient for FINRA to consider in applying the factors to a particular securities acquisition.

With respect to issuer securities received from third parties, it is important to note that the proposed definition of “underwriting compensation” would include payments, rights, interests, or benefits received or to be received by a participating member *from any source* for underwriting, allocation, distribution, advisory and other investment banking services in connection with a public offering. However, some acquisitions of issuer securities from third parties for purposes unconnected to underwriting compensation should not be deemed underwriting compensation (*e.g.*, securities acquired in ordinary course transactions executed over a participating member’s trading desk during the review period from third parties).

To address these situations, the proposed rule change uses a principles-based approach to considering whether securities of the issuer acquired from third parties may be excluded from underwriting compensation. Specifically, under proposed Supplementary Material .03 to Rule 5110, FINRA would consider the following factors, as well as any other relevant factors and circumstances: (1) The nature of the relationship between the issuer and the third party, if any; (2) the nature of the transactions in which the securities were acquired, including, but not limited to, whether the transactions are engaged in as part of the participating member’s ordinary course of business; and (3) any disparity between the price paid and the offering price or market price.

With respect to issuer securities acquired in directed sales programs (commonly called friends and family programs), it is important to note that the proposed definition of “participating member” includes any FINRA member that is participating in a public offering, any affiliate or associated person of the member, and any immediate family of an associated person of the member, but does not include the issuer.³⁹ However, associated persons and their immediate family members may have relationships with issuers that motivate the issuer to sell these persons shares in directed

sales programs. These acquisitions may be unrelated to the investment banking services provided by the participating member.

To address these situations, under the proposed rule change FINRA would take a principles-based approach to considering whether an acquisition of securities by a participating member pursuant to an issuer’s directed sales program may be excluded from underwriting compensation. Specifically, under proposed Supplementary Material .04 to Rule 5110, FINRA would consider the following factors, as well as any other relevant factors and circumstances: (1) The existence of a pre-existing relationship between the issuer and the person acquiring the securities; (2) the nature of the relationship; and (3) whether the securities were acquired on the same terms and at the same price as other similarly-situated persons participating in the directed sales program.

Venture Capital Exceptions

Rule 5110 currently provides exceptions designed to distinguish securities acquired in bona fide venture capital transactions from those acquired as underwriting compensation (for brevity, referred to herein as the “venture capital exceptions”).⁴⁰ Recognizing that bona fide venture capital transactions contribute to capital formation, the proposed rule change would modify, clarify and expand the exceptions to further facilitate members’ participation in bona fide venture capital transactions. Importantly, the venture capital exceptions would include several restrictions to ensure the protection of other market participants and that the exceptions are not misused to circumvent the requirements of Rule 5110.

The proposed rule change would no longer treat as underwriting compensation securities acquisitions covered by two of the current exceptions: (1) Securities acquisitions and conversions to prevent dilution; and (2) securities purchases based on a prior investment history. This treatment is conditioned on prior investments in the issuer occurring before the review period. When subsequent securities acquisitions take place (*e.g.*, as a result of a stock split, a right of preemption, a securities conversion, or when additional securities are acquired to prevent dilution of a long-standing interest in the issuer), the acquisition of the additional securities should not be treated as underwriting compensation.

Accordingly, the proposed rule change would add these acquisitions to the list of examples of payments that are not underwriting compensation because they are based on a prior investment history and are subject to the terms of the original securities that were acquired before the review period.⁴¹

The proposed rule change also would broaden two of the current venture capital exceptions regarding purchases and loans by certain affiliates, and investments in and loans to certain issuers, by removing a limitation on acquiring more than 25 percent of the issuer’s total equity securities.⁴² The 25 percent threshold limits each member and its affiliates from acquiring more than 25 percent of the issuer’s total equity securities, which typically establishes a control relationship. The threshold, which was codified in 2004, provided protection from overreaching by members at a time when there was a concern about limiting the aggregate amount of equity acquired in pre-offering transactions. Subsequent regulatory changes in other areas, such as the 2009 revision of Rule 5121 regarding public offerings with a conflict of interest,⁴³ have added protections and are more appropriate to address acquisitions that create control relationships.

These venture capital exceptions specify that the affiliate must be primarily in the business of making investments or loans. The proposed rule change expands the scope of these exceptions to include that the affiliate, directly or through a subsidiary it controls, must be in such business and further permits that the entity may be newly formed by such affiliate. Expanding the scope of the exceptions to cover direct, indirect or newly formed entities that are in the business of making investments and loans acknowledges the different structures that may be used to participate in bona fide venture capital transactions.⁴⁴

Another venture capital exception relates to private placements with institutional investors. The exception would be available only when the institutional investors participating in the offering are not affiliates of a FINRA member. This ensures that such institutional investors are independent

⁴¹ See proposed Supplementary Material .01(b)(14), (16–18).

⁴² See proposed Rule 5110(d)(1) and (2).

⁴³ Rule 5121 requires prominent disclosure of conflicts and, for certain types of conflicts, the participation of a qualified independent underwriter (“QIU”) in the preparation of the registration statement.

⁴⁴ See proposed Rule 5110(d)(1)(D) and (d)(2)(A)(iv).

³⁸ See proposed Supplementary Material .03 and .04 to Rule 5110.

³⁹ See proposed Rule 5110(j)(15).

⁴⁰ See current Rule 5110(d)(5).

sources of capital. The provision is further clarified to require that the institutional investors must purchase at least 51 percent of the total number of securities sold in the private placement at the same time and on the same terms. In addition, the proposed rule change would raise the percent that participating members in the aggregate may acquire from 20 to 40 percent of the securities sold in the private placement.⁴⁵ These private placements typically occur before the syndicate is formed and, therefore, members may not know at the time whether their participation in the private placement would impact the issuer's future public offering by triggering the threshold. Because exceeding the threshold would subject members to the compensation limits, disclosure provisions and lock-up provisions of the Rule, the current 20 percent threshold reduces the number of members available for the syndicate. Increasing the threshold would allow more members to participate in the private placement and any subsequent public offering. An increase in the threshold is appropriate and raising it to 40 percent: (1) Would not materially change the operation of the exception, as the securities acquired in the private placement would remain subject to the other conditions in the exception; and (2) would benefit issuers that are in the process of assembling a syndicate.

In response to comments to the *Notice 17-15 Proposal*, the proposed rule change would expand the scope of proposed Rule 5110(d)(3) to include providing services for a private placement (rather than just acting as a placement agent).⁴⁶ Members' roles in acting as placement agents and in providing other services in private placements (e.g., acting as a finder or a financial advisor) similarly facilitate offerings. As such, expanding the current venture capital exception beyond securities received for acting as a placement agent to include securities received for providing services for a private placement is appropriate.

Where a highly regulated entity with significant disclosure requirements and independent directors who monitor investments is also making a significant co-investment in an issuer and is receiving securities at the same price and on the same terms as the participating member, the securities acquired by the participating member in a private placement are less likely to be underwriting compensation. To address such co-investments, the proposed rule

change would adopt a new venture capital exception from underwriting compensation for securities acquired in a private placement before the required filing date of the public offering by a participating member if at least 15 percent of the total number of securities sold in the private placement were acquired, at the same time and on the same terms, by one or more entities that is an open-end investment company not traded on an exchange, and no such entity is an affiliate of a FINRA member participating in the offering. These conditions lessen the risk that the co-investment would be made for the purpose of providing undervalued securities to a participating member in return for acting as an underwriter.

A public offering may be significantly delayed for legitimate reasons (e.g., unfavorable market conditions) and during this delay the issuer may require funding. Furthermore, a member may make bona fide investments in or loans to the issuer during this delay to satisfy the issuer's funding needs and any securities acquired as a result of this funding may be unrelated to the anticipated public offering. The proposed rule change would provide some additional flexibility in the availability of the venture capital exceptions for securities acquired where the public offering has been significantly delayed.

The proposed rule change would take a principles-based approach where a public offering has been significantly delayed and the issuer needs funding in considering whether it is appropriate to treat as underwriting compensation securities acquired by a member after the required filing date in a transaction that, except for the timing, would otherwise meet the requirements of a venture capital exception. This principles-based approach starts with the presumption that the venture capital exception would not be available where the securities were acquired after the required filing date. However, FINRA would consider the factors in proposed Supplementary Material .02 in determining whether securities acquired in a transaction that occurs after the required filing date, but otherwise meets the requirements of a venture capital exception, may be excluded from underwriting compensation.

Specifically, FINRA would consider the following principles, as well as any other relevant factors and circumstances: (1) The length of time between the date of filing of the registration statement or similar document and the date of the transaction in which securities were acquired; (2) the length of time between

the date of the transaction in which the securities were acquired and the anticipated commencement of the public offering; and (3) the nature of the funding provided, including, but not limited to the issuer's need for funding before the public offering. A participating member is responsible for providing documents and information sufficient for FINRA to consider in applying the principles to a particular securities acquisition.

Treatment of Non-Convertible or Non-Exchangeable Debt Securities and Derivatives

The proposed rule change would clarify the treatment of non-convertible or non-exchangeable debt securities and derivative instruments.⁴⁷ The proposed rule change would expressly provide that non-convertible or non-exchangeable debt securities and derivative instruments acquired in a transaction *unrelated* to a public offering would *not* be underwriting compensation.⁴⁸ Accordingly, the non-convertible or non-exchangeable debt securities and derivative instruments acquired in a transaction *unrelated* to a public offering would *not* be subject to Rule 5110 (i.e., a description of the non-convertible or non-exchangeable debt securities and derivative instruments need not be filed with FINRA,⁴⁹ there are no valuation-related requirements and the lock-up restriction does not apply).

In contrast, non-convertible or non-exchangeable debt securities and derivative instruments acquired in a transaction *related* to a public offering would be underwriting compensation. For any non-convertible or non-exchangeable debt securities and derivative instruments acquired in a transaction *related* to the public offering, the proposed rule change would clarify that: (1) A description of those securities and derivative instruments must be filed with FINRA; and (2) this description must be accompanied by a representation that a registered principal or senior manager of the participating member has determined if the transaction was or will be entered into at a fair price.⁵⁰

⁴⁷ Consistent with the current Rule, the proposed rule change would define the term "derivative instrument" to mean any eligible OTC derivative instrument as defined in Exchange Act Rule 3b-13(a)(1), (2) and (3). See proposed Supplementary Material .06(b) to Rule 5110.

⁴⁸ See proposed Supplementary Material .01(b)(19) to Rule 5110.

⁴⁹ See proposed Rule 5110(a)(4)(B)(iv)b.

⁵⁰ See proposed Rule 5110(a)(4)(B)(iv)a. Generally consistent with current Rule 5110, the proposed rule change would define the term "fair price" to

⁴⁵ See proposed Rule 5110(d)(3)(C).

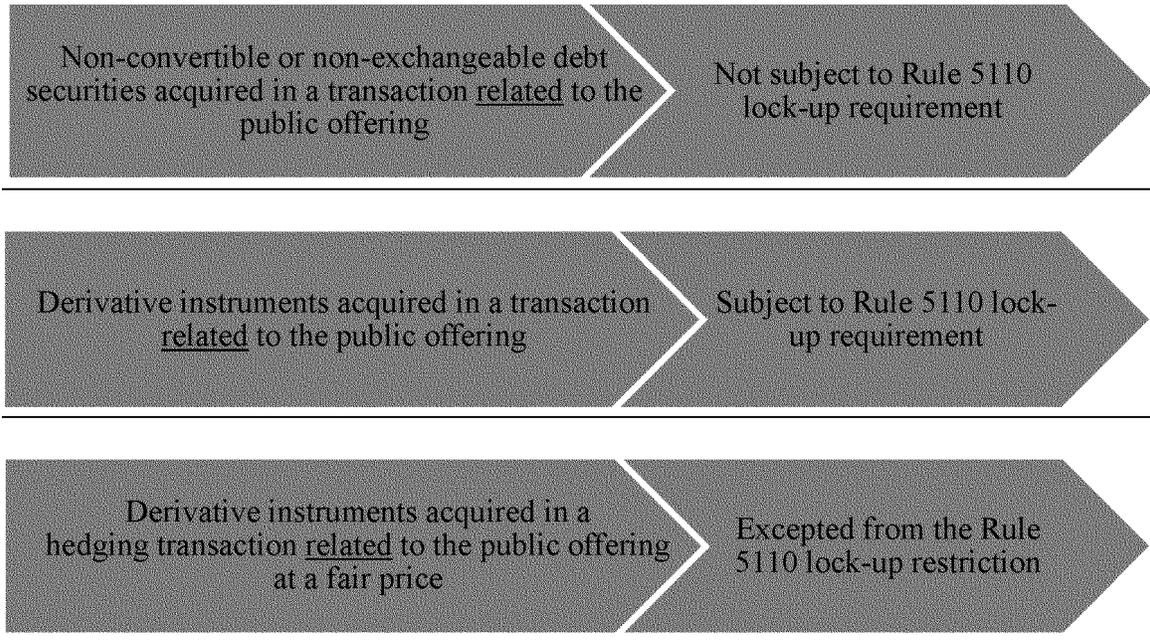
⁴⁶ See proposed Rule 5110(d)(3) and Item II.C. *infra*.

The proposed rule change would also clarify that the valuation depends upon whether the non-convertible or non-exchangeable debt securities or derivative instruments acquired in a transaction *related* to a public offering were or were not acquired at a fair price. Specifically, the proposed rule change would clarify that non-convertible or

non-exchangeable debt securities and derivative instruments acquired at a *fair price* would be considered underwriting compensation but would have *no* compensation value. In contrast, the proposed rule change would provide that non-convertible or non-exchangeable debt securities and derivative instruments *not* acquired at a

fair price would be considered underwriting compensation and subject to the *normal valuation requirements* of Rule 5110.⁵¹

The following charts provide an overview of the treatment of non-convertible or non-exchangeable debt securities and derivative instruments under Rule 5110.



Lock-Up Restrictions

Subject to some exceptions, Rule 5110 requires in any public equity offering a 180-day lock-up restriction on securities that are considered underwriting compensation. During the lock-up period, securities that are underwriting compensation are restricted from sale or transfer and may not be pledged as collateral or made subject to any derivative contract or other transaction that provides the effective economic benefit of sale or other prohibited disposition.⁵² Because a prospectus may become effective long before the commencement of sales, the proposed rule change would provide that the lock-up period begins on the date of commencement of sales of the public equity offering (rather than the date of effectiveness of the prospectus).⁵³ The

mean the participating members have priced a derivative instrument or non-convertible or non-exchangeable debt security in good faith; on an arm's length, commercially reasonable basis; and in accordance with pricing methods and models and procedures used in the ordinary course of their business for pricing similar transactions. The proposed rule change would also clarify that a derivative instrument or other security received as compensation for providing services for the issuer,

proposed rule change also would provide that the lock-up restriction must be disclosed in the section on distribution arrangements in the prospectus or similar document consistent with proposed Supplementary Material .05 requiring disclosure of the material terms of any securities.⁵⁴

The proposed rule change would add exceptions from the lock-up restriction for clarity or to except securities where other protections or market forces obviate the need for the restriction. Due to the existing public market for securities of the issuers, the proposed rule change would add an exception from the lock-up restriction for securities acquired from an issuer that meets the registration requirements of SEC Registration Forms S-3, F-3 or F-10.⁵⁵ The proposed rule change would

for providing or arranging a loan, credit facility, merger, acquisition or any other service, including underwriting services will not be deemed to be entered into or acquired at a fair price. *See* proposed Supplementary Material .06(b) to Rule 5110.

⁵¹ *See* proposed Supplementary Material .06(a) to Rule 5110 and proposed Rule 5110(c).

⁵² Consistent with the current Rule, securities acquired by a member that are not considered

also add an exception from the lock-up restriction for securities that were acquired in a transaction meeting one of Rule 5110's venture capital exceptions.⁵⁶ While these securities would not be considered underwriting compensation and, thus, not subject to the lock-up restriction, the exception would provide additional clarity with respect to these securities.

The proposed rule change would also add an exception from the lock-up restriction for securities that were received as underwriting compensation and are registered and sold as part of a firm commitment offering.⁵⁷ This is intended to give some flexibility to members in selling securities received as underwriting compensation, while limiting the proposed exception to firm commitment offerings where the underwriter has assumed the risk of

underwriting compensation would not be subject to the lock-up restrictions of Rule 5110.

⁵³ *See* proposed Rule 5110(e)(1)(A).

⁵⁴ *See* proposed Rule 5110(e)(1)(B).

⁵⁵ *See* proposed Rule 5110(e)(2)(A)(iii).

⁵⁶ *See* proposed Rule 5110(e)(2)(A)(vi).

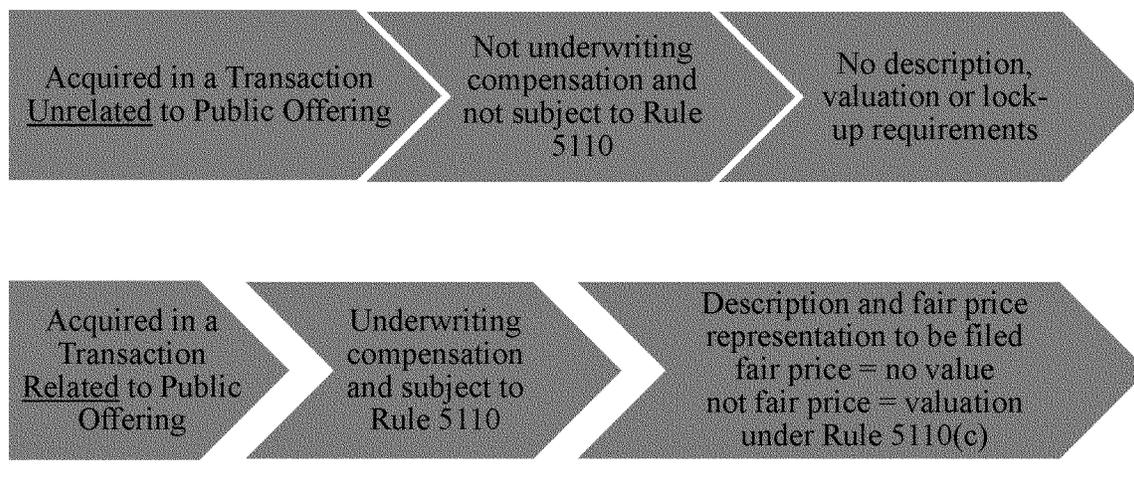
⁵⁷ *See* proposed Rule 5110(e)(2)(A)(viii) and Item II.C. discussion *infra*.

marketing and distributing an offering that includes securities the underwriter received as underwriting compensation. In addition, firm commitment offers are usually marketed and sold to institutional investors, who typically

purchase a majority of the shares in such offerings.

The proposed rule change would provide clarity about the treatment of non-convertible or non-exchangeable debt securities and derivative instruments acquired in transactions

related to a public offering.⁵⁸ The following charts provide an overview of the application of Rule 5110's lock-up requirement to non-convertible or non-exchangeable debt securities and derivative instruments.



The proposed rule change also addresses members' acquisition of derivative instruments in connection with hedging transactions related to a public offering. For example, fixed-for-floating swaps are commonly used in hedging transactions in connection with offerings of debt securities. These hedging transactions would not be effective if the derivative securities were subject to lock-up restrictions. Accordingly, the proposed rule change would provide that the lock-up restriction does not apply to derivative instruments acquired in connection with a hedging transaction related to the public offering and at a fair price.⁵⁹ Derivative instruments acquired in transactions related to the public offering that do not meet the requirements of the exception would continue to be subject to the lock-up restriction.

In addition, the proposed rule change would add an exception to the lock-up restriction to permit the transfer or sale of the security back to the issuer in a transaction exempt from registration with the SEC.⁶⁰ These transactions do not put selling pressure on the secondary market that the lock-up is designed to prevent. The proposed rule

change would also modify the lock-up exception in current Rule 5110(g)(2)(A)(ii) to permit the transfer of any security to the member's registered persons or affiliates if all transferred securities remain subject to the restriction for the remainder of the lock-up period.⁶¹

Finally, because proposed Supplementary Material .01(b)(20) would provide that securities acquired subsequent to the issuer's IPO in a transaction exempt from registration under Securities Act Rule 144A would not be underwriting compensation, the proposed rule change would correspondingly delete as unnecessary the current exception from the lock-up restriction for those securities.⁶²

Prohibited Terms and Arrangements

Rule 5110 includes a list of prohibited unreasonable terms and arrangements in connection with a public offering of securities. The proposed rule change would clarify and amend the list, such as clarifying the scope of relevant activities that would be deemed related to the public offering⁶³ and referring to the commencement of sales of the public offering (rather than the date of effectiveness) in relation to the receipt of underwriting compensation

consisting of any option, warrant or convertible security with specified terms.⁶⁴

The proposed rule change would also clarify that it would be considered a prohibited arrangement for any underwriting compensation to be paid prior to the commencement of sales of public offering, except: (1) An advance against accountable expenses actually anticipated to be incurred, which must be reimbursed to the issuer to the extent not actually incurred; or (2) advisory or consulting fees for services provided in connection with the offering that subsequently is completed according to the terms of an agreement entered into by an issuer and a participating member.⁶⁵ The proposed rule change recognizes the practical issue that certain fees and expenses, including advisor or consultant fees, may be incurred before the offering is sold and allows such fees so long as the services are in connection with an offering that is completed in accordance with the agreement between the issuer and the participating member.

The proposed rule change would also simplify a provision that relates to payments made by an issuer to waive or terminate a ROFR to participate in a

⁵⁸ See proposed Rule 5110(e)(2)(A)(iv).

⁵⁹ See proposed Rule 5110(e)(2)(A)(v).

⁶⁰ See proposed Rule 5110(e)(2)(B)(iii).

⁶¹ See proposed Rule 5110(e)(2)(B)(i). The proposed rule change would retain the current exception to the lock up for the exercise or conversion of any security, if all such securities

received remain subject to the lock-up restriction for the remainder of the 180-day lock-up period. See proposed Rule 5110(e)(2)(B)(ii).

⁶² See current Rule 5110(g)(2)(A)(viii).

⁶³ See proposed Rule 5110(g)(11). Specifically, to clarify the scope, the proposed rule change would refer to "solicitation, marketing, distribution or

sales of the offering" rather than the current "distribution or assisting in the distribution of the issue, or for the purpose of assisting in any way in connection with the underwriting."

⁶⁴ See proposed Rule 5110(g)(8).

⁶⁵ See proposed Rule 5110(g)(4).

future capital-raising transaction.⁶⁶ The application of this provision has been challenging for members, particularly in circumstances where the terms of the future offering had not been negotiated at the time of the proposed public offering. The proposed rule change would, however, retain the prohibition on any non-cash payment or fee to waive or terminate a ROFR.⁶⁷

Defined Terms

In addition to consolidating the defined terms in one location at the end of the Rule, the proposed rule change would simplify and clarify Rule 5110's defined terms. Most notably, the proposed rule change would make the terminology more consistent throughout the Rule's various provisions. For example, the proposed rule change would consolidate the various provisions of the current Rule that address what constitutes underwriting compensation into a single, new definition of "underwriting compensation."⁶⁸

The proposed rule change would also add consistency and clarity to the scope of persons covered by the Rule. Rule 5110 currently alternates between using the defined term "underwriter and related persons" (which includes underwriter's counsel, financial consultants and advisors, finders, any participating member, and any other persons related to any participating member)⁶⁹ and the defined term "participating member" (which includes any FINRA member that is participating in a public offering, any affiliate or associated person of the member and any immediate family).⁷⁰ The proposed rule change would eliminate the term "underwriter and related persons" and instead use the defined term "participating member." However, the proposed definition of underwriting compensation would ensure that the Rule continues to address fees and expenses paid to persons previously covered by the term "underwriter and related persons" (e.g., underwriter's counsel fees and expenses, financial consulting and advisory fees and finder's fees).⁷¹

The proposed rule change would move the definition of "public offering" from Rule 5121 to Rule 5110.⁷² The term "public offering" is used frequently in Rule 5110 and moving it into the Rule should simplify compliance. The definition would be modified to add "made in whole or in part in the United States" to clarify the jurisdictional scope of the definition. The proposed rule change would also move, without modification, the definition of "Net Offering Proceeds" from Rule 5110 to Rule 5121 because the term is used only in Rule 5121.⁷³

In addition, the proposed rule change would modernize Rule 5110's language (e.g., by replacing references to specific securities exchanges to instead reference the definition of "national securities exchange" in the Exchange Act). Furthermore, the proposed rule change would include new defined terms to provide greater predictability for members in applying the Rule (e.g., "associated person," "experienced issuer,"⁷⁴ "equity-linked securities," "overallotment option" and "review period").

The proposed rule change would incorporate the definition of "associated person" in Article I, Section (rr) of the FINRA By-Laws. In response to comments on the Notice 17–15 Proposal, the proposed rule change would also harmonize the definition of bank in the proposed venture capital exceptions and the exemption in proposed Rule 5110(h)(1). Specifically, the proposed rule change would state that a bank is "a bank as defined in Exchange Act Section 3(a)(6) or is a

would include underwriter's counsel fees and expenses, financial consulting and advisory fees and finder's fees. As such, the definition of underwriting compensation would ensure that the Rule addresses fees and expenses paid to persons previously covered by the term "underwriter and related persons." In addition, the term "immediate family" is clarified for readability in proposed Rule 5110(j)(8) to mean the spouse or child of an associated person of a member and any relative who lives with, has a business relationship with, or provides to or receives support from an associated person of a member.

⁷² See proposed Rule 5110(j)(18). Rule 5121 would incorporate the definition in Rule 5110 by reference. See Rule 5121(f).

⁷³ See proposed Rule 5121(f)(9).

⁷⁴ As discussed *supra*, the proposed rule change would delete references to the pre-1992 standards for Form S-3 and standards approved in 1991 for Form F-10 and instead codify the requirement that the issuer have a 36-month reporting history and at least \$150 million aggregate market value of voting stock held by non-affiliates. (Alternatively, \$100 million or more aggregate market value of voting stock held by non-affiliates and an annual trading volume of at least three million shares). Issuers meeting this standard would be defined as "experienced issuers" and their public offerings would be exempt from filing, but subject to the substantive provisions of Rule 5110. See proposed Rule 5110(j)(6).

foreign bank that has been granted an exemption under this Rule and shall refer only to the regulated entity, not its subsidiaries or other affiliates." In addition, in response to comments and to clarify the scope of covered persons, the proposed rule change would revise the issuer definition to refer to the "registrant or other person" (rather than "entity" as initially proposed in the Notice 17–15 Proposal).

Valuation of Securities

Rule 5110 currently prescribes specific calculations for valuing convertible and non-convertible securities received as underwriting compensation. Rather than the specific calculations in the current Rule, the Notice 17–15 Proposal would have instead allowed valuing options, warrants and other convertible securities received as underwriting compensation based on a securities valuation method that is commercially available and appropriate for the type of securities to be valued (e.g., the Black-Scholes model for options). As discussed in Item II.C. *infra*, commenters had conflicting views on the proposed change to the valuation formula and did not provide any information regarding alternative commercially available valuation methods that may be used by members. As a result, the proposed rule change would retain the current methods for valuing options, warrants and other convertible securities received as underwriting compensation in the current Rule.⁷⁵

If the Commission approves the proposed rule change, FINRA will announce the implementation date of the proposed rule change in a *Regulatory Notice* to be published no later than 60 days following Commission approval. The implementation date will be no later than 180 days following publication of the *Regulatory Notice* announcing Commission approval.

2. Statutory Basis

The proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,⁷⁶ which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.

The proposed rule change would facilitate capital formation by

⁷⁵ See proposed Rule 5110(c).

⁷⁶ 15 U.S.C. 78o-3(b)(6).

⁶⁶ See current Rule 5110(f)(2)(F)(i).

⁶⁷ See proposed Rule 5110(g)(7).

⁶⁸ See proposed Rule 5110(j)(22).

⁶⁹ See current Rule 5110(a)(6).

⁷⁰ See current Rule 5110(a)(4).

⁷¹ Substantively consistent with the current Rule, the proposed rule change would define "participating member" to include any FINRA member that is participating in a public offering, any affiliate or associated person of the member, and any "immediate family," but does not include the issuer. See proposed Rule 5110(j)(15). While not included in the "participating member" definition, the broad definition of underwriting compensation

modernizing Rule 5110. The proposed rule change would simplify the provisions of the Rule, make it more comprehensible, and improve its administration.

For example, the proposed rule change is expected to clarify what is considered “underwriting compensation.” In addition, the proposed rule change would make the venture capital exceptions more available to members and not impinge on bona fide investments in, and loans to, issuers. In general, the proposed rule change would provide members with greater operational and financial flexibility, and reduce compliance costs.

The proposed rule change would maintain important protections for issuers and investors participating in offerings. The proposed rule change also would not decrease its ability to oversee underwriting terms and arrangements.

In totality, the proposed rule change would reduce the administrative and operational burdens for members and FINRA, promote regulatory efficiency, and enhance market functioning while maintaining issuer and investor protection.

B. Self-Regulatory Organization’s Statement on Burden on Competition

FINRA does not believe that the proposed rule change would result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. All members would be subject to the proposed amendments.

Economic Impact Assessment

FINRA considered the economic impacts on members when devising the proposed rule change. A discussion of the economic impacts is below.

Regulatory Need

Rule 5110 was last revised in 2004, and since then the capital markets and financial activities of member firms have continued to evolve.⁷⁷ The proposed change would modernize Rule 5110 through a range of amendments. The proposed change would simplify and clarify the Rule, and better align the Rule with current market practices.

Economic Baseline

The economic baseline for the proposed rule change is current Rule 5110 and its interpretation by FINRA. The proposed rule change is expected to affect participating members, issuers

and investors that participate in public offerings.

Rule 5110 regulates the underwriting terms and arrangements in connection with the public offering of securities. The primary function of the Rule is to protect issuers (and their investors at the time of the offering) from unfair underwriting terms and arrangements. Unfair underwriting terms and arrangements increase the costs to issuers of raising capital, potentially leading to a less efficient allocation of capital and thereby imposing a restriction on issuers that need to access capital markets.

The Rule also provides protections for issuers and investors through lock-up restrictions. The restrictions reduce the ability of participating members to utilize the information they gather as part of the underwriting process to opportunistically sell the securities they acquire as compensation in the secondary market (*i.e.*, informed selling).⁷⁸ The lock-up restrictions thereby decrease the likelihood that participating members use the securities to extract undue compensation from issuers, and decrease the likelihood that investors in the secondary market purchase securities when the securities are overvalued. The exposure of investors to informed selling decreases as time elapses and more information about the issuer becomes available.

Member firms that participate in offerings, however, incur costs to comply with Rule 5110. The costs to members include filing and disclosure requirements, limits to direct and indirect compensation, and restrictions on financial and investment activities. These costs decrease the return to members when participating in offerings.

Rule 5110 requires participating members to file documents and information with FINRA. FINRA reviews the information to determine whether underwriting terms and arrangements meet the requirements of the Rule. To the extent possible, this economic impact analysis will quantify the economic effects of the proposed rule change using the information that FINRA collects through its administration of Rule 5110. The analysis will otherwise discuss the economic effects qualitatively.

In 2017, FINRA received 1,553 filings related to public offerings (covering

both equity and debt securities). The filings represent at least 274 members and 1,071 issuers. The total amount of offering proceeds of the filings were over \$151 billion, with a median value of approximately \$38 million per filing.⁷⁹

Currently, members that participate in fewer offerings are likely to incur higher marginal costs to interpret and comply with Rule 5110. In 2017, the median number of filings in which a member participated was three. This means that approximately half of the members (148 of 274 members) participated in three or fewer offerings. In addition, a large number of these members (85) participated in only one offering.⁸⁰

Economic Impact

The proposed amendments would directly impact member firms that regularly engage in underwriting, issuers that engage member firms for those services, and the investors that seek to participate in those offerings. This economic impact analysis seeks to identify the broad impacts associated with modernizing Rule 5110, as well as specific amendments related to the acquisition of securities, lock-up restrictions, filing requirements, and exemptions for offerings that relate to highly regulated entities.

Modernization

Overall, the proposed change would modernize Rule 5110 by simplifying and clarifying its provisions, and by increasing the consistency of the Rule with current practice. The simplification and clarification of the Rule would decrease the compliance costs of member firms that participate in offerings. The decrease in compliance costs includes the time and expense of internal employees to interpret the Rule, as well as the potential expenses associated with outside legal counsel or other outside experts. The simplification and clarification would also decrease the opportunity costs to participating members from not acquiring securities so as to not violate the permitted compensation arrangements under the Rule. Members that participate in fewer offerings would experience a greater decrease in marginal costs from the proposed rule changes.

⁷⁹ The 1,553 filings include shelf offerings. FINRA does not require filing, in all cases, the total amount of offering proceeds related to these filings.

⁸⁰ In addition, approximately one-quarter of members (71) participated in ten or more offerings, whereas ten percent of members (27) participated in 50 or more offerings. The maximum number of offerings that any one member participated in was 155.

⁷⁷ See Securities Exchange Act Release No. 48989 (December 23, 2003), 68 FR 75684 (December 31, 2003) (Order Approving File No. SR-NASD-2000-04). See also *Notice to Members* 04-13 (February 2004).

⁷⁸ Participating members may have greater ability to engage in informed selling soon after the commencement of sales when they may have additional information than other market participants. As more information becomes publicly available, the ability of participating members to engage in informed selling decreases.

As a result of the simplification and clarification of Rule 5110, the underwriting terms and arrangements members negotiate with issuers are more likely to be in compliance with the Rule, and the documents and information members file with FINRA are more likely to meet the regulatory requirements of the rule. This may decrease the amount of time that FINRA needs to evaluate the underwriting terms and arrangements and provide an opinion. A decrease in the time needed for FINRA to provide an opinion could potentially enhance the ability of issuers to access capital markets faster provided the concurrent review conducted by the SEC staff has concluded and an offering can be declared effective.

Securities Acquisitions Not Considered Underwriting Compensation

The proposed rule change addresses whether the securities and derivative instruments that participating members acquire are considered underwriting compensation. The amendments relate to securities acquired from third parties for purposes unrelated to underwriting compensation, investments or loans to the issuer when a public offering has been significantly delayed, and non-convertible or non-exchangeable debt securities and derivative instruments unrelated to a public offering.⁸¹ The amendments also broaden two current venture capital exceptions, and adopt a new venture capital exception.⁸²

In general, the proposed rule change would provide participating members additional flexibility and clarity with respect to whether the securities and derivative instruments they acquire would be subject to the compensation limits and lock-up restrictions of Rule 5110. The proposed rule change would therefore decrease the constraints on participating members to engage in transactions in the ordinary course of business and obtain the commissions and trading profits therefrom. The proposed rule change would also decrease the constraints on participating members to engage in hedging transactions and thereby manage their risk exposures.

The venture capital exceptions would increase the total percentage of shares that participating members may acquire without being considered underwriting compensation under Rule 5110, and as a result may increase the number of

⁸¹ See proposed Supplementary Material .02, .03, .04, and .06 to Rule 5110.

⁸² See proposed Rule 5110(d)(1), (2), and (4). Among the 1,553 filings FINRA received relating to public offerings in 2017, 17 (one percent of 1,553) relate to the current venture capital exceptions under 5110(d)(5).

members that participate in an offering. The proposed amendments to the venture capital exceptions, therefore, would increase the number of financial options and amount of capital available for issuers. The proposed amendments may also improve the market for offerings.⁸³ The venture capital exceptions would thereby promote capital formation.

Conversely, the proposed amendments to the venture capital exceptions allowing underwriters to acquire additional securities not considered underwriting compensation may increase potential conflicts of interest. These acquisitions may create a control relationship, potentially resulting in a participating member having a conflict of interest and increasing the costs to issuers and investors.⁸⁴

Two requirements, however, serve to mitigate against these potential costs to issuers. FINRA Rule 5121 specifically addresses the conflicts of interest of participating members and requires disclosure of the conflicts. Further, the proposed amendments also include a requirement that the securities participating members acquire is at the same price and with the same terms as the securities purchased by all other investors. This is intended to ensure that the securities participating members acquire are not for providing undervalued securities as a form of underwriting compensation.

An increase in the percentage of shares that participating members acquire that is not subject to Rule 5110 may also impose costs on investors. The securities and derivative instruments that participating members acquire would not be subject to lock-up restrictions, and may increase the exposure of investors in the secondary market to informed selling. As described in further detail below and subject to some exceptions, the proposed rule change would decrease investor exposure to informed selling by amending the lock-up restrictions under the Rule.

Lock-up Restrictions

The proposed rule change would specify that, consistent with current practice, the lock-up period begins on

⁸³ See Shane A. Corwin & Paul Shultz, *The Role of IPO Underwriting Syndicates: Pricing, Information Production, and Underwriter Competition*, 60(1) *Journal of Fin.* 443–486 (2005). The authors find that larger syndicates increase information production, analyst coverage, and the number of market makers following the offering.

⁸⁴ One commenter expressed concern that removing the restriction in current Rule 5110(d)(5)(A) and (B) may increase the potential for conflicts of interest to arise. See NASAA.

the date of commencement of sales instead of the date of effectiveness of the prospectus.⁸⁵ This would ensure that at least 180 days must pass after the commencement of sales before participating members may sell the securities that they receive as underwriting compensation. This amendment would only impose economic effects on offerings that otherwise would have begun the lock-up period on the date of the effectiveness of the prospectus. For these offerings, investors would have a longer exposure to informed selling from the date of the commencement of sales, and participating members would have a longer exposure to fluctuations in security values from the date of the commencement of sales. In the experience of FINRA staff, however, any longer exposure would be minimal.

The proposed rule change would provide exceptions to the lock-up restrictions.⁸⁶ Although the exceptions to the lock-up restrictions would provide flexibility and reduce the investment risk of participating members, the exceptions may also increase the exposure of investors to informed selling. The scope of the proposed exceptions, however, reduce the likelihood that investors purchasing the securities would be at an informational disadvantage. One exception is for securities acquired from an issuer that meet the registration requirements of SEC Registration Forms S–3, F–3 or F–10. These registration requirements relate to issuers with existing public markets for their securities. Other proposed exceptions to the lock-up provisions are for sales as part of a firm commitment offering (which are usually marketed and sold to institutional investors) and sales back to the issuer.⁸⁷

Filing Requirements

In general, the proposed rule change would decrease or streamline the filing requirements of participating members. For example, unless otherwise required by FINRA, participating members would not be required to provide documents relevant to the underwriting terms and

⁸⁵ See proposed Rule 5110(e)(1)(A).

⁸⁶ See proposed Rule 5110(e)(2)(A)(iii) and (viii), and (B)(iii).

⁸⁷ Among the 1,553 filings FINRA received relating to public offerings in 2017, 778 relate to firm commitment offerings. The proceeds of the offerings were over \$110 billion, or approximately three-quarters of the total proceeds relating to all filings. The median proceeds were \$60 million. The largest maximum proposed offering proceeds registered was \$2.7 billion. Information describing issuers that meet the registration requirements of SEC Registration Forms S–3, F–3 or F–10 or sales back to the issuer is not available.

arrangements if industry-standard master forms of agreement are used. In addition, participating members would not be required to submit amendments to previously filed documents unless the changes impact the underwriting terms and arrangements.⁸⁸ The decrease in filing requirements would decrease the compliance costs of participating members. The costs for members include the time and expense of legal counsel and other internal staff to prepare and submit the filings.

The proposed changes in filing requirements would decrease the documents and information that participating members file with FINRA. FINRA does not believe, however, that the decrease in the documents and information it receives would reduce its ability to evaluate underwriting terms and arrangements and provide protections to issuers and investors. The documents and information are often duplicative or otherwise unnecessary, or can be accessed through other means.⁸⁹

In some instances, however, the proposed rule change would increase the filing requirements of participating members. For example, a new provision would require participating members of terminated offerings to provide written notification of all underwriting compensation received or to be received.⁹⁰ The new requirements would increase the costs to participating members to file documents and information with FINRA. The new requirements, however, would increase the ability of FINRA to oversee underwriting terms and arrangements, and provide protections to issuers and investors.

Exemptions for Highly Regulated Entities

Lastly, the proposed rule change would expand the current list of offerings that are exempt from its filing requirements and its substantive provisions.⁹¹ The offerings relate to highly regulated entities whose offering terms would continue to be subject to

FINRA Rule 2341. The regulatory protections for issuers and investors would therefore remain, but participating members would no longer incur the costs to comply with Rule 5110.

Offerings that are subject only to FINRA Rule 2341 are not required to be filed with FINRA. In the experience of FINRA staff, however, few filings currently made pursuant to Rule 5110 are also subject to Rule 2341. FINRA therefore does not expect that the costs and benefits of the proposed amendments relating to these offerings would be material.

Alternatives Considered

FINRA considered several alternatives in developing the proposed rule change. FINRA explored how to modernize the Rule and how to simplify and clarify its provisions, while maintaining the protections for issuers and investors.

One alternative to the proposed rule change would be to modify or eliminate the filing requirement for shelf-offerings by issuers that do not meet the “experienced issuer” standard.⁹² Although a modification or elimination of the filing requirement would decrease the compliance costs of participating members, it could increase the exposure of these issuers to unfair and unreasonable underwriting terms and arrangements. FINRA believes that the decrease in compliance costs under this alternative would not justify the increased risk of harm to issuers.

A second alternative would allow participating members to value options, warrants, and other convertible securities they receive as underwriting compensation with common or commercially available valuation methods. The alternative methods could increase the accuracy of the valuations but also their variability across offerings and members. The alternative valuation methods could reduce the ability of issuers and participating members to agree to terms and the ability of FINRA staff to evaluate the underwriting terms and arrangements, and thereby increase the amount of time for issuers to access capital markets.⁹³ FINRA will therefore retain the current valuation methods.

A third alternative, which was proposed in the *Notice 17–15 Proposal*, would no longer require the disclosure of the dollar amount ascribed to each individual item of underwriter compensation in the prospectus.

Instead, participating members could aggregate the underwriting expenses for all items, except for the discount or commission. This alternative would have decreased the compliance costs of participating members. It could have also decreased the ability of investors to understand the underwriting terms and arrangements, however, and to decide whether to participate in the offerings.⁹⁴

Other alternatives include different thresholds relating to the proposed amendments to the venture capital exceptions.⁹⁵ An increase in the amount of securities that participating members may acquire before triggering the provisions of the Rule would benefit issuers by increasing the number of members available to participate in private placements and subsequent public offerings. However, broader exceptions may reduce issuer and investor protections if more activities that are potentially not underwriting compensation are not governed by these provisions of Rule 5110. The proposed rule change maintains several restrictions to ensure the protection of other market participants, including issuers and investors, and is justified by its benefits including the further promotion of capital formation.

C. Self-Regulatory Organization’s Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The proposed rule change was published for comment in the *Notice 17–15 Proposal*. FINRA received 11 comment letters in response to the *Notice 17–15 Proposal*. A copy of the *Notice 17–15 Proposal* is attached as Exhibit 2a. Copies of the comment letters received in response to the *Notice 17–15 Proposal* are attached as Exhibit 2c.⁹⁶

FINRA has considered the concerns raised by commenters and, as discussed in detail below, has addressed many of the concerns noted by commenters in response to the *Notice 17–15 Proposal*. The comments and FINRA’s responses are set forth in detail below.

General Support and Opposition to the Notice 17–15 Proposal

Four commenters supported FINRA’s efforts to simplify, clarify and modernize Rule 5110 but did not support all aspects of the *Notice 17–15*

⁸⁸ See proposed Rule 5110(a)(4)(A) and (E).

⁸⁹ For example, proposed Rule 5110(a)(4)(E) would streamline the filing requirements for shelf offerings. A participating member would file the Securities Act registration number, and the documents and information set forth in proposed Rule 5110(a)(4)(A) and (B) only if specifically requested by FINRA. Otherwise, FINRA would access the base shelf registration statement, amendments, and prospectus supplements through the SEC’s EDGAR system to conduct the review.

⁹⁰ See proposed Rule 5110(a)(4)(C) and proposed Rule 5110(g)(5).

⁹¹ See proposed Rule 5110(h)(2)(E), (K), and (L). The proposed Rule would also clarify that securities of banks that have qualifying outstanding debt securities are exempt from the filing requirement. See proposed Rule 5110(h)(1)(A).

⁹² See, e.g., ABA and Sullivan.

⁹³ Commenters to the *Notice 17–15 Proposal* also had conflicting views on the proposed change to the valuation formula, and did not provide any information regarding commercially available valuation methods. See, e.g., NASAA and SIFMA.

⁹⁴ Commenters to the *Notice 17–15 Proposal* had conflicting views on the proposed change to the disclosure of each individual item of underwriter compensation. See, e.g., ADISA and NASAA.

⁹⁵ See proposed Rule 5110(d).

⁹⁶ See Exhibit 2b for a list of abbreviations assigned to commenters.

Proposal.⁹⁷ SIFMA supported some aspects of the *Notice* 17–15 Proposal but suggested retooling Rule 5110 to a more disclosure-focused and principles-based approach. Callcott supported amending Rule 5110 to require only disclosure of financial relationships between a broker-dealer and its client in a securities underwriting. The remaining commenters expressed comments to several specific aspects of the *Notice* 17–15 Proposal as discussed below.

The ability of small and large businesses to raise capital efficiently is critical to job creation and economic growth. Since 1992, Rule 5110 has played an important role in the capital raising process by prohibiting unfair underwriting terms and arrangements in public offerings of securities. Rule 5110 continues to play an important role in ensuring investor protection and market integrity through effective and efficient regulation that facilitates vibrant capital markets.

The proposed rule change strikes an appropriate balance in modernizing Rule 5110 to allow for some flexibility where appropriate, while maintaining important protections. For instance, one area where FINRA is proposing to add some flexibility is to incorporate a limited principles-based approach to be used by FINRA in determining whether some securities acquisitions may be excluded from underwriting compensation. Specifically, the proposed rule change would incorporate a principles-based approach for acquisitions of securities in venture capital transactions where there has been a significantly delayed offering, acquisitions of issuer securities from third parties and acquisitions of securities pursuant to an issuer's directed sales program. The proposed rule change would retain Rule 5110's current objective approach for other securities acquisitions.

Callcott stated that Rule 5110's complexity imposes costs on all public underwritings and serves as an incentive to instead conduct private placements or other transactions. Moreover, Callcott stated that because "troubled" public companies present the highest liability risks for underwriters, underwriters are unwilling to assist those companies unless they are adequately compensated for the risk. Callcott suggests that Rule 5110 does not solve the problem of "small troubled" companies in need of financing; rather, Callcott states the Rule simply moves the problem to a largely non-transparent and unregulated alternative financial environment, to the

significant detriment of companies and their investors.

The application of Rule 5110 to the receipt of underwriting compensation does not represent a material detriment to small firms or a disincentive to small firm IPOs. Rather, the decrease in small firm IPOs is a multi-faceted issue that may be caused by several factors (*e.g.*, the availability of alternative financing or industry consolidation). Moreover, the availability of different sources of financing may be beneficial to some small firms. It is unclear how removing Rule 5110's restrictions on underwriting terms and arrangements, and corresponding restrictions on underwriting compensation, would be a net positive for "small troubled" companies in need of financing.

Filing Requirements

Three commenters supported allowing members more time to make the required filings with FINRA (from one business day after filing with the SEC or a state securities commission or similar state regulatory authority to three business days) and agreed that the change would help with logistical issues or inadvertent delays without impeding FINRA's ability to review the underwriting terms and arrangements.⁹⁸ ABA supported proposed Rule 5110(a)(4)(A)(ii) to expressly provide that standard industry forms are not required to be filed in connection with an offering, unless otherwise specifically requested by FINRA.

SIFMA suggested FINRA clarify that the requirement in proposed Rule 5110(a)(1)(B) that the managing underwriter notify the other members if the underwriting terms and arrangements are unfair and unreasonable and not appropriately modified be limited to situations where FINRA has made such determination with respect to the terms and arrangements and has so notified the managing underwriter. FINRA agrees and made the suggested change as discussed above in proposed Rule 5110(a)(1)(B).

ABA suggested that the Rule should permit reliance on filings made by issuers in proposed Rule 5110(a)(3)(B) or, alternatively, if not retained, the availability of such reliance should be clarified in Supplementary Material to Rule 5110. Participating members are responsible for filing the required documents and information with FINRA. An issuer may file a base shelf registration statement in anticipation of retaining a member to participate in a takedown, but a participating member

must file any documents and information as set forth in proposed Rule 5110(a)(4)(A) and (B) if specifically requested by FINRA regarding the takedown once the participating member has been engaged.

Commenters requested clarifying or deleting the *Notice* 17–15 Proposal's requirement to file amendments to any documents that contain "changes to the offering" in proposed Rule 5110(a)(4)(A)(iii) to narrow the filing requirement to changes relating to the disclosures made or to be made in any filing that impact the underwriting terms and arrangements for the offering.⁹⁹ The commenters suggested that narrowing the scope of proposed Rule 5110(a)(4)(A)(iii) would appropriately capture the documents relevant to FINRA's review and would reduce the burdens on members (and the associated time and cost) to make unnecessary administrative filings.

FINRA agrees with the commenters and proposes to narrow the filing requirement to changes that "impact the underwriting terms and arrangements for the public offering." Examples of changes impacting the underwriting terms and arrangements include, but are not limited to, changes to the size of the offering, the method of distribution (*i.e.*, firm commitment or best efforts), the amount of underwriting compensation, the type of underwriting compensation, and any new termination fee or ROFR that survives termination of the offering.

Two commenters supported the change in proposed Rule 5110(a)(4)(B)(iii) relating to the representation as to the association or affiliation between participating members and beneficial owners of 5 percent or more of "any class of the issuer's securities" to instead refer to beneficially owning 5 percent or more of any class of the issuer's "equity or equity-linked securities."¹⁰⁰ SIFMA also supported the proposed elimination of the requirement currently in Rule 5110 to provide a representation as to the association or affiliation between participating members and "any beneficial owner of the issuer's unregistered equity securities that were acquired during the 180-day period immediately preceding the required filing date of the public offering." SIFMA suggested that the narrower focus is appropriately designed to elicit the most useful information for reviewing relationships that may affect

⁹⁷ See ABA, NASAA, Rothwell and Sullivan.

⁹⁸ See ABA, ADISA and SIFMA.

⁹⁹ See ABA, ADISA, Davis Polk, Rothwell and SIFMA.

¹⁰⁰ See ABA and SIFMA.

the underwriting terms and arrangements.

ABA requested guidance with respect to the representation requirement in proposed Rule 5110(a)(4)(B)(iii) where beneficial owners of 5 percent or more of any class of the issuer's equity securities are funds or other types of investment vehicles, which are usually in the form of limited partnerships or limited liability companies. ABA also requested that the representation be limited to a statement of association or affiliation only with respect to the general partner or investment manager of such fund or investment vehicle, and any limited partner beneficially owning more than 25 percent of the limited partnership or limited liability company membership interests of the fund or investment vehicle.

Although application of Rule 5110's requirements to beneficial ownership by funds or other types of investment vehicles historically has not been problematic, there have been some instances where conflicts have been identified. When questions have arisen related to beneficial ownership by funds or other types of investment vehicles, FINRA has been willing to work with members to address the questions raised by particular structures and arrangements. Rather than amending the Rule, FINRA proposes to retain the flexibility afforded by this established approach because beneficial ownership of 5 percent or more of an issuer's securities may result in conflicts of interest.

SIFMA suggested that proposed Rule 5110(a)(4)(B)(iv)—requiring the filing of a “description of any securities of the issuer acquired and beneficially owned by any participating member during the review period”—should be limited to a description of any securities-based underwriting compensation acquired during the review period by the participating member (*i.e.*, no description for securities that do not constitute underwriting compensation). Limiting the description to securities that the participating member has determined would be underwriting compensation could result in an incomplete picture of the underwriting terms and arrangements. A description of any issuer securities acquired and beneficially owned by the participating member during the review period is needed to fully evaluate the underwriting terms and arrangements of the public offering and to ensure that there is no circumvention of the Rule.

While a complete description would be required, the proposed rule change provides flexibility with respect to whether some securities would be

treated as underwriting compensation under Rule 5110. For example, because FINRA recognizes that some acquisitions of issuer securities from third parties are for purposes unconnected to underwriting compensation, the proposed rule change would incorporate a principles-based approach in considering whether securities of the issuer acquired from third parties may be excluded from underwriting compensation.

Given the strict limitations on the receipt of underwriting compensation in terminated offerings imposed by proposed Rule 5110(g)(5), SIFMA suggested deleting the requirement in proposed Rule 5110(a)(4)(C) for a member to file a written notification to FINRA of all underwriting compensation received or to be received pursuant to proposed Rule 5110(g)(5), including a copy of any agreement governing the arrangement if an offering is terminated. SIFMA suggested that at the very least, if the requirement is retained, the requirement should be limited to notice to FINRA with respect to the receipt of termination fees. ABA also did not support the requirement in proposed Rule 5110(a)(4)(C) and suggested that the lack of an end date for the requirement would lead to confusion. ABA suggested that, if the requirement is retained, FINRA should clarify the purpose of the obligation, confirm that any such payments are tied to the original failed offering and not a successful subsequent offering, and provide a sunset provision for the requirement.

FINRA believes that information regarding underwriting compensation received or to be received in terminated offerings is relevant to its evaluation of compliance with Rule 5110 and, in particular, paragraph (g)(5). Moreover, incorporating a sunset provision into proposed Rule 5110(a)(4)(C) could result in intentionally delaying payment of underwriting compensation until after the sunset date to circumvent the requirements of Rule 5110. Accordingly, the proposed rule change would retain the approach in the *Notice 17–15* Proposal.

Davis Polk requested clarification regarding whether information relating to unvested securities acquired by participating members during the review period must be filed under Rule 5110. Davis Polk suggested that these securities should not constitute underwriting compensation, as it is unclear whether the conditions precedent to vesting will ever be satisfied. As noted above, it is important that FINRA have information on all securities received during the review

period in order to more accurately evaluate the levels of underwriting compensation. When considering whether vested or unvested securities acquired by participating members and their associated persons are underwriting compensation FINRA evaluates why the securities were granted. For example, unvested directors' options granted to associated persons of participating members in excess of what other directors receive would be deemed underwriting compensation, but grants that are comparable to what other directors receive would not be underwriting compensation.

Filing Requirements for Shelf Offerings

SIFMA suggested modifying the exemption in proposed Rule 5110(h)(1)(C) to eliminate the requirement that issuers filing offerings on Form S–3 need to satisfy the pre-1992 Form S–3 standards or, alternatively, to provide a filing exemption for offerings by well-known seasoned issuers (“WKSIs”) that meet current Form S–3 standards. Sullivan suggested exempting all offerings of securities registered on Forms S–3 and F–3 from both the Rule's substantive and filing requirements and, at a minimum, exempting WKSIs from Rule 5110. In light of established market practices, Sullivan believes that these issuers do not need FINRA's protection in the negotiation of underwriting terms and arrangements and that FINRA's oversight is an unnecessary speed bump to these issuers accessing the capital markets. Davis Polk questioned whether FINRA's goal of investor protection is furthered by the requirement to file WKSI offerings and suggested that FINRA's goal should be to make access to capital less expensive.

Given the availability of documents on the SEC's EDGAR system, Davis Polk suggested eliminating the requirement to file with FINRA prospectus supplements and underlying documents for shelf offerings subject to Rule 5110's filing requirements. Davis Polk suggested that member's counsel should instead be required, at the time of filing of the registration statement, to obtain representations from members that: (1) Underwriting compensation will not exceed 8 percent of the gross offering proceeds; and (2) members will not engage in any prohibited arrangements in connection with any takedown from the base shelf registration statement.

As discussed in Item II.A., given the regulatory issues that have previously arisen in shelf offerings, the proposed rule change would continue to apply Rule 5110's filing requirement to shelf

offerings by issuers that do not meet the “experienced issuer” standard. However, to facilitate the ability of issuers to take advantage of favorable market conditions on short notice and to quickly raise capital through takedown offerings, the proposed rule change would streamline the filing requirements for shelf offerings by issuers that do not meet the “experienced issuer” standard. Specifically, with respect to these shelf offerings, the proposed rule change would provide that only the following documents and information must be filed: (1) The registration statement number; and (2) if specifically requested by FINRA, other documents and information set forth in proposed Rule 5110 (a)(4)(A) and (B).

FINRA would access the base shelf registration statement, amendments and prospectus supplements in the SEC’s EDGAR system and populate the information necessary to conduct a review in the FINRA System. Upon filing of the required registration statement number and documents and information, if any, that FINRA requested pursuant to proposed Rule 5110(a)(4)(E), FINRA would provide the no objections opinion. To further facilitate issuers’ ability to have quicker access to capital markets, FINRA’s review of documents and information related to a shelf takedown offering for compliance with Rule 5110 would occur on a post-takedown basis.

Davis Polk suggested adding an exemption to the filing requirement for any offering on Forms S-3 and F-3 or any IPO: (1) Of an issuer controlled by a venture capital or private equity fund with \$100 million in assets under management; or (2) with proceeds of \$75 million or more. Davis Polk stated that the filing requirement is not needed as these issuers are sophisticated professional negotiators and investors have immediate access to company disclosures through EDGAR, issuer websites and third party analysis. Alternatively, Davis Polk recommended that the proposed exemption for shelf offerings be revised to reflect, at a minimum, the Oct. 21, 1992 Form S-3 and F-3 eligibility requirement of a public float of \$75 million or, preferably, to eliminate the public float requirement entirely, in accordance with current Form S-3 and F-3 standards. Davis Polk suggested that the requirement in the exemption that the issuer have reported under the Exchange Act for three years be modified to one year, as is the case with current Forms S-3 and F-3, on the grounds that a three year reporting history does not provide any benefit

because technology provides investors with immediate access to information.

As discussed above, the proposed rule change would significantly reduce the filing obligations for shelf offerings. The underwriting terms and arrangements in IPOs of issuers controlled by venture capital or private equity funds or IPOs with proceeds of \$75 million or more are not significantly different from those in other IPOs and FINRA’s filing and review program is necessary for investor protection.

Exemptions From Filing and Substantive Requirements

Commenters suggested several changes to the proposed exemptions from Rule 5110’s filing requirement or substantive provisions to expand, modify or clarify the exemptions. Three commenters recommended not subjecting to Rule 5110’s filing requirement public offerings that otherwise meet a filing exemption but for participation by a QIU pursuant to Rule 5121.¹⁰¹ The commenters suggested that subjecting these offerings to Rule 5110’s filing requirement is unjustified and unwarranted, increases the issuer’s transaction costs, and alters the composition of underwriting syndicates in ways that do not further investor or market protection.

Consistent with the approach in the current Rule, proposed Rule 5110(h)(1) would require filing these offerings only if there is participation by a QIU. Rule 5121 was amended in 2009 to focus on offerings with significant conflicts of interest that require the participation of a QIU.¹⁰² FINRA has a regulatory interest in reviewing offerings in which a member has a significant conflict of interest requiring the participation of a QIU. Accordingly, filing and review of these offerings under Rule 5110 continues to be appropriate.

ABA requested revising the exemption from the filing requirement in proposed Rule 5110(h)(1)(E)(i) for exchange offers to include situations in which the securities to be acquired in the exchange are convertible into securities that are listed on a national securities exchange as defined in Section 6 of the Exchange Act. FINRA believes extension of the exemption to these convertible securities is unlikely to be problematic for market participants. Accordingly, the proposed rule change would expand proposed Rule 5110(h)(1)(E)(i) to exempt from the filing requirement exchange offers

where the securities to be issued or the securities of the company being acquired are listed, or convertible into securities that are listed, on a national securities exchange as defined in Section 6 of the Exchange Act.

ABA suggested that in many cases the role played by a member acting as a distribution manager in connection with an exchange offer is limited to contacting investors and recording their intention to tender and that the member receives nominal compensation for these services. Accordingly, ABA requested exempting from Rule 5110’s filing requirement exchange offers in which the compensation to be received by the distribution manager does not exceed 2 percent of the registered aggregate dollar amount of the offering and no member acts as an underwriter for the securities. Distribution managers may provide and receive compensation for a range of different services related to a public offering. Given this broad range of services, FINRA does not agree that providing an exemption from Rule 5110’s provisions is appropriate based on the compensation for distribution manager-related services being less than the suggested threshold.

Davis Polk requested that an express exemption from Rule 5110’s filing requirement be added for offerings of convertible debt of an issuer that has outstanding investment grade rated debt of the same class as that being offered if there is a bona fide public market in the common stock underlying the debt (*i.e.*, the debt meets the exemption in proposed Rule 5110(h)(1)(B) and the underlying common stock generally meets the exemption in proposed Rule 5110(h)(1)(A)). FINRA has not received requests for an exemption for this type of convertible debt and, as such, the potential consequences of an express exemption in the current market environment are unclear. Exemptive relief from the filing requirement for this type of convertible debt may be available on a case-by-case basis as necessary and appropriate. To the extent that FINRA begins receiving numerous such requests, FINRA will evaluate whether an express exemption is warranted.

Davis Polk suggested that filing has not been previously required for shelf offerings registered for the benefit of selling shareholders that are intended to be sold in ordinary market transactions by members acting as agents (commonly called “dribble out offerings”) and requested that an express exemption from the filing requirement be added to Rule 5110. Davis Polk also suggested an express exemption from the filing requirement for block trades in light of

¹⁰¹ See ABA, Davis Polk and SIFMA.

¹⁰² See Securities Exchange Act Release No. 60113 (June 15, 2009), 74 FR 29255 (June 19, 2009) (Order Approving File No. SR-FINRA-2007-009). See also *Regulatory Notice* 09-49 (August 2009).

the highly competitive nature of negotiations between issuers and underwriters in connection with these offerings. Dribble out offerings and block trades are typically handled through shelf takedown offerings. As previously discussed, the proposed rule change would modify the requirements for shelf offerings to no longer require the filing of each takedown offering.

ABA stated that the proposed exemption in the *Notice 17–15* Proposal from the filing requirement for follow-on offerings by qualifying tender offer funds should be extended to also cover IPOs by these entities. ABA requested that, if continued filing of IPOs by these issuers is required, Rule 5110 should be amended to provide that the underwriting terms and arrangements for these offerings, while subject to the filing requirements of Rule 5110, will be reviewed for compliance with the requirements of Rule 2341. As discussed in Item II.A. *supra*, FINRA believes that it is appropriate to consider compensation for distribution of both IPOs and follow-on offerings of tender offer funds under the compensation limitations in Rule 2341. Accordingly, the proposed rule change would exempt both IPOs and follow-on offerings of tender offer funds from Rule 5110.¹⁰³

As offerings of open-end funds and continuously offered interval funds and tender offer funds are exempted from Rule 5110, JLL suggested exempting offerings of continuously offered perpetual-life, publicly offered non-listed REITS (“PLRs”) from the filing requirement. Open-end funds and continuously offered interval funds and tender offer funds are investment companies whose offerings can be appropriately regulated under the Investment Company Act; however, PLRs are generally exempt from the Investment Company Act. Because the protections of the Investment Company Act would not apply, the proposed rule change would not exempt PLRs from the filing requirement.

ABA suggested that the exemption from Rule 5110’s filing requirement for securities offered by issuers with qualifying debt securities be expanded to include offerings by issuers that are organized limited liability companies, limited partnerships, business trusts or other legal persons.¹⁰⁴ The *Notice 17–15* Proposal would have replaced “corporate issuer” with “corporation” in this exemption. Rather than including a lengthy list of different types of legal persons, the proposed rule change would revert to the use of

“corporate issuer.” This approach, which is consistent with Rule 5110 currently, covers a broad range of legal entities that have qualifying debt securities and has not been problematic in practice.

CAI supported the proposed exemption in Rule 5110(h)(2)(E) from the filing and substantive requirements of Rule 5110 for “any insurance contracts not otherwise included” as appropriately resolving members’ questions about the status of insurance contracts under FINRA rules. SIFMA also supported the addition of proposed exemptions from the filing and substantive requirements of Rule 5110 for insurance contracts¹⁰⁵ and unit investment trust securities.¹⁰⁶

ABA requested clarification as to whether the exemption from the filing and substantive provisions of Rule 5110 for securities issued pursuant to a competitively bid underwriting arrangement meeting the requirements of the Public Company Utility Holding Company Act (“PUHCA”) remains tied to that Act. The Energy Policy Act of 2005 repealed the PUHCA Act of 1935 and adopted the PUHCA of 2005.¹⁰⁷ The exemption for any securities issued pursuant to any competitively bid underwriting arrangement meeting the requirements of the PUHCA continues to be appropriate. Accordingly, consistent with the current Rule, the proposed rule change would exempt from the filing and substantive requirements of Rule 5110 securities issued pursuant to a competitively bid underwriting arrangement meeting the requirements of the PUHCA.¹⁰⁸

Sullivan stated that all offerings of investment grade debt, preferred stock and other fixed-income securities should be exempt from Rule 5110’s filing and substantive requirements. Sullivan stated that these offerings involve the tightest underwriting spreads and are intensely negotiated by issuers and, accordingly, the protections of Rule 5110 are not necessary for these offerings. Although some offerings of investment grade debt, preferred stock and other fixed-income securities are intensely negotiated by issuers, offerings of these securities have previously involved unreasonable and unfair underwriting terms and arrangements. Because Rule 5110 prohibits unreasonable and unfair underwriting terms and arrangements, it is

appropriate for the Rule’s protections to continue to apply to these offerings.

Disclosure of Underwriting Compensation

The *Notice 17–15* Proposal would have no longer required that the disclosure include the dollar amount ascribed to each individual item of compensation. Instead the *Notice 17–15* Proposal would have permitted a member to disclose the maximum aggregate amount of all underwriting compensation, except the discount or commission that must be disclosed on the cover page of the prospectus. The *Notice 17–15* Proposal also included a requirement to disclose specified material terms and arrangements in the prospectus, which is consistent with current practice. A description would be required for: (1) Any ROFR granted to a participating member and its duration; and (2) the material terms and arrangements of the securities acquired by the participating member (*e.g.*, exercise terms, demand rights, piggyback registration rights and lock-up periods).¹⁰⁹

Commenters expressed differing viewpoints on the proposed prospectus disclosure requirement changes in the *Notice 17–15* Proposal. ADISA supported changing the disclosure requirements to require disclosure only of the aggregate amount of all compensation, other than discounts and commissions, in the prospectus. On the other hand, NASAA supported retaining the requirement in Rule 5110 for itemized underwriter compensation disclosure in the prospectus and did not support the proposed disclosure requirement changes in the *Notice 17–15* Proposal. NASAA stated that itemized compensation: (1) Allows investors to understand how money is being disbursed to underwriters; (2) provides investors with a better understanding of incentives underlying an underwritten public offering; and (3) provides investors additional liability protections for any misstatements in the disclosure. Davis Polk requested clarification as to the specific disclosure requirements for securities acquired by participating members that are deemed underwriting compensation.

As noted in Item II.A. above, recognizing commenters’ conflicting views, the proposed rule change would retain the current requirements for itemized disclosure of underwriting compensation.¹¹⁰ The proposed rule

¹⁰⁵ See proposed Rule 5110(h)(2)(E).

¹⁰⁶ See proposed Rule 5110(h)(2)(K).

¹⁰⁷ See Energy Policy Act of 2005, Public Law 109–58, 119 Stat. 594 (2005).

¹⁰⁸ See proposed Rule 5110(h)(2)(H).

¹⁰⁹ See proposed Supplementary Material .05 to Rule 5110.

¹¹⁰ See proposed Rule 5110(b)(1) and Supplementary Material .05 to Rule 5110. See also

¹⁰³ See proposed Rule 5110(h)(2)(L).

¹⁰⁴ See proposed Rule 5110(h)(1)(A).

change would make explicit the existing practice of disclosing specified material terms and arrangements related to underwriting compensation, such as exercise terms, in the prospectus.¹¹¹

Underwriting Compensation

While removal of Rule 5110's references to "items of value" was supported,¹¹² commenters requested several clarifications or changes to the proposed definition of underwriting compensation. Two commenters suggested that the reference to compensation received from "any source" in the proposed underwriting compensation definition was overly broad and should be deleted to instead focus on benefits received from or at the direction of the issuer.¹¹³ Alternatively, if the phrase "any source" is not deleted, the commenters suggested that the definition should, at a minimum, be more narrowly tailored to address any specific concerns. Underwriting compensation typically is paid by the issuer, but FINRA has charged violations of its Corporate Financing Rules in connection with quid pro quo arrangements between underwriters and institutional investors for the allocation of hot issues that would make narrowing the source of compensation to issuers in all cases problematic.¹¹⁴

Two commenters suggested revising the proposed underwriting compensation definition to provide that only payments made or securities received during the "review period" would be included in underwriting compensation.¹¹⁵ In its reviews, FINRA typically only considers payments and benefits received during the applicable review period in evaluating underwriting compensation. However, if there is an arrangement, in fact, to pay compensation related to the underwriting outside the review period, the payment must be included under Rule 5110. Accordingly, the proposed rule change does not limit the proposed

underwriting compensation definition to payments and benefits received during the review period.

SIFMA suggested deleting the last sentence of the proposed underwriting compensation definition, as that sentence would imply that finder's fees and underwriter's counsel fees are counted as compensation even if not reimbursed to the participating member. The approach in the proposed underwriting compensation definition is consistent with the treatment in the current Rule, which includes both finder's fees and underwriter's counsel fees as items of value.¹¹⁶ The proposed rule change provides among the examples of payments that would be underwriting compensation: (1) Fees and expenses of participating members' counsel paid or reimbursed to, or paid on behalf of, the participating members (except for reimbursement of "blue sky" fees); and (2) finder's fees paid or reimbursed to, or paid on behalf of, the participating members.¹¹⁷

Davis Polk suggested revising the proposed underwriting compensation definition to exclude securities of foreign (non-U.S.) issuers acquired by participating members in the issuer's domestic market if such market meets certain volume and float requirements. In determining whether the securities are underwriting compensation, Davis Polk suggested that considering whether the securities are traded on a "designated offshore securities market" (as defined in Rule 902(b) of SEC Regulation S) is overly restrictive and not meaningful; rather, the focus should be on whether the securities are freely trading so that the price paid is the fair market price. For this reason, Davis Polk also suggested that proposed Rule 5110(a)(4)(B)(iv) be modified so that participating members need not provide information regarding issuer securities they acquire during the review period in the issuer's domestic market.

The approach in the proposed rule change to provide that "listed securities" purchased in public market transactions would not be considered underwriting compensation is consistent with the treatment of these securities in the current Rule.¹¹⁸ This

treatment has not been historically problematic, with any issues related to securities of foreign (non-U.S.) issuers acquired by participating members in the issuer's domestic market arising infrequently. However, the integrity of foreign markets may vary significantly and information regarding shares obtained in those markets may be important to FINRA's review. While the proposed rule change does not propose to alter the treatment for these securities, exemptive relief may be available on a case-by-case basis as necessary and appropriate.

Davis Polk requested clarification as to whether fees and other compensation paid to foreign broker-dealers in connection with the foreign (non-U.S.) distribution of the offering should be deemed underwriting compensation. Rule 5110 does not apply to fees and other compensation paid to underwriters for securities distributions made exclusively in foreign markets. Notwithstanding that some shares may be sold in foreign markets global offerings typically register shares in the U.S. to accommodate the potential for flow back in the U.S. At the time of FINRA's review, the exact amount of shares that will be sold in the U.S. is not available. Therefore, FINRA's initial review is based on the entire amount registered.

Two commenters suggested that the lack of an express public standard for determining when the aggregate amount of proposed underwriting compensation is unfair and unreasonable under Rule 5110 has caused confusion on the part of issuers, underwriters and counsel.¹¹⁹ In considering whether the aggregate underwriting compensation that participating members receive in connection with a public offering is fair and reasonable, FINRA takes into account the following factors, as well as all other relevant facts and circumstances: (1) The anticipated maximum amount of offering proceeds; (2) whether the offering is being distributed on a firm commitment or best efforts basis; and (3) whether the offering is an initial or follow-on offering.¹²⁰

The amount of permissible underwriting compensation for an offering is typically expressed as a percentage of the proposed maximum

proposed Rule 5110(e)(1)(B) requiring disclosure of lock-ups.

¹¹¹ See proposed Supplementary Material .05 to Rule 5110.

¹¹² See SIFMA.

¹¹³ See Davis Polk and SIFMA.

¹¹⁴ See News Release, NASD, NASD Regulation Charges Credit Suisse First Boston with Siphoning Tens of Millions of Dollars of Customers' Profits in Exchange for "Hot" IPO Shares (January 22, 2002), <http://www.finra.org/newsroom/2002/nasd-regulation-charges-credit-suisse-first-boston-siphoning-tens-millions-dollars>. See also News Release, SEC, SEC Charges CSFB with Abusive IPO Allocation Practices CSFB Will Pay \$100 Million to Settle SEC and NASD Actions; Millions in IPO Profits Extracted from Customers in Exchange for Allocations in "Hot" Deals (January 22, 2002), <https://www.sec.gov/news/headlines/csfbipo.htm>.

¹¹⁵ See Davis Polk and Rothwell.

¹¹⁶ See current Rule 5110(c)(3)(A)(iii)-(iv).

¹¹⁷ See proposed Supplementary Material .01(a)(3) and (4).

¹¹⁸ See proposed Supplementary Material .01(b)(11) to Rule 5110. Substantively consistent with the current Rule, proposed Supplementary Material .01(c)(1) to Rule 5110 would define listed securities to mean "securities that are traded on the national securities exchanges identified in Securities Act Rule 146, on markets registered with the SEC under Section 6 of the Exchange Act, and on any "designated offshore securities market" as defined in Rule 902(b) of SEC Regulation S."

¹¹⁹ See EGS and Rothwell.

¹²⁰ These factors are set forth in current Rule 5110(c)(2)(D). Because this guidance is more appropriate for a *Regulatory Notice* than rule text, the proposed rule change would eliminate the factors in the current Rule. However, FINRA will consider whether additional discussion of this topic in a *Regulatory Notice* or frequently asked questions would be helpful.

offering proceeds, and this percentage generally increases as the offering size decreases. The maximum permissible compensation percentage is typically higher for a firm commitment offering than a best efforts offering of the same size, which recognizes the risks and expenses of committing capital to an offering. The maximum permissible compensation also is typically higher for an IPO than a follow-on offering of the same size, which recognizes the higher cost of underwriting an offering for an issuer without an established market for its securities.

Examples of Payments or Benefits That Are or Are Not Considered Underwriting Compensation

Commenters requested clarification or expansion of the proposed non-exhaustive lists of examples of payments or benefits that would be and would not be considered underwriting compensation. SIFMA suggested that the prefatory language to proposed Supplementary Material .01(a) should state “[t]he following are examples of payments or benefits that are considered underwriting compensation ‘if received during the review period for underwriting, allocation, distribution, advisory or other investment banking services provided in connection with the public offering.’” The proposed rule change does not include a reference to the review period in the prefatory language. As discussed above, if there is an arrangement, in fact, to provide payments or benefits for underwriting services outside the review period, the payments or benefits must be included under Rule 5110. Moreover, because the proposed definition of underwriting compensation already refers to underwriting, allocation, distribution, advisory or other investment banking services provided in connection with a public offering, it is unclear how adding the language to the lists of examples would be helpful.

Two commenters suggested that the items in proposed Supplementary Material .01(a)(3) and (4) to Rule 5110 be revised to clarify that such items (*i.e.*, finder’s fees and counsel fees) are counted as underwriting compensation solely to the extent they are reimbursed to, or paid on behalf of, the participating members.¹²¹ This is consistent with the approach in proposed Supplementary Material .01(a)(2) to Rule 5110 for other fees and expenses, including, but not limited to, road show fees and expenses and due diligence expenses.

¹²¹ See ABA and SIFMA.

Accordingly, FINRA made the suggested change.

SIFMA suggested that proposed Supplementary Material .01(a)(7) to Rule 5110 be revised to provide that common stock and other equity securities would not be considered underwriting compensation if purchased or acquired in a transaction that complies with proposed Rule 5110(d) or is otherwise excluded as underwriting compensation pursuant to other provisions of the proposed Rule (including Supplementary Material .01(b) to Rule 5110). The list of examples of underwriting compensation in proposed Supplementary Material .01(a) to Rule 5110 is intended to be read in combination with the venture capital exceptions and list of examples of what would not be considered underwriting compensation. The proposed rule change does not incorporate the suggested change because it is unclear how adding cross-references to Supplementary Material .01(a)(7) to Rule 5110 would be beneficial. Rather, adding the cross-reference to one example of underwriting compensation as suggested would seem to add confusion, not clarity, to the Rule’s requirements.

SIFMA suggested that proposed Supplementary Material .01(a)(9) to Rule 5110 be revised to eliminate the one percent valuation assigned to ROFRs. SIFMA suggested that ROFRs be deemed underwriting compensation but be assigned zero compensation value (unless the agreement in which the ROFR is granted contains a dollar amount contractually agreed to by the parties to waive the ROFR, in which case that amount should be included). ROFRs have historically been assigned a one percent valuation for purposes of Rule 5110. FINRA continues to believe that ROFRs are a valuable benefit that traditionally have been used in combination with other forms of compensation to reward underwriters and that this historical approach to valuing ROFRs is reasonable.

SIFMA acknowledged that proposed Supplementary Material .01(a)(13) to Rule 5110—which provides that any compensation paid to any participating member in connection with a prior proposed public offering that was not completed is considered underwriting compensation, if the member participated in the revised public offering—is consistent with the current Rule. However, SIFMA questioned the rationale for the treatment of this compensation if it was received in accordance with proposed Rule 5110(g)(5)—which sets forth the requirements for termination fees.

SIFMA suggested that proposed Supplementary Material .01(a)(13) to Rule 5110 should make it clear that the prior compensation would be treated as underwriting compensation only if it is received within the review period for the new public offering.

Rule 5110’s termination provisions were revised in 2014 to provide members with greater flexibility in negotiating the terms of their agreements for terminated offerings, while also providing protection for issuers if a member fails materially to perform the underwriting services contemplated in the written agreement.¹²² The proposed Supplementary Material, which is consistent with the current Rule, continues to fulfill this purpose. Furthermore, the compensation received in a prior terminated offering would be considered underwriting compensation under Rule 5110 only if the member participates in the revised public offering.

With respect to proposed Supplementary Material .01(a)(14) to Rule 5110, SIFMA stated that gifts and business entertainment provided in compliance with the limits set forth in proposed Rule 5110(f)(2)(A) and (B) (which allow for nominal gifts and occasional meals, sporting events or comparable entertainment) should not be counted as underwriting compensation as there is no rationale and investor protection goal served by the imposition of this requirement. Non-cash compensation, including gifts and business entertainment, in connection with a public offering may be reasonably considered underwriting compensation. To the extent that any gifts and business entertainment are provided in compliance with the limits set forth in proposed Rule 5110(f)(2)(A) and (B), the amount of underwriting compensation attributable to the gifts and business entertainment should not be significant in practice. With that said, FINRA is currently reviewing all of its non-cash compensation provisions in the context of a separate retrospective rule review.¹²³

Davis Polk noted that proposed Supplementary Material .01(b)(1) provides that fees of “independent financial advisers” would not be underwriting compensation but questioned the treatment of fees paid to members for acting solely as “financial advisers.” The proposed rule change would define an independent financial

¹²² See Securities Exchange Act Release No. 72114 (May 7, 2014), 79 FR 27355 (May 13, 2014) (Order Approving File No. SR-FINRA-2014-004).

¹²³ See *Regulatory Notice* 16-29 (August 2016).

adviser consistent with the current Rule.¹²⁴ Application of the Rule to financial advisers was addressed when the defined term independent financial adviser was added to Rule 5110 in 2014.¹²⁵ The application of the Rule to fees paid to financial advisers and the carve-out for fees of independent financial advisers, as that term is defined, continues to be appropriate.

SIFMA suggested that proposed Supplementary Material .01(b)(2) to Rule 5110 should exclude from underwriting compensation “cash compensation received for providing services in a private placement,” rather than being limited to acting as a placement agent. SIFMA stated that limiting the provision to receipt of cash compensation solely for acting in a placement agent capacity is unnecessarily narrow and should be removed. Rule 5110 currently provides that cash compensation received for acting only as a private placement agent would not be an item of value. Member’s roles in acting as a placement agent and in providing services in a private placement similarly facilitate offerings. Upon further review, FINRA agrees that this carve-out can be expanded to include the provision of other services by a member for a private placement without the risk of harm to investors. Accordingly, the proposed rule change would expand the scope of proposed Supplementary Material .01(b)(2) to Rule 5110 to include cash compensation for providing services for a private placement.

Two commenters suggested that proposed Supplementary Material .01(b)(11) to Rule 5110 should be modified to remove the reference to “listed” securities (*i.e.*, all securities purchased in public market transactions should be excluded from underwriting compensation, regardless of whether they are listed).¹²⁶ The proposed approach is consistent with the treatment in Rule 5110 currently, which provides that listed securities acquired in public market transactions would not be an item of value.¹²⁷ The defined term “listed securities” in Supplementary Material .01(c)(1) of Rule 5110 provides greater clarity on the scope of covered

securities than the commenters’ suggestion.

Three commenters suggested amending proposed Supplementary Material .01(b)(12) to Rule 5110 to expressly provide that securities received by directors or employees under any written compensatory benefit plan would not be underwriting compensation.¹²⁸ The commenters stated that these types of plans are for the purpose of compensating directors and employees and are unrelated to underwriting compensation in connection with a public offering. FINRA would interpret the reference to a “similar plan” in proposed Supplementary Material .01(b)(12) to Rule 5110 to include a written compensatory benefit plan for directors and employees that provides comparable grants of securities to similarly situated persons (*e.g.*, a written compensatory benefit plan that provides comparable grants of securities to all qualifying employees) and accordingly does not propose to change the Rule text. A “similar plan” would not include a compensatory benefit plan that was developed or structured to circumvent the requirements of Rule 5110.

SIFMA suggested amending proposed Supplementary Material .01(b) to Rule 5110 to expressly provide that underwriting compensation would not include any cash compensation, securities or other benefit received by a person who was not, at the time of the acquisition of the compensation, an associated person, immediate family or affiliate of a participating FINRA member. Because persons have previously transferred from issuers to members around the time of securities acquisitions, the proposed rule change would not provide an express carve-out provision as suggested. However, exemptive relief may be available for bona fide transfers on a case-by-case basis as necessary and appropriate.

SIFMA suggested amending Supplementary Material .01(b) to Rule 5110 to expressly provide that underwriting compensation would not include any cash compensation, securities or other benefit received by an associated person, immediate family or affiliate of a participating member if the member or its parent or other affiliate is issuing its own securities in the public offering. Because a broad carve-out could be used to circumvent the requirements of Rule 5110, the proposed rule change would not provide an express provision as suggested. Exemptive relief may be available on a

case-by-case basis as necessary and appropriate where a participating member or its parent or other affiliate is issuing its own securities in the public offering.

Several commenters suggested amending proposed Supplementary Material .01(b) to Rule 5110 to expressly provide that underwriting compensation would not include securities acquired pursuant to a governmental or court-approved proceeding or plan of reorganization. Specifically, SIFMA suggested amending proposed Supplementary Material .01(b) to Rule 5110 to expressly provide that underwriting compensation would not include acquisitions of securities before or after the required filing date by participating members pursuant to a U.S. or non-U.S. governmental or court-approved proceeding or plan of reorganization in which new securities are issued to or are available for purchase by existing securities holders (*e.g.*, a bankruptcy or tax court proceeding) where such participating members receive or purchase such securities on the same terms as other similarly-situated security holders. ABA supported amending Supplementary Material .01(b) to Rule 5110 to expressly provide that underwriting compensation would not include securities acquired by a participating member in connection with a court-approved bankruptcy process. In addition, Davis Polk supported amending Supplementary Material .01(b) to Rule 5110 to expressly provide that underwriting compensation would not include securities issued pursuant to court order.

Because these securities acquisitions would be overseen by the government or court, the risk of intentional circumvention of Rule 5110 or investor harm is minimized. Accordingly, the proposed rule change would provide that underwriting compensation would not include securities acquired pursuant to a governmental or court-approved proceeding or plan of reorganization as a result of action by the government or court (*e.g.*, bankruptcy or tax court proceeding).¹²⁹

Venture Capital Exceptions From Underwriting Compensation

SIFMA requested that FINRA state affirmatively that Rule 5110’s venture capital exceptions are non-exclusive safe harbors and that other securities acquisitions that do not meet one of the express safe harbors (or fall within other exceptions provided elsewhere in Rule 5110) would also be excluded from

¹²⁴ See current Rule 5110(a)(5)(B) and proposed Rule 5110(j)(9).

¹²⁵ See Securities Exchange Act Release No. 71372 (January 23, 2014), 79 FR 4793 (January 29, 2014) (Notice of Filing of File No. SR-FINRA-2014-003). See also Letter from Kathryn M. Moore, Associate General Counsel, FINRA, to Kevin O’Neill, Deputy Secretary, SEC, (regarding File No. SR-FINRA-2014-003), dated April 16, 2014.

¹²⁶ See ABA and SIFMA.

¹²⁷ See current Rule 5110(c)(3)(B)(iii).

¹²⁸ See ABA, Davis Polk and Rothwell.

¹²⁹ See proposed Supplementary Material .01(b)(22) to Rule 5110.

characterization as underwriting compensation (and the accompanying lock-up restrictions) if the acquisition of the securities by the participating member is not compensation for providing underwriting, allocation, distribution, advisory or other investment banking services in connection with the public offering. FINRA proposes to retain an objective standard for distinguishing securities acquired in bona fide venture capital transactions from those acquired as underwriting compensation. While retaining this objective standard, the proposed rule change provides additional flexibility for members via the principles-based approach for significantly delayed offerings or the examples in proposed Supplementary Material .01(b) in some securities acquisitions not being underwriting compensation.

ABA generally supported the proposed changes to the venture capital exceptions but suggested that some additional changes be considered. Specifically, ABA suggested that the requirement that the participating member must acquire the issuer's securities "at the same price and with the same terms as securities purchased by all other investors" be revised such that the participating member may acquire its securities "on no better terms" than the other investors. ABA noted that members may choose to forego voting rights or other indicia of control when purchasing an issuer's securities and this detrimental variation in the purchase terms should not deny a participating member the ability to rely on the exceptions.

Introducing the concept of securities acquisitions "on no better terms" would introduce considerable uncertainty into the evaluation of whether any of the venture capital exceptions would be available. The "on no better terms" concept would require a weighing and consideration of all of the various terms of a securities acquisition, which could be time consuming for members, counsel and FINRA staff. Retaining the concept of "at the same price and with the same terms," which is in the current Rule, provides objectivity and clarity.

ABA also requested revising proposed Rule 5110(d)(1)(B) to read "investment or loan" rather than "investment and loan" to make clear that the provision does not require a participating member or its affiliate to make both an investment in and a loan to the issuer in order to rely on the exception. To clarify that both an investment in and a loan to the issuer are not required, the proposed rule change would revert to

the current use of "or" in current Rule 5110(d)(5)(A)(i)c.¹³⁰

Two commenters supported amending the timing requirement for the venture capital exceptions to allow for application to situations in which the participating member or its affiliate has made its investment in the issuer after the required filing date.¹³¹ If not so amended, SIFMA suggested either: (1) Eliminating the pre-filing timing restriction in proposed (d)(1) and (2), which address securities acquired by certain affiliates of a participating member; or (2) establishing for all of these exceptions a formal mechanism to reset the required filing date for significantly delayed offerings.

When an offering has been significantly delayed, FINRA would consider the factors in proposed Supplementary Material .02 to Rule 5110 discussed above to analyze whether securities acquired in a transaction that occurs after the required filing date, but otherwise meets the requirements of a venture capital exception, may be excluded from underwriting compensation.

SIFMA suggested that the venture capital exceptions be amended to provide that the determination as to the availability of an exception is to be made by the participating member at the time of the acquisition of the securities and on the basis of the information then known to the participating member. Except for the principles-based approach for significantly delayed offerings, the venture capital exceptions apply to the acquisition of securities before the required filing date. Accordingly, whether an acquisition of the securities meets an exception must be determined before the required filing date.

NASAA expressed concern about removing the restriction in current Rule 5110(d)(5)(A) and (B) that the exception from underwriting compensation is available only to underwriters and their affiliates who own less than 25 percent of the issuer's total equity, as the removal of the restriction may increase the potential for conflicts of interest to arise. NASAA questioned whether the proposed changes further investor protection and whether the protections of Rule 5121 are adequate. FINRA believes, however, the proposed rule change would eliminate an unnecessary restriction in the relevant venture capital exceptions. Post-2004 regulatory changes in other areas, such as the 2009 revision of Rule 5121 regarding public offerings with a conflict of interest, have

added protections to address acquisitions that create control relationships. Moreover, in FINRA's experience control transactions that result in ownership of more than 25 percent of an issuer involve significant investment risks and are not designed to be a means to obtain additional underwriting compensation.

SIFMA stated that the addition of "through a subsidiary it controls" in the venture capital exceptions in proposed Rule 5110(d)(1) and (2) is a useful clarification, but suggested that provision be modified to require that "the affiliate is 'or will be' primarily engaged in the business of making investments in or loans to other companies, 'or has been formed for the purpose of making this investment or loan by a parent that is directly or indirectly engaged in such activities.'" SIFMA suggested that this modification would address situations in which the investing entity is a newly formed vehicle and does not, outside the present investment, have a history of making such investments in other companies.

Expanding the scope of the exceptions to cover direct, indirect or newly formed entities that are in the business of making investments and loans acknowledges the different structures that may be used to participate in bona fide venture capital transactions. Expanding these exceptions to cover entities that may be formed in the future could undermine the protection that results from requiring an entity to be in the business of making such acquisitions, rather than one simply formed to participate in a compensation transaction.

SIFMA supported increasing the participating members' aggregate acquisition threshold from 20 percent to 40 percent of the total offering in the venture capital exception in proposed Rule 5110(d)(3). SIFMA suggested, however, that limiting this venture capital exception to receipt of the securities for placement agent activities is too narrow and should be removed (e.g., securities-related compensation could be offered by an issuer in return for advisory or other services provided by a participating member in connection with the private placement, rather than for services as a placement agent).

FINRA believes that the venture capital exception in proposed Rule 5110(d)(3) can be expanded to include the provision of other services for a private placement without the risk of harm to investors. Accordingly, the proposed rule change would expand the scope of proposed Rule 5110(d)(3) to include providing services for a private

¹³⁰ See proposed Rule 5110(d)(1)(B).

¹³¹ See ABA and SIFMA.

placement (rather than just acting as a placement agent). Proposed Rule 5110(d)(3) would also be clarified to refer to 51 percent of the “total number of securities sold in the private placement.” The current rule text states “at least 51 percent of the ‘total offering’ (comprised of the total number of securities sold in the private placement and received or to be received as placement agent compensation by any member).”

SIFMA also suggested adding another venture capital exception from underwriting compensation for securities acquired before or after the required filing date by a participating member in connection with a loan or a private placement in which securities (at the same price and with the same terms) were also acquired by certain types of special investors, including: (1) Registered investment companies; (2) a fund or insurance company that meets the qualifications in proposed paragraph (d)(1), (2) or (3); (3) a publicly traded company that is listed on a national securities exchange or a non-U.S. issuer that meets the quantitative designation criteria for listing on a national securities exchange; (4) a benefit plan qualified under Section 401(a) of the Internal Revenue Code (provided that such plan is not sponsored by the participating member); (5) a state or municipality, or a state or municipal government benefits plan that is subject to state and/or municipal registration; (6) a sovereign wealth fund or similar investment vehicle; (7) a bank as defined in Section 3(a)(6) of the Exchange Act; or (8) an organization described in Rule 15a-6(a)(4)(ii), provided no participating member manages such entity’s investments or otherwise controls or directs the management or policies of such entity and such entity or entities acquire in the aggregate at least 10 percent of the total offering.

Providing the suggested venture capital exception could result in a significant expansion of the historical scope of Rule 5110’s venture capital exceptions, as the identified special investors represent much of the traditional pool of pre-IPO investors. Providing such a broad exception, without requirements comparable to those imposed by the other exceptions, could result in most securities acquisitions by participating members before the required filing date being excepted from underwriting compensation. However, a participating member may make a co-investment in an issuer in circumstances that do not fit the conditions for the current venture capital exceptions. Where a highly

regulated entity with significant disclosure requirements and independent directors who monitor investments is also making a significant co-investment in the issuer and is receiving securities at the same price and on the same terms as the participating member, the securities acquired by the participating member in a private placement are less likely to be underwriting compensation.

To address such co-investments, the proposed rule change would adopt a new venture capital exception from underwriting compensation for securities acquired in a private placement before the required filing date of the public offering by a participating member if at least 15 percent of the total number of securities sold in the private placement were acquired, at the same time and on the same terms, by one or more entities that are open-end investment companies not traded on an exchange, and no such entity is an affiliate of a FINRA member participating in the offering. These conditions lessen the risk that the co-investment would be made for the purpose of the participating member avoiding the requirements of Rule 5110.

Treatment of Non-Convertible or Non-Exchangeable Debt Securities and Derivatives

Commenters requested clarifications and modifications to the treatment of non-convertible or non-exchangeable debt securities and derivatives. Rothwell stated that non-convertible or non-exchangeable debt securities should not be underwriting compensation, regardless of whether the securities were acquired in a transaction related to the offering, as they are unlikely to be used as a payment for investment banking services. If these debt securities continue to be treated as underwriting compensation, Rothwell recommended adopting a narrower exception from underwriting compensation for these debt securities issued at par (if the purchaser is the sole purchaser) or purchased at least at the same price as other purchasers at or about the same time for the same issue of debt. Rothwell stated there would be no investor protection benefit to including such securities in underwriting compensation. Rothwell suggested that this valuation method would provide an objective methodology that is appropriate to these debt securities and is consistent with investor protection.

SIFMA stated that non-convertible or non-exchangeable debt securities and derivative instruments that are acquired or entered into at a fair price in a transaction related to a public offering

should not be considered underwriting compensation. However, SIFMA suggested that such arrangements should continue to be disclosed in the prospectus because they are entered into in transactions related to the public offering. As a secondary option, SIFMA suggested that proposed Supplementary Material .06 to Rule 5110 be modified to provide that: (1) “non-convertible or non-exchangeable debt securities and derivative instruments acquired ‘from or entered into with the issuer’ in a transaction related to the public offering and at a fair price will be considered underwriting compensation but will have no compensation value”; and (2) any securities or other payment received by a participating member during the review period in connection with the settlement or termination of a derivative instrument that was entered into at a fair price in a transaction related to the public offering will, like the derivative instrument itself, have no compensation value. SIFMA further commented that if the suggested change is not made, proposed Rule 5110(g)(8), which prohibits certain terms in connection with “the receipt of underwriting compensation consisting of any option, warrant or convertible security,” should be modified to exclude fair price derivatives.

Because “related to the offering” is not defined, Davis Polk suggested that the test of whether the non-convertible or non-exchangeable debt and derivative instruments were acquired at a fair price provides a more meaningful standard. Rothwell stated that the terms “related to the public offering” and “unrelated to the public offering” as used in the Rule are confusing and that it would be more appropriate to treat securities as underwriting compensation if not acquired at a fair price or to apply the standards in the definition of “underwriting compensation.”

Rule 5110 distinguishes between whether the non-convertible or non-exchangeable debt securities and derivative instruments were acquired in a transaction related or unrelated to a public offering. The proposed rule change would clarify that non-convertible or non-exchangeable debt securities and derivative instruments acquired in a transaction unrelated to a public offering would not be underwriting compensation. Consistent with the current Rule, these debt securities and derivative instruments would not be subject to Rule 5110 (*i.e.*, a description of the debt securities and derivative instruments need not be filed with FINRA, there are no valuation-related requirements and the lock-up restriction does not apply).

In contrast, non-convertible or non-exchangeable debt securities and derivative instruments acquired in a transaction related to a public offering would be underwriting compensation and a description of these debt securities or derivative instruments must be filed with FINRA. The proposed rule change would clarify that these debt securities and derivative instruments acquired at a fair price would be considered underwriting compensation but would have no compensation value, while these debt securities and derivative instruments acquired not at a fair price would be considered underwriting compensation and subject to the normal valuation requirements of Rule 5110.

SIFMA also suggested the definition of fair price be revised to clarify that securities or instruments that are intended to be compensatory in nature for acting as a private placement agent for the issuer, for providing a loan, credit facility, merger, acquisition or any other service, including underwriting services, would not be viewed as having been acquired or entered into at a fair price, otherwise the reference to “any other service” could be read broadly as to render the definition meaningless. To clarify the scope of the definition, the proposed rule change would provide that a “derivative instrument or other security received as compensation for providing services for the issuer, for providing or arranging a loan, credit facility, merger, acquisition or any other service, including underwriting services will not be deemed to be entered into or acquired at a fair price.”¹³²

Lock-Up Restrictions

Commenters requested several changes to the lock-up restriction, including the length of and securities subject to the restriction. Some commenters agreed that a 180-day lock-up period would be appropriate for IPOs but recommended a shorter (*e.g.*, 30- to 45-day) lock-up period for follow-on offerings.¹³³ SIFMA also suggested that the lock-up requirement not apply in connection with offerings of securities that have a bona fide public market (as that term is defined in Rule 5121).

In contrast, NASAA noted that the NASAA Promotional Shares Statement of Policy requires a lock-up period that is much longer than 180 days (*i.e.*, that promotional shares that are not fully paid will be subject to a lock-up agreement for at least one or two years

following the completion of the offering) to ensure that investors and promoters assume similar risks in the offering. Consequently, NASAA urged requiring a longer lock-up period under Rule 5110 to more closely align the interests of the underwriters with those of the investors in the offering.

The proposed rule change continues the historical approach of a 180-day lock-up period for both initial and follow-on public offerings. While the insider lock-up period could be less than 180 days in a follow-on offering, the insider lock-up period is commonly 180 days in IPOs. Keeping the same lock-up period for underwriters and the issuer's insiders provides equivalent protections for the secondary market. While the insider lock-up period may vary among follow-on offerings, a consistent 180-day lock-up period for underwriters ensures that they do not accept less investment risk than insiders subject to a 180-day lock-up period.

ABA commended FINRA for revising the lock-up restrictions under proposed Rule 5110(e)(1) to clarify that the 180-day restricted period begins with the date of commencement of sales in the public offering and to minimize the impact of the lock-up restriction by including some important additional exemptions. NASAA supported the lock-up restriction being determined by the date of commencement of sales in the public offering (rather than from the date of effectiveness) and suggested that this change would provide increased protection for investors. However, ADISA suggested that the lock-up restriction should be determined using the date of effectiveness to provide clarity to all participants as the term “commencement of sales” can be vaguer and harder to determine rather than the definitive date of effectiveness.

Because the approach in the *Notice* 17-15 Proposal provides clarity in measuring the lock-up period, particularly with respect to securities sold pursuant to a registration statement or amendment thereto that does not have to be declared effective by the SEC, the proposed rule change retains the approach that the lock-up restriction is determined by the date of commencement of sales in the public offering (rather than from the date of effectiveness).

ABA stated that the lock-up restriction should apply only to equity securities received in transactions that are not registered with the SEC and that the lock-up restriction in the *Notice* 17-15 Proposal would potentially expand the scope of the lock-up restriction to include all public offerings. Rothwell stated that the lock-up restriction

should apply only to securities deemed underwriting compensation in the case of public offerings of equity securities. Rothwell suggested revising the lock-up restriction to state that the restriction applies only in the case of a public equity offering of common or preferred stock, options, warrants, and other equity securities, including debt securities convertible to or exchangeable for equity securities of the issuer, that are unregistered.

The *Notice* 17-15 Proposal provided a broad lock-up requirement with several delineated exceptions. FINRA agrees that the scope of the lock-up requirement should be “public equity offering” as is used in the current Rule. The proposed rule change simplifies, clarifies and reduces the securities considered underwriting compensation and thus subject to the lock-up restriction. To the extent that securities are underwriting compensation and subject to lock-up restriction, exemptive relief may be available on a case-by-case basis as necessary and appropriate.

ABA requested guidance with respect to whether it is intended that the lock-up restriction would prevent participating members from selling securities acquired as underwriting compensation in the public offering itself. The proposed rule change would add an exception from the lock-up restriction for securities that were received as underwriting compensation, and are registered and sold as part of a firm commitment offering.¹³⁴ This is intended to give some flexibility to members in selling securities received as underwriting compensation, while limiting the proposed exception to firm commitment offerings where the underwriter has assumed the risk of marketing and distributing an offering that includes securities the underwriter received as underwriting compensation. In addition, firm commitment offerings are usually marketed and sold to institutional investors, who typically purchase a majority of the shares in such offerings.

SIFMA stated that the *Notice* 17-15 Proposal appeared to subject non-convertible or non-exchangeable debt securities and derivative instruments acquired at a fair price in a transaction related to the offering and non-listed securities of an issuer acquired in a public market transaction to Rule 5110's lock-up restriction, unless the security is of an issuer that meets the registration requirements of current Forms S-3, F-3, F-10 (for brevity, referred to herein as “current eligible issuers”). SIFMA supported the exception for current

¹³² See proposed Supplementary Material .06(b) to Rule 5110.

¹³³ See ADISA, Rothwell and SIFMA.

¹³⁴ See proposed Rule 5110(e)(2)(A)(viii).

eligible issuers, but stated that the lock-up restriction should apply only to public offerings of equity and equity-linked securities, should cover only equity and equity-linked securities received as underwriting compensation by participating members in offerings not registered under the Securities Act and should provide an express exception for fair price derivatives. Moreover, SIFMA suggested that the proposed exception for current eligible issuers should be clarified to expressly provide that the exclusion also applies to derivative instruments entered into with such issuers.

Davis Polk stated that application of the lock-up restriction to non-convertible or non-exchangeable debt securities and derivative instruments is not justified and may interfere with some derivative transactions. Rothwell suggested that non-convertible or non-exchangeable debt securities deemed to be underwriting compensation should be excluded from the lock-up restriction as there is no investor protection benefit to be received. Rothwell stated that these securities that are included in the calculation of underwriting compensation: (1) Are likely a different issue or series than those sold to the public and will not have a public market; and (2) even if the securities are from the same issue, the public secondary market trading price of such debt securities is primarily determined by fluctuating interest rates rather than the types of market forces that affect the equity markets.

The proposed rule change would provide clarity about the treatment of non-convertible or non-exchangeable debt securities and derivative instruments acquired in transactions related to a public offering. The proposed rule change would retain the current approach for non-convertible or non-exchangeable debt securities acquired in a transaction related to the public offering and would provide an express exception from the lock-up restriction for clarity (*i.e.*, the exception would provide that the lock-up restriction does not apply).¹³⁵

However, derivative instruments are currently subject to Rule 5110's lock-up restriction. FINRA recognizes that members may acquire derivative instruments in connection with a hedging transaction related to the public offering and that, given the nature of these hedging transactions, the lock-up restriction should not apply. Accordingly, the proposed rule change would provide that the lock-up restriction does not apply to derivative

instruments acquired in connection with a hedging transaction related to the public offering and at a fair price.¹³⁶ Derivative instruments acquired in transactions related to the public offering that do not meet the requirements of the exception would be subject to the lock-up restriction.

SIFMA suggested expressly excluding from the lock-up restriction any securities received in connection with the settlement or termination of a derivative instrument received outside the review period or during the review period in a transaction unrelated to the public offering, such as by revising proposed Supplementary Material .01(b)(14) to Rule 5110 to read "securities acquired as the result of a conversion 'or exchange' of securities originally acquired prior to the review period and securities acquired at termination or in settlement of a derivative instrument entered into prior to the review period or during the review period in a transaction unrelated to the public offering." The lock-up restriction would not apply to securities that were acquired in a transaction unrelated to the public offering. However, because an "exchange" could relate to a wholly different transaction, the suggested revision to proposed Supplementary Material may be overly broad.

SIFMA suggested that the one percent threshold in proposed Rule 5110(e)(2)(A)(ii)—which provides that the lock-up restrictions will not apply if the aggregate amount of securities of the issuer beneficially owned by a participating member does not exceed one percent of the securities being offered—should be tied to the amount of securities received as underwriting compensation during the review period rather than more broadly to all securities held by the participating member. Accordingly, SIFMA suggested that the lock-up restriction should not apply to securities received during the review period as underwriting compensation if the amount of such securities does not exceed one percent of the securities being offered in the public offering. FINRA believes that the aggregate amount of securities beneficially owned by a participating member is a better measure of the potential impact of sales by the participating member into the secondary market.

SIFMA suggested that the exception in proposed Rule 5110(e)(2)(A)(vii) should be modified to allow for the sale or other disposition of the securities by registered investment advisers, even if

such advisers are affiliated with a participating FINRA member. To accomplish this change, SIFMA suggested revising proposed Rule 5110(e)(2)(A)(vii) to state "the security is beneficially owned on a pro-rata basis by all equity owners of an investment fund, provided that (a) no participating member (other than a participating member that is registered as an investment adviser under the U.S. Investment Advisers Act of 1940 and is acting in accordance with its responsibilities thereunder) manages or otherwise directs investments by the fund, and (b) participating members in the aggregate do not own more than 10 percent of the equity of the fund." SIFMA stated that participating members registered as investment advisers are separately regulated and have a fiduciary duty to act in the best interests of their clients, and the lock-up restriction may interfere with that regulatory responsibility. FINRA believes that this lock-up exception continues to be appropriate to securities received as underwriting compensation by a fund controlled by a participating member.

Defined Terms

The *Notice 17–15* Proposal definition of "public offering" was based on the definition in Rule 5121, but included the delineated carve-outs in the Rule 5121 definition (which relate to certain types of securities offerings that are commonly understood not to constitute offerings to the public) separately in the list of securities offerings exempted from Rule 5110's filing and substantive requirements. The practical effect of this approach was that the carve-outs in Rule 5121 (*e.g.*, securities exempt from registration under Securities Act Rule 144A or Regulation S) would not be subject to the filing or substantive provisions of Rule 5110.

Two commenters stated that the definition of public offering proposed in *Notice 17–15* eliminated the carve-outs currently in the Rule 5121 definition of public offering, thus substantially broadening the definition.¹³⁷ The commenters requested a definition of public offering be adopted that retains the carve-outs with the definition, as such offerings would already be exempt from the Rule's coverage by virtue of the definition of public offering itself. Because the approach in the *Notice 17–15* Proposal raised questions regarding the intended scope of the public offering definition, the proposed rule change incorporates the public offering definition from Rule 5121, accompanied

¹³⁵ See proposed Rule 5110(e)(2)(A)(iv).

¹³⁶ See proposed Rule 5110(e)(2)(A)(v).

¹³⁷ See ABA and SIFMA.

by the delineated carve-outs, and correspondingly deletes those carve-outs from the proposed list of exemptions from the filing and substantive provisions of Rule 5110.¹³⁸

ABA recommended revising the public offering definition to state “any primary or secondary distribution of securities ‘made in whole or in part in the United States’ ‘to the public.’” ABA suggested that this approach would avoid circularity and more accurately reflect the types of offerings intended to be covered by the Rule. To clarify the jurisdictional scope, the proposed rule change would include “in whole or in part in the United States” in the public offering definition. However, because the addition of “to the public” may raise new questions on the scope of covered offerings, the proposed definition does not include that language.

SIFMA suggested that because the defined term “experienced issuer” differs from the terminology used by the SEC for purposes of Form S-3, the term is likely to lead to confusion. Beyond the name, commenters suggested modifying the definition substantively. Specifically, SIFMA suggested that the definition mean: “an issuer that (i) meets the registrant requirements specified in paragraph I.A of SEC Form S-3, except that for purposes of paragraph I.A.3 thereof, the reference to twelve calendar months shall be deemed to refer instead to 36 calendar months; and (ii) has an aggregate market value of outstanding voting and non-voting common equity held by non-affiliates (as calculated pursuant to General Instruction I.B.1 of Form S-3) of (a) at least U.S. \$150 million or (b) at least U.S. \$100 million and the issuer has had an annual trading volume of its common equity of at least three million shares (or share equivalent).” Sullivan suggested that, at a minimum, the experienced issuer definition should be revised to conform to existing Forms S-3 and F-3 because requiring an additional 24 months of reporting history does not enhance the ability of these issuers to fend for themselves.

ABA appreciated FINRA’s attempt to streamline Rule 5110 by using the defined term experienced issuer but suggested that the criteria is outdated and the exemption should be available to any issuer who is eligible to file a registration statement under the SEC’s current requirements for Forms S-3, F-3 and F-10. If limiting the exemption beyond the current requirements for Forms S-3, F-3 and F-10 is necessary for the protection of investors, ABA requested that FINRA consider revising

the definition to also cover issuers with a 12 month reporting history if they have: (1) A public float of at least \$75 million; and (2) average daily trading volume (as defined in SEC Regulation M) in their common equity securities of at least \$1 million and also requested exempting issuers that meet these criteria that are filing on SEC Form N-2.

Rather than referring to the pre-1992 standards for Form S-3 and F-3 and standards approved in 1991 for Form F-10, the proposed definition of experienced issuer codifies those standards currently in Rule 5110 to simplify the analysis for the benefit of members. The continued application of the Rule to these issuers continues to be justified.¹³⁹ The proposed rule change intentionally uses language different from that used in other requirements (e.g., Form S-3’s use of “seasoned issuer”) to avoid confusion and make clear that the defined term covers a different set of issuers.

Two commenters stated that retaining the current definition of “institutional investor” is problematic and difficult to use, thereby rendering the venture capital exceptions in proposed Rule 5110(d)(2) and (3) largely unworkable.¹⁴⁰ SIFMA stated that, given the expansive definition of “participating member,” it is difficult to ascertain whether an entity qualifies as an institutional investor and that the focus of the definition should instead be on whether a participating member manages the investor’s investments or otherwise controls or directs the investment decisions of the investor.

SIFMA suggested defining the term “institutional investor” to mean a “person that has an aggregate of at least U.S. \$50 million invested in securities in its portfolio or under management, including investments held by its wholly owned subsidiaries; provided that no participating members manage the institutional investor’s investments or otherwise control or direct the investment decisions of such investor.” Alternatively, if the equity interest element of the definition is not deleted, SIFMA proposed that the: (1) Reference to “equity interest” be changed to “beneficial ownership” as defined in Rule 5121; (2) thresholds for both public and non-public entities be raised to 15 percent and the reference to “entity” be changed to “investor” (due to the incorporation by reference of the specific definition of “entity” in Rule 5121 which does not fit well in this

specific context in Rule 5110); and (3) calculation of the beneficial ownership threshold be limited to ownership by the participating FINRA member and its affiliates (i.e., the calculation should not include associated persons that are not otherwise “affiliates” of the member or immediate family of such persons).

Revising the institutional investor definition as suggested to focus on controlling or directing investment decisions would insert uncertainty and subjectivity into the definition. The proposed rule change retains this definition because the current definition is more objective. Moreover, because Rule 5110’s venture capital exceptions are relied upon by members, FINRA does not agree that the institutional investor definition makes the venture capital exceptions unworkable.

Two commenters suggested that the Notice 17-15 Proposal’s addition of “other than the issuer” at the end of the definition of “participating member” does not make it clear that the issuer is exempted from all categories of participating member.¹⁴¹ To make clear that the definition does not include the issuer, the proposed rule change would define participating member to mean “any FINRA member that is participating in a public offering, any affiliate or associated person of the member, and any immediate family, but does not include the issuer.”¹⁴²

Three commenters stated that the proposed carve-out of the “issuer” from the definition of “participating member” is useful and would help with inadvertent overlap between the two definitions.¹⁴³ These commenters suggested that a comparable carve-out to include participating members be included in the definition of “issuer.” The proposed rule change does not incorporate the suggested change to the definition of “issuer” because a participating member could also be the issuer of the securities.

SIFMA stated that the proposed definition of “issuer” referencing an “entity” offering its securities to the public may be confusing given that the defined term “entity” in Rule 5121 excludes certain types of issuers such as DPPs and REITs. To address this issue, SIFMA suggested that “issuer” be defined to mean the “registrant or other person offering its securities to the public, any selling security holder offering securities to the public, any affiliate of the registrant, such other person or selling security holder (other than an affiliate that is a participating

¹³⁹ See *supra* discussion of previous problems associated with shelf offerings in Item II.A.

¹⁴⁰ See Davis Polk and SIFMA.

¹⁴¹ See ABA and Rothwell.

¹⁴² See proposed Rule 5110(j)(15).

¹⁴³ See ABA, Rothwell and SIFMA.

¹³⁸ See proposed Rule 5110(j)(18).

member), and the officers or general partners, and directors thereof.” To clarify the scope of covered persons, the proposed rule change would revise the issuer definition to refer to the “registrant or other person” (rather than “entity”).¹⁴⁴

ABA stated that while proposed Rule 5110(j)(2) would define the term “bank” for purposes of the Rule’s venture capital exceptions, the term “bank” is not defined for purposes of the exemption for qualifying bank securities under proposed Rule 5110(h)(1). As the purpose of the proposed Rule 5110(h)(1) exemption is to exempt offerings by qualifying issuers, ABA stated that the exemption should include non-U.S. bank issuers and should not be limited to banks as defined in Exchange Act Section 3(a)(6), which definition is largely limited to U.S. domiciled banks and U.S.-based branches of non-U.S. banks.

The proposed rule change would harmonize the definition of bank in the proposed venture capital exceptions and the Rule 5110(h)(1) exemption. Specifically, the proposed rule change would define bank for purposes of Rule 5110 as “a bank as defined in Exchange Act Section 3(a)(6) or is a foreign bank that has been granted an exemption under this Rule and shall refer only to the regulated entity, not its subsidiaries or other affiliates.”¹⁴⁵ This harmonized approach combines the definition of bank currently in Rule 5110, with the scope of banking entities currently covered by the venture capital exceptions.

ABA supported clarifying and codifying the relevant “review period” through a defined term but requested additional guidance regarding when the review period would end for offerings with an indeterminate time period such as at-the-market offerings. An at-the-market offering would be a takedown offering and the corresponding review period is set forth in proposed Rule 5110(j)(20)(C). Additional guidance regarding other offerings with indeterminate time periods may be provided as necessary or appropriate.

ABA questioned why the review period in proposed Rule 5110(j)(20)(C) would be limited to firm commitment or best efforts takedowns or any other continuous offering “on behalf of security holders” and requested that the definition be revised to include the issuer. ABA suggested that as proposed

“on behalf of security holders” appears to qualify “firm commitment,” “best efforts” and “other continuous offering” for the purpose of the review period definition. The reference to “on behalf of securities holders” was not intended to limit proposed Rule 5110(j)(20)(C) as suggested. To clarify the intended scope of the definition, the proposed rule change deletes the reference to “on behalf of security holders.”

Davis Polk stated that because the review period is defined to include the 60-day period following the effective date of a firm commitment offering (or following the final closing for other offerings), participating members would be required to provide FINRA with information regarding any fees or other compensation received by them, their affiliates, associated persons, and immediate family of associated persons for 60 days following the offering, which represents a significant diligence burden. Providing a specific time period gives clarity to participating members. Moreover, the inclusion of a short period of time following the offering prevents circumvention of the Rule 5110 and is consistent with current rule, which has a 90-day requirement.

Davis Polk suggested that the definition of “required filing date” be modified for offerings that are dormant for a period of six months or more. Because the exceptions from underwriting compensation are unavailable for securities acquired by participating members after the first confidential submission to or public filing of the registration statement with the SEC, an issuer may not be able to accept financing from a participating member because of potentially excessive underwriting compensation. Accordingly, Davis Polk suggested either the definition of “required filing date” should be modified or the exceptions from underwriting compensation should be modified to apply to acquisitions by participating members of the issuer’s securities after the required filing date. If the former, Davis Polk suggested that the definition provide that with respect to offerings that are dormant for six months or more, the review period begin upon the filing of the first amendment to the registration statement, which has been confidentially or publicly filed with the SEC, following the dormant period.

Availability of a venture capital exception is contingent upon the securities being acquired before the required filing date because after that date, in FINRA’s experience, securities acquisitions are more likely to be underwriting compensation and issuers may be more dependent on a particular

underwriter or underwriters to raise necessary capital. A public offering may be significantly delayed for legitimate reasons (e.g., unfavorable market conditions) and during this delay the issuer may require funding to operate its business or continue as a going concern. Furthermore, a member may make bona fide investments in or loans to the issuer during this delay to satisfy the issuer’s funding needs and any securities acquired as a result of this funding may be unrelated to the anticipated public offering. The proposed rule change would provide some additional flexibility in the availability of the venture capital exceptions for securities acquired where the public offering has been significantly delayed as discussed above in a principles-based approach in proposed Supplementary Material .02 to Rule 5110.

Valuation of Securities

The *Notice 17–15* Proposal removed the valuation formula for convertible securities and instead allowed for convertible securities to be valued based on a securities valuation method that is commercially available and appropriate for the type of securities to be valued, such as, for example, the Black-Scholes model for options. NASAA stated that the NASAA Underwriting Expenses Statement of Policy uses the same formula as current Rule 5110 for the valuation of underwriter’s warrants in calculating total underwriting expenses. NASAA stated that the current valuation formula serves a useful purpose by providing an objective valuation method that provides consistency across different offerings and suggested that FINRA consider retaining the existing formula as a continued optional method of valuation. NASAA also urged FINRA to reexamine whether it is appropriate for an issuer to grant any options or warrants to underwriters as potential conflicts could impact the due diligence process.

EGS stated that Rule 5110 should continue to have a single valuation method to process filings in a consistent, predictable and efficient manner. EGS’s expressed concerns with the approach in *Notice 17–15* Proposal included: (1) Varying methods will yield inconsistent results from dealer to dealer and deal to deal; and (2) assessment of a new valuation method during the pendency of a filing would delay resolution of that filing and divert FINRA staff’s time and attention away from other filings.

Rohtwell supported removal of the current Rule 5110 formula for valuing options but questioned whether, as a matter of policy, FINRA would continue

¹⁴⁴ See proposed Rule 5110(j)(12).

¹⁴⁵ See proposed Rule 5110(j)(2). Because of this expanded definition, the proposed rule change would delete as unnecessarily duplicative the conditions in the venture capital exceptions.

to accept the warrant formula as a valuation method for securities that have an exercise or conversion price. Rothwell stated that there are situations where the warrant formula may continue to be a viable method for valuing securities.

SIFMA supported removal of the current Rule 5110 formula for valuing options, warrants and convertible securities to instead allow members to use a commercially available valuation method but requested additional guidance as to what should be filed with respect to such methodology. SIFMA stated that in addition to commercially available valuation models, the use of proprietary valuation models should be permitted if the member uses such a model in the ordinary course of its business to value securities of a similar type and files a description of the methodology with FINRA.

The *Notice 17-15* Proposal requested comment on whether the proposed change to the valuation method was appropriate and whether the valuation method should be limited to one that is commercially available. Some commenters supported the proposed change, while others did not. Commenters did not provide any information regarding use of commercially available valuation methods, such as what methods are available and their anticipated benefits. The proposed rule change would retain the current Rule 5110 formula for valuing options, warrants and convertible securities because of the conflicting views on the proposed change to the valuation formula and the lack of information regarding what commercially available valuation methods may be used by members.

Two commenters stated that, consistent with the current Rule, members should be allowed to value non-convertible securities that are currently trading in the secondary market based on the difference between the market price at the time of acquisition (rather than the public offering price) and the acquisition cost.¹⁴⁶ The proposed rule change would retain the current Rule 5110 formula and, consequently, would allow members to value non-convertible securities that are currently trading in the secondary market based on the difference between the market price at the time of acquisition (rather than the public offering price) and the acquisition cost.

Rothwell stated that the valuation of unit securities is not addressed in either the current Rule 5110 or the proposed

rule change. Rothwell speculated that FINRA looks through the unit to value the individual components and ascribe an additional value to the warrant within the unit even though the purchaser may have paid the same price for the unit as the public offering price. Rothwell stated that the unit security should instead be valued as a non-convertible security (as the unit is a security that does not itself have an exercise or conversion price) and that the unit securities should have a zero value and should not be ascribed an additional value when a participating member acquires a non-convertible unit at the same price as the public offering price of the unit. FINRA has previously provided guidance, with accompanying examples, for valuing unit securities.¹⁴⁷ This guidance remains valid and illustrative. FINRA does not agree with the commenter's proposed approach to valuing unit securities because a unit given to an underwriter may include a warrant with unique terms, which should be considered in evaluating underwriting compensation.

Numerical Stock Limit

Prior to 2004, Rule 5110 contained a "stock numerical limit" that prohibited underwriters and related persons from receiving securities that constitute underwriting compensation in an aggregate amount greater than 10 percent of the number or dollar amount of securities being offered to the public. FINRA eliminated this requirement as unnecessary as the convertible securities valuation formula in current Rule 5110 results in a de facto stock numerical limit.¹⁴⁸ Given the proposed elimination of the convertible securities valuation formula in the *Notice 17-15* Proposal, that Proposal requested comment on whether a new stock numerical limit should be included in Rule 5110.

NASAA suggested reinstating the numerical stock limit if FINRA determines to eliminate the convertible securities valuation formula. Rothwell stated that FINRA should not now impose a limit in a manner that would artificially restrict permissible venture, lending and other services that benefit corporate financing clients. Rothwell also stated that any numerical restriction on private placement purchases by a member or affiliate of the securities of the issuer would be contrary to the interest of issuers that

look to the FINRA members that will participate in its public offering to also purchase a significant portion of any pre-IPO private placement. Similarly, Rothwell stated that the customers of such members that purchase pre-IPO private placement securities generally expect that the member will share the risk of the investment by being a co-investor. With respect to securities acquired in venture and lending activities where the participating member must take a significant financial investment, Rothwell stated that the current requirements of Rule 5110 have and will continue to effectively limit the amount of securities acquired as underwriting compensation.

Because the proposed rule change would retain the current Rule 5110 formula for valuing options, warrants and convertible securities, the proposed rule change does not incorporate a new stock numerical limit.

Exemptive Relief

As set forth in the *Notice 17-15* Proposal, Rule 5110 would have been amended to provide that FINRA may in exceptional and unusual circumstances exempt a member from any or all of the provisions in the Rule that FINRA deems appropriate in lieu of the current approach that appropriate FINRA staff, for good cause shown may grant a conditional or unconditional exemption from any of the Rule's provisions. Two commenters questioned whether the change from the exemptive relief provision in the current Rule is intended to limit the circumstances in which an exemption may be sought.¹⁴⁹

The *Notice 17-15* Proposal would have amended the exemptive relief provision in Rule 5110 to be consistent with the exemptive relief provision in the more recently amended Rule 5121. Because the change was not intended to alter the circumstances in which exemptive relief may be sought, the proposed rule change would revert to the language in current Rule 5110 to avoid any confusion regarding the granting of exemptive relief.

Non-Cash Compensation

While acknowledging that the non-cash compensation-related provisions in the *Notice 17-15* Proposal are also in the current Rule, SIFMA recommended clarifying these provisions and eliminating inherent inconsistencies between the provisions and the rest of the Rule. To this end, SIFMA suggested revising proposed Rule 5110(f)(2) to state "in connection with the sale and distribution of a public offering of

¹⁴⁷ See *Notice to Members* 92-28 (May 1992).

¹⁴⁸ See Securities Exchange Act Release No. 48989 (December 23, 2003), 68 FR 75684 (December 31, 2003) (Order Approving File No. SR-NASD-2000-04). See also *Notice to Members* 04-13 (February 2004).

¹⁴⁹ See ABA and SIFMA.

¹⁴⁶ See Rothwell and SIFMA.

securities, no member or person associated with a member shall directly or indirectly accept or make payments or offers of payments of any non-cash compensation, except as provided in this provision, 'or as permitted elsewhere in this Rule.'” Alternatively, SIFMA suggested adding guidance in the Supplementary Material providing that the receipt of non-cash compensation items (including securities, derivatives and ROFRs) that are permitted under other provisions of Rule 5110 will not be prohibited by, or deemed inconsistent with, the restrictions in Rule 5110(g).

ABA also suggested addressing Rule 5110's non-cash compensation-related provisions in this proposed rule change. ABA suggested that if applied literally, the non-cash compensation provisions state that members may not receive any non-cash compensation other than those limited items set forth in the provision itself, and those items do not include certain forms of non-cash compensation such as securities, derivative instruments or ROFRs that are expressly permitted elsewhere in the Rule.

Consistent with the *Notice 17–15* Proposal, because the provisions are the subject of a separate consolidated approach to non-cash compensation, the proposed rule change would incorporate the Rule's current non-cash compensation provisions without modification.

Rule 5121

ABA suggested some clarifications and amendments to Rule 5121. Because any substantive changes to Rule 5121 are more appropriately considered as part of FINRA's separate consideration of our rules and programs governing the capital raising process and their effects on capital formation, this proposed rule change does not include any amendments to Rule 5121 beyond the conforming definitional amendments discussed above.

Regulation A+

ADISA stated that FINRA should be more responsive to the review and clearance of filings made pursuant to SEC Regulation A+ as extensive and long reviews of those offerings have impacted members' ability to effectively raise capital through the public markets. FINRA will continue to review our internal operations and administrative processes to improve the review and clearing of these filings. Separate from this proposed rule change, FINRA will consider the appropriateness of issuing guidance regarding underwriting and related services and financial services

provided to issuers in offerings pursuant to Regulation A+.

Guidance

EGS requested that the Public Offering Frequently Asked Questions available on FINRA's website be enhanced and that FINRA publish informal interpretations more broadly and circulate guidance to members and their counsel more frequently. If the proposed rule change is approved, FINRA will consider providing additional guidance as necessary and appropriate.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve or disapprove such proposed rule change, or

B. institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include File Number SR-FINRA-2019-012 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-FINRA-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 FINRA. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-FINRA-2019-012, and should be submitted on or before May 22, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁵⁰

Eduardo A. Aleman,
Deputy Secretary.

[FR Doc. 2019-08774 Filed 4-30-19; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-85723; File No. SR-NYSE-2019-10]

Self-Regulatory Organizations; NYSE National, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Rule 7.11, Limit Up-Limit Down Plan and Trading Pauses in Individual Securities Due to Extraordinary Market Volatility

April 25, 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 April 19, 2019, NYSE National, Inc. ("NYSE National" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit

¹⁵⁰ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 7.11, Limit Up-Limit Down Plan and Trading Pauses in Individual Securities Due to Extraordinary Market Volatility. The proposed rule change is available on the Exchange's website at www.nyse.com, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Participants filed the Plan to Address Extraordinary Market Volatility (the "Limit Up-Limit Down Plan" or the "Plan") with the Commission on April 5, 2011 to create a market-wide limit up-limit down mechanism intended to address extraordinary market volatility in NMS Stocks,⁴ as defined in Rule 600(b)(47) of Regulation NMS under the Exchange Act.⁵ The Plan sets forth procedures that provide for market-wide limit up-limit down requirements to prevent trades in individual NMS Stocks from occurring outside of the specified Price Bands. These limit up-limit down requirements are coupled with Trading Pauses, as defined in Section I(Y) of the Plan, to accommodate more fundamental price moves. In particular, the Participants adopted this Plan to address extraordinary volatility in the securities markets, *i.e.*, significant fluctuations in individual securities' prices over a short

period of time, such as those experienced during the "Flash Crash" on the afternoon of May 6, 2010.

The Plan was originally approved on a pilot basis to allow the public, the Participants, and the Commission to assess the operation of the Plan and whether the Plan should be modified prior to consideration of approval on a permanent basis.⁶ The Commission recently approved an amendment to the Plan to allow the Plan to operate on a permanent basis.⁷

Rule 7.11 is designed to comply with the Plan's requirement that exchanges establish, maintain, and enforce written policies and procedures that are reasonably designed to comply with the limit up-limit down and trading pause requirements specified in the Plan.⁸ In sum, Rule 7.11 provides that the Exchange will not display or execute trading interest outside the Price Bands as required by the limit up-limit down and trading pause requirements specified in the Plan. Rule 7.11 is designed to ensure that trading interest on the Exchange is either repriced or canceled in a manner consistent with the Plan.

Rule 7.11 currently includes a provision that ties the Rule's effectiveness to the pilot period for the Plan, including any extensions to the pilot period for the Plan. The Exchange proposes to amend Rule 7.11 to delete this provision because the Plan has been made permanent and is no longer operating as a pilot program. The Exchange does not propose any additional changes to Rule 7.11. The proposed rule change would continue to align the effectiveness of Rule 7.11 to the Plan and ensure that the Exchange maintains written policies and procedures that are reasonably designed to comply with the limit up-limit down and trading pause requirements specified in the Plan.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the requirements of Section 6(b) of the Act,⁹ in general, and Section 6(b)(5) of the Act,¹⁰ in particular, in that it is designed to remove impediments to and perfect the mechanism of a free and open market and a national market system, to promote just and equitable principles of

trade, and, in general, to protect investors and the public interest and not to permit unfair discrimination between customers, issuers, brokers, or dealers. Rule 7.11 complies with the Plan's requirement that exchanges establish, maintain, and enforce written policies and procedures that are reasonably designed to comply with the limit up-limit down and trading pause requirements specified in the Plan. The Exchange believes that the proposed rule change promotes just and equitable principles of trade because it would continue to align the effectiveness of Rule 7.11 to the Plan, without any changes. The proposed rule change would also ensure that the Exchange continues to maintain transparent written policies and procedures reasonably designed to comply with the limit up-limit down and trading pause requirements specified in the Plan.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposal would remove a provision from Rule 7.11 that ties its effectiveness to the pilot period for the Plan that was recently approved on a permanent basis. The proposal would continue to ensure that the Exchange continues to maintain written policies and procedures reasonably designed to comply with the Plan without implicating any competitive issues.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act¹¹ and Rule 19b-4(f)(6) thereunder.¹² Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of

⁴ On May 31, 2012, the Commission approved the Plan, as modified by Amendment No. 1. See Securities Exchange Act Release No. 67091, 77 FR 33498 (June 6, 2012) (File No. 4-631) ("Approval Order").

⁵ 17 CFR 242.600(b)(47).

⁶ See *supra* note 4.

⁷ See Securities Exchange Act Release No. 85623 (April 11, 2019), 84 FR 16086 (April 17, 2019) (File No. 4-631).

⁸ See Securities Exchange Act Release No. 83289 (May 17, 2018), 83 FR 23968 (May 23, 2018) (SR-NYSE-NAT-2018-02).

⁹ 15 U.S.C. 78f(b).

¹⁰ 15 U.S.C. 78f(b)(5).

¹¹ 15 U.S.C. 78s(b)(3)(A)(iii).

¹² 17 CFR 240.19b-4(f)(6).

investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6)(iii) thereunder.

A proposed rule change filed under Rule 19b-4(f)(6)¹³ normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b4(f)(6)(iii),¹⁴ the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because the Commission approved making the Plan pilot permanent on April 11, 2019, and therefore the Exchange's proposed changes to its rules reflecting that the Plan is now permanent should go into effect immediately. Therefore, the Commission hereby waives the 30-day operative delay and designates the proposed rule change to be operative upon filing with the Commission.¹⁵

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)¹⁶ of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<http://www.sec.gov/rules/sro.shtml>); or

- Send an email to rule-comments@sec.gov. Please include File Number SR-NYSE-2019-10 on the subject line.

Paper Comments

- Send paper comments in triplicate to: Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSE-2019-10. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSE-2019-10 and should be submitted on or before May 22, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁷

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2019-08777 Filed 4-30-19; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release Nos. 33-10634; 34-85721; File No. 265-32]

Small Business Capital Formation Advisory Committee

AGENCY: Securities and Exchange Commission.

ACTION: Notice of meeting.

SUMMARY: The Securities and Exchange Commission Small Business Capital Formation Advisory Committee, established pursuant to Section 40 of the Securities Exchange Act of 1934 as added by the SEC Small Business Advocate Act of 2016, is providing notice that it will hold a public meeting. The public is invited to submit written statements to the Committee.

DATES: The meeting will be held on Monday, May 6, 2019, from 1:00 p.m. to 3:30 p.m. (ET) and will be open to the public. Written statements should be received on or before May 6, 2019.

ADDRESSES: The meeting will be held at the Commission's headquarters, 100 F Street NE, Washington, DC. The meeting will be webcast on the Commission's website at www.sec.gov. Written statements may be submitted by any of the following methods:

Electronic Statements

- Use the Commission's internet submission form (<http://www.sec.gov/rules/other.shtml>); or
- Send an email message to rule-comments@sec.gov. Please include File Number 265-32 on the subject line; or

Paper Statements

- Send paper statements to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.

All submissions should refer to File No. 265-32. This file number should be included on the subject line if email is used. To help us process and review your statement more efficiently, please use only one method. The Commission will post all statements on the SEC's website at www.sec.gov.

Statements also 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. All statements received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

¹³ 17 CFR 240.19b-4(f)(6).

¹⁴ 17 CFR 240.19b-4(f)(6)(iii).

¹⁵ For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

¹⁶ 15 U.S.C. 78s(b)(2)(B).

¹⁷ 17 CFR 200.30-3(a)(12).

FOR FURTHER INFORMATION CONTACT: Julie Z. Davis, Senior Special Counsel, Office of the Advocate for Small Business Capital Formation, at (202) 551-5407, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-3628.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public. Persons needing special accommodations because of a disability should notify the contact person listed in the section above entitled **FOR FURTHER INFORMATION CONTACT**. The agenda for the meeting includes matters relating to rules and regulations affecting small and emerging companies under the federal securities laws.

Dated: April 25, 2019.

Vanessa A. Countryman,

Acting Secretary.

[FR Doc. 2019-08762 Filed 4-30-19; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-85722; File No. SR-NYSE-2019-21]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Rules 7.11 and 80C, Limit Up-Limit Down Plan and Trading Pauses in Individual Securities Due to Extraordinary Market Volatility

April 25, 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 April 18, 2019, New York Stock Exchange LLC (“NYSE” or the “Exchange”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 7.11, Limit Up-Limit Down Plan and Trading Pauses in Individual Securities Due to Extraordinary Market Volatility, and Rule 80C, Limit Up-Limit

Down Plan and Trading Pauses in Individual Securities Due to Extraordinary Market Volatility. The proposed rule change is available on the Exchange’s website at www.nyse.com, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization’s Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Participants filed the Plan to Address Extraordinary Market Volatility (the “Limit Up-Limit Down Plan” or the “Plan”) with the Commission on April 5, 2011 to create a market-wide limit up-limit down mechanism intended to address extraordinary market volatility in NMS Stocks,⁴ as defined in Rule 600(b)(47) of Regulation NMS under the Exchange Act.⁵ The Plan sets forth procedures that provide for market-wide limit up-limit down requirements to prevent trades in individual NMS Stocks from occurring outside of the specified Price Bands. These limit up-limit down requirements are coupled with Trading Pauses, as defined in Section I(Y) of the Plan, to accommodate more fundamental price moves. In particular, the Participants adopted this Plan to address extraordinary volatility in the securities markets, *i.e.*, significant fluctuations in individual securities’ prices over a short period of time, such as those experienced during the “Flash Crash” on the afternoon of May 6, 2010.

The Plan was originally approved on a pilot basis to allow the public, the Participants, and the Commission to assess the operation of the Plan and

whether the Plan should be modified prior to consideration of approval on a permanent basis.⁶ The Commission recently approved an amendment to the Plan to allow the Plan to operate on a permanent basis.⁷

Rules 7.11 and 80C are designed to comply with the Plan’s requirement that exchanges establish, maintain, and enforce written policies and procedures that are reasonably designed to comply with the limit up-limit down and trading pause requirements specified in the Plan.⁸ In sum, Rules 7.11 and 80C provide that the Exchange will not display or execute trading interest outside the Price Bands as required by the limit up-limit down and trading pause requirements specified in the Plan. Rules 7.11 and 80C are designed to ensure that trading interest on the Exchange is either repriced or canceled in a manner consistent with the Plan.

Rules 7.11 and 80C currently include a provision that ties each Rules’ effectiveness to the pilot period for the Plan, including any extensions to the pilot period for the Plan. The Exchange proposes to amend Rules 7.11 and 80C to delete this provision because the Plan has been made permanent and is no longer operating as a pilot program. The Exchange does not propose any additional changes to Rules 7.11 and 80C. The proposed rule change would continue to align the effectiveness of Rules 7.11 and 80C to the Plan and ensure that the Exchange maintains written policies and procedures that are reasonably designed to comply with the limit up-limit down and trading pause requirements specified in the Plan.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the requirements of Section 6(b) of the Act,⁹ in general, and Section 6(b)(5) of the Act,¹⁰ in particular, in that it is designed to remove impediments to and perfect the mechanism of a free and open market and a national market system, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest and not to permit unfair discrimination between customers, issuers, brokers, or dealers. Rules 7.11 and 80C comply with the Plan’s requirement that exchanges

⁶ See *supra* note 4.

⁷ See Securities Exchange Act Release No. 85623 (April 11, 2019), 84 FR 16086 (April 17, 2019) (File No. 4-631).

⁸ See Securities Exchange Act Release Nos. 68876 (February 8, 2013), 78 FR 10643 (February 14, 2013) (SR-NYSE-2013-09); and 83289 (March 26, 2018), 83 FR 13553 (March 29, 2018) (SR-NYSE-2017-36).

⁹ 15 U.S.C. § 78f(b).

¹⁰ 15 U.S.C. § 78f(b)(5).

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

⁴ On May 31, 2012, the Commission approved the Plan, as modified by Amendment No. 1. See Securities Exchange Act Release No. 67091, 77 FR 33498 (June 6, 2012) (File No. 4-631) (“Approval Order”).

⁵ 17 CFR 242.600(b)(47).

establish, maintain, and enforce written policies and procedures that are reasonably designed to comply with the limit up-limit down and trading pause requirements specified in the Plan. The Exchange believes that the proposed rule change promotes just and equitable principles of trade because it would continue to align the effectiveness of Rules 7.11 and 80C to the Plan, without any changes. The proposed rule change would also ensure that the Exchange continues to maintain transparent written policies and procedures reasonably designed to comply with the limit up-limit down and trading pause requirements specified in the Plan.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposal would remove a provision from Rules 7.11 and 80C that tie their effectiveness to the pilot period for the Plan that was recently approved on a permanent basis. The proposal would continue to ensure that the Exchange continues to maintain written policies and procedures reasonably designed to comply with the Plan without implicating any competitive issues.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act¹¹ and Rule 19b-4(f)(6) thereunder.¹² Because the proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6)(iii) thereunder.

A proposed rule change filed under Rule 19b-4(f)(6)¹³ normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b4(f)(6)(iii),¹⁴ the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because the Commission approved making the Plan pilot permanent on April 11, 2019, and therefore the Exchange's proposed changes to its rules reflecting that the Plan is now permanent should go into effect immediately. Therefore, the Commission hereby waives the 30-day operative delay and designates the proposed rule change to be operative upon filing with the Commission.¹⁵

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)¹⁶ of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include File Number SR-NYSE-2019-21 on the subject line.

¹³ 17 CFR 240.19b-4(f)(6).

¹⁴ 17 CFR 240.19b-4(f)(6)(iii).

¹⁵ For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

¹⁶ 15 U.S.C. 78s(b)(2)(B).

Paper Comments

- Send paper comments in triplicate to: Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSE-2019-21. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSE-2019-21 and should be submitted on or before May 22, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁷

Eduardo A. Aleman,

Deputy Director.

[FR Doc. 2019-08776 Filed 4-30-19; 8:45 am]

BILLING CODE 8011-01-P

¹¹ 15 U.S.C. 78s(b)(3)(A)(iii).

¹² 17 CFR 240.19b-4(f)(6).

¹⁷ 17 CFR 200.30-3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-85716; File No. SR-NYSECHX-2019-07]

Self-Regulatory Organizations; NYSE Chicago, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Regarding New Rules on Hours of Business, Holidays and Trading Halts and Suspensions, and Amendment of Article 20, Rule 1

April 25, 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 April 23, 2019, NYSE Chicago, Inc. (“NYSE Chicago” or the “Exchange”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes new rules on hours of business, holidays and trading halts and suspensions, and amend Article 20, Rule 1. The proposed rule change is available on the Exchange’s website at www.nyse.com, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization’s Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes new rules on hours of business, holidays and trading suspensions, and amend Article 20, Rule 1.

In July 2018, the Exchange and its direct parent company were acquired by NYSE Group, Inc.⁴ As a result, the Exchange became part of a corporate family that now includes five separate registered national securities exchanges.⁵

To simplify operations and allow for consistent action across the Exchange and its Affiliate SROs, the Exchange believes it is important that its rules regarding hours of business, holidays and trading halts and suspensions be consistent with those of its Affiliate SROs.⁶ Accordingly, the Exchange proposes to harmonize its rules with respect to those matters with those of the Affiliate SROs by adopting new Rules 7.1 (Hours of Business), 7.2 (Holidays) and 7.13 (Trading Suspensions) and amend Article 20, Rule 1 (Trading Sessions).

Proposed Rules 7.1, 7.2 and 7.13

The Exchange recently adopted a rule numbering framework in connection with the migration of the Exchange to the NYSE Pillar platform (“Pillar”).⁷ Proposed Rules 7.1, 7.2 and 7.13 would fall within that framework.⁸

Proposed Rule 7.1: The proposed rule is substantially the same as NYSE Rule 7.1, NYSE American Rule 7.1E, NYSE Arca Rule 7.1-E and NYSE National Rule 7.1, with the exception of certain defined terms.⁹

Proposed Rule 7.1(a) and (b) would specify that the Exchange would be

⁴ See Exchange Act Release No. 83635 (July 13, 2018), 83 FR 34182 (July 19, 2018) (SR-CHX-2018-004); see also Exchange Act Release No. 83303 (May 22, 2018), 83 FR 24517 (May 29, 2018) (SR-CHX-2018-004).

⁵ The Exchange has four registered national securities exchange affiliates: New York Stock Exchange LLC (“NYSE”), NYSE American LLC (“NYSE American”), NYSE Arca, Inc. (“NYSE Arca”), and NYSE National, Inc. (“NYSE National”) and collectively, the “Affiliate SROs”).

⁶ See 83 FR 34182, 34187.

⁷ See Exchange Act Release No. 85297 (March 12, 2019), 84 FR 9854 (March 18, 2019) (SR-CHX-2018-03).

⁸ Because there would be a gap in the numbering between proposed Rules 7.2 and 7.13, the Exchange proposes to add new Rules 7.3-7.12, which would be marked “Reserved.”

⁹ NYSE Arca Rule 7.1-E and NYSE National Rule 7.1 use “President” instead of “CEO.” Proposed Rule 7.1(b) would use “Participant” instead of “member organization” or “ETP Holder.” See Article 1, Rule 1(s) (definition of “Participant”).

open for the transaction of business on every business day, and the hours at which trading sessions open and close would be specified by Exchange rule or established by its Board of Directors (“Board”).

Proposed Rule 7.1(c) would provide that, except as may be otherwise determined by the Board, the Chief Executive Officer (“CEO”) or his or her designee may halt or suspend trading in some or all securities; extend the hours for the transaction of business; close some or all Exchange facilities; determine the duration of any such halt, suspension or closing; or determine to trade securities on the Exchange’s disaster recovery facility.¹⁰ Proposed Rule 7.1(d) would provide that the CEO or his or her designee shall take such actions only when they deem it to be necessary or appropriate for the maintenance of a fair and orderly market, or the protection of investors or otherwise in the public interest, due to extraordinary circumstances.

Finally, proposed Rule 7.1(e) would require that the CEO or his or her designee notify the Board of actions taken pursuant to the rule, except for a period of mourning or recognition for a person or event, as soon thereafter as is feasible.

Proposed Rule 7.2: Proposed Rule 7.2, which would establish the list of Exchange holidays, is substantially the same as NYSE Rule 7.2, NYSE American Rule 7.2E, and NYSE National Rule 7.2.¹¹ It is also similar to NYSE Arca Rule 7.2-E, with the exception that the NYSE Arca rule does not include language regarding when that Affiliate SRO would be open for business if a holiday falls on a Sunday.¹²

Proposed Rule 7.13: Proposed Rule 7.13 is the same as NYSE American Rule 7.13E and substantially similar to NYSE Arca Rule 7.13-E and NYSE

¹⁰ As part of its business continuity and disaster recovery plans, NYSE Chicago maintains disaster recovery facilities in geographically diverse locations, as required by Regulation SCI. More specifically, currently NYSE Chicago maintains two geographically diverse data centers. For each symbol, one of the data centers is the primary site and the other the disaster recovery site. Which data center serves as the primary site, and which as the disaster recovery site, depends on the symbol. See 17 CFR 242.1001(a)(2)(v) (requiring policies and procedures for business continuity and disaster recovery plans that include maintaining backup and recovery capabilities sufficiently resilient and geographically diverse and that are reasonably designed to achieve next business day resumption of trading and two-hour resumption of critical SCI systems following a wide-scale disruption).

¹¹ The proposed rule would use “Washington’s Birthday” instead of “President’s Day.” See 5 U.S.C. 6103(a).

¹² NYSE Arca Rule 7.2-E also uses “President’s Day.”

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

National Rule 7.13.¹³ Proposed Rule 7.13 would authorize the Chair of the Board or the CEO (or their officer designee) to suspend trading in any and all securities if such suspension would be in the public interest. The suspension may not continue longer than two days, or as soon thereafter as a quorum of directors can be assembled, unless the Board approves the continuation.

Proposed Amendments to Article 20, Rule 1

Consistent with the proposed rules, the Exchange proposes to amend Article 20, Rule 1(a), (c) and (d).¹⁴

Rule 1(a): Current paragraph (a) provides that, unless otherwise determined by the Board, the Exchange shall be open for trading daily, except on Saturdays and Sundays, and that the Board shall determine the hours during which the Exchange is open for the transaction of business. The Exchange proposes to delete current paragraph (a) of Rule 1, as it would be redundant of proposed Rule 7.1(a). Under proposed Rule 7.1(a), the hours could also be specified by Exchange rule.

Rule 1(c): Current paragraph (c) limits trading on the Exchange to the days and hours during which it is open for the transaction of business. It further states that no Participant shall make any bid, offer or transaction on the Exchange before or after these hours, except that loans of money or securities may be made outside of those hours. The Exchange proposes to delete current paragraph (c) of Rule 1, as it would be redundant of proposed Rule 7.1(b). Proposed Rule 7.1(b) would not make an exception for loans of money or securities, however, as such loans are not dealings upon the Exchange and therefore not covered by the rule.

Rule 1(d): The first two sentences of Rule 1(d) provide that two officers appointed by the CEO may suspend or halt trading in one or more securities if they believe it in the public interest, but that the Board must approve halts or suspensions that extend past the trading day. The Exchange proposes to delete the first two sentences of Rule 1(d), as they would be covered by proposed Rule 7.13, which addresses suspensions in trading, and 7.1(c)–(e), which covers suspensions, trading halts, and other events.¹⁵

¹³ NYSE Arca Rule 7.13–E and NYSE National Rule 7.13 include cross references to other rules and use the term “President” instead of “CEO.”

¹⁴ The remaining paragraphs would be reordered in accordance with the proposed changes.

¹⁵ The final sentence of current paragraph (d) states that “[t]rading may also be halted, paused or suspended on the Exchange, and resumed

Proposed Rule 7.13 would allow the CEO, or their officer designee, to act, rather than requiring two officers appointed by the CEO, and would extend the authority to the Chair of the Board or his or her officer designee, as well. No suspension would continue longer than a period of two days, or as soon thereafter as a quorum of Directors can be assembled, unless the Board approved it.

Proposed Rule 7.1(c) and (e) would, unless otherwise determined by the Board, provide the CEO or his or her designee the authority to act. The requirements would be more comprehensive than in current Rule 1(d): The CEO or his or her designee would only take the described actions, including suspensions and halts,

when he or she deems such action to be necessary or appropriate for the maintenance of a fair and orderly market, or the protection of investors or otherwise in the public interest, due to extraordinary circumstances such as (i) actual or threatened physical danger, severe climatic conditions, civil unrest, terrorism, acts of war, or loss or interruption of facilities utilized by the Exchange, (ii) a request by a governmental agency or official, or (iii) a period of mourning or recognition for a person or event.¹⁶

The proposed Rule 7.1(e) would require the CEO or his or her designee to notify the Board of suspensions or halts, as well as other actions, as soon thereafter as feasible.

The Exchange notes that the trading rules of Cboe BZX Exchange, Inc., Cboe BYX Exchange, Inc., Cboe EDGX Exchange, Inc., and Cboe EDGA Exchange, Inc. also provide that the CEO of the relevant exchange may halt, suspend trading in any and all securities traded on the exchange, close some or all exchange facilities, and determine the duration of any such halt, suspension, or closing, when they deem such action necessary for the maintenance of fair and orderly markets, the protection of investors, or otherwise in the public interest.¹⁷ Such rules also provide that no such action shall continue longer than two days, or as soon thereafter as a quorum of directors can be assembled, unless the relevant

thereafter, pursuant to other Rules.” Because the revised Rule 1 would no longer address halts, pauses or suspensions, the Exchange proposes to delete “also.”

¹⁶ Proposed Rule 7.1(d).

¹⁷ See Cboe BZX Exchange, Inc. Rule 11.1(c) (Hours of Trading and Trading Days); Cboe BYX Exchange, Inc. Rule 11.1(c) (Hours of Trading and Trading Days); Cboe EDGX Exchange, Inc. Rule 11.1(c) (Hours of Trading and Trading Days); and Cboe EDGA Exchange, Inc. Rule 11.1(c) (Hours of Trading and Trading Days).

board of directors approves the continuation.¹⁸

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Exchange Act¹⁹ in general, and with Section 6(b)(5) in particular,²⁰ because the proposed rule change would be consistent with and facilitate a governance and regulatory structure that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

The Exchange believes that the proposed change would remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, protect investors and the public interest because it would allow the Exchange and its Affiliate SROs to follow consistent rules regarding hours of business, holidays and trading halts and suspensions and to take similar actions in case of extraordinary circumstances. The changes would thereby reduce complexity and promote consistency and predictability. The proposed change does not raise any new or novel issues.

The Exchange believes that proposed Rules 7.1, 7.2 and 7.13 would remove impediments to and perfect the mechanism of a free and open market and a national market system because they would establish rules relating to trading on the Exchange that would support the re-launch of trading on the Exchange on the Pillar trading platform. By basing its rules on those of its affiliated exchanges, the Exchange will provide its Participants that are also members on one or more Affiliate SRO with consistency across affiliated exchanges, thereby enabling the Exchange to compete with unaffiliated exchange competitors that similarly operate multiple exchanges on the same trading platforms. The Exchange further believes that the proposed amendments to Article 20, Rule 1 would remove impediments to and perfect the mechanism of a free and open market and a national market system because proposed Rules 7.1, 7.2 and 7.13 would provide for the same Exchange

¹⁸ *Id.*

¹⁹ 15 U.S.C. 78f(b).

²⁰ 15 U.S.C. 78f(b)(5).

authority, with differences described above that are designed to harmonize the Exchange's operations with those of its Affiliate SROs.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act. The proposed rule change is not designed to address any competitive issue but rather to establish Exchange rules regarding hours of business, holidays and trading halts and suspensions that are consistent with the rules of the Affiliate SROs. By basing its rules on those of its affiliated exchanges, the Exchange will provide Participants with consistency across affiliated exchanges and will allow the Exchange and its Affiliate SROs to take similar actions in case of an issue, thus promoting consistency.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act²¹ and Rule 19b-4(f)(6) thereunder.²² Because the proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6)(iii) thereunder.²³

A proposed rule change filed under Rule 19b-4(f)(6)²⁴ normally does not

become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b4(f)(6)(iii),²⁵ the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because it would allow Participants that are also members of one or more Affiliate SROs to have the immediate benefit of harmonized rules regarding hours of business, holidays and trading halts and suspensions being with the rules of the Affiliate SROs. Accordingly, the Commission waives the 30-day operative delay and designates the proposed rule change operative upon filing.²⁶

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)²⁷ of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include File Number SR-NYSECHX-2019-07 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-NYSECHX-2019-07. 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-NYSECHX-2019-07 and should be submitted on or before May 22, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁸

Eduardo A. Aleman,
Deputy Secretary.

[FR Doc. 2019-08781 Filed 4-30-19; 8:45 am]

BILLING CODE 8011-01-P

²¹ 15 U.S.C. 78s(b)(3)(A)(iii).

²² 17 CFR 240.19b-4(f)(6).

²³ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

²⁴ 17 CFR 240.19b-4(f)(6).

²⁵ 17 CFR 240.19b-4(f)(6)(iii).

²⁶ For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

²⁷ 15 U.S.C. 78s(b)(2)(B).

²⁸ 17 CFR 200.30-3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-85724; File No. SR-NYSEARCA-2019-29]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Rule 7.11-E, Limit Up-Limit Down Plan and Trading Pauses in Individual Securities Due to Extraordinary Market Volatility

April 25, 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 April 19, 2019, NYSE Arca, Inc. (“NYSE Arca” or the “Exchange”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 7.11-E, Limit Up-Limit Down Plan and Trading Pauses in Individual Securities Due to Extraordinary Market Volatility. The proposed rule change is available on the Exchange’s website at www.nyse.com, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Participants filed the Plan to Address Extraordinary Market Volatility (the “Limit Up-Limit Down Plan” or the “Plan”) with the Commission on April 5, 2011 to create a market-wide limit up-limit down mechanism intended to address extraordinary market volatility in NMS Stocks,⁴ as defined in Rule 600(b)(47) of Regulation NMS under the Exchange Act.⁵ The Plan sets forth procedures that provide for market-wide limit up-limit down requirements to prevent trades in individual NMS Stocks from occurring outside of the specified Price Bands. These limit up-limit down requirements are coupled with Trading Pauses, as defined in Section I(Y) of the Plan, to accommodate more fundamental price moves. In particular, the Participants adopted this Plan to address extraordinary volatility in the securities markets, *i.e.*, significant fluctuations in individual securities’ prices over a short period of time, such as those experienced during the “Flash Crash” on the afternoon of May 6, 2010.

The Plan was originally approved on a pilot basis to allow the public, the Participants, and the Commission to assess the operation of the Plan and whether the Plan should be modified prior to consideration of approval on a permanent basis.⁶ The Commission recently approved an amendment to the Plan to allow the Plan to operate on a permanent basis.⁷

Rule 7.11-E is designed to comply with the Plan’s requirement that exchanges establish, maintain, and enforce written policies and procedures that are reasonably designed to comply with the limit up-limit down and trading pause requirements specified in the Plan.⁸ In sum, Rule 7.11-E provides that the Exchange will not display or execute trading interest outside the Price Bands as required by the limit up-limit down and trading pause requirements specified in the Plan. Rule 7.11-E is designed to ensure that trading

interest on the Exchange is either repriced or canceled in a manner consistent with the Plan.

Rule 7.11-E currently includes a provision that ties the Rule’s effectiveness to the pilot period for the Plan, including any extensions to the pilot period for the Plan. The Exchange proposes to amend Rule 7.11-E to delete this provision because the Plan has been made permanent and is no longer operating as a pilot program. The Exchange does not propose any additional changes to Rule 7.11-E. The proposed rule change would continue to align the effectiveness of Rule 7.11-E to the Plan and ensure that the Exchange maintains written policies and procedures that are reasonably designed to comply with the limit up-limit down and trading pause requirements specified in the Plan.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the requirements of Section 6(b) of the Act,⁹ in general, and Section 6(b)(5) of the Act,¹⁰ in particular, in that it is designed to remove impediments to and perfect the mechanism of a free and open market and a national market system, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest and not to permit unfair discrimination between customers, issuers, brokers, or dealers. Rule 7.11-E complies with the Plan’s requirement that exchanges establish, maintain, and enforce written policies and procedures that are reasonably designed to comply with the limit up-limit down and trading pause requirements specified in the Plan. The Exchange believes that the proposed rule change promotes just and equitable principles of trade because it would continue to align the effectiveness of Rule 7.11-E to the Plan, without any changes. The proposed rule change would also ensure that the Exchange continues to maintain transparent written policies and procedures reasonably designed to comply with the limit up-limit down and trading pause requirements specified in the Plan.

B. Self-Regulatory Organization’s Statement on Burden on Competition

The Exchange does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposal would remove a provision from Rule 7.11-E that ties its effectiveness to the

⁴ On May 31, 2012, the Commission approved the Plan, as modified by Amendment No. 1. *See* Securities Exchange Act Release No. 67091, 77 FR 33498 (June 6, 2012) (File No. 4-631) (“Approval Order”).

⁵ 17 CFR 242.600(b)(47).

⁶ *See supra* note 4.

⁷ *See* Securities Exchange Act Release No. 85623 (April 11, 2019), 84 FR 16086 (April 17, 2019) (File No. 4-631).

⁸ *See* Securities Exchange Act Release No. 68912 (February 12, 2013), 78 FR 11720 (February 19, 2013) (SR-NYSEArca-2013-13).

⁹ 15 U.S.C. 78f(b).

¹⁰ 15 U.S.C. 78f(b)(5).

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

pilot period for the Plan that was recently approved on a permanent basis. The proposal would continue to ensure that the Exchange continues to maintain written policies and procedures reasonably designed to comply with the Plan without implicating any competitive issues.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act¹¹ and Rule 19b-4(f)(6) thereunder.¹² Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6)(iii) thereunder.

A proposed rule change filed under Rule 19b-4(f)(6)¹³ normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),¹⁴ the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because the Commission approved making the Plan pilot permanent on April 11, 2019, and therefore the Exchange's proposed changes to its rules reflecting that the Plan is now permanent should go into effect immediately. Therefore, the Commission hereby waives the 30-day operative delay and designates the

proposed rule change to be operative upon filing with the Commission.¹⁵

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)¹⁶ of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include File Number SR-NYSEARCA-2019-29 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-2019-29. 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

¹⁵ For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

¹⁶ 15 U.S.C. 78s(b)(2)(B).

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-2019-29 and should be submitted on or before May 22, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁷

Eduardo A. Aleman,
Deputy Secretary.

[FR Doc. 2019-08782 Filed 4-30-19; 8:45 am]

BILLING CODE 8011-01-P

DEPARTMENT OF STATE

[Public Notice 10661]

60-Day Notice of Proposed Information Collection: National Security Language Initiative for Youth Evaluation

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 July 1, 2019.

ADDRESSES: You may submit comments by the following method:

- **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-2019-0001" in the Search field. Then click the "Comment Now" button and complete the comment form.

You must include the DS form number (if applicable), information

¹⁷ 17 CFR 200.30-3(a)(12).

¹¹ 15 U.S.C. 78s(b)(3)(A)(iii).

¹² 17 CFR 240.19b-4(f)(6).

¹³ 17 CFR 240.19b-4(f)(6).

¹⁴ 17 CFR 240.19b-4(f)(6)(iii).

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, may be sent to Natalie Donahue, Chief of Evaluation, Bureau of Educational and Cultural Affairs, [insert mailing address here], who may be reached at (202) 632-6193 or DonahueNR@state.gov.

SUPPLEMENTARY INFORMATION:

• *Title of Information Collection:* NSLI-Y Evaluation.

• *OMB Control Number:* None.
• *Type of Request:* New collection.
• *Originating Office:* Educational and Cultural Affairs (ECA/P/V).

• *Form Number:* No form.
• *Respondents:* NSLI-Y program alumni, their parents, local program coordinators or resident directors, and a small sample of U.S. high school teachers and administrators.

• *Estimated Number of Alumni Survey Respondents:* 5,390.

• *Estimated Number of Alumni Survey Responses:* 1,797.

• *Average Time per Alumni Survey:* 11.3 minutes.

• *Total Estimated Alumni Survey Burden Time:* 338.4 hours.

• *Estimated Number of Parent Survey Respondents:* 10,780.

• *Estimated Number of Parent Survey Responses:* 701.

• *Average Time per Parent Survey:* 8.6 minutes.

• *Total Estimated Parent Survey Burden Time:* 100.5 hours.

• *Estimated Number of Alumni Focus Group Participants:* 135.

• *Average Time per Alumni Focus Group:* 1.5 hours.

• *Total Estimated Alumni Focus Group Burden Time:* 202.5 hours.

• *Estimated Number of Parent Focus Group Participants:* 108.

• *Average Time per Parent Focus Group:* 1.5 hours.

• *Total Estimated Parent Focus Group Burden Time:* 162 hours.

• *Estimated Number of Local Coordinator/Resident Director Key Informant Interviews:* 35.

• *Average Time per Local Coordinator/Resident Director Key Informant:* 60 minutes.

• *Total Estimated Local Coordinator/Resident Director Key Informant Burden Time:* 35 hours.

• *Estimated Number of High School Teacher/Administrator Key Informant Interviews:* 25.

• *Average Time per High School Teacher/Administrator Key Informant:* 35 minutes.

• *Total Estimated High School Teacher/Administrator Key Informant Burden Time:* 14.6 hours.

• *Total Estimated Burden Time:* 853 annual hours.

• *Frequency:* Once

• *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 National Security Language Initiative for Youth (NSLI-Y) is a scholarship program to enable American students aged 15–18 to study less commonly taught languages (Arabic, Chinese, Hindi, Indonesian, Korean, Persian, Russian, and Turkish) in summer or academic-year long programs in a variety of countries. In addition to increased language proficiency, participants gain understanding of their host country and its culture. This program is funded pursuant to the Mutual Educational and Cultural Exchanges Act of 1961 (22 U.S.C. 2451–2464).

In order to assess the efficacy and impact of NSLI-Y, the U.S. Department of State's Bureau of Educational and Cultural Affairs (ECA) intends to conduct an evaluation of the program, which will include collection of data from program alumni between 2008 and 2017, their parents, a small sample of U.S. high school teachers and administrators, and local program coordinators and resident directors. As the NSLI-Y program has been run for more than 10 years, ECA is conducting this evaluation to determine the extent to which the program is achieving its long-term goals. In order to do so, ECA has contracted Dexis Consulting Group to conduct surveys and focus groups with alumni and their parents and in-

depth interviews with local program coordinators/resident directors and the sample of U.S. high school teachers and administrators.

Methodology

As baseline information is limited to the participants' language proficiency tests, it is necessary to collection information directly from program alumni to assess the impact of the NSLI-Y experience beyond language proficiency. As one source of information is potentially biased and limited, additional perspectives will be sought from their parents, who in most cases will have observed any changes in their children after program participation. As some information is easily collected via survey, both of these groups will receive online surveys, but a small number will also be invited to participate in focus groups in 6 cities to be selected (based on where the greatest concentrations of alumni currently reside) to explore key issues in greater depth. Local program coordinators/resident directors will also have identified changes in students over the period of their participation, and therefore, we propose to conduct individual interviews with them. Finally, the Department wishes to understand better the challenges for students in applying for and accepting scholarships, particularly related to participants' ability to obtain high school credit for their academic experience overseas. As these individuals' perspectives and state and district regulations may differ and to minimize the burden on these respondents, individual interviews will be conducted.

Aleisha Woodward,

Deputy Assistant Secretary for Policy, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2019-08801 Filed 4-30-19; 8:45 am]

BILLING CODE 4710-05-P

DEPARTMENT OF STATE

[Public Notice 10754]

U.S. Department of State Advisory Committee on Private International Law: Notice of Full Committee Meeting

The Department of State's Advisory Committee on Private International Law (ACPIL) will hold annual full committee meeting on Thursday, May 23, 2019 in Washington, DC. The meeting will be held at the U.S. Department of State, Annex SA-17 Building at 600 19th St. NW, Room B1-302, Washington, DC

20006. The program is scheduled to run from 8:30 a.m. to 4 p.m.

Meeting participants will be provided an opportunity to provide views on current work, such as investor-state dispute settlement reform work at the United Nations Commission on International Trade Law as well as the finalization of the Convention on the recognition and enforcement of foreign judgments in civil or commercial matters at the Hague Conference on Private International Law. In addition, participants will have an opportunity to express views as to possible future work in the area of private international law. A more detailed agenda will be emailed in advance of the meeting to persons who notify the Department of their intent to participate in the meeting pursuant to the process identified below.

Persons planning to attend the meeting should contact pil@state.gov as soon as possible. The meeting is open to the public up to the capacity of the conference facility, and seating will be reserved based upon when persons contact pil@state.gov. Those planning to attend should provide their name, date of birth, citizenship and either a driver's license or passport number to pil@state.gov. A member of the public needing reasonable accommodation should notify pil@state.gov not later than May 16, 2019. Requests made after that date will be considered, but might not be able to be fulfilled. Persons who wish to have their views considered are encouraged, but not required, to submit written comments in advance. Those who are unable to attend are also encouraged to submit written views. Comments should be sent electronically to pil@state.gov.

This information is being collected pursuant to 22 U.S.C. 2651a and 22 U.S.C. 4802 for the purpose of screening and pre-clearing participants to enter the host venue at the U.S. Department of State, in line with standard security procedures for events of this size. The Department of State will use this information consistent with the routine uses set forth in the System of Records Notice for Security Records (State-36). Provision of this information is voluntary, but failure to provide accurate information may impede your ability to register for the event. Please see the Security Records System of Records Notice (State-36) at <https://>

www.state.gov/documents/organization/242611.pdf for additional information.

Sharla Draemel,

Attorney-Adviser, Office of Private International Law, Office of the Legal Adviser, Department of State.

[FR Doc. 2019-08802 Filed 4-30-19; 8:45 am]

BILLING CODE 4710-08-P

SURFACE TRANSPORTATION BOARD

[Docket No. FD 36282]

Allegheny Valley Railroad Company—Acquisition Exemption—Lines of CSX Transportation, Inc.

Allegheny Valley Railroad Company (AVR),¹ a Class III rail carrier, has filed a verified notice of exemption under 49 CFR 1150.41 to: (1) Acquire from CSX Transportation, Inc. (CSXT) approximately 47.5 miles of rail line that AVR has leased and operated since 2003 in and around Pittsburgh, Pa., (the Lines); and (2) amend and extend existing incidental trackage rights related to the Lines.

AVR states that the Lines to be acquired consist of: (1) The W&P Sub from milepost BO 5.00 at Glenwood Junction in Pittsburgh, to milepost BO 38.14 in Washington, Pa., a distance of approximately 33.14 miles; (2) the Tylerdale Connecting Track from the connection with the W&P Sub at milepost BOA 0.0 to milepost BOA 0.83 in Washington, a distance of approximately 0.83 miles;² (3) the P&W Sub No. 2 Main from milepost BF 322.8 at Glenwood Junction to milepost BF 326.3 at East Schenley in Pittsburgh, a distance of approximately 3.5 miles; (4) the P&W Sub from milepost BG 1.0 at Field in Pittsburgh to milepost BG 10.4 in Glenshaw, Pa., a distance of approximately 9.4 miles; (5) the River Branch from station 6+50 near 41st Street to station 40+94 near 33rd Street in Pittsburgh, including the ramp

¹ AVR is a subsidiary of Carload Express, Inc., a noncarrier holding company that also controls three other Class III rail carriers operating in Pennsylvania, Ohio, Maryland, Delaware, and Virginia. *Carload Express, Inc.—Continuance in Control Exemption—Delmarva Cent. R.R.*, FD 36072 (STB served Dec. 2, 2016).

² According to the verified notice, the Tylerdale Connecting Track was abandoned beyond milepost BOA 0.83 in 1992, prior to being acquired by CSXT. *Tylerdale Connecting R.R.—Aban. Exemption—in Washington Cty., Pa.*, AB 366X (ICC served Feb. 24, 1992); see also *CSX Transp., Inc.—Corp. Family Merger Exemption—Atlanta, Knoxville & N. Ry., Cincinnati Inter-Terminal R.R., & Tylerdale Connecting R.R.*, FD 35448 (STB served Dec. 3, 2010). According to AVR, exempt trackage remains beyond milepost BOA 0.83 to switch shipper facilities, and AVR states that it is acquiring CSXT's interests in the rail line corridor to former milepost BOA 1.47.

connection to the P&W Sub at 33rd Street, a distance of approximately 0.65 miles;³ and (6) portions of CSXT's Glenwood Yard extending generally from Glenwood Junction to Laughlin Junction in Pittsburgh. AVR will acquire all track and rail assets comprising the Lines from CSXT and will acquire a permanent rail freight easement over the underlying rights-of-way.

In connection with the proposed acquisition transaction, AVR will amend, restate, and extend the agreement governing its existing overhead and limited local trackage rights over CSXT's rail line between milepost BF 326.3 at East Schenley and milepost BG 1.0 at Field in Pittsburgh. The verified notice states that these incidental trackage rights connect the third and fourth line segments listed above and are authorized in conjunction with the underlying acquisition transaction pursuant to 49 CFR 1150.41(d).

AVR states that it expects to execute a purchase and sale agreement and related agreements with CSXT shortly, providing for AVR's acquisition of the Lines, and that the proposed acquisition of the Lines will simply convert AVR's leasehold interest in the Lines to an ownership interest.

AVR states that it has leased and provided all rail freight service on the Lines since 2003 (and, with respect to one short segment of trackage, since 2001). *Allegheny Valley R.R.—Lease, Operation & Trackage Rights Exemption—Lines of CSX Transp., Inc.*, FD 34431 (STB served Nov. 26, 2003); *Allegheny Valley R.R.—Lease & Operation Exemption—Line of CSX Transp., Inc.*, FD 34095 (STB served Sep. 27, 2001). AVR states that the proposed acquisition of rail lines will not result in changes to the rail operations of AVR or CSXT or have any effect on AVR or CSXT employees.

AVR has certified that the transaction does not involve any provision or agreement that would limit future interchange with a third-party connecting carrier. AVR states that its projected annual revenues as a result of this transaction will not result in AVR's becoming a Class II or Class I rail carrier. Pursuant to 49 CFR 1150.42(e), if a carrier's projected annual revenues will exceed \$5 million, it is required to

³ According to the verified notice, the River Branch extends an additional approximately 0.85 miles to a terminus near 24th Street. AVR states that this portion of the River Branch is out of service and is not included in the proposed acquisition transaction. AVR indicates that CSXT and AVR will shortly file an appropriate joint notice of exemption for, respectively, the abandonment and discontinuance of service over this out-of-service segment of the River Branch.

send notice of the transaction to the national offices of the labor unions with employees on the affected lines, to post a copy of the notice at the workplace of the employees on the affected lines, and to certify to the Board that it has done so, at least 60 days before the exemption is to become effective. AVR filed its certification on April 11, 2019.⁴ Concurrently with its verified notice, however, AVR filed a petition for partial waiver of the 60-day advance labor notice requirement to permit the exemption to take effect on May 15, 2019. AVR's waiver request will be addressed in a separate decision.

AVR states that it expects to consummate the transaction on or shortly after May 15, 2019. The Board will establish the effective date in its separate decision on the waiver request.

If the notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions for stay must be filed no later than May 8, 2019.

An original and 10 copies of all pleadings, referring to Docket No. FD 36282, must be filed with the Surface Transportation Board, 395 E Street SW, Washington, DC 20423-0001. In addition, a copy of each pleading must be served on AVR's representative, Thomas J. Litwiler, Fletcher & Sippel LLC, 29 North Wacker Drive, Suite 800, Chicago, IL 60606.

Board decisions and notices are available at www.stb.gov.

Decided: April 26, 2019.

By the Board, Allison C. Davis, Acting Director, Office of Proceedings.

Regena Smith-Bernard,
Clearance Clerk.

[FR Doc. 2019-08811 Filed 4-30-19; 8:45 am]

BILLING CODE 4915-01-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activities: Requests for Comments; Clearance of a Renewed Approval of Information Collection: Certification Procedures for Products and Parts Correction

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice correction.

SUMMARY: The FAA published two notices in the **Federal Register** inviting public comments about our intention to request the Office of Management and Budget (OMB) approval to renew an information collection. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on September 26, 2018. The **Federal Register** Notice with a 30-day comment period soliciting comments on the following collection of information was published on February 13, 2019. Both of these notices added an additional five responses to the original collection request because of adding additional blocks to one of the forms. This was incorrect. The additional blocks were added, but the previous respondents had already used the form using a previous block on the form. Also the new blocks were named incorrectly.

FOR FURTHER INFORMATION CONTACT: Joy Wolf by email at: joy.wolf@faa.gov; phone: 202-267-4524.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 2120-0018.

Title: Certification Procedures for Products and Parts.

Form Numbers: FAA Forms 8110-12, 8130-1, 8130-6, 8130-9, 8130-12.

Background: The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on September 26, 2018 (83 FR 48682). The **Federal Register** Notice with a 30-day comment period soliciting comments on the following collection of information was published on February 13, 2019 (84 FR 3850). The request was to add five additional responses. This was incorrect. The responses were already captured in Block 9A.

The new block numbers added to the form were published in the 60-day and 30-day notices inverted. Block 9D is *Exhibition* and block 9E is *Show Compliance with CFR*.

Issued in Washington, DC.

Joy Wolf,

Directives & Forms Management Officer (DMO/FMO), Aircraft Certification Service.

[FR Doc. 2019-08849 Filed 4-30-19; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Submission Deadline for Schedule Information for John F. Kennedy International Airport, Los Angeles International Airport, Newark Liberty International Airport, and San Francisco International Airport for the Winter 2019/2020 Scheduling Season; Suspension of Level 2 at Chicago O'Hare International Airport

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

ACTION: Notice of submission deadline.

SUMMARY: Under this notice, the FAA announces the submission deadline of May 16, 2019, for winter 2019/2020 flight schedules at John F. Kennedy International Airport (JFK), Los Angeles International Airport (LAX), Newark Liberty International Airport (EWR), and San Francisco International Airport (SFO). The deadline coincides with the schedule submission deadline for the International Air Transport Association (IATA) Slot Conference for the winter 2019/2020 scheduling season. The FAA is suspending the Level 2 (runway) designation at Chicago O'Hare International Airport (ORD) for the winter 2019/2020 season; therefore, schedules will not need to be submitted to the FAA for service to/from ORD. This notice also reminds carriers of the upcoming deadline to comply with Automatic Dependent Surveillance-Broadcast Out ("ADS-B Out") equipage requirements and advises carriers of the potential consequences of non-equipage. **DATES:** Schedules must be submitted no later than May 16, 2019.

ADDRESSES: Schedules may be submitted by mail to the Slot Administration Office, AGC-200, Office of the Chief Counsel, 800 Independence Avenue SW, Washington, DC 20591; facsimile: 202-267-7277; or by email to: 7-AWA-slotadmin@faa.gov.

FOR FURTHER INFORMATION CONTACT: Bonnie C. Dragotto, Manager (Acting), Slot Administration, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone (202) 267-3808; email Bonnie.Dragotto@faa.gov.

SUPPLEMENTARY INFORMATION: This document provides routine notice to carriers serving capacity-constrained airports in the United States, announces updates to schedule submission procedures that will better reflect operational conditions at those airports, and provides information regarding the upcoming ADS-B Out compliance deadline. The FAA routinely reviews

⁴ The verified notice states that there are no CSXT employees on the Lines and that AVR's employees are not represented by any labor union.

operational performance at capacity-constrained airports and only applies scheduling limits or procedures for reviewing schedules, as needed. The FAA will temporarily suspend the Level 2 designation for ORD, effectively reverting to Level 1 for the upcoming Winter 2019/2020 scheduling season. The FAA's review of the Level 2 designations at LAX, ORD, and SFO is ongoing.

General Information for All Airports

The FAA has previously designated EWR, LAX, ORD, and SFO as IATA Level 2 airports¹ and JFK as an IATA Level 3 airport consistent with the Worldwide Slot Guidelines (WSG). The FAA currently limits scheduled operations at JFK by order until October 24, 2020.²

The FAA is primarily concerned about scheduled and other regularly conducted commercial operations during peak hours, but carriers may submit schedule plans for the entire day. At LAX and SFO, the peak hours for the winter 2019/2020 scheduling season are from 0600 to 2300 Pacific Time (1400 to 0700 UTC), and at EWR and JFK from 0600 to 2300 Eastern Time (1100 to 0400 UTC). These hours are unchanged from previous scheduling seasons. Carriers should submit schedule information in sufficient detail including, at minimum, the marketing or operating carrier, flight number, scheduled time of operation, frequency, aircraft equipment, and effective dates. IATA standard schedule information format and data elements for communications at Level 2 and Level 3 airports in the IATA Standard Schedules Information Manual (SSIM) Chapter 6 may be used. The WSG provides additional information on schedule submissions at Level 2 and Level 3 airports.

The U.S. winter scheduling season is from October 27, 2019, through March 28, 2020, in recognition of the IATA northern winter scheduling period. The FAA understands there may be differences in schedule times due to different U.S. daylight saving time dates and will accommodate these differences to the extent possible.

As stated in the WSG, schedule facilitation at a Level 2 airport is based on schedule adjustments mutually agreed between the airlines and the

facilitator; the intent is to avoid exceeding the airport's coordination parameters; the concepts of historic precedence and series of slots do not apply at Level 2 airports; and the facilitator should adjust the smallest number of flights by the least amount of time necessary to avoid exceeding the airport's coordination parameters. Consistent with the WSG, the success of Level 2 in the U.S. depends on the voluntary cooperation of all carriers.

The FAA considers several factors and priorities as it reviews schedule requests at Level 2 airports, which are consistent with the WSG, including—services from the previous equivalent season over new demand for the same timings, services that are unchanged over services that plan to change time or other capacity relevant parameters, introduction of year-round services, effective period of operation, regularly planned operations over *ad hoc* operations, and other operational factors that may limit a carrier's timing flexibility. In addition to applying these Level 2 priorities from the WSG, the U.S. Government has adopted a number of measures and procedures to promote competition and new entry at U.S. slot controlled and schedule facilitated airports.

At Level 2 airports, the FAA seeks to improve communications with carriers and schedule facilitators on potential runway schedule issues or terminal and gate issues that may affect the runway times. The FAA also seeks to reduce the time that carriers consider proposed offers on schedules. Retaining open offers for extended periods of time may delay the facilitation process for the airport. Reducing this delay is particularly important to allow the FAA to make informed decisions at airports where operations in some hours are at or near the scheduling limits. The agency recognizes that there are circumstances that may require some schedules to remain open. However, the FAA expects to substantially complete the review process on initial submissions each scheduling season within 30 days of the end of the Slot Conference. After this time, the agency would confirm the acceptance of proposed offers, as applicable, or issue a denial of schedule requests. At Level 3 airports, the FAA follows the slot offer and acceptance procedures set forth in the WSG.

Slot management in the United States differs in some respect from procedures in other countries. In the United States, the FAA is responsible for facilitation and coordination of runway access for takeoffs and landings at Level 2 and Level 3 airports; however, the airport

authority or its designee is responsible for facilitation and coordination of terminal/gate/airport facility access. The process with the individual airports for terminal access and other airport services is separate from, and in addition to, the FAA schedule review based on runway capacity. Approval from the FAA for runway availability and the airport authority for airport facility availability is necessary before implementing schedule plans. Contact information for Level 2 and Level 3 airports is available at <http://www.iata.org/policy/slots/Pages/slot-guidelines.aspx>.

Generally, the FAA uses average hourly runway capacity throughput for airports and performance metrics in its schedule review at Level 2 airports and for the scheduling limits at Level 3 airports.³ The FAA also considers other factors that can affect operations, such as capacity changes due to runway, taxiway, or other airport construction, air traffic control procedural changes, airport surface operations, and historical or projected flight delays and congestion.

Finally, the FAA notes that the schedule information submitted by carriers to the FAA may be subject to disclosure under the Freedom of Information Act (FOIA). The WSG also provides for release of information at certain stages of slot coordination and schedule facilitation. In general, once it acts, the FAA may release information on slot allocation or similar slot transactions or schedule information reviewed as part of the schedule facilitation process. The FAA does not expect that practice to change and most slot and schedule information would not be exempt from release under FOIA. The FAA recognizes that some carriers may submit information on schedule plans that is not available to the public and may be considered by the carrier to be proprietary. Carriers that submit slot or schedule information deemed proprietary should clearly mark such information accordingly. The FAA will take the necessary steps to protect properly designated information to the extent allowable by law.

³ The FAA typically determines an airport's average adjusted runway capacity or throughput for Level 2 and Level 3 airports by reviewing hourly data on the arrival and departure rates that air traffic control indicates could be accepted for that hour, commonly known as "called" rates. The FAA also reviews the actual number of arrivals and departures that operated in the same hour. Generally, the FAA uses the higher of the two numbers, called or actual, for identifying trends and schedule review purposes. Some dates are excluded from analysis, such as during periods when extended airport closures or construction could affect capacity.

¹ These designations will remain effective at these airports until the FAA announces a change in the **Federal Register**. This notice suspends ORD on a trial basis for the winter 2019/2020 scheduling season.

² Operating Limitations at John F. Kennedy International Airport, 73 FR 3510 (Jan. 18, 2008), as amended 83 FR 46865 (Sep. 17, 2018).

JFK Schedules

The Port Authority of New York and New Jersey (PANYNJ) plans construction on JFK Runway 13L/31R that will close the runway from April 1, 2019, through November 15, 2019. The FAA developed an operational “playbook” for runway configurations that would be used under various weather and operating conditions while Runway 13L/31R is closed. The FAA will continue to work closely with the airport, carriers, and other operators to efficiently manage operations. The PANYNJ meets regularly with carriers and other stakeholders to discuss construction plans and consults with the FAA and local air traffic control facilities to minimize operational impacts. Carriers should contact the PANYNJ for the latest information on airport construction plans.

EWR Schedules

The FAA is continuing to monitor operations and delays at EWR and to identify ways to improve performance metrics and operational efficiency, and achieve delay reductions in a Level 2 environment. Demand for access to EWR and the New York City area remains high. Recent requests for flights at EWR have exceeded the scheduling limits in the early morning and for multiple hours in the afternoon and evening from 1300–2159 Eastern Time. The FAA has regularly advised carriers that it would not be able to accommodate requests for new or retimed operations into peak hours and worked with carriers to identify alternative times that were available. In some cases, carriers have been able to swap with other carriers for their preferred times. Carriers may continue to seek swaps in order to operate within the peak, but are ultimately expected to operate according to the FAA’s approved runway times. The FAA also continues to seek the voluntary cooperation of all carriers operating in peak hours to retime operations out of the peak to meet the scheduling limits described below and improve performance at EWR, benefitting all carriers and passengers.

For the winter 2019/2020 season, the hourly scheduling limit remains at 79 operations and 43 operations per half-hour. To help with a balance between arrivals and departures, the maximum number of scheduled arrivals or departures, respectively, is 43 in an hour and 24 in a half-hour. This would allow some higher levels of operations in certain periods (not to exceed the hourly limits) and some recovery from lower demand in adjacent periods. The

FAA will accept flights above the limits if the flights were operated on a regular basis in winter 2018/2019, but again, the FAA seeks cooperation of carriers to retime operations out of the peak period. Additionally, the FAA will consider whether demand exceeds the limits in adjacent periods and consider average demand before determining whether there is availability for new flights in a particular period. However, the operational performance of the airport is unlikely to improve unless peak demand is reduced and schedules are adjusted within the airport’s arrival and departure limits.

The FAA notes that despite efforts to facilitate voluntary scheduling cooperation at EWR, and reductions in the hourly scheduling limits,⁴ there are periods when the demand in half-hours or consecutive half-hours exceeds the optimum runway capacity and the scheduling limits in this notice. The imbalance of scheduled arrivals and departures in certain periods has contributed to increased congestion and delays when the demand exceeds the arrival or departure rates. In particular, retiming a minimal number of arrivals in the early afternoon hours from the 1400 local hour to the 1300 and 1200 hours could have significant delay reduction benefits.

Based on historical demand, the FAA anticipates the 0700 to 0859 and 1330 to 2059 local hours to be unavailable for new flights and very limited availability is expected for new flights in the 2100 local hour. Consistent with the WSG, carriers should be prepared to adjust schedules to meet the hourly limits in order to minimize potential congestion and delay. Carriers are again reminded that runway approval must be obtained from the FAA in addition to any requirements for approval from airport terminal or other facilities prior to operation.

EWR Reference Identification Numbers for Administrative Tracking Purposes

At U.S. slot controlled airports,⁵ the FAA typically assigns slot identification

⁴ The FAA has reduced the hourly scheduling limits from 81 per hour to 79 and effective with the winter 2018/2019 season, applied additional half-hour and arrival and departure limits. The FAA explained that operations approved previously at the higher limits and operated in the prior season would be accepted by the FAA even if they were above the limits, but new flights would not be approved above the current scheduling limits. The FAA continues to encourage carriers to retime flights to less congested periods to keep operations at or below the new scheduling limit to improve performance at the airport.

⁵ Currently, JFK is the only U.S. airport designated as a Level 3 under the WSG. The FAA previously designated ORD and EWR as Level 3 before changing the designation to Level 2. In

addition, the FAA has adopted slot controls at LaGuardia Airport and Ronald Reagan Washington National Airport.

numbers for administrative tracking purposes, primarily to U.S. and Canadian carriers, rather than tracking slot allocations by flight number. Using slot identification numbers has reduced the burden for the carriers and the FAA to update allocation records at Level 3 airports based on changes to flight number, scheduled time within the same slot window, aircraft type, and similar changes that do not impact the FAA’s runway slot allocation. In addition, the identification number allows carriers to specify a slot for transfer or swap purposes and for the FAA and carriers to have a common reference for determining slot allocations at any given point. Most of the larger slot holders have slot software that uses the slot identification number to manage the carrier’s slot portfolio, schedule and comparisons, actual operations and usage, and related functions.

As indicated previously, the demand at EWR is at or above the current scheduling limits in multiple hours. The FAA has worked with carriers to limit flights in the busiest hours, but has accepted flights above the reduced scheduling limits if operated in the previous equivalent scheduling season. The FAA has determined that since the majority of operations at EWR are conducted by U.S. and Canadian carriers, using an administrative tracking number similar to the slot identification number for operations conducted by these carriers would provide administrative benefits without creating any significant burden. Using such “reference identification (ID) numbers” under Level 2 is expected to help carriers manage and track their prior season schedules and operations when submitting requests for subsequent seasons, facilitate swaps between carriers when the FAA is unable to accommodate schedule changes, and allow streamlined tracking and reporting of scheduled activity at the airport. The FAA will begin to offer this alternative reference ID tracking process to carriers on a voluntary basis beginning with the winter 2019/2020 season. There are no required changes to the schedule and data exchange process and carriers can continue to use the current WSG and IATA SSIM Chapter 6 formats. The FAA may assign reference ID numbers to operations of carries that do not opt into the use of reference IDs for FAA’s internal tracking purposes, as appropriate.

addition, the FAA has adopted slot controls at LaGuardia Airport and Ronald Reagan Washington National Airport.

The implementation of reference IDs at EWR is for administrative tracking purposes only and does not reflect a change in policy for Level 2 at EWR. The FAA has discussed the planned use of reference ID numbers at EWR with a number of U.S. and Canadian carriers at the IATA Slot Conference held in November 2018 and a subsequent conference hosted by Airlines for America. Carriers may notify the FAA Slot Administration Office by email at 7-awa-slotadmin@faa.gov of their intent to use reference ID numbers. Notification in advance of the schedule submission deadline for winter 2019/2020 implementation is preferred. The FAA will work with individual carriers that opt to participate by providing the alternative reference ID numbers to use for baseline schedules and proposed changes for the winter 2019/2020 season.

Level 2 Updates

The FAA is reviewing the Level 2 designations based on runway capacity at ORD, LAX, and SFO to determine if the designations continue to be necessary for future scheduling seasons. Preliminary data reflects that scheduled demand is within typical capacity at these airports. However, additional considerations may warrant continuing the Level 2 schedule review process. The FAA intends to conduct additional modeling and analysis, as appropriate, in the coming months to assess whether continuing Level 2 at these airports would provide substantive benefits to the traveling public by reducing potential runway congestion and delay. The FAA also intends to engage in the coming months with airport operators, carriers, and other stakeholders at the respective airports to discuss the Level 2 process. The FAA is not proposing any changes to the Level 2 designation at EWR in this notice.

The FAA designated SFO as Level 2 effective in 2012 as a result of low on time performance relative to other airports, expected growth in scheduled demand, and runway construction.⁶ LAX was designated Level 2 in 2015 based on multiple runway construction projects that were planned through 2018.⁷ LAX has additional runway construction planned for January to May 2021 and the FAA's review of whether to continue Level 2 at LAX will include

consideration of the potential to manage congestion and delay during that closure using the schedule review process.

The FAA designated ORD as Level 2 in 2008 to allow for a smoother transition as Level 3 was phased out due to increased capacity from the opening of a new runway in November 2008.⁸ The FAA concluded that Level 2 was necessary to facilitate the scheduling of operations so that the airport would not suffer from periods of overscheduling as it adjusts to new capacity and as modernization plans continued. The O'Hare Modernization Program added new runways and realigned previously intersecting runways. The typical hourly runway capacity has increased from the 180's when the airport was Level 3 to 214 currently.

The FAA has determined to suspend the ORD Level 2 designation for the winter 2019/2020 scheduling season while it continues its review. Scheduled demand has remained within the typical runway capacity and winter season schedules are typically below the peak summer schedules. The FAA is not aware of upcoming plans by any carriers to make major schedule bank changes that could significantly increase peaking or exceed the airport's capacity. This trial suspension for the winter 2019/2020 scheduling season will reduce the burden associated with the schedule submission and administrative review process. The FAA's suspension is for runway review only and does not change the airport's Level 2 Terminal designation. Carriers must continue to work with the terminal facilitator on schedule review consistent with prior seasons.

The FAA's review of the Level 2 designations at LAX, ORD, and SFO is expected to be completed during summer 2019 and additional information, including any changes to the current designations at these airports, would be announced in the schedule submission notice for the summer 2020 season.

ADS-B Out Compliance

In 2010, the FAA issued a final rule prescribing equipage requirements and performance standards for ADS-B Out equipment on aircraft operating in certain airspace after January 1, 2020.⁹

ADS-B Out equipment is an advanced surveillance technology that makes an aircraft's precise position readily available to ground stations and other aircraft. The technology combines an aircraft's positioning source, aircraft avionics, and a ground infrastructure to create an accurate surveillance interface between aircraft and air traffic control (ATC). Use of ADS-B Out will move ATC from a radar-based system to an aircraft location system based on satellite-derived position and velocity.

The FAA published an additional Statement of Policy for Authorizations to Operators of Aircraft That are Not Equipped With Automatic Dependent Surveillance-Broadcast (ADS-B) Out Equipment on April 1, 2019.¹⁰ All carriers are strongly urged to review the requirements of 14 CFR 91.225 and the April 1, 2019, notice. The FAA expects that scheduled operators routinely operating into ADS-B Out airspace have made plans to equip aircraft for operation in ADS-B Out airspace in time for the January 1, 2020, deadline and these operators should not expect to obtain authorizations for non-equipped aircraft. While a scheduled operator may request a deviation from the ADS-B Out equipage requirements on a per operation basis in accordance with § 91.225(g), it is unlikely that the FAA will issue repeated authorizations to deviate from ADS-B Out equipage requirements. Relying solely on an ATC authorization—which may not be granted—to operate a non-equipped aircraft in ADS-B Out airspace would put scheduled operations in jeopardy. In addition, unscheduled operators with a need to access this airspace on more than an occasional basis should equip with ADS-B Out to ensure no disruption to operations. Given the complex and dynamic nature of operations within ADS-B airspace, it is unlikely that ATC will prioritize authorization requests for unequipped aircraft over providing air traffic services to aircraft equipped with ADS-B Out.

At slot controlled airports in the U.S., any carrier that does not equip in accordance with 14 CFR 91.225 could risk loss of allocated slots if minimum slot usage requirements are not met.¹¹ Slot holders are expected to fully comply with all applicable U.S. aviation regulations. The FAA will not issue waivers of the minimum usage requirements for failure to equip or

⁶ Submission Deadline for Schedule Information for San Francisco International Airport for the Summer 2012 Scheduling Season, 76 FR 64163 (Oct. 17, 2011).

⁷ Notice of Submission Deadline for Schedule Information for Los Angeles International Airport for the Summer 2015 Scheduling Season, 80 FR 12253 (Mar. 6, 2015).

⁸ Notice of Submission Deadline for Schedule Information for O'Hare International, John F. Kennedy International, and Newark Liberty International Airport for the Summer 2009 Scheduling Season, 73 FR 54659 (Sep. 22, 2008).

⁹ Final Rule, Automatic Dependent Surveillance-Broadcast (ADS-B) Out Performance Requirements to Support Air Traffic Control (ATC), 75 FR 30160 (May 28, 2010).

¹⁰ 84 FR 12062. This notice explains how ATC will manage § 91.225(g) and issue authorizations to operators of aircraft that have not equipped with ADS-B Out.

¹¹ See e.g. *supra*, note 2.

obtain an authorization as required by FAA regulation.¹² At Level 2 airports in the U.S., the baseline for future corresponding seasons will continue to depend on actual operations into the airport. A scheduled operation that is not completed due to failure to equip or obtain an authorization will not count toward the carrier's baseline operations for the following corresponding season.

Issued in Washington, DC, on April 25, 2019.

Virginia Boyle,

Deputy Vice President (Acting), System Operations Services.

[FR Doc. 2019-08862 Filed 4-30-19; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Notice of Availability of Errata to the Draft Tier 1 Environmental Impact Statement and Preliminary Section 4(f) Evaluation for Interstate 11 Corridor Between Nogales and Wickenburg, AZ

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice.

SUMMARY: The FHWA is issuing this notice of availability. This notice announces the publication of the Errata to the Draft Tier 1 Environmental Impact Statement and Preliminary Section 4(f) Evaluation for Interstate 11 Corridor between Nogales and Wickenburg, AZ for review, and that the review and comment period is extended to July 8, 2019.

FOR FURTHER INFORMATION CONTACT: Mr. Aryan Lirange, Senior Urban Engineer, Federal Highway Administration, 4000 N. Central Avenue, Suite 1500, Phoenix, Arizona 85012-3500; telephone: (602) 382-8973, fax: (602)382-8998, email: Aryan.Lirange@dot.gov. The FHWA Arizona Division Office's normal business hours are 7:30 a.m. to 4 p.m. (Mountain Time).

You may also contact: Mrs. Rebecca Yedlin, Environmental Coordinator, Federal Highway Administration, 4000 N. Central Ave, Suite 1500, Phoenix, Arizona 85012-3500; telephone: (602) 382-8979, fax: (602) 382-8998, email: Rebecca.Yedlin@dot.gov.

SUPPLEMENTARY INFORMATION: On April 5, 2019, at 84 FR 13662, FHWA published a notice of availability for its

Draft Tier 1 Environmental Impact Statement and Preliminary Section 4(f) Evaluation (Draft Tier 1 EIS) for the Interstate 11 Corridor between Nogales and Wickenburg, AZ project. On April 17, 2019, the Arizona Department of Transportation (ADOT) notified FHWA that a section of the Draft Tier 1 EIS was not included in the document. Based on this, FHWA, in conjunction with ADOT, has published this availability notice in the **Federal Register** and prepared an Errata to the Draft Tier 1 EIS and will provide an extension to the review and comment period to July 8, 2019. The Draft Tier 1 EIS and the Errata will be available at the Draft Tier 1 EIS repositories and are available online at: <http://i11study.com/Arizona/Documents.asp>.

Issued on: April 24, 2019.

Karla S. Petty,

Arizona Division Administrator, Phoenix, Arizona.

[FR Doc. 2019-08865 Filed 4-30-19; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Office of the Assistant Secretary for Research and Technology

[Docket No. DOT-OST-2019-0028]

Notice of Request for Clearance of a Revision of a Currently Approved Information Collection: National Census of Ferry Operators

AGENCY: Bureau of Transportation Statistics (BTS) Office of the Assistant Secretary for Research and Technology (OST-R), DOT.

ACTION: Notice.

SUMMARY: In accordance with the requirements of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, this notice announces the intention of the BTS to request the Office of Management and Budget's (OMB's) approval for an information collection related to the nation's ferry operations. The information collected will be used to produce a descriptive database of existing ferry operations. A summary report of survey findings will also be published by BTS on the BTS web page. **DATES:** Comments must be submitted on or before May 31, 2019.

FOR FURTHER INFORMATION CONTACT: Janine L. McFadden, (202) 366-2857, NCFO Project Manager, BTS, OST-R, Department of Transportation, 1200 New Jersey Ave. SE, Room E32-316, Washington, DC 20590. Office hours are from 8:00 a.m. to 5:30 p.m., E.T.,

Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Title: National Census of Ferry Operators (NCFO).

Type of Request: Approval modifications to an existing information collection.

Affected Public: There are approximately 250 ferry operators nationwide.

Abstract: In 1998, the Transportation Equity Act for the 21st Century (TEA-21) (Pub. L. 105-178), section 1207(c), directed the Secretary of Transportation to conduct a study of ferry transportation in the United States and its possessions. In 2000, the Federal Highway Administration (FHWA) Office of Intermodal and Statewide Planning conducted a survey of approximately 250 ferry operators to identify: (1) Existing ferry operations including the location and routes served; (2) source and amount, if any, of funds derived from Federal, State, or local governments supporting ferry construction or operations; (3) potential domestic ferry routes in the United States and its possessions; and (4) potential for use of high speed ferry services and alternative-fueled ferry services. In 2005, the Safe, Accountable, Flexible Efficient Transportation Equity Act—A Legacy for Users (SAFETEA-LU) Public Law 109-59, Section 1801(e) required that the Secretary, acting through the BTS, shall establish and maintain a national ferry database containing current information regarding routes, vessels, passengers and vehicles carried, funding sources and such other information as the Secretary considers useful. In 2012, MAP-21 legislation [Moving Ahead for Progress in the 21st Century Act (Pub. L. 112-141),] continued the BTS mandate to conduct the NCFO and also required that the Federal Highway Administration (FHWA) use the NCFO data to set the specific formula for allocating federal ferry funds. The funding allocations were based on a percentage of the number of passenger boardings, vehicle boardings, and route miles served. In 2015, the FAST Act legislation [Fixing America's Surface Transportation Act (Pub. L. 114-94, sec. 1112)] continues the BTS mandate to conduct the NCFO on a biennial basis, and extended the requirement that the Federal Highway Administration (FHWA) use the NCFO data to set the specific formula for allocating federal ferry funds as required in MAP-21.

BTS conducted the first National Census of Ferry Operators in 2006. The Census was conducted again in 2008,

¹² *Id.* at 46867 (The Administrator of the FAA may waive the 80% usage requirement in the event of a highly unusual and unpredictable condition which is beyond the control of the carrier and which affects carrier operations for a period of five consecutive days or more).

2010, 2014, 2016 and 2018. Preparations are already underway for the next census in 2020. The overall length of the revised questionnaire for the 2020 NCFO will remain consistent with that of previous years. These information collections were originally approved by OMB under Control Number 2139-0009. The overall length of the questionnaire for the 2020 NCFO will remain consistent with that of previous years.

The survey will be administered to the entire population of ferry operators (estimate 250 or less). The survey will request the respondents to provide information such as: the points served; the type of ownership; the number of passengers and vehicles carried in the past 12 months; vessel descriptions (including type of fuel), federal, state and local funding sources, and intermodal connectivity. All data collected in 2020 will be added to the existing NCFO database.

Data Confidentiality Provisions: The National Census of Ferry Operators may collect confidential business information. The confidentiality of these data will be protected under 49 CFR 7.29. In accordance with this regulation, only statistical and non-sensitive business information will be made available through publications and public use data files. The statistical public use data are intended to provide an aggregated source of information on ferry boat operations nationwide.

Business sensitive information may be shared with FHWA to support FAST Act funding allocations.

Frequency: This survey will be updated every other year.

Estimated Average Burden per Response: The burden per respondent is estimated to be an average of 30 minutes. This average is based on an estimate of 20 minutes to answer questions that require answers specific to that year and an additional 10 minutes to review (and revise as needed) previously submitted data that will be pre-populated for each ferry operation.

Estimated Total Annual Burden: The total annual burden (in the year that the survey is conducted) is estimated to be 125 hours (that is 30 minutes per respondent for 250 respondents equals 7,500 minutes).

Response to Comments: A 60-day notice requesting public comment was issued in the **Federal Register** on February 15, 2019. No comments were received.

Public Comments Invited: Interested parties are invited to send comments regarding any aspect of this information collection, including, but not limited to: (1) The necessity and utility of the information collection for the proper performance of the functions of the DOT; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, clarity and content of the

collected information; and (4) ways to minimize the collection burden without reducing the quality of the collected information. Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW, Washington, DC 20503, Attention: BTS Desk Officer.

Issued in Washington, DC, on this 25th day of April, 2019.

Patricia Hu,

Director, Bureau of Transportation Statistics, Office of the Assistant Secretary for Research and Technology.

[FR Doc. 2019-08822 Filed 4-30-19; 8:45 am]

BILLING CODE 4910-9X-P

DEPARTMENT OF THE TREASURY

Community Development Financial Institutions Fund

Notice of Funds Availability (NOFA) Inviting Applications for the Fiscal Year (FY) 2019 Funding Round of the Bank Enterprise Award Program (BEA Program)

Announcement Type: Announcement of funding opportunity.

Funding Opportunity Number: CDFI-2019-BEA.

Catalog Of Federal Domestic Assistance (CFDA) Number: 21.021.

Dates:

TABLE 1—FY 2019 BEA PROGRAM FUNDING ROUND—KEY DATES FOR APPLICANTS

Description	Deadline	Time (eastern time—ET)	Contact information
Grant Application Package/SF-424 Mandatory (Application for Federal Assistance) <i>Submission Method: Electronically via Grants.gov.</i>	May 29, 2019	11:59 p.m. ET	Contact <i>Grants.gov</i> at 800-518-4726 or support@grants.gov.
Last day to register a user and organization in AMIS ..	June 17, 2019	5:00 p.m. ET ..	CDFI Fund IT Helpdesk: 202-653-0422 or IT Award Management Information System (AMIS) Service Request. ¹
Last day to enter, edit or delete BEA transactions, and verify addresses/census tracts in AMIS.	June 17, 2019	5:00 p.m. ET ..	CDFI Fund IT Helpdesk: 202-653-0422 or IT AMIS Service Request. ²
Last day to contact BEA Program Staff re: BEA Program Application materials.	June 17, 2019	5:00 p.m. ET ..	CDFI Fund BEA Helpdesk: 202-653-0421 or BEA AMIS Service Request. ³
Last day to contact Certification, Compliance Monitoring and Evaluation (CCME) staff.	June 17, 2019	5:00 p.m. ET ..	CCME Helpdesk: 202-653-0423 or Compliance and Reporting AMIS Service Request. ⁴
Last day to contact IT Help Desk re. AMIS support and submission of the FY 2019 BEA Program Electronic Application in AMIS.	June 19, 2019	5:00 p.m. ET ..	CDFI Fund IT Helpdesk: 202-653-0422 or IT AMIS Service Request. ⁵
FY 2019 BEA Program Electronic Application <i>Submission Method: Electronically via AMIS.</i>	June 19, 2019	5:00 pm ET	CDFI Fund IT Helpdesk: 202-653-0422 or IT AMIS Service Request. ⁶

Executive Summary: This NOFA is issued in connection with the fiscal year

¹ For Information Technology support, the preferred method of contact is to submit a Service Request (SR) within AMIS. For the SR, select “Technical Issues” from the Program drop down menu.

² Ibid.

³ For questions regarding completion of the BEA Application materials, the preferred electronic method of contact with the BEA Program Office is to submit a Service Request (SR) within AMIS. For the SR, select “BEA Application” from the Program drop down menu of the Service Request.

⁴ For Compliance and Reporting related questions, the preferred electronic method of

contact is to submit a Service Request (SR) within AMIS. For the SR, select “Compliance & Reporting” from the Program drop down menu of the Service Request.

⁵ For Information Technology support, the preferred method of contact is to submit a Service Request (SR) within AMIS. For the SR, select

(FY) 2019 funding round of the Bank Enterprise Award Program (BEA Program). The BEA Program is administered by the U.S. Department of the Treasury's Community Development Financial Institutions Fund (CDFI Fund). Through the BEA Program, the CDFI Fund awards formula-based grants to depository institutions that are insured by the Federal Deposit Insurance Corporation (FDIC) for increasing their levels of loans, investments, Service Activities, and technical assistance to residents and businesses in the most economically Distressed Communities, and financial assistance and technical assistance to certified Community Development Financial Institutions (CDFIs) through equity investments, equity-like loans, grants, stock purchases, loans, deposits, and other forms of assistance, during a specified period.

I. Program Description

A. History: The CDFI Fund was established by the Riegle Community Development and Regulatory Improvement Act of 1994 to promote economic revitalization and community development through investment in and assistance to CDFIs. Since its creation in 1994, the CDFI Fund has awarded more than \$3.3 billion to CDFIs, community development organizations, and financial institutions through the BEA Program; the Capital Magnet Fund Program (CMF Program), the Community Development Financial Institutions Program (CDFI Program), and the Native American CDFI Assistance Program (NACA Program). In addition, the CDFI Fund has allocated \$54 billion in tax credit allocation authority to Community Development Entities through the New Markets Tax Credit Program (NMTC Program), and guaranteed bonds in the total amount of \$1.5 billion through the CDFI Bond Guarantee Program.

The BEA Program complements the community development activities of banks and thrifts (collectively referred to as banks for purposes of this NOFA) by providing financial incentives to expand investments in CDFIs and to increase lending, investment, and Service Activities within Distressed Communities. Providing monetary awards to banks for increasing their community development activities leverages the CDFI Fund's dollars and puts more capital to work in Distressed Communities throughout the nation.

B. Authorizing Statutes and Regulations: The BEA Program was authorized by the Bank Enterprise Award Act of 1991, as amended. The regulations governing the BEA Program can be found at 12 CFR part 1806 (the Interim Rule). The Interim Rule provides the evaluation criteria and other requirements of the BEA Program. Detailed BEA Program requirements are also found in the application materials associated with this NOFA (the Application). The CDFI Fund encourages interested parties and Applicants to review the authorizing statute, Interim Rule, this NOFA, the Application, and the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (Uniform Requirements) for a complete understanding of the Program. Capitalized terms in this NOFA are defined in the authorizing statute, the Interim Rule, this NOFA, the Application, or the Uniform Requirements. Details regarding Application content requirements are found in the Application and related materials. Application materials can be found on *Grants.gov* and the CDFI Fund's website at www.cdfifund.gov/beat.

C. Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (2 CFR 200): The Uniform Administrative Requirements codify financial, administrative, procurement, and program management standards that Federal award-making agencies and Recipients must follow. When evaluating award applications, awarding agencies must evaluate the risks to the program posed by each applicant, and each applicant's merits and eligibility. These requirements are designed to ensure that applicants for Federal assistance receive a fair and consistent review prior to an award decision. This review will assess items such as the Applicant's financial stability, quality of management systems, history of performance, and audit findings. In addition, the Uniform Requirements include guidance on audit requirements and other award requirements with which Recipients must comply.

D. Priorities: Through the BEA Program, the CDFI Fund specifies the following priorities:

1. *Estimated Award Amounts:* The award percentage used to derive the estimated award amount for Applicants that are CDFIs is three times greater than the award percentage used to derive the estimated award amount for Applicants that are not CDFIs;

2. *Priority Factors:* Priority Factors will be assigned based on an Applicant's asset size, as described in Section V.A.14 of this NOFA (Application Review Information: Priority Factors); and

3. *Priority of Awards:* The CDFI Fund will rank Applicants in each category of Qualified Activity according to the priorities described in Section V.A.16. of this NOFA (Application Review Information: Award Percentages, Award Amounts, Application Review Process, Selection Process, Programmatic Financial Risk, and Application Rejection), and specifically parts V.B.2: Selection Process, V.B.3: Programmatic and Financial Risk, and V.B.4: Persistent Poverty Counties.

E. Baseline Period and Assessment Period Dates: A BEA Program Award is based on an Applicant's increase in Qualified Activities from the Baseline Period to the Assessment Period, as reported on an individual transaction basis in the Application. For the FY 2019 funding round, the Baseline Period is calendar year 2017 (January 1, 2017 through December 31, 2017), and the Assessment Period is calendar year 2018 (January 1, 2018 through December 31, 2018).

F. Funding Limitations: The CDFI Fund reserves the right to fund, in whole or in part, any, all, or none of the Applications submitted in response to this NOFA. The CDFI Fund also reserves the right to reallocate funds from the amount that is available through this NOFA to other CDFI Fund programs, or to reallocate remaining funds to a future BEA Program funding round, particularly if the CDFI Fund determines that the number of awards made through this NOFA is fewer than projected.

G. Persistent Poverty Counties: Pursuant to the Consolidated Appropriations Act, 2019 (Pub. L. Number 116-6), Congress mandated that at least ten percent of the CDFI Fund's appropriations be directed to counties that meet the criteria for "Persistent Poverty" designation. Persistent Poverty Counties (PPCs) are defined as any county that has had 20 percent or more of its population living in poverty over the past 30 years, as measured by the 1990 and 2000 decennial censuses, and the most recent series of 5-year data available from the American Community Survey from the Census Bureau and published by the CDFI Fund at: <https://www.cdfifund.gov/Documents/PPC%20updated%20Oct.2017.xlsx>. The tabular BEA Program Eligibility Data, which is located on the CDFI Fund's website, indicates whether a census tract also meets "Persistent

⁶ "Technical Issues" from the Program drop down menu of the Service Request.

⁶ Ibid.

Poverty County” (PPC) criteria. The tabular BEA Program Eligibility Data can be located by clicking on “Research and Data”, scrolling to “Program Eligibility Guidance” and selecting “BEA Program Updated 2011–2015 ACS Data”, or by going to the following hyperlink: https://www.cdfifund.gov/Documents/BEA%20ACS_2015_V12.xlsx. Applicants that apply under this NOFA will be required to indicate the minimum and maximum percentage of the BEA Program Award that the Applicant will commit to investing in PPCs.

II. Federal Award Information

A. Funding Availability: The CDFI Fund expects to award up to \$25 million for the FY 2019 BEA Program Awards round under this NOFA. The CDFI Fund reserves the right to award in excess of said funds under this NOFA, provided that the appropriated funds are available. The CDFI Fund reserves the right to impose a minimum or maximum award amount; however, under no circumstances will an award be higher than \$1 million for any Recipient.

B. Types of Awards: BEA Program Awards are made in the form of grants.

C. Anticipated Start Date and Period of Performance: The CDFI Fund anticipates the period of performance for the FY 2019 funding round will begin in the fall of calendar year 2019. Specifically, the period of performance begins on the Federal Award Date and will conclude at least one (1) full year after the Federal Award Date as further specified in the BEA Program Award Agreement (Award Agreement), during which the Recipient must meet the performance goals set forth in the Award Agreement.

D. Eligible Activities: Eligible Activities for the BEA Program are referred to as Qualified Activities and are defined in the Interim Rule to include CDFI Related Activities, Distressed Community Financing Activities, and Service Activities (12 CFR 1806.103).

CDFI Related Activities (12 CFR 1806.103) means CDFI Equity and CDFI Support Activities. CDFI Equity consists of Equity Investments, Equity-Like Loans, and Grants. CDFI Support Activities includes Loans, Deposits and Technical Assistance.

Distressed Community Financing Activities (12 CFR 1806.103) means Consumer Loans and Commercial Loans and Investments. Consumer Loans include Affordable Housing Loans; Education Loans; Home Improvement Loans; and Small Dollar Consumer Loans. Commercial Loans and

Investments includes Affordable Housing Development Loans and related Project Investments; Commercial Real Estate Loans and related Project Investments; and Small Business Loans and related Project Investments. Service Activities (12 CFR 1806.103) include Deposit Liabilities, Financial Services, Community Services, Targeted Financial Services, and Targeted Retail Savings/Investment Products.

When calculating BEA Program Award amounts, the CDFI Fund will only consider the amount of a Qualified Activity that has been fully disbursed or, in the case of a partially disbursed Qualified Activity, will only consider the amount that an Applicant reasonably expects to disburse for a Qualified Activity within 12 months from the end of the Assessment Period. Subject to the requirements outlined in Section VI. of this NOFA, in the case of Commercial Real Estate Loans and related Project Investments, the total principal amount of the transaction must be \$10 million or less to be considered a Qualified Activity. Notwithstanding the foregoing, the CDFI Fund, in its sole discretion, may consider transactions with a total principal value of over \$10 million, subject to review.

An activity funded with prior BEA Program Award dollars, or funded to satisfy requirements of an Award Agreement from a prior BEA Program award or an agreement under any CDFI Fund program, shall not constitute a Qualified Activity for the purposes of calculating or receiving an award.

E. Distressed Community: A Distressed Community must meet certain minimum geographic area and eligibility requirements, which are defined in the Interim Rule at 12 CFR 1806.103 and more fully described in 12 CFR 1806.401. Applicants should use the CDFI Fund’s Information Mapping System (CIMS Mapping Tool) to determine whether a Baseline Period activity or Assessment Period activity is located in a qualified Distressed Community. The CIMS Mapping Tool can be accessed through AMIS or the CDFI Fund’s website at <https://www.cdfifund.gov/Pages/mapping-system.aspx>. The CIMS Mapping Tool contains a step-by-step training manual on how to use the tool. In addition, further instructions to determine whether an activity is located in a qualified BEA Distressed Community can be located at: https://www.cdfifund.gov/programs-training/Programs/bank_enterprise_award/Pages/apply-step.aspx#, Step1 when selecting the BEA Program Application CIMS3 Instructions document in the

“Application Materials” section of the BEA web page on the CDFI Fund’s website. If you have any questions or problems with accessing the CIMS Mapping Tool, please contact the CDFI Fund IT Help Desk by telephone at (202) 653–0300, or by IT AMIS Service Request.

Please note that a Distressed Community as defined by the BEA Program is not the same as an Investment Area as defined by the CDFI Program, a Low-Income Community as defined by the NMTC Program, or an Area of Economic Distress as defined by the CMF Program.

1. Designation of Distressed Community by a CDFI Partner: CDFI Partners that receive CDFI Support Activities in the form of loans, technical assistance or deposits from an Applicant must be integrally involved in a Distressed Community. Applicants must provide evidence that each CDFI Partner that is the recipient of CDFI Support Activities is integrally involved in a Distressed Community, as noted in the Application. CDFI Partners that receive Equity Investments, Equity-Like Loans or grants are not required to demonstrate Integral Involvement. Additional information on Integral Involvement can be found in Section V. of this NOFA.

2. Distressed Community Determination by a BEA Applicant: Applicants applying for a BEA Program Award for performing Distressed Community Financing Activities or Service Activities must verify that addresses of both Baseline Period and Assessment Period activities are in Distressed Communities when completing their Application.

A BEA Applicant shall determine an area is a Distressed Community by:

a. Selecting a census tract where the Qualified Activity occurred that meets the minimum area and eligibility requirements; or

b. selecting the census tract where the Qualified Activity occurred, plus one or more census tracts directly contiguous to where the Qualified Activity occurred that when considered in the aggregate, meet the minimum area and eligibility requirements set forth in this section.

F. Award Agreement: Each Recipient under this NOFA must electronically sign an Award Agreement via AMIS prior to payment of the award proceeds by the CDFI Fund. The Award Agreement contains the terms and conditions of the award. For further information, see Section VI. of this NOFA.

G. Use of Award: It is the policy of the CDFI Fund that BEA Program Awards may not be used by Recipients to

recover overhead or Indirect Costs. The Recipient may use up to fifteen percent (15%) of the total BEA Program award amount on Qualified Activities as Direct Administrative Expenses. “Direct Administrative Expenses” shall mean Direct Costs, as described in section 2 CFR 200.413 of the Uniform Requirements, which are incurred by the Recipient to carry out the Qualified

Activities. Such costs must be able to be specifically identified with the Qualified Activities and not also recovered as Indirect Costs. “Indirect Costs” means costs or expenses defined in accordance with section 2 CFR 200.56 of the Uniform Requirements. In addition, the Recipient must comply, as applicable, with the Buy American Act

of 1933, 41 U.S.C. 8301–8303, with respect to any Direct Costs.

III. Eligibility Information

A. Eligible Applicants: For the purposes of this NOFA, the following table sets forth the eligibility criteria to receive a BEA Program award from the CDFI Fund.

TABLE 2—ELIGIBILITY REQUIREMENTS FOR APPLICANTS

Criteria	Description
Eligible Applicants	<ul style="list-style-type: none"> The depository institution holding company of an Insured Depository Institution may not apply on behalf of an Insured Depository Institution. Applications received from depository institution holding companies will be disqualified. Eligible Applicants for the BEA Program must be Insured Depository Institutions, as defined in the Interim Rule. For the FY 2019 funding round, an Applicant must have been FDIC-insured as of the first day of the Baseline Period, January 1, 2017, and maintain its FDIC-insured status at the time of Application to be eligible for consideration for a BEA Program Award under this NOFA. The depository institution holding company of an Insured Depository Institution may not apply on behalf of an Insured Depository Institution. Applications received from depository institution holding companies will be disqualified.
CDFI Applicant	<ul style="list-style-type: none"> For the FY 2019 funding round, an eligible certified-CDFI Applicant is an Insured Depository Institution that was certified as a CDFI as of December 31, 2018 and that maintains its status as a certified CDFI at the time BEA Program Awards are announced under this NOFA. No CDFI Applicant may receive a FY 2019 BEA Program Award if it has: (1) An application pending for assistance under the FY 2019 round of the CDFI Program; (2) been included on the list of award Recipients under the CDFI Program award announcement within the 12-month period prior to the Federal Award Date of the FY 2019 BEA Program Award Agreement; (3) been awarded assistance from the CDFI Fund under the CDFI Program within the 12-month period prior to the Federal Award Date of the FY 2019 BEA Program Award Agreement issued by the CDFI Program; or (4) ever received assistance under the CDFI Program for the same activities for which it is seeking a FY 2019 BEA Program Award. Please note that Applicants may apply for both a CDFI Program award and a BEA Program Award in FY 2019; however, receiving a FY 2019 or FY 2018 CDFI Program award removes an Applicant from eligibility for a FY 2019 BEA Program Award. If an Applicant’s CDFI certification application was submitted to the CDFI Fund as of February 28, 2019, and was ultimately approved by the CDFI Fund by June 15, 2019, then the Applicant’s CDFI status is considered “certified” for purposes of the FY 2019 BEA Program application.
Debarment/Do Not Pay Verification.	<ul style="list-style-type: none"> The CDFI Fund will conduct a debarment check and will not consider an Application submitted by an Applicant (or affiliate of an Applicant) if the Applicant is delinquent on any Federal debt. The Do Not Pay Business Center was developed to support Federal agencies in their efforts to reduce the number of improper payments made through programs funded by the Federal government. The Do Not Pay Business Center provides delinquency information to the CDFI Fund to assist with the debarment check.

B. Prior Award Recipients: The previous success of an Applicant in any of the CDFI Fund’s programs will not be

considered under this NOFA. Prior BEA Program Award Recipients and prior award recipients of other CDFI Fund

programs are eligible to apply under this NOFA, except as noted in the following table:

TABLE 3—ELIGIBILITY REQUIREMENTS FOR APPLICANTS WHICH ARE PRIOR RECIPIENTS

Criteria	Description
Pending resolution of non-compliance.	<ul style="list-style-type: none"> If an Applicant (or affiliate of an Applicant) that is a prior recipient or allocatee under any CDFI Fund program: (i) Has demonstrated it has been in noncompliance with a previous assistance agreement, award agreement, allocation agreement, bond loan agreement, or agreement to guarantee and (ii) the CDFI Fund has yet to make a final determination as to whether the entity is in noncompliance with or default of its previous agreement, the CDFI Fund will consider the Applicant’s Application under this NOFA pending full resolution, in the sole determination of the CDFI Fund, of the noncompliance.
Default or Noncompliance status.	<ul style="list-style-type: none"> The CDFI Fund will not consider an Application submitted by an Applicant (or Affiliate of such Applicant) that has a previously executed assistance agreement, award agreement, bond loan agreement, or agreement to guarantee or allocation agreement if, as of the date of the Application, (i) the CDFI Fund has made a determination that such entity is noncompliant with or in default of such previously executed agreement, and (ii) the CDFI Fund has provided written notification that such entity is ineligible to apply for or receive any future CDFI Fund awards or allocations. Such entities will be ineligible to submit an Application for such time period as specified by the CDFI Fund in writing.

C. Contact the CDFI Fund: Accordingly, Applicants that are prior

recipients and/or allocatees under any CDFI Fund program are advised to

comply with requirements specified in an assistance agreement, award

agreement, allocation agreement, bond loan agreement, or agreement to guarantee. All outstanding reports and compliance questions should be directed to the Certification, Compliance Monitoring and Evaluation helpdesk by submitting a BEA Compliance and Reporting AMIS Service Request or by telephone at (202) 653-0423. The CDFI Fund will respond to Applicants' reporting, compliance, or disbursement questions between the hours of 9:00 a.m. and 5:00 p.m. ET, starting on the date of the publication of this NOFA. The CDFI Fund will not respond to Applicants' reporting, compliance, or disbursement telephone calls or electronic inquiries that are received after 5:00 p.m. ET on June 17, 2019, until after the Application deadline. The CDFI Fund will respond to technical issues related to AMIS Accounts through 5:00 p.m. ET on June 19, 2019, via an IT AMIS Service Request, email at AMIS@cdfi.treas.gov, or by telephone at (202) 653-0422.

D. *Cost sharing or matching fund requirements*: Not applicable.

IV. Application and Submission Information

A. *Address To Request an Application Package*: Application materials can be found on Grants.gov and the CDFI Fund's website at www.cdfifund.gov/beat. Applicants may request a paper version of any Application material by contacting the CDFI Fund Help Desk at cdfishelp@cdfi.treas.gov.

B. *Content and Form of Application Submission*: All Application materials must be prepared using the English language and calculations must be made in U.S. dollars. Applicants must submit all materials described in and required by the Application by the applicable deadlines. Detailed Application content requirements including instructions related to the submission of the Grant Application Package in Grants.gov and the FY 2019 BEA Program Application in AMIS, the CDFI Fund's web-based portal, are provided in detail in the Application Instructions. Once an Application is submitted, the Applicant will not be allowed to change any element of the Application. The CDFI Fund reserves the right to request and review other pertinent or public information that has not been specifically requested in this NOFA or the Application.

C. *Application Submission*: The CDFI Fund has a two-step submission process for BEA Applications that requires the submission of required application information on two separate deadlines and in two separate and distinct systems, Grants.gov and the CDFI

Fund's AMIS. The first step is the submission of the Grant Application, which consists solely of the Office of Management and Budget Standard Form-424 Mandatory (SF-424 Mandatory) *Application for Federal Assistance*, in Grants.gov. The second step is to submit an FY 2019 BEA Program Application in AMIS.

D. *Grants.gov*: Applicants must be registered with Grants.gov to submit the Grants Application Package. The Grants Application Package consists of one item, the SF-424 Mandatory. In order to register with Grants.gov, Applicants must have a DUNS number and have an active registration with SAM.gov. The CDFI Fund strongly encourages Applicants to start the Grants.gov registration process as soon as possible (refer to the following link: <https://www.grants.gov/web/grants/register.html>) as it may take several weeks to complete. Applicants that have previously registered with Grants.gov must verify that their registration is current and active. Applicants should contact Grants.gov directly with questions related to the registration or submission process as the CDFI Fund does not administer or maintain this system.

Applicants are required to submit a Grant Application Package in Grants.gov and have it validated by the Grants.gov submission deadline of May 29, 2019. The Grant Application Package is validated by Grants.gov after the Applicant's initial submission and it may take Grants.gov up to 48 hours to complete the validation process. Therefore, the CDFI Fund encourages Applicants to submit the Grant Application Package as early as possible. This will help to ensure that the Grant Application Package is validated before the Grants.gov submission deadline and provide time for Applicants to contact Grants.gov directly to resolve any submission issues since the CDFI Fund does not administer or maintain that system. For more information about Grants.gov, please visit <https://www.grants.gov> and see Table 8 for Grants.gov contact information.

The CDFI Fund can only electronically retrieve validated Grant Application Packages from Grants.gov and therefore only considers the submission of the Grant Application Package to be successful when it has been validated by Grants.gov before the submission deadline. It is the Applicant's sole responsibility to ensure that its Grant Application Package is submitted and validated by Grants.gov before the submission deadline. Applicants that do not successfully

submit their Grant Application Package and have it validated by the Grants.gov submission deadline will not be able to submit a FY 2019 BEA Program Application in AMIS. The CDFI Fund will electronically retrieve validated Grant Application Packages from Grants.gov on a daily basis. Applicants are advised that it will take up to 48 hours from when the CDFI Fund retrieves the validated Grant Application Package for it to be available in AMIS to associate with a FY 2019 BEA Program Application.

Once the CDFI Fund has retrieved the validated Grant Application Package from Grants.gov and made it available in AMIS, Applicants must associate it with their Application. Applicants can begin working on their FY 2019 BEA Program Application in AMIS at any time, however, they will not be able to submit the application until the validated Grant Application Package is associated, by the Applicant, with the application.

Applicants are advised that the CDFI Fund will not notify them when the validated Grant Application Package has been retrieved from Grants.gov or when it is available in AMIS. It is the Applicant's responsibility to ensure that the validated SF-424 Mandatory is associated with its FY 2019 BEA Application in AMIS. Applicants will not be able to submit their FY 2019 BEA Program Application without completing this step.

Applicants are advised that the lookup function in the FY 2019 BEA Application in AMIS, uses the DUNS number reported on the validated Grant Application Package to match it with the correct AMIS Organization account. Therefore, Applicants must make sure the DUNS number included in the Grant Application Package submitted in Grants.gov matches the DUNS number in their AMIS Organization account. If, for example, the DUNS number does not match because the Applicant inadvertently used the DUNS number of their Bank Holding Company on the Grant Application Package in Grants.gov and is attempting to associate with AMIS Organization account of their FDIC-Insured Bank subsidiary, the lookup function will not return any results and the Applicant will not be able to submit the FY 2019 BEA Application.

Applicants are also highly encouraged to provide EIN, Authorized Representative and/or Contact Person information on the Grant Application Package that matches the information included in AMIS Organization account.

E. *Dun & Bradstreet Universal Numbering System (DUNS)*: Pursuant to the Uniform Administrative

Requirements, each Applicant must provide, as part of its Application submission, a Dun and Bradstreet Universal Numbering System (DUNS) number. Applicants without a DUNS number will not be able to submit a Grant Application Package in *Grants.gov*. Applicants should allow sufficient time for Dun & Bradstreet to respond to inquiries and/or requests for DUNS numbers.

F. System for Award Management (SAM): An active SAM account is required to submit the required Grant Application Package in *Grants.gov*. Any entity applying for Federal grants or other forms of Federal financial assistance through *Grants.gov* must be registered in SAM in order to submit its Grant Application Package in *Grants.gov* or FY 2019 BEA Program Application in AMIS. When accessing *SAM.gov*, users will be asked to create a *login.gov* user account (if they don't already have one). Going forward, users will use their *login.gov* username and password every time when logging in to *SAM.gov*. Applicants must have established an active *SAM.gov* account no later than 30 days after the release of this NOFA. The SAM registration process can take three weeks or longer to complete so Applicants are strongly encouraged to begin the registration process upon release of this NOFA in order to avoid potential application submission problems. Applicants that have previously completed the SAM registration process must verify that their SAM accounts are current and active. Applicants are advised to complete the *SAM.gov* process at least 48 hours in advance of the Grants Application Package deadline. Applicants are required to maintain a current and active SAM account at all times during which it has an active Federal award or an Application under consideration for an award by a Federal awarding agency.

An original, signed notarized letter identifying the authorized Entity

Administrator for the entity associated with the DUNS number is required by SAM and must be mailed to the Federal Service Desk. This requirement is applicable to new entities registering in SAM, as well as existing entities with registrations being updated or renewed in SAM. Additional information on the notarized letter process can be located at: <https://www.gsa.gov/about-us/organization/federal-acquisition-service/office-of-systems-management/integrated-award-environment-iae/sam-update-updated-july-11-2018>.

The CDFI Fund will not consider any Applicant that fails to properly register or activate its SAM account and, as a result, is unable to submit its Grant Application Package in *Grants.gov*, or FY 2019 BEA Program Application in AMIS by the respective deadlines. Applicants must contact SAM directly with questions related to SAM registration or account changes as the CDFI Fund does not administer or maintain this system. For more information about SAM, please visit <https://www.sam.gov> or call 866-606-8220.

G. AMIS: All Applicants must complete an FY 2019 BEA Program Application in AMIS, the CDFI Fund's web-based portal. All Applicants must register User and Organization accounts in AMIS by June 17, 2019. In addition, all BEA transactions must be finalized in AMIS by June 17, 2019; this includes address/census tract verification. No transactions can be added, edited, or deleted after this deadline. Failure to register and complete a FY 2019 BEA Program Application in AMIS in accordance with the deadlines noted in Table 1: FY 2019 BEA Program Funding Round—Key Dates for Applicants will result in the CDFI Fund being unable to accept the Application. As AMIS is the CDFI Fund's primary means of communication with Applicants and Recipients, institutions must make sure that they update their contact information in their AMIS accounts. In

addition, the Applicant should ensure that the institution information (name, EIN, DUNS number, Authorized Representative, contact information, etc.) on the Grant Application Package submitted as part of the Grant Application Package in *Grants.gov* matches the information in AMIS. EINs and DUNS numbers in the Applicant's SAM account must match those listed in AMIS. For more information on AMIS, please see the information available through the AMIS Home page at <https://amis.cdfifund.gov>. Qualified Activity documentation and other attachments as specified in the applicable BEA Program Application must also be submitted electronically via AMIS. Detailed instructions regarding submission of Qualified Activity documentation is provided in the Application Instructions and AMIS Training Manual for the BEA Program Application. Applicants will not be allowed to submit missing Qualified Activity documentation after the BEA Transactions deadline and any Qualified Activity missing the required documentation will be disqualified. Qualified Activity documentation delivered by hard copy to the CDFI Fund's Washington, DC office address will be rejected, unless the Applicant previously requested a paper version of the Application as described in Section IV.A.

H. Submission Dates and Times: The following table provides the critical deadlines for the FY 2019 BEA Funding Round. Applications and any other required documents or attachments received after the applicable deadline will be rejected. The document submission deadlines stated in this NOFA and the Application are strictly enforced. The CDFI Fund will not grant exceptions or waivers for late submissions except where the submission delay was a direct result of a Federal government administrative or technological error.

TABLE 4—CRITICAL DEADLINES FOR FY 2019 BEA FUNDING ROUND

Description	Deadline	Time (eastern time)
Grant Application Package/SF-424 Mandatory, <i>Submission Method: Electronically via Grants.gov</i>	May 29, 2019	11:59 p.m. ET.
FY 2019 BEA Program Application, <i>Submission Method: Electronically via AMIS</i>	June 19, 2019	5:00 pm ET.

1. Confirmation of Application Submission: Applicants may verify that their Grant Application Package was successfully submitted and validated in *Grants.gov* and that their FY 2019 BEA Program Application was successfully submitted in AMIS. Applicants should

note that the Grant Application Package consists solely of the SF-424 Mandatory and has a different deadline than the FY 2019 BEA Program Application. These deadlines are provided above in Table 4. FY 2019 BEA Program Funding Round Critical Deadlines for Applicants. If the

Grant Application Package is not successfully submitted and subsequently validated by *Grants.gov* by the deadline, the CDFI Fund will not review the FY 2019 BEA Program Application or any of the application related material submitted in AMIS and

the Application will be deemed ineligible.

a. *Grants.gov Submission Information:* In order to determine whether the Grant Application Package was submitted properly, each Applicant should: (1) Receive two separate emails from *Grants.gov*, and (2) perform an independent step in *Grants.gov* to determine whether the Grant Application was validated. Each Applicant will receive the first email from *Grants.gov* immediately after the Grant Application Package is submitted confirming that the submission has entered the *Grants.gov* system. This email will contain a tracking number. Within 48 hours, the Applicant will receive a second email which will indicate if the submitted Grant Application Package was successfully validated or rejected with errors. However, Applicants should not rely on the second email notification from *Grants.gov* to confirm that the Grant Application Package was validated. Instead, Applicants should then perform an independent step in *Grants.gov* to determine if the Grant Application Package status shows as “Validated” by clicking on the “Applicants” menu, followed by clicking “Track my Application,” and then entering the tracking number provided in the first email. The Grant Application Package cannot be retrieved by the CDFI Fund until it has been validated by *Grants.gov*.

b. *AMIS Submission Information:* AMIS is the web-based portal where Applicants will directly enter their application information and add supporting documentation, when applicable. The CDFI Fund strongly encourages the Applicant to allow sufficient time to confirm the Application content, review the material submitted, and remedy any issues prior to the BEA Transactions deadline. Only the Authorized Representative or an Application Point of Contact can submit the FY 2019 BEA Program Application in AMIS on the Application deadline.

Applicants will not receive an email confirming that their FY 2019 BEA Program Application was successfully submitted in AMIS. Instead, Applicants should check their AMIS account to ensure that the status of the FY 2019 BEA Program Application shows “Under Review”. Step-by-step instructions for submitting an FY 2019 BEA Program Application in AMIS are provided in the Application Instructions, Supplemental Guidance, and AMIS Training Manual for the BEA Program Electronic Application.

2. *Multiple Application Submissions:* If an Applicant submits multiple

versions of its Grant Application Package in *Grants.gov*, the Applicant can only associate one with its FY 2019 BEA Program Application in AMIS.

Applicants can only submit one FY 2019 BEA Program Application in AMIS. Upon submission, the Application will be locked and cannot be resubmitted, edited, or modified in any way. The CDFI Fund will not unlock a submitted Application or allow multiple Application submissions.

3. *Late Submission:* The CDFI Fund will not accept an SF-424 Mandatory in *Grants.gov* or an FY 2019 BEA Program Application in AMIS if it is not signed by an Authorized Representative or submitted after the respective deadlines. In either case, the CDFI Fund will not review any material submitted, and the Application will be deemed ineligible, except where the submission delay was a direct result of a Federal government administrative or technological error. This exception includes any errors associated with *Grants.gov*, *SAM.gov*, AMIS or any other applicable government system. Please note that this exception does not apply to errors arising from obtaining a DUNS number from Dun & Bradstreet, which is not a government entity. An Applicant unable to make timely submission of its Application due to any errors in the process of obtaining a DUNS number will not be allowed to submit its Application after the Application deadline has passed. In such case, the Applicant must submit their request for acceptance of a late Application submission to the BEA Program Office via an AMIS Service Request with documentation that clearly demonstrates the error by no later than two business days after the applicable Application deadline for *Grants.gov* or AMIS. The CDFI Fund will not respond to a request for acceptance of late Application submissions after that time period. The AMIS Service Request must be directed to the BEA Program with a subject line of “FY 2019 BEA Late Application Submission Request.”

1. *Funding Restrictions:* BEA Program Awards are limited by the following:

1. The Recipient shall use BEA Program Award funds only for the eligible activities described in Section II. D. of this NOFA and its Award Agreement.

2. The Recipient may not distribute BEA Program Award funds to an affiliate, Subsidiary, or any other entity, without the CDFI Fund’s prior written approval.

3. BEA Program Award funds shall only be disbursed to the Recipient.

4. The CDFI Fund, in its sole discretion, may disburse BEA Program

Award funds in amounts, or under terms and conditions, which are different from those requested by an Applicant.

J. *Other Submission Requirements:* None.

V. Application Review Information

A. *Criteria:* If the Applicant submitted a complete and eligible Application, the CDFI Fund will conduct a substantive review in accordance with the criteria and procedures described in the Regulations, this NOFA, the Application guidance, and the Uniform Requirements. The CDFI Fund reserves the right to contact the Applicant by telephone, email, or mail for the sole purpose of clarifying or confirming Application information. If contacted, the Applicant must respond within the time period communicated by the CDFI Fund or run the risk that its Application will be rejected.

1. *CDFI Related Activities:* CDFI Related Activities include Equity Investments, Equity-Like Loans, and CDFI Support Activities provided to eligible CDFI Partners.

2. *Eligible CDFI Partner:* CDFI Partner is defined as a certified CDFI that has been provided assistance in the form of CDFI Related Activities by an unaffiliated Applicant (12 CFR 1806.103). For the purposes of this NOFA, an eligible CDFI Partner must have been certified as a CDFI as of the date that the BEA Applicant made its investment or provided support, and be Integrally Involved in a Distressed Community (if the BEA Applicant provided CDFI Support Activities to the CDFI Partner).

3. *Integrally Involved:* Integrally Involved is defined at 12 CFR 1806.103. For purposes of this NOFA, in order for an Applicant to report CDFI Support Activities in its Application, the CDFI Partner which received the support must be deemed to be Integrally Involved by demonstrating it has: (i) Provided at least 10 percent of the number of its financial transactions or dollars transacted (*e.g.*, loans or Equity Investments), or 10 percent of the number of its Development Service Activities (as defined in 12 CFR 1805.104) or value of the administrative cost of providing such services, in one or more Distressed Communities identified by the CDFI Partner, in each of the three calendar years preceding the date of this NOFA; (ii) transacted at least 25 percent of the number of its financial transactions or dollars transacted (*e.g.*, loans or equity investments) in one or more Distressed Communities in at least one of the three calendar years preceding the date of this

NOFA, or 25 percent of the number of its Development Service Activities (as defined in 12 CFR 1805.104) or value of the administrative cost of providing such services, in one or more Distressed Communities identified by the CDFI Partner, in at least one of the three calendar years preceding the date of this NOFA; (iii) demonstrated that it has attained at least 10 percent of market share for a particular financial product in one or more Distressed Communities (such as home mortgages originated in one or more Distressed Communities) in at least one of the three calendar years preceding the date of this NOFA; or (iv) at least 25 percent of the CDFI Partner's physical locations (e.g., offices or branches) are located in one or more Distressed Communities where it provided financial transactions or Development Service Activities during the one calendar year preceding the date of the NOFA.

4. *Limitations on eligible Qualified Activities provided to certain CDFI Partners:* A CDFI Applicant cannot receive credit for any financial assistance or Qualified Activities provided to a CDFI Partner that is also an FDIC-insured depository institution or depository institution holding company.

5. *Certificates of Deposit:* Section 1806.103 of the Interim Rule states that any certificate of deposit (CD) placed by an Applicant or its Subsidiary in a CDFI Partner that is a bank, thrift, or credit union must be: (i) Uninsured and committed for at least three years; or (ii) insured, committed for a term of at least three years, and provided at an interest rate that is materially below market rates, in the determination of the CDFI Fund.

a. For purposes of this NOFA, "materially below market interest rate" is defined as an annual percentage rate that does not exceed the yields on Treasury securities at constant maturity as interpolated by Treasury from the daily yield curve and available on the Treasury website at www.treas.gov/offices/domestic-finance/debt-management/interest-rate/yield.shtml. For example, for a three-year CD, Applicants should use the three-year rate U.S. Government securities, Treasury Yield Curve Rate posted for that business day. The Treasury updates the website daily at approximately 5:30 p.m. ET. CDs placed prior to that time may use the rate posted for the previous business day. The annual percentage rate on a CD should be compounded daily, quarterly, semi-annually, or annually. If a variable interest rate is used, the CD must also have an interest rate that is materially below the market

interest rate over the life of the CD, in the determination of the CDFI Fund.

b. For purposes of this NOFA, a deposit placed by an Applicant directly with a CDFI Partner that participates in a deposit network or service may be treated as eligible under this NOFA if it otherwise meets the criteria for deposits in 12 CFR 1806.103 and the CDFI Partner retains the full amount of the initial deposit or an amount equivalent to the full amount of the initial deposit through a deposit network exchange transaction.

6. *Equity Investment:* An Equity Investment means financial assistance provided by an Applicant or its Subsidiary to a CDFI, which CDFI meets such criteria as set forth in this NOFA, in the form of a grant, a stock purchase, a purchase of a partnership interest, a purchase of a limited liability company membership interest, or any other investment deemed to be an Equity Investment by the CDFI Fund.

7. *Equity-Like Loan:* An Equity-Like Loan is a loan provided by an Applicant or its Subsidiary to a CDFI, and made on such terms that it has characteristics of an Equity Investment, as such characteristics may be specified by the CDFI Fund (12 CFR 1806.103). For purposes of this NOFA, an Equity-Like Loan must meet the following characteristics:

- a. At the end of the initial term, the loan must have a definite rolling maturity date that is automatically extended on an annual basis if the CDFI borrower continues to be financially sound and carry out a community development mission;
- b. Periodic payments of interest and/or principal may only be made out of the CDFI borrower's available cash flow after satisfying all other obligations;
- c. Failure to pay principal or interest (except at maturity) will not automatically result in a default of the loan agreement; and
- d. The loan must be subordinated to all other debt except for other Equity-Like Loans.

Notwithstanding the foregoing, the CDFI Fund reserves the right to determine, in its sole discretion and on a case-by-case basis, whether an instrument meets the above-stated characteristics of an Equity-Like Loan.

8. *CDFI Support Activity:* A CDFI Support Activity is defined as assistance provided by an Applicant or its Subsidiary to a CDFI that is Integrally Involved in a Distressed Community, in the form of a loan, Technical Assistance, or deposits.

9. *CDFI Program Matching Funds:* Equity Investments, Equity-Like Loans, and CDFI Support Activities (except

Technical Assistance) provided by a BEA Applicant to a CDFI and used by the CDFI for matching funds under the CDFI Program are eligible as a Qualified Activity under the CDFI Related Activity category.

10. *Commercial Loans and Investments:* Commercial Loans and Investments is a sub-category of Distressed Community Financing Activities and is defined as the following lending activity types: Affordable Housing Development Loans and related Project Investments; Commercial Real Estate Loans and related Project Investments; and Small Business Loans and related Project Investments.

11. *Consumer Loans:* Consumer Loans is a sub-category of Distressed Community Financing Activities and is defined as the following lending activity types: Affordable Housing Loans; Education Loans; Home Improvement Loans; and Small Dollar Consumer Loans.

12. *Distressed Community Financing Activities and Service Activities:* Distressed Community Financing Activities comply with consumer protection laws and are defined as (1) Consumer Loans; or (2) Commercial Loans and Investments. In addition to the requirements set forth in the Interim Rule, this NOFA provides the following additional requirements:

a. *Affordable Housing Development Loans and Related Project Investments:* For purposes of this NOFA, eligible Affordable Housing Development Loans and related Project Investments do not include housing for students, or school dormitories. In addition, for such transactions, Applicants will be required to provide supporting documentation that demonstrates that at least 60 percent of the units in the property financed are or will be sold or rented to Eligible Residents who meet Low-and-Moderate-income requirements, as noted in the Application instructions.

b. *Commercial Real Estate Loans and related Project Investments:* For purposes of this NOFA, eligible Commercial Real Estate Loans (12 CFR 1806.103) and related Project Investments are generally limited to transactions with a total principal value of \$10 million or less. Notwithstanding the foregoing, the CDFI Fund, in its sole discretion, may consider transactions with a total principal value of over \$10 million, subject to review. For such transactions, Applicants must provide a separate narrative, or other information, to demonstrate that the proposed project offers, or significantly enhances the quality of, a facility or service not

currently provided to the Distressed Community.

c. *Small Dollar Consumer Loan:* For purposes of this NOFA, eligible Small Dollar Consumer Loans are affordable loans that serve as available alternatives to the marketplace for individuals who are Eligible Residents with a total principal value of no less than \$500 and no greater than \$5,000 and have a term of ninety (90) days or more.

d. *Distressed Community Financing Activities—Transactions Less Than \$250,000:* For purposes of this NOFA, Applicants are expected to maintain records for any transaction submitted as part of the FY 2019 BEA Program Application, including supporting documentation for transactions in the Distressed Community Financing Activity category of less than \$250,000. The CDFI Fund reserves the right to request supporting documentation from an Applicant during its Application Review process for a Distressed Community Financing Activities transaction less than \$250,000.

e. *Low- and Moderate-Income residents:* For the purposes of this NOFA, Low-Income means borrower income that does not exceed 80 percent of the area median income, and Moderate-Income means borrower income may be 81 percent to no more than 120 percent of the area median income, according to the U.S. Census Bureau data.

13. *Reporting Certain Financial Services:* The CDFI Fund will value the administrative cost of providing certain Financial Services using the following per unit values:

a. \$100.00 per account for Targeted Financial Services including safe transaction accounts, youth transaction accounts, Electronic Transfer Accounts and Individual Development Accounts;

b. \$50.00 per account for checking and savings accounts that do not meet the definition of Targeted Financial Services;

c. \$5.00 per check cashing transaction;

d. \$50,000 per new ATM installed at a location in a Distressed Community;

e. \$500,000 per new retail bank branch office opened in a Distressed Community, including school-based bank branches approved by the Applicant's Federal bank regulator;

f. In the case of Applicants engaging in Financial Services activities not described above, the CDFI Fund will determine the unit value of such services;

g. When reporting the opening of a new retail bank branch office, the Applicant must certify that such new

branch is intended to remain in operation for at least the next five years;

h. Financial Service Activities must be provided by the Applicant to Eligible Residents or enterprises that are located in a Distressed Community. An Applicant may determine the number of Eligible Residents who are recipients of Financial Services by either: (i) Collecting the addresses of its Financial Services customers, or (ii) certifying that the Applicant reasonably believes that such customers are Eligible Residents or enterprises located in a Distressed Community and providing a brief analytical narrative with information describing how the Applicant made this determination. Citations must be provided for external sources. In addition, if external sources are referenced in the narrative, the Applicant must explain how it reached the conclusion that the cited references are directly related to the Eligible Residents or enterprises to whom it is claiming to have provided the Financial Services; and

i. When reporting changes in the dollar amount of deposit accounts, only calculate the net change in the total dollar amount of eligible Deposit Liabilities between the Baseline Period and the Assessment Period. Do not report each individual deposit. If the net change between the Baseline Period and Assessment Period is a negative dollar amount, then a negative dollar amount may be recorded for Deposit Liabilities only. Instructions for determining the net change is available in the FY 2019 BEA Program Application in AMIS.

14. *Priority Factors:* Priority Factors are the numeric values assigned to individual types of activity within: (i) The Distressed Community Financing Activities, and (ii) Services Activities categories of Qualified Activities. For the purposes of this NOFA, Priority Factors will be based on the Applicant's asset size as of the end of the Assessment Period (December 31, 2018) as reported by the Applicant in the Application. Asset size classes (*i.e.*, small institutions, intermediate-small institutions, and large institutions) will correspond to the Community Reinvestment Act (CRA) asset size classes set by the three Federal bank regulatory agencies and that were effective as of the end of the Assessment Period. The Priority Factor works by multiplying the change in a Qualified Activity by the assigned Priority Factor to achieve a "weighted value." This weighted value of the change would be multiplied by the applicable Award percentage to yield the Award amount for that particular activity. For purposes of this NOFA, the CDFI Fund is

establishing Priority Factors based on Applicant asset size to be applied to all activity types within the Distressed Community Financing Activities and Service Activities categories only, as follows:

TABLE 5—CRA ASSET SIZE CLASSIFICATION

	Priority factor
Small institutions (assets of less than \$321 million as of 12/31/2018)	5.0
Intermediate—small institutions (assets of at least \$321 million but less than \$1.284 billion as of 12/31/2018)	3.0
Large institutions (assets of \$1.284 billion or greater as of 12/31/2018)	1.0

15. Certain Limitations on Qualified Activities:

a. *Low-Income Housing Tax Credits:* Financial assistance provided by an Applicant for which the Applicant receives benefits through Low-Income Housing Tax Credits, authorized pursuant to Section 42 of the Internal Revenue Code, as amended (26 U.S.C. 42), shall not constitute an Equity Investment, Project Investment, or other Qualified Activity, for the purposes of calculating or receiving a BEA Program Award.

b. *New Markets Tax Credits:* Financial assistance provided by an Applicant for which the Applicant receives benefits as an investor in a Community Development Entity that has received an allocation of New Markets Tax Credits, authorized pursuant to Section 45D of the Internal Revenue Code, as amended (26 U.S.C. 45D), shall not constitute an Equity Investment, Project Investment, or other Qualified Activity, for the purposes of calculating or receiving a BEA Program Award. Leverage loans used in New Markets Tax Credit structured transactions that meet the requirements outlined in this NOFA are considered Distressed Community Financing Activities. The application materials will provide further guidance on requirements for BEA transactions which were leverage loans used in a New Markets Tax Credit structured transaction.

c. *Loan Renewals and Refinances:* Financial assistance provided by an Applicant shall not constitute a Qualified Activity, as defined in this part, for the purposes of calculating or receiving a BEA Program Award if such financial assistance consists of a loan to a borrower that has matured and is then renewed by the Applicant, or consists of

a loan to a borrower that is retired or restructured using the proceeds of a new commitment by the Applicant.

d. *Certain Business Types:* Financial assistance provided by an Applicant shall not constitute a Qualified Activity, as defined in this part, for the purposes of financing the following business types: adult entertainment providers, golf courses, race tracks, gambling facilities, country clubs, facilities offering massage services, hot tub facilities, suntan facilities, or stores where the principal business is the sale of alcoholic beverages for consumption off premises.

e. *Prior BEA Program Awards:* Qualified Activities funded with prior funding round BEA Program Award dollars or funded to satisfy requirements of the BEA Program Award Agreement shall not constitute a Qualified Activity for the purposes of calculating or receiving a BEA Program Award.

f. *Prior CDFI Fund Awards:* No Applicant may receive a BEA Program Award for the same activities funded by another CDFI Fund program or Federal program.

16. Award Percentages, Award Amounts, Application Review Process, Selection Process, Programmatic and Financial Risk, and Application Rejection: The Interim Rule and this NOFA describe the process for selecting Applicants to receive a BEA Program Award and determining Award amounts.

a. *Award percentages:* In the CDFI Related Activities subcategory of CDFI Equity, for all Applicants, the estimated award amount will be equal to 18 percent of the increase in Qualified Activities reported in this subcategory.

In the CDFI Related Activities subcategory of CDFI Support Activities, for a certified CDFI Applicant, the estimated award amount will be equal to 18 percent of the increase in Qualified Activities in this subcategory. If an Applicant is not a certified CDFI, the estimated award amount will be equal to 6 percent of the increase in Qualified Activities in this subcategory.

In Distressed Community Financing Activities' subcategory of Consumer Lending, the estimated award amount for certified CDFI Applicants will be 18 percent of the weighted value of the increase in Qualified Activities in this subcategory. If an Applicant is not a certified CDFI Applicant, the estimated award amount will be equal to 6 percent of the weighted value of the increase in Qualified Activities in this subcategory.

In the Distressed Community Financing Activities subcategory of Commercial Lending and Investments, for a certified CDFI Applicant, the

estimated award amount will be equal to 9 percent of the weighted value of the increase in Qualified Activities in this subcategory. If an Applicant is not a certified CDFI, the estimated award amount will be equal to 3 percent of the weighted value of the increase in Qualified Activity in this subcategory.

In the Service Activities category, for a certified CDFI Applicant, the estimated award amount will be equal to 9 percent of the weighted value of the increase in Qualified Activity for the category. If an Applicant is not a certified CDFI, the estimated award amount will be equal to 3 percent of the weighted value of the increase in Qualified Activity for the category.

b. *Award Amounts:* An Applicant's estimated award amount will be calculated according to the procedure outlined in the Interim Rule (at 12 CFR 1806.403). As outlined in the Interim Rule at 12 CFR 1806.404, the CDFI Fund will determine actual Award amounts based on the availability of funds, increases in Qualified Activities from the Baseline Period to the Assessment Period, and the priority ranking of each Applicant.

In calculating the increase in Qualified Activities, the CDFI Fund will determine the eligibility of each transaction for which an Applicant has applied for a BEA Program Award. In some cases, the actual award amount calculated by the CDFI Fund may not be the same as the estimated award amount requested by the Applicant.

For purposes of calculating award payment amounts, the CDFI Fund will treat Qualified Activities with a total principal amount less than or equal to \$250,000 as fully disbursed. For all other Qualified Activities, Recipients will have 12 months from the end of the Assessment Period to make disbursements and 15 months from the end of the Assessment Period to submit to the CDFI Fund disbursement requests for the corresponding portion of their awards, after which the CDFI Fund will rescind and de-obligate any outstanding award balance and said outstanding award balance will no longer be available to the Recipient.

B. Review and Selection Process:

1. *Application Review Process:* All Applications will be initially evaluated by external non-Federal reviewers. Reviewers are selected based on their experience in understanding various financial transactions, reading and interpreting financial documentation, strong written communication skills, and strong mathematical skills. Reviewers must complete the CDFI Fund's conflict of interest process and be approved by the CDFI Fund.

2. *Selection Process:* If the amount of funds available during the funding round is insufficient for all estimated Award amounts, Recipients will be selected based on the process described in the Interim Rule at 12 CFR 1806.404. This process gives funding priority to Applicants that undertake activities in the following order: (i) CDFI Related Activities, (ii) Distressed Community Financing Activities, and (iii) Service Activities, as described in the Interim Rule at 12 CFR 1806.404(c).

Within each category, CDFI Applicants will be ranked first according to the ratio of the actual award amount calculated by the CDFI Fund for the category to the total assets of the Applicant, followed by Applicants that are not CDFI Applicants according to the ratio of the actual award amount calculated by the CDFI Fund for the category to the total assets of the Applicant.

Selections within each priority category will be based on the Applicants' relative rankings within each such category, subject to the availability of funds and any established maximum dollar amount of total awards that may be awarded for the Distressed Community Financing Activities category of Qualified Activities, as determined by the CDFI Fund.

The CDFI Fund, in its sole discretion:

(i) May adjust the estimated award amount that an Applicant may receive; (ii) may establish a maximum amount that may be awarded to an Applicant; and (iii) reserves the right to limit the amount of an award to any Applicant if the CDFI Fund deems it appropriate.

The CDFI Fund reserves the right to contact the Applicant to confirm or clarify information. If contacted, the Applicant must respond within the CDFI Fund's time parameters or the Application may be rejected.

The CDFI Fund reserves the right to change its eligibility and evaluation criteria and procedures. If those changes materially affect the CDFI Fund's award decisions, the CDFI Fund will provide information regarding the changes through the CDFI Fund's website.

3. *Programmatic and Financial Risk:* The CDFI Fund will consider safety and soundness information from the appropriate Federal bank regulatory agency as defined in Section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813(q)). If the appropriate Federal bank regulatory agency identifies safety and soundness concerns, the CDFI Fund will assess whether the concerns cause or will cause the Applicant to be incapable of completing the activities for which funding has been requested. The CDFI

Fund will not approve a BEA Program Award under any circumstances for an Applicant if the appropriate Federal bank regulatory agency indicates that the Applicant received a composite rating of “5” on its most recent examination, performed in accordance with the Uniform Financial Institutions Rating System.

Furthermore, the CDFI Fund will not approve a BEA Program Award for an Applicant that has:

- a. a CRA assessment rating of below “Satisfactory” on its most recent examination;
- (ii.) a financial audit with: a going concern paragraph, an adverse opinion, a disclaimer of opinion, or a withdrawal of an opinion on its most recent audit;
- (iii.) a Prompt Corrective Action directive from its regulator that was active at the time the Applicant submitted its Application to the CDFI Fund or becomes active during the CDFI Fund’s evaluation of the Application;
- or (iv.) a Material Concern conveyed from its regulator to the CDFI Fund during the CDFI Fund’s evaluation of the Application.

Applicants and/or their appropriate Federal bank regulator agency may be contacted by the CDFI Fund to provide additional information related to Federal bank regulatory or CRA information. The CDFI Fund will consider this information and may choose to not approve a BEA Program Award for an Applicant if the information indicates that the Applicant may be unable to responsibly manage, re-invest, and/or report on a BEA Program Award during the period of performance.

4. *Persistent Poverty Counties:* Should the CDFI Fund determine, upon analysis of the initial pool of BEA Program Award Recipients, that it has not achieved the 10 percent PPC requirement mandated by Congress, Award preference will be given to Applicants that committed to deploying a minimum of 10 percent of their FY 2019 BEA Program Award in PPCs. Applicants may be required to deploy more than the minimum commitment percentage, but the percentage required should not exceed the maximum commitment percentage provided in the Application. Applicants that committed to serving PPCs and are selected to

receive a FY 2019 BEA Program award, will have their PPC commitment incorporated into their Award Agreement as a Performance Goal which will be subject to compliance and reporting requirements. No applicant, however, will be disqualified from consideration for not making a PPC commitment in its BEA Program Application.

5. *Application Rejection:* The CDFI Fund reserves the right to reject an Application if information (including administrative error) comes to the CDFI Fund’s attention that either: Adversely affects an Applicant’s eligibility for an award; adversely affects the CDFI Fund’s evaluation or scoring of an Application; or indicates fraud or mismanagement on the Applicant’s part. If the CDFI Fund determines any portion of the Application is incorrect in a material respect, the CDFI Fund reserves the right, in its sole discretion, to reject the Application.

There is no right to appeal the CDFI Fund’s award decisions. The CDFI Fund’s award decisions are final. The CDFI Fund will not discuss the specifics of an Applicant’s FY 2019 BEA Program Application or provide reasons why an Applicant was not selected to receive a BEA Program Award. The CDFI Fund will only respond to general questions regarding the FY 2019 BEA Program Application and award decision process until 30 days after the award announcement date.

C. *Anticipated Announcement and Federal Award Dates:* The CDFI Fund anticipates making its FY 2019 BEA Program award announcement in the fall of 2019. The Federal Award Date shall be the date that the CDFI Fund executes the Award Agreement.

VI. Federal Award Administration Information

A. *Federal Award Notices:* The CDFI Fund will notify an Applicant of its selection as a Recipient by delivering a notification or letter. The Award Agreement will contain the general terms and conditions governing the CDFI Fund’s provision of an Award. The Award Recipient will receive a copy of the Award Agreement via AMIS. The Recipient is required to sign the Award Agreement via an electronic signature in AMIS. The CDFI Fund will

subsequently execute the Award Agreement. Each Recipient must also ensure that complete and accurate banking information is reflected in its SAM account at www.sam.gov in order to receive its award payment.

B. *Administrative and National Policy Requirements:* If, prior to entering into an Award Agreement, information (including an administrative error) comes to the CDFI Fund’s attention that adversely affects: The Recipient’s eligibility for an award; the CDFI Fund’s evaluation of the Application; the Recipient’s compliance with any requirement listed in the Uniform Requirements; or indicates fraud or mismanagement on the Recipient’s part, the CDFI Fund may, in its discretion and without advance notice to the Recipient, terminate the award or take other actions as it deems appropriate.

If the Recipient’s certification status as a CDFI changes, the CDFI Fund reserves the right, in its sole discretion, to re-calculate the award, and modify the Award Agreement based on the Recipient’s non-CDFI status.

By executing an Award Agreement, the Recipient agrees that, if the CDFI Fund becomes aware of any information (including an administrative error) prior to the effective date of the Award Agreement that either adversely affects the Recipient’s eligibility for an award, or adversely affects the CDFI Fund’s evaluation of the Recipient’s Application, or indicates fraud or mismanagement on the part of the Recipient, the CDFI Fund may, in its discretion and without advance notice to the Recipient, terminate the Award Agreement or take other actions as it deems appropriate.

The CDFI Fund reserves the right, in its sole discretion, to rescind an award if the Recipient fails to return the Award Agreement, signed by the authorized representative of the Recipient, and/or provide the CDFI Fund with any other requested documentation, within the CDFI Fund’s deadlines.

In addition, the CDFI Fund reserves the right, in its sole discretion, to terminate and rescind the Award Agreement and the award made under this NOFA for any criteria described in the following table:

TABLE 6—CRITERIA THAT MAY RESULT IN AWARD TERMINATION PRIOR TO THE EXECUTION OF AN AWARD AGREEMENT

Criteria	Description
Failure to maintain FDIC-insured status.	<ul style="list-style-type: none"> • If prior to entering into an Award Agreement under this NOFA, the Recipient does not maintain its FDIC-insured status, the CDFI Fund will terminate and rescind the Award Agreement and the award made under this NOFA.

TABLE 6—CRITERIA THAT MAY RESULT IN AWARD TERMINATION PRIOR TO THE EXECUTION OF AN AWARD AGREEMENT—Continued

Criteria	Description
Failure to meet reporting requirements.	<ul style="list-style-type: none"> If an Applicant is a prior CDFI Fund Recipient or allocatee under any CDFI Fund program and is not current on the reporting requirements set forth in the previously executed assistance, award, allocation, bond loan agreement(s), or agreement to guarantee, the CDFI Fund reserves the right, in its sole discretion, to delay entering into an Award Agreement and/or to delay making a disbursement of Award proceeds, until said prior Recipient or allocatee is current on the reporting requirements in the previously executed assistance, award, allocation, bond loan agreement(s), or agreement to guarantee. Please note that automated systems employed by the CDFI Fund for receipt of reports submitted electronically typically acknowledge only a report's receipt; such acknowledgment does not warrant that the report received was complete and therefore met reporting requirements. If said prior Recipient or allocatee is unable to meet this requirement within the timeframe set by the CDFI Fund, the CDFI Fund reserves the right, in its sole discretion, to terminate and rescind the award made under this NOFA.
Pending resolution of non-compliance.	<ul style="list-style-type: none"> If, at any time prior to entering into an Award Agreement under this NOFA, an Applicant (or affiliate of an Applicant) that is a prior CDFI Fund Recipient or allocatee under any CDFI Fund program: (i) Has demonstrated it has been in noncompliance with a previous assistance, award, allocation agreement, bond loan agreement, or agreement to guarantee, but (ii) the CDFI Fund has yet to make a final determination regarding whether or not the entity is in noncompliance with or default of its previous assistance, award, allocation, bond loan agreement, or agreement to guarantee, the CDFI Fund reserves the right, in its sole discretion, to delay entering into an Award Agreement and/or to delay making a disbursement of award proceeds, pending full resolution, in the sole determination of the CDFI Fund, of the noncompliance. If said prior Recipient or allocatee is unable to meet this requirement, in the sole determination of the CDFI Fund, the CDFI Fund reserves the right, in its sole discretion, to terminate and rescind the award made under this NOFA.
Default or Noncompliance status.	<ul style="list-style-type: none"> If prior to entering into an Award Agreement under this NOFA: (i) The CDFI Fund has made a final determination that an Applicant (or an affiliate of an Applicant) that is a prior CDFI Fund Recipient or allocatee under any CDFI Fund program whose award or allocation terminated in default or noncompliance of such prior agreement; (ii) the CDFI Fund has provided written notification of such determination to such organization; and (iii) the anticipated date for entering into the Award Agreement under this NOFA is within a period of time specified in such notification throughout which any new award, allocation, assistance, bond loan agreement(s), or agreement to guarantee is prohibited, the CDFI Fund reserves the right, in its sole discretion, to terminate and rescind the Award Agreement and the award made under this NOFA.
Compliance with Federal civil rights requirements.	<ul style="list-style-type: none"> If prior to entering into an Award Agreement under this NOFA, the Recipient receives a final determination, made within the last three years, in any proceeding instituted against the Recipient in, by, or before any court, governmental, or administrative body or agency, declaring that the Recipient has violated the following laws: Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. §2000d); Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. §794); the Age Discrimination Act of 1975, (42 U.S.C. §6101–6107), and Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, the CDFI Fund will terminate and rescind the Award Agreement and the award made under this NOFA.
Do Not Pay	<ul style="list-style-type: none"> The Do Not Pay Business Center was developed to support Federal agencies in their efforts to reduce the number of improper payments made through programs funded by the Federal government. The CDFI Fund reserves the right, in its sole discretion, to rescind an award if the Recipient (or affiliate of a Recipient) is identified as ineligible to be a Recipient per the Do Not Pay database.
Safety and Soundness	<ul style="list-style-type: none"> If it is determined the Recipient is or will be incapable of meeting its award obligations, the CDFI Fund will deem the Recipient to be ineligible or require it to improve safety and soundness conditions prior to entering into an Award Agreement.

C. *Award Agreement:* After the CDFI Fund selects a Recipient, unless an exception detailed in this NOFA applies, the CDFI Fund and the Recipient will enter into an Award Agreement. The Award Agreement will set forth certain required terms and conditions of the award, which will include, but not be limited to: (i) The amount of the award; (ii) the approved uses of the award; (iii) the performance goals and measures; (iv) the period of performance; and (v) the reporting requirements. The Award Agreement shall provide that a Recipient shall: (i) carry out its Qualified Activities in accordance with applicable law, the

approved Application, and all other applicable requirements; (ii) not receive any disbursement of award dollars until the CDFI Fund has determined that the Recipient has fulfilled all applicable requirements; and (iii) use the BEA Program Award amount for Qualified Activities. Recipients which committed to serving PPCs will have their PPC commitment incorporated into their Award Agreement as a performance goal which will be subject to compliance and reporting requirements.

D. *Reporting:* Through this NOFA, the CDFI Fund will require each Recipient to account for and report to the CDFI Fund on the use of the award. This will

require Recipients to establish administrative controls, subject to applicable OMB Circulars. The CDFI Fund will collect information from each such Recipient on its use of the award at least once following the award and more often if deemed appropriate by the CDFI Fund in its sole discretion. The CDFI Fund will provide guidance to Recipients outlining the format and content of the information required to be provided to describe how the funds were used.

The CDFI Fund may collect information from each Recipient including, but not limited to, an Annual Report with the following components:

TABLE 7—REPORTING REQUIREMENTS

Criteria	Description
Financial Statement Audit Report (FSA report).	Recipients must submit the FSA report to the CDFI Fund via AMIS.
Use of BEA Program Award Report—for all Recipients.	Recipients must submit the Use of Award report to the CDFI Fund via AMIS.
Use of BEA Program Award Report—Funds Deployed in Persistent Poverty Counties.	The CDFI Fund will require each Recipient with Persistent Poverty County commitments to report data for Award funds deployed in persistent poverty counties and maintain proper supporting documentation and records which are subject to review by the CDFI Fund.
Explanation of Noncompliance (as applicable) or successor report.	If the Recipient fails to meet a Performance Goal or reporting requirement, it must submit the Explanation of Non-compliance via AMIS.

Each Recipient is responsible for the timely and complete submission of the reporting requirements. The CDFI Fund reserves the right to contact the Recipient to request additional information and documentation. The CDFI Fund may consider financial information filed with Federal regulators during its compliance review. The CDFI Fund will use such information to monitor each Recipient's compliance with the requirements in the Award Agreement and to assess the impact of the BEA Program. The CDFI Fund reserves the right, in its sole discretion, to modify these reporting requirements if it determines it to be appropriate and necessary; however, such reporting requirements will be modified only after notice has been provided to Recipients.

E. Financial Management and Accounting: The CDFI Fund will require Recipients to maintain financial management and accounting systems that comply with Federal statutes,

regulations, and the terms and conditions of the award. These systems must be sufficient to permit the preparation of reports required by general and program specific terms and conditions, including the tracing of funds to a level of expenditures adequate to establish that such funds have been used according to the Federal statutes, regulations, and the terms and conditions of the award.

Each of the Qualified Activities categories will be ineligible for indirect costs and an associated indirect cost rate. The cost principles used by Recipients must be consistent with Federal cost principles and support the accumulation of costs as required by the principles, and must provide for adequate documentation to support costs charged to the BEA Program Award. In addition, the CDFI Fund will require Recipients to: maintain effective internal controls; comply with applicable statutes, regulations, and the Award Agreement; evaluate and

monitor compliance; take action when not in compliance; and safeguard personally identifiable information.

VII. Federal Awarding Agency Contacts

A. Questions Related to Application and Prior Recipient Reporting, Compliance and Disbursements: The CDFI Fund will respond to questions concerning this NOFA, the Application and reporting, compliance, or disbursements between the hours of 9:00 a.m. and 5:00 p.m. Eastern Time, starting on the date that this NOFA is published through the date listed in Table 1. The CDFI Fund will post responses to frequently asked questions in a separate document on its website. Other information regarding the CDFI Fund and its programs may be obtained from the CDFI Fund's website at <https://www.cdfifund.gov>.

The following table lists contact information for the CDFI Fund, *Grants.gov* and SAM:

TABLE 8—CONTACT INFORMATION

Type of question	Telephone number (not toll free)	Electronic contact method
BEA Program	202-653-0421	BEA AMIS Service Request.
Certification, Compliance Monitoring, and Evaluation	202-653-0423	BEA Compliance and Reporting AMIS Service Request.
AMIS—IT Help Desk	202-653-0422	IT AMIS Service Request.
<i>Grants.gov</i> Help Desk	800-518-4726	support@grants.gov .
<i>SAM.gov</i> (Federal Service Desk)	866-606-8220	Web form via https://www.fsd.gov/fsd-gov/login.do .

B. Information Technology Support: People who have visual or mobility impairments that prevent them from using the CDFI Fund's website should call (202) 653-0422 for assistance (this is not a toll free number).

C. Communication with the CDFI Fund: The CDFI Fund will use its AMIS internet interface to communicate with Applicants and Recipients under this NOFA. Recipients must use AMIS to submit required reports. The CDFI Fund will notify Recipients by email using the

addresses maintained in each Recipient's AMIS account. Therefore, a Recipient and any Subsidiaries, signatories, and Affiliates must maintain accurate contact information (including contact person and authorized representative, email addresses, fax numbers, phone numbers, and office addresses) in their AMIS account(s).

D. Civil Rights and Diversity: Any person who is eligible to receive benefits or services from CDFI Fund or Recipients under any of its programs is

entitled to those benefits or services without being subject to prohibited discrimination. The Department of the Treasury's Office of Civil Rights and Diversity enforces various Federal statutes and regulations that prohibit discrimination in financially assisted and conducted programs and activities of the CDFI Fund. If a person believes that s/he has been subjected to discrimination and/or reprisal because of membership in a protected group, s/he may file a complaint with:

Associate Chief Human Capital Officer, Office of Civil Rights, and Diversity, 1500 Pennsylvania Ave. NW, Washington, DC 20220 or (202) 622-1160 (not a toll-free number).

VIII. Other Information

A. Reasonable Accommodations: Requests for reasonable accommodations under section 504 of the Rehabilitation Act should be directed to Mr. Jay Santiago, Community Development Financial Institutions Fund, U.S. Department of the Treasury, at SantiagoJ@cdfi.treas.gov no later than 72 hours in advance of the application deadline.

B. Paperwork Reduction Act: Under the Paperwork Reduction Act (44 U.S.C. chapter 35), an agency may not conduct or sponsor a collection of information, and an individual is not required to respond to a collection of information, unless it displays a valid OMB control number. Pursuant to the Paperwork Reduction Act, the BEA Program funding Application has been assigned the following control number: 1559-0005.

C. Application Information Sessions: The CDFI Fund may conduct webinars or host information sessions for organizations that are considering applying to, or are interested in learning about, the CDFI Fund's programs. For further information, please visit the CDFI Fund's website at <https://www.cdfifund.gov>.

Authority: 12 U.S.C. 1834a, 4703, 4703 note, 4713; 12 CFR part 1806.

Jodie Harris,

Director, Community Development Financial Institutions Fund.

[FR Doc. 2019-08787 Filed 4-30-19; 8:45 am]

BILLING CODE 4810-70-P

DEPARTMENT OF THE TREASURY

Request for Information on Data Collection and Tracking for Qualified Opportunity Zones

AGENCY: Department of the Treasury.

ACTION: Notice and request for information.

SUMMARY: The Department of the Treasury (Treasury Department) is publishing this notice and request for information to seek public input on the development of public information collection and tracking related to investment in qualified opportunity funds (QOFs).

DATES: Comments on this notice and request for information should be received by May 31, 2019.

ADDRESSES: Interested persons are invited to submit comments regarding this notice according to the instructions for "Electronic Submission of Comments" below. All submissions must refer to this document. The Treasury Department encourages the early submission of comments.

Electronic Submission of Comments

Interested persons must submit comments electronically through the Federal eRulemaking Portal at <http://www.regulations.gov>. Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt, and enables the Treasury Department to make them available to the public. Comments submitted electronically through the <http://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 the method specified above.

No Facsimile Comments: Facsimile (FAX) comments will not be accepted.

Public Inspection of Public Comments: In general, all properly submitted comments will be available for inspection and downloading at <http://www.regulations.gov>.

Additional Instructions: Please note the number of the question to which you are responding at the top of each response. Though the responses will be screened for appropriateness, in general comments received, including attachments and other supporting materials, are part of the public record and are immediately available to the public. Do not enclose any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

FOR FURTHER INFORMATION CONTACT: Craig Johnson, Office of Tax Analysis, 202-622-2000. All responses to this notice and request for information should be submitted via <http://www.regulations.gov> to ensure consideration.

SUPPLEMENTARY INFORMATION: Section 13823 of the Tax Cuts and Jobs Act, Pub. L. 115-97, 131 Stat. 2054, 2184 (2017) (TCJA), amended the Internal Revenue Code to add sections 1400Z-1 and 1400Z-2. Sections 1400Z-1 and 1400Z-2 seek to encourage economic growth and investment in designated distressed communities (qualified opportunity zones) by providing Federal income tax benefits to taxpayers who invest in

businesses located within these zones through a QOF. The purpose of information collection and tracking is to measure the effectiveness of the policy in achieving its stated goals, and ensure that this investment opportunity remains an attractive option for investors to use.

A QOF is required to file Form 8996 as part of its annual Federal income tax return. On this form, the QOF reports the amount of assets in the QOF and what portion of those assets are qualified opportunity zone property (as defined in section 1400Z-2(d)(2)(A)). Based on annual data provided in Form 8996, with a lag of approximately two years following the taxable year, the Treasury Department could determine and report publicly on (i) the number of QOFs, (ii) the aggregate amount of investment in QOFs, and (iii) the portion of that investment reported by QOFs as qualified opportunity zone property.

However, the information reported on the current version of Form 8996 lacks sufficient granularity for the Treasury Department to determine the amount and type of investment that flows into an individual qualified opportunity zone through a QOF. This type of information would be valuable for evaluating the success of the qualified opportunity zone tax incentive on increasing investment and economic activity within qualified opportunity zones.

In the coming weeks, the Treasury Department anticipates that possible revisions to the Form 8996 (OMB Control number 1545-0123) could be proposed for tax years 2019 and following. Subject to tax administration limitations, the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), and other requirements under law, it is expected that such proposed revisions to the Form 8996 could require additional information such as (1) the employer identification number (EIN) of the qualified opportunity zone businesses owned by a QOF and (2) the amount invested by QOFs and qualified opportunity zone businesses located in particular census tracts designated as qualified opportunity zones. Notice of the availability of the draft Form 8996 and request for comment will be available at [IRS.gov/DraftForms](https://www.irs.gov/DraftForms).

Treasury Department is seeking public comment on the following questions:

1. What data would be useful for tracking the effectiveness of providing tax incentives for investment in qualified opportunity zones to bring economic development and job creation to distressed communities?

■ *Comments could address (A) suggested measures that would signal improved economic development in local target markets as well as spillover to neighboring areas, (B) measures of job creation specific to the distressed community, (C) who would collect the data, (D) the frequency of data to be collected, and (E) sources from which to collect data.*

2. In addition to the anticipated revisions to Form 8996 discussed in the Summary of this Notice and Request for Information, is there other information that could appropriately be collected on a tax form that would be helpful in measuring the effectiveness of the opportunity zone incentives. For example, should qualified opportunity zone businesses be required to report on a tax form the location by census tract of (1) owned and leased tangible property or (2) employees of a qualified opportunity zone business?

■ *Comments could address (A) suggested alternative sources to collect this information, (B) the detail required, such as geocoding or type of property, and (C) the cost of data reporting.*

3. What data would be useful for measuring how much would have been invested in qualified opportunity zones

in the absence of the opportunity zone incentives?

■ *Comments could address (A) suggested measures for the current economic viability of investment in similarly distressed, but non-qualified census tracts, and (B) current economic trends in qualified and non-qualified census tracts.*

4. What data would be useful for ensuring that the investment opportunity remains an attractive option for investors?

■ *Comments could address (A) information on the quantity and location of investment, (B) the type of property or businesses generating investment interest, and (C) sources from which to collect data.*

5. What are the costs and benefits of various methods of information collection? Who should perform this data collection?

■ *Comments could address (A) methods of collection and data submission, (B) costs associated with each method, including time burden and other cost considerations, and (C) any specific advantages that a particular method might offer.*

6. What considerations should government officials take into account when considering data to analyze the effectiveness of the qualified

opportunity zone incentives to promote economic development to distressed areas? Over what time period should this analysis occur?

■ *Comments could address (A) specific concerns of investing in distressed areas, (B) the ability of job creation to match local labor force skills, (C) opportunity zone investment crowding out other private or public investment, and (D) risk factors not elsewhere noted.*

7. How do you view the role of the Federal Government, and Tribal, State and local governments in the ongoing maintenance and administration of opportunity zones?

■ *Comments could address: Monitoring, tracking, facilitation, or any other role government could serve to improve the effectiveness of the opportunity zone incentives.*

8. Is there any additional information regarding data collection and tracking for opportunity zones not already addressed that you would like to provide?

Dated: April 16, 2019.

David J. Kautter,

Assistant Secretary (Tax Policy).

[FR Doc. 2019-08076 Filed 4-30-19; 8:45 am]

BILLING CODE 4810-25-P



FEDERAL REGISTER

Vol. 84

Wednesday,

No. 84

May 1, 2018

Part II

Department of the Treasury

Internal Revenue Service

26 CFR Part 1

Investing in Qualified Opportunity Funds; Proposed Rule

DEPARTMENT OF TREASURY**Internal Revenue Service****26 CFR Part 1**

[REG–120186–18]

RIN 1545–BP04

Investing in Qualified Opportunity Funds**AGENCY:** Internal Revenue Service (IRS), Treasury.**ACTION:** Notice of proposed rulemaking; partial withdrawal of a notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations that provide guidance under new section 1400Z–2 of the Internal Revenue Code (Code) relating to gains that may be deferred as a result of a taxpayer’s investment in a qualified opportunity fund (QOF), as well as special rules for an investment in a QOF held by a taxpayer for at least 10 years. This document also contains proposed regulations that update portions of previously proposed regulations under section 1400Z–2 to address various issues, including: the definition of “substantially all” in each of the various places it appears in section 1400Z–2; the transactions that may trigger the inclusion of gain that a taxpayer has elected to defer under section 1400Z–2; the timing and amount of the deferred gain that is included; the treatment of leased property used by a qualified opportunity zone business; the use of qualified opportunity zone business property in the qualified opportunity zone; the sourcing of gross income to the qualified opportunity zone business; and the “reasonable period” for a QOF to reinvest proceeds from the sale of qualifying assets without paying a penalty. These proposed regulations will affect QOFs and taxpayers that invest in QOFs.

DATES: Written (including electronic) comments must be received by July 1, 2019. Outlines of topics to be discussed at the public hearing scheduled for July 9, 2019, at 10 a.m. must be received by July 1, 2019. The public hearing will be held at the New Carrollton Federal Building at 5000 Ellin Road in Lanham, Maryland 20706.

ADDRESSES: Submit electronic submissions via the Federal eRulemaking Portal at www.regulations.gov (indicate IRS and REG–120186–18) by following the online instructions for submitting comments. Once submitted to the Federal eRulemaking Portal, comments cannot be edited or withdrawn. The

Department of the Treasury (Treasury Department) and the IRS will publish for public availability any comment received to its public docket, whether submitted electronically or in hard copy. Send hard copy submissions to: CC:PA:LPD:PR (REG–120186–18), room 5203, Internal Revenue Service, PO Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG–120186–18), Courier’s Desk, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Erika C. Reigle of the Office of Associate Chief Counsel (Income Tax and Accounting), (202) 317–7006, and Kyle C. Griffin of the Office of Associate Chief Counsel (Income Tax and Accounting), (202) 317–4718; concerning the submission of comments, the hearing, or to be placed on the building access list to attend the hearing, Regina L. Johnson, (202) 317–6901 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:**Background**

This document contains proposed regulations under section 1400Z–2 of the Code that amend the Income Tax Regulations (26 CFR part 1). Section 13823 of the Tax Cuts and Jobs Act, Public Law 115–97, 131 Stat. 2054, 2184 (2017) (TCJA), amended the Code to add sections 1400Z–1 and 1400Z–2. Sections 1400Z–1 and 1400Z–2 seek to encourage economic growth and investment in designated distressed communities (qualified opportunity zones) by providing Federal income tax benefits to taxpayers who invest new capital in businesses located within qualified opportunity zones through a QOF.

Section 1400Z–1 provides the procedural rules for designating qualified opportunity zones and related definitions. Section 1400Z–2 provides two main tax incentives to encourage investment in qualified opportunity zones. First, it allows for the deferral of inclusion in gross income of certain gain to the extent that a taxpayer elects to invest a corresponding amount in a QOF. Second, it allows for the taxpayer to elect to exclude from gross income the post-acquisition gain on investments in the QOF held for at least 10 years. Additionally, with respect to the deferral of inclusion in gross income of certain gain invested in a QOF, section 1400Z–2 permanently excludes a portion of such deferred gain if the

corresponding investment in the QOF is held for five or seven years.

On October 29, 2018, the Department of the Treasury (Treasury Department) and the IRS published in the **Federal Register** (83 FR 54279) a notice of proposed rulemaking (REG–115420–18) providing guidance under section 1400Z–2 of the Code for investing in qualified opportunity funds (83 FR 54279 (October 29, 2018)). A public hearing on 83 FR 54279 (October 29, 2018) was held on February 14, 2019. The Treasury Department and the IRS continue to consider the comments received on 83 FR 54279 (October 29, 2018), including those provided at the public hearing.

As is more fully explained in the Explanation of Provisions, the proposed regulations contained in this notice of proposed rulemaking describe and clarify requirements relating to investing in QOFs not addressed in 83 FR 54279 (October 29, 2018). Specifically, and as was indicated in 83 FR 54279 (October 29, 2018), these proposed regulations address the meaning of “substantially all” in each of the various places where it appears in section 1400Z–2; the reasonable period for a QOF to reinvest proceeds from the sale of qualifying assets without paying a penalty pursuant to section 1400Z–2(e)(4)(B); the transactions that may trigger the inclusion of gain that has been deferred under a section 1400Z–2(a) election; and other technical issues with regard to investing in a QOF. Because portions of 83 FR 54279 (October 29, 2018) contained certain placeholder text, included less detailed guidance in certain areas that merely cross-referenced statutory rules, or lacked sufficient detail to address these issues, this notice of proposed rulemaking withdraws paragraphs (c)(4)(i), (c)(5) and (6), (d)(2)(i)(A), (d)(2)(ii) and (iii), (d)(5)(i), and (d)(5)(ii)(B) of proposed § 1.1400Z2(d)–1 of 83 FR 54279 (October 29, 2018), and proposes in their place new paragraphs (c)(4)(i), (c)(5) and (6), (d)(2)(i)(A), (d)(2)(ii) and (iii), (d)(5)(i), and (d)(5)(ii)(B) of proposed § 1.1400Z2(d)–1.

The Treasury Department and the IRS welcome suggestions as to other issues that should be addressed to further clarify the rules under section 1400Z–2, as well as comments on all aspects of these proposed regulations.

Within a few months of the publication of these proposed regulations, the Treasury Department and the IRS expect to address the administrative rules under section 1400Z–2(f) applicable to a QOF that fails to maintain the required 90 percent

investment standard of section 1400Z–2(d)(1), as well as information-reporting requirements for an eligible taxpayer under section 1400Z–2, in separate regulations, forms, or publications.

In addition, the Treasury Department and the IRS anticipate revising the Form 8996 (OMB Control number 1545–0123) for tax years 2019 and following. As provided for under the rules set forth in 83 FR 54279 (October 29, 2018), a QOF must file a Form 8996 with its Federal income tax return for initial self-certification and for annual reporting of compliance with the 90-Percent Asset Test in section 1400Z–2(d)(1). Subject to tax administration limitations, the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), and other requirements under law, it is expected that proposed revisions to the Form 8996 could require additional information such as (1) the employer identification number (EIN) of the qualified opportunity zone businesses owned by a QOF and (2) the amount invested by QOFs and qualified opportunity zone businesses located in particular Census tracts designated as qualified opportunity zones. In that regard, consistent with Executive Order 13853 of December 12, 2018, *Establishing the White House Opportunity and Revitalization Council* (E.O. 13853), published in the **Federal Register** (83 FR 65071) on December 18, 2018, and concurrent with the publication of these proposed regulations, the Treasury Department and the IRS are publishing a request for information (RFI) under this subject in the Notices section of this edition of the **Federal Register**, with a docket for comments on www.regulations.gov separate from that for this notice of proposed rulemaking, requesting detailed comments with respect to methodologies for assessing relevant aspects of investments held by QOFs throughout the United States and at the State, Territorial, and Tribal levels, including the composition of QOF investments by asset class, the identification of designated qualified opportunity zone Census tracts that have received QOF investments, and the impacts and outcomes of the investments in those areas on economic indicators, including job creation, poverty reduction, and new business starts. E.O. 13853 charges the White House Opportunity and Revitalization Council, of which the Treasury Department is a member, to determine “what data, metrics, and methodologies can be used to measure the effectiveness of public and private investments in urban and economically distressed communities, including qualified

opportunity zones.” See the requests for comments in the RFI regarding these or other topics regarding methodologies for assessing the impacts of sections 1400Z–1 and 1400Z–2 on qualified opportunity zones throughout the Nation.

Explanation of Provisions

I. Qualified Opportunity Zone Business Property

A. Definition of Substantially All for Purposes of Sections 1400Z–2(d)(2) and (d)(3)

The proposed rule published at 83 FR 54279 (October 29, 2018) clarified that, for purposes of section 1400Z–2(d)(3)(A)(i), for determining whether an entity is a qualified opportunity zone business, the threshold to determine whether a trade or business satisfies the *substantially all* test is 70 percent. See 83 FR 54279, 54294 (October 29, 2018). If at least 70 percent of the tangible property owned or leased by a trade or business is qualified opportunity zone business property (as defined in section 1400Z–2(d)(3)(A)(i)), proposed § 1.1400Z2(d)–1(d)(3)(i) in 83 FR 54279 (October 29, 2018) provides that the trade or business is treated as satisfying the *substantially all* requirement in section 1400Z–2(d)(3)(A)(i).

The phrase *substantially all* is also used throughout section 1400Z–2(d)(2). The phrase appears in section 1400Z–2(d)(2)(D)(i)(III), which establishes the conditions for property to be treated as qualified opportunity zone business property (“during *substantially all* of the qualified opportunity fund’s holding period for such property, *substantially all* of the use of such property was in a qualified opportunity zone”). The phrase also appears in sections 1400Z–2(d)(2)(B)(i)(III) and 1400Z–2(d)(2)(C)(iii), which require that during *substantially all* of the QOF’s holding period for qualified opportunity zone stock or qualified opportunity zone partnership interests, such corporation or partnership qualified as a qualified opportunity zone business.

The proposed rule published at 83 FR 54279 (October 29, 2018) reserved the proposed meaning of the phrase *substantially all* as used in section 1400Z–2(d)(2). The statute neither defines the meaning of *substantially all* for the QOF’s holding period for qualified opportunity zone stock, qualified opportunity zone partnership interests, and qualified opportunity zone business property, nor defines it for purposes of testing the use of qualified opportunity zone business property in a qualified opportunity zone. The Treasury Department and the

IRS have received numerous questions and comments on the threshold limits of *substantially all* for purposes of section 1400Z–2(d)(2). Many commenters suggested that a lower threshold for the use requirement of section 1400Z–2(d)(2)(D)(i)(III) would allow a variety of businesses to benefit from qualifying investments in QOFs. Other commentators suggested that too low a threshold would negatively impact the low-income communities that section 1400Z–2 is intended to benefit, because the tax-incentivized investment would not be focused sufficiently on these communities.

Consistent with 83 FR 54279 (October 29, 2018) these proposed regulations provide that, in testing the use of qualified opportunity zone business property in a qualified opportunity zone, as required in section 1400Z–2(d)(2)(D)(i)(III), the term *substantially all* in the context of “use” is 70 percent. With respect to owned or leased tangible property, these proposed regulations provide identical requirements for determining whether a QOF or qualified opportunity zone business has used *substantially all* of such tangible property within the qualified opportunity zone within the meaning of section 1400Z–2(d)(2)(D)(i)(III). Whether such tangible property is owned or leased, these proposed regulations propose that the *substantially all* requirement regarding “use” is satisfied if at least 70 percent of the use of such tangible property is in a qualified opportunity zone.

As discussed in the preamble to 83 FR 54279 (October 29, 2018) a compounded use of *substantially all* must be interpreted in a manner consistent with the intent of Congress. Consequently, the Treasury Department and the IRS have determined that a higher threshold is necessary in the holding period context to preserve the integrity of the statute and for the purpose of focusing investment in designated qualified opportunity zones. Thus, the proposed regulations provide that the term *substantially all* as used in the holding period context in sections 1400Z–2(d)(2)(B)(i)(III), 1400Z–2(d)(2)(C)(iii), and 1400Z–2(d)(2)(D)(i)(III) is defined as 90 percent. Using a percentage threshold that is higher than 70-percent in the holding period context is warranted as taxpayers are more easily able to control and determine the period for which they hold property. In addition, given the lower 70-percent thresholds for testing both the use of tangible property in the qualified opportunity zone and the amount of owned and leased tangible property of a qualified opportunity zone business

that must be qualified opportunity zone business property, applying a 70-percent threshold in the holding period context can result in much less than half of a qualified opportunity zone business's tangible property being used in a qualified opportunity zone. Accordingly, the Treasury Department and the IRS have determined that using a threshold lower than 90 percent in the holding period context would reduce the amount of investment in qualified opportunity zones to levels inconsistent with the purposes of section 1400Z-2.

The Treasury Department and the IRS request comments on these proposed definitions of *substantially all* for purposes of section 1400Z-2(d)(2).

B. Original Use of Tangible Property Acquired by Purchase

In 83 FR 54279 (October 29, 2018) the Treasury Department and the IRS specifically solicited comments on the definition of the "original use" requirement in section 1400Z-2(d)(2)(D)(i)(II) for both real property and tangible personal property and reserved a section of the proposed regulations to define the phrase *original use*. The requirement that tangible property acquired by purchase have its "original use" in a qualified opportunity zone commencing with a qualified opportunity fund or qualified opportunity zone business, or be substantially improved, in order to qualify for tax benefits is also found in other sections of the Code. Under the now-repealed statutory frameworks of both section 1400B (related to the DC Zone) and section 1400F (related to Renewal Communities), qualified property for purposes of those provisions was required to have its original use in a zone or to meet the requirements of substantial improvement as defined under those provisions. The Treasury Department and the IRS have received numerous questions on the meaning of "original use." Examples of these questions include: May tangible property be previously used property, or must it be new property? Does property previously placed in service in the qualified opportunity zone for one use, but now placed in service for a different use, qualify? May property used in the qualified opportunity zone be placed in service in the same qualified opportunity zone by an acquiring, unrelated taxpayer?

After carefully considering the comments and questions received, the proposed regulations generally provide that the "original use" of tangible property acquired by purchase by any person commences on the date when

that person or a prior person first places the property in service in the qualified opportunity zone for purposes of depreciation or amortization (or first uses the property in the qualified opportunity zone in a manner that would allow depreciation or amortization if that person were the property's owner). Thus, tangible property located in the qualified opportunity zone that is depreciated or amortized by a taxpayer other than the QOF or qualified opportunity zone business would not satisfy the original use requirement of section 1400Z-2(d)(2)(D)(i)(II) under these proposed regulations. Conversely, tangible property (other than land) located in the qualified opportunity zone that has not yet been depreciated or amortized by a taxpayer other than the QOF or qualified opportunity zone business would satisfy the original use requirement of section 1400Z-2(d)(2)(D)(i)(II) under these proposed regulations. However, the proposed regulations clarify that used tangible property will satisfy the original use requirement with respect to a qualified opportunity zone so long as the property has not been previously used (that is, has not previously been used within that qualified opportunity zone in a manner that would have allowed it to be depreciated or amortized) by any taxpayer. (For special rules concerning the original use requirement for assets acquired in certain transactions to which section 355 or section 381 applies, see proposed § 1.1400Z2(b)-1(d)(2) in this notice of proposed rulemaking.)

The Treasury Department and the IRS have also studied the extent to which usage history of vacant structures or other tangible property (other than land) purchased after 2017 but previously placed in service within the qualified opportunity zone may be disregarded for purposes of the original use requirement if the structure or other property has not been utilized or has been abandoned for some minimum period of time and received multiple public comments regarding this issue. Several commenters suggested establishing an "at least one-year" vacancy period threshold similar to that employed in § 1.1394-1(h) to determine whether property meets the original use requirement within the meaning of section 1397D (defining qualified zone property) for purposes of section 1394 (relating to the issuance of enterprise zone facility bonds). Given the different operation of those provisions and the potential for owners of property already situated in a qualified opportunity zone

to intentionally cease occupying property for 12 months in order to increase its marketability to potential purchasers after 2017, other commenters proposed longer vacancy thresholds ranging to five years. The Treasury Department and the IRS are proposing that where a building or other structure has been vacant for at least five years prior to being purchased by a QOF or qualified opportunity zone business, the purchased building or structure will satisfy the original use requirement. Comments are requested on this proposed approach, including the length of the vacancy period and how such a standard might be administered and enforced.

In addition, in response to questions about a taxpayer's improvements to leased property, the proposed regulations provide that improvements made by a lessee to leased property satisfy the original use requirement and are considered purchased property for the amount of the unadjusted cost basis of such improvements as determined in accordance with section 1012.

As provided in Rev. Rul. 2018-29, 2018 I.R.B. 45, and these proposed regulations, if land that is within a qualified opportunity zone is acquired by purchase in accordance with section 1400Z-2(d)(2)(D)(i)(I), the requirement under section 1400Z-2(d)(2)(D)(i)(II) that the original use of tangible property in the qualified opportunity zone commence with a QOF is not applicable to the land, whether the land is improved or unimproved. Likewise, unimproved land that is within a qualified opportunity zone and acquired by purchase in accordance with section 1400Z-2(d)(2)(D)(i)(I) is not required to be substantially improved within the meaning of section 1400Z-2(d)(2)(D)(i)(II) and (d)(2)(D)(ii). Multiple public comments were received suggesting that not requiring the basis of land itself to be substantially improved within the meaning of section 1400Z-2(d)(2)(D)(i)(II) and (d)(2)(D)(ii) would lead to speculative land purchasing and potential abuse of section 1400Z-2.

The Treasury Department and the IRS have considered these comments. Under section 1400Z-2(d)(2)(D)(i)(II) and these proposed regulations, land can be treated as qualified opportunity zone business property for purposes of section 1400Z-2 only if it is used in a trade or business of a QOF or qualified opportunity zone business. As described in part III.D. of this Explanation of Provisions, only activities giving rise to a trade or business within the meaning of section 162 may qualify as a trade or business for purposes of section 1400Z-

2; the holding of land for investment does not give rise to a trade or business and such land could not be qualified opportunity zone business property. Moreover, land is a crucial business asset for numerous types of operating trades or businesses aside from real estate development, and the degree to which it is necessary or useful for taxpayers seeking to grow their businesses to improve the land that their businesses depend on will vary greatly by region, industry, and particular business. In many cases, regulations that imposed a requirement on all types of trades or businesses to substantially improve (within the meaning of section 1400Z-2(d)(2)(D)(i)(II) and (d)(2)(D)(ii)) land that is used by them may encourage noneconomic, tax-motivated business decisions, or otherwise effectively prevent many businesses from benefitting under the opportunity zone provisions. Such rules also would inject a significant degree of additional complexity into these proposed regulations.

Nevertheless, the Treasury Department and the IRS recognize that, in certain instances, the treatment of unimproved land as qualified opportunity zone business property could lead to tax results that are inconsistent with the purposes of section 1400Z-2. For example, a QOF's acquisition of a parcel of land currently utilized entirely by a business for the production of an agricultural crop, whether active or fallow at that time, potentially could be treated as qualified opportunity zone business property without the QOF investing any new capital investment in, or increasing any economic activity or output of, that parcel. In such instances, the Treasury Department and the IRS have determined that the purposes of section 1400Z-2 would not be realized, and therefore the tax incentives otherwise provided under section 1400Z-2 should not be available. If a significant purpose for acquiring such unimproved land was to achieve that inappropriate tax result, the general anti-abuse rule set forth in proposed § 1.1400Z2(f)-1(c) (and described further in part X of this Explanation of Provisions) would apply to treat the acquisition of the unimproved land as an acquisition of non-qualifying property for section 1400Z-2 purposes. The Treasury Department and the IRS request comments on whether anti-abuse rules under section 1400Z-2(e)(4)(c), in addition to the general anti-abuse rule, are needed to prevent such transactions or "land banking" by QOFs or qualified

opportunity zone businesses, and on possible approaches to prevent such abuse.

Conversely, if real property, other than land, that is acquired by purchase in accordance with section 1400Z-2(d)(2)(D)(i)(I) had been placed in service in the qualified opportunity zone by a person other than the QOF or qualified opportunity zone business (or first used in a manner that would allow depreciation or amortization if that person were the property's owner), it must be substantially improved to be considered qualified opportunity zone business property. Substantial improvement by the QOF or qualified opportunity zone business for real property, other than land, is determined by applying the requirements for substantial improvement of tangible property acquired by purchase set forth in section 1400Z-2(d)(2)(D)(ii).

The Treasury Department and the IRS request comments on these proposed rules regarding the original use requirement generally, including whether certain cases may warrant additional consideration. Comments are also requested as to whether the ability to treat such prior use as disregarded for purposes of the original use requirement should depend on whether the property has been fully depreciated for Federal income tax purposes, or whether other adjustments for any undepreciated or unamortized basis of such property would be appropriate. The Treasury Department and the IRS are also studying the circumstances under which tangible property that had not been purchased but has been overwhelmingly improved by a QOF or a qualified opportunity zone business may be considered as satisfying the original use requirement and request comment regarding possible approaches.

Under these proposed regulations, the determination of whether the substantial improvement requirement of section 1400Z-2(d)(2)(D)(ii) is satisfied for tangible property that is purchased is made on an asset-by-asset basis. The Treasury Department and the IRS have considered the possibility, however, that an asset-by-asset approach might be onerous for certain types of businesses. For example, the granular nature of an asset-by-asset approach might cause operating businesses with significant numbers of diverse assets to encounter administratively difficult asset segregation and tracking burdens, potentially creating traps for the unwary. As an alternative, the Treasury Department and the IRS have contemplated the possibility of applying an aggregate standard for determining

compliance with the substantial improvement requirement, potentially allowing tangible property to be grouped by location in the same, or contiguous, qualified opportunity zones. Given that an aggregate approach could provide additional compliance flexibility, while continuing to incentivize high-quality investments in qualified opportunity zones, the Treasury Department and the IRS request comments on the potential advantages, as well as disadvantages, of adopting an aggregate approach for substantial improvement.

Additional comments are requested regarding the application of the substantial improvement requirement with respect to tangible personal property acquired by purchase that is not capable of being substantially improved (for example, equipment that is nearly new but was previously used in the qualified opportunity zone and the cost of fully refurbishing the equipment would not result in a doubling of the basis of such property). Specifically, comments are requested regarding whether the term "property" in section 1400Z-2(d)(2)(D)(ii) should be interpreted in the aggregate to permit the purchase of items of non-original use property together with items of original use property that do not directly improve such non-original use property to satisfy the substantial improvement requirement. In that regard, comments are requested as to the extent to which such treatment may be appropriate given that such treatment could cause a conflict between the independent original use requirement of section 1400Z-2(d)(2)(D)(i)(II) and the independent substantial improvement requirement of section 1400Z-2(d)(2)(D)(ii) by reason of the definition of substantial improvement under section 1400Z-2(d)(2)(D)(ii). Comments are also requested regarding the treatment of purchases of multiple items of separate tangible personal property for purposes of section 1400Z-2(d)(2)(D)(i)(II) that have the same applicable depreciation method, applicable recovery period, and applicable convention, and which are placed in service in the same year by a QOF or qualified opportunity zone business in one or more general asset accounts within the meaning of section 168(i) and § 1.168(i)-1.

C. Safe Harbor for Testing Use of Inventory in Transit

Section 1400Z-2(d)(2)(D)(i)(III) provides that qualified opportunity zone business property means tangible property used in a trade or business of the QOF if, during substantially all of

the QOF's holding period for such property, substantially all of the use of such property was in a qualified opportunity zone. Commentators have inquired how inventory will be treated for purposes of determining whether substantially all of the tangible property is used in the qualified opportunity zone. Commentators expressed concern that inventory in transit on the last day of the taxable year of a QOF would be counted against the QOF when determining whether the QOF has met the 90-percent ownership requirement found in section 1400Z-2(d)(1) (90-percent asset test).

The proposed regulations clarify that inventory (including raw materials) of a trade or business does not fail to be used in a qualified opportunity zone solely because the inventory is in transit from a vendor to a facility of the trade or business that is in a qualified opportunity zone, or from a facility of the trade or business that is in a qualified opportunity zone to customers of the trade or business that are not located in a qualified opportunity zone. Comments are requested as to whether the location of where inventory is warehoused should be relevant and whether inventory (including raw materials) should be excluded from both the numerator and denominator of the 70-percent test for QOZBs.

The Treasury Department and the IRS request comments on the proposed rules regarding the determination of whether inventory, as well as other property, is used in a qualified opportunity zone, including whether certain cases or types of property may warrant additional consideration.

II. Treatment of Leased Tangible Property

As noted previously, section 1400Z-2(d)(3)(A)(i) provides that a qualified opportunity zone business is a trade or business in which, among other things, substantially all (that is, at least 70 percent) of the tangible property owned or leased by the taxpayer is "qualified opportunity zone business property" within the meaning of section 1400Z-2(d)(2)(D), determined by substituting "qualified opportunity fund" with "qualified opportunity zone business" each place that such term appears. Taking into account this substitution, section 1400Z-2(d)(2)(D)(i) provides that qualified opportunity zone business property is tangible property that meets the following requirements: (1) The tangible property was acquired by the trade or business by purchase (as defined in section 179(d)(2)) after December 31, 2017; (2) the original use of such property in the qualified

opportunity zone commences with the qualified opportunity zone business, or the qualified opportunity zone business substantially improves the property; and (3) for substantially all of the qualified opportunity zone business's holding period of the tangible property, substantially all of the use of such property is in the qualified opportunity zone. Commenters have expressed concern as to whether tangible property that is leased by a qualified opportunity zone business can be treated as satisfying these requirements. Similar questions have arisen with respect to whether tangible property leased by a QOF could be treated as satisfying the 90-percent asset test under section 1400Z-2(d)(1).

A. Status as Qualified Opportunity Zone Business Property

The purposes of sections 1400Z-1 and 1400Z-2 are to increase business activity and economic investment in qualified opportunity zones. As a proxy for evaluating increases in business activity and economic investment in a qualified opportunity zone, these sections of the Code generally measure increases in tangible business property used in that qualified opportunity zone. The general approach of the statute in evaluating the achievement of those purposes inform the proposed regulations' treatment of tangible property that is leased rather than owned. The Treasury Department and the IRS also recognize that not treating leased property as qualified opportunity zone business property may have an unintended consequence of excluding investments on tribal lands designated as qualified opportunity zones because tribal governments occupy Federal trust lands and these lands are, more often than not, leased for economic development purposes.

Given the purpose of sections 1400Z-1 and 1400Z-2 to facilitate increased business activity and economic investment in qualified opportunity zones, these proposed regulations would provide greater parity among diverse types of business models. If a taxpayer uses tangible property located in a qualified opportunity zone in its business, the benefits of such use on the qualified opportunity zone's economy would not generally be expected to vary greatly depending on whether the business pays cash for the property, borrows in order to purchase the property, or leases the property. Not recognizing that benefits can accrue to a qualified opportunity zone regardless of the manner in which a QOF or qualified opportunity zone business acquires rights to use tangible property

in the qualified opportunity zone could result in preferences solely based on whether businesses choose to own or lease tangible property, an anomalous result inconsistent with the purpose of sections 1400Z-1 and 1400Z-2.

Accordingly, leased tangible property meeting certain criteria may be treated as qualified opportunity zone business property for purposes of satisfying the 90-percent asset test under section 1400Z-2(d)(1) and the substantially all requirement under section 1400Z-2(d)(3)(A)(i). The following two general criteria must be satisfied. First, analogous to owned tangible property, leased tangible property must be acquired under a lease entered into after December 31, 2017. Second, as with owned tangible property, substantially all of the use of the leased tangible property must be in a qualified opportunity zone during substantially all of the period for which the business leases the property.

These proposed regulations, however, do not impose an original use requirement with respect to leased tangible property for, among others, the following reasons. Unlike owned tangible property, in most circumstances, leased tangible property held by a lessee cannot be placed in service for depreciation or amortization purposes because the lessee does not own such tangible property for Federal income tax purposes. In addition, in many instances, leased tangible property may have been previously leased to other lessees or previously used in the qualified opportunity zone. Furthermore, taxpayers generally do not have a basis in leased property that can be depreciated, again, because they are not the owner of such property for Federal income tax purposes. Therefore, the proposed regulations do not impose a requirement for a lessee to "substantially improve" leased tangible property within the meaning of section 1400Z-2(d)(2)(D)(ii).

Unlike tangible property that is purchased by a QOF or qualified opportunity zone business, the proposed regulations do not require leased tangible property to be acquired from a lessor that is unrelated (within the meaning of section 1400Z-2(e)(2)) to the QOF or qualified opportunity zone business that is the lessee under the lease. However, in order to maintain greater parity between decisions to lease or own tangible property, while also limiting abuse, the proposed regulations provide one limitation as an alternative to imposing a related person rule or a substantial improvement rule and two further limitations that apply when the lessor and lessee are related.

First, the proposed regulations require in all cases, that the lease under which a QOF or qualified opportunity zone business acquires rights with respect to any leased tangible property must be a “market rate lease.” For this purpose, whether a lease is market rate (that is, whether the terms of the lease reflect common, arms-length market practice in the locale that includes the qualified opportunity zone) is determined under the regulations under section 482. This limitation operates to ensure that all of the terms of the lease are market rate.

Second, if the lessor and lessee are related, the proposed regulations do not permit leased tangible property to be treated as qualified opportunity zone business property if, in connection with the lease, a QOF or qualified opportunity zone business at any time makes a prepayment to the lessor (or a person related to the lessor within the meaning of section 1400Z–2(e)(2)) relating to a period of use of the leased tangible property that exceeds 12 months. This requirement operates to prevent inappropriate allocations of investment capital to prepayments of rent, as well as other payments exchanged for the use of the leased property.

Third, also applicable when the lessor and lessee are related, the proposed regulations do not permit leased tangible personal property to be treated as qualified opportunity zone business property unless the lessee becomes the owner of tangible property that is qualified opportunity zone business property and that has a value not less than the value of the leased personal property. This acquisition of this property must occur during a period that begins on the date that the lessee receives possession of the property under the lease and ends on the earlier of the last day of the lease or the end of the 30-month period beginning on the date that the lessee receives possession of the property under the lease. There must be substantial overlap of zone(s) in which the owner of the property so acquired uses it and the zone(s) in which that person uses the leased property.

Finally, the proposed regulations include an anti-abuse rule to prevent the use of leases to circumvent the substantial improvement requirement for purchases of real property (other than unimproved land). In the case of real property (other than unimproved land) that is leased by a QOF, if, at the time the lease is entered into, there was a plan, intent, or expectation for the real property to be purchased by the QOF for an amount of consideration other than the fair market value of the real property

determined at the time of the purchase without regard to any prior lease payments, the leased real property is not qualified opportunity zone business property at any time.

The Treasury Department and the IRS request comments on all aspects of the proposed treatment of leased tangible property. In particular, a determination under section 482 of whether the terms of the lease reflect common, arms-length market practice in the locale that includes the qualified opportunity zone takes into account the simultaneous combination of all terms of the lease, including rent, term, possibility of extension, presence of an option to purchase the leased asset, and (if there is such an option) the terms of purchase. Comments are requested on whether taxpayers and the IRS may encounter undue burden or difficulty in determining whether a lease is market rate. If so, how should the final regulations reduce that burden? For example, should the final regulations describe one or more conditions whose presence would create a presumption that a lease is (or is not) a market rate lease? Comments are also requested on whether the limitations intended to prevent abusive situations through the use of leased property are appropriate, or whether modifications are warranted.

B. Valuation of Leased Tangible Property

Based on the foregoing, these proposed regulations provide methodologies for valuing leased tangible property for purposes of satisfying the 90-percent asset test under section 1400Z–2(d)(1) and the substantially all requirement under section 1400Z–2(d)(3)(A)(i). Under these proposed regulations, on an annual basis, leased tangible property may be valued using either an applicable financial statement valuation method or an alternative valuation method, each described further below. A QOF or qualified opportunity zone business, as applicable, may select the applicable financial statement valuation method if they actually have an applicable financial statement (within the meaning of § 1.475(a)–4(h)). Once a QOF or qualified opportunity zone business selects one of those valuation methods for the taxable year, it must apply such method consistently to all leased tangible property valued with respect to the taxable year.

Financial Statement Valuation Method

Under the applicable financial statement valuation method, the value of leased tangible property of a QOF or qualified opportunity zone business is

the value of that property as reported on the applicable financial statement for the relevant reporting period. These proposed regulations require that a QOF or qualified opportunity zone business may select this applicable financial statement valuation only if the applicable financial statement is prepared according to U.S. generally accepted accounting principles (GAAP) and requires recognition of the lease of the tangible property.

Alternative Valuation Method

Under the alternative valuation method, the value of tangible property that is leased by a QOF or qualified opportunity zone business is determined based on a calculation of the “present value” of the leased tangible property. Specifically, the value of such leased tangible property under these proposed regulations is equal to the sum of the present values of the payments to be made under the lease for such tangible property. For purposes of calculating present value, the discount rate is the applicable Federal rate under section 1274(d)(1), determined by substituting the term “lease” for “debt instrument.”

These proposed regulations require that a QOF or qualified opportunity zone business using the alternative valuation method calculate the value of leased tangible property under this alternative valuation method at the time the lease for such property is entered into. Once calculated, these proposed regulations require that such calculated value be used as the value for such asset for all testing dates for purposes of the “substantially all of the use” requirement and the 90-percent asset test.

The Treasury Department and the IRS request comments on these proposed rules regarding the treatment and valuation of leased tangible property, including whether other alternative valuation methods may be appropriate, or whether certain modifications to the proposed valuation methods are warranted.

III. Qualified Opportunity Zone Businesses

A. Real Property Straddling a Qualified Opportunity Zone

Section 1400Z–2(d)(3)(A)(ii) incorporates the requirements of section 1397C(b)(2), (4), and (8) related to Empowerment Zones. The Treasury Department and the IRS have received numerous comments on the ability of a business that holds real property straddling multiple Census tracts, where not all of the tracts are designated as a

qualified opportunity zone under section 1400Z-1, to satisfy the requirements under sections 1400Z-2 and 1397C(b)(2), (4), and (8). Commenters have suggested that the proposed regulations adopt a rule that is similar to the rule used for purposes of other place-based tax incentives (that is, the Empowerment Zones) enshrined in section 1397C(f). Section 1397C(f) provides that if the amount of real property based on square footage located within the qualified opportunity zone is substantial as compared to the amount of real property based on square footage outside of the zone, and the real property outside of the zone is contiguous to part or all of the real property located inside the zone, then all of the property would be deemed to be located within a qualified zone.

These proposed regulations provide that in satisfying the requirements of section 1400Z-2(d)(3)(A)(ii), section 1397C(f) applies in the determination of whether a qualified opportunity zone is the location of services, tangible property, or business functions (substituting “qualified opportunity zone” for “empowerment zone”). Real property located within the qualified opportunity zone should be considered substantial if the unadjusted cost of the real property inside a qualified opportunity zone is greater than the unadjusted cost of real property outside of the qualified opportunity zone.

Comments are requested as to whether there exist circumstances under which the Treasury Department and the IRS could apply principles similar to those of section 1397C(f) in the case of other requirements of section 1400Z-2.

B. 50 Percent of Gross Income of a Qualified Opportunity Zone Business

Section 1397C(b)(2) provides that, in order to be a “qualified business entity” (in addition to other requirements found in section 1397C(b)) with respect to any taxable year, a corporation or partnership must derive at least 50 percent of its total gross income “from the active conduct of such business.” The phrase *such* business refers to a business mentioned in the preceding sentence, which discusses “a qualified business within an empowerment zone.” For purposes of application to section 1400Z-2, references in section 1397C to “an empowerment zone” are treated as meaning a qualified opportunity zone. Thus, the corporation or partnership must derive at least 50 percent of its total gross income from the active conduct of a business within a qualified opportunity zone.

An area of concern for commenters is how the Treasury Department and the

IRS will determine whether this 50-percent gross income requirement is satisfied. Commenters recommended that the Treasury Department and the IRS provide guidance to clarify the requirements of sections 1400Z-2(d)(3)(A)(ii) and 1397C(b)(2).

The proposed regulations provide three safe harbors and a facts and circumstances test for determining whether sufficient income is derived from a trade or business in a qualified opportunity zone for purposes of the 50-percent test in section 1397C(b)(2). Businesses only need to meet one of these safe harbors to satisfy that test. The first safe harbor in the proposed regulations requires that at least 50 percent of the services performed (based on hours) for such business by its employees and independent contractors (and employees of independent contractors) are performed within the qualified opportunity zone. This test is intended to address businesses located in a qualified opportunity zone that primarily provide services. The percentage is based on a fraction, the numerator of which is the total number of hours spent by employees and independent contractors (and employees of independent contractors) performing services in a qualified opportunity zone during the taxable year, and the denominator of which is the total number of hours spent by employees and independent contractors (and employees of independent contractors) in performing services during the taxable year.

For example, consider a startup business that develops software applications for global sale in a campus located in a qualified opportunity zone. Because the business’ global consumer base purchases such applications through internet download, the business’ employees and independent contractors are able to devote the majority of their total number of hours to developing such applications on the business’ qualified opportunity zone campus. As a result, this startup business would satisfy the first safe harbor, even though the business makes the vast majority of its sales to consumers located outside of the qualified opportunity zone in which its campus is located.

The second safe harbor is based upon amounts paid by the trade or business for services performed in the qualified opportunity zone by employees and independent contractors (and employees of independent contractors). Under this test, if at least 50 percent of the services performed for the business by its employees and independent contractors (and employees of

independent contractors) are performed in the qualified opportunity zone, based on amounts paid for the services performed, the business meets the 50-percent gross income test found in section 1397C(b)(2). This test is determined by a fraction, the numerator of which is the total amount paid by the entity for employee and independent contractor (and employees of independent contractors) services performed in a qualified opportunity zone during the taxable year, and the denominator of which is the total amount paid by the entity for employee and independent contractor (and employees of independent contractors) services performed during the taxable year.

For illustration, assume that the startup business described above also utilizes a service center located outside of the qualified opportunity zone and that more employees and independent contractor working hours are performed at the service center than the hours worked at the business’ opportunity zone campus. While the majority of the total hours spent by employees and independent contractors of the startup business occur at the service center, the business pays 50 percent of its total compensation for software development services performed by employees and independent contractors on the business’ opportunity zone campus. As a result, the startup business satisfies the second safe harbor.

The third safe harbor is a conjunctive test concerning tangible property and management or operational functions performed in a qualified opportunity zone, permitting a trade or business to use the totality of its situation to meet the requirements of sections 1400Z-2(d)(3)(A)(i) and 1397C(b)(2). The proposed regulations provide that a trade or business may satisfy the 50-percent gross income requirement if (1) the tangible property of the business that is in a qualified opportunity zone and (2) the management or operational functions performed for the business in the qualified opportunity zone are each necessary to generate 50 percent of the gross income of the trade or business. Thus, for example, if a landscaper’s headquarters are in a qualified opportunity zone, its officers and employees manage the daily operations of the business (occurring within and outside the qualified opportunity zone) from its headquarters, and all of its equipment and supplies are stored within the headquarters facilities or elsewhere in the qualified opportunity zone, then the management activity and the storage of equipment and supplies in the qualified opportunity zone are

each necessary to generate 50 percent of the gross income of the trade or business. Conversely, the proposed regulations provide that if a trade or business only has a PO Box or other delivery address located in the qualified opportunity zone, the presence of the PO Box or other delivery address does not constitute a factor necessary to generate gross income by such business.

Finally, taxpayers not meeting any of the other safe harbor tests may meet the 50-percent requirement based on a facts and circumstances test if, based on all the facts and circumstances, at least 50 percent of the gross income of a trade or business is derived from the active conduct of a trade or business in the qualified opportunity zone.

The Treasury Department and the IRS request comments on the proposed safe harbor rules regarding the 50-percent gross income requirement, including comments offering possible additional safe harbors, such as one based on headcount of certain types of service providers, and whether certain modifications would be warranted to prevent potential abuses.

C. Use of Intangibles

As provided in 83 FR 54279 (October 29, 2018) and section 1400Z-2(d)(3), a qualified opportunity zone trade or business must satisfy section 1397C(b)(4). Section 1397C(b)(4) requires that, with respect to any taxable year, a substantial portion of the intangible property of a qualified business entity must be used in the active conduct of a trade or business in the qualified opportunity zone, but section 1397C does not provide a definition of “substantial portion.” The IRS and the Treasury Department have received comments asking for the definition of substantial portion. Accordingly, the proposed regulations provide that, for purposes of determining whether a substantial portion of intangible property of a qualified opportunity zone is used in the active conduct of a trade or business, the term *substantial portion* means at least 40 percent.

D. Active Conduct of a Trade or Business

Section 1400Z-2(d)(3)(A)(ii) also incorporates requirement (2) of section 1397C(b), which requires at least 50 percent of the total gross income of a qualified business entity to be derived from the active conduct of a trade or business within a zone. The IRS has received comments asking if the active conduct of a trade or business will be defined for purposes of section 1400Z-2. Other commentators have expressed

concern that the leasing of real property by a qualified opportunity zone business may not amount to the active conduct of a trade or business if the business has limited leasing activity.

Section 162(a) permits a deduction for ordinary and necessary expenses paid or incurred in carrying on a trade or business. The rules under section 162 for determining the existence of a trade or business are well-established, and there is a large body of case law and administrative guidance interpreting the meaning of a trade or business for that purpose. Therefore, these proposed regulations define a trade or business for purposes of section 1400Z-2 as a trade or business within the meaning of section 162. However, these proposed regulations provide that the ownership and operation (including leasing) of real property used in a trade or business is treated as the active conduct of a trade or business for purposes of section 1400Z-2(d)(3). No inference should be drawn from the preceding sentence as to the meaning of the “active conduct of a trade or business” for purposes of other provisions of the Code, including section 355.

The Treasury Department and the IRS request comments on the proposed definition of a trade or business for purposes of section 1400Z-2(d)(3). In addition, comments are requested on whether additional rules are needed in determining if a trade or business is actively conducted. The Treasury Department and the IRS further request comments on whether it would be appropriate or useful to extend the requirements of section 1397C applicable to qualified opportunity zone businesses to QOFs.

E. Working Capital Safe Harbor

Responding to comments received on 83 FR 54279 (October 29, 2018) the proposed regulations make two changes to the safe harbor for working capital. First, the written designation for planned use of working capital now includes the development of a trade or business in the qualified opportunity zone as well as acquisition, construction, and/or substantial improvement of tangible property. Second, exceeding the 31-month period does not violate the safe harbor if the delay is attributable to waiting for government action the application for which is completed during the 31-month period.

IV. Special Rule for Section 1231 Gains

In 83 FR 54279 (October 29, 2018) the proposed regulations clarified that only capital gains are eligible for deferral under section 1400Z-2(a)(1). Section

1231(a)(1) provides that, if the section 1231 gains for any taxable year exceed the section 1231 losses, such gain shall be treated as long-term capital gain. Thus, the proposed regulations provide that only this gain shall be treated as an eligible gain for purposes of section 1400Z-2.

In addition, the preamble in 83 FR 54279 (October 29, 2018) stated that some capital gains are the result of Federal tax rules deeming an amount to be a gain from the sale or exchange of a capital asset, and, in many cases, the statutory language providing capital gain treatment does not provide a specific date for the deemed sale. Thus, 83 FR 54279 (October 29, 2018) addressed this issue by providing that, except as specifically provided in the proposed regulations, the first day of the 180-day period set forth in section 1400Z-2(a)(1)(A) and the regulations thereunder is the date on which the gain would be recognized for Federal income tax purposes, without regard to the deferral available under section 1400Z-2. Consistent with 83 FR 54279 (October 29, 2018) and because the capital gain income from section 1231 property is determinable only as of the last day of the taxable year, these proposed regulations provide that the 180-day period for investing such capital gain income from section 1231 property in a QOF begins on the last day of the taxable year.

The Treasury Department and the IRS request comments on the proposed treatment of section 1231 gains.

V. Relief With Respect to the 90-Percent Asset Test

A. Relief for Newly Contributed Assets

A new QOF's ability to delay the start of its status as a QOF (and thus the start of its 90-percent asset tests) provides the QOF the ability to prepare to deploy new capital before that capital is received and must be tested. Failure to satisfy the 90-percent asset test on a testing date does not by itself cause an entity to fail to be a QOF within the meaning of section 1400Z-2(d)(1) (this is the case even if it is the QOF's first testing date). Some commentators on 83 FR 54279 (October 29, 2018) pointed out that this start-up rule does not help an existing QOF that receives new capital from an equity investor shortly before the next semi-annual test. The proposed regulations, therefore, allow a QOF to apply the test without taking into account any investments received in the preceding 6 months. The QOF's ability to do this, however, is dependent on those new assets being held in cash,

cash equivalents, or debt instruments with term 18 months or less.

B. QOF Reinvestment Rule

Section 1400Z-2(e)(4)(B) authorizes regulations to ensure a QOF has “a reasonable period of time to reinvest the return of capital from investments in qualified opportunity zone stock and qualified opportunity zone partnership interests, and to reinvest proceeds received from the sale or disposition of qualified opportunity zone property.” For example, if a QOF, shortly before a testing date, sells qualified opportunity zone property, that QOF should have a reasonable amount of time in which to bring itself into compliance with the 90-percent asset test. Many stakeholders have requested guidance not only on the length of a “reasonable period of time to reinvest,” but also on the Federal income tax treatment of any gains that the QOF reinvests during such a period.

The proposed regulations provide that proceeds received by the QOF from the sale or disposition of (1) qualified opportunity zone business property, (2) qualified opportunity zone stock, and (3) qualified opportunity zone partnership interests are treated as qualified opportunity zone property for purposes of the 90-percent investment requirement described in 1400Z-1(d)(1) and (f), so long as the QOF reinvests the proceeds received by the QOF from the distribution, sale, or disposition of such property during the 12-month period beginning on the date of such distribution, sale, or disposition. The one-year rule is intended to allow QOFs adequate time in which to reinvest proceeds from qualified opportunity zone property. Further, in order for the reinvested proceeds to be counted as qualified opportunity zone business property, from the date of a distribution, sale, or disposition until the date proceeds are invested in other qualified opportunity zone property, the proceeds must be continuously held in cash, cash equivalents, and debt instruments with a term of 18 months or less. Finally, a QOF may reinvest proceeds from the sale of an investment into another type of qualifying investment. For example, a QOF may reinvest proceeds from a sale of an investment in qualified opportunity stock into qualified opportunity zone business property. Analogous to the flexibility in the safe harbor for working capital, the proposed regulations extend QOF reinvestment relief from application of the 90-percent asset test if failure to meet the 12-month deadline is attributable to delay in government action the application for which is complete.

The Treasury Department and the IRS request comments on whether an analogous rule for QOF subsidiaries to reinvest proceeds from the disposition of qualified opportunity zone property would be beneficial.

Additionally, commenters have requested that the grant of authority in section 1400Z-2(e)(4)(B) be used to exempt QOFs and investors in QOFs from the Federal income tax consequences of dispositions of qualified opportunity zone property by QOFs or qualified opportunity zone businesses if the proceeds from such dispositions are reinvested within a reasonable timeframe. The Treasury Department and the IRS believe that the grant of this regulatory authority permits QOFs a reasonable time to reinvest such proceeds without the QOF being harmed (that is, without the QOF incurring the penalty set forth in section 1400Z-2(f) because the proceeds would not be qualified opportunity zone property). However, the statutory language granting this regulatory authority does not specifically authorize the Secretary to prescribe rules for QOFs departing from the otherwise operative recognition provisions of sections 1001(c) and 61(a)(3).

Regarding the tax benefits provided to investors in QOFs under section 1400Z-2(b) and (c), as stated earlier, sections 1400Z-1 and 1400Z-2 seek to encourage economic growth and investment in designated distressed communities (qualified opportunity zones) by providing Federal income tax benefits to taxpayers who invest in businesses located within these zones through a QOF. Congress tied these tax incentives to the longevity of an investor's stake in a QOF, not to a QOF's stake in any specific portfolio investment. Further, Congress expressly recognized that many QOFs would experience investment “churn” over the lifespan of the QOF and anticipated this by providing the Secretary the regulatory latitude for permitting QOFs a reasonable time to reinvest capital. Consistent with this regulatory authority, the Treasury Department and the IRS clarify that sales or dispositions of assets by a QOF do not impact in any way investors' holding periods in their qualifying investments or trigger the inclusion of any deferred gain reflected in such qualifying investments so long as they do not sell or otherwise dispose of their qualifying investment for purposes of section 1400Z-2(b). However, the Treasury Department and the IRS are not able to find precedent for the grant of authority in section 1400Z-2(e)(4)(B) to permit QOFs a reasonable time to reinvest capital and allow the

Secretary to prescribe regulations permitting QOFs or their investors to avoid recognizing gain on the sale or disposition of assets under sections 1001(c) and 61(a)(3), and notes that examples of provisions in subtitle A of the Code that provide for nonrecognition treatment or exclusion from income can be found in sections 351(a), 354(a), 402(c), 501(a), 721(a), 1031(a), 1032(a), and 1036(a), among others, some of which are applied in the proposed rules and described as selected examples in this preamble. In this regard, the Treasury Department and the IRS are requesting commenters to provide prior examples of tax regulations that exempt realized gain from being recognized under sections 1001(c) or 61(a)(3) by a taxpayer (either a QOF or qualified opportunity zone business, or in the case of QOF partnerships or QOF S corporations, the investors that own qualifying investments in such QOFs) without an operative provision of subtitle A of the Code expressly providing for nonrecognition treatment; as well as to provide any comments on the possible burdens imposed if these organizations are required to reset the holding period for reinvested realized gains, including administrative burdens and the potential chilling effect on investment incentives that may result from these possible burdens, and whether specific organizational forms could be disproportionately burdened by this proposed policy.

VI. Amount of an Investment for Purposes of Making a Deferral Election

A taxpayer may make an investment for purposes of an election under section 1400Z-2(a) by transferring cash or other property to a QOF, regardless of whether the transfer is taxable to the transferor (such as where the transferor is not in control of the transferee corporation), provided the transfer is not re-characterized as a transaction other than an investment in the QOF (as would be the case where a purported contribution to a partnership is treated as a disguised sale). These proposed regulations provide special rules for determining the amount of an investment for purposes of this election if a taxpayer transfers property other than cash to a QOF in a carryover basis transaction. In that case, the amount of the investment equals the lesser of the taxpayer's adjusted basis in the equity received in the transaction (determined without regard to section 1400Z-2(b)(2)(B)) or the fair market value of the equity received in the transaction (both as determined immediately after the transaction). In the case of a

contribution to a partnership that is a QOF (QOF partnership), the basis in the equity to which section 1400Z–2(b)(2)(B)(i) applies is calculated without regard to any liability that is allocated to the contributor under section 752(a). These rules apply separately to each item of property contributed to a QOF, but the total amount of the investment for purposes of the election is limited to the amount of the gain described in section 1400Z–2(a)(1).

The proposed regulations set forth two special rules that treat a taxpayer as having created a mixed-funds investment (within the meaning of proposed § 1.1400Z2(b)–1(a)(2)(v)). First, a mixed-funds investment will result if a taxpayer contributes to a QOF, in a nonrecognition transaction, property that has a fair market value in excess of the property's adjusted basis. Second, a mixed-funds investment will result if the amount of the investment that might otherwise support an election exceeds the amount of the taxpayer's eligible gain described in section 1400Z–2(a)(1). In each instance, that excess (that is, the excess of fair market value over adjusted basis, or the excess of the investment amount over eligible gain, as appropriate) is treated as an investment described in section 1400Z–2(e)(1)(A)(ii) (that is, the portion of the contribution to which a deferral election does not apply).

If a taxpayer acquires a direct investment in a QOF from a direct owner of the QOF, these proposed regulations also provide that, for purposes of making an election under section 1400Z–2(a), the taxpayer is treated as making an investment in an amount equal to the amount paid for the eligible interest.

The Treasury Department and the IRS request comments on the proposed rules regarding the amount with respect to which a taxpayer may make a deferral election under section 1400Z–2(a).

VII. Events That Cause Inclusion of Deferred Gain (Inclusion Events)

A. In General

Section 1400Z–2(b)(1) provides that the amount of gain that is deferred if a taxpayer makes an equity investment in a QOF described in section 1400Z–2(e)(1)(A)(i) (qualifying investment) will be included in the taxpayer's income in the taxable year that includes the earlier of (A) the date on which the qualifying investment is sold or exchanged, or (B) December 31, 2026. By using the terms "sold or exchanged," section 1400Z–2(b)(1) does not directly address non-sale or exchange dispositions, such as

gifts, bequests, devises, charitable contributions, and abandonments of qualifying investments. However, the Conference Report to accompany H.R. 1, Report 115–466 (Dec. 15, 2017) provides that, under section 1400Z–2(b)(1), the "deferred gain is recognized on the earlier of the date on which the [qualifying] investment is disposed of or December 31, 2026." See Conference Report at 539.

The proposed regulations track the disposition language set forth in the Conference Report and clarify that, subject to enumerated exceptions, an inclusion event results from a transfer of a qualifying investment in a transaction to the extent the transfer reduces the taxpayer's equity interest in the qualifying investment for Federal income tax purposes. Notwithstanding that general principle, and except as otherwise provided in the proposed regulations, a transaction that does not reduce a taxpayer's equity interest in the taxpayer's qualifying investment is also an inclusion event under the proposed regulations to the extent the taxpayer receives property from a QOF in a transaction treated as a distribution for Federal income tax purposes. For this purpose, property generally is defined as money, securities, or any other property, other than stock (or rights to acquire stock) in the corporation that is a QOF (QOF corporation) that is making the distribution. The Treasury Department and the IRS have determined that it is necessary to treat such transactions as inclusion events to prevent taxpayers from "cashing out" a qualifying investment in a QOF without including in gross income any amount of their deferred gain.

Based upon the guidance set forth in the Conference Report and the principles underlying the "inclusion event" concept described in the preceding paragraphs, the proposed regulations provide taxpayers with a nonexclusive list of inclusion events, which include:

(1) A taxable disposition (for example, a sale) of all or a part of a qualifying investment (qualifying QOF partnership interest) in a QOF partnership or of a qualifying investment (qualifying QOF stock) in a QOF corporation;

(2) A taxable disposition (for example, a sale) of interests in an S corporation which itself is the direct investor in a QOF corporation or QOF partnership if, immediately after the disposition, the aggregate percentage of the S corporation interests owned by the S corporation shareholders at the time of its deferral election has changed by more than 25 percent. When the threshold is exceeded, any deferred

gains recognized would be reported under the provisions of subchapter S of chapter 1 of subtitle A of the Code (subchapter S);

(3) In certain cases, a transfer by a partner of an interest in a partnership that itself directly or indirectly holds a qualifying investment;

(4) A transfer by gift of a qualifying investment;

(5) The distribution to a partner of a QOF partnership of property that has a value in excess of basis of the partner's qualifying QOF partnership interest;

(6) A distribution of property with respect to qualifying QOF stock under section 301 to the extent it is treated as gain from the sale or exchange of property under section 301(c)(3);

(7) A distribution of property with respect to qualifying QOF stock under section 1368 to the extent it is treated as gain from the sale or exchange of property under section 1368(b)(2) and (c);

(8) A redemption of qualifying QOF stock that is treated as an exchange of property for the redeemed qualifying QOF stock under section 302;

(9) A disposition of qualifying QOF stock in a transaction to which section 304 applies;

(10) A liquidation of a QOF corporation in a transaction to which section 331 applies; and

(11) Certain nonrecognition transactions, including:

a. A liquidation of a QOF corporation in a transaction to which section 332 applies;

b. A transfer of all or part of a taxpayer's qualifying QOF stock in a transaction to which section 351 applies;

c. A stock-for-stock exchange of qualifying QOF stock in a transaction to which section 368(a)(1)(B) applies;

d. A triangular reorganization of a QOF corporation within the meaning of § 1.358–6(b)(2);

e. An acquisitive asset reorganization in which a QOF corporation transfers its assets to its shareholder and terminates (or is deemed to terminate) for Federal income tax purposes;

f. An acquisitive asset reorganization in which a corporate taxpayer that made the qualifying investment in the QOF corporation (QOF shareholder) transfers its assets to the QOF corporation and terminates (or is deemed to terminate) for Federal income tax purposes;

g. An acquisitive asset reorganization in which a QOF corporation transfers its assets to an acquiring corporation that is not a QOF corporation within a prescribed period after the transaction;

h. A recapitalization of a QOF corporation, or a contribution by a QOF

shareholder of a portion of its qualifying QOF stock to the QOF corporation, if the transaction has the result of reducing the taxpayer's equity interest in the QOF corporation;

i. A distribution by a QOF shareholder of its qualifying QOF stock to its shareholders in a transaction to which section 355 applies;

j. A transfer by a QOF corporation of subsidiary stock to QOF shareholders in a transaction to which section 355 applies if, after a prescribed period following the transaction, either the distributing corporation or the controlled corporation is not a QOF; and

k. A transfer to, or an acquisitive asset reorganization of, an S corporation which itself is the direct investor in a QOF corporation or QOF partnership if, immediately after the transfer or reorganization, the percentage of the S corporation interests owned by the S corporation shareholders at the time of its deferral election has decreased by more than 25 percent.

Each of the previously described transactions would be an inclusion event because each would reduce or terminate the QOF investor's direct (or, in the case of partnerships, indirect) qualifying investment for Federal income tax purposes or (in the case of distributions) would constitute a "cashing out" of the QOF investor's qualifying investment. As a result, the QOF investor would recognize all, or a corresponding portion, of its deferred gain under section 1400Z-2(a)(1)(B) and (b).

The Treasury Department and the IRS request comments on the proposed rules regarding the inclusion events that would result in a QOF investor recognizing an amount of deferred gain under section 1400Z-2(a)(1)(B) and (b), including the pledging of qualifying investments as collateral for nonrecourse loans.

B. Timing of Basis Adjustments

Under section 1400Z-2(b)(2)(B)(i), an electing taxpayer's initial basis in a qualifying investment is zero. Under section 1400Z-2(b)(2)(B)(iii) and (iv), a taxpayer's basis in its qualifying investment is increased automatically after the investment has been held for five years by an amount equal to 10 percent of the amount of deferred gain, and then again after the investment has been held for seven years by an amount equal to an additional five percent of the amount of deferred gain. The proposed regulations clarify that such basis is basis for all purposes and, for example, losses suspended under section 704(d) would be available to the extent of the basis step-up.

The proposed regulations also clarify that basis adjustments under section 1400Z-2(b)(2)(B)(ii), which reflect the recognition of deferred gain upon the earlier of December 31, 2026, or an inclusion event, are made immediately after the amount of deferred capital gain is taken into income. If a basis adjustment is made under section 1400Z-2(b)(2)(B)(ii) as a result of a reduction in direct tax ownership of a qualifying investment, a redemption, a distribution treated as gain from the sale or exchange of property under section 301(c)(3) or section 1368(b)(2) and (c), or a distribution to a partner of property with a value in excess of the partner's basis in the qualifying QOF partnership interest, the basis adjustment is made before determining the tax consequences of the inclusion event with respect to the qualifying investment (for example, before determining the recovery of basis under section 301(c)(2) or the amount of gain the taxpayer must take into account under section 301, section 1368, or the provisions of subchapter K of chapter 1 of subtitle A of the Code (subchapter K), as applicable). For a discussion of distributions as inclusion events, see part VII.G of this Explanation of Provisions.

The proposed regulations further clarify that, if the taxpayer makes an election under section 1400Z-2(c), the basis adjustment under section 1400Z-2(c) is made immediately before the taxpayer disposes of its QOF investment. For dispositions of qualifying QOF partnership interests, the bases of the QOF partnership's assets are also adjusted with respect to the transferred qualifying QOF partnership interest, with such adjustments calculated in a manner similar to the adjustments that would have been made to the partnership's assets if the partner had purchased the interest for cash immediately prior to the transaction and the partnership had a valid section 754 election in effect. This will permit basis adjustments to the QOF partnership's assets, including its inventory and unrealized receivables, and avoid the creation of capital losses and ordinary income on the sale. See part VII.D.4 of this Explanation of Provisions for a special election for direct investors in QOF partnerships and S corporations that are QOFs (QOF S corporations) for the application of section 1400Z-2(c) to certain sales of assets of a QOF partnership or QOF S corporation. With respect to that special election, the Treasury Department and the IRS intend to implement targeted anti-abuse provisions (for example,

provisions addressing straddles). The Treasury Department and IRS request comments on whether one or more such provisions are appropriate to carry out the purposes of section 1400Z-2.

More generally, the Treasury Department and the IRS request comments on the proposed rules regarding the timing of basis adjustments under section 1400Z-2(b) and (c).

C. Amount Includible

In general, other than with respect to partnerships, if a taxpayer has an inclusion event with regard to its qualifying investment in a QOF, the taxpayer includes in gross income the lesser of two amounts, less the taxpayer's basis. The first amount is the fair market value of the portion of the qualifying investment that is disposed of in the inclusion event. For purposes of this section, the fair market value of that portion is determined by multiplying the fair market value of the taxpayer's entire qualifying investment in the QOF, valued as of the date of the inclusion event, by the percentage of the taxpayer's qualifying investment that is represented by the portion disposed of in the inclusion event. The second amount is the amount that bears the same ratio to the remaining deferred gain as the first amount bears to the total fair market value of the qualifying investment in the QOF immediately before the transaction.

For inclusion events involving partnerships, the amount includible is equal to the percentage of the qualifying QOF partnership interest disposed of, multiplied by the lesser of: (1) The remaining deferred gain less any basis adjustments pursuant to section 1400Z-2(b)(2)(B)(iii) and (iv) or (2) the gain that would be recognized by the partner if the interest were sold in a fully taxable transaction for its then fair market value.

For inclusion events involving a QOF shareholder that is an S corporation, if the S corporation undergoes an aggregate change in ownership of more than 25 percent, there is an inclusion event with respect to all of the S corporation's remaining deferred gain (see part VII.D.3 of this Explanation of Provisions).

A special "dollar-for-dollar" rule applies in certain circumstances if a QOF owner receives property from a QOF that gives rise to an inclusion event. These circumstances include actual distributions with respect to qualifying QOF stock that do not reduce a taxpayer's direct interest in qualifying QOF stock, stock redemptions to which section 302(d) applies, and the receipt

of boot in certain corporate reorganizations, as well as actual or deemed distributions with respect to qualifying QOF partnership interests. This dollar-for-dollar rule would be simpler to administer than a rule that would require taxpayers to undertake valuations of QOF investments each time a QOF owner received a distribution with respect to the qualifying investment or received boot in a corporate reorganization. If this dollar-for-dollar rule applies, the taxpayer includes in gross income an amount of the taxpayer's remaining deferred gain equal to the lesser of (1) the remaining deferred gain, or (2) the amount that gave rise to the inclusion event. The Treasury Department and the IRS request comments on the dollar-for-dollar rule and the circumstances in which this rule would apply under these proposed regulations.

D. Partnership and S Corporation Provisions

1. Partnership Provisions in General

With respect to property contributed to a QOF partnership in exchange for a qualifying investment, the partner's basis in the qualifying interest is zero under section 1400Z-2(b)(2)(B)(i), increased by the partner's share of liabilities under section 752(a). However, the carryover basis rules of section 723 apply in determining the basis to the partnership of property contributed. The Treasury Department and the IRS are aware that, where inside-outside basis disparities exist in a partnership, taxpayers could manipulate the rules of subchapter K to create non-economic gains and losses. Accordingly, the Treasury Department and the IRS request comments on rules that would limit abusive transactions that could be undertaken as a result of these disparities.

The proposed regulations provide that the transfer by a partner of all or a portion of its interest in a QOF partnership or in a partnership that directly or indirectly holds a qualifying investment generally will be an inclusion event. However, a transfer in a transaction governed by section 721 (partnership contributions) or section 708(b)(2)(A) (partnership mergers) is generally not an inclusion event, provided there is no reduction in the amount of the remaining deferred gain that would be recognized under section 1400Z-2 by the transferring partners on a later inclusion event. Similar rules apply in the case of tiered partnerships. However, the resulting partnership or new partnership becomes subject to section 1400Z-2 to the same extent as

the original taxpayer that made the qualifying investment in the QOF.

Partnership distributions in the ordinary course of partnership operations may, in certain instances, also be considered inclusion events. Under the proposed regulations, the actual or deemed distribution of cash or other property with a fair market value in excess of the partner's basis in its qualifying QOF partnership interest is also an inclusion event.

2. Partnership Mixed-Funds Investments

Rules specific to section 1400Z-2 are needed for mixed-funds investments where a partner contributes to a QOF property with a value in excess of its basis, or cash in excess of the partner's eligible section 1400Z-2 gain, or where a partner receives a partnership interest in exchange for services (for example, a carried interest). Section 1400Z-2(e)(1) provides that only the portion of the investment in a QOF to which an election under section 1400Z-2(a) is in effect is treated as a qualifying investment. Under this rule, the share of gain attributable to the excess investment and/or the service component of the interest in the QOF partnership is not eligible for the various benefits afforded qualifying investments under section 1400Z-2 and is not subject to the inclusion rules of section 1400Z-2. This is the case with respect to a carried interest, despite the fact that all of the partnership's investments might be qualifying investments.

The Treasury Department and the IRS considered various approaches to accounting for a partner holding a mixed-funds investment in a QOF partnership and request comments on the approach adopted by the proposed regulations. For example, a partner could be considered to own two separate investments and separately track the basis and value of the investments, similar to a shareholder tracking two separate blocks of stock. However, that approach is inconsistent with the subchapter K principle that a partner has a unitary basis and capital account in its partnership interest. Thus, the proposed regulations adopt the approach that a partner holding a mixed-funds investment will be treated as holding a single partnership interest with a single basis and capital account for all purposes of subchapter K, but not for purposes of section 1400Z-2. Under the proposed regulations, solely for purposes of section 1400Z-2, the mixed-funds partner will be treated as holding two interests, and all partnership items, such as income and debt allocations and

property distributions, would affect qualifying and non-qualifying investments proportionately, based on the relative allocation percentages of each interest. Allocation percentages would generally be based on relative capital contributions for qualifying investments and other investments. However, section 704(c) principles apply to partnership allocations attributable to property with value-basis disparities to prevent inappropriate shifts of built-in gains or losses between qualifying investments and non-qualifying investments. Additionally, special rules apply in calculating the allocation percentages in the case of a partner who receives a profits interest for services, with the percent attributable to the profits interest being treated as a non-qualifying investment to the extent of the highest percentage interest in residual profits attributable to the interest.

In the event of an additional contribution of qualifying or non-qualifying amounts, a revaluation of the relative partnership investments is required immediately before the contribution in order to adequately account for the two components.

Consistent with the unitary basis rules of subchapter K, a distribution of money would not give rise to section 731 gain unless the distribution exceeded the partner's total outside basis. For example, if a partner contributed \$200 to a QOF partnership, half of which related to deferred section 1400Z-2 gain, and \$20 of partnership debt was allocated to the partner, the partner's outside basis would be \$120 (zero for the qualifying investment contribution, plus \$100 for the non-qualifying investment contribution, plus \$20 under section 752(a)), and only a distribution of money in excess of that amount would trigger gain under subchapter K. However, for purposes of calculating the section 1400Z-2 gain, the qualifying investment portion of the interest would have a basis of \$10, with the remaining \$110 attributable to the non-qualifying investment. A distribution of \$40 would be divided between the two investments and would not result in gain under section 731; however, the distribution would constitute an inclusion event under section 1400Z-2, and the partner would be required to recognize gain in the amount of \$10 (the excess of the \$20 distribution attributable to the qualifying investment over the \$10 basis in the interest).

The Treasury Department and the IRS are concerned with the potential complexity associated with this approach and request comments on alternative ways to account for

distributions in the case of a mixed-funds investment in a QOF partnership. The Treasury Department and the IRS also request comments on whether an ordering rule treating the distribution as attributable to the qualifying or non-qualifying investment portion first is appropriate, and how any alternative approach would simplify the calculations.

3. Application to S Corporations

Under section 1371(a), and for purposes of these proposed regulations, the rules of subchapter C of chapter 1 of subtitle A of the Code (subchapter C) applicable to C corporations and their shareholders apply to S corporations and their shareholders, except to the extent inconsistent with the provisions of subchapter S. In such instances, S corporations and their shareholders are subject to the specific rules of subchapter S. For example, similar to rules applicable to QOF partnerships, a distribution of property to which section 1368 applies by a QOF S corporation is an inclusion event to the extent that the distributed property has a fair market value in excess of the shareholder's basis, including any basis adjustments under section 1400Z-2(b)(2)(B)(iii) and (iv). In addition, the rules set forth in these proposed regulations regarding liquidations and reorganizations of QOF C corporations and QOF S corporation shareholders apply equally to QOF S corporations and QOF S corporation shareholders.

However, flow-through principles under subchapter S apply to S corporations when the application of subchapter C would be inconsistent with subchapter S. For example, if an inclusion event were to occur with respect to deferred gain of an S corporation that is an investor in a QOF, the shareholders of such S corporation would include such gain pro rata in their respective taxable incomes. Consequently, those S corporation shareholders would increase their bases in their S corporation stock at the end of the taxable year during which the inclusion event occurred. Pursuant to the S corporation distribution rules set forth in section 1368, the S corporation shareholders would receive future distributions from the S corporation tax-free to the extent of the deferred tax amount included in income and included in stock basis.

In addition, these proposed regulations set forth specific rules for S corporations to provide certainty to taxpayers regarding the application of particular provisions under section 1400Z-2. Regarding section 1400Z-2(b)(1)(A), these proposed regulations

clarify that a conversion of an S corporation that holds a qualifying investment in a QOF to a C corporation (or a C corporation to an S corporation) is not an inclusion event because the interests held by each shareholder of the C corporation or S corporation, as appropriate, would remain unchanged with respect to the corporation's qualifying investment in a QOF. With regard to mixed-funds investments in a QOF S corporation described in section 1400Z-2(e)(1), if different blocks of stock are created for otherwise qualifying investments to track basis in these qualifying investments, the proposed regulations make clear that the separate blocks will not be treated as different classes of stock for purposes of S corporation eligibility under section 1361(b)(1).

The proposed regulations also provide that, if an S corporation is an investor in a QOF, the S corporation must adjust the basis of its qualifying investment in the manner set forth for C corporations in proposed § 1.1400Z2(b)-1(g), except as otherwise provided in these rules. This rule does not affect adjustments to the basis of any other asset of the S corporation. The S corporation shareholder's pro-rata share of any recognized deferred capital gain at the S corporation level will be separately stated under section 1366 and will adjust the shareholders' stock basis under section 1367. In addition, the proposed regulations make clear that any adjustment made to the basis of an S corporation's qualifying investment under section 1400Z-2(b)(2)(B)(iii) or (iv) or section 1400Z-2(c) will not (1) be separately stated under section 1366, and (2) until the date on which an inclusion event with respect to the S corporation's qualifying investment occurs, adjust the shareholders' stock basis under section 1367. If a basis adjustment under section 1400Z-2(b)(2)(B)(ii) is made as a result of an inclusion event, then the basis adjustment will be made before determining the other tax consequences of the inclusion event.

Finally, under these proposed regulations, special rules would apply in the case of certain ownership shifts in S corporations that are QOF owners. Under these rules, solely for purposes of section 1400Z-2, the S corporation's qualifying investment in the QOF would be treated as disposed of if there is a greater-than-25 percent change in ownership of the S corporation (aggregate change in ownership) (aggregate change in ownership). If an aggregate change in ownership has occurred, the S corporation would have an inclusion event with respect to all of the S corporation's remaining deferred

gain, and neither section 1400Z-2(b)(2)(B)(iii) or (iv), nor section 1400Z-2(c), would apply to the S corporation's qualifying investment after that date. This proposed rule attempts to balance the status of the S corporation as the owner of the qualifying investment with the desire to preserve the incidence of the capital gain inclusion and income exclusion benefits under section 1400Z-2. The Treasury Department and the IRS request comments on the proposed rules regarding ownership changes in S corporations that are QOF owners.

4. Special Election for Direct Investors in QOF Partnerships and QOF S Corporations

For purposes of section 1400Z-2(c), which applies to investments held for at least 10-years, a taxpayer that is the holder of a direct qualifying QOF partnership interest or qualifying QOF stock of a QOF S corporation may make an election to exclude from gross income some or all of the capital gain from the disposition of qualified opportunity zone property reported on Schedule K-1 of such entity, provided the disposition occurs after the taxpayer's 10-year holding period. To the extent that such Schedule K-1 separately states capital gains arising from the sale or exchange of any particular capital asset, the taxpayer may make an election under section 1400Z-2(c) with respect to such separately stated item. To be valid, the taxpayer must make such election for the taxable year in which the capital gain from the sale or exchange of QOF property recognized by the QOF partnership or QOF S corporation would be included in the taxpayer's gross income, in accordance with applicable forms and instructions. If a taxpayer makes this election with respect to some or all of the capital gain reported on such Schedule K-1, the amount of such capital gain that the taxpayer elects to exclude from gross income is excluded from income for purposes of the Internal Revenue Code and the regulations thereunder. For basis purposes, such excluded amount is treated as an item of income described in sections 705(a)(1) or 1366 thereby increasing the partners or shareholders' bases by their shares of such amount. These proposed regulations provide no similar election to holders of qualifying QOF stock of a QOF C corporation that is not a QOF REIT.

The Treasury Department and the IRS request comments on the eligibility for, and the operational mechanics of, the proposed rules regarding this special election.

5. Ability of QOF REITs To Pay Tax-Free Capital Gain Dividends to 10-Plus-Year Investors

The proposed rules authorize QOF real estate investment trusts (QOF REITs) to designate special capital gain dividends, not to exceed the QOF REIT's long-term gains on sales of Qualified Opportunity Zone property. If some QOF REIT shares are qualified investments in the hands of some shareholders, those special capital gain dividends are tax free to shareholders who could have elected a basis increase in case of a sale of the QOF REIT shares. The Treasury Department and the IRS request comments on the eligibility for, and the operational mechanics of, the proposed rules regarding this special treatment.

E. Transfers of Property by Gift or by Reason of Death

For purposes of sections 1400Z-2(b) and (c), any disposition of the owner's qualifying investment is an inclusion event for purposes of section 1400Z-2(b)(1) and proposed § 1.1400Z2(b)-1(a), except as provided in these proposed regulations. Generally, transfers of property by gift, in part or in whole, either will reduce or terminate the owner's qualifying investment. Accordingly, except as provided in these proposed regulations, transfers by gift will be inclusion events for purposes of section 1400Z-2(b)(1) and proposed § 1.1400Z2(b)-1(c).

For example, a transfer of a qualifying investment by gift from the donor, in this case the owner, to the donee either will reduce or will terminate the owner's qualifying investment, depending upon whether the owner transfers part or all of the owner's qualifying investment. A charitable contribution, as defined in section 170(c), of a qualifying interest is also an inclusion event because, again, the owner's qualifying investment is terminated upon the transfer. However, a transfer of a qualifying investment by gift by the taxpayer to a trust that is treated as a grantor trust of which the taxpayer is the deemed owner is not an inclusion event. The rationale for this exception is that, for Federal income tax purposes, the owner of the grantor trust is treated as the owner of the property in the trust until such time that the owner releases certain powers that cause the trust to be treated as a grantor trust. Accordingly, the owner's qualifying investment is not reduced or eliminated for Federal income tax purposes upon the transfer to such a grantor trust. However, any change in the grantor trust status of the trust

(except by reason of the grantor's death) is an inclusion event because the owner of the trust property for Federal income tax purposes is changing.

Most transfers by reason of death will terminate the owner's qualifying investment. For example, the qualifying investment may be distributed to a beneficiary of the owner's estate or may pass by operation of law to a named beneficiary. In each case, the owner's qualifying investment is terminated. Nevertheless, in part because of the statutory direction that amounts recognized that were not properly includible in the gross income of the deceased owner are to be includible in gross income as provided in section 691, the Treasury Department and the IRS have concluded that the distribution of the qualifying investment to the beneficiary by the estate or by operation of law is not an inclusion event for purposes of section 1400Z-2(b). Thus, the proposed regulations would provide that neither a transfer of the qualifying investment to the deceased owner's estate nor the distribution by the estate to the decedent's legatee or heir is an inclusion event for purposes of section 1400Z-2(b). Similarly, neither the termination of grantor trust status by reason of the grantor's death nor the distribution by that trust to a trust beneficiary by reason of the grantor's death is an inclusion event for purposes of section 1400Z-2(b). In each case, the recipient of the qualifying investment has the obligation, as under section 691, to include the deferred gain in gross income in the event of any subsequent inclusion event, including for example, any further disposition by that recipient.

F. Exceptions for Disregarded Transfers and Certain Types of Nonrecognition Transactions

1. In General

Proposed § 1.1400Z2(b)-1(c) describes certain transfers that are not inclusion events with regard to a taxpayer's qualifying investment for purposes of section 1400Z-2(b)(1). For example, a taxpayer's transfer of its qualifying investment to an entity that is disregarded as separate from the taxpayer for Federal income tax purposes is not an inclusion event because the transfer is disregarded for Federal income tax purposes. The same rationale applies here as in the case of a taxpayer's transfer of its qualifying investment to a grantor trust of which the taxpayer is the deemed owner. However, a change in the entity's status as disregarded would be an inclusion event.

Additionally, a transfer of a QOF's assets in an acquisitive asset reorganization described in section 381(a)(2) (qualifying section 381 transaction) generally is not an inclusion event if the acquiring corporation is a QOF within a prescribed period of time after the transaction. Following such a qualifying section 381 transaction, the taxpayer retains a direct qualifying investment in a QOF with an exchanged basis. However, the proposed regulations provide that a qualifying section 381 transaction generally is an inclusion event, even if the acquiring corporation qualifies as a QOF within the prescribed post-transaction period, to the extent the taxpayer receives boot in the reorganization (other than boot that is treated as a dividend under section 356(a)(2)) because, in those situations, the taxpayer reduces its direct qualifying investment in the QOF (see part VII.F.2 of this Explanation of Provisions).

A transfer of a QOF shareholder's assets in a qualifying section 381 transaction also is not an inclusion event, except to the extent the QOF shareholder transfers less than all of its qualifying investment in the transaction, because the successor to the QOF shareholder will retain a direct qualifying investment in the QOF. Similar reasoning extends to a transfer of a QOF shareholder's assets in a liquidation to which section 332 applies, to the extent that no gain or loss is recognized by the QOF shareholder on the distribution of the QOF interest to the 80-percent distributee, pursuant to section 337(a). This rule does not apply if the QOF shareholder is an S corporation and if the qualifying section 381 transaction causes the S corporation to have an aggregate ownership change of more than 25 percent (as discussed in part VII.D.2 of this Explanation of Provisions).

Moreover, the distribution by a QOF of a subsidiary in a transaction to which section 355 (or so much of section 355 as relates to section 355) applies is not an inclusion event if both the distributing corporation and the controlled corporation qualify as QOFs immediately after the distribution (qualifying section 355 transaction), except to the extent the taxpayer receives boot. The Treasury Department and the IRS have determined that continued deferral under section 1400Z-2(a)(1)(A) is appropriate in the case of a qualifying section 355 transaction because the QOF shareholder continues its original direct qualifying investment, albeit reflected in investments in two QOF corporations.

Finally, a recapitalization (within the meaning of section 368(a)(1)(E)) of a QOF is not an inclusion event, as long as the QOF shareholder does not receive boot in the transaction and the transaction does not reduce the QOF shareholder's proportionate interest in the QOF corporation. Similar rules apply to a transaction described in section 1036.

2. Boot in a Reorganization

An inclusion event generally will occur if a QOF shareholder receives boot in a qualifying section 381 transaction in which a QOF's assets are acquired by another QOF corporation. Under proposed § 1.1400Z2(b)-1(c), if the taxpayer realizes a gain on the transaction, the amount that gives rise to the inclusion event is the amount of gain under section 356 that is not treated as a dividend (*see* section 356(a)(2)). A similar rule applies to boot received by a QOF shareholder in a qualifying section 355 transaction to which section 356(a) applies. If the taxpayer in a qualifying section 381 transaction realizes a loss on the transaction, the amount that gives rise to the inclusion event is an amount equal to the fair market value of the boot received.

However, if both the target QOF and the acquiring corporation are wholly and directly owned by a single shareholder (or by members of the same consolidated group), and if the shareholder receives (or the group members receive) boot with respect to a qualifying investment, proposed § 1.1400Z2(b)-1(c)(8) (applicable to distributions by QOF corporations) applies to the boot as if it were distributed in a separate transaction to which section 301 applies.

Similarly, the corporate distribution rules of proposed § 1.1400Z2(b)-1(c)(8) would apply to a QOF shareholder's receipt of boot in a qualifying section 355 transaction to which section 356(b) applies. By its terms, section 356(b) states that the corporate distribution rules of section 301 apply if a distributing corporation distributes both stock of its controlled corporation and boot. As a result, under these proposed regulations, there would be an inclusion event to the extent section 301(c)(3) would apply to the distribution. The Treasury Department and the IRS request comments on the proposed treatment of the receipt of boot as an inclusion event.

If the qualifying section 381 transaction is an intercompany transaction, the rules in § 1.1502-13(f)(3) regarding boot in a reorganization apply to treat the boot as

received in a separate distribution. These rules do not apply in cases in which either party to the distribution becomes a member or nonmember as part of the same plan or arrangement. However, as noted in part VIII of this Explanation of Provisions, a qualifying section 355 transaction cannot be an intercompany transaction.

G. Distributions and Contributions

Under the proposed regulations, and subject to certain exceptions, distributions made with respect to qualifying QOF stock (including redemptions of qualifying QOF stock that are treated as distributions to which section 301 applies) and certain distributions with respect to direct or indirect investments in a QOF partnership are treated as inclusion events. In the case of a QOF corporation, an actual distribution with respect to a qualifying investment results in inclusion only to the extent it is treated as gain from a sale or exchange under section 301(c)(3). A distribution to which section 301(c)(3) applies results in inclusion because that portion of the distribution is treated as gain from the sale or exchange of property. Actual distributions treated as dividends under section 301(c)(1) are not inclusion events because such distributions neither reduce a QOF shareholder's direct equity investment in the QOF nor constitute a "cashing out" of the QOF shareholder's equity investment in the QOF. In turn, actual distributions to which section 301(c)(2) applies are not inclusion events because the reduction of basis under that statutory provision is not treated as gain from the sale or exchange of property.

For these purposes, a distribution of property also includes a distribution of stock by a QOF that is treated as a distribution of property to which section 301 applies under section 305(b). The Treasury Department and the IRS have determined that this type of distribution should be an inclusion event, even though it does not reduce the recipient's interest in the QOF, because it results in an increase in the basis of QOF stock. The Treasury Department and the IRS request comments on the proposed treatment of distributions to which section 305(b) applies.

In the case of a redemption that is treated as a distribution to which section 301 applies, the Treasury Department and the IRS have determined that the full amount of the redemption generally should be an inclusion event, regardless of whether a portion of the redemption proceeds are characterized as a dividend under

section 301(c)(1) or as the recovery of basis under section 301(c)(2). Otherwise, such a redemption could reduce a shareholder's direct equity investment without triggering an inclusion event (if the full amount of the redemption proceeds is characterized as either a dividend or as the recovery of basis). However, there are circumstances in which the shareholder's interest in the QOF is not reduced by a redemption (for example, if the shareholder wholly owns the distributing corporation). Thus, if a QOF redeems stock wholly and directly held by its sole QOF shareholder (or by members of the same consolidated group), the proposed regulations do not treat the redemption as an inclusion event to the extent the proceeds are characterized as a dividend under section 301(c)(1) or as a recovery of basis under section 301(c)(2). The Treasury Department and the IRS request comments on the proposed treatment of redemptions that are treated as distributions to which section 301 applies.

In the case of a QOF partnership, interests in which are directly or indirectly held by one or more partnerships, a distribution by one of the partnerships (including the QOF partnership) of property with a value in excess of the basis of the distributee's partnership interest is also an inclusion event. In the absence of this rule, a direct or indirect partner in a QOF partnership could dilute the value of its qualifying investment and thereby reduce the amount of deferred gain that would be recognized in a subsequent transaction.

The transfer by a QOF owner of its qualifying QOF stock or qualifying QOF partnership interest in a section 351 exchange generally would be an inclusion event under the proposed regulations, because the contribution would reduce the QOF owner's direct interest in the QOF. However, the contribution by a QOF shareholder of a portion (but not all) of its qualifying QOF stock to the QOF itself in a section 351 exchange would not be so treated, as long as the contribution does not reduce the taxpayer's equity interest in the qualifying investment (for example, if the QOF shareholders made pro rata contributions of qualifying QOF stock).

The Treasury Department and the IRS request comments on the proposed rules governing inclusion events, including whether additional rules are needed to prevent abuse.

VIII. Consolidated Return Provisions

A. QOF Stock is Not Stock for Purposes of Affiliation

The framework of section 1400Z-2 and the consolidated return regulations are incompatible in many respects. If a QOF corporation could be a subsidiary member of a consolidated group, extensive rules altering the application of many consolidated return provisions would be necessary to carry out simultaneously the policy objectives of section 1400Z-2 and the consolidated return regulations. For example, special rules would be required to take into account the interaction of section 1400Z-2 with §§ 1.1502-13 (relating to intercompany transactions), 1.1502-32 (relating to the consolidated return investment adjustment regime), and 1.1502-19 (relating to excess loss accounts).

Section 1400Z-2 is inconsistent with the intercompany transaction regulations under § 1.1502-13. The stated purpose of the regulations under § 1.1502-13 is to ensure that the existence of an intercompany transaction (a transaction between two members of a consolidated group) does not result in the creation, prevention, acceleration, or deferral of consolidated taxable income or tax liability. In other words, the existence of the intercompany transaction must not affect the consolidated taxable income or tax liability of the group as a whole. Therefore, § 1.1502-13 generally determines the tax treatment of items resulting from intercompany transactions by treating members of the consolidated group as divisions of a single corporation (single-entity treatment).

The deferral of gain permitted under section 1400Z-2 would conflict with the purposes of § 1.1502-13 if the QOF shareholder and QOF corporation were members of the same consolidated group. Under section 1400Z-2, a qualifying investment in a QOF results in the deferral of the recognition of gain that would otherwise be recognized. However, allowing a transfer by a member investor to a member QOF to result in the deferral of gain recognition directly contradicts the express purpose of the intercompany transaction regulations. Therefore, consolidation of a QOF corporation with a corporation that otherwise would be a QOF shareholder not only would violate a basic tenet of single-entity treatment, but also would necessitate the creation of an elaborate system of additional consolidated return rules to establish the proper tax treatment of intercompany transactions involving a

group member that is a QOF (QOF member). For the same reasons, special rules would be necessary to address the consequences under section 1400Z-2 of distributions from QOF members to other group members. In addition, special rules would be required to determine if and how § 1.1502-13 would apply for purposes of testing whether a member of the group (tested member) met the requirements of section 1400Z-2(d) to continue to be treated as a QOF following an intercompany transaction. For example, such rules would need to address whether satisfaction of the requirements should be tested by taking into account not only property held by the tested member, but also property held by other members that have been counterparties in an intercompany transaction.

Section 1400Z-2 is also inconsistent with the consolidated return investment adjustment regime. Section 1.1502-32 requires unique adjustments to the basis of member stock to reflect income, gain, deduction, and loss items of group members. These rules apply only to members of consolidated groups, and they cause stock basis in subsidiary members of consolidated groups to be drastically different from the stock basis that would exist outside of a group. These investment adjustment rules would affect the timing and amount of inclusion of the deferred capital gain under section 1400Z-2, because the governing rules under section 1400Z-2 depend on the observance of very particular stock basis adjustments. Therefore, significant modifications to the application of the investment adjustment rules under § 1.1502-32 would be required to implement section 1400Z-2 if the QOF shareholder and QOF corporation were members of the same group. Further, the rules of § 1.1502-32 are integral to the application of the consolidated return system, and it would be virtually impossible to accurately anticipate all of the instances in which the special basis rules should be applied to the QOF member, as well as to any includible corporations owned by the QOF member (such corporations also would be included in the group).

As a final example, special rules would also be needed to harmonize the excess loss account (ELA) concept established by the rules in § 1.1502-19 with the operation of section 1400Z-2. The consolidated return regulations provide for downward stock basis adjustments that take into account distributions by lower-tier members to higher-tier members and the absorption of member losses by other members of the group. As a result of these

adjustments, a member of a group may have negative basis (that is, an ELA) in its stock in another member. The existence of negative stock basis is not contemplated under section 1400Z-2, and it is unique to the consolidated return regulations. Harmonizing rules would be required to ensure the special QOF basis election under section 1400Z-2(c) would not eliminate an ELA in the stock of the QOF member and provide a benefit beyond what was intended by section 1400Z-2. In other words, the basis adjustment under section 1400Z-2(c) should exclude from income no more than the appreciation in the QOF investment.

In summary, section 1400Z-2 and the consolidated return system are based on incompatible principles and rules. To enable the two systems to interact in a manner that effectuates the purposes of each, complicated additional regulations would be required. However, it is not possible to anticipate all possible points of conflict. Therefore, rather than trying to forcibly harmonize the two frameworks, these proposed regulations treat QOF stock as not stock for purposes of section 1504, which sets forth the requirements for corporate affiliation. Consequently, a QOF C corporation can be the common parent of a consolidated group, but it cannot be a subsidiary member of a consolidated group. In other words, a QOF C corporation owned by members of a consolidated group is not a member of that consolidated group. These proposed regulations treat QOF stock as not stock for the broad purpose of section 1504 affiliation.

The Treasury Department and the IRS request comments on whether this rule should be limited to treat QOF stock as not stock only for the purposes of consolidation, as well as whether the burden of potentially applying two different sets of consolidated return rules would be outweighed by benefits of permitting QOF C corporations to be subsidiary members of consolidated groups.

B. Separate Entity Treatment for Members of a Consolidated Group Qualifying for Deferral Under Section 1400Z-2

The proposed regulations clarify that section 1400Z-2 applies separately to each member of a consolidated group. Accordingly, to qualify for gain deferral, the same member of the consolidated group must: (i) Sell a capital asset to an unrelated person, the gain of which the member elects to be deferred under section 1400Z-2; and (ii) invest an amount of such deferred gain from the original sale into a QOF.

C. Basis Increases in Qualifying Investment “Tier Up” the Consolidated Group

Sections 1400Z–2(b)(2)(B)(iii) and (iv) and 1400Z–2(c) provide special basis adjustments applicable to qualifying investments held for five years, seven years, and at least 10 years. If the QOF owner is a member of a consolidated group, proposed § 1.1400Z2(g)–1(c) would treat these basis adjustments to the qualifying investment as meeting the requirements of § 1.1502–32(b)(3)(ii)(D), and thus as tax-exempt income to the QOF owner. Consequently, upper-tier members that own stock in the QOF owner would increase their basis in the stock of the QOF owner by the amount of the resulting tax-exempt income. The basis increase under section 1400Z–2(c) would be treated as tax-exempt income only if the qualifying investment were sold or exchanged and the QOF owner elected to apply the special rule in section 1400Z–2(c). Treating these special basis adjustments under section 1400Z–2 as tax-exempt income to the QOF owner is necessary to ensure that the amounts at issue remain tax-free at all levels within the consolidated group. For example, this treatment would prevent an unintended income inclusion upon a member’s sale of the QOF owner’s stock.

D. The Attribute Reduction Rule in § 1.1502–36(d)

These proposed regulations clarify how a member’s basis in a qualifying investment is taken into account for purposes of applying the attribute reduction rule in § 1.1502–36(d). When a member (M) transfers a loss share of subsidiary (S) stock, the rules in § 1.1502–36 apply. If the transferred S share is a loss share after the application of § 1.1502–36(b) and (c), the attribute reduction rule in § 1.1502–36(d) applies to prevent duplication of a single economic loss. In simple terms, § 1.1502–36(d) compares M’s basis in the loss S share to the amount of S’s tax attributes that are allocable to the loss share. If loss duplication exists on the transfer of the S share (as determined under the mechanics of § 1.1502–36(d)), S must reduce its tax attributes by its attribute reduction amount (ARA). In certain cases, M instead may elect to reduce its basis in the loss S share. To ensure that the purposes of both section 1400Z–2 and § 1.1502–36(d) are effectuated, the proposed regulations provide special rules regarding the application of § 1.1502–36(d) when S owns a qualifying investment.

In applying the anti-loss duplication rule discussed in the preceding

paragraph, S includes its basis in a qualifying investment in determining whether there is loss duplication and, if so, the amount of the duplicated loss. However, if loss duplication exists, S cannot cure the loss duplication by reducing its basis in the qualifying investment under § 1.1502–36(d). Because of the special QOF basis election available under section 1400Z–2(c), reducing S’s basis in the qualifying investment would not achieve the anti-loss duplication purpose of § 1.1502–36(d) if the special QOF basis election were made at a later date. This is because any basis reduced under § 1.1502–36(d) would be restored on the sale of the qualifying investment. Therefore, S must reduce its other attributes. If S’s attribute reduction amount exceeds S’s attributes available for reduction, then the parent of the group is deemed to elect under § 1.1502–36(d)(6) to reduce M’s basis in S to the extent of S’s basis in the qualifying investment. The reduction of M’s basis in S is limited to the remaining ARA.

IX. Holding Periods and Other Tacking Rules

Under section 1400Z–2(b)(2)(B) and (c), increases in basis in a qualifying investment held by an investor in a QOF are, in part, dependent upon the QOF investor’s holding period for that qualifying investment. The proposed regulations generally provide that, for purposes of section 1400Z–2(b)(2)(B) and (c), a QOF investor’s holding period for its qualifying investment does not include the period during which the QOF investor held property that was transferred to the QOF in exchange for the qualifying investment. For example, if an investor transfers a building that it has owned for 10 years to a QOF corporation in exchange for qualifying QOF stock, the investor’s holding period for the qualifying QOF stock for purposes of section 1400Z–2 begins on the date of the transfer, not the date the investor acquired the building.

Similarly, if an investor disposes of its entire qualifying investment in QOF 1 and reinvests in QOF 2 within 180 days, the investor’s holding period for its qualifying investment in QOF 2 begins on the date of its qualifying investment in QOF 2, not on the date of its qualifying investment in QOF 1.

However, a QOF shareholder’s holding period for qualifying QOF stock received in a qualifying section 381 transaction in which the acquiring corporation is a QOF immediately thereafter, or received in a recapitalization of a QOF, includes the holding period of the QOF shareholder’s

qualifying QOF stock exchanged therefor. Similar rules apply to QOF stock received in a qualifying section 355 transaction. The Treasury Department and the IRS have determined that, in these situations, a QOF shareholder should be permitted to tack its holding period for its initial qualifying investment because the investor’s direct equity investment in a QOF continues. In the case of a qualifying section 381 transaction in which the acquiring corporation is a QOF immediately thereafter, the investor’s continuing direct equity investment in a QOF is further reflected in the investor’s exchanged basis in the stock of the acquiring corporation. Tacked holding period rules apply in the same manner with respect to a QOF partner’s interest in a QOF partnership, for example, in the case of a partnership merger where the QOF partner’s resulting investment in the QOF partnership continues. Finally, the recipient of a qualifying investment by gift that is not an inclusion event, or by reason of the death of the owner, may tack the donor’s or decedent’s holding period, respectively.

Similar rules apply for purposes of determining whether the “original use” requirement in section 1400Z–2(d)(2)(D) commences with the acquiring corporation (after a qualifying section 381 transaction in which the acquiring corporation is a QOF immediately thereafter) or the controlled corporation (after a qualifying section 355 transaction). In each case, the acquiring corporation or the controlled corporation satisfies the original use requirement if the target corporation or the distributing corporation, respectively, did so before the transaction. Thus, the acquiring corporation and the controlled corporation may continue to treat the historic qualified opportunity zone business property received from the target corporation and the distributing corporation, respectively, as qualified opportunity zone business property.

X. General Anti-Abuse Rule

Proposed § 1.1400Z2(f)–1(c) provides a general anti-abuse rule pursuant to section 1400Z–2(e)(4)(C), which provides that “the Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this section, including * * * rules to prevent abuse.” The Treasury Department and the IRS expect that most taxpayers will apply the rules in section 1400Z–2 and §§ 1.1400Z2(a)–1 through 1.1400Z2(g)–1 in a manner consistent with the purposes of section 1400Z–2. However, to prevent abuse,

proposed § 1.1400Z2(f)–1(c) provides that if a significant purpose of a transaction is to achieve a tax result that is inconsistent with the purposes of section 1400Z–2, the Commissioner can recast a transaction (or series of transactions) for Federal tax purposes as appropriate to achieve tax results that are consistent with the purposes of section 1400Z–2. Whether a tax result is inconsistent with the purposes of section 1400Z–2 must be determined based on all the facts and circumstances. For example, this general anti-abuse rule could apply to a treat a purchase of agricultural land that otherwise would be qualified opportunity zone business property as a purchase of non-qualified opportunity zone business property if a significant purpose for that purchase were to achieve a tax result inconsistent with the purposes of section 1400Z–2 (see part I.B of this Explanation of Provisions).

The Treasury Department and the IRS request comments on this proposed anti-abuse rule, including whether additional details regarding what tax results are inconsistent with the purposes of section 1400Z–2 is required or whether examples of particular types of abusive transactions would be helpful.

XI. Entities Organized Under a Statute of a Federally Recognized Indian Tribe and Issues Particular to Tribally Leased Property

Commenters have asked whether Indian tribal governments, like state and territorial governments, can charter a partnership or corporation that is eligible to be a QOF. Proposed § 1.1400Z2(d)–1(e)(1) provides that, if an entity is not organized in one of the 50 states, the District of Columbia, or the U.S. possessions, it is ineligible to be a QOF. Similarly, proposed § 1.1400Z2(d)–1(e)(2) provides that, if an entity is not organized in one of the 50 states, the District of Columbia, or the U.S. possessions, an equity interest in the entity is neither qualified opportunity zone stock nor a qualified opportunity zone partnership interest. The Treasury Department and the IRS have determined that, for purposes of both proposed § 1.1400Z2(d)–1(e)(1) and (2), an entity “organized in” one of the 50 states includes an entity organized under the law of a Federally recognized Indian tribe if the entity’s domicile is located in one of the 50 states. Such entity satisfies the requirement in section 1400Z–2(d)(2)(B)(i) and (C) that qualified opportunity zone stock is stock in a domestic corporation and a qualified opportunity zone partnership

interest is an interest in a domestic partnership. See section 7701(a)(4). The Treasury Department and the IRS, while acknowledging the sovereignty of federally recognized Indian tribes, note that an entity that is eligible to be a QOF will be subject to Federal income tax under the Code, regardless of the laws under which it is established or organized.

Commenters also noted that Indian tribal governments occupy Federal trust lands, and that these lands are often leased for economic development purposes. According to these commenters, the right to use Indian tribal government reservation land managed by the Secretary of the Interior can raise unique issues with respect to lease valuations. As discussed in part II of this Explanation of Provisions, these proposed regulations address the treatment of leased tangible property in general.

In order to obtain tribal input in accordance with Executive Order 13175, “Consultation and Coordination with Indian Tribal Governments,” and consistent with Treasury’s Tribal Consultation Policy (80 FR 57434, September 23, 2015), the Treasury Department and the IRS will schedule Tribal Consultation with Tribal Officials before finalizing these regulations to obtain additional input, within the meaning of the Tribal Consultation Policy, on QOF entities organized under the law of a Federally recognized Indian tribe and whether any additional guidance may be needed regarding QOFs leasing tribal government Federal trust lands or regarding leased real property located on such lands, as well as other Tribal implications of the proposed regulations. Such Tribal Consultation will also seek input on questions regarding the tax status of certain tribally chartered corporations other than QOFs.

Proposed Effective/Applicability Dates

Section 7805(b)(1)(A) and (B) of the Code generally provides that no temporary, proposed, or final regulation relating to the internal revenue laws may apply to any taxable period ending before the earliest of (A) The date on which such regulation is filed with the **Federal Register**; or (B) in the case of a final regulation, the date on which a proposed or temporary regulation to which the final regulation relates was filed with the **Federal Register**. However, section 7805(b)(2) provides that regulations filed or issued within 18 months of the date of the enactment of the statutory provision to which they relate are not prohibited from applying to taxable periods prior to those

described in section 7805(b)(1). Furthermore, section 7805(b)(3) provides that the Secretary may provide that any regulation may take effect or apply retroactively to prevent abuse.

Consistent with authority provided by section 7805(b)(1)(A), the rules of proposed §§ 1.1400Z2(a)–1, 1.1400Z2(b)–1, 1.1400Z2(c)–1, 1.1400Z2(d)–1, 1.1400Z2(e)–1, 1.1400Z2(f)–1, and 1.1400Z2(g)–1 generally apply to taxable years ending after May 1, 2019. However, taxpayers may generally rely on the rules of proposed §§ 1.1400Z2(a)–1, 1.1400Z2(b)–1, 1.1400Z2(d)–1, 1.1400Z2(e)–1, 1.1400Z2(f)–1, and 1.1400Z2(g)–1 set forth in this notice of proposed rulemaking for periods prior to the finalization of those sections if they apply these proposed rules consistently and in their entirety. This pre-finalization reliance does not apply to the rules of proposed § 1.1400Z2(c)–1 set forth in this notice of proposed rulemaking as these rules do not apply until January 1, 2028.

Special Analyses

I. Regulatory Planning and Review

Executive Orders 13771, 13563, and 12866 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility.

These proposed regulations have been designated by the Office of Management and Budget’s Office of Information and Regulatory Affairs (OIRA) as economically significant under Executive Order 12866 pursuant to the Memorandum of Agreement (April 11, 2018) between the Treasury Department and the Office of Management and Budget regarding the review of tax regulations. Accordingly, the proposed regulations have been reviewed by the Office of Management and Budget. In addition, the Treasury Department and the IRS expect the proposed regulations, when final, to be an Executive Order 13771 deregulatory action and request comment on this designation.

A. Background and Overview

Congress enacted section 1400Z–2, in conjunction with section 1400Z–1, as a temporary provision to encourage private sector investment in certain

lower-income communities designated as qualified opportunity zones (see Senate Committee on Finance, Explanation of the Bill, at 313 (November 22, 2017)). Taxpayers may elect to defer the recognition of capital gain to the extent of amounts invested in a QOF, provided that such amounts are invested during the 180-day period beginning on the date such capital gain would have been recognized by the taxpayer. Inclusion of the deferred capital gain in income occurs on the date the investment in the QOF is sold or exchanged or on December 31, 2026, whichever comes first. For investments in a QOF held longer than five years, taxpayers may exclude 10 percent of the deferred gain from inclusion in income, and for investments held longer than seven years, taxpayers may exclude a total of 15 percent of the deferred gain from inclusion in income. In addition, for investments held longer than 10 years, the post-acquisition gain on the qualifying investment in the QOF also may be excluded from income through a step-up in basis in the qualifying investment. In turn, a QOF must hold at least 90 percent of its assets in qualified opportunity zone property, as measured by the average percentage of assets held on the last day of the first 6-month period of the taxable year of the fund and on the last day of the taxable year. The statute requires a QOF that fails this 90-percent test to pay a penalty for each month it fails to satisfy this requirement.

The proposed regulations clarify several terms used in the statute, such as what constitutes “substantially all” in each of the different places that phrase is used in section 1400Z–2, the use of qualified opportunity zone business property (including leased property) in a qualified opportunity zone, the sourcing of income to a qualified opportunity zone business, the “reasonable period” for a QOF to reinvest proceeds from the sale of qualifying assets without paying a penalty, and what transactions comprise an inclusion event that would lead to the inclusion of deferred gain in gross income. In part, the proposed regulations amend portions of previously proposed regulations related to section 1400Z–2.

B. Need for the Proposed Regulations

The Treasury Department and the IRS are aware of concerns raised by commenters that investors have been reticent to make substantial investments in QOFs without first having additional clarity on which investments in a QOF would qualify to receive the preferential tax treatment specified by the TCJA.

This uncertainty could reduce the amount of investment flowing into lower-income communities designated as qualified opportunity zones. The lack of additional clarity could also lead to different taxpayers interpreting, and therefore applying, the same statute differently, which could distort the allocation of investment across the qualified opportunity zones.

C. Economic Analysis

1. Baseline

The Treasury Department and the IRS have assessed the benefits and costs of the proposed regulations relative to a no-action baseline reflecting anticipated Federal income tax-related behavior in the absence of these proposed regulations.

2. Economic Effects of the Proposed Regulation

a. Summary of Economic Effects

The proposed regulations provide certainty and clarity to taxpayers regarding utilization of the tax preference for capital gains provided in section 1400Z–2 by defining terms, calculations, and acceptable forms of documentation. The Treasury Department and the IRS project that this added clarity generally will encourage taxpayers to invest in QOFs and will increase the amount of investment located in qualified opportunity zones. The Treasury Department and the IRS have not made quantitative estimates of these effects.

The benefits and costs of major, specific provisions of these proposed regulations relative to the no-action baseline and alternatives to these proposed rules considered by the Treasury Department and the IRS are discussed in further detail below.

b. Qualified Opportunity Zone Business Property and Definition of Substantially All

The proposed regulations establish the threshold for satisfying the *substantially all* requirements for four out of the five uses of the term in section 1400Z–2. The other *substantially all* test in section 1400Z–2(d)(3)(A)(i) already had been set at 70 percent by prior proposed regulations (83 FR 54279, October 29, 2018). The proposed regulations provide that the term *substantially all* means at least 90 percent with regard to the three holding period requirements in section 1400Z–2(d)(2). The other *substantially all* term in section 1400Z–2(d)(2)(D)(i)(III) in the context of “use” is set to 70 percent, the same as the threshold established under the prior proposed rulemaking. The

clarity provided in the proposed regulations reduces uncertainty for prospective investors regarding which investments would satisfy the requirements of section 1400Z–2. This clarity likely would lead to a greater level of investment in QOFs.

In choosing what values to assign to the substantially all terms, the Treasury Department and the IRS considered the costs and benefits of setting the threshold higher or lower. Setting the threshold higher would limit the type of businesses and investments that would be able to meet the proposed requirements and possibly distort the industry concentration within some opportunity zones. Setting the threshold lower would allow investors in certain QOFs to receive capital gains tax relief while placing a relatively small portion of its investment within a qualified opportunity zone. A lower threshold would increase the likelihood that a taxpayer may receive the benefit of the preferential treatment on capital gains without placing in service more tangible property within a qualified opportunity zone than would have occurred in the absence of section 1400Z–2. This latter concern is magnified by the way the different requirements in section 1400Z–2 interact.

For example, these regulations imply that a QOF could satisfy the substantially all standards with as little as 40 percent of the tangible property effectively owned by the fund being used within a qualified opportunity zone. This could occur if 90 percent of QOF assets are invested in a qualified opportunity zone business, in which 70 percent of the tangible assets of that business are qualified opportunity zone business property; and if, in addition, the qualified opportunity zone business property is only 70 percent in use within a qualified opportunity zone, and for 90 percent of the holding period for such property. Multiplying these shares together ($0.9 \times 0.7 \times 0.7 \times 0.9 = 0.4$) generates the result that a QOF could satisfy the requirements of section 1400Z–2 under the proposed regulations with just 40 percent of its assets effectively in use within a qualified opportunity zone.

The Treasury Department and the IRS recognize that the operations of certain types of businesses may extend beyond the Census tract boundaries that define qualified opportunity zones. The substantially all thresholds provided in the proposed regulations are set at levels so as to limit the ability of investors in QOFs to receive preferential capital gains treatment, unless a consequential amount of tangible property used in the underlying business is located within a

qualified opportunity zone, while also allowing flexibility to business operations so as not to significantly distort the types of businesses that can qualify for opportunity zone funds.

c. Valuation of Leased Property

The proposed regulations provide two methods for determining the asset values for purposes of the 90-percent asset test in section 1400Z-2(d)(1) for QOFs or the value of tangible property for the substantially all test in section 1400Z-2(d)(3)(A)(i) for qualified opportunity zone businesses. Under the first method, a taxpayer may value owned or leased property as reported on its applicable financial statement for the reporting period. Alternatively, the taxpayer may set the value of owned property equal to the unadjusted cost basis of the property under section 1012. The value of leased property under the alternative method equals the present value of total lease payments at the beginning of the lease. The value of the property under the alternative method for the 90-percent asset test and substantially all test does not change over time as long as the taxpayer continues to own or lease the property.

The two methods should provide similar values for leased property at the time that the lease begins, as beginning in 2019, generally accepted accounting principles (GAAP) require public companies to calculate the present value of lease payments in order to recognize the value of leased assets on the balance sheet. However, there are differences. On financial statements, the value of the leased property declines over the term of the lease. Under the alternative method, the value of the leased asset is calculated once at the beginning of the lease term and remains constant while the term of the lease is still in effect. This difference in valuation of property over time between using financial statements and the alternative method also exist in the case of owned property. In addition, the two approaches would generally apply different discount rates, thus leading to some difference in the calculated present value under the two methods.

The Treasury Department and the IRS provide the alternative method to allow for taxpayers that either do not have applicable financial statements or do not have them available in time for the asset test. In addition, the alternative method is simpler, thus reducing compliance costs, and would provide greater certainty in projecting future compliance with the 90-percent asset and substantially all tests. Thus, some taxpayers with applicable financial statements may elect to use the

alternative method. The drawback to the alternative method is that it does not account for depreciation, and, over time, the values used for the sake of the 90-percent asset test and the substantially all test may diverge from the actual value of the property.

The Treasury Department and the IRS have determined that the value of leased property should be included in both the numerator and the denominator of the 90-percent asset test and the substantially all test, as this would be less distortive to business decisions compared to other available options. Leasing is a common business practice, and treating leased property differently than owned property could lead to economic distortions. If the value of leased property were not included in the tests at all, then it would be relatively easy for taxpayers to choose where to locate owned and leased property so as to technically meet the standards of the test, while maintaining substantial business operations outside of a qualified opportunity zone.

The Treasury Department and the IRS considered a third option for how leased property should be included in the 90-percent asset and substantially all tests. Under this option, leased property of the taxpayer would be included only in the denominator of the fraction. The reason for this is that leased property generally would not satisfy the purchase and original use requirements of section 1400Z-2(d)(2)(D)(i) and thus would not be deemed as qualified opportunity zone business property. However, not allowing leased property located within a qualified opportunity zone to be treated as qualified opportunity zone business property could distort business decisions of taxpayers and also could make it difficult for some businesses to satisfy the substantially all test in section 1400Z-2(d)(3)(A)(i), despite bringing new economic activity to a qualified opportunity zone.

For example, a start-up business that rented office space within a qualified opportunity zone and owned tangible property in the form of computers and other office equipment likely would fail the substantially all test if leased property only were included in the denominator of the substantially all fraction, despite all of its operations being located within a qualified opportunity zone. This may lead businesses to take on extra debt in order to purchase property located within a qualified opportunity zone, thus increasing the risk of financial distress, including bankruptcy.

One potential disadvantage of including leased property in both the numerator and denominator of the

substantially all test is that it may weaken the incentive to construct new real property or renovate existing real property within a qualified opportunity zone, as taxpayers would be able to lease existing real property in a zone without improving it and become a qualified opportunity zone business. However, allowing the leasing of existing real property within a zone may encourage fuller utilization and improvement of such property and limit the abandonment or destruction of existing productive property within a qualified opportunity zone when new tax-favored real property becomes available.

Hence, including leased property in both the numerator and the denominator of the 90-percent asset test and substantially all test encourages economic activity within qualified opportunity zones while reducing the potential distortions between owned and leased property that may occur under other options.

d. Qualified Opportunity Zone Business

Section 1400Z-2(d)(3)(A)(ii) incorporates the requirement of section 1397C(b)(2) that a qualified business entity must derive at least 50 percent of its total gross income during a taxable year from the active conduct of a qualified business in a zone. The proposed regulations provide multiple safe harbors for determining whether this standard has been satisfied.

Two of these safe harbors provide different methods for measuring the labor input of the entity. The labor input can be measured in terms of hours or compensation paid. The proposed regulations provide that if at least 50 percent of the labor input of the entity is located within a zone (as measured by one of the two provided approaches), then the section 1397C(b)(2) requirement is satisfied.

In addition, a third safe harbor provides that the 50 percent gross income requirement is met if the tangible property of the trade or business located in a qualified opportunity zone and the management or operational functions performed in the qualified opportunity zone are each necessary for the generation of at least 50 percent of the gross income of the trade or business.

The determination of the location of income for businesses that operate in multiple jurisdictions can be complex, and the rules promulgated by taxing authorities to determine the location of income are often burdensome and may distort economic activity. The provision of alternative safe harbors in these proposed regulations should reduce the

compliance and administrative burdens associated with determining whether this statutory requirement has been met. In the absence of such safe harbors, some taxpayers may interpret the 50 percent of gross income standard to require that a majority of the sales of the entity must be located within a zone. The Treasury Department and the IRS have determined that a standard based strictly on sales would discriminate against some types of businesses (for example, manufacturing) in which the location of sales is often different from the location of the production, and thus would preclude such businesses from benefitting from the incentives provided in section 1400Z-2. Furthermore, the potential distortions introduced by the provided safe harbors would increase incentives to locate labor inputs within a qualified opportunity zone. To the extent that such distortions exist, they further the statutory goal of encouraging economic activity within qualified opportunity zones. Given the flexibility provided to taxpayers in choosing a safe harbor, other distortions, such as to business organizational structuring, are likely to be minimal.

e. QOF Reinvestment Rule

The proposed regulations provide that a QOF has 12 months from the time of the sale or disposition of qualified opportunity zone property or the return of capital from investments in qualified opportunity zone stock or qualified opportunity zone partnership interests to reinvest the proceeds in other qualified opportunity zone property before the proceeds would not be considered qualified opportunity zone property with regards to the 90-percent asset test. This proposed rule provides clarity and gives substantial flexibility to taxpayers in satisfying the 90-percent asset test, which should encourage greater investment within QOFs compared to the baseline.

f. Other Topics

The proposed regulations clarify several other areas where there is uncertainty in how to apply the statute in practice. For example, the proposed regulations clarify what events cause the inclusion of deferred gain, that a QOF may not be a subsidiary member of a consolidated group, and how to determine the length of holding periods in a qualifying investment. These proposed regulations provide greater certainty to taxpayers regarding how to structure investments so as to comply with the statutory requirements of the opportunity zone incentive. This should reduce administration and compliance

costs and encourage greater investment in QOFs.

D. Paperwork Reduction Act

The proposed regulation establishes a new collection of information in § 1.1400Z2(b)-1(h). In proposed § 1.1400Z2(b)-1(h)(1), the collection of information requires (i) a partnership that makes a deferral election to notify all of its partners of the deferral election, and (ii) a partner that makes a deferral election to notify the partnership in writing of its deferral election, including the amount of the eligible gain deferred. Similar requirements are set forth in proposed § 1.1400Z2(b)-1(h)(4) regarding S corporations and S corporation shareholders. The collection of information in proposed § 1.1400Z2(b)-1(h)(2) requires direct and indirect owners of a QOF partnership to provide the QOF partnership with a written statement containing information requested by the QOF partnership that is necessary to determine the direct and indirect owners' shares of deferred gain. Lastly, the collection of information in proposed § 1.1400Z2(b)-1(h)(3) requires a QOF partner to notify the QOF partnership of an election under section 1400Z-2(c) to adjust the basis of the qualifying QOF partnership interest that is disposed of in a taxable transaction. Similar requirements again are set forth in proposed § 1.1400Z2(b)-1(h)(4) regarding QOF S corporations and QOF S corporation shareholders. The collection of information contained in this proposed regulation will not be conducted using a new or existing IRS form.

The likely respondents are partnerships and partners, and S corporations and S corporation shareholders.

Estimated total annual reporting burden: 8,500 hours.

Estimated average annual burden per respondent: 1 hour.

Estimated number of respondents: 8,500.

Estimated frequency of responses: 8,500.

The collections of information contained in this notice of proposed rulemaking will be submitted to the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collection of information should be sent to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports

Clearance Officer, SE:W:CAR:MP:T:T:SP, Washington, DC 20224. Comments on the collection of information should be received by July 1, 2019. Comments are specifically requested concerning:

Whether the proposed collection of information is necessary for the proper performance of the functions of the IRS, including whether the information will have practical utility;

The accuracy of the estimated burden associated with the proposed collection of information;

How the quality, utility, and clarity of the information to be collected may be enhanced;

How the burden of complying with the proposed collection of information may be minimized, including through the application of automated collection techniques or other forms of information technology; and

Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

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

II. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (RFA) (5 U.S.C. chapter 6), it is hereby certified that these proposed regulations, if adopted, would not have a significant economic impact on a substantial number of small entities that are directly affected by the proposed regulations.

As discussed elsewhere in this preamble, the proposed regulations would provide certainty and clarity to taxpayers regarding utilization of the tax preference for capital gains provided in section 1400Z-2 by defining terms, calculations, and acceptable forms of documentation. The Treasury Department and the IRS anticipate that this added clarity generally will encourage taxpayers to invest in QOFs and will increase the amount of investment located in qualified opportunity zones. Investment in QOFs is entirely voluntary, and the certainty that would be provided in the proposed regulations is anticipated to minimize any compliance or administrative costs, such as the estimated average annual burden (1 hour) under the Paperwork Reduction Act. For example, the proposed regulations provide multiple safe harbors for purpose of determining whether the 50-percent gross income test has been met as required by section

1400Z-2(d)(3)(A)(ii) for a qualified opportunity zone business.

Taxpayers affected by these proposed regulations include QOFs, investors in QOFs, and qualified opportunity zone businesses in which a QOF holds an ownership interest. The proposed regulations will not directly affect the taxable incomes and liabilities of qualified opportunity zone businesses; they will affect only the taxable incomes and tax liabilities of QOFs (and owners of QOFs) that invest in such businesses. Although there is a lack of available data regarding the extent to which small entities invest in QOFs, will certify as QOFs, or receive equity investments from QOFs, the Treasury Department and the IRS project that most of the investment flowing into QOFs will come from large corporations and wealthy individuals, though some of these funds would likely flow through an intermediary investment partnership. It is expected that some QOFs and qualified opportunity zone businesses would be classified as small entities; however, the number of small entities significantly affected is not likely to be substantial.

Accordingly, it is hereby certified that this rule would not have a significant economic impact on a substantial number of small entities. The Treasury Department and the IRS specifically invite comments from any party, particularly affected small entities, on the accuracy of this certification.

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

III. Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) requires that agencies assess anticipated costs and benefits and take certain other actions before issuing a final rule that includes any Federal mandate that may result in expenditures in any one year by a state, local, or tribal government, in the aggregate, or by the private sector, of \$100 million in 1995 dollars, updated annually for inflation. In 2018, that threshold is approximately \$150 million. This rule does not include any Federal mandate that may result in expenditures by state, local, or tribal governments, or by the private sector in excess of that threshold.

IV. Executive Order 13132: Federalism

Executive Order 13132 (entitled "Federalism") prohibits an agency from publishing any rule that has federalism implications if the rule either imposes

substantial, direct compliance costs on state and local governments, and is not required by statute, or preempts state law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. This proposed rule does not have federalism implications and does not impose substantial direct compliance costs on state and local governments or preempt state law within the meaning of the Executive Order.

Statement of Availability of IRS Documents

IRS Revenue Procedures, Revenue Rulings, and Notices 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 <http://www.irs.gov>.

Comments

Before these proposed regulations are adopted as final regulations, consideration will be given to any electronic and written comments that are submitted timely to the IRS as prescribed in this preamble under the **ADDRESSES** heading. The Treasury Department and the IRS request comments on all aspects of the proposed rules. All comments will be available at <http://www.regulations.gov> or upon request.

Drafting Information

The principal authors of these proposed regulations are Erika C. Reigle and Kyle Griffin, Office of the Associate Chief Counsel (Income Tax & Accounting); Jeremy Aron-Dine and Sarah Hoyt, Office of the Associate Chief Counsel (Corporate); and Marla Borkson and Sonia Kothari, Office of the Associate Chief Counsel (Passthroughs and Special Industries). Other personnel from the Treasury Department and the IRS participated in their development.

List of Subjects in 26 CFR Part 1

Income Taxes, Reporting and recordkeeping requirements.

Partial Withdrawal of a Notice of Proposed Rulemaking

Accordingly, under the authority of 26 U.S.C. 1400Z-2(e)(4) and 7805, § 1.1400Z2(d)-1(c)(4)(i), (c)(5), (6), and (7), (d)(2)(i)(A), (d)(2)(ii) and (iii), (d)(5)(i), and (d)(5)(ii)(B) of the notice of proposed rulemaking (REG-115420-18) published in the **Federal Register** on October 29, 2018 (83 FR 54279) are withdrawn.

Proposed Amendments to the Regulations

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

PART 1—INCOME TAX

■ **Paragraph 1.** The authority citation for part 1 is amended by adding entries in numerical order for §§ 1.1400Z2(a)-1, 1.1400Z2(b)-1, 1.1400Z2(c)-1, 1.1400Z2(d)-1, 1.1400Z2(f)-1, 1.1400Z2(g)-1(a), (c), (d), (e), (f), and (g)(1), 1.1400Z2(g)-1(b) and (g)(2), and 1.1400Z2(g)-1(b) and (g)(2) to read in part as follows:

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

Section 1.1400Z2(a)-1 also issued under 26 U.S.C. 1400Z-2(e)(4).

Section 1.1400Z2(b)-1 also issued under 26 U.S.C. 1400Z-2(e)(4).

Section 1.1400Z2(c)-1 also issued under 26 U.S.C. 1400Z-2(e)(4) and 857(g)(2).

Section 1.1400Z2(d)-1 also issued under 26 U.S.C. 1400Z-2(e)(4).

Section 1.1400Z2(f)-1 also issued under 26 U.S.C. 1400Z-2(e)(4).

Section 1.1400Z2(g)-1(a), (c), (d), (e), (f), and (g)(1) also issued under 26 U.S.C. 1400Z-2(e)(4) and 1502.

Section 1.1400Z2(g)-1(b) and (g)(2) also issued under 26 U.S.C. 1400Z-2(e)(4) and 1504(a)(5).

■ **Par. 2.** Section 1.1400Z2(a)-1, as proposed to be added by 83 FR 54279, October 29, 2018 is amended by:

■ 1. Redesignating (b)(2)(iii) and (iv) as paragraphs (b)(2)(v) and (vi), respectively.

■ 2. Adding new paragraphs (b)(2)(iii) and (iv) and paragraphs (b)(9) and (10).

The revisions and additions read as follows:

§ 1.1400Z2(a)-1 Deferring tax on capital gains by investing in opportunity zones.

* * * * *

(b) * * *

(2) * * *

(iii) *Gains from section 1231 property.*

The only gain arising from section 1231 property that is eligible for deferral under section 1400Z-2(a)(1) is capital gain net income for a taxable year. This net amount is determined by taking into account the capital gains and losses for a taxable year on all of the taxpayer's section 1231 property. The 180-day period described in paragraph (b)(4) of this section with respect to any capital gain net income from section 1231 property for a taxable year begins on the last day of the taxable year.

(iv) *No deferral for gain realized upon the acquisition of an eligible interest.*

Gain is not eligible for deferral under section 1400Z-2(a)(1) if such gain is realized upon the sale or other transfer of property to a QOF in exchange for an eligible interest (see paragraph

(b)(10)(i)(C) of this section) or the transfer of property to an eligible taxpayer in exchange for an eligible interest (see paragraph (b)(10)(iii) of this section).

* * * * *

(9) *Making an investment for purposes of an election under section 1400Z-2(a)—(i) Transfer of cash or other property to a QOF.* A taxpayer makes an investment for purposes of an election under section 1400Z-2(a)(1)(A) (section 1400Z-2(a)(1)(A) investment) by transferring cash or other property to a QOF in exchange for eligible interests in the QOF, regardless of whether the transfer is one in which the transferor would recognize gain or loss on the property transferred.

(ii) *Furnishing services.* Services rendered to a QOF are not considered the making of a section 1400Z-2(a)(1)(A) investment. Thus, if a taxpayer receives an eligible interest in a QOF for services rendered to the QOF or to a person in which the QOF holds any direct or indirect equity interest, then the interest in the QOF that the taxpayer receives is not a section 1400Z-2(a)(1)(A) investment but is an investment to which section 1400Z-2(e)(1)(A)(ii) applies.

(iii) *Acquisition of eligible interest from person other than QOF.* A taxpayer may make a section 1400Z-2(a)(1)(A) investment by acquiring an eligible interest in a QOF from a person other than the QOF.

(10) *Amount invested for purposes of section 1400Z-2(a)(1)(A).* In the case of any investments described in this paragraph (b)(10), the amount of a taxpayer's section 1400Z-2(a)(1)(A) investment cannot exceed the amount of gain to be deferred under the election. If the amount of the taxpayer's investment as determined under this paragraph (b)(10) exceeds the amount of gain to be deferred under the section 1400Z-2(a) election, the amount of the excess is treated as an investment to which section 1400Z-2(e)(1)(A)(ii) applies. See paragraph (b)(10)(ii) of this section for special rules applicable to transfers to QOF partnerships.

(i) *Transfers to a QOF—(A) Cash.* If a taxpayer makes a section 1400Z-2(a)(1)(A) investment by transferring cash to a QOF, the amount of the taxpayer's section 1400Z-2(a)(1)(A) investment is that amount of cash.

(B) *Property other than cash—Nonrecognition transactions.* This paragraph (b)(10)(i)(B) applies if a taxpayer makes a section 1400Z-2(a)(1)(A) investment by transferring property other than cash to a QOF and if, but for the application of section

1400Z-2(b)(2)(B), the taxpayer's basis in the resulting investment in the QOF would be determined, in whole or in part, by reference to the taxpayer's basis in the transferred property.

(1) *Amount of section 1400Z-2(a)(1)(A) investment.* If paragraph (b)(10)(i)(B) of this section applies, the amount of the taxpayer's section 1400Z-2(a)(1)(A) investment is the lesser of the taxpayer's adjusted basis in the eligible interest received in the transaction, without regard to section 1400Z-2(b)(2)(B), or the fair market value of the eligible interest received in the transaction, both as determined immediately after the contribution. Paragraph (b)(10)(i)(B) of this section applies separately to each item of property contributed to a QOF.

(2) *Fair market value of the eligible interest received exceeds its adjusted basis.* If paragraph (b)(10)(i)(B) of this section applies, and if the fair market value of the eligible interest received is in excess of the taxpayer's adjusted basis in the eligible interest received, without regard to section 1400Z-2(b)(2)(B), then the taxpayer's investment is an investment with mixed funds to which section 1400Z-2(e)(1) applies. Paragraph (b)(10)(i)(B)(1) of this section determines the amount of the taxpayer's investment to which section 1400Z-2(e)(1)(A)(i) applies. Section 1400Z-2(e)(1)(A)(ii) applies to the excess of the fair market value of the investment to which section 1400Z-2(e)(1)(A)(i) applies over the taxpayer's adjusted basis therein, determined without regard to section 1400Z-2(b)(2)(B).

(3) *Transfer of built-in loss property and section 362(e)(2).* If paragraph (b)(10)(i)(B) of this section and section 362(e)(2) both apply to a transaction, the taxpayer is deemed to have made an election under section 362(e)(2)(C).

(C) *Property other than cash—Taxable transactions.* This paragraph (b)(10)(i)(C) applies if a taxpayer makes a section 1400Z-2(a)(1)(A) investment by transferring property other than cash to a QOF and if, without regard to section 1400Z-2(b)(2)(B), the taxpayer's basis in the eligible interest received would not be determined, in whole or in part, by reference to the taxpayer's basis in the transferred property. If this paragraph (b)(10)(i)(C) applies, the amount of the taxpayer's section 1400Z-2(a)(1)(A) investment is the fair market value of the transferred property, as determined immediately before the transfer. This paragraph (b)(10)(i)(C) applies separately to each item of property transferred to a QOF.

(D) *Basis in an investment with mixed funds.* If a taxpayer's investment in a

QOF is an investment with mixed funds to which section 1400Z-2(e)(1) applies, the taxpayer's basis in the investment to which section 1400Z-2(e)(1)(A)(i) applies is equal to the taxpayer's basis in all of the QOF interests received, determined without regard to section 1400Z-2(b)(2)(B), and reduced by the basis of the taxpayer's investment to which section 1400Z-2(e)(1)(A)(i) applies, determined without regard to section 1400Z-2(b)(2)(B).

(ii) *Special rules for transfers to QOF partnerships.* In the case of an investment in a QOF partnership, the following rules apply:

(A) *Amounts not treated as an investment—(1) Non-contributions in general.* To the extent the transfer of property to a QOF partnership is characterized other than as a contribution (for example, as a sale for purposes of section 707), the transfer is not a section 1400Z-2(a)(1)(A) investment.

(2) *Reductions in investments otherwise treated as contributions.* To the extent any transfer of cash or other property to a partnership is not disregarded under paragraph (b)(10)(ii)(A)(1) of this section (for example, it is not treated as a disguised sale of the property transferred to the partnership under section 707), the transfer to the partnership will not be treated as a section 1400Z-2(a)(1)(A) investment to the extent the partnership makes a distribution to the partner and the transfer to the partnership and the distribution would be recharacterized as a disguised sale under section 707 if:

(i) Any cash contributed were non-cash property; and

(ii) In the case of a distribution by the partnership to which § 1.707-5(b) (relating to debt-financed distributions) applies, the partner's share of liabilities is zero.

(B) *Amount invested in a QOF partnership—(1) Calculation of amount of qualifying and non-qualifying investments.* To the extent paragraph (b)(10)(ii)(A) of this section does not apply, the amount of the taxpayer's qualifying investment in a QOF partnership is the lesser of the taxpayer's net basis in the property contributed to the QOF partnership, or the net value of the property contributed by the taxpayer to the QOF partnership. The amount of the taxpayer's non-qualifying investment in the partnership is the excess, if any, of the net value of the contribution over the amount treated as a qualifying investment.

(2) *Net basis.* For purposes of paragraph (b)(10)(ii)(B) of this section, net basis is the excess, if any, of—

(i) The adjusted basis of the property contributed to the partnership; over

(ii) The amount of any debt to which the property is subject or that is assumed by the partnership in the transaction.

(3) *Net value.* For purposes of paragraph (b)(10)(ii)(B) of this section, net value is the excess of—

(i) The gross fair market value of the property contributed; over

(ii) The amount of the debt described in paragraph (b)(10)(ii)(B)(2)(ii) of this section.

(4) *Basis of qualifying and non-qualifying investments.* The basis of a qualifying investment is the net basis of the property contributed, determined without regard to section 1400Z–2(b)(2)(B) or any share of debt under section 752(a). The basis of a non-qualifying investment (before any section 752 debt allocation) is the remaining net basis. The bases of qualifying and non-qualifying investments are increased by any debt allocated to such investments under the rules of § 1.1400Z2(b)–1(c)(6)(iv)(B).

(5) *Rules applicable to mixed-funds investments.* If one portion of an investment in a QOF partnership is a qualifying investment and another portion is a non-qualifying investment, see § 1.1400Z2(b)–1(c)(6)(iv) for the rules that apply.

(iii) *Acquisitions from another person.* If a taxpayer makes a section 1400Z–2(a)(1)(A) investment by acquiring an eligible interest in a QOF from a person other than the QOF, then the amount of the taxpayer's section 1400Z–2(a)(1)(A) investment is the amount of the cash, or the fair market value of the other property, as determined immediately before the exchange, that the taxpayer exchanged for the eligible interest in the QOF.

(iv) *Examples.* The following examples illustrate the rules of paragraph (b)(10) of this section. For purposes of the following examples, B is an individual and Q is a QOF corporation.

(A) *Example 1: Transfer of built-in gain property with basis less than gain to be deferred.* B realizes \$100 of eligible gain within the meaning of paragraph (b)(2) of this section. B transfers unencumbered property with a fair market value of \$100 and an adjusted basis of \$60 to Q in a transaction that is described in section 351(a). Paragraph (b)(10)(i)(B) of this section applies because B transferred property other than cash to Q and, but for the application of section 1400Z–2(b)(2)(B), B's basis in the eligible interests in Q would be determined, in whole or in part, by reference to B's basis in the transferred property. The fair market value of the eligible interest B received is \$100, and, without regard to section 1400Z–2(b)(2)(B), B's basis

in the eligible interest received would be \$60. Thus, pursuant to paragraph (b)(10)(i)(B)(2) of this section, B's investment is an investment with mixed funds to which section 1400Z–2(e)(1) applies. Pursuant to paragraphs (b)(10)(i)(B)(1) and (2) of this section, B's section 1400Z–2(a)(1)(A) investment is \$60 (the lesser of the taxpayer's adjusted basis in the eligible interest, without regard to section 1400Z–2(b)(2)(B), of \$60 and the \$100 fair market value of the eligible interest received). Pursuant to section 1400Z–2(b)(2)(B)(i), B's basis in the section 1400Z–2(a)(1)(A) investment is \$0.

Additionally, B's other investment is \$40 (the excess of the fair market value of the eligible interest received (\$100) over the taxpayer's adjusted basis in the eligible interest, without regard to section 1400Z–2(b)(2)(B) (\$60)). B's basis in the other investment is \$0 (B's \$60 basis in its investment determined without regard to section 1400Z–2(b)(2)(B), reduced by the \$60 of adjusted basis allocated to the investment to which section 1400Z–2(e)(1)(A)(i) applies, determined without regard to section 1400Z–2(b)(2)(B)). See paragraph (b)(10)(i)(D) of this section. Pursuant to section 362, Q's basis in the transferred property is \$60.

(B) *Example 2: Transfer of built-in gain property with basis in excess of eligible gain to be deferred.* The facts are the same as *Example 1* in paragraph (b)(10)(iv)(A) of this section, except that B realizes \$50 of eligible gain within the meaning of paragraph (b)(2) of this section. Pursuant to paragraph (b)(10) of this section, B's section 1400Z–2(a)(1)(A) investment cannot exceed the amount of eligible gain to be deferred (that is, the \$50 of eligible gain) under the section 1400Z–2(a) election. Therefore, pursuant to paragraph (b)(10)(i)(B)(1) of this section, B's section 1400Z–2(a)(1)(A) investment is \$50 (the lesser of the taxpayer's adjusted basis in the eligible interest received, without regard to section 1400Z–2(b)(2)(B), of \$60 and the \$100 fair market value of the eligible interest, limited by the amount of eligible gain to be deferred under the section 1400Z–2(a) election). B's section 1400Z–2(a)(1)(A) investment has an adjusted basis of \$0, as provided in section 1400Z–2(b)(2)(B)(i). Additionally, B's other investment is \$50 (the excess of the fair market value of the eligible interest received (\$100) over the amount (\$50) of B's section 1400Z–2(a)(1)(A) investment). B's basis in the other investment is \$10 (B's \$60 basis in its investment determined without regard to section 1400Z–2(b)(2)(B)), reduced by the \$50 of adjusted basis allocated to B's section 1400Z–2(a)(1)(A) investment, determined without regard to section 1400Z–2(b)(2)(B)).

(C) *Example 3: Transfers to QOF partnerships—(1) Facts.* A and B each realized \$100 of eligible gain and each transfers \$100 of cash to a QOF partnership. At a later date, the partnership borrows \$120 from an unrelated lender and distributes the cash of \$120 equally to A and B.

(2) *Analysis.* If the contributions had been of property other than cash, the contributions and distributions would have been tested under the disguised sale rules of § 1.707–5(b) by, among other things, determining the timing of the distribution and amount of the

debt allocated to each partner. Under paragraph (b)(10)(ii)(A)(2) of this section, the cash of \$200 (\$100 from A and \$100 from B) is treated as property that could be sold in a disguised sale transaction and each partner's share of the debt is zero for purposes of determining the amount of the investment. To the extent there would have been a disguised sale applying the rule of paragraph (b)(10)(ii)(A)(2) of this section, the amount of the investment would be reduced by the amount of the contribution so recharacterized.

(3) *Property contributed has built-in gain.* The facts are the same as in this *Example 3* in paragraph (b)(10)(iv)(C)(1) of this section, except that the property contributed by A had a value of \$100 and basis of \$20 and the partnership did not borrow money or make a distribution. Under paragraph (b)(10)(ii)(B)(1) of this section, the amount of A's qualifying investment is \$20 (the lesser of the net value or the net basis of the property that A contributed), and the excess of the \$100 contribution over the \$20 qualifying investment constitutes a non-qualifying investment. Under paragraph (b)(10)(ii)(B)(2) of this section, A's basis in the qualifying investment (determined without regard to section 1400Z–2(b)(2)(B) or section 752(a)) is \$20. After the application of section 1400Z–2(b)(2)(B) but before the application of section 752(a), A's basis in the qualifying investment is zero. A's basis in the non-qualifying investment is zero without regard to the application of section 752(a).

(4) *Property contributed has built-in gain and is subject to debt.* The facts are the same as in this *Example 3* in paragraph (b)(10)(iv)(C)(3) of this section, except that the property contributed by A has a gross value of \$130 and is subject to debt of \$30. Under paragraph (b)(10)(ii)(B)(1) of this section, the amount of A's qualifying investment is zero, the lesser of the property's \$100 net value (\$130 minus \$30) or zero net basis (\$20 minus \$30, but limited to zero). The entire contribution constitutes a non-qualifying investment.

(5) *Property contributed has built-in loss and is subject to debt.* The facts are the same as in this *Example 3* in paragraph (b)(10)(iv)(C)(4) of this section, except that the property contributed by A has a basis of \$150. Under paragraph (b)(10)(ii)(B)(1) of this section, the amount of A's qualifying investment is \$100, the lesser of the property's \$100 net value (\$130 minus \$30) or \$120 net basis (\$150 minus \$30). The non-qualifying investment is \$0, the excess of the qualifying investment (\$100) over the net value (\$100). A's basis in the qualifying investment (determined without regard to section 1400Z–2(b)(2)(B) and section 752(a)) is \$120, the net basis. After the application of section 1400Z–2(b)(2)(B), A's basis in the qualifying investment is zero, plus its share of partnership debt under section 752(a).

* * * * *

■ **Par. 3.** Section 1.1400Z2(b)–1 is added to read as follows:

§ 1.1400Z2(b)–1 Inclusion of gains that have been deferred under section 1400Z–2(a).

(a) *Scope and definitions*—(1) *Scope*. This section provides rules under section 1400Z–2(b) of the Internal Revenue Code regarding the inclusion in income of gain deferred under section 1400Z–2(a)(1)(A). This section applies to a QOF owner only until all of such owner's gain deferred pursuant to section 1400Z–2(a)(1)(A) has been included in income, subject to the limitations described in paragraph (e)(5) of this section. Paragraph (a)(2) of this section provides additional definitions used in this section and §§ 1.1400Z2(c)–1 through 1.1400Z2(g)–1. Paragraph (b) of this section provides general rules under section 1400Z–2(b)(1) regarding the timing of the inclusion in income of the deferred gain. Paragraph (c) of this section provides rules regarding the determination of the extent to which an event triggers the inclusion in income of all, or a portion, of the deferred gain. Paragraph (d) of this section provides rules regarding holding periods for qualifying investments. Paragraph (e) of this section provides rules regarding the amount of deferred gain included in gross income under section 1400Z–2(a)(1)(B) and (b), including special rules for QOF partnerships and QOF S corporations. Paragraph (f) of this section provides examples illustrating the rules of paragraphs (c), (d), and (e) of this section. Paragraph (g) of this section provides rules regarding basis adjustments under section 1400Z–2(b)(2)(B). Paragraph (h) of this section provides special reporting rules applicable to partners, partnerships, and direct or indirect owners of QOF partnerships. Paragraph (i) of this section provides dates of applicability.

(2) *Definitions*. The following definitions apply for purposes of this section and §§ 1.1400Z2(c)–1 and 1.1400Z2(g)–1:

(i) *Boot*. The term *boot* means money or other property that section 354 or 355 does not permit to be received without the recognition of gain.

(ii) *Consolidated group*. The term *consolidated group* has the meaning provided in § 1.1502–1(h).

(iii) *Deferral election*. The term *deferral election* means an election under section 1400Z–2(a) made before January 1, 2027, with respect to an eligible interest.

(iv) *Inclusion event*. The term *inclusion event* means an event described in paragraph (c) of this section.

(v) *Mixed-funds investment*. The term *mixed-funds investment* means an investment a portion of which is a

qualifying investment and a portion of which is a non-qualifying investment.

(vi) *Non-qualifying investment*. The term *non-qualifying investment* means an investment in a QOF described in section 1400Z–2(e)(1)(A)(ii).

(vii) *Property*—(A) *In general*. The term *property* means money, securities, or any other property.

(B) *Inclusion events regarding QOF corporation distributions*. For purposes of paragraph (c) of this section, in the context in which a QOF corporation makes a distribution, the term *property* does not include stock (or rights to acquire stock) in the QOF corporation that makes the distribution.

(viii) *QOF*. The term *QOF* means a qualified opportunity fund, as defined in section 1400Z–2(d)(1) and associated regulations.

(ix) *QOF C corporation*. The term *QOF C corporation* means a QOF corporation other than a QOF S corporation.

(x) *QOF corporation*. The term *QOF corporation* means a QOF that is classified as a corporation for Federal income tax purposes.

(xi) *QOF owner*. The term *QOF owner* means a QOF shareholder or a QOF partner.

(xii) *QOF partner*. The term *QOF partner* means a person that directly owns a qualifying investment in a QOF partnership or a person that owns such a qualifying investment through equity interests solely in one or more partnerships.

(xiii) *QOF partnership*. The term *QOF partnership* means a QOF that is classified as a partnership for Federal income tax purposes.

(xiv) *QOF S corporation*. The term *QOF S corporation* means a QOF corporation that has elected under section 1362 to be an S corporation.

(xv) *QOF shareholder*. The term *QOF shareholder* means a person that directly owns a qualifying investment in a QOF corporation.

(xvi) *Qualifying investment*. The term *qualifying investment* means an eligible interest (as defined in § 1.1400Z2(a)–1(b)(3)), or portion thereof, in a QOF to the extent that a deferral election applies with respect to such eligible interest or portion thereof.

(xvii) *Qualifying QOF partnership interest*. The term *qualifying QOF partnership interest* means a direct or indirect interest in a QOF partnership that is a qualifying investment.

(xviii) *Qualifying QOF stock*. The term *qualifying QOF stock* means stock in a QOF corporation that is a qualifying investment.

(xix) *Qualifying section 355 transaction*. The term *qualifying section*

355 transaction means a distribution described in paragraph (c)(11)(i)(B) of this section.

(xx) *Qualifying section 381 transaction*. The term *qualifying section 381 transaction* means a transaction described in section 381(a)(2), except the following transactions:

(A) An acquisition of assets of a QOF by a QOF shareholder that holds a qualifying investment in the QOF;

(B) An acquisition of assets of a QOF by a tax-exempt entity as defined in § 1.337(d)–4(c)(2);

(C) An acquisition of assets of a QOF by an entity operating on a cooperative basis within the meaning of section 1381;

(D) An acquisition by a QOF of assets of a QOF shareholder that holds a qualifying investment in the QOF;

(E) A reorganization of a QOF in a transaction that qualifies under section 368(a)(1)(G);

(F) A transaction, immediately after which one QOF owns an investment in another QOF; and

(G) A triangular reorganization of a QOF within the meaning of § 1.358–6(b)(2)(i), (ii), or (iii).

(xxi) *Remaining deferred gain*. The term *remaining deferred gain* means the full amount of gain that was deferred under section 1400Z–2(a)(1)(A), reduced by the amount of gain previously included under paragraph (b) of this section.

(b) *General inclusion rule*. The gain to which a deferral election applies is included in gross income, to the extent provided in paragraph (e) of this section, in the taxable year that includes the earlier of:

- (1) The date of an inclusion event; or
- (2) December 31, 2026.

(c) *Inclusion events*—(1) *General rule*. Except as otherwise provided in this paragraph (c), the following events are inclusion events (which result in the inclusion of gain under paragraph (b) of this section) if, and to the extent that—

(i) *Reduction of interest in QOF*. A taxpayer's transfer of a qualifying investment reduces the taxpayer's equity interest in the qualifying investment;

(ii) *Distribution of property regardless of whether the taxpayer's direct interest in the QOF is reduced*. A taxpayer receives property in a transaction that is treated as a distribution for Federal income tax purposes, whether or not the receipt reduces the taxpayer's ownership of the QOF; or

(iii) *Claim of worthlessness*. A taxpayer claims a loss for worthless stock under section 165(g) or otherwise claims a worthlessness deduction with respect to its qualifying investment.

(2) *Termination or liquidation of QOF or QOF owner*—(i) *Termination or liquidation of QOF*. Except as otherwise provided in this paragraph (c), a taxpayer has an inclusion event with respect to all of its qualifying investment if the QOF ceases to exist for Federal income tax purposes.

(ii) *Liquidation of QOF owner*—(A) *Portion of distribution treated as sale*. A distribution of a qualifying investment in a complete liquidation of a QOF owner is an inclusion event to the extent that section 336(a) treats the distribution as if the qualifying investment were sold to the distributee at its fair market value, without regard to section 336(d).

(B) *Distribution to 80-percent distributee*. A distribution of a qualifying investment in a complete liquidation of a QOF owner is not an inclusion event to the extent section 337(a) applies to the distribution.

(3) *Transfer of an investment in a QOF by gift*. A taxpayer's transfer of a qualifying investment by gift, whether outright or in trust, is an inclusion event, regardless of whether that transfer is a completed gift for Federal gift tax purposes, and regardless of the taxable or tax-exempt status of the donee of the gift.

(4) *Transfer of an investment in a QOF by reason of the taxpayer's death*—(i) *In general*. Except as provided in paragraph (c)(4)(ii) of this section, a transfer of a qualifying investment by reason of the taxpayer's death is not an inclusion event. Transfers by reason of death include, for example:

(A) A transfer by reason of death to the deceased owner's estate;

(B) A distribution of a qualifying investment by the deceased owner's estate;

(C) A distribution of a qualifying investment by the deceased owner's trust that is made by reason of the deceased owner's death;

(D) The passing of a jointly owned qualifying investment to the surviving co-owner by operation of law; and

(E) Any other transfer of a qualifying investment at death by operation of law.

(ii) *Exceptions*. The following transfers are not included as a transfer by reason of the taxpayer's death, and thus are inclusion events, and the amount recognized is includible in the gross income of the transferor as provided in section 691:

(A) A sale, exchange, or other disposition by the deceased taxpayer's estate or trust, other than a distribution described in paragraph (c)(4)(i) of this section;

(B) Any disposition by the legatee, heir, or beneficiary who received the

qualifying investment by reason of the taxpayer's death; and

(C) Any disposition by the surviving joint owner or other recipient who received the qualifying investment by operation of law on the taxpayer's death.

(5) *Grantor trusts*—(i) *Contributions to grantor trusts*. If the owner of a qualifying investment contributes it to a trust and, under the grantor trust rules, the owner of the investment is the deemed owner of the trust, the contribution is not an inclusion event.

(ii) *Changes in grantor trust status*. In general, a change in the status of a grantor trust, whether the termination of grantor trust status or the creation of grantor trust status, is an inclusion event. Notwithstanding the previous sentence, the termination of grantor trust status as the result of the death of the owner of a qualifying investment is not an inclusion event, but the provisions of paragraph (c)(4) of this section apply to distributions or dispositions by the trust.

(6) *Special rules for partners and partnerships*—(i) *Scope*. Except as otherwise provided in this paragraph (c)(6), in the case of a partnership that is a QOF or, directly or indirectly solely through one or more partnerships, owns an interest in a QOF, the inclusion rules of this paragraph (c) apply to transactions involving any direct or indirect partner of the QOF to the extent of such partner's share of any eligible gain of the QOF.

(ii) *Transactions that are not inclusion events*—(A) *In general*. Notwithstanding paragraphs (c)(1) and (2) and (c)(6)(iii) of this section, and except as otherwise provided in paragraph (c)(6) of this section, no transaction described in paragraph (c)(6)(ii) of this section is an inclusion event.

(B) *Section 721 contributions*. Subject to paragraph (c)(6)(v) of this section, a contribution by a QOF owner, including any contribution by a partner of a partnership that, solely through one or more upper-tier partnerships, owns an interest in a QOF (contributing partner), of its direct or indirect partnership interest in a qualifying investment to a partnership (transferee partnership) in a transaction governed all or in part by section 721(a) is not an inclusion event, provided the interest transfer does not cause a partnership termination of a QOF partnership, or the direct or indirect owner of a QOF, under section 708(b)(1). See paragraph (c)(6)(ii)(C) of this section for transactions governed by section 708(b)(2)(A). Notwithstanding the rules in this paragraph (c)(6)(ii)(B), the inclusion rules in paragraph (c) of

this section apply to any part of the transaction to which section 721(a) does not apply. The transferee partnership becomes subject to section 1400Z-2 and all section 1400Z-2 regulations in this chapter with respect to the eligible gain associated with the contributed qualifying investment. The transferee partnership must allocate and report the gain that is associated with the contributed qualifying investment to the contributing partner to the same extent that the gain would have been allocated and reported to the contributing partner in the absence of the contribution.

(C) *Section 708(b)(2)(A) mergers or consolidations*. Subject to paragraph (c)(6)(v) of this section, a merger or consolidation of a partnership holding a qualifying investment, or of a partnership that holds an interest in such partnership solely through one or more partnerships, with another partnership in a transaction to which section 708(b)(2)(A) applies is not an inclusion event. The resulting partnership or new partnership, as determined under § 1.708-1(c)(1), becomes subject to section 1400Z-2, and all section 1400Z-2 regulations in this chapter, to the same extent that the original partnership was so subject prior to the transaction, and must allocate and report any eligible gain to the same extent and to the same partners that the original partnership allocated and reported such items prior to the transaction. Notwithstanding the rules in this paragraph (c)(6)(ii)(C), the general inclusion rules of paragraph (c) of this section apply to the portion of the transaction that is otherwise treated as a sale or exchange under paragraph (c) of this section.

(iii) *Partnership distributions*. Notwithstanding paragraph (c)(6)(i) of this section, and subject to paragraph (c)(6)(v) of this section, and except as provided in paragraph (c)(6)(ii)(C) of this section, an actual or deemed distribution of property (including cash) by a QOF partnership to a partner with respect to its qualifying investment is an inclusion event only to the extent that the distributed property has a fair market value in excess of the partner's basis in its qualifying investment. Similar rules apply to distributions involving tiered partnerships. See paragraph (c)(6)(iv) of this section for special rules relating to mixed-funds investments.

(iv) *Special rules for mixed-funds investments*—(A) *General rule*. The rules of paragraph (c)(6)(iv) of this section apply solely for purposes of section 1400Z-2. A partner that holds a mixed-funds investment in a QOF partnership (a mixed-funds partner)

shall be treated as holding two separate interests in the QOF partnership, one a qualifying investment and the other a non-qualifying investment (the separate interests). The basis of each separate interest is determined under the rules described in paragraphs (c)(6)(iv)(B) and (g) of this section as if each interest were held by different taxpayers.

(B) *Allocations and distributions.* All section 704(b) allocations of income, gain, loss, and deduction, all section 752 allocations of debt, and all distributions made to a mixed-funds partner shall be treated as made to the separate interests based on the allocation percentages of such interests as defined in paragraph (c)(6)(iv)(D) of this section. For purposes of this paragraph (c)(6)(iv)(B), in allocating income, gain, loss, or deduction between these separate interests, section 704(c) principles shall apply to account for any value-basis disparities attributable to the qualifying investment or non-qualifying investment. Any distribution (whether actual or deemed) to the holder of a qualifying investment is subject to the rules of paragraphs (c)(6)(iii) and (v) of this section, without regard to the presence or absence of gain under other provisions of subchapter K of chapter 1 of subtitle A of the Code.

(C) *Subsequent contributions.* In the event of an increase in a partner's qualifying or non-qualifying investment (for example, as in the case of an additional contribution for a qualifying investment or for an interest that is a non-qualifying investment or a change in allocations for services rendered), the partner's interest in the separate interests shall be valued immediately prior to such event and the allocation percentages shall be adjusted to reflect the relative values of these separate interests and the additional contribution, if any.

(D) *Allocation percentages.* The allocation percentages of the separate interests shall be determined based on the relative capital contributions attributable to the qualifying investment and the non-qualifying investment. In the event a partner receives a profits interest in the partnership for services rendered to or for the benefit of the partnership, the allocation percentages with respect to such partner shall be calculated based on:

(1) With respect to the profits interest received, the highest share of residual profits the mixed-funds partner would receive with respect to that interest; and

(2) With respect to the remaining interest, the percentage interests for the capital interests described in the immediately preceding sentence.

(v) *Remaining deferred gain reduction rule.* An inclusion event occurs when and to the extent that a transaction has the effect of reducing—

(A) The amount of remaining deferred gain of one or more direct or indirect partners; or

(B) The amount of gain that would be recognized by such partner or partners under paragraph (e)(4)(ii) of this section to the extent that such amount would reduce such gain to an amount that is less than the remaining deferred gain.

(7) *Special rule for S corporations—(i) In general.* Except as provided in paragraphs (c)(7)(ii), (iii), and (iv) of this section, none of the following is an inclusion event:

(A) An election, revocation, or termination of a corporation's status as an S corporation under section 1362;

(B) A conversion of a qualified subchapter S trust (as defined in section 1361(d)(3)) to an electing small business trust (as defined in section 1361(e)(1));

(C) A conversion of an electing small business trust to a qualified subchapter S trust;

(D) A valid modification of a trust agreement of an S-corporation shareholder whether by an amendment, a decanting, a judicial reformation, or a material modification;

(E) A 25 percent or less aggregate change in ownership pursuant to paragraph (c)(7)(iii) of this section in the equity investment in an S corporation that directly holds a qualifying investment; and

(F) A disposition of assets by a QOF S corporation.

(ii) *Distributions by QOF S corporation—(A) General rule.* An actual or constructive distribution of property by a QOF S corporation to a shareholder with respect to its qualifying investment is an inclusion event to the extent that the distribution is treated as gain from the sale or exchange of property under section 1368(b)(2) and (c).

(B) *Spill-over rule.* For purposes of applying paragraph (c)(7)(ii) of this section to the adjusted basis of a qualifying investment, or non-qualifying investment, as appropriate, in a QOF S corporation, the second sentence of § 1.1367-1(c)(3) applies—

(1) With regard to multiple qualifying investments, solely to the respective bases of such qualifying investments, and does not take into account the basis of any non-qualifying investment; and

(2) With regard to multiple non-qualifying investments, solely to the respective bases of such non-qualifying investments, and does not take into account the basis of any qualifying investment.

(iii) *Aggregate change in ownership of an S corporation that is a QOF owner—*

(A) *General rule.* Solely for purposes of section 1400Z-2, an inclusion event occurs when there is an aggregate change in ownership, within the meaning of paragraph (c)(7)(iii)(B) of this section, of an S corporation that directly holds a qualifying investment in a QOF. The S corporation is treated as having disposed of its entire qualifying investment in the QOF, and neither section 1400Z-2(b)(2)(B)(iii) or (iv) nor section 1400Z-2(c) applies to the S corporation's qualifying investment after that date. The disposition under this paragraph (c)(7)(iii)(A) is treated as occurring on the date the requirements of paragraph (c)(7)(iii)(B) of this section are satisfied.

(B) *Aggregate ownership change threshold.* For purposes of paragraph (c)(7)(iii)(A) of this section, there is an *aggregate change in ownership* of an S corporation if, immediately after any change in ownership of the S corporation, the percentage of the stock of the S corporation owned directly by the shareholders who owned the S corporation at the time of its deferral election has decreased by more than 25 percent. The ownership percentage of each shareholder referred to in this paragraph (c)(7)(iii)(B) is measured separately from the ownership percentage of all other shareholders. Any decrease in ownership is determined with regard to the percentage held by the relevant shareholder at the time of the election under section 1400Z-2(a), and all decreases are then aggregated. Decreases in ownership may result from, for example, the sale of shares, the redemption of shares, the issuance of new shares, or the occurrence of section 381(a) transactions. The aggregate change in ownership is measured separately for each qualifying investment of the S corporation.

(iv) *Conversion from S corporation to partnership or disregarded entity—(A) General rule.* Notwithstanding paragraph (c)(7)(i) of this section, and except as provided in paragraph (c)(7)(iv)(B) of this section, a conversion of an S corporation to a partnership or an entity disregarded as separate from its owner under § 301.7701-3(b)(1)(ii) of this chapter is an inclusion event.

(B) *Exception for qualifying section 381 transaction.* A conversion described in paragraph (c)(7)(iv)(A) of this section is not an inclusion event if the conversion comprises a step in a series of related transactions that together qualify as a qualifying section 381 transaction.

(v) *Treatment of separate blocks of stock in mixed-funds investments.* With regard to a mixed-funds investment in a QOF S corporation, if different blocks of stock are created for otherwise qualifying investments to track basis in such qualifying investments, the separate blocks are not treated as different classes of stock for purposes of S corporation eligibility under section 1361(b)(1).

(vi) *Applicability.* Paragraph (c)(7) of this section applies regardless of whether the S corporation is a QOF or a QOF shareholder.

(8) *Distributions by a QOF C corporation.* A distribution of property by a QOF C corporation with respect to a qualifying investment is not an inclusion event except to the extent section 301(c)(3) applies to the distribution. For purposes of this paragraph (c)(8), a distribution of property also includes a distribution of stock by a QOF C corporation that is treated as a distribution of property to which section 301 applies pursuant to section 305(b).

(9) *Dividend-equivalent redemptions—(i) General rule.* Except as provided in paragraph (c)(9)(ii) or (iii) of this section, a transaction described in section 302(d) is an inclusion event with respect to the full amount of the distribution.

(ii) *Redemption of stock of wholly owned QOF.* If all stock in a QOF is held directly by a single shareholder, or directly by members of the same consolidated group, and if shares are redeemed in a transaction to which section 302(d) applies, *see* paragraph (c)(8) of this section (applicable to distributions by QOF corporations).

(iii) *S corporations.* S corporation section 302(d) transactions are an inclusion event to the extent the distribution exceeds basis in the QOF as adjusted under paragraph (c)(7)(ii) of this section.

(10) *Qualifying section 381 transactions—(i) Assets of a QOF are acquired—(A) In general.* Except to the extent provided in paragraph (c)(10)(i)(C) of this section, if the assets of a QOF corporation are acquired in a qualifying section 381 transaction, and if the acquiring corporation is a QOF immediately after the acquisition, then the transaction is not an inclusion event.

(B) *Determination of acquiring corporation's status as a QOF.* For purposes of paragraph (c)(10)(i)(A) of this section, the acquiring corporation is treated as a QOF immediately after the qualifying section 381 transaction if the acquiring corporation satisfies the certification requirements in

§ 1.1400Z2(d)–1 immediately after the transaction and holds at least 90 percent of its assets in qualified opportunity zone property on the first testing date after the transaction (*see* section 1400Z–2(d)(1) and § 1.1400Z2(d)–1).

(C) *Receipt of boot by QOF shareholder in qualifying section 381 transaction—(1) General rule.* Except as provided in paragraph (c)(10)(i)(C)(2) of this section, if assets of a QOF corporation are acquired in a qualifying section 381 transaction and a taxpayer that is a QOF shareholder receives boot with respect to its qualifying investment, the taxpayer has an inclusion event. If the taxpayer realizes a gain on the transaction, the amount that gives rise to the inclusion event is the amount of gain under section 356 that is not treated as a dividend under section 356(a)(2). If the taxpayer realizes a loss on the transaction, the amount that gives rise to the inclusion event is an amount equal to the fair market value of the boot received.

(2) *Receipt of boot from wholly owned QOF.* If all stock in both a QOF and the corporation that acquires the QOF's assets in a qualifying section 381 transaction are held directly by a single shareholder, or directly by members of the same consolidated group, and if the shareholder receives (or group members receive) boot with respect to the qualifying investment in the qualifying section 381 transaction, paragraph (c)(8) of this section (applicable to distributions by QOF corporations) applies to the boot as if it were distributed from the QOF to the shareholder(s) in a separate transaction to which section 301 applied.

(ii) *Assets of a QOF shareholder are acquired—(A) In general.* Except to the extent provided in paragraph (c)(10)(ii)(B) of this section, a qualifying section 381 transaction in which the assets of a QOF shareholder are acquired is not an inclusion event with respect to the qualifying investment. However, if the qualifying section 381 transaction causes a QOF shareholder that is an S corporation to have an aggregate change in ownership within the meaning of paragraph (c)(7)(iii)(B) of this section, *see* paragraph (c)(7)(iii)(A) of this section.

(B) *Qualifying section 381 transaction in which QOF shareholder's qualifying investment is not completely acquired.* If the assets of a QOF shareholder are acquired in a qualifying section 381 transaction in which the acquiring corporation does not acquire all of the QOF shareholder's qualifying investment, there is an inclusion event to the extent that the QOF shareholder's

qualifying investment is not transferred to the acquiring corporation.

(11) *Section 355 transactions—(i) Distribution by a QOF—(A) In general.* Except as provided in paragraph (c)(11)(i)(B) of this section, if a QOF corporation distributes stock or securities of a controlled corporation to a taxpayer in a transaction to which section 355, or so much of section 356 as relates to section 355, applies, the taxpayer has an inclusion event with respect to its qualifying investment. The amount that gives rise to such inclusion event is equal to the fair market value of the shares of the controlled corporation and the boot received by the taxpayer in the distribution with respect to its qualifying investment.

(B) *Controlled corporation becomes a QOF—(1) In general.* Except as provided in paragraph (c)(11)(i)(B)(3) of this section, if a QOF corporation distributes stock or securities of a controlled corporation in a transaction to which section 355, or so much of section 356 as relates to section 355, applies, and if both the distributing corporation and the controlled corporation are QOFs immediately after the final distribution (qualifying section 355 transaction), then the distribution is not an inclusion event with respect to the taxpayer's qualifying investment in the distributing QOF corporation or the controlled QOF corporation. This paragraph (c)(11)(i)(B) does not apply unless the distributing corporation distributes all of the stock and securities in the controlled corporation held by it immediately before the distribution within a 30-day period. For purposes of this paragraph (c)(11)(i)(B), the term *final distribution* means the last distribution that satisfies the preceding sentence.

(2) *Determination of distributing corporation's and controlled corporation's status as QOFs.* For purposes of paragraph (c)(11)(i)(B)(1) of this section, each of the distributing corporation and the controlled corporation is treated as a QOF immediately after the final distribution if the corporation satisfies the certification requirements in § 1.1400Z2(d)-1 immediately after the final distribution and holds at least 90 percent of its assets in qualified opportunity zone property on the first testing date after the final distribution (*see* section 1400Z–2(d)(1) and § 1.1400Z2(d)-1)).

(3) *Receipt of boot.* If a taxpayer receives boot in a qualifying section 355 transaction with respect to its qualifying investment, and if section 356(a) applies to the transaction, the taxpayer has an inclusion event, and the amount that gives rise to the inclusion event is the

amount of gain under section 356 that is not treated as a dividend under section 356(a)(2). If a taxpayer receives boot in a qualifying section 355 transaction with respect to its qualifying investment, and if section 356(b) applies to the transaction, *see* paragraph (c)(8) of this section (applicable to distributions by QOF corporations).

(4) *Treatment of controlled corporation stock as qualified opportunity zone stock.* If stock or securities of a controlled corporation are distributed in a qualifying section 355 transaction, and if the distributing corporation retains a portion of the controlled corporation stock after the initial distribution, the retained stock will not cease to qualify as qualified opportunity zone stock in the hands of the distributing corporation solely as a result of the qualifying section 355 transaction. This paragraph (c)(11)(i)(B)(4) does not apply unless the distributing corporation distributes all of the stock and securities in the controlled corporation held by it immediately before the distribution within a 30-day period.

(ii) *Distribution by a QOF shareholder.* If a QOF shareholder distributes stock or securities of a controlled QOF corporation in a transaction to which section 355 applies, then for purposes of section 1400Z-2(b)(1) and paragraph (b) of this section, the taxpayer has an inclusion event to the extent the distribution reduces the taxpayer's direct tax ownership of its qualifying QOF stock. For distributions by a QOF shareholder that is an S corporation, *see also* paragraph (c)(7)(iii) of this section.

(12) *Recapitalizations and section 1036 transactions—(i) No reduction in proportionate interest in qualifying QOF stock—(A) In general.* Except as otherwise provided in paragraph (c)(8) of this section (relating to distributions subject to section 305(b)) or paragraph (c)(12)(i)(B) of this section, if a QOF corporation engages in a transaction that qualifies as a reorganization described in section 368(a)(1)(E), or if a QOF shareholder engages in a transaction that is described in section 1036, and if the transaction does not have the result of decreasing the taxpayer's proportionate interest in the QOF corporation, the transaction is not an inclusion event.

(B) *Receipt of property or boot by QOF shareholder.* If the taxpayer receives property or boot in a transaction described in paragraph (c)(12)(i)(A) of this section and section 368(a)(1)(E), then the property or boot is treated as property or boot to which section 301 or section 356 applies, as determined

under general tax principles. If the taxpayer receives property that is not permitted to be received without the recognition of gain in a transaction described in paragraph (c)(12)(i)(A) of this section and section 1036, then, for purposes of this section, the property is treated in a similar manner as boot in a transaction described in section 368(a)(1)(E). For the treatment of property to which section 301 applies, *see* paragraph (c)(8) of this section. For the treatment of boot to which section 356 applies (including in situations in which the QOF is wholly and directly owned by a single shareholder or by members of the same consolidated group), *see* paragraph (c)(10) of this section.

(ii) *Reduction in proportionate interest in the QOF corporation.* If a QOF engages in a transaction that qualifies as a reorganization described in section 368(a)(1)(E), or if a QOF shareholder engages in a transaction that is described in section 1036, and if the transaction has the result of decreasing the taxpayer's proportionate qualifying interest in the QOF corporation, then the taxpayer has an inclusion event in an amount equal to the amount of the reduction in the fair market value of the taxpayer's qualifying QOF stock.

(13) *Section 304 transactions.* A transfer of a qualifying investment in a transaction described in section 304(a) is an inclusion event with respect to the full amount of the consideration.

(14) *Deduction for worthlessness.* If a taxpayer claims a loss for worthless stock under section 165(g) or otherwise claims a worthlessness deduction with respect to all or a portion of its qualifying investment, then for purposes of section 1400Z-2 and all section 1400Z-2 regulations in this chapter, the taxpayer is treated as having disposed of that portion of its qualifying investment on the date it became worthless. Thus, the taxpayer has an inclusion event with respect to that portion of its qualifying investment, and neither section 1400Z-2(b)(2)(B)(iii) or (iv) nor section 1400Z-2(c) applies to that portion of the taxpayer's qualifying investment after the date it became worthless.

(15) *Other inclusion and non-inclusion events.* Notwithstanding any other provision of this paragraph (c), the Commissioner may determine by published guidance that a type of transaction is or is not an inclusion event.

(d) *Holding periods—(1) Holding period for QOF investment—(i) General rule.* Solely for purposes of sections 1400Z-2(b)(2)(B) and 1400Z-2(c), and except as otherwise provided in this

paragraph (d)(1), the length of time a qualifying investment has been held is determined without regard to the period for which the taxpayer had held property exchanged for such investment.

(ii) *Holding period for QOF investment received in a qualifying section 381 transaction, a reorganization described in section 368(a)(1)(E), or a section 1036 exchange.* For purposes of section 1400Z-2(b)(2)(B) and 1400Z-2(c), the holding period for QOF stock received by a taxpayer in a qualifying section 381 transaction in which the target corporation was a QOF immediately before the acquisition and the acquiring corporation is a QOF immediately after the acquisition, in a reorganization described in section 368(a)(1)(E), or in a section 1036 exchange, is determined by applying the principles of section 1223(1).

(iii) *Holding period for controlled corporation stock.* For purposes of section 1400Z-2(b)(2)(B) and 1400Z-2(c), the holding period of a qualifying investment in a controlled corporation received by a taxpayer on its qualifying investment in the distributing corporation in a qualifying section 355 transaction is determined by applying the principles of section 1223(1).

(iv) *Tacking with donor or deceased owner.* For purposes of section 1400Z-2(b)(2)(B) and 1400Z-2(c), the holding period of a qualifying investment held by a taxpayer who received that qualifying investment as a gift that was not an inclusion event, or by reason of the prior owner's death, includes the time during which that qualifying investment was held by the donor or the deceased owner, respectively.

(2) *Determination of original use of QOF assets—(i) Assets acquired in a section 381 transaction.* For purposes of section 1400Z-2(d), including for purposes of determining whether the original use of qualified opportunity zone business property commences with the acquiring corporation, any qualified opportunity zone property transferred by the transferor QOF to the acquiring corporation in connection with a qualifying section 381 transaction does not lose its status as qualified opportunity zone property solely as a result of its transfer to the acquiring corporation.

(ii) *Assets contributed to a controlled corporation.* For purposes of section 1400Z-2(d), including for purposes of determining whether the original use of qualified opportunity zone business property commences with the controlled corporation, any qualified opportunity zone property contributed

by the distributing corporation to the controlled corporation in connection with a qualifying section 355 transaction does not lose its status as qualified opportunity zone property solely as a result of its contribution to the controlled corporation.

(3) *Application to partnerships.* The principles of paragraphs (d)(1) and (2) of this section apply to qualifying QOF partnership interests with regard to non-inclusion transactions described in paragraph (c)(6)(ii) of this section.

(e) *Amount includible.* Except as provided in § 1.1400Z2(a)-1(b)(4), the amount of gain included in gross income under section 1400Z-2(a)(1)(B) on a date described in paragraph (b) of this section is determined under this paragraph (e).

(1) *In general.* Except as provided in paragraphs (e)(2) and (4) of this section, and subject to paragraph (e)(5) of this section, in the case of an inclusion event, the amount of gain included in gross income is equal to the excess of the amount described in paragraph (e)(1)(i) of this section over the amount described in paragraph (e)(1)(ii) of this section.

(i) The amount described in this paragraph (e)(1)(i) is equal to the lesser of:

(A) An amount which bears the same proportion to the remaining deferred gain, as:

(1) The fair market value of the portion of the qualifying investment that is disposed of in the inclusion event, as determined as of the date of the inclusion event, bears to;

(2) The fair market value of the total qualifying investment immediately before the inclusion event; or

(B) The amount described in paragraph (e)(1)(i)(A)(1) of this section.

(ii) The amount described in this paragraph (e)(1)(ii) is the taxpayer's basis in the portion of the qualifying investment that is disposed of in the inclusion event.

(iii) For purposes of paragraph (e)(1)(i)(A)(1) of this section, the fair market value of that portion is determined by multiplying the fair market value of the taxpayer's entire qualifying investment in the QOF, valued as of the date of the inclusion event, by the percentage of the taxpayer's qualifying investment that is represented by the portion disposed of in the inclusion event.

(2) *Property received from a QOF in certain transactions.* In the case of an inclusion event described in paragraph (c)(6)(iii) or (v) or (c)(8), (9), (10), (11), or (12) of this section, the amount of gain included in gross income is equal to the lesser of:

(i) The remaining deferred gain; or

(ii) The amount that gave rise to the inclusion event. See paragraph (c) of this section for rules regarding the amount that gave rise to the inclusion event, and see paragraph (g) of this section for applicable ordering rules.

(3) *Gain recognized on December 31, 2026.* The amount of gain included in gross income on December 31, 2026 is equal to the excess of—

(i) The lesser of—

(A) The remaining deferred gain; and

(B) The fair market value of the qualifying investment held on December 31, 2026; over

(ii) The taxpayer's basis in the qualifying investment as of December 31, 2026, taking into account only section 1400Z-2(b)(2)(B).

(4) *Special amount includible rule for partnerships and S corporations.* For purposes of paragraphs (e)(1) and (3) of this section, in the case of an inclusion event involving a qualifying investment in a QOF partnership or S corporation, or in the case of a qualifying investment in a QOF partnership or S corporation held on December 31, 2026, the amount of gain included in gross income is equal to the lesser of:

(i) The product of:

(A) The percentage of the qualifying investment that gave rise to the inclusion event; and

(B) The remaining deferred gain, less any basis adjustments pursuant to section 1400Z-2(b)(2)(B)(iii) and (iv); or

(ii) The gain that would be recognized on a fully taxable disposition of the qualifying investment that gave rise to the inclusion event.

(5) *Limitation on amount of gain included after statutory five- and seven-year basis increases.* The total amount of gain included in gross income under this paragraph (e) is limited to the amount deferred under section 1400Z-2(a)(1), reduced by any increase in the basis of the qualifying investment made pursuant to section 1400Z-2(b)(2)(B)(iii) or (iv). See paragraph (g)(2) of this section for limitations on the amount of basis adjustments under section 1400Z-2(b)(2)(B)(iii) and (iv).

(f) *Examples.* The following examples illustrate the rules of paragraphs (c), (d) and (e) of this section. For purposes of the following examples: A, B, C, W, X, Y, and Z are C corporations that do not file a consolidated Federal income tax return; Q is a QOF corporation or a QOF partnership, as specified in each example; and each divisive corporate transaction satisfies the requirements of section 355.

(1) *Example 1: Determination of basis, holding period, and qualifying investment—*

(i) *Facts.* A wholly and directly owns Q, a QOF corporation. On May 31, 2019, A sells a capital asset to an unrelated party and realizes \$500 of capital gain. On October 31, 2019, A transfers unencumbered asset N to Q in exchange for a qualifying investment. Asset N, which A has held for 10 years, has a basis of \$500 and a fair market value of \$500. A elects to defer the inclusion of \$500 in gross income under section 1400Z-2(a) and § 1.1400Z2(a)-1.

(ii) *Analysis.* Under § 1.1400Z2(a)-1(b)(10)(i)(B)(1), A made a qualifying investment of \$500. Under section 1400Z-2(b)(2)(B)(i), A's basis in its qualifying investment in Q is \$0. For purposes of sections 1400Z-2(b)(2)(B) and 1400Z-2(c), A's holding period in its new investment in Q begins on October 31, 2019. See paragraph (d)(1)(i) of this section. Other than for purposes of applying section 1400Z-2, A has a 10-year holding period in its new Q investment as of October 31, 2019.

(iii) *Transfer of built-in gain property.* The facts are the same as in this *Example 1* in paragraph (f)(1)(i) of this section, but A's basis in transferred asset N is \$200. Under § 1.1400Z2(a)-1(b)(10)(i)(B)(1), A made a qualifying investment of \$200 and a non-qualifying investment of \$300.

(2) *Example 2: Transfer of qualifying investment—(i) Facts.* On May 31, 2019, A sells a capital asset to an unrelated party and realizes \$500 of capital gain. On October 31, 2019, A transfers \$500 to newly formed Q, a QOF corporation, in exchange for a qualifying investment. On February 29, 2020, A transfers 25 percent of its qualifying investment in Q to newly formed Y in exchange for 100 percent of Y's stock in a transfer to which section 351 applies (the Transfer), at a time when the fair market value of A's qualifying investment in Q is \$800.

(ii) *Analysis.* Under § 1.1400Z2(a)-1(b)(10)(i)(A), A made a qualifying investment of \$500 on October 31, 2019. In the Transfer, A exchanged 25 percent of its qualifying investment for Federal income tax purposes, which reduced A's direct qualifying investment. Under paragraph (c)(1)(i) of this section, the Transfer is an inclusion event to the extent of the reduction in A's direct qualifying investment. Under paragraph (e)(1) of this section, A therefore includes in income an amount equal to the excess of the amount described in paragraph (e)(1)(i) of this section over A's basis in the portion of the qualifying investment that was disposed of, which in this case is \$0. The amount described in paragraph (e)(1)(i) is the lesser of:

(A) \$125 ($\$500 \times (\$200/\$800)$); or

(B) \$200. As a result, A must include \$125 of its deferred capital gain in income in 2020. After the Transfer, the Q stock is not qualifying Q stock in Y's hands.

(iii) *Disregarded transfer.* The facts are the same as in this *Example 2* in paragraph (f)(2)(i) of this section, except that Y elects to be treated as an entity that is disregarded as an entity separate from its owner for Federal income tax purposes effective prior to the Contribution. Since the Transfer would be disregarded for Federal income tax purposes, A's transfer of its qualifying investment in Q

would not be treated as a reduction in direct tax ownership for Federal income tax purposes, and the Transfer would not be an inclusion event with respect to A's qualifying investment in Q for purposes of section 1400Z-2(b)(1) and paragraph (b) of this section. Thus, A would not be required to include in income any portion of its deferred capital gain.

(iv) *Election to be treated as a corporation.* The facts are the same as in this *Example 2* in paragraph (f)(2)(iii) of this section, except that Y (a disregarded entity) subsequently elects to be treated as a corporation for Federal income tax purposes. A's deemed transfer of its qualifying investment in Q to Y under § 301.7701-3(g)(1)(iv) of this chapter is an inclusion event for purposes of section 1400Z-2(b)(1) and paragraph (b) of this section.

(3) *Example 3: Part sale of qualifying QOF partnership interest in Year 6 when value of the QOF interest has increased—(i) Facts.* In October 2018, A and B each realize \$200 of eligible gain, and C realizes \$600 of eligible gain. On January 1, 2019, A, B, and C form Q, a QOF partnership. A contributes \$200 of cash, B contributes \$200 of cash, and C contributes \$600 of cash to Q in exchange for qualifying QOF partnership interests in Q. A, B, and C hold 20 percent, 20 percent, and 60 percent interests in Q, respectively. On January 30, 2019, Q obtains a nonrecourse loan from a bank for \$1,000. Under section 752, the loan is allocated \$200 to A, \$200 to B, and \$600 to C. On February 1, 2019, Q purchases qualified opportunity zone business property for \$2,000. On July 31, 2024, A sells 50 percent of its qualifying QOF partnership interest in Q to B for \$400 cash. Prior to the sale, there were no inclusion events, distributions, partner changes, income or loss allocations, or changes in the amount or allocation of debt outstanding. At the time of the sale, the fair market value of Q's qualified opportunity zone business property is \$5,000.

(ii) *Analysis.* Because A held its qualifying QOF partnership interest for at least five years, A's basis in its partnership interest at the time of the sale is \$220 (the original zero basis with respect to the contribution, plus the \$200 debt allocation, plus the 10% increase for interests held for five years). The sale of 50 percent of A's qualifying QOF partnership interest to B requires A to recognize \$90 of eligible gain, the lesser of 50 percent of the remaining \$180 deferred gain (\$90) or the gain that would be recognized on a taxable sale of 50 percent of the interest (\$390). A also recognizes \$300 of gain relating to the appreciation of its interest in Q.

(4) *Example 4: Sale of qualifying QOF partnership interest when value of the QOF interest has decreased—(i) Facts.* The facts are the same as in *Example 3* in paragraph (f)(3) of this section, except that A sells 50 percent of its qualifying QOF partnership interest in Q to B for cash of \$50, and at the time of the sale, the fair market value of Q's qualified opportunity zone business property is \$1,500.

(ii) *Analysis.* Because A held its qualifying QOF partnership interest for at least five years, A's basis at the time of the sale is \$220.

Under section 1400Z-2(b)(2)(A), the sale of 50 percent of A's qualifying QOF partnership interest to B requires A to recognize \$40 of eligible gain, the lesser of \$90 (50 percent of A's remaining deferred gain of \$180) or \$40 (the gain that would be recognized by A on a sale of 50 percent of its QOF interest). A's remaining basis in its qualifying QOF partnership interest is \$110.

(5) *Example 5: Amount includible on December 31, 2026—(i) Facts.* The facts are the same as in *Example 3* in paragraph (f)(3) of this section, except that no sale of QOF interests takes place in 2024. Prior to December 31, 2026, there were no inclusion events, distributions, partner changes, income or loss allocations, or changes in the amount or allocation of debt outstanding.

(ii) *Analysis.* For purposes of calculating the amount includible on December 31, 2026, each of A's basis and B's basis is increased by \$30 to \$230, and C's basis is increased by \$90 to \$690 because they held their qualifying QOF partnership interests for at least seven years. Each of A and B is required to recognize \$170 of eligible gain, and C is required to recognize \$510 of eligible gain.

(iii) *Sale of qualifying QOF partnership interests.* The facts are the same as in this *Example 5* in paragraph (f)(5)(i) of this section, except that, on March 2, 2030, C sells its entire qualifying QOF partnership interest in Q to an unrelated buyer for cash of \$4,200. Assuming an election under section 1400Z-2(c) is made, the basis of C's Q interest is increased to its fair market value immediately before the sale by C. C is treated as purchasing the interest immediately before the sale and the bases of the partnership's assets are increased in the manner they would be if the partnership had an election under section 754 in effect.

(6) *Example 6: Mixed-funds investment—(i) Facts.* On January 1, 2019, A and B form Q, a QOF partnership. A contributes \$200 to Q, \$100 of which is a qualifying investment, and B contributes \$200 to Q in exchange for a qualifying investment. All the cash is used to purchase qualified opportunity zone property. Q has no liabilities. On March 30, 2023, when the values and bases of the qualifying investments remain unchanged, Q distributes \$50 to A.

(ii) *Analysis.* Under paragraph (c)(6)(iv) of this section, A is a mixed-funds partner holding two separate interests, a qualifying investment and a non-qualifying investment. One half of the \$50 distribution is treated under that provision as being made with respect to A's qualifying investment. For the \$25 distribution made with respect to the qualifying investment, A is required to recognize \$25 of eligible gain.

(iii) *Basis adjustments.* Under paragraph (g)(1)(ii)(B) of this section, prior to determining the tax consequences of the distribution, A increases its basis in its qualifying QOF partnership interest by \$25 under section 1400Z-2(b)(2)(B)(ii). The distribution of \$25 results in no gain under section 731. After the distribution, A's basis in its qualifying QOF partnership interest is \$0 (\$25-\$25).

(7) *Example 7: Qualifying section 381 transaction of a QOF corporation—(i) Facts.* X wholly and directly owns Q, a QOF

corporation. On May 31, 2019, X sells a capital asset to an unrelated party and realizes \$500 of capital gain. On October 31, 2019, X contributes \$500 to Q in exchange for a qualifying investment. In 2020, Q merges with and into unrelated Y (with Y surviving) in a transaction that qualifies as a reorganization under section 368(a)(1)(A) (the Merger). X does not receive any boot in the Merger with respect to its qualifying investment in Q. Immediately after the Merger, Y satisfies the requirements for QOF status under section 1400Z-2(d)(1) (see paragraph (c)(10)(i)(B) of this section).

(ii) *Analysis.* The Merger is not an inclusion event for purposes of section 1400Z-2(b)(1) and paragraph (b) of this section. See paragraph (c)(10)(i)(A) of this section. Accordingly, X is not required to include in income in 2020 its \$500 of deferred capital gain as a result of the Merger. For purposes of section 1400Z-2(b)(2)(B) and 1400Z-2(c), X's holding period for its investment in Y is treated as beginning on October 31, 2019. For purposes of section 1400Z-2(d), Y's holding period in its assets includes Q's holding period in its assets, and Q's qualified opportunity zone business property continues to qualify as such. See paragraph (d)(2)(i) of this section.

(iii) *Merger of QOF shareholder.* The facts are the same as in this *Example 7* in paragraph (f)(7)(i) of this section, except that, in 2020, X (rather than Q) merges with and into Y in a section 381 transaction in which Y acquires all of X's qualifying interest in Q, and Y does not qualify as a QOF immediately after the merger. The merger transaction is not an inclusion event for purposes of section 1400Z-2(b)(1) and paragraph (b) of this section. See paragraph (c)(10)(ii) of this section.

(iv) *Receipt of boot.* The facts are the same as in this *Example 7* in paragraph (f)(7)(i) of this section, except that the value of X's qualifying investment immediately before the Merger is \$1,000, X receives \$100 of cash in addition to Y stock in the Merger in exchange for its qualifying investment, and neither Q nor Y has any earnings and profits. X realizes \$1,000 of gain in the Merger. Under paragraphs (c)(10)(i)(C)(1) and (e)(2) of this section, X is required to include \$100 of its deferred capital gain in income in 2020.

(v) *Realization of loss.* The facts are the same as in this *Example 7* in paragraph (f)(7)(iv) of this section, except that the Merger occurs in 2025, the value of X's qualifying investment immediately before the Merger is \$25, and X receives \$10 of boot in the Merger. X realizes \$25 of loss in the Merger. Under paragraphs (c)(10)(i)(C)(1) and (e)(2) of this section, X is required to include \$10 of its deferred capital gain in income in 2020.

(8) *Example 8: Section 355 distribution by a QOF—(i) Facts.* A wholly and directly owns Q, a QOF corporation, which wholly and directly owns Y, a corporation that is a qualified opportunity zone business. On May 31, 2019, A sells a capital asset to an unrelated party and realizes \$500 of capital gain. On October 31, 2019, A contributes \$500 to Q in exchange for a qualifying investment. On June 26, 2025, Q distributes all of the stock of Y to A in a transaction in

which no gain or loss is recognized under section 355 (the Distribution). Immediately after the Distribution, each of Q and Y satisfies the requirements for QOF status (see paragraph (c)(11)(i)(B)(2) of this section).

(ii) *Analysis.* Because each of Q (the distributing corporation) and Y (the controlled corporation) is a QOF immediately after the Distribution, the Distribution is a qualifying section 355 transaction. Thus, the Distribution is not an inclusion event for purposes of section 1400Z-2(b)(1) and paragraph (b) of this section. See paragraph (c)(11)(i)(B) of this section. Accordingly, A is not required to include in income in 2025 any of its \$500 of deferred capital gain as a result of the Distribution. For purposes of section 1400Z-2(b)(2)(B) and 1400Z-2(c), A's holding period for its qualifying investment in Y is treated as beginning on October 31, 2019. See paragraph (d)(2)(i) of this section.

(iii) *Section 355 distribution by a QOF shareholder.* The facts are the same as in this *Example 8* in paragraph (f)(8)(i) of this section, except that A distributes 80 percent of the stock of Q (all of which is a qualifying investment in the hands of A) to A's shareholders in a transaction in which no gain or loss is recognized under section 355. The distribution is an inclusion event for purposes of section 1400Z-2(b)(1) and paragraph (b) of this section, and A is required to include in income \$400 (80 percent of its \$500 of deferred capital gain) as a result of the distribution. See paragraphs (c)(1) and (c)(11)(ii) of this section.

(iv) *Distribution of boot.* The facts are the same as in this *Example 8* in paragraph (f)(8)(i) of this section, except that A receives boot in the Distribution. Under paragraphs (c)(8) and (c)(11)(i)(B)(3) of this section, the receipt of boot in the Distribution is an inclusion event for purposes of section 1400Z-2(b)(1) and paragraph (b) of this section to the extent of gain recognized pursuant to section 301(c)(3).

(v) *Section 355 split-off.* The facts are the same as in this *Example 8* in paragraph (f)(8)(i) of this section, except that Q stock is directly owned by both A and B (each of which has made a qualifying investment in Q), and Q distributes all of the Y stock to B in exchange for B's Q stock in a transaction in which no gain or loss is recognized under section 355. The distribution is a qualifying section 355 transaction and is not an inclusion event for purposes of section 1400Z-2(b)(1) and paragraph (b) of this section. Neither A nor B is required to include its deferred capital gain in income in 2025 as a result of the distribution.

(vi) *Section 355 split-up.* The facts are the same as in this *Example 8* in paragraph (f)(8)(v) of this section, except that Q wholly and directly owns both Y and Z; Q distributes all of the Y stock to A in exchange for A's Q stock and distributes all of the Z stock to B in exchange for B's Q stock in a transaction in which no gain or loss is recognized under section 355; Q then liquidates; and immediately after the Distribution, each of Y and Z satisfies the requirements for QOF status. The distribution is a qualifying section 355 transaction and is not an inclusion event for purposes of section 1400Z-2(b)(1) and

paragraph (b) of this section. Neither A nor B is required to include its deferred capital gain in income in 2025 as a result of the transaction.

(vii) *Section 355 split-off with boot.* The facts are the same as in this *Example 8* in paragraph (f)(8)(v) of this section, except that B also receives boot. Under paragraph (c)(11)(i)(B)(3) of this section, B has an inclusion event, and the amount that gives rise to the inclusion event is the amount of gain under section 356 that is not treated as a dividend under section 356(a)(2).

(9) *Example 9: Recapitalization—(i) Facts.* On May 31, 2019, each of A and B sells a capital asset to an unrelated party and realizes \$500 of capital gain. On October 31, 2019, A contributes \$500 to newly formed Q in exchange for 50 shares of Q non-voting stock (A's qualifying investment) and B contributes \$500 to Q in exchange for 50 shares of Q voting stock (B's qualifying investment). A and B are the sole shareholders of Q. In 2020, when A's qualifying investment is worth \$600, A exchanges all of its Q non-voting stock for \$120 and 40 shares of Q voting stock in a transaction that qualifies as a reorganization under section 368(a)(1)(E).

(ii) *Analysis.* Because A's proportionate interest in Q has decreased in this transaction, the recapitalization is an inclusion event under paragraph (c)(12)(ii) of this section. Thus, A is treated as having reduced its direct tax ownership of its investment in Q to the extent of the reduction in the fair market value of its qualifying QOF stock. The \$120 that A received in the reorganization represents the difference in fair market value between its qualifying investment before and after the reorganization. Under paragraphs (c)(12)(i)(B) and (e)(2) of this section, A is required to include \$120 of its deferred capital gain in income in 2020. Because B's proportionate interest in Q has not decreased, and because B did not receive any property in the recapitalization, B does not have an inclusion event with respect to its qualifying investment in Q. See paragraph (c)(12)(i) of this section. Therefore, B is not required to include any of its deferred gain in income as a result of this transaction.

(10) *Example 10: Debt financed distribution—(i) Facts.* On January 1, 2019, A and B form Q, a QOF partnership, each contributing \$200 that is deferred under the section 1400Z-2(a) election to Q in exchange for a qualifying investment. On November 18, 2022, Q obtains a nonrecourse loan from a bank for \$300. Under section 752, the loan is allocated \$150 to A and \$150 to B. On November 30, 2022, when the values and bases of the investments remain unchanged, Q distributes \$50 to A.

(ii) *Analysis.* A is not required to recognize gain under § 1.1400Z2(b)-1(c) because A's basis in its qualifying investment is \$150 (the original zero basis with respect to the contribution, plus the \$150 debt allocation). The distribution reduces A's basis to \$100.

(11) *Example 11: Debt financed distribution in excess of basis—(i) Facts.* The facts are the same as in *Example 10* in paragraph (f)(10) of this section, except that the loan is entirely allocated to B under

section 752. On November 30, 2024, when the values of the investments remain unchanged, Q distributes \$50 to A.

(ii) *Analysis.* Under § 1.1400Z2(b)-1(c)(6)(iii), A is required to recognize \$30 of eligible gain under section § 1.1400Z2(b)-1(c) because the \$50 distributed to A exceeds A's \$20 basis in its qualifying investment (the original zero basis with respect to its contribution, plus \$20 with regard to section 1400Z-2(b)(2)(B)(iii)).

(12) *Example 12: Aggregate ownership change threshold—(i) Facts.* On May 31, 2019, B, an S corporation, sells a capital asset to an unrelated party for cash and realizes \$500 of capital gain. On July 15, 2019, B makes a deferral election and transfers the \$500 to Q, a QOF partnership in exchange for a qualifying investment. On that date, B has outstanding 100 shares, of which each of individuals D, E, F, and G owns 25 shares. On September 30, 2019, D sells 10 shares of its B stock. On September 30, 2020, E sells 16 shares of its B stock.

(ii) *Analysis.* Under paragraph (c)(7)(iii)(A) of this section, the sales of stock by D and E caused an aggregate change in ownership of B because, the percentage of the stock of B owned directly by D, E, F, and G at the time of B's deferral election decreased by more than 25 percent. Solely for purposes of section 1400Z-2, B's qualifying investment in Q would be treated as disposed of. Consequently, B would have an inclusion event with respect to all of B's remaining deferred gain of \$500, and neither section 1400Z-2(b)(2)(B)(iii) or (iv), nor section 1400Z-2(c), would apply to B's qualifying investment after that date.

(g) *Basis adjustments—(1) Timing of section 1400Z-2(b)(2)(B)(ii) adjustments—(i) In general.* Except as provided in paragraph (g)(1)(ii) of this section, basis adjustments under section 1400Z-2(b)(2)(B)(ii) are made immediately after the amount of gain determined under section 1400Z-2(b)(2)(A) is included in income under section 1400Z-2(b)(1). If the basis adjustment under section 1400Z-2(b)(2)(B)(ii) is being made as a result of an inclusion event, then the basis adjustment is made before determining the other tax consequences of the inclusion event.

(ii) *Specific application to section 301(c)(3) gain, S corporation shareholder gain, or partner gain—(A) General rule.* This paragraph (g)(1)(ii) applies if a QOF makes a distribution to its owner, and if, without regard to any basis adjustment under section 1400Z-2(b)(2)(B)(ii), at least a portion of the distribution would be characterized as gain under section 301(c)(3) or paragraphs (c)(6)(iii) and (c)(7)(ii) of this section with respect to its qualifying investment.

(B) *Ordering rule.* If paragraph (g)(1)(ii) of this section applies, the taxpayer is treated as having an inclusion event to the extent provided

in paragraph (c)(6)(iii) or (c)(7), (8), (9), (10), (11), or (12) of this section, as applicable. Then, the taxpayer increases its basis under section 1400Z–2(b)(2)(B)(ii), before determining the tax consequences of the distribution.

(C) *Example.* The following example illustrates the rules of this paragraph (g)(1)(ii).

(1) *Example 1—(i) Facts.* On May 31, 2019, A sells a capital asset to an unrelated party and realizes \$500 of capital gain. On October 31, 2019, A contributes \$500 to Q, a newly formed QOF corporation, in exchange for all of the outstanding Q common stock and elects to defer the recognition of \$500 of capital gain under section 1400Z–2(a) and § 1.1400Z2(a)–1. In 2020, when Q has \$40 of earnings and profits, Q distributes \$100 to A (the Distribution).

(ii) *Recognition of gain.* Under paragraph (g)(1)(ii)(A) of this section, the Distribution is first evaluated without regard to any basis adjustment under section 1400Z–2(b)(2)(B)(ii). Of the \$100 distribution, \$40 is treated as a dividend and \$60 is treated as gain from the sale or exchange of property under section 301(c)(3), because A's basis in its Q stock is \$0 under section 1400Z–2(b)(2)(B)(i). Under paragraphs (c)(8) and (e)(2) of this section, \$60 of A's gain that was deferred under section 1400Z–2(a) and § 1.1400Z2(a)–1 is recognized in 2020.

(iii) *Basis adjustments.* Under paragraph (g)(1)(ii)(B) of this section, prior to determining the further tax consequences of the Distribution, A increases its basis in its Q stock by \$60 in accordance with section 1400Z–2(b)(2)(B)(ii). As a result, the Distribution is characterized as a dividend of \$40 under section 301(c)(1) and a return of basis of \$60 under section 301(c)(2). Therefore, after the section 301 distribution, A's basis in Q is \$0 (\$60 – \$60).

(2) [Reserved]

(2) *Amount of basis adjustment.* The increases in basis under section 1400Z–2(b)(2)(B)(iii) and (iv) only apply to that portion of the qualifying investment that has not been subject to previous gain inclusion under section 1400Z–2(b)(2)(A).

(3) *Special partnership rules—(i) General rule.* The initial basis under section 1400Z–2(b)(2)(B)(i) of a qualifying investment in a QOF partnership is zero, as adjusted to take into account the contributing partner's share of partnership debt under section 752.

(ii) *Tiered arrangements.* Any basis adjustment described in section 1400Z–2(b)(2)(B)(iii) and (iv) and section 1400Z–2(c) (the basis adjustment rules) shall be treated as an item of income described in section 705(a)(1) and shall be reported in accordance with the applicable forms and instructions. Any amount to which the basis adjustment rules or to which section 1400Z–2(b)(1) applies shall be allocated to the owners

of the QOF, and to the owners of any partnership that directly or indirectly (solely through one or more partnerships) owns such QOF interest, and shall track to such owners' interests, based on their shares of the remaining deferred gain to which such amounts relate.

(4) *Basis adjustments in S corporation stock—(i) S corporation investor in QOF—(A) S corporation.* If an S corporation is an investor in a QOF, the S corporation must adjust the basis of its qualifying investment as set forth in this paragraph (g). The rule in this paragraph (g)(4)(i)(A) does not affect adjustments to the basis of any other asset of the S corporation.

(B) *S corporation shareholder—(1) In general.* The S corporation shareholder's pro-rata share of any recognized capital gain that has been deferred at the S corporation level will be separately stated under section 1366 and will adjust the shareholders' stock basis under section 1367.

(2) *Basis adjustments to qualifying investments.* Any adjustment made to the basis of an S corporation's qualifying investment under section 1400Z–2(b)(2)(B)(iii) or (iv), or section 1400Z–2(c), will not:

(i) Be separately stated under section 1366; or

(ii) Until the date on which an inclusion event with respect to the S corporation's qualifying investment occurs, adjust the shareholders' stock basis under section 1367.

(3) *Basis adjustments resulting from inclusion events.* If the basis adjustment under section 1400Z–2(b)(2)(B)(ii) is being made as a result of an inclusion event, then the basis adjustment is made before determining the other tax consequences of the inclusion event.

(ii) *QOF S corporation—(A) Transferred basis of assets received.* If a QOF S corporation receives an asset in exchange for a qualifying investment, the basis of the asset shall be the same as it would be in the hands of the transferor, increased by the amount of the gain recognized by the transferor on such transfer.

(B) *Basis adjustments resulting from inclusion events.* If the basis adjustment under section 1400Z–2(b)(2)(B)(ii) for the shareholder of the QOF S corporation is being made as a result of an inclusion event, then the basis adjustment is made before determining the other tax consequences of the inclusion event.

(h) *Notifications by partners and partnerships, and shareholders and S corporations—(1) Notification of deferral election.* A partnership that makes a deferral election must notify all

of its partners of the deferral election and state each partner's distributive share of the eligible gain in accordance with applicable forms and instructions. A partner that makes a deferral election must notify the partnership in writing of its deferral election, including the amount of the eligible gain deferred.

(2) *Notification of deferred gain recognition by indirect QOF owner.* If an indirect owner of a QOF partnership or QOF S corporation sells a portion of its partnership interest or S corporation shares in a transaction to which § 1.1400Z2(b)–1(c)(6)(iv) applies, or which is subject to § 1.1400Z2(b)–1(c)(7)(iii), such indirect owner must provide to the QOF owner notification and information sufficient to enable the QOF owner, in a timely manner, to recognize an appropriate amount of deferred gain.

(3) *Notification of section 1400Z–2(c) election by QOF partner or QOF partnership.* A QOF partner must notify the QOF partnership of an election under section 1400Z–2(c) to adjust the basis of the qualifying QOF partnership interest that is disposed of in a taxable transaction. Notification of the section 1400Z–2(c) election, and the adjustments to the basis of the qualifying QOF partnership interest(s) disposed of or to the QOF partnership asset(s) disposed of, is to be made in accordance with applicable forms and instructions.

(4) *S corporations.* Similar rules to those in paragraphs (h)(1) and (3) of this section apply to S corporations as appropriate.

(i) *Applicability dates.* This section applies for taxable years that begin on or after the date of publication in the **Federal Register** of a Treasury decision adopting these proposed rules as final regulations. However, a taxpayer may rely on the proposed rules in this section with respect to taxable years that begin before that date, but only if the taxpayer applies the rules in their entirety and in a consistent manner.

■ **Par. 4.** Section 1.1400Z2(c)–1, as proposed to be added by 83 FR 54279 October 29, 2018, is amended by:

- 1. Revising paragraph (a).
- 2. Redesignating paragraphs (b), (c), and (d) as paragraphs (c), (d), and (f) respectively.
- 3. Adding new paragraph (b).
- 4. Revising newly redesignated paragraph (d) introductory text.
- 5. In newly redesignated paragraph (d)(1)(ii), removing the language “paragraph (b) of this section” and adding in its place “paragraph (c) of this section” and removing the language “paragraph (a) of this section” and

adding in its place “paragraphs (a) and (b) of this section”.

■ 6. Adding paragraph (d)(2).

■ 7. Adding paragraph (e).

■ 8. Revising newly redesignated paragraph (f).

The revisions and additions read as follows:

§ 1.1400Z2(c)–1 Investments held for at least 10 years.

(a) *Scope and definitions*—(1) *Scope*. This section provides rules under section 1400Z–2(c) of the Internal Revenue Code regarding the election to adjust the basis in a qualifying investment in a QOF or certain eligible property held by the QOF. See § 1.1400Z2(b)–1(d) for purposes of determining the holding period of a qualifying investment for purposes of this section.

(2) *Definitions*. The definitions provided in § 1.1400Z2(b)–1(a)(2) apply for purposes of this section.

(b) *Investment to which an election can be made*—(1) *In general*—(i) *Election by taxpayer*. If the taxpayer sells or exchanges a qualifying investment that it has held for at least 10 years, then the taxpayer can make an election described in section 1400Z–2(c) on the sale or exchange of the qualifying investment.

(ii) *Limitation on the 10-year rule*. As required by section 1400Z–2(e)(1)(B) (treatment of investments with mixed funds), section 1400Z–2(c) applies only to the portion of an investment in a QOF with respect to which a proper election to defer gain under section 1400Z–2(a)(1) is in effect. For rules governing the application of section 1400Z–2(c) to the portion of an investment in a QOF for which a loss has been claimed under section 165(g), see § 1.1400Z2(b)–1(c)(14). See also § 1.1400Z2(b)–1(c)(7)(iii) for rules governing the application of section 1400Z–2(c) to the portion of an investment in a QOF held by an S corporation QOF owner that has an aggregate change in ownership within the meaning of § 1.1400Z2(b)–1(c)(7)(iii)(B).

(2) *Special election rules for QOF Partnerships and QOF S Corporations*—

(i) *Dispositions of qualifying QOF partnership interests*. If a QOF partner’s basis in a qualifying QOF partnership interest is adjusted under section 1400Z–2(c), then the basis of the partnership interest is adjusted to an amount equal to the fair market value of the interest, including debt, and immediately prior to the sale or exchange, the basis of the QOF partnership assets are also adjusted, such adjustment is calculated in a manner similar to a section 743(b)

adjustment had the transferor partner purchased its interest in the QOF partnership for cash equal to fair market value immediately prior to the sale or exchange assuming that a valid section 754 election had been in place. This paragraph (b)(2)(i) applies without regard to the amount of deferred gain that was included under section 1400Z–2(b)(1), or the timing of that inclusion.

(ii) *Dispositions of QOF property by QOF partnerships or QOF S corporations*—(A) *Taxpayer election*—(1) *In general*. For purposes of section 1400Z–2(c), if a taxpayer has held a qualifying investment (as determined under § 1.1400Z2(b)–1(c)(6)(iv)) in a QOF partnership or QOF S corporation for at least 10 years, and the QOF partnership or QOF S corporation disposes of qualified opportunity zone property after such 10 year holding period, the taxpayer may make an election to exclude from gross income some or all of the capital gain arising from such disposition reported on Schedule K–1 of the QOF partnership or QOF S corporation and attributable to the qualifying investment. To the extent that the Schedule K–1 of a QOF partnership or QOF S corporation separately states capital gains arising from the sale or exchange of any particular qualified opportunity zone property, the taxpayer may make an election with respect to such separately stated item.

(2) *Section 1231 gains*. An election described in paragraph (b)(2)(ii)(A)(1) of this section may be made only with respect to capital gain net income from section 1231 property for a taxable year to the extent of net gains determined under section 1231(a) reported on Schedule K–1 of a QOF partnership or QOF S corporation.

(B) *Validity of election*. To be valid, the taxpayer must make an election described in paragraph (b)(2)(ii)(A)(1) of this section for the taxable year in which the capital gain from the sale or exchange of QOF property recognized by the QOF partnership or QOF S corporation would be included in the taxpayer’s gross income (without regard to the election set forth in this paragraph (b)(2)(ii)), in accordance with applicable forms and instructions.

(C) *Consequences of election*. If a taxpayer makes a valid election under this paragraph (b)(2)(ii) with respect to some or all of the capital gain reported on Schedule K–1 of a QOF partnership or QOF S corporation, the amount of such capital gain that the taxpayer elects to exclude from gross income is excluded from the taxpayer’s income for purposes of the Internal Revenue Code. Such excluded amount is treated as an

item of income under sections 705(a)(1) or 1366.

* * * * *

(d) * * * The following examples illustrate the principles of paragraphs (a) through (c) of this section.

* * * * *

(2) *Example 2*—(i) *Facts*. In 2019, A and B each contribute \$100 to a QOF partnership for qualifying QOF partnership interests.

(ii) *Sale of qualifying QOF partnership interest*. In 2030 when the QOF assets have a value of \$260 and a bases of \$200, A sells its partnership interest, recognizing \$30 of gain, \$15 of which is attributable to assets described in section 751(c) and (d), and for which sale A makes an election under section 1400Z–2(c) and paragraph (b)(2)(i) of this section. Because A’s election under paragraph (b)(2)(i) of this section is in effect, with regard to the sale, the bases of the assets are treated as adjusted to fair market value immediately before A’s sale and there is no gain recognized by A.

(iii) *Sale of QOF property*. The facts are the same as in this *Example 2* in paragraph (d)(2)(i) of this section, except that the partnership sells qualified opportunity zone property with a value of \$120 and a basis of \$100, recognizing \$20 of gain, allocable \$10 to each partner and A makes an election under section 1400Z–2(c) and paragraph (b)(2)(ii) of this section for the year in which A’s allocable share of the partnership’s recognized gain would be included in A’s gross income. Because A’s election under paragraph (b)(2)(ii) of this section is in effect, A will exclude the \$10 allocable share of the partnership’s \$20 of recognized gain.

(e) *Capital gain dividends paid by a QOF REIT that some shareholders may be able to elect to receive tax free under section 1400Z–2(c)*—(1) *Eligibility*. For purposes of paragraph (b) of this section, if a shareholder of a QOF REIT receives a capital gain dividend identified with a date, as defined in paragraph (e)(2) of this section, then, to the extent that the shareholder’s shares in the QOF REIT paying the capital gain dividend are a qualifying investment in the QOF REIT—

(i) The shareholder may treat the capital gain dividend, or part thereof, as gain from the sale or exchange of a qualifying investment on the date that the QOF REIT identified with the dividend; and

(ii) If, on the date identified, the shareholder had held that qualifying investment in the QOF REIT for at least 10 years, then the shareholder may apply a zero percent tax rate to that capital gain dividend, or part thereof.

(2) *Definition of capital gain dividend identified with a date*. A *capital gain dividend identified with a date* means an amount of a capital gain dividend, as defined in section 857(b)(3)(B), or part thereof, and a date that the QOF REIT designates in a notice provided to the

shareholder not later than one week after the QOF REIT designates the capital gain dividend pursuant to section 857(b)(3)(B). The notice must be mailed to the shareholder unless the shareholder has provided the QOF REIT with an email address to be used for this purpose. In the manner and at the time determined by the Commissioner, the QOF REIT must provide the Commissioner all data that the Commissioner specifies with respect to the amounts of capital gain dividends and the dates designated by the QOF REIT for each shareholder.

(3) *General limitations on the amounts of capital gain with which a date may be identified*—(i) *No identification in the absence of any capital gains with respect to qualified opportunity zone property.* If, during its taxable year, the QOF REIT did not realize long-term capital gain on any sale or exchange of qualified opportunity zone property, then no date may be identified with any capital gain dividends, or parts thereof, with respect to that year.

(ii) *Proportionality.* Under section 857(g)(2), designations of capital gain dividends identified with a date must be proportional for all dividends paid with respect to the taxable year. Greater than *de minimis* violation of proportionality invalidates all of the purported identifications for a taxable year.

(iii) *Undistributed capital gains.* If section 857(b)(3)(C)(i) requires a shareholder of a QOF REIT to include a designated amount in the shareholder's long-term capital gain for a taxable year, then inclusion of this amount in this manner is treated as receipt of a capital gain for purposes of this paragraph (e) and may be identified with a date.

(iv) *Gross gains.* The amount determined under paragraph (e)(4) of this section is determined without regard to any losses that may have been realized on other sales or exchanges of qualified opportunity zone property. The losses do, however, limit the total amount of capital gain dividends that may be designated under section 857(b)(3).

(4) *Determination of the amount of capital gain with which a date may be identified.* A QOF REIT may choose to identify the date for an amount of capital gain in one of the following manners:

(i) *Simplified determination.* If, during its taxable year, the QOF REIT realizes long-term capital gain on one or more sales or exchanges of qualified opportunity zone property, then the QOF REIT may identify the first day of that taxable year as the date identified with each designated amount with

respect to the capital gain dividends for that taxable year. A designated identification is invalid in its entirety if the amount of gains that the QOF REIT identifies with that date exceeds the aggregate long-term capital gains realized on those sales or exchanges for that taxable year.

(ii) *Sale date determination*—(A) *In general.* If, during its taxable year, the QOF REIT realizes long-term capital gain on one or more sales or exchanges of qualified opportunity zone property, then the QOF REIT may identify capital gain dividends, or a part thereof, with the latest date on which there was such a realization. The amount of capital gain dividends so identified must not exceed the aggregate long-term capital gains realized on that date from sales or exchanges of qualified opportunity zone property. A designated identification is invalid in its entirety if the amount of gains that the QOF REIT identifies with that date violates the preceding sentence.

(B) *Iterative application.* The process described in paragraph (e)(4)(ii) of this section is applied iteratively to increasingly earlier transaction dates (from latest to earliest) until all capital gain dividends are identified with dates or there are no earlier dates in the taxable year on which the QOF REIT realized long-term capital gains with respect to a sale or exchange of qualified opportunity zone property, whichever comes first.

(f) *Applicability date.* This section applies to taxable years of a taxpayer, QOF Partnership, QOF S corporation, or QOF REIT, as appropriate, that end on or after the date of publication in the **Federal Register** of a Treasury decision adopting these proposed rules as final regulations.

■ **Par. 5.** Section 1.1400Z2(d)-1, as proposed to be added by 83 FR 54279, October 29, 2018, is amended by:

- 1. Revising paragraphs (b) and (c)(4) through (7).
- 2. Revising the heading of paragraph (c)(8).
- 3. In paragraph (c)(8)(i), removing “paragraph (c)(4)(ii) of this section” and adding in its place “this paragraph (c)(8)(i)”.
- 4. Adding paragraphs (c)(8)(ii)(B) and (c)(9).
- 5. Revising paragraph (d)(2)(i)(A) through (C) and adding paragraphs (d)(2)(i)(D) and (E).
- 6. Redesignating paragraph (d)(2)(iii) as (d)(2)(iv) and revising newly redesignated paragraph (d)(2)(iv).
- 7. Redesignating paragraphs (d)(2)(ii) as (d)(2)(iii) and revising newly redesignated paragraph (d)(2)(iii).
- 8. Adding new paragraph (d)(2)(ii).

■ 9. Revising paragraphs (d)(3)(ii)(A) through (C) and (d)(4)(ii) and the heading of paragraph (d)(5).

■ 10. Adding a sentence at the end of paragraph (d)(5)(i) and adding paragraphs (d)(5)(i)(A) through (E).

■ 11. Adding a sentence at the end of paragraph (d)(5)(ii)(A).

■ 12. Revising paragraphs (d)(5)(ii)(B), (d)(5)(iv) introductory text, and (d)(5)(iv)(A) and (C) and adding paragraphs (d)(5)(iv)(D) and (E).

■ 13. Redesignating paragraph (d)(5)(viii) as (d)(5)(ix) and adding a new paragraph (d)(5)(viii).

■ 14. Adding a sentence at the end of paragraph (f).

The revisions and additions read as follows:

§ 1.1400Z2(d)-1 Qualified Opportunity Funds.

* * * * *

(b) *Valuation of assets for purposes of the 90-percent asset test*—(1) *In general.* For purposes of the 90-percent asset test in section 1400Z-2(d)(1), on an annual basis, a QOF may value its assets using the applicable financial statement valuation method set forth in paragraph (b)(2) of this section, if the QOF has an applicable financial statement within the meaning of § 1.475(a)-4(h), or the alternative valuation method set forth in paragraph (b)(3) of this section. During each taxable year, a QOF must apply consistently the valuation method that it selects under this paragraph (b)(1) to all assets valued with respect to the taxable year.

(2) *Applicable financial statement valuation method*—(i) *In general.* Under the applicable financial statement valuation method set forth in this paragraph (b)(2), the value of each asset that is owned or leased by the QOF is the value of that asset as reported on the QOF's applicable financial statement for the relevant reporting period.

(ii) *Requirement for selection of method.* A QOF may select the applicable financial statement valuation method set forth in this paragraph (b)(2) to value an asset leased by the QOF only if the applicable financial statement of the QOF is prepared according to U.S. generally accepted accounting principles (GAAP) and requires an assignment of value to the lease of the asset.

(3) *Alternative valuation method*—(i) *In general.* Under the alternative valuation method set forth in this paragraph (b)(3), the value of the assets owned by a QOF is calculated under paragraph (b)(3)(ii) of this section, and the value of the assets leased by a QOF is calculated under paragraph (b)(3)(iii) of this section.

(ii) *Assets that are owned by a QOF.* The value of each asset that is owned by a QOF is the QOF's unadjusted cost basis of the asset under section 1012.

(iii) *Assets that are leased by a QOF—*
(A) *In general.* The value of each asset that is leased by a QOF is equal to the present value of the leased asset as defined in paragraph (b)(3)(iii)(C) of this section.

(B) *Discount rate.* For purposes of calculating present value under paragraph (b)(3)(iii) of this section, the discount rate is the applicable Federal rate under section 1274(d)(1), determined by substituting the term "lease" for "debt instrument."

(C) *Present value.* For purposes of paragraph (b)(3)(iii) of this section, present value of a leased asset—

(1) Is equal to the sum of the present values of each payment under the lease for the asset;

(2) Is calculated at the time the QOF enters into the lease for the asset; and

(3) Once calculated, is used as the value for the asset by the QOF for all testing dates for purposes of the 90-percent asset test.

(D) *Term of a lease.* For purposes of paragraph (b)(3)(iii) of this section, the term of a lease includes periods during which the lessee may extend the lease at a pre-defined rent.

(4) *Option to disregard recently contributed property.* A QOF may choose to determine compliance with the 90-percent asset test by excluding from both the numerator and denominator of the test any property that satisfies all the criteria in paragraphs (b)(4)(i) through (iii) of this section. A QOF need not be consistent from one semi-annual test to another in whether it avails itself of this option.

(i) As the case may be, the amount of the property was received by the QOF partnership as a contribution or by the QOF corporation solely in exchange for stock of the corporation;

(ii) This contribution or exchange occurred not more than 6 months before the test from which it is being excluded; and

(iii) Between the date of that contribution or exchange and the date of the asset test, the amount was held continuously in cash, cash equivalents, or debt instruments with a term of 18 months or less.

(c) * * *

(4) *Qualified opportunity zone business property of a QOF—*(i) *In general.* Tangible property used in a trade or business of a QOF is qualified opportunity zone business property for purposes of paragraph (c)(1)(iii) of this section if the requirements of

paragraphs (c)(4)(i)(A) through (E) of this section, as applicable, are satisfied.

(A) In the case of property that the QOF owns, the property was acquired by the QOF after December 31, 2017, by purchase as defined by section 179(d)(2) from a person that is not a related person within the meaning of section 1400Z-2(e)(2).

(B) In the case of property that the QOF leases—

(1) *Qualifying acquisition of possession.* The property was acquired by the QOF under a lease entered into after December 31, 2017;

(2) *Arms-length terms.* The terms of the lease were market rate (that is, the terms of the lease reflect common, arms-length market practice in the locale that includes the qualified opportunity zone as determined under section 482 and all section 482 regulations in this chapter) at the time that the lease was entered into; and

(3) *Additional requirements for leases from a related person.* If the lessee and the lessor are related parties, paragraph (c)(4)(i)(B)(4) and (5) of this section must be satisfied.

(4) *Prepayments of not more than one year.* The lessee at no time makes any prepayment in connection with the lease relating to a period of use of the property that exceeds 12 months.

(5) *Purchase of other QOZBP.* If the original use of leased tangible personal property in a qualified opportunity zone (within the meaning of in paragraph (c)(4)(i)(B)(6) of this section) does not commence with the lessee, the property is not qualified opportunity zone business property unless, during the relevant testing period (as defined in paragraph (c)(4)(i)(B)(7) of this section), the lessee becomes the owner of tangible property that is qualified opportunity zone business property having a value not less than the value of that leased tangible personal property. There must be substantial overlap of the zone(s) in which the owner of the property so acquired uses it and the zone(s) in which that person uses the leased property.

(6) *Original use of leased tangible property.* For purposes of paragraph (c)(4)(i)(B)(5) of this section, the original use of leased tangible property in a qualified opportunity zone commences on the date any person first places the property in service in the qualified opportunity zone for purposes of depreciation (or first uses it in a manner that would allow depreciation or amortization if that person were the property's owner). For purposes of this paragraph (c)(4)(i)(B)(6), if property has been unused or vacant for an uninterrupted period of at least 5 years,

original use in the zone commences on the date after that period when any person first uses or places the property in service in the qualified opportunity zone within the meaning of the preceding sentence. Used tangible property satisfies the original use requirement if the property has not been previously so used or placed in service in the qualified opportunity zone.

(7) *Relevant testing period.* For purposes of paragraph (c)(4)(i)(B)(5) of this section, the *relevant testing period* is the period that begins on the date that the lessee receives possession under the lease of the leased tangible personal property and ends on the earlier of—the date 30-months after the date the lessee receives possession of the property under the lease; or the last day of the term of the lease (within the meaning of paragraph (b)(3)(iii)(D) of this section.

(8) *Valuation of owned or leased property.* For purposes of paragraph (c)(4)(i)(B)(5) of this section, the value of owned or leased property is required to be determined in accordance with the valuation methodologies provided in paragraph (b) of this section, and such value in the case of leased tangible personal property is to be determined on the date the lessee receives possession of the property under the lease.

(C) In the case of tangible property owned by the QOF, the original use of the owned tangible property in the qualified opportunity zone, within the meaning of paragraph (c)(7) of this section, commences with the QOF, or the QOF substantially improves the owned tangible property within the meaning of paragraph (c)(8) of this section (which defines substantial improvement in this context).

(D) In the case of tangible property that is owned or leased by the QOF, during substantially all of the QOF's holding period for the tangible property, substantially all of the use of the tangible property was in a qualified opportunity zone.

(E) In the case of real property (other than unimproved land) that is leased by a QOF, if, at the time the lease is entered into, there was a plan, intent, or expectation for the real property to be purchased by the QOF for an amount of consideration other than the fair market value of the real property determined at the time of the purchase without regard to any prior lease payments, the leased real property is not qualified opportunity zone business property at any time.

(ii) *Trade or business of a QOF.* The term *trade or business* means a trade or business within the meaning of section 162.

(iii) *Safe harbor for inventory in transit.* In determining whether tangible property is used in a qualified opportunity zone for purposes of section 1400Z-2(d)(2)(D)(i)(III), and of paragraphs (c)(4)(i)(D), (c)(6), (d)(2)(i)(D), and (d)(2)(iv) of this section, inventory (including raw materials) of a trade or business does not fail to be used in a qualified opportunity zone solely because the inventory is in transit—

(A) From a vendor to a facility of the trade or business that is in a qualified opportunity zone; or

(B) From a facility of the trade or business that is in a qualified opportunity zone to customers of the trade or business that are not located in a qualified opportunity zone.

(5) *Substantially all of a QOF's holding period for property described in paragraphs (c)(2) and (3) and (c)(4)(i)(D) of this section.* For purposes of determining whether the holding period requirements in paragraphs (c)(2) and (3) and (c)(4)(i)(D) of this section are satisfied, the term *substantially all* means at least 90 percent.

(6) *Substantially all of the usage of tangible property by a QOF in a qualified opportunity zone.* A trade or business of an entity is treated as satisfying the *substantially all* requirement of paragraph (c)(4)(i)(D) of this section if at least 70 percent of the use of the tangible property is in a qualified opportunity zone.

(7) *Original use of tangible property acquired by purchase—(i) In general.* For purposes of paragraph (c)(4)(i)(C) of this section, the original use of tangible property in a qualified opportunity zone commences on the date any person first places the property in service in the qualified opportunity zone for purposes of depreciation or amortization (or first uses it in a manner that would allow depreciation or amortization if that person were the property's owner). For purposes of this paragraph (c)(7), if property has been unused or vacant for an uninterrupted period of at least 5 years, original use in the qualified opportunity zone commences on the date after that period when any person first so uses or places the property in service in the qualified opportunity zone. Used tangible property satisfies the original use requirement if the property has not been previously so used or placed in service in the qualified opportunity zone. If the tangible property had been so used or placed in service in the qualified opportunity zone before it is acquired by purchase, it must be substantially improved in order to satisfy the requirements of section 1400Z-2(d)(2)(D)(i)(II).

(ii) *Lessee improvements to leased property.* Improvements made by a lessee to leased property satisfy the original use requirement in section 1400Z-2(d)(2)(D)(i)(II) as purchased property for the amount of the unadjusted cost basis under section 1012 of such improvements.

(8) *Substantial improvement of tangible property acquired by purchase— * * **

(ii) * * *

(B) *Unimproved land.* Unimproved land that is within a qualified opportunity zone and acquired by purchase in accordance with section 1400Z-2(d)(2)(D)(i)(I) is not required to be substantially improved within the meaning of section 1400Z-2(d)(2)(D)(i)(II) and (d)(2)(D)(ii).

(9) *Substantially all of tangible property owned or leased by a QOF—(i) Tangible property owned by a QOF.* Whether a QOF has satisfied the “substantially all” threshold set forth in paragraph (c)(6) of this section is to be determined by a fraction—

(A) The numerator of which is the total value of all qualified opportunity zone business property owned or leased by the QOF that meets the requirements in paragraph (c)(4)(i) of this section; and

(B) The denominator of which is the total value of all tangible property owned or leased by the QOF, whether located inside or outside of a qualified opportunity zone.

(d) * * *

(2) * * *

(i) * * *

(A) In the case of tangible property that the entity owns, the tangible property was acquired by the entity after December 31, 2017, by purchase as defined by section 179(d)(2) from a person who is not a related person within the meaning of section 1400Z-2(e)(2).

(B) In the case of tangible property that the entity leases—

(1) *Qualifying acquisition of possession.* The property was acquired by the entity under a lease entered into after December 31, 2017;

(2) *Arms-length terms.* The terms of the lease are market rate (that is, the terms of the lease reflect common, arms-length market practice in the locale that includes the qualified opportunity zone as determined under section 482 and all section 482 regulations in this chapter) at the time that the lease was entered into; and

(3) *Additional requirements for leases from a related person.* If the lessee and the lessor are related parties, paragraphs (d)(2)(i)(B)(4) and (5) of this section must be satisfied.

(4) *Prepayments of not more than one year.* The lessee at no time makes any prepayment in connection with the lease relating to a period of use of the property that exceeds 12 months.

(5) *Purchase of other QOZBP.* If the original use of leased tangible personal property in a qualified opportunity zone (within the meaning of in paragraph (d)(2)(i)(B)(6) of this section) does not commence with the lessee, the property is not qualified opportunity zone business property unless, during the relevant testing period (as defined in paragraph (d)(2)(i)(B)(7) of this section), the lessee becomes the owner of tangible property that is qualified opportunity zone business property having a value not less than the value of that leased tangible personal property. There must be substantial overlap of the zone(s) in which the owner of the property so acquired uses it and the zone(s) in which that person uses the leased property.

(6) *Original use of leased tangible property.* For purposes of paragraph (d)(2)(i)(B)(5) of this section, the original use of leased tangible property in a qualified opportunity zone commences on the date any person first places the property in service in the qualified opportunity zone for purposes of depreciation (or first uses it in a manner that would allow depreciation or amortization if that person were the property's owner). For purposes of this paragraph (d)(2)(i)(B)(6), if property has been unused or vacant for an uninterrupted period of at least 5 years, original use in the qualified opportunity zone commences on the date after that period when any person first uses or places the property in service in the qualified opportunity zone within the meaning of the preceding sentence. Used tangible property satisfies the original use requirement if the property has not been previously so used or placed in service in the qualified opportunity zone.

(7) *Relevant testing period.* For purposes of paragraph (d)(2)(i)(B)(5) of this section, the *relevant testing period* is the period that begins on the date that the lessee receives possession under the lease of the leased tangible personal property and ends on the earlier of—the date 30-months after the date the lessee receives possession of the property under the lease; or the last day of the term of the lease (within the meaning of paragraph (b)(3)(iii)(D) of this section).

(8) *Valuation of owned or leased property.* For purposes of paragraph (d)(2)(i)(B)(5) of this section, the value of owned or leased property is required to be determined in accordance with the valuation methodologies provided in

paragraph (b) of this section, and such value in the case of leased tangible personal property is to be determined on the date the lessee receives possession of the property under the lease.

(C) In the case of tangible property owned by the entity, the original use of the owned tangible property in the qualified opportunity zone, within the meaning of paragraph (c)(7) of this section, commences with the entity, or the entity substantially improves the owned tangible property within the meaning of paragraph (d)(4) of this section (which defines substantial improvement in this context).

(D) In the case of tangible property that is owned or leased by the entity, during substantially all of the entity's holding period for the tangible property, substantially all of the use of the tangible property was in a qualified opportunity zone.

(E) In the case of real property (other than unimproved land) that is leased by the entity, if, at the time the lease is entered into, there was a plan, intent, or expectation for the real property to be purchased by the entity for an amount of consideration other than the fair market value of the real property determined at the time of the purchase without regard to any prior lease payments, the leased real property is not qualified opportunity zone business property at any time.

(ii) *Trade or business of an entity.* The term *trade or business* means a trade or business within the meaning of section 162.

(iii) *Substantially all of a qualified opportunity zone business's holding period for property described in paragraph (d)(2)(i)(D) of this section.* For purposes of the holding period requirement in paragraph (d)(2)(i)(D) of this section, the term *substantially all* means at least 90 percent.

(iv) *Substantially all of the use of tangible property by a qualified opportunity zone business in a qualified opportunity zone.* The substantially all of the use requirement of paragraph (d)(2)(i)(D) of this section is satisfied if at least 70 percent of the use of the tangible property is in a qualified opportunity zone.

(3) * * *

(ii) * * * (A) *In general.* Whether a trade or business of the entity satisfies the 70-percent "substantially all" threshold set forth in paragraph (d)(3)(i) of this section is to be determined by a fraction—

(1) The numerator of which is the total value of all qualified opportunity zone business property owned or leased by the qualified opportunity zone

business that meets the requirements in paragraph (d)(2)(i) of this section; and

(2) The denominator of which is the total value of all tangible property owned or leased by the qualified opportunity zone business, whether located inside or outside of a qualified opportunity zone.

(B) *Value of tangible property owned or leased by a qualified opportunity zone business—(1) In general.* For purposes of the fraction set forth in paragraph (d)(3)(ii)(A) of this section, on an annual basis, the owned or leased tangible property of a qualified opportunity zone business may be valued using the applicable financial statement valuation method set forth in paragraph (d)(3)(ii)(B)(2) of this section, if the qualified opportunity zone business has an applicable financial statement within the meaning of § 1.475(a)–4(h), or the alternative valuation method set forth in paragraph (d)(3)(ii)(B)(3) of this section. During each taxable year, the valuation method selected under this paragraph (d)(3)(ii)(B)(1) must be applied consistently to all tangible property valued with respect to the taxable year.

(2) *Applicable financial statement valuation method—(i) In general.* Under the applicable financial statement valuation method set forth in this paragraph (d)(3)(ii)(B)(2), the value of tangible property of the qualified opportunity zone business, whether owned or leased, is the value of that property as reported, or as otherwise would be reported, on the qualified opportunity zone business's applicable financial statement for the relevant reporting period.

(ii) *Requirement for selection of method.* A qualified opportunity zone business may select the applicable financial statement valuation method set forth in this paragraph (d)(3)(ii)(B)(2) to value tangible property leased by the qualified opportunity zone business only if the applicable financial statement of the qualified opportunity zone business requires, or would otherwise require, an assignment of value to the lease of the tangible property.

(3) *Alternative valuation method—(i) In general.* Under the alternative valuation method set forth in this paragraph (d)(3)(ii)(B)(3), the value of tangible property that is owned by the qualified opportunity zone business is calculated under paragraph (d)(3)(ii)(B)(3)(ii) of this section, and the value of tangible property that is leased by the qualified opportunity zone business is calculated under paragraph (d)(3)(ii)(B)(4) of this section.

(ii) *Tangible property owned by a qualified opportunity zone business.* The value of tangible property that is owned by the qualified opportunity zone business is the unadjusted cost basis of the property under section 1012 in the hands of the qualified opportunity zone business for each testing date of a QOF during the year.

(4) *Tangible property leased by a qualified opportunity zone business—(i) In general.* For purposes of paragraph (d)(3)(ii)(B)(3) of this section, the value of tangible property that is leased by the qualified opportunity zone business is equal to the present value of the leased tangible property as defined in paragraph (d)(3)(ii)(B)(5) of this section.

(ii) *Discount rate.* For purposes of calculating present value under paragraph (d)(3)(ii)(B)(4) of this section, the discount rate is the applicable Federal rate under section 1274(d)(1), determined by substituting the term "lease" for "debt instrument."

(5) *Present value.* For purposes of paragraph (d)(3)(ii)(B)(4), present value of leased tangible property

(i) Is equal to the sum of the present values of each payment under the lease for such tangible property;

(ii) Is calculated at the time the qualified opportunity zone business enters into the lease for such leased tangible property; and

(iii) Once calculated, is used as the value for such asset by the qualified opportunity zone business for all testing dates for purposes of the 90-percent asset test.

(6) *Term of a lease.* For purposes of paragraph (d)(3)(ii)(B)(4) of this section, the term of a lease includes periods during which the lessee may extend the lease at a pre-defined rent.

(C) *Five-Percent Zone Taxpayer.* If a taxpayer both holds an equity interest in the entity and has self-certified as a QOF, then that taxpayer may value the entity's assets using the same methodology under paragraph (b) of this section that the taxpayer uses for determining its own compliance with the 90-percent asset requirement of section 1400Z–2(d)(1) (Compliance Methodology), provided that no other equity holder in the entity is a Five-Percent Zone Taxpayer. If two or more taxpayers that have self-certified as QOFs hold equity interests in the entity and at least one of them is a Five-Percent Zone Taxpayer, then the values of the entity's assets may be calculated using the Compliance Methodology that both is used by a Five-Percent Zone Taxpayer and that produces the highest percentage of qualified opportunity zone business property for the entity. A *Five-Percent Zone Taxpayer* is a

taxpayer that has self-certified as a QOF and that holds stock in the entity (if it is a corporation) representing at least 5 percent in voting rights and value or holds an interest of at least 5 percent in the profits and capital of the entity (if it is a partnership).

* * * * *

(4) * * *

(ii) *Special rules for land and improvements on land*—(A) *Buildings located in the qualified opportunity zone.* If a qualified opportunity zone business purchases a building located on land wholly within a QOZ, under section 1400Z-2(d)(2)(D)(ii) a substantial improvement to the purchased tangible property is measured in relation to the qualified opportunity zone business's additions to the adjusted basis of the building. Under section 1400Z-2(d), measuring a substantial improvement to the building by additions to the qualified opportunity zone business's adjusted basis of the building does not require the qualified opportunity zone business to separately substantially improve the land upon which the building is located.

(B) *Unimproved land.* Unimproved land that is within a qualified opportunity zone and acquired by purchase in accordance with section 1400Z-2(d)(2)(D)(i)(I) is not required to be substantially improved within the meaning of section 1400Z-2(d)(2)(D)(i)(II) and (d)(2)(D)(ii).

(5) *Operation of section 1397C requirements adopted by reference*—(i) * * * A trade or business meets the 50-percent gross income requirement in the preceding sentence if the trade or business satisfies any one of the four criteria described in paragraph (d)(5)(i)(A), (B), (C), or (D) of this section, or any criteria identified in published guidance issued by the IRS under § 601.601(d)(2) of this chapter.

(A) *Services performed in qualified opportunity zone based on hours.* At least 50 percent of the services performed for the trade or business are performed in the qualified opportunity zone, determined by a fraction—

(1) The numerator of which is the total number of hours performed by employees and independent contractors, and employees of independent contractors, for services performed in a qualified opportunity zone during the taxable year; and

(2) The denominator of which is the total number of hours performed by employees and independent contractors, and employees of independent contractors, for services performed during the taxable year.

(B) *Services performed in qualified opportunity zone based on amounts paid for services.* At least 50 percent of the services performed for the trade or business are performed in the qualified opportunity zone, determined by a fraction—

(1) The numerator of which is the total amount paid by the entity for services performed in a qualified opportunity zone during the taxable year, whether by employees, independent contractors, or employees of independent contractors; and

(2) The denominator of which is the total amount paid by the entity for services performed during the taxable year, whether by employees, independent contractors, or employees of independent contractors.

(C) *Necessary tangible property and business functions.* The tangible property of the trade or business located in a qualified opportunity zone and the management or operational functions performed in the qualified opportunity zone are each necessary for the generation of at least 50 percent of the gross income of the trade or business.

(D) *Facts and circumstances.* Based on all the facts and circumstances, at least 50 percent of the gross income of a qualified opportunity zone business is derived from the active conduct of a trade or business in the qualified opportunity zone.

(E) *Examples.* The following examples illustrate the principles of paragraphs (d)(5)(i)(C) and (D) of this section.

(1) *Example 1.* A landscaping business has its headquarters in a qualified opportunity zone, its officers and employees manage the daily operations of the business (within and without the qualified opportunity zone) from its headquarters, and all its equipment and supplies are stored in the headquarters facilities. The activities occurring and the storage of equipment and supplies in the qualified opportunity zone are, taken together, a material factor in the generation of the income of the business.

(2) *Example 2.* A trade or business is formed or organized under the laws of the jurisdiction within which a qualified opportunity zone is located, and the business has a PO Box located in the qualified opportunity zone. The mail received at that PO Box is fundamental to the income of the trade or business, but there is no other basis for concluding that the income of the trade or business is derived from activities in the qualified opportunity zone. The mere location of the PO Box is not a material factor in the generation of gross income by the trade or business.

(3) *Example 3.* In 2019, Taxpayer X realized \$w million of capital gains and within the 180-day period invested \$w million in QOF Y, a qualified opportunity fund. QOF Y immediately acquired from partnership P a partnership interest in P,

solely in exchange for \$w million of cash. P is a real estate developer that has written plans to acquire land in a qualified opportunity zone on which it plans to construct a commercial building for lease to other trades or businesses. In 2023, P's commercial building is placed in service and is fully leased up to other trades or businesses. For the 2023 taxable year, because at least 50 percent of P's gross income is derived from P's rental of its tangible property in the qualified opportunity zone. Thus, under P's facts and circumstances, P satisfies the gross income test under section 1397C(b)(2).

(ii) *Use of intangible property requirement*—(A) * * * For purposes of section 1400Z-2(d)(3)(ii) and the preceding sentence, the term *substantial portion* means at least 40 percent.

(B) *Active conduct of a trade or business*—(1) [Reserved]

(2) *Operating real property.* Solely for the purposes of section 1400Z-2(d)(3)(A), the ownership and operation (including leasing) of real property is the active conduct of a trade or business. However, merely entering into a triple-net-lease with respect to real property owned by a taxpayer is not the active conduct of a trade or business by such taxpayer.

(3) *Trade or business defined.* The term *trade or business* means a trade or business within the meaning of section 162.

* * * * *

(iv) *Safe harbor for reasonable amount of working capital.* Solely for purposes of applying section 1397C(e)(1) to the definition of a qualified opportunity zone business under section 1400Z-2(d)(3), working capital assets are treated as reasonable in amount for purposes of sections 1397C(b)(2) and 1400Z-2(d)(3)(A)(ii), if all of the requirements in paragraphs (d)(5)(iv)(A) through (C) of this section are satisfied.

(A) *Designated in writing.* These amounts are designated in writing for the development of a trade or business in a qualified opportunity zone (as defined in section 1400Z-1(a)), including when appropriate the acquisition, construction, and/or substantial improvement of tangible property in such a zone.

* * * * *

(C) *Property consumption consistent.* The working capital assets are actually used in a manner that is substantially consistent with paragraphs (d)(5)(iv)(A) and (B) of this section. If consumption of the working capital assets is delayed by waiting for governmental action the application for which is complete, that delay does not cause a failure of this paragraph (d)(5)(iv)(C).

(D) *Ability of a single business to benefit from more than a single application of the safe harbor.* A business may benefit from multiple overlapping or sequential applications of the working capital safe harbor, provided that each application independently satisfies all of the requirements in paragraphs (d)(5)(iv)(A) through (C) of this section.

(E) *Examples.* The following examples illustrate the rules of paragraph (d)(5)(iv) of this section.

(1) *Example 1: General application of working capital safe harbor—(i) Facts.* QOF F creates a business entity E to open a fast-food restaurant and acquires almost all of the equity of E in exchange for cash. E has a written plan and a 20-month schedule for the use of this cash to establish the restaurant. Among the planned uses for the cash are identification of favorable locations in the qualified opportunity zone, leasing a building suitable for such a restaurant, outfitting the building with appropriate equipment and furniture (both owned and leased), necessary security deposits, obtaining a franchise and local permits, and the hiring and training of kitchen and wait staff. Not-yet-disbursed amounts were held in assets described in section 1397C(e)(1), and these assets were eventually expended in a manner consistent with the plan and schedule.

(ii) *Analysis.* E's use of the cash qualifies for the working capital safe harbor described in paragraph (d)(5)(iv) of this section.

(2) *Example 2: Multiple applications of working capital safe harbor—(i) Facts.* QOF G creates a business entity H to start a new technology company and acquires equity of H in exchange for cash on Date 1. In addition to H's rapid deployment of capital received from other equity investors, H writes a plan with a 30-month schedule for the use of the Date 1 cash. The plan describes use of the cash to research and develop a new technology (Technology), including paying salaries for engineers and other scientists to conduct the research, purchasing, and leasing equipment to be used in research and furnishing office and laboratory space. Approximately a year-and-a-half after Date 1, on Date 2, G acquires additional equity in H for cash, and H writes a second plan. This new plan has a 25-month schedule for the development of a new application of existing software (Application), to be marketed to government agencies. Among the planned uses for the cash received on Date 2 are paying development costs, including salaries for software engineers, other employees, and third-party consultants to assist in developing and marketing the new application to the anticipated customers. Not-yet-disbursed amounts that were scheduled for development of the Technology and the Application were held in assets described in section 1397C(e)(1), and these assets were eventually expended in a manner substantially consistent with the plans and schedules for both the Technology and the Application.

(ii) *Analysis.* H's use of both the cash received on Date 1 and the cash received on

Date 2 qualifies for the working capital safe harbor described in paragraph (d)(5)(iv) of this section.

* * * * *

(viii) *Real property straddling a qualified opportunity zone.* For purposes of satisfying the requirements in this paragraph (d)(5), when it is necessary to determine whether a qualified opportunity zone is the location of services, tangible property, or business functions, section 1397C(f) applies (substituting "qualified opportunity zone" for "empowerment zone"). If the amount of real property based on square footage located within the qualified opportunity zone is substantial as compared to the amount of real property based on square footage outside of the qualified opportunity zone, and the real property outside of the qualified opportunity zone is contiguous to part or all of the real property located inside the qualified opportunity zone, then all of the property is deemed to be located within a qualified opportunity zone.

* * * * *

(f) *** Notwithstanding the preceding sentence, a QOF may not rely on the proposed rules in paragraphs (c)(8)(ii)(B) and (d)(4)(ii)(B) of this section (which concern the qualification of land as QOZBP) if the land is unimproved or minimally improved and the QOF or the QOZB purchases the land with an expectation, an intention, or a view not to improve the land by more than an insubstantial amount within 30 months after the date of purchase.

■ **Par. 6.** Section 1.1400Z2(f)–1 is added to read as follows:

§ 1.1400Z2(f)–1 Failure of qualified opportunity fund to maintain investment standard.

(a) *In general.* Except as provided by § 1.1400Z2(d)–1(a)(2)(ii) with respect to a taxpayer's first taxable year as a QOF, if a QOF fails to satisfy the 90-percent asset test in section 1400Z–2(d)(1), then the fund must pay the statutory penalty set forth in section 1400Z–2(f) for each month it fails to meet the 90-percent asset test.

(b) *Time period for a QOF to reinvest certain proceeds.* If a QOF receives proceeds from the return of capital or the sale or disposition of some or all of its qualified opportunity zone property within the meaning of section 1400Z–2(d)(2)(A), and if the QOF reinvests some or all of the proceeds in qualified opportunity zone property by the last day of the 12-month period beginning on the date of the distribution, sale, or disposition, then the proceeds, to the extent that they are so reinvested, are

treated as qualified opportunity zone property for purposes of the 90-percent asset test in section 1400Z–2(d)(1), but only to the extent that prior to the reinvestment in qualified opportunity zone property the proceeds are continuously held in cash, cash equivalents, or debt instruments with a term of 18 months or less. If reinvestment of the proceeds is delayed by waiting for governmental action the application for which is complete, that delay does not cause a failure of the 12-month requirement in this paragraph (b).

(c) *Anti-abuse rule—(1) In general.* Pursuant to section 1400Z–2(e)(4)(C), the rules of section 1400Z–2 and §§ 1.1400Z2(a)–1 through 1.1400Z2(g)–1 must be applied in a manner consistent with the purposes of section 1400Z–2. Accordingly, if a significant purpose of a transaction is to achieve a tax result that is inconsistent with the purposes of section 1400Z–2, the Commissioner can recast a transaction (or series of transactions) for Federal tax purposes as appropriate to achieve tax results that are consistent with the purposes of section 1400Z–2. Whether a tax result is inconsistent with the purposes of section 1400Z–2 must be determined based on all the facts and circumstances.

(2) [Reserved]

(d) *Applicability date.* This section applies to taxable years of a QOF that end on or after the date of publication in the **Federal Register** of a Treasury decision adopting these proposed rules as final regulations. However, an eligible taxpayer may rely on the proposed rules in this section (other than paragraph (c) of this section) with respect to taxable years before the date of applicability of this section, but only if the eligible taxpayer applies the rules in their entirety and in a consistent manner. An eligible taxpayer may rely on the proposed rules in paragraph (c) of this section with respect to taxable years before the date of applicability of this section, but only if the eligible taxpayer applies the rules of section 1400Z–2 and §§ 1.1400Z2(a)–1 through 1.1400Z2(g)–1, as applicable, in their entirety and in a consistent manner.

■ **Par. 7.** Section 1.1400Z2(g)–1 is added to read as follows:

§ 1.1400Z2(g)–1 Application of opportunity zone rules to members of a consolidated group.

(a) *Scope and definitions—(1) Scope.* This section provides rules regarding the Federal income tax treatment of QOFs owned by members of consolidated groups.

(2) *Definitions.* The definitions provided in § 1.1400Z2(b)–1(a)(2) apply for purposes of this section.

(b) *QOF stock not stock for purposes of affiliation*—(1) *In general.* Stock in a QOF corporation (whether qualifying QOF stock or otherwise) is not treated as stock for purposes of determining whether the issuer is a member of an affiliated group within the meaning of section 1504. Therefore, a QOF corporation can be the common parent of a consolidated group, but a QOF corporation cannot be a subsidiary member of a consolidated group.

(2) *Example.* The following example illustrates the rules of this paragraph (b).

(i) *Facts.* Corporation P wholly owns corporation S, which wholly owns corporation Q. P, S, and Q are members of a U.S. consolidated group (P group). In 2018, S sells an asset to an unrelated party and realizes \$500 of capital gain. S contributes \$500 to Q and properly elects to defer recognition of the gain under section 1400Z–2. At such time, Q qualifies and elects to be treated as a QOF.

(ii) *Analysis.* Under paragraph (b) of this section, stock of a QOF (qualifying or otherwise) is not treated as stock for purposes of affiliation under section 1504. Thus, once Q becomes a QOF, Q ceases to be affiliated with the P group members under section 1504(a), and it deconsolidates from the P group.

(c) *Qualifying investments by members of a consolidated group.* Except as otherwise provided in this section or in § 1.1400Z2(b)–1, section 1400Z–2 applies separately to each member of a consolidated group. Therefore, for example, the same member of the group must both engage in the sale of a capital asset giving rise to gain and timely invest an amount equal to some or all of such gain in a QOF (as provided in section 1400Z–2(a)(1)) in order to qualify for deferral of such gain under section 1400Z–2.

(d) *Tiering up of investment adjustments provided by section 1400Z–2.* Basis increases in a qualifying investment in a QOF under sections 1400Z–2(b)(2)(B)(iii), 1400Z–2(b)(2)(B)(iv), and 1400Z–2(c) are treated as satisfying the requirements of § 1.1502–32(b)(3)(ii)(A), and thus qualify as tax-exempt income to the QOF owner. Therefore, if the QOF owner is a member of a consolidated group and is owned by other members of the same group (upper-tier members), the group members increase their bases in the shares of the QOF owner under § 1.1502–32(b)(2)(ii). However, there is no basis increase under § 1.1502–32(b)(2)(ii) in shares of upper-tier members with regard to basis increases under section 1400Z–2(c) and the regulations at § 1.1400Z2(c)–1 unless

and until the basis of the qualifying investment is increased to its fair market value, as provided in section 1400Z–2(c) and the regulations at § 1.1400Z2(c)–1.

(e) *Application of § 1.1502–36(d).* This paragraph (e) clarifies how § 1.1502–36(d) applies if a member (M) transfers a loss share of another member (S) and S is a QOF owner that owns a qualifying investment in a QOF. To determine S's attribute reduction amount under § 1.1502–36(d)(3), S's basis in its qualifying investment is included in S's net inside attribute amount to compute S's aggregate inside loss under § 1.1502–36(d)(3)(iii)(A). However, S's basis in the qualifying investment is not included in S's category D attributes available for attribute reduction under § 1.1502–36(d)(4). Thus, S's basis in the qualifying investment cannot be reduced under § 1.1502–36(d). If S's attribute reduction amount exceeds S's attributes available for reduction, then to the extent of S's basis in the qualifying investment (limited by the remaining attribute reduction amount), the common parent is treated as making the election under § 1.1502–36(d)(6) to reduce M's basis in the transferred loss S shares.

(f) *Examples.* The following examples illustrate the rules of this section.

(1) *Example 1: Basis adjustment when member owns qualifying QOF stock*—(i) *Facts.* Corporation P is the common parent of a consolidated group (P group), and P wholly owns Corporation S, a member of the P group. In 2018, S sells an asset to an unrelated party and realizes \$500 of capital gain. S contributes \$500 to Q (a QOF corporation) and properly elects to defer the gain under section 1400Z–2(a) and § 1.1400Z2(a)–1. S does not otherwise own stock in Q. In 2029, when S still owns its qualifying investment in Q, P sells all of the stock of S to an unrelated party.

(ii) *Analysis*—(A) *5-year and 7-year basis increase and § 1.1502–32 tier-up.* In 2023, when S has held the stock of Q for five years, under section 1400Z–2(b)(2)(B)(iii), S increases its basis in its Q stock by \$50 (10 percent of \$500, the amount of gain deferred by reason of section 1400Z–2(a)(1)(A)). The 10-percent basis increase qualifies as tax-exempt income to S under paragraph (d) of this section. Thus, P (an upper-tier member) increases its basis in S's stock by \$50 under § 1.1502–32(b)(2)(ii). Similarly, in 2025, when S has held the stock of Q for seven years, under section 1400Z–2(b)(2)(B)(iv), S increases its basis in its Q stock by an additional \$25 (5 percent of \$500). The 5 percent basis increase also qualifies as tax-exempt income to S under paragraph (d) of this section, and P increases its basis in S's stock by an additional \$25 under § 1.1502–32(b)(2)(ii).

(B) *S's recognition of deferred capital gain in 2026.* S did not dispose of its Q stock prior to December 31, 2026. Therefore, under section 1400Z–2(b)(1)(B) and § 1.1400Z2(b)–

1(b)(2), S's deferred capital gain is included in S's income on December 31, 2026. The amount of gain included under section 1400Z–2(b)(2)(A) is \$425 (\$500 of deferred gain less S's \$75 basis in Q). S's basis in Q is increased by \$425 to \$500, and P's basis in S also is increased by \$425.

(C) *P's disposition of S.* P's sale of S stock in 2029 results in the deconsolidation of S. Q remains a non-consolidated subsidiary of S, and S is not treated as selling or exchanging its Q stock for purposes of section 1400Z–2(c). Therefore, no basis adjustments under section 1400Z–2 are made as a result of P's sale of S stock.

(iii) *S sells the stock of Q after 10 years.* The facts are the same as in this *Example 1* in paragraph (f)(1)(i) of this section, except that in 2029, instead of P selling all of the stock of S, S sells all of the stock of Q to an unrelated party for its fair market value of \$800. At the time of the sale, S has owned the Q stock for over 10 years, and S elects under section 1400Z–2(c) to increase its stock basis in Q from \$500 (see the analysis in this *Example 1* in paragraph (f)(1)(ii)(B) of this section) to the fair market value of Q on the date of the sale, \$800. As a result of the election, S's basis in Q is \$800 and S has no gain on the sale of Q stock. Additionally, the \$300 basis increase in Q is treated as tax-exempt income to S pursuant to paragraph (d) of this section. Thus, P increases its basis in P's S stock by \$300 under § 1.1502–32(b)(2)(ii).

(2) *Example 2: Computation and application of the attribute reduction amount under § 1.1502–36(d) when S owns a QOF*—(i) *Facts.* Corporation P (the common parent of a consolidated group) wholly owns corporation M, which wholly owns corporation S, which wholly owns Q (a QOF corporation). In 2018, S sells an asset to an unrelated party and realizes \$5,000 of capital gain. S contributes \$5,000 to Q and properly elects to defer the gain under section 1400Z–2. In 2024, M sells all of its S stock to an unrelated party for fair market value of \$100, and M's basis in the stock of S is \$300. At the time of sale, S owns the stock of Q with a basis of \$500 (S's basis in Q was increased under section 1400Z–2(b)(2)(B)(iii) to \$500 in 2023), and S has a net operating loss carryover of \$50. M's transfer of the S shares is a transfer of loss shares under § 1.1502–36. Assume that no basis redetermination is required under § 1.1502–36(b) and no basis reduction is required under § 1.1502–36(c).

(ii) *Attribute reduction under § 1.1502–36(d).* Under § 1.1502–36(d), S's attributes are reduced by S's attribute reduction amount. Section 1.1502–36(d)(3) provides that S's attribute reduction amount is the lesser of the net stock loss and S's aggregate inside loss. The net stock loss is the excess of the \$300 aggregate basis of the transferred S shares over the \$100 aggregate value of those shares, or \$200. S's aggregate inside loss, which includes the basis of the stock of Q as provided by paragraph (e) of this section, is the excess of S's net inside attribute amount over the value of the S share. S's net inside attribute amount is \$550, computed as the sum of S's \$50 loss carryover and its \$500 basis in Q. S's aggregate inside loss is therefore \$450 (\$550 net inside attribute

amount over the \$100 value of the S share). Accordingly, S's attribute reduction amount is the lesser of the \$200 net stock loss and the \$450 aggregate inside loss, or \$200. Under § 1.1502-36(d)(4), S's \$200 attribute reduction is first allocated and applied to reduce S's \$50 loss carryover to \$0. Under § 1.1502-36(d)(4)(i)(D), S generally would be able to reduce the basis of its category D assets (including stock in other corporations) by the remaining attribute reduction amount (\$150). However, paragraph (e) of this section provides that S's basis in the QOF (Q) shares is not included in S's category D attributes that are available for reduction under § 1.1502-36(d)(4), and the remaining \$150 of

attribute reduction amount cannot be used to reduce the basis of Q shares under § 1.1502-36(d). Rather, under paragraph (e) of this section, P is treated as making the election under § 1.1502-36(d)(6) to reduce M's basis in the transferred loss S shares by \$150. As a result, P's basis in its M stock will also be reduced by \$150.

(g) *Applicability date.* Except as otherwise provided in this paragraph (g), this section applies for taxable years that begin on or after the date of publication in the **Federal Register** of a Treasury decision adopting these

proposed rules as final regulations. However, a QOF may rely on the proposed rules in this section with respect to taxable years that begin before the applicability date of this section, but only if the QOF applies the rules in their entirety and in a consistent manner.

Kirsten Wielobob,

Deputy Commissioner for Services and Enforcement.

[FR Doc. 2019-08075 Filed 4-30-19; 8:45 am]

BILLING CODE 4830-01-P

Reader Aids

Federal Register

Vol. 84, No. 84

Wednesday May 1, 2019

CUSTOMER SERVICE AND INFORMATION

Federal Register/Code of Federal Regulations

General Information, indexes and other finding aids **202-741-6000**

Laws **741-6000**

Presidential Documents

Executive orders and proclamations **741-6000**

The United States Government Manual **741-6000**

Other Services

Electronic and on-line services (voice) **741-6020**

Privacy Act Compilation **741-6050**

ELECTRONIC RESEARCH

World Wide Web

Full text of the daily Federal Register, CFR and other publications is located at: www.govinfo.gov.

Federal Register information and research tools, including Public Inspection List and electronic text are located at: www.federalregister.gov.

E-mail

FEDREGTOC (Daily Federal Register Table of Contents Electronic Mailing List) is an open e-mail service that provides subscribers with a digital form of the Federal Register Table of Contents. The digital form of the Federal Register Table of Contents includes HTML and PDF links to the full text of each document.

To join or leave, go to <https://public.govdelivery.com/accounts/USGPOOFR/subscriber/new>, enter your email address, then follow the instructions to join, leave, or manage your subscription.

PENS (Public Law Electronic Notification Service) is an e-mail service that notifies subscribers of recently enacted laws.

To subscribe, go to <http://listserv.gsa.gov/archives/publaws-l.html> and select *Join or leave the list (or change settings)*; then follow the instructions.

FEDREGTOC and **PENS** are mailing lists only. We cannot respond to specific inquiries.

Reference questions. Send questions and comments about the Federal Register system to: fedreg.info@nara.gov

The Federal Register staff cannot interpret specific documents or regulations.

FEDERAL REGISTER PAGES AND DATE, MAY

18383-18694..... 1

CFR PARTS AFFECTED DURING MAY

At the end of each month the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

10 CFR

Proposed Rules:

430.....18414

431.....18414

21 CFR

Proposed Rule:

1308.....18423

26 CFR

Proposed Rules:

1.....18652

29 CFR

1602.....18383

30 CFR

Proposed Rules:

913.....18428

917.....18430

925.....18433

938.....18435

32 CFR

151.....18383

Proposed Rules:

199.....18437

200.....18437

33 CFR

165.....18387, 18389

Proposed Rules:

165.....18452

40 CFR

52.....18392

180.....18398

Proposed Rules:

131.....18454

44 CFR

64.....18403

46 CFR

Proposed Rules:

355.....18468

356.....18469

47 CFR

30.....18405

76.....18406

50 CFR

300.....18409

Proposed Rules:

648.....18471

LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion

in today's **List of Public Laws**.

Last List April 24, 2019

Public Laws Electronic Notification Service (PENS)

PENS is a free electronic mail notification service of newly

enacted public laws. To subscribe, go to <http://listserv.gsa.gov/archives/publaws-l.html>

Note: This service is strictly for E-mail notification of new laws. The text of laws is not available through this service. **PENS** cannot respond to specific inquiries sent to this address.

TABLE OF EFFECTIVE DATES AND TIME PERIODS—MAY 2019

This table is used by the Office of the Federal Register to compute certain dates, such as effective dates and comment deadlines, which appear in agency documents. In computing these

dates, the day after publication is counted as the first day.

When a date falls on a weekend or holiday, the next Federal business day is used. (See 1 CFR 18.17)

A new table will be published in the first issue of each month.

DATE OF FR PUBLICATION	15 DAYS AFTER PUBLICATION	21 DAYS AFTER PUBLICATION	30 DAYS AFTER PUBLICATION	35 DAYS AFTER PUBLICATION	45 DAYS AFTER PUBLICATION	60 DAYS AFTER PUBLICATION	90 DAYS AFTER PUBLICATION
May 1	May 16	May 22	May 31	Jun 5	Jun 17	Jul 1	Jul 30
May 2	May 17	May 23	Jun 3	Jun 6	Jun 17	Jul 1	Jul 31
May 3	May 20	May 24	Jun 3	Jun 7	Jun 17	Jul 2	Aug 1
May 6	May 21	May 28	Jun 5	Jun 10	Jun 20	Jul 5	Aug 5
May 7	May 22	May 28	Jun 6	Jun 11	Jun 21	Jul 8	Aug 5
May 8	May 23	May 29	Jun 7	Jun 12	Jun 24	Jul 8	Aug 6
May 9	May 24	May 30	Jun 10	Jun 13	Jun 24	Jul 8	Aug 7
May 10	May 28	May 31	Jun 10	Jun 14	Jun 24	Jul 9	Aug 8
May 13	May 28	Jun 3	Jun 12	Jun 17	Jun 27	Jul 12	Aug 12
May 14	May 29	Jun 4	Jun 13	Jun 18	Jun 28	Jul 15	Aug 12
May 15	May 30	Jun 5	Jun 14	Jun 19	Jul 1	Jul 15	Aug 13
May 16	May 31	Jun 6	Jun 17	Jun 20	Jul 1	Jul 15	Aug 14
May 17	Jun 3	Jun 7	Jun 17	Jun 21	Jul 1	Jul 16	Aug 15
May 20	Jun 4	Jun 10	Jun 19	Jun 24	Jul 5	Jul 19	Aug 19
May 21	Jun 5	Jun 11	Jun 20	Jun 25	Jul 5	Jul 22	Aug 19
May 22	Jun 6	Jun 12	Jun 21	Jun 26	Jul 8	Jul 22	Aug 20
May 23	Jun 7	Jun 13	Jun 24	Jun 27	Jul 8	Jul 22	Aug 21
May 24	Jun 10	Jun 14	Jun 24	Jun 28	Jul 8	Jul 23	Aug 22
May 28	Jun 12	Jun 18	Jun 27	Jul 2	Jul 12	Jul 29	Aug 26
May 29	Jun 13	Jun 19	Jun 28	Jul 3	Jul 15	Jul 29	Aug 27
May 30	Jun 14	Jun 20	Jul 1	Jul 5	Jul 15	Jul 29	Aug 28
May 31	Jun 17	Jun 21	Jul 1	Jul 5	Jul 15	Jul 30	Aug 29